

0031997

From: [Russ Wilson](#)
To: [Mark_Lawyer@ios.doi.gov](#); [Fay_Iudicello@ios.doi.gov](#)
Cc: [John_Strylowski@ios.doi.gov](#); [Mike Murray](#); [Doug Wetmore](#); [JASON_WAANDERS@sol.doi.gov](#)
Subject: Fw: EOP questions on Hatteras rule
Date: 01/13/2012 01:20 PM

Please see text below.

Russel J. Wilson
Chief, Regulations and Special Park Uses


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----- Forwarded by Russ Wilson/WASO/NPS on 01/13/2012 03:17 PM -----

**Mike
Murray/CAHA/NPS**

01/13/2012 03:11 PM

To: Russ Wilson/WASO/NPS
cc: AJ North/WASO/NPS@NPS, Cyndy Holda/CAHA/NPS@NPS, stephan_nofield@ios.doi.gov
Subject: Re: Fw: EOP questions on Hatteras rule 

See responses below.

Mike Murray
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Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
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▼ [Russ Wilson/WASO/NPS](#)

**Russ
Wilson/WASO/NPS**

01/13/2012 02:26 PM

To: Mike Murray/CAHA/NPS@NPS, Cyndy Holda/CAHA/NPS@NPS
cc: stephan_nofield@ios.doi.gov, AJ North/WASO/NPS@NPS
Subject: Fw: EOP questions on Hatteras rule

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----- Forwarded by Russ Wilson/WASO/NPS on 01/13/2012 02:26 PM -----

"Lawyer, Mark"
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01/13/2012 02:14 PM

To "Wilson, Russel J." <Russ_Wilson@nps.gov>, "North, Arthur" <AJ_North@nps.gov>
cc "Shackelton, Steve" <Steve_Shackelton@nps.gov>
Subject EOP questions on Hatteras rule

Russ,

I just spoke with Nathan. By way of background, he says OMB is satisfied with the rule as is and is ready to conclude review. The OIRA review process provides that, when OIRA is about to conclude review, the desk officer distributes the documents one last time within EOP, with an admonition to "speak now or forever hold your peace." In this case, persons within EOP (but outside OMB) who are not familiar with the issues raised questions. Assuming we cannot resolve this by other means (we are working on that), we need to bring these people quickly up to speed and respond to their questions.

Here are the questions:

- 1) What is the change in area available to Off Road Vehicles (ORVs)?

The rule designates 28 miles (42%) of Seashore beaches as year-round ORV routes, 13 miles (19%) as seasonal ORV routes (i.e., half the year 42% of the Seashore's beaches is designated for ORV use, and half the year 61% is designated), and 26 miles (39%) as vehicle-free areas (i.e., half the year 58% is designated as vehicle free and half the year 39% is vehicle free. This distribution of uses will provide a wide variety of visitor experience opportunities while

protecting federally- and state-listed shorebirds and sea turtles that nest on Seashore beaches. In the absence of the rule, no areas are legally authorized for ORV use; however, (prior to the lawsuit and consent decree) ORVs have previously been allowed to access large portions of the Seashore.

2) What is the management environment that this rule replaces? He referred to a consent decree and wanted to know if the current management of the Cape Hatteras Seashores arises from the Bush administration or some other administration. Essentially, what is the current management arrangement and how did it arise (and in which administration)?

Executive Orders 11644 (1972) and 11989 (1977) require Federal agencies permitting ORV use on federal lands to publish regulations designating specific trails and areas for this use to protect natural and cultural resources, minimize user conflicts and provide for public safety. NPS implemented these orders in 36 CFR 4.10, which provides that designated ORV routes and areas shall be promulgated as park-specific special regulations. NPS has not previously designated ORV routes and ORVs have been allowed to access large portions of the Seashore. The U.S. District Court of Eastern North Carolina issued an order in July 2007 stating that in the absence of an ORV plan and regulation for the Seashore, ORV use is not authorized and therefore is prohibited. NPS was subsequently sued by environmental groups. In April 2008, the case was settled with a consent decree that was signed for DOI by then Assistant Secretary for Fish, Wildlife and Parks Lyle Laverty. The Seashore has operated under the consent decree, which established requirements for protecting shorebird and turtle nests and deadlines for NPS to complete an ORV management plan and special regulation. The deadline for the final rule to become effective is February 15, 2012. In essence, the rule is necessary to authorize and manage ORV use at the Seashore and to replace the temporary management measures imposed under the consent decree with a long-term plan and regulation.

3) What is the balance between ORV interests and environmental interests in the comments? Did we receive approximately equal responses? More of one than another? Is our response balanced between the competing interests?

in general, public comments were highly polarized on both the draft ORV management plan/ environmental impact statement (DEIS) and the proposed rule. The vast majority of commenters thought that the plan/EIS and rule are either too lenient in allowing too much ORV use or too strict in regulating/limiting ORV use. Neither side was happy with the plan or proposed rule. On

the DEIS, about 15,000 comments were received in which approximately 10,000 thought the NPS preferred alternative allowed too much ORV use and about 5,000 comments (from less than 5,000 commenters since some ORV advocates submitted as many as 5 or more comments each) thought the NPS plan was too restrictive of ORV use. NPS received 21,000 comments on the proposed rule, which were similarly polarized (i.e., commenters either thought the rule was too lenient or too strict; and again some ORV advocates submitted 5 or more comments each). It is difficult to characterize the relative proportion of "too lenient" vs. "too strict" comments on the proposed rule because use of the www.regulations.gov website for the rule did not have the same comment analysis capability as the NPS Planning, Environment, and Public Comment (PEPC) website which facilitated the comment analysis on the DEIS.

You need to assume these people have not read the documents (because they haven't). Nathan has asked for written responses. If you can get the responses to me, I'll get this back to Nathan ASAP and try to get this wrapped up.

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