

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-CALO-19111; PPWONRADE2, PMP00EI05.YP]

RIN 1024-AE24

Cape Lookout National Seashore, Off-Road Vehicle Management

AGENCY: National Park Service, Interior

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to designate routes for, and manage off-road vehicle use within Cape Lookout National Seashore, North Carolina. Under the National Park Service general regulations, the operation of motor vehicles off roads is prohibited unless authorized by special regulation. The proposed rule would authorize off-road vehicle use at the Seashore through a permit system and establish operational and vehicle requirements.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024-AE24, by any of the following methods:

- Electronically: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Hardcopy: Mail or hand-deliver to: Superintendent, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531.

Instructions: All comments received must include the agency name and RIN for this rulemaking: 1024-AE24. Comments submitted through Federal eRulemaking Portal:

http://www.regulations.gov or submitted by mail must be entered or postmarked before midnight (Eastern Daylight Time) [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] Comments submitted by hand delivery must be received by the close of business hours (5 p.m. Eastern Daylight Time) [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

If you commented on the Draft ORV Management Plan/Draft Environmental Impact Statement, (plan/DEIS) your comments have been considered in drafting the proposed rule. Comments should focus on this proposed rule; comments that refer back to the draft Plan/DEIS will be untimely and will not be considered.

Comments will not be accepted by fax, e-mail, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Patrick Kenney, Superintendent, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531; phone 252-728-2250, extension 3014.

SUPPLEMENTARY INFORMATION:

Background

Description of Cape Lookout National Seashore

Authorized by Congress in 1966 (Pub. L. 89-366), and established as a unit of the National Park System in 1976 (41 FR 39363), Cape Lookout National Seashore (Seashore) is located approximately three miles off the mainland in the central coastal area of North Carolina. Consisting of more than 29,000 acres of land and water from Ocracoke Inlet to Beaufort Inlet, the 56 miles of barrier islands consist mostly of wide, bare beaches with low dunes covered by

scattered grasses, flat grasslands bordered by dense vegetation, maritime forests, and large expanses of salt marsh alongside the sounds. The Seashore serves as a popular recreation destination where visitors participate in a variety of recreational activities. The Seashore also contains important habitat for wildlife created by the Seashore's dynamic environmental processes. Several species listed under the Endangered Species Act, including the piping plover, seabeach amaranth, red knot, and four species of sea turtles, are found within the Seashore.

Authority and Jurisdiction to Promulgate Regulations

In the statute commonly known as the NPS Organic Act (54 U.S.C. 100101), Congress granted the National Park Service (NPS) broad authority to regulate the use of areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior (Secretary), acting through the NPS, to “prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.” 54 U.S.C. 100751(a). In the Seashore's enabling act, Congress directed the Secretary to administer the Seashore “for the general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment.” 16 U.S.C. 459g-4.

Off-Road Motor Vehicle Regulation

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 in response to the 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.” Executive Order 11644 was amended by Executive Order 11989 in 1977, and together they are collectively referred to in this rule as “E.O.” The E.O. requires Federal agencies that allow motorized vehicle use in off-road areas to designate specific areas and routes on public lands where the use of motorized vehicles may be permitted. Specifically, section three of the E.O.

requires agencies to develop and issue regulations that designate the specific areas and trails on public lands where off-road vehicle (ORV) use is permitted, and areas where ORV use is prohibited. The regulations must ensure that the designation of such areas and trails 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. The regulations must also require that the designation of such areas and trails shall be in accordance with the following:

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall 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) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas 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.

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 must comply with the E.O. It also states that ORV routes and use-areas may be

designated only in national recreation areas, national seashores, national lakeshores, and national preserves. The proposed rule is consistent with these authorities and with Section 8.2.3.1

(Motorized Off-road Vehicle Use) of NPS Management Policies 2006, available at:

<http://www.nps.gov/policy/mp/policies.html>.

ORV Use at Cape Lookout National Seashore

ORV use at the Seashore predates the authorization and establishment of the Seashore. Beginning in the 1930s, vehicles were transported to the islands by shallow draft ferries and were used to access fishing grounds.

