



Interim Protected Species Management Strategy Laws and NPS Management Policies

Introduction

The Interim Protected Species Management Strategy (Strategy) for Cape Hatteras National Seashore (Seashore) will guide management practices for protected species until the long-term Off-Road Vehicle Management Plan and regulation are completed in 2008 as currently scheduled. In order to develop this Strategy, the National Park Service (NPS) must fulfill requirements of a variety of federal laws, Executive Orders, and NPS regulations.

Because park units vary based on their enabling legislation, natural resources, cultural resources, and missions, management activities appropriate for each unit and for areas in each unit vary as well. An action appropriate in one unit could impair resources in another unit. Therefore, the NPS needs to develop a Strategy tailored to the Seashore that will fulfill all of the requirements mentioned, in part, below.

For more information on this planning process go, to: <http://parkplanning.nps.gov/caha>.

National Park Service Organic Act and Related Authorities

The Organic Act and National Park System General Authorities Act

In the NPS *Organic Act of 1916*, Congress directed the US Department of the Interior and the NPS to manage units of the national park system “to conserve the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations.” Congress reinforced this mandate in the 1970 National Park System General Authorities Act, as amended in 1978 (Redwood amendment). In the Redwood amendment, Congress clarified that in all units of the National Park System, “The authorization of activities shall be construed and the protection, management, and application of these areas shall be conducted in 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.”

Cape Hatteras National Seashore Enabling Legislation

The park’s enabling legislation (1937) states that: “. . . said area shall be, and is hereby, established, dedicated, and set apart as a national seashore for the benefit and enjoyment of the people. 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 the area.”

In 1940, the original legislation was amended to read “Cape Hatteras National Seashore Recreational Area” as

part of Congressional action to authorize hunting in certain areas.

The enabling legislation and subsequent amendments make clear the intent of Congress to provide for both recreational use and the preservation of flora and fauna.

NPS Management Policies 2001:

Sec. 4.4.2.3 Management of Threatened or Endangered Plants and Animals – “The NPS will survey for, protect, and strive to recover all species native to national park system units that are listed under the Endangered Species Act. The NPS will fully meet its obligations under the NPS Organic Act and the Endangered Species Act to both proactively conserve listed species and prevent detrimental effects on these species.”

“The NPS will inventory, monitor, and manage state and locally listed species in a manner similar to its treatment of federally listed species, to the greatest extent possible. In addition, the NPS will inventory other native species that are of special management concern to parks (such as rare, declining, sensitive, unique species and their habitats) and will manage them to maintain their natural distribution and abundance.

The NPS will determine all management actions for the protection and perpetuation of federally, state, or locally listed species through the park management planning process, and will include consultation with lead federal and state agencies as appropriate.”

Sec. 8.2 Visitor Use

“To provide for enjoyment of the parks, the NPS will encourage visitor activities that: are appropriate to the purpose for which the park was established; are inspirational, educational, or healthful, and otherwise appropriate to the park environment; will foster an understanding of, and appreciation for park resources and values, or will promote enjoyment through a direct association with, or relation to park resources; and can be sustained without causing unacceptable impacts to park resources or values.”

Endangered Species Act

The 1973 Endangered Species Act (ESA) provides for the conservation of ecosystems upon which threatened and endangered (T&E) species of fish, wildlife, and plants depend. The ESA authorizes, in part, the determination and listing of species as endangered and threatened; prohibits unauthorized taking, possession, sale, and transport of endangered species; authorizes the assessment of civil and criminal penalties for violating the Act or regulations; and authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.

The ESA defines *take* as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." *Harm* in the definition of "take" in the ESA means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. The Code of Federal Regulations defines *harass* as acts or omissions, whether intentional or negligent, that annoy wildlife so as to "significantly

affect behavioral patterns."

The ultimate goal of the ESA is the recovery (and subsequent conservation) of T&E species and the ecosystems on which they depend. Recovery plans – documents prepared for listed species that detail the specific actions needed for recovery – provide a blueprint for private, federal, and state cooperation in the conservation of T&E species and their ecosystems.

Section 7 of the ESA requires federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species. The ESA requires all federal agencies to consult with the Secretary of the Interior on all projects and proposals with the potential to impact federally endangered or threatened plants and animals. It also requires federal agencies to use their authorities in furtherance of the ESA by carrying out programs for the conservation of T&E species and to insure that any agency action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any T&E species.

Migratory Bird Treaty Act

The original Migratory Bird Treaty Act of 1918 implemented the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the U.S., Mexico, Japan, and the former Soviet Union for the protection of migratory birds. Each of the conventions protect selected species of birds that are common to both countries (i.e., they occur in both countries at some point during their annual life cycle).

Under the Migratory Bird Treaty Act, it is prohibited, unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or

cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention...or any part, nest, or egg of any such bird."

Subject to limitations in the Migratory Bird Treaty Act, the Secretary of the Interior may adopt regulations determining the extent to which, if at all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting, or exporting of any migratory bird, part, nest, or egg will be allowed.

For a list of birds protected under the Act, see <http://www.fws.gov/migratorybirds/intrnltr/mbta/mbtintro.html>

Executive Orders

Executive Order 13186

Issued in 2001, this Executive Order (EO) requires federal agencies to take certain actions to further implement the Migratory Bird Treaty Act. The EO states, in part, that: "each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement . . . a Memorandum of Understanding (MOU) with the Fish and Wildlife Service . . . that shall promote the conservation of migratory bird populations." Among other required actions, agencies must develop and use principles, standards, and practices that will lessen the amount of unintentional take of migratory birds and to recognize and promote economic and recreational values of birds, as appropriate.

The EO encourages agencies to begin immediate conservation measures, as appropriate and practical, until a MOU is completed. The NPS and U.S. Fish and Wildlife are currently in the process of drafting a MOU.

Executive Order 11644 as amended by Executive Order 11989

EO 11644 of 1972, amended by EO 11989 of 1977, requires certain federal agencies permitting ORV use on agency lands to publish regulations designating specific trails and areas for this use.

The NPS has started planning efforts to promulgate regulations as required by these EO's, and to produce an ORV management plan for the Seashore.

For more information on the ORV management planning process, go to <http://parkplanning.nps.gov/caha>.