



# United States Department of the Interior

NATIONAL PARK SERVICE  
Cape Cod National Seashore  
99 Marconi Site Road  
Wellfleet, MA 02667

IN REPLY REFER TO:  
L7617

## Memorandum

To: Northeast Regional Director  
From: Superintendent  
Subject: Finding of No Significant Impact (FONSI) and Alternative Selection for Options for Managing ORV Access, Cape Cod National Seashore

This memorandum records the selection of a management alternative by the National Park Service (NPS) from those presented in the *Environmental Assessment: Cape Cod National Seashore Options for Managing ORV Access*. The decision is made after public and interagency review and comment, careful consideration of environmental effects, legislative mandates, applicable regulations, and NPS policy.

The National Environmental Policy Act (NEPA) requires consideration of the environmental effects of proposed federal actions. The act also ensures that environmental information is available to public officials and the public before decisions are made and actions are taken. The *Environmental Assessment (EA)* describes the proposed action and the no-action alternative, and summarizes potential environmental consequences of implementing the alternatives. This memorandum documents highlights of the impact analysis and decision-making processes, signaling completion of the EA process as required by NEPA.

## BACKGROUND

Since the creation of Cape Cod National Seashore (CCNS) in 1961, off-road vehicle (ORV) operations have been regulated by either the CCNS or the towns. During the 1960s and 1970s, ORV trails and routes were extensive. In 1978, Eastham closed the route between Coast Guard Beach and Nauset Inlet because the Blizzard of '78 had destroyed the available ORV route. Then in the early 1980s Wellfleet closed the outer beach to ORV use year-round. As a result, the ORV route on the beach was limited to the area from the Wellfleet-Truro town line north to Long Point in Provincetown.

The ORV Management Plan of 1985 closed the portion of the ORV corridor between High Head in Truro and the Wellfleet town line. It further restricted the use of ORVs by creating a season for operation between April 15 and November 15. ORVs could operate on the beach between November 16 and April 14 only for the purposes of accessing town shellfish beds, picking flotsam and jetsam, or in the case of dune cottage residents or their caretakers, for accessing their cottages. A limited access pass (LAP) was required for these uses and no travel was permitted within two hours of high tide.

In 1986, the piping plover, a small beach nesting shorebird, was federally listed as a threatened species. As a result of increasing plover populations and the dynamic nature of nesting patterns, the amount of available ORV corridor decreased over the years. In 1995 as little as 0.3 miles of ORV corridor were available for several weeks. This situation led to a call for new regulations.

The need for new regulation was motivated by the inflexibility of the existing rule to deal with changing conditions on the beach. To revise the regulation, in 1995 the Seashore entered into a negotiated rule making process (Neg Reg) with 23 agencies, organizations, and interest groups with long-term interests and involvement in ORV management and natural resource conservation at CCNS. In November 1995 the Neg Reg committee presented a proposed rule for ORV management at CCNS. The Neg Reg was published in the Federal Register for public comment and became codified in 36 Code of Federal Regulations (CFR) in 1998 (36 CFR 7.67). This regulation permits ORV use at CCNS on designated roads and areas in Provincetown and Truro. The regulation describes where and when ORV use is permitted. There are three pages in the regulations that list special requirements and restrictions to ensure natural, cultural, and aesthetic resources are protected along the ORV corridor.

Since 1995, increasing amounts of the ORV corridor have been closed to protect plover chicks due to population increases of piping plovers and nesting dynamics. 2006 was the first year the distribution and timing of protective buffers for piping plover broods resulted in complete daytime closure of ORV access. The 8.5 mile ORV corridor was closed in the daytime for 14 days in late June and early July, and over 31 days, 0.2 miles or less was open to ORVs. As a result of the 2006 total closure, the park implemented two accommodations for traditional ORV users. One accommodation waived the beach entrance fee in the northern part of the park for ORV permit holders. This allowed limited beach access, especially for fishermen, to the general vicinity of the corridor while maintaining protection of plover broods. The park also allowed overnight parking for self-contained vehicles (SCV) at the Pilgrim Springs and the Province Lands Visitor Center parking areas.

