

Appendix C

Summary of Public Comments Received on the Revised Draft CCP/EA and Their Disposition

Comments received during the public review period for the Revised Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) were considered during preparation of the Decision Document, a Finding of No Significant Impact (FONSI). Comments were received from elected officials, Federal agencies, State and local governments, national conservation and recreation organizations, regional and State organizations, and local residents, as well as out-of-state residents.

The Revised Draft CCP/EA was released for 30 days of public review and comment July 5 through August 4, 2000. A formal public hearing was held July 19, at the Absegami High School in Galloway Township, Atlantic County, New Jersey. Some 80 people were in attendance. The majority of the speakers, including a legislative staff member representing Congressman Jim Saxton, were opposed to the proposed year-round beach closure to motor vehicles at the Holgate Unit of Forsythe National Wildlife Refuge. Most also spoke in opposition to the proposed seasonal beach closure at the Two Mile Beach Unit of Cape May National Wildlife Refuge.

During the comment period we received over 1,700 written comments on the document. Of these, 1,159 opposed and 543 supported the proposed beach closures. Many of the latter comments also urged that we petition the State Tidelands Council to close the State owned intertidal area (i.e., the lands below the mean high tide line) on the Holgate Peninsula to motorized vehicle use.

Those opposed to the proposed beach closures included:

- New Jersey Division of Fish and Wildlife;
- County of Ocean Board of Chosen Freeholders;
- Township of Lower;
- Township of Long Beach;
- Township of Manchester;
- Borough of Beach Haven;
- Chamber of Commerce of Southern Ocean County;
- Atlantic Surfers;
- Eastern Surfing Association/New Jersey District;
- Mid-Island Surfcasters;
- New Jersey Anglers Association;
- Jersey Coast Shark Anglers;
- Recreational Fishing Alliance;
- New Jersey State Federation of Sportsmen's Clubs;
- United Mobile Sportfishermen.

Those supporting the proposed beach closures included:

- New Jersey Chapter of the Sierra Club;
- Atlantic Audubon Society;
- New Jersey Audubon Society;
- New Jersey Conservation Foundation;
- Wetlands Institute;

Coalition Against Toxics;
Northwest Ecosystem Alliance;
Wilderness Watch;
Lower Township Environmental Commission.

Others commenting on the document included:

New Jersey Trappers Association;
New Jersey Environmental Federation;
Animal Protection Institute;
New Jersey Waterfowlers Association;
Middle Township Beach Association;
Alliance for a Living Ocean.

A summary of the public comments received and the disposition of the concerns expressed in those comments follows.

Comment: The Army Corps of Engineers commented that proposed activities in navigable waters will require a Department of Army permit pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

Response: The Service will comply with the Acts, and submit the required permit application(s) and environmental documents prior to any actual construction work.

Comment: The New Jersey Division of Fish and Wildlife (NJDFW), while supportive of our plans to promote piping plover breeding at the Two Mile Beach Unit, does not believe that there is sufficient justification to extend this closure through the shorebird migration season. They believe an April 1-August 15 closure would be sufficient to safeguard piping plover breeding.

Response: The Service funded a research study by the New Jersey Audubon Society's Cape May Bird Observatory in fiscal year 2000 to look at all shorebirds use of the entire beach area. Observations were made twice a week along predetermined transects from mid-August to mid-October on three adjoining beaches, the United States Coast Guard (USCG) LORAN Support Unit, the Service Two Mile Beach Unit, both closed to all public use, and the private property to the north which was open to public use. Our current beach closure through September 31, accommodates late nesting birds, such as, the black skimmer and least tern, as well as migrating shorebirds. Based on the results of the study the Service will make a decision on whether to reduce or maintain our closure period.

Comment: The NJDFW also encouraged us to allow access to the jetty for fishing utilizing the existing parking facilities. This has been permitted in the past by the Coast Guard and will not jeopardize beach nesting birds.

Response: Jetty access is controlled by the Coast Guard and the Service has no authority on Coast Guard land.

