

0030342

From: [Doug Wetmore](#)
To: [Mike Murray](#)
Cc: [Sandra Hamilton](#)
Subject: Re: CAHA Rule
Date: 12/01/2010 09:25 AM
Attachments: [CAHA Draft PR 11-30-2010.docx](#)

Hi Mike. I've attached the latest version of the rule.




CAHA Draft PR 11-30-2010.docx

Doug Wetmore
Environmental Protection Specialist
National Park Service - Environmental Quality Division
P.O. Box 25287
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▼ [Mike Murray/CAHA/NPS](#)

**Mike
Murray/CAHA/NPS**

12/01/2010 08:59 AM

To: Sandra Hamilton/DENVER/NPS@NPS
cc: Doug Wetmore/DENVER/NPS@NPS, Cyndy Holda/CAHA/NPS@NPS
Subject: Re: CAHA Rule 

4:30 p.m. works best for me. Please send me whatever version of the proposed rule you are working from.

Thanks,

Mike Murray
Superintendent
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
(w) 252-473-2111, ext. 148
(c) 252-216-5520
fax 252-473-2595

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This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure.

▼ [Sandra Hamilton/DENVER/NPS](#)


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**Sandra
Hamilton/DENVER/NPS**

To: Doug Wetmore/DENVER/NPS@NPS, Mike
Murray/CAHA/NPS@NPS

12/01/2010 10:10 AM

cc

Subject: Re: CAHA Rule 

DOUG: OK. I have a copy and will look at it during lunch today.

MIKE: is there a time after 2:30 ET this afternoon when we could call you to resolve some potential confusion between the descriptions in the ORV route table from the last version of the proposed rule and the FEIS route table for alt F? Thanks.

Sandy

Sandy Hamilton
Environmental Protection Specialist
National Park Service - Environmental Quality Division
Academy Place
P.O. Box 25287
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FAX: (303) 987-6782
▼ [Doug Wetmore/DENVER/NPS](mailto:Doug.Wetmore@NPS.gov)

**Doug
Wetmore/DENVER/NPS**

To: Sandra Hamilton/DENVER/NPS@NPS

cc

11/30/2010 04:21 PM

Subject: CAHA Rule

Sandy. Updated rule is on the N drive, with today's date. Please review, especially the section on Paperwork Reduction Act. I left some of my comments on the beach segments, as I'd like to get Mike's input on them.

<N:\EOD\Cape Hatteras\Rule>

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1 [insert billing code] [insert account number]

2 DEPARTMENT OF THE INTERIOR

3 National Park Service

4 36 CFR Part 7

5 RIN 1024-AD85

6 Special Regulations of the National Park Service; Cape Hatteras National Seashore

7 AGENCY: National Park Service, Interior.

8 ACTION: Proposed rule.

9 SUMMARY: The National Park Service (NPS) proposes to amend its special regulation for Cape
10 Hatteras National Seashore (Seashore), North Carolina to designate routes where off-road vehicles
11 (ORVs) may be used. Under existing NPS general regulations, the operation of motor vehicles off of
12 roads within areas of the National Park System is prohibited unless otherwise provided for by special
13 regulation. The intended effect of this proposed rule is to carefully manage ORV use at the Seashore to
14 protect and preserve natural and cultural resources and natural processes, to provide a variety of visitor
15 use experiences while minimizing conflicts among various users, and to promote the safety of all visitors.

16 DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF
17 PUBLICATION IN THE FEDERAL REGISTER].

18 ADDRESSES: You may submit comments, identified by the number RIN 1024-AD85, by any of the
19 following methods:

- 20 - Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions for
21 submitting comments.
- 22 - Mail or hand delivery to: Superintendent, Cape Hatteras National Seashore, 1401 National
23 Park Drive, Manteo, North Carolina 27954.
- 24 - For additional information see “Public Participation” under SUPPLEMENTARY
25 INFORMATION below.

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1 Comments will not be accepted by fax, email, or in any way other than those specified above.

2 **FOR FURTHER INFORMATION CONTACT:** Mike Murray, Superintendent, Cape Hatteras
3 National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954. Phone: (252) 473-2111 (ext
4 148).