The closure blocked the ability of guests to travel by ORV to the Race Point Light Keeper's House and participate in the overnight program sponsored by the Cape Cod Chapter of the American Lighthouse Foundation (ALF), which leases the lighthouse from the U.S. Coast Guard (USCG). To accommodate the guests, park management provided a parking area within a half mile of the light. However, the soft nature of the sand road, weight of luggage and supplies, and uncertain weather for the walk, led the Foundation to cancel all reservations during the 31-day period. ORV closures also affected several local businesses that depend heavily on ORV users. This loss of business came during the height of the tourist season - a critical time for many local businesses and the community.

The ORV Season runs from April 15, to November 15. Applications are made via mail or in the person at the ORV office next to the Race Point Ranger Station, Provincetown. Applicants receive an orientation to the program, watch an awareness video on ORV protocol and wildlife protection, and have their vehicles inspected to insure they have the required tires and equipment. Approximately 3,000 ORV seasonal and 3,000 weekly permits are issued within the agreed limits. More information on the program is available on the park's website at [www.nps.gov/caco/activities](http://www.nps.gov/caco/activities).

The 2006 total ORV corridor closure prompted intense public, community and park concern resulting in park staff working with the Cape Cod Advisory Commission to review alternatives for managing ORV access through the EA process. Once the recommendations are adopted, they will have the result of allowing the NPS to have the option to modify the negotiated rules. The modifications will be in the spirit of the Neg Reg and give management options to make minor adjustments to the timing and location elements of the Neg Reg to deal with changing conditions on the beaches. The adjustments will be implemented only to provide up to a half mile of ORV corridor to avoid near total closure of ORV access to the beach. The options are intended to provide Seashore managers more flexibility to allow ORV access, while continuing to meet the following objectives:

- Management will be consistent with the guidelines in Appendix G of the U.S. Fish and Wildlife Service's (USFWS) Atlantic Coast Piping Plover Recovery Plan (USFWS 1996).
- Protecting and preserving natural resources.
- Ensuring public safety.
- Preserving other types of visitor experiences.

The purpose of this action is to attempt to avoid complete or near-complete ORV closures in a manner that is consistent with the spirit of the Neg Reg, including those aspects of the Neg Reg that provide for the protection of natural and cultural resources. The 1998 Neg Reg prescribed specific calendar dates for opening of certain access points based on nesting patterns at the time. This proposed action will allow the park some flexibility based on current, observed, monitored conditions, while maintaining protection of piping plovers in accordance with the

guidelines in the Piping Plover Recovery Plan. This will allow CCNS to better provide a range of opportunities for visitors to enjoy the park's resources and values in a manner that would maintain protection of those resources and values.

### **SELECTED ALTERNATIVE**

The Selected Alternative is the Preferred Alternative described in the EA. Seashore management will have options under the Selected Alternative to modify existing designations of scheduled access to three ORV beaches. The modifications will be implemented through a revision to the Superintendent's Compendium. ORV access accommodations will be revised or added to the designated routes, areas and times available, and upon the conditions set out, will be evaluated for temporary ORV access. These modifications are consistent with the spirit of the 1995 Neg Reg process and the special regulations that followed in 1998. This alternative is preferred because it maximizes opportunities for ORV beach access consistent with the NPS's primary responsibility to protect natural and cultural resources, particularly in this case, nesting piping plovers. In all cases, as stated in the Neg Reg, openings of access for ORV use will be contingent on beach, tidal, nesting, and public safety conditions. This alternative will not guarantee beach access to ORV users. Three existing designated access routes will be utilized for expanded dates or times of access, and upon the conditions set out, will be evaluated for temporary ORV access of up to half a mile of corridor. A fourth option will be implemented after a rulemaking to include a new route corridor. In the event of near or total closure (less than 1/2-mile of accessible ORV corridor), management will have the option to implement one or all of these options.

- The park will consider opening access to the High Head North ORV corridor prior to July 21st. In addition, the park will explore opening access to the ORV corridor near High Head and Head of the Meadow prior to July 1st.
- The park will consider temporary daytime access to the ORV corridor south of Coast Guard Beach in Truro until June 30th. This option required and received approval from the Town of Truro. ORVs have always been very visible at the pedestrian access and would remain so if the hours of use include 7:00 a.m. to 6:00 p.m. The current program permits access for fishing from 6:00 p.m. to 7:00 a.m. An existing ORV access road is located 80 feet south of the town owned property. At this southerly point, defined ORV parking is separated from established bathing areas with signs that state "No Vehicles Beyond This Point."
- This last section of the selected alternatives is considered accepted, but will not be implemented until a formal rule making process is completed. Once approved, this option would be used as a last resort if the options as described above do not meet the half mile threshold, the park will consider opening access up to 0.4 miles of beach for ORV access north of Herring Cove Beach prior to June 30<sup>th</sup>. The proposed access would be directly off the northern end of Herring Cove parking area where the parking lot abuts the beach. The driving corridor will be established between a point 10 feet seaward of the spring high tide drift line and the berm of the crest and marked with delineation posts. CCNS will establish a track to an area where ORVs would stop and park. It will be at least 200 yards from the bathing beach. The number of vehicles that could be accommodated in the possible 0.4 mile Herring Cove North ORV area would be up to 100 vehicles. Beach conditions will be carefully monitored to insure standards of width, wrackline protection, and pedestrian access is assured.

The park will implement the above changes only as needed to try and maintain a half-mile of accessible ORV corridor.

### **ALTERNATIVES CONSIDERED**

The EA analyzed the Selected Alternative described above and a No Action Alternative. Under the "No Action" alternative, current ORV management practices would continue. No new or modified ORV access options would be available to management. Impacts to natural resources would remain negligible to minor. Short- to long-term adverse impacts to ORV users and associated businesses could remain as could minor temporary adverse effects for the aesthetic or use experience of beachgoers who object to ORV use. When closures occur, there would likely be an adverse impact to park operations because of a short-term reduction in ORV funding of park staff dedicated to

managing the ORV corridor. A minor short-term adverse impact on surfcasters would occur during near or total closures. There are no anticipated cumulative impacts.

Alternatives considered but rejected were:

- Utilize the inner dune road to Exit 8 – This alternative was rejected for three reasons: it would have entailed considerable impacts to the extensive natural resources in the back dunes, including numerous dune slack wetlands and the Eastern spadefoot toad, which is listed as threatened under the Massachusetts Endangered Species Act, the increase in traffic would have compromised the desired visitor experience provided by the dune shacks in this area; and, the route to the beach is long with many hills and turns making it unsafe for large numbers of vehicles.
- Reopen old routes from the Pole Line Road to the beach – This alternative would have resulted in substantial damage to vegetation, dunes, and other natural resources that have recovered since cessation of ORV traffic along these tracks. Additionally, these crossovers lead to areas of high piping plover nesting activity, and therefore were unlikely to be usable during much of the nesting season.
- Open Herring Cove South to ORVs – Access to this area would have entailed routing traffic over a recovering overwash. This would have impeded recovery of the foredune. Similarly, this would have put traffic adjacent to an older, more recovered overwash, potentially slowing its continued recovery. Additionally, the southwestern sections of this beach (Wood End and Long Point) are used by nesting plovers.

#### **ENVIRONMENTALLY PREFERRED ALTERNATIVE**

In accordance with the NPS DO-12, the NPS is required to identify the "Environmentally Preferred Alternative" in all environmental documents, including EAs. The Environmentally Preferred Alternative is determined by applying the criteria suggested in NEPA, which is guided by the Council on Environmental Quality (CEQ). The CEQ provides direction that the Environmentally Preferable Alternative is the alternative that will promote the national environmental policy as expressed in Section 101 of NEPA. Generally, the criteria mean the Environmentally Preferable Alternative is the alternative that causes the least damage to the biological and physical environment and that best protects, preserves, and enhances historic, cultural, and natural resources (Federal Register, 1981).

As considered in this EA, the no action alternative would be the environmentally Preferred Alternative if only natural resources were considered. However NEPA looks at the broader human environment, including public use and socioeconomic concerns. After review of potential resource, socioeconomic and public use impacts and mitigations, the Preferred Alternative of management options to modify ORV access, would better balance long-term preservation of resources, visitor experience, and socioeconomic concerns. Therefore, this is the environmentally Preferred Alternative.

#### **WHY THE PREFERRED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT**

As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

*Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts which require analysis in an EIS:* No major adverse or beneficial impacts were identified that would require analysis in an environmental impact statement. No impacts to air quality, soundscapes, water quality, land use, energy resources, geology, marine and estuarine resources, lightscares, Indian trust resources, floodplains, scenic resources, public health or safety, or prime and unique farmlands were identified.

Under the Selected Alternative, impacts to natural resources will remain negligible to minor. Socioeconomic impacts could range from negligible to moderately beneficial. Impacts would be beneficial to ORV users and have minor,

short-term adverse effects for the beachgoers who object to ORV use. There would be no impact on park expenses and a beneficial impact on staffing and management/user conflicts.

***Degree of effect on public health or safety:*** Openings of access for ORV use are contingent on public safety conditions, so these options will not have an effect on public health or safety. The rangers spend a considerable amount of their time closely monitoring the ever-changing beach conditions and communicating information to ORV users. Ranger patrol activity on the ORV corridor has a significant public safety component. Inexperienced overland drivers may require assistance as they get stuck and need a tow. Tidal considerations make this task time sensitive and require considerable ranger presence on the route corridor.

***Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas:*** Historic or cultural resources, wetlands, prime or unique farmlands and wild and scenic rivers will not be affected.

Cultural resources would not be adversely affected by the Selected Alternative. Ethnographic resources could experience a minor, long-term beneficial effect as a result of making customary activities like surf/shore fishing more accessible. NPS notified the Massachusetts Historical Commission of the EA on December 22, 2006 by letter and sent the EA on February 15, 2007. The State Historic Preservation Officer (SHPO) reviewed the EA and on March 26, 2007 concurred that the proposed modifications to ORV access and management will have no adverse effect on the historic and archeological resources of CCNS.

There will be no long-term impacts to ecologically critical areas resulting from the Selected Alternative. Under the Selected Alternative, ORVs would continue to be restricted to the marked corridor that protects the wrack line, dune vegetation, foreshore, and foredune. Opening Herring Cove North to ORVs would introduce potential impacts to an area not evaluated in the 1997 EA or the current No Action Alternative. ORV use at Herring Cove North would be regulated and confined to a designated corridor as it is in the existing ORV corridor. Herring Cove North will only be opened as a last resort. Under the Selected Alternative, impacts to the wrack line, dune vegetation, plovers, terns, and marine mammals would remain negligible to minor, as described in detail in the 1997 EA. Preliminary results of a study conducted after the 1997 EA suggest there is a minor impact of unknown duration to the beach macroinvertebrate community.

***Degree to which effects on the quality of the human environment are likely to be highly controversial:*** There were no highly controversial effects identified during either preparation of the EA or the public review period. The Selected Alternative incorporates three routes that are already open to ORVs and no appreciable impacts are anticipated which would increase user conflicts with non-ORV recreational users. The fourth option is a well established beach with substantial parking area, and additional beach options to the south for non-ORV users. Prior public attitude surveys have indicated that non-ORV beach users are less inclined to favor ORV use on Seashore beaches than ORV users. Little public comment on this point was received on the EA, but it is possible that the Seashore will receive adverse public response if the fourth option is implemented. However, this alternative will not be implemented without an opportunity for formal public rule-making and a full public comment process.

***Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks:*** There were no highly uncertain, unique or unknown risks identified during either preparation of the EA or the public review period.

***Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration:*** The Selected Alternative neither establishes a NPS precedent for future actions with significant effects nor represents a decision in principle about a future consideration.

***Whether the action is related to other actions with individually insignificant but cumulatively significant impacts:*** Impacts of the Selected Alternative identified in the EA were to natural resources, public use, park management, and socioeconomic and cultural resources. As described in the EA there are no other projects that are being considered for cumulative impacts, except for access to Race Point Lighthouse. The USCG and the ALF are developing a plan to provide limited vehicle access to the Race Point Lighthouse during the piping plover nesting season, including

times when the Seashore has closed the Pole Line Route to general ORV use in order to protect piping plovers. This plan will pertain only to ALF's management of the Race Point Lighthouse and will not affect other ORV users. Together there could be a minor to moderate beneficial impact for public use, and no expected cumulative adverse impacts to natural or cultural resources, or socioeconomic and park management and operations.

***Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources:*** The Selected Alternative will not adversely affect districts, sites, highways, structures or objects listed on the National Register of Historic Places nor cause loss or destruction of significant scientific, cultural, or historical resources.

