

Feedback on EIS Proposal To form an Off-Road Vehicle Management at Cape Hatteras National Seashore

2008 11Nov 05 - ORV EIS Alternatives

(<http://parkplanning.nps.gov/document.cfm?parkID=358&projectId=10641&documentID=25051>)

TO: Sandy Hamilton, Environmental Quality Division NPS (sandra_hamilton@nps.gov)
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FROM: Jim Lyons

DATE: December 22, 2008

I appreciate the work that has gone into the three EIS proposals (C, D, and E). I realize there are no easy answers to an ORV management plan for CHNS. I hope my feedback will be constructive as you continue your planning.

ORV Use Impairs Park Values

In April 27, 1999 a precedent was set in CHNS where visitor use conflicts were addressed and a recreational activity regulated as a result. The NPS banned Personal Water Craft (PWC) use in CHNS because of visitor use conflicts and impairment of NPS values.

“Probably the strongest complaints come from land-based visitors. Beach walkers, people looking for shells, birdwatchers, sunbathers, artists, photographers, or those who simply stand on the shore to appreciate the visual beauty and natural sounds of the Seashore voice frequent complaints about the behavior of PWC operators and the noise PWCs produce. The natural sounds of the barrier island environment are a prime component of the seashore experience and PWCs often intrude upon this experience.” (1)

Some visitors find a similar recreational conflict with ORV use on the Seashore beaches.

The Enabling legislation for CHNS clearly intended for this Park to be preserved as remote seashore. (“permanently reserved as a primitive wilderness”)(2). Unlimited and unregulated ORV use has enabled large numbers of visitors to travel to areas of CHNS that otherwise would be seldom visited, diminishing a wilderness experience for other visitors. Visual beauty and natural sounds are

impaired by ORV use. Even lightly traversed ORV beaches will have ruts in the sand disfiguring the day-to-day physiographic process of the beach. At night, vehicle lights from ORVs create a recreational conflict with pedestrians on Park beaches.

Establishing high NPS Value and Pedestrian Only Access (POA) areas in CHNS will not exclude anyone or deny appropriate recreational activities (“swimming, boating, sailing, fishing, and other recreational activities of similar nature”(2). ORV use is seen in this Park as a means of access and is not generally viewed as a recreational activity in itself. ORV use is one of several legitimate and historical means of access in CHNS that should be considered only when it is equitably balanced with other NPS Policy, Acts of Congress and Executive Orders.

NPS managers must provide suitable and equitable areas that provide visitors with an opportunity to experience NPS Values to as high a degree as possible. Park managers will not fulfill this obligation with any of the currently proposed plans.

The following documents address NPS Values: Management Policies 2006, The 1916 Organic Act, The 1970 National Park System General Authorities Act, as amended in 1978, The Cape Hatteras National Seashore Enabling Legislation, Executive Order 11644 and United States Code (3).

With consideration of these documents I have identified areas where POA areas and NPS Park Values coincide. Provided below are the criteria I formulated and used to establish high NPS Values POA areas.

Management Policies 2006 outlines rationale and attributes for NPS Values. The Organic Act places a high value on the no-impairment standard and considers park resources and Values subject to this standard. The Cape Hatteras Enabling Legislation intended this park to be managed for a diverse set of recreational interest as long as those activities do not impair resources or Park Values. The Enabling legislation is not specific to the type of access needed to engage in these pursuits. When deciding where ORV routes and areas should be it is equally important to consider the quality and establishment of high value POA areas. This requires specific criteria that establishes suitable pedestrian only areas and insures that visitors have an opportunity to experience National Park Resources and Values in CHNS.

Listed below are criteria for establishing POA with high NPS Values and potential areas in CHNS where those NPS Values are located.

