

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 7**

RIN 1024-AD88

**Special Regulations; Areas of the National Park System, Cape Cod National Seashore****AGENCY:** National Park Service, Interior.**ACTION:** Proposed Rule.

**SUMMARY:** The National Park Service (NPS) proposes to amend special regulations for Cape Cod National Seashore, to allow for a spring-season hunt for Eastern Wild Turkey. The proposed rule would implement the Cape Cod National Seashore Hunting Program Environmental Impact Statement of August 2007.

**DATES:** Comments must be received by April 21, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 1024-AD88 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Bob Grant, Chief Ranger, 99 Marconi Site Road, Wellfleet, MA 02667.

All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) 1024-AD88 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bob Grant, Chief Ranger, 99 Marconi Site Road, Wellfleet, MA 02667; [bob\\_grant@nps.gov](mailto:bob_grant@nps.gov).

**SUPPLEMENTARY INFORMATION:****Description of the Park Area**

In 1961 the U.S. Congress established Cape Cod National Seashore (CACO). In establishing the seashore, Congress directed that the unique flora and fauna, the physiographic conditions and the historic sites and structures be permanently preserved, the public enjoyment and understanding of the unique natural, historic, and scientific

features the seashore be facilitated by establishing trails, observation points, exhibits and services for the public, and provided that adaptable portions of the seashore may be managed for camping, swimming, boating, sailing, hunting, fishing, and other activities of similar nature. Public Law 87-126, Sec. 7, Aug. 7, 1961, 75 Stat. 291.

The seashore comprises 43,608 acres of shoreline; salt marshes; clear, deep, freshwater kettle ponds; uplands; as well as a great diversity of species supported by these habitats. Lighthouses, a life-saving station, dune shacks, modern and Cape Cod-style houses, cultural landscapes, and wild cranberry bogs provide a glimpse into Cape Cod's past and continuing life ways. The Seashore offers six swimming beaches, eleven self-guiding nature trails, and a variety of picnic areas and scenic overlooks.

**Background**

The 1961 legislation establishing CACO allowed the NPS to permit hunting within the seashore.

The Secretary may permit hunting and fishing, including shellfishing, on lands and waters under his jurisdiction within the seashore in such areas and under such regulations as he may prescribe during open seasons prescribed by applicable local, State and Federal law. The Secretary shall consult with officials of the Commonwealth of Massachusetts and any political subdivision thereof who have jurisdiction of hunting and fishing, including shellfishing, prior to the issuance of any such regulations, and the Secretary is authorized to enter into cooperative arrangements with such officials regarding such hunting and fishing, including shellfishing, as he may deem desirable. \* \* \* 16 U.S.C. 459b-6(c)

The proposed rule would increase hunting opportunities by expanding the hunting season to include a spring turkey hunt. Hunting within CACO that is authorized by NPS regulations is conducted in accordance with Commonwealth of Massachusetts, Department of Fisheries and Wildlife (MDFW) regulations. Upland game hunting is currently authorized at CACO and Eastern Wild Turkey is managed as a native upland game bird by the MDFW. The existing special regulation prohibits hunting from March 1 through August 31. The proposed rule is necessary because the Massachusetts spring turkey season generally takes place from late April to mid or late May when hunting is prohibited by the existing CACO special regulation. Fall turkey hunting could also be initiated if MDFW established such a season in its southeast region, but no rule change would be needed for a fall hunt since

the State does not conduct hunting before September 1.

For many years, CACO cooperated with the MDFW to release ring-necked pheasants within the seashore to provide a pheasant hunt. In 2002, CACO was sued for failure to follow the National Environmental Policy Act (NEPA) with respect to the hunting program. In September 2003, the U.S. District Court ordered CACO to prepare a NEPA environmental assessment of the hunting program. The court also enjoined the pheasant hunt until CACO completed the NEPA assessment.

**National Environmental Policy Act Process**

As a result of the court order, CACO initiated and completed a Final Environmental Impact Statement (FEIS), and Record of Decision (ROD), on the seashore hunting program.

The goals of the NEPA process were to develop and evaluate several alternative approaches for managing hunting at CACO that would:

- Balance diverse uses of the park while minimizing effects to wildlife populations, ecosystems, and sustaining natural processes;
- Reduce or avoid conflicts during recreational uses of the park;
- Protect natural and cultural resources, cultural heritage, and recreational values;
- Provide opportunities for future generations to enjoy the natural and cultural resources, cultural heritage, and recreational values of CACO; and
- Develop management solutions that address concerns related to the current hunting program to ensure diverse and high quality public experiences.

The chosen alternative as documented by the ROD, was Alternative B—Develop a Modified Hunting Program.

Through Alternative B, CACO seeks to increase hunting opportunities for native upland game bird species, including turkey, by establishing a turkey season generally consistent with MDFW regulations and making ancillary improvements to upland game bird habitat. The alternative would phase out pheasant stocking and hunting through adaptive management actions aimed at improving the availability of native upland game bird species. Hunting areas would be consolidated and clearly delineated and educational outreach concerning hunting would be expanded to hunting and non-hunting users. The NPS and MDFW would cooperatively monitor and manage game and other species.

Alternative B, implemented in part through the proposed rule, will increase hunting opportunities for native upland

game bird species. Eastern Wild Turkeys and Northern Bobwhite Quail are native species that were traditionally hunted on Cape Cod. Both turkeys and quail were extirpated from Cape Cod and other parts of New England in the past, but populations have now been restored to the point where MDFW has allowed hunting for some time.

The proposed rule will restore opportunities to hunt turkey by modifying the dates when turkey hunting is allowed within CACO, but does not expand hunting for any other species. Fall turkey hunting will also be allowed within CACO if MDFW establishes a fall season for the MDFW Southeast Region, which includes CACO.

Due to the limited turkey habitat within CACO, turkey hunting will be a controlled hunt, limiting the number of hunters, and will require hunters to obtain a NPS permit. Issuance of the permits may be managed through a lottery system. Specific areas will be designated as open to turkey hunting, generally for two to four weeks during the MDFW designated season. Continuation of this program will be based on monitoring of the annual hunt by MDFW, and responsive management, to ensure NPS goals regarding natural resource protection, visitor experience, and safety are met.

Alternative B requires the NPS to designate areas where hunting is permitted, replacing the current policy that allows hunting in all areas except where specifically prohibited (which had been designated by the posting of signs and maps). Some small patches of land that are of only minimal value for hunting will be closed to hunting. The no-hunting buffer adjacent to bike paths will be increased from 150 feet to 500 feet. Hunting areas may be further adjusted if necessary to meet public safety needs, and any changes will be made through the authority of the rule, and published in the superintendent's compendium. These changes will provide added protection for visitors using the bike paths; should result in more predictable areas where hunting activity is likely to be encountered; and will provide consistent buffers for hunting set-backs from roads, buildings, and bike paths. Further, the changes will facilitate more efficient monitoring by law enforcement staff and will minimally reduce hunting opportunities. Maps of the areas where hunting is allowed, along with applicable CACO and MDFW regulations, will be made readily available at various locations within CACO, and will be integrated into educational outreach materials.

### Updating the 1984 Special Regulation

CACO's hunting program has generally followed the Commonwealth of Massachusetts' program, administered by the MDFW, with additional specific provisions or restrictions as necessary to meet park objectives and NPS policies. CACO regards MDFW as a key expert agency, with the State and region-wide perspective important for determining hunting seasons, bag limits, and other elements of a sound hunting program. As a result, management of hunting at CACO is best accomplished through close coordination between CACO and MDFW. CACO has adopted many of the State's regulations without additional restrictions, although the ultimate responsibility for developing and managing an appropriate hunting program for CACO rests with the NPS.

The current special regulation controlling hunting at CACO was promulgated through a proposed and final rule (48 FR 56971, December 27, 1983; and 49 FR 18442, April 30, 1984). That rulemaking recognized that the superintendent needed the discretion afforded by 36 CFR 1.5, Closures and public use limits, to designate appropriate locations where hunting is allowed, and to impose reasonable limits or restrictions necessary to address park specific issues such as public safety, resource protection and visitor use concerns. The proposed rule would authorize a new hunt during a time that previously was closed to hunting. It also creates a CACO-specific discretionary authority for the superintendent, consistent with the public notice requirement of 36 CFR 1.7, to require permits where appropriate and ensure that potential park specific issues such as public safety, resource protection, and visitor use can be addressed should they arise.

