

0031211

From: [Mike Murray](#)
To: [Doug Wetmore](#); JASON.WAANDERS@sol.doi.gov; Mike.Stevens@sol.doi.gov
Cc: russ_wilson@nps.gov; [AJ North](#); [Paul Stevens](#)
Subject: Final Draft of the Final Rule
Date: 09/30/2011 12:06 PM
Attachments: [093011 Final Draft of Regulatory Language for Final Rule.doc](#)

All,

Doug and I discussed the questions/concerns stated in his message below. I let him know how those issues were considered and resolved during our conference call on Wednesday. As a result, he and I are both comfortable with the edits in the 9/29/11 draft. I have accepted all changes in that draft and updated the document, which is attached as the "093011 Final Draft of Regulatory Language for Final Rule".



093011 Final Draft of Regulatory Language for Final Rule.doc

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

**Doug
Wetmore/DENVER/NPS**

09/30/2011 12:47 PM

To: Mike Murray/CAHA/NPS@NPS
cc: JASON.WAANDERS@sol.doi.gov,
Mike.Stevens@sol.doi.gov

Subject: RE: Updated draft 

I have a couple concerns with the revisions, although they may have already been addressed by the group since this draft was originally sent out.

- It's still not clear to me if the permit is issued to the person or the vehicle. It appears that it's being issued to the person, because there is still a "permit holder" and the vehicle is no longer "authorized" for off-road use (it's just being "used" for off-road use). If that's the case, does the permit apply to more than one ORV? I think adding one sentence to clarify this would be appropriate. As it stands, the new language has the same issues as the old language.

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- It seems that we've taken a step back with respect to the comments on the Superintendent's closures language. Although the language is no longer permissive, it removes any reference to the origin of the species protection measures. To me, that implies that the Superintendent can implement any desired measures whether or not they are contained in the EIS. Can't we at least reference the EIS/ROD in a general way so that there is some logical connection between these closures and the legally enforceable resource protection measures in the plan?

Thanks.

Doug Wetmore
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Natural Resource Stewardship & Science
Environmental Quality Division
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▼ [Mike Murray/CAHA/NPS](#)

**Mike
Murray/CAHA/NPS**

09/29/2011 09:39 AM

To "Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>
cc "North, Arthur" <AJ_North@nps.gov>, "Jacob, David" <David_Jacob@nps.gov>, "Wetmore, Doug" <Doug_Wetmore@nps.gov>, "Stevens, Mike" <Mike.Stevens@sol.doi.gov>, "Stevens, Paul" <Paul_Stevens@nps.gov>, "Wilson, Russel J." <Russ_Wilson@nps.gov>

Subject RE: Updated draft 

Here is the correct version.

[attachment "092911 Updated DRAFT Final Rule JMW2_MPS mbm.doc" deleted by Doug Wetmore/DENVER/NPS]

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

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

09/29/2011 11:23 AM

To "Murray, Mike" <Mike_Murray@nps.gov>
cc "North, Arthur" <AJ_North@nps.gov>, "Jacob, David" <David_Jacob@nps.gov>, "Wetmore, Doug" <Doug_Wetmore@nps.gov>, "Stevens, Mike" <Mike.Stevens@sol.doi.gov>, "Stevens, Paul" <Paul_Stevens@nps.gov>, "Wilson, Russel J." <Russ_Wilson@nps.gov>

Subject RE: Updated draft

Mike: Your new version of the periodic review sentence sounds good to me.

You attached a draft from a few days ago, though--I assume that was inadvertent?

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

From: Mike_Murray@nps.gov [mailto:Mike_Murray@nps.gov]
Sent: Thursday, September 29, 2011 11:10 AM
To: Waanders, Jason
Cc: North, Arthur; Jacob, David; Wetmore, Doug; Stevens, Mike; Stevens, Paul; Wilson, Russel J.
Subject: RE: Updated draft

I agree with Mike's and Jason's edits and have restored "natural and cultural resource protection" to the first sentence in subsection (10) Superintendent's Closures. I have one additional suggested change of their edits to the second sentence in subsection (10), which is as follows

In the second sentence, the wording "periodic review process of these closures" doesn't sound quite right to me. As described in the FEIS (Chap 2, pp. 73-74; and Table 10-1, p.143), the periodic review is really about assessing whether the standards, requirements, criteria, buffers, etc. (described in the plan as the basis for future "management actions", including closures) are resulting in the Desired Future Conditions (for protected species) that are identified in Chap 1, pp. 7-10. In an attempt to better describe the intent of the periodic review process and the relationship between "criteria" for closures and the "results" (whether positive or negative) for species, I've revised the second sentence to read as follows: "The Superintendent will conduct periodic reviews of the criteria for and results of these closures to assess their effectiveness."

