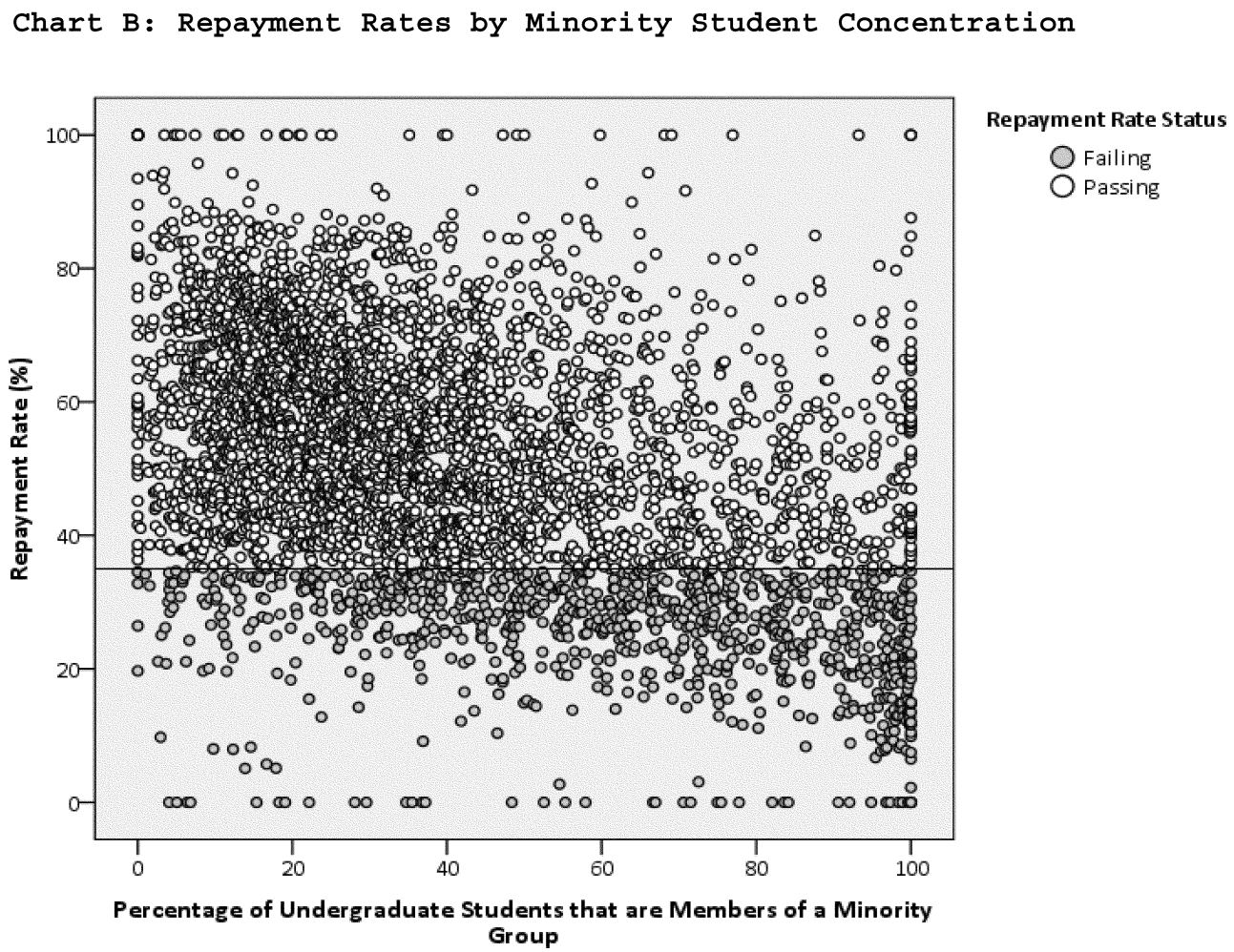
On page 34464, Chart B is corrected to read as follows:



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Source: NSLDS and IPEDS.

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Dated: January 18, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–1245 Filed 1–20–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD85

Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore—Off-Road Vehicle Management

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates off-road vehicle (ORV) routes and authorizes limited ORV use within Cape Hatteras National Seashore (Seashore) in a manner that will protect and preserve natural and cultural resources, provide a variety of safe visitor experiences, and minimize conflicts among various users. Under National Park Service (NPS) general regulations, the operation of motor vehicles off of roads within areas

of the National Park System is prohibited unless authorized by special regulation.

DATES: This rule is effective February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954. Phone: (252) 473–2111 (ext. 148).

SUPPLEMENTARY INFORMATION:

Background

Description of Cape Hatteras National Seashore

Situated along the Outer Banks of North Carolina, Cape Hatteras National Seashore was authorized by Congress in 1937 and established in 1953 as the nation's first national seashore. Consisting of more than 30,000 acres distributed along approximately 67 miles of shoreline, the Seashore is part of a dynamic barrier island system.

The Seashore serves as a popular recreation destination where visitors participate in a variety of recreational activities. The Seashore also contains important wildlife habitat created by dynamic environmental processes. Several species listed under the Endangered Species Act (ESA), including the piping plover, seabeach amaranth, and three species of sea turtles, are found within the park.

Authority and Jurisdiction

In enacting the National Park Service Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*), Congress granted the NPS broad authority to regulate the use of areas under its jurisdiction. Section 3 of the Organic Act specifically authorizes the Secretary of the Interior, acting through the NPS, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * * .''

Off-Road Motor Vehicle Regulation

Executive Order (E.O.) 11644, Use of Off-road Vehicles on the Public Lands, was issued in 1972 in response to widespread and rapidly increasing off-road driving on public lands ''often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.'' E.O. 11644 was amended by E.O. 11989 in 1977 to add a provision that allows agency heads to immediately close areas or trails to off-road vehicle use if the agency head determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails on public lands.

Section 3 of E.O. 11644 requires agencies to develop and issue regulations and administrative instructions to provide for administrative designation of the specific areas or trails on public lands on which the use of off-road vehicles may be permitted, and of areas in which the use of off-road vehicles is prohibited. Those regulations are to direct that the designation of such areas and trails be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. They also must require that such areas and trails:

(1) Be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails may be located in units of the National Park System only if NPS determines that off-road vehicle use will not adversely affect their natural, aesthetic, or scenic values.

The NPS regulation at 36 CFR 4.10(b) implements the E.O. and requires that routes and areas designated for ORV use be promulgated as special regulations and that the designation of routes and areas shall comply with 36 CFR 1.5 and E.O. 11644. It also states that such routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves. The final rule is consistent with these authorities, and with NPS Management Policies 2006, available at: *http://www.nps.gov/policy/MP2006.pdf.*

ORV Use at Cape Hatteras National Seashore

Following the establishment of the Seashore in 1937, beach driving was primarily for the purpose of transportation, not recreation. Because the area was sparsely populated, the number of ORVs on the beach was much smaller than it is today. The paving of NC Highway 12, the completion of the Bonner Bridge connecting Bodie and Hatteras islands in 1963, and the introduction of the State of North Carolina ferry system to Ocracoke Island facilitated visitor access to the sound and ocean beaches. Improved access, increased population, and the popularity of the sport utility vehicle have resulted in a dramatic increase in vehicle use on Seashore beaches.

Since the 1970s, ORV use at the Seashore has been managed through various draft or proposed plans. However, none were completed or published as a special regulation as required by 36 CFR 4.10(b). Motivated in part by a decline in most beach nesting bird populations on the Seashore since the 1990s, in July 2007 NPS completed the Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment (Interim Strategy) to provide resource protection guidance with respect to ORVs and other human disturbance until the long-term ORV management plan and regulation could be completed.

In October 2007, a lawsuit was filed by Defenders of Wildlife and the National Audubon Society against the NPS and the U.S. Fish and Wildlife Service challenging the Interim Strategy. The lawsuit alleged the federal defendants failed to implement an adequate plan to govern off-road vehicle use at the Seashore that would protect the Seashore's natural resources while minimizing conflicts with other users. It also alleged that the federal defendants failed to comply with the requirements of the E.O. and NPS regulations regarding ORV use. The lawsuit was resolved in April 2008 by a consent decree agreed to by the plaintiffs, the federal defendants, and the intervenors, Dare and Hyde counties and a coalition of local ORV and fishing groups.

ORV use is currently managed under the consent decree, which also initially established deadlines of December 31, 2010, and April 1, 2011, respectively, for completion of an ORV management plan/environmental impact statement (plan/EIS) and a final special regulation. The Cape Hatteras National Seashore ORV Management Plan/Draft Environmental Impact Statement (DEIS) was released to the public on March 5, 2010, and a 60-day public comment period followed, beginning on March 12, 2010. On December 20, 2010, the Cape Hatteras ORV Management Plan/Final Environmental Impact Statement (FEIS) was completed, and the NPS Southeast Regional Director signed the Record of Decision (ROD) choosing the NPS Preferred Alternative as the

Selected Action. The public was informed of the availability of the FEIS and ROD through notice in the **Federal Register** on December 28, 2010. The FEIS, the ROD, and other supporting documentation can be found online at the NPS Planning Environment and Public Comment (PEPC) Web site at *http://www.parkplanning.nps.gov/caha.*

In March 2011, the NPS notified the parties to the litigation and the U.S. District Court for the Eastern District of North Carolina (Court) that the final rule would not be completed by the original April 1, 2011, consent decree deadline. The Court has since issued two orders modifying the consent decree to extend the deadline for the effective date of the final rule which is now February 15, 2012.

Notice of Proposed Rulemaking

On July 6, 2011, NPS published a Notice of Proposed Rulemaking for the management of ORVs at Cape Hatteras National Seashore (76 FR 39350). On July 6, 2011, NPS also published the ''Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore'' online at the Seashore's public planning Web site at *http://www.parkplanning.nps.gov/caha.*

The proposed rule for off-road vehicle management was based on the Selected Action as described in the ROD for the FEIS. The proposed rule was available for public comment from July 6, 2011 through September 6, 2011. However, Hurricane Irene made landfall in the area of the Seashore on Saturday August 27, 2011, resulting in widespread damage along the Outer Banks of North Carolina and along the east coast into New England. Because the hurricane may have prevented some affected persons from commenting on the rule by the September 6 deadline, NPS reopened the public comment period on September 9, 2011, and extended the deadline to midnight on September 19, 2011.

Summary of and Responses to Public Comments

Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal at *http://www.regulations.gov.* A total of 21,302 comment documents were received. A summary of comments and NPS responses is provided below, followed by a table that sets out section-by-section the changes NPS has made from the proposed rule in this final rule based on the analysis of the comments.

1. *Comment:* By allowing ORV use at the Seashore, the proposed rule fails to meet the mandates of the Organic Act of preserving and protecting flora, fauna, historic objects, and scenery.

Response: NPS and the courts have consistently interpreted the Organic Act and its amendments as providing that resource conservation shall predominate over visitor recreation, in the event of a conflict between the two. However, the Organic Act gives NPS broad authority and discretion to manage these sometimes conflicting goals and to determine how visitor activities, including recreational activities, may be managed to avoid or minimize impacts to natural and cultural resources. The General Authorities Act, which amended the Organic Act, requires NPS to manage all units as part of a single National Park System for the purpose set out in the Organic Act. Other laws and policies also support NPS's decision to manage recreational use at the Seashore. The laws also give NPS the management discretion to allow impact to park resources and values when necessary and appropriate to fulfill the purposes of a park, as long as the impact does not constitute impairment of the affected resources and values. (NPS Management Policies 2006, Section 1.4.3)

2. *Comment:* By allowing ORV use on large portions of the Seashore, the proposed rule fails to comply with the Seashore's enabling legislation, which said that no plan for the convenience of visitors shall be undertaken that is incompatible with the preservation of the park's unique flora and fauna and physiographic conditions.

Response: The Seashore's enabling legislation states in 16 U.S.C. 459a–1 that ''the administration, protection, and development'' of the Seashore shall be exercised ''subject to the provisions of the NPS Organic Act.'' Accordingly, recreation must be managed in a manner to provide for resource conservation. NPS Management Policies require the NPS to manage activities in the park unit to avoid impairing resources, to avoid or minimize unacceptable resource impacts, and to strive to restore the integrity of park resources that have been damaged or compromised in the past.

The Selected Action, upon which the rule is based, is consistent with this mandate, and is also consistent with the enabling legislation's mandate to preserve the unique flora and fauna and physiographic conditions. Among other things, it specifically provides for actions to preserve sensitive and protected species during important lifecycle stages, thus ensuring their preservation.

3. *Comment:* Implementing ORV restrictions such as vehicle-free areas is in conflict with Section 3 of E.O. 11644 because these restrictions severely limit the variety of access opportunities available for visitors and increase the potential for conflicts among users in the areas that remain open to recreational use.

Response: Section 3 of E.O. 11644 states that the designation of ORV routes ''will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands.'' It does not address or restrict the designation of vehicle-free areas. Nonetheless, in the plan/EIS, NPS has sought to provide for a variety of access opportunities through the designation of ORV routes, as well as providing pedestrians with some vehicle-free areas. Part of the purpose of developing the plan/EIS, as stated in the FEIS, was ''to provide a variety of visitor use experiences while minimizing conflicts among various users,'' which the NPS believes the plan and rule have accomplished.

This rule designates more than half of the ocean beach mileage in the Seashore as seasonal or year-round ORV routes, in addition to 18 soundside access routes, providing a substantial amount of vehicular access. The remaining ocean beach and sound shoreline would be closed to ORV use, which provides a more primitive, vehicle-free visitor experience at the Seashore. The rule also includes measures such as carrying capacity restrictions, reduced speed limits, and parking requirements to reduce the potential for conflicts among Seashore visitors.

4. *Comment:* This regulation conflicts with E.O. 11644 and E.O. 11989, which allow the designation of ORV routes in areas of the National Park System only if the agency determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values. Driving on the beach clearly adversely impacts these values of the Seashore.

