

direction onto the Mt. Livermore, Texas—Chihuahua, U.S.G.S. map;

(4) The boundary continues to follow Highway 166 in a westerly direction;

(5) The boundary then continues to follow Highway 166 as it turns in a northerly and then northeasterly direction to the point where it meets Highway 118;

(6) The boundary then follows Highway 118 in a northerly direction until it reaches a point where it intersects with the 1600 meter contour line, just north of Robbers Roost Canyon;

(7) The boundary then proceeds in a straight line due east for about two miles until it reaches the 1600 meter contour line to the west of Friend Mountain;

(8) The boundary follows the 1600 meter contour line in a northeasterly direction until it reaches the northernmost point of Friend Mountain;

(9) The boundary then diverges from the contour line and proceeds in a straight line east-southeast until it reaches the beginning point of Buckley Canyon, approximately three-fifths of a mile;

(10) The boundary then follows Buckley Canyon in an easterly direction to the point where it meets Cherry Canyon;

(11) The boundary then follows Cherry Canyon in a northeasterly direction to the point where it meets Grapevine Canyon;

(12) The boundary then proceeds in a straight line from the intersection of Cherry and Grapevine Canyons to the peak of Bear Cave Mountain, on the Fort Davis, Texas, U.S.G.S. map;

(13) The boundary then proceeds in a straight line from the peak of Bear Cave Mountain to the point where Farm Road 1832 begins;

(14) The boundary follows Farm Road 1832 back to its intersection with Texas Highway 17, at the point of beginning.

Approved: April 21, 1997.

John W. Magaw,
Director.

[FR Doc. 97-11746 Filed 5-5-97; 8:45 am]

BILLING CODE 4810-31-U

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise the current regulation for off-road vehicle (ORV) use at Cape Cod National Seashore. Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, new and unrelated measures have impacted the off-road vehicle corridor identified in the amended plan. These measures have resulted from the necessity to protect the federally listed threatened piping plover (*Charadrius melodus*). Because of a lack of flexibility in the Amended 1985 Plan, there has been an inability to adapt it to changing natural resource concerns.

The piping plover became a federally listed threatened species in 1986. In 1995 there were 83 pair of plovers nesting on the beaches of Cape Cod National Seashore. Thirty-three pair were within the eight and one-half miles of the ORV corridor. During the Fourth of July weekend (a period of peak use for ORV's) in 1994, eight-tenths of a mile of the ORV corridor was open. In 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, it is expected that the birds will continue to nest here. Thus, Cape Cod National Seashore hopes to develop a more flexible and effective regulation governing ORV use that will accommodate the NPS's responsibilities for managing natural resources.

DATES: Written comments will be accepted through June 5, 1997.

ADDRESSES: All comments should be addressed to: Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Telephone 508-349-3785, ext. 203.

SUPPLEMENTARY INFORMATION:

Background

The mission of the NPS is to preserve and protect park resources while at the same time allowing for the enjoyment of these same resources in a manner that will leave them unimpaired for future generations. In September 1995, Cape Cod National Seashore convened a committee to negotiate a rulemaking (per the Federal Advisory Commission Act (FACA), 5 U.S.C. App. II conflicts, while also providing optimum protection for the piping plover

(*Charadrius melodus*) in compliance with the Endangered Species Act of 1973, as amended, and other Seashore resources.

The 1981 ORV Management Plan was challenged in U.S. District Court. However, the plan, as amended in 1985 (50 FR 31181), was upheld by the District Court in 1988 and the U.S. Court of Appeals in 1989. The District Court found that ORV use at Cape Cod National Seashore is not inappropriate; that the 1985 Plan minimized user conflicts; that the NPS had provided other recreational users adequate use of the Seashore; that the NPS had properly surveyed the sentiments of Seashore users; and that ORV use, as managed by the NPS, does not adversely affect the Seashore's values or its ecology.

The 1985 regulation that established an 8.5 mile ORV corridor on the 40 miles of outer beach within the Seashore would have provided a satisfactory solution except that since 1988, the number of nesting pair of piping plover increased in this area over 800 percent. The ORV corridor is one of the prime nesting areas in the Seashore (in 1995, 33 of 87 pair nested in the corridor). Primarily because of plovers in the corridor, the Seashore staff monitors every bird, nest and egg daily to determine if the ORV corridor should be open or closed. Symbolic fencing is put up as soon as a nest is established to identify the site. Wire enclosures are put up once the eggs have been laid and the ORV corridor is closed from the time the birds hatch until they fledge, approximately 28 days later. In the past few years, during the time when the Seashore receives the most visitors (Fourth of July), including people wishing to use the ORV corridor, only 0.4 to 0.6 miles of the corridor has been open.