Suggested Criteria For Establishing Pedestrian Only Access Only Beaches With High “NPS Values”

- A. Outside of ORV trails or Routes**
- B. Quality Beaches** that afford “NPS Values” scenic features; natural visibility, both day and night; natural landscapes; natural soundscapes and smells”) 1. In an unaltered state with minimal adjacent infrastructure, 2. Natural coastal and dune building processes, 3. Observable wildlife resources, 4. Wide beach with minimal degree of slope,
- C. Ease of egress**, all egress through NPS property with ramps, boardwalks or established breaks through the dune
- D. Established pedestrian beaches**, beaches that have been used extensively for pedestrian access only in the past and have suitable established parking infrastructure
- E. Convenient to NPS visitors and services**
- F. Remote areas**

High “NPS Value” areas

1. Bodie Island Spit,
2. The south groin in Buxton to Cape Point,
3. Cape Point to the Frisco village line,
4. Ramp 55 to Hatteras Inlet,
5. The North end of Ocracoke Island (Hatteras Inlet),
6. The Ocracoke Pony Pen south to the NPS Campground
7. South Point (Ocracoke).

Moderate “NPS Value” areas

1. South Salvo to North Avon
2. South Avon to approx 1 mile North of the Buxton Village line
3. Frisco Bathhouse to Hatteras Village
4. Other areas of Ocracoke.

CHNS visitor have a wide range of expectations. Some visitors want a remote, with no services, NPS experience while others expect bathrooms, boardwalks, interpretative signs and easy egress. The Park should identify and establish both types of experiences in the Seashore.

The three new plans (C, D, E) do not sufficiently address year round POA issues or provide suitable NPS Values for visitors. There is no discussion of criteria for selecting POA beaches in this Park.

If NPS Values were the only concern Cape Point (Ramp 43 to new Ramp 47) would be an area of CHNS where one would not expect an ORV routes or area. This area is the most famous site in the Park. Making an ORV route and parking lot at the tip of Cape Point, the epitome of inspirational and resource value, is really quite extraordinary in a global sense. It seems to be taken as a given that all of the Cape Point area will be an ORV route or area. Cape Point is a world-

class fishing and board/kite sailing area and an excellent birdwatching spot but it is more than a superlative destination for recreational activities. It is the equivalent of Old Faithful, or the Zion Narrows. Having an ORV route in this area compromises NPS values for many visitors.

If suitable areas were proposed for POA that address NPS Values it is possible that Cape Point could be designated as an ORV route, some or all of the time. Narrow, adjacent to village beaches or areas of beach that can be changed to ORV routes by "adaptive management" if they become wide enough to safely drive is not a reasonable alternative or compromise.

Comments On Option Plans

There are parts of some of Option Plans C, D, and E that succeed for some areas of the Seashore however none of the plans in themselves adequately address NPS Values and POA issues in CHNS. It appears that ORV issues have taken precedent over Park Values and POA interests in these plans.

What were the criteria were used to identify where high NPS Value and POA areas? Designation of POA areas appears to be happenstance or worse wherever it is less desirable for ORV use. ORV access is the first choice for the majority of the best NPS Value areas of this Park.

Park managers should make every effort to provide suitably identified POA areas that provide NPS Values in any plan put forward for an ORV management plan in this Park.

Special consideration should be given to the area on Hatteras Island from the Old Lighthouse Beach (southern groin) to Cape Point and from Cape Point to the Frisco Village line. There is approximately 10 miles of seashore in this area. These 10 miles contains the largest contiguous area with highest NPS values (in my estimation) of any in the Seashore. This area is the most remote. There is no adjacent highway near most of it. This area is surrounded by NPS land with no private infrastructure. Many of the man made dunes have eroded away leaving natural physiographic process at work. Dynamic coastal process can be viewed on a daily basis. The area is extremely rich with unique biological resources. The center of it (Cape Point) is one of the most striking geophysical places on the East Coast. At least half (approximately 5 miles) of this 10-miles should be set aside for NPS values and protected as a POA area.

Species Management 1 (SM1) areas restrict access to all visitors to sections of the Park whether or not immediate resource protection is required. It might be appropriate to create sections of the Park where access is not allowed by designating strategically placed wildlife areas with adjacent viewing areas for visitors. This would protect high value resource areas, afford visitors an

opportunity to experience these resources and educate visitors about the unique resources of CHNS. SM2 is a much more desirable management option in my opinion.

Bodie Island

I think Alt E best serves POA on Bodie Island. It affords parking opportunities for pedestrian near beaches that have been historically thought of as a POA beach. It provides a longer contiguous section of beach of suitable length for both pedestrians and ORV users. Opt E also provides seasonal access opportunities with a high quality beach (Ramp 4 to Bodie Island Spit) to pedestrians. Alternative D closes Ramp 4 to Bodie Island Spit to all visitors, an undesirable alternative.