As per the Advisory Council on Historic Preservation's regulations 36 CFR Part 800, NPS notified the Massachusetts Historical Commission and the Wampanoag Tribe of Gay Head-Aquinnah on December 22, 2006 of the NPS intention to use the NEPA process to comply with Section 106 of the National Historic Preservation Act. A copy of the EA was sent to both the Mashpee Wampanoag Indian Council, Inc. and to the Wampanoag Tribe of Gay Head-Aquinnah on February 15, 2007. The NPS has not received written comment from either tribe on the ORV EA, however the NPS continues to consult regularly with both tribes on ongoing issues at the park and, since the tribes did not comment, the NPS assumes that the tribes have no concerns with the ORV access options.

***Degree to which the action may adversely affect an endangered or threatened species or its critical habitat:*** Under the Selected Alternative, the park will continue to adhere to the plover protection and management guidelines in the Piping Plover Recovery Plan keeping impacts negligible to minor as in the 1997 EA. Nesting and staging terns will continue to be protected by existing management practices and ongoing monitoring has not identified specific tern impacts from ORVs, therefore the potential adverse impacts to terns would remain negligible to minor.

***Whether the action threatens a violation of federal, state, or local environmental protection law:*** The Selected Alternative violates no federal, state, or local environmental protection laws.

## SUMMARY OF ADDITIONAL ENVIRONMENTAL IMPACTS

The Selected Alternative could reduce the diversion of ORV dollars away from local providers of ORV services. This would be a moderate beneficial impact to those businesses whose primary customers are ORV users, and a negligible to minor benefit to those tourist-serving businesses with a diverse customer base thus avoiding adverse long-term impacts. The EA analyzed the economic impact of the ORV users on local businesses affected by the closures and the proposed management options only; it did not assess the effects of non-ORV users going elsewhere due to the presence of ORVs because the entire ORV program is not being evaluated.

The Selected Alternative would have a beneficial impact on ORV users and minor, short-term adverse effects for the aesthetic or use experience of beachgoers who object to ORV use. Potential minor to moderate impacts from user conflicts between ORV users and bathers or people who would prefer to see vehicle-free beaches would be adverse but of minimal duration. Although private ORVs have not been allowed on Herring Cove North beach for many years, ORVs are visible on a daily basis on Race Point, on the opposite side of Hatches Harbor entrance, and over 600 vehicles are parked on the nearby parking lot. There may be some limited conflict between pedestrians and ORVs at Herring Cove North since this location has only seen vehicle use by law enforcement and piping plover monitoring patrols, and at Coast Guard Beach where only evening ORV access and patrols were previously allowed. Any new adverse impacts to aesthetics would be minor and short-term. Further, impacts would be minimized as these two access points would be open only until June 30<sup>th</sup>, prior to the busiest visitor times. The other two access points are established areas that extend away from primary beaches. This access point would be open only until June 30<sup>th</sup>, prior to the busiest visitor times. The user conflict would be temporary and minor, primarily occurring before the height of beach season begins.

Under the Selected Alternative the expertise required for daily monitoring and enforcing park rules would remain, as would the year round demand for staff. The permit fee revenue stream used directly to fund ORV operations would be beneficially impacted if near or total closures can be avoided. There is no anticipation of staff or expense

impacts. Impact on conflicts between ORV users and staff would be beneficial as there would be fewer conflicts/complaints with ORV user groups and NPS staff.

## IMPAIRMENT OF PARK RESOURCES OR VALUES

Cape Cod National Seashore determined that implementation of the Selected Alternative will not constitute an impairment of the seashore's resources and values. This project simply expands by a few weeks the season for already utilized ORV routes and provides a new temporary option for a longstanding activity and park use for ORVs and does not meet any threshold to be viewed as impairment to the resources and values of the seashore. This conclusion is based on a thorough analysis of the impacts described in the EA, the agency and public comments received, and the professional judgment of the decision-maker in accordance with the NPS' *Management Policies 2006* (August 31, 2006). As described in the EA, implementation of the Selected Alternative will not result in major, adverse impacts to a resource or value whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation or proclamation of Cape Cod National Seashore; (2) key to the natural or cultural integrity of the seashore or to opportunities for enjoyment of the seashore; or (3) identified in the seashore's general management plan or other relevant NPS planning documents as being of significance.