Any comments, concerns, or suggestions for improvement regarding my proposed edits?

0031214

(See attached file: 092611 First draft edits for Final Rule rjw-eqd_MPS JMW mbm.doc)

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"Waanders, Jason"
<JASON.WAANDERS@sol.doi.gov>
09/29/2011 09:08 AM

"Stevens, Mike"
<Mike.Stevens@sol.doi.gov>, "Murray, Mike"
<Mike_Murray@nps.gov>, "Stevens, Paul"
<Paul_Stevens@nps.gov>, "Wilson, Russel J."
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<Doug_Wetmore@nps.gov>

"Jacob, David"
<David_Jacob@nps.gov>

RE: Updated draft

To
cc
Subject

Reading Mike's edits (which I agree with) drew my attention to one other thing we missed. At the top of p. 3, I believe our final agreed-upon language for the end of (2)(vi), after all the discussion, was "to the vehicle being used off-road." We are keeping it as "the vehicle", but editing the end of the sentence (because technically the person is authorized and the vehicle is simply used). This honestly probably doesn't make a big difference, but I think this is what we agreed on.

The attached version adds this single edit to what Mike S sent earlier.

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-----Original Message-----
From: Stevens, Mike

0031215

Sent: Thursday, September 29, 2011 8:15 AM
To: Waanders, Jason; Murray, Mike; Stevens, Paul; Wilson, Russel J.; North, Arthur; Wetmore, Doug
Cc: Jacob, David
Subject: RE: Updated draft

A couple of minor edits--and I echo Jason's call to leave the "catchall" provision in, for the same reasons.

Michael Stevens
Attorney-Adviser
Office of the Regional Solicitor
Southeast Region
phone 404-331-4447, x238

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

From: Waanders, Jason
Sent: Wednesday, September 28, 2011 5:44 PM
To: Murray, Mike; Stevens, Mike; Stevens, Paul; Wilson, Russel J.; North, Arthur; Wetmore, Doug
Cc: Jacob, David
Subject: RE: Updated draft

Here's my suggested edits. I've edited the commercial fishing provision as we discussed. I've also responded to 2 of Mike's edits on page 7. While I freely admit that the language he deleted is a catchall that may not be in the plan or ROD, those documents do contain a "compliance with legal obligations" catchall that we do not include in the reg. If we don't have something, we will put ourselves in the position of possibly having to do another rulemaking if an unforeseen need for a resource closure comes up and we have to rely on 36 CFR 1.5 (and its requirements of rulemaking for "controversial" actions). So I'm making another pitch to keep it in.

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

From: Mike_Murray@nps.gov [mailto:Mike_Murray@nps.gov]
Sent: Wednesday, September 28, 2011 4:20 PM
To: Waanders, Jason; Stevens, Mike; Stevens, Paul; Wilson, Russel J.; North, Arthur; Wetmore, Doug
Cc: Jacob, David
Subject: Updated draft

Based on our conference call, attached is an updated draft final rule. I "Accepted Changes" for the edits that were previously submitted and then confirmed as agreed upon during the call and eliminated previous comments related to those edits. Any new edits that were proposed or resolved during the call I have shown in Track Changes. I also made some additional edits to the wording in sub-section (10), and added some new comments to explain

0031216

those changes. As discussed, Jason will add his edits to this new version, then re-circulate his version to the group for further review.

(See attached file: 092811 Updated DRAFT Final Rule.doc)

Thanks again for your help,

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[attachment "092911 Updated DRAFT Final Rule JMW2_MPS.doc" deleted by Mike Murray/CAHA/NPS]

List of Subjects in 36 CFR Part 7

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

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

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 36 U.S.C. 501 -511, D.C. Code 10-137 (2001) and D.C. Code 50-2201 (2001)

2. In § 7.58,

- A. Revise the introductory language in paragraph (b)(1).
- B. Remove paragraph (b)(1)(ii),
- C. Redesignate paragraphs (b)(1)(iii) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(iv).
- D. Add paragraph (c)

The revisions to read as follows:

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(b) * * *

(1) *Definitions.* As used in this section:

* * * * *

(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 paragraph (c):

ORV means a motor vehicle used off of park roads (off-road), subject to the vehicle requirements, prohibitions, and permitting requirements described in this regulation.