Comment: The NJDFW also emphasized that prohibitions on deer hunting at Forsythe make it difficult to adequately manage deer herds on this area without resulting negative impacts on a variety of habitats, particularly Atlantic white cedar swamp.

Response: A substantial portion of Forsythe Refuge is currently open to deer hunting in Deer Management Zones 56, 57, and 58. We work cooperatively with the Division’s deer management program staff to ensure a healthy herd, to protect critical habitat, and to provide a quality hunt experience. Annual meetings are held between Refuge and Division representatives.

Comment: The NJDFW also noted that when converting to GIS, the boundary of Deer Management Zone 57 was changed, eliminating some salt marsh areas. They recommend that the original boundary be restored.

Response: Deer Management Zone 57 will include all the salt marsh area that was previously included.

Comment: The NJDFW also strongly urged that opportunities to harvest resident Canada and snow goose be expanded to the maximum extent practicable to reduce the negative habitat and societal impacts resulting from the current overabundance of these species. They also proposed an annual review of waterfowl hunting areas with Division staff and sportsmen representatives to discuss boundary issues, the 40% prohibition on pre-1978 acquisition, addition of new refuge lands and other waterfowl related issues.

Response: Over the past four years we have expanded opportunities to hunt resident Canada and snow geese to the maximum. Opening no more than 40% of a refuge, established as an inviolate sanctuary, to waterfowl hunt is a provision of the Migratory Bird Conservation Act. It applies to all the refuge property within the pre-1978 approved acquisition boundary. We can open more than 40 percent of the refuge property within the pre-1978 approved refuge boundary, only if the Secretary determines that such an action would be beneficial to the species hunted. The 40 percent limitation is intended to ensure that sufficient undisturbed area is available for waterfowl species can carry out their life cycles and sustain their population numbers.

Comment: A majority of commenters, including the State and local governments and many organizations, opposed our proposal to restrict year-round motorized vehicle access above the mean high tide line on the Holgate Unit of Forsythe Refuge.

Response: We are mandated to comply with the provisions of the Wilderness Act. The Act clearly states in Section 4(c) that, “Except as specifically provided for in this Act.....there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structures or installations within any such area.” There is an exception in Section 4(d)(1) of the Act which states that “Within wilderness areas designated by this Act the use of aircraft or motorboats (emphasis added), where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary deems desirable.” There is no exception to permit the continuation of previously established motor vehicle use. We simply do not have the authority to be more liberal than the law itself.

Comment: The Southern Ocean County Chamber of Commerce noted that without beach buggy access, older anglers and those with disabilities would not be able to participate in the sport of surf fishing. A “seasonal boat concession,” promised as part of the Alternative B and C proposals, might at least begin to address this concern, but only if the ferry service is in place and operational before the access ban is implemented, and only if “seasonal” includes late fall, and only if the ferry service was operated from predawn to late nights, when—as any angler knows—the fish are biting. To run a shuttle service from nine-to-five is pretty much useless.

Response: The Wilderness Act prohibits the use of “mechanical means of transport”. However, the Americans with Disabilities Act states in Section 507(c)(1) that “In General—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation or to construct any facilities or modify any conditions of lands within wilderness to facilitate such use.” We believe that our proposed “seasonal boat concession” will help make the Holgate Unit more accessible to those with disabilities, including those using wheelchairs, and all other users as well. Once a final decision has been made, we plan to pursue efforts to provide a concession, assuming it is still part of our final decision. If so, we would work to have the concession in place by the fall of 2001. Once in place, the concession would respond to market demands in terms of its operations.

Comment: The Chamber also stated that it fervently believed that the state-owned portion of the beach--below the mean high tide line--should remain open to beach buggies when nesting migratory birds are not present.

Response: During the fall and winter, control of motor vehicle access in the state-owned riparian zone below mean high tide at Holgate is determined by the State Tidelands Council under all three alternatives in the Comprehensive Conservation Plan..

