

From: [Doug Wetmore](#)
To: [Mike Murray](#)
Cc: [Waanders, Jason](#); [Mike Anderson](#); [Stevens, Mike](#); [Stevens, Paul](#); [Selleck, Philip](#); [Hamilton, Sandra](#)
Subject: Re: draft reg
Date: 04/02/2010 04:33 PM
Attachments: [CAHA Draft Proposed ORV Rule Preamble.mbm-EQD.doc](#)
[CAHA Draft Proposed ORV Rule Preamble.mbm-EQD_clean.doc](#)

Hi everyone.

I've attached a copy of the preamble (with Mike Murray and EQD comments) and the rule (Mike Murray's latest revision) in both track-changes and clean versions. The rule text is included as a reference to facilitate your review of the preamble. As you'll notice, we deleted a large amount of text from the preamble (Affected Environment/Environmental Consequences) as it seemed unnecessary and Mike Tiernan also removed similar text from the preamble for the CURE proposed rule. Please submit any comments on the preamble by Friday April 9th.

Thanks.



CAHA Draft Proposed ORV Rule Preamble.mbm-EQD.doc CAHA Draft Proposed ORV Rule Preamble.mbm-EQD_clean.doc

Doug Wetmore
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▼ [Mike Murray/CAHA/NPS](#)

Mike Murray/CAHA/NPS

04/01/2010 04:09 PM

To "Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>, "Stevens, Mike" <Mike.Stevens@sol.doi.gov>, "Stevens, Paul" <Paul_Stevens@nps.gov>, "Selleck, Philip" <Philip_Selleck@nps.gov>, "Hamilton, Sandra" <Sandra_Hamilton@nps.gov>, Jon Anglin/CAHA/NPS@NPS, "Doug_Wetmore@nps.gov" <Doug_Wetmore@nps.gov>

cc Mike Anderson/Atlanta/NPS@NPS, Jonathan Pierce/Atlanta/NPS@NPS

Subject draft reg

All,

Attached is revised proposed rule text, with tables showing the designated routes, etc. I have reviewed it multiple times and have yet to review it anew without changing something, so it is time for you to help with editing. Several caveats:

- **Paul and Jon**, please review content carefully to ensure it captures our intended requirements and intended designated routes and soundside access points. See note in section (7)(i) regarding the applicability of all

vehicle and equipment requirements to commercial fishermen. I seem to recall some RegNeg discussion about there being a legitimate exception for commercial fishermen to one of the equipment requirements, but I don't remember the specifics. Would that discussion have been that they don't necessarily need a 4WD vehicle? (If that is the case, then the fact that we are not "requiring" but are only "recommending" a 4WD vehicle for anyone should cover it.) In any case, please review the applicability of ALL vehicle and equipment requirement to see if there are any specific ones that legitimately need not apply to commercial fishermen.

- Someone adept with formatting needs to check the document carefully to ensure the correct numbering and lettering format occurs throughout the document. For example, I broke section 12, sub-section (ii) "Pedestrian Safety" into sub-sub-sections, but didn't know how to number them.
- Some of you may be seeing the ORV routes table (section 11) for the first time. Thanks to Phil and AJ North at DEWA, who assisted in creating the tables, which the park has now edited. I've eliminated a separate section in the initial draft of the tables for routes with **LIMITED ACCESS MARCH 15 to JULY 31** (of which there are only two: Cape Point and South Point). These two routes are, in essence, year-round routes that (along with all routes) are subject to the superintendent's closure provision (section 9) and also subject to the Species Management Areas provision (section 10). Seems like those two provisions adequately define how those two routes will be managed, likely resulting in limited access during the breeding season, without complicating it further by creating an extra category of routes with **LIMITED ACCESS MARCH 15 to JULY 31**. See what you think about this approach.
- In section 11, *Off-road routes and area*. I've also tried to preface the tables with the possibility that reference point names may change, etc. I don't know if the wording is good, or if the wording should be located in the reg (as shown) or in the preamble to the reg. Please consider both the wording and the location of the wording when you review this section.

I'll be on leave until April 12. **I would appreciate it if you all would review this and provide comments "to all" by COB on Wednesday, April 7, if possible.** Where possible (e.g., Sandy and Doug; Paul and Jon), please consolidate your comments with your co-workers before submitting them. If anyone has any good ideas for simplifying or better organizing the text, please, please, please feel free to give it a shot. I'm not convinced we are anywhere near a final draft yet, but hope the group input will help make it much closer to final draft.

Sandy, I'll leave it up to you if you want to go ahead and consolidate the comments, update the draft, then distribute the new revised draft to the group and to TRG, or if you want to wait for me to get back so I can consolidate the comments. Also note that this is the section to be inserted into the edited version of the preamble that I sent you earlier with the notation to "Insert revised regulatory text here".

[attachment "ORV Draft Rule v040110.mbm.docx" deleted by Doug Wetmore/DENVER/NPS]

Thanks everybody!

Mike Murray

0025883

Superintendent
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▼ "Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>

"Waanders, Jason"
<JASON.WAANDERS@sol.doi.gov>

03/31/2010 02:06 PM

To "Murray, Mike" <Mike_Murray@nps.gov>,
"Doug_Wetmore@nps.gov"
<Doug_Wetmore@nps.gov>
cc "Stevens, Mike" <Mike.Stevens@sol.doi.gov>,
"Stevens, Paul" <Paul_Stevens@nps.gov>, "Selleck,
Philip" <Philip_Selleck@nps.gov>, "Hamilton, Sandra"
<Sandra_Hamilton@nps.gov>
Subject RE: advice needed

Maybe you could have language saying that the textual descriptions in the reg are intended to be descriptive and that the precise locations will be controlled by GPS coordinates or other appropriate techniques, which will be updated annually and made available to the public (i.e., in the compendium). That could also allow you to retain some flexibility to make small but necessary adjustments if conditions on the ground change.

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

From: Murray, Mike
Sent: Wednesday, March 31, 2010 1:55 PM
To: Doug_Wetmore@nps.gov
Cc: Waanders, Jason; Stevens, Mike; Stevens, Paul; Selleck, Philip; Hamilton, Sandra
Subject: Re: advice needed

We have GPS coordinates for the start and end points of each beach segment.
Need advice on how to include that in the draft regulation> If we use coordinates only (without a text description), it will be difficult for the public to understand the locations.

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0025884

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Doug

Wetmore/DENVER/NP
S

To

Murray/CAHA/NPS@NPS
03/31/2010 01:16

cc

PM
jason.waanders@sol.doi.gov,

Paul

Philip

Sandra

Hamilton/DENVER/NPS@NPS

Subject

link:

Murray)

Mike

mike.stevens@sol.doi.gov,

Stevens/CAHA/NPS@NPS,

Selleck/WASO/NPS@NPS,

Re: advice needed(Document

Mike

Hi Mike.

Does park staff have GPS locations (lat/lon) for the existing features such as ramps and beaches? If so, they could be used in the language to at least provide documentation on the location of these features at the time of the rule. However, this probably wouldn't work for the "new" ramp locations, as I believe their exact locations on the ground have yet to be determined.

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Mike

Murray/CAHA/NPS

To

0025885

03/31/2010 10:33 AM
Sandra
Philip
Selleck/WASO/NPS@NPS
cc
Wetmore/DENVER/NPS@NPS,
Paul
Stevens/CAHA/NPS@NPS
Subject
needed

jason.waanders@sol.doi.gov,
Hamilton/DENVER/NPS@NPS,
Doug
mike.stevens@sol.doi.gov,
advice

Jason, Sandy and Phil,

Park staff and I continue to struggle with coming up with clear and concise language to describe the ORV routes (i.e., the beach segments open to ORVs) in the proposed rule in a way that does not rely so heavily on using the current names of facilities (e.g., Coquina Beach) and ramp names (e.g., Ramp 4, Ramp 23, 27, etc.). Our efforts thus far have been tedious at best and have resulted in awkward descriptions (based on distance from "fixed landmarks," such as town or village boundaries, which will not change over time) that will not be easily understood by the public. See attached language, which I am not satisfied with (it needs to be simplified). In other words, we are bogged down in reviewing/editing the draft proposed rule because we haven't found an easy way to overcome the concern about the ORV route segments to current ramp names that could (and may likely) change in the future.

The issue that we are trying to avoid (but which may be leading us down the path of more complicated descriptive language) is that if we use the current ramp names in the regulation, which would be the easiest thing to do for all involved, it is highly likely that ramp name(s) and potentially the location of some ramps could change over time. If the regulatory description uses a place name that changes, would we need to change the regulation; and would the location identified in the regulation become obscure over time? This is not a hypothetical concern, as the CAHA special regulation on commercial fishing has already experienced such an issue. In 7.58(b)(6), "ramp 22" is used as a reference point for the sport fishing zone. "Ramp 22" is long gone, no longer exists, and at best only a few long-time staff sort of remember where it was. On the other hand, even though ramp 22 no longer exists and the reference may be confusing to people reading the regulation for the first time today, most people who need to know the regulation seem to understand where the sportfishing zone is. In other words, "ramp 22" is obscure but the approximate location of where it used to be has become the accepted location of the boundary of the sportfishing zone.

For the ORV rule, rather than try to come up with "geographic descriptions" that are independent of current facility and ramp names, some of which will likely change over the next 10-15 years (which is what we've been trying

to accomplish , but had limited success), it would be much simpler to describe the beach segments by the existing landmarks, as we have done in the DEIS. Would it work to use some sort of qualifying language, such as "the current (or 2010?) location of" ramp xx; so that in the future if the ramp name changes or the ramp is lost in a storm and relocated some place else, the actual location of the ORV route segment would still be based on where ramp xx was originally located when the regulation was established? Some version of such qualifying language in reference to the current ramp names would make the task of describing the ORV route segments much, much easier to finish and easier for the public to understand, as long as we do not risk losing sight of the intended ORV route segment boundaries if/when name or location of the ramp(s) change, which is inevitable. At this point, I'm just looking for an efficient way to resolve this, so we can move forward.

Any suggestions for adequate "qualifying language" that we could use to convey that the ORV route segments are designated based on the current location of the reference points used, and if those reference points (i.e., ramps) change in the future, the ORV route segment would still be located more or less where they were when the regulation was established? Is there a simple way to say that/do that, so we can move forward (and stop the tedious effort that has us bogged down at the moment)?

Your thoughts please.

[attachment "Route Descriptions.v033110.mbm.docx" deleted by Doug Wetmore/DENVER/NPS]

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4/2/2010: Mike Murray and EQD Comments

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC__

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

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The National Park Service (NPS) is proposing to designate routes and areas where off-road ~~motor~~ vehicles (ORVs) may be used off of Seashore roads at in the Cape Hatteras National Seashore, North Carolina. Unless otherwise provided for by special regulation, the operation of off road motor vehicles off of roads within areas of the National Park System is prohibited under existing regulations.

Comment [dw1]: Mike Tiernan on CURE

Comment [dw2]: Mike Tiernan on CURE

The intended effect of the special regulations is to carefully manage 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 various users, and to promote the safety of all visitors, 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.
- NPS Planning, Environment, and Public Comment (PEPC) website:
<http://parkplanning.nps.gov/caha>

4/2/2010: Mike Murray and EQD 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.

