

0031234

From: [Fox, Lori](#)
To: Doug_Wetmore@nps.gov
Cc: [Byron, Rebecca](#); [Plakorus, David](#)
Subject: RE: CAHA concern report
Date: 10/04/2011 12:26 PM
Attachments: [CAHA Proposed Rule reportConcernResponse_DRAFT_100411.doc](#)

Hi Doug,

In response to your comments, attached is the revised draft. Give me a ring when you have a chance to discuss the merits of sending this for edit now or waiting a till later - just want to take the most advantage of our time. Let me know when you think we will be having a call to schedule concern responses.

Oh and to address your comments, there were a few that asked if the language was from the rule. In all cases it was and we left it as is.

Please let me know if you have any questions or concerns.

Lori

Lori Fox
Senior Planner/Deputy Director Denver Operations

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

From: Doug_Wetmore@nps.gov [mailto:Doug_Wetmore@nps.gov]
Sent: Monday, October 03, 2011 12:19 PM
To: Fox, Lori
Cc: Byron, Rebecca
Subject: Re: CAHA concern report

Lori/Rudi.

My comments are attached. Please feel free to call if you have any questions.

(See attached file: CAHA PR ConcernRept_2011_10_03.docx)

Doug Wetmore
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"Fox, Lori"		
<lfox@louisberger.com>		To
10/03/2011 09:29 AM	"Doug_Wetmore@nps.gov"	
	<Doug_Wetmore@nps.gov>	cc
	"Byron, Rebecca"	
	<rbyron@louisberger.com>	Subject
	Re: CAHA concern report	

Due to time constraints, how about word track changes?

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

From: Doug_Wetmore@nps.gov [mailto:Doug_Wetmore@nps.gov]
Sent: Monday, October 03, 2011 10:55 AM
To: Fox, Lori

0031235

Cc: Byron, Rebecca
Subject: Re: CAHA concern report

Thanks Lori.

How did you want to receive comments? Are you going to make changes in PEPC or just in the Word file?

Doug Wetmore
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"Fox, Lori"
<lfox@louisberger.com>
09/30/2011 03:10 PM
"Doug_Wetmore@nps.gov"
<Doug_Wetmore@nps.gov>
"Byron, Rebecca"
<rbyron@louisberger.com>
CAHA concern report

To
cc
Subject

Hi Doug,

Thank you for your patience. Attached is the first draft report. A few things..

1. As I noted, this has been read and edited to an extent, but has not undergone an in depth edit due to time constraints. We will have to find time in the schedule for that to happen
2. Most duplication is removed, there is some between the GN1000 code (EIS related) and the rest of the report as people talked about the same topic, but sometimes for the EIS and sometimes for the rule.
3. For RN2200, I just noticed in my last flip though we have something for Ban ORVs but not really the "allow them everywhere" side. Some of the other CSs may get at this, but if we need to add a CS for that we can.

Ok, that should be it. Please let me know if you have any questions on this, I will be around all weekend.

Lori

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***Cape Hatteras NS
Cape Hatteras National Seashore Off-Road Vehicle Negotiated Rulemaking and
Management Plan/EIS
2011 07Jul 06 - Public Comment Period Open for Proposed ORV Rule
Concern Response Report***

Report Date: 10/04/2011

CCI000 - Consultation and Coordination: General Comments

Concern ID: 33098

**CONCERN
STATEMENT:**

Commenters requested that the Seashore be designated as a Traditional Cultural Property (TCP), noting that TCPs were not included in the process which violates the National Historic Preservation Act and Section 106 review under the National Environmental Policy Act-Commenters also stated that the consultation made with the Tuscarora Indian Tribe was not needed as they never lived on at Cape Hatteras.

Representative Quote(s):

Corr. ID: 343

Organization: *Not Specified*

Comment ID: 226755

Organization Type: Unaffiliated Individual

Representative Quote: The consultation with the Tuscarora Indian tribe was an insult to the Native Americans who inhabit the Outer Banks. The natives were Croatoans, whose descendants intermingled with the Europeans and still live here and use the beaches for recreation and cultural observances such as weddings, scattering of ashes, Easter sunrise services and spiritual contemplation. The Bornfriend Native American Museum in Frisco and the History Museum in Avon have collections of artifacts and share knowledge of early Hatteras. At least one book has been written by a Croatoan descendent and resident Scott Dawson, entitled Croatoan: Birthplace of America. Hatteras and Ocracoke Island Villages were: Ha, Pacuiwoc, Croatoan, Wodokon. Incidentally, these Indians had names for most of the mammals being killed today by the NPS with the excuse they are invasive and exotic.

The current descendants also benefit from the annual influx of tourist money. The Tuscarora, who don't even speak the island Algonquin language, were enemies of the Croatoan. Of course the Tuscarora never replied to the NPS because they never lived on these islands. This is another example of how the NPS has hoodwinked the public into believing that they are exercising due diligence. NPS has not worked with the local population as required.

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 228336

Organization Type: Unaffiliated Individual

Representative Quote: The Interim Plan is legally defensible and if you don't draw a line in the sand you will be back in court every few years. To minimize the threat of a successful challenge from the environmental groups, I request that the NPS reconsider the decision not to designate Hatteras National Seashore Recreational Area as Traditional Cultural Properties.

Corr. ID: 15160

Organization: North Carolina Beach Buggy Association, Inc. (NCBBA)

Comment ID: 232134

Organization Type: Recreational Groups

Representative Quote: TCPs; Traditional Cultural Properties have been ignored (except for a single letter to an Indian Tribe headquartered in western NY). While we recognize the existence of the Tuscarora Nation and their interactions, including warfare with local tribes our requests for a TCP investigation requires a review of the cultures and traditions of the local families who have occupied the area now encompassed by CHNSRA. These local families, many having occupied these lands for multiple centuries have been ignored by NPS in this Proposed Rule.

As requested, since 2008, the National Historic Preservation Act of 1966, as amended, requires a section 106 review as a part of the NEPA process and this should have been completed in conjunction with the NEG-REG process. This review must be completed prior to the enactment of the Proposed ORV Rule.

GNI1000 - General Comments: Comments on the FEIS/ROD

Concern ID: 33133

**CONCERN
STATEMENT:**

Commenters suggested alternative A be implemented as it was found to have no significant impacts and provided protection to natural resources. They further requested that this alternative be reviewed annually by Dare and Hyde County.

Representative Quote(s):

Corr. ID: 47 **Organization:** *Not Specified*

Comment ID: 222027 **Organization Type:** Unaffiliated Individual

Representative Quote: The Cape Hatteras National Seashore Recreational Area should be governed by Alternate 'A' and it should start immediately.

Corr. ID: 47 **Organization:** *Not Specified*

Comment ID: 222029 **Organization Type:** Unaffiliated Individual

Representative Quote: Alternate "A" should be reviewed annually and improved by the elected official of Dare and Hyde County and then submitted to the NPS for comment and approval. The NPS and/or the DOI should only be allowed to alter the existing legislation governing the use of the CHNSRA by getting the combined approval of the governing bodies of the two counties and the state of North Carolina.

Corr. ID: 194 **Organization:** *Not Specified*

Comment ID: 224420 **Organization Type:** Unaffiliated Individual

Representative Quote: Alternative A EIS or Interim Management Strategy is the "common sense" solution for Cape Hatteras National Recreational Area. It found no significant impact and provided protection to natural resources. I am demanding that it be implemented following the Consent Decree.

Concern ID: 33134

**CONCERN
STATEMENT:**

Commenters expressed that the Consent Decree has not improved Piping Plover productivity, specifically with the enforcement of the 1000 meter buffers.

Representative Quote(s):

Corr. ID: 13249 **Organization:** *Not Specified*

Comment ID: 231278 **Organization Type:** Unaffiliated Individual

Representative Quote: Birds Regardless of the requirements of the Consent Decree to enforce 1000 meter buffers in all directions of the Piping Plover nests, the productivity has not substantially improved. This year there have been fewer pairs, fewer surviving nests, and fewer fledglings. In spite of the killing of over 2,000 mammalian potential predators in the last few years, predation by raccoon, fox, opossum, mink, gulls, crows, ghost crabs and snakes are usually the reason given for the greatest losses that can be determined. In other years weather events of storm and tide have accounted for losses also. The last few years have been virtually storm free. There has been no documentation for loss by ORV.

Concern ID: 33138

**CONCERN
STATEMENT:**

Commenters stated that the buffers in the Draft Environmental Impact Statement (DEIS) are excessive and suggested alternatives for buffer sizes including 100 feet, 200 meters, 50 meters (for piping plovers, and 200 meters (for unfledged piping plover chicks). Commenters suggested that buffers for unfledged piping plover chicks move with the brood as it relocated to food sources, instead of expanding.

Representative Quote(s):

Corr. ID: 47 **Organization:** *Not Specified*

Comment ID: 222024 **Organization Type:** Unaffiliated Individual

Representative Quote: Birds that are nesting need protection from predators. Erect a 100' radius fence around the nesting area do not cordon off 5 miles of beach access!!! When a nest is built too close to an access road to the beach, lay out a temporary road around the 100' radius perimeter.

Corr. ID: 812

Organization: *Not Specified*

Comment ID: 222193

Organization Type: Unaffiliated Individual

Representative Quote: The 1000 meter boundary around Plover nests are overly restrictive and not supported by reliable science. These large, inflexible buffers are too extreme. The current 1000 meter buffer for nests equals 771 acres per nest, this far exceeds any realistic and reasonable need for protection of the nests. The Piping Plover breeding/nesting buffer should not exceed 50 meters. The unfledged piping plover chick buffer should not exceed 200 meters and should move with the brood as it relocates to reliable food sources not simply expand. These ORV buffers as well as corridors should be maintained to allow ORV's to pass through or around nesting areas to ensure beach access is always maintained. This 1000 meter boundary creates unneeded restriction and makes areas such as Cape Point, South Beach area and the sound side and seaside areas of Hatteras Inlet inaccessible during much of the visitor season and calendar year

Concern ID:

33140

**CONCERN
STATEMENT:**

Commenters stated that alternative F in the Final Environmental Impact Statement (FEIS) was biased toward environmental concerns. Commenters also expressed concern that the basis for boundary distances was based off of the 2005 USGS Protocols, which did not undergo adequate review, and that other information used in the FEIS was obtained from special groups.

Representative Quote(s):

Corr. ID: 47

Organization: *Not Specified*

Comment ID: 222008

Organization Type: Unaffiliated Individual

Representative Quote: Alternative "F", currently being considered as basis for more government regulation on the use of Off Road Vehicles (ORVs) in the Cape Hatteras National Seashore Recreational Area, is far too one-sided (biased by environmentalist) than necessary to support the protection of the piping plover and other migratory birds in the Cape Hatteras National Seashore Recreational Area. Alternate "F" places unnecessary burden on the business owners and recreational users or the area.

Corr. ID: 87

Organization: *Not Specified*

Comment ID: 226608

Organization Type: Unaffiliated Individual

Representative Quote: The 2005 USGS Protocols are indicated by NPS as the primary basis for the highly restrictive boundary distances that restrict public access to the national seashore. There is at least an "appearance of conflict of interest" associated with the primary science basis justification for the Alternative F recommendation. As noted over three years ago, the cited protocols are not reviewed consistent with published USGS peer review policy guidelines especially with regard to full disclosures and conflicts of interests. In fact the Protocols were developed and prepared in large part by well known environmental activists who subsequently used them as the basis for law suit against NPS, thus creating a very clear conflict of interest in full view of the federal government. A review of the public record indicates that USGS commissioned well known environmental activist scientists to selectively review and discuss the science as they choose to represent it, and then formulate and recommend management options and policies. There was no outside questioning and review of their work.

Concern ID:

33144

**CONCERN
STATEMENT:**

Commenters questioned the federal listing status of bird species included in FEIS, stating that none of the birds are endangered species. Commenters also stated that

birds that are state-listed species should not trigger the large closures included in the FEIS. They requested that no prenesting buffers be established for these species and that buffers be limited to 30 meters.

Representative Quote(s): **Corr. ID:** 15008 **Organization:** *Not Specified*
Comment ID: 229075 **Organization Type:** *Not Specified*
Representative Quote: The proposed rule lists the Piping Plover as endangered. It's my understanding that it is a species of concern, not endangered. It's status is NT (Near Threatened) which is one step away from "Least concern" (http://en.wikipedia.org/wiki/Piping_Plover). Protection of the Piping Plover in the park does not seem like a valid reason to implement this rule.
Corr. ID: 23214 **Organization:** *Not Specified*
Comment ID: 232337 **Organization Type:** Unaffiliated Individual
Representative Quote: American oystercatchers, Wilson's plover, and colonial waterbird species are afforded pre-nesting closures and buffers of up to 300 meters in the proposed rule. While these species are not federally-listed as endangered or threatened, they may be state-listed by the North Carolina Wildlife Resources Commission (NC WRC) as "species of concern". The executive director of the NC WRC recently expressed the state's objections to the use of its "species of concern" designation to trigger ORV management strategies under the federal Endangered Species Act, as currently reflected in the DEIS (<http://hamptonroads.com/2010/05/orv-plan-gives-too-much-space-some-species-critics-argue>). A "species of concern" designation is not intended to trigger active management measures and surely not the excessively large closures recommended. The referenced species are designated as "Least Concern" by the International Union for Conservation of Nature (the designation corresponding to the lowest risk of extinction; for reference, humans are also an IUCN species of Least Concern). Considering the abundance of these species, as indicated by their conservation status, pre-nesting buffers are not warranted and should not be in the proposed rule. Additionally, temporary closures, if provided, should be no greater than 30 meters and include ORV corridors around them.

Concern ID: 33148

CONCERN STATEMENT: One commenter disagreed with the description of beach driving included in the Federal Register and, instead, agreed with the description included in the FEIS which describes the history of beach driving along the Seashore.

Representative Quote(s): **Corr. ID:** 12982 **Organization:** *Not Specified*
Comment ID: 228343 **Organization Type:** Unaffiliated Individual
Representative Quote: Contrary to the Federal Register description of beach driving, the FEIS on which the rule is based characterizes beach driving in the following fashion:

"Cape Hatteras National Seashore provides a variety of visitor experiences. It is a long, essentially linear park, visitation is high, and parking spaces near roads are limited. Some popular beach sites, particularly those near the inlets and Cape Point, are a distance from established or possible parking spaces. Visitors who come for some popular recreational activities such as surf fishing and picnicking are accustomed to using large amounts and types of recreational equipment that cannot practically be hauled over these distances by most visitors without some form of motorized access. For many visitors, the time needed and the physical challenge of hiking to the distant sites, or for some even to close sites, can discourage or preclude access by nonmotorized means. As a result, ORVs have long served as a primary form of access for many portions of the beach in the Seashore, and continue to be the most practical available means of access and parking for many visitors."

This is the most accurate description of beach driving that I have seen. This description of beach driving applies not only to today but applies to the nature of beach driving long before the establishment of Cape Hatteras National Seashore Recreational Area in 1953. In fact, tourism and beach driving for the purposes of engaging in recreational activities was established practice before Congress authorized Cape Hatteras National Seashore Recreational Area in 1937. For example, as per the following statement made by Lindsay Warren, tourism was well established in 1935.

"Conservatively speaking, this area is the greatest game and fishing spot on the American continent. Visitors go there almost the year round from every section of the nation, and just 18 miles off Hatteras is the Gulf Stream with its unrivaled fishing."

Concern ID:

33503

CONCERN STATEMENT:

Commenters felt that user conflict would increase as a result of implementing alternative F. Commenters felt that with less shoreline area available to recreate, more visitors would be crowded into smaller areas and would remove the opportunity for visitors to have a remote beach experience.

Representative Quote(s):

Corr. ID: 12982

Organization: Not Specified

Comment ID: 228346

Organization Type: Unaffiliated Individual

Representative Quote: Alternative F defines an unprecedented standard for species management outside of the Species Management Areas--namely, ML1. ML1 protocols use "larger, longer-lasting buffers" to protect wildlife. While it is not possible to predict the number of miles that will be closed by these unprecedented protocols, it is possible to use the pattern of closures that have resulted from the past two years of management under the consent decree to make a fairly accurate estimate of potential closures. A review of the Beach Access reports for 2008 and 2009 shows a pattern of wide-spread full-beach resource closures spanning the period of 5/15 to 8/15. Based upon the fact that the predicted ML1 closures will be added to the mandated Species Management Area closures, it is more than likely that the resource management proposal will relegate access for ALL visitors to either the high density village front beaches or 15 miles of shoreline spread over 10 areas. The length of the shoreline available in these 10 areas will likely range from as little as 1/2 mile beach parking lots to a maximum of 2.7 miles. In effect, the resource management proposal will likely turn the beaches available outside of the village fronts into virtual parking lots with the only opportunity for a remote experience being relegated to pedestrian day use at Pea Island.

Corr. ID: 13249

Organization: Not Specified

Comment ID: 231279

Organization Type: Unaffiliated Individual

Representative Quote: Conflict of Users Following this proposed plan will greatlyacerbate the potential for conflict among users. By drastically cutting the amount of shoreline open for recreation, large numbers of visitors will be crowded into smaller areas. The forced location of swimmers, surfers, boogie boarders, fishermen (both casting lures and bottom fishing), kite boarders, wind sailors, etc makes for increased disagreements and infighting. One of the prime attractions of CHNSRA has been the availability of more remote areas and sections of like usage. The access to these areas with the necessary equipment is provided only by ORV travel. To even consider studying and developing a plan for the use of mass transit by tram and/or boat is beyond ridiculous and could only be imagined by someone with no knowledge of the Cape Hatteras National Seashore Recreational Area beaches and ocean shoreline!

Concern ID:

33517

**CONCERN
STATEMENT:**

One commenter suggested establishing an organization of volunteers to survey sea turtle and shorebird nesting each morning to mark off areas to alert drivers so they do not disturb them or establish a Sea Turtles Days program.

Representative Quote(s):**Corr. ID:** 4599**Organization:** *Not Specified***Comment ID:** 230860**Organization Type:** *Not Specified*

Representative Quote: They have a Sea Turtle Days (name approximate) festival, and tourist information provides a number to call to report a tag ID if you see a sea turtle nesting. In short, the Island has adopted the turtles are part of the iconic specialness of the place. I hope Cape Hatteras National Seashore can do likewise.

Corr. ID: 13854**Organization:** *Not Specified***Comment ID:** 230933**Organization Type:** Unaffiliated Individual

Representative Quote: Establish an organization of some sorts to do both sea turtle and shorebird nesting surveys each morning. Mark off these areas. I found most drivers don't want to disturb the wildlife and will stay away. Also, if an organization does not yet exist in Cape Hatteras don't forget that under the correct supervision volunteers are a great option for surveys! I know there's a budget crunch in our country right now, so don't rule out the option of volunteers working under an experienced person.

When sea turtles begin to emerge from the nests establish a system for raking out the "ruts" from tire tracks. The hatchlings are only about 2 inches long. They easily get stuck in them where they are easy prey, or die from sun exposure.

Concern ID:

33818

**CONCERN
STATEMENT:**

Commenters stated that the DEIS did not present statistics showing that the population decline of species at the Seashore was connected to the use of ORVs and failed to present how resource closures will be managed. One commenter stated that the DEIS and FEIS show that nesting birds are more disturbed by humans on foot, and suggested that ORV groups were being unfairly singled out.

Representative Quote(s):**Corr. ID:** 40**Organization:** *Not Specified***Comment ID:** 221913**Organization Type:** Unaffiliated Individual

Representative Quote: The DECIS lists the ebb and flow of Piping Plover (PP) populations over the years but no statistics on this data is presented which links population decline with the use of ORV's. Rather, there is incrimination by inference. As mentioned in the DECIS, many factors affect Piping Plover populations such as climate, predators and other natural phenomena. I could not find any statistical data which points to ORV's rather than climate or say predators instigating the decline of PP numbers.

Corr. ID: 13503**Organization:** *Not Specified***Comment ID:** 231887**Organization Type:** Unaffiliated Individual

Representative Quote: The nearly weekly "Cape Hatteras National Seashore Beach Access Report" supplied by the CHNSRA staff clearly show that the overwhelming majority of resource closure violations are committed by pedestrians, yet there is no NPS-supplied educational component for this or any other non-orv user group. NPS-cited studies in both the DEIS and FEIS repeatedly show that nesting shorebirds birds, AMOY in particular, are more readily disturbed by humans on foot than by ORV's, yet the seashore's most documented closure violators are not required to take part in being educated. Once again, the ORV user group has been unfairly singled out, when the NPS' own data shows that other all other user groups would likely benefit from being educated about the nature of resource closures as well.

Corr. ID: 14912**Organization:** *Not Specified***Comment ID:** 228839**Organization Type:** *Not Specified*

Representative Quote: Closures. There was no mention of how resource closures

will be managed. The consent decree was forced upon the "recreationists" under threat of a total beach closure. Hopefully the ridiculous sized areas reserved for nesting plovers will be brought back in line. NPS biologists should make the decisions, not environmental extremists with large legal staffs. Recent experience in Massachusetts suggests that the presence of people actually helps plovers avoid their primary threat: predators.

Concern ID:

33819

**CONCERN
STATEMENT:**

Commenters questioned data in the DEIS and FEIS stating that there was no quantitative or qualitative facts to support the restrictions or closures in these documents, and that incomplete science and justification was used for the ORV restrictions.

Representative Quote(s):

Corr. ID: 119

Organization: *Not Specified*

Comment ID: 225616

Organization Type: Unaffiliated Individual

Representative Quote: The resource protection and the benefits of limited ORV and pedestrian access are not clearly outlined in the proposal. There are no quantitative or qualitative facts or data to support the need for the excessive restrictions and closures that the NPS proposes to enact. By decree of the March 9, 2009 Presidential Directive for science integrity and transparency. " The excessive closures and boundary sizes that have been enacted under the consent decree are being used for the basis of Alternative F. However, NPS has failed to give specific explanation as to why resource closures have to be so excessive. The answers and references that NPS does provide in this proposal are all based on the consent decree which was established using the biased, misleading, and unproven references of individuals and activists organizations that support the total closure of access to CHNSRA.

