



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

**Cape Hatteras National Seashore
North Carolina**

**FINDING OF NO SIGNIFICANT IMPACT
Consideration of Modifications to the Final Rule for Off-Road Vehicle
Management - Environmental Assessment**

Recommended:

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David E. Hallac
Superintendent, Cape Hatteras National Seashore

12/19/16

Date

Approved:

A handwritten signature in black ink, appearing to read "Stan Austin".

^{FOR} Stan Austin
Regional Director, Southeast Region, National Park Service

12/19/2016

Date

INTRODUCTION

The Department of the Interior, National Park Service (NPS) has prepared this Finding of No Significant Impact (FONSI) for the Consideration of Modifications to the Final Rule for Off-Road Vehicle Management Environmental Assessment (EA) regarding off-road vehicle (ORV) management at Cape Hatteras National Seashore. This FONSI has been prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), its implementing regulations (40 CFR 1500-1508), the Department of the Interior NEPA regulations (43 CFR 46), and NPS Director's Order 12, Conservation Planning, Environmental Impact Analysis and Decision-Making and accompanying handbook. This FONSI is not the final agency action for those elements of the EA that require promulgation of a regulation to be effective. Promulgation of a regulation will constitute the final agency action for such elements.

BACKGROUND

In compliance with NEPA, the NPS has prepared an EA that evaluates proposed changes to the Cape Hatteras National Seashore (Seashore) ORV special regulation. The EA also evaluates the impacts of other access improvements and changes to the ORV permit system currently in place at the Seashore.

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

On December 19, 2014, the President signed the National Defense Authorization Act for Fiscal Year 2015 (2014 Act). The 2014 Act required NPS to review and modify wildlife buffers, expedite construction of vehicle access points and roads, and undertake a public process to consider changes to ORV management at the Seashore. NPS addressed the wildlife buffers portion of the 2014 Act by developing the Review and Adjustment of Wildlife Protection Buffers EA and completing the process with a FONSI, which was signed on June 15, 2015. The NPS also completed the construction of all planned vehicle access points and roads authorized under the 2013 FONSI for the Proposal to Facilitate Additional Public Beach Access EA.

The 2014 Act also required the Secretary of the Interior to consider three specific changes to the 2012 Final Rule regarding ORV management, which were examined in the EA and are explained in the Purpose and Need for Action, below.

Purpose and Need for Action

The purpose of the EA is to consider changing morning beach openings from nighttime closures, seasonal ORV route dates, and the size and location of vehicle-free areas (VFAs), as well as to explore alternative ORV permit options and access improvement projects within the Seashore. Action is needed as a result of the 2014 Act, which directed the NPS to undertake a public process to consider, consistent with management requirements at the Seashore, the following changes to the 2012 Final Rule: opening beaches at the Seashore that are closed to night driving restrictions by opening beach segments on a rolling basis as daily management reviews are completed; extending seasonal ORV routes for additional periods in the fall and spring if ORV use would not create resource management problems at the Seashore; and modifying the size and location of VFAs.

The statements and conclusions reached in this FONSI are based on documentation and analysis provided in the EA. To the extent necessary, relevant sections of the EA are incorporated by reference below.

SELECTED ALTERNATIVE

Based on the analysis presented in the EA, the NPS has selected alternative 2 for implementation, with one minor modification. Alternative 2 (hereinafter referred to as the selected alternative) was identified in the EA as the NPS preferred alternative and is described below and on pages 33-42 of the EA. The minor modification to the selected alternative consists of an approximately 600-foot extension to the bypass route at Cape Point, south of the Salt Pond at the narrows behind the overwash dunes. The NPS's public process brought to light concerns regarding access to Cape Point during the non-nesting season, with many commenters requesting an alternative route that would begin near old Ramp 45 or Salt Pond Road and traverse the south beach eastward towards Cape Point. The NPS considered this request for use during the non-nesting season, when beach erosion may preclude vehicle and pedestrian access to Cape Point from Ramps 43 and 44, and therefore is including an extension of the existing bypass route south of Ramp 44 as part of the selected alternative. The bypass route extension should provide a continuous alternative route to Cape Point from Ramp 44 that may be used when erosion or a beach closure may otherwise preclude travel to the south during the non-nesting season. Although this southern extension was not originally part of the preferred alternative in the EA, impacts associated with this proposed 600-foot extension will be similar in nature to those disclosed in the EA for the 0.4-mile extension to the north. There would be no measurable or observable impacts to federally- or state-listed species, special-status species, or non-listed shorebirds associated with the 600-foot bypass route extension and no wetlands would be impacted.

Seashore staff will evaluate the use of this bypass extension as an effective alternate access route to Cape Point. If the extended bypass road is unable, as intended, to generally provide alternate access to Cape Point when beach erosion and high tides may preclude travel, the NPS may initiate a new planning process to evaluate other alternate routes to reach Cape Point when such conditions exist.

In addition to this modification, as set forth in the preferred alternative in the EA the selected alternative will include:

Morning Beach Openings

Priority routes (year-round ORV routes accessible from Ramp 2, Ramp 4, Ramp 25, Ramp 27, Ramp 43, Ramp 44, Ramp 48, Ramp 49, and Ramps 70 and 72) will open to ORV use at 6:00 a.m. in May, June, and July. In August and September, priority routes will open to ORV use at 6:30 a.m., and then all beaches with ORV routes not already open for 24 hour driving will open at 7:00 a.m. from October 1 until November 15.

If any of these priority routes are closed for an extended period of time due to erosion or weather conditions (e.g., flooding), alternate year-round ORV routes could be opened at the earlier times in lieu of designated priority routes, as long as no conflict exists with any restrictions expressed in the Seashore's existing ORV/species management plans or regulations. Other ORV routes will continue to open at 7:00 a.m. when night driving restrictions are in place.

Seasonal Off-Road Vehicle Routes

Seasonally designated ORV routes in front of the villages and the Ocracoke Campground will be open to ORV use from October 15 through April 14.

Vehicle-Free Areas

The NPS will not construct Ramps 2.5 and 59.5 (from the 2013 Proposal to Facilitate Additional Public Beach Access EA). Instead, it will restore Ramp 2 to ORV use and extend the existing year-round ORV route approximately 0.5 mile north, providing dual access to this ORV route from Ramp 4 and Ramp 2. Restoring Ramp 2 will maintain the current entrance location from the parking area at Coquina Beach, but will realign approximately 100 to 150 feet of the length of the ramp to the south by approximately 200 feet. The ramp will be approximately 36 feet wide, and the surface will be composed of a pervious mixture of sand, shell, and clay. Ramp 59 will be open for year-round ORV use, extending the existing year-round ORV route by approximately 0.5 mile.

The NPS will redesignate the existing VFA south of Ramp 23 as a seasonal ORV route, extending the existing seasonal ORV route in front of Rodanthe-Waves-Salvo south by approximately 1.5 miles. Similarly, the NPS will redesignate a portion of the existing VFA at Ramp 34 as a seasonal ORV route, extending it in front of the village of Avon for 1 mile north. Old Ramp 45, an existing park road (0.2 miles long) that is currently closed to all vehicles, will be opened to vehicular use to provide additional pedestrian access to the south beach and Cape Point areas. A parking area will be installed at the end of old Ramp 45 as described under "Access Improvements," below.

Access Improvements

Devil Shoals Road, sometimes referred to as "Dump Station Road", located across from the Ocracoke Campground, will be improved and designated as a park road instead of an ORV route. Visitors will not be required to purchase an ORV permit to drive on this road. The NPS will widen the existing one-lane road to two lanes up to 28 feet wide, and will construct one small parking area up to 35 feet wide and 70 feet long that will contain approximately five parking spaces or more if they can fit within the 35 foot by 70 foot disturbed area. The last 400 feet of roadway closest to the sound will not be widened, so as to avoid affecting wetlands. The road and parking areas will be composed of sand, crushed shells, and clay.

The South Bitterswash Creek site is located approximately 4 miles from the north end of Ocracoke Island on the western side of the island. In the EA, this site was erroneously referred to as "Bitter Wash Creek." According to USGS maps, the correct name for the site is South Bitterswash Creek. Access improvements at this site will include designating a parking area and footpath and formalizing a road where a disturbed vehicle pathway already exists. The formalized road will be approximately 160 feet long by 36 feet wide and will be designated as a park road. The NPS will construct a 10 to 12 car parking area (up to 150 feet by 50 feet in size) at the end of the roadway. To minimize stormwater runoff, the road and parking area will be constructed using a pervious mixture of sand, shell, and clay. The NPS will install a primitive pedestrian path, approximately 175 feet long and 7 feet wide, to provide access from the parking area to the sound. To construct the primitive path, the NPS will clear vegetation to expose the existing sand; no additional surfacing materials will be used.

The NPS will extend the existing interdunal (bypass) route at Cape Point south of the Salt Pond at the narrows behind the overwash dunes by approximately 0.4 mile north to Ramp 44. The 0.4-mile extension will be approximately 30 feet wide. As discussed above, the NPS will also extend the existing bypass route by approximately 600 feet to the south. The NPS is including

this bypass extension in the selected alternative in order to provide additional ORV access near Cape Point when the ORV route along the beach is closed due to erosion or for safety or resource protection.

The selected alternative will also include additional parking at the end of old Ramp 45. The NPS will designate a 15 to 20 car parking area at the end of old Ramp 45 to improve pedestrian access to the beaches near the south beach and Cape Point. The parking area will be approximately 180 feet long and 140 feet wide. To minimize stormwater runoff and flooding, NPS will construct the parking area landward of the dune line using a pervious mixture of sand, shell, and clay.

ORV Permit Durations

The existing annual ORV permit will change from being valid for the calendar year to being valid for one year from the date of issue. Also, the Seashore will no longer issue a 7-day ORV permit; it will issue a 10-day permit instead.

RATIONALE FOR THE DECISION

The NPS has decided to implement the selected alternative because it best meets the purpose and need for the project while maintaining year-round VFAs for non-motorized recreationists and limiting impacts on resources and park operations. The selected alternative addresses morning beach openings, seasonal ORV route periods, and VFA size and location as required by the 2014 Act.

The selected alternative also improves visitor experience at the Seashore by improving pedestrian and ORV access and addressing visitor concerns regarding the existing ORV permit lengths. Under the selected alternative, select beaches will open for ORV use earlier in the morning, and the Seashore will retain its ability to check for sea turtles and nests; the dates for ORV access to seasonal ORV routes will be extended for an additional two weeks in the fall and spring (October 15 through April 14); and year-round ORV routes will be expanded slightly to use existing ramps without requiring the construction of two new ramps. The revised ORV permit periods will include short-term permits (10-day) that allow for an additional weekend of ORV use compared to the current 7-day permits. The 10-day permit will also align with the existing North Carolina saltwater fishing license permit periods. The annual ORV permit period from date of purchase will address visitor concerns with the previous permit period, which was for the calendar year. The access improvements will provide more reliable access to both VFAs and ORV routes, and will provide soundside access for those without an ORV permit on Ocracoke Island, which currently does not exist.

Overall, a balance between ORV routes and VFAs will be maintained to provide diverse visitor experiences and simultaneously protect natural resources. Although the actions associated with the selected alternative will involve additional ORV and pedestrian access, impacts to the Seashore's natural resources will be minimal due to the limited amount of changes under the selected alternative and the specific areas for which changes to VFAs or access improvements will be located. The selected alternative provides a sufficient level of increased public access as required by the 2014 Act while affording the necessary protections for the Seashore's natural resources.

MITIGATION MEASURES

The NPS places strong emphasis on avoiding, minimizing, and mitigating potentially adverse environmental impacts. To help ensure the protection of natural and cultural resources and the

quality of the visitor experience, the following protection measures will be implemented as part of the selected alternative.

As discussed on page 52 of the EA, the NPS will use best management practices and environmentally sensitive standards for all access improvements and the realignment of Ramp 2 to minimize stormwater runoff and mitigate impacts on wetlands. A wetland delineation was completed to confirm that all access improvements can be completed outside of wetland areas and will result in no loss of wetlands. Construction fencing will be placed around construction areas to discourage visitors from entering the construction site.

Existing wildlife buffers will continue to be implemented for all prenesting and nesting activities for protected species. These wildlife protection buffers will be established throughout the Seashore, within ORV routes and VFAs, as conditions warrant.

The Seashore will distribute educational materials regarding ways to help identify turtle nesting activity as part of the ORV permit program. Every ORV permittee will receive information regarding what turtle crawls and turtle nesting activities look like so that they can notify Seashore staff if they notice nesting activity that has not already been marked.

FINDING OF NO SIGNIFICANT IMPACT

As described in the EA, the selected alternative has the potential to cause adverse impacts to wetlands, federally listed species, state-listed and special status species, non-listed shorebirds, visitor experience, and seashore operations and management. However, no potential for significant adverse impacts was identified. As defined by 40 CFR 1508.27, significance, as used in NEPA, requires consideration of context and intensity. The following considerations, included in 40 CFR 1508.27, are relevant to this finding of no significant impact:

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.

Wetlands

For all changes in ORV use under the selected alternative, impacts on marine intertidal wetlands (sandy beach areas below high tide) will continue to include rutting and compaction of sediments in the intertidal zone from ORV use; however, these impacts will be short term due to the continuous movement and deposition of sand in the intertidal areas and the ability of the shoreline to “restore” itself in the long term. Because of the nature of the impacts and the consistent regeneration by wave action of wetland soils affected by ORV use impacts related to changes in seasonal or year-round ORV routes or VFAs will be short term, negligible, and adverse, meaning there will be no measurable effects on the size, continuity, or connectivity of the marine intertidal wetlands.

Although the EA stated that impacts from construction-related activities for soundside access improvements will be long-term and adverse in these areas where fill has to be added to any wetland areas to stabilize soils for the parking or road base, a wetland delineation (completed after the EA was published) determined that any direct wetland impacts from access improvements can be avoided. This wetland delineation is available for viewing at <http://parkplanning.nps.gov/caha-orv-ea>. Direct wetland impacts will be avoided by siting the roads and parking areas in uplands that are available in that general vicinity or areas that have been previously disturbed and routing the trail at South Bitterswash Creek to avoid impacts on estuarine wetlands. The parking area and roadway at Devil Shoals Road will be constructed using a permeable base of sand, shells, and clay, so there will be minimal indirect effects on

adjacent wetlands from water running off or ponding. There will be no loss of wetlands associated with the implementation of the selected alternative.

The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

Piping Plover

Opening priority routes to ORV use up to an hour earlier will negligibly impact non-breeding plovers because of the limited amount of area impacted and the very small amount of additional time that ORVs will have access to those beaches. Any impacts will be well within the range of natural variability for piping plovers that might be present on the beaches and will have no measurable effects on the species. Breeding piping plovers will still be protected by established wildlife buffers and will not be impacted.

Extending the seasonally designated ORV routes in front of the villages and the Ocracoke Campground by two weeks in the spring and fall, extending the year-round ORV route north of Ramp 4 by 0.5 mile and the year-round ORV route north of Ramp 63 by 0.5 mile, and designating portions of the VFAs south of Ramp 23 and north of Ramp 34 as seasonal ORV routes will not impact piping plovers in any measurable way. Piping plovers generally are not found in these areas. Higher ORV traffic in these areas could result in dispersal and desiccation of the wrack line, thereby reducing the population of invertebrates that piping plovers could feed on in that area. However, given the relatively small area that could be affected, the indirect impacts on piping plovers likely will be well within natural fluctuations. Continuing to survey and monitor for piping plovers and implementing prenesting closures and wildlife protection buffers around suitable habitat, nesting adults, and unfledged chicks will greatly minimize any potential direct impacts in these areas. Continued establishment of prenesting closures will protect any birds that use these areas for breeding from ORV impacts prior to April 14.

Most of old Ramp 45 is behind the primary dune line and is not considered piping plover habitat. Therefore there will be no impacts from opening old Ramp 45 to vehicular use or the addition of a parking area. Similarly, access improvements on Ocracoke Island will be limited to the soundside areas of the Seashore and will have no impacts on piping plovers or their habitat because there is no available habitat in these areas. More visitors may park and access Cape Point from the parking area at old Ramp 45 which could cause additional disturbance from noise or physical presence and will result in negligible, adverse impacts on non-breeding piping plovers in the area, meaning that impacts would not be observable or measurable. Breeding plovers will still be protected from additional impacts by existing wildlife protection buffers.

Impacts from extending the ORV bypass route near Cape Point 0.4 mile north to Ramp 44 and south for 600 feet will have long-term, negligible, and adverse impacts on piping plovers. Extending the bypass road itself in either direction will not directly impact any piping plover habitat, but may bring ORVs closer to wintering or migrating piping plovers in the area of the Salt Pond and could potentially cause disturbance. However, the potential impacts on piping plovers would be limited due to the continued implementation of wildlife protection buffers for nesting birds.

Red Knot

Impacts on red knots and the natural processes sustaining them as a result of opening priority routes to ORV use up to an hour earlier will not be observable or measurable because (1) the relatively short amount of additional time that the beaches will be open (30 to 60 minutes); (2) the relatively small amount of beach area affected, (3) the fact that in June and July, red knots are generally not found at the Seashore, and from August through October, relatively few are

found; and (4) the priority routes at Ramp 4, Ramp 27 to the north, and Ramp 43 are east-facing beaches, where very few red knots are found at the Seashore. Similarly, because very few red knots are found at the Seashore during October and April and all areas are east-facing beaches, allowing ORV use in front of the villages and Ocracoke campground for an additional two weeks in the spring and fall will not result in observable or measurable impacts on the red knot. Extending the seasonal ORV routes at Ramp 23 and at Ramp 34 and extension of the ORV bypass road north to Ramp 44 and south toward Cape Point will have long-term, negligible, adverse impacts on red knots because impacts from disturbance from ORVs will not be noticeable and will be well within the natural range of variability of their population, habitat, and natural processes sustaining them. These actions will potentially expose red knots to disturbance from ORVs during their resting and foraging behaviors; however, any potential impacts will not be measurable and will be greatly reduced by the fact that Ramps 23 and 34 are located on east-facing beaches. Since 2010, red knots have generally not been observed in these areas.

In addition to the above areas, old Ramp 45 will be opened to year-round vehicle use as a park road. Most of old Ramp 45 is behind the primary dune line and few red knots have been observed during surveys in this area. Therefore, adverse impacts on red knots will not be observable or measurable. The proposed additional parking area at old Ramp 45 will not occur in red knot habitat, so there will be no impact. More visitors may park and access the beach adjacent to this parking area, but with only 15 to 20 parking spaces only a small increase in the number of pedestrians accessing the beach will occur, and any additional disturbance due to noise or physical presence will likely not be observable or measurable because few red knots occur in this area. Any effects from these actions near old Ramp 45 will be well within the naturally occurring fluctuations in population, habitat, and the processes sustaining them. Resource closures established for other bird species also will continue to provide some additional protection for red knots.

Extending the year-round ORV route north of Ramp 4 by 0.5 mile to Ramp 2 and the year-round ORV route north of Ramp 63 by 0.5 mile to Ramp 59 will also have adverse impacts on the red knot. Though the area to be extended north of Ramp 4 to Ramp 2 is on an east-facing beach, and east-facing beaches generally are not where red knots are found at the Seashore, a few red knots have been observed in this area in previous years. Red knots have been routinely observed in the area of Ramp 59 in previous years. While opening these areas to ORV use will potentially expose red knots to direct impacts from ORVs during their resting and foraging behaviors and indirect impacts on their invertebrate food source, these areas are immediately adjacent to year-round VFAs (north of Ramp 2 and north of Ramp 59) that provide ample and suitable habitat for the red knot. Given the relatively small area of new ORV routes that will be opened to year-round ORV use and the fact there is suitable habitat for red knots that is vehicle-free immediately adjacent to these areas, direct and indirect impacts on the red knot will likely not be detectable. However, if they are detectable, impacts will not be outside the natural range of variability. Occasional responses by some individuals to disturbance, if detectable, may result in minimal interference to feeding, resting, or other factors affecting population levels, but are not expected to result in changes to local population numbers, population structure, or other demographic factors. Sufficient habitat in the Seashore will remain functional to maintain a sustainable population in the Seashore.

The access improvements on Ocracoke Island will be on the soundside areas of the Seashore and will not impact red knots or their habitat.

Sea Turtles

Although priority routes will be opened to ORV use as early as 6:00 a.m. during May, June, and July; at 6:30 a.m. during August and September; and at 7:00 a.m. during October until November 15, the beaches will still be surveyed for turtle crawls/nests prior to opening them for ORV use. Even so, opening the beaches to ORV use prior to the current 7:00 a.m. timeframe will slightly increase the risk that nesting may occur after a beach has been surveyed, resulting in the nest being unprotected from impacts associated with ORV use. However, given the relatively small area of beach affected and the fact that early morning nesting events are fairly rare, potential additional impacts will be minimal. In general, after beaches have been surveyed in the morning, ORV use could contribute to false crawls and any crawls of daytime nesting turtles will likely be obscured by ORV tracks. Nesting turtles on the beach during daylight hours as a result could be struck or run over. However, given the extreme rarity of daytime nesting events at the Seashore, the increased risk of impacts will be relatively small. Additionally, by adhering to the speed limit on the beach, ORV drivers likely will be able to see a nesting turtle and avoid striking it. As described in the EA, all of these impacts will be negligible, meaning they are not expected to be observable or measurable, and will be well within the natural range of variability.

The one mile increase in the amount of Seashore open to year-round ORV use will result in long term, negligible adverse impacts to sea turtles. Surveying, monitoring, and protection of sea turtles, nests, and hatchlings through the use of wildlife buffers would continue to occur. There impacts will not be measurable and will be well within the natural range of variability due to the relatively small area being opened to ORV use and the protective measures in place. Impacts from extending the ORV bypass route north to Ramp 44 and south towards Cape Point will have long-term, beneficial impacts on sea turtles because ORVs could bypass the ocean beach that is suitable habitat for sea turtle nesting, thus removing potential impacts from ORV use.

Allowing ORV use in front of the villages for an additional two weeks in the spring and fall, as well as the addition of 2.5 miles of seasonal ORV routes, will not impact sea turtles because the seasonal time periods do not overlap with the sea turtle nesting season. Similarly, there will be no impacts from access improvements on the soundside of Ocracoke Island because nesting sea turtles are not present. Opening old Ramp 45 to vehicular traffic as a park road and construction of a parking area will not impact sea turtles because that area is located behind the primary dune line and is not considered sea turtle nesting habitat.

State-Listed and Special Status Species and Non-Listed Shorebirds

Implementing the selected alternative will result in negligible to minor adverse effects on state-listed and special status species and non-listed shorebirds, similar to those impacts described under piping plovers. These impacts are not expected to be observable or measurable, but if they are, they will not be outside the natural range of variability. Occasional responses by some individuals to disturbance could occur, but without interference to feeding, reproduction, resting, or other factors affecting population levels. Small changes to local population numbers, population structure, and other demographic factors also might occur. However, they should not result in injury or mortality of individuals. Sufficient habitat in the Seashore will remain functional to maintain a sustainable population in the Seashore. The extension of seasonal ORV use periods for two weeks in the fall and spring will result in long-term, negligible, adverse impacts on state-listed species and non-listed species because of the prolonged disturbance from vehicles and people. Increased human and vehicle presence associated with the redesignation of VFAs to year-round or seasonal ORV routes may also disturb these species. These impacts will not be observable or measurable. Continued establishment of prenesting closures and wildlife protection buffers around suitable habitat, nesting adults, and unhatched

fledglings will help protect state-listed and special status species. Construction noise from access improvements, as well as additional human and vehicle disturbance once the access improvements are complete will also result in short-term, minor adverse effects on state-listed and special status species and non-listed shorebirds, but the areas that will be affected will be relatively small and the impacts will be intermittent and sporadic. Occasional responses by some individuals to disturbance are expected, but without interference to feeding, reproduction, resting, or other factors affecting population levels. Small changes to local population numbers, population structure, and other demographic factors could also occur, but would not result in injury or mortality. Sufficient habitat in the Seashore will remain functional to maintain a sustainable population in the Seashore.

Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

Visitor Use and Experience

The expansion of seasonal ORV route periods and redesignation of VFAs to year-round or seasonal ORV routes will have negligible to minor adverse impacts on visitor experience for visitors desiring a vehicle-free experience because there will be fewer miles of VFAs and longer periods of ORV use in front of the villages and the Ocracoke Campground. These impacts will be minor because there still will be over 20 miles of VFAs available throughout the Seashore and year-round opportunities for a vehicle-free experience in the park will continue to exist. Although changes in visitor experience could be detectable, they would not appreciably limit any critical characteristics of the visitor experience for non-ORV users. Expanded seasonal ORV route periods and increased mileage of ORV routes at the Seashore would have beneficial impacts to the experience of ORV users. Impacts on visitor experience from earlier morning beach openings, additional access improvements, and altering the existing ORV permit system will be long-term and beneficial for ORV users at the Seashore.

Seashore Operations and Management

Implementing the selected alternative will result in long-term, negligible, adverse effects on seashore operations and management. Seashore staff workload will increase as a result of the change in morning beach openings and expanded season for ORV use in front of village beaches and the Ocracoke Campground in the spring and fall. Additionally, workload will increase because the Seashore maintenance staff will be responsible for completing access improvements projects (e.g., reconstruction of Ramp 2 and the improvements at Devil Shoals Road). Long-term, negligible adverse impacts will persist from the continued maintenance needs of the new access areas. Staff time to assist visitors to understand new designated year-round ORV and seasonal ORV routes will increase as Seashore visitors learn the new route designations that are part of the selected alternative.

The change in the permit system will also have management impacts. Long-term beneficial impacts will result from alleviating the common rush of park visitors buying annual ORV permits during December and January, which will reduce staff workload. Short-term, minor adverse impacts for law enforcement will result from the additional time needed to check permits since they will no longer be color-coded based on year.

Whether the action is related to other actions that may have individual insignificant impacts but cumulatively significant effects. Significance cannot be avoided by terming an action temporary or breaking it down into small component parts.

The NPS has analyzed other past, present, and reasonably foreseeable future actions in order to consider the significance of cumulative impacts associated with the implementation of the selected alternative. A discussion of the cumulative impacts for each resource is included in

Chapter 4 of the EA. With the exception of the topic of visitor use and experience, the selected alternative will contribute only minimally to overall cumulative impacts. For visitor use and experience, the selected alternative will contribute noticeable beneficial impacts for ORV users from improved access and annual permits from date of issue. Overall, the impacts of the selected alternative, combined with the cumulative impacts from other past, present, and reasonably foreseeable future actions, will not result in significant adverse cumulative impacts.

CONCLUSION

The selected alternative will not have a significant effect on the human environment in accordance with Section 102(2)(C) of NEPA. Therefore, an Environmental Impact Statement (EIS) is not required for this project and will not be prepared.

- Attachment A—Non-Impairment Determination
- Attachment B—Errata
- Attachment C—Response to Substantive Public Comments
- Attachment D—Additional Agency Consultations

ATTACHMENT A: NON-IMPAIRMENT DETERMINATION

INTRODUCTION

This non-impairment determination has been prepared for the selected alternative, as described in the Finding of No Significant Impact for the Consideration of Modifications to the Final Rule for Off-Road Vehicle Management Environmental Assessment (EA).

By enacting the NPS Organic Act of 1916 (Organic Act), Congress directed the U.S. Department of the Interior and the NPS to manage units "to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (54 U.S.C. 100101).

NPS *Management Policies 2006* (NPS 2006), Section 1.4.4, explains the prohibition on impairment of park resources and values:

"While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them."

An action constitutes impairment when its impacts "harm the integrity of park resources or values, including the opportunities that otherwise will be present for the enjoyment of those resources or values" (NPS 2006, Section 1.4.5). To determine impairment, the NPS must evaluate the "particular resources and values that will be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts: (NPS 2006, Section 1.4.5).

National park system units vary based on their enabling legislation, natural and cultural resources present, and mission. Likewise, the activities appropriate for each unit and for areas in each unit also vary. For example, an action appropriate in one unit could impair resources in another unit.

As stated in the NPS *Management Policies 2006* (sec. 1.4.5), an impact on any park resource or value may constitute an impairment, but an impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; or
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
- identified in the park's general management plan or other relevant NPS planning documents as being of significance.

The significance and importance of each resource, based on the Seashore's enabling legislation, is discussed under the analyzed resource sections below.

The resource impact topics carried forward and analyzed for the NPS selected alternative in the EA and for which a non-impairment determination is contained in this attachment are wetlands, federally listed species, state-listed and special status species, and non-listed shorebirds. A non-impairment determination is not made for visitor experience or Seashore operations because those impact topics are not generally considered to be park resources or values according to the Organic Act, and cannot be impaired the same way that an action can impair park resources and values. Each resource or value for which impairment is assessed and the reasons why impairment will not occur is described below.

Wetlands

As noted in the Seashore's enabling legislation, part of the significance of the Seashore is the preservation of unique physiographic conditions now prevailing in this area. The analysis in the EA indicated up to 0.1 acre of direct impacts to wetlands from parking and roadway construction. However a wetland delineation completed after the EA was published indicated that all construction can be sited outside of wetlands. The wetland delineation is available for viewing at <http://parkplanning.nps.gov/caha-orv-ea>. The selected alternative will not directly impact wetlands as a result of construction-related activities at South Bitterswash Creek, Devil Shoals Road, the extension of the existing bypass route at Cape Point, or the construction of a parking area at old Ramp 45. The NPS will avoid direct wetland impacts by siting all roads and parking areas in uplands. The NPS will minimize indirect wetland impacts by constructing the parking areas and roads using a permeable base of sand, shells, and clay, so there will be minimal effects on adjacent wetlands from water runoff or ponding. Best management practices and environmentally sensitive construction methods employed throughout the construction period will minimize stormwater runoff and mitigate indirect impacts on wetlands. Impacts to intertidal wetlands (sandy areas on the beach below the high tide line) will continue to occur due to rutting and compaction from ORV use on beaches but these impacts will be minimal due to the continuous regeneration of sediment deposition in these areas.

The area of impacts on wetlands under the selected alternative is small relative to the overall acreage of wetlands within the Seashore, and the selected alternative will provide parking areas and roads, allowing visitors to better experience the natural resource values present at the Seashore, including wetlands. Overall, the wetlands that are affected by implementation of the selected alternative make up only a small portion of the wetlands in the park, indirect impacts to those wetlands will be relatively small, and their overall viability will not be affected. There will be zero wetland loss associated with the implementation of the selected alternative. Wetlands in the project area will remain in a similar state to existing conditions, and will continue to function in a healthy manner. Current and future generations will continue to have the opportunity to experience these resources. Therefore, there will be no impairment to wetlands as a result of implementing the selected alternative.

Federally Listed, State-listed, and Special Status Species

The significance of the Seashore includes the preservation of natural landscapes as well as the unique flora and fauna within it. The 2006–2011 Strategic Plan states that migratory birds and threatened and endangered species, as well as their habitat, are part of the Seashore's significance.

The selected alternative will potentially expose federally and state listed species and special status species to increased disturbance from ORVs and pedestrians and, in the short term, to disturbance from construction activities. Detailed analysis of impacts on federally- and state-listed species is available in Chapter 4 of the EA and is also addressed in the FONSI. Impacts to these species from all actions under the selected alternative will be well within natural fluctuations to population, habitat, and natural processes sustaining them. Occasional

responses to disturbance by some individual birds or sea turtles could occur but will not result in changes to local population numbers, population structure, or other demographic factors. Sufficient habitat in the Seashore will remain functional to maintain a sustainable population in the Seashore. There will be no loss of critical habitat. Continued surveying and implementation of prenesting closures and wildlife protection buffers will mitigate impacts on these species. As an additional mitigation measure, Seashore staff will distribute educational materials regarding turtle nesting as part of the ORV permit program. Every ORV permittee will receive information regarding what turtle crawls and turtle nesting activities look like so that they can notify Seashore staff if they notice nesting activity that has not already been marked with signage or fencing. The NPS will continue to provide information on all nesting species within the Seashore.

While the selected alternative will potentially expose these species to increased disturbance from ORVs and pedestrians, it will not inhibit the Seashore's ability to protect federally and state-listed species. Prenesting closures and wildlife protection buffers will continue to provide a safe habitat to allow all listed species to nest and forage undisturbed within the Seashore. Wildlife protection buffers will continue to provide educational opportunities for visitors, ranging from species protection requirements to recovery goals. Current and future generations will continue to have the opportunity to appreciate and experience listed species within the Seashore. Therefore, the selected alternative will not result in impairment.

Non-listed Shorebirds

Part of the significance of the Seashore is the preservation of natural landscapes as well as the unique flora and fauna found within them, as noted in the Seashore's 2006 – 2011 Strategic Plan. Under the selected alternative, non-listed shorebirds may experience increased disturbance from human and vehicle presence. Occasional responses by some individuals to disturbance could occur, but wildlife protection buffers or prenesting closures in place for listed species will protect non-listed shorebirds present as well and will therefore help mitigate impacts. Impacts on shorebirds, their habitats, or the natural processes sustaining them will be within the range of natural variability. Sufficient habitat will remain functional to maintain a sustainable population in the Seashore and the selected alternative will not inhibit the Seashore's ability to provide habitat for non-listed shorebirds. Current and future generations will continue to have the opportunity to experience non-listed shorebirds at the Seashore. Therefore, the selected alternative will not result in impairment.

SUMMARY

The NPS has determined that implementation of the selected alternative will not constitute an impairment of the resources or values of the Seashore. This conclusion is based on consideration of the park's purpose and significance, a thorough analysis of the environmental impacts described in the EA, comments provided by the public and others, and the professional judgment of the decisionmaker guided by the direction of NPS *Management Policies 2006*.

ATTACHMENT B—ERRATA

Global

Throughout the EA, Bitter Wash Creek should be South Bitterswash Creek.

Throughout the EA, Ramp 45 should be old Ramp 45.

Chapter 2

Page 33 - Access Improvements

In addition to including the soundside access improvements on Ocracoke Island described for alternative 1, alternative 2 would extend the existing interdunal (bypass) road at Cape Point south of the Salt Pond at the narrows. This existing bypass road would be extended approximately 0.4 mile north to Ramp 44 and approximately 600 feet south towards Cape Point. The extension may improve access to Cape Point at some times when certain resource closures are in place. The bypass road would be extended behind the overwashed dunes. The ~~0.4 mile~~ extension would be approximately 30 feet wide. Construction would be minimal because the road would be primitive and there is little vegetation in this location.

Pages 38 and 40, Figures 25 and 27. Figures have been update to reflect correct terminology of old Ramp 45 and South Bitterswash Creek. The approximate location of the parking area at Ramp 45 has been adjusted further from the shoreline. Revised figures are provided at the end of the errata.

Page 42 - Figure 29. Figure has been updated to reflect the addition of 600 feet of bypass road. Revised figures are provided at the end of the errata.

Page 53 – Alternatives Considered but Dismissed from Detailed Analysis

Insert the following text:

Designate Additional Vehicle-Free Areas.

During the public scoping period, commenters requested that additional VFAs be designated within the Seashore as part of an alternative. The NPS considered this request, but found it to be beyond the scope of the EA, which is to consider modifications as required by the NDAA. In light of the other provisions of the NDAA section related to the Seashore, and its overall intent of expanding ORV access, simple addition or expansion of VFAs did not appear to fall within the purpose of the NDAA.

Chapter 4

Page 76 – Cumulative Impacts

North Carolina Highway 12 Protection Activities Special Use Permit – Beach Nourishment EA. NPS is a cooperating agency with the US Army Corps of Engineers on reviewing a special use permit request from Dare County for beach nourishment along NC-12 north of Buxton Village along 3 miles of the Seashore. There is a narrow isthmus north of Buxton that is regularly overwashed during storm events, leading to emergency closures of NC-12. An EA was prepared, and the preferred alternative would involve placing 2.6 million cubic yards ~~tons~~ of material on about 3 miles of beach during the summer months. NPS has not issued a decision document yet;

however, the timeframe for the preferred alternative would include work being completed between May and August in the year the project is approved and funded. Potential impacts relevant to this EA include socioeconomics, state and federally-listed species, non-listed shorebirds, and visitor use and experience

Page 79 – Wetlands

Under all action alternatives, soundside access would be constructed on Ocracoke Island, including road improvements and parking area construction at ~~Bitter Wash Creek~~ South Bitterswash Creek and Devil Shoals Road sites. Long-term, adverse impacts would occur in these areas where fill (sand, crushed shell, and clay) has to be added to any wetland areas to stabilize soils for the parking or road base. A wetland delineation determined that any direct wetland impacts from access improvements can be avoided. Direct wetland impacts would be avoided by siting the roads and parking areas in uplands that are available in that general vicinity or areas that have been previously disturbed and routing the trail at South Bitterswash Creek and Devil Shoals Road to avoid impacts on estuarine wetlands. At South Bitterswash Creek, it is expected that wetland impacts could be avoided by siting the road and parking area in uplands that are available in that general vicinity and routing the trail leading to the water to limit impacts on estuarine wetlands. As a result, only 0.01 acre of wetland would be directly affected. At Devil Shoals Road, siting of the road and parking would occur so that the road narrows as it approaches the sound, which would limit direct wetland impacts to 0.1 acre in total. The parking areas and roadway would be constructed using a permeable base of sand, shells, and clay, so there would be minimal indirect effects on adjacent wetlands from water running off or ponding. ~~These impacts would be considered localized, minor, and adverse because although there would be a permanent loss in the footprint of the parking area and part of the road or path, a relatively small area of wetland would be lost.~~ The surface would not be paved, which would keep impacts on nearby wetland hydrology to a minimum by allowing for infiltration on the site and avoiding surface runoff. There would be no wetland impacts from the realignment of Ramp 2.

Under alternatives 2 and 3, access improvements for the bypass road at Ramp 44 and parking area at old Ramp 45 could be sited so that estuarine wetlands in that area are avoided. Therefore, although alternatives 2 and 3 involve additional access improvements, there would be no wetland impacts associated with those improvements and impacts on wetlands under all of the action alternatives would be the same, resulting in long-term, negligible to minor, adverse impacts.

Page 106 – Sea Turtles

However, given the relatively small area of beach affected and the fact that early morning nesting events are fairly rare, potential additional impacts would be minimal, though slightly more than under alternative 1 given the additional 30 minutes that the priority routes would be open during May, June, and July under alternative 2 compared with alternative 1.

Page 145 – Seashore Operations and Management

Opening priority routes by 6:00 a.m. would result in long-term, moderate, adverse impacts on resource management staff because they would need to work ~~with heavy equipment~~ before daylight.



Legend

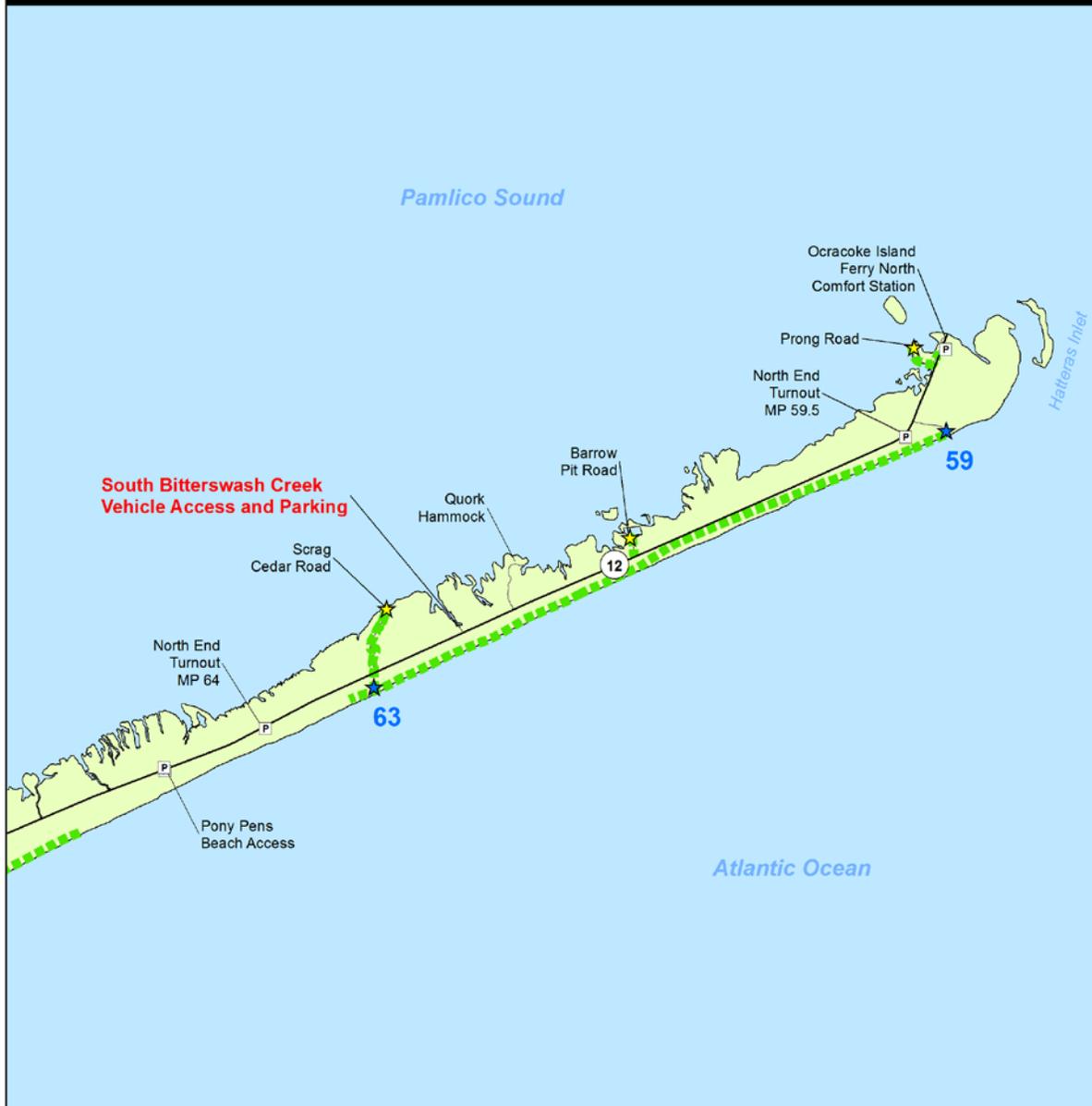
- | | | |
|---------------|----------------------|---------------|
| CAHA Boundary | ORV Ramps | Trails |
| Villages | Soundside Ramps | Roads |
| Campgrounds | Year Round ORV Route | State Highway |
| Parking Lots | Seasonal ORV Route | Other |
| Swim Beaches | | |

Alternative 2
Map 4 of 7

*Areas open to ORVs are subject to temporary resource or safety closures.



FIGURE 25. ALTERNATIVE 2 (MAP 4 OF 7)



Legend

- | | | |
|---------------|----------------------|---------------|
| CAHA Boundary | ORV Ramps | Trails |
| Parking Lots | Oceanside Ramps | Roads |
| | Soundside Ramps | State Highway |
| | ORV Routes | Other |
| | Year Round ORV Route | |

Alternative 2
Map 6 of 7

*Areas open to ORVs are subject to temporary resource or safety closures.



FIGURE 27. ALTERNATIVE 2 (MAP 6 OF 7)



FIGURE 29. BYPASS ROAD EXTENSION

ATTACHMENT C—RESPONSE TO SUBSTANTIVE PUBLIC COMMENTS ON THE ENVIRONMENTAL ASSESSMENT

AL1200 - Beach Opening Times

CONCERN STATEMENT: One commenter noted that opening priority beaches before 7:00 a.m. could result in missed turtle nests, which would therefore be unprotected and could result in an illegal take under the Endangered Species Act. The commenter also noted that some turtles could nest or nests could hatch after the beaches are already patrolled in the morning, which could also result in an illegal take. Another commenter raised similar concerns regarding species protection and staff safety. The commenter suggested that only two priority beaches be opened earlier than the current 7:00 a.m. opening time. A third commenter stated that the morning opening times were arbitrary and should be directly tied to the sunrise. Commenters questioned if NPS resource staff could adequately survey priority beaches prior to ORV use.

Response: Under the preferred alternative (alternative 2 in the EA), the morning beach opening times were tailored to when light is available for resource management staff to safely and properly complete their morning surveys for nesting activities, based on the sunrise and civil twilight time for each month that nighttime restrictions are in place. Civil twilight is the period of time before sunrise and after sunset when the sun is about 6 degrees below the horizon and during which is enough visibility to conduct ordinary outdoor activities. From May through October these times range from 5:20 a.m. to 6:50 a.m. Staff determined how long it would take to survey each priority beach and when sufficient visibility is available for staff safety and to ensure staff can adequately identify any new nesting activities that have occurred. As a result, the NPS has selected the alternative which allows survey times to change as daylight changes.

NPS staff will complete monitoring surveys prior to priority beaches opening, to protect nests prior to beaches opening to ORV use. Therefore, as long as sufficient light was available, opening the beach earlier than 7:00 a.m. is not expected to result in missed nests or adverse impacts to sea turtles. Under Alternative 2, not all beaches will be open prior to 7:00 a.m.; only beaches identified as priority locations could be opened earlier. The NPS worked closely with the USFWS to evaluate the impacts of Alternative 2 to avoid and minimize potential impacts to sea turtles.

Regarding priority beaches, the NPS has hired additional staff who are available for these surveys. Once the process for opening priority beaches is implemented, the Seashore could reduce the number of priority beaches if all beaches are not able to be properly opened in a timely fashion. The number and location of priority beaches were selected based on location throughout the seashore as well as the ability for staff to properly survey all beaches by 7:00 a.m. But if the surveys cannot be completed, the Seashore can reexamine the number of priority beaches.

CONCERN STATEMENT: One commenter requested that a phone number be supplied to ORV users so they could report new turtle nesting activity and help mark new nests.

Response: The NPS appreciates the suggestion of a phone number for ORV users to report nesting activity and will revise the ORV permit package to include information on how to identify turtle nests and a phone number to report nesting activity.

AL1500 - Dates for Use of Seasonal ORV Route

CONCERN STATEMENT: Commenters also noted that expanding seasonal ORV use periods could threaten the existing protections for birds and turtles, including interrupting courtship and nesting periods.

Response: Expanding the seasonal ORV route periods for four weeks or fewer into the spring and fall would not reduce the existing species protections already in place. None of the changes would preclude the existing use of prenesting closures and wildlife buffers, which would continue to protect species on all Seashore beaches.

CONCERN STATEMENT: Commenters requested that the seasonal ORV routes in front of the villages be closed to ORV use year-round, or that no changes be made to current ORV use periods because of safety concerns. Other commenters requested that the seasonal ORV routes in front of villages be opened to ORV use year-round.

Response: The NPS did not consider closing the areas in front of the villages to ORV use or making them available for year-round ORV use, because these were beyond the scope of the EA. The 2014 National Defense Authorization Act (NDAA) directed the NPS to consider “extending seasonal off-road vehicle routes for additional periods in the fall and spring if off-road vehicle use would not create resource management problems at the National Seashore”. The NPS only considered extending the duration of ORV use in the fall and spring, per the direction of the NDAA.

CONCERN STATEMENT: Commenters requested expanded ORV use periods for seasonal ORV routes not in front of villages or the Ocracoke Campground. Commenters also requested that vehicle-free areas (VFAs) be converted to seasonal ORV routes after the summer vacation months.

Response: Because of wildlife nesting activity in the spring and late summer, the Seashore’s emphasis on providing a diversity of visitor experiences, and importance of managing staff workload, no changes were made to seasonal ORV routes not in front of villages or the Ocracoke Campground.

CONCERN STATEMENT: Commenters disagreed with NPS’s rationale for considering but dismissing a six-week expansion of seasonal ORV route use, stating that longer dates would not interfere with nesting activity.

Response: As discussed in the EA, the six-week extension period for seasonal ORV routes was dismissed because there may be active turtle and bird nests during this timeframe, both in the spring and fall. Having active nests in these ORV routes would increase staff workload during that time period as well as the management complexity. Congressional direction in the NDAA was to consider modifications that would not create resource management problems. Since the six-week extension period may create resource management and workload issues, it was dismissed from full analysis in the EA.

AL1800 - Size and Location of Vehicle-Free Areas

CONCERN STATEMENT: Commenters requested additional access to and from Cape Point. Suggestions included never closing the point to pedestrians, re-designating the VFA at old Ramp 45 (otherwise

known as South Beach) as an ORV route, and extending the existing bypass road behind the dune line to reach Cape Point during resource closures.

Response: Increasing access to Cape Point was considered and the NPS concluded that the best option to maximize access yet maintain an important adjacent VFA was to re-designate a portion of old Ramp 45 into a park road with an informal parking area near the end in order to provide easier access to the beach in this area, while still retaining the natural, "wilderness-like" quality of the area. This parking area will increase access into this popular area. The preferred alternative also includes the extension of an existing bypass road by 0.4 mile all the way to Ramp 44. Furthermore, based on input from the public, the preferred alternative has been modified to expand the bypass approximately 600 feet to the south. As a result, the extension of the bypass should help to provide improved access to Cape Point. On the other hand, the area continues to have a high density of nesting shorebirds each year, so that never closing Cape Point to pedestrians is not feasible. For similar reasons, wildlife buffers will remain in place to protect nesting wildlife. The buffer sizes have been informed by scientific literature, data collected at the Seashore, and expert opinion and are designed to be the shortest duration and cover the smallest area necessary to protect a species. Accordingly, they remain in place regardless of the type of route and would not be affected even if the route was only open to pedestrians.

CONCERN STATEMENT: Commenters suggested a wide variety of modifications to existing VFA areas, similar to those provided during the public scoping period.

Response: The NPS received numerous comments requesting changes to the existing VFAs throughout this planning process. Recommendations from the public ranged from allowing no vehicles on Seashore beaches to substantial reductions of VFA mileage. Many commenters suggested changes to VFAs at specific ramps and routes throughout the Seashore, many of them focused in and around the Cape Point area. The NPS considered all these suggestions and made a minor adjustment to ORV access by extending the bypass route near Ramp 44 an additional 600 feet to the south. The NPS proposed 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 NPS chose not to make extensive changes to the VFAs because the preferred alternative sufficiently addresses the requirements of Section 3057(c) of the 2014 NDAA, and maintains a balance between pedestrian and ORV access and resource protection. In considering modifications to the VFAs throughout this planning process, the NPS began with the existing VFAs as a baseline, considered each of the VFAs along the Seashore, and identified particular places where changes could be made while remaining consistent with management requirements at the Seashore. The NPS proposed making changes to only particular VFAs to provide for an increase in ORV access without substantially impacting the balance of visitor opportunities available, staff and public safety, sensitive wildlife species, or workload complexity of park staff.

CONCERN STATEMENT: One commenter agreed with the proposed realignment at Ramp 2, but stated the proposed re-designation of 0.5 mile of the VFA should be a seasonal ORV route instead of a year-round ORV because of safety concerns. The commenter noted that Coquina Beach is a heavily used area during the summer.

Response: The NPS considered the suggestion provided by this commenter. Implementing this suggestion would require construction of Ramp 2.5 in addition to Ramp 2 in order to provide dual

access points to the year-round ORV route. Construction of Ramp 2.5 would require additional land disturbance and increase the environmental impact to the Seashore. The realignment of Ramp 2 to the south, along with the construction of a pedestrian walkway (also accessible by people with disabilities) near the Coquina Beach bathhouse, should alleviate any potential safety issues associated with re-opening Ramp 2 to ORV use. Regarding pedestrian safety, there are currently several paths other than Ramp 2 that provide pedestrian access to Coquina Beach. The NPS will implement appropriate signage to direct pedestrians to those locations and avoid user conflicts on the realigned ramp. Following the opening of realigned Ramp 2, the NPS will evaluate any visitor use conflicts and may implement an appropriately sized “no-stopping zone” if necessary.

AL2100 - Permit Durations

CONCERN STATEMENT: Commenters requested that an 8-day permit replace the 7-day permit option (if the 7-day option is retained) to match the current housing rental periods.

Response: Under the selected alternative, the 10-day permit would replace the 7-day permit at the same cost. Given that an 8-day permit would fall within the 10-day permit, a separate 8-day permit would not be necessary.

CONCERN STATEMENT: One commenter noted that the permit period lengths are outside of the scope of the NDAA requirements for consideration and suggested that no changes should be made.

Response: While it is true that the NDAA did not require the NPS to review and modify the ORV permit period lengths, the NPS chose to include permit lengths in the scope of the EA, to determine if different permit durations could improve the experience of ORV users.

AL2400 - Access Improvements - Hatteras Island

CONCERN STATEMENT: One commenter noted that the soundside access improvements on Ocracoke Island should still require an ORV permit, similar to comparable areas in other parts of the Seashore. A second commenter noted that while an ORV permit may not be required, an ORV would still be required to safely access the proposed parking area near old Ramp 45. A third commenter recommended that instead of constructing a parking area at old Ramp 45, a new parking area should be located at the end of Pole Road which would allow pedestrian access to the wilderness-like beach in the vicinity of Pole Road instead of South Beach.

Response: Soundside access on Ocracoke Island without the requirement for a permit is provided because similar opportunities for this type of access are not available on Ocracoke Island and are available on Hatteras and Bodie islands. These access points on Ocracoke are or will be dirt roads.

Regarding vehicles required to access old Ramp 45, the NPS will install signs noting that this ramp is a primitive, high clearance road. It currently has a firm base and may be accessible by typical passenger vehicles during regular conditions with no flooding. Old Ramp 45 is an existing park road currently closed to vehicle traffic. The road continues to be maintained with culverts and a hard packed pervious surface. Pole Road is located in an area that is more than 10 miles from old Ramp 45 and the South Beach. An existing parking area is available at the end of Pole Road.

CONCERN STATEMENT: Commenters requested additional access improvements including soundside access on Bodie Island, additional improvements at Coquina Beach, and soundside launch areas for kayaks.

Response: While additional access improvements may be considered in the future, the NPS considered only access improvements that addressed the outstanding need for better pedestrian and vehicular access to Cape Point and the soundside of Ocracoke. The access improvements on Ocracoke are intended to provide soundside access without an ORV permit requirement on that island. Such access is already available on Bodie and Hatteras islands, including adjacent to the Oregon Inlet Fishing Center and at the Salvo and Haulover day use areas.

CONCERN STATEMENT: Commenters requested additional access to and from Cape Point to ensure constant access despite resource closures and flooding and a safe exit area during storm events. Suggestions included a bypass road behind the dune line from Ramp 45, a temporary ORV route through the existing VFA during resource closures, or the use of Salt Pond Road.

Response: Access to Cape Point should be enhanced by elements of the preferred alternative which include an extension of the bypass route near Ramp 44 and parking and access improvements near old Ramp 45. Constant access to Cape Point is unlikely to be possible given the importance of the area for shorebird nesting during the spring and summer. However, recent modification to wildlife protection buffers and access improvements described in this EA should enhance opportunities for visitors to access Cape Point.

GA3000 - Impact Analysis: General Methodology For Establishing Impacts/Effects

CONCERN STATEMENT: One commenter requested a comprehensive brief of the best available science for this planning action.

Response: All science used in the development of this EA is identified in the literature cited section of the EA. Additional information, where cross-referenced in the EA, can be found in the original Off-Road Vehicle Management Plan/Environmental Impact Statement (ORV FEIS, 2010).

CONCERN STATEMENT: One commenter suggested that the NPS did not properly consider synergistic effects to wildlife that could occur when the effects of the wildlife buffers EA were combined with the effects of the ORV EA and that the cumulative impacts were therefore underestimated in the ORV EA.

Response: The ORV EA (page 76) specifically included the “Review and Adjustment of Wildlife Buffers EA/FONSI” as one of the projects that was evaluated in the cumulative impact analysis. Due to the minimal changes to ORV management proposed in the preferred alternative, impacts on wildlife were deemed to be negligible. This was by design, as the NPS specifically avoided making changes to VFAs that could meaningfully impact wildlife. The NPS did not find any evidence of synergistic effects (where the net adverse cumulative effect is greater than the sum of the individual effects) on wildlife associated with the combined implementation of the wildlife buffers EA and the ORV EA. It is important to note that wildlife protection buffers and all wildlife protection activities apply to all areas of the seashore and at all times regardless of their designation as an ORV route, seasonal ORV route, or VFA.

ON1000 - Other NEPA Issues: General Comments

CONCERN STATEMENT: Commenters requested an extension of the public comment period for the EA, ranging from 30 days to 1 year, or until the 2015 resource reports are published.

Response: The 30-day comment period satisfied the requirements of the National Environmental Policy Act and provided ample opportunity for public involvement and comment on the EA. The EA was posted online at <http://parkplanning.nps.gov/caha-orv-ea> on February 17, 2016, which opened the public comment period and established the closing date of March 18, 2016, for comments. Within that public comment period, five public meetings were held in two states and over 1,000 public comments were received. Therefore, the 30-day public comment period provided reasonable opportunity to comment for all interested parties. Available resource data were sufficient for the purposes of NEPA analysis of the impact of the alternatives.

CONCERN STATEMENT: Commenters requested that the NPS consider comments from local residents more heavily than comments from responders located in other parts of the country.

Response: Local residents and park visitors were included and actively participated in the planning effort for this EA. Five public scoping meetings and five public comment meetings were held in or adjacent to the Seashore and also in two states within the region. The public notice mechanisms required by NEPA regulations afforded all stakeholders reasonable opportunities to provide input during the planning process. NEPA encourages all interested parties to submit comments and every substantive comment and suggestion has value, regardless of geographic location. As stated in the 1978 reaffirmation of the NPS's core mandate, the national park system is "preserved and managed for the benefit and inspiration of all the people of the United States." Therefore public comments from local residents, park visitors, as well as comments from outside the geographic planning area will be treated with equal importance.

CONCERN STATEMENT: One commenter noted that while the identification of an environmentally preferable alternative is not required for an EA, the NPS has typically identified one. The commenter noted the no-action alternative would likely be the environmentally preferable alternative and requested that the NPS identify the environmentally preferable alternative in the decision document.

Response: As the commenter correctly stated, the NPS does not need to identify an environmentally preferable alternative in an EA. Given that the alternatives in the ORV EA had relatively similar environmental impacts, selecting an environmentally preferable alternative was not a valuable exercise for this planning process.

PN5000 - Purpose And Need: Regulatory Framework

CONCERN STATEMENT: Commenters noted that the ORV FEIS requires a 5-year review of the plan. Given the revisions to aspects of ORV management at the park, commenters requested that the 5-year review timeframe begin after the selected action for this EA is implemented before any further management changes are considered.

Response: These comments are outside the scope of this EA, as this document is not the controlling document for the 5-year review.

CONCERN STATEMENT: One commenter requested that the NPS clearly communicate the need to undergo a rulemaking process to implement some of the proposed alternative actions in the EA.

New Response: The rulemaking requirement is currently described on page 2 of the EA.

PO4000 - Park Operations: Impact Of Proposal And Alternatives

CONCERN STATEMENT: Commenters raised concerns regarding the level of staff required to implement proposed changes to ORV management at the Seashore. Commenters noted the additional requirements for resource staff to open beaches earlier and questioned whether the NPS had appropriate resource staff levels to adequately survey all beaches before the priority and non-priority beaches are opened each morning and appropriate law enforcement staff to patrol all areas open for ORV use.

Response: When developing the range of alternatives, the NPS considered the level of staffing for each alternative element. For example, extending the seasonal ORV route periods for six weeks was dismissed due to the staff requirements that may be needed to manage active turtle and bird nests during that period. Using funding from the ORV permit program, the NPS was able to add 13 additional seasonal staff in 2015, including 10 biologists and 3 law enforcement staff. If the NPS determines that additional staff are needed, the park will continue to hire more in the future. For earlier openings of beaches to ORV use, the staff levels required to complete the surveys may be the same as current levels. The impacts from earlier morning openings were related to having sufficient available light to adequately survey. Once the process for opening priority beaches is implemented, the Seashore could reduce the number of priority beaches if all beaches are not able to be properly opened in a timely fashion. The number and location of priority beaches were selected based on location throughout the Seashore as well as the ability for staff to properly survey all beaches in the morning before opening them up to ORV use. But if the surveys cannot be completed due to a higher volume of turtle nests in the future, for example, the Seashore can reexamine the number of priority beaches. As a result, the NPS has selected the alternative which allows surveys to be completed as the amount of available daylight changes.

TE2000 - Threatened And Endangered Species: Methodology And Assumptions

CONCERN STATEMENT: Commenters stated that the implementation of VFAs has not improved the productivity of piping plover nests at the Seashore and, therefore, VFAs should be eliminated. Another commenter questioned if the recovery of the piping plover at the Seashore is possible and, if not, asked if the NPS should be spending so much money to conserve the species.

Response: A variety of factors impact the reproductive success of piping plovers within the Seashore and throughout the range of the species; VFAs are not designated solely to support piping plover productivity and recovery. The ORV FEIS (2010) and Final Rule (2012) designated a mix of VFAs and ORV routes in order to provide a multitude of visitor experiences and not necessarily to address reproductive success of wildlife species. Wildlife protection buffers have been developed and implemented at the Seashore to protect piping plovers from human disturbance during the breeding season. Other factors, such as predation or weather, may also affect the reproductive success of this species regardless of the route designation and protective measures. In September 2016, the NPS held a science review workshop to further evaluate the factors affecting reproductive

success of nesting wildlife. The NPS looks forward to reviewing a report on this topic that is scheduled for delivery in 2017.

VE2000 - Visitor Experience: Methodology And Assumptions

CONCERN STATEMENT: Commenters requested a visitor use study to determine pedestrian use levels of existing VFA locations.

Response: While VFAs are not solely for pedestrian use, the NPS would like to complete a visitor use study of the entire Seashore for all visitor uses.

VE4000 - Visitor Experience: Impact Of Proposal And Alternatives

CONCERN STATEMENT: One commenter stated that the construction of a parking area at Ramp 45 would change the primitive wilderness and natural views of that area and adversely affect the visitor experience in that location.

Response: The NPS has located the designated parking area to minimize the impacts to the viewshed from the beach. The parking area has been sited behind the primary dune line and should be visible only to those visitors who are traveling on old Ramp 45.

CONCERN STATEMENT: One commenter disagreed that there would be continued adverse impacts on ORV users under the no-action alternative. Implementing the 2012 ORV regulation should not result in an adverse impact to ORV users simply based on the NPS's failure to enforce the law prohibiting ORV use between 1972 and 2012.

Response: This EA tiers to the 2010 ORV FEIS. As noted in the 2010 ORV FEIS, ORV use preceded the establishment of the Seashore and was accounted for in park planning documents and draft ORV management plans since 1973, although formal regulations were never promulgated until 2012. In the years prior to 2012, ORV use was not subject to formalized VFAs or other similar limitations. This pattern of ORV use became the basis for the no-action alternatives in the ORV FEIS. All action alternatives in the ORV FEIS, including the selected alternative and the resulting 2012 regulation, restricted ORV use more rigorously in comparison to historic ORV management at the Seashore. Therefore, the visitor experience of ORV users was adversely impacted, as documented in the ORV FEIS. Because this EA tiers to that FEIS, it continues to include those impacts.

CONCERN STATEMENT: Commenters stated that extending seasonal ORV routes into October and April would create user conflicts during high visitor use periods. The commenters requested that there be no revisions to seasonal ORV route periods unless the changes are proportionally offset by increased VFAs or improved pedestrian experience opportunities at other suitable locations. Commenters also stated that visitor conflicts would occur at Ramp 59, which was relocated to Ramp 59.5 because of parking availability.

Response: The NPS does not expect an increase in user conflicts during April and October because these months are not within peak visitation period. Additionally, the NPS currently experiences few, if any, reports of visitor conflicts. However, the NPS has provided improved pedestrian experiences at the Seashore in this EA by developing a parking area along old Ramp 45 to allow increased access to the South Beach area.

The NPS staff frequently monitors and patrols the beach around Ramp 59. Observations suggest that this area is not heavily used by pedestrians, and therefore the NPS does not expect a significant user conflict. Also, visitors can access the northern portion of this VFA from a pedestrian trail that begins near the parking lot at the Ocracoke ferry terminal. Using this trail allows pedestrians to access this VFA without encountering ORVs. The NPS will continue to monitor pedestrian access to this VFA and determine if it would be appropriate to create a future pedestrian trail near Ramp 59.

WH4000 - Wildlife And Wildlife Habitat: Impact Of Proposal And Alternatives

CONCERN STATEMENT: One commenter noted that proposed VFA changes would be located in documented nesting areas and that the a parking area at old Ramp 45 would be located in breeding habitat for multiple species and is vital for migrating red knots.

Response: Proposed changes to VFAs would not change the implementation and effectiveness of wildlife protection buffers, which are in place regardless of route designation at the Seashore in order to protect beach nesting species. Pedestrian access is currently available from old Ramp 45 during red knot migration. The addition of the informal parking area is not expected to significantly change the use of the area during red knot migration, because it would not be located within red knot habitat or on the beach front. Therefore, no additional impacts to red knots are expected from access improvements near old Ramp 45.

CONCERN STATEMENT: One commenter claimed that the proposed action would benefit only ORV users, and would result in harm to park resources, pedestrians, and park operations. The commenter recommended that the NPS revise the preferred alternative to include additional mitigation measures to protect wildlife and the pedestrian experience at the Seashore.

Response: The NPS disagrees that the proposed action would only benefit ORV users, as access improvements proposed around Cape Point and on Ocracoke Island would clearly benefit pedestrian users as well. The preferred alternative includes only minor changes to existing VFAs, morning beach opening times, and dates for seasonal ORV route access. As described in Chapter 4 of the EA, these changes would have minimal impacts on wildlife, the experience of pedestrians, and park operations. Those visitors seeking solitude would still have a considerable amount of VFAs at the Seashore available to them year round. Also, pedestrians would be able to have a vehicle-free experience within the seasonal ORV routes, which would be closed to ORVs during peak visitation months at the Seashore. Therefore, because the preferred alternative would result in minimal impacts to wildlife and overall visitor experience, the NPS believes that additional mitigation measures are not warranted.