5 **SUPPLEMENTARY INFORMATION:**

6 **Background**

7 **Description of Cape Hatteras National Seashore**

8 Officially authorized in 1937 along the Outer Banks of North Carolina, Cape Hatteras is the
9 nation's first national seashore. Consisting of more than 30,000 acres distributed along approximately 67
10 miles of shoreline, the Seashore is part of a dynamic barrier island system.

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

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

20
21 **Authority and Jurisdiction**

22 By enacting the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 et seq.),
23 Congress granted the NPS broad authority to regulate the use of the park areas under its jurisdiction. The
24 Organic Act (16 U.S.C. 3) specifically provides the authority through the Secretary of the Interior, to

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1 “make and publish such rules and regulations as he may deem necessary or proper for the use and
2 management of the parks...”

3

4 **Off-Road Motor Vehicle Regulation**

5 Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in response to
6 the widespread and rapidly increasing off-road driving on public lands “often for legitimate purposes but
7 also in frequent conflict with wise land and resource management practices, environmental values, and
8 other types of recreational activity.” The Executive Order, issued in 1972 and amended by Executive
9 Order 11989 in 1977, requires federal agencies that allow motorized vehicle use in off-road areas to
10 designate specific areas and routes on public lands where the use of motorized vehicles may be permitted.

11 Specifically, section 3 of the Executive Order, as amended, authorizes agencies to designate
12 specific areas and trails on which the use of off-road vehicles may be permitted, provided the designation
13 of such areas and trails will be based on protecting resources of public lands, promoting the safety of all
14 users of those lands, and minimizing conflicts among the various uses on those lands. NPS has
15 implemented the Executive Order through its regulations at 36 CFR § 4.10(b) which requires that “routes
16 and areas designated for ORV use shall be promulgated as special regulations” and that the designation of
17 routes and areas “shall comply with section 1.5 of this chapter and Executive Order 11644.” It also states
18 that such routes and areas may be designated only in national recreation areas, national seashores,
19 national lakeshores, and national preserves.

20 NPS is issuing this proposed rule to comply with these authorities and with NPS policies.

21

22 **ORV Use at Cape Hatteras National Seashore**

23 Historically, beach driving at the Seashore was for the purpose of transportation, and not
24 recreation. Because the area was sparsely populated, the number of ORVs on the beach was much smaller
25 than it is today. The paving of NC-12, the completion of the Bonner Bridge connecting Bodie and

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1 Hatteras islands in 1963, and the introduction of the State of North Carolina ferry system to Ocracoke
2 Island facilitated visitor access to the sound and ocean beaches. Improved access, increased population,
3 and the popularity of the sport utility vehicle have resulted in a dramatic increase in vehicle use on
4 Seashore beaches.

5 ORV use at the Seashore has historically been managed since the 1970s through various draft or
6 proposed plans, though none were ever finalized or published as a special regulation as required by 36
7 CFR § 4.10(b). Motivated in part by a decline in most beach nesting bird populations on the Seashore
8 since the 1990s, in July 2007 the NPS finalized an Interim Protected Species Management Strategy
9 (Interim Strategy) that was to provide resource protection guidance with respect to ORV and other human
10 disturbance until the long-term ORV management plan and regulation could be completed. In October
11 2007, a lawsuit was filed challenging the Interim Strategy which resulted in a consent decree in April
12 2008. ORV use is currently managed pursuant to the consent decree, which modified aspects of the
13 Interim Strategy. The court order implementing the consent decree also established deadlines for
14 completion of an ORV management plan/EIS and special regulation, of December 31, 2010 and April 1,
15 2011 respectively.