Decision To Initiate Negotiated Rulemaking

The need for a new rule and the use of the negotiated process was motivated by a number of events including legislative requirements, past litigation, management issues and inflexibility of the existing rule to deal with changing conditions such as the use of the corridor by the piping plover. The proposed regulation and the negotiated rulemaking process is an attempt to manage off-road vehicle (ORV) access on the outer beach in a way that accommodates the wishes of ORV enthusiasts and those choosing other forms of beach use, while minimizing impacts to natural and cultural resources and providing a degree of flexibility for managing the beach.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC47

Cape Cod National Seashore, Off-road Vehicle Use

AGENCY: National Park Service, Interior.

Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, issues which had not been anticipated or addressed previously impacted the off-road vehicle corridor. These impacts were mainly in response to the importance of and the efforts to protect the piping plover. Thus, Cape Cod National Seashore hopes the new regulation will be more flexible and effective in governing ORV use, and will accommodate the NPS's responsibilities for managing natural resources and the recreational opportunities mandated in the Seashore's enabling legislation.

The objective of negotiated rulemaking is to front load the controversy by getting all the interested parties involved in the decision making process from the beginning and acknowledging, if not resolving, all the issues and concerns. The process brings together at the negotiating table the organizations that are interested in the issues and charges them with developing a solution that is acceptable to everyone. This process is used by many Federal agencies, but this was the first time the NPS used negotiated rulemaking to develop a rule that will become part of the Code of Federal Regulations (CFR).

A total of 23 agencies, organizations and interest groups with long term interests and involvement in the ORV issue were identified for the committee. They included State agencies, the 6 towns the Seashore is located within, ORV user groups, environmental groups, Federal agencies, and tourism and preservation groups.

Specifically, the Committee consisted of members from the following organizations:

1. Association for the Preservation of Cape Cod
2. Cape Cod Chamber of Commerce
3. Cape Cod Commission
4. Cape Cod Salties
5. Citizens Concerned for Seacoast Management
6. Conservation Law Foundation
7. Eastham Forum
8. Highland Fish and Game Club
9. Massachusetts Audubon Society
10. Massachusetts Beach Buggy Association
11. Massachusetts Coastal Zone Management
12. Massachusetts Department of Environmental Protection
13. Massachusetts Division of Fisheries and Wildlife
14. Massachusetts Division of Marine Fisheries
15. National Park Service
16. Sierra Club

17. Town of Chatham
18. Town of Eastham
19. Town of Orleans
20. Town of Provincetown
21. Town of Truro
22. Town of Wellfleet
23. Town of U.S. Fish and Wildlife Service

Each organization selected one representative to sit at the table. This person spoke and made commitments for that organization. Only representatives were allowed to participate in the formal discussions. All participants at the table had an equal voice.

To avoid problems with unbalanced votes on one "side," the negotiated rulemaking was done as a consensus process (every organization had veto authority). The task assigned the committee was to develop a new ORV regulation for Cape Cod National Seashore. If the committee was unable to reach consensus on a new regulation, then the NPS would develop a new rule using the ideas, information and creativity that had been gathered from the group. This process allowed every issue, idea and concern to be heard; all sides had a chance to hear what was most important and what most worried the other participants. The NPS agreed that if consensus was reached, the consensus regulation would be put forward as a proposed rule through the notice and comment rulemaking process with full public involvement.

As required by FACA, all formal meetings were announced in the **Federal Register** and were open to the public. There was a public comment period at the end of each meeting. Letters could be submitted to be included in the official record if someone was unable to attend.

The rulemaking sessions were conducted by contracted professional negotiators. The sessions were limited to three, two-day meetings. These meetings were spaced one month apart to allow the representatives sufficient time between meetings to report back to their respective organizations and to ensure that they were not committing to things the organizations could not support and, very importantly, to allow time for independent interactions and negotiations among committee members to occur.

The committee was successful in reaching consensus on a proposed ORV regulation for Cape Cod National Seashore. It is the contents of that regulation that have been used to identify issues, alternatives and potential impacts for National Environmental Policy Act (NEPA)

compliance. The proposed rule, accompanied by the environmental compliance documentation for that rule, is published here for public comment and review.

Issues of Concern Raised During the Negotiated Rulemaking

During the course of negotiations, many ideas and issues were discussed, clarified and agreed to by the negotiating committee. The committee reached consensus on the following items and agreed that, although not appropriate for inclusion in the text of the regulation, these items were important points, ideas and agreements that should be included in the preamble where they would be part of the official record and identified as part of the committee consensus.