Comment [C3]: We should not accept comments by email, fax, or in bulk; just like we said for the DEIS. Are we supposed to use the www.regulations.gov website (why not use PEPC)?

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 Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan/Environmental Impact Statement- (plan/EIS) published March 12 ~~(January)~~, 2010.- The public should be aware that five other alternatives were presented in the plan/EIS. -Those alternatives are also described in this preamble and 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 ~~motorized vehicle ORV~~ use in off-road areas to designate specific areas and routes on public lands where the use of motorized vehicles ~~ORVs~~ may be permitted. Therefore, motorized travel off of established roads would not be permitted in any areas unless designated under a special regulation.

Comment [dw4]: Mike Tiernan on CURE

Section 3 of this Executive Order, as amended, authorizes the NPS to designate ORV use areas provided that the designation of such routes and 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

4/2/2010: Mike Murray and EQD Comments

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 off of roads, 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

4/2/2010: Mike Murray and EQD Comments

~~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

Comment [C5]: 1940 amendment not relevant

4/2/2010: Mike Murray and EQD Comments

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~~ park areas under its jurisdiction-- ~~In addition,~~ the Organic Act (16 U.S.C. 3) specifically provides the authority 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]~~

Comment [dw6]: Mike Tiernan on CURE

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.~~

Comment [dw7]: Mike Tiernan on CURE

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 (NCRWRC).

4/2/2010: Mike Murray and EQD Comments

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 Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan /Draft Environmental Impact Statement (plan/EIS). The ~~Off Road Vehicle Management Plan/Draft Environmental Impact Statement (plan/DEIS)~~ was open for public review and comment from March 12, 2010 [insert date] until May 11, 2010 [insert date]. -The plan/~~DEIS~~ is available at <http://parkplanning.nps.gov/caha>.

The purpose of the plan/DEIS was to develop regulations and procedures that carefully manage ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural

Comment [dw8]: Spell out?

Comment [dw9]: The document uses "plan/EIS" terminology. Should we use that or "plan/DEIS" here?

4/2/2010: Mike Murray and EQD Comments

~~processes, to provide a variety of visitor use experiences while minimizing conflicts among various users, and to promote the safety of all visitors. 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 A, 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

4/2/2010: Mike Murray and EQD Comments

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 ~~Seashore 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. [Alternative A is analyzed as a baseline for comparison with the other alternatives in the plan/EIS following the requirements in 40 CFR 1502.14\(d\). Details of the management actions under this alternative are described in tables 8 and 9 of the plan/EIS.](#)

[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 that. 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

Comment [C10]: The prenesting areas under the CD are based on the 2008 prenesting areas under the interim strategy, so it is not a new requirement that they be "large."

4/2/2010: Mike Murray and EQD Comments

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. [provided certain conditions from the modified consent decree are met.](#)
- 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. This alternative is designed to provide visitors to the Seashore with a degree of predictability regarding areas available for ORV use, as well as vehicle-free](#)

Comment [dw11]: Proposed text for the action alternatives was taken directly from the DEIS. Previous version had text from the executive summary, which was not very descriptive.

4/2/2010: Mike Murray and EQD Comments

areas, based largely on the seasonal resource- and visitor-use characteristics of various areas in the Seashore. This alternative would manage ORV use by identifying areas that historically do not support sensitive resources or that historically have lower visitor use. Many of these areas 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, with restrictions based on seasonal resource and visitor use or as year-round non-ORV areas. Some areas would be designated as vehicle-free year-round to provide opportunities for non-ORV users to experience the Seashore without the presence of vehicles. The establishment of ORV routes and vehicle-free areas would be based largely on seasonal resource requirements and year-round visitation patterns and would provide the public and the Seashore with a structured management approach that clearly states what areas are available for ORV use and when they are open. The public would have clear direction as to what would be open seasonally or year-round; however, it would require some effort on the public's part to be informed and to understand what areas are open and when use is permitted. Implementation would require an increase in Seashore staff and resources for public education and enforcement, but would provide for efficient Seashore operations with the identification of defined use areas.

Generally, most areas where there is a seasonally designated ORV route would be open to ORVs from October 15 to March 14, primarily due to concerns about resource protection for birds and turtles during breeding and hatching/fledging periods and to minimize conflicts with high visitor use periods. Areas that would be seasonally designated vehicle-free would include SMAs and some village beaches. These seasonal vehicle-free areas would primarily occur during periods of high visitation and high resource sensitivity—the summer and shoulder season months. The spits and points would be closed to ORVs from March 15 to October 14 to provide resource protection. A pedestrian access corridor would be provided at Bodie Island Spit, Cape Point, and South Point although the corridor could close during the breeding season as resource protection buffers and closures are established. Existing soundside ORV access areas would be retained and designated as ORV routes, including existing primitive parking and

4/2/2010: Mike Murray and EQD Comments

designated boat launch areas. The Seashore would maintain posts and signage defining the location of the parking areas and ORV access routes on the soundside.

ORV routes under this alternative would still be subject to temporary resource closures established when protected species breeding behavior warrants and/or if new habitat is created. In addition to the breeding season measures, resource closures and/or vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS (common to all alternatives).

Designated ORV routes would be established seasonally in areas with high visitation and/or sensitive resources and year-round in some areas that historically do not support sensitive resources or that have lower visitor use. To facilitate ORV access to the designated routes, existing ramps would be improved, reconfigured, and/or supplemented by new ramps, including the construction of ramps 47 and 48. (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64.) In addition, the interdunal road network would be maintained at its current level of access in most places, although an extension from ramp 45 west to ramp 49 would be provided. Pullouts or road widening would be provided where appropriate to provide safe ORV passage on the interdunal roads. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30, although SMAs would be closed to ORV use beginning on March 15. From May 1 through November 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 7:00 p.m. to 7:00 a.m. This alternative also involves the addition or expansion of parking areas at several locations.

ORV safety closures would be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable

4/2/2010: Mike Murray and EQD Comments

only to ORV access; pedestrian and commercial fishing access would generally be maintained through ORV safety closures.

Alternative C would include a Seashore-wide carrying-capacity element (“peak use limit”), which would be based on a physical space requirement of an average of one vehicle per 20 linear feet for Bodie and Hatteras Island Districts and one vehicle per 30 linear feet for the Ocracoke Island District. The provision of a lower carrying-capacity on Ocracoke Island would provide for a less crowded visitor experience in this area, enhancing the types of experiences available throughout the Seashore. The carrying capacity could be implemented whenever overcrowding could cause safety concerns, such as peak use periods during major summer holidays and weekends. The allowable number of vehicles in each area subject to the carrying capacity would be determined by the space requirements and the beachfront length of the area.

Alternative C would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in managing ORV use. Only annual permits would be available under this alternative, but these would be valid for 12 months from date of purchase so they could extend over the length of a season. To obtain the 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. Following completion of the test, owners would need to sign for their permits to acknowledge that they understand the rules and that all drivers of the permitted vehicles will abide by the rules and regulations governing ORV use at the Seashore. A violation of the rules and regulations by the owner or driver of an 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.

4/2/2010: Mike Murray and EQD Comments

Every five years the NPS would conduct a systematic review of the ORV and species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

Designated routes and areas under alternative C are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

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 15 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]

Comment [C12]: Need to be sure we use the correct dates

Alternative D: Increased Predictability and Simplified Management. This alternative is designed to provide visitors to the Seashore with the maximum amount of predictability regarding routes available for ORV use and vehicle-free areas for pedestrian use, which means establishing year-round ORV route and non-ORV area designations consistent with approved use patterns over the course of the year. Under this alternative, ORV routes would be determined by identifying areas that historically do not support sensitive resources and areas of lower visitor use. These areas would be designated as ORV routes year-round. Areas of historically high resource sensitivity or high visitor use would not be designated as ORV routes. The establishment of ORV routes and vehicle-free areas on a year-round (rather than seasonal) basis would provide the public and the Seashore with a simplified management approach that would

4/2/2010: Mike Murray and EQD Comments

increase predictability and reduce confusion about what and when areas are available for ORV use, and reduce the need for staff resources on the beach. Because of the relative simplicity of the elements of this alternative, implementation would require a lower level of Seashore staff and resources than other action alternatives and would maximize the efficiency of Seashore operations.

Year-round vehicle-free areas would include lifeguarded beaches and the areas in front of villages, as well as designated SMAs. These vehicle-free areas would provide for visitor safety during periods of high visitation, particularly in the summer months, and would also provide a vehicle-free experience for visitors during the off-season. Soundside access would continue as currently provided under the no-action alternatives. Vehicle-free areas would also be established year-round at Cape Point and the spits to provide a simplified approach to sensitive species management for Seashore operations, maximizing contiguous protected areas and eliminating seasonal changes in designated ORV routes and the demands associated with enforcing those changes. Other uses would still be allowed in these vehicle-free areas outside any identified resource closures or SMAs. All SMAs would be managed using the ML1 strategy, which would involve larger and longer species protection buffers and would not allow pedestrian access once prenesting closures are established. Pedestrian access to these areas would be allowed once breeding activities are completed.

ORV routes under this alternative would still be subject to temporary resource closures established when protected species breeding behavior warrants and/or if new habitat is created. In addition to the breeding season measures, resource closures within some vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS (common to all alternatives).

To facilitate access to designated ORV routes, existing ORV ramps would be improved, reconfigured, and/or supplemented by new ramps. (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64). No new or expanding parking areas would be provided

4/2/2010: Mike Murray and EQD Comments

under alternative D. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through November 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 7:00 p.m. to 7:00 a.m. to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours.

ORV safety closures would not be designated; ORV users would drive at their own risk and would be expected to rely on their knowledge of beach driving to determine if an area is safe to access based on their assessment of current conditions.

Alternative D would not include a carrying-capacity requirement, but would limit vehicles to a one-vehicle-deep parking configuration so that areas would not become overcrowded such that a safety concern would occur.

Alternative D would include a simple vehicle permit system, with no limit on the number of permits issued. Permit fees would be based on the recovery of NPS costs incurred in managing ORV use, but the fee should be lower than fees under alternatives C, E, or F due to the decreased management costs under this alternative. Only annual (based on the calendar year, as opposed to a 12-month period) permits would be available under this alternative. To obtain a permit, ORV drivers would be required to read the rules and regulations governing ORV use at the Seashore, including beach-driving safety and resource closure requirements. Owners would need to sign for their permit to acknowledge that they understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. Special consideration would be paid to providing beach safety information because of the lack of safety closures under this alternative. 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.

4/2/2010: Mike Murray and EQD Comments

Every five years the NPS would conduct a systematic review of the species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

Designated routes and areas under alternative D are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS. 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. This alternative is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, including to the spits and points, but often with controls or restrictions in place to limit impacts on sensitive resources. During the shorebird breeding season, some ORV routes may be kept open to use for longer periods of time by providing ORV pass-through zones at some spits and points and by improving interdunal road and ramp access. More pedestrian access would be provided through substantial additions to parking capacity at various key locations that lend themselves to walking on the beach. Vehicle-free areas would be provided during all seasons for non-ORV users to experience the Seashore without the

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4/2/2010: Mike Murray and EQD Comments

presence of vehicles. Like the other action alternatives, this alternative would manage ORV use by identifying areas that historically do not support sensitive resources and areas of lower visitor use. Most of these areas would be designated as ORV routes year-round. Areas of high resource sensitivity and high visitor use would either be designated as seasonal ORV routes, with restrictions based on seasonal resource and visitor use, or as year-round non-ORV areas. In addition, the SMAs would be reopened to ORV use approximately six weeks earlier than under alternative C (September 1 versus October 15).