Corr. ID: 14930

Organization: *Not Specified*

Comment ID: 228830

Organization Type: Unaffiliated Individual

Representative Quote: I have followed and previously commented during this rulemaking process. I have seen many substantive comments brushed aside with mention of "best available science". I believe my National Park Service (NPS) has done a poor job in this rulemaking process. The NPS has used incomplete science and justification for the ORV restrictions we currently face and continues using it in the proposed restrictions. The most egregious being the current rules instituted by the now famous consent decree. This is policy making at its worst. The rules have been administered with zero public participation, touted as restrictions based on "best available science", and then wind up as the basis for all action alternatives in the Draft Environmental Impact Statement (DEIS). Is that how we develop and craft policy now?

Concern ID:

33822

**CONCERN
STATEMENT:**

One commenter stated that under the "Intended Effects or Objectives of the Final Plan/EIS" the NPS concluded that ORVs are harmful to shipwrecks, native plant species and wildlife species and questioned how NPS vehicles contributed to these effects.

Representative Quote(s):

Corr. ID: 719

Organization: *Not Specified*

Comment ID: 227315

Organization Type: Unaffiliated Individual

Representative Quote: In the Record of Decision, Cape Hatteras National Seashore Recreational Area, Off-Road Vehicle Management Plan and Final Environmental Impact Statement, there are 17 bullet points listed under 'Intended Effects or Objectives of the Final Plan/EIS', all 17 of which mention ORVs in some regard. Reading the bullet points clearly shows that the NPS has concluded that ORVs are harmful to basically everything within the Seashore. Shipwrecks, native plant species, and wildlife species are all specifically mentioned. If this is indeed the

case, how are the shipwrecks, native plant species, and wildlife species able to tell the difference between a recreational visitor's ORV and the NPS ORVs which routinely drive through the enclosures on a daily basis?

Concern ID: 33823

CONCERN STATEMENT:

Representative Quote(s):

33823
One commenter suggested continuing the test plan for turtle nesting as it was successful and the turtle population grew.

Corr. ID: 6485 **Organization:** *Not Specified*

Comment ID: 231270 **Organization Type:** *Not Specified*

Representative Quote: During a test plan to protect the beaches for wildlife, the turtle nesting was more successful and the population grew. Why shouldn't this successful program be continued?

Concern ID: 33824

CONCERN STATEMENT:

Representative Quote(s):

33824
Commenters suggested that factors outside the Seashore reduced breeding numbers, pointing specifically to storm activity over the years. Commenters also suggested that human presence may enhance survivability and fledging rates of plover chicks.

Corr. ID: 126 **Organization:** NCBBA, OBPA

Comment ID: 226976 **Organization Type:** Recreational Groups

Representative Quote: Also as a part of "Exhibit A", I have utilized my time to try to pinpoint storms that may have interfered with the success and/or decline of the species. These storms would be detrimental to the success of these species and looking at a chart, without consideration of weather variables, the date would continued to be skewed and flawed. Given the amount of storm activity, noted below, from 1998 to 2005, one could surmise that the breeding numbers would be significantly reduced as a direct result of natural events.

Corr. ID: 795 **Organization:** *Not Specified*

Comment ID: 223956 **Organization Type:** Unaffiliated Individual

Representative Quote: The arguments are finally being made that human presence may actually enhance survivability and fledge rates.

http://articles.boston.com/2011-08-14/lifestyle/29887156_1_pairs-of-piping-plovers-beaches-chicks

<http://www.reverjournal.com/2009/08/05/revere-beach-becoming-an-unexpected-bird-sanctuary/>

Corr. ID: 12982 **Organization:** *Not Specified*

Comment ID: 228358 **Organization Type:** Unaffiliated Individual

Representative Quote: The data suggest that the difference between fledge rates for the recent management policies and those reported for the 1992-2003 policies ARE weather related. Stated more specifically, if you remove the 4 years with storm activity from the 1992-2003 Management period, the recalculated fledge rate is 0.85 which is right in line with the 0.87 and 0.84 fledge rates for "good" weather years included in the Interim Plan and the Consent Decree, respectively. In fact, based upon this data, I submit that the different management policies have had NO impact on the productivity of Piping Plover.

Concern ID: 34163

CONCERN STATEMENT:

Representative Quote(s):

34163
One commenter stated that 94 percent of commenters expressed interest for ORV and pedestrian access, and questioned why those numbers were not taken into deeper consideration in the proposed rule.

Corr. ID: 22202 **Organization:** *Not Specified*

Comment ID: 232496 **Organization Type:** Unaffiliated Individual

Representative Quote: I would also like the record to show an overwhelming 94% of the people that spoke during public comment period were for beach access, both pedestrian and ORV. Why weren't those numbers taken into deeper consideration in the Park's proposed plan?

Concern ID: 34181

CONCERN STATEMENT: Commenters suggested areas where habitat could be added, specifically noting the area of the Coast Guard houses, in Buxton near the lighthouse, and at Cape Point to add habitat. They also suggested implementing restoration in wilderness areas and consulting with other agencies as to how and where this habitat could be constructed.

Representative Quote(s): **Corr. ID:** 126 **Organization:** NCBBA, OBPA
Comment ID: 226974 **Organization Type:** Recreational Groups
Representative Quote: Perhaps, the U. S. Forest Service could assist in keeping the land functioning to maintain the ecosystems. I restate this request, as they could manage the lands by clearing the underbrush/overgrowth in the spits to make it more habitable for nesting shorebirds.
Corr. ID: 13249 **Organization:** *Not Specified*
Comment ID: 231286 **Organization Type:** Unaffiliated Individual
Representative Quote: It would follow that if there is a requirement to set aside spaces for wildlife it should be accommodated in the wilderness areas. Examples of these accommodations would require the restoration and creation of areas for birds around ponds that are free of vegetation and removal of turtle nests to corrals or hatcheries instead of leaving them on the recreational beach area. It should be noted here that these methods would be more productive at less expense than what is currently being done or contemplated in the EIS or ORV plan. The threatened and endangered species that nest and rest on CHNSRA are few. The Piping Plover pairs have not exceeded 14 pair per year in 20 years. In 2011 there were only 10 fledglings in spite of all the protection given them and a season without significant storm events. The NPS has systematically removed predators during the last few years to a total of over 2,000 animals. Though turtle nesting is increased all along the Atlantic Coast, nearly 50% of the nests at CHNSRA are lost to ocean overwash each year regardless of the protection given them, including severe restrictions to beach users and prohibition of night driving. Surely it would be better to accomplish the requirements of the Recovery Plans by properly taking care of our wildlife than by simply developing rules to prohibit visitors in the necessary mode of access, the ORV, than merely prohibiting people from a national area that has been set aside for public use.
Corr. ID: 13363 **Organization:** *Not Specified*
Comment ID: 227702 **Organization Type:** Unaffiliated Individual
Representative Quote: Bird protection or keeping can be performed by any method chosen by NPS outside of the BFA's. It would be recommended that NPS consult with other agencies or authorities as to the best methods for each species e.g. vegetation control, pond construction and water management, dredge spoil islands etc.
Corr. ID: 13363 **Organization:** *Not Specified*
Comment ID: 227696 **Organization Type:** Unaffiliated Individual
Representative Quote: Thus there is no virgin natural habitat at Cape Point. This mix of sand, grass and dune has all been influenced by the actions of man. Restoration to correct the NPS destruction would certainly be appropriate. Increased corrective manipulation to intentionally create superior plover habitat to both improve fledging and provide public access to the recreational beaches would be preferred.
Corr. ID: 14461 **Organization:** *Not Specified*

Comment ID: 229140 **Organization Type:** *Not Specified*

Representative Quote: I wish you would consider a natural area here where the coast guard houses are we are dealing w/ a night mere situation here whereas the govt. is selling houses we the taxpayers paid for then adding a link parking lot to our otherwise reasonably uncrowded beach. Why can't you open it up to a bird habitat instead of the huge public parking lot ,this area is a known washout area which is why they left in the first place. We need trees there and the grass mowing and parking lot is truly an eyesore. If you cared about the environment you would have a natural area here and help protect the neighborhood w/ a natural buffer zone and wildlife habitat instead of encouraging more human activity here, we have birds here too.

Corr. ID: 14461 **Organization:** *Not Specified*

Comment ID: 229137 **Organization Type:** *Not Specified*

Representative Quote: This area needs to promote forestry in places like Buxton near the lighthouse where you have the immediate opportunity to do so. Tear up the noxious tar road and let it go natural, trees will grow, natural fauna will emerge the area needs this desperately. It is the elbow of the island, the first stop for hurricane winds and over wash.

Concern ID:

34182

**CONCERN
STATEMENT:**

Commenters requested the formation of a Federal Advisory Committee to work with the NPS in determining resource closures and other Seashore matters or allowing a biologist representative from ORV access groups to ride along with NPS staff. Others stated that these decisions should be left to the local population or that the NPS should seek a cooperative venture with local fisherman.

Representative Quote(s):

Corr. ID: 629

Organization: *Not Specified*

Comment ID: 225510 **Organization Type:** Unaffiliated Individual

Representative Quote: somebody who was a biologist representative from the ORV Access should be granted "ride along" privilege. This was what was bothering me.....if only one source is monitoring, creating closures, and creating reports....there is an opportunity for error.. that is not "challenged".

How many miles of beach are there? How many different birds of concern are there? What appears to be a scrape or nest, may be mistaken, if only by one source driving. Does the Park Service do detailed walks of these miles?

Corr. ID: 689

Organization: *Not Specified*

Comment ID: 224968 **Organization Type:** Unaffiliated Individual

Representative Quote: I feel that any decisions affecting the CHNS be addressed by a committee. The committee being made up of representatives from the NPS and local organizations (OBPA, Cape Hatteras Anglers Club, NC Beach Buggy Association).

Corr. ID: 15001

Organization: *Not Specified*

Comment ID: 229106 **Organization Type:** Unaffiliated Individual

Representative Quote: As for closures designed to protect endangered or threatened species, the NPS should convene a Federal Advisory Committee including representatives of the fishing, beach access, and birding communities. This FACA should meet publically and be tasked authorizing the Superintendent to close beach access routes due to turtle nesting. As piping plovers are not listed as an endangered or threatened species, plover nest should not justify closures. In addition, NPS should eliminate mass exterminations of local predatory species such as foxes and raccoons, which currently take place under the auspices of protecting bird populations.

Corr. ID: 15001

Organization: *Not Specified*

Comment ID: 229107 **Organization Type:** Unaffiliated Individual

Representative Quote: In order to verify the existence of nests, the NPS should convene a local Federal Advisory Committee (including members representing local beach access and fishing interests) to approve any road closures due to nesting turtles. Night driving should be allowed unless approved by this group. As piping plovers are not listed as an endangered species, piping plover nests should not constitute justification for a closure.

Concern ID: 34215

CONCERN STATEMENT: Commenters requested the establishment of dog-free areas at the Seashore.

Representative Quote(s): **Corr. ID:** 4806 **Organization:** *Not Specified*

Comment ID: 230872 **Organization Type:** *Not Specified*

Representative Quote: It is urgent that all beaches have vehicle exclusion and dog-free areas to allow these key migrating species some opportunity to recover numbers so that the ecological balance along shore lines is maintained into the future

Concern ID: 34220

CONCERN STATEMENT: Commenters suggested ways in which the Seashore could increase education for visitors, including increasing signage, requiring community service for rule violators, providing public information boards, and providing information/classes on species protection.

Representative Quote(s): **Corr. ID:** 85 **Organization:** *Not Specified*

Comment ID: 219108 **Organization Type:** *Not Specified*

Representative Quote: I have read no mention of how the beach closings would be communicated to the public. It is imperative that local businesses have information updated daily by NPS so they can share info with their customers. Also, some sort of public information boards need to be available in several locations so people can be informed easily of the ramps and beaches that are open for residents and visitors.

Corr. ID: 128 **Organization:** *Not Specified*

Comment ID: 224939 **Organization Type:** Unaffiliated Individual

Representative Quote: My suggestion would be to make available more written or printed material concerning park rules, animal and wildlife protection, driving tips (including night driving) and any other information that you wish to convey. These would be distributed by local realtors, retail outlets, welcome centers, fishing clubs, chamber of commerce, visitor centers and hotel/motels.

Corr. ID: 912 **Organization:** *Not Specified*

Comment ID: 227361 **Organization Type:** *Not Specified*

Representative Quote: Maybe we should make people take a class on care and protection of the birds instead of a course on how to drive.

Corr. ID: 4171 **Organization:** *Not Specified*

Comment ID: 230721 **Organization Type:** *Not Specified*

Representative Quote: Explanatory signs in simple language should be posted in the appropriate places with contacts for people to get more knowledge about the area they are using if they are interested.

Corr. ID: 6588 **Organization:** *Not Specified*

Comment ID: 230607 **Organization Type:** Unaffiliated Individual

Representative Quote: Let's educate the ORV community to the benefits of preserving wildlife through displays, ranger briefings and handouts to ORV users. This process should include extensive patrolling to enforce protection of sensitive wildlife areas.

Corr. ID: 9268 **Organization:** *Not Specified*

Comment ID: 230765 **Organization Type:** *Not Specified*

Representative Quote: There needs to be education that it's not just "all about me," but that it's about sharing this planet with others who live here, too. It's about learning to be considerate and appreciative of others.

Concern ID: 34221

**CONCERN
STATEMENT:**

Commenters provided suggestions for NPS campgrounds including implementing a 1,000 meter buffer around NPS campgrounds to improve aesthetics and reduce visitor conflicts and improvement of amenities.

Representative Quote(s): **Corr. ID:** 22206 **Organization:** *Not Specified*

Comment ID: 232299 **Organization Type:** Unaffiliated Individual

Representative Quote: For pedestrian safety, recreational conflicts and aesthetic reasons visitors utilizing the NP campground should have an adjacent vehicle free buffer that extends a 1000 meters beyond the immediate confines of the campground on the ocean beach.

PN4000 - Purpose And Need: Park Enabling Legislation

Concern ID: 33292

**CONCERN
STATEMENT:**

Commenters felt that the proposed rule should refer to the Seashore as "Cape Hatteras National Seashore Recreational Area" because this is the name that was established through the enabling legislation 16 USC 459 sec 3, (1937) and the "Redwoods Amendment" 16 USC 459 sec. 1a-1 of 1978. Commenters also stated that the name of the Seashore cannot be changed except by an act of Congress and that removing "Recreation Area" from the name changes the original purpose of the Seashore.

Representative Quote(s): **Corr. ID:** 13249 **Organization:** *Not Specified*

Comment ID: 231285 **Organization Type:** Unaffiliated Individual

Representative Quote: It would therefore follow that the superintendent could open such areas previously closed if the situation changes. The Enabling Legislation (459) states: said area shall be, and is, established, dedicated, and set apart as a national seashore recreational area for the benefit and enjoyment of the people. To withhold any areas from public use of the greatest amount possible would violate the Congressional Law. When sections of the beach are closed off for wildlife or other reasons, the majority of the visitors who are then crowded into the small remaining sections are deprived of the benefit and enjoyment of the recreational area as stipulated in the Law.

The Enabling Legislation (459a-2) also states: 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 area shall be permanently reserved as a primitive wilderness. Those areas that are adaptable for the uses specified, and like uses, are to be developed as the need dictates. The NPS visitor usage statistics and even the casual observer over the last 74 years can ascertain that there is increased need for more recreational area. Those uses would only be appropriate on the beach along the ocean and sound fronts. The uses are especially suited to Cape Point and the inlet spits. Any plan that eliminates or reduces the access to those areas by the majority of the users is in violation of the law of Congress.

Corr. ID: 14290 **Organization:** *Not Specified*

Comment ID: 229375 **Organization Type:** *Not Specified*

Representative Quote: This proposed regulation refers to "Cape Hatteras National

Seashore." By law, specifically US Code - Section 459, the area "shall be known as the Cape Hatteras National Seashore Recreational Area". Assistant Director Tolson's memo of May 10, 1954 allowed the shorter title to be used "in all correspondence, except formal memoranda and documents which require the correct, full name of "Cape Hatteras National Seashore Recreational Area Project [sic]." Mr. Tolson's addition of the word "Project" to the title notwithstanding, he clearly recognized that he had no legal authority to change the official name. A regulation is clearly not correspondence, and should require the correct, full name "Cape Hatteras National Seashore Recreational Area." On June 29, 1940, Congress deemed it important enough to add these words to the enabling legislation for the park. To change the name, officially, would require another act of Congress.

Corr. ID: 23198

Organization: *Not Specified*

Comment ID: 232497

Organization Type: Unaffiliated Individual

Representative Quote: 1. Congress, in the Enabling Legislation establishing the Cape Hatteras National Seashore Recreational Area (hereinafter "the Park") has specifically and explicitly stated, inferred and implied, that such areas as may be especially suited to recreational activities "shall be developed" for the recreational use and enjoyment of the visitors. Further, Congress has listed a number of recreational activities which are appropriate uses of the Park, several of which involve and require the use or equipment, gear, apparatus, tackle or other cumbersome or weighty items. Fishing is one such activity clearly identified and contemplated as an intended use of the Park, and indeed Congress specifically provided that traditional Commercial, as well as recreational, fishing should be allowed and continued, in full knowledge that moving weighty and cumbersome fishing gear and associated vehicles onto and across the beaches was involved, acceptable, and a practical necessity to access the Park resources. Clearly, the continuing use of vehicles on the beaches of the Park is a traditional use as well as a practical necessity for Park visitor and user access today, as it was when Congress established the Park. The proposed regulation as written would permanently render vast areas of the Park inaccessible, as a practical matter, to many visitors and users, in contradiction to the expressed and implied intent of Congress. This is a fatal flaw in the proposed regulation.

Concern ID:

33294

CONCERN STATEMENT:

One commenter stated that the park service mischaracterized beach driving as a "new" activity in order to justify new infrastructure.

Representative Quote(s):

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 229281

Organization Type: Unaffiliated Individual

Representative Quote: I submit that the park service has mischaracterized beach driving for recreational purposes as a "new" activity so as to justify a rule that requires a vast array of new infrastructure. Furthermore, characterizing beach driving as a "new" activity allows the park service to propose a rule that changes to long established ORV corridors and routes without having to prove that the established corridors and trails are "necessary to protect the resource, promote safety and minimize conflicts."

Concern ID:

33464

CONCERN STATEMENT:

One commenter questioned how the proposed rule would impact primitive wilderness within the Seashore, stating that the proposed rule does not address the goal of preserving wilderness as directed in the enabling legislation and required through Executive Order 11644.

Representative Quote(s):

Corr. ID: 22206

Organization: *Not Specified*

Comment ID: 232295

Organization Type: Unaffiliated Individual

Representative Quote: It is unclear how the proposed ORV management will

impact primitive wilderness areas of the Park. In addition to not satisfying the intent of Executive Order 11644 the proposed management does not address Congress's goal of preserving "Primitive Wilderness" in CHNS as directed in the Park's enabling legislation.

Concern ID: 34216

**CONCERN
STATEMENT:**

One commenter suggested that since Pea Island is technically owned by the NPS (although controlled by U.S. Fish and Wildlife Service), it should be included as a VFA in the Seashore.

Representative Quote(s):

Corr. ID: 854

Organization: *Not Specified*

Comment ID: 227128

Organization Type: Unaffiliated Individual

Representative Quote: By NPS and USFWS documentation the Pea Island Refuge actually lies "within" the Seashore boundaries. In fact there are actually about 75 miles of beach in the Seashore, not the 67 miles cited in the background section of the proposed rule introductory material. True, Pea Island is now fully controlled by USFWS (not the case until a relatively recent law change, which by the way did not change "ownership" established by the refuge enabling legislation) only because of practicality, but to ignore it as a VFA within the Seashore is irresponsible.

PR1000 - Rulemaking Process

Concern ID: 33325

**CONCERN
STATEMENT:**

Commenters requested that electronic bulk letters should be disallowed and rejected because they fail to comply with NPS requirements. Additionally, commenters questioned why the number of public comments on regulations.gov appeared to be decreasing.

Representative Quote(s):

Corr. ID: 14859

Organization: *Not Specified*

Comment ID: 229064

Organization Type: Unaffiliated Individual

Representative Quote: I also note that as of September 1, 2011, there were 798 publicly submitted comments on the proposed rule website but are now only 592 showing. What happened to the other 206 comments?

Corr. ID: 23068

Organization: *Not Specified*

Comment ID: 232510

Organization Type: Unaffiliated Individual

Representative Quote: The service made it very clear within the instructions for comment submission that all comments must contain two items. On the first instant, NPS declares that all comment must be addressed to either NPS or the National Park Service, on the second; all comments must contain the rule identification number (RIN) 1024-AD85.

As per NPS:

"Comments submitted through Federal eRulemaking

Portal:<http://www.regulations.gov> or submitted by mail must be entered or postmarked before midnight (Eastern Daylight Time) September 19, 2011.

Comments submitted by hand delivery must be received by the close of business hours (5:00 p.m. Eastern Daylight Time) on September 19, 2011.

Comments will not be accepted by fax, email, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

All submissions must include the words "National Park Service" or "NPS" and must include the identifying number 1024-AD85.(emphasis added) Comments received through the Federal eRulemaking portal at <http://www.regulations.gov> will be available on the regulations.gov web site, usually without change. Before including your address, phone number, e-mail address, or other personal identifying

information in your comment, you should be aware that your entire comment -- including your personal identifying information -- may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information, we cannot guarantee that we will be able to do so. To view comments received through the Federal eRulemaking portal, go to <http://www.regulations.gov> and enter 1024-AD85 in the Keyword or ID search box."

As such, by the services own requirements for comment submission, all comment received through this "cut and paste" effort, which fail to comply with the above mentioned requirements, need disallowed and should be rejected. If NPS won't follow its own rules, the service has no right to expect the owners of this seashore, the American people, to do so either.

Concern ID:

33327

**CONCERN
STATEMENT:**

Commenters stated that the proposed rule does not mirror the Record of Decision prepared for the ORV Management Plan/EIS and should more accurately reflect alternative F, or the environmentally preferable alternative, alternative D.

