

0025994

**From:** [Philip Selleck](#)  
**To:** [Mike Murray](#); [Paul Stevens](#)  
**Subject:** Edits  
**Date:** 04/12/2010 01:15 PM  
**Attachments:** [CAHA Draft Proposed ORV Rule PAS 4-12-10clean.doc](#)

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Mike, Paul,

Attached is the most recent version of the rule, with my edits. I focused on the regulatory text, not the preamble, given the time allotted. Please let me know if you have questions.

Phil



CAHA Draft Proposed ORV Rule PAS 4-12-10clean.doc

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**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.

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- 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

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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:

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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..."

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#### 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]**

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## **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

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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



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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

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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

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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

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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.

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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,

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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.

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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

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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



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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).

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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.

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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

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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).

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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

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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

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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

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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



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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

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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

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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]**

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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

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.

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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

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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](mailto:Exsec@ios.doi.gov).

DRAFTING INFORMATION: The primary authors of this regulation are:

#### **Public Participation**

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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:

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§ 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-Off-road corridor~~ means the actual physical ~~demarcation limits~~ of the ~~ORV-off-road~~ route in the ~~fieldpark~~. ~~ORV-Off-road~~ 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-management Area-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~~ under an off-road permit is limited to routes and areas designated in this section

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(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.



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(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 ~~requirements apply are required~~ for ~~operation driving under an off-road permit.~~ ~~Four-wheel drive vehicles are recommended.~~

(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)(43)(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.* ~~temporary use.~~ The Superintendent may issue a special use permit for temporary off-road driving to:

~~to authorize the following on a temporary basis:~~

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**Comment [PS1]:** This means any of the 17+ routes for access to the sound?

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(i) Authorize the 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) Allow participants in fishing tournaments in an area not designated for off-road use, when off-road use had been allowed in that area for that tournament before January 1, 2009.~~

~~(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) Allow ~~V~~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.* In addition to the requirements of (c)(3)(i) through (vi) of this section, ~~u~~se of vehicles off-road under terms of a commercial use authorization or commercial fishing permit issued by the Superintendent will be as follows. A separate off-road permit is not required:

~~(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) When driving off-road, a commercial use authorization holder~~ Vehicles authorized to operate off road under a commercial use authorization are is restricted to the designated ~~ORV off-road routes that are~~ open for ~~ORV~~ use.

~~(iv) A Vehicles authorized to operate under a commercial fishing permit holder issued by the Superintendent are allowed to~~ may drive on designated off-road routes and, when actively

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engaged in authorized commercial fishing activities, on beaches not designated for ~~ORV-off-road~~ use, ~~except for, except in resource superintendent's management~~ closures and ~~on~~ lifeguarded beaches.

Comment [PS2]: I used the term superintendent here for two reasons 1) resource management closure is not used or defined anywhere else 2) There may be instances other than RM to close an area to all vehicles

(viii) 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-management Areas~~ areas.* The Superintendent shall designate and publish a listing of ~~Species-species Management-management Areas~~ areas in the park compendium.

Comment [PS3]: If you put them in the compendium, they must be reevaluated annually.

(i) Species ~~Management-management Areas~~ 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~~ whichever is sooner.

(ii) ~~Once a designated~~ When the superintendent closes a ~~Species-species Management management Area~~ area is closed to off-road ~~use-use as a as a pre-~~ nesting area area or as a result of or when observed shorebird breeding activity is observed, it ~~shall~~ will remain closed to off-

Comment [PS4]: It might be good to define pre-nesting activity

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~~road use~~ until August 1, for two weeks after breeding activity has ceased, or for 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 following tables show designated off-road driving areas and numbers of routes and ramps. 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. The Superintendent will annually update and publish Mmaps that show these designated ramps, routes and areas for ORV-off-road use, including a written determination that explains the reasons for any changes. will be updated annually and made available to the public in accordance with § 1.7 of this chapter.~~

<b>BODIE ISLAND - <del>ORV PERMITTED DESIGNATED AREAS, ROUTES AND RAMPS</del></b>	
<b>YEAR ROUND</b>	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
<b>SEASONAL August 1 to March 14</b>	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"