Hatteras Island

Alt C provides 7.2 miles of year round POA on Hatteras Island. Of this, 5.3 miles is situated adjacent to the Tri villages. This 5.3 area provides little high value area to visitors and little parking access, limiting access to visitors who are residing on private property in the village.

Alt D provides POA from Ramp 34 to Ramp 38 but this section affords little in the way a NPS Values. Most of the area is adjacent to villages and associated infrastructure. A small part of the northern section of this beach does afford parking to visitors and is an undeveloped beach, but it is not of sufficient length. There are parking opportunities at either end of this beach but no restroom facilities. Alt D closes the most dynamic section of the Park (Cape Point) to visitors year round, an unacceptable option.

An example of POA that was suggested and works well is the pedestrian area in Buxton that starts at the southern lighthouse beach groin and extends to .4 mile north of ramp 43. This area exemplifies NPS Values. However, the southern terminus should logically extend to the Ramp 43 parking lot as it had been until recent years, providing parking and egress from either end of the beach.

An example of POA not considered in the plans would be the area from Ramp 38 to just south of the Haulover. This area has parking at ramp 38. Part of this area has been a POA area in the past. There is a parking lot with bathroom facilities at the Haulover and no adjacent private housing along this stretch of beach.

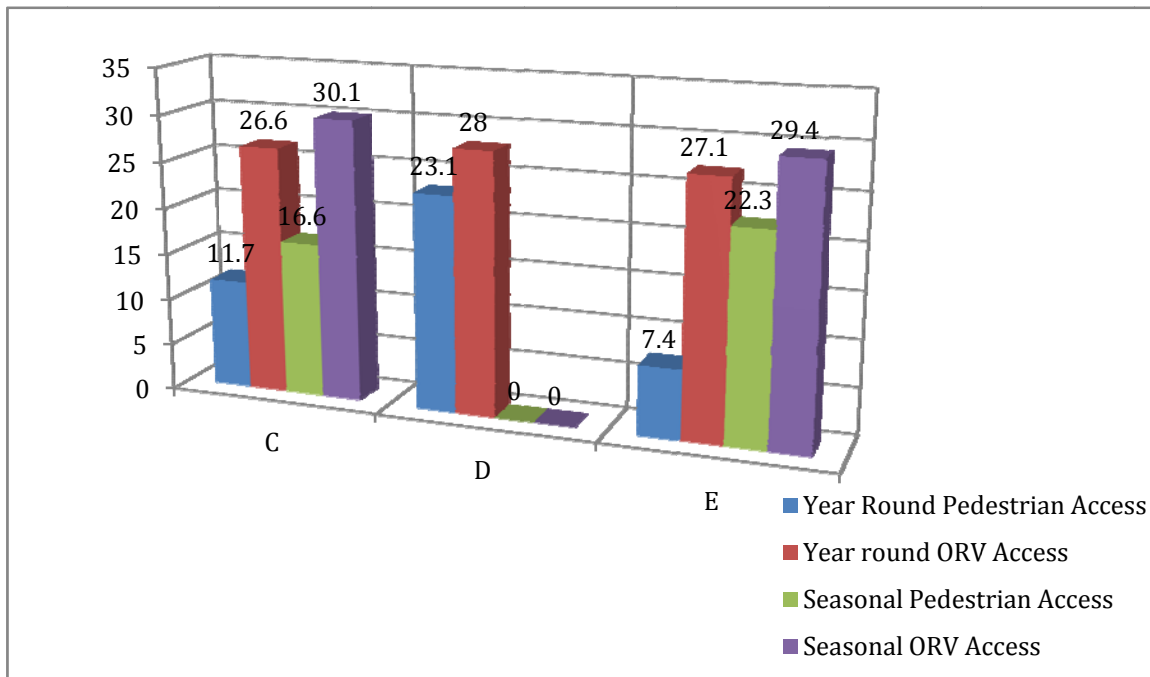
I find Opt E most lacking in providing for NPS Values and POA because this plan allocates only 1.9 miles of year round POA on Hatteras Island while providing over 17 miles of year round ORV access there. This is not an equitable alternative.

