



**Summary of Comments and Responses  
for the  
Cape Hatteras National Seashore  
Interim Protected Species Management Strategy/  
Environmental Assessment**

July 2007



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## **RESPONSES TO SUBSTANTIVE COMMENTS ON THE STRATEGY / ENVIRONMENTAL ASSESSMENT**

The Interim Protected Species Management Strategy/Environmental Assessment (strategy/EA) for Cape Hatteras National Seashore was released for public review January 25, 2006. Its release initiated a 36-day public comment period that ended March 1, 2006.

Correspondence received during the public comment period included letters, electronic mail, transcripts from public meetings, and comments on the National Park Service (NPS) Planning, Environment and Public Comment (PEPC) website. The park received correspondence from 103 individuals, 2 business group (1 petition with 155 signatures), 5 recreational groups, 1 county government (Dare County Board of Commissioners), 5 conservation/ preservation groups, and 1 state government (the North Carolina Wildlife Resources Commission). The correspondence contained 488 comments on various topics; the comments received in the petition were counted once for purposes of the following discussion. All correspondence received during the public comment period may be viewed at the park headquarters during regular business hours.

At the close of the public comment period, the NPS began analyzing the correspondence received on the strategy/EA. Content analysis consisted of a five-step process:

- developing a coding structure
- employing a comment database for comment management
- reading and coding of public comments
- interpreting and analyzing the comments to identify issues and themes
- preparing this comment summary

A coding structure was developed to help sort comments into logical groupings, or topics. The coding structure was derived from an analysis of the range of topics discussed during internal NPS scoping, past planning documents, and the comments themselves. The coding structure was designed to capture all comment content rather than to restrict or exclude any ideas. Each comment was categorized by topic using the established coding structure. An identification number and code was assigned to each comment (see Table 1). The comments coded from the petition were counted 155 times, for each signature, but were considered once when determining the comment distribution between codes below.

Once coded, the comments were identified as substantive or nonsubstantive, according to criteria in the Council on Environmental Quality regulations (40 CFR 1500). These criteria state that substantive comments raise an issue regarding law or regulation, agency procedure or performance, compliance with stated objectives, validity of impact analyses, or other matters of practical or procedural importance. Nonsubstantive comments offer opinions or provide information not directly related to the issues or impact analysis. Nonsubstantive comments were acknowledged and considered, but did not require responses.

The majority of comments received focused on the alternatives proposed in the strategy/EA. Of the 125 comments addressing the alternatives, 35 comments addressed the preferred alternative (alternative D). Suggestions for new alternatives or alternative elements accounted for 29 comments. Five of the comments on alternative D were non-substantive and voiced support for the alternative; the remaining 30 comments were substantive. Substantive comments on alternative D included

suggestions for changing closure sizes, addressing various recreational uses at the Seashore, and other elements. Other topics with a high number of comments included threatened and endangered species (61 comments), socioeconomics (40 comments), general comments on the strategy/EA impact analysis (30 comments), purpose and need (29 comments), and wildlife and wildlife habitat (21 comments).

One petition, with 155 signatures, was received and coded. The majority of the petition comments addressed the negotiated rulemaking process: twenty-six comments on the negotiated rulemaking stakeholders (times 155 signatures totals 4,050) and three comments on the negotiated rulemaking process itself (times 155 signatures totals 465). One petition comment (times 155 signatures totals 155) resulted in 155 of the 171 comments received on visitor use and experience affected environment were from the petition

Concern statements were developed by code to summarize the views expressed in the substantive comments. All together, 268 substantive comments were identified and coded and from that 63 concern statements were developed. The NPS then developed response statements addressing each concern statement. This report provides the concern statements, the representative comments that led to the development of those concern statements, and the NPS responses to these substantive comments.

Reading, coding, and analyzing comments helps the NPS decide if substantive issues raised by the public warrant further modification and analysis of the alternatives, issues, and impacts. Comment analysis also helped the NPS identify any strategy/EA text where clarification was helpful or factual errors needed correction. If editorial clarifications or factual changes were required, the text changes are reflected in the Errata (attachment 2 to the FONSI) for the strategy/EA.

## **ORGANIZATION OF COMMENTS AND RESPONSES**

This report contains a summary of the substantive comments received on the strategy/EA and the NPS response to those comments. The substantive comments received are organized by topic using the codes in Table 1 below. When a comment duplicates others received, one representative comment is presented. Table 2 displays correspondence received by type (i.e., letter, electronic mail, etc.). Table 3 displays distribution of organization types that commented, and Table 4 displays the distribution of the states from which correspondence were received. The report includes an index of the organizations and agencies that submitted correspondence, and provides the identification number for correspondence received from each organization and agency.

## **DEFINITION OF TERMS**

Primary terms used in the analysis of and response to public comment are defined below.

**Correspondence:** A correspondence is the entire document received from a commenter. It can be in the form of a letter, email, written comment form, note card, or petition.

**Comment:** A comment is a portion of the text within the correspondence that addresses a single subject. It could include such information as an expression of support or opposition to particular alternatives, additional data regarding the existing condition, or an opinion debating the adequacy of an analysis. Each individual comment can receive one or more codes.

**Code:** A code is a grouping centered on a common subject. The codes were developed during the public review process and are used to categorize topics and issues on the strategy/EA.

**Concern:** Codes are further refined into representative concern statements. Depending on the variety

of comments addressing one code, a code could be represented by several concern statements or just one concern statement to provide a better focus on the content of comments. For example, “Alternatives: New Alternatives or Elements” had two concern statements, while other codes may only have one concern statement.

**Table 1: Comment Distribution by Code**

Note: Each comment may have multiple codes. As a result, the total number of comments at the bottom of column 3 may be different than the number of comments received.)

Code	Description	Number of Comments	% of Comments Received
AL1000	Alternatives: Elements Common to all Alternatives	2	0.04%
AL1005	Alternatives: Elements Common to all Alternatives (Non-Substantive)	3	0.06%
AL1010	Alternatives: Methodology for Developing Alternatives	5	0.09%
AL2000	Alternatives: Alternatives Eliminated	12	0.23%
AL3000	Alternatives: Environmentally Preferred Alternative / National Environmental Policy Act § .101&102	1	0.02%
AL4000	Alternatives: New Alternatives or Elements	29	0.55%
AL4500	Oppose all Proposed Alternatives	2	0.04%
AL5000	Alternatives: Alternative A – No Action: Continuation of 2004 Protected Species Management	6	0.11%
AL6010	Alternatives: Alternative B – Undisturbed Area Focus	5	0.09%
AL6030	Support Alternative B	4	0.08%
AL8000	Alternatives: Alternative D – Access/Research Component Focus (Preferred Alternative)	27	0.51%
AL8010	Alternatives: Alternative D – Access/Research Component Focus (Preferred Alternative) (Non-Substantive)	3	0.06%
AL8030	Support Alternative D	4	0.08%
AL8060	Oppose Alternative D	1	0.02%
AL9100	Support Limiting ORV Use at Cape Hatteras National Seashore	14	0.26%
AL9200	Support ORV Use at Cape Hatteras National Seashore	6	0.11%
AL9600	Support Development of an ORV Management Plan	1	0.02%
BA1000	Biological Assessment – Comments or Concerns Regarding the Biological Assessment	8	0.15%
CB1000	Coastal Barrier Ecosystem: Affected Environment	1	0.02%
CC1000	Consultation and Coordination: General Comments	4	0.08%
GA1000	Impact Analysis: Impact Analyses	11	0.21%
GA3000	Impact Analysis: General Methodology for Establishing Impacts/Effects	19	0.36%
MT1000	Miscellaneous – ORV Corridor	9	0.17%
MT2000	Miscellaneous – Beach Access	5	0.09%
NE1000	Other National Environmental Policy Act Issues: General Comments	6	0.11%
PN2000	Purpose and Need: Park Purpose and Significance	10	0.19%
PN4000	Purpose and Need: Park Legislation/Authority	6	0.11%
PN5000	Purpose and Need: Regulatory Framework	8	0.15%
PN5500	Purpose and Need: Regulatory Framework (Non-Substantive)	5	0.09%
PO500	Park Operations and Management: Affected Environment	1	0.02%



**Table 1: Comment Distribution by Code**

Note: Each comment may have multiple codes. As a result, the total number of comments at the bottom of column 3 may be different than the number of comments received.)

Code	Description	Number of Comments	% of Comments Received
PO1000	Park Operations: Guiding Policies, Regulations, and Laws	1	0.02%
PO4000	Park Operations: Impact of Proposal and Alternatives	4	0.08%
PO4500	Park Operations and Management: Cumulative Impacts	1	0.02%
RN1000*	Negotiated Rulemaking Process	*470	*8.89%
RN1500	Negotiated Rulemaking Process (Non-Substantive)	4	0.08%
RN2000*	Negotiated Rulemaking Stakeholders	*4,078	*77.15%
SE1000	Socioeconomics: Guiding Policies, Regulations, and Laws	1	0.02%
SE1100	Socioeconomics: Affected Environment (General)	2	0.04%
SE1150	Socioeconomics: Affected Environment (General) (Non-Substantive)	1	0.02%
SE1200	Socioeconomics: Affected Environment (Economy of Communities within the Seashore)	6	0.11%
SE2000	Socioeconomics: Methodology and Assumptions	1	0.02%
SE3000	Socioeconomics: Study Area	2	0.04%
SE4000	Socioeconomics: Impact of Proposal and Alternatives	2	0.04%
SE4500	Socioeconomics: Impact of Proposal and Alternatives (Non-Substantive)	13	0.25%
SE5200*	Socioeconomics: Impact of Alternatives (Economy of Communities within the Seashore)	*164	*3.10%
SE6000	Socioeconomics: Cumulative Impacts	4	0.08%
SS1000	Soundscapes: Affected Environment	1	0.02%
TE1000	Threatened And Endangered Species: Guiding Policies, Regulations, and Laws	1	0.02%
TE1100	Threatened and Endangered Species (General): Affected Environment	2	0.04%
TE1200	Threatened and Endangered Species: Piping Plover	12	0.23%
TE1250	Threatened and Endangered Species: Piping Plover (Non-Substantive)	15	0.28%
TE1600	Threatened and Endangered Species: Sea Turtles	5	0.09%
TE2000	Threatened and Endangered Species: Methodology and Assumptions	4	0.08%
TE4000	Threatened and Endangered Species: Impact of Proposal and Alternatives	2	0.04%
TE4200	Threatened and Endangered Species: Impact of Alternatives on Piping plovers	9	0.17%
TE4400	Threatened and Endangered Species: Impact of Alternatives on Seabeach Amaranth	1	0.02%
TE4600	Threatened and Endangered Species: Impact of Alternatives on Sea Turtles	4	0.08%
TE4650	Threatened and Endangered Species: Impact of Alternatives on Sea Turtles (Non-Substantive)	6	0.11%
VE4000	Visitor Experience: Impact of Proposal and Alternatives	5	0.09%
VU4000	Visitor Use: Impact of Proposal and Alternatives	12	0.23%

**Table 1: Comment Distribution by Code**

Note: Each comment may have multiple codes. As a result, the total number of comments at the bottom of column 3 may be different than the number of comments received.)

Code	Description	Number of Comments	% of Comments Received
WH1000	Wildlife and Wildlife Habitat: Guiding Policies, Regulations, and Laws	2	0.04%
WH2000	Wildlife and Wildlife Habitat: Methodology and Assumptions	5	0.09%
WH3150	Wildlife and Wildlife Habitat (General): Affected Environment (Non-Substantive)	4	0.08%
WH4200	Wildlife and Wildlife Habitat: Impact of Alternatives: Sensitive Species (American Oystercatcher)	2	0.04%
WH4600	Wildlife and Wildlife Habitat: Impact of Alternatives: Sensitive Species (Red Knot)	1	0.02%
WH8010	Wildlife and Wildlife Habitat: Other Wildlife (invertebrates, predator control, etc.)	5	0.09%
WH8020	Impact of Nighttime Driving on Wildlife and Wildlife Habitats	3	0.06%
XX1000	Duplicate Comment**	9	0.17%
VU/VE1000*	Visitor Use and Experience: Affected Environment	*171	*3.23%
VU/VE4000	Visitor Use and Experience: Methodology and Assumptions	30	0.57%
VU/VE6000	Visitor Use and Experience: Impact of Alternatives	3	0.06%
<b>TOTAL</b>		<b>5,286</b>	<b>100%</b>
<p>*Note: One correspondence contained 155 signatures (the petition). Each comment in that letter is represented 155 times, although it came from one correspondence.</p> <p>RN 1000 – 3 comments under this code were from the petition, accounting for 465 of the 470 comments.</p> <p>RN2000 – 26 comments under this code were from the petition, accounting for 4,030 of the 4,078 comments.</p> <p>SE5200 – 1 comment under this code was from the petition, accounting for 155 of the 164 comments.</p> <p>VU/VE1000 – 1 comment under this code was from the petition, accounting for 155 of 171 comments.</p> <p>** Denotes that the same comment was received from the same person and entered into PEPC more than once.</p>			

**TABLE 2. CORRESPONDENCE DISTRIBUTION BY CORRESPONDENCE TYPE**

Correspondence Type	Number of Correspondences
E-mail	32
Fax	1
Letters (including one petition with 155 signatures)	16
Transcript	29
On-line using the NPS PEPC System	38
<b>Total</b>	<b>116</b>

**TABLE 3. CORRESPONDENCE DISTRIBUTION BY ORGANIZATION TYPE**

<b>Organization Type</b>	<b>Number of Correspondences</b>
Business	2 (1 petition)
Recreational Groups	5
Conservation/Preservation Group	4
State Government	1
Unaffiliated Individual	103
County Government	1
<b>Total</b>	<b>116</b>

**TABLE 4. CORRESPONDENCE DISTRIBUTION BY STATE**

<b>State</b>	<b>Percentage</b>	<b>Number of Correspondences</b>
Alaska	1.72%	2
Colorado	1.72%	2
District of Columbia	1.72%	2
Iowa	0.86%	1
Maryland	1.72%	2
Missouri	0.86%	1
Montana	0.86%	1
North Carolina	63.79%	74 (petition with 155 signatures)
New Mexico	0.86%	1
Ohio	0.86%	1
Oregon	0.86%	1
Pennsylvania	1.72%	2
Virginia	9.48%	11
Not Provided by Commenter	12.93%	15
<b>Total</b>		<b>116</b>

## **INDEX OF CORRESPONDENCE BY CATEGORY OF AUTHOR**

(See table 1 for a description of codes.)

### **BUSINESS**

American Sportfishing Association – Correspondence #32 and #65

AL1010, AL5000, AL8000, CC1000, RN1500, SE1100, SE1200, SE4000, SE5200, TE1200, TE1250, TE4200, WH8010

Cape Hatteras Business Allies – Correspondence #24

RN1000, RN2000, SE5200, VU/VE1000

### **RECREATIONAL GROUPS**

Cape Hatteras Access Preservation Alliance – Correspondence #75

AL8000, GA3000, NE1000, PN5000, SE5200, TE1200, TE2000, TE4000, TE4200, VU/VE6000, WH1000, WH8010

North Carolina Beach Buggy Association – Correspondence #93

AL8010

United Four Wheel Drive Association – Correspondence #82 and #107

AL1010, AL3000, AL5000, GA3000, MT1000, NE1000, PO4000, VU/VE6000, WH2000

### **PRESERVATION/CONSERVATION GROUPS**

Audubon North Carolina – Correspondence #80 and #96

AL1010, AL6010, AL8000, AL8060, PN5000, WH2000, WH3150, WH4200, WH8010

Defenders of Wildlife – Correspondence #27

RN1000, RN2000

Wildlands CPR – Correspondence #83

GA3000, VU/VE1000

### **COUNTY GOVERNMENT**

Dare County Board of Commissioners – Correspondence #98

AL8030

**STATE GOVERNMENT**

North Carolina Wildlife Resources Commission – Correspondence #81

AL4000, AL8000, TE4600, WH4200, WH8020

## CONCERN RESPONSE REPORT

### AL1000 - ALTERNATIVES: ELEMENTS COMMON TO ALL ALTERNATIVES

<b>Concern ID:</b>	12865
<b>CONCERN STATEMENT:</b>	Commenters said that, in all of the alternatives, the definition for historical habitat should not be 10 years because of the dynamic nature of the Seashore. They said that because the environmental conditions have changed, this habitat is no longer suitable in some cases and should not be closed.
<b>Representative Quote(s):</b>	<p><b>Corr. ID:</b> 73      <b>Organization:</b> <i>Not Specified</i></p> <p><b>Comment ID:</b> 22697 <b>Organization Type:</b> Unaffiliated Individual</p> <p><b>Representative Quote:</b> Alternatives B, C and D each suggest that activities during the last 10 years be used as the basis for Pre-Nesting closures. The Piping Plover Recovery Plan [U.S. Fish and Wildlife Service Piping Plover (<i>Charadrius melodus</i>), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as cited in the strategy/EA)] suggest only 3 years for good reason. The north end of Ocracoke Island is an excellent example as no Piping Plover have been there the last three years because the habitat changed and is no longer attractive. Going back 10 years ignores the dynamic nature of these islands and does nothing positive for birds. What is the goal here, to close beaches or be realistic and practical on protection?</p>
<b>Response:</b>	The strategy/EA recognizes the dynamic nature of the Seashore and the changes that may occur to the habitat. Page 48 the strategy/EA states, “because of the dynamic nature of Cape Hatteras National Seashore beaches and inlets, the management may change by location and time, and new sites (bars, islands) may require additional management, or management actions may become inapplicable for certain sites due to changes in ground conditions (i.e., habitat changes with vegetation growth).” Thus, in those strategy/EA alternatives, habitat used in the past 10 years acts as a starting point, but habitat that is no longer suitable is not subject to pre-nesting closures. The modified preferred alternative – <i>Alternative D (Access/Research Component Focus) with Elements of Alternative A</i> adopts the element of alternative D that provides for pre-nesting closures in recent habitat (used in the past 3 years), and monitoring in historic habitat (used in the past 10 years) and new habitat with closures implemented in those areas when breeding activity is observed. The modified preferred alternative, as described in the Errata (attachment 2 to the FONSI), also includes an annual pre-season survey of piping plover habitat, conducted in February or March, to more effectively establish closures and make sure pre-nesting closures are adapted to the current habitat conditions.
<b>Concern ID:</b>	12866
<b>CONCERN STATEMENT:</b>	Commenters felt that a guiding policy of any strategy should be the flexibility to respond to the dynamic nature of the Seashore and should be based on common sense and reasonableness. Commenters suggested that the Seashore focus on managing resources rather than people.
<b>Representative Quote(s):</b>	<p><b>Corr. ID:</b> 47      <b>Organization:</b> <i>Not Specified</i></p> <p><b>Comment ID:</b> 22304 <b>Organization Type:</b> Unaffiliated Individual</p> <p><b>Representative Quote:</b> Management plans need to be flexible to reflect the dynamic nature of our beaches. Past policies of managing people with massive closures instead of managing the resource should be abandoned. In order to accomplish this would require staffing by well qualified and experienced personnel who are capable of on site decisions to manage any threatened or endangered species in order to prevent conflict with the proper recreational goals within the Seashore. It would be difficult to run a successful program with personnel having a parochial experience and who are easily led to consider guidelines as rigid regulation.</p> <p><b>Corr. ID:</b> 164599      <b>Organization:</b> <i>Not Specified</i></p>

**Comment ID:** 22638

**Organization Type:** Unaffiliated Individual

**Representative Quote:** I would request that in implementation of any alternatives that senior management find a way to train their personnel the value of "common sense, reasonableness" as pertains to interpretation of regulations. For instance if a 100 foot corridor is prescribed and a high sea erodes it to 97 feet should it be closed? Technically yes, but aren't there other considerations? I suggest that rules in many cases not be arbitrary but should be used more as guidelines subject to intelligent interpretation. In the past many decisions appeared to me to be so literally interpreted that the end result was one of complete bias against reasonable ORV use.

**Response:**

The strategy/EA and the selected alternative (modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) recognize the dynamic nature of the Seashore and the changes that may occur to the habitat as stated under Concern Statement 12865 (p. 12 of this report). In addition, provisions for permanent and temporary staff training and an increase in permanent law enforcement personnel are addressed in the "Elements Common to All Action Alternatives" section on pp. 48 - 51 of the strategy/EA. In regards to managing species to prevent conflicts, NPS policies dictate that park resources be conserved and left in place, rather than providing active management of the species itself.

An example of flexibility in Seashore management occurred in late March 2006 during establishment of pre-nesting closures. The closures were adjusted to actual beach conditions and contours that had changed since the winter of 2005 when the aerial photographs were taken for the strategy/EA. This type of on-the-ground judgment and decision-making will be used during implementation of the interim strategy/EA. Further, the modified preferred alternative detailed in the Errata (attachment 2 to the FONSI) allows for some flexibility in implementing provisions such as corridor width. For example, once the corridor is established a change of two or three feet in width would likely not result in a corridor closure. Providing flexibility to allow judgment by park staff in specific situations where it would be appropriate, whether relating to species buffers or to corridor widths, necessitates tolerance from interests that would prefer the judgment be different or the "rule" adhered to strictly. The selected alternative considers such judgments to be special situations and they will be made by Seashore's staff and reviewed/approved by the Superintendent during the period the interim strategy/EA is in effect.

## **AL1010 - ALTERNATIVES: METHODOLOGY FOR DEVELOPING ALTERNATIVES**

**Concern ID:** 12867

**CONCERN STATEMENT:** A Commenter asked for a definition of "mean high tide line" and how it would be applied.

**Representative Quote(s):**

**Corr. ID:** 88      **Organization:** Not Specified

**Comment ID:** 22935 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Well, then it would be about -- it would go beyond 100 feet or it might be 200 feet from the stake. Will those stakes be moved as the beach builds or will they be left and allowed for it to change again and shorten the distance between the stakes and the high-water mark? Another question, what consists of the high-water mark? Is it the noon tide, the main high tide or just the normal high tide?

**Response:**

"Mean high tide line" has been defined in the Errata (attachment 2 to the FONSI). At a minimum when considering the location of the high water line, the Seashore will re-evaluate the stake locations at the beginning of each year when pre-nesting delineations are made. For operational practicality, a decision to move stakes at other times as the areas of the high water line shifts will consider factors such as the time needed for moving the stakes and staff available, the amount of change in the beach, bird presence and behavior, location of the beach change, and effect of the beach change on the ORV corridor. The Seashore anticipates that absent major changes such as those occurring during hurricanes, it will not be necessary to move stakes frequently. When establishing stake locations for the high water line during the annual re-evaluation in the spring, the Seashore will use the mean high tide.

**Concern ID:** 12869  
**CONCERN STATEMENT:** Commenters questioned the methodology used in developing the alternatives saying that alternative elements such as the establishment of ORV corridor widths and size and location of closures were not based in science or expert recommendations. Commenters also questioned the scientific adequacy of the documents referenced in the strategy/EA and felt that available applicable data were not used in the process. As a result, commenters felt that the strategy/EA unjustly focused on ORV use and ignored impacts to and from other uses, such as impacts of other Seashore activities on protected species.

**Representative Quote(s):**

**Corr. ID:** 80      **Organization:** Audubon North Carolina

**Comment ID:** 22822 **Organization Type:** Conservation/Preservation

**Representative Quote:** It is also important for protection measures to be based on the current science related to issues and the biological needs of the species in question. The peer-reviewed scientific literature is clear and the recommendations developed by biologists who are among the leading experts in their respective fields are clear. Audubon is very concerned that Cape Hatteras National Seashore is taking an approach that deviates significantly from the science and the recommendations of experts in favor of a politically-motivated approach that largely ignores standard bird management measures.

**Corr. ID:** 82      **Organization:** United Four Wheel Drive Association

**Comment ID:** 22844 **Organization Type:** Recreational Groups

**Representative Quote:** The agency established corridor widths for pedestrian and ORV access (hereafter referred to as ORV corridors) of 100' and 150' for Alternatives C and D, respectively. The same width of ORV corridors is used in each of the 5 geographic areas considered for [piping plover] Closure areas; Bodie Island Spit, Hatteras Island Spit, North Ocracoke Island, South Ocracoke Island Spit, and South Beach/Cape Point. Not only is the actual amount of the width arbitrary at 100' and 150', but the implementation of these corridors from place to place is arbitrary. The agency failed to provide a rationale for the corridor width limitation as it relates to area closure size. For instance, alternatives B, C and D institute a [piping plover] closure area at Hatteras Island Spit encompassing a large area on the southern point of the spit. Yet Alternatives B and C institute a 150' ORV corridor while Alt. D institutes a 100' corridor. In this example, the decrease in the ORV corridor cuts open ORV areas by 1/3 as compared to Alternatives B and C, yet only increases the closure area for species protection by 1/5. There is no apparent correlation or rationale between the size of the ORV corridor lost compared to the size of the protection area gained.