During the shorebird breeding season, ORV pass-through zones would be designated at Bodie Island Spit, Cape Point, and South Point. The pass-through zones would use standard resource protection buffers and would not allow pedestrians, pets, ORV stopping, parking, or disembarking of passengers. These pass-through zones would be established to provide an increased possibility of access during the prenesting and incubation periods only, and would be subject to resource closures. Once through the pass-through zone, recreation would be allowed outside any existing resource closures. Both Bodie Island Spit and South Point would have pedestrian-only areas, when conditions allow, extending access beyond the end of the ORV route. When unfledged chicks are present, the probability of being able to provide this access would decrease. Therefore, in addition to the pass-through zones, the Seashore would promote the use of water taxis as alternative transportation to Bodie Island Spit and South Point, subject to designated landing zones and resource closures. Alternative E also involves the development of an interdunal pedestrian trail on Bodie Island. The trail would begin at a new parking area near the campground and would provide access to the inlet. This new trail would also be subject to resource protection closures.

The variety of access methods possible under alternative E, based on the establishment of ORV routes, seasonal vehicle-free areas, designation of ORV pass-through zones, and the promotion of water taxi service to designated points and spits, would provide the public with ORV and pedestrian access to a greater number of areas within the Seashore, even during portions of the shorebird breeding season. However, this alternative would afford less predictability than alternatives C and D regarding areas available for use and would require a greater amount of oversight and management. Implementation

4/2/2010: Mike Murray and EQD Comments

would perhaps be difficult for the public to understand and would require more Seashore staff and resources than the other alternatives.

Areas that would be seasonally designated vehicle-free would include the areas in front of villages, except Frisco and Hatteras, and most of the SMAs. The ORV open season in front of the villages would be defined as November 1 to March 31 and in most SMAs from September 1 through March 14 (when a resource closure is not limiting access), with ORV access (via a pass-through zone) to Bodie Island Spit, Cape Point, and South Point from March 15 through August 31 via a pass-through zone, subject to resource closures. Soundside access would remain open at currently designated boat launch areas, on Hatteras Inlet Spit from the Pole Road to Cable Crossing and the Spur Road, and on Ocracoke Island soundside areas where commercial fishing access is currently allowed. Under this alternative, motorcycles would be allowed on all routes and areas open to ORVs on the soundside.

The remaining soundside access points would be closed to ORV use and small parking areas would be constructed to provide pedestrian access to the water. Signage/posts would be installed at the parking areas and boat launch areas to prevent damage to vegetation and other soundside resources.

ORV routes under this alternative would still be subject to temporary resource closures established when protected-species breeding behavior warrants and/or if new habitat is created. In addition to the breeding-season measures, resource closures and/or vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS (common to all alternatives).

To facilitate access to ORV routes, this alternative would extend the existing interdunal road west of ramp 45 all the way to ramp 49 and construct two new ramps (47 and 48). (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64). A new ramp would be established at either 24 or 26, along with a new parking area at the selected location. Designated ORV

4/2/2010: Mike Murray and EQD Comments

routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through September 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 10:00 p.m. to 6:00 a.m. to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours. From May 1 through September 15, a limited number of ORV users would be permitted to park and stay overnight at selected spits and points, under the terms and conditions of a special use permit, when such areas are not otherwise closed to protect sensitive resources. From September 16 through November 15, ORV routes with no or a low density of turtle nests remaining (as determined by the NPS) would be open between 10:00 p.m. and 6:00 a.m., subject to the terms and conditions of a required permit (see table 8 for details). This alternative also involves the addition of parking spaces at several ramp locations.

ORV safety closures could be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable only to ORV access; pedestrian and commercial fishing access would generally be maintained through ORV safety closures. For village beaches that are open to ORV use during the winter season, the village beaches must be at least 20 meters wide from the toe of the dune seaward to the mean high tide line in order to be open to ORV use.

Alternative E would include a carrying-capacity requirement for all areas based on a physical space requirement of one vehicle per 20 linear feet for Bodie and Hatteras Island Districts, except 400 vehicles would be allowed within a 1-mile area centered on Cape Point, and one vehicle per 30 linear feet for the Ocracoke Island District. The carrying capacity would be implemented whenever overcrowding could cause safety concerns, such as at peak use periods during major summer holidays and weekends. The allowable number of vehicles in each area would be determined by the space requirements and the beachfront length of the area.

Alternative E would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in managing ORV

4/2/2010: Mike Murray and EQD Comments

use. Expected permit fees would be higher under this alternative due to the intense level of management required for implementation. Both annual and weekly 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. Following completion of the test, owners would need to sign for their permit to acknowledge that they understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. 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. The park-and-stay provision would be managed under a separate special use permit. Alternative E would also include a self-contained vehicle (SCV) camping opportunity from November 1 to March 31 at three NPS campgrounds (one in each district), with a separate permit requirement and use limits.

Every five years the NPS would conduct a systematic review of the ORV and species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

Designated routes and areas under alternative E are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

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

4/2/2010: Mike Murray and EQD Comments

~~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 the NPS in the development of an ORV regulation for the Seashore. The Committee met 11 times from January 2007 through February 2009, and conducted numerous subcommittee and work group meetings and conference calls. The Committee discussed and explored options for the full spectrum of ORV management issues covered in this plan/EIS. Although the Committee did not reach a consensus on a recommended alternative, the NPS has used the Committee's input to create this action alternative. In any case of conflicting advice from Committee members about any particular issue, the NPS has made a management judgment as to which approach would make an effective overall ORV management alternative. The NPS has also included under alternative E some ORV management approaches identified by the Committee that would require more intensive management (such as park-and-stay and SCV camping), in keeping with the maximum management theme of that alternative.

This alternative is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, including access to the spits and points, but often with controls or restrictions in place to limit impacts on sensitive resources. This means that some areas may

4/2/2010: Mike Murray and EQD Comments

be kept open to ORV users for longer periods of time by reopening some ORV corridors at the spits and points sooner after shorebird breeding activity is completed than in alternatives C or E, and by improving interdunal road and ORV ramp access. Pedestrian access would be enhanced by providing increased parking capacity at various points of access to vehicle-free areas. Such areas would be provided during all seasons so non-ORV users can experience the Seashore without the presence of vehicles. Like the other action alternatives, this alternative would manage ORV use by identifying areas that historically do not support sensitive resources and areas of lower visitor use. Many of these areas 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, with restrictions based on seasonal resource and visitor use, or as year-round non-ORV areas. In addition, the SMAs could reopen to ORV use as early as July 31, which is up to four weeks earlier than under alternative E (September 1), when the shorebird breeding season is completed at each site (typically in August).

During the shorebird breeding season, a shoreline pedestrian access corridor would be established at Bodie Island Spit, and ORV access corridors would be established at Cape Point and South Point. These corridors would use standard resource-protection buffers and would be subject to resource closures. When unfledged chicks are present, the probability of being able to provide this access would decrease. Like alternative E, alternative F also involves the development of an interdunal pedestrian trail on Bodie Island. The trail would begin at a new parking area near the campground and would provide access to the inlet. This new trail would also be subject to resource-protection closures. Alternative F would include the construction of a short ORV route to access a new pedestrian trail to the sound on Ocracoke Island.

The variety of access methods possible under alternative F, based on the establishment of year-round and seasonal ORV routes and vehicle-free areas, and increased interdunal roads and parking to support access, would provide the public with ORV and pedestrian access to a greater number of areas within the Seashore. This alternative would afford less predictability than alternative C or D, but

4/2/2010: Mike Murray and EQD Comments

somewhat more predictability than alternative E, regarding areas available for use, and it would require a comparable level of oversight and management to alternative E.

Areas that would be seasonally designated vehicle-free would include the areas in front of villages, except Buxton, which would be vehicle free year-round, and some SMAs that would have seasonal restrictions on ORV use. The ORV open season in front of the villages would be varied, with northern Hatteras Village beaches (Rodanthe, Waves, Salvo, and Avon) open September 16 to May 14, southern Hatteras Village beaches open December 1 to February 28/29, and Ocracoke campground and day use area beaches open November 1 to March 31. SMAs (that are designated as ORV routes) would generally be closed to ORV use March 15 through July 31, or until two weeks after all chicks have fledged and breeding activity has ceased, whichever comes later. ORV access would be allowed to Cape Point and South Point during the breeding season, subject to resource closures, using the standard buffer distances. New interdunal roads on South Beach from ramp 45 to ramp 49, on Hatteras Inlet Spit extending northeast and southwest from the southern terminus of the Pole Road, and on North Ocracoke Spit from ramp 59 extending northeast toward the inlet would facilitate access to locations that have either seasonal or year-round restrictions on ORV use. Existing soundside access points would remain open, with better maintenance than currently occurs. Signage/posts would be installed at the soundside parking areas and boat launch areas to prevent damage to vegetation and other soundside resources. This alternative also involves the addition of parking spaces at several ramp locations.

ORV routes under this alternative would still be subject to temporary resource closures established when protected-species breeding behavior warrants and/or if new habitat is created. In addition to the breeding-season measures, resource closures and/or vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS. This would include three “floating” nonbreeding shorebird habitat areas located between ramps 23 and 34, between ramps 45 and

4/2/2010: Mike Murray and EQD Comments

49, and south of ramp 72. The “floating area” would be adjusted on a yearly basis to provide nonbreeding habitat in these areas. The closure would float year to year; depending on where the most effective wintering habitat is located which would be determined based on a review of the previous year’s monitoring results.

To facilitate access to ORV routes, this alternative would add ramp 39 near Haulover Beach. (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64). New ramps would also be established at both 24 and 26, along with new parking areas. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through September 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 1 hour after sunset until NPS turtle patrol has checked the beach in the morning (by approximately one-half hour after sunrise) to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours. From September 16 through November 15, selected ORV routes with no or a low density of turtle nests remaining (as determined by the NPS) would reopen to night driving, subject to the terms and conditions of a required permit.

ORV safety closures could be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable only to ORV access; pedestrian and commercial fishing access would generally be maintained through safety closures. Alternative F provides specific guidelines for establishing and removing safety closures. Additional ORV-driving requirements would be implemented to provide for increased pedestrian safety in all areas open to ORV use.

Alternative F would include a carrying-capacity requirement (peak use limit) for all areas based on a physical space requirement of one vehicle per 20 linear feet for Bodie Island, Hatteras Island, and Ocracoke Island Districts, except that 400 vehicles would be allowed within a 1-mile area centered on Cape Point. The carrying capacity would prevent safety concerns associated with overcrowding, such as

4/2/2010: Mike Murray and EQD Comments

at peak use periods during major summer holidays and weekends. The allowable number of vehicles in each area would be determined by the space requirements and the beachfront length of the area.