Comment: Numerous commenters expressed concern that our proposed closure of the beach above mean high tide at the Holgate Unit to motorized vehicles would seriously impact the Chamber’s entire six-week Surf Fishing Tournament, which along with the Chowderfest and Beach Wheels festival, enlivens the Island’s economy after the traditional vacation season has ended.

Response: We acknowledge that our proposed beach closure may have some impact on the tournament. While we encourage fishing, one of our six priority public uses, the Wilderness Act does not allow us to permit the use of motorized vehicles in wilderness areas, including in support of fishing. We believe that our proposed “seasonal ferry concession” would be able to continue to provide Tournament anglers access to the tip of the Holgate Peninsula.

Comment: A number of commenters questioned the availability of scientific data to prove that the seasonal beach closure at the Two Mile Beach Unit of Cape May Refuge would benefit the piping plover.

Response: It is well documented in scientific literature that if human disturbance or presence is eliminated, birds will recolonize/reclaim habitat. There are studies that show that birds respond negatively to human walkers. These studies also note that disturbance by humans and pets often reduces the functional stability of habitat and causes direct and indirect mortality of eggs and chicks. Predation has also been identified as a major factor limiting piping plover reproductive success at many Atlantic Coast sites, and substantial evidence shows that human activities are affecting types, numbers, and activity patterns of predators, thereby exacerbating natural predation. This past summer, after Service closed the Two Mile Beach Unit and the USCG closed the adjoining LORAN Support Unit, plovers nested for the first time since 1994. Least terns nested for the first time since 1988. American oystercatchers also nested. These nests were all located on the Coast Guard LORAN Support Unit beach, where the nesting habitat is better. Our portion of the beach did provide undisturbed critical feeding areas for significant numbers of shorebirds. Piping plover also fed on our beach. There was frequent activity by up to eight adult plovers observed early in the season, but they did not actually nest on the Refuge.

Comment: The Mayor of the Township of Lower stated that the Two Mile Beach Unit of Cape May Refuge did have walking activities, sunbathing activities, fishing activities before becoming a National Wildlife Refuge. Very little concern was given to the piping plover however the plover allegedly nested there.

Response: Lt. Cmdr. Charles Schue III, the Coast Guard base commander, is quoted as stating (Atlantic City Press, July 2, 2000, Richard Degener, Reporter) that “it always has been illegal to walk on the Coast Guard beach or jetty.” He said “We didn’t have enough security to enforce it. This is a closed base with no public access.” The Two Mile Beach Unit was part of the USCG LORAN Support Unit until October 1999. No piping plover nesting occurred on the Coast Guard property after 1994.

Comment: The Mayor also believed that the coexistence of the piping plover and the needs of recreational users can be met as they are within the Township of Lower at the Cape May Meadows project administered by the Nature Conservancy. Sunbathing, fishing, and walking on the beach area is permitted while the piping plover continues to exist in this area.

Response: Although piping plovers do nest at the Nature Conservancy’s Cape May Meadows, the fledging rate per nesting pairs the last three years, 1998, 1999 and 2000, has been 0.43, 0.25, and 0.25, respectively. Population modeling for the piping plovers show that the fledging rate per nesting pair needs to be at least 1.50 for the species to avoid extinction. This indicates that the Cape May Meadows is not providing the habitat the piping plover needs to continue to exist.

Comment: The Mayor also asked if the Fish and Wildlife Service performed a compatibility study in the Cape May Meadows, or on the newly acquired Cape May Refuge.

Response: The Service has no jurisdiction over the Cape May Meadows Preserve. Compatibility determinations are prepared only for lands that are part of the National Wildlife Refuge System. The National Wildlife Refuge Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997, states in Section (d)(3)(A)(i) that “On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses (emphasis added) that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.” Section 5(2) of the Act states that “The terms wildlife-dependent recreation and wildlife-dependent recreational use mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.” The Act also states that “The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats (emphasis added) within the United States for the benefit of present and future generations of Americans.” This basic “wildlife first” tenant of the Act takes precedence over the six priority wildlife-dependent recreational uses. The formal transfer of the Two Mile Beach Unit from the Coast Guard to the Service occurred during the preparation of our Revised Draft CCP/EA. In the Revised Draft we are in effect determining that fishing, wildlife observation and photography, environmental education and interpretation are indeed compatible uses on the Unit, subject to our proposed seasonal beach closure.