Representative Quote(s):

Corr. ID: 13576

Organization: SELC

Comment ID: 232202

Organization Type: Conservation/Preservation

Representative Quote: The Proposed Rule, as written, does not contain sufficiently specific and enforceable protections for wildlife and other natural resources. As a result, it does not meet the purpose and need identified by the National Park Service, and it does not comply with controlling law. At the very minimum, the Proposed Rule should mirror the Selected Action from the NPS's Record of Decision (ROD), which was to implement Alternative F from the Final Environmental Impact Statement (FEIS) (although we believe that the better alternative remains Alternative D, the environmentally preferred alternative, which, according to the ROD "best protects the biological and physical environment). According to the FEIS, the purpose of the Proposed Rule 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 experiences while minimizing conflicts among various users, and to promote the safety of all visitors." (FEIS at p. 1)

The ROD states that the Proposed Rule will, among other things:

- Bring the Seashore in compliance with Executive Orders 11644 and 11989 respecting ORV use, and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to Seashore resources and values.

...

- Provide for protected species management in relation to ORV use

...

- Provide protection for threatened, endangered, and other protected species (e.g., state-listed species) and their habitats, and minimize impacts related to ORV and other uses

- Minimize impacts to wildlife species and their habitats related to ORV use.

...

- Manage ORV use to allow for a variety of visitor use experiences.

- Minimize conflicts between ORV use and other uses.

Concern ID:

34065

**CONCERN
STATEMENT:**

Commenters requested that supporting documents, public comments, transcripts of public hearings be added to the public docket as they contain information which is relevant to the proposed rule.

- Representative Quote(s):** **Corr. ID:** 433 **Organization:** *Not Specified*
Comment ID: 226470 **Organization Type:** *Not Specified*
Representative Quote: The public cannot make informed decisions about the agencies actions without having supporting documents on the record for the public to review. Accordingly, the only remedy now is for the NPS to do a supplemental notice of proposed rules and upload all supporting documents, including the regulatory analysis submitted to the DOI and OMB.
Corr. ID: 22211 **Organization:** *Not Specified*
Comment ID: 232475 **Organization Type:** Unaffiliated Individual
Representative Quote: Public comments and transcripts of public hearings held in association with the negotiated rulemaking federal advisory committee should be added to the public docket for this rulemaking since they contain information which is relevant to the proposed rules.
- Concern ID:** 34070
CONCERN STATEMENT: Commenters requested an extension for the comment period, ranging from an additional 30 to 60 days.
Representative Quote(s): **Corr. ID:** 14930 **Organization:** *Not Specified*
Comment ID: 228835 **Organization Type:** Unaffiliated Individual
Representative Quote: Finally, in lieu of Hurricane Irene, there are people who likely planned to submit comment but may find it hard or impossible to meet the deadline. Please consider extending the comment period for an additional 30 days.
Corr. ID: 14980 **Organization:** *Not Specified*
Comment ID: 229439 **Organization Type:** *Not Specified*
Representative Quote: Under the circumstances of hurricane Irene, I would encourage an additional 60 day commentary as the residents most affected by this are currently consumed with cleanup and re-establishing basic needs.
- Concern ID:** 34077
CONCERN STATEMENT: Commenters requested that the Final EIS be published on the regulations.gov website so that it can become part of the federal record.
Representative Quote(s): **Corr. ID:** 144 **Organization:** *Not Specified*
Comment ID: 224890 **Organization Type:** Unaffiliated Individual
Representative Quote: The final EIS which is the basis for this ruling is not published or available in its entirety on this site. Again, misleading the concerned American public.
- Concern ID:** 34210
CONCERN STATEMENT: Commenters stated that the public was denied opportunities for input on multiple occasions during the DEIS and FEIS processes including the cost benefit analysis.
Representative Quote(s): **Corr. ID:** 14191 **Organization:** *Not Specified*
Comment ID: 230117 **Organization Type:** Unaffiliated Individual
Representative Quote: The DEIS was published on March 12, 2010. The FEIS was published on November 11, 2010. The record of decision to adopt the FEIS was published on December 20, 2010. The cost benefit analysis on which the DEIS, FEIS, and the record of decision were based was published on July 6, 2011. This timing of the above events denied the public any opportunity to comment on the cost benefit analysis.
Corr. ID: 23210 **Organization:** *Not Specified*
Comment ID: 232336 **Organization Type:** Unaffiliated Individual
Representative Quote: The economic impact statement on which this Rule is based was published in June of this year. The DEIS and FEIS were published last

Fall. As citizens we are required to comply with the law and regulations. A rule effecting the economy of two Islands should likewise be drafted in accordance with the rules of the Federal Agencies responsible for creating them in the first place. So both the DEIS and FEIS process are flawed. In the interest of fairness this entire process needs to be restarted and followed correctly. There has been inadequate time for concerned people or groups to review the analysis prior to its being used in crafting the rule. Given the incredible potential for harm to the economies of the villages embodied in this ORV plan, the precautionary principle would seem to apply here. The Federal government should act cautiously and with due regard to the possible consequences of their actions before implementing a plan which has not yet been adequately vetted.

RN 2050 - Proposed Rule: New Elements

Concern ID: 33388

**CONCERN
STATEMENT:**

Commenters requested that the proposed rule include increased protection for species, including adding species buffers and specific protections to the rule, as well as enforcement of these buffers and increasing the land area protected. Specific suggestions also included banning all vehicles. Commenters requested that these protections be specific, enforceable, and science-based.

Representative Quote(s):

Corr. ID: 1464 **Organization:** *Not Specified*

Comment ID: 228861 **Organization Type:** Unaffiliated Individual

Representative Quote: If the Park Service does not close the entire Seashore to beach driving, then I urge you to include specific, enforceable, science-based protections for wildlife and pedestrians in the regulation. I support non-driving buffers around nesting birds and turtles, their nests, chicks and hatchlings, and specific protections for migrating and wintering shorebirds.

As it is currently written, the proposed regulation treats wildlife protection as optional, and this is simply not acceptable. Please add buffers and other specific, mandatory wildlife protections to the regulation. I urge you to include science-based protections for all natural resources that strictly adhere to the "Highest Degree of Protection" as outlined in the USGS Protocols for Cape Hatteras National Seashore

Corr. ID: 13576 **Organization:** SELC

Comment ID: 232209 **Organization Type:** Conservation/Preservation

Representative Quote: Last but not least, the omission of buffers and other resource protections from the Proposed Rule prevents it from fulfilling its purpose, satisfying the objectives listed above, and complying with applicable law. The FEIS statement of purpose and need, Executive Order 11644, 36 C.F.R. § 4.10, and the Consent Decree (FOOTNOTE: This refers to the Consent Decree entered in the lawsuit *Defenders of Wildlife v. National Park*) all require the NPS to promulgate a special regulation that designates ORV routes and areas in such a way that will protect and preserve wildlife, habitat, and other natural resources from ORV impacts and that will minimize conflicts among uses (for instance, conflicts between ORV use and wildlife protection or between ORVs and pedestrian visitors). By merely designating ORV routes without also including the buffers and other measures described in the FEIS/ROD that limit the routes for the protection of wildlife, the Proposed Rule cannot be said to satisfy any of those requirements.

Corr. ID: 23024 **Organization:** *Not Specified*

Comment ID: 232447 **Organization Type:** Unaffiliated Individual

Representative Quote: What special training do NPS employees receive to drive in "resource closures" The plan states vehicle free areas, and resource closures, this should include NPS vehicles.

Concern ID: 33394
CONCERN STATEMENT: Commenters suggested changes to law enforcement they felt should be part of the rule including increasing law enforcement presence, using local residents to police the area, using sensors or video surveillance to catch violators, strict enforcement of no-camping and no alcohol policies, and a hotline to report violations.

Representative Quote(s): **Corr. ID:** 8 **Organization:** *Not Specified*
Comment ID: 218944 **Organization Type:** *Not Specified*
Representative Quote: I would really like to see a hot-line number opened to which the beach-lovers/protectors could report vehicle violations/pollution promoters and expect prompt response.
Corr. ID: 5255 **Organization:** *Not Specified*
Comment ID: 231010 **Organization Type:** Unaffiliated Individual
Representative Quote: I think that there are enough places for people to go and ride what ever they want to ride without them getting away with riding on protected land. Arrest them and make it mandatory that they go through a learning program that teaches them why and how wildlife are "given" these few and far between places where they are protected, enabling them a small guarantee of a chance at life. Add to that sentence a mandatory 40 hours community service working with wildlife "protectors" to be done in no less then a month.
Corr. ID: 15001 **Organization:** *Not Specified*
Comment ID: 229108 **Organization Type:** Unaffiliated Individual
Representative Quote: there should be strict enforcement of no-camping and no alcohol policies.
Corr. ID: 17972 **Organization:** *Not Specified*
Comment ID: 232008 **Organization Type:** Unaffiliated Individual
Representative Quote: To enforce regulation protected area may be equipped with hidden sensors that verify that passing vehicle has valid RFID tag. Simplified solution may be just video surveillance system.
Corr. ID: 22297 **Organization:** *Not Specified*
Comment ID: 232409 **Organization Type:** Unaffiliated Individual
Representative Quote: Another suggestion would be to allow some of the local residents to police the beaches to assist the NPS rangers. This could work similarly to the USGC auxiliary program.

Concern ID: 33398
CONCERN STATEMENT: Commenters suggested alternatives to a permit system, including alternative ways for the park to generate revenue such as collecting tolls at the Seashore or only allowing residents of the Outer Banks access.

Representative Quote(s): **Corr. ID:** 65 **Organization:** *Not Specified*
Comment ID: 219141 **Organization Type:** *Not Specified*
Representative Quote: Lastly, I feel strongly that the residents of Hatteras should be granted/allowed ORV access to the beaches year round and should only be limited by the Superintendent for specific and viable reasons
Corr. ID: 7191 **Organization:** *Not Specified*
Comment ID: 230093 **Organization Type:** Unaffiliated Individual
Representative Quote: An effective and historically consistent policy that maintains the NPS compact with OBX residents would allow licensed but judicious ORV beach access by those residents (where access has minimal impact) and deny such access to all others.
Corr. ID: 13503 **Organization:** *Not Specified*
Comment ID: 231886 **Organization Type:** Unaffiliated Individual

Representative Quote: If the NPS was truly interested in procuring "Recovery Costs" for proposed projects within the seashore recreation area, it would seem prudent to install a toll booth at all seashore entrances,(not unlike the one currently in place on the NPS portion of the Blue Ridge Parkway in Virginia), and charge all non-resident/non-business travelers a set fee for entering the park premises. In this way, all user groups would pay into the fund used for park improvements, instead of unfairly placing the monetary burden on the backs of only one user group, which frankly seems punitive in nature. In short, to be fair and equitable, all user groups should pay to use the resource.

Concern ID: 33400

CONCERN STATEMENT: Commenters suggested that the NPS revise the proposed rule to adopt the Coalition for Beach Access Plan.

Representative Quote(s): **Corr. ID:** 23198 **Organization:** *Not Specified*

Comment ID: 232504 **Organization Type:** Unaffiliated Individual

Representative Quote: 4. Finally, I recommend that the position statement of the Coalition for Beach Access relative to the Draft ORV Management Plan/EIS (DEIS) for the Cape Hatteras National Seashore, developed through and in consultation with the Negotiated Rulemaking Advisory Committee and thus representative or the majority of pertinent stakeholder groups, be substituted for the proposed Regulation. I believe that such wholesale substitution would provide a BETTER balance of optimizing public access to the Park while affording adequate and reasonable protection and preservation to ALL Park resources and protected species, and ALSO incorporating the REQUIRED preservation of the Traditional and Cultural Values that Define the Cape Hatteras National Seashore Recreational Area which is absent from the proposed regulation.

Concern ID: 33410

CONCERN STATEMENT: Commenters suggested including alternative transportation in the rule such as slow moving electric trains, other electric vehicles, requiring the use of biofuels, or park run busses for those with mobility issues. One commenter was concerned that the existing language in the rule was too vague, and alternative transportation would never be implemented.

Representative Quote(s): **Corr. ID:** 695 **Organization:** *Not Specified*

Comment ID: 224960 **Organization Type:** Unaffiliated Individual

Representative Quote: But it seems like there are some "outside the box" solutions--raised roadways, the water taxis, shuttles, etc. that could help.

Corr. ID: 5078 **Organization:** *Not Specified*

Comment ID: 230942 **Organization Type:** *Not Specified*

Representative Quote: One suggestion is slow moving electric trains whose drivers know how to avoid wildlife habitats.

Corr. ID: 5771 **Organization:** *Not Specified*

Comment ID: 228875 **Organization Type:** *Not Specified*

Representative Quote: GET MOTORIZED VEHICLES OUT OF NATIONAL PARKS- EXCEPT FOR PARK RUN BUSES TO HELP DISABLED PEOPLE SEE THE WONDERS

Corr. ID: 6774 **Organization:** *Not Specified*

Comment ID: 229359 **Organization Type:** *Not Specified*

Representative Quote: If conveyance is necessary for the sake of monetary enhancement and income, I suggest either electric omnibusses, or horse-drawn vehicles--as works well for other areas in the country.

Corr. ID: 11051 **Organization:** *Not Specified*

Comment ID: 229941 **Organization Type:** Unaffiliated Individual

Representative Quote: I would require any vehicles to be powered by human power or alternative fuels such as biofuels from fry oil or human waste. Be innovative, lead the way.

Concern ID: 33412

CONCERN STATEMENT: Commenters suggested that access only be provided for mobility impaired visitors, with commenters suggesting that this access should be equivalent to a golf cart or provided in electric vehicles.

Representative Quote(s): **Corr. ID:** 592 **Organization:** *Not Specified*
Comment ID: 225484 **Organization Type:** *Not Specified*
Representative Quote: As a compromise one could limit vehicular traffic to a single trail, preferably allowing electric vehicles traveling no more than 5 miles an hour. That would allow handicapped people to enjoy the experience at the beach.
Corr. ID: 14043 **Organization:** *Not Specified*
Comment ID: 228726 **Organization Type:** Unaffiliated Individual
Representative Quote: Only the handicapped should be permitted to drive off road for 4 reasons: 1. ORV use creates unnecessary climate change. 2. Peak Oil- we probably passed world peak oil production 3 to 5 years ago. What oil is left should be for lubricants & necessary transportation! 3. Environmental destruction. 4. The obesity epidemic- we should encourage muscle powered, not motor powered recreation!

Concern ID: 33414

CONCERN STATEMENT: Commenters suggested providing other areas for ORV use, such as building a track nearby or providing over dune access.

Representative Quote(s): **Corr. ID:** 2630 **Organization:** *Not Specified*
Comment ID: 228773 **Organization Type:** *Not Specified*
Representative Quote: An area that is not endangering the wildlife should be set aside for that recreational use and it is our duty to protect our fragile eco system and wildlife preserving them for future generations.
Corr. ID: 5341 **Organization:** *Not Specified*
Comment ID: 228038 **Organization Type:** Unaffiliated Individual
Representative Quote: However, I like the idea of creating more over the dune access for those not able to drive on the beach, but at what risk does this create to the life expectancy of the dune?
Corr. ID: 12037 **Organization:** *Not Specified*
Comment ID: 229370 **Organization Type:** Unaffiliated Individual
Representative Quote: Please act responsibly and build a nearby track for racing around in a dune buggy or off road vehicle.

Concern ID: 33421

CONCERN STATEMENT: Commenters suggested that where ORV use is allowed could be based on seasonal indicators such as the summer tourist season, or by seasonal nesting patterns for species at the Seashore.

Representative Quote(s): **Corr. ID:** 3581 **Organization:** *Not Specified*
Comment ID: 229596 **Organization Type:** Unaffiliated Individual
Representative Quote: The Plovers and other ground nesting birds need to be protected. NO off-road vehicles should be allowed two months before to two months after official nesting periods.
Corr. ID: 20055 **Organization:** *Not Specified*
Comment ID: 231649 **Organization Type:** *Not Specified*
Representative Quote: At least, consider a vehicle halt during nesting season.

Corr. ID: 22028 **Organization:** *Not Specified*
Comment ID: 232275 **Organization Type:** Unaffiliated Individual
Representative Quote: seasonal changes should be based around the summer tourist season: change driving patterns at memorial day and labor day weekends which mark the beginning and end of the season. Traffic drops way off the other times of year, evident of the changes in speed limit on highway 12.
Corr. ID: 23193 **Organization:** *Not Specified*
Comment ID: 232161 **Organization Type:** Unaffiliated Individual
Representative Quote: 7)Winter driving times should be determined by the need to protect nesting species, not the calendar and should be at the discretion of the superintendent.

RN0500 - Proposed Rule: General

Concern ID: 34213

CONCERN STATEMENT: Commenters felt that some of the general language in the proposed rule was inaccurate, including how user conflicts at the Seashore are described and disagreeing with the statement that ORV use is unregulated.

Representative Quote(s): **Corr. ID:** 6537 **Organization:** *Not Specified*
Comment ID: 229262 **Organization Type:** *Not Specified*
Representative Quote: I believe that the facts stated by this proposal are inaccurate and non-factual. It states that the use of off road vehicles are unregulated - which is nowhere near the truth.
Corr. ID: 22222 **Organization:** Dare County
Comment ID: 232000 **Organization Type:** County Government
Representative Quote: - The Proposed ORV Rule says in its Summary - "minimizing conflicts among various users." In this comment, and in others like it, NPS would have everyone believe that the people who use the Cape Hatteras National Seashore Recreation Area are in conflict with each other. We find this not to be true.

It is our experience that those who favor responsible ORV access, which represents the overwhelming majority, have taken great strides to accommodate the few who disagree.

We believe there is something for everyone at America's first national seashore and have a documented track record of willingness to compromise and accommodate the needs of all user groups. This is a matter of public record during the negotiated rulemaking proceeding, of which Dare County was a participant.

RN1050 - Proposed Rule: Compliance with Other Laws

Concern ID: 33125

CONCERN STATEMENT: Commenters stated that by allowing ORV use the proposed rule fails to meet the mandates of the National Park Service Organic Act of 1916 of preserving and protecting flora, fauna, historic objects and scenery.

Representative Quote(s): **Corr. ID:** 5392 **Organization:** *Not Specified*
Comment ID: 230620 **Organization Type:** Unaffiliated Individual
Representative Quote: In 1916 the Presidential mandate specified the National Park Service "to conserve the scenery and the natural and historic objects and wildlife therein, and to provide for the enjoyment of the same in such manner and

by such means as will leave them unimpaired for the enjoyment of future generations." By encouraging and expanding ORV use, you are allowing a very small percentage of the visitors to the Cape Hatteras National Seashore to impair and irreparably damage both the wildlife and the scenery you are directed to protect! You will fail the agency's mission and future generations of Americans.

Concern ID:

33164

CONCERN STATEMENT:

Multiple commenters stated that the proposed rule violates Executive Orders 13132, 11644, and 11989 by not providing a federalism summary impact statement, limiting the variety of access opportunities, increasing potential visitor conflicts and limiting visitor use. Commenters stated the inspections and night driving violated Executive Order 12988, the Information Quality Act and the U.S. Constitution. Additionally, commenters also stated that it does not provide sufficient protection to wildlife. Another commenter stated that vehicle free areas conflict with multiple Executive Orders', and the Interim Plan that determined that the entire Seashore should remain accessible to ORV's.

Representative Quote(s):

Corr. ID: 259

Organization: *Not Specified*

Comment ID: 226462

Organization Type: Unaffiliated Individual

Representative Quote: The NPS indicates that under the criteria in E.O. 13132 this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. I disagree. The proposed rule imposes a direct negative effect on the state and local government in that closing parts of the National Seashore Recreational Area to ORV use will have a devastating effect on the local economy and decrease revenues brought by tourism to the State of North Carolina.

Corr. ID: 332

Organization: *Not Specified*

Comment ID: 221936

Organization Type: Unaffiliated Individual

Representative Quote: Subjecting vehicles to search and inspection for equipment and requiring individuals to partake in an in person education to obtain a permit violates: Civil Justice Reform (Executive Order 12988)The inspection and education parts of this rule does not comply With the requirements of E.O. 12988.

Corr. ID: 1227

Organization: Center for Biological Diversity

Comment ID: 230096

Organization Type: Conservation/Preservation

Representative Quote: Executive Orders 11644 and 11989 also require that off-road vehicle routes shall be located in areas of the National Park system only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values. Driving on the beach clearly adversely impacts the natural, aesthetic, and scenic value of the Cape Hatteras National Seashore.

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 228345

Organization Type: Unaffiliated Individual

Representative Quote: In point of fact, the proposed rule expands the park's most under utilized areas (vehicle free areas) while reducing areas (ORV areas) that have become so congested under the consent decree that it nearly impossible to engage in many popular activities (i.e. fishing, surfing, or any other activity that require some elbow room). This, in combination with unprecedented approaches to resource management and a wide range of new restrictions on visitor use, will dramatically reduce the shoreline available for visitor use, severely limit the variety of access opportunities available for ALL visitors, and increase the potential for conflicts among users in the areas that remain open to recreational use. This being case, this rule violates section 3 of the E.O.

Corr. ID: 23209

Organization: *Not Specified*

Comment ID: 232429

Organization Type: Unaffiliated Individual

Representative Quote: Vehicle Free Areas (VFA) proposed in this rule directly conflict with several executive orders. When these orders were given, NPS determined that the entire seashore should remain accessible to ORV's. In 1978 the Interim Management Strategy also made this same determination. The only exception to this is the seasonal closing of the beaches in front of the villages. These areas have high pedestrian traffic during peak tourist season. If other areas are left open, we can all enjoy different sections of this park. To close random areas of the beach to vehicle access for unknown reasons is unconscionable.

Concern ID: 33227

CONCERN STATEMENT:

Commenters stated that the NPS and DOI are in violation of the National Environmental Policy Act (NEPA) and other executive orders because they did not publish the full extent of the proposed restrictions in the Federal Register and did not give ample documentation, review time and meetings or other forms of education for the public of the proposed changes.