Alternative F would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in managing ORV use. Expected permit fees would be similar to alternative E due to the level of management required for implementation. 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. Following completion of the test, owners would need to sign for their permit to acknowledge that they understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. 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. In addition to the mandatory education program for ORV users, the NPS would establish a voluntary resource-education program targeted toward non-ORV beach users.

Every five years the NPS would conduct a systematic review of the ORV and species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness. Designated routes and areas under alternative F are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

Alternative F is the NPS 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

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4/2/2010: Mike Murray and EQD Comments

with more flexibility in management. Furthermore, this alternative incorporates input from the negotiated rulemaking process, thereby providing more public input. [EIS pgs 95-96]

~~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. Although the Committee did not reach consensus on a recommended alternative, (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—xiii]~~

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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.~~

4/2/2010: Mike Murray and EQD Comments

~~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

4/2/2010: Mike Murray and EQD Comments

———— 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

4/2/2010: Mike Murray and EQD Comments

~~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]~~

4/2/2010: Mike Murray and EQD Comments

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 seraping 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

4/2/2010: Mike Murray and EQD Comments

~~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;~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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. 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. Depending upon the number of nests that may be ready to hatch and the availability of volunteers, this could minimize negative impacts from artificial lighting, predation, and human disturbance.~~

~~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~~

Comment [C13]: The nest watch program is a relatively minor aspect of the overall management and should not be listed first and described in much more detail than the relatively more important aspects of sea turtle management under this alternative.

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4/2/2010: Mike Murray and EQD Comments

~~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.~~

4/2/2010: Mike Murray and EQD Comments

~~———— 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~~

4/2/2010: Mike Murray and EQD Comments

~~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 identifilists the gull-billed tern as a state listed threatened species. The American oystercatcher is listed as a species of concern by the Southeastern Shorebird Conservation Plan, and both~~

Comment [C14]: Is "state-threatened" correct terminology?

4/2/2010: Mike Murray and EQD Comments

~~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.~~

4/2/2010: Mike Murray and EQD Comments

~~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 oystereatchers 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 oystereatchers, 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 managed under ML1 procedures 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 oystereatchers 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).~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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 and to South 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]~~

4/2/2010: Mike Murray and EQD Comments

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

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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~~

4/2/2010: Mike Murray and EQD Comments

~~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]~~

4/2/2010: Mike Murray and EQD Comments

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.

4/2/2010: Mike Murray and EQD Comments

~~———— 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~~

Comment [dw15]: Currently not in the rule text. Should it be?

Comment [C16]: I know we used this wording in the DEIS; however, it evolved from an attempt to distinguish it from the night driving permit required under alternative B and to say that under the action alternatives there is not a separate permit for night driving. The reality is that the night driving restriction is just another requirement that must be followed by the permittee; so there is no need for the deleted sentence in the regulation.

4/2/2010: Mike Murray and EQD Comments

~~and~~ acknowledge in writing an 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 affixed displayed on the vehicle in a manner and location specified as directed~~ by the Superintendent ~~at the time of issuance.~~

In addition to ORV operator requirements, this proposal would establish vehicle requirements for 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 ~~two~~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 combined ORV length of vehicle and trailer 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 operation of motorcycles and all-terrain vehicles (ATV) off road would be prohibited.

The ORV would be required to contain certain equipment, including a low-pressure tire gauge, shovel, jack, and jack stand. Under this proposal, authorized personnel ~~the Superintendent~~ would reserve the right to inspect~~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

Comment [C17]: LE staff in reviewing the draft proposed rule think we erred in how the restriction is worded in the DEIS (i.e., this edit is not consistent with wording in the DEIS and the difference needs to be reconciled). As it is worded in the DEIS, it would allow a 3-axle vehicle up to 30-ft long towing a 2-axle trailer of unrestricted length. It is difficult to imagine such a rig, and even more difficult to imagine it would be an appropriate off-road vehicle. If someone really needed to use a heavy duty tractor-trailer rig on the beach for some reason, we would treat it as a one-time SUP situation, not as an ongoing use authorized by ORV permit.

Comment [dw18]: Is there another type of ORV permit?
Comment [dw19]: GLOBAL – revise the citation when rule language is finalized.

4/2/2010: Mike Murray and EQD Comments

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 issued to the North Carolina Department of Transportation during the temporary emergency situation. The Superintendent could also authorize temporary ~~non-emergency~~ ORV use of non-ORV areas for 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]**

Vehicles authorized to operate on the beach under a commercial use authorization (CUA) issued by the Superintendent would be restricted to designated ORV routes that are open to ORV use, but would not be required to obtain a separate ORV permit in addition to the CUA.

Vehicles authorized to operate on the beach under a commercial fishing permit issued by the Superintendent ~~vehicles~~ would be authorized to enter non-ORV areas, except for full resource closures and lifeguarded beaches, and would not be required to obtain a separate ORV permit. 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]** Any ORV permit, special use permit, or commercial use authorization could be revoked for violation of applicable Seashore regulations or terms and conditions of the respective permit.

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 or not be designated for ORV use. **[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

Comment [dw20]: Need to discuss concerns with this language.

4/2/2010: Mike Murray and EQD Comments

show these routes and areas would be available in the Office of the Superintendent and on the

[parkSeashore](#) 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 [parkSeashore](#) 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.~~

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4/2/2010: Mike Murray and EQD Comments

~~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(e)(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 be required to slow down 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 two-way 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 unhatched sea turtle nests remaining would reopen for night driving, subject to terms and conditions of an

4/2/2010: Mike Murray and EQD Comments

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]

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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

4/2/2010: Mike Murray and EQD Comments

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.

4/2/2010: Mike Murray and EQD Comments

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 Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan Draft Environmental Impact Statement (plan/EIS). The plan/EIS Draft Environmental Impact Statement (EIS) was open for public review and comment from March 12, 2010~~[insert date]~~, until May 11, 2010~~[insert date]~~. The plan/EIS ~~and any errata are is~~ 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.

Comment [dw21]: NOTE: This language appears three times in the preamble.

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~~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

4/2/2010: Mike Murray and EQD Comments

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.
- ~~NPS Planning, Environment, and Public Comment (PEPC) website:~~
<http://parkplanning.nps.gov/caha>
- 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.

Comment [C22]: Should not accept emails, faxes or bulk comments (same as how we handled DEIS comments). I am not familiar with www.regulations.gov; could we use PEPC instead since the public is familiar with it?

4/2/2010: Mike Murray and EQD Comments

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

Draft rule text v04/01/10

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

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

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

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

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(c) Off-Road motor vehicle use

(1) Definitions. In addition to the definitions found in § 1.4 of this chapter, the following terms apply in this section:

ORV means a motor vehicle used off of park roads.

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).

Species Management Area means an area of suitable habitat that has had concentrated and recurring use by multiple individuals and/or multiple species of protected shorebirds during the breeding season or nonbreeding season, or concentrations of seabeach amaranth specimens.

Comment [PS23]: Proper format is without numbering for definitions

Comment [JMW24]: I've left this for the moment as a placeholder, but I think it could be deleted entirely. "Motor vehicle" is defined in 1.4 and we should stick to that (see Cape Cod, 7.67).

If we must define ORV, define it simply as a "motor vehicle used off of park roads," consistent with the terms used in 4.10.

We'll need to discuss whether to keep the term ORV or replace it with motor vehicle throughout, but for the moment I'll keep ORV.

For an alternate approach, see Assateague's "oversand vehicle" at 7.65. But that's not the same as what we're doing here.

Comment [PS25]: Is there a reason to depart from 11644 definition?

Comment [mbm26]: There is no CFR definition of ORV, but there is one in the executive order. Is that assimilated by reference to the EO in 36 CFR 4.10b? If not, I think we need to define it here.

Comment [mps27]: This comment may be too late in the game, but do we really need to define "ORV" in the rule? Aren't all the routes being designated "off-road," so that all of the vehicles involved will be by definition "off-road"?

Comment [mbm28]: Not sure I fully understand or agree with Jason's comment although, in general, I like the idea of streamlining things. "Park road" is defined in 36 CFR 1.4, but "ORV route" is not. Nor is "ORV route" expressly defined in the EO. Since it is a term used in this reg and is defined in the DEIS, it makes sense to me to include its definition in the reg, especially if we are including "ORV corridor." I'd say keep both, or drop both, but not keep just one.

Comment [JMW29]: Another definition that doesn't add anything beyond what's in the general regs. This definition is simply a summary of the terms of the regulation, which suggests we don't really have anything to say here.

Comment [PS30]: Is this the only place ORV are used?

in more than 1 (i.e., 2 or more) of the past 5 years and is managed to reduce or minimize human disturbance.

Comment [JMW31]: This definition presents the opposite problem: it is legislating by definition. I would end the definition with the first sentence, and then put the subsequent, more substantive, sentences elsewhere in the reg.

Also, I did a word search on the word "corridor," and I am not certain that it is being used consistently to refer to the physical demarcation. Where we talk about nesting, for example, "corridor" seems to mean something more like a detour or substitute route.

(2) Off-road permit system. A permit issued by the Superintendent is required to operate a vehicle off-road at Cape Hatteras National Seashore.

(i) Off-road driving is limited to routes and areas designated in this section.

(ii) There is no limit to the number of permits that the Superintendent may issue.

(iii) Off-road permits are valid on the date of issuance.

Comment [dw32]: Do we need to address the types of permits: annual vs. weekly?

(iv) A permit applicant must complete an education program, pass a knowledge test, and acknowledge in writing an understanding of the rules governing off-road use at the park.

(v) Each permit holder must affix the permit to the vehicle authorized for off-road use in a manner and location specified by the Superintendent.

(3) Vehicle and equipment requirements. The following are required for operation under an off-road permit:

(i) The vehicle 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. Four-wheel drive vehicles are recommended.

(ii) The vehicle must have no more than two axles.

Comment [mbm33]: The DEIS, Table 8, p. 109, states "no more than 3 axles" but we believe it should be two.

(iii) Towed trailers must have no more than two axles.

(iv) The maximum combined length of a vehicle and trailer that may operate off-road is 30 feet.

Comment [mbm34]: The DEIS, Table 8, p. 109, states the 30 ft length limit "does not include the additional length of a towed trailer. It is hard to imagine a 30-ft long vehicle, so we believe this was intended as the combined length of vehicle and trailer.

(v) Vehicle tires must be U.S. Dept. of Transportation-listed or approved.

Comment [JMW35]: Should we limit trailer length, in the way we limited axles?

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

Comment [mbm36]: This is covered later in section (4)(iv)

4/2/2010: Mike Murray and EQD Comments

(4) Vehicle inspection. Authorized persons may inspect the vehicle to determine whether it complies with the requirements of paragraphs (c)(4)(i) through (vi) of this section.

Comment [PS37]: What is the criteria for who gets inspected and who doesn't?

(5) Motorcycles and all-terrain vehicles. The operation of motorcycles and all-terrain vehicles off-road is prohibited, except that motorcycles are allowed on designated routes to Pamlico Sound.

Comment [dw38]: DEIS doesn't allow this under Alt-F. Motorcycles only allowed under Alt-E.

(6) Special use permits for off-road driving. The Superintendent may issue a special use permit for off-road driving to authorize the following on a temporary basis:

(i) North Carolina Department of Transportation to use park beaches as a public way when necessary to by-pass sections of NC Highway 12 that are closed for repairs;

(ii) Fishing tournaments to have vehicular access in an area not designated for off-road use if tournament participants had been allowed ORV access to that area before January 1, 2009.