ORV corridor means the actual physical limits of the designated ORV route in the Seashore. On the landward side, the ORV corridor on Seashore beaches will be marked when possible by posts that are located seaward of the toe of the dune or the vegetation line. On the seaward side, the corridor runs to the water line, which will not be marked by posts unless necessary. Where the ocean beach is at least 30 meters wide above the high tide line, the landward side of the corridor will be posted at least 10 meters seaward of the toe of the dune.

(2) *ORV permits*. The Superintendent administers the NPS special park use permit system at the Seashore, including permits for ORV use, and charges fees to recover NPS administrative costs.

(i) A permit issued by the Superintendent is required to operate a vehicle on designated ORV routes at the Seashore.

(ii) Operation of a motor vehicle authorized under an ORV permit is limited to those routes designated in this paragraph (c).

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

(iv) Annual ORV permits are valid for the calendar year for which they are issued. Seven-day ORV permits are valid from the date of issue.

(v) In order to obtain a permit, an applicant must comply with vehicle and equipment requirements, complete a short education program in a manner and location specified by the Superintendent, acknowledge in writing an understanding of the rules governing ORV use at the Seashore, and pay the permit fee.

(vi) Each permit holder must affix the proof of permit, in a manner and location specified by the Superintendent, to the vehicle being used off-road.

(3) *Vehicle and equipment requirements.* The following requirements apply for driving off- road:

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

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

(iii) A towed boat or utility trailer must have no more than two axles.

(iv) Vehicle tires must be listed or approved by the U.S. Department of Transportation.

(v) The vehicle must carry a low-pressure tire gauge, shovel, jack, and jack support board.

(4) *Vehicle inspection.* Authorized persons may inspect the vehicle to determine compliance with the requirements of paragraphs (c)(3)(i) through (c)(3)(v).

(5) The off-road operation of a motorcycle, all-terrain vehicle (ATV) or utility vehicle (UTV) is prohibited.

(6) The towing of a travel trailer (i.e. camping trailer) off- road is prohibited.

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

(i) Authorize the North Carolina Department of Transportation to use Seashore beaches as a public way, when necessary, to bypass sections of NC Highway 12 that are impassable or closed for repairs; or

(ii) Allow participants in regularly scheduled fishing tournaments to drive in an area if such tournament use was allowed in that area for that tournament before January 1, 2009; or

(iii) Allow vehicular transport of mobility impaired individuals via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

Such special use permits are subject to the resource, safety, seasonal, and other closures implemented pursuant to subsection (10), and may only be used in a manner consistent with the terms and conditions of the permit.

(8) *Commercial fishing vehicles.* The Superintendent, when issuing a commercial fishing permit, may authorize the holder, when actively engaged in authorized commercial fishing, to operate a vehicle off-road.

(i) Such authorization may allow off-road driving on a beach that is not otherwise designated for ORV use, provided that the beach is neither subject to a resource closure nor a lifeguarded beach.

(ii) Such authorization may allow off-road driving beginning at 5 a.m. on days when night driving restrictions are in effect, to set or tend haul seine or gill nets, if the permit holder is carrying and able to present a fish-house receipt from the previous 30 days.

(9) *ORV routes.* The following tables indicate designated ORV routes. The following ramps are designated for ORV use to provide access to ocean beaches: 2.5, 4, 23, 25.5, 27, 30, 32.5, 34, 38, 43, 44, 47.5, 49, 55, 59, 59.5, 63, 67, 68, 70, and 72. Designated ORV routes and ramps are subject to resource, safety, seasonal and other closures implemented pursuant to subsection (10). Soundside ORV access ramps are described in the table below. For a village beach to be open to ORV use during the winter season, it must be at least 20 meters (66 feet)

wide from the toe of the dune seaward to mean high tide line. Maps depicting designated routes and ramps are available in the Office of the Superintendent and for review on the Seashore website.