For these reasons adoption of a 100' corridor as opposed to 150' corridor is arbitrary and capricious. An ORV corridor width must be established above wrack line which correlates to the amount of closure area necessary for species protection in connection with the corridor width necessary to minimize concentration of use. The establishment of this corridor may be different from place to place, from time to time, and from protection need to protection need.

**Corr. ID:** 65      **Organization:** American Sportfishing Association

**Comment ID:** 22710      **Organization Type:** Business Groups

**Representative Quote:** [The American Sportfishing Association] believes that the entire [interim protected species management strategy/EA], as presented, derives from a false premise. It presupposes that ORV use as it has been traditionally managed at [Cape Hatteras National Seashore] is, in and of itself, detrimental to the protected species at the Seashore. As we will point out in more detail below, the Strategy is rife with statements that are not and likely cannot be supported by the facts. It derives conclusions from numerous unwarranted assumptions. As a result, the Strategy is severely biased against ORV use at the Seashore and proposes measures well in excess of those needed to provide the protection of the enumerated species.



**Corr. ID:** 65

**Organization:** American Sportfishing Association

**Comment ID:** 22770

**Organization Type:** Business Groups

**Representative Quote:** It is clear that the [strategy/EA] was developed based on a number of preconceived notions concerning the reasons for the recent decline in piping plover nesting at [Cape Hatteras National Seashore]. This bias is further reflected in the fact that the Strategy refers twice to the filing of a notice of intent to file a lawsuit by the Defenders of Wildlife objecting to ORV use, but does not reflect the extensive input of biological information, economic data and practical local experience that [the American Sportfishing Association], along with [the Outer Banks Preservation Association] and other groups, have provided to the Park Service for consideration. It is disheartening to have participated in this process with the hope of a true balance being sought between species protection and human recreation, based on the actual on the ground facts. The lack of data to support the biological conclusions and the failure to consider economic data supplied by the stakeholders can only lead to a lack of faith in the conclusions. The strategy is based on little or no data, fails to take into account the severe economic impacts of the proposed closures on the affected communities, and focuses almost entirely on ORV restrictions as opposed to other protective measures. While there is reference to the U.S. Fish and Wildlife Service Guidance, there is no tempering of the application of those guidelines to ensure a measured approach to the imposition of closures.

**Corr. ID:** 82

**Organization:** United Four Wheel Drive Association

**Comment ID:** 22843

**Organization Type:** Recreational Groups

**Representative Quote:** Furthermore, the agency completely fails to analyze concentrated use impacts to species and wildlife and wildlife habitats. Eliminating access in the areas discussed above will nearly double the concentration of use on those areas remaining open to the public. The EA did not analyze the environmental consequences of the increased concentration of use on species, wildlife and wildlife habitats, visitor use and experience, physical, biological, or anthropogenic factors.

Closure of access areas does not equate to a reduction in use. Yet, in contradiction to the requirements of [the National Environmental Policy Act] requiring a discussion of the environmental effects of alternatives, no qualitative or quantitative analysis was conducted on the potential of significant impact to the human environment caused by the increased concentration of use.

**Response:**

The strategy/EA recognizes that there are numerous factors that impact all species at the Seashore, including the dynamic coastal environment. Beginning on p. 119 of the strategy/EA, the affected environment for each species is described. This affected environment includes the current risks and threats to these species at the Seashore. For example, p. 125 of the strategy/EA discusses risk factors for the piping plover with citations to the scientific literature on this topic. Risk factors listed include storms, reduction in genetic variations, fluctuating birth and death rates, and inability to find a mate. This section goes on to also discuss pedestrians, pets, and ORVs as other risk factors, again with citations. A similar discussion was included in the strategy/EA for each of the species included in the analysis and did not put a disproportionate focus on ORV use. Further, information presented in the strategy/EA is based on a wide range of guidance and scientific data, as stated on pp. 39 - 41 of the strategy/EA, of which the U.S. Geological Survey protocols are only one source. A combination of these data was used to determine potential impacts and develop a reasonable range of alternatives. The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides protected species management actions for a variety of appropriate recreational uses as well as for predator management. Predator management, hurricane recovery and other such events are accounted for in the strategy/EA (see strategy/EA p. 33) and included in the analysis of cumulative impacts for each alternative. Predator management is provided for in all alternatives. The issue of predator impacts and predator control will further be addressed in the Seashore's upcoming predator control plan that is being developed by the U.S. Department of Agriculture, Wildlife Services in Raleigh, North Carolina.

The U.S. Fish and Wildlife Service (USFWS) Amended Biological Opinion (2007) addresses in detail the adverse effects on piping plover of past management of vehicles, pedestrians, and pets. For example, the USFWS Amended Biological Opinion (2007) states that if adequate pre-nesting closures are not

established by April 1 when spring migrants begin arriving and displaying breeding behavior (i.e., territorial establishment, courting, etc.), nesting by these birds may be delayed or preempted. Pre-nesting closures have not been consistently applied at the Seashore, and while other factors (weather, predation, etc.) may play a role in the success of nest establishment, disturbance is as likely the leading cause of failure to construct a nest as any other factor. After an extensive analysis of the effects of alternative D, the USFWS Amended Biological Opinion (2007) concluded that incidental take of piping plover is anticipated during each nesting season under the modified preferred alternative.

All materials provided by the public and interested organizations during public scoping and the strategy/EA comment period were reviewed and their information considered during the development of the strategy/EA. These sources are cited throughout the strategy/EA and in the references section. A commenter voiced distrust of scientific reports that use the terms “may” or “can” or “sometimes.” This is accepted terminology, particularly for interpreting results of wildlife field studies where there may be variables that are difficult to control for in the field and individuals of the same species exhibit behavioral differences and absolutes cannot be stated.

In regards to the size of buffers and closures, the size and widths determined for the modified preferred alternative were based on a number of scientific sources and on the best life history, research and management data available for the protected species (see strategy/EA pp. 40 – 41). These documents were used as the basis for determining start and end dates of management measures, buffer sizes, and corridor widths proposed under the modified preferred alternative (see the Errata (attachment 2 to the FONSI)). As some of these sources have varying information, the whole of this scientific literature was applied to the alternatives in the context of the enabling legislation for the Seashore, which allows some level of appropriate recreational uses. In addition, the variation in corridor widths was incorporated into the alternatives so that a range of reasonable alternatives could be created. As pointed out, the change in corridor width creates a change in visitor use, which was analyzed for each alternative (see strategy/EA pp. 242 - 252). The location of these corridors, while set for an established width of 100 feet under the modified preferred alternative, will be responsive to the dynamic nature of the Seashore. One such provision under the modified preferred alternative is to allow for a reduced corridor width in areas where species management actions are taking place, with a reduced speed limit of 10 miles per hour. A pre-determined width for the ORV corridor was stated under the modified preferred alternative to reduce confusion by setting a uniform standard throughout the park. The modified preferred alternative does not use the wrack line as a delineation for the corridor because further analysis determined that the scattered nature of wrack on the Seashore beaches made it impractical to use for this purpose.

The strategy/EA (p. 245, 249 and 251) addresses the effects of the potential for increased concentration of visitor use on the visitor experience and satisfaction, as discussed under Concern Statement 13088 (p. 68). The strategy/EA states that closures may result in increasing use of non-closure areas. However, all non-closure areas are by definition not key breeding or feeding habitat for the protected bird species, and therefore, any additional concentration of use would not have a significant impact on these species. As part of the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) described in the Errata (attachment 2 to the FONSI), data will be collected on the protected species and their response to recreational use to add to the scientific and management data available. This additional information will assist in developing the long-term ORV management plan/EIS and the proposed negotiated rulemaking process.

**Concern ID:** 13042

**CONCERN STATEMENT:** Commenters questioned why the buffer size for foraging piping plovers was different between Cape Hatteras National Seashore and Cape Lookout National Seashore.

**Representative Quote(s):** **Corr. ID:** 32 **Organization:** American Sportfishing Association

**Comment ID:** 22290 **Organization Type:** Business Groups

**Representative Quote:** The plan contemplates buffers for foraging plover chicks of up to 3000 ft on either side of a nest. When I compare this with the earlier proposal for Cape Lookout, which is

immediately south of [Cape Hatteras National Seashore], the maximum buffer proposed is 600 feet. I cannot understand this discrepancy, especially in light of the fact that Cape Lookout sustains a much larger population of plovers. Can you shed some light on this?

**Response:**

Although the two national seashores are located along the Outer Banks north to south of each other, separated by Ocracoke Inlet, each is a unique environment for protected species populations. Land uses adjacent to each of the seashores as well as visitation rate are different between the two units. The more intense visitor use, different seasonality of peak visitor use, and areas used by visitors when compared to the habitat used by piping plover at Cape Hatteras were factors that were considered in determining the buffers for that species. At Cape Hatteras National Seashore under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*, buffer sizes for piping plover chicks start at 600 feet, the same as at Cape Lookout. However, because the piping plover population differs at Cape Hatteras as there are fewer breeding pairs and because Cape Hatteras has higher visitation in breeding areas that leads to more potential sources of disturbance, the possibility of increasing buffers up to 3,000 feet was incorporated at Cape Hatteras. This allows the Seashore flexibility in responding to the potential threats to piping plover that are unique to this Seashore and the breeding habitats found there. The variation in the two seashores is also a result of pre-nesting areas that are closed. At Cape Lookout a 2-mile (now approximately 1.25 miles as a result of a new inlet created by Hurricane Ophelia) ORV closure at the north end of South Core Banks is proposed, which is where many of the birds at that Seashore are concentrated, providing birds with an ample buffer beyond the 600 feet proposed. The piping plover population at Cape Hatteras does not have such an area of concentration, thus the modified preferred alternative allows flexibility up to 3,000 feet to protect the birds where they do occur instead of closing a large area of the Seashore to begin with. It should be noted that the proposed buffers for the Seashore are within the range of those in the U.S. Fish and Wildlife Service Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as cited in the strategy/EA).

**AL2000 - ALTERNATIVES: ALTERNATIVES ELIMINATED**

**Concern ID:** 12942

**CONCERN STATEMENT:** Commenters felt that dismissal of habitat creation was unjustified and should be considered as an option at the Seashore as it could be accomplished within the timeframe of the strategy/EA. Commenters also provided recommendations on how habitat creation could occur.

**Representative Quote(s):**

**Corr. ID:** 47

**Organization:** Not Specified

**Comment ID:** 22314

**Organization Type:** Unaffiliated Individual

**Representative Quote:** p.65 Creating New Habitat: This alternative was rejected as beyond the time constraints of the park strategy. What are the authors thinking. The interim plan is expected to last for three years or possibly more, depending on the ORV Negotiated Rule Making Regulations.

An hour spraying herbicide with an ATV, a couple of days with a bulldozer, and a morning with a disc harrow will produce an attractive and suitable habitat for birds.

**Corr. ID:** 165267

**Organization:** Not Specified

**Comment ID:** 23136

**Organization Type:** Unaffiliated Individual

**Representative Quote:** And it just doesn't seem to me that it would take much effort to clear a space around that pool and encourage the plovers to land there. And certainly, they would choose that place, especially if there are ORVs out on the point and South Beach.

**Corr. ID:** 164548

**Organization:** Not Specified

**Comment ID:** 22592

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Suggested site: Salt Pond south of ramp 44, a previous site

Procedure to remove vegetation from perimeter of pond

1. Utilize vegetation removing techniques including the use of environmentally friendly weed control products delivered specifically to targeted vegetation using an ATV mounted boom sprayer in order to remove vegetation which inhibits nesting.
2. Use cultivation equipment, like an ATV pulled Disc-Harrow, to soften sand to make it more inviting for nesting.
3. Place predator traps around perimeter of cleared area to prohibit intrusion of predators.
4. Use signage to prohibit pedestrians and ORV's.

**Response:** In the long-term plan, habitat restoration (which will require further planning) will be considered.

**Concern ID:** 12943

**CONCERN STATEMENT:** Commenters felt the Endangered Species Act did not provide a reason for dismissing an alternative that includes hatcheries for endangered sea turtles. Commenters also said that by not doing anything to protect turtle nests, the alternatives analyzed in the strategy/EA are in violation of the Endangered Species Act and that a hatchery would benefit the species and the Seashore.

**Representative Quote(s):**

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22329

**Organization Type:** Unaffiliated Individual

**Representative Quote:** "Endangered Species Act": The ultimate clincher to the authors' distorted reasoning against turtle hatcheries is found in the final sentence of the critique where it refers to the Endangered Species Act. "Any actions that would increase the likelihood of reduced productivity and species decline would frustrate the purpose of the Act." These authors are advocating a program that will knowingly yield a 48% hatch rate and claiming that this is preferred to a process that will give a 80-90% hatch rate. Is there something wrong with this approach or have I become senile in the discipline of mathematics?

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22323

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Reason: "Hatcheries not fully analyzed." This is a statement, not a reason. It is actually an understatement. From the content of the paragraph that follows, this opinion statement is actually incorrect. The idea of hatcheries was not even considered, let alone "fully analyzed". The authors babble about county and private hatcheries which do not meet the NPS responsibilities for these protected species. The fact that NPS successfully operates its own turtle hatchery in our sister National Seashore at Padre Island, Texas, was conveniently omitted.

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22330

**Organization Type:** Unaffiliated Individual

**Representative Quote:** The [Endangered Species Act] is further expounded upon at the bottom of page 67 over to page 68 where it states "any unauthorized harm, injury of mortality of Endangered Species Act protected species would result in a violation of federal law, potential fines, and other criminal charges".

I suppose that the Park Service destruction of sea turtles by perpetuation of a flawed policy is excluded from such penalties because they are [North Carolina Wildlife Resources Commission] "authorized". If I, as a private citizen, had caused the destruction of 28,000 sea turtle eggs over the last eight years, I would be behind bars looking out!

**Response:** This alternative element (hatcheries) was dismissed because the preferred method of the National Park Service for protecting threatened and endangered species is through the preservation of a species'

natural habitat (see NPS *Management Policies 2006*, Section 4.4.2.3). The U.S. Fish and Wildlife Service Recovery Plan for U.S. Population of Loggerhead Turtle (*Caretta caretta*), as well as other sea turtle recovery plans, notes that when protecting nests, “In all cases the least manipulative method should be employed to avoid interfering with known or unknown natural biological processes”, and that “artificial incubation should be avoided” (USFWS 1991a, as cited in the strategy/EA). Hatcheries are generally used in the management of threatened and endangered species as a last resort mechanism to avoid extinction of the species or to restore a population in a particular location. As noted in the strategy/EA, the Kemp’s ridley sea turtle hatchery at Padre Island National Seashore is an example of a last resort measure to restore an endangered population. The use of hatcheries is not warranted at the Seashore because, even though they may result in an increased hatch rate, the conditions at the Seashore do not warrant their use as population numbers are viable and applicable guidance and state and federal policy favors maintenance of the nests in their natural habitat (see strategy/EA pp. 66 -67). Also during development of the alternatives for the strategy/EA, NPS sought advice from the team leader of the Padre Island hatchery, who confirmed that further consideration of a hatchery was not warranted at Cape Hatteras (D. Shaver, NPS, pers. comm., E. Cecil, National Park Service, October 27, 2005). The Endangered Species Act allows for some incidental take of species (any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a federal agency or applicant), which would address the loss of turtles nest as a result of natural causes when these nests are left undisturbed. The USFWS Amended Biological Opinion (2007) determined that the level of incidental take at the Seashore under the strategy/EA’s modified preferred alternative “is not likely to result in jeopardy to the species.”

#### AL4000 - ALTERNATIVES: NEW ALTERNATIVES OR ELEMENTS

**Concern ID:** 12931

**CONCERN STATEMENT:** Commenters suggested studies the Seashore could conduct to improve productivity of sensitive species, specifically sea turtle populations, and determine causes for declines in those populations such as looking at sex ratios, nest temperatures, and false crawls. Commenters also discussed current management measures for sea turtles offered suggestions on possible improvements to current procedures.

**Representative Quote(s):**

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22312

**Organization Type:** Unaffiliated Individual

**Representative Quote:** 5. Conduct a study to determine the effect of false crawls on the survival of a turtle species. Perhaps we should determine the significance of false crawls before too much money and energy is spent pursuing the agenda of tying ORV operations and false crawls together.

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22315

**Organization Type:** Unaffiliated Individual

**Representative Quote:** p.66 Turtle Individual Nest Relocation

Reason: "Moving eggs may result in changes to sex ratio." Yes, but not moving them caused heavy loss of eggs. Instead of hatching 80 males you might only have 40, but that is 40 more than zero when a storm takes the whole nest. There are no studies in Cape Hatteras National Seashore as to existing or desirable sex ratio. How would anyone know if there were a change?

**Corr. ID:** 57

**Organization:** *Not Specified*

**Comment ID:** 22593

**Organization Type:** Unaffiliated Individual

**Representative Quote:** 1. Institute turtle nest temperature studies at 4 locations  
a. Ocracoke Island  
b. South beaches of Hatteras (E-W)  
c. North beaches of Hatteras (N-S)  
d. Pea Island Refuge

2. Institute a major nest relocation program to remove all turtle nests laid in areas of historical weather related loss.

3. Select safe beach areas for nest relocation program at 3 locations
- Ocracoke Island
  - Hatteras Island beach south of Cape Point (E-W)
  - Hatteras Island beach north of Cape Point (N-S)

criteria for site selection would be based upon historical nest survival data, isolation from human interference and results of new temperature studies.

**Corr. ID:** 58

**Organization:** *Not Specified*

**Comment ID:** 22599

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Institute beach temperature studies to see what our ranges are here on our east and south facing beaches. Since we are at the extreme northern end of nest activities our enough beaches may in fact be low enough in temperature to develop male turtles. Unless these studies are done any statement regarding what sex our beaches are developing is conjecture.

Study the effects of lighting at piers, villages, and of ORV's to see if there is any significant relationship to false crawls. Since there seems to be little or no difference in the percentage of false crawls here and at Cape Lookout, this may be a waste of time. Cape Lookout has no village or pier lights and little night driving during nesting season. Keep in mind that during the 30 days that Cape Point was closed to ORVs and all human activity this past summer there were three false crawls. It should be easy for NPS to control lighting at piers as they are NPS concessions.

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22308

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Projects of major impact which should be on this list are: 1. Involvement of NPS staff with the county commissioners to develop and enact a meaningful light pollution ordinance. Control of light pollution from park facilities and pier concessions is of course important but pretty small potatoes compared to the impact from street lighting and the brilliance of beachfront homes that shine like Christmas trees! Such pollution has proven controllable elsewhere and should be done here.

**Corr. ID:** 57

**Organization:** *Not Specified*

**Comment ID:** 22594

**Organization Type:** Unaffiliated Individual

**Representative Quote:** 4. Adopt [USFWS] (Pea Island) procedure for silt fencing around turtle nests. This is a tight keyhole configuration which provides better shielding from ambient artificial lighting and minimize ghost crab predation. Current [Cape Hatteras National Seashore] configuration is ineffective in those regards.

**Corr. ID:** 81

**Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22831

**Organization Type:** State Government

**Representative Quote:** The Commission recommends the daily monitoring effort for sea turtle nests and hatchling emergencies be expanded. Nesting of loggerheads in North Carolina begins in May and many records indicate nests have successfully incubated until November. Therefore, we request monitoring be conducted May 1 - November 15 of every year.

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22320

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Their program was to leave most nests in the natural location except those that were obviously in immediate danger. Basically a nest close to the water would be relocated higher on the same beach or to the nearest adjacent higher site. This "natural" style of management has not proven successful because our island beaches are far too dynamic with a high frequency of storm flooding and aggressive wave action.

The results of this "natural" policy are that [Cape Hatteras National Seashore] experienced a 30% to 70% loss of loggerhead progeny over the last nine years with an average hatch rate of 48%. Average nest loss was 41% for the same period.

**Response:**

In consultation with the USFWS, changes were made to proposed sea turtle management, resulting in the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* that is described in detail in the Errata (attachment 2 to the FONSI). These changes include beginning surveying on May 15, beginning surveys at dawn, and not relocating turtle nests for recreational access purposes. Further, turtle management actions will be in accordance with the North Carolina Wildlife Resources' Commission Handbook, including when and how to relocate nests, as the NPS considers this the best available guidance for sea turtle management actions applicable to the Seashore (see strategy/EA p. 60). This is also consistent with the U.S. Fish and Wildlife Service Recovery Plan for U.S. Population of Loggerhead Turtle (*Caretta caretta*) as well as other sea turtle recovery plans that state when protecting nests, "In all cases the least manipulative method should be employed to avoid interfering with known or unknown natural biological processes" (USFWS 1991a, as cited in the strategy/EA). These guidance documents are implemented on the ground with consideration of the unique environmental conditions at the Seashore including the impact of hurricanes, rising sea level, and impacts from erosion. There are many unknown variables as to the effects of nest relocation on sex determination of hatchlings and other contributing environmental factors as to the hardness of hatchlings produced. Because of these unknowns, the Seashore has taken a conservative approach to sea turtle nest relocation. In emergency situations or situations not addressed in the handbook, the Seashore will communicate with the State Sea Turtle Coordinator. The above handbook and guidance also are the basis for the type of data that will be collected under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* as shown on p. 75 of the strategy/EA and include the use of Geographic Positioning Systems (GPS) to mark locations where possible. Suggestions for additional types of data to be collected or additional management measures such as use of mile posts, removing carsonite stakes, and addition of new site types were not included in the modified preferred alternative as some of these elements, such as mile posts, would be better considered under the long-term ORV management plan/EIS and others were outside the scope of the above referenced guidance.

Due to the small size of Pea Island National Wildlife Refuge and the minimal number of nests compared to the Seashore, Pea Island is able to monitor each hatching nest throughout the night, erecting and dismantling the fencing around the nest each night. The Seashore does not have the resources to monitor each hatching nest throughout the night. The larger size of the Seashore's silt fencing enclosure is used to minimize the impact of artificial light while also not identifying the specific location of a nest in order to minimize vandalism and potential predation.

Under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*, the Seashore will establish turtle friendly lighting standards for all structures and facilities within the Seashore for which it issues new permits, contracts, or commercial use authorizations. This includes the upcoming prospectus for the Oregon Inlet Fishing Center concessions contract and the issuance of new contracts, permits or commercial use authorizations for fishing piers under NPS jurisdiction. Further, as part of the modified preferred alternative, light filtering fencing is erected behind and to either side of nests to mitigate the effects of off-beach light from villages as well as light from ORVs on the beach, as discussed above. The modified preferred alternative recognizes that better educational materials than the sea turtle video may become available during the interim period and specifies sea turtle outreach will 1) provide information to the public about nesting sea turtles and measures taken by the Seashore to protect nests and hatchlings and 2) conduct educational programs during the sea turtle hatching season where public school students could learn about sea turtles by participating in post-hatching nest examinations.

Staffing and funding levels for conservation measures were analyzed in the strategy/EA. Conservation measures are discretionary activities intended to minimize or avoids adverse effects of an action on listed species or critical habitat, to help implement recovery plans, or to develop information. Conservation



recommendations outlined in the USFWS Amended Biological Opinion (2007) will be considered for implementation. The Seashore will notify the USFWS when any of these conservation measures are implemented.

**Concern ID:** 13043  
**CONCERN STATEMENT:** Some commenters stated that ORV use should be limited and priority given to species protection.

**Representative Quote(s):**

**Corr. ID:** 61 **Organization:** *Not Specified*

**Comment ID:** 22610 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The plan must limit the numbers of ORV's on the beaches, and carefully control timing of ORV use, with priority given to species protection. During critical nesting periods, the beach should be off limits to ORV's.

**Corr. ID:** 85 **Organization:** *Not Specified*

**Comment ID:** 22855 **Organization Type:** Unaffiliated Individual

**Representative Quote:** If ORV corridors are to be used, the number of vehicles should be limited to a set number at any time. At Assateague Island [National Seashore] here in Maryland, the vehicle numbers are strictly regulated, with lower numbers in bird breeding season.

**Response:** NPS strives to conserve wildlife while providing appropriate recreational opportunities for the public. During the period covered by the strategy/EA, the Seashore believes the management of ORV use on the beaches as provided by the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* will also provide needed species protection. Monitoring the success of sensitive species reproduction during the interim period will provide additional information on the ability of the Seashore to protect sensitive species while allowing for appropriate ORV driving on the beach. This and other information will help inform development of a full range of alternatives for ORV management during preparation of the long-term ORV management plan/EIS.

**Concern ID:** 13046  
**CONCERN STATEMENT:** Commenters suggested that community members and volunteers be used to help implement the preferred alternative, including adjusting the ORV corridor and that better enforcement of existing rules would be the most effective in protecting species at the Seashore.

**Representative Quote(s):**

**Corr. ID:** 43 **Organization:** *Not Specified*

**Comment ID:** 22289 **Organization Type:** Unaffiliated Individual

**Representative Quote:** With respect to manpower, it should be noted that members of [Outer Banks Preservation Association], [Cape Hatteras Access Preservation Alliance], [North Carolina Beach Buggy Association], and community members have, in the past made their time available to assist the park service in a variety of ways (i.e. assisting park personnel in erecting and dismantling bird fencing in the areas of salty pond, removing debris from the beach after hurricanes, and prior, to the contracting of incident team for the Hatteras Inlet escort program, providing the bodies needed to implement the escort program). I mention this because I am certain that if you find yourself short of the staff required to adjust the 100 foot corridors specified in alternative D, the members of these organizations will be more than happy to lend a hand again just the way they have in the past.