Comment [JMW39]: Agree with Mike's concerns. Why wouldn't we require tournament participants to get ORV permits just like everyone else? If these areas are otherwise closed for valid reasons, how do we justify allowing a tournament? And again, does the EIS cover this?

(iii) Vehicular transport of mobility-impaired individuals via the shortest, most direct distance from the nearest designated off-road route to join a gathering on a beach that is closed to off-road driving; the vehicle must return to the street after the transport.

Plus there will be interpretive headaches about what is "traditional." If we must have such a section, better to generate a concrete list of tournaments now.

(7) Authorized commercial vehicles. Use of vehicles off-road under terms of a commercial use authorization or commercial fishing permit issued by the Superintendent will be as follows:

Comment [mps40]: Add language from DEIS, p. 58, that vehicle must then return to street after dropping individual off at beach (similar to bypass provision above).

(i) Vehicles operated off-road for authorized commercial activities, including commercial fishing, must meet the vehicle and equipment requirements listed under paragraphs (c)(4)(i) through (vi) of this section.

Comment [mbm41]: The issue of CUAs was not specifically addressed in the CUA. After checking with some other parks, we believe that not requiring CUAs to get an ORV permit (similar to how commercial fishing permits are handled) is the best approach.

(ii) Commercial off-road vehicle operation will be regulated under the terms and conditions of the respective commercial permit. A separate ORV permit is not required.

Comment [mbm42]: Paul or Jon, wasn't there some issue about there being a legitimate exception to one or some of the equipment requirements for commercial fishermen? I vaguely recall there is, but don't remember the specifics. Has it been resolved by not requiring a 4WD? or was it something else?

4/2/2010: Mike Murray and EQD Comments

(iii) Vehicles authorized to operate off-road under a commercial use authorization are restricted to the designated ORV routes that are open for ORV use.

(iv) Vehicles authorized to operate under a commercial fishing permit issued by the Superintendent are allowed to drive on designated routes and, when actively engaged in authorized commercial fishing activities, on beaches not designated for ORV use, except in resource management closures and on lifeguarded beaches.

(v) The Superintendent may adjust night-driving hours for commercial fishing vehicles to begin up to 2 hours before off-road areas are open to the public, for those entering to actively engage in authorized commercial fishing activity and who are able to present fish house receipts for the previous 30 days.

(8) Revocation of permit. An off-road permit, special use permit, or commercial use authorization may be revoked for violation of applicable park regulations or terms and conditions of the respective permit.

(9) Superintendent's closures. The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for off-road use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. Violation of such a closure is prohibited.

(10) Species Management Areas. The Superintendent shall designate Species Management Areas in the park compendium. Species Management Areas shall be reevaluated and re-designated at a minimum every 5 years, or after major hurricanes, storms or significant beach erosion, as part of the periodic review process. Once a designated Species Management Area is closed to off-road use as a pre-nesting area or as a result of observed shorebird breeding

Comment [mbm43]: I know "issued by the Superintendent" seems superfluous, but we need to say it to distinguish the park commercial fishing permit from the State of NC commercial fishing permit

Comment [mps44]: I thought that the entire exception for commercial fishing vehicles, indeed the whole definition of commercial fishing vehicles, was limited to fishermen who are actively engaged in this way.

Comment [PS45]: The compendium must be reviewed annually

4/2/2010: Mike Murray and EQD Comments

activity, it shall remain closed to off-road use until August 1, two weeks after breeding activity has ceased, or two weeks after all chicks in the area have fledged, whichever is later.

(11) Off-road routes and areas. ORVs may be operated only in the following routes and areas and only in accordance with the following restrictions. The textual descriptions that follow are approximate in nature. Reference point names such as ramp number could change, but the approximate location of the route would remain the same. The precise location of designated off-road routes and ORV access ramps will be determined by GPS coordinates or other appropriate techniques. Maps that show these designated routes and areas for ORV use will be updated annually and made available to the public in accordance with § 1.7 of this chapter.

Comment [mbm46]: We still need to develop alternative location identifiers to use along with (or in lieu of) "ramp" number.

Comment [PS47]: Add introductory sentence

<u>BODIE ISLAND - ORV PERMITTED AREAS</u>	
<u>YEAR ROUND</u>	<u>1. 0.5 miles south of Coquina Beach to 0.2 miles south of ramp 4, with at least one but not more than two ORV access ramps</u>
<u>SEASONAL</u> <u>August 1 to March 14</u>	<u>1. 0.2 miles south of ramp 4 to Oregon Inlet, with a spur route to within 30 meters of the northeast corner of the "bait pond"</u>

HATTERAS ISLAND - ORV PERMITTED AREAS	
<p>4/2/2010 - Mike Murray and EOD Comments <u>YEAR ROUND</u></p>	<p><u>1. Ramp 23 to ramp 27, with at least three but not more than four ORV access ramps</u></p> <p><u>2. Ramp 30 to ramp 32.5, with two ORV access ramps</u></p> <p><u>3. At least five but not more than six routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon</u></p> <p><u>4. Ramp 38 to 1.7 miles south of ramp 38, with at least one but not more than two ORV access ramps</u></p> <p><u>5. At least three but not more than four ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Avon and Buxton</u></p> <p><u>6. 0.4 miles north of ramp 43 to Cape Point to 0.2 miles west of "the hook," with two ORV access ramps</u></p> <p><u>7. Interdunal route from intersection with Lighthouse Road (i.e., ramp 44) to ramp 49, with at least two but not more than three spur routes from the interdunal route to the ORV route below</u></p> <p><u>8. Ramp 47 to ramp 49</u></p> <p><u>9. One route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet</u></p> <p><u>10. Pole Road from Museum Drive to Spur Road, with two spur routes to Pamlico Sound, the sound shoreline between Cable Crossing to Spur Road, and at least three but not more than four spur routes to the ORV route below</u></p> <p><u>11. Ramp 55 to 1.8 miles south of ramp 55, with one ORV access ramp</u></p>
<p><u>SEASONAL</u> <u>September 16 to May 14</u></p>	<p><u>1. Beach in front of Rodanthe-Waves-Salvo to ramp 23, with one ORV access ramp</u></p> <p><u>2. Ramp 34 to ramp 38 (Avon), with two ORV access ramps</u></p>
<p><u>August 1 to March 14</u></p>	<p><u>1. Ramp 32.5 to ramp 34, with two ORV access ramps</u></p> <p><u>2. Cape Point 0.2 miles west of the "hook" to ramp 47, with two seasonal spur routes from the interdunal route between ramp 44 and ramp 49</u></p> <p><u>Note: The Superintendent will periodically designate 1.5 miles of ocean shoreline between ramp 23 and ramp 34 and 1.5 miles between ramp 45 and 49 as closed to ORV use for non-breeding shore birds.</u></p> <p><u>3. Pole Road south of Spur Road to two dead-end, interdunal spur routes located northeast and southwest of the end of Pole Road</u></p>
<p><u>December 1 to the Last Day of February</u></p>	<p><u>1. Beach in front of Frisco village, with access from adjacent ORV route</u></p> <p><u>2. Beach in front of Hatteras Village to ramp 55, with access from adjacent ORV route</u></p>

4/2/2010: Mike Murray and EQD Comments

<u>OCRACOKE ISLAND - ORV PERMITTED AREAS</u>	
<u>YEAR ROUND</u>	<p><u>1. 0.25 mile northeast of ramp 59 to 0.25 southwest of ramp 59, with one ORV access ramp</u></p> <p><u>2. Interdunal spur road from ramp 59 north for 0.3 mile</u></p> <p><u>3. Ramp 62 to ramp 64, with two ORV access ramps</u></p> <p><u>4. Three routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens</u></p> <p><u>5. 0.75 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68, with one ORV access ramp</u></p> <p><u>6. One route from NC Highway 12 to Pamlico Sound located near Ocracoke Campground</u></p> <p><u>7. 0.5 miles northeast of ramp 70 to Ocracoke inlet, with two ORV access ramps</u></p> <p><u>8. One route from ramp 72 to a pedestrian trail to Pamlico Sound</u></p>
<u>SEASONAL</u> <u>August 1 to March 14</u>	<p><u>1. One seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound</u></p> <p><u>2. One seasonal route at the north end of South Point spit from the beach route to Pamlico Sound</u></p> <p><u>Note: The Superintendent will periodically designate 1.0 miles of ocean shoreline between ramp 72 and Ocracoke Inlet as closed to ORV use for non-breeding shore birds, with an upper beach route to by-pass the 1.0 mile area.</u></p>
<u>November 1 to March 31</u>	<p><u>1. 0.5 mile northeast to 0.5 mile southwest of ramp 68 (Ocracoke Campground area), with access from adjacent ORV routes and one seasonal ORV access ramp</u></p> <p><u>2. 1.2 miles to 0.5 mile northeast of ramp 70 (Ocracoke Day Use Area), with access from adjacent ORV routes</u></p>
<u>November 1 to March 14</u>	<p><u>1. 0.5 miles southwest of ramp 68 to 1.2 miles northeast of ramp 70, with access from adjacent ORV routes</u></p>

4/2/2010: Mike Murray and EQD Comments

(13) Vehicle carrying capacity. The Superintendent will periodically evaluate, at a minimum every five years, vehicle carrying capacity for areas designated for off-road use and may revise the carrying capacity limits after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives

4/2/2010: Mike Murray and EQD Comments

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC_ _

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

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The National Park Service (NPS) is proposing to designate routes and areas where off-road vehicles (ORVs) may be used off of Seashore roads at Cape Hatteras National Seashore, North Carolina. Unless otherwise provided for by special regulation, the operation of motor vehicles off of roads 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/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 various users, and to promote the safety of all visitors.. 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.
- NPS Planning, Environment, and Public Comment (PEPC) website:
<http://parkplanning.nps.gov/caha>
- Mail or hand delivery to: Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954.

4/2/2010: Mike Murray and EQD Comments

- 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 Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan/Environmental Impact Statement (plan/EIS) published March 12, 2010. The public should be aware that five other alternatives were presented in the plan/EIS. Those alternatives are also described in this preamble and should 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 motorized vehicle use in off-road areas to designate specific areas and routes on public lands where the use of motorized vehicles 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 routes and areas 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

4/2/2010: Mike Murray and EQD Comments

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 off of roads, 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

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:

4/2/2010: Mike Murray and EQD Comments

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.

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 park areas under its jurisdiction. The Organic Act (16 U.S.C. 3) specifically provides the authority 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..."

ORV Use at Cape Hatteras National Seashore

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 (NCWRC).

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 (CFR 4.10). The 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 Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan / Environmental Impact Statement (plan/EIS). The plan/EIS was open for public review and comment from March 12, 2010 until May 11, 2010. The plan/EIS is available at <http://parkplanning.nps.gov/caha>.

The purpose of the plan/DEIS was to develop regulations and procedures that carefully manage 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 various users, and to promote the safety of all visitors..