Comment: The Mayor also noted that he was informed when attempting to procure one of the existing buildings at the Two Mile Beach Unit for fire protection that all the buildings would be, with the exception of one or two, demolished. This does not make sense to him.

Response: The maintenance and upkeep of these buildings represent a significant cost and those not required for the management and operation of the Unit would be demolished in our Proposed Action,

Alternative B.

Comment: Several commenters, including the Animal Protection Institute, opposed providing trapping opportunities on Forsythe and Cape May Refuges. The Animal Protection Institute believes that trapping is an ineffective “management tool” that does not “control” populations. While they strongly support our efforts to protect threatened and endangered species, they believe we have relied too heavily on lethal predator removal as the primary method of addressing threatened and endangered species recovery efforts on refuges. They argue that protection of these species can, and should be, accomplished using effective, long-term management strategies that are both humane and socially acceptable.

Response: We believe that trapping is an important wildlife management tool. It is used on refuges to control predators and to manage populations of small mammals that impact refuge habitats and facilities such as dikes. Alternative B, our Proposed Action, includes additional opportunities for trapping at both Forsythe and Cape May Refuges. At Forsythe we would expand the areas open to trapping and at Cape May we would open about 25% of the Refuge to trapping of muskrat, raccoon and fox. All trapping is by refuge issued special use permit only. On average, only six trapping permits are issued each year at Forsythe Refuge. We use Department of Agriculture Animal Damage Control trappers at both the Holgate Unit of Forsythe Refuge and the Two Mile Beach Unit of Cape May Refuge to help control predators in our piping plover recovery efforts. Predation has been identified as a major factor limiting piping plover reproductive success at many Atlantic Coast sites. We also use fencing for exclosures, which has generally proved to be successful. However, on occasion we have documented cases where predators, especially fox, have learned to key in on fenced exclosures, dig under them, and destroy the nests they were intended to protect. Any feral animals that are caught are turned over to township animal damage control officials. Our trapping program complies with State law and we believe that trapped animals are humanely dealt with. The relocation of any predatory wildlife is illegal in New Jersey.

Comment: Several commenters, including the New Jersey Trappers Association and the New Jersey Federation of Sportsmen’s Clubs, asked us to consider providing more trapping opportunities on these public lands.

Response: Alternative B, our Proposed Action, includes additional opportunities for trapping at both Forsythe and Cape May Refuges. At Forsythe we would expand the areas open to trapping and at Cape May we would open about 25% of the Refuge to trapping of muskrat, raccoon and fox. There are currently 16 trapping units at Forsythe Refuge. On average, only two thirds of these are trapped under refuge special use permit.

Comment: The Wetlands Institute strongly encouraged us to develop collaborative research and management programs on the Jersey Coast Refuges to assist in our conservation efforts. The New Jersey Chapter of the Sierra Club also requested that the final CCP contain a detailed analysis of the best available data regarding the refuge and relevant nearby areas.

Response: Our Proposed Action, Alternative B, includes actions involving baseline surveys and monitoring of Refuge resources, expanded use of geographic information systems to document and model species and habitats, increased on-site support for current research efforts and initiating new research on both Forsythe and Cape May Refuges.

Comment: Many commenters, including the Atlantic Audubon Society, New Jersey Audubon Society, New Jersey Conservation Foundation, and Coalition Against Toxics, supported our efforts to impose a year-

round motorized vehicle closure, above mean high tide, at the Holgate Unit. Many also encouraged us to proceed with efforts to petition the State Tidelands Council to close the state-owned riparian lands adjacent to the wilderness area as well.

