

**National Park Service
U.S. Department of the Interior**



***Benefit-Cost and Regulatory Flexibility Analyses:
Special Regulations of Off-Road Motor Vehicles at Cape Hatteras
National Seashore***

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Introduction

This report presents the benefit-cost and regulatory flexibility analyses of a proposed regulatory action to amend its special regulations for Off-Road Vehicle (ORV) use at Cape Hatteras National Seashore. Consideration of changes to this special regulation was required by the provisions of the National Defense Authorization Act for Fiscal Year 2015 (2014 Act). This proposed rule would amend the special regulation for ORV use at the Seashore as it relates to (1) the morning opening of beaches that are closed to ORV use at night, (2) the dates that seasonal ORV routes are open in the fall and spring, and (3) the size and location of VFAs. The proposed rule would also allow the Seashore to issue ORV permits that would be valid for different lengths of time than currently exist, and would revise some ORV route designations to allow vehicular access without requiring an ORV permit.

Quantitative analyses were not conducted due to a lack of available data, and because the additional cost of conducting quantitative analyses was not considered to be reasonably related to the expected increase in the quantity and/or quality of relevant information. Nevertheless, the National Park Service (NPS) believes that these analyses provide an adequate assessment of all relevant costs and benefits associated with the regulatory action.

The results of the benefit-cost analysis indicate that any negligible costs of the proposed regulatory action are justified by the associated benefits. Additionally, this proposed regulatory action will not have an annual economic effect of \$100 million, and will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

The results of the regulatory flexibility analysis indicate no adverse impacts for any sector of the economy or unit of government, including small entities. Given those findings, the proposed regulatory action will not impose a significant economic impact on a substantial number of small entities.

Benefit-Cost Analysis

Background

Situated along the Outer Banks of North Carolina, Cape Hatteras National Seashore (Seashore/park) was authorized by Congress in 1937 and established in 1953 as the nation's first national seashore. The Seashore contains important wildlife habitat created by dynamic environmental processes. Several species listed under the Endangered Species Act (ESA), including the piping plover, rufa subspecies of the red knot, and five species of sea turtles, are found within the park. The Seashore also serves as a popular recreation destination where users participate in a variety of activities.

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, issued in 1972 and amended by Executive Order 11989 in 1977, required federal agencies to issue regulations designating specific areas and routes on public lands where the use of ORVs may be used. NPS implemented these Executive Orders by promulgating a regulation at 36 CFR 4.10 (Travel on park roads and designated routes). Under 36 CFR 4.10, the use of motor vehicles off roads is not permitted unless routes and areas are designated for off-road motor vehicle use by special regulation. Under 36 CFR 4.10(b), such routes and areas “may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.”

In 2010, the NPS finalized the Off-Road Vehicle Management Plan and Environmental Impact Statement (ORV FEIS) for ORV use at the Seashore to guide the management and use of off-road vehicles at the Seashore. As a part of the selected alternative, certain elements of the ORV FEIS were implemented through a special rulemaking process. The Final Rule for ORV management at the Seashore was published in the Federal Register on January 23, 2012 (2012 Final Rule).

Statement of Need for the Proposed Plan

Executive Order 12866 (58 FR 51735) directs Federal agencies to demonstrate the need for the regulations they promulgate. On December 19, 2014, the President signed the National Defense Authorization Act for Fiscal Year 2015 (2014 Act). The 2014 Act requires that the Secretary of the Interior consider three specific changes to the 2012 Final Rule regarding (1) morning opening of beaches that are closed to ORV use at night, (2) the dates for seasonal ORV routes, and (3) the size and location of vehicle-free areas (VFAs).

On February 17, 2016, the NPS published the Consideration of Modifications to the Final Rule for Off-Road Vehicle Management Environmental Assessment (EA). As required by the 2014 Act, the EA evaluated the times that beach routes open to ORV use in the mornings, extending the dates that seasonal ORV routes would be open in the fall and spring, and modifying the size and location of VFAs. The EA also considered issuing ORV permits for different lengths of time, revising some ORV route designations, and providing access improvements for soundside locations on Ocracoke Island.

Alternatives Considered in the Analysis

The EA analyzed four alternatives. The no-action alternative describes the continuation of current management under the 2012 Final Rule and related Seashore management plans. The three action alternatives (the Alternative 1, Alternative 2 (proposed rule), and Alternative 3) for changing morning beach openings from nighttime closures, seasonal ORV route dates, the size and location of VFAs, and alternative ORV permit options and access improvements within the Seashore. Complete descriptions of all alternatives can be found in the Consideration of Modifications to the Final Rule for Off-Road Vehicle Management Environmental Assessment (NPS 2016).

Baseline Conditions

The costs and benefits of a regulatory action are measured with respect to its baseline conditions. Guidance from Office of Management and Budget (OMB) for a regulatory analysis suggests that the baseline should represent the agency's best assessment of the way the world would look absent the proposed action (OMB 2003). Therefore, all costs and benefits that are included in this analysis are incremental to the baseline conditions. That is, any future impacts that would occur without the proposed action, as well as any past impacts that have already occurred, are not included in this analysis. For this proposed regulatory action, the baseline conditions are described by the 2012 Final Rule and the EA no-action alternative.