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 alternative A, 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

4/2/2010: Mike Murray and EQD Comments

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 Seashore 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. Alternative A is analyzed as a baseline for comparison with the other alternatives in the plan/EIS following the requirements in 40 CFR 1502.14(d). Details of the management actions under this alternative are described in tables 8 and 9 of the plan/EIS.

[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 that 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

4/2/2010: Mike Murray and EQD Comments

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. provided certain conditions from the modified consent decree are met.
- 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. This alternative is designed to provide visitors to the Seashore with a degree of predictability regarding areas available for ORV use, as well as vehicle-free

4/2/2010: Mike Murray and EQD Comments

areas, based largely on the seasonal resource- and visitor-use characteristics of various areas in the Seashore. This alternative would manage ORV use by identifying areas that historically do not support sensitive resources or that historically have lower visitor use. Many of these areas 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, with restrictions based on seasonal resource and visitor use or as year-round non-ORV areas. Some areas would be designated as vehicle-free year-round to provide opportunities for non-ORV users to experience the Seashore without the presence of vehicles. The establishment of ORV routes and vehicle-free areas would be based largely on seasonal resource requirements and year-round visitation patterns and would provide the public and the Seashore with a structured management approach that clearly states what areas are available for ORV use and when they are open. The public would have clear direction as to what would be open seasonally or year-round; however, it would require some effort on the public's part to be informed and to understand what areas are open and when use is permitted. Implementation would require an increase in Seashore staff and resources for public education and enforcement, but would provide for efficient Seashore operations with the identification of defined use areas.

Generally, most areas where there is a seasonally designated ORV route would be open to ORVs from October 15 to March 14, primarily due to concerns about resource protection for birds and turtles during breeding and hatching/fledging periods and to minimize conflicts with high visitor use periods. Areas that would be seasonally designated vehicle-free would include SMAs and some village beaches. These seasonal vehicle-free areas would primarily occur during periods of high visitation and high resource sensitivity—the summer and shoulder season months. The spits and points would be closed to ORVs from March 15 to October 14 to provide resource protection. A pedestrian access corridor would be provided at Bodie Island Spit, Cape Point, and South Point although the corridor could close during the breeding season as resource protection buffers and closures are established. Existing soundside ORV access areas would be retained and designated as ORV routes, including existing primitive parking and

4/2/2010: Mike Murray and EQD Comments

designated boat launch areas. The Seashore would maintain posts and signage defining the location of the parking areas and ORV access routes on the soundside.

ORV routes under this alternative would still be subject to temporary resource closures established when protected species breeding behavior warrants and/or if new habitat is created. In addition to the breeding season measures, resource closures and/or vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS (common to all alternatives).

Designated ORV routes would be established seasonally in areas with high visitation and/or sensitive resources and year-round in some areas that historically do not support sensitive resources or that have lower visitor use. To facilitate ORV access to the designated routes, existing ramps would be improved, reconfigured, and/or supplemented by new ramps, including the construction of ramps 47 and 48. (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64.) In addition, the interdunal road network would be maintained at its current level of access in most places, although an extension from ramp 45 west to ramp 49 would be provided. Pullouts or road widening would be provided where appropriate to provide safe ORV passage on the interdunal roads. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30, although SMAs would be closed to ORV use beginning on March 15. From May 1 through November 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 7:00 p.m. to 7:00 a.m. This alternative also involves the addition or expansion of parking areas at several locations.

ORV safety closures would be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable

only to ORV access; pedestrian and commercial fishing access would generally be maintained through ORV safety closures.

Alternative C would include a Seashore-wide carrying-capacity element (“peak use limit”), which would be based on a physical space requirement of an average of one vehicle per 20 linear feet for Bodie and Hatteras Island Districts and one vehicle per 30 linear feet for the Ocracoke Island District. The provision of a lower carrying-capacity on Ocracoke Island would provide for a less crowded visitor experience in this area, enhancing the types of experiences available throughout the Seashore. The carrying capacity could be implemented whenever overcrowding could cause safety concerns, such as peak use periods during major summer holidays and weekends. The allowable number of vehicles in each area subject to the carrying capacity would be determined by the space requirements and the beachfront length of the area.

Alternative C would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in managing ORV use. Only annual permits would be available under this alternative, but these would be valid for 12 months from date of purchase so they could extend over the length of a season. To obtain the 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. Following completion of the test, owners would need to sign for their permits to acknowledge that they understand the rules and that all drivers of the permitted vehicles will abide by the rules and regulations governing ORV use at the Seashore. A violation of the rules and regulations by the owner or driver of an 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.

Every five years the NPS would conduct a systematic review of the ORV and species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

Designated routes and areas under alternative C are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

Alternative D: Increased Predictability and Simplified Management. This alternative is designed to provide visitors to the Seashore with the maximum amount of predictability regarding routes available for ORV use and vehicle-free areas for pedestrian use, which means establishing year-round ORV route and non-ORV area designations consistent with approved use patterns over the course of the year. Under this alternative, ORV routes would be determined by identifying areas that historically do not support sensitive resources and areas of lower visitor use. These areas would be designated as ORV routes year-round. Areas of historically high resource sensitivity or high visitor use would not be designated as ORV routes. The establishment of ORV routes and vehicle-free areas on a year-round (rather than seasonal) basis would provide the public and the Seashore with a simplified management approach that would increase predictability and reduce confusion about what and when areas are available for ORV use, and reduce the need for staff resources on the beach. Because of the relative simplicity of the elements of this alternative, implementation would require a lower level of Seashore staff and resources than other action alternatives and would maximize the efficiency of Seashore operations.

Year-round vehicle-free areas would include lifeguarded beaches and the areas in front of villages, as well as designated SMAs. These vehicle-free areas would provide for visitor safety during periods of high visitation, particularly in the summer months, and would also provide a vehicle-free experience for visitors during the off-season. Soundside access would continue as currently provided under the no-action alternatives. Vehicle-free areas would also be established year-round at Cape Point and the spits to provide a simplified approach to sensitive species management for Seashore operations,

4/2/2010: Mike Murray and EQD Comments

maximizing contiguous protected areas and eliminating seasonal changes in designated ORV routes and the demands associated with enforcing those changes. Other uses would still be allowed in these vehicle-free areas outside any identified resource closures or SMAs. All SMAs would be managed using the ML1 strategy, which would involve larger and longer species protection buffers and would not allow pedestrian access once prenesting closures are established. Pedestrian access to these areas would be allowed once breeding activities are completed.

ORV routes under this alternative would still be subject to temporary resource closures established when protected species breeding behavior warrants and/or if new habitat is created. In addition to the breeding season measures, resource closures within some vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS (common to all alternatives).

To facilitate access to designated ORV routes, existing ORV ramps would be improved, reconfigured, and/or supplemented by new ramps. (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64). No new or expanding parking areas would be provided under alternative D. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through November 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 7:00 p.m. to 7:00 a.m. to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours.

ORV safety closures would not be designated; ORV users would drive at their own risk and would be expected to rely on their knowledge of beach driving to determine if an area is safe to access based on their assessment of current conditions.

Alternative D would not include a carrying-capacity requirement, but would limit vehicles to a one-vehicle-deep parking configuration so that areas would not become overcrowded such that a safety concern would occur.

Alternative D would include a simple vehicle permit system, with no limit on the number of permits issued. Permit fees would be based on the recovery of NPS costs incurred in managing ORV use, but the fee should be lower than fees under alternatives C, E, or F due to the decreased management costs under this alternative. Only annual (based on the calendar year, as opposed to a 12-month period) permits would be available under this alternative. To obtain a permit, ORV drivers would be required to read the rules and regulations governing ORV use at the Seashore, including beach-driving safety and resource closure requirements. Owners would need to sign for their permit to acknowledge that they understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. Special consideration would be paid to providing beach safety information because of the lack of safety closures under this alternative. 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.

Every five years the NPS would conduct a systematic review of the species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

Designated routes and areas under alternative D are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

Alternative E: Variable Access and Maximum Management. This alternative is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, including to the spits and points, but often with controls or restrictions in place to limit impacts on sensitive resources. During the shorebird breeding season, some ORV routes may be kept open to use for

4/2/2010: Mike Murray and EQD Comments

longer periods of time by providing ORV pass-through zones at some spits and points and by improving interdunal road and ramp access. More pedestrian access would be provided through substantial additions to parking capacity at various key locations that lend themselves to walking on the beach. Vehicle-free areas would be provided during all seasons for non-ORV users to experience the Seashore without the presence of vehicles. Like the other action alternatives, this alternative would manage ORV use by identifying areas that historically do not support sensitive resources and areas of lower visitor use. Most of these areas would be designated as ORV routes year-round. Areas of high resource sensitivity and high visitor use would either be designated as seasonal ORV routes, with restrictions based on seasonal resource and visitor use, or as year-round non-ORV areas. In addition, the SMAs would be reopened to ORV use approximately six weeks earlier than under alternative C (September 1 versus October 15).

During the shorebird breeding season, ORV pass-through zones would be designated at Bodie Island Spit, Cape Point, and South Point. The pass-through zones would use standard resource protection buffers and would not allow pedestrians, pets, ORV stopping, parking, or disembarking of passengers. These pass-through zones would be established to provide an increased possibility of access during the prenesting and incubation periods only, and would be subject to resource closures. Once through the pass-through zone, recreation would be allowed outside any existing resource closures. Both Bodie Island Spit and South Point would have pedestrian-only areas, when conditions allow, extending access beyond the end of the ORV route. When unfledged chicks are present, the probability of being able to provide this access would decrease. Therefore, in addition to the pass-through zones, the Seashore would promote the use of water taxis as alternative transportation to Bodie Island Spit and South Point, subject to designated landing zones and resource closures. Alternative E also involves the development of an interdunal pedestrian trail on Bodie Island. The trail would begin at a new parking area near the campground and would provide access to the inlet. This new trail would also be subject to resource protection closures.

The variety of access methods possible under alternative E, based on the establishment of ORV routes, seasonal vehicle-free areas, designation of ORV pass-through zones, and the promotion of water

4/2/2010: Mike Murray and EQD Comments

taxi service to designated points and spits, would provide the public with ORV and pedestrian access to a greater number of areas within the Seashore, even during portions of the shorebird breeding season. However, this alternative would afford less predictability than alternatives C and D regarding areas available for use and would require a greater amount of oversight and management. Implementation would perhaps be difficult for the public to understand and would require more Seashore staff and resources than the other alternatives.

Areas that would be seasonally designated vehicle-free would include the areas in front of villages, except Frisco and Hatteras, and most of the SMAs. The ORV open season in front of the villages would be defined as November 1 to March 31 and in most SMAs from September 1 through March 14 (when a resource closure is not limiting access), with ORV access (via a pass-through zone) to Bodie Island Spit, Cape Point, and South Point from March 15 through August 31 via a pass-through zone, subject to resource closures. Soundside access would remain open at currently designated boat launch areas, on Hatteras Inlet Spit from the Pole Road to Cable Crossing and the Spur Road, and on Ocracoke Island soundside areas where commercial fishing access is currently allowed. Under this alternative, motorcycles would be allowed on all routes and areas open to ORVs on the soundside.

The remaining soundside access points would be closed to ORV use and small parking areas would be constructed to provide pedestrian access to the water. Signage/posts would be installed at the parking areas and boat launch areas to prevent damage to vegetation and other soundside resources.