Response: The NPS interprets and implements the E.O. term ''adversely affect'' in a manner that is consistent with similar requirements in its NPS Management Policies 2006, under which NPS only allows ''appropriate use'' of parks, and avoids ''unacceptable impacts.'' This rule is consistent with those requirements. It will not impede the attainment of the Seashore's desired future conditions for natural and cultural resources as identified in the FEIS. This rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural

locations within the Seashore. Within the context of the resources and values of the Seashore, ORV use on the ORV routes designated by this rule (which are also subject to resource closures and other species management measures that will be implemented under the Selected Action in the ROD) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of the Seashore. Therefore, this rule is consistent with E.O. 11644 and E.O. 11989. A more detailed explanation of this determination is provided in the ''Compliance with Other Laws and Executive Orders'' section of this rule.

5. *Comment:* All ORVs should be banned within the Seashore.

Response: This rule implements the December 2010 ROD, which, following input from the public during development of the EIS, allowed for continued ORV use. ORV use is a historical use at the Seashore that has been accounted for in various planning documents, including the Seashore's 1984 General Management Plan, which states, ''Selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing in accordance with the existing use restrictions.''

Furthermore, prohibition of ORV use at the Seashore would not have met the stated purpose, need, and objectives of the plan/EIS. The purpose of the plan was to ''develop regulations and procedures that carefully manage ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural processes, provide a variety of visitor use experiences while minimizing conflicts among various users, and promote the safety of all visitors * * * .'' ORV use, if effectively managed, provides convenient access for many appropriate visitor activities at some popular beach sites including, for example, activities that use vehicles to transport substantial amounts of gear for the activity. Prohibition, rather than management, of ORV use could substantially diminish such visitor experience opportunities. Therefore, prohibiting all ORV use would not have met the need as described in the plan.

6. *Comment:* The proposed rule should refer to the Seashore as ''Cape Hatteras National Seashore Recreational Area'' because this is the name that was established through the enabling legislation. The name of the Seashore cannot be changed except by an act of Congress, and removing ''Recreational Area'' from the name changes the original purpose of the Seashore.

Response: On June 29, 1940, Congress amended the 1937 authorizing legislation for ''Cape Hatteras National Seashore'' to permit hunting. The same amendment also changed the formal title of the park to ''Cape Hatteras National Seashore Recreational Area,'' in order to distinguish it from more traditional types of parks where all hunting was generally prohibited, and avoid setting a precedent for other parks.

NPS had already defined a ''national seashore'' as a recreational area in its 1937 brochure explaining the Park, Parkway, and Recreational Study Act, and the anticipated recreational purposes of the park were established by Congress through Acting Secretary of the Interior Oscar L. Chapman's letter to the House Committee on Public Lands. Thus, including the term ''recreational area'' in the title was redundant.

In 1954, NPS authorized the original park name (''national seashore'') to be used for all administrative purposes except for formal memoranda and documents requiring the full legal name. Subsequently, the term ''recreational area'' fell from use in most official references to the park. In 1961, Congress authorized Cape Cod in Massachusetts as the second ''national seashore'' and subsequently created eight more ''national seashores'' between 1962 and 1975, for a total of ten. All such park units that followed Cape Hatteras were officially named ''national seashores.''

Since 1962, Cape Hatteras has been referred to as ''national seashore'' in all Congressional legislation and ''national seashore'' has been the standard nomenclature for this type of park. In any event, this nomenclature question is irrelevant to this rule and the ORV plan. The General Authorities Act of 1970 and the 1978 Redwoods Amendment expressly clarified that all units of the National Park System are to be managed to the same statutory standards and authorities. Furthermore, the NPS motor vehicle regulation at 36 CFR 4.10 does not recognize a ''national seashore recreational area'' unit designation as one of the types of units where ORV use is permitted.

7. *Comment:* The proposed rule violates E.O. 13132 by not providing a federalism summary impact statement.

Response: The proposed rule is consistent with E.O. 13132. It does not have federalism implications that require a federalism summary impact statement. The rule governs the use of federally owned land in the Seashore by individual Seashore visitors. It does not have a substantial direct effect on the State of North Carolina (or any other state), on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

8. *Comment:* The proposed rule violates E.O. 13474, which amended E.O. 12962, specifically section (d), which directs Federal agencies to ensure that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments * * * or any other relevant conservation or management areas or activities under Federal authority, consistent with applicable law. The ORV management plan harms recreational fishermen the most.

Response: E.O. 12962 (1995), as amended by E.O. 13474 (2008), directs Federal agencies, ''to the extent permitted by law,'' to improve the quantity, function, sustainable productivity and distribution of U.S. aquatic resources for increased recreational fishing opportunities. It further directs Federal agencies to ensure that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks or any other relevant conservation or management areas or activities under any Federal authority, ''consistent with applicable law.'' Numerous laws require NPS to conserve wildlife and other natural and cultural resources unimpaired for the enjoyment of future generations and to contribute to the protection and recovery of migratory birds and federally listed threatened or endangered species. As stated in Chapter 1 of the FEIS, these laws include the Organic Act, the Seashore's enabling legislation, the Migratory Bird Treaty Act, and the ESA. In addition, as discussed above, E.O. 11644 (1972), E.O. 11989 (1977), and NPS regulation 36 CFR 4.10, impose additional requirements on the management of ORV use, if it is allowed.

The proposed rule is ''consistent with applicable law'' and places no direct constraints on recreational fishing. Its focus is to authorize ORV use at the Seashore, manage it to protect and preserve natural and cultural resources and natural processes in accordance with applicable laws, and provide a variety of safe visitor experiences while minimizing conflicts among various users. To the extent that management of ORV use would impact fishing and other recreational uses of the Seashore, those impacts were analyzed during the preparation of the plan/EIS.

9. *Comment:* The proposed rule will negatively impact primitive wilderness within the Seashore and does not address Congress's goal of preserving ''primitive wilderness'' at the Seashore as directed in the park's enabling legislation.

Response: The Seashore's 1937 enabling legislation, which indicated that areas not developed for recreational uses ''shall be permanently reserved as a primitive wilderness,'' predates the Wilderness Act of 1964, which established the National Wilderness Preservation System and created a process through which Congress formally designates ''wilderness areas''. At this time, there are no such proposed or designated ''wilderness areas'' in the Seashore. The Seashore's enabling legislation authorizes NPS to provide infrastructure and facilities for visitors in selected areas, as needed to support recreational use (*e.g.,* parking areas, day-use facilities for beach-goers, lifeguarded beaches, boat launch areas, campgrounds, and ORV ramps), while leaving other areas undeveloped in order to retain their primitive character. The Seashore has many undeveloped areas that are preserved and further protected under the Selected Action and this rule. However, since none of these areas are currently designated or proposed wilderness, the ORV management plan/EIS did not address preserving wilderness under the 1964 Act. A study to explore the suitability of designating areas at the Seashore as wilderness is outside the scope of this planning effort and will be addressed during a future process to develop a new General Management Plan for the Seashore.

10. *Comment:* The exclusion of specific fixed-distance, mandatory buffers for wildlife and other natural resource protection in the proposed rule violates the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). By excluding those species protections from the rule, the proposed rule is outside the range of alternatives considered within the FEIS (and specifically the Selected Action, Alternative F, as detailed in the ROD) and has not undergone the ''hard look'' required by NEPA. By implementing this new alternative that was not studied in the FEIS, the proposed rule violates the APA's notice and comment requirements, and applicable E.O.s and regulations.

Response: The proposed rule is based directly on the Selected Action described in the FEIS and ROD. The rule contains those portions of the Selected Action, such as the designated ORV routes and other ORV management requirements, that NPS believes are necessary to comply with the E.O.s and NPS regulations. The species management strategies for the Selected Action, as described in the FEIS, are intended to evolve over time, through the periodic review process, in order to ensure accomplishment of the desired future conditions for park resources as stated in the plan. In response to these comments, NPS has revised the wording of § 7.58(c)(10) to more clearly articulate its commitment to the implementation of the species management strategies and periodic review process described in the Selected Action.

11. *Comment:* NPS and DOI are in violation of NEPA and the E.O.s because they did not publish the full extent of the proposed restrictions in the **Federal Register** and did not provide ample documentation, review time, and meetings or other forms of education for the public.

Response: Not every aspect of ORV management at the Seashore is appropriate for inclusion in this rule; this is why NPS developed an ORV management plan. As discussed above, NPS has already developed an ORV management plan and chosen its Selected Action in the ROD. (This Selected Action was the NPS Preferred Alternative in the FEIS.) As part of the NEPA planning process, the NPS published the DEIS, FEIS, and the ROD on the NPS PEPC Web site at *http://www.parkplanning.nps.gov/caha* prior to publishing the proposed rule.

This rulemaking process is governed by the APA and not by that NEPA process, which is now complete. As required by the APA, the NPS published the proposed regulation in the **Federal Register** (76 FR 39350) on July 6, 2011. As stated in that notice of proposed rulemaking, the purpose of the rule was to implement the Selected Action from the ROD. As required by the APA, the public has had the opportunity to review and comment on those aspects of ORV management that are actually being addressed in the regulation.

This public participation under the APA is in addition to the extensive public participation that has already occurred through the NEPA process and the negotiated rulemaking process. The public participation process is summarized on p. 27 of the FEIS and the expected impact of the proposed alternatives, including the various restrictions proposed in each alternative, is described in ''Chapter 4: Environmental Consequences,'' pp. 325–638 of the FEIS. A complete list of documents, public participation notices, and other information for the project has been and still is available on the NPS PEPC Web site at *http://parkplanning.nps.gov/caha.* (See ''Cape Hatteras National Seashore Off-Road Vehicle Negotiated Rulemaking and Management Plan/EIS'' project page, ''Document List.'')

The APA does not require an agency to conduct public hearings for this type of rulemaking process. However, as part of the NEPA process, the NPS:

- Conducted public informational meetings in February and March of 2007 during public scoping on the plan/EIS, conducted additional informational meetings in January and February 2008 to examine the range of alternatives and seek input on alternative elements;
- Accepted public comments each day during 20 days of negotiated rulemaking advisory committee meetings; and
- Conducted five public hearings during the public comment period on the DEIS, as described on p. C–1 of the FEIS.

The rule is based on the plan/EIS that was developed through this extensive public participation process.

12. *Comment:* The proposed rule does not adequately address the Migratory Bird Treaty Act, the ESA, or the Unfunded Mandates Reform Act (UMRA).

Response: The Selected Action in the ROD, which is the basis for this rule, gave extensive consideration to the protection of migratory birds and federally listed threatened or endangered species. The U.S. Fish and Wildlife Service also reviewed the FEIS and drafted a Biological Opinion which concurred with the NPS *Determination of Effect* on protected species and provided revisions that were included in the ROD. A detailed analysis of the impacts of the management alternatives on threatened or endangered species is provided in Chapter 4, pp. 347–491 of the FEIS. Please see the paragraph entitled Unfunded Mandates Reform Act in the ''Compliance with Other Laws and Executive Orders'' section of this preamble for explanation regarding consistency with UMRA.

13. *Comment:* The proposed rule makes no mention of the America's Great Outdoors Initiative.

Response: The America's Great Outdoors Initiative (AGO) is a program to encourage stewardship and recreational use of public lands. AGO vision statements include the following:

- All children, regardless of where they live, have access to clean, safe outdoor places within a short walk of their homes or schools, where they can play, dream, discover, and recreate. Americans participate in the shared responsibility to protect and care for our unique natural and cultural heritage for the use and enjoyment of future generations.
- Our national parks, national wildlife refuges, national forests, and

other public lands and waters are managed with a renewed commitment to sound stewardship and resilience.

• Our natural areas and waterways, whether publicly or privately owned, are reconnected, healthy, and resilient and support both human needs and the wildlife that depend on them.

AGO does not provide specific guidance related to NPS ORV management decisions and does not supersede or modify the laws, regulations, and E.O.s that apply to ORV management at the Seashore.

The rule is necessary to implement the Selected Action identified in the ROD, to bring the Seashore in compliance with the E.O.s and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to Seashore resources and values. Under the Selected Action, NPS will provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, with controls or restrictions in place to limit impacts on sensitive resources. NPS believes implementation of this rule will be consistent with AGO's vision of stewardship and appropriate recreational use of public lands.

14. *Comment:* Subjecting vehicles to search and inspection for equipment and requiring individuals to partake in an in-person education program to obtain a permit violates E.O. 12988 (Civil Justice Reform).

Response: As described in the ''Compliance with Other Laws and Executive Orders'' section of this preamble, the provisions of this rule are consistent with E.O. 12988. Note, however, that E.O.12988 generally applies only to civil matters, and violations of this regulation, as with other NPS regulations, would be criminal matters to which this E.O. does not apply.

15. *Comment:* The rule does not comply with the following:

• Regulatory Flexibility Act. There was not adequate consideration given to economic impacts, both direct and indirect, nor to cumulative impacts of small businesses on the islands.

• Antideficiency Act. The rule makes forward looking statements about infrastructure improvements which NPS claims will lessen the economic impacts. There are no funds in the NPS appropriated budget to pay for these improvements.

• Architectural Barriers Act of 1968. A large number of those submitting comments on the DEIS specifically expressed concerns about people with disabilities and others who are unable to walk long distances and would no longer be able to enjoy the Seashore.

Response: Under 5 U.S.C. 605(b), the Regulatory Flexibility Act permits an agency to certify that a proposed rule would not have a significant economic impact on a substantial number of small entities, if the preliminary analysis supports such a decision. NPS performed the required economic analysis and provided the above certification in the proposed rule. NPS provided the Office of Management and Budget (OMB) with the proposed rule before publication in the **Federal Register**. OMB reviewed and commented on the rule, and approved its publication, indicating that it was consistent with applicable regulatory requirements under its purview.