Executive Order 11644, as amended by E.O. 11989, "Use of Off-Road Vehicles on Public Lands" directs the NPS to monitor the impacts of the ORV program on the resources of Cape Cod National Seashore. The committee supported this monitoring to identify the actual effects (or lack of effects) of ORV use at the Seashore. The intent of this research is not to develop "new" science on the effects of ORV use on the outer beaches, but to document specifically the current condition of the ORV corridor and to monitor the changes, if any, that occur over time. This data will be used to assess any changes that occur in the area where the ORV corridor is located and to try to identify the causes of these changes. The monitoring methods identified for use by the NPS will undergo peer review by the broader scientific community to identify weaknesses, including areas of monitoring not covered by the technical research design. In this context, "peer" includes scientists beyond the NPS scientific community. The monitoring will result in an annual report that NPS will also distribute for public and peer review and comment. While user fees gathered from ORV permits can be used to fund this research, this funding is limited.

The committee recognized the importance and relative fragility of barrier spits, such as the sand spit at Hatches Harbor. The NPS agrees to work in consultation with the Massachusetts Office of Coastal Zone Management to address concerns specific to barrier spits. It is understood that these areas are more sensitive; that they are important to shorebirds and for protecting the natural resources located behind them; and that a closer look at these sensitive areas may result in a need to limit use or further control existing uses to protect resources.

The Cape Cod National Seashore Advisory Commission will be requested to develop a new subcommittee to provide input and advice on the ORV program at Cape Cod National Seashore. The chair of the subcommittee will be a duly appointed member of the Commission. Other members of the subcommittee will represent the same general mix of interests represented in the negotiated rulemaking committee. This subcommittee will be assigned to review and analyze the annual monitoring report. Following its review and analysis, the subcommittee may refer any ORV program management issues it identifies to the commission for further deliberation, and the Commission may advise the Superintendent with respect to those issues.

Night fishing is recognized as an important activity on the beaches of Cape Cod National Seashore. Vehicles displaying a permit approved by the Superintendent are able to access paved public parking lots, closed to the general public after hours, for nighttime fishing. An annual report submitted to the Secretary of the Interior will include an analysis of the annual operating costs of the ORV program.

The negotiated rulemaking committee discussed a potential future need for commercial permittees who would bring people to various outer beach locations to fish, swim, picnic or enjoy other activities compatible with the establishment of the Seashore. This service could potentially reduce the number of people needing to drive their personal ORV's on the beach. The Seashore agreed to evaluate the impact if the number of commercial permits for the ORV corridor exceeded the number issued in 1981 (18). Operators of a passenger vehicle for hire, engaged in carrying passengers for a fee on a designated ORV route, will obtain a permit for commercial use issued by the Superintendent. One condition of this permit will be that the applicants must demonstrate they possess adequate knowledge of the Seashore's off-road system and points of interest, and they must comply with all applicable Federal, State and local regulations. The fee for this permit will be based on the costs incurred by the NPS to administer this program. Failure to comply with any provision of an ORV permit, any regulation listed in this section or Part 2 or Part 4 of this chapter, or the requirements of the commercial use permit may result in revocation of permits by the Superintendent.

The committee recognized that, even given the greater flexibility of the consensus rule, there is a high

probability portions of the beach may be closed at various times because of resource protection concerns. To provide access to some locations immediately adjacent to prime fishing areas, the committee identified "limited parking areas" for fishing access. These areas will be sand pull-offs located behind the primary dunes and be limited to two or three cars. NPS staff will identify areas for these to be located on the High Head access route and the Power Line route. Every attempt will be made to locate the parking spaces on previously impacted areas. They will be located to provide minimal visual impact and to minimize widening of the route or impact to vegetation. The spaces will be posted to identify that only people actively fishing may park.

It is recognized that boat launching, within the ORV corridor, is permitted by properly approved and permitted vehicles. The definition of boat in this context does not include personal watercraft (e.g., jet skis style vessel). Additional information regarding the requirements pertaining to the use of personal watercraft and boats is contained within the Compendium of Designations, Closures (36 CFR 1.5 and 1.7) for Cape Cod National Seashore and 36 CFR part 3.

Self-contained vehicles will continue to be managed as they have in the past. A self-contained vehicle is a vehicle with a water or chemical toilet and a permanently installed holding tank able to hold a minimum of three days of waste material. It is recognized that self-contained vehicles need to be located within close proximity to a beach access route. They also need to be located on a wider section of beach away from vegetation. The access route for self-contained vehicles must be fairly flat and stable. These factors will limit the possible locations for this activity. The committee agreed that, while the location of the self-contained parking area may need to shift somewhat, neither the scale nor the general level of impact would increase.

All the organizations represented by the committee agreed that the protection of the piping plover is important. There was consensus of the need to close beaches to ORV's when chicks have hatched and before they have fledged.

The committee acknowledged Executive Order 12962, Recreational Fisheries, which, in part, acknowledges the importance of participating in recreational fishing, and protecting and conserving fish stock.