ORV routes under this alternative would still be subject to temporary resource closures established when protected-species breeding behavior warrants and/or if new habitat is created. In addition to the breeding-season measures, resource closures and/or vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS (common to all alternatives).

4/2/2010: Mike Murray and EQD Comments

To facilitate access to ORV routes, this alternative would extend the existing interdunal road west of ramp 45 all the way to ramp 49 and construct two new ramps (47 and 48). (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64). A new ramp would be established at either 24 or 26, along with a new parking area at the selected location. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through September 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 10:00 p.m. to 6:00 a.m. to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours. From May 1 through September 15, a limited number of ORV users would be permitted to park and stay overnight at selected spits and points, under the terms and conditions of a special use permit, when such areas are not otherwise closed to protect sensitive resources. From September 16 through November 15, ORV routes with no or a low density of turtle nests remaining (as determined by the NPS) would be open between 10:00 p.m. and 6:00 a.m., subject to the terms and conditions of a required permit (see table 8 for details). This alternative also involves the addition of parking spaces at several ramp locations.

ORV safety closures could be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable only to ORV access; pedestrian and commercial fishing access would generally be maintained through ORV safety closures. For village beaches that are open to ORV use during the winter season, the village beaches must be at least 20 meters wide from the toe of the dune seaward to the mean high tide line in order to be open to ORV use.

Alternative E would include a carrying-capacity requirement for all areas based on a physical space requirement of one vehicle per 20 linear feet for Bodie and Hatteras Island Districts, except 400 vehicles would be allowed within a 1-mile area centered on Cape Point, and one vehicle per 30 linear feet for the Ocracoke Island District. The carrying capacity would be implemented whenever overcrowding could cause safety concerns, such as at peak use periods during major summer holidays and weekends.

4/2/2010: Mike Murray and EQD Comments

The allowable number of vehicles in each area would be determined by the space requirements and the beachfront length of the area.

Alternative E would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in managing ORV use. Expected permit fees would be higher under this alternative due to the intense level of management required for implementation. Both annual and weekly 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. Following completion of the test, owners would need to sign for their permit to acknowledge that they understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. 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. The park-and-stay provision would be managed under a separate special use permit. Alternative E would also include a self-contained vehicle (SCV) camping opportunity from November 1 to March 31 at three NPS campgrounds (one in each district), with a separate permit requirement and use limits.

Every five years the NPS would conduct a systematic review of the ORV and species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

Designated routes and areas under alternative E are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

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

4/2/2010: Mike Murray and EQD Comments

the NPS in the development of an ORV regulation for the Seashore. The Committee met 11 times from January 2007 through February 2009, and conducted numerous subcommittee and work group meetings and conference calls. The Committee discussed and explored options for the full spectrum of ORV management issues covered in this plan/EIS. Although the Committee did not reach a consensus on a recommended alternative, the NPS has used the Committee's input to create this action alternative. In any case of conflicting advice from Committee members about any particular issue, the NPS has made a management judgment as to which approach would make an effective overall ORV management alternative. The NPS has also included under alternative E some ORV management approaches identified by the Committee that would require more intensive management (such as park-and-stay and SCV camping), in keeping with the maximum management theme of that alternative.

This alternative is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, including access to the spits and points, but often with controls or restrictions in place to limit impacts on sensitive resources. This means that some areas may be kept open to ORV users for longer periods of time by reopening some ORV corridors at the spits and points sooner after shorebird breeding activity is completed than in alternatives C or E, and by improving interdunal road and ORV ramp access. Pedestrian access would be enhanced by providing increased parking capacity at various points of access to vehicle-free areas. Such areas would be provided during all seasons so non-ORV users can experience the Seashore without the presence of vehicles. Like the other action alternatives, this alternative would manage ORV use by identifying areas that historically do not support sensitive resources and areas of lower visitor use. Many of these areas 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, with restrictions based on seasonal resource and visitor use, or as year-round non-ORV areas. In addition, the SMAs could reopen to ORV use as early as July 31, which is up to four weeks earlier than under alternative E (September 1), when the shorebird breeding season is completed at each site (typically in August).

4/2/2010: Mike Murray and EQD Comments

During the shorebird breeding season, a shoreline pedestrian access corridor would be established at Bodie Island Spit, and ORV access corridors would be established at Cape Point and South Point. These corridors would use standard resource-protection buffers and would be subject to resource closures. When unfledged chicks are present, the probability of being able to provide this access would decrease. Like alternative E, alternative F also involves the development of an interdunal pedestrian trail on Bodie Island. The trail would begin at a new parking area near the campground and would provide access to the inlet. This new trail would also be subject to resource-protection closures. Alternative F would include the construction of a short ORV route to access a new pedestrian trail to the sound on Ocracoke Island.

The variety of access methods possible under alternative F, based on the establishment of year-round and seasonal ORV routes and vehicle-free areas, and increased interdunal roads and parking to support access, would provide the public with ORV and pedestrian access to a greater number of areas within the Seashore. This alternative would afford less predictability than alternative C or D, but somewhat more predictability than alternative E, regarding areas available for use, and it would require a comparable level of oversight and management to alternative E.

Areas that would be seasonally designated vehicle-free would include the areas in front of villages, except Buxton, which would be vehicle free year-round, and some SMAs that would have seasonal restrictions on ORV use. The ORV open season in front of the villages would be varied, with northern Hatteras Village beaches (Rodanthe, Waves, Salvo, and Avon) open September 16 to May 14, southern Hatteras Village beaches open December 1 to February 28/29, and Ocracoke campground and day use area beaches open November 1 to March 31. SMAs (that are designated as ORV routes) would generally be closed to ORV use March 15 through July 31, or until two weeks after all chicks have fledged and breeding activity has ceased, whichever comes later. ORV access would be allowed to Cape Point and South Point during the breeding season, subject to resource closures, using the standard buffer distances. New interdunal roads on South Beach from ramp 45 to ramp 49, on Hatteras Inlet Spit extending northeast and southwest from the southern terminus of the Pole Road, and on North Ocracoke

4/2/2010: Mike Murray and EQD Comments

Spit from ramp 59 extending northeast toward the inlet would facilitate access to locations that have either seasonal or year-round restrictions on ORV use. Existing soundside access points would remain open, with better maintenance than currently occurs. Signage/posts would be installed at the soundside parking areas and boat launch areas to prevent damage to vegetation and other soundside resources. This alternative also involves the addition of parking spaces at several ramp locations.

ORV routes under this alternative would still be subject to temporary resource closures established when protected-species breeding behavior warrants and/or if new habitat is created. In addition to the breeding-season measures, resource closures and/or vehicle-free areas would be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance while still allowing a pedestrian or pedestrian/ORV access corridor in areas designated by the NPS. This would include three “floating” nonbreeding shorebird habitat areas located between ramps 23 and 34, between ramps 45 and 49, and south of ramp 72. The “floating area” would be adjusted on a yearly basis to provide nonbreeding habitat in these areas. The closure would float year to year; depending on where the most effective wintering habitat is located which would be determined based on a review of the previous year’s monitoring results.

To facilitate access to ORV routes, this alternative would add ramp 39 near Haulover Beach. (Note: All action alternatives involve relocating ramp 2 and building new ramps at 32.5, 62, and 64). New ramps would also be established at both 24 and 26, along with new parking areas. Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through September 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 1 hour after sunset until NPS turtle patrol has checked the beach in the morning (by approximately one-half hour after sunrise) to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours. From September 16 through November 15, selected ORV routes with no or a low density of turtle nests

4/2/2010: Mike Murray and EQD Comments

remaining (as determined by the NPS) would reopen to night driving, subject to the terms and conditions of a required permit.

ORV safety closures could be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable only to ORV access; pedestrian and commercial fishing access would generally be maintained through safety closures. Alternative F provides specific guidelines for establishing and removing safety closures. Additional ORV-driving requirements would be implemented to provide for increased pedestrian safety in all areas open to ORV use.

Alternative F would include a carrying-capacity requirement (peak use limit) for all areas based on a physical space requirement of one vehicle per 20 linear feet for Bodie Island, Hatteras Island, and Ocracoke Island Districts, except that 400 vehicles would be allowed within a 1-mile area centered on Cape Point. The carrying capacity would prevent safety concerns associated with overcrowding, such as at peak use periods during major summer holidays and weekends. The allowable number of vehicles in each area would be determined by the space requirements and the beachfront length of the area.

Alternative F would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in managing ORV use. Expected permit fees would be similar to alternative E due to the level of management required for implementation. 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. Following completion of the test, owners would need to sign for their permit to acknowledge that they understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. 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

4/2/2010: Mike Murray and EQD Comments

for any vehicle for a specified period of time. In addition to the mandatory education program for ORV users, the NPS would establish a voluntary resource-education program targeted toward non-ORV beach users.

Every five years the NPS would conduct a systematic review of the ORV and species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness. Designated routes and areas under alternative F are shown on figure 2 and described in table 7 of the plan/EIS. Details of the management actions under this alternative are described in table 8 of the plan/EIS.

Alternative F is the NPS 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.

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. 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

4/2/2010: Mike Murray and EQD Comments

program, pass a basic knowledge test, and acknowledge in writing an understanding of the rules governing ORV use at the Seashore. Under the proposed rule, ORV permits would not be transferable and would be affixed on the vehicle in a manner and location specified by the Superintendent.

In addition to ORV operator requirements, this proposal would establish vehicle requirements for ORVs (§ 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 two axles would not be permitted. Trailers could have up to two axles. The maximum combined length of vehicle and trailer would be 30 feet, 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 operation of motorcycles and all-terrain vehicles (ATV) off road would be prohibited.

The ORV would be required to contain certain equipment, including a low-pressure tire gauge, shovel, jack, and jack stand. Under this proposal, authorized personnel would reserve the right to inspect the vehicle to determine whether it complies with these vehicle requirements. 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 issued to the North Carolina Department of Transportation during the temporary emergency situation. The Superintendent could also authorize temporary ORV use of non-ORV areas for fishing tournaments that were established before January 1, 2009. A special use permit could be issued to authorize temporary ORV use to transport mobility-impaired individuals to their family or friends on an open beach that is otherwise closed to ORVs. In this case, ORV use would be limited to

4/2/2010: Mike Murray and EQD Comments

the shortest, most direct distance between the nearest designated ORV route and the location of the gathering. **[EIS pg 111]**

Vehicles authorized to operate on the beach under a commercial use authorization (CUA) issued by the Superintendent would be restricted to designated ORV routes that are open to ORV use, but would not be required to obtain a separate ORV permit in addition to the CUA.

Vehicles authorized to operate on the beach under a commercial fishing permit issued by the Superintendent would be authorized to enter non-ORV areas, except for full resource closures and lifeguarded beaches, and would not be required to obtain a separate ORV permit. 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]** Any ORV permit, special use permit, or commercial use authorization could be revoked for violation of applicable Seashore regulations or terms and conditions of the respective permit.

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 or not be designated for ORV use. **[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 Seashore 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 Seashore website.

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 be required to slow down to 5 mph (or the slowest possible speed to maintain traction without exceeding the overall speed limit) when traveling within 100 feet 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 two-way 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 unhatched sea turtle nests remaining would reopen for night driving, subject to terms and conditions of an ORV permit.