NPS has included infrastructure and access improvements as an integral part of the ORV plan and regulation, and anticipates that funding for construction of the improvements will come from appropriated NPS program funds such as ''Line Item Construction,'' ''Repair and Rehabilitation,'' or from the Seashore's recreation fees, or from grants. Consistent with the Antideficiency Act, no funds have been obligated or expended for this purpose in excess of appropriations or in advance of their receipt.

The Architectural Barriers Act of 1968, as amended, 41 U.S.C. 4151 *et seq.,* imposes standards on buildings constructed under several types of federal nexus. The rule, which designates routes for ORV use, does not require the construction of any buildings, so the Act does not apply.

16. *Comment:* NPS has failed to adequately address or even recognize the economic impact of the rule. The Region of Influence (ROI) is incorrectly identified. Analysis at the county-wide level masks the impacts that would occur in the Seashore villages, and northern communities such as Kill Devil Hills and Southern Shores should not be included in the ROI.

Response: To gather data for the socioeconomic analysis, NPS conducted a survey of businesses in the Seashore villages and in Kill Devil Hills, Nags Head, and Kitty Hawk. In the business survey, some of the businesses in the three villages north of the Seashore reported that beach closures to ORVs would affect their revenue and would cause revenue losses in the future, so it is not inaccurate to include these communities in the ROI. However, it is true that other businesses in the three northern communities reported that ORV restrictions would have no impact on their business. Since some businesses in the three northern communities reported impacts in the survey, NPS felt it was important to include those in the analysis. To estimate the portion of the economic output in Dare and Hyde counties generated in the ROI, and, within the ROI, the amount generated in the Seashore villages, NPS adjusted the county-level values by the percentages of employment by business section. NPS fully agrees that the impacts will fall mainly on the Seashore villages. For this reason, NPS reported the range of revenue impacts used to calculate the impacts for each alternative separately for the Seashore villages and the rest of the ROI. To measure the economic impacts of the alternatives, NPS used ''IMPLAN,'' a computer software program that simulates how changes in sales and employment in one industry can affect other industries and the regional economy as a whole. Although the results from running the IMPLAN model are presented at the county level, the discussion of each alternative stated that the Seashore villages would experience the majority of the direct impacts. In the discussion of the impacts on small businesses, NPS stated that the impacts will be larger for businesses that depend on visitors who use particular beach access ramps or visit particular beaches that will be closed or restricted under the alternative. The conclusion for each alternative reiterated that the Seashore villages will experience the majority of the impacts and that small businesses may be disproportionately impacted. The analysis forecasts higher adverse impacts on the small businesses than for the ROI as a whole.

In initial meetings shortly before the negotiated rulemaking committee was officially formed and in early meetings with the committee, NPS was told that the economic impacts would be widespread. Members of the local community urged NPS to consider the impacts on Dare County, the State of North Carolina, and neighboring states. NPS chose to narrow the ROI to just the island portions of Dare and Hyde counties, and assessed the resulting indirect and induced impacts on Dare and Hyde counties as a whole.

NPS released the results of these studies and updated relevant sections of the FEIS to reflect them. It is an acceptable NEPA planning practice for newly available results of studies that were not available at the time a DEIS is written to be incorporated in the FEIS. NPS would have prepared a supplemental DEIS for review if there was significant new information relevant to environmental concerns and bearing on the proposed action and its impacts (40 CFR 1502.9(c)(1)(ii)). In this case, however, the study findings were

consistent with the analysis already provided in the DEIS.

17. *Comment:* The economic analysis for the proposed rule is flawed because it does not address the ''ripple effect'' to the local economy and is based on faulty assumptions about visitor spending.

Response: NPS obtained relevant data for impact analysis using IMPLAN, an economic model that specifically calculates the ''ripple effect'' that changes in direct spending by visitors have on other sectors of the economy. According to generally accepted economic theory (Boardman, 1996), these ripple effects should be included in benefit/cost analyses only if they are large enough to change prices in affected markets. Although NPS had no information about possible changes in prices, NPS chose to err on the side of representing all relevant impacts and included these ripple effects in the analysis of impacts. Therefore, NPS believes its analysis of these ripple effects is adequate.

18. *Comment:* Since the proposed rule raised OMB legal or policy issues, OMB may also have concerns about the rulemaking process.

Response: As required by federal regulatory procedures, before NPS published the proposed rule in the **Federal Register**, OMB reviewed the proposed rule and the ''Benefit-Cost Analysis of Proposed ORV Use Regulations at Cape Hatteras National Seashore'' and approved the publication of the proposed rule. OMB also reviewed the final rule and the ''Benefit-Cost Analysis of Final ORV Use Regulations at Cape Hatteras National Seashore'' and approved the final rule for publication in the **Federal Register**.

19. *Comment:* The ORV permit requirements should require approval by OMB.

Response: The NPS special park-use permit program allows for a variety of activities including, but not limited to, ORV use, special events, recreational activities, commercial filming and agricultural use, to be authorized through a permit. The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that OMB review and approve forms used by agencies to collect information used by the Superintendent to make an informed decision whether to approve or deny a permit request. OMB has approved NPS use of application forms until June 2013 and issued an approval number of 1024–0026. Prior to their expiration, NPS will initiate the renewal process, which will include publishing a **Federal Register** notice soliciting public comments on the current applications.

20. *Comment:* The public was denied opportunities to comment on the economic impact analysis, including the benefit-cost analysis, during the ORV management planning and rulemaking processes.

Response: The DEIS, which was developed and open to public comment through the NEPA process, contained a socioeconomic impact analysis of the proposed management alternatives (Chapter 4, pp. 561–568). The DEIS was open to public review and comment for 60 days, during which NPS received numerous comments on the analysis. A separate report titled ''Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore'' was prepared, as required, for the proposed rule and posted online at *http://www.parkplanning.nps.gov/caha,* on July 6, 2011, the same date the proposed rule was published in the **Federal Register**. The public's opportunity to comment on the proposed rule included the ability to comment on the benefit-cost analysis and other documents and studies that were used to form the basis for the rule.

21. *Comment:* The small business survey conducted for the proposed rule was not completed and published before the public comment period, and therefore there was insufficient time for public review and comment. Several local businesses were never consulted or contacted and the estimates are based upon flawed sample data.

Response: NPS contracted with RTI International to conduct a small business survey to provide information for the preparation of the FEIS. A representative cross-section of businesses was surveyed, but not all businesses. This is standard methodology for such a survey. RTI also conducted a survey of Seashore visitors and conducted counts of vehicles using the ocean-side beach access ramps and counted visitors using selected beaches at the Seashore. The results of these studies were incorporated into the plan/FEIS, and the reports were made available to the public on December 23, 2010 when they were posted on the RTI Web site at *http://rti.org/publications/publications.cfm* and on the NPS PEPC Web site at *http://www.parkplanning.nps.gov/caha*. The Seashore issued a press release on December 23, 2010, announcing the availability of these reports. It is not unusual for newly available results of studies that were not available at the time a DEIS is written to be incorporated into the FEIS. The NPS would have prepared a supplemental EIS (with an accompanying public comment period) for review if there was significant new information relevant to environmental concerns and bearing on the proposed action and its impacts (40 CFR 1502.9(c)(1)(ii)). In this case, however, the study findings did not provide significant new information and were consistent with the analysis provided in the DEIS. Therefore, a supplemental EIS was not prepared. The public was given the opportunity to comment on any completed studies or data used in the planning process during the public comment periods for the DEIS and the proposed rule.

22. *Comment:* The economic impact requirement of $100 million is not a fair measurement for the area and should be decreased based on the area to which the proposed rule will apply.

Response: Under E.O. 12866, agencies are required to submit an economic analysis of certain ''significant'' regulations to the OMB. E.O. 12866 establishes a number of different criteria under which a regulation is determined to be ''significant''. The economic impact threshold level of $100 million for analyzing impacts of the rule is one of those criteria. Another criterion for determining that a regulation is ''significant'' for purposes of triggering OMB review under the E.O. is whether a regulation raises novel legal or policy issues. This rule was determined to be significant because it was determined that it raised novel legal or policy issues. The $100 million threshold was not the basis for which this rule was reviewed under Executive Order 12866 and had no impact on the level of analysis and review that this rule received.

23. *Comment:* The economic impact analysis is flawed because there is limited information regarding the number of vehicles or visitors that accessed the Seashore before increased access restrictions, which began in 2003, several years before the Interim Strategy. Without information before 2003, the baseline assessment is skewed.

Response: Reliable data on the number of ORVs using Seashore beaches before 2003 was not available and is not directly relevant to this study. As part of the NEPA planning process, NPS developed a set of alternatives for management of ORVs in the Seashore that included two no-action alternatives (the Interim Strategy and the consent decree) and four action alternatives, and identified Alternative F as the NPS Preferred Alternative in the plan/EIS. The Interim Strategy was implemented in 2006–2007 and the consent decree was implemented in 2008–2010, while the plan/EIS was being developed. These no-action alternatives

implemented in 2006–2010 serve as the baseline for comparison of the action alternatives, including the NPS Selected Alternative F that is the basis for this rule. Section 2.3 of the ''Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore'' describes how NPS evaluated visitation and ORV use information for the range of management alternatives considered in the plan/EIS. NPS believes that the methodology and information sources described in the benefit-cost analysis provide an adequate basis for assumptions about baseline visitation.

24. *Comment:* The ecosystem and the associated tourism play an important role in the economy of the Seashore. Protection of this environment would be beneficial to the Seashore's economy.

Response: While the economic analysis of this rule did not quantify potential benefits from the protection of the Seashore's ecosystems and the environment resulting from the proposed actions, the FEIS did account qualitatively for these benefits, which were considered in choosing the NPS Preferred Alternative as the Selected Action in the ROD, upon which this rule is based.

25. *Comment:* The four areas of the Seashore that the North Carolina Beach Buggy Association had proposed as potential Traditional Cultural Properties (TCPs) were not considered by NPS during the ORV management planning and rulemaking processes. The National Historic Preservation Act (NHPA) of 1966 requires Section 106 review as part of the NEPA process.

Response: As required by Section 106 of the NHPA, NPS consulted with the North Carolina Department of Cultural Resources, State Historic Preservation Office (SHPO), during the NEPA process. The SHPO sent a letter to the Seashore on April 6, 2010, which indicated that it had reviewed the DEIS under Section 106 of the NHPA, that it was aware of ''no historic resources which would be affected by the project,'' and that it had no comments. The Seashore has also completed a number of studies meant to identify historic resources, including a Historic Resource Study, an Ethnohistorical Description of the Eight Villages Adjoining Cape Hatteras National Seashore, and an Ethnographic Study Analysis of Cape Hatteras National Seashore. While preparing the plan/EIS, NPS determined the areas ineligible as TCPs and provided its determination to the SHPO, which offered no opinion.

26. *Comment:* It was not necessary for the NPS to consult with the Tuscarora Indian tribe since Tribal members never lived at Cape Hatteras.

Response: The Presidential Memorandum of April 29, 1994 and E.O. 13175 on Consultation and Coordination with Indian Tribal Governments require NPS to maintain a government-to-government relationship with federally recognized tribal governments. In this case, the Seashore is mandated to consult with the Tuscarora Indian Tribe, since it is the only federally recognized tribe affiliated with the Seashore.

27. *Comment:* Since Pea Island is technically owned by the NPS (although controlled by U.S. Fish and Wildlife Service), it should be included as a vehicle-free area in the Seashore.

Response: Pea Island National Wildlife Refuge (Refuge) is administered by the U.S. Fish and Wildlife Service, and NPS does not direct the management of visitor use at the Refuge. Therefore, NPS regulations (including the designation of ORV routes) do not apply at the Refuge.

28. *Comment:* The proposed rule does not reflect the will of the people that was expressed during the public hearings and comment period for the DEIS. A large percentage of the people who spoke during the public comment period preferred that ORV and pedestrian access take priority over resource protection. Why were those numbers not considered more in the proposed rule?

Response: While the majority of the members of the public who spoke at the DEIS public hearings supported ORV access over resource protection, statements made at the hearings represent only a subset of the over 15,000 pieces of correspondence that NPS received on the DEIS. Under NEPA, all comments are considered with equal weight, regardless of whether they were handwritten, electronic, or spoken.

NPS received thousands of comments supporting increased ORV access and thousands calling for increased resource protection with greater restriction of ORV use than NPS had proposed. Although NPS reviewed and considered these comments and made changes to the Preferred Alternative based on them, the decision to revise the Preferred Alternative was based on the substance and merit of the comments, not merely the number of comments received. The NPS must base its decision on applicable legal authorities and policies, available scientific information, and other substantive concerns, not the relative popularity of one alternative over another. These changes were subsequently reflected in the FEIS and the Selected Action in the ROD, which formed the basis for this rule.

29. *Comment:* NPS should not accept form letters orchestrated and submitted by advocacy groups or comment letters on the proposed rule that failed to comply with NPS requirements that all comments include the agency name and the Regulation Identifier Number (RIN) in the body of the comments.

Response: The purpose of emphasizing the use of the identification information was to ensure that comments made their way to the appropriate place for consideration, analysis, and response. The agency name and RIN information were automatically included in all comments that were received through the Federal eRulemaking Portal at *http://www.regulations.gov*. Comments that were mailed or hand delivered to the Seashore in accordance with the stated deadlines were accepted with or without the RIN, as long as they were clearly applicable to the proposed ORV rule at the Seashore.

30. *Comment:* Supporting documents, public comments, and transcripts of public hearings should have been added to the public docket posted at *http://www.regulations.gov,* as they contain information relevant to the proposed rule.

Response: The proposed rule was based directly on the Selected Action identified in the ROD, which was developed through the NEPA process. As stated in the July 6, 2011, **Federal Register** notice for the proposed rule, the FEIS, the ROD, and other supporting documentation can be found online at *http://www.parkplanning.nps.gov/caha* and are part of the public record for the plan/EIS.

31. *Comment:* NPS should create an advisory committee of local residents, ORV representatives, and local officials to work with NPS in determining future resource closures, dates for seasonal ORV restrictions, ORV route boundaries, and other ORV management matters.