ATTACHMENT D: ADDITIONAL AGENCY CONSULTATION



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Raleigh ES Field Office

Post Office Box 33726

Raleigh, North Carolina 27636-3726

December 7, 2016

David Hallac
Superintendent
Cape Hatteras National Seashore
National Park Service
1401 National Park Drive
Manteo, North Carolina 27954

Subject: Amendment to the Biological Opinion for Cape Hatteras National Seashore's Off-Road Vehicle Management Plan

Dear Superintendent Hallac:

This letter responds to your February 19, 2016 request for reinitiation of section 7 consultation and constitutes an amendment to the U.S. Fish and Wildlife Service's (USFWS) Biological Opinion (BO), dated November, 15, 2010, on the Cape Hatteras National Seashore's (Seashore) Off-Road Vehicle Management Plan (Plan), in accordance with section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (16 United States Code [U.S.C.] 1531 et seq.). This opinion assessed the effects of implementation of the Seashore's Off-Road Vehicle Management Plan on the piping plover (*Charadrius melodus*) of the Atlantic Coast, Great Lakes and Great Plains populations and critical habitat for the wintering population of the piping plover in North Carolina; seabeach amaranth (*Amaranthus pumilus*); and loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and leatherback (*Dermochelys coriacea*) sea turtles.

This December 7, 2016 BO amendment also addresses potential impacts of the Plan on three additional species that weren't considered in the November 15, 2010 BO: the red knot (*Calidris canutus rufa*; red knot), and the Kemp's ridley (*Lepidochelys kempfi*) and hawksbill (*Eretmochelys imbricata*) sea turtles. The USFWS listed red knot as a threatened species on January 12, 2015. The red knot does not nest on the Seashore but migrates and spends winters on the North Carolina coast and uses available habitat on the Seashore. One Kemp's ridley sea turtle nest was documented on the Seashore in 2011. DNA analyses on sea turtle nests in 2015 identified two hawksbill nests on the Seashore that year. Nesting habitats of all five sea turtles are similar.

The basis of your request is the requirement for the National Park Service (NPS) to meet a directive in the National Defense Authorization Act for Fiscal Year 2015 (2014 NDAA) to 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). The changes proposed in the EA would include access improvements and different ORV permit durations to improve ORV management at the Seashore.

In January 2012, NPS published the Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore Off-Road Vehicle (ORV) Management Final Rule. This rule designates ORV routes and authorizes limited ORV use within the Seashore in a manner that will protect and preserve natural and cultural resources, provide a variety of safe visitor experiences, and minimize conflicts among various users. NPS proposes to amend its special regulation for ORV use at the Seashore to revise the times that certain beaches open to ORV use in the morning, extend the dates that certain seasonal ORV routes are open in the fall and spring, and modify the size and location of vehicle-free areas. Consideration of changes to this special regulation was required by section 3057 of the 2014 NDAA.

NPS has completed an environmental assessment (EA) (February 2016) to address the times that certain beaches are open to ORV use in the morning, extend the dates that certain seasonal ORV routes are open in the fall and spring, and modify the size and location of vehicle free areas. The EA was developed in consultation with the USFWS' Raleigh Field Office in compliance with the National Environmental Policy Act (NEPA), and includes an analysis that serves as a Biological Assessment for review of the proposed action on threatened and endangered species. A complete administrative record of this consultation is on file in the Raleigh Field Office.

The EA tiers off of the Off-Road Vehicle Final Environmental Impact Statement of November 2010 (ORV FEIS). The USFWS's November, 15, 2010 BO evaluated impacts of the initial proposed action based on the project description outlined in alternative F of the ORV FEIS. The February 2016 EA explores a no-action alternative which is the continuation of current management—implementation of alternative F contained in the 2010 ORV FEIS.

The 2014 NDAA required NPS to review and modify wildlife buffers, expedite construction of vehicle access points and roads, and undertake a public process to consider changes to ORV management at the Seashore. USFWS and NPS consulted on the wildlife buffers portion of the 2014 NDAA in May 2015. The NPS proposed modifications to the size of the Seashore's wildlife protection buffers and designation of additional access corridors around temporary resource protection closures. Apart from buffers and corridors, all other elements addressed in alternative F of the ORV FEIS would remain unchanged. In the resulting amendment of the USFWS's November, 15, 2010 BO on June 4, 2015 (attached), the USFWS concurred with the NPS's determination that the proposed buffer modifications were not likely to adversely affect seabeach amaranth (*Amaranthus pumilus*), red knot or the Kemp's Ridley sea turtle. Further, the amendment stated that the USFWS "...believes that it is likely that the level of incidental take that would occur from implementation [as a result of the proposed buffer modifications] would not exceed that authorized under the November 15, 2010 Incidental Take Statement for piping plover, loggerhead, green or leatherback sea turtles." NPS completed NEPA analysis on the wildlife protection buffer adjustment and rendered a Finding of No Significant Impact (FONSI), which was signed in June 2015.

The preferred alternative (and proposed action for section 7 review) described in the February 2016 EA is identified as alternative 2. The proposed action would amend the special regulation for ORV use on the Seashore as it pertains to the morning opening times of beaches that are closed to ORV use at night, the dates that seasonal ORV routes are open in spring and fall, and the size and location of vehicle free areas (VFAs). The Seashore would also issue ORV permits that would be valid for

different lengths of time than currently exist and would revise the status of some ORV routes to allow vehicular access without requiring an ORV permit.

Description of the proposed action

The following is summarized from the detailed description of alternative 2, contained in the EA. For the period extending from May 1 through November 15, priority routes identified by NPS would be open at 6:00 a.m. in May, June and July (the priority routes are exhibited in figures 8-11 in the EA). Priority routes would be open to ORV use at 6:30 a.m. in August and September and then all beaches with ORV routes would open at 7:00 a.m. from October until November 15. If any priority routes are closed for an extended period due to erosion, weather conditions, flooding, etc., alternate year-round ORV routes could be opened at 6:30 a.m. in lieu of designated priority routes, as long as there is no conflict with any restrictions expressed in the Seashore's existing ORV/species management plans or regulations. Other ORV routes would continue to open at 7:00 a.m. during this period. Seasonally designated ORV routes in front of the villages and Ocracoke campground would be open to ORV use from October 15 through April 14. All other aspects of night driving would remain unchanged from the no-action alternative.

Ramps 2.5 and 59.5 (as described in the 2013 Proposal to Facilitate Additional Public Beach Access) would not be constructed. Instead, NPS would restore Ramp 2 to ORV use and extend the existing year-round ORV route 0.5 miles north, providing dual access to this ORV route from Ramp 4 and Ramp 2. Ramp 59 would be re-authorized for ORV use, extending the existing year-round ORV route approximately 0.5 mile.

The existing VFA south of Ramp 23 would be re-designated as a seasonal ORV route, extending the seasonal ORV route in front of Rodanthe-Waves-Salvo south by 1.5 mile. Similarly, a portion of the existing VFA at Ramp 34 would be re-designated as a seasonal ORV route, extending the seasonal ORV route in front of Avon for one mile north. Both locations would still be subject to resource closures. The length of Ramp 45 (0.2 miles) would also be designated as a park road to provide additional pedestrian access to the Cape Point area as well as a parking area. The existing VFA locations would be re-designated as one mile of year-round ORV routes and 2.5 miles of seasonal ORV routes and one mile of year-round ORV route would be re-designated as a park road, resulting in approximately 29 miles designated as year-round ORV routes, 15 miles of seasonal ORV routes, and 23 miles of VFAs. Proposed ORV route locations under alternative 2 are provided in figures 22–28 of the EA.

The project would extend the existing interdunal (bypass) road at Cape Point south of the Salt Pond where the beach narrows. This existing bypass road would be extended approximately 0.4 miles north to Ramp 44 and about 600 feet south of its current location. The extension may improve access to Cape Point at some times when certain resource closures are in place. The bypass road would be extended behind the overwashed dunes. The 0.4-mile extension would be approximately 30 feet wide. The NPS expects impacts related to road extension are expected to be minimal since the road will be unimproved and there is little vegetation at this location.

A new parking area would be constructed at Ramp 45. The new parking area would accommodate 15 to 20 vehicles and would improve pedestrian access to the beaches near Cape Point. The parking area would be approximately 180 feet long and 140 feet wide. To minimize stormwater runoff and flooding, the parking area would be constructed using a pervious mixture of sand, shell, and clay.

Soundside access would be improved on Ocracoke Island. Devil Shoals Road (currently Dump Station Road), an existing dirt road across from Ocracoke campground, would be improved and designated as a park road instead of an ORV route. Visitors would not be required to purchase an ORV permit to drive on this road. The existing one-lane road would be widened to two lanes, up to 28 feet wide, and one small parking area containing approximately five parking spaces would be constructed. The parking area would be up to 35 feet wide and 70 feet long. The last 400 feet of roadway closest to the sound would not be widened to avoid affecting wetlands. The road and parking areas would be composed of sand, crushed shells, and clay rather than impermeable paving materials.

NPS would also improve access at Bitter Wash Creek, located approximately 4 miles from the north end of Ocracoke Island on the western side of the island. Improvements would include a designated parking area and footpath southeast of the creek. An undeveloped pathway will be formalized as a road. The road would be approximately 160 feet long by 36 feet wide and a 10 to 12 car parking area (150-foot by 36-foot in size) would be constructed at the end of the roadway. To minimize stormwater runoff, the road and parking area would be constructed using a pervious mixture of sand, shell, and clay. A 175-foot long, seven-foot wide primitive pedestrian path would be installed to provide access from the parking area to the sound. To construct the path, vegetation would be cleared to expose the existing sand, and no additional surfacing materials would be used.

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 preferred alternative in the EA, permits would continue to be assigned to a particular vehicle. The existing annual ORV permit NPS issues would change from being valid for a calendar year to being valid for one year from the date of issue. The seven-day ORV permit would no longer be issued and would be replaced with a 10-day permit.

Piping Plover

The NPS stated in its February 2016 EA that "Opening priority routes to ORV use up to an hour earlier... would have negligible impacts on non-breeding plovers because of the limited amount of area impacted and the very small amount of additional time that ORVs would have access to those beaches." Based on the EA, any effects "...from ORV presence during the small window of additional time allowed would be well within the range of natural variability for piping plovers that might be present on the beaches and would have no measureable effects on the species." Breeding piping plovers would still be protected by established buffers and closures. The NPS concluded that "... no impacts to breeding piping plovers are expected as a result of changes to morning beach opening times..."

The NPS indicated in the EA that extending access to the seasonally designated ORV routes in front of the villages and Ocracoke campground by two weeks in the spring and fall is not expected to have impacts on piping plovers. Data presented in Figure 39 of the EA show that piping plovers, both breeding and non-breeding, generally are not found or occur in relatively low numbers in the proposed seasonal routes. The EA stipulates that the Seashore would continue to establish pre-nesting closures, as appropriate, by March 15 and would protect any birds that use these areas for breeding from ORV impacts prior to April 14, when the areas become closed to ORV use.

The NPS acknowledges that establishing and using the ORV route extensions, as described in the EA (including: the year-round route approximately 0.5-miles north of Park Mile 2; the year-round route on Ocracoke east about 0.5 miles to Ramp 59; the seasonal route extending south from Ramp 23 (1.5 miles); the seasonal route extending north of Ramp 34 (1 mile); the year-round route north of Ramp 4 (0.5 miles); and, the year-round route north of Ramp 63), would allow ORVs into these areas, which could result in dispersal and desiccation of wrack line habitat reducing piping plover prey sources (invertebrate populations) in these areas. However, the EA states that "...generally few, if any, piping plovers (breeding and non-breeding) are found in these areas." The NPS would continue to survey and monitor for piping plovers and will establish pre-nesting closures and buffers around suitable habitat, nesting adults and unfledged chicks near the proposed route extensions. In addition to the above-noted areas, Ramp 45 also would be opened to all vehicles as a park road. Most of Ramp 45 is behind the primary dune line and is not considered piping plover habitat. The NPS concluded that indirect impacts on piping plovers associated with the route extensions and road conversion at Ramp 45 likely would be negligible and any changes would be within natural fluctuations of changes to population, habitat, and processes sustaining them.