**Corr. ID:** 57 **Organization:** *Not Specified*

**Comment ID:** 22809 **Organization Type:** Unaffiliated Individual

**Representative Quote:** 5. Develop a trained volunteer staff augmented by electronic surveillance to provide 24/7 monitoring of safe nest areas. Staff would be supervised by qualified NPS professionals.



**Corr. ID:** 49

**Organization:** *Not Specified*

**Comment ID:** 22671

**Organization Type:** Unaffiliated Individual

**Representative Quote:** During the tourist season have a ranger in the primary areas monitoring a cell phone and the public will do most of the policing.

**Corr. ID:** 51

**Organization:** *Not Specified*

**Comment ID:** 22613

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Obtain and post the rules such as airing down, speed limits, staying off the dunes and etc. Some of the rules I would like to see are:

1. No speeding (speed limit 25mph)
2. Air down
3. Clean up all trash including cigarettes
4. Stay off the dunes
5. No driving below the tide lines
6. Fires by written permit only
7. No digging sand holes over 1 foot
8. Dog and Cats on a short lead
9. Clean up after your pet
10. Stay in driving lanes whenever possible

**Response:**

The National Park Service recognizes the value of community interest groups and volunteers in supporting Seashore programs and the Seashore has successful relationships on many fronts with them. A number of volunteers supported the interim protected species efforts during the past breeding season. Additionally, several community interest groups assisted with pre-nesting closure installation in late March 2006. As a practical matter, use of community interest groups during the summer season to assist in species management and monitoring is difficult because of the requirements for rapid response to install closures and other general management issues. The Seashore welcomes the assistance of interest groups and volunteers whenever practicable.

In regards to enforcement, the modified preferred alternative – *Alternative D (Access/Research Component Focus)* with *Elements of Alternative A* provides for outreach and enforcement to enforce proper trash disposal (pack in/pack out) and anti-wildlife feeding regulations throughout the Seashore, including proper disposal of fishing bait and filleted fish carcasses. Law enforcement staff activities will be directed to appropriate protected species projects. However, enforcement staff will be reallocated in the event that other emergency or enforcement situations must be attended to during high visitation periods. It is the responsibility of the Superintendent and law enforcement managers to direct their resources where most needed depending on circumstances. If, and as this occurs, law enforcement staff may not be able to dedicate as much time to species protection. The Seashore will provide education and outreach materials regarding the impacts of trash disposal, wildlife-feeding, fireworks, and pets on sensitive species. Issues with driving below the tideline, digging holes on the beach, use of driving lanes, and the suggestion of requiring written permissions for fires on the beach may be addressed during the long-term ORV management plan/EIS and proposed the negotiated rulemaking process. 36 CFR 2.15(a)(5) prohibits “failing to comply with pet excrement disposal conditions, which may be established by the superintendent”. The Superintendent’s Compendium 2.15(a)(5) says “Pet excrement disposal conditions include necessary removal of all pet excrement from all park areas”.

**Concern ID:**

13050

**CONCERN  
STATEMENT:**

Commenters provided elements to incorporate into a modified preferred alternative that would accommodate more vehicular access including increasing areas open to ORV use, size and location of driving lanes and parking areas, and use of vehicle counters.

**Representative  
Quote(s):**

**Corr. ID:** 33

**Organization:** *Not Specified*

**Comment ID:** 22792

**Organization Type:** Unaffiliated Individual

**Representative Quote:** What I have done is draw a black line on the parts of both areas that need to be kept open. What is shown for the Point is way too small. There is not enough room on what your photo shows for the number of fishermen and vehicles. Correct me if I'm wrong but from past practice, if the Point is smaller than what is shown on your photo your enclosure WILL NOT be smaller. The fishermen do not want much beach, just enough to drive to & from at high tide without driving in water, and room to park & fish 24 hours a day

**Corr. ID:** 49

**Organization:** *Not Specified*

**Comment ID:** 22668

**Organization Type:** Unaffiliated Individual

**Representative Quote:** There should be driving lanes and parking room above the high tide lines in the whole park.

**Corr. ID:** 57

**Organization:** *Not Specified*

**Comment ID:** 22810

**Organization Type:** Unaffiliated Individual

**Representative Quote:** 11. Install vehicle counters at each ramp. System should be capable of separating day and night use.

**Corr. ID:** 23

**Organization:** *Not Specified*

**Comment ID:** 22287

**Organization Type:** Unaffiliated Individual

**Representative Quote:** I strongly recommend you consider a 200 ft corridor vice the 100 ft for Alt D. 300 ft would be better but I doubt you can go that far. We had problems with the 150 ft used from Supt Order #7 when it was overwashed by even a moderate on shore wind or sea. Westerly winds from the sound are a similar problem. Basically the beach affected became closed until the water receded and work arounds were seldom used or at best consisted of marking the areas for no parking and letting people try to time their transit thru the wash. In some areas, once you passed at low tide, no way could you return until the next low tide. I'll note later how this is contradictory to the "safety" closures. Unless you really have the resources and delegated authority to respond rapidly (within an 8 hr shift) to such overwash conditions, the 100 ft is going to be a problem of great frustration to all concerned. 200 ft would likely eliminate much of the problem.

**Response:**

The 100-foot corridor provided for in the modified preferred alternative – *Alternative D (Access/Research Component Focus)* with *Elements of Alternative A* is intended to provide for ORV use and to protect sensitive species. While the corridor width provisions may not provide vehicle access to all areas usually open for vehicle access under all conditions, the National Park Service has determined that the corridors are appropriate during the timeframe that the interim strategy/EA will be in place. Further, these corridors will be flexible and adjust to the dynamic nature of the Seashore, as discussed under Concern Statements 12866, 12867, and 12869 (pp. 12, 13, and 14, respectively, of this report). Definition of longer term access regulation, including the size and placement of access corridors as well as the location of parking areas, will be addressed in the long-term ORV management plan/EIS and proposed negotiated rulemaking processes. The Seashore is currently testing vehicle counters at four beach access ramps to provide additional information for the long-term ORV management plan/EIS and proposed negotiated rulemaking process. If the counters work well, the Seashore may install counters at additional ramps; eventually installing traffic counters at all ramps. The Seashore is currently field testing several brands to determine which works best in the Seashore environment.

**Concern ID:**

13052

**CONCERN  
STATEMENT:**

Commenters suggested alternative methods for implementing closures under the preferred alternative to address concerns such as the effort involved with frequent moving of symbolic fencing, the requirement for Superintendent approval and the impact delays may have on birds, use of monitors for species protection, and different dates closures should begin.

**Representative  
Quote(s):**

**Corr. ID:** 81

**Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22838

**Organization Type:** State Government

**Representative Quote:** Changes in posted areas should not require superintendent approval. The additional time required to obtain the necessary approval and continued operation of ORV and other recreational activities near beach nesting birds, especially piping plovers, may discourage adults from nesting, cause birds to abandon active nests, or push foraging chicks out of the area. Biologists making observations on site should be allowed to post areas immediately upon seeing courtship behavior, nesting activity, or foraging chicks.

**Corr. ID:** 81

**Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22834

**Organization Type:** State Government

**Representative Quote:** Several of the alternatives will require the frequent moving of symbolic fencing and vehicle corridors to protect chicks. This will be very labor intensive and may cause delays in species protection and lead to the loss of chicks. A more feasible option that would afford nesting birds adequate protection would include leaving vehicle corridors open on inlet spits during egg laying and incubation and closing portions of the inlet spits to ORVs after chicks hatch. This eliminates the need to continuously move fencing necessary to keep adequate buffers around moving chicks and allows continual and safe access to vital foraging areas at the waters edge.

**Corr. ID:** 81

**Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22839

**Organization Type:** State Government

**Representative Quote:** The Commission requests April 1 of every year be the latest date by which colonial waterbird and shorebird nesting areas are posted. This would alleviate some confusion from the different proposed dates for closures and monitoring and afford the greatest protection to waterbirds.

**Corr. ID:** 50

**Organization:** *Not Specified*

**Comment ID:** 22618

**Organization Type:** Unaffiliated Individual

**Representative Quote:** The park can never guarantee that trained, qualified monitors will be ready and on the ground when the plovers arrive each spring - due to the hiring system, background checks and budgets - so the responsible action would be to protect all suitable habitat by mid-March and not have a plan that relies so much on monitors.

**Response:**

Seashore staff agrees that frequent moving of symbolic fencing is labor intensive and time consuming. Seashore management is working to make closure installation and modification as efficient as possible and may alter approaches somewhat as the interim strategy progresses; however, any modifications will be within the bounds of the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* described in the Errata (attachment 2 to the FONSI) and will take into consideration potential impacts to protected species. The installation of closures requires judgment that seeks to simultaneously protect shorebirds and provide reasonable opportunities for access in the most economical and effective manner.

It is the Seashore's experience that the pre-nesting closures posted for piping plover during 2006 were also adequate pre-nesting closures for other species of concern and a similar approach will be taken during subsequent years of the interim strategy under the modified preferred alternative. Adjustments to closures will be made when life cycle activities, e.g., scraping and nesting, occur outside of the May 1 closures for colonial waterbirds when these birds occur outside existing pre-nesting closures for other protected species. Pre-nesting closures for piping plover will begin by April 1.

All species closures are subject to the Superintendent's approval. The process used during the 2006 season generated approvals considerably more rapidly than in previous years on which this comment was probably based. During 2006, the Superintendent responded to the vast majority of closure requests within a 24-hour period. Many closures were approved during the same day, if not within hours, of receiving closure requests from the field, and many were approved in advance of the proposed

implementation date to prepare for nests that were known to be near hatching. These pre-approved closures were implemented to plan for, rather than react to, species management once courtship and mating began. For example, in an area of a nest about to hatch, the buffer for chicks hatching would already be planned and approved so it could be implemented as soon as the chicks were present.

The modified preferred alternative relies on species surveys rather than closing all suitable habitat because it better meets the purpose of the strategy/EA to “protect sensitive species and provide for recreational use as directed in the enabling legislation, NPS management policies, and other laws and mandates” (see strategy/EA p. 1). The National Park Service recognizes that the expertise of the selected seasonal employees varies; the Seashore chooses the best applicants and then conducts additional training on standardized data collection and species surveying at the Seashore to assist in this process. Under the modified preferred alternative, recruitment and hiring of seasonal staff will begin earlier for the 2007 season than in past seasons, and job announcement distribution will be expanded to reach a broader range of applicants.

The modified preferred alternative also maintains migratory and wintering bird closures for non-breeding piping plovers at high priority areas, such as the spits and Cape Point. These closures remain in place throughout the winter months and are expanded by April 1, for pre-nesting activity, providing year-round protection at major nesting sites. NPS believes this will provide adequate protection during the period covered by the interim strategy.

**Concern ID:** 13054

**CONCERN STATEMENT:** Commenters stated concern that the alternatives do not discuss protection of newly created habitat that is a result of natural causes and felt that this could cause impacts to the species.

**Representative Quote(s):**

**Corr. ID:** 81

**Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22833

**Organization Type:** State Government

**Representative Quote:** The Commission is concerned that none of the discussed alternatives adequately address newly created habitat. New areas are proposed to be posted only when breeding behavior is observed on two consecutive visits or when a nest is found. This may cause problems following severe storms which result in significant changes to the beach front.

**Response:**

The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) provides for the annual assessment of existing and newly formed habitat prior to the start of the breeding season in February or March of each year (see the Errata (attachment 2 to the FONSI)). In most cases regular surveys will indicate if an area not already incorporated into pre-nesting closures is being used by birds and a closure will be established. Closing all newly created habitat would likely result in closure of some areas unnecessarily, (i.e., areas that would not be used for nesting even if closed) during the interim period.

#### **AL5000 - ALTERNATIVES: ALTERNATIVE A – NO-ACTION ALTERNATIVE, CONTINUATION OF 2004 MANAGEMENT**

**Concern ID:** 12935

**CONCERN STATEMENT:** Commenters voiced their preference for the no action alternative and the continuation of ORV use at the Seashore. They further stated that the strategy/EA was incorrect in its representation of alternative D as the most permissive, as alternative A allowed more access.

**Representative Quote(s):**

**Corr. ID:** 12

**Organization:** Not Specified

**Comment ID:** 22254 **Organization Type:** Unaffiliated Individual

**Representative Quote:** I think we should keep all our Seashores open for ORV use. I vote for no change. The plan you are using now seems to be working. I think the NPS does a great job.

**Corr. ID:** 82      **Organization:** United Four Wheel Drive Association

**Comment ID:** 22842      **Organization Type:** Recreational Groups

**Representative Quote:** The agency asserts that the impact of resource closures on visitor use is the same for Alternatives A, C, and D. However, the scope of the closures represented visually in Appendix A clearly demonstrates the error of this assertion. For example, comparison between the [piping plover] Closure area for Piping Plover Pre-Nesting Closures at Bodie Island Spit clearly indicates an increase in closure area between Alternative A and that of Alternatives C and D.

**Response:** Based on the analysis presented in the strategy/EA, public comment on the strategy/EA, park field experience during the 2006 breeding season, the USFWS Amended Biological Opinion (2007) (attachment 1 to the Finding of No Significant Impact [FONSI]), new research, and professional judgment, the NPS chose a modified preferred alternative that takes alternative D and incorporates some elements of alternative A, the “no action” alternative, as described in the Errata (attachment 2 to the FONSI). The revised alternative provides more flexibility to Seashore staff in establishing closures for American oystercatcher and provides more defined parameters for colonial waterbird closures. The inclusion of these new elements will serve to increase visitor access, where appropriate, while still providing the necessary level of protection of these species.

**Concern ID:** 12936

**CONCERN STATEMENT:** Commenters felt that use of 2004 for the no action alternative did not represent a true baseline and that pre-2004 conditions would be a more accurate representation.

**Representative Quote(s):** **Corr. ID:** 65      **Organization:** American Sportfishing Association

**Comment ID:** 22708      **Organization Type:** Business Groups

**Representative Quote:** Alternative A Does Not Reflect True Background Conditions: The [interim protected species management strategy/EA] recognizes that specific management changes were made in 2004 that restricted ORV use more than prior years. Nevertheless, the Strategy moves the marker forward from a true no-action background based on long term management practices to encompass changes made very recently that have been objected to strenuously by users. A more accurate no-action alternative would be the management approach used prior to 2004. As noted above, there have been no documented deaths to protected species due to ORV use under those pre-2004 measures.

**Response:** The no-action alternative accounts for species management prior to 2005, while acknowledging specific management changes provided in Superintendent’s Order 07: ORV Management, which was approved in 2004 (see strategy/EA p. 43). As stated in the strategy/EA, the no-action alternative did not address the vehicle escort program implemented in 2005, as that management action was a one-time emergency action carried out by an NPS incident management team working with seashore staff. The NPS incident management teams are not available for continuing management activities such as interim protected species management at the seashore. The no-action alternative, therefore, accounted for species management prior to 2005, while acknowledging specific management changes provided in Superintendent’s Order 07: ORV Management, which was enacted in 2004. Management actions prior to 2004 are provided to give context to the baseline. Therefore, those management actions occurring prior to 2004 are accounted for under the no action alternative.

**Concern ID:** 13378

**CONCERN STATEMENT:** A commenter questioned, under alternative A, the need for a trained observer in emergency vehicles.

**Representative Quote(s):** **Corr. ID:** 116      **Organization:** Not Specified

**Comment ID:** 23191      **Organization Type:** Unaffiliated Individual

**Representative Quote:** On 46, it talks about essential vehicle use where it says "All essential vehicles will travel with the aid of a trained observer. Essential vehicles are those emergency, law enforcement and Seashore vehicles necessary to provide for the safety of recreationists." I'm concerned about those emergency vehicles. They have to have a trained observer. They have to abide by these closures. Say, if the emergency is at the point, and -- which often it is -- and you have this 100-foot corridor and you have people and trucks and things, are they allowed even to go into buffer zones?

**Response:** The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* as described in the Errata (attachment 2 to the FONSI) has been adjusted to clarify that in the event of an emergency, the protection of human life takes precedence over all other management activities. To the extent practicable, emergency response vehicle operators will consult with trained resources management staff regarding protected species before driving into or through resource closures; however, prior consultation may not always be practical.

## AL6010 - ALTERNATIVES: ALTERNATIVE B – UNDISTURBED AREA FOCUS

**Concern ID:** 12937

**CONCERN STATEMENT:** Some commenters stated support for a modified alternative B. Suggested modifications included reduction of some of the year-round closures and closure of the soundside year-round, adoption of the U.S. Geological Survey protocols "moderate" protection measures, and alteration to ORV corridors including closing the corridor in some places.

**Representative Quote(s):** **Corr. ID:** 80 **Organization:** Audubon North Carolina

**Comment ID:** 22823 **Organization Type:** Conservation/Preservation

**Representative Quote:** After reviewing all of the proposed alternatives, it is our opinion that Alternative B provides the most adequate protection for waterbirds and shorebirds within the Seashore. Even so, we feel that Alternative B is more restrictive than necessary for the protection of birds in some cases. Complete, year-round closure of the inlet spits and Cape Point to vehicles not necessary in all cases. Vehicle access within a 100' corridor along the ocean front beach could be allowed in areas where there were no conflicts with breeding or non-breeding birds. Soundside areas should be closed to all activity year-round because of their importance to breeding and non-breeding birds throughout the year.

**Corr. ID:** 80 **Organization:** Audubon North Carolina

**Comment ID:** 22827 **Organization Type:** Conservation/Preservation

**Representative Quote:** We strongly urge the Seashore to reject Alternative D and modify Alternative B to be consistent with the "moderate protection" recommendations provided to the Seashore by U.S. Geological Survey biologists who are recognized as among the most knowledgeable biologists in their respective fields (Erwin 2005, Cohen 2005, Meyer 2005). And we urge the Seashore to implement the moderate protection recommendations immediately and in time for the 2006 nesting season.

**Corr. ID:** 85 **Organization:** Not Specified

**Comment ID:** 22855 **Organization Type:** Unaffiliated Individual

**Representative Quote:** We favor Alternative B, with these strengthening amendments:  
The "historic" breeding areas are a good start, but the protection under B is inadequate because of ORV corridors 100 to 150 feet wide in the tidal zone, and a cross-cutting corridor at South Beach/Cape Point. Those corridors should be closed.  
The protected areas in B address only 7 small areas out of the 53 miles of beaches NPS manages at Cape Hatteras NS. We ask NPS to identify other areas that are likely to serve as expansion areas for breeding and resting/feeding for the protected species. These should be closed to ORVs and treated as "potential" or "future" breeding and resting/feeding areas for these species.

**Response:** The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of*



*Alternative A*, which considered the U.S. Geological Survey Protocols, incorporates size, location, and duration of closures and provisions for an ORV corridor using best available information to provide species protection, as well as recreational access to a greater extent than alternative B or alternative B with modifications. The modified preferred alternative is based on the life cycle of the species and allows for protection of the species in each of these lifecycle stages, while also providing appropriate recreation opportunities to Seashore visitors. As noted in the Errata (attachment 2 to the FONSI), this alternative has been adjusted to include a yearly survey prior to breeding season to identify any potential new habitat and account for new habitat in species management. As noted, complete closure of the inlet spits and Cape Point is not necessary, and this has not been incorporated into the modified preferred alternative. The suggestion to close the soundside year-round was not incorporated into the modified preferred alternative because it also was more restrictive than necessary. As stated above, a yearly habitat survey will be conducted, including the soundside, to ensure that only areas that would provide appropriate habitat would be potential areas for closure.

#### **AL8000 - ALTERNATIVES: ALTERNATIVE D – ACCESS/RESEARCH COMPONENT FOCUS (PREFERRED ALTERNATIVE)**

**Concern ID:** 13056

**CONCERN STATEMENT:** Commenters supported a modified alternative D, including the one drafted by the Outer Banks Preservation Association, and felt this should be the preferred alternative. Elements of this alternative would include how to establish pre-nesting closures, establishment of an ORV corridor, sizes of buffer zones, length of closures, and prohibiting pets.

**Representative Quote(s):**

**Corr. ID:** 59

**Organization:** *Not Specified*

**Comment ID:** 22609

**Organization Type:** Unaffiliated Individual

**Representative Quote:** I wholeheartedly recommend that the "modified Alternative D" as proposed by [Outer Banks Preservation Association ]/[Cape Hatteras Access Preservation Alliance] comments and as presented by the Law firm of Holland and Knight, this date, be incorporated and adopted in toto. It is well justified and supportable based both on its included legal analysis and scientific/technical documentation.

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22777

**Organization Type:** Non-Governmental

**Representative Quote:** Instead, we proposed a modified Alternative D, as detailed in Exhibit A, to clarify the approach as set forth in the 1996 [U.S. Fish and Wildlife Service] Piping Plover Atlantic Coast Population Revised Recovery Plan [USFWS 1996a, as cited in the strategy/EA] which, in considering protective measures, states that "vehicles may be allowed to pass through portion of the protected areas that are considered inaccessible to plover chicks because of steep topography, dense vegetation, or other naturally-occurring obstacles." See Ex. A. Furthermore, the language of Alternative D merits clarification to reflect the protective measures it adopts and recognize that no incidental take is anticipated.

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22789

**Organization Type:** Non-Governmental

**Representative Quote:** MODIFIED ALTERNATIVE D

As previously mentioned our proposed modified Alternative D is further detailed in Exhibit A, as attached. The following is a brief summary of components of Alternative D and the reasoning behind the modifications.

A. Uses of the previous three years of nesting data to establish pre-season closures only if suitable habitat is present.

B. Establishment of a permanent recreational (ORV and pedestrian) access corridor that is clearly defined, provides ample protection for the listed species, is able to be implemented, and is consistently applied throughout the year.

C. Standardize the buffer zone for nesting pairs of all species of shorebirds and colonial nesting birds to 150 feet.

- D. Reducing the time of year closures for all species of shore birds and colonial nesting birds from 1 April to 1 August.
- E. Reducing the buffer zone for unfledged piping plover chicks to 300 feet, and removing buffers for the non-federally listed shorebirds and colonial nesting birds.
- F. Remove year-round closures of suitable interior habitats for resting and loafing shorebirds and colonial waterbirds Modified Alternative D would include that nesting areas will remain closed between 1 April and 1 August each year. Interior habitats at Cape Point, Hatteras Spit, Ocracoke, and Bodie Island Spit will reopen after plover chicks fledge.
- G. Prohibit pets from within closures.

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22788

**Organization Type:** Non-Governmental

**Representative Quote:** Modified Alternative D proposes to base habitat closures on the past 3 years of piping plover nesting areas. Annual habitat assessments should be conducted in February and March of each year to determine if the closures provide suitable piping plover nesting habitat. Previous nesting areas that do not provide suitable habitat should not be closed, and likewise suitable nesting habitat that is outside the previous nesting areas should be included in the annual closures. In addition, the modified preferred alternative proposes establishing habitat criteria for suitable and unsuitable habitat based on the scientific literature and the site-specific information provided by local researchers, and uses these criteria to determine suitable and unsuitable nesting habitat.

**Response:**

Based on public comments and field experience during the 2006 breeding season, the Seashore has developed a modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*), as detailed in the Errata (attachment 2 to the FONSI), that incorporates some of the actions contained in alternative A and alternative D, and are oriented to non-federally listed species.

**Concern ID:**

13058

**CONCERN  
STATEMENT:**

Commenters stated the piping plover buffers under alternative D were excessive and should not be larger than minimums in the U.S. Fish and Wildlife Service Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as cited in the strategy/EA).

**Representative  
Quote(s):**

**Corr. ID:** 73

**Organization:** *Not Specified*

**Comment ID:** 22698

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Alternative D Closure Buffers for [piping plover] unfledged chicks is 600-3000 feet yet the Recovery Plan guide less. Thus there is no need to exceed the Recovery Plan minimums. The 3000 feet buffer is intended to be used where no approved plan exists and this is expected to be an approved plan, so why the excessive 3000 foot concept- See Holland & Knight comment.

**Response:**

Vehicle buffer distances recommended in the U.S. Fish and Wildlife Service Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, pp. 193-196, as cited in the strategy/EA) vary from 200 meters (656 feet) to more than 1,000 meters (3,280 feet) to total closure of beach areas, and should not fall below 100 meters (328 feet). As this plan recommends a range of possible management, the Seashore considered this range in the context of the piping plover populations and habitat found at the Seashore. It was determined that buffers under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* would be established at 600 feet, which is consistent with the minimum recommended. However, since piping plover broods can be highly mobile, the Seashore wanted to account for this and be able to provide the needed protection, thus the range of up to 3,000 feet is included in the modified preferred alternative. The flexibility in buffers for unfledged piping plover chicks not only allows expansion of the buffer, but also allows reduction of the buffer to 300 feet if the mobility and the behavior of the chicks warrant a reduction. Because the range of possible buffers was based on the U.S. Fish and Wildlife Service Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as



cited in the strategy/EA), the NPS considers this range reasonable and necessary to provide the flexibility needed to manage this species at the Seashore.