For example, at the time the FEIS (July 2007) and the ROD (September 2007), were completed, the MDFW had a two week spring turkey hunting season, at the end of April to early May. The FEIS/ROD statements of being "consistent with" the State season and "expand CACO's hunting season to accommodate the State's spring turkey hunt" was written in the context of the two week season. Since that date, the State has expanded its spring turkey season from two to four weeks, ending in late May. Due to possible user conflicts that may arise in late May, the CACO superintendent, using discretionary authority of the rule, will set the closing date of the season. CACO will strive to be consistent with the MDFW's turkey season dates, to avoid

confusion, however the superintendent will have the discretion to adjust CACO's closing date, based on factors such as safety, use patterns, and the park's best interest.

Other locations within Massachusetts, such as the Massachusetts Military Reservation, have their own special regulations that have different dates than the standard dates/times established by the MDFW, in order to authorize hunting activities that are compatible with their land management concerns. The superintendent's discretion in this case would be similar to this established practice. The public will be notified of the spring turkey closing date, and other special conditions for the CACO hunting program, which will also be published in the superintendent's compendium.

### Reduced Public Comment Period

The NPS intends the public be given the greatest possible opportunity to comment, while simultaneously recognizing that a delay in the rulemaking process is impracticable, and will not allow sufficient time to establish a spring 2011 turkey season, consistent with the start date identified by the State of Massachusetts for Wildlife Management Zone 12 (which includes CACO). Further, if there is a delay in the rulemaking process, CACO and the MDFW will not have sufficient time to notify the public of the regulatory change.

The proposed rule follows an extensive environmental analysis process described below, which concluded with the publication of a Final Environmental Impact Statement and subsequent Record of Decision that allows for implementation of this rule. The environmental analysis included a series of public meetings and a 60-day period for comment. The comments received from the public were considered while evaluating the alternatives in the FEIS resulting in the selection of Alternative B, which included establishing turkey hunting consistent with MDFW regulations. In developing the rule, the NPS consulted with the MDFW, which strongly supports a spring 2011 season. The National Wild Turkey Federation and more than a dozen Cape Cod sporting groups in the Barnstable League, including among others, the Highland Fish and Game Club, the Brewster Rod and Gun Club and the Bass River Rod and Gun Club, have also collectively strongly urged the NPS to initiate a turkey season this spring.

Finally, the failure to establish a spring 2011 season will have a direct negative effect on the economy of the

local communities as a result of lost sales of goods and services to turkey hunters. The NPS therefore finds that timely action is required, and consistent with 318 DM 5, is reducing the public comment period from 60 to 30 days.

#### Compliance With Other Laws and Executive Orders

##### *Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user-fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. The rule meets the requirements of the NPS general regulations at 36 CFR 2.2(b)(2).

##### *Regulatory Flexibility Act (RFA)*

The Department of the Interior certifies 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.*).

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. The rule will benefit small businesses in the local communities through the sale of goods and services to turkey hunters.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not impose restrictions on business in the local communities in the form of fees, recordkeeping or other requirements that would increase costs.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act (UMRA)*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

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

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

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

Under the criteria in Executive Order 13132, the rule sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

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

This rule complies with the requirements of Executive Order 12988. Specifically this rule:

(a) Meets the requirements of section 3(a) requiring 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)*

Under the criteria in Executive Order 13175 we have evaluated this rule and determined that it has no potential effects on Federally recognized Indian Tribes.

##### *Paperwork Reduction Act (PRA)*

This rule does not contain information collection requirements and a submission under the PRA is not required. An individual seeking a NPS turkey hunting permit will only be required to present a drivers license, vehicle registration and Massachusetts State Hunting license, to ensure compliance with legal requirements, to verify the identity of the applicants and facilitate management of emergent or other incidents if they occur. OMB regulations at 5 CFR 1320.3(h) define this action as an exemption to the requirements of the PRA.

##### *National Environmental Policy Act (NEPA)*

This rule implements a portion of a major Federal action significantly affecting the quality of the human environment. CACO formally initiated the NEPA process with a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on the Cape Cod National Seashore Hunting Program. CACO published the NOI in the **Federal Register** on June 21, 2004. A series of public and agency scoping meetings followed to solicit input on hunting in the park from American Indian Tribes, Federal and State agencies and local towns, the public and interested groups. Using the information gathered during the scoping process, CACO prepared a Draft Environmental Impact Statement (Draft EIS) for public review and comment.

The comment period opened on April 21, 2006, with the Environmental Protection Agency's publication of a Notice of Availability (NOA) in the **Federal Register**, and closed on June 19, 2006, 60 days later. Two public meetings were held during the 60-day review period to receive oral comment. The availability of the Draft EIS and the dates and times of the public meetings were also publicized through a second NOA published by the NPS in the **Federal Register** on May 10, 2006, and through press releases sent to local newspapers and radio stations. Over 200 comments were received on the Draft EIS. These comments were used to improve the Draft and produce the Final EIS.

Completion of the Final EIS was noticed in the **Federal Register** by the DOI and EPA on August 7 and August 10, 2007, respectively. The Record of Decision (ROD) was signed on September 18, 2007. The chosen alternative was Alternative B—Develop a Modified Hunting Program. The Final EIS and ROD may be reviewed at: <http://www.nps.gov/caco/parkmgmt/planning>.

##### *Information Quality Act (IQA)*

In developing this rule we did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

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

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

### Clarity of This Rule

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

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

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

### Drafting Information

The primary authors of this regulation were Stephen Prokop, former Chief Ranger CACO; Bob Grant, Chief Ranger CACO; Carrie Phillips, former Chief of Resources Management, CACO; Robin Lepore, Office of the Regional Solicitor, Department of the Interior; Philip A. Selleck, Associate Regional Director, Operations and Education, National Park Service, National Capital Region; Russel J. Wilson, Chief Regulations and Special Park Uses, National Park Service, Washington, DC; and A.J. North, Regulations Coordinator, National Park Service, Washington, DC.

### Public Participation

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

### 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. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### List of Subjects in 36 CFR Part 7

National Parks, Hunting, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR part 7 as follows:

#### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201 (2001).

2. In § 7.67 revise paragraph (f) to read as follows:

#### **§ 7.67 Cape Cod National Seashore.**

\* \* \* \* \*

(f) *Hunting.* (1) Hunting is allowed at times and locations designated by the Superintendent as open to hunting.

(2) Except as otherwise provided in this section, hunting is permitted in accordance with § 2.2 of this chapter.

(3) Only deer, upland game (including Eastern Wild Turkey), and migratory waterfowl may be hunted.

(4) Hunting is prohibited from March 1st through August 31st each year, except for the taking of Eastern Wild Turkey as designated by the superintendent.

(5) The superintendent may:

- (i) Require permits and establish conditions for hunting.
- (ii) Temporarily limit, restrict, or terminate hunting access or activities after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives, such as those described in the Cape Cod National Seashore Hunting Program/ Final Environmental Impact Statement.

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

(7) Violating a closure, designation, use or activity restriction or a term or condition of a permit is prohibited. Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the superintendent.

Dated: March 14, 2011.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–6703 Filed 3–21–11; 8:45 am]

**BILLING CODE 4310–WV–P**

### DEPARTMENT OF COMMERCE

#### Patent and Trademark Office

#### 37 CFR Chapter I

[Docket No. PTO–C–2011–0017]

#### Improving Regulation and Regulatory Review

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for information.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO” or “Office”) is preparing a preliminary plan to review its existing significant regulations in response to the President’s Executive Order 13563 on Improving Regulation and Regulatory Review. The purpose of this regulatory review is to determine whether any of these regulations should be modified, streamlined, expanded, or repealed in order to make the Office’s regulatory program more effective and less burdensome. More effective and less burdensome regulations will help the Office in its mission to foster innovation and competitiveness through providing high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide. The Office is asking the public to provide ideas and information about preparing such a review plan and to help the Office identify which regulations should be reviewed.

**DATES:** You must submit any comments on or before April 21, 2011.

**ADDRESSES:** Submit comments electronically by e-mailing them directly to the Office at [regulatory\\_review\\_comments@uspto.gov](mailto:regulatory_review_comments@uspto.gov). Comments may also be submitted by mail addressed to: Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Nicolas Oettinger. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet. Comments may also be submitted through the Federal eRulemaking Portal Web site at <http://www.regulations.gov>. Additional instructions on providing comments through the Federal eRulemaking Portal are available at <http://www.regulations.gov>. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO–P–2011–0017).