The NPS determined in the EA that extending the ORV bypass road on Cape Point from Ramp 44 south would not directly affect any piping plover habitat but would bring ORV traffic closer to piping plovers using the overwash area of the salt pond to the west. NPS pointed out that the potential impacts would be limited to wintering or migrating piping plovers due to the continued use of buffer protections for nesting birds. The NPS concluded that any effects to piping plovers would be negligible.

The access improvements proposed for Ocracoke Island would be limited to the soundside areas of the Seashore. The EA indicates that no suitable piping plover habitat occurs within these project sites and NPS has determined that Ocracoke Island access improvements would have no impacts on piping plovers.

Assessment of the potential impacts of changing permit durations on piping plover was based on the assumption that the number of ORVs accessing the Seashore would remain about the same as the current volume. The NPS's conclusion took into consideration that the wildlife buffers and species protection measures currently in place would mitigate increased visitation resulting from the proposed change in ORV permit lengths. The NPS concluded that there would be no impacts to piping plovers associated with modifying the duration of ORV permits.

Red knot

The February 2016 EA points out that opening priority routes to ORV use at 6:00 a.m. during May, June, and July, at 6:30 a.m. during August and September, and at 7:00 a.m. during October until

November 15 would have negligible impacts on the red knot because: (1) the relatively short amount of additional time that the beaches would be open; (2) the relatively small amount of beach area affected, (3) the fact that from June through July, red knots are generally not found at the Seashore and during August through October, relatively few are found; and (4) the priority routes at Ramp 4, Ramp 27 to the north, and Ramp 43 are east-facing beaches, and very few red knots are found on east-facing beaches at the Seashore. Additionally, resource closures for other nesting shorebirds, which generally involves red knot habitat, would provide additional protection to red knots.

The EA indicates that extending access to seasonally available ORV routes in front of the villages and Ocracoke campground by two weeks in the spring and fall would have negligible impacts to red knot resting and foraging behavior. Potential impacts would be reduced since the villages of Waves, Salvo, and Avon are on east-facing beaches. The EA presents data showing that overall year-round red knot use of east-facing beaches is very low. The NPS believes that the likelihood that red knots would be present when these routes were active would be limited.

As presented in the EA, documented red knot use of east-facing beaches is relatively low. The NPS expects that converting 0.5 mile of VFA to year-round ORV routes both north of Ramp 4 to Ramp 2, an east-facing beach where few red knots have been observed; Ramp 45 (as a park road); and Ramp 63 to Ramp 59, an area where red knots are frequently observed, would result in negligible direct impacts from ORV activities as well as negligible indirect impacts from ORVs reducing invertebrate populations. Potential impacts from ORVs on red knots from converting 2.5 miles of VFAs to year-round ORV routes south of Ramp 23 and north of Ramp 34 would be direct from ORV disturbance on resting and foraging behavior and indirect from driving over and reducing red knot food sources (invertebrate populations). The NPS believes these potential impacts would be negligible since Ramps 23 and 34 are on east-facing beaches.

In the discussion of Alternative 2 in the EA, the NPS concluded that soundside access improvements would have no effects on red knots, and adverse impacts from ORV disturbance resulting from extending the bypass road on Cape Point 0.4 mile north to Ramp 44 would be minimized because of the relatively small area affected. Red knots have rarely been found in the vicinity of the bypass road during the surveys conducted since 2010. The EA pointed out that pre-nesting closures and buffers established for nesting shorebirds throughout the Seashore would help protect red knots and their habitat, mainly in the spring when closures and buffers are in place and the red knot is migrating.

According to the project description, the new parking area would be limited to 15 to 20 spaces and a small increase in the number of pedestrians accessing the beach at different times would be expected. Any additional disturbance due to noise or physical presence of visitors on foot would be temporary and minor. Further, very few red knots were observed in this area during surveys conducted between 2010 and 2015. Resource closures for other protected species such as the piping plover overlap red knot habitat and would provide some protection. No critical habitat has been designated or proposed for red knots within the Seashore. The NPS concluded that changes to the duration of ORV permits and construction of a parking area at Ramp 45 would have no impacts on red knots.

Nesting sea turtles

All five threatened or endangered sea turtle species that occur in the waters of North Carolina, the loggerhead, green, Kemp's ridley, leatherback, and hawksbill sea turtles, have been documented nesting at the Seashore. The hawksbill was previously only known to occur at the Seashore through occasional stranding, usually due to either death or incapacitation from hypothermia; however, in 2015 there were at least two documented hawksbill nests. Except for the timing of nest laying activities, the nesting habits for loggerhead, green, leatherback, and hawksbill sea turtles at the Seashore are similar. Nesting Kemp's ridley turtles differ from the other nesting sea turtle species because they primarily emerge to lay eggs during daytime hours. Only one Kemp's ridley nest has ever been recorded at the Seashore.

The EA states that while the priority routes would be open to ORV use between 6:00 a.m. and 7:00 p.m. from May 1 through November 15, the beaches would still be surveyed for sea turtle nests prior to opening for ORV use, greatly minimizing potential impacts to sea turtles and nests. The EA acknowledges there is a very small risk that some early morning nests or crawls could occur on priority routes after the surveys have been conducted. The EA indicates that since 2009, about five nests have been recorded annually at the Seashore that occurred during daylight hours and/or while surveys were being conducted (e.g., after sunrise and before 7:00 a.m.).

The EA states that ORVs could adversely affect early morning nesters by contributing to false crawls, obscuring turtle nesting tracks and crawls, or striking nesting turtles. Obscured tracks could result in some nests and hatchlings being unprotected from ORV impacts. However, since early morning nesting events are uncommon and this element of the project—morning beach openings, involves a relatively small area of the beach, NPS believes the potential for additional impacts would be minimal.

Since the 2010 ORV FEIS was published, only one Kemp's ridley nest has been detected on the Seashore. There have been rare occasions involving other sea turtle species coming ashore to nest in the day time. However, daytime nesting/crawls have remained extremely rare on the Seashore. Where ORV operators abide by the Seashore's speed limit, drivers should be able to see and avoid sea turtles on shore; NPS anticipates that additional risk to daytime nesting activity would be minimal.

The EA indicates that allowing ORV use in front of the villages for an additional two weeks in the spring and fall would have no impact on sea turtles, nor would adding 2.5 miles of seasonal ORV routes (1.5 miles south of Ramp 23 and 1 mile north of Ramp 34) because allowing ORV use in these areas from October 15 through April 15 would not overlap with the sea turtle nesting season. Further, for nests laid late in the season, monitoring and appropriate buffer protections would still be put into place, protecting the nests and emergent hatchlings after October 1, minimizing potential impacts to sea turtles.

As discussed in the EA, soundside access improvements and construction of a parking area at Ramp 45 are not expected to have impacts on sea turtles, and any increased pedestrian use of the beach adjacent to Ramp 45 resulting from the easier access is also not expected to affect sea turtles since nests would be protected by resource closures. The NPS believes that extending the ORV bypass road on Cape Point 0.4 miles north to Ramp 44 and 600 feet south of its current southern extent

would not adversely affect sea turtles. ORV use of the bypass road may result in a limited amount of sand compaction and erosion. However, availability of the extended bypass would reduce the need for ORV traffic to travel on the ocean beach (suitable nesting habitat). Resource closures would still be put into place as appropriate and necessary. In the EA, the NPS determined that the proposed changes to the duration of ORV permits would have no impact on sea turtles.

On August 21, 2016, you notified me that an injured green sea turtle had been found on the Seashore south of the villages. The turtle had apparently been run over by a vehicle the previous night. The turtle's injuries were significant enough that the animal had to be euthanized. It is unclear whether the vehicle involved was abiding by approved rules and regulations governing ORV use on the Seashore. Take associated with willful violations of Seashore rules is not considered incidental to the proposed activity and is not covered by the incidental take statement issued in the 2010 BO (attached).

If an investigation determines that the activity that resulted in the injury of a sea turtle was conducted in accordance with Seashore regulations, NPS should coordinate with the USFWS within 30 days to develop and implement appropriate, corrective measures to further reduce the potential for an adult sea turtle to be struck or run over by a vehicle. If more than one incident involving NPS-approved ORV use on the Seashore occurs within five years of this BO Amendment, the NPS and USFWS should reinitiate formal consultation.

Based on our review of the February 2016 EA, discussions with the NPS and subsequent modifications to the proposed action as discussed above, the USFWS concurs with the NPS's determination that the proposed implementation of alternative 2, described in the Seashore's February 2016 EA may affect but is not likely to adversely affect piping plover (*Charadrius melodus*), rufa red knot (*Calidris canutus rufa*), or nesting sea turtles. The Service believes that it is likely that the level of incidental take that would occur from implementation of alternative 2 of the February 2016 EA would not exceed that authorized under the November 15, 2010 Incidental Take Statement for piping plover or nesting sea turtles. All the Reasonable and Prudent Measures, Terms and Conditions, reporting requirement and reinitiation triggers from the November 15, 2010 BO remain in effect.

If you have any questions please contact John Hammond at (919) 856-4520 extension 28 or via email at john_hammond@fws.gov.

Sincerely,


for Pete Benjamin
Field Supervisor

Enclosures

Literature Cited

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Coastal Management
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Secretary

BRAXTON DAVIS

December 8, 2016

Ms. Dave Hallac
Superintendent
Cape Hatteras National Seashore
National Park Service
1401 National Park Drive
Manteo, NC 27954

SUBJECT: CD16-0042 Consistency Concurrence Regarding the proposed Modifications to the Off Road Vehicle (ORV) Management at Cape Hatteras National Seashore, Hyde and Dare County, North Carolina (DCM#20160042)

Dear Mr. Hallac:

We received your consistency submission on October 27, 2016, concerning the proposal to modify the ORV Management at the Cape Hatteras National Seashore in Hyde and Dare County, North Carolina.

North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina's Administrative Code, and the land use plan of the County and/or local municipality in which the proposed project is located. It is the objective of the Division of Coastal Management (DCM) to manage the State's coastal resources to ensure that proposed activities requiring a federal permit would be compatible with safeguarding and perpetuating the biological, social, economic, and aesthetic values of the State's coastal waters.

DCM has reviewed the submitted information pursuant to the management objectives and enforceable policies of Subchapters 7H and 7M of Chapter 7 in Title 15A of the North Carolina Administrative Code and concurs that the proposed Federal activity by the National Park Service is consistent, to the maximum extent practicable, with North Carolina's certified coastal management program.

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Should the proposed action be modified, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency determination pursuant to 15 CFR 930.46, or a new consistency determination pursuant to 15 CFR 930.36. Likewise, if further project assessments reveal environmental effects not previously considered by the proposed development, a supplemental consistency certification may be required. If you have any questions, please contact me at (252) 808-2808. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

A handwritten signature in black ink that reads 'Dan M. Govoni'.

Daniel Govoni
Policy Analyst