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.

4/2/2010: Mike Murray and EQD Comments

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

4/2/2010: Mike Murray and EQD Comments

As a companion document to this NPRM, NPS has issued the Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan Environmental Impact Statement (plan/EIS). The plan/EIS was open for public review and comment from March 12, 2010 until May 11, 2010. The plan/EIS is 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

4/2/2010: Mike Murray and EQD Comments

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.
- NPS Planning, Environment, and Public Comment (PEPC) website:
<http://parkplanning.nps.gov/caha>
- 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:

Draft rule text v04/01/10

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

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

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

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

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(c) *Off-Road motor vehicle use*

(1) *Definitions.* In addition to the definitions found in § 1.4 of this chapter, the following terms apply in this section:

ORV means a motor vehicle used off of park roads.

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).

Species Management Area means an area of suitable habitat that has had concentrated and recurring use by multiple individuals and/or multiple species of protected shorebirds during the breeding season or nonbreeding season, or concentrations of seabeach amaranth specimens, in more than 1 (i.e., 2 or more) of the past 5 years and is managed to reduce or minimize human disturbance.

(2) *Off-road permit system.* A permit issued by the Superintendent is required to operate a vehicle off-road at Cape Hatteras National Seashore.

(i) Off-road driving is limited to routes and areas designated in this section.

(ii) There is no limit to the number of permits that the Superintendent may issue.

(iii) Off-road permits are valid on the date of issuance.

(iv) A permit applicant must complete an education program, pass a knowledge test, and acknowledge in writing an understanding of the rules governing off-road use at the park.

(v) Each permit holder must affix the permit to the vehicle authorized for off-road use in a manner and location specified by the Superintendent.

(3) *Vehicle and equipment requirements.* The following are required for operation under an off-road permit:

(i) The vehicle 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. Four-wheel drive vehicles are recommended.

(ii) The vehicle must have no more than two axles.

(iii) Towed trailers must have no more than two axles.

(iv) The maximum combined length of a vehicle and trailer that may operate off-road is 30 feet.

(v) Vehicle tires must be U.S. Dept. of Transportation-listed or approved.

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

(4) *Vehicle inspection.* Authorized persons may inspect the vehicle to determine whether it complies with the requirements of paragraphs (c)(4)(i) through (vi) of this section.

(5) *Motorcycles and all-terrain vehicles.* The operation of motorcycles and all-terrain vehicles off-road is prohibited, except that motorcycles are allowed on designated routes to Pamlico Sound.

(6) *Special use permits for off-road driving.* The Superintendent may issue a special use permit for off-road driving to authorize the following on a temporary basis:

(i) North Carolina Department of Transportation to use park beaches as a public way when necessary to by-pass sections of NC Highway 12 that are closed for repairs;

(ii) Fishing tournaments to have vehicular access in an area not designated for off-road use if tournament participants had been allowed ORV access to that area before January 1, 2009.

(iii) Vehicular transport of mobility-impaired individuals via the shortest, most direct distance from the nearest designated off-road route to join a gathering on a beach that is closed to off-road driving; the vehicle must return to the street after the transport.

(7) *Authorized commercial vehicles.* Use of vehicles off-road under terms of a commercial use authorization or commercial fishing permit issued by the Superintendent will be as follows:

(i) Vehicles operated off-road for authorized commercial activities, including commercial fishing, must meet the vehicle and equipment requirements listed under paragraphs (c)(4)(i) through (vi) of this section.

(ii) Commercial off-road vehicle operation will be regulated under the terms and conditions of the respective commercial permit. A separate ORV permit is not required.

(iii) Vehicles authorized to operate off-road under a commercial use authorization are restricted to the designated ORV routes that are open for ORV use.

(iv) Vehicles authorized to operate under a commercial fishing permit issued by the Superintendent are allowed to drive on designated routes and, when actively engaged in authorized commercial fishing activities, on beaches not designated for ORV use, except in resource management closures and on lifeguarded beaches.

(v) The Superintendent may adjust night-driving hours for commercial fishing vehicles to begin up to 2 hours before off-road areas are open to the public, for those entering to actively engage in authorized commercial fishing activity and who are able to present fish house receipts for the previous 30 days.

(8) *Revocation of permit.* An off-road permit, special use permit, or commercial use authorization may be revoked for violation of applicable park regulations or terms and conditions of the respective permit.

(9) *Superintendent's closures.* The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for off-road use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. Violation of such a closure is prohibited.

(10) *Species Management Areas.* The Superintendent shall designate Species Management Areas in the park compendium. Species Management Areas shall be reevaluated and re-designated at a minimum every 5 years, or after major hurricanes, storms or significant beach erosion, as part of the periodic review process. Once a designated Species Management Area is closed to off-road use as a pre-nesting area or as a result of observed shorebird breeding activity, it shall remain closed to off-road use until August 1, two weeks after breeding activity has ceased, or two weeks after all chicks in the area have fledged, whichever is later.

(11) *Off-road routes and areas.* ORVs may be operated only in the following routes and areas and only in accordance with the following restrictions. The textual descriptions that follow are approximate in nature. Reference point names such as ramp number could change, but the approximate location of the route would remain the same. The precise location of designated off-road routes and ORV access ramps will be determined by GPS coordinates or other appropriate techniques. Maps that show these designated routes and areas for ORV use will be updated annually and made available to the public in accordance with § 1.7 of this chapter.

BODIE ISLAND - ORV PERMITTED AREAS	
YEAR ROUND	1. 0.5 miles south of Coquina Beach to 0.2 miles south of ramp 4, with at least one but not more than two ORV access ramps
SEASONAL August 1 to March 14	1. 0.2 miles south of ramp 4 to Oregon Inlet, with a spur route to within 30 meters of the northeast corner of the "bait pond"

HATTERAS ISLAND - ORV PERMITTED AREAS	
<p>4/2/2010- Mike Murray and EQD Comments YEAR ROUND</p>	<ol style="list-style-type: none"> 1. Ramp 23 to ramp 27, with at least three but not more than four ORV access ramps 2. Ramp 30 to ramp 32.5, with two ORV access ramps 3. At least five but not more than six routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon 4. Ramp 38 to 1.7 miles south of ramp 38, with at least one but not more than two ORV access ramps 5. At least three but not more than four ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Avon and Buxton 6. 0.4 miles north of ramp 43 to Cape Point to 0.2 miles west of "the hook," with two ORV access ramps 7. Interdunal route from intersection with Lighthouse Road (i.e., ramp 44) to ramp 49, with at least two but not more than three spur routes from the interdunal route to the ORV route below 8. Ramp 47 to ramp 49 9. One route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet 10. Pole Road from Museum Drive to Spur Road, with two spur routes to Pamlico Sound, the sound shoreline between Cable Crossing to Spur Road, and at least three but not more than four spur routes to the ORV route below 11. Ramp 55 to 1.8 miles south of ramp 55, with one ORV access ramp
<p>SEASONAL September 16 to May 14</p>	<ol style="list-style-type: none"> 1. Beach in front of Rodanthe-Waves-Salvo to ramp 23, with one ORV access ramp 2. Ramp 34 to ramp 38 (Avon), with two ORV access ramps
<p>August 1 to March 14</p>	<ol style="list-style-type: none"> 1. Ramp 32.5 to ramp 34, with two ORV access ramps 2. Cape Point 0.2 miles west of the "hook" to ramp 47, with two seasonal spur routes from the interdunal route between ramp 44 and ramp 49 <p>Note: The Superintendent will periodically designate 1.5 miles of ocean shoreline between ramp 23 and ramp 34 and 1.5 miles between ramp 45 and 49 as closed to ORV use for non-breeding shore birds.</p> <ol style="list-style-type: none"> 3. Pole Road south of Spur Road to two dead-end, interdunal spur routes located northeast and southwest of the end of Pole Road
<p>December 1 to the Last Day of February</p>	<ol style="list-style-type: none"> 1. Beach in front of Frisco village, with access from adjacent ORV route 2. Beach in front of Hatteras Village to ramp 55, with access from adjacent ORV route

OCRACOKE ISLAND - ORV PERMITTED AREAS	
YEAR ROUND	<ol style="list-style-type: none"> 1. 0.25 mile northeast of ramp 59 to 0.25 southwest of ramp 59, with one ORV access ramp 2. Interdunal spur road from ramp 59 north for 0.3 mile 3. Ramp 62 to ramp 64, with two ORV access ramps 4. Three routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens 5. 0.75 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68, with one ORV access ramp 6. One route from NC Highway 12 to Pamlico Sound located near Ocracoke Campground 7. 0.5 miles northeast of ramp 70 to Ocracoke inlet, with two ORV access ramps 8. One route from ramp 72 to a pedestrian trail to Pamlico Sound
SEASONAL August 1 to March 14	<ol style="list-style-type: none"> 1. One seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound 2. One seasonal route at the north end of South Point spit from the beach route to Pamlico Sound <p>Note: The Superintendent will periodically designate 1.0 miles of ocean shoreline between ramp 72 and Ocracoke Inlet as closed to ORV use for non-breeding shore birds, with an upper beach route to by-pass the 1.0 mile area.</p>
November 1 to March 31	<ol style="list-style-type: none"> 1. 0.5 mile northeast to 0.5 mile southwest of ramp 68 (<i>Ocracoke Campground area</i>), with access from adjacent ORV routes and one seasonal ORV access ramp 2. 1.2 miles to 0.5 mile northeast of ramp 70 (<i>Ocracoke Day Use Area</i>), with access from adjacent ORV routes
November 1 to March 14	<ol style="list-style-type: none"> 1. 0.5 miles southwest of ramp 68 to 1.2 miles northeast of ramp 70, with access from adjacent ORV routes

(12) *Rules for Vehicle Operation.* Drivers must comply with Part 4 of this title and with the following requirements:

(i) *Access:* Visitors accessing the Seashore by ORV must use only designated beach access ramps and soundside access routes to enter designated ORV routes and areas.

(ii) *Pedestrian safety.*

(x) Vehicles must yield to pedestrians on all off-road routes.

(xx) When approaching or passing a pedestrian on the beach, vehicles shall move to the landward side to yield the wider portion of the beach corridor to the pedestrian.

(xxx) Vehicles 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.

(iii) *Beach parking.* Parking within routes is allowed in any configuration, as long as parked vehicles do not obstruct two-way traffic.

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

(v) *Speed limit.* The speed limit for off-road driving is 15 mph (unless otherwise posted)

(vi) *Hours of Operation*

ORV – HOURS of OPERATION	
November 16 – April 30: All Designated Routes ----- May 1 – November 15 Designated Routes in Sea Turtle Nesting Habitat (Ocean Intertidal Zone, Ocean Backshore, Dunes) ----- September 16- November 15 Designated Routes in Sea Turtle Nesting Habitat	24 Hours/Day ----- 1 Hour after Sunrise to 1 Hour after Sunset ----- 24 Hours/Day on routes with no or low density of unhatched sea turtle nests remaining - as determined by the Park Superintendent)

(13) *Vehicle carrying capacity*. The Superintendent will periodically evaluate, at a minimum every five years, vehicle carrying capacity for areas designated for off-road use and may revise the carrying capacity limits after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives