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United States Department of the Interior



IN REPLY REFER TO:
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NATIONAL PARK SERVICE
Southeast Regional Office
Atlanta Federal Center
1924 Building
100 Alabama St., SW.
Atlanta, Georgia 30303

The Honorable Richard Burr
217 Russell Senate Office Building
Washington, DC 20515

AUG 01 2011

Dear Senator Burr:

Thank you for your correspondence of July 18, 2011, on behalf of constituent Frank Folb, regarding off-road vehicle (ORV) management at Cape Hatteras National Seashore (the Seashore). Your email has been forwarded to the Southeast Region of the National Park Service (NPS) for a response. We are pleased to respond to your inquiry.

As background, Executive Order 11644 (1972), amended by Executive Order 11989 (1977), requires Federal agencies permitting ORV use on Federal lands to publish regulations designating specific trails and areas for this use. The NPS implemented these executive orders in 36 C.F.R. § 4.10, which provides that routes and areas designated for ORV use shall be promulgated as special regulations. However, the Seashore has not previously designated ORV routes and ORVs have been allowed to access large portions of the Seashore.

To meet the requirements for authorizing and managing ORV use at the Seashore, the National Park Service (NPS) developed an ORV management plan and issued a Record of Decision (ROD) for the plan on December 20, 2010. The NPS chose the Selected Action because it will best accomplish the purpose and need for taking action while fulfilling the statutory mission of the NPS and its responsibilities for managing park resources and ORVs based on the Organic Act, the Seashore's enabling legislation, Executive Orders 11644 and 11989, NPS Management Policies 2006, and other relevant authorities (summarized in Chapter 1 of the final plan/EIS). On July 6, 2011 the NPS published in the Federal register a proposed rule (special regulation) that would implement portions of the plan that designate ORV routes and establish ORV use restrictions and requirements. The proposed rule is open to public comment until September 6, 2011.

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Here are responses to the specific questions, based on the final plan/EIS (FEIS) and ROD:

Question 1. “After being selected and participating in the over 18 months ordeal of Negotiated Rule Making and the DEIS where there was never a mention of **no** off-road vehicle (ORV) use at Ramp 34; why did the FEIS have Ramp 34 closed to ORV use north of there and only to the south from November 1 to March 1 each year?”

The NPS received and took into account numerous comments on the draft plan/EIS (DEIS), including many requesting additional year-round non-ORV areas that would better protect migratory and wintering shorebirds and allow pedestrians to experience a more natural, vehicle-free environment in the Seashore, as well as many that requested additional year-round ORV areas. Alternative F was modified in the FEIS to designate more vehicle-free areas year-round. The NPS response to specific suggestions made in the DEIS comments about the Ramp 34 area was as follows:

1 mile south of ramp 23 to 1 mile north of ramp 34 - The NPS examined this area and retained one portion as closed to ORVs year-round, based on bird use. However, part of this area will remain open to ORV use year round because of the desire to provide areas for ORV access where the use could be best accommodated, since an objective of this plan is to manage ORV use to provide for a variety of visitor use experiences.

Question 2. “Why did NPS shorten the seasons of use by ORV’s by four and a half months (Sept 1 to May 15 to Nov 1 to March 1) when there was only a small group during Negotiated Rule Making that were ocean front home owners wanting to privatize the beaches in front of their cottages wanted the closures?”

The village beaches are, in fact, public beaches open to pedestrians year-round and seasonally open to ORVs. Based on public comments, the NPS revised Alternative F in the FEIS to provide more consistent management of village beaches, while recognizing that some village beaches may be too narrow to safely accommodate an ORV corridor. Seasonal ORV routes would be designated for Rodanthe south of the pier, Waves, Salvo, Avon, Frisco, and Hatteras beaches. These would all be treated similarly and would be open to ORVs from November 1 to March 31, with minimum beach width criteria that would prompt a safety closure of portions of village beaches not meeting the criteria. This approach would keep ORVs off village beaches during the busiest tourist seasons as well as the prime nesting season for turtles, while allowing off-season ORV access for fishing and other beach recreation.

Question 3. “Piping plovers are a threaten species that nest on our beaches. Do the same plovers return each year to nest and how long is it until the fledged plovers should return to their place of birth to nest or roost until they are old enough to nest?”

Piping plovers that nest and fledge on the Seashore are not tagged or banded, so it is not possible to know which ones may return to nest in subsequent years. The increase in breeding pairs at the Seashore in recent years indicates “recruitment” of additional birds into the local breeding population, but it is not known whether the recruits are birds returning to their place of origin or are dispersing from other populations, such as from Cape Lookout. According to the November 2010 *Biological Opinion for the Off-road Vehicle Management Plan for Cape Hatteras National Seashore* (USFWS 2010), piping plovers live an average of five years, although studies have documented birds as old as 11

and 15 years. Plovers are known to begin breeding as early as one year of age; however, the percentage of birds that breed in their first adult year is unknown.