Response: We have decided not to petition the State Tidelands Council to close the state-owned riparian lands to motorized vehicle use during the fall and winter. Should the State ever decide to exercise its right to do so, we would certainly applaud and support that decision.

Comment: A number of commenters, including New Jersey Audubon Society and the New Jersey Environmental Federation, supported our efforts to develop Integrated Pest Management Plans for both Forsythe and Cape May Refuges. They often expressed concern over the possible use of chemicals to control mosquitos and invasive species, such as phragmites.

Response: Through the use of an Integrated Pest Management Plan we hope to significantly reduce our use of pesticides and herbicides.

Comment: The New Jersey Audubon Society recommended that we consider the expansion of the Cape May Refuge by purchasing 100 acres of critical wildlife habitat located immediately south of the former Coast Guard Electronics base and across the Cape May Inlet (known as East Cape May or Sewell Point).

Response: We believe that it would be more appropriate for the New Jersey State Department of Environmental Protection to protect this property. They have been actively involved with this property for a number of years.

Comment: A number of commenters, including the Animal Protection Institute, were opposed to providing opportunities for hunting on the Jersey Coast Refuges.

Response: Hunting is one of the six priority public uses of National Wildlife Refuges identified in the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997. In the Act Congress clearly instructed us to “ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses” and “ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System”. The Act further states that we are to “provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting”. The State Division of Fish and Wildlife regularly conducts studies of resident game species and establishes bag limits and season lengths that ensure sustainability of the species. We, in cooperation with the States, Canada and Mexico, monitor migratory bird populations in order to make management decisions on seasons and bag limits. In the case of over abundant species such as white-tailed deer, resident Canada and snow geese, the damage these species do to habitat is well documented. The complaints from the public on the impacts of resident geese to private property have been increasing in recent years and involves not only a question of habitat destruction, but public health and safety as well. In these particular cases we believe hunting is an important management tool.

Comment: The New Jersey Waterfowlers Association expressed a hope for expanded opportunities to hunt waterfowl on the Refuges. They also seek increased use, not only for the hunter, but also for birdwatchers, fishermen, boaters and photographers.

Response: Our Proposed Action, Alternative B, greatly expands opportunities for hunting, including waterfowl hunting, at both Forsythe and Cape May Refuges. It also expands opportunities for fishing, wildlife observation and photography, environmental education and interpretation at both Refuges. These are the six priority public uses of the National Wildlife System identified in the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997.

Comment: A number of commenters believed that surfing should be established as a compatible use and permitted to the same extent as the six priority public uses established in the National Wildlife Refuge System Improvement Act.

Response: Surfing was not identified as a wildlife-dependent use in that Act; therefore, it cannot be given the same priority as hunting, fishing, wildlife observation and photography, environmental education and interpretation, the six priority public uses identified in the Act. We believe there are other areas along the Jersey Coast which can accommodate this recreational activity. We do intend to conduct a compatibility review of surfing as soon as our current Draft Policy on Compatibility is finalized.

Comment: Numerous commenters stated that they would like us to pursue acquisition of the remainder of the Two Mile Beach parcel should the U.S. Coast Guard ever decide to pull out.

Response: Under our Proposed Action, Alternative B, we have stated that “Should the Coast Guard’s LORAN Support Unit (adjacent to the Two Mile Beach Unit), become excess to its needs, we would work to acquire the site.”

Comment: The Mid-Island Surfcasters noted that despite the fact that E.O. 12962 directed the U.S. Fish & Wildlife Service to work aggressively to minimize conflicts between recreational fisheries and the Endangered Species Act, there has been no effort by the Service to make accommodation for fishermen’s needs at Holgate.

Response: Our proposed seasonal closure to motorized vehicles above mean high tide at the Holgate Unit is solely based on the authority of the Wilderness Act, not the Endangered Species Act. While we encourage fishing, one of our six priority public uses, the Wilderness Act does not allow us to permit the use of motorized vehicles in wilderness areas, including in support of fishing. Anglers on foot would still have seasonal access to the beach at the Holgate Unit from September through March. We believe that our proposed “seasonal ferry concession” would also continue to provide anglers access to the tip of the Holgate Peninsula.

Comment: The Surfcasters also stated that the “Guidelines for Managing Recreational Activities in Piping Plover Breeding habitat on the Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act” (dated April 15, 1994) issued by the Service is ignored. The Guidelines required beach closure to vehicles only when the plover chicks have hatched, not the entire period from April through September. They consider this a hostile act of no benefit to the birds and an unnecessary sacrifice by the sport fisherman.

Response: Our proposed seasonal closure to motorized vehicles above mean high tide at the Holgate Unit is solely based on the authority of the Wilderness Act, not the Endangered Species Act. The summer closure of the Holgate Unit from April through August, which has been in place to protect the piping plover since 1988, would not be effected by this action and would remain in place. Anglers on foot would still have seasonal access to the beach at the Holgate Unit from September through March. We believe that our

proposed “seasonal ferry concession” would also continue to provide anglers access to the tip of the Holgate Peninsula.

Comment: The Surfcasters also noted that Alternatives B and C triple the refuge staff, more than triple the budget, propose to acquire all the remainder of land within the legislated boundary of the refuges and more outside the boundary and propose excessive construction of facilities which they deemed boondoggles in order to substantiate the need for bloated staff.

Response: The proposed actions under Alternatives B and C reflect the comments and issues raised during the public scoping meetings which focused on the need for additional public recreational opportunities. In order to provide these opportunities additional facilities, staffing, and related funding is required. Not only has the public requested additional opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation, but the National Wildlife Refuge Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 instructs us to provide additional opportunities as well. Section (a)(4)(H) of the Act tells us to “Provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting.”

Comment: The Surfcasters also noted that we said that we are directed by the Wilderness Act that existing vehicle use at Holgate is in violation of the Act. They believe this is a false claim for Holgate as the use pre-existed Holgate wilderness.

Response: Section 4(c) of the Wilderness Act specifically prohibits certain uses in designated wilderness areas such as the Holgate Unit. It states that “...there shall be no temporary roads, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanized transport, and no structure or installation within such area.” Section 4(d)(1) further states that “Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary deems desirable.” There are no provisions in the Act that would allow for the use of motor vehicles by the public, whether the use was a pre-existing one or not. The Service cannot be less restrictive than the law itself.

Comment: The Surfcasters also felt that Appendix A (the summary of public comment) fails to explain why the provision of 50CFR35.5 (b) is ignored and is suspiciously silent concerning it. Clearly, they noted, the omission is intended to bolster the false claim that the U.S. Fish & Wildlife Service is required by the Act to end the vehicle access at Holgate.

Response: The Regulation, 50CFR35 Subpart A 35.5 is in error. Section 4(c) of the Wilderness Act specifically prohibits certain uses in designated wilderness areas such as the Holgate Unit. It states that “...there shall be no temporary roads, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanized transport, and no structure or installation within such area.” Section 4(d)(1) further states that “Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary deems desirable.” There are no provisions in the Act that would allow for the use of motor vehicles by the public, whether the use was a pre-existing one or not. The Service cannot be less restrictive than the law itself. We are taking steps to see that this regulation is amended and the error corrected.

Comment: The Mid-Island Surfcasters and other commenters felt that the idea of a possible concession

ferry to transport fishermen to the Holgate Unit point was not a viable alternative.

Response: We can cite several examples of highly successful ferry system concessions in use at several Atlantic Coast National Wildlife Refuges to access Wilderness Areas, including Cape Romain Refuge in South Carolina and Monomoy Refuge in Massachusetts. The ferry system at Monomoy supports a very successful striped bass and bluefish sport fishery, as well as very popular access for birders. We believe that such a system could be established to serve the Holgate Unit as well. Once a final decision has been made, we plan to pursue efforts to provide a concession, assuming it is still part of our final decision. If so, we would work to have the concession in place by the fall of 2001. Once in place, the concession would respond to market demands in terms of its operations.

Comment: A number of commenters felt there was a disparity between the alternatives regarding beach access at the Two Mile Beach Unit. This was especially true regarding Alternative C, which called for a year-round beach closure at the Holgate Unit, while allowing year-round public access at the Two Mile Beach Unit. Alternative A called for continued seasonal access at the Holgate Unit, while keeping the beach at the Two Mile Beach Unit closed year-round. They believed we were unfairly limiting their choices to opening one beach while closing the other beach. Some felt that we were deliberately trying to divide the public in this respect.

Response: This is not true. Alternative A in all National Environmental Policy Act documents is always the “no action alternative, the continuation of existing practices. Furthermore, all possible conditions of beach access are reflected in the range of alternatives we displayed. We are not necessarily limited to these three alternatives in making our final decision. We could take various components of each alternative to structure a new forth alternative. For example, we could take the Forsythe component of Alternative A, the Cape May component of Alternative B, and the Two Mile Beach Unit component of Alternative C, to form a new alternative as our final decision. Some commenters did exactly that when stating that they liked this part of one Alternative and that part of another Alternative.

Comment: Some commenters felt that the plans for both Forsythe and Cape May Refuges fell far short of the provisions set forth in the National Wildlife Refuge System Improvement Act of 1997 relative to providing opportunities for compatible wildlife-dependent recreational activities at both refuges. They believed that bird watching, fishing, waterfowl and upland game hunting, trapping, environmental education, wildlife observation and photography should be permitted wherever possible.

Response: In our professional judgement, our Proposed Action, Alternative B, provides a good range of compatible wildlife-dependent recreational opportunities on both refuges, while allowing us to still meet our conservation mandates under the Act.

Comment: The Jersey Coast Shark Anglers questioned why the planning team for the Jersey Coast Refuges was located in another state. They also questioned how people who don't live in New Jersey or use the Jersey Coast Refuges can possibly make decisions for the local residents.

Response: The Planning Team for the Jersey Coast Refuges project was made up of Refuge staff who are local residents, a representative of the New Jersey Division of Fish and Wildlife, and planning staff from our Regional Office in Hadley, Massachusetts. Our Regional Office planning staff provides support services to all of refuges in our 13 state Northeastern Region as they prepare Comprehensive Conservation Plans. Since the U.S. Fish & Wildlife Service and the National Wildlife Refuge System are national in scope and represents a public trust network of conservation lands, any citizen or resident of the United States has the right to comment on any plan or policy regarding an individual refuge or the system as a whole. These

lands, which include the Jersey Coast Refuges, belong to all the American people, not just local residents.

Comment: Several commenters noted that properties acquired for National Wildlife Refuges should remain open to traditional compatible wildlife-related public recreational activities pending completion of refuge management plans, unless demonstrated negative impacts of these uses are present.

Response: Section 668dd(d)(3)(A)(ii) of the National Wildlife refuge Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997, states that “On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.” Section 5(2) of the Act states that “The terms wildlife-dependent recreation and wildlife-dependent recreational use mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.” Appendix N of our Revised Draft CCP/EA for the Jersey Coast Refuges contains Interim Compatibility Determinations for both Forsythe and Cape May Refuges. These Interim Determinations indicate that any such uses occurring on lands proposed for acquisition in the document would be considered to be compatible and allowed to continue until plans for those new lands had been completed.

Comment: A number of commenters protested our change in policy, which would prohibit beach buggy use at Holgate. They saw no valid reason to mandate changes at this time in the Holgate vehicle policy merely because of the 1964 Wilderness Act general regulations regarding motor vehicles. They felt that instead of following the guidelines and policies of the National Wildlife Refuge Improvement Act of 1997 related to compatible wildlife-related public uses, our plan goes out of its way to prohibit a compatible wildlife-related public use (in this case beach buggies at Holgate) which was successfully mitigated years ago and generally accepted by all over the years.

Response: We are mandated to comply with the provisions of the Wilderness Act. The Act clearly states in Section 4(c) that “Except as specifically provided for in this Act.....there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structures or installations within any such area.” The only exception appears in Section 4(d)(1) which states that “Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary deems desirable.” The national Wildlife Refuge System Improvement Act of 1997 identifies only six wildlife-dependent recreational uses. Fishing is a wildlife-dependent recreational use; motorized vehicle use is not a wildlife-dependent recreational use. Therefore, motor vehicle use could never be determined to be a compatible wildlife-dependent use. We simply do not have the authority to be allow uses specifically prohibited by the Wilderness Act or any other law. The Service has clearly been remiss in not fully complying with the spirit and requirements of the Act by not prohibiting the use of motor vehicles above mean high tide within the Holgate Unit. Our Proposed Action, Alternative B, seeks to correct this situation.

Comment: Some commenters noted that we have been using the State of New Jersey lands which surrounds the Wilderness to police the area. They stated this as a fact, since they believed that there is no access in the Wilderness for our vehicles as well.

Response: Like all citizens of New Jersey we have the right to drive our vehicles within the State owned riparian zone below mean high tide. We also have the authority under the Wilderness Act to utilize the area in the Holgate Unit above mean high tide for administrative purposes. Section 4(c) of the Act states that

“.....except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (emphasis added) (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.” On page II-60 of the Revised Draft CCP/EA we also note that in our administration of the Holgate Unit “We would scrutinize all planned management actions to determine if they are necessary to protect wilderness resources and determine the “minimum tool” needed to carry them out. We would not use a tool simply because it is the most comfortable, convenient, or least expensive.” Use of a motorized vehicle may not always be the “minimum tool” necessary to get our job done. In the Principles of Wilderness Management found in Appendix A of the Revised Draft CCP/EA, the eighth Principle states that we must “Accomplish necessary wilderness management work with the minimum tool, resorting to mechanized or motorized equipment only when its use clearly is the least damaging to the Wilderness resource.”

Comment: One commenter felt that the Two-Mile Beach Unit did not benefit from the preliminary planning effort (contacting organizations and individuals to solicit comments and suggestions on natural resources and public uses) that was conducted for Forsythe and Cape May Refuges.

Response: The Two-Mile Beach Unit was addressed as part of a series of public scoping meetings held in November and December 1996. Meetings were held in the Townships of Upper, Dennis, Middle and Lower in Cape May County. We also distributed an Issues Workbook before these meetings were held and distributed a Planning Update following the meetings. In April of 1997 we also held an Alternatives Workshop to help us in the development of our alternatives. During these meetings and through the workbooks we received many public comments on the Two Mile Beach Unit, which was still under the jurisdiction of the Coast Guard at that time.

Comment: Many commenters felt that the Holgate closure was not necessary to protect the piping plover.

Response: Our proposed seasonal closure to motorized vehicle use above mean high tide at the Holgate Unit is solely based on the authority of the Wilderness Act, not the Endangered Species Act. The summer closure of the Holgate Unit from April through August, which has been in place to protect the piping plover since 1988, would not be effected by this action and would remain in place.

Comment: A number of commenters, including the Middletown Beach Association, expressed concern over our plans to allow hunting between the Delaware Bay and Route 47.

Response: We acknowledge these concerns and all hunting will be conducted in full compliance with State hunting regulations. We will physically post the 450 foot safety zones in the area involved.

Comment: Many commenters noted that fishing opportunities would be greatly reduced by our Holgate closure. They felt that this violated our charge under the National Wildlife Refuge System Improvement Act of 1997 to provide opportunities for the six priority general public uses, which include fishing.

Response: While we acknowledge that some opportunities would be lost at the Holgate Unit by anglers depending on the use of motorized vehicles, anglers on foot would still have seasonal access to the beach at the Holgate Unit from September through March. We believe that our proposed “seasonal ferry concession” would also continue to provide anglers access to the tip of the Holgate Peninsula. Our Proposed Action, Alternative B, also provides additional fishing opportunities on both Forsythe and Cape May

Refuges.