## PUBLIC INVOLVEMENT

The EA was released on February 15, 2007. The NPS sent out 73 copies of the EA and 51 letters informing interested parties that the EA was available. The park received 18 comments by mail and email and 37 comments on the NPS park planning website (PEPC). A total of 34 PEPC Comments were in favor of opening alternative routes and 3 comments on PEPC were opposed to the Preferred Alternative. The Seashore received 14 emails and letters in favor of the Preferred Alternative and 4 which were opposed to the Preferred Alternative. On March 3, 2007 the Seashore conducted a public meeting to solicit public comment on the ORV EA. A total of 54 people attended the public meeting. No objections to the EA were received from SHPO, the Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay Head-Aquinnah, Mashpee Wampanoag Indian Council, Inc., USFWS, Massachusetts Division of Wildlife & Fisheries (MDFW), and Coastal Zone Management (CZM). Massachusetts Audubon Society expressed support for the first three management options described in the Preferred Alternative, however strongly objected to the fourth option to open Herring Cove North.

Six comments were received from individuals who recommended that the Seashore's four management options to improve ORV access, described in the Preferred Alternative, be implemented before the 0.5 mile threshold is reached. A few proponents suggested that the four options be implemented as soon as the ORV corridor opens on April 15 and be maintained through November 15. Several individuals suggested that the four access alternatives be implemented as soon as portions of the ORV corridor begin to shut down due to piping plover nesting activity. Others questioned why the Seashore would limit ORV access to 0.5 miles if additional miles of corridor could be opened.

The 0.5 mile threshold contained in the Preferred Alternative was arrived at to ensure that the spirit and intent of the Neg Reg process that occurred in the 1990s is preserved. The Neg Reg process was initiated when only 0.3 miles of ORV corridor were open because of plover nesting activity in 1995. The outcome of the Neg Reg process was to add ORV access at Head of the Meadow and night time fishing at Coast Guard Beach. The 0.5 mile threshold gives CCNS more flexibility to try and temporarily provide available ORV corridor in order to make it more likely that the ORV corridor can remain open during nesting season. The 0.5 mile trigger would allow adequate room to establish the ORV track, boat trailer parking, and ORV parking.

Two comments were received expressing concern about the narrowness of Herring Cove North beach for ORV access and associated concern for public safety with ORV use at this location. The Herring Cove North ORV access option is a last resort option and will not be implemented at this time but will be proposed in a formal rule-making for designation as an ORV route. This alternative is a last resort option and will only be utilized if Seashore rangers determine on a daily basis that the width of the beach and other beach conditions in the area are suitable for ORV use, consistent with the 1994 "Guidelines for Barrier Beach Management in Massachusetts." Seashore rangers will

delineate the ORV corridor with signs, posts, and possibly fencing. In addition, the ORV corridor will be located so as to avoid wildlife habitat, coastal dunes, wrack lines, and vegetated areas. Rangers will also employ safeguards to ensure separation between the designated swimming area at Herring Cove and the ORV use area. Rangers will estimate the square footage of available coastal beach, ten feet from the spring high tide and not including the wrack line, to determine the number of vehicles allowed on this section of beach. As stated in the Barrier Beach Guidelines, beach managers must make their decisions "case by case," depending on the characteristics of the barrier beach under consideration for ORV use.

Two individuals, representing themselves as members of the Sierra Club, expressed their objections to any ORV access. Six individuals, who represented themselves as members of the Massachusetts Beach Buggy Association, requested that larger stretches of corridor be considered. The EA did not include expanding, phasing out, or eliminating ORV use as a management option, as the focus was to address temporary management options to reduce the chance of near or total ORV closure. A reassessment of the entire ORV program is not warranted as it has not been found to be an incompatible or inappropriate use.

One commenter stated that the economic impacts on his bait and tackle shop business were long-term, adverse economic impacts while the EA reported short-term adverse impacts. It is agreed that the adverse impacts could be long-term for a seasonal business so directly related to ORV fishing activity.