16

17 **Description of the Subjects and Issues Involved**

18 NPS is seeking public comment on the proposed rule, which is divided into the following general
19 categories:

- 20 1. ORV permits
- 21 2. Designation of ORV routes, including dates of village closures
- 22 3. Vehicle equipment requirements
- 23 4. Vehicle inspection
- 24 5. Vehicle operation rules
- 25 6. Motorcycles/ATV/UTV

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- 1 7. Temporary special use permits
- 2 8. Authorized commercial vehicles
- 3 9. Authorized commercial fishing
- 4 10. Night driving
- 5 11. Carrying capacity

6

7 **The Proposed Rule**

8 This rule is proposed for the purpose of implementing parts of the selected action (alternative F) as
9 described in the Record of Decision (ROD) for the Cape Hatteras National Seashore Off-Road Vehicle
10 Management Plan / Final Environmental Impact Statement (Plan/FEIS). The Plan/FEIS and other
11 supporting documentation can be found online at <http://parkplanning.nps.gov/caha>. The proposed rule
12 would amend the special regulations for the Seashore set forth in 36 CFR 7.58. Under this proposal, a
13 new paragraph (c) would be added to § 7.58 to designate areas where ORVs may be used at the Seashore
14 and establish other requirements, including permit, vehicle, and equipment requirements. The following
15 section explains some of the principal requirements of the proposed rule [in a “question and answer
16 format”](#):
17

18 *Do I need a permit to operate a vehicle off road?*

19 Yes. To obtain an ORV permit, you must complete a short education program, acknowledge in writing
20 that you understand and agree to abide by the rules governing ORV use at the Seashore, and pay the
21 applicable permit fee. Both weekly (7-day) and annual (12-month) ORV permits would be available.

22

23 *Is there a limit to the number of ORV permits available?*

24 No. There would be no limit to the number of permits that the Superintendent could issue.
25

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1 *Several of my family members have ORVs that we would like to use on Seashore beaches. Do we need to*
2 *get a permit for each vehicle?*

3 Yes. You would need to get a permit for any vehicle that you want to use for beach driving on designated
4 ORV routes. A permit would need to be affixed to all vehicles operating off road within the Seashore.

5

6 *Where can I operate my vehicle off road?*

7 Once you obtain an ORV permit, you may operate a vehicle off road only on designated routes described
8 in the table located in § 7.58(c)(11) below. That table also provides dates for seasonal restrictions on
9 driving on these designated routes. Maps of designated ORV routes would be available in the Office of
10 the Superintendent and on the Seashore website.

11

12 *Does the ORV permit guarantee that all designated ORV routes will be open for me to use?*

13 No. ORV routes are subject to temporary resource and safety closures as needed. Past experience
14 indicates that substantial sections of the beach will remain open for ORV use when other sections have a
15 temporary closure.

16

17 *Are there any requirements for my vehicle?*

18 Yes. To receive a permit to operate a vehicle on designated ORV routes, you must meet the vehicle and
19 equipment requirements contained in § 7.58(c)(3) below. Your vehicle must be registered, licensed, and
20 insured for highway use and comply with state inspection regulations within the state, country, or
21 province where the vehicle is registered. It must have no more than two axles and its tires must be U.S.
22 Department of Transportation-listed or approved. Your vehicle must contain a low-pressure tire gauge, a
23 shovel, a jack, and a jack stand.

24

25 *Can I drive my two-wheel drive vehicle off road?*

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1 Yes. Four-wheel-drive vehicles are recommended, but two-wheel-drive vehicles would be allowed.

2

3 *Can I tow a boat trailer off road with my vehicle?*

4 Yes. Towed boat trailers with one or two axles would be allowed. Boat trailers with more than two axles
5 would be prohibited.

6

7 *Can I tow a travel trailer (camping trailer) off road with my vehicle?*

8 No. Travel trailers (i.e. camping trailers) would be prohibited off road.

9

10 *Can I ride my motorcycle, ATV, or UTV off of Seashore roads?*

11 No. The operation of motorcycles, all-terrain vehicles (ATV), and utility vehicles (UTVs) off road by the
12 public in the Seashore would be prohibited.

13

14 *What is the speed limit on designated ORV routes?*

15 The speed limit would be 15 miles per hour (unless otherwise posted), except for emergency vehicles
16 when responding to a call. ORVs would be required to slow to 5 miles per hour when traveling within
17 100 feet or less of pedestrians at any location on the beach at any time of year.

