



Public Comment Analysis for the Compatibility Determination for Fishing at Parker River National Wildlife Refuge

Introduction

The public comment period for the draft Compatibility Determination (CD) for Fishing at Parker River National Wildlife Refuge (NWR) began on July 13 and concluded on August 1, 2022, for a total of 20 days. Notice was provided by all of the following: refuge Facebook page, refuge websites, flyers throughout refuge kiosks and the gatehouse entry station, article in the Newburyport Daily News (requested July 12; published July 14), a press release to online and print news media throughout the North Shore of Massachusetts and Seacoast Region of New Hampshire, and emails or phone calls to all known key stakeholders, elected officials, and relevant state agencies beginning 2 days before the public announcement. In addition to the 508-compliant draft documents being available for digital download on the refuge website, hard copies were provided at three locations: the Newbury and Newburyport public libraries and the refuge visitor center.

This document summarizes the public comments received. For the final CD, please visit the Parker River NWR website (<https://www.fws.gov/refuge/parker-river>).

Results

In total we received 83 public comments in writing: 6 from non-profit organizations or sporting clubs and 81 from individuals (four comments were signed by two people). No local, state or federal agencies submitted comments, except for the US Fish and Wildlife Service's Ecological Services office.

Of the 83 comments, 81 specifically mentioned the off-road vehicle (ORV) fishing program: 49 (59%) supported permanently discontinuing the program while 32 (38%) advocated for keeping the program, either in its entirety or in parts. The 6 comments received from organizations were split in half on this issue.

Fifteen comments mentioned the need to maintain and improve beach accessibility for wheelchair users and those who are otherwise mobility impaired (9 of these 15 comments advocated to keep ORVs, 5 to discontinue ORVs, and 1 to discontinue ORVs only when mobility-impaired beach access is fully available).

Twelve comments recommended some type of compromise, such as: further limiting the number of ORV permits or beach miles open to ORVs, creating specific beach management zones per user group, better educating ORV users and enforcing existing laws, only allowing ORVs during daylight hours, cordoning off nesting/migration areas to allow ORVs to pass elsewhere, and temporarily halting ORVs until or unless beach conditions improve. Many of these comments acknowledged changes to the beach which have limited the amount of area open to beach driving.

Five comments noted that ORV users help injured wildlife, clean up beach debris, notify staff of violations, and are otherwise good beach stewards.

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Nine comments questioned the science behind the decision to discontinue ORVs, noted that an independent research study specific to the refuge is needed, or stated that ORVs do not occur during the period that piping plovers are nesting.

Five comments described a perceived flaw in some part of the public comment process, such as the comment period being too short or the lack of a public hearing/meeting as part of a National Environmental Policy Act (NEPA) process.

Of those comments supporting the decision to discontinue ORVs, 21 stated the need to protect migratory shorebirds and their habitats and 24 mentioned beach erosion and sea level rise as sound rationale to do so based on the science and personal observations of the refuge beach. Other general themes from this group were that (1) ORVs are contrary to the mission of a national wildlife refuge, (2) ORVs detract from the feeling of solitude and quiet on the refuge beach, (3) ORVs present unique safety challenges, and (4) the CD, and discontinuing ORVs, does not limit fishing but maintains all fishing areas and seasons.

Discussion

While the draft fishing CD was comprehensive and detailed available fishing opportunities throughout the refuge, nearly all comments specifically discussed the decision to discontinue ORVs for fishing. No comments indicated that the refuge should not be open to fishing, or that rules should further restrict the seasons or open areas as indicated in the draft. Therefore, the public comment process has affirmed longstanding public support of recreational fishing as a priority public use at the refuge.

Notably, about 20% of comments – both those in support of and against the decision to discontinue ORVs – discussed the need to enhance beach access for mobility-impaired anglers and beach users, such as those in wheelchairs. We will continue to evaluate existing, and construct new, infrastructure as able to improve accessibility, as we did with rebuilding the Hellcat Boardwalk for Architectural Barriers Act (ABA) compliance in 2020. Steps are being taken right now to improve beach accessibility, such as purchasing Mobi-Mats, retrofitting boardwalk 3 to remove barriers (e.g., steps) and install curbing, and plans to re-design Lots 2 and 7 boardwalks for ABA-compliance. This is in addition to existing opportunities for the public to use refuge-provided beach wheelchairs at no cost. If there is sufficient demand and interest, we will purchase additional beach wheelchairs and storage facilities as needed.

However, while we will do everything within our means to improve beach accessibility, the refuge beach and dune systems are highly dynamic and constantly evolving. Boardwalks are routinely inundated with sand while others are undercut and destroyed by storms. Gently sloping dunes to the beach become steep and inaccessible during high-wind events. Therefore, all beach access improvements must be made while considering: (1) availability of refuge staff and financial resources to complete the projects (e.g., build new boardwalks when one is destroyed or install/move Mobi-Mats as sands shift), (2) projections for sea level rise, erosion rates and dune migration to ensure future infrastructure resilience, and (3) direct and indirect effects to natural resources (plants, wildlife, habitat).

For those comments suggesting a compromise to allow only certain aspects of the ORV program, ORVs have already been significantly reduced since 2011 due in large part to beach erosion, before which all the refuge beach south of the Beach Buggy 1 (BB1) access trail was open to ORVs for a longer season. We believe that further limiting the program by, for example, only allowing 20 permits or 1 beach mile

or during daylight hours would still detract from the refuge's core mission of protecting migratory shorebirds and their habitat, in addition to the safety concerns outlined in the CD due to the increasingly narrow and steep beach profile. Such narrow beach conditions further make it impossible to rope off and allow ORV passage around sensitive areas, as occurs at some ORV-permitted beaches on Cape Cod, MA.

Several comments within this category asked if we would re-evaluate the ORV decision in the future. While the present CD discontinues use of ORVs, it expires in 15 years (i.e., 2037) and will need to be re-evaluated before that time. In addition, CDs can be amended at any time if new information becomes available that would change the analysis in a major way.

In general, we agree with those comments stating that ORV users are good stewards of the resource. Many ORV users at the refuge are responsible, follow the rules, and leave the beach cleaner than when they arrived. Additionally, the draft CD did NOT find that ORVs were the primary cause of the increased rates of beach erosion observed over the previous years. Rather, the CD indicated that climate change, as related to sea level rise and increased storm intensity, were the driving factors, and that ORVs – based on relevant research locally and abroad – would only exacerbate this ongoing problem. Certainly, there would be no habitat or species benefits to ORV use.

In the draft document, we relied on the local, regional, and even international literature, including recent studies and those from as far back as the 1980s, to provide relevant context. Based on this extensive literature review, what is increasingly clear is that (1) many migratory shorebird populations are in steep decline, especially species using the refuge during fall migration, (2) coastal sites are undergoing unprecedented geomorphological changes, (3) the importance of natural, undeveloped beaches to shorebirds will only increase as habitat is lost elsewhere due to climate change and development, and (4) ORVs negatively affect shorebirds and their habitats. Given the overwhelming research, continuing to allow ORVs at Parker River NWR would be contrary to the refuge's core mission. And, waiting to act on this decision is time that shorebird populations and eroding beaches do not have. On the flyway scale, it may be a small step, but a highly significant one in mitigating shorebird disturbance and preserving beach and dune habitat.

Several comments noted that the CD did not adequately prove that harm was done to either shorebirds or beaches by ORVs, and that the refuge should conduct a formal, site-specific study before such a decision can be made. As noted above, due to already observed geomorphological changes of the beach problematic to safe ORV access, and considering global shorebird population declines, additional research is not needed to make this decision. Further, by policy, CDs are not peer-reviewed, primary sources of literature; they are written based on the "best available science and the sound professional judgement of the refuge manager." Even if data are insufficient to find a use compatible, then the use must not be allowed.

For those comments stating that piping plovers are already well protected and discontinuing ORVs would do little to further benefit this nesting shorebird, we agree, in part. As stated in the CD, the decision to discontinue ORVs was made not for the (direct) benefit of the piping plover, but for the Arctic-breeding shorebird species that depend on the refuge for stopover habitat during fall migration; a period which coincides with the ORV program. Such species include the federally threatened red knot, semipalmated sandpiper, dunlin and black-bellied plover. Any benefits to piping plovers would be indirectly related to habitat protection (e.g., reduced rates of erosion).

Five groups and individuals were displeased with the public process used to make this decision, including the length of time and manner with which public input was received. By policy, new or renewed CDs are required to undergo a minimum of 14 days public comment. To provide additional time, we selected 20 days, in addition to advanced notification sent to key stakeholders. Considering we were not inundated with comments leading up to the last day, there was only one CD for review, and only two comments were received after the August 1 deadline, we believe that adequate time was provided for the public to share their input. Further, the process of finding a refuge use – such as fishing – to be compatible is not a public rulemaking process, and public scoping meetings or listening sessions are not required, as they would be for a NEPA document such as an Environmental Impact Statement.

Conclusion

Parker River NWR offers some of the best recreational surf casting beaches in Massachusetts, and fishing has a long and successful history at the refuge. Provided the stipulations as outlined in the CD are followed, fishing will not detract from the mission and purpose of the refuge and will continue to instill an appreciation for the resource. All areas and seasons previously open to fishing will continue to be open, with the addition of Lot 6 shoreline access to Stage Island; new since the last fishing CD was written, and the expansion of the fishing area at Nelson Island. Public comments universally supported the notion of maintaining access for anglers.

However, use of ORVs for fishing was found to detract from the mission of the refuge due to adverse effects on migratory birds, shoreline and dune habitat, and public safety. Further, most public comments supported discontinuing the ORV fishing program. Therefore, we will move forward with the CD, which maintains or expands fishing areas and seasons but discontinues the use of ORVs.

Numerous comments provided constructive feedback and suggestions to improve the CD, many of which were incorporated into the final draft. Listed below are some notable changes made as a result of the public comment review process:

- The area open to fishing on Nelson Island was expanded from 200 ft to 550 ft of shoreline so the entirety of the cove area may be used on either side of the trail's end (p. 2).
- Stated more explicitly that we do not believe ORVs are the *primary* cause of beach erosion on the refuge, but that external factors (e.g., sea level rise) combine to exacerbate erosion (p. 4).
- Noted that the ORV fishing program does not have direct impacts to locally-nesting piping plovers, but rather to migrating shorebirds in September and October (p. 4).
- The supplemental document previously titled "Effects of Off-Road Vehicles at Parker River National Wildlife Refuge" was rightfully found by some to be misleading, as the title reads more like a research study specific to the refuge. The title has been changed to "Effects of Off-Road Vehicles on Beaches: A Literature Review." It is available for download at <https://ecos.fws.gov/ecp>.
- Updated language in the above-referenced supplemental document to indicate the photos are a snapshot in time; typically, the dune ORV access trail and beach front does not appear so flooded throughout the entire ORV fishing season, as conditions change rapidly (Figure 1, p. 2). This change was also included in the CD (Figure 2, p. 16).