<b>HATTERAS ISLAND - DESIGNATED AREAS, ROUTES AND RAMPS ORV PERMITTED AREAS</b>	
<p><del>4/1/2018 Mike Murray and EQD Comments, Phil Schuchman</del>  <b>YEAR ROUND</b></p>	<ol style="list-style-type: none"> <li>1. Ramp 23 to ramp 27, with at least three but not more than four ORV access ramps</li> <li>2. Ramp 30 to ramp 32.5, with two ORV access ramps</li> <li>3. At least five but not more than six routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon</li> <li>4. Ramp 38 to 1.7 miles south of ramp 38, with at least one but not more than two ORV access ramps</li> <li>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</li> <li>6. 0.4 miles north of ramp 43 to Cape Point to 0.2 miles west of "the hook," with two ORV access ramps</li> <li>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</li> <li>8. Ramp 47 to ramp 49</li> <li>9. One route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet</li> <li>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</li> <li>11. Ramp 55 to 1.8 miles south of ramp 55, with one ORV access ramp</li> </ol>
<p><b>SEASONAL</b>  <b>September 16 to May 14</b></p>	<ol style="list-style-type: none"> <li>1. Beach in front of Rodanthe-Waves-Salvo to ramp 23, with one ORV access ramp</li> <li>2. Ramp 34 to ramp 38 (Avon), with two ORV access ramps</li> </ol>
<p><b>August 1 to March 14</b></p>	<ol style="list-style-type: none"> <li>1. Ramp 32.5 to ramp 34, with two ORV access ramps</li> <li>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</li> </ol> <p><b>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.</b></p> <ol style="list-style-type: none"> <li>3. Pole Road south of Spur Road to two dead-end, interdunal spur routes located northeast and southwest of the end of Pole Road</li> </ol>
<p><b>December 1 to the Last Day of February</b></p>	<ol style="list-style-type: none"> <li>1. Beach in front of Frisco village, with access from adjacent ORV route</li> <li>2. Beach in front of Hatteras Village to ramp 55, with access from adjacent ORV route</li> </ol>

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<b>OCRACOKE ISLAND - DESIGNATED AREAS, ROUTES AND RAMPS ORV PERMITTED AREAS</b>	
<b>YEAR ROUND</b>	<ol style="list-style-type: none"> <li>1. 0.25 mile northeast of ramp 59 to 0.25 southwest of ramp 59, with one ORV access ramp</li> <li>2. Interdunal spur road from ramp 59 north for 0.3 mile</li> <li>3. Ramp 62 to ramp 64, with two ORV access ramps</li> <li>4. Three routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens</li> <li>5. 0.75 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68, with one ORV access ramp</li> <li>6. One route from NC Highway 12 to Pamlico Sound located near Ocracoke Campground</li> <li>7. 0.5 miles northeast of ramp 70 to Ocracoke inlet, with two ORV access ramps</li> <li>8. One route from ramp 72 to a pedestrian trail to Pamlico Sound</li> </ol>
<b>SEASONAL</b> <b>August 1 to March 14</b>	<ol style="list-style-type: none"> <li>1. One seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound</li> <li>2. One seasonal route at the north end of South Point spit from the beach route to Pamlico Sound</li> </ol> <p><b>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.</b></p>
<b>November 1 to March 31</b>	<ol style="list-style-type: none"> <li>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</li> <li>2. 1.2 miles to 0.5 mile northeast of ramp 70 (<i>Ocracoke Day Use Area</i>), with access from adjacent ORV routes</li> </ol>
<b>November 1 to March 14</b>	<ol style="list-style-type: none"> <li>1. 0.5 miles southwest of ramp 68 to 1.2 miles northeast of ramp 70, with access from adjacent ORV routes</li> </ol>

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(12) *Rules for Vehicle Operation.* ~~Drivers must comply with~~ The following restrictions apply in addition to the requirements of Part 4 of this title; and with the following requirements:

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

(ii) *Pedestrian safety.*

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

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~~(xx)B~~ When approaching or passing a pedestrian on the beach, vehicles shall

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move to the landward side to yield the wider portion of the beach corridor to the pedestrian.

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~~(xxx)C~~ Vehicles must slow to 5 mph or the slowest possible speed to maintain

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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.

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(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	24 Hours/Day ----- 1 Hour after Sunrise to 1 Hour after Sunset
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 on routes with no or low density of unhatched sea turtle nests remaining - as

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	<b>determined by the Park Superintendent)</b>
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(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