18

19 *Are there right of way rules for ORV drivers in addition to those already in effect at the Seashore?*

20 Yes.

21

22 *Can I drive off-road at night?*

23 Yes. ORVs may be driven on designated ORV routes 24 hours a day from November 16th to April 30.

24 However, night driving restrictions would be in effect between May 1 and November 15, as described in
25 §7.58(c)(12)(vi). From May 1 to September 15 designated ORV routes in potential sea turtle nesting

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1 habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to ORV use from 9:00 p.m.
2 until 7:00 a.m. September 16 to November 15 ORV routes with no turtle nests remaining would reopen
3 for night driving, subject to terms and conditions of the ORV permit.

4

5 *Is a separate permit required for night driving?*

6 No. It would be covered by the ORV permit required to drive off-road in the Seashore.

7

8 *I have a family member who is disabled or mobility-impaired. Can I use my ORV to drive them to the*
9 *beach where we are gathering, even if it is not designated as an ORV route?*

10 Yes, in front of villages only and subject to the conditions of a special use permit. The permit would
11 allow you to transport mobility-impaired individuals to a predetermined location in a vehicle-free area
12 (VFA) in front of the villages. After transporting the person to the beach, you would have to immediately
13 return the vehicle to the nearest ORV route or Seashore road. Additionally, you should keep in mind that
14 there would be many miles of beach open to ORVs year-round or seasonally that will be accessible by
15 ORV for family gatherings and other activities where vehicles may be parked in the ORV corridor.

16

17 *Do commercial fishermen need an ORV permit?*

18 No. Commercial fishermen do not need an ORV permit. When actively engaged in commercial fishing
19 activity, they would be covered under their commercial fishing special use permit.

20

21 *Can commercial fishermen drive in the vehicle-free areas?*

22 Yes. Authorized commercial fishermen actively engaged in commercial fishing activity would be
23 allowed to enter vehicle-free areas, except for resource closures and lifeguarded beaches, as is the case
24 now. They would be granted beach access beginning at 5 a.m. when night driving restrictions are in
25 effect, subject to the terms and conditions of their commercial fishing permit.

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1

2 **Compliance With Other Laws**

3 **Regulatory Planning and Review (Executive Order 12866).**

4 This document is a significant rule and the Office of Management and Budget has reviewed this
5 rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the
6 results are contained in the report titled “Benefit-Cost Analysis of Proposed ORV Use Regulations in
7 Cape Hatteras National Seashore” which is available online at <http://parkplanning.nps.gov/caha>

8 (1) This rule will not have an annual effect of \$100 million or more on the economy and will not
9 adversely affect in a material way the environment, public health or safety, or State, local, or tribal
10 governments or communities. However, it may adversely affect the economy, productivity, competition,
11 or jobs. You must summarize in the preamble the cost/benefit analysis

12 (2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or
13 planned by another agency. This is an agency-specific rule that applies only to lands owned and managed
14 by the NPS. The management of ORVs on NPS lands will not interfere with other agencies or local
15 government plans, policies, or controls.

16 (3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs
17 or the rights or obligations of their recipients. It only affects the use of ORVs within the Seashore. No
18 grants or other forms of monetary supplement are involved.

19 (4) This rule does not raise novel legal or policy issues. This proposed rule is similar to other
20 special regulations governing vehicular use previously promulgated by the NPS.

21

22 **Regulatory Flexibility Act.**

23 The Department of the Interior certifies that this document will not have a significant economic
24 effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et*
25 *seq.*). This certification is based on information contained in the report titled “Benefit-Cost Analysis of

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1 Proposed ORV Use Regulations in Cape Hatteras National Seashore” which is available online at
2 <http://parkplanning.nps.gov/caha>. According to that report, no entities, small or large, are directly
3 regulated by the proposed rule. The courts have held that the RFA requires an agency to perform a
4 regulatory flexibility analysis of small entity impacts only when a rule directly regulates them.
5 Therefore, the NPS must assess the impacts on directly regulated entities, but is not required to analyze
6 in a regulatory flexibility analysis the indirect effects on small entities resulting from rules.

7

8 **Small Business Regulatory Enforcement Fairness Act (SBREFA).**

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

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

17 This determination is based on information contained in the report titled “Benefit-Cost Analysis of
18 Proposed ORV Use Regulations in Cape Hatteras National Seashore” which is available online at
19 <http://parkplanning.nps.gov/caha>. This action will result in increased costs to those visitors desiring to
20 operate ORVs on the beach, due to the requirement for an ORV permit. However, the price of the permit
21 would be based on a cost recovery system and would not result in a major increase in costs to consumers.