Ocracoke Island

Option D provides the most POA. Any area adjacent to the highway on Ocracoke Island will have the distraction of seeing and hearing cars and diminish NPS Values. Ocracoke has a long history of established POA areas. These areas appeared to have worked well for that area. I would encourage the NPS to included similar designations in any new proposals.

Respectfully,
Jim Lyons

Graph of EIS proposal C, D, E Mileage breakdown



1.
L3425 (CAHA)
April 27, 1999
Memorandum
To: Files

From: Superintendent, Outer Banks Group
Subject: Determination on Appropriateness of Personal Watercraft Use at Cape Hatteras National Seashore

Probably the strongest complaints come from land-based visitors. Beach walkers, people looking for shells, birdwatchers, sunbathers, artists, photographers, or those who simply stand on the shore to appreciate the visual beauty and natural sounds of the Seashore voice frequent complaints about the behavior of PWC operators and the noise PWCs produce. The natural sounds of the barrier island environment are a prime component of the seashore experience and PWC often intrude upon this experience.

2.

The Cape Hatteras National Seashore Enabling legislation

The Cape Hatteras National Seashore Enabling legislation (1. (Aug. 17, 1937, ch. 687, Sec. 4, 50 Stat. 670; June 29, 1940, ch. 459, Sec. 1, 54 Stat. 702; Mar. 6, 1946, ch. 50, 60 Stat. 32.) emphasizes recreational opportunities for visitors to the Seashore, "***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 and no development of the project or 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 this area . . .***"

3.

Management Policies 2006 (<http://www.nps.gov/policy/mp/policies.html>)
 "1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values

"The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States. The enjoyment that is contemplated by the statute is broad; it is the enjoyment of all the people of the United States and includes enjoyment both by people who visit parks and by those who appreciate them from afar. It also includes deriving benefit (including scientific knowledge) and inspiration from parks, as well as other forms of enjoyment and inspiration. Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the **Organic Act. 1.4.5 (1.)**"

“1.4.6 What Constitutes Park Resources and Values”

“The “park resources and values” that are subject to the No-impairment standard include

* the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;

* appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;

* the park’s role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and

* any additional attributes encompassed by the specific values and purposes for which the park was established”

“1.4.7.1 Unacceptable Impacts

* be inconsistent with a park’s purposes or values, or

* impede the attainment of a park’s desired future conditions for natural and cultural resources as identified through the park’s planning process, or

*create an unsafe or unhealthful environment for visitors or employees, or

* diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or

* unreasonably interfere with

1. park programs or activities, or
2. an appropriate use, or
3. the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.
4. NPS concessioner or contractor operations or services.”

8.1 General

“Many different types of uses take place in the hundreds of park units that make up the national park system. Some of those uses are carried out by the National Park Service, but many more are carried out by park visitors, permittees, lessees, and licensees. The 1916 Organic Act, which created the National Park Service, directs the Service to conserve park resources “unimpaired” for the enjoyment of future generations. **The 1970 National Park System General Authorities Act**, as amended in 1978, prohibits the Service from allowing any activities that would cause derogation of the values and purposes for which the parks have been established (except as directly and specifically provided by Congress). Taken together, these two laws establish for NPS managers (1) a strict mandate to protect park resources and values; (2) a responsibility to actively manage all park uses; and (3) when necessary, an obligation to regulate their amount, kind, time, and place in such a way that future generations can enjoy, learn, and be inspired by park resources and values and appreciate their national significance in as good or better condition than the generation that preceded them. (Throughout these Management Policies, the term “impairment” is construed to also encompass “derogation.”) “

Executive Order 11644

Executive Order 11644 requires that ORV use must be promulgated in National Parks that do not include specially sanctioned ORV use in the enabling legislation for that park (CHNS). The executive order specially requires establishing policies and procedures to ensure that off-road vehicles on public lands will be controlled and directed to protect the resources of those lands, promote the safety of all users of those lands, and minimize conflicts among those users.

“(a) (3): Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(a) (4): Areas and trails 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.”

U.S.C. Code

16 U.S.C. Section 1a-1 states, "The authorization of activities shall be conducted in the light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."

Cc

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