**Concern ID:** 13060

**CONCERN STATEMENT:** Commenters questioned piping plover protection under alternative D saying that it does not provide enough year-round protection, does not adequately account for nighttime chick movement, and does not regulate kites attached to surf boards.

**Representative Quote(s):** **Corr. ID:** 69 **Organization:** private citizen

**Comment ID:** 22650 **Organization Type:** Unaffiliated Individual

**Representative Quote:** I choose Alternate D. On p. 84 Wintering closures: the closures should be maintained all year. .Page 99: Kites: Include the large rectangular kites that are used with surf boards.

**Corr. ID:** 81 **Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22836 **Organization Type:** State Government

**Representative Quote:** Alternative D states that piping plover chicks will be observed continuously during the daylight hours. However, chicks can be active at night and the minimum 600 foot buffer around chicks may be too small to afford protection from nighttime driving when capable chicks move outside this area.

**Response:** Under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*, detailed in the Errata (attachment 2 to the FONSI), protection for wintering birds will be provided as suitable piping plover habitats at the spits and Cape Point will be closed year-round to all recreational users to provide for resting and foraging. As stated above in the response to Concern Statement 13058 (p. 31 of this report), buffer sizes for piping plover would be flexible. While initially established at 600 feet, the modified preferred alternative allows for expansion of the buffer up to 3,000 feet for a highly mobile brood. If a brood is observed as highly mobile, the buffer size would be increased to afford the needed protection at night when observers are not present. Based on Seashore staff experience during the 2006 breeding season, kite boards will be included under kites, as detailed in the Errata (attachment 2 to the FONSI), because their on-the-ground impacts to protected species would be similar to those of recreational kites.

**Concern ID:** 13063

**CONCERN STATEMENT:** Commenters stated that closures dates under alternative D should retain flexibility to respond to pairs that might nest before the closures begin. Commenters felt that lack of flexibility in pre-nesting closure establishment would not prevent the failure of some pairs to breed.

**Representative Quote(s):** **Corr. ID:** 53 **Organization:** Virginia Tech

**Comment ID:** 22604 **Organization Type:** Unaffiliated Individual

**Representative Quote:** 1) Under Option D [Cape Hatteras National Seashore] will commence fencing and monitoring on April 1, rather than March 15. As monitoring improves, [Cape Hatteras National Seashore] may find that territory establishment does occur between March 15 and April 1, as has been documented at many places on the Atlantic Coast. Failure to protect breeding areas during this time could result in failure of some pairs to breed. [Cape Hatteras National Seashore] should at least retain the option of closing [piping plover] areas on March 15, and [American oystercatcher] monitors surveying between March 15 and April 1 should be trained to recognize [piping plover] breeding activity.

**Response:** Under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*), as described in the Errata (attachment 2 to the FONSI), Seashore staff will begin pre-nesting monitoring efforts for piping plover on March 15, monitoring once per week, and increase monitoring to three times per week on April 1. Pre-nesting/nesting behaviors observed during

this time will be addressed and closures will be modified and established as needed. The Seashore recognizes the importance of having qualified field staff trained by the start of the pre-nesting season. Recruitment and hiring of seasonal staff has begun earlier for the 2007 season than in past seasons and job announcement distribution has been expanded to reach a broader range of applicants. Additional protection to early nesters will also be provided by the year-round migratory and wintering bird closures for non-breeding piping plovers at high priority areas, such as the spits and Cape Point. These closures remain in place throughout the winter months and are expanded by April 1st, for pre-nesting activity, providing year-round protection at major nesting sites.

**Concern ID:** 13067

**CONCERN STATEMENT:** Commenters stated opposition to alternative D, citing that it was confusing and would adversely impact protected species at the Seashore by not providing the needed protection.

**Representative Quote(s):**

**Corr. ID:** 80

**Organization:** Audubon North Carolina

**Comment ID:** 22824

**Organization Type:** Conservation/Preservation

**Representative Quote:** Alternative D, the Seashore's preferred alternative, represents a return to politically biased management decisions that characterized the Seashore prior to the 2005 breeding season and a blatant disregard for more than two decades of scientific research on the issue. The Seashore's preferred Alternative D fails to provide the basic protection for waterbirds and shorebirds and is inconsistent with the science and biological needs of the species in questions. It is Audubon's opinion that Alternative D is inadequate and unacceptable as an interim management strategy for protected species.

**Corr. ID:** 80

**Organization:** Audubon North Carolina

**Comment ID:** 22826

**Organization Type:** Conservation/Preservation

**Representative Quote:** Beach-nesting birds within the Seashore have declined significantly in recent years. If existing downward trends continue, the Seashore will likely face functional extirpation of breeding shorebirds and colonial waterbirds. Alternative D - with its abandonment of standard bird management practices -leaves little hope that necessary changes to reverse the downward breeding population trends will be implemented.

**Corr. ID:** 81

**Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22840

**Organization Type:** State Government

**Representative Quote:** In general, we feel the management strategy presented in the preferred Alternative D does not offer adequate protection of listed and non-listed species. Changes in this alternative may afford increased protection while still allowing the NPS to meet their objectives for public use. Implementation of the preferred alternative may also be perceived by the public as confusing. This confusion may lead to additional impacts from inadvertent violations. We request the NPS seriously consider the afore mentioned concerns and implement them within the interim management plan.

**Corr. ID:** 96

**Organization:** Audubon North Carolina

**Comment ID:** 23044

**Organization Type:** Unaffiliated Individual

**Representative Quote:** we are very, very concerned the plan proposed, Alternative D, is not adequate to provide for protection for nesting shore birds, colonial waterbirds as well as migrating shore birds and wintering shore birds of the Seashore.

There also are key points in the plan that are vague or contradictory. And several of the points are very, very important in terms of basic management questions, which will influence the day-to-day field operations of the Seashore personnel. For instance, on page 59 of the document, they give certain buffer distances that are suggested for nesting shore birds and colonial waterbirds.

These buffer distances indicated for the oystercatchers and colonial waterbirds are less than the

recommendations of scientists and experts in the field. And then they say all of these buffers could be adjusted based on observed bird behavior.

**Response:**

Throughout the strategy/EA, the analysis recognizes that impacts to protected species at the Seashore would occur under alternative D. A summary of impacts to protected species under each alternative can be found on pp. 107 - 114 of the strategy/EA.

The USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI) concluded that implementation of the interim strategy would not jeopardize the continued existence of the species. The USFWS Amended Biological Opinion (2007) stated that "Depending on the extent to which the NPS implements protective measures described in the Interim Strategy, the Strategy may represent an improvement over past management at the Seashore and we expect its implementation may afford an opportunity for at least a minimal amount of successful breeding annually at [Cape Hatteras National Seashore's] most significant nesting sites (Bodie Island, Cape Point, Cape Hatteras spit and Ocracoke spit). This would potentially halt the decline in [Cape Hatteras National Seashore's] breeding population and could produce a slight population increase over the near term. Similarly, any measures implemented to protect non-breeding piping plovers would represent an improvement over past management which may increase adult survivorship."

Further, the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) includes performance measures to gauge its success. The terms and conditions in the USFWS Amended Biological Opinion (2007) require monitoring relative to the various breeding stages (number of breeding pairs, number of scrapes, number of nests, and number of fledglings); the performance measures address most of these stages. Performance measures for piping plover and sea turtles are detailed in the Errata (attachment 2 to the FONSI). If these targets are not met, the Seashore will reinitiate consultation with the USFWS as part of the annual review process identified in the USFWS Amended Biological Opinion (2007), unless the Superintendent and USFWS mutually agree that failure to meet the targets was caused by factors beyond the management control or influence of the Seashore (e.g., a higher than normal frequency of severe storms occurred during the breeding season resulting in an increased incidence of nest failures).

## **BA1000 - BIOLOGICAL ASSESSMENT (BA) – COMMENTS OR CONCERNS REGARDING THE BA**

**Concern ID:** 12944

**CONCERN STATEMENT:** Commenters felt that the information in the Biological Assessment and strategy/EA regarding park management and predator control was inaccurate and should be corrected.

**Representative Quote(s):**

**Corr. ID:** 18      **Organization:** Community Member

**Comment ID:** 22240      **Organization Type:** Unaffiliated Individual

**Representative Quote:** Interim Protected Species Management Strategy/Environmental Assessment, pg 157: The Strategy document reads as follows: "Currently, all Cape Hatteras National Seashore beaches are open to ORV use during the winter, except a section near the Cape Hatteras Lighthouse, which is closed year round. Some beaches are also closed to ORV use if they become too narrow."

Biological Assessment of The Interim Protected Species Management Strategy Project Description pg. 4: The Biological Assessment reads as follows: "During winter months all [Cape Hatteras National Seashore] beaches are open to ORV use."

**Corr. ID:** 108      **Organization:** Not Specified

**Comment ID:** 23157      **Organization Type:** Unaffiliated Individual

**Representative Quote:** Much data is provided in a lot of areas regarding, you know, plovers and what-have-you for 2004. However, it appears that we have left out, whether it was intentional or not, reporting

of the numbers and instances of so-called predator trapping in 2004.

**Response:**

Much of the language in the Biological Assessment was taken directly from the strategy/EA; however, in some cases differences may exist because the scope of the Biological Assessment is different than the EA and does not necessarily require duplicative language in every respect. Factual inaccuracies in the strategy/EA are corrected in the Errata (attachment 2 to the FONSI).

Regarding the above representative quotes, the statement regarding ORV use in the winter was correct in the strategy/EA, as the closure at the lighthouse is a year-round closure. .

The issue of predators and their current impact is addressed throughout the “Affected Environment” section (starting on p. 199 of the strategy/EA) for each species. For example, p. 125 of the strategy/EA discusses nest predation on piping plovers for the years that data were available at the time of writing. The data for 2004 were not included in these sections because at the time of writing it was not available. From 2002 through 2006, 58 red fox, 27 grey fox, 99 raccoons, 21 Virginia possums, 7 feral cats, and 1 feral dog have been removed from within the Seashore boundaries. The latest data have been added to the strategy/EA through the Errata (attachment 2 to the FONSI). The difference in where winter ORV use is allowed, and not including the 2004 predator trapping numbers in the strategy/EA, had no material effect on and would not have changed the USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI) or the impact analysis conclusions in the strategy/EA. The USFWS was kept apprised of new data throughout the consultation process.

**Concern ID:**

12945

**CONCERN  
STATEMENT:**

Commenters felt data were missing in both the strategy/EA and Biological Assessment regarding species population trends and ORV usage that could lead to a different interpretation and conclusion from the data.

**Representative  
Quote(s):**

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22334

**Organization Type:** Unaffiliated Individual

**Representative Quote:** p. 139 Table 14 (This same table is in the Biological Assessment, p. 52 as table 11) Data for several years is completely missing from Table 14: 1978-1982, 1994, 1997, 2002, and 2003. What would those missing years indicate as to population trends?

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22333

**Organization Type:** Unaffiliated Individual

**Representative Quote:** p. 139 Table 14 (This same table is in the Biological Assessment, p. 52 as table 11) The authors claim substantial declines in nests of [Cape Hatteras National Seashore] bird species for 2004: Gull billed tern 23% decline, Least tern 37% decline. Such conclusions are arithmetically correct if the nests recorded for 2004 are divided by the historical (12 data points) average, but they are not real! The data for the least tern shows 6 of the 12 years to be lower than the average and 4 of these are lower than 2004.

Data for the gull billed tern shows 8 of the 12 years with nest quantities lower than the average and 7 of these are lower than in 2004. All this data is just too scattered to draw such positive conclusions.

**Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:**

**Organization Type:** Unaffiliated Individual

22332

**Representative Quote:** p. 139 Table 14 (This same table is in the Biological Assessment, p. 52 as table 11): a. Sooty tern average is not 1 but 0: One divided by 12 is 0.08 which is less than 0.5. b. Bottom lines of table labeled Total should read 1618, 1637, 1298, 762, 1422, 1073, 1534, 1275, 1204, 465, 1076, 951. Except for year 2001, the table totals were obviously the sum of only 3 of the 5 upper numbers.

**Response:** The substantial declines in nests of Seashore bird species for 2004 was determined by adding the totals in Table 14 for gull-billed tern (1977 - 2001 survey data) and dividing by 12 (number of years surveyed); the average is 40.8 which is 24% higher than the number of birds surveyed in 2004 (21). If you add totals in Table 14 for least tern (1997 - 2001 survey data) and divide by 12 (number of years surveyed), the average is 348 which is 39% higher than the birds surveyed in 2004 (212). The statements in the strategy/EA and Biological Assessment are justified by the survey data. However, the following changes have been made within the Errata (attachment 2 to the FONSI) to the strategy/EA in Table 14: the average for least tern has changed from 337 to 348 and the average for gull-billed tern has been changed from 40 to 41. For the snooty tern, following the same logic as above, the average in the strategy/EA has been changed in the Errata (attachment 2 to the FONSI) to 0.09 to reflect 1 divided by 12.

As a commenter noted, the totals in Table 14 are incorrect. These totals (last line of the table) have been changed as follows, as noted in the Errata (attachment 2 to the FONSI):

1977: 1,618	1997: 1,534
1983: 1,637	1998: 1,275
1988: 1,298	1999: 1,204
1992: 762	2000: 465
1993: 1,422	2001: 1,076 (no change)
1995: 1,073	2004: 961

Table 14 was compiled from data collected by the Seashore, the state and Dr. J. Parnell, from the University of North Carolina-Wilmington, as noted on the table. Before 1995, all colonial waterbird nest counts were performed by Dr. James Parnell of University of North Carolina-Wilmington under an agreement with the North Carolina Wildlife Resources Commission. Starting in 1995, Seashore staff began the nest counts. The driving force behind this data collection was a request from the USFWS, which wanted data on colonial waterbirds statewide. Cape Hatteras National Seashore began collecting data in 1995 and collected these data every other year, and then every third year, based on the North Carolina Wildlife Resources Commission. Based on the North Carolina Wildlife Resources Commission data collection schedule; from 1995 the Seashore collected data every year that it was collected statewide. Data were not collected during the years that data is not presented, such as 1994.

## GA3000 - IMPACT ANALYSIS: GENERAL METHODOLOGY FOR ESTABLISHING IMPACTS/EFFECTS

**Concern ID:** 12946

**CONCERN STATEMENT:** Commenters stated the calculation of the Seashore property and shoreline was inaccurately represented and should be corrected.

**Representative Quote(s):** **Corr. ID:** 17 **Organization:** Community Member

**Comment ID:** 22244 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The soundside shoreline in front of the Villages is private property, that is, the soundside shoreline in front of the Villages is NOT within the boundary of the Cape Hatteras National Seashore. It appears that the soundside shoreline in front to the Villages was included in calculating the soundside habitats and beaches included within the Cape Hatteras National Seashore boundaries. This being the case, the passage should read as follows:

"...and 35 (not 50) miles of soundside habitats and beaches...."

**Corr. ID:** 42 **Organization:** Not Specified

**Comment ID:** 22338 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Since "The 13 miles of beach that comprise Pea Island National Wildlife Refuge are within the Cape Hatteras National Seashore boundary" it would be more accurate to state: "Of the 70 miles

of Atlantic Ocean beaches, and inlets that front Bodie, Hatteras and Ocracoke Islands, Cape Hatteras National Seashore encompasses (MANAGES) approximately 53 miles"

**Response:** Calculations of the Seashore property in the strategy/EA reflected the area inside the Cape Hatteras National Seashore boundary, not necessarily the area managed by the Seashore. Under existing surveys and maps, based on mechanical measurements, the most accurate statement for the strategy/EA would be: Cape Hatteras National Seashore encompasses approximately 64 miles of ocean shoreline and inlets and 51 miles of soundside shorelines and inlets. Soundside shorelines within the Villages of Rodanthe, Waves, Salvo, Avon, Buxton, Frisco and Hatteras are not part of the boundary of Cape Hatteras National Seashore. It is noteworthy that a complete resurvey of the Seashore was made and digital measurements of Seashore boundaries will soon be available, which should improve physical measurements information currently available. This change has been made in the Errata (attachment 2 to the FONSI). When available, the most recent data will be incorporated into the long-term ORV management/EIS planning process.

**Concern ID:** 12947

**CONCERN STATEMENT:** A commenter stated that personal communications should not be considered as factual scientific data and all references to these communications should be stricken from the strategy/EA.

**Representative Quote(s):** **Corr. ID:** 74

**Organization:** Not Specified

**Comment ID:** 22692

**Organization Type:** Unaffiliated Individual

**Representative Quote:** pp. 119-169 Any sentences ascribed as pers. comm. to the [Louis Berger Group] agent must be omitted from this document. Personal comments are not factual scientific data.

**Response:** To supplement existing scientific literature, the analysis in the strategy/EA also used the opinion of professionals and experts in their field to determine the baseline condition detailed on pp. 119 - 169 of the strategy/EA. These professionals included NPS staff members that have specific knowledge of species behavior and conditions at the Seashore, and other government professionals and academic experts. NPS Director's Order #12 states, "In making decisions, the NPS will articulate a reasoned connection between technical and scientific information and the final agency action. Technical and scientific analyses on potential impacts that are essential in making a well-reasoned decision will be obtained even though such information may not be readily available." The personal communications included in the strategy/EA are considered technical information from professionals and experts in their particular fields. These personal communications supplement the published scientific data and furthers the reasoned decision making process. Personal communications to contractor and NPS staff working on the strategy/EA are cited in the document as part of public disclosure under the National Environmental Policy Act planning process. National Park Service Director's Order #12: Conservation Planning, Environmental Impact Analysis and Decision Making, encourages talking with appropriate agencies or other experts to determine whether the potential for a measurable impact, significant impact, or resource conflict exists (section 2.6 B), and directs parks to "include a list of all references cited ... including written material and personal communications" (section 4.5 I.1).

**Concern ID:** 12948

**CONCERN STATEMENT:** Some commenters questioned the methodology of the strategy/EA stating that too much emphasis was placed on ORV use, with ORV restrictions part of many alternatives. These commenters felt other recreational uses were not fully considered in the analysis.

**Representative Quote(s):** **Corr. ID:** 47

**Organization:** Not Specified

**Comment ID:** 22305

**Organization Type:** Unaffiliated Individual

**Representative Quote:** p. 61. There are eleven projects listed here for Alternative "D" to aide the recovery of sea turtles. In a continuation of the bias witnessed throughout this EA book, seven of these programs involve ORV use. In particular, four of the programs involve nighttime ORV driving. It was noticed that Alternatives B and C both ban ORV night driving. Perhaps the authors are somewhat frustrated that



Alternative D does not proscribe night ORV use also.

**Corr. ID:** 62

**Organization:** *Not Specified*

**Comment ID:** 22620

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Alternative D address ORV usage in a way that will serve as an Interim ORV management plan. That was not the purpose of this management document. Alternative D is geared toward providing the maximum ORV access without considering other recreational users needs and it does not address recreational user conflicts.

**Corr. ID:** 68

**Organization:** *Not Specified*

**Comment ID:** 22642

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Thirdly, this document highlights ORV use and ignores all other recreational users of the Park. According to a NPS survey, only 7-11% of all park users access the beach with ORVs. The majority of visitors are pedestrians. Current policy is catering to this special interest group and largely ignoring the majority of recreational users.

**Response:**

To meet the purpose and need, the strategy/EA and the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* focused on areas of the Seashore where protected or sensitive species exist, which are also areas of high ORV use. Because these species exist in areas of high ORV use, ORV use is considered as part of this strategy/EA. However, ORV use is not the only recreational use considered. The alternatives also include provisions for pedestrian use, kite flying, Frisbee throwing, beach fires, etc. U.S. Fish and Wildlife Recovery Plans for protected species (as cited in the strategy/EA) address the effects these uses can have on the species and call for agencies to manage these uses in ways that provide for species protection.

The modified preferred alternative has been changed to be consistent with the USFWS Amended Biological Opinion (2007) (see the Errata, table 2 (attachment 2 to the FONSI)).

The EA examines the impacts on visitor experiences. The long-term ORV management plan/EIS will examine alternatives for addressing conflicts between visitors.

**Concern ID:** 13072

**CONCERN STATEMENT:** A commenter felt that the documents (strategy/EA, U.S. Geological Survey Protocols, USFWS Biological Opinion, etc.) are hard to distinguish from each other. The commenter stated that these documents should all be considered as one document that is a new species management plan to reduce this confusion.

**Representative Quote(s):** **Corr. ID:** 47

**Organization:** *Not Specified*

**Comment ID:** 22297

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Most are unaware of the details in the Patuxent Protocols and the Biological Assessment. All three of these documents are so closely intertwined they should be considered as one. It is highly unlikely that these documents can be massaged and patched enough to be truly valid. Now that you have a fresh resource staff, you might consider repudiation of those documents and the construction of a new species management plan for this park.

**Response:**

The strategy/EA presents alternatives for interim protected species management and evaluates their impacts. As part of the process of developing the strategy/EA, the NPS reviewed sources on the subject, such as the U.S. Geological Survey Protocols and the U.S. Fish and Wildlife Recovery Plans (as cited in the strategy/EA). After identification of the preferred alternative for the strategy/EA, the NPS prepared the Biological Assessment, which is used for the consultation on the preferred alternative with the USFWS that is required by the Endangered Species Act. The Biological Assessment contains information needed for consultation with the USFWS. In response to the NPS request for consultation and the Biological Assessment it provided, the USFWS issued its Amended Biological Opinion (2007) (attachment 1 to the

FONSI) that the preferred alternative will adversely affect listed species but is not likely to jeopardize the continued existence of listed species. The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) is consistent with the strategy/EA and with the USFWS Amended Biological Opinion (2007).

## NE1000 - OTHER NATIONAL ENVIRONMENTAL POLICY ACT ISSUES: GENERAL COMMENTS

**Concern ID:** 13073

**CONCERN STATEMENT:** Commenters stated that the no action alternative was not analyzed equally with alternatives B, C, and D.

**Representative Quote(s):** **Corr. ID:** 82 **Organization:** United Four Wheel Drive Association

**Comment ID:** 22841 **Organization Type:** Recreational Groups

**Representative Quote:** Written documentation presented by the National Park Service at the public meeting held in Rodanthe, NC on February 10, 2006, indicated that the preferred Alternative (Alt.), Alt. D, was the most permissive of the four alternatives analyzed. However, the comparison between alternatives in terms of motor vehicle use was done only between Alternatives B, C, and D. The most permissive of the four alternatives is Alternative A, providing the shortest time period for motor vehicle restrictions as well as the least amount of geographical closure area for motor vehicle restrictions. This statement by the NPS is indicative of violations of the National Environmental Policy Act (NEPA) requiring the inclusion of "the alternative of no action" and "a presentation of the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among option by the public, devoting substantial treatment to each alternative considered in detail so that reviewers may evaluate their comparative merits." There is no doubt that maps and other details were provided in the EA indicating some comparison to the alternative of no action (Alt: A). However, the agency failed to devote substantial treatment to Alt. A in violation of NEPA.

**Response:** The analysis of and consideration given to the “no action” alternative in the strategy/EA complies with the requirements of the National Environmental Policy Act and National Park Service Director’s Order #12: Conservation Planning, Environmental Impact Analysis, and Decision Making to provide a full analysis of the “no action” alternative. Throughout the document, the strategy/EA includes an impact analysis of all alternatives, including alternative A. Alternative A was given equal treatment in all respects including for example, level of description, impact analysis, and comparison with the other alternatives with respect to meeting the objectives of the strategy/EA. In regards to visitor use, a comparison of all alternatives is provided starting on p. 115 of the strategy/EA in tabular form to assist the reader in comparing the alternatives to one another.

The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) allows closures for non federally-listed species to be more flexible, and to provide increased visitor access where it would not conflict with resource management for these other species. The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) incorporates elements of the no action alternative, such as basing American oystercatcher closures on bird behavior rather than a set buffer distance, to better meet the objectives of both species protection and appropriate recreational access.

## PN5000 - PURPOSE AND NEED: REGULATORY FRAMEWORK

**Concern ID:** 12955

**CONCERN STATEMENT:** Commenters stated that the strategy/EA should be followed by a comprehensive ORV plan to reduce impacts to wildlife.

**Representative** **Corr. ID:** 21 **Organization:** Not Specified



**Quote(s):**

**Comment ID:** 22218 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The National Park Service is right to restrict ORVs on the beaches. This should have been done a long time ago. This Interim Strategy should be followed by a comprehensive plan to reduce the impacts of ORVs on wildlife habitat and public uses of Cape Hatteras National Seashore.

**Response:**

On December 11, 2006, the National Park Service published a Notice of Intent to Prepare an ORV Management Plan/Environmental Impact Statement for Cape Hatteras National Seashore. The publication of the Notice of Intent opens the public scoping period for the plan/EIS. In February 2007, public scoping meetings were held to gain public input on the purpose, need, objectives, and preliminary alternative concepts for a long-term plan. The public input gained during these meetings and throughout the public scoping period will be used in the development of the long-term plan, which will address impacts to wildlife.

**Concern ID:**

12956

**CONCERN  
STATEMENT:**

Commenters felt that the case law cited in the strategy/EA to support the premise of the document did not interpret the Organic Act and Seashore's enabling legislation correctly. Commenters felt that proper interpretation allows for recreational use at the Seashore, as it is specifically provided for in the Seashore's enabling legislation and that the Seashore's interpretation of policy in the strategy/EA are in violation of the Organic Act and the Redwoods Act.

**Representative  
Quote(s):**

**Corr. ID:** 47 **Organization:** *Not Specified*

**Comment ID:** 22298 **Organization Type:** Unaffiliated Individual

**Representative Quote:** pp. 24-37 The citations and interpretations found in this section of related laws, policies, plans and actions all bolster the validity of a strong position on resource protection in Cape Hatteras as a part of the National Park System. This section lacks a complete understanding of the intended purpose of this particular National Seashore as it has developed and especially as it was created by the U.S. Congress. There is no mention of the historical background behind the seashore concept. In particular there is no mention of Director Conrad Wirth's letter to the villagers to garner their acceptance of the deal.

**Corr. ID:** 75 **Organization:** *Not Specified*

**Comment ID:** 22786 **Organization Type:** Non-Governmental

**Representative Quote:** The NPS cites case law in the EA to support the proposition that courts have interpreted the Organic Act and its amendments to "elevate resource conservation above visitor recreation." See EA at 24 citing to Michigan United Conservation Clubs v. Lujan, 949 F.2d 202, 206 (6th Cir. 1991) (The court in this case addressed the narrow question as to whether Congress specifically authorized trapping in two national lakeshores.); National Rifle Association of America v. Potter 628 F.Supp. 903 (D.C. Cir. 1986). However, both of these cases state clearly that although 6 Under 40 C.F.R. § 1508.27(b)(4) an EA must consider the "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 7 Congress specifically intended to preserve the right of legal residents to earn a livelihood by fishing within the boundaries of the[Cape Hatteras National Seashore]. 16 U.S.C. § 459a-l.

Congress speaks of conservation in the Organic Act, Congress could and did authorize various activities such as hunting and trapping when creating individual units of the Parks System through subsequent legislative acts. 628 F.Supp. at 910. In interpreting the language of the Organic Act, the Court in Michigan United Conservation Clubs, found that: Notwithstanding that the goals of user enjoyment and natural preservation may sometimes conflict, the [National Park Service] may rationally conclude, in light of the Organic Act and its amendments, that its primary management function with respect to wildlife is preservation unless Congress has declared otherwise. Id. at 207.

**Corr. ID:** 47 **Organization:** *Not Specified*

**Comment ID:** 22300 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The villagers were encouraged to hold onto their land as it would become valuable with the influx of visitors which the new National Seashore would attract. The Park Service had no desire to feed or house visitors and this opportunity was offered to the villages. The switch to a tourist based economy was begun at the inception of [Cape Hatteras National Seashore]. Thus the value and purpose of the beaches in this National Seashore were established to be recreational and the Redwood Act demands that the NPS actions will ensure no derogation of that value and purpose. On this basis the NPS can not close the beaches or otherwise prevent the recreational use. Forms of recreation can be regulated to prevent conflict among various recreational activities.

**Corr. ID:** 75 **Organization:** *Not Specified*

**Comment ID:** 22787 **Organization Type:** Non-Governmental

**Representative Quote:** Unlike the national lakeshores, in Michigan United Conservation Clubs, the [Cape Hatteras National Seashore (CHNS)] specifically provides for recreational use. In creating the CHNS, Congress supplemented the mandate of the Organic Act, tailoring agency discretion as applicable to the creation of the CHNS which was to be "set apart as a national seashore for the benefit and enjoyment of the people ..." 16 U.S.C. § 459 (1946). "[C]ertain portions of the [CHNS] are especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature which shall be developed for such uses as needed." 16 U.S.C. § 459a-2; see also *Peele v. C.B. Morton*, 396 F.Supp. 584 (E.D.N.C. 1975) (The Court noted that Congress created the CHNS to recognize and provide for the recreational and commercial benefits of fishing by the residents of the Outer Banks.). Here it is clear that Congress intended to tailor the discretion of the NPS, and directly authorized recreation use of the CHNS. As such, the preferred Alternative D, as presently constructed, does not comply with the statutory mandates of 16 U.S.C. § 459 in creating the CHNS or the Organic Act. Both Alternative B and Alternative D unlawfully emphasize species protection over other identified uses. The plain language of section 459 supports that Congress did not intend to allow the [National Park Service] to prioritize wildlife over other uses for the benefit and enjoyment of the public. To remedy this flaw in Alternative D, a reasonable balance of species protection, based on sound science, and other uses must be established.

**Corr. ID:** 80 **Organization:** Audubon North Carolina

**Comment ID:** 22825 **Organization Type:** Conservation/Preservation

**Representative Quote:** It is also apparent that the Seashore is largely ignoring mandates that govern natural resource protection within the Seashore. The Seashore acknowledges early in the EA that "courts consistently interpret the Organic Act and its amendments to elevate resource conservation above visitor recreation" (EA at 24); yet, the Seashore's proposed Alternative D clearly rejects that mandate.

**Response:**

The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* allows for commercial fishing access consistent with the park's enabling legislation. The modified preferred alternative (see details in the Errata (attachment 2 to the FONSI)) meets the objective of the strategy/EA to "Provide for continued recreational use and access consistent with required management of protected species." The Organic Act gives NPS broad authority and discretion to manage the sometimes conflicting goals of resource conservation and visitor enjoyment and to determine how visitor activities, including recreational activities, may be managed to avoid or minimize impacts to natural and cultural resources. The express language of the Organic Act does not mandate that NPS equally balance preservation with public use in making its management decisions. *S. Utah Wilderness Alliance v. Nat'l Park Serv.*, 387 F. Supp. 2d 1178, 1190 (D. Utah 2005). Courts have held that the Organic Act places an "overarching concern on preservation of resources" in the management of national parks. *S. Utah Wilderness Alliance v. Dabney*, 222 F.3d 819, 826 (10th Cir. 2000). Since the Act "speaks of but a single purpose, namely, conservation" *Nat'l Rifle Ass'n v. Potter*, 628 F. Supp. 903, 909 (D.D.C. 1986), where the goals of resource preservation and user enjoyment conflict, preserving the resources takes precedence. Thus, NPS's interpretation of the Organic Act as allowing the Seashore to manage appropriate recreational uses in the interest of resource protection is consistent with the Act and is a proper exercise of discretion. In *Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445 (9th Cir.1996), the Ninth Circuit held that a plan

adopted for the Golden Gate National Recreation Area, which restricted bicycle access in certain areas of the park by closing a number of trails to bikes, was well within the discretion granted by the Organic Act. The court noted that “[T]he [Golden Gate National Recreation Area] Act in no way mandates that any particular type of recreation be given primacy over other types. There is simply nothing in the [Golden Gate National Recreation Area] Act or the NPS Organic Act requiring the NPS to give bicyclists unfettered reign of the park without regard to the recreational interests of those whose chosen mode of recreation is inconsistent with such unfettered reign.” Id. at 1461. See also *Mausolf v. Babbitt*, 125 F.3d 661, 668-70 (8th Cir.1997) (finding that plan to close certain trails to snowmobiles furthered park objectives of “preservation and protection of wildlife”), cert. denied, 524 U.S. 951, 118 S.Ct. 2366, 141 L.Ed.2d 735 (1998).

Other laws and policies also support NPS’s decision to manage recreational use at the Seashore. The General Authorities Act, which amends the Organic Act, requires NPS to manage all units of the park system so as to effect the primary purpose of the Organic Act, which is to conserve park resources. *Bicycle Trails Council of Marin v. Babbitt*, 1994 U.S. Dist. LEXIS 12805, 14-15. (N.D. Cal. 1994). This Act thus clarifies that “the provisions of [the Organic Act]... shall, to the extent such provisions are not in conflict with any such specific provision, be applicable to all areas within the national park system and any reference in such Act to national parks, monuments, recreation areas, historic monuments, or parkways shall hereinafter not be construed as limiting such Acts to those areas.” Id. at 3. Because all units of the park system—including seashores—are to be managed to conserve and avoid impairment of resources, a unit’s designation as a park, monument, or recreation area is irrelevant with regard to NPS’s duties under the Organic Act, except where Congress explicitly directs specific treatment for particular park units.

The Seashore’s enabling legislation does not specifically authorize ORV use, nor does it require or authorize NPS to allow unmanaged recreation that damages park resources or values in violation of the Organic Act. The Seashore’s enabling legislation and the Organic Act must be read in tandem when evaluating the appropriateness of NPS’s management decisions, as the former supplements, but does not supersede, the latter. The Seashore’s enabling legislation does expressly provide for appropriate recreational use in “certain portions” of the Seashore that are “especially adaptable” for it, but it also provides that the Seashore is to be “permanently reserved as a primitive wilderness and no development...for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions” there. Accordingly, the recreation that is specifically authorized at the Seashore under its enabling legislation must be managed to also provide for resource protection.

The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*) is consistent with the Organic Act’s mandate to conserve park resources and values because it provides for actions to preserve protected species during important lifecycle stages. *National Park Service Management Policies 2006* explain that “NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values. However, the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values” (Section 1.4.3).

The National Park Service *Management Policies 2006* section 1.4.6 interprets the Organic Act and the Redwood Act by describing “park resources and values” as

- the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals.
- Appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them

- The park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- Any additional attributes encompassed by the specific values and purposes for which the park was established.

The Seashore has many of the resources and values described above as well as those additionally described in its enabling legislation:

...said area shall be, and is hereby, established, dedicated, and set apart as a national seashore for the benefit and enjoyment of the people. Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, the said areas shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area (50 Stat. 669, August 17, 1937).

**Concern ID:**

13076

**CONCERN  
STATEMENT:**

Commenters felt that no regulatory basis exists for protection of American oystercatchers and other shorebirds that are not federally listed. Commenters stated that the U.S. Shorebird Conservation Plan (USFWS 2004a, as cited in the strategy/EA) is not an enforceable plan and should not be treated as such. Further, commenters stated that the provisions in the strategy/EA, including proposed beach closures, exceed what is required under the Endangered Species Act for the piping plover or the U.S. Fish and Wildlife Recovery Plans (as cited in the strategy/EA).

**Representative  
Quote(s):**

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22773 **Organization Type:** Non-Governmental

**Representative Quote:** Even where there is compelling science, without evidence of causation of actual injury or death of a take, enforcement of section 9 of the [Endangered Species Act (ESA)] is unlawful. See *Defender of Wildlife v. Bernal*. 204 F.3d 920 (9th Cir. 2000) (Despite some solid factual premises and well founded expert opinion plaintiffs theory, that construction of a school complex was in an areas known to be a habitat of an endangered species, was only speculative and not sufficient to support an injunction.). "Mere anecdotal plover/vehicle interactions of record do not present a principled basis from which to discern a reasonable likelihood that the vehicle traffic at issue will result in actual death or injury to the plovers allegedly present ...." *Atlantic Green Sea Turtle, et al. v. County Council of Volusia et al* 2005WL 1227305 at \*6 (M.D. Fl. 2005). As in the *Country Council of Volusia* case, no evidence is present in the EA to support that recreational use, and ORV use on [Cape Hatteras National Seashore], will "harass" or "harm" piping plovers in violation of the ESA. See *id.* (The Court found a lack of record evidence that ORV use will harm or harass, within the meaning of the ESA, piping plovers in the Smyrna Dunes, Volusia County.).

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22774 **Organization Type:** Non-Governmental

**Representative Quote:** Potential impacts of recreational uses of the beaches is not enough to constitute a "take" under the ESA. Therefore, the proposed extensive beach closures is overreaching and exceed the requirements of the ESA. As discussed above, and confirmed by the Supreme Court, an agency may not proscribe activities, such a beach closures in this instance, in order to protect habitat that is merely considered suitable. *Sweet Home*, 515 at 708-14 (O'Conner, J., concurring); see also *Arizona Cattle Growers*, 273 F.3d at 1244 ("[T]here is no evidence that Congress intended to allow the Fish and Wildlife Service [though the ESA] to regulate any parcel of land that is merely capable of supporting a protected species."). Furthermore, Steve Williams, Director of the United States Fish and Wildlife Service, recognized that incidental take is not a proper mechanism for managing land use. See Memorandum to Regional Directors from Steve Williams, Director, FWS (June 25, 2002) attached as Ex. B. If there is no

reasonable certainty of a take, there should be no [incidental takes].

**Corr. ID:** 75                      **Organization:** *Not Specified*

**Comment ID:** 22772 **Organization Type:** Non-Governmental

**Representative Quote:** The management strategy of the proposed action, as presented in all of the alternatives, exceeds the statutory requirements under the Endangered Species Act ("ESA") to protect the piping plover. Each of the alternatives is premised on a need to close sections of [Cape Hatteras National Seashore] to recreational uses, including off-road vehicles ("ORVs") in order to comply with the ESA. See EA at 1 (The purpose and need is for a management strategy that complies with the ESA.). The proposed beach closures are intended to avoid ESA "takings" of the piping plover by protecting suspected piping plover habitat. However, almost in the same breath, the EA states that a "take" of the piping plovers will likely occur when applying any of the alternatives. See EA at viii. These statements in the EA raise two points of significant concern. First, the proposed beach closures are overly extensive and exceed the requirement of the ESA by attempting to protect suggested habitat. Second, we disagree with the NPS that the taking of the piping plover will occur under any of the alternatives effectively resulting in unavoidable incidental takes. Rather takes will only be likely if no protective measures are established.

**Response:**

A number of laws, regulations, and policies, in addition to the Endangered Species Act, guided development of the strategy/EA and include the NPS Organic Act, as amended and supplemented, the Migratory Bird Treaty Act, NPS regulations and policies, Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds, and others (see strategy/EA pp. 24 – 37). Included are both those that regulate recreation use and species protection. The combination of the laws, regulations, and policies included in this section of the strategy/EA create the framework in which the alternatives are developed. The U.S. Shorebird Conservation Plan (USFWS 2002, as cited in the strategy/EA) was used as one source of information.

The finding in the strategy/EA that a "take" of protected species is possible was confirmed in the USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI). The USFWS Amended Biological Opinion (2007) states that take of piping plover and sea turtles can be anticipated at the Seashore from disturbance by recreational activities, implementation of protective measures and implementation of monitoring measures. An incidental take statement is included in the USFWS Amended Biological Opinion (2007). The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* for the strategy/EA incorporates performance measures for piping plovers and sea turtles to assist in measuring the effectiveness of the strategy/EA. This is further detailed under the response to the Concern Statement 13067 (p. 37 of this report).

The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* (see the Errata for details (attachment 2 to the FONSI)) provides for adjustment to some of the closures through an annual habitat assessment conducted in February/March to refine the determination of recent breeding habitat and it also provides for adjustments to American oystercatcher buffers based on bird behavior.

## **PO1000 - PARK OPERATIONS: GUIDING POLICIES, REGULATIONS AND LAWS**

**Concern ID:** 12958

**CONCERN STATEMENT:** Commenters asked that the NPS consider the American with Disabilities Act and maintain beach access for those with disabilities.

**Representative Quote(s):**

**Corr. ID:** 49                      **Organization:** *Not Specified*

**Comment ID:** 22670                      **Organization Type:** Unaffiliated Individual

**Representative Quote:** Remember one thing, you have the American Disabilities Act, which pertains to many others and myself. We have the right to use the beach also.

**Response:** The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* takes into consideration the American with Disabilities Act (ADA). Those with disabilities have access by vehicle to beach areas open for appropriate ORV driving. In addition to vehicular access, existing boardwalk areas and other ADA accessible areas will remain open to public use.

## **RN1000 - NEGOTIATED RULEMAKING PROCESS**

**Concern ID:** 12961

**CONCERN STATEMENT:** Commenters stated that the negotiated rulemaking panel should be expanded to allow for better representation of the various user groups and improve the process. Some commenters felt that too much emphasis was put on seat limitation of stakeholders and not enough on the process. Commenters also questioned which groups had seats in the process.

**Representative Quote(s):** **Corr. ID:** 24 **Organization:** Cape Hatteras Business Allies

**Comment ID:** 22459 **Organization Type:** Business

**Representative Quote:** I have contended from the start that the seats allocated in the "Other users" category were going to be hard to fill, because the majority of activities enjoyed by the visitors to [Cape Hatteras National Seashore] require beach access. Most of the visitors, who are not just here on a day trip, need access to the beach by ORV in order to pursue the activity they came here to enjoy to start with. I have watched this category change and morph into nothing more than a waste of valuable seats. It is now filled with contrived organizations that do not need to meet the criteria of CBI set forth to start with. This gives me great apprehension as to the changes of the [negotiated rulemaking] groups that don't meet the criteria, and it is insulting to those of us that do. To assign seats for the sake of feigning that everyone is represented is self-defeating. It is a waste of everyone's time.

**Corr. ID:** 24 **Organization:** Cape Hatteras Business Allies  
**Comment ID:** 22456 **Organization Type:** Business

**Representative Quote:** If the quest for "balance" and seat limitations at the table is more important than actually identifying and verifying who the true stakeholders are, the in the process is doomed to fail. IT would be a disgrace to invest the time and money in to a process that was flawed from the onset, because it was not flexible enough when it came to seat numbers.

**Corr. ID:** 25 **Organization:** *Not Specified*  
**Comment ID:** 22495 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Under specific sections of the ADA my inclusion would be most beneficial to the negotiating processes, even in a special advisors capacity, with committee member status.

**Corr. ID:** 27 **Organization:** Defenders of Wildlife  
**Comment ID:** 22378 **Organization Type:** Conservation/Preservation

**Representative Quote:** Originally, the Consensus Building Institute proposed a 28-member panel with additional seats for environmental organizations. We believe that the panel must either be expanded to include more environmental organizations or contracted to address the significant overlap in membership of many of the designees in off-road vehicle organizations.

**Response:** Composition of the proposed negotiated rulemaking committee is outside the scope of the strategy/EA. When a Notice of Intent to Establish a Negotiated Rulemaking Committee is published in the Federal Register, there will be a 30-day period for the public to comment on the proposal to establish a committee. During that comment period persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person proposed for membership on the committee may apply for or nominate another person for, membership on the committee to represent such interests. The *Negotiated Rulemaking Final Feasibility Assessment* prepared by a neutral facilitation team, recommended a committee of 28 members to accommodate a balance of interests.



**Concern ID:** 12962  
**CONCERN STATEMENT:** Commenters noted that the negotiated rulemaking process would require too much time in meetings and suggested the process be conducted through phone calls or emails.

**Representative Quote(s):** **Corr. ID:** 24 **Organization:** Cape Hatteras Business Allies  
**Comment ID:** 22454 **Organization Type:** Business  
**Representative Quote:** I do not have the extra time (2 ½ hours driving time alone) and personal resources to take trips up to the Northern beaches to work with my partner, and I have my own business to run. Yes, there are phones and e-mails, neither of which are as effective as face to face communications. Why bother to sit at a negotiating table at all if this can be accomplished with technology?

**Response:** Communication protocols for the proposed negotiated rulemaking are outside the scope of the strategy/EA and will be decided by the committee once it is established.

**Concern ID:** 13077  
**CONCERN STATEMENT:** Commenters expressed concern that participating in the negotiated rulemaking process may exclude the possibility of future litigation.

**Representative Quote(s):** **Corr. ID:** 27 **Organization:** Defenders of Wildlife  
**Comment ID:** 22380 **Organization Type:** Conservation/Preservation  
**Representative Quote:** Although we recognize the desire of CBI and some stakeholders that participants in the negotiated rulemaking focus their attention on this process instead of litigation, Defenders does not support any requirement that would foreclose pursuit of legal remedies necessary to address continuing violations of federal law and policy. But there cannot be a double standard that forces groups like [National Parks Conservation Association] to leave the process because of their litigation, while turning a blind eye [Outer Banks Preservation Association's] own litigation activities, especially where OPBA members comprise no fewer than ten of the committee's proposed representatives and alternatives.

**Response:** Issues about fairness regarding stakeholder groups' litigation and other activities are outside the scope of the strategy/EA. The *Negotiated Rulemaking Final Feasibility Assessment* discusses the reasons why filing of lawsuits and pursuing political intervention and use of political influence reduce the chances of success of negotiated rulemaking. Defining a fair and workable standard for committee members regarding litigation and exertion of political influence during the negotiated rulemaking process would be a topic considered by the committee.

## SE1200 - SOCIOECONOMICS: AFFECTED ENVIRONMENT (ECONOMY OF COMMUNITIES WITHIN THE SEASHORE)

**Concern ID:** 12966  
**CONCERN STATEMENT:** Commenters questioned the socioeconomic data in the affected environment. Commenters provided data they felt should have been used including information submitted by the Outer Banks Preservation Association (48 page report) and anecdotal observations that indicate lodging establishments in 2005 were not impacted by beach closures.

**Representative Quote(s):** **Corr. ID:** 65 **Organization:** American Sportfishing Association  
**Comment ID:** 22714 **Organization Type:** Business Groups  
**Representative Quote:** The [interim protected species management strategy/EA] does not even acknowledge receipt of a study commissioned by the Outer Banks Preservation Association (OBPA) that has been presented to NPS directly and through formal comments submitted on the [interim protected species

management strategy/EA] proposals last fall. That 48 page report included a detailed research plan, the specifics of the surveys used, analysis of the data, and documentation of data sources. In all, 1450 individuals were surveyed between September of 2002 to August 2003, a full year survey. Those surveyed consisted of 466 residents, 546 non-resident property owners, and 438 visitors. The surveys were done by a professional survey consultant. Despite this detailed information, the economic analysis of the [interim protected species management strategy/EA] is contained in 3 pages, uses only lodging data and a small telephone survey, and applies the data to the entirety of Dare County. The OBPA report itself is not acknowledged in any way, either by dismissing its findings or analyzing them. Given the paucity of data apparently available to the Strategy writers, it would appear that a detailed survey of this nature would be appropriate for at least review and comment.

The OBPA report concentrated on the southern portion of Dare County that would be most affected by the closures that the Strategy is supposed to be analyzing. It found that beach fishing is engaged in by 60% of the visitors and 62% of non-resident property owners. Seventy-eight per cent of those use ORVs for fishing access. This far exceeds the [interim protected species management strategy/EA] estimate that 10% of visitors would be affected by closures. Fifty five percent of the southern Dare County residents hold full time employment positions on the Outer Banks, 39% own or manage a business. ORV ownership is 77-85% of residents, 78% of non-resident property owners and 68% of visitors. Of these vehicle owners, 84% use their vehicles for beach access.

**Corr. ID:** 68

**Organization:** *Not Specified*

**Comment ID:** 22639

**Organization Type:** Unaffiliated Individual

**Representative Quote:** The plan frequently mentions "economic impact" on the villages, especially Buxton, in basing decision making. During the month of July 2005 when Cape Point was closed I noticed the following: (1) The local motels had "no vacancy" signs, (2) the restaurants, shops, and grocery stores were all jammed-packed as usual for July, and (3) the realty companies who rent weekly cottages (by far the majority of visitors to Hatteras Island stay in these rental homes) were full to capacity as they usually are in July. They require 50% deposit 6 months prior to the rental and 100% payment 30 days prior to the stay.

**Response:**

As described in the strategy/EA starting on p. 235, the socioeconomic analysis was mainly qualitative. Past trend analysis, lodging receipts, along with informational telephone interviews were the basis for the socioeconomic analysis. The information provided by commenters suggests avenues for further investigation during development of the long-term ORV management plan/EIS and proposed negotiated rulemaking.

The socioeconomic report submitted by the Outer Banks Preservation Association was used in the strategy/EA to help frame the "Affected Environment" (see strategy/EA p. 164).

## **SE2000 - SOCIOECONOMICS: METHODOLOGY AND ASSUMPTIONS**

**Concern ID:** 12968

**CONCERN STATEMENT:** A commenter stated that the sample size for the socioeconomic impact analysis was insufficient and the entire economic impact analysis was unbalanced.

**Representative Quote(s):**

**Corr. ID:** 70

**Organization:** *Not Specified*

**Comment ID:** 22652 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Contacting 26 businesses within Dare and Hyde Counties, only 11 responded and this is the extent of the study other than asking the Dare County Visitors Bureau for their lodging receipts? So I feel the need to ask how NPS could possibly even begin to find balance when there are only 7 out of 336 pages devoted to socioeconomic impact?.. unless an equal amount of time effort and money is spent on the environmental impacts as well as the socioeconomic impact the document is NOT balanced.