22

23 **Unfunded Mandates Reform Act.**

24 This rule does not impose an unfunded mandate on State, local, or tribal governments or the
25 private sector of more than \$100 million per year. The rule does not have a significant or unique effect on

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1 State, local, or tribal governments or the private sector. The designated routes are located entirely within
2 the Seashore, and will not result in direct expenditure by State, local or tribal governments on those
3 routes. This rule addresses public use of National Park Service lands, and imposes no requirements on
4 other agencies or governments. A statement containing the information required by the Unfunded
5 Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

6

7 **Takings (E.O. 12630).**

8 Under the criteria in Executive Order 12630, this rule does not have significant takings
9 implications. No taking of personal property will occur as a result of this rule. Access to private property
10 located within or adjacent to the Seashore will not be affected by this rule. This rule does not regulate
11 uses of private property. A takings implication assessment is not required.

12

13 **Federalism (E.O. 13132).**

14 Under the criteria in Executive Order 13132, this rule does not have sufficient federalism
15 implications to warrant the preparation of a Federalism summary impact statement. This rule only affects
16 use of NPS administered lands and imposes no requirements on other agencies or governments. A
17 Federalism summary impact statement is not required.

18

19 **Civil Justice Reform (E.O. 12988).**

20 This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

21 (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors
22 and ambiguity and be written to minimize litigation; and

23 (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language
24 and contain clear legal standards.

25

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Paperwork Reduction Act

Implementation of an ORV permit system will require permit applicants to provide a very limited amount of information to Seashore staff. Applicants would need to provide their name, address, and vehicle information prior to issuance of an ORV permit. Vehicle information would be verified and collected by NPS staff reviewing the applicant's state-issued vehicle registration and/or driver's licenses and taking down any required information. OMB regulations [5. C.F.R. 1320.3(h)] specify a number of items that are generally not "information" under the Paperwork Reduction Act (PRA). These items include "affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument" and "facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency". The NPS considers the applicant information required for issuance of an ORV permit as identification of the applicant and their address, which would not trigger the requirements of the PRA. The NPS considers the vehicle information as a fact obtained through direct observation of an applicant's state-issued driver's license and vehicle registration. Therefore, the permit application process does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required for this proposed rule.

Comment [dw1]: We can either go this way, or use existing OMB number that CACO used.

National Environmental Policy Act

This rule constitutes a major Federal action significantly affecting the quality of the human environment. In accordance with the National Environmental Policy Act of 1969, the NPS prepared a Draft Environmental Impact Statement (DEIS) and a Final Environmental Impact Statement (FEIS) for the Off-Road Vehicle Management Plan. The FEIS was released on November 15, 2010. The NPS notice and the EPA Notice of Availability were published in the Federal Register on November 19, 2010. . The FEIS evaluated six alternatives for managing off-road motorized vehicle access and use at the Seashore, including two no-action alternatives. A Record of Decision (ROD) selecting Alternative F was signed on

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1 December 20, 2010, and a notice of the decision was published in the Federal Register on December 23,
2 2010. This regulation is proposed for the purpose of implementing the selected action as described in the
3 ROD, as it related to issuing a proposed rule. A full description of the alternatives that were considered,
4 the environmental impacts associated with the project, and public involvement is contained in the FEIS
5 which can be found online at <http://parkplanning.nps.gov/caha>.

6
7 **Consultation with Indian tribes (E.O. 13175).**

8 On August 27, 2010, the NPS sent a letter to the Tuscarora Nation requesting information on any
9 historic properties of religious or cultural significance to the tribe that would be affected by the EIS/ORV
10 management plan. The Tuscarora Nation has not informed the Seashore of any such properties. Under the
11 criteria in Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), we
12 have evaluated this rule and determined that it would have no potential effect on federally recognized
13 Indian tribes.