The NPS recognizes the importance of citizen participation in the ORV program. In accordance with NPS policy, a program will be developed to

make use of the unique skills and knowledge of individuals within the ORV community. This program will formalize and recognize the preservation efforts, education, beach clean up and other activities many of these individuals already perform.

Section-by-Section Analysis

The two main reasons for use of off-road vehicles on the outer beach are to get to prime fishing areas that are located a considerable distance from parking lots or other access points, and to participate in family related activities including swimming, picnicking and other activities compatible with the establishment of the Seashore. The proposed rule will permit flexibility, while protecting resources and restricting off-road vehicle use to a limited portion of the beaches.

Section 7.67(a) Off-road Operation of Motor Vehicles

The proposed rule will permit flexibility, while protecting resources and restricting off-road vehicle use to a limited portion of the beach. The major changes in the rule include the following.

Section 7.67(a)(1) Closure

This new paragraph clarifies that the Superintendent may close any access or route when necessary to protect resources.

Section 7.67(a)(2) Route Designations

The new rule will close a section of the existing off-road vehicle corridor from April 1 through July 20. This section is prime plover nesting area and consequently is usually closed. The total closure of this area will also eliminate the need, by Seashore staff, to watch daily the nests, eggs and unfledged chicks of piping plover.

The rule will open a section of the outer beach which is currently closed to ORV's to allow use for night fishing of prime fishing areas.

The rule will authorize the use of an alternative access route (route through the inner dunes to the outer beach), which previously could only be open during emergencies, to be opened by the superintendent for a variety of reasons. Often one pair of plover, by nesting at the end of an access route, will close off large portions of the corridor.

The new rule will establish small, undeveloped parking areas, located behind the primary dunes, for people who want to fish. These parking areas would be used when the off-road corridor was closed to vehicles. The location of these lots would improve the

transportation of fishing equipment to and from the outer beach to a vehicle.

Section 7.67(a)(3) Travel Restriction

This new paragraph will allow boat launching in designated open route corridors.

Section 7.67(a)(4) Equipment Requirements

This paragraph is unchanged.

Section 7.67(a)(5) Oversand Permit

During the off-season (November 16 through April 14), a person with an oversand permit would be able to access a limited section of the ORV corridor for fishing, as well as for the recovery of personal property, flotsam and jetsam, and for caretaker functions at dune cottages. This can be prime fishing season, and would provide access to isolated locations.

Section 7.67(a)(6) Commercial Vehicle Permits

This new paragraph is broken out from § 7.67(a)(5) Oversand permits for clarity.

Section 7.67(a)(7) Camping

The new rule will eliminate language which suggests that the only beach camping that is allowed is in a self-contained ORV, and will allow the park to consider potential future camping on the beach, if authorized by the Superintendent through another approved permitting process.

Section 7.67(a)(8) Program Management and Review

This new paragraph strengthens the NPS commitment to monitoring the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources by vehicles in designated corridors, but recognizes that funding is a limiting factor in this research. The rule also commits the NPS to producing an annual report. Cape Cod National Seashore is one of the approved Inventory and Monitoring parks, and the need for this information has already been integrated into this program.

Section 7.67(a)(9) Penalties

This new paragraph clarifies the penalty for a violation of the section.

Section 7.67(a)(10) Information Collection

This paragraph is unchanged.

Section-by-Section Comparison

Section 7.67 Cape Cod National Seashore

(a) Off-road operation of motor vehicles. (1) Route designations.

Existing: (i) From April 15–November 15 on the outer beach from the opening to Hatches Harbor, around Race Point to High Head, and including the beach access routes at Race Point and High Head and the bypass route at Race Point Light.

(iv) Except as described in paragraph (a)(1)(ii), from November 16 through April 14 oversand travel is restricted to uses and routes approved in writing or by permit by the Superintendent on a single-trip basis.

New: (2) *Route designations.* (i) From April 15 through November 15 on the outer beach between the opening to Hatches Harbor, around Race Point to High Head including the North and South beach access routes at Race Point, the bypass route at Race Point Light, the access route at High Head, and for night fishing (hours as posted) from Coast Guard Beach in Truro to Longnook Beach. The off-road vehicle corridor from Exit 8 to High Head will be closed from April 1 through July 20. The Superintendent may open the Power Line Route access and fishing parking area when high tides, beach erosion, shorebird closures, or other circumstances exist that warrant public use of this access way.

(iv) From January 1 through December 31 the access road and parking area for fishing only at High Head.

(v) From July 1 through August 31 on the outer beach from High Head to Head of the Meadow.

(3) *Travel restrictions.* (vii)(a)

Existing: No such section.

New: (vii) The following is permitted: (a) Boat trailering and launching in designated open route corridors.