Today, ORVs provide vehicular access to the Seashore beaches for recreational purposes. ORV routes have been designated and ORV use has been managed through the Superintendent's Compendium, which currently allows for ORV use from March 16 to December 31 (with a closure of the Seashore to ORVs from January 1 through March 15). The Cape Lookout National Seashore General Management Plan (NPS 1980) identified 47 of the 56 miles of the Seashore as appropriate for controlled ORV use. The remaining nine miles on Shackleford Banks is a proposed wilderness area under the Wilderness Act (Pub. L. 88-577) and is managed to preserve its wilderness character and is closed to recreational vehicle use. Currently, of the 47 miles identified as appropriate for ORV use, 2.2 miles are closed to ORV use year-round. Additional areas may be periodically closed to ORV use for resource protection during the bird nesting and fledgling season or turtle nesting and hatching season.

Draft ORV Management Plan/Draft Environmental Impact Statement

The plan/DEIS was released for public comment on May 23, 2014, with the public comment period extended twice through September 19, 2014. This long-term ORV planning effort is based on recognition by the NPS that if allowed, ORVs must be regulated in a manner that is consistent with applicable law and in a manner that appropriately addresses resource

protection, potential conflicts among the various Seashore users, and visitor safety.

The plan/DEIS and other supporting documentation can be found online at

<http://www.parkplanning.nps.gov/california>.

The Proposed Rule

This proposed rule would establish a special regulation pursuant to the E.O. and 36 CFR 4.10(b) that would implement portions of the preferred alternative as described in the plan/DEIS.

The proposed rule would:

- Designate ORV routes and pedestrian-only areas at the Seashore;
- Implement a permit system for ORVs with limits on the number of permits;
- Impose date and time restrictions on the use of ORVs to protect resources and enhance visitor experience; and
- Set vehicle and equipment standards, phasing out sport model All-Terrain Vehicles (ATVs) and Utility Vehicles (UTVs), and
- Allow an additional four ramps on North Core Banks and five ramps on South Core Banks where vehicle traffic could cross between the Beach Route and the Back Route could be constructed.

Based on review of public comments on the plan/DEIS (received through compliance with the National Environmental Policy Act), the proposed rule reflects input received during this planning effort, including the following:

- Closure dates would be consistent to eliminate confusion;
- Seven miles of existing pedestrian only areas would be changed from year-round to seasonal closures (Memorial Day – Labor Day);

- Creation of a designated route for ORVs in front of the Long Point and Great Island cabin camps;
- ORV permits would be valid for ORV use on both North and South Core Banks;
- An annual limit on the number of ORV permits that would be issued, would be determined based on 5 years of data instead of 3 years, and data from years with significant ORV closure events in excess of 14 days (such as a hurricane) would not be used to establish a vehicle cap;
- Night driving on beach ORV routes would not be allowed from 9:00 p.m. - 6:00 a.m. from May 1 to September 14. However, driving on the back routes would be allowed from 5:00am – 10:00pm, and at any time in the Great Island and Long Point cabin camps as defined on the map available at the office of the Superintendent and for review on the Seashore's website at <http://www.nps.gov/calor>;
- Vehicle length restriction would be removed and replaced with a wheelbase limit not to exceed 180 inches;
- Vehicles with a two-stroke engine would be prohibited immediately;
- ATV trailer length limit would be removed and made consistent with vehicle trailer lengths; and
- New prohibitions (including use of sport-model ATV/UTVs, trailers exceeding 30 feet in length and vehicles with wheel base exceeding 180 inches) would be phased in after a one year grace period.

The NPS intends to recover the costs of administering the ORV special use permit program under 54 U.S.C. 103104. In order to obtain a special use permit required to operate a motor vehicle on designated ORV routes in the Seashore, the proposed rule would require ORV operators to pay a permit fee.

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

What is an “Off-Road Vehicle” (ORV)?

For the purposes of this regulation, an “off-road vehicle” or “ORV” means a motor vehicle used off of Seashore roads (off-road). ORVs authorized for use at the Seashore are subject to the vehicle requirements, prohibitions, and permitting requirements described in this proposed rule. However, certain ORVs would be prohibited at the Seashore by this rule; these include motorcycles, tracked vehicles, farm vehicles, vehicles with two-stroke engines, and amphibious ATVs.