14
15 **Information Quality Act**

16 As listed in the References section in the plan/FEIS, many of the references cited are from peer-
17 reviewed scientific journals or are official agency publications, such as the U.S. Fish and Wildlife species
18 recovery plans, which have been reviewed by other scientific experts outside of the recovery teams that
19 are knowledgeable of particular species. Interim guidance on NPS Director's Order 11-B indicates that
20 scientific or scholarly information published in peer-reviewed journals does not require additional peer
21 review. Information presented in the plan/EIS is based on a wide range of guidance and scientific data
22 which was used to determine potential impacts and to develop a range of reasonable alternatives for the
23 plan/EIS. The NPS gathered hundreds of scientific journal articles and research papers prior to and during
24 this planning process, and made a concerted effort to obtain reports and studies that were applicable to the
25 species in question and the ecological characteristics of the Seashore. In sum, the NPS considered a wide

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1 variety of information sources to evaluate potential impacts in the EIS, the majority of which were from
2 published peer-reviewed scientific journals or official agency publications, all of which have been part of
3 the official administrative record for this project. The NPS believes that the information used in preparing
4 the FEIS and the subsequent decision to issue this proposed rule is of sufficient quality, objectivity,
5 utility, and integrity to comply with the Information Quality Act (Pub. L. 106-554) and the OMB, DOI,
6 and NPS policies and guidelines that address the Act.

7
8 **Effects on the Energy Supply (E.O. 13211)**

9 This rule is not a significant energy action under the definition in Executive Order 13211. A
10 Statement of Energy Effects is not required.

11
12 **Clarity of this Rule.**

13 We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of
14 June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- 15 (a) be logically organized;
16 (b) use the active voice to address readers directly;
17 (c) use clear language rather than jargon;
18 (d) be divided into short sections and sentences; and
19 (e) use lists and tables wherever possible.

20 If you feel that we have not met these requirements, send us comments by one of the methods
21 listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as
22 specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are
23 unclearly written, which sections or sentences are too long, the sections where you feel lists or tables
24 would be useful, etc.

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1 **Public Participation**

2 *Instructions:* All submissions received must include the agency name and docket number or
3 Regulatory Information Number (RIN) for this rulemaking, which is **1024-AD85**. All comments received
4 through the federal rulemaking portal at www.regulations.gov will be ~~available~~ **posted** without change to
5 www.regulations.gov. Before including your address, phone number, e-mail address, or other personal
6 identifying information in your comment, you should be aware that your entire comment – including your
7 personal identifying information – may be made publicly available at any time. While you can ask us in
8 your comment to withhold your personal identifying information from public review, we cannot
9 guarantee that we will be able to do so.

10 *Docket:* For access to the docket or to view comments received through the federal rulemaking
11 portal, go to www.regulations.gov and enter “1024-AD85” in the “Keyword or ID” search box.

12

13 **List of Subjects in 36 CFR Part 7**

14 District of Columbia, National Parks, Reporting and recordkeeping requirements. In
15 consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as follows:

16

17

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

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

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

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

23 **§ 7.58 Cape Hatteras National Seashore.**

24 * * * * *

25 (c) *Off-Road motor vehicle use*

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

3 *ORV* means a motor vehicle used off of park roads.

4 *ORV corridor* means the actual physical limits of the ORV route in the Seashore. ORV corridors
5 on the ocean beach are marked on the landward side by posts seaward of the toe of dune or vegetation line
6 to the high tide line (the seaward side of the corridor is not posted).

7 (2) *ORV permit.* A permit issued by the superintendent is required to operate a vehicle off of
8 Seashore roads at Cape Hatteras National Seashore.

9 (i) Operation of a motor vehicle authorized under an ORV permit is limited to only those routes
10 designated in this section

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

12 (iii) Annual ORV permits are valid for the calendar year. Seven-day ORV permits are valid from
13 the date of issuance.

14 (iv) A permit applicant must complete a short education program in-person and acknowledge in
15 writing an understanding of the rules governing ORV use at the Seashore.

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

18 (3) *Vehicle and equipment requirements.* The following requirements apply for driving off-road.
19 Driving a vehicle not meeting these requirements off-road is prohibited.

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

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

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

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

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

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

2 (4) *Vehicle inspection.* Authorized persons may inspect the vehicle to determine whether it
3 complies with the requirements of paragraphs (c)(3)(i) through (vi) of this section.

