



## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

[NPS-CAHA-NPS0036286; 233P103601 - PPSECAHAS0 - PPMPSPD1Z.YM0000]

RIN 1024-AE83

#### Cape Hatteras National Seashore; Bicycling

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service proposes to amend the special regulations for Cape Hatteras National Seashore to allow for bicycle use on an approximately 1.6-mile multi-use pathway to be constructed in the Hatteras Island District of the Seashore.

**DATES:** Comments on the proposed rule must be received by 11:59 PM EDT on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE83, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov/>. Follow the instructions for submitting comments.

(2) *By hard copy:* Mail to: Superintendent, Cape Hatteras National Seashore, 1401

National Park Drive, Manteo, North Carolina 27954.

*Document Availability:* The Construct Multi-use Pathway in Hatteras Island District Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and related project documents provide information and context for this proposed rule and are available online at <https://parkplanning.nps.gov/parkHome.cfm?parkID=358> by clicking the link entitled “Construct Multi-Use Pathway in Hatteras Island District” and then

clicking the link entitled “Document List.”

*Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024-AE83) for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided.

*Docket:* For access to the docket to read comments received, go to <https://www.regulations.gov/> and search for “1024-AE83.”

**FOR FURTHER INFORMATION CONTACT:** David Hallac, Superintendent, Cape Hatteras National Seashore; (252)-473-2111; david\_hallac@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on Regulations.gov in the docket for this rulemaking.

**SUPPLEMENTARY INFORMATION:**

**Background.**

*Purpose and Significance of Cape Hatteras National Seashore.*

In 1937, Congress authorized the establishment of Cape Hatteras National Seashore. Located in the Outer Banks in Dare County, North Carolina, the Seashore consists of more than 30,000 acres distributed along approximately 75 miles of ocean-facing shoreline. The purpose of the Seashore is to permanently preserve the wild and primitive character of the ever-changing barrier islands, protect the diverse plant and animal communities sustained by coastal island processes, and provide for recreational

use and enjoyment that is compatible with preserving the distinctive natural and cultural resources of the Nation's first national seashore.

Located within a day's drive of several urban centers, the Seashore is a popular vacation destination that receives approximately three million visitors each year. Stretching about 75 miles from north to south, the Seashore encompasses Bodie, Hatteras, and Ocracoke islands, which are linked by North Carolina Highway 12 (NC12) and the Hatteras Inlet Ferry. Nine villages, including Nags Head, Rodanthe, Waves, Salvo, Avon, Buxton, Frisco, Hatteras, and Ocracoke, are located adjacent to or within the Seashore. Popular visitor activities include beachcombing, swimming, fishing, hiking, camping, and learning about the history and natural features of the unique barrier islands. Visitors can access the northern entrance via roadways and the southern entrance by ferry or air travel. The Seashore encompasses a mix of land uses with villages, residences, commercial uses, tourist attractions, and nationally important resources within and adjacent to NPS-managed areas.

#### *Bicycle Use in the Seashore.*

Bicycle use has occurred in the Seashore for several decades. Bicycles are allowed on roads and in parking areas that are open to public motor vehicle traffic. Bicycle use is not allowed on any trails or pathways within the Seashore. Public roads and parking areas that are open to traditional bicycles are open to electric bicycles, which are defined in NPS regulations as two- or three-wheeled cycles with fully operable pedals and electric motors of not more than 750 watts that meet the requirements of one of three classes. See the definition of "electric bicycle" in 36 CFR 1.4(a).

#### *New Multi-use Pathway.*

Connectivity within and near the Seashore is important for realizing one purpose of the Seashore to provide access and opportunities for the benefit and enjoyment of visitors. The Seashore's 1984 General Management Plan (GMP) recognized the need for

a “bikeway” within the Seashore and identified the area adjacent to Lighthouse Road as an appropriate location that would provide access from NC12 and the village of Buxton to popular visitor use areas within the Cape Hatteras Lighthouse District. Multiple modes of transportation use the Lighthouse Road corridor. These include passenger, recreational, and camping vehicles, as well as pedestrians and bicyclists, who either share the paved road with motor vehicles or use the grassy shoulders along the road. Although the shoulders are wide enough to physically accommodate pedestrians and bicyclists for most of Lighthouse Road, there is no designated and safe pathway for these groups of visitors.

In May 2022 the NPS initiated a 30-day public scoping process to inform the development of plans to construct a multi-use, paved pathway adjacent to Lighthouse Road, consistent with the recommendation in the GMP. Following the public scoping period, in February 2023 the NPS published the EA to analyze the potential environmental consequences of no-action and action alternatives. Under the action alternative, which is the NPS’s preferred alternative, the NPS would construct a 10-12-foot-wide paved multi-use pathway in two phases. The pathway would be physically separated from but adjacent to Lighthouse Road, and then extend away from the road to the Trailhead at Cape Hatteras Lighthouse in one direction, and to the Trailhead at Buxton Beach Access in the other direction. The total length of the pathway would be approximately 1.6 miles. The project would include wayfinding signage, benches, bollards, and the reconfiguration of the Seashore entrance at the start of the pathway, including intersection improvements and connections to local sidewalks.

In addition to evaluating the potential consequences of constructing the pathway, the EA also evaluated the potential impacts of allowing bicycles and electric bicycles on the pathway. The EA evaluated the suitability of the trail surface and soil conditions for accommodating bicycle use; and life cycle maintenance costs, safety considerations,

methods to prevent or minimize user conflict, and methods to protect natural and cultural resources and mitigate impacts associated with bicycle use.

The NPS accepted public comments on the EA for 30 days. In May 2023 following a recommendation by the Superintendent of the Seashore, the Regional Director for Interior Region 2, South Atlantic – Gulf, signed the FONSI identifying the action alternative in the EA as the selected alternative. As stated in the FONSI, the NPS believes the action alternative will greatly improve the quality of the experience for visitors travelling along Lighthouse Road by constructing a safe, resilient, and accessible off-road pathway for pedestrians and bicyclists. The NPS expects to complete construction of phase one of the pathway in the spring of 2024.

### **Proposed Rule.**

This proposed rule would implement part of the selected alternative in the FONSI by authorizing the Superintendent of the Seashore to allow bicycles on an approximately 1.6-mile multi-use pathway within the Hatteras Island District of the Seashore. This rulemaking would comply with NPS regulations at 36 CFR 4.30, which state that special regulations are required to designate new bicycle trails outside of developed areas. The proposed rule would add a new paragraph (d) to 36 CFR 7.58, which contains existing special regulations for the Seashore. After the pathway is constructed, the Superintendent could designate the pathway for bicycle use by notifying the public through one or more of the methods listed in 36 CFR 1.7. The Superintendent would be required to list the pathway as open to bicycle use in the Superintendent's compendium, which is a written compilation of designations, closures, permit requirements and visitor use restrictions that is available on the Seashore's website (<https://www.nps.gov/caha/index.htm>). Maps showing the pathway as open to bicycle use would be available at Seashore visitor centers and on the Seashore's website. Finally, the proposed rule would state that the Superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail

to bicycle use, or terminate such conditions, closures, limits, or restrictions. This could occur after the Superintendent considers public health and safety, resource protection, and other management activities and objectives, as stated in 36 CFR 4.30(f). This rulemaking would not affect the use of any existing trails or pathways in the Seashore, all of which would remain closed to bicycle use.

NPS regulations at 36 CFR 4.30(i) give superintendents the discretionary authority to allow electric bicycles on park roads, parking areas, and administrative roads and trails that are otherwise open to bicycles. After the pathway is constructed, the Superintendent may designate it open to traditional bicycles as explained above. At that time, the Superintendent also could designate the pathway as open to some or all classes of electric bicycles. If, in the future, the Superintendent determines that electric bicycles or certain classes of electric bicycles should no longer be allowed on the pathway, or that conditions for use should change, the Superintendent could make such changes by updating the Superintendent's compendium and providing adequate public notice under 36 CFR 1.7.

### **Compliance with Other Laws, Executive Orders and Department Policy.**

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)**

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that the proposed rule is not significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021

(Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

Executive Order 13563 reaffirms the principles of Executive Order 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. Executive Order 13563 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. Executive Order 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. The NPS has developed this proposed rule in a manner consistent with these requirements.

### **Regulatory Flexibility Act**

This rulemaking would 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.). This certification is based on information contained in the economic analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Rule to Designate a New Multi-Use Trail for Bicycle Use at Cape Hatteras National Seashore.” The report may be viewed on the seashore’s planning website at the uniform resource locator (URL) listed in **ADDRESSES**.

### **Congressional Review Act (CRA)**

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

- (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**

This rulemaking does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local or Tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

### **Takings (Executive Order 12630)**

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

### **Federalism (Executive Order 13132)**

Under the criteria in section 1 of Executive Order 13132, the rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This proposed rule only affects use of federally administered lands and waters. It has no direct effects on other areas. A federalism summary impact statement is not required.

### **Civil Justice Reform (Executive Order 12988)**

This rulemaking complies with the requirements of Executive Order 12988. This rulemaking:

(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. The NPS has evaluated this rulemaking under the criteria in Executive Order 13175 and under the Department's Tribal consultation policy and has determined that Tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian Tribes. Nevertheless, in support of the Department of the Interior's and the NPS's commitment to government-to-government consultation, during the EA process, the NPS sent early notification letters to Tribal partners to invite participation in the planning process. The Tribes are the Absentee Shawnee Tribe, the Catawba Indian Nation, the Eastern Shawnee Tribe, the Shawnee Tribe, and the United Keetoowah Band of Cherokee Indians. The NPS notified the Tribes of the project through correspondence dated May 20, 2022, and received a response from the Catawba Indian Nation in a letter dated July 7, 2022. The Catawba Indian Nation requested to be notified if Native American artifacts or human remains are located during the ground disturbance phase of the project.

## **Paperwork Reduction Act**

This rulemaking does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

## **National Environmental Policy Act**

The NPS has prepared the EA to determine whether this rulemaking will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This rulemaking would not constitute a major Federal

action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because of the FONSI. The EA contains a full description of the purpose and need for taking action, the alternatives considered, a map of the affected area, and the environmental impacts associated with the project. A copy of the EA and FONSI can be found online at the URL listed in **ADDRESSES**.

### **Effects on the Energy Supply (Executive Order 13211)**

This rulemaking is not a significant energy action under the definition in Executive Order 13211; the rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rulemaking has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

### **Clarity of this rule.**

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and 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 the NPS has not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**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 by one of the methods listed in the **ADDRESSES** section of this document.

**Public availability of comments.**

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.

**List of Subjects in 36 CFR Part 7**

National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

**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. Amend § 7.58 by adding paragraph (d) to read as follows:

**§ 7.58 Cape Hatteras National Seashore.**

\* \* \* \* \*

(d) *Bicycle Use.* (1) The Superintendent may designate all or a portion of the following trails as open to bicycle use:

- (i) Multi-use pathway in the Hatteras Island District (approximately 1.6 miles).
- (ii) [Reserved]

(2) Maps showing the pathway as open to bicycle use will be available at Seashore visitor centers and posted on the Seashore website. The Superintendent will provide notice that the pathway is open to bicycle use in accordance with § 1.7 of this chapter, including in the superintendent's compendium (or written compilation) of discretionary actions referred to in 36 CFR 1.7(b).

(3) The Superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such conditions, closures, limits, or restrictions in accordance with § 4.30 of this chapter. A violation of any such limit, restriction, condition, or closure is prohibited.

**Shannon A. Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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