**Response:**

The informational interviews conducted were selected based on their inclusion in the Outer Banks Chamber of Commerce listing. These interviews were not the sole means for assessing socioeconomic impact and were



supplemented with lodging receipts, past visitor surveys, U.S. Census data, North Carolina state agencies, the Outer Banks Chamber of Commerce, and other sources cited starting on p. 161 of the strategy/EA. The data presented in both the "Affected Environment" and in the "Environmental Consequences" make up the socioeconomic analysis. Also, as described above in Concern Statement 12966 (p. 46 of this report), the socioeconomic analysis was mainly qualitative due to the nature of the strategy/EA.

## **SE5200 - SOCIOECONOMICS: IMPACT OF ALTERNATIVES (ECONOMY OF COMMUNITIES WITHIN THE SEASHORE)**

**Concern ID:** 12970

**CONCERN STATEMENT:** Commenters stated that the strategy/EA did not adequately consider the economic impacts to the villages within the Seashore and included too broad of a study area by including the county as a whole and not just communities in the Seashore boundaries. They stated that the economies in the northern portions of the Seashore are different from those in the southern portions, which are constrained by the Seashore boundary, and these differences should be taken into consideration in the strategy/EA.

**Representative Quote(s):**

**Corr. ID:** 65      **Organization:** American Sportfishing Association

**Comment ID:** 22713      **Organization Type:** Business Groups

**Representative Quote:** While the Plan does give a nod to the fact that the adverse effects of beach restrictions fall most heavily on the southern communities, it dismisses this fact by concluding that: "The data indicate no such impact on the county as a whole." The inquiry into the economic impact consisted of a review of county wide lodging data and telephone calls to 26 businesses (time frame not disclosed) with responses from 16. Eleven of those businesses were accommodations establishments. Only four respondents were accommodations owners in Avon, Buxton and Frisco. All of the latter businesses either reported or predicted severe adverse impacts to their businesses with closures. Four other respondents were retail businesses located in Avon, Buxton and Frisco. All four predicted that they would lose up to 50% of their revenue and would likely close their businesses. Obviously the Strategy fails to account for the area of greatest impact.

**Corr. ID:** 65      **Organization:** American Sportfishing Association

**Comment ID:** 22712      **Organization Type:** Business Groups

**Representative Quote:** The data, however, also indicate that growth in the most recent years has been uneven. Lodging revenues from establishments located in the northern areas of Dare County (north of Hatteras Island) including Nags Head, Kill Devil Hills, and Duck continued to increase and accounted for more than 60% of the total in 2004-2005. Although Kill Devil Hills has experienced somewhat stagnant growth in the last 3 fiscal years, lodging revenues in Nags Head, Kitty Hawk, and Duck have continued to rise with 2004-2005 revenues exceeding the previous year's total by 4.3%. In contrast, increases in lodging revenue from establishments located in the southern reaches of Hatteras Island, especially in the villages of Avon, Buxton and Hatteras have been stagnant. Revenues for fiscal year 2004-2005 remain below 2002-2003 for these villages. ([interim protected species management strategy/EA], p. 255).

The report goes on to say that: "The reasons for the differences in revenue growth among these jurisdictions are difficult to ascertain." However, a mere glance at the map of these communities would clearly show that the opportunities for expansion in the northern communities are considerably greater simply because those communities are not constrained by having to contain all growth within predetermined boundaries. The southern communities cannot grow outward and therefore cannot increase their area of development. Furthermore, all of the access points for ORV access to surf fishing are located well south of the areas of growth in northern Dare County. The most northerly two access points are at the south end of Bodie Island. The remainder of the access points are south of Pea Island National Wildlife Refuge. It should also be noted that the thirteen miles of Pea Island [National Wildlife Refuge], which allows no ORV use, were carved out of [Cape Hatteras National Seashore], thereby limiting ORV use even further.

**Corr. ID:** 86

**Organization:** *Not Specified*

**Comment ID:** 22859

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Tables 1 presents lodging revenue receipts for the period 1999 to 2005. In Table 1 these receipts are presented in nominal (unadjusted for inflation) terms. Table 1 is equivalent to Table 26, page 255 of the EA.

Pointing to Table 1, the EA concludes that Lodging revenues for Dare County have increased steadily over the 6 year period. In Table 2 these receipts are presented in real (adjusted for inflation) terms. The Consumer Price Index, CPI, (as per the Bureau of Labor Statistics) was used to restate these figures in constant 1999-2000 dollar terms.

Properly viewed in real terms, Table 2 shows that lodging revenues have been relatively flat over the last few years. Year-to-year growth rates of lodging revenues are reported in both Tables 1 and 2. These growth rates provide a clearer indication of any trends that may be present. That said, both tables clearly show a downward trend. In fact during the fiscal year 2003-2004, the growth rate was negative.

**Corr. ID:** 86

**Organization:** *Not Specified*

**Comment ID:** 22858

**Organization Type:** Unaffiliated Individual

**Representative Quote:** The following summarizes the geographic area to be included in the [region of influence (ROI)].

The geographic area of the ROI is defined based on the locations where the proposed restrictions on recreational activities (as part of the interim protected species management strategy) would be implemented and the distribution of the businesses that would most likely be affected by those restrictions. With respect to the above,

1. the location of the proposed restrictions is limited to Hatteras and Ocracoke Islands,
2. the recreational activities most affected are primarily limited to Hatteras and Ocracoke Islands, and
3. the businesses most affected are primarily located on Hatteras and Ocracoke Islands.

In a manner consistent with the above EA statements, the ROI should be redefined to include only the villages of Hatteras Island and Ocracoke Island. The ROI, as presently defined to include all of Dare and Hyde counties, serves only to mask a clear understanding of the economic health of the villages of Hatteras and Ocracoke Islands. The downward trend in growth of these villages is difficult to dis-entangle from the county data presented in the EA. As such, the EA understates the impact of past and proposed OR V restriction on the local economies of these villages.

**Response:**

Although the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides for specific management actions on Hatteras, Ocracoke, and Bodie Islands, the visitors that would come to the Seashore have the option to stay, eat, and frequent businesses in and adjacent to these areas. The region of influence (ROI) was focused on the range of areas that could be impacted from these actions. However, the strategy/EA does recognize that some communities, in particular those located within the Seashore, may experience a greater impact. This distinction is made in the analysis of the impacts on pp. 257 - 259 of the strategy/EA.

The strategy/EA qualitatively addressed the visitor use impacts that could result from access restrictions due to partial or full beach closures in each alternative. The socioeconomic analysis does the same, providing a gross, qualitative analysis. The constraints of the data are listed on pp. 253 - 256 of the strategy/EA.

The commenter's interpretation that lower revenue growth in the southern communities is because they are constrained by having to contain all growth within predetermined boundaries and cannot grow outward and increase their area of development. This fails to explain why revenue growth at Waves, Salvo and Rodanthe is increasing when they too have to contain growth within predetermined boundaries. Regardless, it would not change the conclusions of the impact analysis. Lodging occupancy gross sales receipts for fiscal years from 1999-200 through 2004-2005 for Avon, Buxton, and Hatteras are displayed in Table 26, p. 225, of the

strategy/EA. (See discussion on p. 255 which contrasts the increasing lodging revenues from establishments located in the villages of Rodanthe, Waves and Salvo on the northern portion of Hatteras Island with the revenues for fiscal year 2004-2005 which remain below 2002-2003 in the villages of Avon, Buxton, and Hatteras which are further south on the island.) The strategy/EA notes that the reasons for the differences in revenue growth among these jurisdictions and across years are difficult to ascertain; however, the NPS conclusions remain unchanged.

## SE6000 - SOCIOECONOMICS: CUMULATIVE IMPACTS

**Concern ID:** 12972

**CONCERN STATEMENT:** Commenters stated that the health of the economy should take into account other projects, programs, and weather events in the area as any of these would also contribute to the health of the economy. It was suggested that data be shown by month so that it would be apparent that impacts to the economy of Hatteras Island in the fall months is attributed in part to storm events. Commenters also stated that the analysis of impacts was not based in scientific fact and, as such, were overstated.

**Representative Quote(s):**

**Corr. ID:** 63      **Organization:** *Not Specified*

**Comment ID:** 22628      **Organization Type:** Unaffiliated Individual

**Representative Quote:** ORV advocacy groups and local business are often the same people. They have actively solicited and pressured other business, often with misinformation. They have consistently made accusations that the NPS has 2 agendas for the seashore. The first is a gradual plan of closing all ORV use in this park and the second is that the park wants to prohibit all people and make this park a wildlife sanctuary. These accusations are without merit. In addition many of these businesses encourage their clients and customers to not come to HI because of temporary resource protection measures. One motel owner told me they had to explain to their clients that not all the NPS beaches were closed that only a small portion were temporally closed for resource protection and there were still miles of beaches to walk or drive on. Those customers decided not to cancel their reservations. Loss of business might well be attributed to this type of behavior and misinformation and have little to do with temporary resource protection closures. I know of one business that had an excellent summer season. Table 26 does not delineate gross sales by months. Aug and September have had numerous storms and hurricanes that have impacted Hatteras Island. After Ocracoke, Hatteras Island evacuates next and can be one of the last to allow visitors back another economic consideration that was not taken into account. Higher gasoline prices, economic uncertainty, tropical storms, mandatory evacuations and road closures have had more to do with the minor reduction of gross sales receipts of Buxton Frisco, Hatteras than temporary resource protection ORV closures.

**Corr. ID:** 63      **Organization:** *Not Specified*

**Comment ID:** 22627      **Organization Type:** Unaffiliated Individual

**Representative Quote:** The best that can be said is that there are just too many factors and variables to predict what if any affect resource related ORV closures would have on the local economy. Increased off season use of ORVs and beaches turned into parking lots might easily be the reason some visitors choose not to return to this park, a valid hypothesis that was not even mentioned.

**Corr. ID:** 68      **Organization:** *Not Specified*

**Comment ID:** 22640      **Organization Type:** Unaffiliated Individual

**Representative Quote:** The document mentions local business owners who claim that they lost revenue due to the Cape Point closures. Their claims are not based on any evidence but only subjective claims. There needs to be good scientific data to support these claims if the NPS is going to use such subjective opinion to base important decisions regarding Park wildlife resources. These business owners all happen to be members of the [Outer Banks Preservation Association]. Thus there is inherent bias to these claims along with a lack of good scientific data to support them.

**Response:**

The analysis of the impacts under each alternative includes a discussion of cumulative impacts. These impacts include storm events and other projects occurring in the area. In the cumulative impacts discussion for the

alternatives, the strategy/EA acknowledges that the local and regional economies are affected by a number of factors.

### SS1000 - SOUNDSCAPES: AFFECTED ENVIRONMENT

**Concern ID:** 12973

**CONCERN STATEMENT:** Commenters asked that ORV use be denied in order to protect the natural quiet, as mandated by law.

**Representative Quote(s):** **Corr. ID:** 7 **Organization:** none

**Comment ID:** 22258 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The ORV carrying capacity of the Hatteras beaches has now been exceeded with resulting destructive impacts. The NPS must deny or eliminate such use in order to protect the natural quiet as mandated by law.

**Response:** The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides for closures and ORV corridors that would limit noise impacts from vehicular and recreation noise on protected species at the Seashore to negligible or minor. Vehicles and people would be at sufficient distances from breeding and nesting activity to prevent noise-related adverse impacts. This issue is addressed on p. 18 of the strategy/EA.

### TE1000 - THREATENED AND ENDANGERED SPECIES: GUIDING POLICIES, REGULATIONS AND LAWS

**Concern ID:** 13079

**CONCERN STATEMENT:** A commenter stated that the provisions in the alternatives for wintering habitat are in conflict with the court order emanating from the USFWS designation of wintering critical habitat for the piping plover.

**Representative Quote(s):** **Corr. ID:** 10 **Organization:** Not Specified

**Comment ID:** 22262 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Table 2 page 84. The suitable interior habitats for wintering are open ended and seem to fly in the face of the court order setting aside the plover wintering habitat designation. This seems to be an attempt to get around the court order.

**Response:** The court order was directed to the USFWS, not to the Seashore, which was not a party to the litigation. It challenged the process used to designate critical habitat at Cape Hatteras National Seashore (e.g., lack of an environmental assessment under the National Environmental Policy Act). NPS has ample authority under its Organic Act, the NPS *Management Policies*, and the Seashore's enabling legislation to manage habitat for wintering shorebirds.

### TE1200 - THREATENED AND ENDANGERED SPECIES: PIPING PLOVER

**Concern ID:** 12976

**CONCERN STATEMENT:** Commenters stated that the facts presented regarding piping plover, such as the numbers of nesting pairs and population numbers, stated in the strategy/EA and Biological Assessment were not correct. In some cases, the commenters provided data they felt should be used in the strategy/EA.

**Corr. ID:** 79 **Organization:** Not Specified

**Comment ID:** 22678 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Interim Protected Species Management Strategy pg. 122: "Cape Point had 4 to 6

breeding pairs of piping plovers". In 2005, there was evidence of territory prospecting by at least two pairs at Cape Point. Ultimately, one nest was confirmed and fledged 3 chicks (Cohen 2005a).

South Beach had one pair ".There is no evidence of nesting at South Beach from 2000-2005 (Cohen 2005a)."

Biological Assessment Of The Interim Protected Species Management Strategy Project Description pg. 12: "In 2005, there was evidence of territory prospecting by at least one pair at Bodie Island Spit, at least one pair at South Ocracoke, one pair at Hatteras Spit, and two pairs at Cape Point. Ultimately, nests were found for one pair at Hatteras Spit and one pair at Cape Point. Each pair fledged 3 chicks. "

#### CORRECTION

Both documents state that a pair of Piping Plover nested and fledged 3 chicks at Cape Point. This is NOT TRUE. As per the park service press release dated July 14, 2005 "CAPE POINT TEMPORARILY CLOSED TO VISITOR USE FOR PLOVER CHICK PROTECTION" The eight-day old piping plover chicks, WHICH HATCHED FROM A NEST ON THE SOUTH BEACH last week, have moved to Cape Point foraging for food.

The Biological Assessment confirms this on page 17.

"At Cape Point, a resource closure was created around a complex of ephemeral pools to protect an oystercatcher brood (the closure extended to approximately 50 feet from the edge of the pools). THIS CLOSURE WAS LATER USED BY A PLOVER BROOD THAT HATCHED TO THE WEST."

#### **Response:**

In 2005, one piping plover nest was located between Salt Pond Road and Ramp 45, South Beach. This South Beach nest hatched and moved its brood of chicks 0.8 miles within three days of hatching to Cape Point to forage. The chicks remained there to forage and fledged from the Cape Point site. This caused some confusion since the chicks moved from one geographic location to another and prompted management action at Cape Point. The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides that reports regarding the previous bird breeding season will be published annually on the Seashore website.

The comment text is correct about the park's use of the term "South Beach." South Beach and Cape Point split at Salt Pond Road. East, towards the point from Salt Pond Road, is referred to as Cape Point and west from Salt Pond Road towards Ramp 49 is South Beach. In relation to closures, the Seashore has referred to the area between Salt Pond Road and Ramp 45 as the salt pond closure. The NPS may use slightly different local geographical terms than other groups.

#### **Concern ID:**

12977

#### **CONCERN STATEMENT:**

Commenters felt that the strategy/EA does not protect piping plover habitat by leaving potential habitat open until the species is observed. They also said that all beach areas where the species nest or where flightless chicks are found should be closed to protect important habitats.

#### **Representative Quote(s):**

**Corr. ID:** 21

**Organization:** *Not Specified*

**Comment ID:** 22219 **Organization Type:** Unaffiliated Individual

**Representative Quote:** All beach areas where the species nest or where flightless chicks are found should be closed to ORVs throughout the breeding season. Important habitats for roosting and feeding migrants should also be protected, including wet sand flats and Cape Point. Winter habitat for Piping Plover should be protected.

**Corr. ID:** 50

**Organization:** *Not Specified*

**Comment ID:** 22617

**Organization Type:** Unaffiliated Individual

**Representative Quote:** The strategy fails in not protecting all suitable piping plover pre-nesting nesting

habitat. It is well documented that these birds utilize the sound side of Hatteras spit - yet ORVs will be allowed to drive there until a monitor observes birds using the site. The NPS knows plovers are very sensitive to disturbance during territory establishment and could abandon a site before their presence is observed. Vehicles bring people to the spit 24 hours a day.

**Response:**

The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* will offer protection to all protected species during various life stages. These protective measures proposed under the modified preferred alternative were based on numerous sources including the U.S. Geological Survey protocols, U.S. Fish and Wildlife Recovery Plans (as cited in the strategy/EA), and consultation with the USFWS. The modified preferred alternative addresses the resident population of protected species as well as migrating piping plovers through a series of monitoring and resource closures, as detailed in the Errata (attachment 2 to the FONSI). For unfledged piping plover chicks, a 600-foot buffer will be established around the brood, which could be expanded to 3,000 feet depending on the mobility of the brood. Based on piping plover behavior, the buffer could be reduced after the first week to no less than 300 feet, but may require expansion up to a maximum of 3,000 feet. This buffer will move if the piping plover chicks relocate and will incorporate resting and foraging sites. An annual habitat assessment will be conducted in February or March. Based on this assessment, new habitat and suitable portions of recent breeding habitat, such as some shoreline foraging areas and nesting habitat, will be closed to the public with symbolic fencing by April 1 each year. This annual habitat assessment will include Bodie Island Spit; Green Island; Cape Point, South Beach, and Hatteras Spit; and South Ocracoke. Therefore, rather than automatically closing one area such as Hatteras Spit, regardless of piping plover use, areas will be closed based on the species recent use (past 3 years) of that habitat and the annual habitat assessment.

In accordance with the USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI), the modified preferred alternative provides that the Seashore will monitor the presence, abundance, and behavior of migrating and wintering piping plovers from August 1 to March 31 each year. During these surveys, specific observations would include vehicle, pedestrian, and pet tracks in posted habitat; any signs of predators; species-specific management measures in place at the time of the observation; observed behaviors; and reactions to disturbance by pedestrians, pets, or vehicles, as detailed in the Errata (attachment 2 to the FONSI).

Much of the Seashore could be considered potential suitable piping plover habitat of varying degrees of quality; however, much of it is historically unoccupied by piping plover. The closure of all suitable habitat would not meet the strategy/EA's purpose, and therefore would not be a reasonable alternative. The modified preferred alternative protects breeding, migrating, and overwintering piping plover populations by closing areas based on the life cycle stage of the bird (see table 2 in the Errata (attachment 2 to the FONSI)) and also allow for the management of appropriate recreational uses.

**Concern ID:**

13080

**CONCERN  
STATEMENT:**

Commenters stated that the Seashore has not historically been an important nesting area for the piping plover and would like to see this distinction made in the strategy/EA. Commenters felt this resulted in a flawed methodology because it did not recognize or discuss information indicating the declining piping plover population is not linked to recreational use or discuss the recovery of the species in surrounding areas. They also questioned how future success of the species would be measured and how closures would adjust to reflect a future increase in the species.

**Representative  
Quote(s):**

**Corr. ID:** 65

**Organization:** American Sportfishing Association

**Comment ID:** 22673

**Organization Type:** Business Groups

**Representative Quote:** The [Cape Hatteras National Seashore] area is at the southern end of the piping plover's range, and in comparison with adjacent beach areas immediately to the north (Assateague Island), and south (Cape Lookout), has always had a lower nesting population than those areas. Areas to the north of [Cape Hatteras National Seashore], including those that allow ORV use, have had stable or increasing populations of piping plover. For example, a report by the Virginia Department Game and Inland Fisheries in 2004 reviewed the piping plover's 2003 nesting success. In 2003, an estimated 114 pairs nested in Virginia

with a fledging success rate of 1.90 per nest, the highest rate on record. Cape Lookout National Seashore has a larger piping plover population than [Cape Hatteras National Seashore], but has recently experienced fluctuations in its population. Nesting numbers began declining in 1999 from an average of about 35 nesting pairs to nesting pair numbers averaging 15. This decline continued through the year 2004. Cape Lookout's piping plover report for 2003 reviewed the overall success for North Carolina and concluded that:

It is logical that some broad environmental factor, such as prey availability for chicks, is the reason for poor productivity in North Carolina. Being at the southern extreme of the piping plover range likely has limiting factors on nesting productivity that may not be overcome by the kind of management that is successful in the heart of nesting range. In 2005 the piping plover population at Cape Lookout rebounded to 37 nesting pairs with 30 chicks fledged. This is in the range of the previous average populations at the Seashore. Again, no correlation between either the decline, or the rebound, and ORV use on the island has been demonstrated. Notably, neither the Assateague nor the Cape Lookout piping plover reports cite human disturbance as reasons for nesting or fledging failure. Looking at the Atlantic Coast population as a whole shows that the population has shown marked improvement overall, and further demonstrates North Carolina's relative unimportance in the recovery.

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22779

**Organization Type:** Non-Governmental

**Representative Quote:** What the EA does not consider or discuss is that available information shows that recreational usage is not linked to piping plover decline in North Carolina. First, low productivity has been recorded on North Carolina beaches since 1994 and has remained low during each subsequent year even as recreational usage of the beaches has dramatically increased. From 1994 to 2004, North Carolina has recorded the lowest productivity (chicks fledged per nest) in each year of the study with exception to 2002, when the productivity for New Hampshire piping plovers measured only 0.14 chicks fledged per nest. For comparison, each State on the Atlantic Coast has recorded a 10-year productivity estimate between 1.07 to 1.69 chicks fledged per nest and the Atlantic Canada population has a 10-year productivity estimate of 1.62 chicks fledged per nest; whereas, piping plovers in North Carolina have a drastically lower 10-year productivity estimate of only 0.46 chicks fledged per nest. This low fledging success is seen on Cape Hatteras (0.28 chicks fledged per nest between 1992-2003) and Cape Lookout (0.42 chicks fledged per nest between 1989-2004). Second, low productivity has been recorded on beaches with heavy recreational usage and on beaches with light recreational usage. Portsmouth Flats, a beach with light recreational usage, has the lowest reported fledging success in the last 7 nesting seasons compared to the other heavily used beaches in Cape Lookout National Seashore (National Park Service: Cape Lookout National Seashore 2004).

**Response:**

The USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI) addresses the significance of the Seashore's piping plover population and its potential for recovery. "Under the currently proposed management, the Cape Hatteras National Seashore population is likely to remain very low and may become extirpated, further isolating the small breeding population to the south. While extinction probabilities are less sensitive to initial population size, this does not diminish the importance of population size to population survival. Increasing population size will delay time to extinction, allowing implementation of measures to improve survival and productivity rates. The larger and more dispersed the Atlantic Coast population is, the less will be the overall effects of environmental stochasticity [randomness], catastrophes, or inconsistent management. While the specific recovery rate of piping plovers at [Cape Hatteras National Seashore] is unknown, their recovery rate is expected to be moderate if the birds are protected from all stressors. For example, several areas within the Atlantic Coast breeding population have doubled and quadrupled their population size without a loss of productivity in as few as two to four years."

The USFWS Amended Biological Opinion (2007) states that the number of nests is not necessarily a good indicator of the number of breeding plovers at the Seashore. For example, in 2005, at least three pairs of plovers were seen exhibiting territorial behavior indicative of breeding, but only two nests were found. The USFWS Amended Biological Opinion (2007) for the strategy/EA states that the estimated carrying capacity of piping plovers for the Seashore determined during the revision of the U.S. Fish and Wildlife Service Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as cited in the strategy/EA and the USFWS Amended Biological Opinion (2007)) for the species is 30 pairs;



although, many other locations throughout the species' range have demonstrated population growth that exceeded their predicted number. The USFWS Amended Biological Opinion (2007) notes, "piping plover habitat is inherently dynamic and carrying capacity fluctuates accordingly, but the available information suggests that 30 pairs is a conservative estimate of the potential breeding population at [Cape Hatteras National Seashore]."

The success of the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* in the strategy/EA will be measured by a series of performance measures that are described under Concern Statement 12986 (p. 57 of this report). If these performance measures are not met, the Seashore will reinitiate consultation with the USFWS. Closures in the future years of the strategy/EA will be adjusted based on annual habitat surveys conducted in February or March, before the breeding season. These surveys will be used to better assess what recent breeding habitat is still suitable and provide for more effective closures.

## TE2000 - THREATENED AND ENDANGERED SPECIES: METHODOLOGY AND ASSUMPTIONS

**Concern ID:** 12983

**CONCERN STATEMENT:** Commenters stated that the strategy/EA provides no evidence that a "take" under the Endangered Species Act would occur under the strategy/EA. As a result, the commenters felt that the conclusions in the strategy/EA were arbitrary.

**Representative Quote(s):**

**Corr. ID:** 75

**Organization:** Not Specified

**Comment ID:** 22775

**Organization Type:** Non-Governmental

**Representative Quote:** The EA provides no concrete evidence that a "take" has occurred due to recreation use, nor has the EA has provided any reasonable certainty of a "take." Rather the EA contains statement such as "ORV use may affect the beach through sand displacement and compaction, which may lead to steeper dune profiles, ..., which, in turn, may prove less suitable for piping plover nesting." EA at 127. But, such statements are not supported by any reasonable certainty or with evidence. Here, beach closures to protect habitat of the piping plover would be arbitrary and capricious and exceed the requirements of the [Endangered Species Act]. In addition, management of land use is not to be conducted through an incidental take mechanism which is exactly the framework established by the current proposed action.