In addition, although the Seashore allows ATV and UTV use for transportation within its boundaries, the seashore has determined that the use of these vehicles for performance riding is not consistent with the Seashore’s purpose or NPS *Management Policies 2006* and has proposed phasing out the specific type of ATVs and UTVs that are designed and classified by manufacturers as high performance vehicles. These high performance vehicles are by design faster, noisier, and less safe than utility models. They are by design made for racing, jumping, and moving at high speeds, instead of used as a tool for access to the Seashore. The NPS will not issue ORV permits for these specific types of ATV and UTV vehicles after the expiration of the grace period.

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

Yes. To obtain an ORV permit, you must complete a short educational 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. A permit fee schedule would be developed by the Superintendent. Implementation of the permit system would begin the first full calendar year

after the final regulation becomes effective.

Is there a limit to the number of ORV permits that will be issued?

Yes. Initially, the maximum number of ORV permits that may be issued is 5,500. This number is based on current use levels. In order to ensure that ORV use does not exceed current levels, ORV use would be monitored for the first five years that permits are issued and thereafter capped at the five-year average use level (not to exceed 5,500). Any year in which there is a significant ORV closure (more than 14 days) will not be counted and an additional year of data would be collected and averaged to determine the cap. A permit would allow access to all routes where ORVs are permitted within the Seashore. Permits would be established on a first-come, first-served basis. An annual lottery may be established to equitably allocate permits.

My family has several ORVs that we would like to use on Seashore beaches. Do we need to get a permit for each vehicle?

Yes. You would need to get a permit for each vehicle you plan to use on ORV routes in the Seashore. You would also need to affix the permit to each vehicle in a manner specified by the Superintendent.

Where and when may I operate my ORV?

Once you obtain an ORV permit and an education certificate, you may operate your motor vehicle off road only on the routes described in the tables in the proposed rule. The Seashore would be closed to motor vehicles from December 16 through March 15 of each year. The tables in this rule also provide dates for seasonal restrictions for driving on designated routes. If deemed necessary by the Superintendent, seasonal closures for resource management could occur from March 16 through December 15. Some pedestrian only areas would be established from May 1 – September 14, however some are year round. Maps of designated

ORV routes will be available at the Office of the Superintendent and for review on the Seashore website at: <http://www.nps.gov/california>.

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

No. In addition to the seasonal pedestrian-only restrictions from May 1 – September 14, ORV routes may be subject to temporary resource and visitor safety closures. This authority would be exercised independent of the Superintendent’s authority under 36 CFR 1.5 and would provide the park with greater flexibility to respond to the impacts of ORV use in designated routes and areas to prevent ‘unacceptable impacts’. Public notice of any action taken under this authority would be given pursuant to one or more of the methods set forth in 36 CFR 1.7.

Are there any requirements for my ORV?

Yes. To receive a permit to operate a vehicle on designated ORV routes (except for ATVs and UTVs), your vehicle must be registered, licensed, and insured for highway use and comply with inspection regulations within the state, province or country, where the vehicle is registered. ORV operators (except for ATVs and UTVs) would be required to carry a low-pressure tire gauge, shovel, jack, and jack stand/board in the vehicle.

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

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

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

Yes. Trailers with one or two axles would be allowed. Trailers with more than two axles would be prohibited. Trailers cannot exceed 30 feet in length including all attachments. Restrictions on trailers would be implemented after a one-year grace period. Transporting passengers in a trailer would be prohibited.

Is there a vehicle length restriction?

No. The proposed rule would not institute a vehicle length restriction, but the NPS wants to ensure that all vehicles on the Seashore can safely navigate the back routes and properly stay in the track on designated routes. Therefore, the NPS would not issue ORV permits for vehicles with a wheelbase measurement that exceeds 180 inches. There would be a one year grace period before the wheelbase restriction is implemented.

May I ride my all-terrain vehicle (ATV) or utility vehicle (UTV) at the Seashore?

After a one year grace period, only non-sport model ATVs and UTVs would be allowed from March 16 through December 15 on designated routes within the Seashore provided the non-sport ATVs and UTVs have not been modified and still meet the manufacturer's original specifications for a non-sport or utility model. ATV/UTVs would be allowed a maximum of 3 axles, and would not need to be registered, licensed, insured for highway use, or comply with inspection regulations. ATV/UTV operators would not be required to carry in or on the vehicle a low-pressure tire gauge, shovel, jack, or jack stand/board. ATV operators must wear a U.S. Department of Transportation approved helmet and eye protection. All high-performance sport-model ATVs and UTVs would be prohibited after a one year grace period and can no longer receive the required ORV permit to ride at the seashore. While these high-performance sports model are generally identified by the manufactures, any questions concerning the models subject to this prohibition will be resolved by the Superintendent.