Massachusetts Audubon Society made several comments indicating that clarification is needed regarding implementation of tern management measures, particularly with respect to State-listed least terns, and implementation of the management guidelines in Appendix G of the Piping Plover Recovery Plan. In particular, they recommended defining a minimum corridor between the toe of the dune and the wrack zone, and questioned how habitat would be protected from disturbance to allow plovers to nest once an area is opened to ORV use. They also made recommendations regarding protection of tern nesting and staging areas. To clarify, the park's tern and plover protection measures will not change under the Selected Alternative in this EA. Areas open to ORVs will continue to be managed in accordance with the procedures in the "Motor Vehicle Management" section of Appendix G. Areas not yet opened to ORVs will be managed in accordance with the procedures in the "Management of Non-motorized Recreational Uses" section of Appendix G; if these areas become opened to ORVs, the "Motor Vehicle Management" procedures will be implemented. Similarly, measures to protect terns will continue to follow the State's 1993 Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns, and Their Habitats in Massachusetts. We refer readers to those documents for details regarding dates and criteria for installing symbolic fencing, minimum buffers for nests and unfledged chicks, and other aspects of managing recreation in proximity to plovers and terns. Establishment and demarcation of ORV corridors will continue to follow the specifications and procedures of the Neg Reg. ORV use will not be allowed on any part of the corridor or the areas discussed in this EA unless ORV use can be managed consistent with these guidelines and in a manner that provides adequate protection for terns and plovers.

Massachusetts Audubon expressed concern regarding the park's ability to adequately monitor the ORV corridor and the areas that could be opened as described in this EA. Our staffing levels have been and will continue to be adequate to provide for intensive and thorough monitoring of the ORV corridor as well as the areas discussed in the EA. However, if we determine that implementing the options described in this EA would compromise our ability to monitor terns and plovers adequately, either at those locations or elsewhere along the corridor, we would refrain from implementing the Selected Alternative. We will not implement any of the options described in the EA unless we are confident we can continue to provide appropriate monitoring and management of terns, plovers, and recreational uses throughout the park's North District.

Massachusetts Audubon commented that the EA should have summarized and incorporated long-term tern and piping plover monitoring data into an analysis of effects of the ORV corridor on park resources. The scope of the analysis for this EA was limited to evaluation of temporary management options to deal with near or total ORV closures within the spirit of the Neg Reg. Our analysis of effects focused on the effects of these minor changes, and on new information since the 1997 EA for the Neg Reg; the park's annual piping plover and colonial water bird monitoring reports indicate that the analysis and conclusions in the 1997 EA are still valid for these species. However, while we believe that more intensive and comprehensive analysis of long-term monitoring data is outside the scope of this EA, we agree with Massachusetts Audubon that such analysis is needed to better understand



population trends and inform plover and tern management in general. The park will undertake this responsibility to review historic data and ensure systems are in place for future analysis.

Massachusetts Audubon also described a number of research and more in-depth data analyses that should be conducted, specifically: variation in productivity among different beach segments, annual review of protective measures, and analysis of the effects of various management options. The park staff does review the results of protective measures on an annual basis, and uses that information to formulate management recommendations for the coming season. With respect to more in-depth analysis and research, we have supported a number of research projects to better understand the effects of ORVs on the natural, cultural, and aesthetic resources of the ORV corridor. An ethnographic study of surfcasters and ORV use was conducted in 2000 (Mueller, Eileen). There has also been an exploration of indicators for measuring ORV-user visitor experience (final report not yet complete). Two studies focused on effects to natural resources. The first investigated the effects of ORVs on beach macroinvertebrates; this study has not been completed but the preliminary results are discussed in the EA. The second study focused on the effects of disturbance on piping plover nest attendance (Schneider 2005). We have not yet conducted the more in-depth analyses and research recommended by Massachusetts Audubon. As indicated above, we concur that this type of research and analysis would contribute to our collective understanding of tern and piping plover population trends, and would better inform management in general. We will continue to look for the resources to support these types of studies.

Massachusetts Audubon pointed out that the research and in-depth analyses discussed above, as well as other aspects of the park's plover and tern conservation program, would benefit from the involvement of an experienced full-time, year-round biologist. We agree with Massachusetts Audubon, and are continuing to explore ways to restore this type of position at CCNS given existing financial resources. However, this staffing issue is beyond the scope of this EA, and as discussed above, we believe our current staffing is adequate to implement the measures discussed in this EA.