Response: Creating a standing ORV management advisory committee under the Federal Advisory Committee Act (FACA) was considered but dismissed as a reasonable alternative during the preparation of the plan/EIS. Section 2(b)(2) of FACA restricts the establishment of such committees to situations ''when they are determined to be essential.'' The NPS does not believe a standing advisory committee is essential because this rule, once established, will provide the framework for ORV management at the Seashore.

When NPS did establish a negotiated rulemaking advisory committee to assist NPS in developing alternatives for the

ORV management plan and rule, the committee represented a wide range of interests, and accordingly their points of view were often contradictory. That committee was unable to reach consensus on the matters before it. Therefore, due to the extremely polarizing nature of ORV use at the Seashore, there would be a strong probability that a similar ORV management committee would not be able to provide NPS with clear and consistent actionable advice, and managing the committee would require a commitment of staff time and funding that could not be sustained over the life of the plan.

32. *Comment:* The comment period should have been extended 30 to 60 days because of Hurricane Irene.

Response: The 60-day public comment period for the proposed rule opened on July 6, 2011, and closed on September 6, 2011. With 11 days remaining in the comment period, Hurricane Irene struck the Outer Banks area early on Saturday, August 27, 2011. Thousands of public comments had been received before the hurricane reached the Outer Banks. On September 9, 2011, NPS published a **Federal Register** notice announcing it would reopen the public comment period until September 19 to allow more time (*i.e.,* 13 more days) for those who may have been affected by Hurricane Irene to submit comments. NPS acknowledges that many Outer Banks residents, property owners, and businesses were impacted by Hurricane Irene, and believes that reopening the comment period for the length of time described above was an appropriate response to the circumstances.

33. *Comment:* Numerous commenters proposed various changes to the designated routes, including adding more year-round vehicle-free areas or increasing vehicular access to popular fishing areas.

Response: Comments on designated ORV routes in the proposed rule were nearly identical to those received on the DEIS. While finalizing the FEIS, NPS thoroughly considered these comments and made revisions to the NPS Preferred Alternative, which was the Selected Action in the ROD and formed the basis for this rule. NPS believes this process has identified an equitable balance of vehicle-free areas and ORV routes that provides for both resource protection and a variety of visitor experiences. Further information on how NPS considered and designated routes and areas can be found in the FEIS (p. C–115).

34. *Comment:* NPS should reduce the size of the buffer distances used to protect beach nesting wildlife so that closures are smaller and recreational access is allowed along the shoreline past the nesting areas.

Response: Resource closures are established to provide each protected species with access to key habitat during critical points in its annual cycle. As described in the FEIS, the buffer distances are intended to provide adequate protection to minimize the impacts of human disturbance on nesting birds and chicks in the majority of situations, given the level of visitation and recreational use in areas of sensitive wildlife habitat at the Seashore and issues related to noncompliance with posted resource protection areas.

The buffer distances were developed after consideration of the best available science, which includes existing guidelines and recommendations, such as the Piping Plover Recovery Plan (USFWS 1996a) and the U.S. Geological Survey (USGS) Open-File Report 2009–1262 (2010), also referred to as the ''USGS protocols,'' on the management of species of special concern at the Seashore, as well as relevant scientific literature (research, studies, reports, *etc.*). In addition, buffer distances were developed using the practical knowledge gained by NPS resources management staff during two years of implementing the Interim Strategy (2006–2007) and three years implementing the consent decree (2008–2010).

35. *Comment:* The Selected Action, Alternative F, was biased toward environmental concerns, rather than recreation.

Response: The Selected Action, as described in the ROD, includes the combination of ORV routes and requirements and species management strategies that best addresses the stated purpose, need, and objectives of the plan/EIS. NPS is obligated under its Organic Act and the Seashore's enabling legislation to ensure that the Seashore's beach nesting wildlife species are sufficiently protected from the impacts of ORV use and human disturbance to ensure that those species are conserved and remain unimpaired for the enjoyment of future generations.

As stated in NPS Management Policies 2006, Section 1.4.3, Congress recognizes that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired. Congress has therefore provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to predominate. This is how courts have consistently interpreted the Organic Act.

36. *Comment:* The species protection measures are based on incomplete science such as the ''USGS protocols,'' which are not peer reviewed science.

Response: NPS guidelines require that all scientific and scholarly information disseminated to the public in any format meets the requirements of NPS Director's Order 11–B: *Ensuring Quality of Information Disseminated by the National Park Service,* which may require peer review for activities and information used in the decision-making process. However, there is no requirement that all information used in a NEPA document be peer reviewed.

The FEIS does not state that the USGS protocols are the primary source of information used in the plan. NPS used a multitude of sources in the development of the species protection strategies contained in the FEIS, in addition to the professional experience of Seashore staff implementing various species management measures under the Interim Strategy and the Consent Decree.

As noted in the References section of the FEIS, the majority of the research that was relied upon was from peer-reviewed journals and official agency publications, such as the U.S. Fish and Wildlife Service species recovery plans. However, NPS did review and incorporate the results of several studies that were completed by university researchers as part of their graduate theses or doctoral dissertations, as many of these research projects involved species found at the Seashore and also occurred in similar coastal or barrier island ecosystems.

NPS believes the FEIS contains information of maximum quality, objectivity, utility, and integrity and is therefore in compliance with the Information Quality Act and the OMB, DOI, and NPS policies and guidelines that address the Act.

37. *Comment:* The definition of *ORV corridor* in the proposed rule does not sufficiently protect wildlife. The definition in the proposed rule has the effect of setting aside far more area for driving than it did in the FEIS, when it was clearly modified by the establishment of Species Management Areas.

Response: The NPS has revised the definition of *ORV Corridor* in the final rule to better describe the physical boundaries of the ORV corridor on the beach and to ensure that the definition is consistent with the intent of the language in the FEIS and ROD, thereby providing a sufficient level of wildlife protection. Instead of using Species

Management Areas (SMAs), the NPS revised the Preferred Alternative (FEIS p. 79–80) and the resulting Selected Action in the ROD to provide more intensive monitoring and response to changes in bird activity rather than less intensive monitoring with larger and longer-lasting closures. The purpose of this change was to simplify the plan and to lessen the amount of time that designated ORV routes would be affected by resource closures, while still providing sufficient protection for wildlife, especially during critical life stages.

38. *Comment:* There should be corridors to provide access through and around areas of resources closures. The Selected Action, Alternative F, will result in less shoreline available for recreation, resulting in crowding and user conflict.

Response: During public comment on the DEIS, some commenters recommended providing a corridor through all species resource closures and buffers. A buffer or resource closure is an area surrounding a sensitive resource, such as bird nests or chicks, which is closed to visitor access during critical life cycle stages to reduce human disturbance and the risk of mortality due to pedestrians and ORVs. Any passages, corridors, or pass-throughs that cut directly across or through a resource closure would essentially undermine the biological function of the closure and could render it compromised, perhaps even useless, to the species it is meant to protect, particularly if all buffers were to include ORV corridors. Therefore, including an ORV corridor through resource closures was not included in the range of alternatives, as it would violate the mandate to conserve wildlife and other park resources under the Organic Act, the Seashore's enabling legislation, the E.O.s on ORV management, and 36 CFR 4.10.

39. *Comment:* Vehicle traffic should be routed around nesting sites using established roads in order to avoid impacts to wildlife.

Response: The FEIS calls for the use of species-specific buffer distances to minimize human disturbance and protect nesting areas. In many cases, the buffer, once established, will preclude access along the beach adjacent to a nest site, particularly if the beach is narrow. However, in some cases, such as on a wide beach or inlet spit, there may be sufficient distance between the nesting area and the shoreline to allow continued access when the prescribed buffers are implemented. When shoreline access is temporarily closed to protect a particular nest site, ORV traffic will be able to continue to use open routes, which connect to established roads, in order to access other locations that are open to ORV use.

40. *Comment:* The required training and ORV permits should be available at multiple locations and online, not just ''in person'' as indicated in paragraph 7.58(c)(2)(v). Requiring the education to be obtained ''in person'' could cause undue delays for visitors, especially when there is a high influx of visitors. Once an individual has completed the education program, they should not have to complete the education program again in the following year(s) or weeks, if renewal of a weekly permit is desired.

Response: The NPS has modified paragraph 7.58(c)(2)(v) of the rule by removing the ''in person'' language to provide the Superintendent with greater flexibility for administering the ORV permit issuance procedures. The objective of the education program is to ensure ORV operators know the rules and to improve compliance with ORV and resource protection requirements.

NPS will initially require that all permit applicants take the education program in person in order to ensure completion of the program, and applicants will be required to take the education program annually for annual permits, or once per year if an applicant obtains one or more 7-day permits in a year, assuming the applicant has committed no violations since last taking the education program. Through the periodic review process, the NPS will evaluate the effectiveness of the education program in achieving its objectives and could at some point, if appropriate, consider changes in the delivery method or frequency of the education requirement.

41. *Comment:* The Seashore should require education for all visitors, not just ORV users.

Response: The education requirement in the rule applies specifically to persons applying for an ORV permit, as NPS believes that the education program will improve compliance with the ORV regulations. As indicated in Table 8 of the FEIS, NPS will also develop a new voluntary (*i.e.* not mandatory) resource education program targeted toward pedestrian beach users.

42. *Comment:* NPS should consider alternatives to a permit fee, including alternative ways for the park to generate revenue, such as collecting tolls at the Seashore. If ORV users are going to be charged a user fee, then all visitors should have to pay a fee.

Response: While preparing the plan/EIS, NPS considered a variety of alternative elements related to ORV permits and fees and then considered public comments on the issue before determining the Selected Action in the ROD. The idea of an entrance fee for the Seashore was discussed thoroughly during the negotiated rulemaking process and was dismissed primarily due to administrative and financial obstacles.

Establishing an entrance fee would require NPS to install and staff entrance gates in the Seashore to collect entrance fees. NPS would then need to accommodate thousands of local residents that need to travel through the Seashore to gain access to their property. The logistics of collecting entrance fees from all visitors would result in delays at entrances and would restrict travel along NC–12. In addition, the Seashore would only be able to retain a portion of the entrance fees collected and generally those funds are not available to support key functions associated with an ORV management program, such as law enforcement, maintenance of routes or parking lots, or resource management. The fee paid for a Seashore ORV permit will be collected and retained under the NPS special park uses cost recovery authority to support the various ORV management program functions.

43. *Comment:* Outer Banks residents should not be required to obtain an ORV permit, or at least should not have to pay a fee.

Response: As a unit of the National Park System, the Seashore is open on an equal basis to all members of the public, regardless of where they live. Therefore, the cost of ORV permits would be the same for all ORV users and would not vary based on their place of residence. Additional information on how the permit system would be administered and what fees would be used for can be found in the FEIS (p. C–70).

44. *Comment:* ORV permits should be issued to individuals rather than vehicles.

Response: The option of issuing a permit to the person that would be usable in any vehicle was considered during the development of the plan/EIS, but eventually eliminated. Tracking and verifying that people have ORV permits when the permits are movable between multiple vehicles would require substantially more effort by NPS law enforcement staff. Therefore, to provide the most efficient method for enforcing the permit system, NPS has revised the wording in paragraph (c)(2) of the rule to make it clear that the permit is issued to the individual for a specific vehicle and the ''proof of permit,'' such as a windshield sticker or a hang-tag issued by NPS, must be affixed to that vehicle for use off-road.

45. *Comment:* The ORV permit should not be based on the calendar year, but instead permits should be valid one year from the issue date. Other commenters suggested that the ORV permit be issued for two weeks, similar to the North Carolina recreational saltwater fishing license.

Response: While developing the plan/EIS, NPS considered a variety of options for year-long permits, which included an option for permits that would be valid for one year from the issue date, as well as various options for short-term permits. Based on simplicity, operational efficiency, and visitor convenience, the decision was made to provide visitors with two permit options: annual permits, valid for the calendar year; and 7-day permits, valid from date of purchase.

46. *Comment:* The proposed price range for the ORV permit is too high and will discourage use.

Response: The price for the ORV permit will be based on a cost-recovery system and is not designed to be prohibitive. As a cost recovery program administered under NPS Director's Order 53, the actual price of the ORV permit will be determined by the cost to NPS to implement the ORV management program divided by the estimated number of permits to be sold.

Based on prices at Cape Cod and Assateague Island National Seashores for similar types of permits, it is reasonable to expect the price of an annual ORV permit at Cape Hatteras to be $90–$150 and the price of a weekly permit to be approximately 33%–50% of the annual price (up to 50% if the annual price is lower in the price range; as low as 33% if the annual price is higher in the price range).

47. *Comment:* After paying for a permit, people may not be able to access their preferred area of the Seashore due to resource closures or carrying capacity restrictions.

Response: Obtaining an ORV permit allows a visitor to operate the permitted vehicle on designated ORV routes, but does not guarantee access to all routes all the time. Certain areas of the Seashore may also be closed to ORV access for resource protection during breeding and nesting season for protected species. During peak use periods, such as summer weekends and holidays, there could be occasions where certain popular areas at the Seashore reach their established carrying capacity limit, precluding additional ORV use until a number of vehicles leave the particular area.

While it is true that some popular ORV areas will be inaccessible at certain times during the year, past experience indicates that substantial sections of the beach designated as ORV routes would remain open for ORV use when other sections are temporarily closed.

48. *Comment:* There should be lower fees for less polluting vehicles.

Response: As discussed previously, the price of the ORV permit fee is determined by how much it costs NPS to implement the ORV management plan. Although low emission vehicles are less polluting, they still require the same effort and level of management as standard vehicles. Therefore, offering a reduced fee for low emission vehicles would not meet the NPS goal of recovering the costs of administering the ORV management program.

49. *Comment:* The legality and cost of the NPS inspection and equipment requirements are questionable.