Question 4. “While no one on the access group wants no protection for the plovers, but we do believe that the buffers and protection given on this seashore are absurd and beyond actual need, what would no protection for the plovers nesting or wintering in this seashore do for the demise or recovery of this species?”

The NPS is required to provide protection for nesting and wintering piping plovers, a federally listed threatened species, under the Endangered Species Act, the NPS Organic Act, the Migratory Bird Treaty Act, the Executive Orders, and a variety of other federal regulations and policies. Under the Executive Orders and NPS regulations, the NPS can authorize ORV use only if that use is managed in a way that minimizes impacts to wildlife and wildlife habitats. See response to Question 6 below regarding buffer distances.

Question 5. “Again while we want protection for the turtles that nest within the seashore, we do not know why the protection on National Seashore land is so different and drastic as that of the Pea Island Refuge with boundaries inside the seashore. In fact, with North Carolina, South Carolina and Georgia making up less than 10% of the nesting turtles on the Atlantic seaboard and Cape Hatteras Seashore being a small portion of that 10 percent, would protection similar or less than Pea Island Refuge do for the turtles?”

The Seashore’s sea turtle nest management strategies were developed to suit the specific management circumstances at the Seashore, and are based on the latest scientific research as well as the most current U.S. Fish and Wildlife Service Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (Recovery Plan) and North Carolina Wildlife Resources Commission sea turtle management guidelines. Though the turtle protection measures at Pea Island National Wildlife Refuge (Refuge) may appear to be less protective than the Seashore’s, the Refuge also prohibits ORVs on its beaches year-round, allows no visitor activity on its beaches at night except for fishing with a night fishing permit, and receives very few turtle nests compared to the Seashore (13 vs. 153 in 2010). In contrast, the Seashore allows ORV use across many miles of turtle nesting habitat, currently allows beach driving until 10 p.m. during the turtle nesting season, and allows pedestrian beach access 24 hours a day except within temporary resource closures. Given the higher levels of recreational use and the greater number of turtle nests at risk, it is justifiable that the Seashore’s turtle nest protection strategies are different than the Refuge’s.

Regarding the relative importance of turtle nests at the Seashore, the Recovery Plan indicates that the Northern Recovery Unit, which includes the Seashore, is the second largest loggerhead nesting aggregation in the Northwest Atlantic. The Northern Recovery Unit is particularly important to the conservation of the loggerhead sea turtle population because the cooler nest incubation temperatures north of Florida account for a higher proportion of male hatchlings than the Peninsular Florida Recovery Unit.

Question 6. “NPS state that they have no way to protect species other than those for threatened and endangered does NPS do absurd and beyond actual need protection of birds on North Carolina’s list of concern? Why can they not treat them with the same protection the state does?”

A number of laws, regulations, and policies, in addition to the Endangered Species Act, guide species management at the Seashore. These include the NPS Organic Act, the Migratory Bird Treaty Act, the Executive Orders, and a variety of other federal regulations and policies.. Under the Executive Orders, areas designated for ORV use shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. NPS *Management Policies 2006*, section 4.4.2.3, states in part that the NPS will manage state- and locally listed species in a manner similar to its treatment of federally listed species to the greatest extent possible and will manage those species of management concern to maintain their natural distribution and abundance.

The sensitivity of beach-nesting birds to human disturbance varies by species and can vary among individual birds of the same species depending upon the circumstances. Buffer distances for managed species are detailed in Table 11 (p. 144) of the FEIS. The species specific buffer distances were developed after consideration of the best available science, which includes existing guidelines and recommendations, such as the Piping Plover Recovery Plan (USFWS 1996a) and the USGS Open-File Report 2009-1262 (2010) on the management of species of special concern at the Seashore, as well as relevant scientific literature (research, studies, reports, etc.) for the respective species. In addition, in determining appropriate buffer distances the NPS considered the practical knowledge gained by NPS resources management staff during two years of implementing the Interim Strategy (2006–2007) and three years implementing the consent decree (2008–2010).

In closing, we appreciate your continued interest in the management of Cape Hatteras National Seashore and encourage all interested parties to remain involved in this issue in order to make implementation of the ORV plan and special regulation as successful as possible. If you have further questions, please contact Superintendent Mike Murray at (252) 473-2111, extension 148.

Sincerely,


David Vela
Regional Director
Southeast Region