

**PROGRESS REPORT ON
OFF-ROAD VEHICLE MANAGEMENT PLAN/EIS AND SPECIAL REGULATION
CAPE HATTERAS NATIONAL SEASHORE
STATUS AS OF JANUARY 28, 2010**



National Park Service
Cape Hatteras National Seashore
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I. INTRODUCTION

- NPS is preparing an off-road vehicle (ORV) management plan/environmental impact statement (Plan/EIS) and special regulation. The purpose of the plan is to develop regulations and procedures that 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 use experiences while minimizing conflicts among various users, and to promote the safety of all visitors.

II. BACKGROUND

- Executive Order 11644 of 1972, amended by Executive Order 11989 of 1977, requires federal agencies permitting ORV use on federal lands to publish regulations designating specific trails and areas for this use. The National Park Service implemented these executive orders in 36 C.F.R. § 4.10, which provides that routes and areas designated for off-road vehicle use shall be promulgated as special regulations.
- ORVs have operated on the Seashore's beaches since before the park was established, but the required regulation has never been issued. Since the Seashore was established, ORV use has increased and populations of native shorebird species, including the federal listed threatened piping plover and several state listed species, have declined. Unrestricted night driving had the potential to adversely affect sea turtle nesting activities.
- The Seashore is home to important habitats created by the Seashore's dynamic environmental processes, including habitat for several federally listed species including the piping plover, three species of sea turtles, and seabeach amaranth. These habitats are also home to numerous other protected species, such as the American oystercatcher, black skimmer, Wilson's plover and several species of tern, as well as other wildlife. NPS is required to conserve and protect all of these species, as well as the other resources and values of the Seashore.
- The Seashore also 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. 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.
- In January 2006, NPS released an Interim Protected Species Management Strategy/EA (Interim Strategy) to provide guidance for protected species management until an ORV management plan and special regulation could be developed. In October 2007, Defenders of Wildlife, National Audubon Society, and Southern Environmental Law Center filed a complaint to challenge the interim strategy. Dare and Hyde Counties and the Cape Hatteras Access Preservation Alliance (a coalition of ORV and fishing groups) intervened.
- As a result of the settlement of the litigation on the Seashore's Interim Strategy, the Seashore is under court order/consent decree to complete an ORV management plan/EIS by December 31, 2010 and to issue a final regulation for ORV use by April 1, 2011.
- In December 2007, DOI established a negotiated rulemaking advisory committee (Committee) to assist NPS in the development of a CAHA ORV regulation. Plaintiff and Intervenor

organizations, along with other stakeholders, were appointed to the Committee. The Committee held eleven formal meetings and dozens of informal work sessions from January 2008 through February 2009, and submitted a final report on March 31, 2009. The Committee did not reach a consensus; however, it developed a considerable amount of useful information and ORV management options for NPS to consider in the development of the ORV plan/EIS and special regulation.

III. CURRENT STATUS

- NPS is operating under the consent decree until the long-term ORV plan/EIS and special regulation are completed. The consent decree deadlines for completion of the plan/EIS and special regulation are December 31, 2010 and April 1, 2011 respectively.
- NPS is on track to release the draft ORV plan/EIS (DEIS) soon, along with an NPS Notice of Availability (NOA) that will provide details on commenting on the DEIS. The U.S. Environmental Protection Agency (EPA) also publishes its own, much briefer NOA in the Federal Register. The publication of the EPA notice will formally begin the public review and 60-day comment period on the DEIS. Once we know the exact EPA notice date, NPS will announce a series of public meetings to be held approximately 3-4 weeks later, after the public has had time to review the document. The meetings, which will be conducted in a hearing-style format to receive and document public comments, serve as one of several mechanisms the public can use to provide comments on the DEIS. The public may also submit written comments on-line or in hard copy. Information explaining how to submit comments will be provided in the NPS NOA.
- It is NPS policy to identify a preferred alternative, when one is known, so that the public is fully informed of what the agency is considering and can make comments in that context. There will be a preferred alternative identified in the DEIS; however, it does not constitute a final decision. Under the NEPA process, NPS considers public comments about the full range of alternatives and their impacts that are described in the DEIS, including the preferred alternative, and may make changes that would be incorporated into the final EIS and record of decision.
- NPS is also preparing a proposed ORV rule (i.e., special regulation), based on the preferred alternative in the DEIS. As soon as it is ready, the proposed rule will be published in the Federal Register and have its own 60-day comment period. This potentially overlapping comment period approach is consistent with the “NEPA planning schedule” that NPS provided to the negotiated rulemaking advisory committee at its initial meeting in January 2008 (*see 2008 Jan RegNeg Committee Meeting (#1) Materials on the NPS PEPC website*). As with the DEIS preferred alternative, the proposed rule does not constitute a final decision. This approach is consistent with both the requirements of NEPA and the Administrative Procedure Act. The record of decision (ROD) will reflect the final decision under the NEPA planning process. The final rule, which is scheduled to be completed within three months after the ROD, will reflect the final decision on a special regulation.