Response: As part of the special regulation, NPS has the authority to develop vehicle and equipment requirements associated with issuance of an ORV permit. Much like state vehicle inspection requirements, Seashore law enforcement personnel may inspect ORVs to ensure compliance with the vehicle requirements contained in the rule. NPS will not randomly search permitted ORVs for required equipment. However, ORV operators must be able to demonstrate compliance with vehicle and equipment requirements upon request.

NPS developed these equipment requirements, which are similar to ORV equipment requirements at other seashore parks, in order to provide for visitor safety and reduce incidences of vehicle strandings. The equipment requirements contained in the rule are minimal and are generally items that most drivers already have in their vehicles. Accordingly, the cost of these items would be negligible.

50. *Comment:* Low speed vehicles, golf carts, or electric vehicles should be allowed.

Response: Under the proposed rule, only vehicles registered, licensed, and insured for highway use and that comply with inspection regulations within the state, country, or province where the vehicle is registered are allowed to operate on the Seashore. While low speed vehicles or neighborhood electric vehicles may be authorized for local use in certain areas, they generally are not registered, licensed, or insured for highway use, and therefore will not be permitted to be used on the Seashore.

51. *Comment:* NPS should clarify what it means in paragraph (3)(v) by requiring a ''jack stand'' be carried. Jack stands are typically used in an automotive repair shop.

Response: NPS concurs with this comment and has revised paragraph (c)(3)(v) of the rule to use the phrase ''jack support board,'' rather than ''jack stand.'' The purpose of the board is to place it under the jack so the jack does not sink into the soft sand if the vehicle operator is attempting to raise the vehicle to change a tire on the beach.

52. *Comment:* Paragraph (6) of the rule should be clarified to indicate that trailers with sleeping, cooking, and bathroom facilities are excluded.

Response: NPS generally concurs with this suggestion; however, NPS believes that trailers with only cooking facilities, such as a grill, are appropriate for beach use. Since camping on Seashore beaches is prohibited, the intent is to preclude the use of trailers that could contribute to violations of the camping prohibition. NPS has revised paragraph (c)(6) of the rule to state as follows: Towing a travel trailer (*i.e.* a trailer with sleeping and/or bathroom facilities) off-road is prohibited.

53. *Comment:* Additional modes of alternative transportation should be included in the rule.

Response: Alternative transportation is outside the scope of the rule; however, as described in the FEIS under Alternative F, transportation strategies such as shuttles and buses could be considered (p. 80). According to the ROD, NPS would consider applications for commercial use authorizations to offer beach and water shuttle services and would apply for funding to conduct an alternative transportation study to evaluate the feasibility of alternative forms of transportation to popular sites.

54. *Comment:* In paragraph (7)(iii), special-use permits for mobility impaired individuals should be valid for all vehicle-free areas, not just in vehicle-free areas in front of villages.

Response: Vehicle-free areas were designed to provide areas for a ''vehicle-free'' experience for park visitors and to provide for resource protection for wildlife. There are many opportunities for mobility impaired visitors to use an ORV for beach access on the designated ORV routes outside of the vehicle-free areas. For mobility impaired visitors who specifically wish to join others that have gathered on foot on a village beach, the special-use permit option is also provided.

55. *Comment:* In paragraph (7)(iii), the requirement that the vehicle must return to the designated ORV route or Seashore road immediately after the transport raises significant safety concerns and is unreasonable. What if the person needs to leave the beach quickly due to weather or health issues?

Response: NPS concurs that the vehicle removal requirement in paragraph (c)(7)(iii) of the proposed rule may create safety concerns or be unreasonable under certain circumstances. NPS revised the wording in the rule to eliminate the vehicle removal requirement and to state that special-use permits are subject to the resource, safety, and other closures implemented under § 7.58(c)(10), and may only be used in a manner consistent with the terms and conditions of the permit.

56. *Comment:* Vehicular access should only be allowed for mobility impaired visitors.

Response: ORV use, if effectively managed, provides convenient access for many appropriate visitor activities at some popular beach sites including, for example, activities that use vehicles to transport substantial amounts of gear for the activity. Allowing only mobility-impaired visitors to operate vehicles on ORV routes would essentially preclude vehicular access for the majority of ORV users at the Seashore.

As noted above, this rule implements the ROD which allows for continued ORV use. Allowing ORV use only by mobility-impaired visitors would not have met the purpose, need, and objectives of the plan/EIS. This approach would also have been inconsistent with the Seashore's 1984 General Management Plan which states that ''selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing in accordance with the existing use restrictions.''

57. *Comment:* The proposed rule makes no mention of the Americans with Disabilities Act (ADA). Special-use permits should be issued to anyone who possesses a legally registered handicapped sticker from their state.

Response: The Rehabilitation Act, 29 U.S.C. 791 *et seq.,* applies to Federal agencies in lieu of the ADA, and NPS is required to provide reasonable access to programs and services at the Seashore. ''Reasonable'' does not necessarily mean ''total'' and must be viewed in the light of the entire program or activity, including its purpose (*i.e.,* providing the visitor with a variety of experiences).

In developing the plan/EIS and rule, NPS recognized that visitors to the Seashore have different needs, and therefore provided that:

- ORVs are allowed on designated routes for those visitors who feel they may require a vehicle to be readily available due to a medical condition or disability or may need to have a family member with them at all times,
- Vehicular transport of mobility-impaired individuals is allowed via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

Anyone who has a license plate or placard issued by a State Division of Motor Vehicles to a mobility-impaired individual is eligible for the special-use permit; however, the special-use permit is not intended to provide blanket vehicular access to all vehicle-free areas. Because the special-use permit is intended only to allow vehicular transport of mobility-impaired individuals via the shortest, most direct distances from the nearest designated ORV route or Seashore road to a predetermined location in a designated vehicle-free area in front of a village, NPS will issue the special-use permit upon request on a case-by-case basis. The specific terms and conditions of each special-use permit, such as the location to be accessed or the duration of the permit, will be determined based on the individual need. These opportunities are consistent with the applicable requirements and NPS policies.

58. *Comment:* Implementation and enforcement of special-use permits will create an undue workload burden on the Superintendent and NPS personnel.

Response: The operational impacts of ORV management and the associated costs for adequate staffing to implement the ORV management plan and rule, including the special-use permit provision, were carefully considered in the FEIS. The specific circumstances described in paragraph (c)(7) for issuance of a special-use permit to authorize temporary off-road driving in areas not designated as ORV routes are limited in scope, number, and frequency of occurrence. The expected special-use permit workload will not add substantially or uniquely to the general ORV management workload that was considered and addressed in the FEIS.

59. *Comment:* Non-emergency use by nonessential vehicles should be prohibited within a resource closure and special-use permits should state that the holder must adhere to all closures.

Response: NPS concurs with this comment. The wording of paragraph (c)(7) of the rule has been revised to state that the special-use permits are subject to the resource, safety, and other closures implemented under § 7.58(c)(10), and may only be used in a manner consistent with the terms and conditions of the permit.

60. *Comment:* NPS should increase its law enforcement presence and focus on enforcing the existing rules, which are sufficient, rather than establishing additional rules.

Response: Without a rule designating ORV routes, NPS is out of compliance with its own regulations and the E.O.s on ORV use. Therefore, this rule is needed to allow continued ORV use at the Seashore. The operational impacts of ORV management and the associated costs for adequate staffing to enforce regulations related to ORV use were considered and addressed in FEIS.

61. *Comment:* NPS should create a 1,000-meter ORV exclusion zone on beaches adjacent to all NPS campgrounds to improve the experience for people staying in the campgrounds and to reduce visitor conflicts and improvement of amenities.

Response: The beach in front of the Ocracoke campground is designated as vehicle-free during periods of high visitor use (April 1 to October 31). At Cape Point, Oregon Inlet, and Frisco Campgrounds, adjacent areas are open to ORV use year-round to maintain an ORV route, and the Seashore knows of no major issues raised related to safety or conflicts at the campgrounds that would warrant additional restrictions. However, the Superintendent has the authority under paragraph (c)(10) of this rule to temporarily restrict access to ORV routes or areas in accordance with public health and safety criteria.

62. *Comment:* The NPS has mischaracterized beach driving as a ''new'' activity in order to justify new infrastructure.

Response: ORV use at the Seashore is not new. NPS briefly summarized the history of ORV use at the Seashore in the preamble to the proposed rule and more extensively in pp. 17–27 of the FEIS. What is new is that the rulemaking process will result in the formal designation of ORV routes in order to comply with the E.O.s on ORV use and with NPS regulation 36 CFR 4.10(b). As described in the FEIS and ROD, new infrastructure will facilitate public use of designated ORV routes and the vehicle-free areas that are not designated for ORV use.

63. *Comment:* An area that is not endangering the wildlife should be set aside for recreational beach driving. Please act responsibly and build a nearby track for racing around in a dune buggy or off-road vehicle.

Response: The E.O.s require that ORV activities on public lands be limited to designated routes or areas and that these designations be based on the protection of resources, the promotion of visitor safety, and the minimization of user

conflicts. Designating an area for recreational driving or racing would not meet these requirements, as these types of vehicular uses would not promote visitor safety, minimize conflicts, or adequately protect resources.

This rule implements the ROD, which did not provide for such use. Establishing this type of use would have been inconsistent with the purpose of the plan/EIS, which was to ''develop regulations and procedures that carefully manage ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural processes, to provide a variety of visitor use experiences while minimizing conflicts among various users, and to promote the safety of all visitors.''

64. *Comment:* Where ORV use is allowed could be based on seasonal indicators such as the summer tourist season or by seasonal nesting patterns for species at the Seashore.

Response: While preparing the plan/EIS, NPS considered a variety of seasonal factors, including shorebird and turtle nesting seasons, and park visitation and rental unit occupancy trends, before determining the dates used for seasonal restrictions in the Selected Action and ROD. The proposed rule was based on and is consistent with the ROD.

65. *Comment:* Seasonal ORV closures of villages should be based on conditions, not arbitrary dates. Dates should not be permanently established in the proposed rule, but should be determined annually by the Superintendent through consultation with Dare County, Hyde County, and North Carolina Department of Transportation officials.

Response: The seasonal dates when ORV use is allowed in front of villages and Ocracoke Campground are not arbitrary. In the ROD, NPS determined these areas would be open to ORVs from November 1 to March 31, when visitation and rental occupancy is lowest. To provide for increased visitor safety and additional opportunities for a vehicle-free experience, these areas will be closed to ORV use from April 1 to October 31 when visitation and rental occupancy is highest.

66. *Comment:* The language describing user conflicts in the proposed rule is inaccurate. NPS would have everyone believe that the people who use the Seashore are in conflict with each other, which is not true.

Response: The existence of visitor conflicts has been documented in many public comments received on the Interim Strategy and on the DEIS. The Seashore also receives letters from visitors complaining about the adverse effects of ORVs on their experience at the Seashore. Some members of the negotiated rulemaking committee represented members of the public that consider the presence of vehicles driving on the beach as a conflict with their experience of the Seashore.

The Seashore does not compile data on numbers of these complaints or incidents of visitor conflict, nor is a quantitative analysis required to manage or minimize it under the E.O.s. As required, the Seashore is designating routes to ''minimize visitor conflict.''

67. *Comment:* ORVs should be limited as to the amount of noise each vehicle can make.

Response: Vehicles used off-road must be registered, licensed, and insured for highway use and must comply with inspection regulations within the state, country, or province where the vehicle is registered.

Most jurisdictions require that vehicles authorized for highway use have functioning exhaust and muffler systems and prohibit modifications to those systems that could result in excessive noise. In addition, 36 CFR 2.12, Audio Disturbances, prohibits the operation of motorized vehicles within NPS units in excess of 60 dBA at a distance of 50 feet from the source, or if below that noise level, noise which is unreasonable. The rule also establishes reduced speed limits, which will reduce vehicular noise.

NPS believes that this combination of restrictions will adequately protect the soundscape in the Seashore.

68. *Comment:* There should be substantial fines for violation of ORV rules and requirements.

Response: Most of the violations observed at the Seashore are considered petty offenses (Class B Misdemeanors) in the Federal Court System, which carry a maximum fine of $5,000.00 and/or six months in prison. The size of fines is also governed by a collateral forfeiture schedule, as approved by the Chief Judge of the Eastern District of North Carolina. The last update to the collateral forfeiture schedule was approved by the court in 2004. NPS will submit an updated collateral forfeiture schedule in the next year or two and may request higher fines for ORV related offenses. In addition to the possibility of fines for the violator, an ORV permit may be revoked for violation of applicable park regulations or terms and conditions of the permit, which includes violation of resource protection closures.

69. *Comment:* Night driving should be prohibited during sea turtle and bird nesting season.

Response: This rule prohibits night driving from May 1 through September 14, which coincides with sea turtle nesting season. The rule also authorizes the Superintendent to permit night driving from September 15 through November 15, but only in areas where no sea turtle nests remain. Pre-nesting and seasonal resource closures described in the FEIS prohibit any ORV use in these areas during the nesting period for sensitive bird species. NPS believes that these measures provide ample nighttime protection for birds, sea turtles, and their nests.

70. *Comment:* Night driving restrictions are not needed, are not based on science, and should not be included in the rule. There has only been one documented case in the history of the Seashore of a sea turtle being hit by an ORV, and that occurred in an area closed to the public while the consent decree night driving restriction was in effect.

Response: The sea turtle management procedures at the Seashore are based on the latest scientific research and are consistent with the latest U.S. Fish and Wildlife Service Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (2008) and North Carolina Wildlife Resources Commission guidelines, which were both developed by scientific experts in the field of loggerhead sea turtle biology and conservation. For example, the loggerhead sea turtle recovery plan recommends that nighttime driving on beaches during the loggerhead nesting season be prohibited because vehicles on the beach have the greatest potential to come into contact with nesting females and emerging hatchlings at night.