Representative Quote(s):

Corr. ID: 13249 **Organization:** *Not Specified*

Comment ID: 231283 **Organization Type:** Unaffiliated Individual

Representative Quote: The Negotiated Rule Making Committee was a farce. Nothing submitted concerning access was acceptable. No scientific information, including results of CAHA Resource Reports was used. The groups that had sponsored and supported the Consent Decree were allowed to remain on the committee even though it was against the operating procedures of the committee. There was no consensus building. It was stipulated that the Consent Decree would not have any effect on the operations of the committee. The final conclusions and the DEIS, FEIS, and this ORV proposed rule were/are all based on the Consent Decree and the USGS Protocols which have not been peer reviewed and do not follow guidelines of the US government. There were no public meetings or other methods of education the public held by NPS to educate and inform the citizenry of the massive changes proposed for CHNSRA. This is a violation of National Environmental Policy Act (NEPA) as well as the E. O. The eight small villages with small family owned businesses have been heavily impacted by the Consent Decree and will be even more impacted by the ORV proposal if authorized. This impact has been deliberately obscured by the NPS economic analysis. This contracted document was not available for public comment before the FEIS was finalized.

Corr. ID: 13249 **Organization:** *Not Specified*

Comment ID: 232768 **Organization Type:** Unaffiliated Individual

Representative Quote: E. O., Sec. 3 (b) (Which does not appear in the Federal Register with the proposed rule)

"The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section..." Executive Order, Sec. 3(b). This absolutely and unequivocally has not been done. I have attended most of the public sessions. I have spoken and presented written material on various issues. My work has not been responded to properly.

Concern ID: 33267

CONCERN STATEMENT:

Commenters expressed concern that the proposed rule does not adequately address the Migratory Bird Treaty Act, the Endangered Species Act or the Unfunded Mandates Reform Act.

Representative Quote(s):

Corr. ID: 333 **Organization:** *Not Specified*

Comment ID: 234030 **Organization Type:** Unaffiliated Individual

Representative Quote: It is not specified anywhere how this measurement and

resulting enforcement would be carried out. The ambiguity of this rule clearly violates:

Regulatory Planning and Review(Executive Order 12866) due to lack of review and Unfunded Mandates Reform Act (UMRA) due to lack of information and review and violates:

Civil Justice Reform (Executive Order 12988) This rule complies With the requirements of E.O. 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be

reviewed to eliminate errors and ambiguity and be written to minimize litigation

Corr. ID: 9312 **Organization:** *Not Specified*

Comment ID: 229605 **Organization Type:** *Not Specified*

Representative Quote: Are you now going to totally ignore the Migratory Bird Treaty Act? Or the Endangered Species Act?

Corr. ID: 9640 **Organization:** *Not Specified*

Comment ID: 230101 **Organization Type:** *Not Specified*

Representative Quote: The Memorandum of Understanding (MOU) among the Federal land management agencies, dated September 1994, states that the agencies must use their authorities to further the purposes of the ESA. The National Park Service has the responsibility under these laws and the MOU noted above to prohibit all public motor vehicle use regardless of public opinion to the contrary.

Concern ID:

33269

CONCERN

STATEMENT:

Representative Quote(s):

One commenter stated that the proposed rule is a breach of agreement made with private landowners during the initial land acquisition.

Corr. ID: 49 **Organization:** *Not Specified*

Comment ID: 219100 **Organization Type:** Unaffiliated Individual

Representative Quote: I have talked to one of the property owners who were forced to sell their property during the government acquiring this land for public use. They were told that they would always be able to continue to use their land. At that time it included Raving. Now that they are older this is in some cases is the only method to get down to the water. It sounds to me that that these newer restrictive laws might even be a breach of contract for those who sold their property under those circumstances.

Concern ID:

33271

CONCERN

STATEMENT:

Representative Quote(s):

Commenters discussed that the proposed rule violates the National Environmental and Policy Act by not including species protections such as wildlife buffers, selecting an alternative outside of the range of alternatives that had not undergone a "hard look", by not disclosing sufficient scientific or process-orientated information to the public and because federal and state agencies and the public had not had the opportunity to substantively comment on the proposed rule. Commenters requested that a supplemental EIS be undertaken.

Corr. ID: 13576 **Organization:** SELC

Comment ID: 232225 **Organization Type:** Conservation/Preservation

Representative Quote: Further, adopting a new alternative in the Proposed Rule frustrates the central purpose of NEPA and the EIS process. The alternatives analysis is often described as the heart of the EIS and requires that agencies take a "hard look" at the environmental impacts of their actions. Nat'l Audubon Soc'y v. Dep't of the Navy, 422 F.3d 174, 184 (4th Cir. 2005). That analysis "encompasses a thorough investigation into the environmental impacts of an agency's action and a candid acknowledgement of the risks that those impacts entail. Id. at 185. It is "surely implicated when the environment that may be damaged is one that Congress

has specially designated for federal protection," as are the wildlife and habitat at the Seashore. Id. at 186-87.

There, the "hard look" must "take particular care to evaluate how its actions will affect the unique biological features of th[e] congressionally protected area." Id. at 187. The Proposed Rule ignores these requirements, extracting the ORV routes and other requirements from Alternative F as described in the FEIS and ROD, yet omitting the mandatory resource protections that would provide the environmental benefits described by Alternative F. The resulting new alternative has not been given the "hard look" required by NEPA and its environmental consequences are, at best, unknown. Its approach to resource protection drastically differs from each of the alternatives considered in the FEIS and has not been studied to any degree.

Corr. ID: 13576 **Organization:** SELC

Comment ID: 232227 **Organization Type:** Conservation/Preservation

Representative Quote: Finally, NPS's promulgation of a new alternative in the Proposed Rule also violates NEPA's purpose of providing an opportunity for the public and governmental agencies "to analyze and comment on the action's environmental implications." 422 F.3d at 184. Here, neither the public nor federal and state wildlife agencies had the opportunity to comment on the environmental implications of the alternative reflected in the Proposed Rule. (NOTE: The opportunity to comment on the Proposed Rule does not ameliorate this violation. For major federal actions, like this rule, that opportunity for public comment is only meaningful if it is preceded by a full analysis of the proposed action in an EIS, a step the NPS has failed to take with its new alternative.)

The FEIS did not forecast that NPS was considering an alternative devoid of mandatory, specified buffers and the public could not have anticipated that such an alternative would be introduced during the rulemaking period. Nor can NPS rely on the inclusion of Alternative F in the FEIS to satisfy NEPA's public notice requirements. The benefits provided by Alternative F, while not adequate to protect all natural resources within the Seashore, rely on fixed, mandatory buffers; they would significantly exceed the environmental benefits, if any, of the Proposed Rule and cannot put the public on notice of its environmental consequences. See *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446-47 (4th Cir. 1996) (stating that misleading representation of benefits can violate NEPA "by skewing the public's evaluation of a project").

Corr. ID: 13576 **Organization:** SELC

Comment ID: 232229 **Organization Type:** Conservation/Preservation

Representative Quote: The only legal path forward for NPS if it decides to implement the Proposed Rule is first to prepare and disseminate a supplemental EIS that takes a legitimate "hard look" at the consequences of a regulation that contains no mandatory, science-based wildlife protections. A supplemental EIS is required if an "agency makes substantial changes in the proposed action that are relevant to environmental concerns." 40 C.F.R. § 1502.9. The exclusion of fixed-distance, mandatory buffers is clearly a "substantial change" that is "relevant to environmental concerns." To be clear, we do not support a supplemental EIS or a regulation without mandatory, science based wildlife protections; NPS can only comply with the court-ordered deadline to complete this rulemaking by implementing the changes to the Proposed Rule described above and should do so no later than November 15.

Corr. ID: 13576 **Organization:** SELC

Comment ID: 232224 **Organization Type:** Conservation/Preservation

Representative Quote: NPS's decision to adopt a new alternative in the Proposed Rule violates NEPA in three ways. First, the Proposed Rule selects an alternative that is outside the range of

alternatives considered within the EIS. Second, by selecting that alternative, the Proposed Rule adopts an alternative that has not undergone the "hard look" required by NEPA. Third, because it was not included in the EIS, NPS has not provided the public or other governmental agencies the opportunity to analyze and substantively comment on the alternative in the Proposed Rule and its implications for wildlife protection. Because of these shortcomings, the new alternative articulated in the Proposed Rule must be fully evaluated in a supplemental EIS before it can legally be finalized.

Under NEPA's implementing regulations, the selected alternative must be "encompassed by the range of alternatives discussed in the relevant environmental documents." 40 C.F.R. § 1505.1(e). As described above, the Proposed Rule fails to prescribe any fixed-distance, mandatory buffers for resource protection. Each alternative considered in the EIS, however, included mandatory, fixed-distance buffers. (NOTE: See FEIS at p. 144 (chart showing fixed buffer distances under each alternative).

In contrast, the Proposed Rule provides that the "Superintendent may temporarily limit, restrict, or terminate access," without requiring any specific restrictions. 76 Fed. Reg. at 39,356. Thus, the Proposed Rule cannot, under any interpretation, be considered to be within the range of alternatives of the EIS or representative of Alternative F as it was selected in the ROD. Nor does it purport to be within that range; it merely states that it "implements portions of the plan/FEIS and ROD." 76 Fed. Reg. at 39,354. By doing so, it selects an alternative outside of the range of those considered in the FEIS and violates NEPA.

Corr. ID: 13576 **Organization:** SELC

Comment ID: 232230 **Organization Type:** Conservation/Preservation

Representative Quote: By implementing a new alternative that was not studied in the FEIS, the Proposed Rule violates the APA's notice and comment requirements. Under the APA, the notice of the Proposed Rule "must be sufficiently descriptive of subjects and issues involved so that interested parties may offer informed criticism and comments." *Ethyl Corp. v. EPA*, 541 F.2d 1, 48 (D.C. Cir. 1976). The purpose of that description is "to disclose the thinking of the agency and the data relied on." *Lloyd Noland Hosp. & Clinic v. Heckler*, 762 F.2d 1561, 1565 (11th Cir. 1985). An agency that fails to reveal the technical basis for its rule "commits serious procedural error." *Conn. Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982).

Because the alternative presented in the Proposed Rule was not evaluated in the FEIS, the NPS has not presented an analysis evaluating the environmental impact of the Proposed Rule, provided any scientific evidence for its ORV-route-only approach, or made available any of the data that undergirds this approach, if any exists. Therefore, the Proposed Rule does not "disclose the thinking of the agency" and does not provide sufficient information for the public to allow us to submit "informed criticism and comments" on the analyses and data that purportedly support the Proposed Rule.

Further, adopting this new alternative in a final rule would be arbitrary and capricious. Under the APA, courts "shall ... hold unlawful and set aside agency action, finding, and conclusions found to be - (A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). Nothing in the record before the agency supports NPS's conclusion that a purely discretionary resource protection program will provide adequate environmental benefits. To the contrary, the record is replete with evidence that discretionary measures before the creation of the Interim Plan in 2007 and the mandatory

measures within the Interim Plan - embodied in Alternative A of the FEIS - were inadequate to protect resources and contributed to declines in breeding shorebirds, water birds, and sea turtles. The ROD makes clear that "[p]rotected species and wildlife mitigation measures are integral parts of the selected action" that are necessary to mitigate for impacts to wildlife. ROD at 7. Without these "integral parts," NPS has no basis to claim that the Proposed Rule will protect resources on the Seashore.

Concern ID:

33734

CONCERN STATEMENT:

Commenters stated that the proposed rule makes no mention of the Disabilities Act or the Great Outdoor Initiative and that the proposed rule does not provide adequate recreational fishing opportunities as mandated by Executive Order 13474.

Representative Quote(s):

Corr. ID: 22214

Organization: *Not Specified*

Comment ID: 232472

Organization Type: Unaffiliated Individual

Representative Quote: I see

no mention of the Disabilities Act which your plan simply ignores. And with great concern to me is the fact that you ignore Executive Order 13474 which amended Executive Order 12962. I quote "(d) ensuring that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments, national marine sanctuaries, marine protected areas, or any other relevant conservation or management areas or activities under any Federal authority, consistent with applicable law." The major group of people who are being banned by your ORV plan are recreational fishermen!

Realizing that President Obama's Great Outdoor Initiative program must not apply to park service since you fail to realize the aspects of getting kids outdoors and

onto our beaches is important. If kids and parents cannot access then they stay indoors.

Corr. ID: 23160

Organization: American Sportfishing Association

Comment ID: 232509

Organization Type: Recreational Groups

Representative Quote: While the NPS states that they are protecting the seashore for future generations, it is sacrificing the livelihoods, enjoyment and culture of the present generation in its attempts to do so. This is directly contrary to promises made by the NPS upon creation of the unit; to Executive Order 13474 that states "that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks? or any other relevant conservation or management areas or activities under any Federal authority?"; and to the Obama Administration's recent America's Great Outdoors initiative to promote recreation in the outdoors. Again, we are opposed to this rule and the flawed process that led to its development, and urge NPS to reevaluate the rule to provide a more balanced plan that allows reasonable access to the beaches while also providing resource protection.

Concern ID:

34188

CONCERN STATEMENT:

One commenter stated that the permit requirements including watching a video, should be considered collection of new information and requires approval by the Office of Management and Budget.

Representative Quote(s):

Corr. ID: 259

Organization: *Not Specified*

Comment ID: 226461

Organization Type: Unaffiliated Individual

Representative Quote: I disagree with the statement that this rule does not contain any new collection of information that requires approval by OMB under the PRA of 1995. The NPS references to an OMB approval for special use permits; however, the analysis conducted by the NPS for that approval (OMB 1024-0026) fails to

adequately address elements of collection the NPS is specifically proposing with this proposed rule. Namely, the cost for the specific type of permit and the time burden imposed on the public for watching a short educational program related to use of the specific type of permit (Reference: "Do I need a permit to operate a vehicle off road?"). Accordingly, this proposed rule requires a new collection of information and OMB should require the NPS to rewrite the proposed rule so that includes a more detailed description of the collection of information requirements that the NPS is imposing on the American public. Details should include; Summary of collection information, Need for information, Proposed use of information, Description of the respondents, Number of respondents, Frequency of responses, Burden of response, Estimate of total annual burden, and Cost.

Concern ID: 34211

CONCERN STATEMENT: One commenter felt since the proposed rule raised Office of Management and Budget (OMB) legal or policy issues, that this agency may also have concerns about the rulemaking process.

Representative Quote(s): **Corr. ID:** 14930 **Organization:** *Not Specified*

Comment ID: 232807 **Organization Type:** Unaffiliated Individual

Representative Quote: The proposed rule continues the flawed process and it appears the NPS seeks to lock in bad policy making decisions. This rush to completion is unsettling and as stated in the preamble of the proposed rule, "OMB has determined that this rule raises novel and legal or policy issues.?" This leads me to believe the OMB questions many of the flaws in the rulemaking process, particularly the existing rules resulting from the consent decree.

RN1250 - Proposed Rule: ORV Permit

Concern ID: 33314

CONCERN STATEMENT: Commenters stated their objections to the permit system in the proposed rule, stating that costs may discourage use. They suggested changing the permit fee to either be free or to a lesser/minimal amount or to amounts that are similar to state fishing licenses or other National Parks. Specific permit fee suggestions ranged from \$10-50 annually, \$20 for 10 days, \$10-20 weekly and \$5 daily. One commenter recommended that permit fees be set as high as possible. One commenter recommended not limiting the number of permits available and another commenter recommended allowing holders of the America the Beautiful Pass to have free entry. Commenters also suggested that senior citizens, holders of the Interagency Senior Pass, residents, and property owners be exempt or offered discounted permit costs and not have to attend educational classes. Commenters recommended that only tourists should have to pay for a permit and should be reciprocal with other seashores.

Representative Quote(s): **Corr. ID:** 93 **Organization:** *Not Specified*

Comment ID: 219112 **Organization Type:** Unaffiliated Individual

Representative Quote: ORV fees should be set as high as possible to cut down on beach driving overuse, protect the environment and wildlife, lower automotive emissions and ensure pedestrian safety. A several hundred dollar fee would not be out of line with other ORV fees at national parks and seashores.

Corr. ID: 100 **Organization:** *Not Specified*

Comment ID: 225592 **Organization Type:** Unaffiliated Individual

Representative Quote: Please keep the permit price for ORV use reasonable as possible as vacations there have become more and more expensive over the years. We once were able to fish without a license, and bait and tackle have gone up as

well. A permit in the range of \$15-20 for a week would be reasonable, and \$50 for a yearly permit for those of us who come more than once a year. Also, it does not need to be for one specific vehicle, but should be for use among a family that may have more than one ORV and wishes to use a different vehicle at times during the week of their stay

Corr. ID: 147 **Organization:** *Not Specified*

Comment ID: 224118 **Organization Type:** *Not Specified*

Representative Quote: Please make these permits reciprocal with other seashore national parks.

Corr. ID: 211 **Organization:** *Not Specified*

Comment ID: 225712 **Organization Type:** Unaffiliated Individual

Representative Quote: Although it may be beneficial to license and educate beach drivers, the proposed \$70 for one week is high and would detract from the vacationers opportunities including reducing available revenues for other CHNS business such as lodging, dining and recreational equipment and supplies (e.g. fishing tackle, bait, groceries, etc) Since many visitors are only able to make one or two trips per year, the high cost of a yearly permit further reduce the number of visitors the CHNS will see each year. It is recommended to make the cost a nominal \$50 per year for a driving permit.

Corr. ID: 255 **Organization:** *Not Specified*

Comment ID: 226157 **Organization Type:** Unaffiliated Individual

Representative Quote: A reasonable fee to allow access to the beaches would be acceptable to me, but should not be in excess of \$50.00.

Corr. ID: 265 **Organization:** *Not Specified*

Comment ID: 226466 **Organization Type:** Unaffiliated Individual

Representative Quote: there should be no charge for the permit. Our federal taxes are paying for all government agencies to exist now. It should be a privilege for the government to serve the people not the other way around. Federal lands belong to the people of this country and should have access without having to pay.

Corr. ID: 305 **Organization:** *Not Specified*

Comment ID: 226673 **Organization Type:** Unaffiliated Individual

Representative Quote: The Cape Hatteras National Recreational Seashore has within its perimeters many villages and residents whose culture and very livelihoods depend upon beach access. At a minimum, these island residents should be excluded from this permitting regulation. Do not further burden this economically fragile community with unfair and unsubstantiated fees.

Corr. ID: 326 **Organization:** *Not Specified*

Comment ID: 226598 **Organization Type:** Unaffiliated Individual

Representative Quote: If there will be fees it should not be more than the state fishing license fee. a year is like 15 dollars for in state. and there are weekly license fee of 10 dollars for out of state.

Corr. ID: 339 **Organization:** *Not Specified*

Comment ID: 226564 **Organization Type:** *Not Specified*

Representative Quote: The cost of a permit or access fee should not be a consideration when one is budgeting for their family vacation or weekend at the beach. The fees at some seashores of \$150 to \$200 or more are excessive and are uncalled for in the Cape Hatteras Recreational Area. Any such permit or fee should not serve as a deterrent to visitation to the Park and to Hatteras Island.

Corr. ID: 343 **Organization:** *Not Specified*

Comment ID: 226749 **Organization Type:** Unaffiliated Individual

Representative Quote: With modern computer technology and generated forms the administrative costs to supply an annual permit should be well below \$20.00 for the rest of the public.

Vehicle inspections are not necessary if the applicant certifies that his vehicle and equipment satisfy the permit requirements.

Corr. ID: 772 **Organization:** *Not Specified*

Comment ID: 224138 **Organization Type:** *Not Specified*

Representative Quote: If fees are to be considered, they need to be limited to fees comparable to visiting any NPS managed property. They need to be affordable, comparable to state fishing licenses in costs. Preferably, this would use the existing NPS pass system and national passes such as the America the Beautiful Annual Pass would be accepted. Permits must be available for sale and issuance via the internet.

Corr. ID: 790 **Organization:** *Not Specified*

Comment ID: 223982 **Organization Type:** *Not Specified*

Representative Quote: in regard to (c)(2) ORV Permits, I think a reasonable and fair fee for access should be allowed. However, the fees should be commensurate with the need to cover the administrative cost of the Permit Process, without undue burden on the people that it will affect---in other words, plain and simple fees..... also, the permit process should allow both long term and short term fee periods, (e.g.- 1 and/or 1-2 week permits, monthly permits, yearly, etc., with fees tied to the needs of access and cost of administration.

Corr. ID: 8290 **Organization:** *Not Specified*

Comment ID: 230367 **Organization Type:** Unaffiliated Individual

Representative Quote: Cost of the permits should also be low and discounted to holders of an Interagency Senior Pass.

Corr. ID: 13642 **Organization:** *Not Specified*

Comment ID: 227768 **Organization Type:** *Not Specified*

Representative Quote: As for the permits, i can see paying \$10 for a 10 day pass like the fishing license is but thats about it.

Corr. ID: 14191 **Organization:** *Not Specified*

Comment ID: 230121 **Organization Type:** Unaffiliated Individual

Representative Quote: I would hope the fee for beach driving would be low enough so as not to impact low income families from enjoying the beach. Anything over \$30 for a week is excessive.

Corr. ID: 14966 **Organization:** *Not Specified*

Comment ID: 229022 **Organization Type:** Unaffiliated Individual

Representative Quote: Permits

If a permit system is to be instituted, it should be free or of minimal cost and should be readily available on the internet prior to visiting the Recreational Area. There also should not be a limit on permits available for a weekly or yearly basis. Residents, property owners, and business owners of the villages and towns contained within the Recreational Area should be exempt from permits or provided one free.

Corr. ID: 23193 **Organization:** *Not Specified*

Comment ID: 232157 **Organization Type:** Unaffiliated Individual

Representative Quote: 2)Fees, though needed must be within the range of lower and fixed income people so as not to exclude their participation
3)\$40.00 annual and @20.00 10 day fees must be the maximum.