4 (5) *Motorcycles.* The operation of motorcycles off-road is prohibited.

5 (6) *All-terrain and utility vehicles.* The operation of all-terrain vehicles (ATVs) and utility
6 vehicles (UTVs) by the public in the Seashore is prohibited.

7 (7) *Special use permits for off-road driving, temporary use.* The superintendent may issue a
8 special use permit for temporary off-road vehicle use to:

9 (i) Authorize the North Carolina Department of Transportation to use Seashore beaches as a
10 public way when necessary to by-pass sections of NC Highway 12 that are impassible or closed for
11 repairs;

12 (ii) Allow participants in a regularly-scheduled fishing tournament to drive in an area not
13 designated for off-road use, if off-road use was allowed in that area for that tournament before January 1,
14 2009.

15 (iii) Allow vehicular transport of mobility-impaired individuals via the shortest, most direct
16 distance from the nearest designated ORV route or Seashore road to a predetermined location in a
17 designated vehicle-free area in front of a village; the vehicle must return to the designated ORV route or
18 Seashore road immediately after the transport.

19 (8) *Authorized commercial vehicles.* In addition to the requirements of (c)(3)(i) through (vi) of
20 this section, use of vehicles off-road under terms of a commercial use authorization or commercial fishing
21 permit issued by the superintendent will be as follows. A separate ORV permit is not required.

22 (i) When driving off-road, a commercial use authorization holder is restricted to the designated
23 ORV routes open for use.

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1 (ii) A commercial fishing permit holder may drive on designated ORV routes and, when actively
2 engaged in authorized commercial fishing activities, on beaches not designated for ORV use, except for
3 resource closures and lifeguarded beaches.

4 (iii) The superintendent may allow commercial fishing vehicles to enter the beach at 5 a.m. when
5 night driving restrictions are in effect for the general public, for those actively engaged in authorized
6 commercial fishing activity involving haul seine and gill nets and able to present fish house receipts for
7 the previous 30 days.

8 (9) *Revocation of permit.* The superintendent may revoke an ORV permit, special use permit, or
9 commercial use authorization for violation of applicable Seashore regulations or terms and conditions of
10 the respective permit.

11 (10) *Superintendent's closures.* The superintendent may temporarily limit, restrict, or terminate
12 access to the areas designated for off-road use after taking into consideration public health and safety,
13 natural and cultural resource protection, and other management activities and objectives. The public will
14 be notified of such closures through one or more methods listed in § 1.7(a) of this chapter. Violation of
15 any closure is prohibited.

16 (11) *ORV routes.* The following tables indicate designated ORV routes. The following ramps are
17 designated as open to ORV use (subject to resource, safety, seasonal, or other closures) to provide access
18 to ocean beaches: 2.5, 4, 23, 25.5, 27, 30, 32.5, 34, 38, 43, 44, ~~45~~, 47.5, 49, 55, 59.5, 63, 67, 68, 70, 72.

19 Maps that show these ramps are available in the Office of the Superintendent and on the Seashore
20 website. Driving off of designated ORV routes or outside the ORV corridor is prohibited. The
21 superintendent will annually update and publish maps that show these designated routes and ramps for
22 off-road use, and in the event of any changes, will provide a written determination that explains the
23 reasons.

24

Comment [dw2]: 45 isn't open under alt F.