Driving on the beach at night has been shown to impact nesting sea turtles and hatchlings both directly and indirectly. Because visibility is reduced at night, there is also the potential for nesting, live stranded, or hatchling turtles to be hit by ORVs operating at night. In addition, because NPS does not have the resources to monitor the entire beach 24 hours per day, the number of recorded incidents resulting from human activities, especially at night, likely underestimates the actual number of incidents that occur.

Even in areas that people do not normally access due to the distance from beach access points, the Seashore has documented vehicle lights and people with lights and cameras causing false crawls—false crawls that would likely not have occurred if ORVs had not brought people to those locations. Park staff have also documented turtles crawling toward vehicle lights after

nesting, false crawls adjacent to fire pits, hatchlings disoriented by fires, hatchlings caught in tire ruts, and vehicles running over turtle nests before morning turtle patrols—some with recorded damage to eggs.

Though it is the only known recorded incident at the Seashore where an adult nesting turtle was struck and killed by an ORV, the recent death of an adult nesting turtle that likely occurred during the early morning hours of June 24, 2010 indicates that the potential does exist for vehicles driving at night to strike and kill nesting turtles.

71. *Comment:* The regulation should allow portions of designated ORV routes to remain open to night driving rather than closing the entire route containing a turtle nest.

Response: NPS concurs with this comment and has revised the rule language to provide the Superintendent with the authority to open ''portions of'' designated ORV routes in sea turtle nesting habitat to night driving if no turtle nests remain within those portions.

72. *Comment:* NPS should close the Seashore to night driving from 10 p.m.–6 a.m. or from one hour after sunset to one hour before sunrise.

Response: As described in the FEIS, NPS studied several different scenarios for establishing the hours and dates for night driving at the Seashore. Restricting night driving between the hours of 9 p.m. and 7 a.m. provides an easily understood, enforceable restriction that provides a balance between conservation and public access by encompassing the majority of the nesting and hatching periods at night while generally allowing turtle patrol staff time to find and protect nests before ORVs are on the beach each day.

73. *Comment:* The rule should allow vehicle operators to avoid turtles rather than closing routes to night driving.

Response: As noted above, night driving has been shown to impact sea turtles, and turtle management experts who developed the loggerhead sea turtle recovery plan recommend that night driving be prohibited during the turtle nesting season. Allowing vehicles in close proximity to sea turtles, especially at night, greatly increases the potential for direct and indirect disturbance to nesting turtles and hatchlings. Therefore, seasonally closing ORV routes (or portions of ORV routes) to night driving is a reasonable method of protecting sea turtles while continuing to provide ORV users with some level of night driving opportunities outside of seasonal restrictions.

74. *Comment:* NPS should require applicants for night driving permits to complete an educational program.

Response: The education program that must be taken in order to obtain the standard ORV permit will address night driving restrictions and reasons for those restrictions. The rule does not require a separate or special permit for night driving.

75. *Comment:* The night driving restriction will curtail other early evening and nighttime activities at the Seashore, such as night sky viewing and beach fires. Lack of ORV access at night will create safety issues by requiring fisherman to walk in the dark to access prime historic fishing grounds.

Response: Seasonal night driving restrictions may affect the ability of visitors to have beach fires in more remote areas of the Seashore after 9 p.m. However, beach fires will still be permitted throughout the Seashore outside of turtle nesting season and in front of villages and other selected beaches during the nesting season. Night driving restrictions will actually improve the ability of visitors to enjoy night sky viewing by reducing the amount of ambient light on the beaches. Although night driving restrictions will preclude fishermen from driving to or from fishing grounds after 9 p.m., nothing in the rule will prohibit fishermen (or other visitors) from carrying a flashlight along the beach outside of resource closures.

76. *Comment:* Camping in self-contained vehicles, vehicles engaged in fishing, and vehicles remaining stationary should be allowed on the beach at night.

Response: Off-season, self-contained vehicle camping in park campgrounds was analyzed in the FEIS in Alternative E. It was not selected in the ROD or included in the rule due to the staffing and operating costs, and the permitting, law enforcement patrol, and maintenance workloads associated with keeping campgrounds open in the off-season for a limited number of campers.

NPS believes that local commercial campgrounds provide appropriate opportunities for off-season vehicle camping. Allowing overnight parking on the beach when night driving is restricted would create patrol and enforcement problems, and would rely on the unrealistic expectation that visitors parked in such locations would strictly comply with the night driving restrictions. NPS does not have the resources to patrol the entire Seashore at night to enforce compliance, and allowing parked vehicles on the beach at night would potentially result in additional compliance problems that would cause adverse impacts to park resources.

77. *Comment:* The Seashore should be closed to commercial fishing. If not closed to commercial fishing, there should be specific restrictions on commercial fishing activity and permits.

Response: The Seashore's enabling legislation provides that the legal residents of the villages have the right to earn a livelihood by fishing within the boundaries of the Seashore. Therefore, NPS allows commercial fishing. However, the activity is managed and permitted in accordance with the eligibility requirements in 36 CFR 7.58(b). Under the ORV rule, commercial fishermen will not be required to obtain a separate ORV permit, but their use of vehicles on Seashore beaches will be regulated through their commercial fishing permit issued by the Seashore.

78. *Comment:* Commercial fishing should be allowed only where there is neither a resource closure nor a lifeguarded beach.

Response: Commercial fishing vehicles have been prohibited from entering either resource closures or lifeguarded beaches for a number of years under the Superintendent's Compendium, and NPS is continuing this prohibition in this rule. To make it clear that the restriction applies to either situation, NPS has revised the wording in paragraph (c)(8)(i) of the rule.

79. *Comment:* The list of ''open ramps'' in paragraph (c)(9) is misleading because it includes proposed ramps that are not yet funded. Since there are ramps, parking areas, and dune walkovers identified as mitigation that are not funded, they should not be included in the rule and the rule should not be implemented until the ramps are constructed. The funds needed to construct the proposed ramps and other infrastructure need to be identified.

Response: Implementation of the FEIS, ROD and this rule will require funding for construction of supporting infrastructure, such as new access ramps and parking areas. NPS anticipates that funding for this construction will come from appropriated NPS program funds such as ''Line Item Construction'' or ''Repair and Rehabilitation,'' or from the park's recreation fees, or from grants. The only designated year-round ORV route at the Seashore that will not have an established ORV access point until after the new ramps are constructed is the area between ramp 59.5 and ramp 63. Therefore, NPS has amended the language in the rule to allow existing ramp 59 to remain open to ORV use

until ramp 59.5 can be funded and constructed.

80. *Comment:* Some areas that have been historically open to ORVs have been excluded from the designated routes listed in the tables in paragraph (c)(9). If NPS moves forward with its plan to close these areas to ORV use, the rule should be revised to provide for an adaptive management process under which NPS could reopen these closures based on visitor use patterns.

Response: The designated ORV routes in paragraph (c)(9) of the rule are taken from Alternative F in the FEIS, which became the Selected Action in the ROD. An NPS regulation, 36 CFR 4.10, requires NPS to designate routes through the promulgation of this special regulation.

NPS received and considered numerous comments on the proposed ORV routes during the review of the DEIS and addressed these public comments in Appendix C of the FEIS. While the FEIS contains adaptive management provisions for protected species management, the designation of ORV routes in a regulation does not lend itself to the principles of adaptive management, which is designed to make iterative adjustments to management techniques as new scientific information becomes available. If, at some point in the future, NPS needs to revise the designated ORV routes, additional NEPA compliance will be required, followed by a new proposed and final rule.

81. *Comment:* Paragraph (c)(9) of the proposed rule (ORV Routes) should be amended to state explicitly that these routes will be subject to mandatory resource, safety, seasonal, and other closures. These clarifications are necessary to make it clear that even if a route is ''open,'' it is still subject to certain closures. By not putting in these clarifications, NPS would violate E.O. 11644.

Response: The wording of paragraph (c)(9) has been revised in the rule to make it clear that the routes and ramps listed are ''designated'' for ORV use, not necessarily ''open.'' Paragraph (c)(10) indicates that routes or areas designated for off-road use are subject to closure or restriction by the Superintendent for a variety of reasons, including natural and cultural resource protection.

82. *Comment:* Section 7.58(c)(10) should be revised to provide the Superintendent with the discretion to authorize enhanced access when he or she determines that such enhanced access is appropriate based upon consideration of the relevant factors.

Response: Paragraph (c)(10) applies specifically to the Superintendent's authority to establish temporary closures of ORV routes as needed to provide for resource protection, public health and safety, and other conditions described in that paragraph. Examples could include pre-nesting closures, carrying capacity closures, and implementation of resource protection buffers described in the FEIS. The Superintendent does not have the discretion to allow vehicular access to areas that are not authorized or designated as ORV routes in the special regulation, except for the specific situations addressed in paragraph (c)(7), related to temporary special-use permits for off-road driving.

83. *Comment:* There is no basis for the NPS to establish parking requirements and reduced speed limits in the rule.

Response: As described in the FEIS, NPS decided to implement the ''one deep'' beach parking restriction as a safety measure to ensure that two-way traffic will not be impeded during times of high ORV use. Although parking multiple rows deep may seem desirable to some visitors, law enforcement staff have documented that it has resulted in parking and traffic congestion, especially on narrow beaches. This congestion blocks vehicle travel lanes, impedes safe traffic flow, fosters disorderly behavior, and results in a potentially dangerous situation in the event of an emergency. Reduced speed limits were implemented to increase pedestrian safety in areas where pedestrians and ORVs are in close proximity to one another.

84. *Comment:* The use of the term ''may'' in paragraph (c)(10), Superintendent's Closures, renders the section permissive rather than obligatory. As written, the proposed rule seems to allow the Superintendent to choose not to impose any closures at all, even in the presence of protected species nests or chicks that would warrant imposition of buffers under the FEIS and ROD. The wording should be revised to state ''the Superintendent shall limit, restrict, or terminate access to routes or areas designated for off-road use'' based on the considerations listed.

Response: The intent of the special regulation is to implement the Selected Action as described in the FEIS and ROD, which includes implementation of the Species Management Strategies described in Table 10–1 in the FEIS. As also described in response #10, the strategies will be periodically reviewed to evaluate their effectiveness. The wording of paragraph (c)(10) has been revised to state that the Superintendent ''will'' temporarily limit, restrict, or terminate access to routes and areas designated for off-road use in accordance with the criteria listed; and wording has been added that states ''the Superintendent will conduct periodic reviews of the criteria and the results of these closures to assess their effectiveness.''

85. *Comment:* The vehicle carrying capacity is objectionable and not necessary, as the capacity of the area regulates itself. Carrying capacity should be struck from the rule.

Response: NPS disagrees with the assertion that ''the capacity of the area regulates itself.'' Numerous documented law enforcement incidents have occurred over the years at popular locations during peak use periods, such as summer holiday weekends, involving crowded conditions, disorganized parking, and unsafe vehicle operation. The 260 vehicle per linear mile limit, based on a physical space requirement of 20 feet per vehicle, will allow enough space for vehicles to be parked side-by-side with their doors open without touching each other and with room for a person to pass between them safely. This, along with the other measures in the rule, will improve visitor experience and visitor safety during busy weekends.

86. *Comment:* The carrying capacity in the proposed rule should be much lower and allow no more than 130 ORVs per mile of Seashore. Language should be added to the rule to clarify that density limitations apply per mile of the beach, and not to the entire National Seashore.

Response: As described above, NPS developed carrying capacity restrictions to work with other measures in the rule to mitigate public safety and visitor experience impacts during peak ORV use periods at the Seashore. The established capacity limits are intended to apply to beach segments open to ORV use at any particular time and not as a method of establishing the total allowable numbers of vehicles in the entire Seashore at any one time. Paragraph (c)(13) of the rule has been revised to make it clear that the carrying capacity applies to that portion of an ORV route that is open for ORV use.

Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, NPS made the following changes in the final rule:

7.58(c)(1)	Changed definition of *ORV corridor* to: • Describe the physical boundaries of the ORV corridor on the beach; and • Ensure that the definition is consistent with the intent of the language in the FEIS and ROD.
7.58(c)(2)(v)	• Removed the ''in person'' language from the rule to provide the Superintendent with greater flexibility for administering the ORV permit issuance procedures.
7.58(c)(7)(iii)	• Allowed ORVs that transport mobility-impaired individuals to remain on the beach, subject to conditions in the special-use permit issued for the activity. • Clarified that these special-use permits are subject to all resource, safety, seasonal, and other closures implemented under paragraph § 7.58(c)(10) of the rule.
7.58(c)(8)(i) and (ii)	• Clarified exactly where commercial fishing permit holders can operate ORVs when engaged in authorized commercial fishing activities.
7.58(c)(9)	• Clarified that designated ORV routes and ramps are subject to resource, safety, seasonal, and other closures. • Indicated that ramp 59 will be temporarily designated as an ORV ramp until ramp 59.5 is constructed. • Edited designated routes table for Hatteras Island to provide a more accurate description of the current conditions at Hatteras Inlet spit, as a result of physical changes to the island caused by Hurricane Irene in August 2011. • Edited designated routes table for Ocracoke Island to provide that ramp 59 is temporarily designated as an ORV ramp until ramp 59.5 is constructed and operational.
7.58(c)(10)	• Clarified the Superintendent's authority to implement and remove closures. • Clarified the criteria for establishing closures. • Added language regarding the periodic review process.
7.58(c)(12)(i)	• Clarified that the Superintendent may open portions of designated ORV routes in sea turtle nesting habitat to night driving from September 15 through November 15, if no turtle nests remain within these portions of ORV routes. The proposed rule stated that only entire routes with no turtle nests remaining could be opened to night driving.
7.58(c)(13)	• Clarified that carrying capacity refers to the maximum number of vehicles allowed on any open ORV route, at one time, and is the length of the route (or, if part of the route is closed, the length of the portion of the route that is open) divided by 6 meters (20 feet).