Concern ID:
CONCERN
STATEMENT:

33321

Commenters provided multiple suggestions for implementation of the permit system. Suggestions included making permits and permit training available seven days a week and available on-line, in-person and at multiple locations through the area and at National Park Service locations across the country. One commenter recommended that once an individual has completed the education program that

they should not have to complete the education program in the following years. Concerns on in-person permitting included that is not cost effective and that funding could be spend on additional ramps and parking. They also felt that in-person permitting could cause undue delays especially during high tourist seasons and Memorial and Labor Day weekend.

Representative Quote(s):

Corr. ID: 30 **Organization:** *Not Specified*

Comment ID: 219097 **Organization Type:** Unaffiliated Individual

Representative Quote: Consider removing the requirement for "in-person" training and make it web based training followed by the payment of a fee and the issuance of a permit for a selected period of time.

Corr. ID: 30 **Organization:** *Not Specified*

Comment ID: 219096 **Organization Type:** Unaffiliated Individual

Representative Quote: The "in-person" education programs should be offered seven days a week at whatever facility is chosen to conduct the program and issue the permits. This will ensure that visitors to the Seashore that arrive on a Saturday or Sunday will be able to obtain the permit upon arrival to the area. Consider allowing other National Park Service locations across the country to conduct the "in-person" training and issue permits by choice of dates (for weekly permits) so that visitors arriving at the National Seashore already have the required permit upon arrival in the area. Once a person has completed the education program, it should not be necessary to complete the education program each year after before obtaining a permit.

Corr. ID: 703 **Organization:** *Not Specified*

Comment ID: 224952 **Organization Type:** *Not Specified*

Representative Quote: ORV permits must be available online in addition to in-person at NPS staffed facilities. Fishing licenses, boat registrations, hunting licenses, and Beach Driving Permits (Delaware) can be purchased quickly and conveniently online in many states. Making the CAHA ORV permit an in-person only process will create delays for many in obtaining the permit, especially during the Memorial Day to Labor Day period. Since many CAHA visitors come from out of state, convenience is an important issue. An inconvenient permit process will reduce public goodwill and respect toward the NPS, and could lead to people expressing anger and impatience during long wait times. Most people aren't going to want to wait for an hour to get a permit after driving for 8 hours and waiting to check into a house. Online availability will also save cost, through less need to hire overhead employees to administer the permit process. These cost savings could be used to add the additional ramps, parking, etc. outline in the proposed rule.

Corr. ID: 22222 **Organization:** Dare County

Comment ID: 231990 **Organization Type:** County Government

Representative Quote: While additional education and training is desirable in any endeavor, we believe any requirement to mandate training prior to the issuance of a permit is unwarranted in this case because of the effective job that has been done to promote and sustain reasonable use of the CHNSRA.

If NPS imposes a training requirement, over our objection, then the following practical issues must be considered:

Training and Permits Must Be Available Online

Visitors to the CHNSRA generally have one (1) week in which to pack in as much vacation as possible. Visitors to the Outer Banks most frequently arrive on Saturday afternoon and stay through the calendar week.

This pattern sets in place a weekly cycle that will choke the resources of NPS in handling a long line of incoming visitors each Saturday. Furthermore, the NPS

permit office would need to be open well into the evening hours in order to accommodate those traveling tremendous distances to reach Dare County.

Training Must Be Available At Multiple Locations

Training and permits, other than those available online, must also be available at multiple locations that are easily accessible for visitors. Permitting locations should include Bodie Island, Hatteras Island, and Ocracoke Island. To do otherwise will place a hardship and a burden on visitors that will ultimately discourage use of the CHNSRA.

Concern ID:

33330

**CONCERN
STATEMENT:**

Commenters suggested that the permit not be based on the calendar year, but instead one-year from the issue date. One commenter requested clarification on if a permit hold must repeat the education requirement for each and every permit obtained at different times.

Representative Quote(s):

Corr. ID: 276

Organization: *Not Specified*

Comment ID: 226594

Organization Type: Unaffiliated Individual

Representative Quote: If this requirement is levied, an annual permit should not be based on the calendar year. It should run for one year from the date of issue. That would be most cost effective for the public in \$s and time, avoiding full payment for partial years and waiting in line in early Jan to get a permit.

It is not clear if a permit holder must repeat the education for each and every permit obtained at different times. (eg 3 education times for 3 weekly permits issued a month or so apart, or education every year for each annual permit.

Concern ID:

33336

**CONCERN
STATEMENT:**

Commenters suggested that permits be issued for individuals not vehicles, and that one permit holder be allowed to use the same permit for multiple vehicles. Commenter also suggested specific forms that permits could take, such as hang tags in vehicles. One commenter felt that one permit should be required, rather than having to show up in person and take a class and then obtain a separate permit.

Representative Quote(s):

Corr. ID: 626

Organization: *Not Specified*

Comment ID: 225500

Organization Type: Unaffiliated Individual

Representative Quote: Are the drivers the ones required to obtain the permit or the vehicles? Or both?

I am against permitting both the driver and the vehicle. I am for educating the driver and permitting the driver only.

Corr. ID: 643

Organization: *Not Specified*

Comment ID: 225477

Organization Type: Unaffiliated Individual

Representative Quote: "(vi) Each permit holder must affix the permit in a manner and location specified by the Superintendent to the vehicle authorized for off-road use"

I protest this rule. If you require people to show up in person and take a class and sign then do not require the vehicle to hold the permit. This is double dipping. I have multiple vehicles. If I purchase a permit to drive on the beach then one is ENOUGH.

Corr. ID: 8290

Organization: *Not Specified*

Comment ID: 233870

Organization Type: Unaffiliated Individual

Representative Quote: I suggest using a hangtag like those the U.S. Forest Service uses for access to certain recreational areas in South Carolina, allowing up to two

personal ORV license plates to be listed on the hangtag for those of us who sometimes drive different vehicles depending on conditions.

Corr. ID: 13496 **Organization:** *Not Specified*

Comment ID: 231861 **Organization Type:** *Not Specified*

Representative Quote: Attaching the permit to a particular vehicle, instead of to a specific driver who has passed the educational requirement of the permitting system is particularly dubious, since anyone possessing a current drivers license could operate a permitted vehicle on the beach without knowing the "rules of the road". Also, for a family living within the boundaries of the seashore with multiple vehicles, getting permits for more than one vehicle could prove financially impossible. Permits should be assigned to a particular driver who has passed the NPS course. Permits could simply be number bearing placards hung from the rear-view mirror, which would also allow a family to transfer said permit to another vehicle in their possession.

Concern ID: 33337

CONCERN STATEMENT: Commenters recommended that all visitors to the Seashore pay for a permit, not just ORV drivers, except residents.

Representative Quote(s): **Corr. ID:** 463 **Organization:** *Not Specified*

Comment ID: 221982 **Organization Type:** Unaffiliated Individual

Representative Quote: A permitting process should be for all users or none of the users the same as in every other park in the NPS. You pay at the entrance when you enter or obtain a Golden Pass from NPS. Residents with proof would be exempt. The notion that only people accessing the beach by ORV should pay for the permits is discriminatory. The Seashore infrastructure is used by all and should be paid by all. Documented pedestrian closure infractions greatly exceed those of ORV. They need to share the burden for the cost of CHNSRA operations.

Concern ID: 33341

CONCERN STATEMENT: Commenters voiced concerns that they may not be able to access the Seashore after paying for a permit. One commenter stated that limitations could result in visitor conflict at popular ORV locations.

Representative Quote(s): **Corr. ID:** 58 **Organization:** *Not Specified*

Comment ID: 219095 **Organization Type:** Unaffiliated Individual

Representative Quote: the proposal indicates there will be limits on the number of cars allowed to access the beach at any given time. If a person pays for a permit and is then denied access they will have been denied a service for which they have paid.

Corr. ID: 5104 **Organization:** *Not Specified*

Comment ID: 227904 **Organization Type:** *Not Specified*

Representative Quote: There will also be no guarantee that trails will be open for use after purchasing a permit, in effect paying for nothing. Federal funds in the form of taxes are already used for the management of the NPS and the OBX; why should the public be charged twice for using what we have already paid for?

Corr. ID: 13486 **Organization:** Coastal Conservation Association North Carolina

Comment ID: 231941 **Organization Type:** Conservation/Preservation

Representative Quote: The rule states that there will be no limit to the number of "permits" issued to ORV users. However, the rule states that the superintendent may "temporarily limit, restrict or terminate access to (ORV) routes". The reasons for such termination were given as "resource protection, carrying capacity, and other management activities and objectives" Given the popularity of certain locations, i.e. Cape Point, Hatteras Inlet, Oregon Inlet and Ocracoke Inlet, during

specific times of the year, the impact on ORV users and fishermen would be very dramatic and result in significant confrontations in the park.

RN1350 - Proposed Rule: Vehicle and Equipment Requirements

Concern ID: 33306

***CONCERN
STATEMENT:***

Commenters questioned the legality of the equipment requirements and the right for NPS personnel to search and inspect ORVs for the proper equipment. Commenters requested that the cost burden of purchasing all of the required equipment be analyzed before the rule is approved. One commenter requested additional details for how the NPS will determine vehicles meet the requirements and that language be added to the proposed rule to make clear that an ORV driver entering or leaving ORV areas be required to show required equipment to NPS personnel.

Representative Quote(s): **Corr. ID:** 287

Organization: *Not Specified*

Comment ID: 226798

Organization Type: Unaffiliated Individual

Representative Quote: I strongly oppose and protest to the requirements that mandate that vehicles operating on the beach be required to carry special equipment without specifying what that special equipment is and the cost of such equipment. The economic impact of such required equipment must be evaluated as per law. Additionally I am strongly opposed to the requirement that authorized persons may inspect vehicles to determine compliance. Not enough information has been provided to explain this obvious attempt at invasion of privacy. As presented this is a blanket license for persons to stop, detain and search any vehicle at anytime without suspicion or cause of wrong doing.

This rule does not include the cost burden that the tax paying citizens will have to incur for the vague equipment listed. The rule also fails to explain the benefit, need or reason of having such equipment. Law enforcement personnel should only be permitted to follow the law and inspect a vehicle when there is evidence of law breaking. All text concerning vehicle equipment and vehicle inspection should be deleted. As written, it is unconstitutional.

Corr. ID: 14859

Organization: *Not Specified*

Comment ID: 229052

Organization Type: Unaffiliated Individual

Representative Quote: With regard to required equipment, I recommend that language be added to make it clear that an ORV driver entering, on or leaving the ORV area be required to produce for inspection said equipment to authorized NPS personnel, if requested by said personnel. To be clear, the operator of the vehicle shall be required to present to NPS personnel and not that NPS shall be given permission to search said vehicle to determine if the equipment is present.

Corr. ID: 22215

Organization: *Not Specified*

Comment ID: 232465

Organization Type: Unaffiliated Individual

Representative Quote: Vehicle and equipment requirements

D) How does NPS propose to insure all "permitted" vehicles meet these requirements especially part (v) short of a vehicle-by-vehicle inspection by NPS personnel? Those things are "common sense" things for those of us that have driven the beach and for those that have not, put it in the internet "training" and on the ramp sign age.

Corr. ID: 23205

Organization: *Not Specified*

Comment ID: 232106

Organization Type: Unaffiliated Individual

Representative Quote: Proposed 36 CFR 7.58 (c)(3) and (c)(4) - Vehicle equipment and Inspection:

The requirement for vehicles to carry a rescue kit of equipment in addition to what is normally part of their outfit is not supported by any analysis. In 40 plus years of beach driving I have never seen a vehicle that wasn't able to be extracted by either other operators or on rare occasions the services of one of the local tow operators.

Unless there is a significant number of problems relating to the lack of this gear on the vehicles driving on the beach there no reason for the rule. This does however impose a cost on park visitors which should be reflected in your analysis of the plan and a cost benefit calculation produced for review and public comment prior to implementation.

Concern ID: 33307

CONCERN STATEMENT:

Commenters requested clarifications on the type or purpose of the required equipment, including the requirement for a jack stand and the low pressure gauge. One commenter provided feedback on equipment that would be more useful, including a wooden plank or plywood sheet and a pressure gauge for 60 psi or less.

Representative Quote(s): **Corr. ID:** 117 **Organization:** *Not Specified*
Comment ID: 224997 **Organization Type:** Unaffiliated Individual
Representative Quote: Subsection 7.58 (c) (3) (v) Clarify if standard manufacturer jack and jack stand suffices.
Corr. ID: 276 **Organization:** *Not Specified*
Comment ID: 226593 **Organization Type:** Unaffiliated Individual
Representative Quote: With regard to the Jack Stand equipment requirement.

Here is what one commonly thinks of as a jack stand.

http://www.autozone.com/autozone/accessories/Tools-Garage-and-Equipment/Jack-Stand/_/N-2562

The requirement should be clarified that what is needed is some sort of support (eg, heavy piece of board) to keep the jack from sinking into the sand.

It makes little sense to require a jack but not require a functional spare tire, unless the intent of the jack is only to support the vehicle while one shovels sand from under it and not for use with a flat tire.

Corr. ID: 14961 **Organization:** *Not Specified*

Comment ID: 228029 **Organization Type:** Unaffiliated Individual

Representative Quote: (c) (3) (v)The "required equipment" list which appears to have been copied verbatim and without understanding from another area's seashore regulation as proposed is vague and contains unnecessary items while ignoring items that should be included. The vast majority of vehicles on the beach will never actually need any of the proposed items beyond satisfaction of NPS requirements. Indeed, the majority of "stuck" vehicles are freed by the effort of a "good samaritan" with the use of another vehicle and a tow rope or strap.

A "Jack stand", which by common definition is a 3 or 4 legged support normally used as a safety support of a vehicle on jacks, would be useless on the beach. A more useful device would be a wooden plank or metal plate of a minimum size (e.g., 2x12 plank at least 24" long or similar sized ¾" plywood sheet) would have more utility in use freeing a stuck vehicle.

A "low pressure" tire gage, intended to be used when airing down tires to pressures below 15PSI, would be destroyed by the average user attempting to use same on a tire inflated to greater than 20PSI. A more useful and reasonable requirement would be to have a gauge capable of pressure indication of 60PSI or less.

Concern ID: 33309

CONCERN STATEMENT:

Commenters requested the list of equipment be recommended and not required.

Representative Quote(s): **Corr. ID:** 8290 **Organization:** *Not Specified*
Comment ID: 230368 **Organization Type:** Unaffiliated Individual
Representative Quote: As for requiring special equipment to drive on the sand, I

really feel the NPA should stick to making "recommendations" for the novices and not make any "requirements" for anyone.

Concern ID: 33310
CONCERN STATEMENT: One commenter suggested that regulations be written more clearly to clarify that trailers with sleeping, cooking, and bathroom facilities are excluded.
Representative Quote(s): **Corr. ID:** 14859 **Organization:** *Not Specified*
Comment ID: 229054 **Organization Type:** Unaffiliated Individual
Representative Quote: I submit that the regulation be made clearer to remove ambiguity that the intended exclusion for travel trailers is intended to exclude those trailers which have permanently installed sleeping, cooking and bathroom facilities.

Concern ID: 33313
CONCERN STATEMENT: One commenter requested that all vehicle types should be allowed in order to reach fishing areas. Another commenter provided suggestions for additional requirements for ORVs, including helmets, protective clothing and special requirements for child-sized ORVs so that they are more visible. Commenters suggested that ORVs should be limited to the amount of noise each vehicle can make.
Representative Quote(s): **Corr. ID:** 3165 **Organization:** *Not Specified*
Comment ID: 229571 **Organization Type:** Unaffiliated Individual
Representative Quote: Restrictions should include caring for the safety of children, such as requirements for adequate protective clothing and helmets. Small child sized ORV's should have flags so they can be less obscured by terrain from being seen by faster adult size ORV's driven by teenagers or even experienced adults. Child sized ORV's often have no lights nor reflectors and should not be driven at night. All ORV's should have mufflers and restrict noise levels. There should be a use fees structure with incentives for low and non polluting ORV's such as LPG, hydrogen or EV's. There should also be a fines structure for violations, which would help pay for enforcement and to have first responders available.
Corr. ID: 3761 **Organization:** *Not Specified*
Comment ID: 229665 **Organization Type:** Unaffiliated Individual
Representative Quote: The first thing I would advise is that these vehicles be limited as to the noise that they make

RN1650 - Proposed Rule: Night Driving Restrictions

Concern ID: 33356
CONCERN STATEMENT: Commenters questioned the Seashore being closed to night driving even though there may be no turtle nesting activity occurring. Commenters also believed that the night driving restriction is not based on science, and as a result should not be included in the final rule. One commenter suggested that lack of ORV access at night will create safety issues by requiring fisherman to walk in the dark to access prime historic fishing grounds.
Representative Quote(s): **Corr. ID:** 142 **Organization:** *Not Specified*
Comment ID: 222189 **Organization Type:** *Not Specified*
Representative Quote: The final ORV plan's night driving restrictions are based on supposition rather than science and should not be included in the final plan. Never was there a reported incident of a turtle death caused by a vehicle, until 2010 with night driving restrictions already in place.
Corr. ID: 276 **Organization:** *Not Specified*
Comment ID: 226589 **Organization Type:** Unaffiliated Individual

Representative Quote: Extensive reasons are given in the introductory material for the proposed rule for not allowing motorcycles, ATVs, etc on the beach but no reason is given for removing vehicles from the beach during the curfew. The best a person can find are the rather weak reasons given in the FEIS Vol II pages C-59 and C-110.

The reasons given revolve around vehicles allowing human disturbance and lack of resources to enforce stationary vehicles on the beach. I submit that there is no prohibition of pedestrians on the beach at night causing human disturbance. If resources exist to enforce the possibility of human disturbance from pedestrians, they must be available to enforce stationary vehicles.

Corr. ID: 327

Organization: *Not Specified*

Comment ID: 226597

Organization Type: Unaffiliated Individual

Representative Quote: The ORV night driving restrictions are too severe and punitive to fisherman who depend upon access at night for recreational fishing. Lack of ORV access at night will create significant safety issues by requiring fisherman to walk miles in the dark to access prime historic fishing grounds. There was no scientific peer reviewed data presented to support a ban on night driving. Reasoning provided in this document behind the night driving restricted hours is to provide NPS personnel adequate time to drive the entire line of beach.

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 228359

Organization Type: Unaffiliated Individual

Representative Quote: The main difference in management related to turtles is the Consent Decree ban on night driving. The rationale was that lights cause false crawls. The average false crawl ratio under the consent decree (2008 through 8/10/11) is 0.88. This figure is not statistically different from the average for the period of 2000-2008 of 1.0. Furthermore, the first recorded instance of a turtle take by a vehicle occurred during 2010 when the night driving ban was in effect. Is it possible that without the ban the driver would have had his lights on and would have seen the turtle? If this was intentional, would the presence of other night time users served as a deterrent? I submit that the answer to the latter is a resounding YES.

Concern ID:

**CONCERN
STATEMENT:**

33357

Commenters provided several suggestions on how the night driving rule could be revised to be more accommodating to visitors, such as: allowing portions of designated routes to remain open to ORVs depending on the location of turtle nests; only closing the Seashore to night driving from 10pm - 6am, or from one hour after sunset to one hour before sunrise; providing language in the rule requiring vehicle operators to avoid turtles rather than closing entire routes; offering a night driving permit that can only be obtained after completing an education component; requiring headlights on all vehicles and reducing night driving speed limits to 15 mph; allowing self-contained vehicles to stay overnight; convening a local Federal Advisory Committee to approve any road closures due to nesting turtles; allowing nighttime access for vehicles specifically engaged in fishing; and allowing vehicles to remain stationary on the beach overnight.

Representative Quote(s):

Corr. ID: 100

Organization: *Not Specified*

Comment ID: 225591

Organization Type: Unaffiliated Individual

Representative Quote: As for limiting driving at night, I feel that a permit system allowing night driving that requires a short orientation class, like the proposed daytime permit, should be available and for longer times during the year than is currently proposed.

Corr. ID: 328

Organization: *Not Specified*

Comment ID: 226627

Organization Type: Unaffiliated Individual

Representative Quote: I oppose the night driving restriction hours and dates. Having static hours does not take into account daylight savings time and the changes in sunrise and sunset. Sunrise and sunset are key times for serious recreational fisherman. These restrictions should follow sunrise and sunset. Suggest one hour before and one hour after respectively.

Corr. ID: 633 **Organization:** *Not Specified*

Comment ID: 225598 **Organization Type:** Unaffiliated Individual

Representative Quote: Night driving restrictions are excessive and should follow normal seasonal dates memorial day and labor day or better yet do away with night driving ban and require headlights and 15mph

Corr. ID: 675 **Organization:** *Not Specified*

Comment ID: 224987 **Organization Type:** Unaffiliated Individual

Representative Quote: I propose the elimination of night driving restrictions and adopt the language below for turtles:

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

(B) When approaching or passing a TURTLE 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 TURTLES at any location on the beach at any time of year.

Corr. ID: 738 **Organization:** *Not Specified*

Comment ID: 224843 **Organization Type:** *Not Specified*

Representative Quote: The night time use hours are too restrictive. At the least should be 10pm-6am.

Corr. ID: 764 **Organization:** *Not Specified*

Comment ID: 224536 **Organization Type:** Unaffiliated Individual

Representative Quote: With regard to the table on night driving restrictions. The proposed rule table and explanatory question / answer section of the introductory material of the proposed rule indicate a designated ORV route can only be opened to vehicles at night 15 Sep to 15 Nov if NO turtle nest exists in a designated route. The words should be revised to indicate that portions of a designated route can be opened where no nest exists within the portion to be opened or access available to bypass the nest. For example, if not so revised literal application as written could result in a single nest 20 yds to the South on the new Ramp 32.5 closing the entire route between Ramp 32.5 and 34.

Corr. ID: 1463 **Organization:** *Not Specified*

Comment ID: 228381 **Organization Type:** *Not Specified*

Representative Quote: Also, there should be regulations allowing self-contained vehicles to stay overnight as in the Cape Cod National Seashore.