BODIE ISLAND - DESIGNATED ROUTES	
YEAR ROUND	Ramp 2.5 (0.5 miles south of the southern boundary of Coquina Beach) to 0.2 miles south of ramp 4
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 to ramp 27</p> <p>Ramp 30 to ramp 32.5</p> <p>The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon: soundside ramps 46, 48, 52, 53, 54 and the soundside ORV access at Little Kinnakeet</p> <p>Ramp 38 to 1.5 miles south of ramp 38</p> <p>The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Avon and Buxton: soundside ramps 57, 58, 59, and 60.</p> <p>0.4 miles north of ramp 43 to Cape Point to 0.3 miles west of “the hook”</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</p>

	<p>A soundside ORV access route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet</p> <p>Pole Road from Museum Drive to Spur Road to Pamlico Sound, with one spur route, commonly known as Cable Crossing, to Pamlico Sound and four spur routes to the ORV route below</p> <p>Ramp 55 southwest along the ocean beach for 1.6 miles, ending at the intersection with the route commonly known as Bone Road</p>
<p>SEASONAL November 1 to March 31</p>	<p>0.1 mile south of Rodanthe Pier to ramp 23</p> <p>Ramp 34 to ramp 38 (Avon)</p> <p>East Frisco boundary to west Frisco boundary (Frisco village beach)</p> <p>East Hatteras boundary to ramp 55 (Hatteras village beach)</p>

OCRACOKE ISLAND - DESIGNATED ROUTES	
<p>YEAR ROUND</p>	<p>Ramp 59 to ramp 63. After ramp 59.5 is constructed, it will replace ramp 59 for ORV access and the route will be from ramp 59.5 to ramp 63.</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</p> <p>A 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</p> <p>A 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>A seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound</p> <p>A seasonal route at the north end of South Point spit from the beach route to Pamlico Sound</p>

November 1 to March 31	0.5 mile northeast of ramp 68 to ramp 68 (Ocracoke Campground area)
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(10) *Superintendent's closures.* The Superintendent will temporarily limit, restrict, or terminate access to routes or areas designated for off-road use in accordance with public health and safety, vehicle carrying capacity and other ORV management criteria, natural and cultural resource protection, applicable species management strategies including buffer distances, and desired future conditions for threatened, endangered, state-listed and special status species. The Superintendent will conduct a periodic review of the criteria for and results of these closures to assess their effectiveness. The public will be notified of such closures through one or more of the methods listed in § 1.7(a) of this chapter. Violation of any closure is prohibited. Such closures shall be removed as determined by the Superintendent based on the same criteria.

(11) *Rules for Vehicle Operation.* (i) Notwithstanding the definition of “Public Vehicular Area” (PVA) in North Carolina law, the operator of any motor vehicle anywhere in the Seashore, whether in motion or parked, must at all times comply with all North Carolina traffic laws that would apply if the operator were operating the vehicle on a North Carolina highway.

(ii) In addition to the requirements of Part 4 of this chapter, the following restrictions apply:

(A) A vehicle operator must yield to pedestrians on all designated ORV routes.

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

(C) A vehicle operator 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.

(D) An operator may park on a designated ORV route, but no more than one vehicle deep, and only as long as the parked vehicle does not obstruct two-way traffic.

(E) When driving on a designated route, an operator must lower the vehicle's tire pressure sufficiently to maintain adequate traction within the posted speed limit.

(F) The speed limit for off road driving is 15 mph, unless otherwise posted.

(12) *Night Driving Restrictions.*

(i) Hours of operation and night driving restrictions are listed in the following table:

HOURS of OPERATION/NIGHT DRIVING RESTRICTIONS	
November 16 – April 30	All designated ORV routes are open 24 hours a day.
May 1 – September 14	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed from 9 p.m. to 7 a.m.
September 15 – November 15	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed from 9 p.m. to 7 a.m., but the Superintendent may open portions of designated ORV routes in sea turtle nesting habitat (if no turtle nests remain), 24 hours a day.

(ii) Maps available in the office of the Superintendent and on the Seashore's website will show routes closed due to night driving restrictions, and routes the Superintendent opens because there are no turtle nests remaining.

(13) *Vehicle carrying capacity.* The maximum number of vehicles allowed on any particular ORV route, at one time, is the linear distance of the route divided by 6 meters (20 feet).

(14) Violating any of the provisions of this paragraph, or the terms, conditions, or requirements of an ORV or other permit authorizing ORV use is prohibited. A violation may also result in the suspension or revocation of the applicable permit by the Superintendent.

(15) *Information Collection.* As required by 44 U.S.C. 3501 et seq. The Office of Management and Budget has approved the information collection requirements contained in this paragraph. The OMB approval number is 1024-0026. The NPS is collecting this information to provide the Superintendent data necessary to issue ORV special use permits. The information will be used to grant a benefit. The obligation to respond is required to order to obtain the benefit in the form of the ORV permit.

Acting Assistant Secretary for Fish and Wildlife and Parks

Date