The Final Rule

This final rule establishes a special regulation as provided in 36 CFR 4.10(b) to manage ORV use at the Seashore. The regulation implements portions of the Selected Action, as described in the ROD, by designating ORV routes at the Seashore, establishing requirements to obtain a permit, and imposing date and time and other restrictions related to operation of ORVs, including vehicle and equipment standards. In addition, the final rule corrects a drafting error at § 7.58(b)(1) to clarify that the definitions found there only apply to § 7.58 and not to the entirety of 36 CFR part 7.

The rule will also delete the definition of permittee at § 7.58(b)(1)(ii) as it is unnecessary and potentially confusing to the public, as the term could be applied to individuals holding different types of permits for different activities. This deletion consequently requires redesignation of the remaining provisions in paragraph (b).

The following explains some of the principal elements of the final rule in a question and answer format:

What is an Off-Road Vehicle (ORV)?

For the purposes of this rule, an off-road vehicle or ORV means a motor vehicle used off of park roads (off-road). Vehicles will need to comply with vehicle and equipment requirements in this rule; vehicles that do not comply are not authorized for ORV use at the Seashore.

Do I need a permit to operate a vehicle off road?

Yes. To obtain an ORV permit, you must complete a short education program, acknowledge in writing that you understand and agree to abide by the rules governing ORV use at the Seashore, and pay the applicable permit fee. Both weekly (7-day, valid from the date of issuance) and annual (calendar year) ORV permits will be available.

Is there a limit to the number of ORV permits available?

No. There will be no limit to the number of permits that the Superintendent could issue. However, use restrictions may limit the number of vehicles on a particular route at one time.

Several of my family members have ORVs that we would like to use on Seashore beaches. Do we need to get a permit for each vehicle?

Yes. You will need to get a permit for each vehicle that you want to use for driving on designated ORV routes. You must display the proof of permit, in a manner and location specified by the Superintendent, on each vehicle that you operate on designated ORV routes within the Seashore. (The proof of permit may be a color coded windshield sticker, hang tag for the rear-view mirror, or some other indicator provided by NPS.)

Where can I operate my vehicle off road?

Once you obtain an ORV permit, you may operate a vehicle off road only on designated routes described in the tables located in § 7.58(c)(9). The tables also provide dates for seasonal restrictions on driving these designated routes. Maps of designated ORV routes will be available in the Office of the Superintendent and on the Seashore Web site.

Does the ORV permit guarantee that all designated ORV routes will be open for me to use?

No. In addition to the referenced seasonal restrictions, ORV routes are subject to temporary resource and safety closures. However, past experience indicates that substantial portions of the beach designated as ORV routes will remain open for ORV use even when other sections are temporarily closed.

Are there any requirements for my vehicle?

Yes. To receive a permit to operate a vehicle on designated ORV routes, your vehicle must:

• Be registered, licensed, and insured for highway use and comply with inspection requirements for the state, country, or province where the vehicle is registered;

• Have no more than two axles and be equipped with tires that are listed or approved by the U.S. Department of Transportation as described at: *http://www.safercar.gov/Vehicle+Shoppers/Tires/Tires+Rating/Passenger+Vehicles*.

• Be equipped with a low-pressure tire gauge, shovel, jack, and jack support board.

Can I drive my two-wheel-drive vehicle on designated ORV routes?

Yes. Four-wheel-drive vehicles are recommended, but two-wheel-drive vehicles will be allowed if, in the judgment of the vehicle operator, the vehicle is capable of over-sand travel.

Can I tow a boat or utility trailer with my vehicle on designated ORV routes?

Yes. Towed boat and utility trailers with one or two axles will be allowed. Boat and utility trailers with more than two axles will be prohibited.

Can I tow a travel trailer (i.e., a trailer with sleeping and/or restroom facilities) on designated ORV routes?

No. Travel trailers will be prohibited on designated ORV routes, as camping at the Seashore is prohibited except in designated campgrounds.

Can I ride my motorcycle off of seashore roads?

No. The operation of motorcycles will be prohibited on designated ORV routes. Motorcycles are generally not capable of travelling through the deep, soft sand or carrying the requisite equipment for self-extraction should they become stuck.

Can I ride my all-terrain vehicle (ATV), or utility vehicle (UTV) off of seashore roads?

No. ATVs and UTVs may not be operated on park roads or designated off-road routes. These vehicles have historically not been allowed to operate within the Seashore. Authorizing their use would interfere with the more significant and traditional use of four-wheel drive pick-up trucks, sport utility vehicles, and other passenger vehicles for off-road access associated with fishing, picnicking, sun bathing, surfing, wading, and swimming.

What is the speed limit on designated ORV routes?

The speed limit will be 15 miles per hour (unless otherwise posted), except for emergency vehicles responding to a call.

Are there right-of-way rules for ORV drivers in addition to those already in effect at the Seashore?

Yes. Vehicles must yield to pedestrians and move to the landward side of the ORV corridor when approaching or passing a pedestrian on the beach. When traveling within 100 feet of pedestrians, ORVs must slow to 5 mph.

Can I drive on designated ORV routes at night?

Yes, but not at all times on all routes. ORVs will be allowed on designated ORV routes 24 hours a day from November 16 through April 30, subject to the terms and conditions established under an ORV permit. From May 1 through September 14, designated ORV routes in potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) will be closed to ORVs from 9 p.m. until 7 a.m. From September 15 through November 15, designated ORV routes in potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) will remain closed to ORVs from 9 p.m. until 7 a.m., however, the Superintendent may reopen portions of designated ORV routes at night if there are no turtle nests remaining. This is a minor change to the dates in the ROD. NPS has decided it will be easier for the public to understand and more convenient to administer if the night-driving dates coincided with some of the seasonal ORV route dates. Therefore, night driving may be allowed beginning on September 15 instead of September 16. Routes that are subject to these night-driving restrictions, as well as routes or portions of routes identified as having no turtle nests remaining, will be shown on maps available in the Office of the Superintendent and on the Seashore Web site.

Can I leave my ORV parked on the beach if I don't drive it between 9 p.m. and 7 a.m. during the dates night-driving restrictions are in effect?

No. During the restricted hours, all vehicles will be prohibited on designated ORV routes, including the beach.

Is a separate permit required for night driving?

No. It will be covered by the ORV permit required to drive on the designated ORV routes in the Seashore.

I have a family member who is disabled or mobility-impaired. Can I use my ORV to drive that family member to the beach where we are gathering, even if it is not designated as an ORV route?

Yes, if you obtain a special-use permit for that purpose. The special-use permit will allow you to transport mobility-impaired individuals to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use. You will be subject to the terms and conditions set forth in the permit. Additionally, you should keep in mind that with a standard ORV permit you will have access to many miles of beach open to ORVs year-round or seasonally. In those areas, vehicles may simply be parked in the ORV corridor.

Are there other types of permits that allow ORV use at the seashore?

Yes. Commercial use authorizations would, as appropriate, also authorize ORV use by commercial use authorization holders, but not their clients. ORV use by commercial fishermen who are actively engaged in a commercial fishing activity would be authorized under the terms of their commercial fishing special-use permit.

In addition, the Superintendent may issue a special-use permit for temporary ORV use to:

• Allow the North Carolina Department of Transportation to use Seashore beaches as a public way, when necessary, to bypass sections of NC Highway 12 that are impassable or closed for repairs;

• Allow participants in regularly scheduled fishing tournaments to drive in an area if such tournament use was allowed in that area for that tournament before January 1, 2009; or

• Allow vehicular transport of mobility impaired individuals via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

Can commercial fishermen drive in vehicle-free areas?

Yes. In keeping with the current practice, commercial fishermen when actively engaged in their authorized commercial fishing activity may be allowed to operate an ORV in a vehicle-free area if the beach is neither subject to a resource closure nor a lifeguarded beach. Lifeguarded beaches will be seasonally closed to ORVs by the Superintendent. Commercial fishing activities and use of associated fishing

gear conflict with the significant concentrated beach use and associated swimming in these areas.

Commercial fishermen who are actively engaged in authorized commercial fishing activity and are carrying and able to present a fish-house receipt from the previous 30 days will be allowed to enter the beach at 5 a.m. on days when night driving restrictions are in effect for the general public.

Compliance With Other Laws and Executive Orders

Use of Off-Road Vehicles on the Public Lands (E.O. 11644 and 11989)

Section 3(4) of E.O. 11644 provides that ORV ''[a]reas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.'' Since the E.O. clearly was not intended to prohibit all ORV use everywhere in these units, the term ''adversely affect'' does not have the same meaning as the somewhat similar terms ''adverse impact'' or ''adverse effect'' used in the National Environmental Policy Act of 1969 (NEPA). In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term ''adverse effect'' includes minor or negligible effects. Section 3(4) of the E.O., by contrast, concerns substantive management decisions and must be read in the context of the authorities applicable to such decisions. The Seashore is an area of the National Park System. Therefore, NPS interprets the E.O. term ''adversely affect'' consistent with its NPS Management Policies 2006. Those policies require that the NPS only allow ''appropriate use'' of parks and avoid ''unacceptable impacts.''

This rule is consistent with those requirements. It will not impede the attainment of the Seashore's desired future conditions for natural and cultural resources as identified in the FEIS. NPS has determined that this rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural locations within the Seashore. Therefore, within the context of the resources and values of the Seashore, ORV use on the ORV routes designated by this rule (which are also subject to resource closures and other species management measures that will be implemented under the Selected Action in the ROD) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of the Seashore.

Section 8(a) of the E.O. requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of the information gathered, agency heads shall from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the E.O. The Selected Action for the FEIS, as described in the ROD, identifies monitoring and resource protection procedures, periodic review, and desired future conditions to provide for the ongoing and future evaluation of impacts of ORV use on protected resources. The park Superintendent has the existing authority under both this final rule and 36 CFR 1.5 to close portions of the Seashore as needed to protect park resources.

Regulatory Planning and Review (Executive Order 12866 and 13563)

This document is a significant rule, and the Office of Management and Budget (OMB) has reviewed the rule in accordance with E.O. 12866 and 13563. The assessments required by E.O. 12866 and the details of potential beneficial and adverse economic effects of the final rule can be found in the report entitled ''Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore,'' which is available online at *http://www.parkplanning.nps.gov/caha*.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) The rule does raise novel legal or policy issues since ORV use at the Seashore has been the subject of litigation in the past; a settlement agreement between the parties was reached in May 2008 and ORV use at the Seashore is currently managed under a court order/consent decree until the final rule is promulgated.

Regulatory Flexibility Act (RFA)

According to the RFA and subsequent court decisions, NPS must assess the impacts on directly regulated entities, but is not required to analyze in a regulatory flexibility analysis the indirect effects on small entities resulting from rules (see Small Business Administration [2003] for a discussion of indirect versus direct impacts). No entities, small or large, are directly regulated by the final rule. Accordingly, NPS certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined by the RFA and interpreted by the courts. This certification is based on information contained in the report entitled ''Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore,'' available for review online at *http://www.parkplanning.nps.gov/caha*. As stated in that report, no entities, small or large, are directly regulated by the final rule, which only regulates visitors' use of ORVs.

As part of the socio-economic impact analysis for the plan/EIS, and based on suggestions from negotiated rulemaking advisory committee members, NPS conducted a small business survey, a visitor intercept survey, and a vehicle count study to supplement the existing sources of socio-economic data that were available in the public domain. We carefully considered this information in analyzing the rule's costs, benefits, and impact.

While close to 100 percent of the rule's economic impacts will fall on small businesses, some popular areas, such as Cape Point, South Point, and Bodie Island spit, would have designated year-round or seasonal ORV routes. The presence of more vehicle-free areas for pedestrians, combined with increased parking for pedestrian access, could increase overall visitation and thereby help businesses to recoup some of the revenues lost as a result of ORV restrictions.

The Selected Action described in the ROD, which is the basis for the final rule, includes a number of measures designed to mitigate the effect on the number of visitors, as well as the potential for indirect economic effects on village businesses that profit from patronage by Seashore visitors who use ORVs. These include: new pedestrian and ORV beach access points, parking areas, pedestrian trails, routes between dunes, and ORV ramps to enhance ORV and pedestrian access; a designated year-round ORV route at Cape Point and South Point, subject to resource closures when breeding activity occurs; and pedestrian shoreline access along ocean and inlet shorelines adjacent to shorebird pre-nesting areas until breeding activity is observed. In addition, NPS will seek funding for an alternative transportation study and consider applications for businesses to offer beach and water shuttle services.

These extra efforts to increase overall access and visitor use under the Selected Action, which were developed with extensive public involvement, should increase the probability that the economic impacts are on the low rather than high end of the range.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA, 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on information contained in the report titled ''Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore,'' available online at *http://www.parkplanning.nps.gov/caha*. This action will result in increased costs for those visitors desiring to operate ORVs on the beach, due to the requirement for an ORV permit. However, the price of the permit will be based on a cost recovery system and will not result in a major increase in costs to visitors. Businesses operating in the Seashore under a commercial use authorization and commercial fishermen operating under a commercial fishing special-use permit will not need an ORV permit.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The designated ORV routes are located entirely within the Seashore, and will not result in direct expenditures by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. No taking of real or personal property will occur as a result of this rule. Access to private property located within or adjacent to the Seashore will not be affected by this rule. This rule does not regulate uses of private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A Federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it will have no potential effect on federally recognized Indian tribes.

On August 27, 2010, the NPS sent a letter to the Tuscarora Nation requesting information on any historic properties of religious or cultural significance to the tribe that would be affected by the FEIS. The Tuscarora Nation has not informed the Seashore of any such properties.