BODIE ISLAND - DESIGNATED ROUTES

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YEAR ROUND	0.5 miles south of the southern boundary of Coquina Beach to 0.2 miles south of ramp 4, with at least one but not more than two ORV access ramps
SEASONAL September 15 to March 14	0.2 miles south of ramp 4 to the eastern confluence of the Atlantic Ocean and Oregon Inlet
HATTERAS ISLAND - DESIGNATED ROUTES	
YEAR ROUND	<p>1.5 miles south of ramp 23 Ramp 25.5 to ramp 27, with two ORV access ramps</p> <p>Ramp 30 to ramp 32.5, with two ORV access ramps</p> <p>At least five but not more than six soundside routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon</p> <p>Ramp 38 to 1.5 miles south of ramp 38, with one ORV access ramp</p> <p>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</p> <p>0.4 miles north of ramp 43 to Cape Point to 0.3 miles west of "the hook," with two ORV access ramps</p> <p>Interdunal route from intersection with Lighthouse Road (i.e., ramp 44) to ramp 49, with one spur route from the interdunal route to the ORV route below</p> <p>Ramp 47.5 to east Frisco boundary ramp 49</p> <p>One soundside route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet</p> <p>Pole Road from Museum Drive to Spur Road, with two spur routes to Pamlico Sound and at least three but not more than four spur routes to the ORV route below</p> <p>Ramp 55 to 4-8 1.6 miles south of ramp 55, with one ORV access ramp</p>
SEASONAL November 1 to March 31	<p>0.1 mile south of Rodanthe Pier Beach in front of Rodanthe Waves Salvo to ramp 23, with one ORV access ramp</p> <p>Ramp 34 to ramp 38 (Avon), with two ORV access ramps</p> <p>East Frisco boundary to west Frisco boundary (Frisco village beach)</p> <p>East Hatteras boundary to ramp 55 (Hatteras village beach)</p>
September 15 to March 14	Interdunal route south of the intersection of Pole Road and Spur Road to no less than 100 meters from the ocean or inlet shoreline

Comment [dw3]: Map shows 2 green dashes east of ramp 47.5

Comment [dw4]: These route descriptions differ from those on table 7-1. Decide which one to use and be consistent.

Comment [dw5]: What about areas in front of Frisco and Hatteras?

OCRACOKE ISLAND - DESIGNATED ROUTES

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<p>YEAR ROUND</p>	<p>Ramp 59.5 to ramp 63, with two ORV access ramps</p> <p>Three routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens, commonly known as Prong Road, Barrow Pit Road, and Scrag Cedar Road.</p> <p>1.0 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68, with one ORV access ramp</p> <p>One route from NC Highway 12 to Pamlico Sound located near Ocracoke Campground, commonly known as Dump Station Road.</p> <p>0.4 miles northeast of ramp 70 to Ocracoke inlet, with two ORV access ramps</p> <p>One route from ramp 72 to a pedestrian trail to Pamlico Sound, commonly known as Shirley's Lane</p>
<p>SEASONAL September 15 March 14</p>	<p>One seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound</p> <p>One seasonal route at the north end of South Point spit from the beach route to Pamlico Sound</p>
<p>November 1 to March 31</p>	<p>0.5 mile northeast of ramp 68 to ramp 68 (<i>Ocracoke Campground area</i>), with one seasonal ORV access ramp</p>

Comment [dw6]: Map shows 2 dashes west of 63

Comment [dw7]: Is that existing? Not shown on map.

Comment [dw8]: Map 7 doesn't show as going all the way to the sound. Does it?

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(12) *Rules for Vehicle Operation.* The following restrictions apply in addition to the requirements of Part 4 of this title:

(i) *Access.* Individuals who drive off-road must use only designated beach access ramps and soundside access routes to enter designated ORV routes.

(ii) *Pedestrian safety.*

(A) Vehicles must yield to pedestrians on all ORV routes.

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

(C) Vehicles must slow to 5 mph when traveling within 30.5 meters (100 feet) or less of pedestrians at any location on the beach at any time of year.

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1 (iii) *Beach parking.* Parking within ORV routes is allowed no more than one-vehicle deep, as
2 long as parked vehicles do not obstruct two-way traffic.

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

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

6 (vi) *Hours of operation.* November 16 – April 30, all designated routes are open 24 hours a day;
7 May 1 – November 15, designated routes in sea turtle nesting habitat (ocean intertidal zone, ocean
8 backshore, dunes) are open 7 a.m. to 9 p.m.; and September 16 – November 15, designated routes in sea
9 turtle nesting habitat with no turtle nests remaining, as identified by the superintendent, are open to 24
10 hours a day.

11 (13) *Vehicle carrying capacity.* The maximum number of vehicles allowed on any particular
12 ORV route is the linear distance of the route divided by 6 meters (20 feet) per vehicle.

13 (14) Violation of any of these restrictions is prohibited.