What is the speed limit on designated ORV routes?

The speed limit would be 25 miles per hour (unless otherwise designated). The speed limit would be reduced to 15 miles per hour when operating a vehicle within 100 feet of any person, another vehicle, a campsite, any structure or while towing a trailer.

May I drive on designated ORV routes at night?

Yes, but not at all times on all routes. Night driving on beach ORV routes would not be allowed from 9:00 p.m. until 6:00 a.m. from May 1 to September 14 to reduce impacts on wildlife. In addition, driving on the back routes would be allowed from 5:00am – 10:00pm, and at any time in the Great Island and Long Point cabin camps (as defined by the map available at the office of the Superintendent and for review on the Seashore's website at <http://www.nps.gov/calor>).

May my ORV be parked on the beach if I don't drive it between 9 p.m. and 6 a.m. during the dates night driving restrictions are in effect?

Yes, if the ORV is attended and not driven on the beach during that time.

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, such use could be accommodated on a case-by-case basis and would be subject to the conditions of a special use permit issued by the Superintendent.

Do concessionaires and commercial use authorization holders need a separate ORV permit?

No. Use of ORVs associated with businesses would be controlled through an NPS concession contract or commercial use authorization.

What is the relationship of NC Motor Vehicle Law to these Regulations?

NPS specifically adopts state motor vehicle laws at 36 CFR 4.2(a), and can deviate from these state laws by special regulation. Under N.C. General Statute 20-4.01(32)(b), beach areas are considered public vehicular areas, and are not necessarily subject to the broader set of registration and operation laws for state roads. This rule would specify that notwithstanding the definition of public vehicular area in North Carolina State law, the operator of any motor vehicle at the Seashore, whether the ORV is moving or parked, must at all times comply with North

Carolina traffic laws that would apply as if operating on a North Carolina highway. This requirement would apply to ATVs/UTVs even though they are, for example, not required to be registered, inspected or display a license plate, nor allowed on highways under North Carolina law. However, this special regulation would allow ATV/UTV use as ORVs the same as other vehicles within the Seashore; the operation of all these vehicles must be in compliance with this and other applicable regulations such as operation and safety requirements, and non-conflicting North Carolina law.

Compliance with Other Laws, Executive Orders, and Department Policy

Use of Off-Road Vehicles on the Public Lands (Executive Order 11644)

Executive Order 11644, as amended by Executive Order 11989, was adopted to address impacts on public lands from ORV use. The Executive Order applies to ORV use on federal public lands that is not authorized under a valid lease, permit, contract, or license. Section 3(4) of E.O. 11644 provides that ORV “areas 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” commonly used in the National Environmental Policy Act of 1969 (NEPA). Under NEPA, a procedural statute that provides for the study of environmental impacts, the term “adverse effect” refers to any effect, no matter how minor or negligible.

Section 3(4) of the E.O., by contrast, does not prescribe procedures or any particular means of analysis. It concerns substantive management decisions, and must instead be read in the context of the authorities applicable to such decisions. The Seashore is an area of the National Park System. Therefore, the NPS interprets the E.O. term “adversely affect” consistent with its NPS Management Policies 2006. Those policies require that NPS only allows “appropriate use” of parks, and avoids “unacceptable impacts.”

Specifically, this rule would not impede the attainment of the Seashore’s desired future conditions for natural and cultural resources as identified in the plan/DEIS. The NPS has determined this rule would 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 E.O., ORV use on the ORV routes designated by this rule (which are also subject to safety and resource closures and other species management measures that would be implemented under the proposed rule) would not adversely affect the natural, aesthetic, or scenic values of the Seashore.

Section 8(a) of the E.O. requires the respective agency head to monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, such agency head shall from time to time amend or rescind designations of areas or other actions taken pursuant to the E.O. as necessary to further the policy of the E.O. The plan/DEIS identifies monitoring and resource protection procedures, and desired future conditions to provide for the ongoing and future evaluation of impacts of ORV use on protected resources. The Park Superintendent would have authority under both this rule and under 36 CFR 1.5 to close portions of the Seashore as needed to protect park resources and values, and public health and safety.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in a report entitled, "*Benefit Cost Analysis of Proposed ORV Use Regulation at Cape Lookout National Seashore*, available for public review at:

<http://parkplanning.nps.gov/projectHome.cfm?projectID=15978>.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

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

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 expenditure 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 (Executive Order 12630).