Paperwork Reduction Act (PRA)

This rule does not contain any new collection of information that requires approval by OMB under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with NPS special-use permits and has assigned OMB control number 1024–0026 (expires 06/30/2013). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule implements portions of the FEIS and ROD, and is a major Federal action significantly affecting the quality of the human environment. In accordance with NEPA, NPS prepared the DEIS and the FEIS. The DEIS was released to the public on March 5, 2010, and a 60-day public comment period followed beginning on March 12, 2010. The FEIS was released on November 15, 2010. The NPS Notice of Availability and the EPA Notice of Availability for the FEIS were published in the **Federal Register** on November 15 and November 19, 2010, respectively. The FEIS evaluated six alternatives for managing off-road motorized vehicle access and use at the Seashore, including two no-action alternatives. The ROD, which selected Alternative F, was signed on December 20, 2010, and a notice of the decision was published in the **Federal Register** on December 28, 2010. The purpose of this rule is to implement the Selected Action as described in the ROD. A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement is contained in the FEIS available online at: *http://www.parkplanning.nps.gov/caha.*

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Administrative Procedure Act

This rule is effective on February 15, 2012. Under 5 U.S.C. 553(d), new rules ordinarily go into effect no less than thirty days after publication in the **Federal Register**, except under specified circumstances, including a finding by the agency that there is good cause for making the rule effective earlier. For this regulation, the NPS has determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective no later than February 15, 2012. The NPS has found that good cause exists for this effective date, for the following reasons:

(1) The ROD for the FEIS, which this rule implements, was signed on December 20, 2010, and the public was informed of the availability of the FEIS and ROD through notice in the **Federal Register** on December 28, 2010. Therefore, by February 15, 2012, the public will have had 415 days notice of the NPS decision that forms the basis of this rule.

(2) An integral part of the FEIS and rule is the species management strategies described in the FEIS, which were developed to manage ORV use in a manner conducive to the protection of the migratory birds and sea turtle species that rely on the Seashore's beach habitat for nesting. The shorebird breeding season at the Seashore begins

in early March. Implementation of the rule and the associated species management strategies would be most effective if the designated ORV routes and ORV permit and education requirements were implemented, and signs reflecting the new requirements were installed, prior to the start of the breeding season. A significant change in management procedures and information regarding ORV requirements implemented after the breeding season begins would compromise the efficiency and effectiveness of ORV management and species protection at the Seashore and be confusing to Seashore visitors.

(3) There is a court-approved deadline of February 15, 2012, for the rule to take effect, which would not be met if this rule were further delayed.

There is no benefit in delaying the effective date of this rule, and the above-described harms to the public resulting from a procedural delay of this rule should be avoided. An effective date of February 15, 2012, is therefore warranted.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. In § 7.58:

■ A. Revise the introductory text in paragraph (b)(1).

■ B. Remove paragraph (b)(1)(ii).

■ C. Redesignate paragraphs (b)(1)(iii) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(iv).

■ D. Add paragraph (c).

The revisions and addition read as follows:

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(b) * * *

(1) *Definitions.* As used in this section:

* * * * *

(c) *Off-road motor vehicle use.*

(1) *Definitions.* In addition to the definitions found in § 1.4 of this chapter, the following terms apply in this paragraph (c):

ORV means a motor vehicle used off of park roads (off-road), subject to the vehicle requirements, prohibitions, and permitting requirements described in this paragraph (c).

ORV corridor means the actual physical limits of the designated ORV route in the Seashore. On the landward side, the ORV corridor on Seashore beaches will be marked when possible by posts that are located seaward of the toe of the dune or the vegetation line. On the seaward side, the corridor runs to the water line, which will not be marked by posts unless necessary. Where the ocean beach is at least 30 meters wide above the high tide line, the landward side of the corridor will be posted at least 10 meters seaward of the toe of the dune.

(2) *ORV permits.* ORV permits are a form of NPS special park use permits, which are issued and administered by the Superintendent and for which the NPS charges a fee to recover its administrative costs.

(i) A permit issued by the Superintendent is required to operate a vehicle on designated ORV routes at the Seashore.

(ii) Operation of a motor vehicle authorized under an ORV permit is limited to those routes designated in this paragraph (c).

(iii) There is no limit to the number of ORV permits that the Superintendent may issue.

(iv) Annual ORV permits are valid for the calendar year for which they are issued. Seven-day ORV permits are valid from the date of issue.

(v) In order to obtain a permit, an applicant must comply with vehicle and equipment requirements, complete a short education program in a manner and location specified by the Superintendent, acknowledge in writing an understanding of the rules governing ORV use at the Seashore, and pay the permit fee.

(vi) Each permit holder must affix the proof of permit, in a manner and location specified by the Superintendent, to the vehicle covered by the permit for use off-road.

(3) *Vehicle and equipment requirements.* The following requirements apply for driving off-road:

(i) The vehicle must be registered, licensed, and insured for highway use and must comply with inspection requirements for the state, country, or province where the vehicle is registered.

(ii) The vehicle may have no more than two axles.

(iii) A towed boat or utility trailer may have no more than two axles.

(iv) Vehicle tires must be listed or approved by the U.S. Department of Transportation.

(v) The vehicle must carry a low-pressure tire gauge, shovel, jack, and jack support board.

(4) *Vehicle inspection.* Authorized persons may inspect the vehicle to determine compliance with the requirements of this paragraph (c).

(5) *Certain vehicles prohibited.* The off-road operation of a motorcycle, all-terrain vehicle (ATV), or utility vehicle (UTV) is prohibited.

(6) *Travel trailers prohibited.* The towing of a travel trailer (*i.e.,* a trailer with sleeping or bathroom facilities) off-road is prohibited.

(7) *Special-use permits for off-road driving, temporary use.* Special-use permits issued under this paragraph are subject to resource, safety, and other closures implemented under § 7.58(c)(10), and may only be used in a manner consistent with the terms and conditions of the permit. The Superintendent may issue a special-use permit for temporary off-road vehicle use to:

(i) Authorize the North Carolina Department of Transportation to use Seashore beaches as a public way, when necessary, to bypass sections of NC Highway 12 that are impassable or closed for repairs;

(ii) Allow participants in regularly scheduled fishing tournaments to drive in an area if driving was allowed in that area for that tournament before January 1, 2009; or

(iii) Allow vehicular transport of mobility impaired individuals via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

(8) *Commercial fishing vehicles.* The Superintendent, when issuing a commercial fishing permit, may authorize the holder, when actively engaged in authorized commercial fishing, to operate a vehicle off-road.

(i) An authorization under this paragraph may allow off-road driving on a beach not otherwise designated for ORV use, only if the beach is not subject to a resource closure or is not a lifeguarded beach.

(ii) An authorization under this paragraph may allow off-road driving beginning at 5 a.m. on days when night-driving restrictions are in effect, to set or tend haul seine or gill nets, only if the permit holder is carrying and able to present a fish-house receipt from the previous 30 days.

(9) *ORV routes.* The following tables indicate designated ORV routes. The following ramps are designated for off-road use to provide access to ocean beaches: 2.5, 4, 23, 25.5, 27, 30, 32.5, 34, 38, 43, 44, 47.5, 49, 55, 59, 59.5, 63, 67, 68, 70, and 72. Designated ORV routes and ramps are subject to resource, safety, seasonal, and other closures implemented under § 7.58(c)(10). Soundside ORV access ramps are described in the table below. For a village beach to be open to ORV use during the winter season, it must be at least 20 meters (66 feet) wide from the toe of the dune seaward to mean high tide line. Maps showing designated routes and ramps are available in the Office of the Superintendent and on the Seashore Web site.

BODIE ISLAND—DESIGNATED ROUTES	
YEAR ROUND	Ramp 2.5 (0.5 miles south of the southern boundary of Coquina Beach) to 0.2 miles south of ramp 4.
SEASONAL: September 15 to March 14	0.2 miles south of ramp 4 to the eastern confluence of the Atlantic Ocean and Oregon Inlet.

HATTERAS ISLAND—DESIGNATED ROUTES	
YEAR ROUND	1.5 miles south of ramp 23 to ramp 27. Ramp 30 to ramp 32.5. The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon: soundside ramps 46, 48, 52, 53, 54 and the soundside ORV access at Little Kinnakeet. Ramp 38 to 1.5 miles south of ramp 38. The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Avon and Buxton: soundside ramps 57, 58, 59, and 60. 0.4 miles north of ramp 43 to Cape Point to 0.3 miles west of ''the hook.'' Interdunal route from intersection with Lighthouse Road (*i.e.,* ramp 44) to ramp 49, with one spur route from the interdunal route to the ORV route below. Ramp 47.5 to east Frisco boundary. A soundside ORV access route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet. Pole Road from Museum Drive to Spur Road to Pamlico Sound, with one spur route, commonly known as Cable Crossing, to Pamlico Sound and four spur routes to the ORV route below. Ramp 55 southwest along the ocean beach for 1.6 miles, ending at the intersection with the route commonly known as Bone Road.
SEASONAL: November 1 to March 31	0.1 mile south of Rodanthe Pier to ramp 23. Ramp 34 to ramp 38 (Avon). East Frisco boundary to west Frisco boundary (Frisco village beach). East Hatteras boundary to ramp 55 (Hatteras village beach).

OCRACOKE ISLAND—DESIGNATED ROUTES	
YEAR ROUND	Ramp 59 to ramp 63. After ramp 59.5 is constructed, it will replace ramp 59 for ORV access and the route will be from ramp 59.5 to ramp 63. Three routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens, commonly known as Prong Road, Barrow Pit Road, and Scrag Cedar Road. 1.0 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68. A route from NC Highway 12 to Pamlico Sound located near Ocracoke Campground, commonly known as Dump Station Road. 0.4 miles northeast of ramp 70 to Ocracoke inlet. A route from ramp 72 to a pedestrian trail to Pamlico Sound, commonly known as Shirley's Lane.
SEASONAL: September 15 to March 14	A seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound. A seasonal route at the north end of South Point spit from the beach route to Pamlico Sound.
November 1 to March 31	0.5 mile northeast of ramp 68 to ramp 68 (Ocracoke Campground area).

(10) *Superintendent's closures.* (i) The Superintendent will temporarily limit, restrict, or terminate access to routes or areas designated for off-road use based on one or more of the following criteria:

(A) Public health and safety;

(B) Vehicle carrying capacity and other ORV management considerations;

(C) Natural and cultural resource protection;

(D) Applicable species management strategies including buffer distances; or

(E) Desired future conditions for threatened, endangered, state-listed, and special status species.

(ii) The Superintendent will conduct periodic reviews of the criteria for and results of these closures to assess their effectiveness. The public will be notified of such closures through one or more of the methods listed in § 1.7(a) of this chapter. Violation of any closure is prohibited.

(iii) The Superintendent will remove or relax closures based on the same criteria used for closure.

(11) *Rules for Vehicle Operation.* (i) Notwithstanding the definition of ''Public Vehicular Area'' (PVA) in North Carolina law, the operator of any motor vehicle anywhere in the Seashore, whether in motion or parked, must at all times comply with all North Carolina traffic laws that would apply if the operator were operating the vehicle on a North Carolina highway.

(ii) In addition to the requirements of Part 4 of this chapter, the following restrictions apply:

(A) A vehicle operator must yield to pedestrians on all designated ORV routes.

(B) When approaching or passing a pedestrian on the beach, a vehicle operator must move to the landward side to yield the wider portion of the ORV corridor to the pedestrian.

(C) A vehicle operator must slow to 5 mph when traveling within 30.5 meters (100 feet) or less of pedestrians at any location on the beach at any time of year.

(D) An operator may park on a designated ORV route, but no more than one vehicle deep, and only as long as the parked vehicle does not obstruct two-way traffic.

(E) When driving on a designated route, an operator must lower the vehicle's tire pressure sufficiently to maintain adequate traction within the posted speed limit.

(F) The speed limit for off-road driving is 15 mph, unless otherwise posted.

(12) *Night-Driving Restrictions.*

(i) Hours of operation and night-driving restrictions are listed in the following table:

HOURS OF OPERATION/NIGHT DRIVING RESTRICTIONS

November 16–April 30	All designated ORV routes are open 24 hours a day.
May 1–September 14	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed from 9 p.m. to 7 a.m.
September 15–November 15	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed from 9 p.m. to 7 a.m., but the Superintendent may open designated ORV routes, or portions of the routes, in sea turtle nesting habitat (if no turtle nests remain), 24 hours a day.

(ii) Maps available in the office of the Superintendent and on the Seashore's Web site will show routes closed due to night-driving restrictions, and routes or portions of the routes the Superintendent opens because there are no turtle nests remaining.

(13) *Vehicle carrying capacity.* The maximum number of vehicles allowed on any ORV route, at one time, is the length of the route (or, if part of the route is closed, the length of the portion of the route that is open) divided by 6 meters (20 feet).

(14) Violating any of the provisions of this paragraph, or the terms, conditions, or requirements of an ORV or other permit authorizing ORV use is prohibited. A violation may also result in the suspension or revocation of the applicable permit by the Superintendent.

(15) *Information Collection.* As required by 44 U.S.C. 3501 *et seq.,* OMB has approved the information collection requirements contained in this paragraph. The OMB approval number is 1024–0026. NPS is collecting this information to provide the Superintendent data necessary to issue ORV special-use permits. The information will be used to grant a benefit. The obligation to respond is required in order to obtain the benefit in the form of the ORV permit.

Dated: January 18, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–1250 Filed 1–20–12; 8:45 am]

BILLING CODE 4310–X6–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0859; FRL–9621–1]

Approval and Promulgation of Air Quality Implementation Plans; Missouri; Reasonably Available Control Technology (RACT) for the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Missouri to EPA on January 17, 2007, with a supplemental revision submitted to EPA on June 1, 2011. The purpose of these SIP revisions is to satisfy the RACT requirements for volatile organic compounds (VOCs) set forth in the Clean Air Act (CAA or Act) with respect to the 8-hour ozone NAAQS. In addition to taking final action on the 2007 submission, EPA is also taking final action to approve several VOC rules adopted by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. We are taking final action to approve these revisions because they enhance the Missouri SIP by improving VOC emission controls in Missouri. EPA's final action to conditionally approve the SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, Missouri will be required to revise its rules to address one additional source category, no later than December 31, 2012.

DATES: *Effective Date:* This final rule will be effective February 22, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2011–0859. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; telephone number (913) 551–7214; email address: *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following questions: