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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

Notice of Proposed Substantial Changes on Adoption of Proposed Amendments

State Park Service Code

Proposed Changes: N.J.A.C. 7:2-1.7 and 3.2

Proposed: July 16, 2012 at 44 N.J.R. 1935(a).

Authorized By: Bob Martin, Commissioner, New Jersey Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-1 et seq., 13:1B-15.100 et seq., and 13:1L-1 et seq.

DEP Docket Number: 01-12-06

Submit comments by October 18, 2013 electronically at

<http://www.nj.gov/dep/rules/comments>.

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket Number 01-12-06

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 4th Floor

Mail Code 401-04L

P.O. Box 402

Trenton, New Jersey 08625-0402

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This notice of proposed change can be viewed or downloaded from the Department's web page at www.nj.gov/dep/rules.

Take notice that the Department in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-4.10, is proposing substantial changes to the State Park Service Code, N.J.A.C. 7:2, based on comments received on the proposal of amendments published in the New Jersey Register on July 16, 2012 (44 N.J.R. 1935(a)). The public comment period closed on September 14, 2012.

Through this Notice of Substantial Changes on Adoption, the Department is proposing to amend the definition of “mobile sport fishing vehicle” to remove language added in the initial proposal that makes recreational vehicles (RVs) and military designed and surplus vehicles ineligible for use as mobile sport fishing vehicles. As amended, the rule restricts mobile sport fishing vehicles to two-axle, four-wheel drive passenger motor vehicles, having tires no larger than 40 inches in overall diameter, designed to be licensed and operated on the public roadways and highways of the State, and capable of four-wheel drive operation when off the public roads on the beach. Only ATVs and trailers-in-tow are specifically excluded from the definition.

The Department is also proposing to amend N.J.A.C. 7:2-3.2(e) to remove the restriction on military designed or surplus vehicles in or over lands or in or on waters under the jurisdiction of the State Park Service. The proposed amended rule prohibits the operation of vehicles with more than two axles and tires larger than 40 inches in overall diameter, whether or not the vehicle is capable of four-wheel drive. As in the proposed rule, ATVs are expressly prohibited.

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Summary of Public Comments and Agency Responses:

The Department received comments on the provisions proposed for substantial change from the individuals listed below:

1. Scott Adams
2. George Alderson
3. Louis Amato
4. Robert Bennett
5. Judith Berrien
6. Tom Berry
7. Michael Bradway
8. John Britton
9. Alan Brooker
10. Donald Brossman
11. Matt Burk
12. Denny Bush
13. Robert Campi
14. Mary Ann Carlsen
15. Kevin Carlson
16. Lee Cattaneo
17. Gary Chandler
18. Andrew Ciok
19. Kenneth Coanshock
20. Wyllys Cooper
21. Nicholas DeLuca
22. Jim DeSaye
23. John Dwyer
24. Mark Dzindzio
25. Valerie Dzindzio
26. Zoltan Egyed
27. Chris Eppolito
28. Stephen Farrell
29. Trevor Farrell
30. Melanie Farrell
31. Kelly Farrell
32. Chris Farrell
33. Tom Farrell

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34. Daniel Federico
35. Kevin Felix
36. Wayne Ford
37. John Franklin
38. Contance Gatto
39. James Gatto
40. Maria Gelfand
41. David Gelfand
42. Richard Giehl
43. Reb Gilliland
44. Charles Glotfelty
45. Leif Gobel
46. Barry Graber
47. Brian Hawthorne
48. Ralph Herbst III
49. Karen Heredia
50. Steven Hoitsma
51. Albert Horner
52. William Houston
53. Stephen Jobs
54. Art Johansen
55. Sarah Johansen
56. William Jones
57. Gertrude Jordan
58. Larry Karpinsky
59. Boris Khavronin
60. Chester Krencicki
61. Karen Kryven
62. Stephen Kuhn
63. Mike Kupetsky
64. Melissa Lenter
65. Robert Lick
66. Devin McGrath
67. Ron Meelheim
68. John Melilli
69. Sam Milone
70. Jean Moore
71. Bob Moore
72. Mike Moran

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73. David Morrison
74. Anthony Mosca
75. Glenn Mullary, Sr.
76. Thomas Murl
77. Anthony Nascimento
78. Fred Norton
79. Paul Novello
80. Gregory O'Brien
81. Greg O'Driscoll
82. Richard Ogonofski
83. Diane Ogonofski
84. Frank Paglianite
85. John Parrinello
86. Linda Paul
87. David Paulick
88. Nancy Paulick
89. Ulumje Pereborow
90. Jaclyn Rhodes
91. Thomas Robb
92. Mark Rowley
93. Tony Saldutti
94. Thomas Schugsta
95. Albert Sergio
96. Joe Skelly
97. Norman Stoop
98. Robert Strobel
99. Sandy Sutyinszky
100. Kathleen Swigon
101. Donna Talley
102. Susan Thomason
103. Dave Uth
104. Doug Velting
105. Vincent Villecco
106. Michael Virilli
107. John J. Walaszek
108. Rhonda Ward
109. Jeff Warnet
110. Barb Weber Berry
111. Paul Wells

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- 112. Ron Wilkens
- 113. Darryl Zarichak

- 114. The following 17 commenters submitted form letters in opposition to the change of definition for a mobile sport fishing vehicle at Island Beach State Park.

Paul Harris
Paul Novello
Robert King
Karen King
Jason Gribschaw
John Reinert
Lou Sutyinszky
David Strom
Kurt Renart
Eileen Lloyd
Michael Pawlowicz
Mark Rowley
Patrick Wales
Zachary Wales
Natalie Pietrowski
Kate Pietrowski
Dave Pietrowski

- 115. The following 86 commenters were included on a single form letter in opposition to the change of definition for a mobile sport fishing vehicle at Island Beach State Park.

Scott Adams
John Amodio
Alan Bikowski
Anthony Buckley
Janine Buckley
Robert Campi
Mark Chamberlain
Kerry Chamberlain
John Clarkin
Ann Clarkin
Courtney Clayton
Betty Joe Damato

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Wes Darcy
Jennifer DeSaye
James DeSaye
Domanick Desiderio
Amanda R. DeStefano
Joe Ditchkus
Cheryl Dunin
Zoltan Egyed
Celino Figueira
Dania Garrett
Richard Giehl
Ruth Ann Harper
Mike Harper
Janine Hawrylak
Tracey Jones
Kaddie Karelson
Scott Keenin
Amanda Keenin
Russell Knapp
John Kravchak
Staci Kravchak
Chester Krencicki
Mike Kupetsky
Giancarlo Lacerda
Eileen Lloyd
Mike Lloyd
Dr. Richard Lopez
Jim Lusby
Kevin McDonnell
Jimmy McDonnell
Fred Morra
Andrea Morra
Edward Nixon
Debra Nixon
Alexis Nixon
Nick Petronari
Dorene Petronari
Adam Poppe
William A. Radice, Jr.
Rick Raub
Joyce Raub
Ryan Reali
Cindy Reali
Robert Reali
Russell Reali

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Carol Rodriguez
John Rodriguez
Kathleen Rowley
Mark Rowley
Robert Russup
Karen Russup
John Russup
Connie Russup
Guy Ryan
Beverly Sabatino
Tony Sabatino
Scott Schoen
Helen Schoen
Gregory Schoen
Corey Schoen
Sarah Schoen
Mike Scott
Richard Sloan
Patti Sloan
Albert E. Sniede, Sr.
Kathy Swick
Henry Walker
John Walters
Susan Walters
Patrick M. Walton
Todd Warren
Brian Wood
Michael Wujek
Kurt D. Zschak

116. The following 4 commenters submitted a single letter.

Glenn Bintliff
Joseph Donner
Nicholas Haris
Gregory Williams

A summary of the comments and the Department's responses follows with respect to those provisions for which substantial changes are proposed. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

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1. COMMENT: The proposed amendments to the definition of motor vehicles and their use in State parks and forests, the definition of mobile sport fishing vehicles at Island Beach State Park and the definition of an off-road vehicle are supported. (1, 51, 64, 90, 102, 111, 112)

RESPONSE: The Department acknowledges the comments in support of the amendments; however, the Department has determined, in response to other comments received, to propose to amend the definition of mobile sport fishing vehicle, as set forth in this Notice of Substantial Changes on Adoption.

2. COMMENT: Rather than change the existing rules pertaining to off-road vehicle use and destruction of the natural resources within State parks and forests, enforce the current rules and regulations and/or provide education to the public on what rules exist. New rules are not needed. (4, 7, 17, 18, 20, 22, 45, 47, 49, 52, 54, 55, 59, 62, 66, 90, 91, 101, 103, 105, 107, 116)

RESPONSE: The Department's law enforcement personnel do enforce the rules and impose penalties for violations. The Department acknowledges that educating the public on the existing rules and regulations is a priority, and the Division of Parks and Forestry website does provide a link to the current Administrative Code. (<http://www.nj.gov/dep/parksandforests/>) The Department is in the process of redesigning the website, and will post the rules and regulations more prominently on the website. The rules are also available at the individual State parks.

However, the Department has determined, in response to other comments received, to propose to amend the definition "mobile sport fishing vehicle" as it relates to military-designed or surplus vehicles, and N.J.A.C. 7:2-3.2 regarding the use of military-designed or surplus vehicles in the parks, as set forth in this Notice of Substantial Changes on Adoption. See

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Response to Comments 3 through 6. See also Response to Comment 7 regarding the proposed amendment to the definition of “mobile sport fishing vehicle” with regard to recreational vehicles (RVs).

3. COMMENT: The proposed amendments to N.J.A.C. 7:2-3.2, Unauthorized motor vehicle use, which ban any motorized vehicle that is likely to cause damage or injury to persons, wildlife or property, is overly broad. It is a vehicle’s operation that determines whether damage occurs and not the vehicle itself. (14, 24, 56, 62, 67, 79, 85, 86)

4. COMMENT: Vehicles with tires larger than 40 inches in diameter are still legal on public roads. The vehicles do not cause any more damage than a vehicle with 30 inch tires. A large tire disperses the weight of the vehicle and has less PSI on its footprint than a smaller tire. Military vehicles are designed the same way, which is why they do so well off road. This proposal can lead to other restrictions on our privileges and rights to operate pleasure vehicles. For those who are not following the rules, cite the offenders. Do not punish those who are not breaking current regulations. (3)

5. COMMENT: The proposed amendment to N.J.A.C. 7:2-3.2 prohibits “military-designed or surplus vehicles (whether or not modified for civilian use).” It is wrong that drivers of these vehicles could now be cited by the State Park Police for driving on-road through a State park or forest. (19, 23, 80, 106)

6. COMMENT: The proposed amendment to N.J.A.C. 7:2-3.2(e) should be removed as it pertains to military-designed vehicles. If this ban is enacted, there should be a Gross Vehicle Weight restriction used rather than the type of vehicle, as there is an immense range of military type designed vehicles. Not all military-designed vehicles are large. (86)

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RESPONSE TO COMMENTS 3 THROUGH 6: It is the responsibility of the vehicle operator to operate a vehicle safely and not to cause damage or injury to persons, wildlife or property; however, the Department must have the ability to protect the natural resources entrusted to the State. The Department has observed that certain types of vehicles are frequently operated in such a way that they cause damage or injury. Not all vehicle operators are as conscientious as is necessary. Because the Department has been unable to rely upon the operators of those vehicles to act appropriately, the Department determined that banning certain types of vehicles would be an effective means of protecting its resources.

As discussed in the summary of proposed N.J.A.C. 7:2-3.2 regarding unauthorized motor vehicle use, large vehicles are causing damage to trails and off-road areas in the State parks and forests. (44 N.J.R. at 1937) The Department explained the problem further in its discussion of the definition of “mobile sport fishing vehicle.” The large vehicles often damage natural areas due to their extreme weight and the size of their tires, which cause ruts and other damage. (44 N.J.R. at 1935) In particular, the Department has observed that military surplus vehicles, such as the “deuce and a half” and HMMWV, are often operated off-road, in a manner that damages natural areas. However, as pointed out in comments received on the proposal, not all military-designed or surplus vehicles are oversized, and not all have the oversized tires that are particularly damaging.

The Department is, in response to comments, proposing to amend N.J.A.C. 7:2-3.2 to remove the general prohibition on military-designed or surplus vehicles. Proposed N.J.A.C. 7:2-3.2(e) prohibits a person from operating a motorized vehicle likely to cause damage or injury to persons, wildlife, or property within the jurisdiction of the State Park Service; however, the proposed rule specifically identifies as prohibited only ATVs, and vehicles with more than two

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axles or having tires larger than 40 inches in overall diameter (except during special events on a pre-established course under prescribed conditions, pursuant to N.J.A.C. 7:2-3.4(d)). The Department is removing initially proposed language that would have made the rule applicable only to vehicles with four-wheel drive capability because, as discussed in the proposal summary, large vehicles damage paved roadways as well as natural areas, whether or not the vehicle has four-wheel drive. Four-wheel drive is not a necessity on paved roadways. Most of the large military-type vehicles do have four wheel drive, however. The proposed amended rule allows in the parks those vehicles with no greater than 40-inch tires and no more than two axles, similar to those vehicles included in the definition of “mobile sport fishing vehicles,” both as initially proposed and as proposed to be amended through this notice. Existing N.J.A.C. 7:2-3.4 continues to prohibit all vehicles from operating in natural areas, including woods, swamps, bogs, wetlands or fields, or off of established roads or parking areas, unless specifically permitted. Consequently, vehicles with tires of any size are prohibited from operating in these areas.

The large diameter tires that are contemplated under the rule are generally also a wider track tire. Although the wider track may, as one commenter suggests, distribute the weight of the vehicle across a broader footprint, reducing the PSI under the tire, the wide tire by virtue of its width disturbs a larger area from side to side than a narrower tire. The rule will continue to exclude the largest military-type vehicles, such as the “deuce and a half,” that are of significant concern. Vehicles of this type that have been modified to operate on two axles are usually equipped with tires that exceed the 40-inch restriction. Those that have not been modified exceed the two axle limitation. The standard of 40-inches maximum provides law enforcement with an objective measure to determine whether a vehicle meets the regulatory requirements.

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In a related amendment, the Department, in recognition of comments pointing out that not all military vehicles are over-sized or have large tires, but keeping in mind the particular damage that large vehicles with large tires cause to beaches, proposes to amend the definition of “mobile sport fishing vehicle” at N.J.A.C. 7:2-1.7 to no longer exclude military-designed and military surplus vehicles from the definition. To qualify as a mobile sport fishing vehicle, a vehicle must be a two-axle, four-wheel drive passenger motor vehicle, having tires no larger than 40 inches in overall diameter, and must be designed to be licensed and operated on the public roadways and highways of the State, and capable of four-wheel drive operation when off the public roads on the beach. ATVs and trailers-in-tow remain excluded from the definition. For a discussion of recreational vehicles (RVs) as mobile sport fishing vehicles, see Response to Comment 7.

7. COMMENT: There should not be a change in the definition of “mobile sport fishing vehicle” to exclude RVs and military-designed or military surplus vehicles (whether or not modified for civilian use). Tire size should not be a determining factor. (1, 5, 6, 8-16, 18, 21, 22, 24-48, 50, 53, 57, 58, 60, 61, 63, 65, 68, 69-79, 81-85, 87-89, 91-101, 104, 105, 108, 109, 110, 113-115)

RESPONSE: As discussed above in the Response to Comments 3 through 6, the Department proposes to amend the definition of “mobile sport fishing vehicle” at N.J.A.C. 7:2-1.7 to remove the exclusion of military-designed and military surplus vehicles. The Department is also proposing to allow RVs to be used as mobile sport fishing vehicles, provided the RV meets the restrictions on tire size.

The Department recognizes that it is not necessarily the nature of the vehicle, but its operation that causes harm to the natural areas. The exclusion of RVs and military-designed and

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military surplus vehicles as initially proposed was intended to apply to vehicles likely to harm to natural areas and impair public safety. (44 N.J.R. at 1935) As proposed to be amended through this notice, N.J.A.C. 7:2-3.2(e) prohibits the operation of a motor vehicle that is likely to cause damage or injury to persons, wildlife or property within the jurisdiction of the State Park Service, no matter the type of vehicle. Therefore, the rules give the State Park Service the authority to protect the parks and visitors from harm from motor vehicles, whether or not particular types of vehicles are prohibited. This includes vehicles parked in such a way as to limit visibility beyond and around them. (44 N.J.R. at 1935) The Department also stated in the proposal summary that it was excluding from the definition of mobile sport fishing vehicles those vehicles “often used for overnight camping, which is prohibited on the beach.” (44 N.J.R. at 1935) Existing N.J.A.C. 7:2-6.1 prohibits camping on any State Park Service property, except in areas designated and marked for that purpose. Accordingly, to the extent that holders of mobile sport fishing vehicle permits are camping on the beaches, in an RV or otherwise, the State Park Service will enforce the existing prohibition.

Because other provisions of the rules sufficiently protect beaches and natural areas, birds and other wildlife, and public safety, the Department proposes to amend the definition of “mobile sport fishing vehicle” to remove the exclusion of RVs. As amended, only ATVs and trailers in tow are specifically excluded from the definition. Provided a vehicle is a two-axle, four-wheel drive passenger motor vehicle, with tires no larger than 40 inches in overall diameter, designed to be licensed and operated on the public roadways and highways, and is capable of four-wheel drive operation when off the public road on the beach, and is not otherwise prohibited, the vehicle falls within the proposed definition of mobile sport fishing vehicle.

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8. COMMENT: The Department cannot conclude that the proposed amendments will not have any economic impact or impact on jobs or employment in New Jersey. The prohibitions on sport fishing activities are likely to reduce participation in sport fishing and displace a percentage of that use to other areas outside of New Jersey, as well as reduce spending on vehicles used for this activity within the State. (26, 33, 43, 47, 53, 65, 82, 83, 85 94, 99, 144)

RESPONSE: To the extent that the comments are concerned with the proposed restrictions on the types of vehicles that are eligible for a mobile sport fishing vehicle permit, see Responses to Comments 3 through 6 and 7. The Department has not otherwise proposed to restrict sport fishing in the State parks and forests.

Effect of Proposed Changes on Impact Statements Included in the Proposed Amendments

The proposed substantial changes on adoption will not affect the impact statements set forth in the proposal.

Full text of the proposed substantial changes to the proposed amendments follows (additions to proposal indicated in italicized boldface ***thus***; deletions from proposal indicated in italicized cursive brackets {thus}):

SUBCHAPTER 1. GENERAL PROVISIONS

7:2-1.7 Definitions

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

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...

“Mobile sport fishing vehicle” means a **two-axle**, four-wheel drive **passenger** motor vehicle, **having tires no larger than 40 inches in overall diameter**, designed to be licensed and operated on the public roadways and highways of the State, and capable of four-wheel drive operation when off the public roads on the beach. [ATV’s, golf carts and specialty vehicles] **ATVs**{, **recreational camping vehicles (RVs)**}, **and trailers-in-tow**{, **and military-designed or military surplus vehicles (whether or not modified for civilian use)**} are specifically [excepted] **excluded** from this definition.

...

SUBCHAPTER 3. MOTORIZED VEHICLES

7:2-3.2 Unauthorized motor vehicle use

(a) - (d) (No change from proposal.)

(e) Except in accordance with N.J.A.C. 7:2-3.4(d), a person shall not operate or permit the operation on or over lands or in or on waters under the jurisdiction of the State Park Service of a motorized vehicle likely to cause damage or injury to persons, wildlife, or property within the jurisdiction of the State Park Service. Such vehicles include, but are not limited to, a motor vehicle having more than two axles {and capability of four-wheel drive} or having tires larger than 40 inches in overall diameter, an ATV, {military-designed or surplus vehicle (whether or not modified for civilian use)}, or an unlicensed or unregistered motor vehicle.