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. Access to private property located within or adjacent to the Seashore will not be affected, and this rule does not regulate uses of private property. Therefore, a takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 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 (Executive Order 12988)

This rule complies with the requirements of Executive Order. 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 (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.).

This rule does not contain any new collection of information that requires approval by OMB under the PRA of 1995. OMB has approved the information collection requirements associated with NPS special use permits and has assigned OMB control number 1024–0026 (expires 08/31/2016). 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 constitutes a major federal action with the potential to significantly affect the quality of the human environment. In accordance with NEPA, the NPS prepared the plan/DEIS, which was released for public comment on May 23, 2014, with the public comment period extended to September 4, 2014, then again to September 19, 2014. A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement, and other supporting documentation, can be found online at

<http://www.parkplanning.nps.gov/calor>. The NPS considered public comments made on the plan/DEIS in drafting this proposed rule. The NPS will evaluate substantive comments received on the proposed rule in developing the Final ORV Management Plan/Final Environmental Impact Statement, Record of Decision, and Final Rule.

Effects on the Energy Supply (Executive Order 13211).

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

Clarity of this rule.

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

All submissions received must include the agency name and RIN for this rulemaking: 1024-AE24. All comments received through the Federal eRulemaking portal at <http://>

www.regulations.gov will be available without change. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information, we cannot guarantee that we will be able to do so. To view comments received through the Federal eRulemaking portal, go to <http://www.regulations.gov> and enter 1024– AE24 in the search box.

Drafting Information: The primary authors of this regulation are: Russel J. Wilson, Chief, Regulations, Jurisdiction, and Special Park Uses, and A.J. North, Regulations Coordinator, National Park Service, Washington, DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 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: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. In § 7.49, add paragraph (c) to read as follows:

§ 7.49 Cape Lookout National Seashore.

* * * * *

(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):

All-terrain vehicle (ATV) - A motorized off-highway vehicle designed to travel on four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

Back Route - A marked and maintained ORV corridor located behind the dunes running parallel to the beach, known locally as the back road.

ORV means a motor vehicle used off of Seashore roads (off-road).

Utility Terrain Vehicle (UTV) - A motorized off-highway vehicle designed to travel on four low-pressure tires. Differs from ATVs in that UTVs typically have a side-by-side seating arrangement, many have seat belts and roll-over protection, and most have a cargo box at the rear of the vehicle. UTVs generally have a higher payload capability and are longer and wider than ATVs.

(2) *ORV permits.* The Superintendent administers the NPS special park use permit system at the Seashore, including permits for ORV use, and charges fees to recover ORV program administration costs.

(i) A permit issued by the Superintendent is required to operate a vehicle on designated ORV routes at the Seashore. The Superintendent is responsible for determining or resolving the eligibility of a vehicle for an ORV permit. The cost of the permits will be set by the Superintendent.

(ii) Operation of a motor vehicle authorized under an ORV permit is limited to those routes designated in the table in paragraph (c)(7) of this section.

(iii) The Superintendent will establish an annual limit on the number of ORV permits that may be issued, not to exceed 5,500, and will notify the public under §1.7 of this chapter.

(iv) In order to obtain a permit, an applicant must comply with vehicle and equipment

requirements, obtain an education certificate, acknowledge in writing an understanding of the rules governing ORV use at the Seashore, and pay the permit fee.

(v) Each permit holder must affix the permit in a manner and location specified by the Superintendent to the vehicle authorized for off-road use.

(3) *Vehicle, operator and equipment requirements.* The following requirements apply for driving a motor vehicle off-road:

(i) The ORV (except ATVs and UTVs) must be registered, licensed, and insured for highway use and must comply with inspection regulations within the state, province, or country where the vehicle is registered.

(ii) The ORV (except ATVs and UTVs) must have no more than two axles, no more than six wheels and no less than four wheels. ATVs and UTVs may have no more than three axles, no more than six wheels and no less than four wheels. An ORV's wheelbase must not exceed 180 inches; this requirement will take effect one year after the effective date of the final rule.