Proposed Rule

The proposed rule, pursuant to 36 CFR 4.10(b), would implement the NPS preferred alternative (Alternative 2) in the EA by amending the special regulation for ORV use at the Seashore as it relates to (1) the morning opening of beaches that are closed to ORV use at night, (2) the dates that seasonal ORV routes are open in the fall and spring, and (3) the size and location of VFAs. The proposed rule would also allow the Seashore to issue ORV permits that would be valid for different lengths of time than currently exist, and would revise some ORV route designations to allow vehicular access without requiring an ORV permit. Certain elements of the proposed rule and the EA alternatives may have effects on the use and experiences of different visitor groups. The anticipated effects on user groups for each component of the proposed regulatory action are described below.

Beach Opening Times: as stated in EA alternative 2, ORV routes would continue to open to ORV use at 7:00 a.m. but certain "priority" beach routes could be opened to ORV use earlier than 7:00 a.m. but no earlier than 6:00 a.m. The NPS proposed this change so that ORV users could access some of the more popular beaches earlier than 7:00 a.m. The NPS is proposing to amend the special regulation at 36 C.F.R. § 7.58(c)(12) to state that the priority beaches would open no earlier than 6:00 a.m. Earlier access would be beneficial to ORV users since it would increase time available for fishing and beach access, but would not be expected to alter visitor use. Pedestrian visitors would not be impacted by the morning beach openings because all priority routes would be located within existing designated ORV routes.

Dates for Use of Seasonal ORV Routes: the proposed rule would extend the dates for ORV use of seasonally designated routes in front of the villages of Rodanthe, Waves, Salvo, Avon, Frisco, and Hatteras and the Ocracoke Campground by two weeks in the fall and two weeks in the spring, making these seasonal routes open to ORV use from October 15 through April 14. The NPS proposed changing seasonal dates for ORV use to provide an additional month of ORV access in areas and at times of the year which would not result in measureable impacts to sensitive wildlife, visitor experience, safety, or workload complexity of park staff. Expansion of the seasonal ORV routes by two weeks in the fall and two weeks in the spring would benefit ORV users. Visitors wanting a

vehicle-free experience within a short walking distance from their home or vacation rental may experience negligible adverse impacts during those two two-week periods.

Size and Location of VFAs: the proposed rule would modify the size and location of VFAs and improve access in some locations. The NPS proposed making minor changes to the VFAs because it would slightly increase ORV access on each of the islands without measurably impacting visitor experience, safety, sensitive wildlife species, or workload complexity of park staff. These changes would not be expected to alter the existing overall Seashore visitor use.

Permit Durations: the NPS is proposing to remove the specific times established for the duration of ORV permits from the special regulation at § 7.58(c)(2)(iv), and instead control the duration of the permits through the Superintendent's compendium. As described in the EA, existing annual ORV permits would change from being valid for the calendar year of issuance to being valid for one year from the date of issuance. Also, the existing 7-day ORV permit would be replaced by a 10-day permit. The NPS proposed this change to the rule so that annual ORV permits would be good for a full year rather than just for the current calendar year, which if issued later than January 1 would be for less than a full year. Also, changing to a 10-day ORV permit from a 7-day permit could allow ORV users to access the beaches over two weekends, depending upon when they arrive at the Seashore. The NPS intends to continue to recover the costs of administering the ORV permit program under 54 U.S.C. 103104. This requirement will remain in the proposed rule.

Access Improvements: the existing ORV route designation along Devil Shoals Road would be removed. No ORV permit would be required to access this location as it would be considered a park road instead of an ORV route. The NPS proposed these changes to allow for limited vehicular soundside access on Ocracoke Island without the requirement to purchase an ORV permit. Unlike the other islands at the Seashore, there is currently no vehicular access to the soundside of Ocracoke Island available without an ORV permit. The existing Cape Point bypass route south of ramp 44 would be extended 0.4 miles to the north so that it would join with ramp 44.

The NPS is also proposing to extend the existing bypass route by approximately 600 feet to the south of the southern terminus of the bypass. Although this southern extension was not originally part of the preferred alternative in the EA, impacts associated with this proposed 600-foot extension would be similar in nature to those disclosed in the EA for the 0.4 mile extension to the north. As concluded in the EA, impacts associated with the bypass route extension would remain negligible at most and would have to impact to wetlands. The NPS proposes extending this existing bypass to provide additional ORV access near Cape Point when the ORV route along the beach is closed for safety or resource protection. The bypass road is not located near a VFA and would not impact pedestrian visitors.

Benefits and Costs of the Proposed Rule and EA Alternatives

This section evaluates the expected benefits and costs associated with the proposed regulation and the EA Alternatives compared to the current baseline conditions. Quantitative analyses were not conducted due to lack of available data, and because the additional cost of conducting quantitative analyses was not considered to be reasonably related to the expected increase in the quantity and/or quality of relevant information. Nevertheless, NPS believes this approach provides an appropriate means to characterize the relevant benefits and costs associated with this proposed regulatory action.

Benefits

As described under Alternative 2 of the EA, earlier morning beach openings, extended routes and seasons, and altering the existing permit system would improve use and experience for ORV users. The parking areas, access road, pedestrian pathway, and the removal of an ORV permit requirement to access the soundside would provide long-term, beneficial impacts for both ORV and pedestrian visitors on Ocracoke Island who would like soundside access without the cost of an ORV permit. Therefore this action would generate additional benefits for ORV users and pedestrian visitors on Ocracoke Island. The net economic value of a trip (or consumer surplus) is defined as the amount respondents are willing to pay above the amount they actually paid for their trip. Estimates on the current level of benefits and the number of trips each visitor would take each year are not available. Therefore, the net economic value associated with the increased benefits to ORV users and pedestrian visitors on Ocracoke Island could not be estimated. Nevertheless, positive benefits to ORV users and pedestrian visitors on Ocracoke Island are anticipated.

Alternatives 1 and 3 would also generate benefits for ORV users compared to baseline conditions.

Costs

As described in the proposed rule and the EA, earlier beach openings and alterations to the existing permit system will not have an effect on visitors who don't use ORVs. Under the proposed rule, visitors desiring a vehicle-free experience would lose 2.5 miles of designated vehicle-free beach outside of peak visitation periods but would retain vehicle-free access during the summer visitation season. The expansion of the seasonal ORV routes by two weeks in the fall and two weeks in the spring could affect visitors wanting a vehicle-free experience within a short walking distance from their home or vacation rental during those two two-week periods. These effects could negatively impact the experience for visitors desiring a vehicle-free experience. According to the EA, Alternative 2 would contribute small, adverse, incremental impacts for visitors desiring a vehicle-free experience. These changes would not be expected to alter the existing overall Seashore visitor use or measurably impact visitor experience. Therefore, it is anticipated

that overall this action could impose negligible impacts on visitors wanting a vehicle-free experience and no impacts to other visitors.

Alternatives 1 and 3 would also generate negligible impacts to visitors desiring a vehicle-free experience as compared to baseline conditions.

Summary

As described in the EA, the proposed rule would contribute noticeable, beneficial, incremental impacts for ORV users and pedestrian visitors on Ocracoke Island from improved access and small, adverse, incremental impacts for visitors desiring a vehicle-free experience. This action will not affect other visitors and will not impose any additional fees, restrictions, or other management measures that would increase costs to local businesses or communities. Since this action will generate positive benefits to ORV users and pedestrian visitors on Ocracoke Island and would not be expected to alter the existing overall Seashore visitor use or measurably impact visitor experience, the NPS concludes that net benefits of the proposed rule (EA Alternative 2) will be positive.

Uncertainty

The number of trips ORV users would take or the increased benefits they would experience as a result of the proposed regulatory action is unknown. The number of visitors desiring a vehicle-free experience affected from the proposed regulatory action is also unknown. Therefore, the total benefits generated by this action cannot be estimated. Nevertheless, positive benefits to ORV users are anticipated as illustrated in the discussion above. Any uncertainty involved in this analysis is associated only with the magnitude of those benefits. NPS is not aware of any other sources of uncertainty.

Conclusions

The results of this benefit-cost analysis indicate that positive net benefits will be generated by implementing the proposed regulatory action. Given that, NPS concludes that the benefits associated with the proposed regulatory action justify any associated costs. Further, this proposed regulatory action is not expected to have an annual economic effect of \$100 million, or to adversely affect an economic sector, productivity, jobs, or other units of government. This proposed regulatory action will improve governmental functions by completing the provisions required by National Defense Authorization Act for Fiscal Year 2015.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended, requires agencies to analyze impacts of regulatory actions on small entities (businesses, nonprofit organizations, and

governments), and to consider alternatives that minimize such impacts while achieving regulatory objectives (Small Business Administration 2012). Agencies must first conduct a threshold analysis to determine whether regulatory actions are expected to have a significant economic impact on a substantial number of small entities. If the threshold analysis indicates a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be produced and made available for public review and comment along with the proposed regulatory action. A final regulatory flexibility analysis that considers public comments must then be produced and made publicly available with the final regulatory action. Agencies must publish a certification of no significant impact on a substantial number of small entities if the threshold analysis does not indicate such impacts.

This threshold analysis relies on the associated benefit-cost analysis, which concludes that this proposed regulatory action will generate slight positive net benefits. In addition, this action will not impose restrictions on small businesses, governments, or non-profit organizations in the form of fees, training, record keeping, or other measures that would increase costs. Given those findings, this proposed regulatory action will not impose a significant economic impact on a substantial number of small entities.

References

National Park Service. 2016. Consideration of Modifications to the Final Rule for Off-Road Vehicle Management Environmental Assessment. National Park Service, U.S. Department of the Interior.

Office of Management and Budget. 2003. Circular A-4: guidance for developing regulatory analyses. September 17, 2003.

Small Business Administration. 2012. "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act." May 2012.