Corr. ID: 14819 **Organization:** *Not Specified*

Comment ID: 228218 **Organization Type:** *Not Specified*

Representative Quote: Delete the night driving statement:

"However, from September 15 to November 15, the Superintendent may reopen designated ORV routes at night if there are no turtle nests remaining."

Insert the following:

"However, from September 15 to November 15, the Superintendent will reopen designated ORV routes at night if there are no turtle nests remaining. The reopening applies to the entire seashore or to the designated routes where there are no turtle nests remaining. The reopening will be implemented within 3 days after it is determined there are no turtle nests remaining in each designated route respectively."

This reopening option is a practical approach to provide night-time ORV access without endangerment of sea turtles. September 15 to November 15 is the prime season for surf fishing for Red Drum, the saltwater fish of the state of North Carolina. These fish are known to feed in the surf zone during night-time hours.

Corr. ID: 23198 **Organization:** *Not Specified*

Comment ID: 232503 **Organization Type:** Unaffiliated Individual

Representative Quote: There is legitimate uncertainty regarding any benefit to threatened species resulting from prohibiting nighttime ORV access to the beaches. The Park Service should consider alternatives to total closure such as allowing nighttime access for vehicles specifically engaged in fishing, or allowing vehicles to remain stationary on the beach overnight. Such accommodations could be tailored to those areas which are especially popular or are unique in that they are renowned worldwide for the quality sportfishing experience they offer, such as Cape Point, the Wimble Shoals area, and the Inlet Spits. Further, the proposed restrictions impose onerous hardships for commercial beach fishing activities which must work their sets and gear in timely fashion. We note that Congress, in the enabling legislation, specifically addressed such activities. I recommend that the proposed Nighttime Closures be deleted from the Regulation, and failing that, that the aforementioned adjustments be incorporated in lieu of the existing proposal. I further recommend that the alleged benefits to the turtle hatchling survival rate be quantified, and if a significant improvement can't be documented, that the nighttime closure policy be terminated.

Concern ID: 33361

CONCERN STATEMENT:

One commenter stated that the night driving restriction will curtail other early evening and night time activities at the Seashore, such as night sky viewing, and beach fires.

Representative Quote(s): **Corr. ID:** 12982 **Organization:** *Not Specified*

Comment ID: 228349 **Organization Type:** Unaffiliated Individual

Representative Quote: Also, opportunities for night sky viewing, beach fires, and a wide range of other early evening or night time activities will be sharply curtailed. Finally, the time restrictions will make it impossible for the working resident to access the beach before or after work or at night as has been custom since long before the Cape Hatteras National Seashore Recreational Area was even suggested. Limiting the leisure time options of low income residents of the Island villages which exist as islands surrounded by Park Service property and Pamlico Sound and are totally dependent traditional access to the park's beaches is unconscionable.

Concern ID: 33362

CONCERN STATEMENT:

Commenters suggested prohibiting driving at night during sea turtle and bird nesting season.

Representative Quote(s): **Corr. ID:** 13576 **Organization:** SELC

Comment ID: 234045 **Organization Type:** Conservation/Preservation

Representative Quote: Mandatory buffers of predetermined, species-specific sizes to be implemented around nesting birds and turtles, nests, turtle hatchlings, and unfledged chicks, to prevent disturbance of the species by ORVs

Corr. ID: 13854 **Organization:** *Not Specified*

Comment ID: 230932 **Organization Type:** Unaffiliated Individual

Representative Quote: Prohibit driving at night during sea turtle nesting season. This is typically the time where females come to nest and hatchlings emerge.

RN1750 - Proposed Rule: Special Use Permits for Off-Road Driving, Temporary Use

Concern ID: 33322

**CONCERN
STATEMENT:**

Commenters stated that the requirement to drop off mobility impaired individuals and then remove the vehicle from the beach was unsafe or impractical and restricted access. Commenters stated that vehicles provided immediate shelter during a weather event and were necessary to remain on the beach in case of an emergency where the individual needed to be removed from the beach quickly. One commenter suggested that all legally registered handicap vehicles should be issued a special use permit.

Representative Quote(s):

Corr. ID: 119

Organization: *Not Specified*

Comment ID: 225606

Organization Type: Unaffiliated Individual

Representative Quote: As an individual that has a physical handicap, I am appalled at the suggestion in the proposed rule of having "mobility impaired individuals" driven on to the beach and then removing the transportation from them. This action would not only place undue hardship on the "impaired" individual, it would also place them at risk. ORV's provide more than just transportation on the beach. They also provide shelter and safety for beach users. The recognition of the fact that "mobility impaired individuals" have special needs and the provision of a special permit for these individuals is appreciated. However, requiring "mobility impaired" individuals to be dropped off and to use the beach without the safety and security of having their ORV on the beach with them is simply irresponsible. If a sudden storm or medical emergency were to arise, "mobility impaired" individuals would literally be in grave danger while awaiting the return of their transportation.

Corr. ID: 249

Organization: *Not Specified*

Comment ID: 226176

Organization Type: Unaffiliated Individual

Representative Quote: Special use permits (iii) Transportation of mobility impaired individuals; Special use permits should be issued to anyone who is in possession of a legally registered Handicap sticker from their state. There are many types of handicaps, many of which make it impossible or extremely difficult to access the beach. Making the driver of said vehicle immediately remove the vehicle presents a safety issue for the handicapped person. The driver must be allowed to keep the vehicle conveniently parked to allow a quick and orderly transport from the beach if the need should arise.

Corr. ID: 15161

Organization: Cape Hatteras Access Preservation Alliance

Comment ID: 232169

Organization Type: Recreational Groups

Representative Quote: Section 7 .58(c)(7) Special use permits for off-road driving, temporary use.

The Coalition supports the proposed rules for special use permits with the following exception:

(iii) - The proviso stating that "provided that, the vehicle must return to the designated ORV route or Seashore road immediately after the transport" raises significant safety concerns and should be eliminated. The purpose of paragraph (iii) is to provide an access option for mobility impaired individuals in pre-designated areas in front of villages during the time of year when ORV access is not otherwise permitted. This option will allow such individuals the opportunity to accompany others within their group to the village beaches. This provision will be an important option for many visitors who would not otherwise be able to enjoy the CHNSRA. Removal of the vehicle. However, is an unreasonable and unnecessary requirement of this special use. The fact that the individual for whom a temporary permit would be issued is mobility impaired recognizes that special care may be required. The driver of the ORV may be the impaired individual, or the primary care giver. The impaired individual may need constant attention by the care giver. Access to supplies within the vehicle may be needed. Quick and orderly transport from the beach (unexpected events, thunderstorm, etc.) may be needed. The remaining

language in paragraph (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 designated vehicle-free area in front of 0 vii/age;) is adequate to prevent abuse of the temporary use permit for what will be a small, but important subgroup of the overall visitor population.

Corr. ID: 22222 **Organization:** Dare County

Comment ID: 231999 **Organization Type:** County Government

Representative Quote: The proposed ORV rule outlines handicapped access to vehicle free areas (VFA's) in a way that is neither safe nor convenient for the physically challenged visitor.

The Proposed ORV Rule requires a permitted vehicle to transport a mobility-impaired individual to a predetermined VFA. After transporting the person, the vehicle is then required to exit the area leaving the handicapped person without immediate access to transportation.

For mobility-impaired individuals traveling with only one (1) companion, this puts them at risk by being left on the beach without a caregiver while the driver returns the vehicle to a designated parking area, which could be a considerable distance away. This is unsafe for many mobility-impaired visitors and tantamount to patient abandonment

Without a vehicle close by, the handicapped person is without a viable means of transportation in the event of a medical emergency, a sudden change of weather or temperature conditions, or need for toilet facilities.

Dare County is a popular destination for handicapped visitors. This is due, in large part, to the dedication that has been given to providing maximum access for those with mobility challenges.

Our mobility-impaired community includes those using wheelchairs, walkers, and canes. It also includes elderly visitors, many of whom are frail. Additionally, those coping with chronic medical needs could be hurt and caused to suffer by the proposed rule. For example, visitors who need the continuous administration of oxygen would benefit from having their vehicle nearby as an energy-generating source for their oxygen supply system.

Concern ID:

**CONCERN
STATEMENT:**

Representative Quote(s):

33326

Several commenters requested that special use permits for mobility impaired individuals should be valid for all VFAs, not just VFAs in front of villages.

Corr. ID: 15160

Organization: North Carolina Beach Buggy Association, Inc. (NCBBA)

Comment ID: 232125 **Organization Type:** Recreational Groups

Representative Quote: Special use permits should be offered for all VFAs and not only "in front of the villages". The establishment of VFAs closes vast areas within CHNSRA to all mobility impaired visitors. These proposed VFAs close areas that have traditionally been available to the mobility impaired as well as the healthy individuals capable of walking to desired locales. To not allow this access to continue, the NPS is discriminating against the aged and infirm members of the public.

Concern ID:

**CONCERN
STATEMENT:**

33332

One commenter stated that interpretation and enforcement of special use permits create an undue burden on the Superintendent and NPS personnel.

Representative Quote(s): **Corr. ID:** 465 **Organization:** *Not Specified*
Comment ID: 225626 **Organization Type:** Unaffiliated Individual
Representative Quote: Special use permits-
 Section (c)(7)(iii) regarding mobility impaired individuals is unnecessary.
 Interpretation and enforcement of this section would place an undue burden on the
 Superintendent and NPS personnel.

Concern ID: 33345

**CONCERN
 STATEMENT:**

One commenter suggested revisions for the proposed rule, including specific language prohibiting non-emergency use by nonessential vehicles within a resource closure and additional language for special use permits stating that they must adhere to all closures.

Representative Quote(s): **Corr. ID:** 13576 **Organization:** SELC
Comment ID: 232216 **Organization Type:** Conservation/Preservation
Representative Quote: Accordingly, we suggest that the Proposed Rule be amended as follows:
 (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 designated vehicle-free area in front of a village; provided that, the vehicle must return to the designated ORV route or Seashore road immediately after the transport. SUCH SPECIAL USE PERMITS ARE SUBJECT TO THE MANDATORY RESOURCE, SAFETY, SEASONAL, AND OTHER CLOSURES IMPOSED PURSUANT TO SUBSECTION (10). TEMPORARY NON-EMERGENCY USE BY NONESSENTIAL VEHICLES IS NOT PERMITTED WITHIN A RESOURCE CLOSURE

Corr. ID: 13576 **Organization:** SELC
Comment ID: 232215 **Organization Type:** Conservation/Preservation
Representative Quote: Although § 7.58(c)(7), entitled "Special use permits for off-road driving, temporary use," is taken from page 120 of the FEIS, it has been altered in such a way as to fundamentally change its meaning and effect. The Proposed Rule deleted the final sentence describing Alternative F's plan for special use permit management, which states, "Temporary non-emergency use by nonessential vehicles would not be permitted within resource closure." FEIS at 120 (emphasis in original). This final sentence in the FEIS's description of Alternative F is crucial to the balance between ORV users and wildlife protections, and should be restored in the final regulation.

While special use permits are an important and necessary component of Seashore use for NCDOT, fishing tournaments, and mobility-impaired visitors, the FEIS makes clear that those special needs do not trump resource closures. The final sentence describing Alternative F clarifies that any nonessential ORV users, even those with special use permits, are not allowed within resource closures. Omission of this point in the regulation may lead to confusion in the event of a conflict between a special use and a resource closure. The FEIS and controlling law are clear about which takes priority resource closures and the regulation should be, too. As explained above, federal law and Park Service policy dictate that a conflict between conservation and recreation must be resolved in favor of conserving

natural resources.

RN1850 - Proposed Rule: Commercial Fishing/Commercial Use

Concern ID: 33347

CONCERN STATEMENT: One commenter requested the Seashore be closed to commercial fishing. If not closed to commercial fishing, the commenter provided suggestions for commercial fishing permits including higher permit fees, requiring catch reports, and adherence to the same rules as recreational visitors.

Representative Quote(s): **Corr. ID:** 951 **Organization:** *Not Specified*
Comment ID: 227576 **Organization Type:** *Not Specified*

Representative Quote: Commercial Fishing: The National Seashore Park is just that a recreational area and should be closed to commercial fishing. If commercial fishing is allowed then a higher fee should be charged, catch reports by species should be required and the fisherman should be governed by the same rules as the recreational community.

Concern ID: 33348

CONCERN STATEMENT: One commenter requested a revision to the language in the proposed rule, stating that commercial fishing should be allowed only where there is neither a resource closure nor a lifeguarded beach.

Representative Quote(s): **Corr. ID:** 13576 **Organization:** SELC
Comment ID: 232217 **Organization Type:** Conservation/Preservation

Representative Quote: A small revision will give the section a meaning that is more in line with the reality of Hatteras beaches and with the intent of the FEIS. We suggest amending the section to read as follows:

(8) Commercial Fishing vehicles. The Superintendent may authorize a commercial fishing permit holder when actively engaged in authorized commercial fishing to operate a vehicle on a beach:

(i) Not designated for ORV use, provided the beach is NEITHER <not> subject to a resource closure NOR <and> is <not> lifeguarded; and (ii) 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.

The amendment brings the Rule in line with the intent of the FEIS and ROD, and allows qualified commercial fishermen to enter all areas except resource closures and lifeguarded beaches. That sentence makes clear that fisherman cannot enter resource closures, regardless of whether they are also lifeguarded, and cannot enter lifeguarded beaches, regardless of whether they are also resource closures. The small wording change will have major benefits for the safety of wildlife and pedestrians.

RN2060 - Proposed Rule: Implementation

Concern ID: 33352

CONCERN STATEMENT: Commenters questioned the timeline and funding for the implementation of improvements in the proposed rule. They stated that the plan, including permits should not be implemented until these improvements are in place and the funding source for these improvements clarified including conducting a cost study and knowing the funding source. One commenter questioned if additional environmental compliance was needed for these improvements and if potential

- legal action could delay the implementation of the improvements.
- Representative Quote(s):** **Corr. ID:** 126 **Organization:** NCBBA, OBPA
- Comment ID:** 226978 **Organization Type:** Recreational Groups
- Representative Quote:** How quickly will the New Interdunal Roads and additional Ramps be built into the current infrastructure? Has the NPS already been granted the necessary approval for funding for these improvements? If not, then permits should definitely not be an idea until we have some guarantee or assurance that we will have additional access via the infrastructure changes.
- Corr. ID:** 670 **Organization:** *Not Specified*
- Comment ID:** 224995 **Organization Type:** *Not Specified*
- Representative Quote:** I protest the implementation of any further restrictions or rulings from the interim plan until and unless funding clarification, management, creation dates and finished ramps are available for use and all clarification regarding yet to be created ramps, parking and access is made known to the public.
- Corr. ID:** 704 **Organization:** *Not Specified*
- Comment ID:** 224969 **Organization Type:** *Not Specified*
- Representative Quote:** In regard to vehicle-free areas (VFA) and the additional ramps and parking areas specified in the plan, I have these concerns:
- Is funding available to add the additional ramps, parking areas, and access points specified in the plan during 2011-2012?
 - Is an environmental impact study required to implement same, or this the impact study for the plan itself sufficient?
 - Does the NPS envision lawsuits from environmental organizations or landowners that would prevent the construction of these additional access points after the implementation of the proposed rule?
- Corr. ID:** 13398 **Organization:** *Not Specified*
- Comment ID:** 231340 **Organization Type:** *Not Specified*
- Representative Quote:** After reading over the Proposed Rule I am left wondering how The Rule will be enforced without hiring more NPS Officers. With several large projects being put on hold due to lack of funding I can not justify funding for additional NPS officers.
- The Bonner Bridge is in desperate need of repair and the Bodie Lighthouse is in the midst of work and is on hold.
- Not only will there be a need for NPS in the field there will also be a need for more administrative support due to the influx of processing and paperwork from the new permits.
- Corr. ID:** 22209 **Organization:** *Not Specified*
- Comment ID:** 232461 **Organization Type:** Unaffiliated Individual
- Representative Quote:** The table for the proposed new ramps is flawed. The NPS has not shown:
- a cost study
 - a timeline to identify when the new ramps will be built
 - the source of the funds to be used for the building of the new ramps
 - or, ensured that the "proposed" ramps will ever be built.
- The likelihood that the proposed ramps will be funded under the current state of the economy is at best, years away, but most likely- never! The NPS should not propose any new project of this magnitude without prior approval.
- Corr. ID:** 22213 **Organization:** *Not Specified*
- Comment ID:** 232420 **Organization Type:** Unaffiliated Individual
- Representative Quote:** It is my understanding that there is a proposed parking area to keep ORVs from parking on the beach; how much will that cost and where is the United States government going to get the money. If they do get the money how

long will it take to get the money and build the parking lots?

Corr. ID: 23180 **Organization:** *Not Specified*

Comment ID: 232269 **Organization Type:** *Not Specified*

Representative Quote: I am requesting that any rule changes or implementation be postponed until at a minimum, NPS and Department of Interior provide a plan or documentation as to how ORV access will be managed if the proposed new ramps, parking areas, pedestrian walkways and routes do not yet exist when the rule becomes final.

Concern ID:

33355

**CONCERN
STATEMENT:**

Commenters felt that the list of open ramps in the proposed rule is misleading because it includes proposed ramps that are not yet funded. Since these ramps are not yet funded, commenters felt they should not be included in the proposed rule and the proposed rule should not be implemented until these ramps are constructed. Some commenters requested that a specific fund be established to ensure the needed funds to construct the proposed ramps.

Representative Quote(s):

Corr. ID: 218 **Organization:** *Not Specified*

Comment ID: 226986 **Organization Type:** Unaffiliated Individual

Representative Quote: The table showing designated ORV routes should be changed to reflect ORV routes and access points as they were provided in 2007 under the interim management plan and as they currently physically exist. The table and the park service analysis for designated routes is flawed in that the table refers to ramps that do not exist and proposes to close public areas without an explanation why.

Corr. ID: 12982 **Organization:** *Not Specified*

Comment ID: 228338 **Organization Type:** Unaffiliated Individual

Representative Quote: With respect to the list of infrastructure improvements, there has been absolutely no evidence of progress on any of the above infrastructure improvements. This being the case, how does the park service expect to have these improvements in place by November 15 when the permit portion of the rule goes into effect? I submit that the implementation of the permit without the specified infrastructure improvements is a violation of the rule.

Corr. ID: 14748 **Organization:** *Not Specified*

Comment ID: 229309 **Organization Type:** *Not Specified*

Representative Quote: No particular VFA should be implemented until the added infrastructure (e.g. ramps, interdunal roads, parking, etc.) are in place to support a particular VFA. For example without a proposed added ramp, a single wildlife closure near an existing ramp can shutdown an entire ORV route.

Corr. ID: 15161 **Organization:** Cape Hatteras Access Preservation Alliance

Comment ID: 232175 **Organization Type:** Recreational Groups

Representative Quote: As stated in the preamble, the proposed rule relies on certain mitigation measures to address the potential negative impacts of the rule on the visitor experience and the local economy. The preamble states: "The proposed rule includes a number of measures designed to mitigate effect on the number of visitors as well as the potential for indirect economic effects on village businesses that profit from patronage by Seashore visitors using ORVs. These include: New pedestrian and ORV beach access points, parking areas, pedestrian trails, routes between dunes, and ORV ramps to enhance ORV and pedestrian access; a designated year-round ORV route at Cape Point and South Point, subject to resource closures when breeding activity occurs; and pedestrian shoreline access along ocean and inlet shorelines adjacent to shorebird pre-nesting areas until breeding activity is observed. In addition, we will seek funding for an alternative transportation study and consider applications for businesses to offer beach and

water shuttle services. These extra efforts to increase overall access and visitor use under the Selected Action, which we developed with extensive public involvement, should increase the probability that the economic impacts are on the low rather than high end of the range."

However, the proposed rule provides no timeframe or certainty that any of these measures will actually be implemented. Although we continue to believe that the stated mitigation measures are insufficient to address these potential impacts, what is clear is that the failure to implement these measures, or implementation of these measures only after the rule's restrictions go into effect, will have irreversible consequences. With these concerns in mind, the Coalition believes closures must not be implemented to historically accessible routes until the mitigating infrastructure has been completed. This condition should be explicitly stated in the rule.

Concern ID: 34202

CONCERN STATEMENT: One commenter suggested that if small businesses show signs of decreased revenue after 1 to 2 years of implementing the Proposed Rule, then the decision must be revisited and modified.

Representative Quote(s): **Corr. ID:** 923 **Organization:** Not Specified

Comment ID: 227551 **Organization Type:** Unaffiliated Individual

Representative Quote: The economic impact of this decision must be monitored. If after 1-2 years of implementation, the small businesses within the seashore area (Ocracoke, Bodie and Hatteras Islands) have suffered economic damage, then the decision must be revisited and modified.

RN2150 - Proposed Rule: Superintendent's Closures

Concern ID: 33349

CONCERN STATEMENT: Commenters suggested changing the wording under Section 7.S.S. (c) (10) for the Superintendent to "terminate access to routes or areas designated for off-road use or open access routes to areas previously closed to off-road use after taking into consideration" for the following factors: erosion, visitor use, and wildlife usage.

Representative Quote(s): **Corr. ID:** 15161 **Organization:** Cape Hatteras Access Preservation Alliance

Comment ID: 232173 **Organization Type:** Recreational Groups

Representative Quote: Proposed Section 7.S.S(c)(10) would give the Superintendent power to "terminate access to routes or areas designated for off-road use after taking into consideration" several factors. This section should be revised to state that the Superintendent may "terminate access to routes or areas designated for off-road use or open access to routes or areas previously closed to off-road use after taking into consideration" these factors.

The NPS discussed the value and importance of adaptive management techniques in the Final Environmental Impact Statement I Off-Road Vehicle Management Plan. For adaptive management to be successful, the Superintendent must have the latitude to not only terminate access, but to also open routes and areas as conditions change. The CHNSRA is a dynamic environment. Erosion and accretion patterns on the beaches often change from year to year, season to season, and sometimes month to month. As a result of these changes, visitor use patterns change. Wildlife usage patterns change. The Superintendent should have the discretion to authorize enhanced access when he or she determines that such enhanced access is appropriate based upon consideration of the relevant factors.

Corr. ID: 23160 **Organization:** American Sportfishing Association

Comment ID: 232507 **Organization Type:** Recreational Groups

Representative Quote: Proposed Section 7.5.8(c)(10) would give the Superintendent power to "terminate access to routes or areas designated for off-road use after taking into consideration" several factors. We believe this statement is a reflection of the overarching problem contained within this rule which focuses more on excluding uses than providing public access to public resources. ASA believes that the rule should also provide the Superintendent with the ability to open routes or areas previously closed to ORV use under an adaptive management process. A variety of factors may change that could reduce the effectiveness or utility of access closures. Therefore, the rule should provide the Superintendent with the discretion to reopen areas after considering all relevant factors.

RN2200 - Proposed Rule: ORV Routes - General

Concern ID: 33273

**CONCERN
STATEMENT:**

Commenters stated that the definition of "ORV Corridor" under the proposed rule does not sufficiently protect wildlife and provided specific language regarding the necessary minimum width of the corridor. Additionally the commenter requested that this section use "must" instead of "may" to make the actions required. The commenter also requested that Subsection 7.58 (c) (12)(ii) (ORV Routes) and Subsection 7.58 (c) (9) (Night Driving Restrictions) should have the same map availability requirements.

Representative Quote(s):

Corr. ID: 117

Organization: Not Specified

Comment ID: 224996

Organization Type: Unaffiliated Individual

Representative Quote: Subsection 7.58 (c) (10) Should have the same requirement for map as found in Subsection 7.58 (c) (12)(ii)

Corr. ID: 117

Organization: Not Specified

Comment ID: 224994

Organization Type: Unaffiliated Individual

Representative Quote: Subsection 7.58 (c) (9) Rule would benefit from publishing a map to show the routes.

Corr. ID: 13576

Organization: SELC

Comment ID: 232208

Organization Type: Conservation/Preservation

Representative Quote: (Proposed Rule § 7.58(c)(10) (emphasis added))

The use of the term "may" renders the section permissive rather than obligatory. As written, the Proposed Rule seems to allow the Superintendent to choose whether, when, and to what extent to impose any limits or restrictions on ORV routes for resource protection. It allows the Superintendent to choose not to impose any closures at all, even in the presence of, for instance, protected species' nests or chicks that would warrant imposition of buffers under the FEIS and ROD. By leaving the decision whether, when, and to what extent to limit or restrict ORV routes to the Superintendent's discretion, the permissive nature of this section's wording renders the carefully crafted wildlife protections and buffer requirements of the FEIS and ROD moot. The use of "may" in this section stands in marked contrast to the compulsory language used elsewhere in the Proposed Rule, such as "must", "is required", and "is prohibited".

Even the section identifying ORV routes says absolutely that they are "designated" as ORV routes, not, for instance, that they "may be designated" in the discretion of the Superintendent. Obligatory, rather than permissive, terms in this section are necessary for the Proposed Rule to implement the selected alternative.

Corr. ID: 13576

Organization: SELC

Comment ID: 232218

Organization Type: Conservation/Preservation

Representative Quote: Section 7.58(c)(1) defines the term "ORV Corridor" in a

way that is not sufficiently protective of wildlife, especially migrating and wintering shorebirds. Although we acknowledge that the definition in the Proposed Rule is similar to the definition in the FEIS, the FEIS also contained mandatory conditions related to imposing substantial "Species Management Areas", or "SMAs" throughout the Seashore, including at the points and spits, which modified the ORV corridors and affected the scope of the definition. References to those SMAs were erroneously omitted from the regulation. As a result, the definition of "ORV corridor" in the Proposed Rule has the effect of setting aside far more area for driving than it did in the FEIS, when it was clearly modified by the establishment of SMAs.

Additionally, throughout the Seashore, space at the toe of the Seashore's dunes is necessary year-round to give protected shorebird species adequate area to rest, roost, and seek shelter; the ocean intertidal zone, wrack line, and sandy beach landward of the high tide line are important for foraging, resting, and roosting shorebirds. The Park Service appears to have determined that an ORV corridor of 20 meters at the water's edge is sufficient, as evidenced by the way in which the FEIS and Proposed Rule both define a corridor when the beach is at least 30 meters wide. The definition of "ORV Corridors" should be based on the minimum width necessary, but measured from the high tide line, leaving the habitat at the toe of the dune, the intertidal zone, wrack line and immediately landward of the high tide line undisturbed by vehicles.

Concern ID: 33275
CONCERN STATEMENT: Commenters requested that popular fishing areas and beaches be open 2/7 and to reduce the size of the closures.
Representative Quote(s): **Corr. ID:** 123 **Organization:** *Not Specified*
Comment ID: 222150 **Organization Type:** Unaffiliated Individual
Representative Quote: Please keep the beaches open 24/7 and free.

There is room for ORV - birds - turtles. Please reduce the size of the closures.
Corr. ID: 13385 **Organization:** *Not Specified*
Comment ID: 231325 **Organization Type:** *Not Specified*
Representative Quote: The areas most popular to fishing should be opened all day, every day, 24/7.

Concern ID: 33276
CONCERN STATEMENT: Commenters requested a ban of ORVs within the Seashore.
Representative Quote(s): **Corr. ID:** 2224 **Organization:** *Not Specified*
Comment ID: 227981 **Organization Type:** *Not Specified*
Representative Quote: Regulations must be put in place to ban all recreational vehicles from the National Seashores.

Concern ID: 33614
CONCERN STATEMENT: Commenters requested that section 9 of the proposed rule (ORV Routes) be amended to state that these routes would be subject to mandatory resource, safety, seasonal and other closures. They felt these clarifications were necessary to make it clear that even if a route is open, it is still subject to certain closures. By not putting in these clarifications, commenters stated that the NPS would violate Executive Order 11644 and the Consent Decree.
Representative Quote(s): **Corr. ID:** 13576 **Organization:** SELC
Comment ID: 232213 **Organization Type:** Conservation/Preservation

Representative Quote: The section should therefore be amended to clarify that protection of natural resources predominates over access for ORV use. We suggest the addition of the underlined portions, so that the section reads as follows:

(9) ORV Routes. The following tables indicate designated ORV routes THAT MAY BE AVAILABLE FOR ORV USE SUBJECT TO THE MANDATORY RESOURCE, SAFETY, SEASONAL, AND OTHER CLOSURES IMPOSED PURSUANT TO SUBSECTION (10). The following ramps are designated as POTENTIALLY open to ORV use (ALSO subject to THE MANDATORY resource, safety, seasonal, or other closures IMPOSED PURSUANT TO SUBSECTION (10)) to provide access to ocean beaches: 2.5, 4, 23, 25.5, 27, 30, 32.5, 34, 38, 43, 44, 47.5, 49, 55, 59.5, 63, 67, 68, 70, 72. 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 Web site.

The performance-based standards proposed to be added to § 7.58(c)(10) above could also be added to this section.

In sum, the final regulation must be clear that ORV access is not guaranteed in the designated ORV routes, but rather that the natural resource protections of Alternative F of the FEIS will prevail by limiting the ORV routes and areas.

Corr. ID: 13576

Organization: SELC

Comment ID: 232211

Organization Type: Conservation/Preservation

Representative Quote: Section 7.58(c)(9) affirmatively designates ORV routes without any indication that ORV use in those areas may be occasionally subject to mandatory limitations, restrictions, or prohibitions, for instance, when the beaches are closed for reasons related to natural-resource protection and public health and safety.

This omission ensures that the Proposed Rule will violate controlling law. As discussed above, Executive Order 11644, 36 C.F.R. § 4.10, and the Consent Decree all require the final regulation to include provisions to protect natural resources from ORV impacts. Similarly, section 1.4.3 of the National Park Service's Management Policies 2006 explains that, "when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant." Likewise, the Cape Hatteras National Seashore enabling legislation provides that no "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 the area." 16 U.S.C. § 459a-2. Elevating ORV access above wildlife protections turns these provisions on their heads.

RN2250 - Proposed Rule: ORV Routes - Changes or Suggestions

Concern ID: 33350

CONCERN STATEMENT:

Commenters recommended that no permanent vehicle free areas be established and that latitude be given to the Superintendent to modify access based upon the changing conditions at the Seashore.

Representative Quote(s):

Corr. ID: 22222

Organization: Dare County

Comment ID: 231992

Organization Type: County Government

Representative Quote: Also, as the landscape of the seashore changes due to

weather and tide conditions the natural environment of the area changes as well. These changes can best be assessed, analyzed and adjusted as needed by the Superintendent.

We believe the Superintendents of the CHNSRA, including the current one, are dedicated professionals with the ability and experience to manage the seashore in a responsible way.

Dare County has supported giving flexibility to the Superintendent. This was a fundamental principle in our participation in the drafting of early guidelines for the seashore including the Interim Management Strategy. Flexibility for the Superintendent was a keystone of our position throughout the negotiated rulemaking process, the public hearings on the Draft Environmental Impact Statement (DEIS), and comments on the Final Environmental Impact Statement (FEIS).

NPS needs to trust and empower its Superintendent to adapt and alter corridors and routes.

Corr. ID: 22900 **Organization:** *Not Specified*

Comment ID: 232114 **Organization Type:** *Not Specified*

Representative Quote: VFA's (vehicle free areas) should be at the discretion of the superintendent. If a VFA is imposed on an area and pedestrians are not using it, the VFA designation should be lifted.

Concern ID:

**CONCERN
STATEMENT:**

33353

Commenters questioned the applicability and usefulness of seasonal restrictions. One commenter mentioned closing beaches during nesting season only while others recommended having vehicle free areas during the summer only. Commenters stated that seasonal dates should not be permanently established in the proposed rule, but determined annually by the Superintendent through consultation with Dare County, Hyde County and North Carolina Department of Transportation officials. Another commenter stated the seasonal restriction creates an unwarranted expansion of access restrictions on the village-front beaches during the off-season.

Representative Quote(s):

Corr. ID: 14461 **Organization:** *Not Specified*

Comment ID: 229138 **Organization Type:** *Not Specified*

Representative Quote: As an environmentalist and resident here in Buxton next to the Shoals and inlet I have a good idea of the situation. I can see closing these 2 areas during nesting season ONLY!

Corr. ID: 15070 **Organization:** *Not Specified*

Comment ID: 232182 **Organization Type:** Unaffiliated Individual

Representative Quote: Vehicle free areas (VFAs) should only be in effect during the summer. Summer VFAs should be eliminated if experience shows that they are underutilized.

Corr. ID: 15161 **Organization:** Cape Hatteras Access Preservation Alliance

Comment ID: 232171 **Organization Type:** Recreational Groups

Representative Quote: ORV access restrictions during the fall and spring seasons are excessive and punitive to the typical visitor during those periods. Historically, beaches fronting the villages within the CHNSRA have been opened to ORV access during the tourist "off-season", beginning September 15th and continuing until May 15th. Reduction of "off-season" access to the November 1st to March 31st period will effectively privatize these beaches for the fortunate few who can afford oceanfront homes and discriminate against those who cannot. Smaller crowds, fewer children, shorter days, less predictable weather, more wind, and

migrating fish all affect visitor use patterns on the beaches in front of the villages. Should use patterns of these beaches change significantly in the future, recognition of longer tourist seasons and shorter "off-seasons" may be appropriate. Recent trends do not yet reflect this need. The Coalition believes seasonal dates should not be permanently established by rule, but determined annually by the Superintendent through consultation with Dare County, Hyde County and North Carolina Department of Transportation officials.

Corr. ID: 23160 **Organization:** American Sportfishing Association

Comment ID: 232506 **Organization Type:** Recreational Groups

Representative Quote: In addition, the rule includes an unwarranted expansion of access restrictions on the village-front beaches during the off-season. ASA believes seasonal dates should not be permanently established by rule, but determined annually by the Superintendent through consultation with Dare County, Hyde County and North Carolina Department of Transportation officials.

Concern ID: 33354

**CONCERN
STATEMENT:**

Commenters requested that more areas of the Seashore be restricted to off-road vehicle use. These suggestions include at least half of the beach (33.5 miles), 2/3 of the Seashore, all but 5-20 acres, and 66 and 41 miles. One commenter suggested restricting beach driving to certain times of the year.

Representative Quote(s):

Corr. ID: 8251 **Organization:** *Not Specified*

Comment ID: 230353 **Organization Type:** Unaffiliated Individual

Representative Quote: If ORV use is to be allowed within the seashore, then a minimum of half of the beach, or 33.5 miles, should be available year round for non-ORV users and wildlife. In fact the share set aside for protection should be more than half since the noise and exhaust of ORVs drifts beyond the areas set aside for them. I would think that 2/3 of the beach should be protected.

Corr. ID: 13740 **Organization:** *Not Specified*

Comment ID: 232769 **Organization Type:** *Not Specified*

Representative Quote: Out of 67 miles of park, only 1 mile should be open to ORVs, if any. Any more would be unfairly disproportionately in their favor. Why does NPS want to allow ORVs to "run wild" through the environmentally critical park?

Corr. ID: 19868 **Organization:** *Not Specified*

Comment ID: 232001 **Organization Type:** *Not Specified*

Representative Quote: And, most troubling why is it that just 26 of the Seashore's 67 miles of beach is set aside for pedestrians and wildlife year-round while 41 miles is reserved for year-round and seasonal beach driving? If anything the numbers should be reversed!

Corr. ID: 19932 **Organization:** *Not Specified*

Comment ID: 232074 **Organization Type:** *Not Specified*

Representative Quote: At least 2/3 of the beach should be restricted from driving.

Corr. ID: 20687 **Organization:** *Not Specified*

Comment ID: 232029 **Organization Type:** *Not Specified*

Representative Quote: Instead of increasing the total mileage for the OVR's to 41 miles and only setting aside 26 miles for the PEDISTRIANS AND THE WILDLIFE, why not reverse it to less than 20 miles for the OVR's AND limiting it to only CERTAIN times of the year that they are allowed to drive them on the beach? That way the wildlife, birds that are nesting, sea turtles that are nesting and the pedestrians that are trying to just walk and enjoy the scenery are safe and free from being run over by these careless, and sometimes drunken drivers out on the beach.

Concern ID: 33360

**CONCERN
STATEMENT:**

Commenters requested that the closures in various areas of the Seashore such as ramps 30, 32.5, 34, and 38 be further explained with justification.

Representative Quote(s):

Corr. ID: 22211 **Organization:** *Not Specified*

Comment ID: 232483 **Organization Type:** Unaffiliated Individual

Representative Quote: The table proposes year round access from ramp 30 to a yet to be built ramp 32.5. Currently, year round access is provided between ramps 30 and 34 covering an area of 4.3 miles. The proposed rule fails to explain where ramp 32.5 would be located or why the National Seashore Recreational Area will be closed to recreational ORV users from a yet to be built ramp (32.5) to ramp 34 and when the proposed ramp will be built. Assuming 32.5 will be located 2.5 miles south of ramp 30 would mean that 1.8 miles of the National Seashore Recreational Area will be closed to recreational ORV users. This proposed rule fails to explain or justify why 1.8 miles of the National Seashore Recreational Area will be closed to recreational ORV users between ramps 32.5 and 34.

13. Currently year round ORV access is provided at ramp 34 from the northern boundary of Avon Village northward. The proposed rule fails to discuss access at ramp 34 or explain or justify why this area of the national seashore recreational area needs to be closed to recreational ORV users year round.

14. The table proposes year round access from ramp 38 to 1.5 miles south of ramp 38. Currently, year round ORV access is provided for 2 miles south of ramp 38. The proposed rule fails to explain or justify why .5 miles of the national seashore recreational area needs to be closed to to recreational ORV users year round.

Concern ID:

33370

**CONCERN
STATEMENT:**

Commenters discussed the need for increased ORV access at the following areas: Cape Point, South Point, Hatteras Inlet, the area west of ramp 43, from 0.4 miles North of ramp 43 to 0.3 west of the hook to the area west to ramp 45 and back through ramp 45 to the interdunal road, the area between ramp 34 north to ramp 32.5, ramp 1 to 0.5 miles south of Coquina Beach, ramp 23 south to the proposed new ramp 25.5, ramp 27 to ramp 30, proposed new ramp 32.5 to ramp 34, 0.3 miles west of Cape Point hook to the proposed new ramp 47.5, Bone Beach exit around spit to Pamlico Sound, the confluence of Pamlico Sound and Hatteras Inlet to the proposed new ramp 67, ramp 68 to .4 miles northeast of ramp 70, and the inlet shoreline along South Point, and travel corridors linking ORV areas.

Representative Quote(s):

Corr. ID: 170 **Organization:** *Not Specified*

Comment ID: 224791 **Organization Type:** *Not Specified*

Representative Quote: Access to areas like Hatteras Cape Point, the south point of Hatteras Island (the Hatteras Spit) and the south point of Ocracoke Island should remain available to people.

Corr. ID: 417 **Organization:** *Not Specified*

Comment ID: 225720 **Organization Type:** *Not Specified*

Representative Quote: Both of my parents are legally handicapped and the only way they can access the beach is via an ORV. The closing of ramp 23 will not allow my parents to access the beach as they have done for decades. The construction of a ramp 25.5 would provide access to a very narrow section of beach which is often inaccessible during high tides. By closing ramp 23, my parents and my family would be denied access to the beach we have been enjoying for more than 42 years and ramp 25.5 would provide no benefit to the users due to the narrow existing beach conditions.

Corr. ID: 465 **Organization:** *Not Specified*

Comment ID: 225630 **Organization Type:** Unaffiliated Individual

Representative Quote: ORV routes- (South Beach)

Hatteras Island year round route referred to as:

"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.

Ramp 47.5 to east Frisco boundary. "

This portion of Section 9 affects South Beach and it is not descriptive enough for the public to interpret the effect it will have. Nothing regarding this interdunal road is shown on any map that was reasonably associated with this rulemaking provision. Until this restriction is adequately explained, the entire beach from the "hook" to Frisco should be included in the "Year Round" designation.

Corr. ID: 465

Organization: *Not Specified*

Comment ID: 225631

Organization Type: Unaffiliated Individual

Representative Quote: ORV routes- (Ramp 55 to Hatteras Inlet)

Hatteras Island year round route referred to as:

'Pole Road from Museum Drive to Spur Road, with two spur routes to Pamlico Sound (one at the terminus of Spur Road and one commonly known as Cable Crossing) and four spur routes to the ORV route below.

Ramp 55 southwest along the ocean beach for 1.6 miles, ending at the intersection with the route commonly known as Bone Road."

Hatteras Island Seasonal route referred to as:

"Interdunal route south of the Intersection of Pole Road and Spur Road stopping at least 100 meters from the ocean or inlet shoreline"

These portions of Section 9 affect the Hatteras Inlet area and it is not descriptive enough for the public to interpret the effect it will have. Nothing regarding this interdunal road is shown on any map that was reasonably associated with this rulemaking provision. Until this restriction is adequately explained, the entire beach from Ramp 55 to the inlet, plus traditional sound side access should be included in the "Year Round" designation.

Corr. ID: 765

Organization: *Not Specified*

Comment ID: 224535

Organization Type: Unaffiliated Individual

Representative Quote: My comment is with regard to the designated ORV route from 0.4 miles North of Ramp 43 to 0.3 miles West of the hook. This route should be expanded to include the area West to Ramp 45 and back thru Ramp 45 to the interdunal road. This would reduce the possibility of Cape Point (probably the premiere surf fishing spot in the world) being cut off from vehicle access from a single wildlife closure just South of Ramp 44. There would at least be the possibility of vehicle access thru Ramp 45.

Corr. ID: 925

Organization: *Not Specified*

Comment ID: 227138

Organization Type: *Not Specified*

Representative Quote: We only want traditional use areas like Cape Point, South Beach and Hatteras Inlet kept open to vehicles.

Corr. ID: 13425

Organization: *Not Specified*

Comment ID: 231346

Organization Type: *Not Specified*

Representative Quote: Please reconsider the VFA limitations of the rule and permit vehicles where they have traditionally been allowed. Specifically in all of the areas around Cape Point, including the back roads, areas along the sound, Ramps 23 to Avon Pier and Ramp 55 to the Coast Guard Station and all the roads in between.

Corr. ID: 15161

Organization: Cape Hatteras Access Preservation Alliance

Comment ID: 232170

Organization Type: Recreational Groups

Representative Quote: Historically Recognized Routes have been excluded from the tables Eleven historically recognized and utilized ORV routes have been excluded from the tables. The Coalition believes these routes should continue to be

available for public access via ORVs. Several of these areas have been excluded with the intention to provide visitors access to areas without the presence of vehicles. We believe this intention is misguided and that if ORV access is denied, the closed areas will not be used. The underutilized beaches of the Pea Island National Wildlife Refuge, areas north of Coquina Beach, and areas temporarily closed to ORV access for resource protection but not pedestrian access clearly demonstrate that most visitors seek beaches accessible by ORVs. CHAPA has previously submitted photographic logs which document the sparse use of several areas closed to ORV access. If the NPS moves forward with its plan to close these areas that have historically been accessible to ORVs, it should revise the rule to provide for an adaptive management process pursuant to which the NPS could reopen these closures when the future visitor use patterns confirm the Coalition's position. These routes include:

1. Bodie Island - ramp 1 to 0.5 mi south of Coquina Beach
2. Bodie Island - eastern confluence of Atlantic Ocean and Oregon Inlet to the "bait pond"
3. Hatteras Island - ramp 23 south to proposed new ramp 25.5
4. Hatteras Island - ramp 27 south to ramp 30
5. Hatteras Island - proposed new ramp 32.S to ramp 34
6. Hatteras Island - 0.3 mi west of Cape Point hook to proposed new ramp 47.5
7. Hatteras Island - bone road beach exit around spit to Pamlico Sound
8. Ocracoke Island - confluence of Pamlico Sound and Hatteras inlet to proposed new ramp 59.5
9. Ocracoke Island - proposed new ramp 63 to 1 mi ne of proposed new ramp 67
10. Ocracoke Island - ramp 68 to .4 mi ne of ramp 70
11. Ocracoke Island - Inlet shoreline along South Point

Concern ID:

33380

CONCERN STATEMENT:

One commenter suggested increasing the ORV use area along the western boundary of the golf course recommending that the barrier be 100-yards further east.