Massachusetts Audubon expressed concern that the park has not encouraged public and peer review of monitoring data, particularly the data collected pursuant to the Neg Reg. While we have been reporting monitoring results to MDFW, USFWS, and the CCNS Advisory Commission annually, we agree that these data and reports should be shared more broadly. We will work to correct this oversight by making our reports and data summaries available via the park's web site. We have set a goal of making at least the last 10 years of reports and data summaries available on line within the next six months, and adding future data and reports as they become available.

MDFW reviewed the EA and subsequent information provided by the park to clarify how the Preferred Alternative would be implemented. In a letter dated March 15, 2007, MDFW provided several recommendations to ensure that implementation of the Preferred Alternative will not result in death or harm to, or harassment of, piping plover and least tern adults, eggs, or chicks, or adverse effects to their habitats. MDFW's recommendations include:

- More intensive monitoring of Herring Cove North.
- Following the State's tern management guidelines to ensure protection of least terns.
- When determining appropriate buffers for any areas that could be opened under the Preferred Alternative, taking into account that the terns and plovers using those areas may have chosen them due to the lack of ORVs and are likely to be more sensitive to the disturbance associated with initiation of ORV activity.
- Expanding buffers or closing areas to ORVs if plovers or terns appear intolerant of the introduction of ORVs and related activity.
- Refraining from allowing ORVs to park seaward of plover and tern nests.

MDFW also recommended that under no circumstances should plover or tern chicks be "herded" in order to facilitate ORV access. Herding or otherwise influencing the movement of adults and chicks would be a violation of both the State and Federal Endangered Species Acts, and is not tolerated at CCNS. We concur with and will implement MDFW's recommendations, and as a result, take of plovers or least terns, as defined by the Massachusetts Endangered Species Act, is not anticipated.

USFWS reviewed the EA and subsequent information provided by the park to clarify how the Preferred Alternative would be implemented. In a letter dated March 22, 2007, USFWS reiterated that larger buffers around plover nests may be needed in areas where ORV use of the beach is likely to be in the form of parking rather than as a travel corridor. In this letter, USFWS also concurred with the park's determination that implementation of the Preferred

Alternative is not likely to adversely affect piping plovers. As a result, further consultation pursuant to Section 7 of the Endangered Species Act is not necessary at this time.

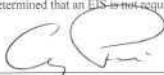
The Coastal Zone Management Act requires that federal agencies adhere to state Coastal Zone Management Plans when conducting projects or activities that affect the coastal zone. Steve McKenna, the Cape and Islands coordinator of the Massachusetts CZM program, confirmed their consistency determination by telephone on April 2, 2007. He found that the Preferred Alternative properly avoids, minimizes, and mitigates impacts, strikes a balance and provides flexibility for managers for plover protection and improving public access, and is in the spirit of the Neg Reg as described.

#### FINDING OF NO SIGNIFICANT IMPACT

The Selected Alternative does not constitute an action that normally requires preparation of an environmental impact statement (EIS). The Selected Alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are minor or moderate in intensity. There are no significant impacts on public health, public safety, threatened or endangered species, historic properties either listed in or determined eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the action will not violate any federal, state, or local environmental protection law.

Based on the foregoing, it has been determined that an EIS is not required for this project and thus will not be prepared.

Recommended:

  
George E. Price, Jr.  
Superintendent, Cape Cod National Seashore

6/7/07  
Date

Approved:

  
Chrystandra L. Walter  
Acting Regional Director, Northeast Region

6/7/07  
Date

#### Attachments

Attachment A: Errata to the Environmental Assessment

**Attachment A. Errata to the Environmental Assessment.**

References:

Massachusetts Department of Fish and Wildlife (MDFW). 1993. *Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns, and Their Habitats in Massachusetts.*

Massachusetts Barrier Beach Task Force. 1994. *Guidelines for Barrier Beach Management in Massachusetts. Massachusetts Coastal Zone Management Program.* Boston, Massachusetts. 265 pp

Mueller, Eileen 2001. *Surfcasters and Off Road Vehicle Use at Cape Cod National Seashore: An Ethnographic Report.* National Park Service, Northeast Ethnography Program, Boston MA.

Schneider, E. G. 2005. Behavioral ecology of an incubating shorebird: The effects of ambient temperature and human disturbance on piping plover (*Charadrius melodus*) incubation patterns at Cape Cod National Seashore. Masters Thesis, University of Rhode Island. 97 pp.