**Response:**

The strategy/EA analyzes risk factors to piping plover including those from human disturbance, but does not use take by itself as a threshold for determining impacts to piping plover (see strategy/EA pp. 178-179). The NPS has authority and responsibility to conserve piping plover independent of whether take is determined by the USFWS under the Endangered Species Act. The NPS consulted with the USFWS on the preferred alternative (alternative D) and the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*. The USFWS issued an amended Biological Opinion (2007) on the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*, which acknowledges that take will occur for piping plovers and all species of sea turtles. The USFWS allows for incidental take, as long as the Seashore follows the non-discretionary measures detailed in the USFWS Biological Opinion (2006) (attachment 1 to the FONSI). Incidental take results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the federal agency or applicant. Under the modified preferred alternative, piping plover takes would occur from the following four factors: 1) delayed determination of establishment of one to four nests; 2) abandonment or loss of one to four nests; 3) the loss of one to four broods or equivalent number of chicks; or 4) harm and harassment of migrating and wintering piping plovers over 55 miles of Seashore beach. For sea turtles, the USFWS determined that an incidental take would occur under the modified preferred alternative in the form of: 1) harassment of nesting sea turtles resulting in false crawls; 2) loss of any nest for which protective measures are not implemented; and 3) harm and/or harassment of nestlings from any nests for which protective measures are not implemented. Incidental take measures are stated in the USFWS Amended Biological Opinion (2007) (pp. 78 - 80, attachment 1 to the FONSI).



**Concern ID:** 13081

**CONCERN STATEMENT:** Commenters stated that determined level of impact to threatened and endangered species in the strategy/EA was not acceptable and that any plan should not have these levels of impacts.

**Representative Quote(s):** **Corr. ID:** 63 **Organization:** *Not Specified*

**Comment ID:** 22625 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Terms such as long-term, moderate, adverse impacts are unacceptable when formulating a plan to protect unique and threatened species in the Park

**Response:** The USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI) concluded that implementation of the interim strategy would not jeopardize the continued existence of the species. The USFWS Amended Biological Opinion (2007) stated that, "Depending on the extent to which the NPS implements protective measures described in the Interim Strategy, the Strategy may represent an improvement over past management at the Seashore and we expect its implementation may afford an opportunity for at least a minimal amount of successful breeding annually at [Cape Hatteras National Seashore's] most significant nesting sites (Bodie Island, Cape Point, Cape Hatteras spit and Ocracoke spit). This would potentially halt the decline in [Cape Hatteras National Seashore's] breeding population and could produce a slight population increase over the near term. Similarly, any measures implemented to protect non-breeding piping plovers would represent an improvement over past management which may increase adult survivorship."

Further, the modified preferred alternative includes performance measures to gauge its success. The terms and conditions in the USFWS Amended Biological Opinion (2007) require monitoring relative to the various breeding stages (number of breeding pairs, number of scrapes, number of nests, and number of fledglings); the performance measures address most of these stages. Performance measures for piping plover and sea turtles are detailed in the Errata (attachment 2 to the FONSI). If these targets are not met, the Seashore will reinitiate consultation with the USFWS as part of the annual review process identified in the USFWS Amended Biological Opinion (2007), unless the Superintendent and USFWS mutually agree that failure to meet the targets was caused by factors beyond the management control or influence of the Seashore such as a high frequency of storms, etc.

**Concern ID:** 13082

**CONCERN STATEMENT:** Commenters noted that the source data for sea turtle statistics were flawed and that use of these data reached inaccurate conclusions about the population and false crawls.

**Representative Quote(s):** **Corr. ID:** 73 **Organization:** *Not Specified*

**Comment ID:** 22695 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Sea Turtle activity at Cape Hatteras National Seashore (CHNS): The "References" section starting on page 295 lists the annual sea turtle reports for the years 2000 thru 2004 by various authors. It must be noted that none of these annual reports contain cumulative information on "lost" turtle nests (or even annual information prior to 2003) at CHNS which is over twice the percentage of Cape Lookout; false crawls, which is a lower percentage of activities here than at Cape Lookout and hatch rates, which are well below the Loggerhead Recovery Plan goal [USFWS 1991a, as cited in the strategy/EA]. Furthermore, the hatch rate for the year 2000 is overstated at 62% when it should have been 25.4%. Field GPS readings for 2000 put some false crawls in or near Wilmington DE, Salisbury MD, about 8 miles off the coast on Diamond Shoals or in the middle of Pamlico Sound. Since the rate of false crawls at CHNS is lower than at Cape Lookout (where ORV summer activity is minimal) any relationship between ORV use and false crawls at CHNS is obscure at best and thus must be deleted from this whole document. If one were to depend on this body of information as a summary of turtle activity for Cape Hatteras National Seashore, they would not be getting the whole story. CHNS has such a poor history of lost sea turtle nests and low hatch rates that to continue to follow the interpretation of [North Carolina Wildlife Resources Commission] guidelines as in the past would be paramount to a "take" of the species involved. Relocation

of nests is the only way to come close to reaching the Loggerhead Recovery Plan goal of a 60% hatch rate. Lost nest rates must be reduced and this can only be done by relocation. I have given a rather extensive report to Superintendent Mike Murray on 2/23/06 which he has submitted on my behalf.

**Corr. ID:** 58

**Organization:** *Not Specified*

**Comment ID:** 22600

**Organization Type:** Unaffiliated Individual

**Representative Quote:** False crawls and nests as a percentage of total nesting activity are virtually the same as those of Cape Lookout where there is little ORV traffic during nesting season, no villages or piers, yet Hatteras annual reports blame ORV's for perceived high false crawl and low nest results.

**Response:**

Seashore staff works closely with the State Sea Turtle Coordinator on the turtle nest monitoring program. Both the state and the Seashore recognize that not all possible nesting situations can be addressed with standardized protocols, and that there are naturally occurring parameters that may require deviations from guidelines outlined in the Handbook for Sea Turtle Volunteers in North Carolina. The Seashore also recognizes various differences in environmental and human-influenced issues between Cape Hatteras and Cape Lookout National Seashores. While both seashores follow guidance set by the state, it is recognized that management must be adaptive to suit those varying needs.

Under state guidance, it is recommended that nests be left in situ versus relocating whenever possible. There are many unknown variables as to the effects of nest relocation on sex determination of hatchlings and other contributing environmental factors as to the hardness of hatchlings produced. The Seashore will continue to follow recommendations of experts in the field in relation to turtle nest management.

Data collection and analysis are being standardized for the Seashore and a geographic information systems (GIS) program developed when funded to address previous mapping errors. This should allow for better quality control of the data disseminated for future reports.

Many different factors influence the number of false crawls or abandoned nesting attempts. While it is known that ORV use and other human disturbance can lead to false crawls or the abandonment of nesting activities, other things such as physical characteristics, whether natural or caused by human activities, of the beach in the areas where the turtles come ashore to nest (e.g., beach slope, compactness of sand etc.) can also lead to false crawls or abandoned nesting attempts (see strategy/EA p. 132).

## **TE4000 - THREATENED AND ENDANGERED SPECIES: IMPACT OF PROPOSAL AND ALTERNATIVES**

**Concern ID:** 12986

**CONCERN STATEMENT:** Commenters stated that existing low productivity rates for species at the park should be attributed to other factors rather than ORV use. These factors include current management, predators, storm events, poor foraging areas, etc.

**Corr. ID:** 75

**Organization:** *Not Specified*

**Comment ID:** 22780

**Organization Type:** Non-Governmental

**Representative Quote:** Third, predators that occur within the Cape Hatteras National Seashore, such as red fox, raccoon, and feral cats have been identified as a major factor limiting piping plover nesting success. Id. at 6-7; EA at 123 ("The Cape Point Nest was abandoned the day after a fox tried to dig around the predator enclosure." A pair's second nest lost its only egg to unknown causes, though predation was implicated). Of the 2 active piping plover nests on Cape Hatteras in 2003, one chick was produced from the estimated 7 eggs (no egg number was recorded for Ocracoke nest, assumed 3 eggs). All four of the chicks were depredated at the Hatteras Island nest (National Park Service: Cape Hatteras National Seashore 2002 and 2003). Cape Lookout has reported high nest depredation in nesting piping plovers (National Park Service: Cape Lookout National Seashore 2004). Since 1997, 18 nests protected by predator enclosures have lost eggs to ghost crabs (National Park Service: Cape Lookout National Seashore 2004).

**Corr. ID:** 65                      **Organization:** American Sportfishing Association

**Comment ID:** 22706    **Organization Type:** Business Groups

**Representative Quote:** With regard to [Cape Hatteras National Seashore] itself, the most likely cause of failure in piping plover reproduction is most likely predation. In the Seashore's own documents, predation is thought to be a primary factor in nesting failures. Recent studies have also implicated poor foraging habitat in North Carolina for chicks as a likely reason for poor fledging rates in that state. Despite these published studies the ISMS doggedly ignores factors other than ORV use.

**Corr. ID:** 65                      **Organization:** American Sportfishing Association

**Comment ID:** 22769    **Organization Type:** Business Groups

**Representative Quote:** There is no dispute that some closures to protect piping plovers and other threatened and endangered species are necessary as part of the management plan. However, the need for the vast expansion of the closure areas proposed in the preferred alternative remains unexplained and unsupported except by the most conclusory of statements. The [interim protected species management strategy/EA] fails utterly to analyze other causes for plover declines or to include the array of measures needed for comprehensive species management. If the Strategy is to be what it purports to be, a strategy for protected species management, more analysis of the actual factors affecting the recovery of the species is essential.

**Response:**

The NPS recognizes that there are numerous factors that impact all species at the Seashore, including the dynamic coastal environment as discussed under Concern Statement 12869 (p. 14 of this report). The USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI) also discusses the different threats to threatened and endangered species at the Seashore, and these are acknowledged by the NPS. Further, the strategy/EA does not claim or base the determinations for piping plover on cause and effect data because there are very few confirmed factors in the loss of nesting pairs from 1987 through the present. The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* uses a combination of buffers, closures, and predator controls designed to provide the best protection measures for piping plover and prevent future declines caused by predators, recreation, pets, pedestrians, etc.

NPS agrees that it will be helpful to provide for achievable goals to help the Seashore and the public evaluate whether the modified preferred alternative is working as predicted during the interim period. Based on public comments and discussions with the USFWS, these performance measures were developed to evaluate the actions under the modified preferred alternative for the protection of piping plovers and sea turtles. The terms and conditions in the USFWS Amended Biological Opinion (2007) require monitoring relative to the various breeding stages (number of breeding pairs, number of scrapes, number of nests, and number of fledglings); thus it is appropriate to have performance measures relative to most of these stages, as described in the Errata (attachment 2 to the FONSI). The performance measures detailed in the Errata will be considered minimum targets for piping plovers and sea turtles during the period the interim strategy would be in effect.

**TE4200 - THREATENED AND ENDANGERED SPECIES: IMPACT OF ALTERNATIVES ON PIPING PLOVER**

**Concern ID:** 13084

**CONCERN STATEMENT:** Commenters stated that the strategy/EA does not protect all suitable habitat for endangered species at the Seashore and that the level of impact determined for piping plover in the strategy/EA constitutes impairment of the resource.

**Representative Quote(s):**    **Corr. ID:** 53                      **Organization:** Virginia Tech

**Comment ID:** 22603    **Organization Type:** Unaffiliated Individual

**Representative Quote:** I disagree with the assertion that there is no impairment of piping plovers under Option A. The population declined sharply under current management, putting the entire future existence of the resource at [Cape Hatteras National Seashore] in doubt. That would seem to constitute "impairment" as is defined in the document.

**Corr. ID:** 85      **Organization:** *Not Specified*

**Comment ID:** 22854 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The [interim protected species management strategy/EA] is badly needed. We regret we must say the "preferred alternative" (Alternative D) is woefully inadequate in protecting the habitat of the protected species of birds, plants and sea turtles. It gives year-round protection to a few tiny areas and breeding-season protection to a few slightly larger areas, but mainly leaves the whole beach open to continued ORV traffic. The birds will never be able to expand their territory and population's under this plan. Alternative D could result in smaller populations than now. We disagree with the conclusion (page viii) that "impairment to the piping plover would not occur" under A, C and D; the same for other protected species.

**Response:**

The Finding of No Significant Impact (FONSI) for the selected alternative (modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*), as described in the Errata (attachment 2 to the FONSI), concluded that the modified preferred alternative will not impair park resources and values (see p.25 of the FONSI). This conclusion is based on a thorough analysis of the environmental impacts described in the strategy/EA, consultation with the USFWS, public comments, relevant scientific studies, and the professional judgment of the decision-maker guided by the direction in National Park Service *Management Policies 2006*.

National Park Service *Management Policies 2006* describe the impairment that is prohibited by the Organic Act and the General Authorities Act as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would 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.

An impact to any park resource or value may, but does not necessarily, constitute an impairment. An impact would be more likely to constitute 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.

An impact would be less likely to constitute an impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values and it cannot be further mitigated.

Impairment is a subset of major impacts. All impairments are major impacts, but not all major impacts are impairments. As described in the strategy/EA and FONSI, after a review of the impacts, implementation of the modified preferred alternative will not result in major, adverse impacts to the piping plover. Implementation of the modified preferred alternative will not impair park resources or values, and will not violate the NPS Organic Act.

## TE4400 - THREATENED AND ENDANGERED SPECIES: IMPACT OF ALTERNATIVES ON SEABEACH AMARANTH

**Concern ID:** 12989

**CONCERN STATEMENT:** Commenters felt that the strategy/EA fails to provide protection for the seabeach amaranth and that any plant outside of another species closure will not survive.

**Representative Quote(s):** **Corr. ID:** 50 **Organization:** *Not Specified*

**Comment ID:** 22619 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The plan fails in providing protection to suitable sites for the germination of seabeach amaranth. Amaranth seedlings will not survive unless they happen to be in an established closure for birds or turtles.

**Response:** Much of the seabeach amaranth habitat overlaps that of the shorebirds and sea turtles found at the Seashore and is, therefore, protected by closures established for these species. In addition, a seabeach amaranth plant found outside of these areas would be afforded protection by a 30 square foot buffer around the plant, ensuring that the plant would be protected under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*.

## TE4600 - THREATENED AND ENDANGERED SPECIES: IMPACT OF ALTERNATIVES ON SEA TURTLES

**Concern ID:** 12990

**CONCERN STATEMENT:** Commenters stated that the strategy/EA should not allow sea turtle nest relocation to accommodate recreation because of the potential impacts and this is not acceptable according to the North Carolina Resources Commission Handbook. Commenters felt allowing vehicles in turtle nesting areas would have negative impacts to the species.

**Representative Quote(s):** **Corr. ID:** 50 **Organization:** *Not Specified*

**Comment ID:** 22616 **Organization Type:** Unaffiliated Individual

**Representative Quote:** The strategy fails in allowing unrestricted vehicle access through nesting grounds of threatened and endangered sea turtles in spite of known negative impacts.

**Corr. ID:** 81 **Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22829 **Organization Type:** State Government

**Representative Quote:** There should be no moving of sea turtle nests to accommodate recreational uses. The NC Wildlife Resources Commission Handbook clearly states that nests should be moved only when one or more of the following situations exist:

- . The nest is below the average high tide line where regular inundation will result in embryonic mortality.
- . The nest is in an area known to be susceptible to erosion.
- . The nest is under a sloughing escarpment and is subject to being buried too deeply.
- . The nest is in an area where unusual, but lawfully conducted, human activities pose a serious threat to nests, such as emergency dune pushing following a major storm event. Beach driving is not considered among those unusual events described above.

**Response:** The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides that all sea turtle management actions at the Seashore will follow the guidelines in the North Carolina Resources Commission Handbook. In response to public comment, consultation with the North Carolina Wildlife Resources Commission, and consultation with the USFWS the modified preferred alternative does not allow sea turtle nests relocation to accommodate beach driving (see the Errata (attachment 2 to the FONSI)).

Sea turtles nest along almost the entire length of the Seashore. The modified preferred alternative – provides for nest protection and includes restricting vehicle access in areas of nesting sea turtles by creating bypasses for vehicle traffic around nesting areas when needed. Nesting areas will be closed to ORV and pedestrian traffic with a 30 square foot buffer, which would expand approximately 50-55 days into the incubation period. With these protective measures, some level of vehicular access in nesting areas could remain and species protection goals could still be met.

**Concern ID:** 12991  
**CONCERN STATEMENT:** Commenters raised questions as to how the proposed bypass for sea turtles nests would be implemented, asking for clarification.

**Representative Quote(s):** **Corr. ID:** 99 **Organization:** *Not Specified*

**Comment ID:** 23085 **Organization Type:** Unaffiliated Individual

**Representative Quote:** We have discussed bypasses where enclosures or turtles crawl or various what-have-you go all the way to the water line that you want protection to provide alternate routes. And, in each one of these where you say alternate routes, you also include Route 12. Is that your primary focus on alternate routes is the track goes around and brings it back up to Route 12 and around, or are we talking about going interdunal roads or, you know, areas around it -- a closure, without having to go-- for instance, there's Ramp 27 and your interpretation of Route 12 being in there and it means you go back to 27 and go out to 12 and go down to 34 and you come back on the beach? Or are you looking more in terms of interdunal areas as far as bypasses?

**Response:** The strategy/EA glossary defines “alternate ORV route” as a route that uses another ramp or an existing interdunal route or North Carolina Highway 12 to provide ORV access to an area. The glossary defines “by-pass” as a temporary route established by the Seashore in accordance with the bypass criteria to provide ORV access during short periods of time (see strategy/EA p. 282). By-pass criteria are described on pp. 56-57 of the strategy/EA and in the Errata (attachment 2 to the FONSI). Alternate routes include existing interdunal routes; by-passes include new, temporary interdunal routes. Both alternate routes and by-passes would be considered for use to provide appropriate ORV access while protecting species needs.

## VU/VE1000 - VISITOR USE AND EXPERIENCE: AFFECTED ENVIRONMENT

**Concern ID:** 12992  
**CONCERN STATEMENT:** Commenters noted text and figure corrections regarding existing ORV access at the Seashore. Commenters felt that the text, as it currently reads, incorrectly represents the number of ramp access points at the Seashore.

**Representative Quote(s):** **Corr. ID:** 73 **Organization:** *Not Specified*

**Comment ID:** 22704 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Map This same map with the same date was on the NPS website in August 2005 without Ramp 45 or Ramp 57. Someone has changed the map that NPS made public without allowing the public to see the change.

**Corr. ID:** 73 **Organization:** *Not Specified*

**Comment ID:** 22705 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Off-Road Vehicle Use. The last sentence in the second paragraph should read “the sound side ramps were rarely used by comparison, in part because of very low carrying capacity, and in 2003 there were no signs or maps indicating their existence to the visiting public.” (They are not even shown on the map that appears on page 156.)



**Corr. ID:** 73      **Organization:** *Not Specified*

**Comment ID:** 22703 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Table 17 This table shows ramp 45 as open, yet it has been closed for at least 4 years. Ramp 57 (Pole Road) was not even listed as a ramp in the 1978 ORV Plan and never been known as a "ramp," let alone given a number. It does not show as a ramp on the recently revised NPS handout on ORV driving at [Cape Hatteras National Seashore] either. With this in mind let us not distort the number of ramps described in the paragraph above this table.

**Response:**

Access to Ramp 45 through the Cape Point Campground was closed due to law enforcement issues (deer poaching and vandalism to campground facilities) during the winter. Due to the high volume of traffic in the campground during all hours of the day during the summer season, the Seashore closed Ramp 45. Ramp 45 access to South Beach, reached via the interdunal road, remains open. During the long-term ORV management plan/EIS alternatives development process, Ramp 45 may be considered as an alternate route. The ramp map in the strategy/EA was modified to show Ramps 45 and 57 to make it consistent with the 2003 study completed by Hans Vogelsong (Cape Hatteras National Seashore Visitor Use Study, as cited on pp. 151 to 160 of the strategy/EA. This study collected data from these ramp (vehicle access point) locations (see strategy/EA p. 158, table 18). The map on p. 156 of the strategy/EA does not show the soundside ramps because it is a map of ocean beach access as of August 17, 2005.

**Concern ID:**

12993

**CONCERN  
STATEMENT:**

Several commenters noted a desire to maintain natural habitat and enjoy the Seashore without vehicles present. Other commenters suggested this desire could be met outside the Seashore at Pea Island National Wildlife Refuge. Commenters noted conflicts between these types of uses and ORV use, and felt these conflicts were not addressed in the strategy/EA.

**Representative  
Quote(s):**

**Corr. ID:** 1      **Organization:** *Not Specified*

**Comment ID:** 22223 **Organization Type:** Unaffiliated Individual

**Representative Quote:** Too many people but, more specifically, too many vehicles are over-whelming the seashore and the marshes.

**Corr. ID:** 30      **Organization:** *Not Specified*

**Comment ID:** 22587 **Organization Type:** Unaffiliated Individual

**Representative Quote:** I would like to cast my vote for limiting vehicle use at Cape Hatteras Nat'l Seashore. Solitude and vehicle-free beaches are important to me, not to mention the vital habitat issues.

**Corr. ID:** 38      **Organization:** *Not Specified*

**Comment ID:** 22583 **Organization Type:** Unaffiliated Individual

**Representative Quote:** I also value the opportunity to share a beach with others without the heavy presence and burden of so many vehicles. It is such a disturbance to those of us who enjoy those beautiful places that you cannot access by car. Please do not allow vehicles to take over one more of our public lands.

**Corr. ID:** 55      **Organization:** *Not Specified*

**Comment ID:** 22591 **Organization Type:** Unaffiliated Individual

**Representative Quote:** For environmentalists and other naturalists, there are other public beaches such as Pea Island which do not allow vehicular traffic. This stretch of beach is approximately fifteen miles in length and provides ample natural areas for swimming, beach-combing, bird watching or other related activities.

**Corr. ID:** 64      **Organization:** *Not Specified*

**Comment ID:** 22629 **Organization Type:** Unaffiliated Individual

**Representative Quote:** In effect the [interim protected species management strategy/EA] is managing all

recreational aspects of this park and specifically the areas next to the inlets and Cape Point. At an informational meeting in Hatteras community center, one person voiced his concern about other recreational users having a party in one of the described corridors, which could potentially block his ORV access. The recreational user conflict is a consideration that has not been addressed in this plan.

**Corr. ID:** 64

**Organization:** *Not Specified*

**Comment ID:** 22630

**Organization Type:** Unaffiliated Individual

**Representative Quote:** By saying what and where ORV activities are allowed you are not addressing other recreational interest and potential recreational conflicts between user groups. ORV use does impact other recreational users.

**Corr. ID:** 68

**Organization:** *Not Specified*

**Comment ID:** 22641

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Secondly, this document does not address the great user conflict present between ORVs and pedestrian users of the park. With an ever narrowing beach and increasing development on Hatteras Island, there is greater conflict each year. Safety of pedestrians especially children is compromised.

**Corr. ID:** 83

**Organization:** Wildlands CPR

**Comment ID:** 22851

**Organization Type:** Conservation/Preservation

**Representative Quote:** There are three places, in particular, where the geography and road locations would make it appropriate and viable to provide for quality non-motorized recreational opportunities along the beach, within the park. Hatteras Inlet Spit, Ocracoke Inlet Spit and Cape Point/South Beach. In each of these areas the road is far enough away from the beach, that the Park Service could provide a truly non-motorized experience for park visitors. This should be as much of a priority for the Park Service as providing off-road vehicle access.

**Corr. ID:** 83

**Organization:** Wildlands CPR

**Comment ID:** 22849

**Organization Type:** Conservation/Preservation

**Representative Quote:** While the Environmental Assessment does assess the impacts of off-road vehicle recreation on wildlife, it does not assess the impacts of off-road vehicle recreation on other forms of non-motorized recreation. This assessment does not take into consideration the concerns and needs of the non-motorized public who also uses this park, other than for safety issues. By not addressing the clear user-conflicts that are caused by motorized recreationists, and limiting motorized recreation to reduce those conflicts, the EA fails to comply with the off-road vehicle Executive Orders (11644 and 11989), which require that areas be closed to motorized use until the conflicts and impacts are resolved.

**Response:**

The strategy/EA evaluated the impacts of various types of recreational uses, including pedestrian, night use of the beach, Frisbee throwing, kite-flying, pets, campfires, and ORVs on protected species as detailed under Concern Statement 12869 (p. 14 of this report). The various recreational opportunities available at the Seashore are described in the strategy/EA starting on p. 151 and the impacts are discussed starting on p. 242. An example of impacts to non-motorized users can be found on p. 246 of the strategy/EA where it discusses how pedestrians would be impacted by resource closures.