(5) *Oversand permits.*

Existing: (E) during the period from November 16 through April 14 the Superintendent may issue a limited-access pass to the holder of an oversand permit.

(1) Travel under this pass is limited to that portion of the beach between High Head and Hatches Harbor only.

(2) Vehicle travel under this pass is prohibited within two hours either side of high tide.

(3) The pass will specify the times and routes of travel authorized.

(4) The pass may be issued for the following purposes:

(i) Access to town shellfish beds at Hatches Harbor;

(ii) Recovery of personal property, flotsam and jetsam from the beach; or

(iii) Caretaker functions at a dune cottage.

New: (i)(A) An oversand permit is a type of Special Use Permit that is issued under the authority found at 36 CFR 1.6 and 4.10. The following information must be provided for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State of issue; vehicle license plate number and State of issue; vehicle description, including year, make, model and color; make, model and size of tires; and the equipment on board as required by section 4 of this rule.

(ii) Off-season oversand use. During the period from November 16 through April 14, an oversand route user will possess an oversand permit and a limited access pass that requires the viewing of an educational program that outlines the special aspects of off-season oversand use. The limited access pass will be issued to any vehicle operator possessing a valid permit issued under section 5(i)(A) of this rule.

(A) Vehicle travel during this season is limited to that portion of the beach between High Head and Hatches Harbor.

(B) Vehicle travel during this season is prohibited within two hours either side of high tide.

(C) The limited access pass may be issued for the following purposes

(1) Access to town shellfish beds at Hatches Harbor;

(2) Recovery of personal property, flotsam and jetsam from the beach;

(3) Caretaker functions at a dune cottage; or

(4) Fishing

The limited access pass will be annotated to specify the purpose(s) for which the permit is being issued.

(ii) Commercial vehicle permits

Existing: (ii) Commercial vehicle permits. The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a commercial vehicle permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire.

(A) Commercial vehicle permits are limited to 18, which is the number issued in the 1981 permit year.

(B) Each operator of a passenger vehicle for hire who is engaged in carrying passengers for a fee on a designated oversand route will obtain a guide permit issued by the Superintendent. Such permit may only be issued upon a showing that the applicant possesses adequate knowledge of the Seashore's off-road system and points of interest and has complied with

all applicable Federal, State and local regulations.

(C) Annual permit fees.

(1) Commercial Vehicle Permit: \$10 for each passenger-carrying seat in the vehicle to be operated.

(2) Guide Permit: \$15 for the calendar year or any part thereof.

(iii) Failure to comply with any provision of an oversand permit or with any regulation listed in this section or part 2 or part 4 of this chapter is prohibited and is grounds for immediate revocation of an oversand permit.

New: (6) *Commercial vehicle permits.*

(i) The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire. A commercial vehicle permit is issued under the authority found at 36 CFR 1.6, 4.10 and 5.6. The following information must be provided by the applicant for each vehicle that will use a designated oversand route: Name and address of tour company and name of company owner; make and model of vehicle; vehicle license plate number and State of issue; and number of passenger seats.

(7) *Camping*

Existing: (5) Camping. (v) Tents and camping trailers are prohibited on the beach.

(vi) Beach camping in any manner other than authorized by this section is prohibited.

New: (7) *Camping.* The operator of an oversand vehicle wishing to camp on the beach must possess a valid permit issued under section (5)(i)(A) of this rule and under the authority found at 36 CFR 2.10. In addition, the operator must provide the following information for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State of issue; vehicle license plate number and State of issue; vehicle description, including year, make, model, color, pickup or motor home; and the equipment on board as required by section 4 of this rule.

(v) Camping on the beach in any manner other than authorized in the provisions of this section or as authorized by the Superintendent through another approved permitting process, is prohibited.

(vi) deleted.

(8) *Program management and review.* Existing: No such section.

New: (8) *Program management and review.* In implementing this rule, the Superintendent will:

(i) monitor the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources of vehicles in designated corridors. The Superintendent may amend, rescind, limit the use of, or close designated routes for the purpose of resource protection if monitoring results find resource degradation or visitor impact is occurring, consistent with 36 CFR 1.5 and 1.7, Executive Order 11644 Sec. 3 and Executive Order 11989 Sec. 8;

(ii) consult with the Cape Code National Seashore Advisory Commission regarding management of the off-road vehicle program;

(iii) pursuant to 16 U.S.C. 18g-j, recognize and utilize volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use;

(iv) provide an annual report to the Secretary and the public of the results of the monitoring conducted under subparagraph (7)(i) subject to the availability of funding; and

(v) issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(9) *Penalties.*

Existing: No such section.

New: (9) *Penalties.* Failure to comply with any provision of an oversand permit, or with any regulation listed in this section or part 2 or part 4 of this chapter, is prohibited and may result in revocation of an oversand permit by the Superintendent.