Representative Quote(s):**Corr. ID:** 15109**Organization:** *Not Specified***Comment ID:** 230125**Organization Type:** Unaffiliated Individual

Representative Quote: At present the ORV beach driving barrier is between the part of the beach that fronts Robin Lane, on the western boundary of the golf course. The ORV barrier should be about 100 yards further east to the boundary of the golf course and the NPS airport property, as this will promote safety, allow reasonable accommodation of ORV and pedestrian users, and conform the rule to existing park regulations that provide that areas in front of privately owned village property not have seasonal summer ORV access in front of them.

Concern ID:

33383

CONCERN STATEMENT:

One commenter suggested rerouting vehicle traffic around nesting sites to established roads before moving them back to the beach.

Representative Quote(s):**Corr. ID:** 7163**Organization:** *Not Specified***Comment ID:** 230446**Organization Type:** Unaffiliated Individual

Representative Quote: Perhaps some compromise can be reached by rerouting ORV's around important nesting sites even if they have to temporarily leave the beach and drive on a road for a few minutes before returning to the beach.

RN2350 - Proposed Rule: Rules for Vehicle Operation**Concern ID:** 33277**CONCERN****STATEMENT:**

Commenters stated that rules pertaining to driving, parking, speeding limits and obstructing traffic are overreaching and without basis, and deny fishermen's rights to self-govern and apply common sense to certain situations. Commenters also suggested a seasonal variable speed limit.

Representative Quote(s):**Corr. ID:** 343**Organization:** *Not Specified***Comment ID:** 226753**Organization Type:** Unaffiliated Individual

Representative Quote: The public has operated satisfactorily with a 25 mph beach speed limit for generations. NPS has offered no valid reason for change to a 15 mph regulation. Low tide winter conditions provide a large safety margin to travel at higher speeds. There should be at least a seasonal variation in speed limits.

Corr. ID: 13249**Organization:** *Not Specified***Comment ID:** 231294**Organization Type:** Unaffiliated Individual

Representative Quote: Section 11 Rules for Vehicle Operation (ii) Parts (B)(C)(D)(F) Demonstrate that those who wrote this document are unfamiliar with the characteristics of the Cape Hatteras beach and the ORV practices necessary there.

B. An ORV driver needs to be aware of the destination of the pedestrian and must move to accommodate that person whether he/she/they are attempting to move towards the dune or towards the ocean.

C. It is frequently impossible to slow the vehicle to 5 miles/hour in a pedestrian or any other area. A beach vehicle requires greater speed than that to traverse the beach. Park Service vehicles do not do this.

D. There has been no scientific information to determine that there is a need for this rule. Frequently groups of users will gather together to visit, eat, swim, participate in sports, or other beach activity. A one vehicle depth is only necessary when located at a narrow beach. This situation is self regulating. No rule is necessary.

F. A 15 mph speed limit is unnecessary in open areas of the beach, especially in the off season or on remote beaches. One may wish to drive slowly to view the ocean or faster to get to where the birds show fishing possibilities. Traditional and cultural practices have evolved to take care of speed limits. Only those who are joy riding or testing the vehicle or driving recklessly and need attention by law enforcement officers break these common practices.

Corr. ID: 23039**Organization:** *Not Specified***Comment ID:** 232352**Organization Type:** *Not Specified*

Representative Quote: 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)." Spits and inlets are fish drawing magnets. Parking etiquette has already been established by those that come to an established area. Again it is not the government's right to take away the rights of the public to govern themselves in simple matters, parking being one of them. Peer pressure works wonders in these situations and thus frees up park personnel to perform more important duties.

Corr. ID: 23193**Organization:** *Not Specified***Comment ID:** 232160**Organization Type:** Unaffiliated Individual

Representative Quote: 6)Limiting the number of vehicles allowed on the sand isn't necessary. Only on occasion are vehicles double of triple parked and that is at specific places such as Cape Point. When this happens there is great cooperation among fishermen.

Concern ID:

33281

CONCERN STATEMENT: One commenter questioned how low speed vehicles (LSVs) are addressed under the proposed rule.
Representative Quote(s): **Corr. ID:** 14859 **Organization:** *Not Specified*
Comment ID: 229053 **Organization Type:** Unaffiliated Individual
Representative Quote: Low Speed Vehicles (LSV) or Neighborhood Electric Vehicles (NEV) are authorized for use with certain restrictions regarding signage on roadways within NC that do not include licensing and registration. How are those vehicles viewed under this proposed regulation? This is not clear.

RN2450 - Proposed Rule: Vehicle Carrying Capacity

Concern ID: 33283
CONCERN STATEMENT: Commenters suggested using the same vehicle limits that Chincoteague uses: a first come, first serve basis
Representative Quote(s): **Corr. ID:** 23078 **Organization:** *Not Specified*
Comment ID: 232487 **Organization Type:** Unaffiliated Individual
Representative Quote: limit the number of ORVs at any given time (consider the first-come-first-serve limit that Chincoteague uses.)

Concern ID: 33284
CONCERN STATEMENT: Commenters stated objection to establishing an ORV carrying capacity, noting that the capacity of the area regulates itself, and requested that this language be deleted from the proposed rule.
Representative Quote(s): **Corr. ID:** 13249 **Organization:** *Not Specified*
Comment ID: 231298 **Organization Type:** Unaffiliated Individual
Representative Quote: Section 13 Vehicle Carrying Capacity

Limiting the number of vehicles on any portion of the beach is unnecessary and doesn't work in the tradition and culture of CHNSRA. In some areas due to tide, closures, fishing activity, beach structure, family and group gatherings there may be a temporary need for a more dense arrangement of vehicles. Any crowding is self-limiting. Visitors choose the less populated areas and avoid the crowds. This is a treasured benefit of the recreational area. The freedom to select a beach of individual choice is a freedom that is cherished.

Corr. ID: 14822 **Organization:** *Not Specified*
Comment ID: 229042 **Organization Type:** *Not Specified*
Representative Quote: Rules for user parking are not needed, period. The statement "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." should be deleted.

Corr. ID: 14877 **Organization:** *Not Specified*
Comment ID: 228784 **Organization Type:** *Not Specified*
Representative Quote: Please consider that a vehicle carrying capacity of the length of the ORV route divided by 6 meters defines a parking lot, not a beach with natural, aesthetic, and scenic value.

Concern ID: 33286
CONCERN STATEMENT: One commenter stated that the carrying capacity in the proposed rule should be much lower and suggests no more than 130 ORVs per mile of Seashore.
Representative Quote(s): **Corr. ID:** 13576 **Organization:** SELC
Comment ID: 232220 **Organization Type:** Conservation/Preservation

Representative Quote: This section of the Proposed Rule states that 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)." According to the FEIS, this equates to 260 vehicles per mile. (FEIS at p. 81) For the reasons we more fully explained in our comments on the draft environmental impact statement and submitted on May 11, 2010, we believe that the carrying capacity in the final regulation should be much lower. The current limit of 260 vehicles per mile could result in approximately 10,500 ORVs on Seashore beaches at any given time, if the carrying capacity is maximized on all ORV routes. That is approximately four times the highest number of vehicles that has ever been recorded on Cape Hatteras's beaches in any given day.⁶ In addition, as the Proposed Rule is currently written, it is not clear that all those vehicles must be spread throughout the Seashore.

That number of vehicles would result in significant recreational conflicts and increased environmental impacts, including degradation of soil, sand, vegetation, and wildlife habitat in violation of Executive Order 11644, especially if allowed to pack into a few small areas of the Seashore. We recommend a much lower carrying capacity and clarification that the density applies per mile of the beach, and not to the entire National Seashore. We recommend the following revisions:

(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> 12 meters (<20>40 feet). THE DENSITY OF VEHICLES ON THE BEACH MAY NOT EXCEED 130 VEHICLES PER EACH MILE OF THE BEACH

Concern ID:

33288

CONCERN STATEMENT:

One commenter stated that the carrying capacity rule, as outlined in the proposed rule violates the Regulatory Planning and Review (Executive Order 12866) due to lack of review and the Unfunded Mandates Reform Act (UMRA) due to lack of information and review and violates the Civil Justice Reform (Executive Order 12988).

Representative Quote(s):

Corr. ID: 333

Organization: *Not Specified*

Comment ID: 226569

Organization Type: Unaffiliated Individual

Representative Quote: I strongly oppose sections § 7.58 Cape Hatteras National Seashore.(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).

There is no data nor justification given for such limits.

SE5500 - Economics

Concern ID:

33291

CONCERN STATEMENT:

Commenters disagreed with the region of influence (ROI), scope, and data used of the economic study. Commenters stated that using data for areas north of Bonner Bridge skews the actual impacts. One commenter suggested completing two studies; one for an ROI above and below Bonner Bridge while another commenter recommended focusing solely on the villages within the Seashore. One commenter stated that the economic impact analysis is flawed because there is limited information regarding the number of vehicles that access the beaches on Hatteras prior to 2003, resulting in a skewed baseline assessment and that the visitor and economic data was outdated and inaccurate. Commenters also stated that several local businesses were never consulted or contacted and that the estimates are based upon flawed sample data.

Representative Quote(s): **Corr. ID:** 218

Organization: *Not Specified*

Comment ID: 226995

Organization Type: Unaffiliated Individual

Representative Quote: The proposed rules are based on data that is flawed. The economic analysis failed to convey accurate information concerning the impact that ORV restrictions will have on the affected area. The discussion under this section correctly indicates that close to 100% of the rule's impacts would fall on small businesses, but incorrectly purports that vehicle free areas combined with increased parking for pedestrian access could increase visitation and help business. This is a false statement. More restrictions and less recreational freedom mean less people - not more.

Corr. ID: 344

Organization: *Not Specified*

Comment ID: 225998

Organization Type: Unaffiliated Individual

Representative Quote: The economic assessment that is a legally mandated supplement to the proposed regulation is incomplete. There is no cost-benefit analysis and there is no accounting of the full costs-direct, indirect, present or future. The Costs of new infrastructure, as well as, lost opportunity costs and economic impact associated with the permits to access by ORV are not evaluated or estimated. Moreover, the currently published three part economic analysis does not provide the information necessary to serve as a basis for a meaningful and substantive cost analysis.

Corr. ID: 8292

Organization: *Not Specified*

Comment ID: 231318

Organization Type: Unaffiliated Individual

Representative Quote: On January 18, 2011 President's Obama signed an executive order to review all federal regulations to ensure they are needed, conducive to maintaining and creating jobs and assisting in reducing the deficit. With this, I would have expected the National Park Service to include in the analysis the Agency's cost to implement these regulations and a cost/benefit analysis to the Hatteras Island community and its small businesses. The 81 page "Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore" does not contain this information; it is for a much larger area, has data that is 3+ years out of date and has no mention of Federal or State costs.

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 228352

Organization Type: Unaffiliated Individual

Representative Quote: There are three flaws in the RTI International cost benefit analysis. The first is the definition of the ROI. In the Interim Plan, the park service defined the ROI as Outer Banks Dare and Hyde Counties. Comments demonstrated that this broad definition of the ROI served to minimize the impact on the 4,000 residents of the 8 villages of Hatteras and Ocracoke Islands with economies that are dependent upon park visitation. RTI International used the same flawed definition of the ROI as was used by the park service in the Interim Plan. As evidenced by the statements presented below, using a wider ROI guaranteed the same result as achieved in the Interim Plan--that is, major negative impacts to the residents of Hatteras and Ocracoke Islands would be summarily dismissed.

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 228355

Organization Type: Unaffiliated Individual

Representative Quote: Third, RTI International used the a model to forecast economic impact that cannot possibly reflect the realities of the situation. The model used does not reflect the unique geography of Hatteras and Ocracoke Islands and the resultant lack of close substitutes for employment and leisure. With respect to geography, the 8 villages are surrounded either by park owned property or Pamlico Sound--each village is an island with the park being the sea. As such, the primary source of economic activity is park visitation.

Corr. ID: 12982

Organization: *Not Specified*

Comment ID: 228357 **Organization Type:** Unaffiliated Individual

Representative Quote: RTI does look at visitation but states that more aggressive resource protection policies have only been in effect since 2007 (3 years as of the writing of the cost benefit report) thus, RTI concludes that there is insufficient data to make a reliable estimate of average visitation.

This is not accurate. Instead, the data clearly shows that while visitation has been somewhat variable, each pullback has been followed by a new growth spurt. The most recent growth spurt (1997-2003) resulted in an average of 2.67 million visitors per year. Contrary to RTI, more aggressive resource protection policies began in 2004 or 7 years ago not 3 years ago. At this point, visitation dropped to 1993 levels. As restrictions have continued to increase, visitation has remained at or below 1993 levels. That is, this new level of visitation has persisted throughout the 7 years of aggressive management policies which is enough time to make an accurate estimate of annual visitation.

This new level of visitation represents a 17.4% decline from the most recent growth spurt and a 24% decline from the last peak in 2002. Based upon the fact that the local economy is almost "exclusively" dependent upon tourism resulting from park visitation, this substantial "long term" decline has drained local businesses' emergency reserves. As such businesses are increasingly questioning their long term viability. Other businesses have closed and foreclosures on rental properties are commonplace. Businesses made these point quite clear when surveyed but RTI seems to have ignored it.

Corr. ID: 13504 **Organization:** *Not Specified*

Comment ID: 231877 **Organization Type:** *Not Specified*

Representative Quote: Also, to include the economic data from areas of Dare County north of the Bonner Bridge artificially skews the numbers for the contiguous Hatteras and Ocracoke Islands in an upward fashion, thus wrongly asserting that the economic impacts to these geographically separate areas are not as bad as reality has shown them to be.

Corr. ID: 14191 **Organization:** *Not Specified*

Comment ID: 230119 **Organization Type:** Unaffiliated Individual

Representative Quote: The economic impact also examines the whole of Dare and Hyde Counties. The reduction in business will impact mainly Hatteras and Ocracoke Islands. The economies of these areas are vastly different from mainland Hyde County and the Northern Villages of Dare County. Mainland Hyde is 3 hours from Ocracoke by Ferry, Manteo is over an hour drive from Hatteras. The Economic Impact should have focused on the most impacted areas of Ocracoke, Hatteras, Frisco, Buxton, Avon, Rodanthe, Waves and Salvo. Residents of Hatteras and Ocracoke Island have few alternative options for employment. Thoughts that restrictions in beach access will prompt the creation of alternative employment are not based on facts but idle speculation.

Corr. ID: 14191 **Organization:** *Not Specified*

Comment ID: 230118 **Organization Type:** Unaffiliated Individual

Representative Quote: The elemental flaw in the economic impact analysis is that the NPS cannot say how many vehicles used the beaches on Hatteras Island prior to increased access restrictions. These essentially began in 2003 and have increased every year. It was 2009 or 2010 before an actual study over a long period of time was done on actual beach ramp usage. Prior to that usage statistics are based on a traffic counter at Whalehead junction which is 60 miles from the heart of Hatteras Island. If you do not know how many vehicles accessed the beach in 2002 you do not have a legitimate baseline to start your economic analysis. The Interim Plan and the Consent Decree have had economic impacts that factored into the baseline used in the EIA.

This is flawed logic and underestimates the impact of access restrictions.

Concern ID: 33293

CONCERN STATEMENT: Commenters stated that the small business survey conducted for the proposed rule was not released to the public prior to the public comment period, and therefore the public never had the chance to review it and make informed comments on it.

Representative Quote(s): **Corr. ID:** 22222

Organization: Dare County

Comment ID: 232004

Organization Type: County Government

Representative Quote: The Proposed ORV Rule says it conducted a "small business survey." This effort, by RTI, was never concluded or published prior to the close of public comments on the Environmental Impact Statements. This prevented the public from having access to the survey and being able to make informed comments about it.

Concern ID: 33296

CONCERN STATEMENT: Commenters stated that the economic impact requirement of \$100 million is not a fair measurement for the area, and should be decreased based on the area to which the proposed rule will apply.

Representative Quote(s): **Corr. ID:** 13479

Organization: *Not Specified*

Comment ID: 231830

Organization Type: *Not Specified*

Representative Quote: I also found it troubling that with reference to the "Benefit-Cost Analysis of Proposed ORV Use Regulations" DOI certified that this document will not have a significant economic effect on a substantial number of small entities. Then I see a figure of 100,000,000 dollars being used. With the run-a-way spending and businesses laying off and going under, this is to me, very disturbing.

Corr. ID: 13585

Organization: *Not Specified*

Comment ID: 231930

Organization Type: *Not Specified*

Representative Quote: OMB's economic impact requirement of \$100 million is not a fair measurement for this area. This is a wilderness area with a sparse population in just a few villages. The economic base is very small, supplemented by the tourists who visit only during a short period of time during the calendar year. The measurement of a particular rule's economic impact should be scaled based on the area to which the proposed rule will apply. The expansion of Vehicle Free Areas will result in fewer ORV users. In an economy that is very small, that will have a large negative effect.

Corr. ID: 15001

Organization: *Not Specified*

Comment ID: 229110

Organization Type: Unaffiliated Individual

Representative Quote: The NPS is required to have a Regulatory Impact Analysis of this proposed rulemaking. The assertion that the impact of this proposed rule is less than \$100 million is absurd. The devastating economic impact of the closures that have taken place to date and the vagueness of the conditions that would allow the Superintendent to close ORV access under similar circumstances. I strongly encourage NPS to research and publicize the decrease of gross earnings of local businesses and local/state sales tax revenues during the closure period (2007 through present day). I believe that evidence will show significant economic impact to local residents.

Concern ID: 33298

CONCERN STATEMENT: Commenters noted the role that ecosystem and the associated tourism play in the economy of the Seashore, and protection of this environment would be beneficial to the Seashore's economy.

Representative Quote(s): **Corr. ID:** 6222

Organization: *Not Specified*

Comment ID: 230943

Organization Type: Unaffiliated Individual

Representative Quote: Any expansion of ORV within the Seashore would be detrimental to wildlife, which also bring in tourist dollars to the area. Indeed, our family frequently bring our guests to the Pea Island Wildlife Sanctuary, Buxton Woods and other Nature Conservancy properties in the area, as well as taking part in the annual "Wings Over Water" bird watching festival. If ORV access is increased, it will have a measurable impact on wildlife, and directly on the ability of residents such as ourselves and visitors to enjoy the natural beauty of the Outer Banks.

Corr. ID: 6932

Organization: *Not Specified*

Comment ID: 230962

Organization Type: Unaffiliated Individual

Representative Quote: Supporters of unlimited ORV access wail about impending economic doom, despite the fact that Dare County has seen an increase in revenues from visitors under the interim plan. Eco-tourism is on the rise and would benefit from sensible ORV limits.

Corr. ID: 10532

Organization: *Not Specified*

Comment ID: 231179

Organization Type: Unaffiliated Individual

Representative Quote: Motorized vehicles being driven on lands critical to the survival of nesting birds and turtles serves no purpose, detracts from the esthetic value of the natural landscapes, and endangers the survival of not only these species but diminishes the economic benefits derived in the local surrounding communities that depend on green, sustainable eco-tourism.

Concern ID:

33300

CONCERN STATEMENT:

One commenter stated that mitigation measures should not have been included in the economic analysis because they are unfunded and the timeline for construction is unknown.

Representative Quote(s):

Corr. ID: 14191

Organization: *Not Specified*

Comment ID: 230120

Organization Type: Unaffiliated Individual

Representative Quote: The Rule Proposes additional ramps and access roads to allow access when areas of the beach are closed and minimize the impact of additional restrictions. The reality is that these changes are not funded nor are the likely to be funded given the current environment in Washington. The economic analysis should not have included these as mitigating factors as they are unlikely to happen.

Concern ID:

33305

CONCERN STATEMENT:

Commenters felt that the economic analysis provided for the proposed rule is flawed because it does not address the "ripple effect" to the local economy and is based on faulty assumptions about visitor spending. Commenters felt that local businesses and the local economy will suffer as a result of the proposed rule.

Representative Quote(s):

Corr. ID: 13584

Organization: *Not Specified*

Comment ID: 231996

Organization Type: Unaffiliated Individual

Representative Quote: The proposed rule as written will have even further economic disaster than the CD. The NPS should lend more weight to the people affected by this proposed rule. The final version of the RTI Benefit-Cost analysis is deficient and limited by its own admission, only a 47% response rate of a small and biased sample population. Again the NPS is going ahead with total disregard of the people they are supposed to be serving.

Corr. ID: 22199

Organization: *Not Specified*

Comment ID: 232280

Organization Type: Unaffiliated Individual

Representative Quote: I have serious doubts in the assumptions contained in the "Benefit-Cost Analysis." Assuming some of the restrictions contained with the proposed rule and the proposed permitting fees, I and many other fisherman will likely limit the number of visits to the Seashore or simply travel to other less

restricted areas. The assumption that an increase in Vehicle Free Areas might increase overall visitation is doubtful and plays Russian Roulette with local family businesses.

Corr. ID: 23041

Organization: *Not Specified*

Comment ID: 232344

Organization Type: *Not Specified*

Representative Quote: In referring to your own studies under Plan "A" (p574) at the extreme worse, only 135 jobs would be lost causing long term minimal effect. Under Plan "F", 400 jobs (p.594) will be lost. Neither mentions how this will have the "ripple effect" to the local economy for those that live from paycheck to pay check. All of the studies are put into a model that predicts out comes, but not real life. Just as an example, with the statistics being drawn from the 2000 census (http://mcdc2.missouri.edu/websas/dp_products_overview.shtml) there was a working population of 2241 and a total of 3371 capable of working; this gives 66% of this population working. Now if we go under Plan "A", 62% would remain working or 94% of the original population, under Plan "F", 55% would remain working or 83% of the original population. The difference in the un-employed is 6% under Plan "A" and 17% under Plan "F". This is a difference of 11%, would have a big ripple effect to the both the local and regional economy.