Minimizing visitor conflict, providing for areas without vehicles, and limiting the number of vehicles overall will be addressed in the long-term ORV management plan/EIS. On December 11, 2006, the National Park Service published a Notice of Intent to prepare an ORV Management Plan/Environmental Impact Statement for Cape Hatteras National Seashore. The publication of the Notice of Intent opens the public scoping period for the plan/EIS. The public scoping period also included public meetings which were held in February 2007 to further gain public input into the long-term ORV management planning process.

**Concern ID:**

12994



**CONCERN  
STATEMENT:**

Commenters expressed concern about past management that did not allow visitors on foot into resource closures at South Beach.

**Representative  
Quote(s):**

**Corr. ID:** 44      **Organization:** *Not Specified*

**Comment ID:** 22490 **Organization Type:** Unaffiliated Individual

**Representative Quote:** When schools of feeding fish shows up at the point, so too do a horde of anglers (some as frenzied as the fish). Having access (at least by foot) to the beach front along the south (west) areas allows the anglers to spread out, novices or persons who just don't like the crowd tend to fish at the fringes. NPS management closed the beach front to foot traffic during 2004 and much of 2005. Without access (at least by foot) to the shoreline, anglers with various skill levels were forced into a small area and ended up standing shoulder to shoulder throwing lures with treble hooks and often hooking themselves or fellow anglers.

**Response:**

Under the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*, pedestrians have 24-hour access to all Seashore beaches outside of existing resource closures. Seashore 2006 records for the area south (west) of the point (South Beach) indicate that shoreline resource closures occurred from May 1 to August 3, beginning 0.5 or 0.6 mile west of the point and extending west from 0.2 mile to 2 miles depending on the date, with alternate access provided by interdunal road, Ramp 49 or Salt Pond Road. These limited closures are necessary for the protection of sensitive species.

**Concern ID:**  
**CONCERN  
STATEMENT:**

13086

Commenters noted that visitation at the park has been decreasing and implied that this could be related to the beach closures.

**Representative  
Quote(s):**

**Corr. ID:** 24      **Organization:** Cape Hatteras Business Allies

**Comment ID:** 22403 **Organization Type:** Business

**Representative Quote:** Not to mention according to the Parks own statistics, visitor use at [Cape Hatteras National Seashore (CAHA)] is down by 17%. Visitor numbers have been declining for the past 3 years at CAHA. So what may be viewed as a positive trend in visitor numbers for Dare County and what is actually taking place at CAHA are not always the same.

**Response:**

The strategy/EA notes on p. 151 that visitor use at the Seashore has declined in recent years. The correlation between this decline and recent species protection measures has not been studied. Visits to national parks nationwide peaked in 1987 and have declined since then, and the Seashore fits into the overall trend for the national park system as a whole.

**Concern ID:**  
**CONCERN  
STATEMENT:**

13087

Commenters noted ORV access provided in years before 2003 and that anglers want access that allows them to follow schools of fish south.

**Representative  
Quote(s):**

**Corr. ID:** 44      **Organization:** *Not Specified*

**Comment ID:** 22489 **Organization Type:** Unaffiliated Individual

**Representative Quote:** It is very common for schools of striped, bluefish, and Spanish to come into this section of the beach in large numbers. Sometimes the schools continue south and without through access there is no way to follow them. For several years prior to the spring of 2005, this beach consisted of one or two lanes adjacent to the dunes with 6 foot or better drop off to the beach. Despite the narrow configuration to this beach, prior to 2003, we were permitted to travel this section and when the bluefish and Spanish came in anglers were able to follow the fish. As a side note, the little clump of grass there was defined as

fledgling dune.

**Response:** The strategy/EA analyzes impacts of the alternatives on fishing starting on p. 242 and these impacts were considered in developing the modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*, as described in the Errata (attachment 2 to the FONSI).

## VU/VE4000 - VISITOR USE AND EXPERIENCE: METHODOLOGY AND ASSUMPTIONS

**Concern ID:** 12996

**CONCERN STATEMENT:** Commenters disagreed with the methodology in determining the areas open to ORV use stating that the amount of available area has been overstated. Because they felt these calculations were inaccurate, they suggested that these portions of the strategy/EA be changed to accurately reflect conditions. Commenters stated that the ORV use figures and other visitor use figures were not accurately calculated, resulting in an understatement of the impact of ORV users. A commenter noted the reference, Vogelsong 2003, should not be used in the strategy/EA.

**Corr. ID:** 86

**Organization:** *Not Specified*

**Comment ID:** 22864

**Organization Type:** Unaffiliated Individual

**Representative Quote:** Upon substitution of 684,779 for the algebraically meaningless, 91,907, and upon repetition of the same calculations undertaken by the authors of the EA, the initially-noted EA statement is reproduced below-albeit, in corrected form. For reasons previously explained, all references to the percentage figures initially contained have been omitted from this corrected version of the EA statement.

Any full-beach resource closures that restrict ORV access would most likely occur during the summer months, when 45% to 50% of the park's annual visitation occurs (Vogelsong 2003; NPS Public Use Statistics Office 2005). Of the estimated 684,779 ORVs in the park annually, approximately 342,390 ORVs visit park beaches during the summer months, assuming that ORV use follows overall park visitation patterns. At least 50%, or 171,195 of those ORVs, would frequent the ramps that provide access to the spits (Vogelsong 2003). Assuming that these 171,195 ORVs are distributed equally among the four ramps and that use is equally distributed between June, July, and August, approximately 42,799 ORVs would occur throughout the summer, and 14,266 ORVs would occur monthly at each ramp. Thus, a one-month closure at one spit could affect approximately 32,242 visitors during any on summer month. A full summer closure would affect 96,725 visitors. during the 3 summer months. This assumes that all ORV users are driving to the spits, which may not be the case.

**Corr. ID:** 71

**Organization:** *Not Specified*

**Comment ID:** 22660

**Organization Type:** Unaffiliated Individual

**Representative Quote:** (page 157) Of the visitors surveyed, 1,276 or approximately 76% indicated that they owned or rented an ORV. Of these ORV owner/renters, 90% (or 68% of all surveys) spent some time on the beach driving at Cape Hatteras National Seashore (Vogelsong 2003). Comment(s) The second sentence of the above-noted EA statement is at best, misleading, at worst, incorrect.

Because of a flaw in the design of Vogelsong's survey instrument,--in particular, Question 6 of the "Seashore Visitor Survey," it is not possible to calculate the percentage of non ORV owners/renters surveyed who spent time driving on the beach that is, either with friends or relatives. As such, it is also not possible to calculate the percentage of all visitors surveyed who reported spending time driving on the park's beaches. Upon careful review of question 6A in particular, the follow-up question 6B, it can only be concluded that at least 68% of all visitors surveyed reported spending some time driving on the beach.

Correction(s) Of the 1,681 visitors surveyed, 1,276 (76%) indicated that they either owned or rented an ORV. 90% of these ORV owner/renters (1,146 visitors) further indicated that they spent time beach driving. At least 68% of all visitors surveyed reported spending some time driving on the park's beaches. Because of a flaw in the survey instrument, it is not possible to precisely quantify the meaning of the words "at least 68%." In this regard, the most accurate statement that can be issued is as follows: At least 68%, but not more than 98.2% of all visitors surveyed reported spending time driving on the beaches.

**Corr. ID:** 71

**Organization:** *Not Specified*

**Comment ID:** 22661

**Organization Type:** Unaffiliated Individual

**Representative Quote:** (page 157) Visitor counts conducted during this study (Vogelsong 2003) indicated that, on average each vehicle in the seashore carries approximately 2.26 occupants.

Comment(s) This estimate is based upon passenger counts conducted at two locations- namely, the Oregon Inlet Marina and the Hatteras Lighthouse areas. In all, the number of passengers in a total of 40 vehicles was counted. According to Vogelsong, this estimate applies to all vehicles within the park - that is, regardless of either type or location. The systematic errors built into the above-described process by which data were collected should be obvious. As such, any calculation/inference, based upon this estimate must be taken with a huge "grain of salt."

Finally, the fact that Vogelsong's 2.26 estimate is approximately equal to the State Ferry System's estimated of 2.38 means nothing. Vehicles found either on a ferry to Ocracoke or vehicles found in the parking areas of the marina/lighthouse have precious little in common with vehicles found on the park's beaches. Either on the basis of sound statistical judgment, or common sense, this estimate is absurd.

Correction(s) Vogelsong estimates that each vehicle that enters the park carries, on average, 2.26 visitors per vehicle. Because this estimate is based upon passenger counts of a total of 40 vehicles conducted, at two locations - namely, the Oregon Inlet Marina and Hatteras Lighthouse area, it is not at all reasonable to assume that this estimate applies to all vehicles entering the park - in particular, with respect to ORVs on the beaches.

**Corr. ID:** 71

**Organization:** *Not Specified*

**Comment ID:** 22658

**Organization Type:** Unaffiliated Individual

**Representative Quote:** (page 157) On an annual basis, this daily figure indicates that approximately 10% of total seashore visitation or roughly 91,907 ORVs frequent the seashore beaches. Comment(s) This 10% figure is algebraically meaningless. This follows from the fact that this percentage is calculated by dividing 91,907, a meaningless quantity, by 2,275,886 - Vogelsong's estimate of the total number of park visitors during the 12 month period of his study. Correction(s) This statement should be stricken from the EA.

**Corr. ID:** 71

**Organization:** *Not Specified*

**Comment ID:** 22657

**Organization Type:** Unaffiliated Individual

**Representative Quote:** (page 157) Table 18 indicates that an average of 251.8 ORVs were counted on the seashore beaches at any one time during the 2001 and 2002 visitor surveys and counts.

Comment(s) It is not possible to calculate this average (251.8) on the basis of the information provided in Table 18. That said, the usage of the word "indicates" is not appropriate. Table 18 uses the words "at one time." The EA statement, on the other hand, uses the words "at any one time." The usage of the word "any" is not appropriate. This follows from the fact that a disproportionately large number (50.3%) of data collection days were during the summer months. The sampling schedule employed by Vogelsong, as such, introduced an element of systematic error into the data and biased his findings. Finally, because this 251.8 average quantity was calculated on the basis of data collected by way of a non-probability sample, this quantity is not a statistical estimate of the average number of ORVs found on the park's beaches "at any one time." Such an inference (estimate) can only be made on the basis of data collected by way of a random (probability) sample.

**Corr. ID:** 73

**Organization:** *Not Specified*

**Comment ID:** 22693

**Organization Type:** Unaffiliated Individual

**Representative Quote:** All reference to Vogelsong 2003: Any and all conclusions based on and references to (Vogelsong 2003) must be deleted from this document as shown by the ERRATA submission of James Luizer.

**Response:**

The Vogelsong study describes how visitor counts were estimated on pp. 8 - 12 of the study. This study indicates that visitor use levels were estimated at various points throughout the park from counts of visitors, parked vehicles, off-road vehicles, and people per vehicle and describes specifically the methodologies used for estimation. Vogelsong indicates that ORV counts are believed to accurately represent ORV users; however non-ORV users are under-represented. To accurately represent non-users total park use was determined using North Carolina Department of Transportation (NCDOT) traffic and ferry counts, along with the average passenger-per-vehicle counts. Once calculated, this total park visitation was estimated at 2,275,886 people. Further, Vogelsong states that the figures represented in Table 1 of his study, recreated on p. 158 of the strategy/EA, is a more accurate representation of the actual number of ORV users at the park than the counts depicting the number of people and parked vehicles. He goes on to say the following:

“The average of 251.8 ORV’s *per day* counted on the beaches multiplied by 365 days provides an estimate of 91,907 ORV’s or 207,875 ORV users annually using the park beaches. Since this number is probably accurate plus or minus 20% a more accurate but less precise estimate would include a range of 73,526 – 110,288 ORVs or 166,300 – 249,450 ORV users annually using the beach.”

The range of ORV users from the Vogelsong study used in the EA, 7.3% to 11%, was determined based on the total number of ORV users from total park visitation and was determined using ORV counts at the park. These counts captured all park users, both those using ORVs and non-ORV users. While the study found that 68% of visitors stated they owned and used their ORVs at the beach, this survey question was asked of a sample of park users that were mainly ORV users and is an under representation of non-ORV users. Since the 7.3% to 11% was based on all park visitation, rather than just the sample the 68% was based on, the plan/EA used the 7.3 to 11% figure for analysis as it provides a more accurate representation.

Sampling at areas of frequent ORV use allowed for a sampling strategy which includes high numbers of both ORV users and non-users. Vogelsong indicates that 76% of the visitors in the sample reported owning or renting an ORV and that, of these 90% (68% of the entire sample) reported spending at least some time beach driving at the Seashore. However, the study does not use this percentage, as suggested by the commenter, to determine annual ORV use, but does indicate that whether or not visitors own or rent an ORV will be used as an independent variable for statistical analysis in order to compare attitudes and preferences toward ORV use.

Although Vogelsong’s methodology for deriving these estimates is disputed by the commenters, it was used in the impact analysis to provide a comparison of impacts between alternatives and was used in conjunction with a standard set of assumptions that were consistently applied to each alternative (see strategy/EA, pp. 242 - 243). This approach allowed an identification of the potential magnitude of the impacts for each alternative.

The intensity of the impact was not determined by the number of ORV users, but rather by the number of spits and other Seashore locations that might be affected by species management strategies. The percentage of visitors that might be impacted by the closures in each alternative was solely for rough comparison purposes only. The methodology and assumption section on p. 243 of the strategy/EA identifies these figures as only gross representations of visitor use.

The National Park Service reviewed possible visitor study options and concluded that the Vogelsong study was the best representation of visitor use. The study’s purpose was to understand how visitors use the Seashore. Vogelsong’s study was conducted from May 2001 through May 2002. Data collection included character of use, visitor attitudes/norms towards visitor density, other activities, ORV usage, aircraft flyovers, and satisfaction. This study was preceded by a pilot study and determined valid and reliable. As

stated above, these data were used in the strategy/EA only to provide a rough, qualitative idea of visitor use trends, and not absolute visitation numbers.

Vogelsong states that “In order to account for variations in seasonal and weekly visitation a sampling schedule was developed and adhered to which was designed to provide representation of all types of visitors regardless of when and where they visited the park during the study period.” Table 3 and table 4 in the Vogelsong study represent when and where interviews were conducted. Though the numbers of interviews during each season were not equal in the study they are each large enough for a statistical analysis and a comparison of traits. The numbers of interviews at each site are not equal primarily due to closures of beach areas and poor weather. Though not equal, the sample is felt to be fairly representative of most visitor groups.

## **VU/VE6000 - VISITOR USE AND EXPERIENCE: IMPACT OF ALTERNATIVES**

**Concern ID:** 13088

**CONCERN STATEMENT:** Commenters expressed concern that closures in one area of the Seashore could cause congestion in other areas impacting visitor use.

**Representative Quote(s):** **Corr. ID:** 44 **Organization:** *Not Specified*

**Comment ID:** 22487 **Organization Type:** Unaffiliated Individual

**Representative Quote:** In the summer months, artificial restrictions beyond what is required to protect protected species results in unnecessary congestion on the beaches by forcing all users to confine themselves to the areas just off the access ramps. It is the ability to spread out that attracts people, other than anglers, to the Seashore's beaches.

**Response:** The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides for closures of some areas of the Seashore for species protection, but has added increased flexibility in the size of the closures for non-listed species. These closures would be temporary and the size and location would be related to the life-cycle stage of the species, as described in the Errata (attachment 2 to the FONSI). The modified preferred alternative includes guidelines to shorten the amount of time a closure is in place if the species is not using the habitat, abandons the habitat, or the species offspring is lost and renesting does not occur. During the breeding season when resource closures are in place, the potential exists for other areas of the Seashore to experience higher use. These measures incorporated into the modified preferred alternative will reduce possible congestion and minimize impacts to visitor use and experience.

## **WH1000 - WILDLIFE AND WILDLIFE HABITAT: GUIDING POLICIES, REGULATIONS, AND LAWS**

**Concern ID:** 13000

**CONCERN STATEMENT:** Commenters questioned the laws and regulations on which the analysis of wildlife impacts was based, including the guidance and enforceability of the U.S. Shorebird Conservation Plan, the requirements of the Migratory Bird Treaty Act, and the inclusion of the American oystercatcher, red knot, and Wilson's plover in the strategy/EA.

**Representative Quote(s):** **Corr. ID:** 70 **Organization:** *Not Specified*

**Comment ID:** 22655 **Organization Type:** Unaffiliated Individual

**Representative Quote:** "What is a "sensitive" "locally sensitive" species and WHO says so? By whose authority? Furthermore without the proper studies now it seems we are starting to treat the US shorebird Conservation Plan as if it is law, and enforceable, when in fact it is not! Yet because of this Plan, the Species Protection plan for [Cape Hatteras National Seashore] is treating all kinds of birds the same way it does Piping Plovers! American Oystercatchers come immediately to mind! They are ONLY protected by the Migratory Bird Treaty! That is all, nothing else! If this nonsense remains, I shudder to think what may happen if a Cardinal is spotted in Fort Raleigh or at The Wright Brothers Memorial! Seriously.. think about how ludicrous this is! The entire Outer Banks Group should play by these rules, not just the Seashore.

**Corr. ID:** 75      **Organization:** *Not Specified*

**Comment ID:**      **Organization Type:** Non-Governmental  
22776

**Representative Quote:** Furthermore, the beach closures as contemplated by the proposed action to protect the American Oystercatcher are not required for compliance with the Migratory Bird Treaty Act ("MBTA"). As explained in our May 19, 2005 letter to the [National Park Service] and incorporated herein, the plain language of the MBTA does not require habitat protection or other indirect takes of a bird. See *Seattle Audubon Society v. Evans*, 952 F.2d 297 (9th Cir. 1991) (Habitat modification or degradation resulting for the sale of timber does not violate the MBTA). Here, the proposed action treats non- [Endangered Species Act] listed species such as the American Oystercatcher identically to the piper plover by enforcing beach closure to prohibit speculative "takes". See Ex. C for additional discussion. However, the MBTA does not provide the legal authority to take such drastic step and impose beach closures to protect habitat or prevent speculative harm that may come from nest destruction.

**Corr. ID:** 47      **Organization:** *Not Specified*

**Comment ID:** 22335      **Organization Type:** Unaffiliated Individual

**Representative Quote:** The sentence, "Therefore only those aspects of the red knots life history pertinent to its management...at Cape Hatteras National Seashore will be covered in this section" does not correlate with pp. 146-147. In those two whole pages *Tierra del Fuego, Chile*, is mentioned three times and *Delaware Bay* is discussed nine times. In the Biological Assessment the red knot verbiage has been appropriately reduced to only two paragraphs.

There is a prediction on p. 147 that the red knot will be extinct by 2010 because of the lack of food along the shores of the Delaware Bay. There is little we in Cape Hatteras can do to save the red knot. Sadly we may not need to consider this species when we formulate the ORV [negotiated rulemaking process].

**Corr. ID:** 73      **Organization:** *Not Specified*

**Comment ID:** 22694      **Organization Type:** Unaffiliated Individual

**Representative Quote:** American Oystercatchers, Wilson's Plovers or Red Knots are only listed in the U. S. Shorebird Conservation Plan as "Species of High Concern" and the Migratory Bird Treaty Act of 1918. Therefore, closures are not required for the protection of these birds. This is not to say that their lives are to be sacrificed, but only that there should be no intentional "take" under the Migratory Bird Treaty Act of 1918 and thus any closures for these birds do not seem to be mandated. See Holland & Knight comment.

**Corr. ID:** 107      **Organization:** Attorney-United Four-Wheel Drive Assn

**Comment ID:** 33809      **Organization Type:** Recreational Groups

**Representative Quote:** But I saw that the red knot and the Wilson's plover was added. And that was something that was not discussed during the scoping phase during this -- during the public meetings. And I'm wondering if the justification or rationale for that is within the EA and I missed it, but I could not find any records that those are a North Carolina species of special concern or indicative of being a managed species or how those two species came to be discussed in the EA.

**Response:** The development of alternatives for protected species at the Seashore was based on multiple laws,

regulations, and guidelines. Some of these sources, such as the U.S. Shorebird Conservation Plan, are not enforceable by law, and others are. Regardless of their third party enforceability status, the Seashore considered them during the planning process. Guiding the Seashore, and all of the NPS, in this policy are the NPS *Management Policies 2006*. The *Management Policies* (sec. 4.4.2.3) state that “The Service will survey for, protect, and strive to recover all species native to national park systems units that are listed under the Endangered Species Act. The Service will fully meet its obligations under the NPS Organic Act and the Endangered Species Act to both proactively conserve listed species and prevent detrimental effects on these species.” The policies further direct (sec. 4.4.2.3) that “the National Park Service will inventory, monitor, and manage state and locally listed species in a manner similar to its treatment of federally listed species to the greatest extent possible. In addition, the Service will inventory other native species that are of special management concern to the parks (such as rare, declining, sensitive, or unique species and their habitats) and will manage them to maintain their natural distribution and abundance.” The NPS Organic Act and the Seashore’s enabling legislation provide ample authority and the responsibility for the Seashore to conserve native species. All of the species, both Endangered Species Act protected, North Carolina species of concern, and species of concern to the park such as the declining Wilson’s plover and red knot (now an Endangered Species Act candidate species) are managed in accordance with these NPS policies. Comments received during the open house portion of the Kill Devil Hills public scoping meeting asked that the NPS consider management of these two species in the strategy/EA.

#### **WH4200 - WILDLIFE AND WILDLIFE HABITAT: IMPACT OF ALTERNATIVES: SENSITIVE SPECIES (AMERICAN OYSTERCATCHER)**

<b>Concern ID:</b>	13003	
<b>CONCERN STATEMENT:</b>	Commenters stated that the monitoring frequency for special status species such as American oystercatcher may not be efficient to protect mobile chicks.	
<b>Representative Quote(s):</b>	<b>Corr. ID:</b> 81	<b>Organization:</b> North Carolina Wildlife Resources Commission
	<b>Comment ID:</b> 22837	<b>Organization Type:</b> State Government
	<b>Representative Quote:</b> Many species of waterbirds have smaller buffers than the 600 foot piping plover buffer. For example, American oystercatcher broods are monitored once a day and allowed only a 300 foot buffer. Chicks may easily move outside this buffer area and could be struck by ORVs. The management strategy states buffer areas may be enlarged for mobile chicks, but infrequent monitoring increases the likelihood of chick mortality.	
	<b>Corr. ID:</b> 96	<b>Organization:</b> Audubon North Carolina
	<b>Comment ID:</b> 23045	<b>Organization Type:</b> Unaffiliated Individual
	<b>Representative Quote:</b> In another place, same page of the document, I think it says, "Staff would observe species activities and potentially close areas outside of pre-defined nesting closures being used by other protected bird species." And on page 210, under that, it says, "Because fencing is at the discretion of the Superintendent, it is not known how many oystercatchers would benefit from the protection afforded by fencing." Does this mean that, if a nest is located outside of the one of the five areas that you identified, that protection by symbolic fencing would be discretionary?	
<b>Response:</b>	The listed buffer distances in the strategy/EA are minimums to be used as a guide. Buffers may be increased as needed in order to protect a highly mobile brood. Monitoring of the brood may also increase as needed to ensure the safety of the chicks. The discretionary fencing is a component of alternative A, which was not the selected alternative. Under the selected alternative (modified preferred alternative – <i>Alternative D (Access/Research Component Focus) with Elements of Alternative A</i> ), closures with symbolic fencing will be provided for American oystercatchers based on observations (see the Errata, table 2 (attachment 2 to the FONSI)), which will establish buffer sizes based on individual bird behavior to maintain flexibility in establishing closures for this species and allow for the protection of highly mobile broods.	

## WH8020 - IMPACT OF NIGHTTIME DRIVING ON WILDLIFE AND WILDLIFE HABITATS

**Concern ID:** 13004

**CONCERN STATEMENT:** Commenters stated that nighttime driving is of great concern and was not adequately addressed in the alternatives or impacts.

**Representative Quote(s):** **Corr. ID:** 81      **Organization:** North Carolina Wildlife Resources Commission

**Comment ID:** 22830 **Organization Type:** State Government

**Representative Quote:** Nighttime beach driving is of particular concern and should not be permitted during the nesting season for shorebirds. Shorebird chicks cannot be monitored at night and may move away from protected areas to forage nearby. There is evidence that American oystercatcher chicks are attracted to vehicle headlights and may migrate towards areas of ORV activity.

**Response:** The purpose of the strategy/EA is to evaluate and implement strategies to protect sensitive species and provide for appropriate recreational uses as directed in the enabling legislation, NPS management policies, and other laws and mandates until a long-term ORV management plan/EIS is developed. The modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A* provides for closures that would provide adequate protection to the chicks during the interim period. The issue of nighttime driving will be addressed in the long-term ORV management plan/EIS.

On December 11, 2006 the National Park Service published a Notice of Intent to Prepare an ORV Management Plan/Environmental Impact Statement for Cape Hatteras National Seashore. The publication of the Notice of Intent opens the public scoping period for the plan/EIS. Also in February 2007, public scoping meetings were held to further solicit public input into the long-term ORV management plan/EIS.