Note: Section (6) Information Collection of existing rule is now section (10) of new rule, same language.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

A formal negotiated rulemaking was utilized in the development of this proposed rule in accordance with the Federal Advisory Commission Act (FACA) and the Negotiated Rulemaking Act (5 U.S.C. 561).

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection

requirements contained in this proposed rule have been approved by the Office of Management and Budget and assigned clearance number 1024-0026. This information is being collected to solicit information that is necessary for the Superintendent to issue off-road vehicle permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Specifically, the NPS needs the following information to issue a permit:

(1) Name and address of registered owner.

(2) Drivers license number and State of issue.

(3) Vehicle license plate number and State.

(4) Vehicle description, including year, make, model and color.

(5) Make, model and size of tires.

(6) List of equipment on board as required in section 4 of the rule.

The public reporting burden for the collection of information in this instance is estimated to be 0.28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, DC 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024-0125), Washington, DC 20503.

Compliance With Other Laws

This rule is subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 152 *et seq.*), that

this rule will not impose a cost of \$100 million or more in any given year on local, State or tribal governments or private entities.

This regulation is subject to National Environmental Policy Act (NEPA) compliance and a draft Environmental Assessment (EA) has been completed. This document is available for public review and can be obtained by contacting the park at the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Ch. I, 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, 460(q), 462(k), Sec. 7.96 also issue under Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.67(a) is proposed to be revised to read as follows:

§ 7.67 Cape Cod National Seashore.

(a) *Off-road operation of motor vehicles.*—(1) *Closure.* The Superintendent may close any access or oversand route at any time for weather, impassable conditions due to changing beach conditions or to protect resources.

(2) *Route designations.* The operation of motor vehicles, other than on established roads and parking areas, is limited to the following oversand routes during the prescribed dates:

(i) From April 15 through November 15, on the outer beach between the opening to Hatches Harbor, around Race Point to High Head, including the North and South Beach access routes at Race Point, the bypass route at Race Point Light, the access route at High Head, and for night fishing (hours as posted), from Coast Guard Beach in Truro to Longnook Beach. The off-road vehicle corridor from Exit 8 to High Head will be closed from April 1 through July 20. The Superintendent may open the Power Line Route access and fishing parking area when high tides, beach erosion, shorebird closures of other circumstances exist that warrant public use of this access way.

(ii) From January 1 through December 31, on controlled access routes for residents or caretakers of individual dune cottages in the Province Lands.

(iii) From April 15 through November 15, on commercial dune taxi routes following portions of the outer beach

and cottage access routes as described in the appropriate permit.

(iv) From January 1 through December 31, the access road and parking area at High Head for fishing only.

(v) From July 1 through August 31, on the outer beach from High Head to Head of the Meadow.

(3) *Travel restrictions.* The operation of a motor vehicle on oversand routes is subject to all applicable provisions of this chapter, including part 4 as well as the specific provisions of this section.

(i) *Route limits.* (A) On the beach, a vehicle operator will drive in a corridor extending from a point 10 feet seaward of the spring high tide drift line to the berm crest. An operator may drive below the berm crest only to pass a temporary cut in the beach, but will regain the crest immediately following the cut. Delineator posts mark the landward side of the corridor in critical areas.

(B) On an inland oversand route, a vehicle operator will drive only in a lane designated by pairs of delineator posts showing the sides of the route.

(ii) An oversand route is closed at any time that tides, nesting birds or surface configuration prevent vehicle travel within the designated corridor.

(iii) When two vehicles meet on the beach, the operator of the vehicle with the water on the left will yield.

(iv) When two vehicles meet on a single-lane oversand route, the operator of the vehicle in the best position to yield will pull out of the track only so far as necessary to allow the other vehicle to pass safely, and then will back into the established track before resuming the original direction of travel.

(v) When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the ruts or holes created by such activity before removing the vehicle from the immediate area.

(vi) The following are prohibited:

(A) Driving off a designated oversand route.

(B) Exceeding a speed of 15 miles per hour unless posted otherwise.

(C) Parking a vehicle in an oversand route so as to obstruct traffic.

(D) Riding on a fender, tailgate, roof, door or any other location on the outside of a vehicle.

(E) Driving a vehicle across a designated swimming beach at any time when it is posted with a sign prohibiting vehicles.

(F) Operating a motorcycle on an oversand route.

(vii) Boat trailering and launching by permitted ORV's in designated open route corridors is permitted.

(4) *Equipment requirements.* (i) Each vehicle operated on an oversand route

will be equipped to the standard identified by the Superintendent, including:

(A) Shovel;

(B) Tow rope, chain, cable or other similar towing device;

(C) Jack;

(D) Jack support board;

(E) Low air pressure tire gauge; and

(F) Five tires that meet or exceed established standards.

(ii) Operating a vehicle on an oversand route without the required equipment is prohibited.

(5) *Oversand permits.* No oversand vehicle, other than an authorized emergency vehicle, will be operated on a designated oversand route without an oversand permit issued by the Superintendent.

(i) The Superintendent may establish a permit system for oversand vehicles and establish fees, designed to recover the costs incurred by the National Park Service to administer the oversand program.

(A) An oversand permit is a type of Special Use Permit that is issued under the authority found at 36 CFR 1.6 and 4.10. The following information must be provided for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State if issue; vehicle license plate number and State of issue; vehicle description, including year, make, model and color; make, model and size of tires; and the equipment on board as required by paragraph (a)(4) of this section.

(B) Prior to being issued a permit, an operator of an oversand vehicle will:

(1) Demonstrate that the vehicle is equipped as required in paragraph (a)(3) of this section; and

(2) Demonstrate evidence of compliance with all Federal and State regulations that apply to licensing, registering, inspecting and insuring such a vehicle.

(C) Before being issued a permit, an applicant for an oversand permit will view an oversand vehicle operation educational program and shall assure that all other potential operators view the same program.

(D) The Superintendent will affix an oversand permit to the permitted vehicle at the time of issuance.

(E) Transfer of an oversand permit from one vehicle to another is prohibited.

(ii) *Off-season oversand use.* During the period from November 16 through April 14, an oversand route user will possess an oversand permit and a limited access pass that requires the viewing of an educational program that outlines the special aspects of off season

oversand use. The limited access pass will be issued to any vehicle operator possessing a valid permit issued under paragraph (a) (5)(i)(A) of this section. The limited access pass will be annotated to specify the purpose(s) for which the permit is being issued.

(A) Vehicle travel during the off-season is limited to that portion of the beach between High Head and Hatches Harbor.

(B) Vehicle travel during the off-season is prohibited within two hours either side of high tide.

(C) The limited access pass may be issued for the following purposes:

(1) Access to town shellfish beds at Hatches Harbor;

(2) Recovery of personal property, flotsam and jetsam from the beach;

(3) Caretaker functions at a dune cottage; or

(4) Fishing

(6) *Commercial vehicle permits.* (1) The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire. A commercial vehicle permit is issued under the authority found at 36 CFR 1.6, 4.10 and 5.6. The following information must be provided by the applicant for each vehicle that will use a designated oversand route: Name and address of tour company and name of company owner; make and model of vehicle; vehicle license plate number and State of issue; and number of passenger seats.

(7) *Camping.* The operator of an oversand vehicle wishing to camp on the beach must possess a valid permit issued under paragraph (a)(5)(i)(A) of this section and under the authority found at 36 CFR 2.10. In addition, the operator must provide the following information for each vehicle for which a permit is requested: Name and address

of registered owner; drivers license number and State of issue; vehicle license plate number and State of issue; vehicle description, including year, make, model, color, pickup or motor home; and the equipment on board as required by paragraph (a)(4) of this section.

(i) A self-contained vehicle is defined as one that has a self-contained water or chemical toilet and a permanently installed holding tank with a minimum capacity of three days' waste material.

(ii) Camping is allowed only in self-contained vehicles in areas designated for that purpose.

(iii) Two areas with a maximum combined capacity of 100 vehicles are designated.

(A) An operator will drive the self-contained vehicle off the beach for the purpose of emptying holding tanks at a dumping station at intervals of no more than 72 hours.

(B) Before returning to the beach, a vehicle operator will notify the Oversand Station as specified by the Superintendent.

(iii) An operator will not drive a self-contained vehicle outside the limits of a designated camping area except when entering or leaving the beach by the most direct authorized route.

(iv) Each self-contained vehicle permit holder is limited to a maximum of 21 days camping on the beach from July 1 through Labor Day.

(v) Camping on the beach in any manner other than authorized in the provisions of this section or as authorized by the Superintendent through another approved permitting process is prohibited.

(8) *Program management and review.* In implementing this program, the Superintendent will: (i) Monitor the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources of vehicles in designated corridors. The Superintendent may amend, rescind,

limit the use of or close designated routes for the purpose of resource protection if monitoring results find resource degradation or visitor impact is occurring, consistent with 36 CFR 1.5 and 1.7, Executive Order 11644 Sec. 3 and Executive Order 11989 Sec. 8;

(ii) Consult with the Cape Cod National Seashore Advisory Commission regarding management of the off-road vehicle program;

(iii) Pursuant to 16 U.S.C. 18g-j, recognize and utilize volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use;

(iv) Provide an annual report to the Secretary of the Interior and the public of the results of the monitoring conducted under paragraph (a)(8)(i) of this section subject to the availability of funding; and

(v) Issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(9) *Penalties.* Violation of a term or condition of an oversand permit issued in accordance with this section is prohibited. A violation may also result in the suspension or revocation of the permit.

(10) *Information collection.* The information collection requirement contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0026. The information is being collected to solicit information necessary for the Superintendent to issue off-road vehicle permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

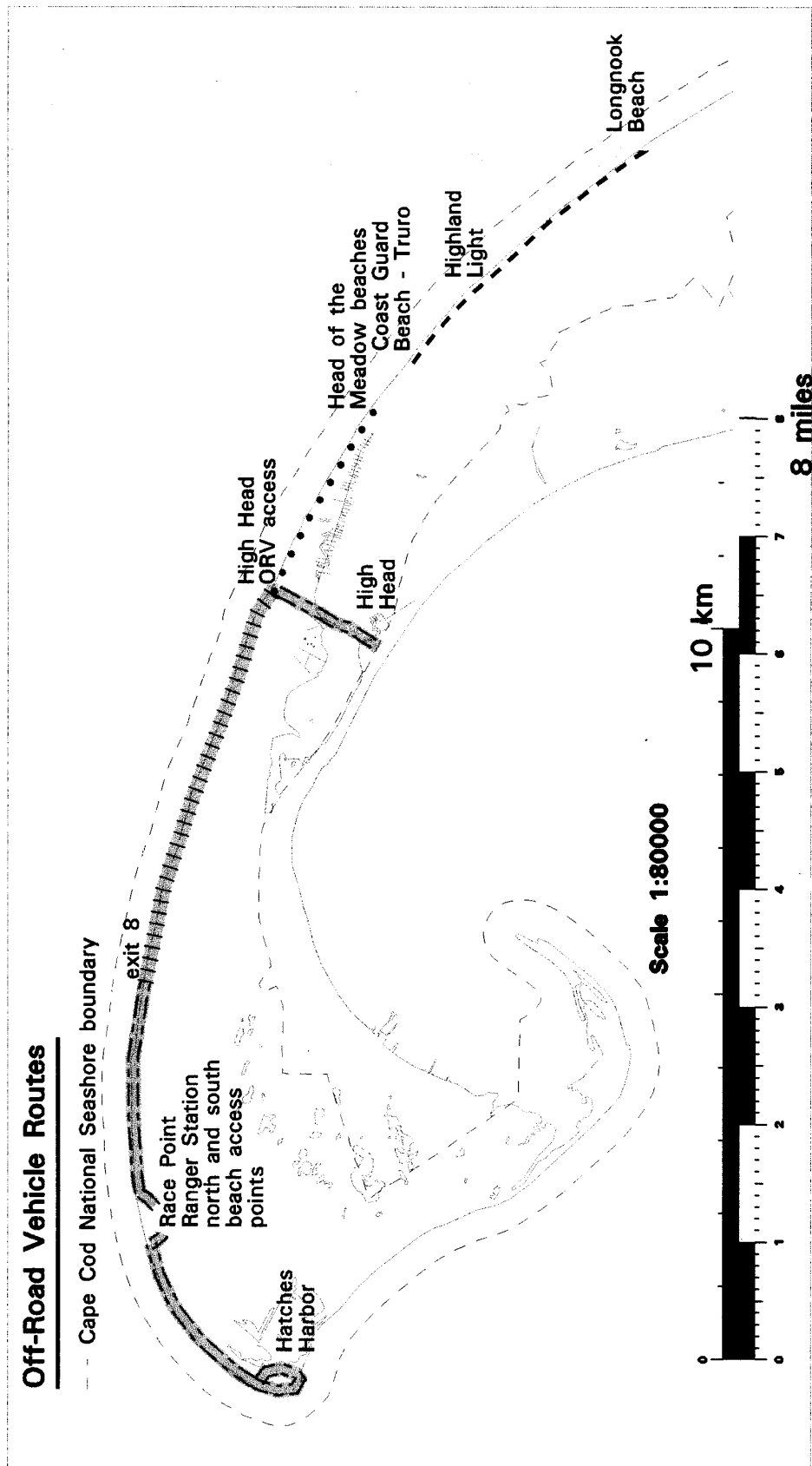
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Dated: March 23, 1997.

Don Barry,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-70-M



ORV route - existing regulation

proposed regulation: ORV route 4/15-11/15

proposed regulation: ORV route, night fishing

proposed regulation: ORV route closed 4/1-7/20
open 7/21-11/15

proposed regulation: ORV route 7/1-8/31

map prepared 4/17/97, Mark Adams, Cape Cod National Seashore

Cape Cod National Seashore National Park Service Proposed ORV Regulation