(iii) A towed trailer must have no more than two axles and must not exceed 30 feet in length. This paragraph will take effect one year after the effective date of the Final Rule.

(iv) The ORV (except ATVs and UTVs) must carry a low-pressure tire gauge, shovel, jack, and jack stand or support board.

(v) ORV operators must possess a valid driver's license and an education certificate in addition to the vehicle being permitted

(vi) ATV operators must wear a U.S. Department of Transportation approved helmet and eye protection.

(vii) Riding on the tailgate or roof or hanging outside of moving ORVs is prohibited.

(viii) While riding in a truck bed a person must be seated on the floor. Children under 16 years of age riding in truck beds must also be accompanied by an adult riding in the bed.

(ix) Passengers are prohibited from riding in or on a trailer, unless specifically authorized by the NPS in a permit, commercial use authorization or concession contract.

(4) *Vehicle inspection.* An authorized person may inspect the vehicle to determine compliance with the requirements of this regulation.

(5) *Prohibited vehicles.* Use of a motorcycle, tracked vehicle, farm vehicle, a vehicle with a two-stroke engine, and combination vehicles (i.e. amphibious ATVs) are prohibited in the Seashore. The use of high performance/sport model ATVs and UTVs will be prohibited one year after the effective date of the final rule.

(6) *Special use permits for off-road driving, temporary use.* The Superintendent may issue a special use permit for temporary off-road vehicle use to allow vehicular transport of mobility impaired individuals, subject to the conditions of the permit.

(7) *ORV routes.* (i) The Seashore is closed to ORV use from December 16 through March 15.

(ii) The Seashore is open to ORV use from March 16 through December 15, with seasonal closures for species management from March 16 through December 15 and pedestrian-only areas from May 1 – September 14.

(iii) The following tables designate ORV routes, ORV ramps, areas closed to ORVs, and pedestrian only areas. Maps depicting the designated routes and ramps, areas closed and pedestrian only areas are available in the Office of the Superintendent and for review on the Seashore website.

Designated ORV Beach Route
The oceanside beach of North and South Core Banks from the toe of the primary dune line or vegetation line to the water line on the seaward side, that is accessible and otherwise open (not closed due to pedestrian, safety or species resource protection closures). The ORV corridor would be marked on the landward side.

Designated ORV Back Route and Ramps	
The back route is a marked route parallel to the ocean beach behind the primary dune on North Core and South Core Banks. Marked crossover routes or “ramps” between the ocean beach and back route are further described below.	
North Core Banks	<p>Route would parallel the beach behind the primary dune line from approximately 0.5 miles south of Portsmouth Flats at mile marker 4 to 0.5 mile north of Old Drum Inlet at mile marker 18 with the exception there is no back route at Kathryn-Jane Flats from mile 6 to mile 7. South of Old Drum Inlet the back route would continue from approximately mile maker 19.5 to mile marker 21 immediately north of the Ophelia Inlet.</p> <p>Ramps: 4a, 4b, 5a, 5b, 6, 7a, 7b, 8a, 8b, 9, 10a, 10b, 11a, 11b, 12, 13a, 13b, 14, 15a, 15b, 16, 17a, 17b, 18a, 18b, 19, 20, 21.</p>
South Core Banks	<p>Route would parallel the beach behind the primary dune line approximately 1 mile south of Ophelia Inlet at mile marker 24 to the point of Cape Lookout at mile marker 44. Additionally, the back route on South Core Banks would be extended from mile marker 44a to mile marker 44b; this by-pass section of back route would only be open when the area of the Cape closes to through traffic.</p> <p>Ramps 24, 25, 26a, 26b, 27, 28, 29, 29a, 29b, 30, 31, 32, 33, 34, 35a, 35b, 36, 37a, 37b, 38, 39, 40, 41a, 41b, 42a, 42b, 43, 44a, 44b, 45.</p>

Designated Miscellaneous ORV Routes	
A marked route from the beach to the Portsmouth Village parking area through Portsmouth Flats.	
Marked routes within the Long Point and Great Island Cabin Camp areas including vehicle ferry landings.	
Designated parking areas at Long Point, Great Island, and the Cape Lookout Light Station area, and the marked routes to these areas.	
Marked Routes within the Cape Lookout Village Historic District.	
<p>Marked sound-side access routes:</p> <p style="padding-left: 40px;">North Core Banks- mile marker 9, mile marker 12, mile marker 18</p> <p style="padding-left: 40px;">South Core Banks- miles marker 26.5, mile marker 31.5, mile marker 35.5 (Codds Creek), mile marker 45</p>	

Areas closed to ORVs	
Sections of the islands isolated from designated ferry landings through the formation of new inlets, such as Middle Core Banks. All areas of the park not designated for ORV use.	

Pedestrian-only areas	
All other areas of the Seashore not designated for ORVs above, including Shackelford Banks	Entire area, year round closure
Long Point	Seasonal pedestrian only area May 1 to September 14, on the ocean beach at Long Point Cabin Camp from ramp 16 to ramp 17a (approximately 0.50 miles). An ORV route will be established through this area.
Great Island	Seasonal pedestrian only area May 1 to September 14, on the ocean beach at the Great Island Cabin Camp pedestrian-only area from ramp 29 to ramp 30 (approximately 1.9 miles), to be determined by beach profile. An ORV route will be established through this area.
Codds Creek	Seasonal pedestrian only area May 1 to September 14, on the ocean beach near Codds Creek for a total closure of 0.8 miles between mile marker / ramps 35a and 35b for pedestrians only.
Light Station	A year-round pedestrian-only area at the lighthouse would run from ramp 41a to ramp 41b for a total closure of approximately 0.7 miles.
Power Squadron Spit	A year-round pedestrian-only area at the lighthouse would run from Mile Marker 46.2 to the end of the Spit.

(8) *Superintendent's closures.* (i) The Superintendent may temporarily limit, restrict, or terminate access to routes or areas designated for off-road use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(ii) The public will be notified of such closures through one or more of the methods listed in § 1.7 of this chapter.

(iii) Violation of any closure or restriction is prohibited.

(9) *Rules for vehicle operation.* (i) Notwithstanding North Carolina law, including the definition of “Public Vehicular Area,” the operator of an ORV anywhere in the Seashore, whether in motion or parked, must comply with all North Carolina traffic laws that would apply if the operator were operating the vehicle on a North Carolina highway. ATVs/UTVs are not allowed on highways under North Carolina traffic law. However, this special regulation would allow ATVs/UTVs use within the Seashore, and would require ATVs/UTVs operators to comply with this and other applicable regulations, and non-conflicting North Carolina law in the same manner as all other vehicles operating off-road.

(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) The speed limit for off road driving is 25 mph, unless otherwise designated.

(C) A vehicle operator must slow to 15 mph when traveling within 100 feet or less of any person, vehicle, campsite, structure or while pulling a trailer.

(D) When driving on a designated route, an operator must lower the vehicle’s tire pressure sufficiently to maintain adequate traction.

(E) Vehicles may only be transported to the Seashore by NPS authorized ferries.

(10) *Night driving restrictions.* (i) Hours of operation and night driving restrictions are listed in the following table:

Hours of Operation/Night Driving Restrictions	
December 16 through March 15	Seashore closed to recreational ORV use
March 16 through April 30 and September 15 through December 15	All designated ORV routes are open 24 hours a day
May 1 through September 14	Designated ORV routes are closed from 9 p.m. to 6 a.m. to reduce potential impacts to

	wildlife. The back route is open 5am to 10pm.
March 16 through December 15	Designated ORV routes within cabin areas at Long Point and Great Island are open 24 hours a day.

(ii) Maps are available in the office of the Superintendent and on the Seashore’s website that show routes closed due to resource and visitor protection.

(11) *Parking permit.* (i) A parking permit issued by the Superintendent is required for long-term vehicle parking at designated locations.

(ii) Long-term vehicle lots would be closed from December 16 through March 15.

(12) *Park violations.* (i) 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.

(ii) A violation may also result in the suspension or revocation of a NPS permit by the Superintendent.

(13) *Information collection.* As required by 44 U.S.C. 3501 *et seq.* The Office of Management and Budget has approved the information collection requirements contained in this paragraph. The OMB approval number is 1024-0026. The 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 to order to obtain the benefit in the form of the ORV permit.

Dated: December 9, 2015.

Karen Hyun
Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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