

From: [Mike Murray](#)
To: jason.waanders@sol.doi.gov; russ_wilson@nps.gov
Cc: [Doug Wetmore](#); [AJ North](#); mike.stevens@sol.doi.gov
Subject: ATV/UTV language
Date: 03/22/2011 07:37 AM
Attachments: [ATVs-UTVs.docx](#)

Jason and Russ,

To follow up on our conversation last week, attached is language from the DEIS and FEIS regarding the prohibition of ATVs/UTVs. Feel free to use any of the language in the preamble of the proposed rule.

Also, a reminder to Jason to confirm the answer to the question about whether having ORV permit applicants provide their driver's license and vehicle registration information when they apply for the ORV permit would trigger an information collection requirement under the Paperwork Reduction Act. My understanding is that AJ checked this out with someone at DOI and determined that it would not trigger the requirement. If it makes any difference, during implementation we could have the applicant provide the DL and registration (documents) to our staff and staff could then input the information (name, address, DL #, license plate #, vehicle make/model) into the permit database (rather than have us require the applicant to fill out a form with the information).



ATVs-UTVs.docx

Please let me know if you need anything else from the park.

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

CONFIDENTIALITY NOTICE

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.

ATV/UTV References in ORV Plan/EIS

DEIS, March 2010, Chapter 2

ALTERNATIVE ELEMENTS CONSIDERED BUT DISMISSED FROM FURTHER CONSIDERATION

(p. 84) Provide All-Terrain Vehicle Access and Remove the Helmet Requirement

Commenters suggested that ATVs should be allowed on the beach and that ATV users should not be required to use helmets. The NPS only allows street-legal vehicles on the beach under the North Carolina Motor Vehicle Code, which does not include ATVs. Alternatives in this plan/EIS do not include changing the requirement for street-legal vehicles. The Seashore considers ATV use at the Seashore to be incompatible with visitor use and resource protection goals and objectives due to the damage they could cause. Further, street-legal vehicles are used for transportation, but the majority of ATVs are used primarily for recreational purposes, although they may secondarily serve a transportation function. Since ATVs would not be permitted, the issue of requiring helmets is not applicable.

FEIS, November 2010, Chapter 2

ALTERNATIVE ELEMENTS CONSIDERED BUT DISMISSED FROM FURTHER CONSIDERATION

(p. 85) Provide All-Terrain Vehicle/Utility Terrain Vehicle Access and Remove the Helmet Requirement

Commenters suggested that ATVs and utility terrain vehicles (UTVs) should be allowed on the beach and that ATV users should not be required to use helmets. The NPS only allows street-legal vehicles on the beach under the North Carolina Motor Vehicle Code, which does not include ATVs or UTVs. Alternatives in this plan/EIS do not include changing the requirement for street-legal vehicles. The Seashore considers ATV and UTV use at the Seashore to be incompatible with visitor use and resource protection goals and objectives due to the damage they could cause. Further, street-legal vehicles are used for transportation, but the majority of ATVs and UTVs are used primarily for recreational or utility purposes, although they may secondarily serve a transportation function. Since ATVs and UTVs would not be permitted, the issue of requiring helmets is not applicable.

FEIS, November 2010, Appendix C

AL1130 - Alternative Elements: Vehicle/Operator Requirements

Concern ID: 24102

Concern Statement: Commenters requested that ATVs and motorcycles not be banned from the Seashore and claimed that the DEIS did not provide an adequate rationale for prohibiting the use of these types of vehicles on Seashore beaches.

(pp. C-91 to C-92) Response: The NPS has noted several issues involved with motorcycles on Seashore beaches. The deep sand conditions have resulted in motorcycles getting stuck and the

operators having to walk them through the deep sand to access areas of compacted sand. The proposed reduction of beach speed limits would exacerbate this. The NPS also has concerns about resource impacts of allowing noisier, more mobile vehicles (dirt bikes, etc.) in beach nesting habitat. For these reasons, alternative F prohibits the off-road use of motorcycles. Available case law clearly supports the conclusion that motorcycles may be regulated differently, or even prohibited, as long as the regulation has a rational basis. As stated above, the NPS based the decision to prohibit motorcycles off-road on the potential for impacts to visitor experience (soundscapes), visitor safety, and natural resources. Many units of the National Park Service prohibit off-road use of motorcycles.

The rationale for continuing the long standing ATV prohibition and revising alternative F to also prohibit utility vehicles (UTVs) is similar to the rationale for motorcycles as explained above. Also, scientific studies have shown that ATVs generate more noise than street-legal vehicles and cause more disturbance to beach nesting birds. McGowan and Simons (2006) conducted American Oystercatcher monitoring surveys using stationary video cameras on Cape Hatteras National Seashore and Cape Lookout National Seashore in 2002 and 2003. They recorded 539 instances in which incubating birds departed their nests. Of those instances, ATVs were filmed within 3 minutes of nest departure on 136 occasions (25%) and ORVs were filmed 92 times (17%) within 3 minutes of nest departure. They recorded a total of 284 ATVs, 62% of which passed by a nest within less than 3 minutes of a bird departing its nest. They observed 1,466 ORVs pass by filmed nests, but only 11% passed by within 3 minutes of a bird leaving its nest. Groups or individual pedestrians (traveling by foot) were filmed 19 times (4%) within 10 minutes of nest departures (McGowan and Simons 2006).

Regression models show that there was little or no association between ORV traffic and the rate at which incubating oystercatchers made trips to and from their nests, or the amount of time they spent incubating. Likewise, pedestrian foot traffic was not associated with a significant reduction in the percent time incubating, or birds making more trips to and from their nests per hour. Increased ATV traffic, however, was associated with a reduction in the percent time spent incubating, and an increase in the rate of trips to and from the nest.

McGowan and Simons suggest that birds appear to have habituated to the presence of ORVs (Whittaker and Knight 1998), but they view ATVs (and to a lesser extent, pedestrians) as threats. They propose that ATVs are louder and move faster than ORVs and pedestrians, which might explain why the birds are affected more by ATV traffic (Burger 1981, Burger and Gochfeld 1998). ORVs and pedestrians also tend to stay closer to the firm sand along the water's edge, which means they generally travel farther from nesting birds.

The following language (DEIS p. 84) specifically explains the reason for the prohibition of ATV use at the Seashore:

“The NPS only allows street-legal vehicles on the beach under the North Carolina Motor Vehicle Code, which does not include ATVs. Alternatives in this plan/EIS do not include changing the requirement for street-legal vehicles. The Seashore considers ATV use at the Seashore to be incompatible with visitor use and resource protection goals and objectives due to the damage they could cause. Further, street-legal vehicles are used for transportation, but the majority of

ATVs are used primarily for recreational purposes, although they may secondarily serve a transportation function.”

This language has been revised in Chapter 2 of the FEIS to explain and include the prohibition of UTVs at the Seashore.