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NORTH CAROLINA BEACH BUGGY ASSOCIATION, INC.

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September 6-15, 2011

Mike Murray, Superintendent
Cape Hatteras National Seashore
1401 National Park Drive
Manteo, NC 27954

Re: RIN 1024-AD85; 36 CFR Part 7 - Proposed Rule

Superintendent Murray:

The North Carolina Beach Buggy Association (NCBBA) is an association formed nearly 50 years ago in support of Cape Hatteras National Seashore Recreational Area (CHNSRA) with the following unchanged NCBBA Mission Statement:

"The North Carolina Beach Buggy Association is a non-profit organization, established in 1964, dedicated to preservation of and vehicular access to the natural beach resources of the Outer Banks through conservation, a code of ethics for beach behavior and support of local, state, federal officials and other organizations dedicated to these same goals."

Our ideals and actions have not changed over these years as evidenced by our continuing support of programs within CHNSRA and surrounding communities in the form of both donated moneys and labor. We recognize the necessity of an ORV Rule and support a reasonably conceived and enacted regulation that protects the rights of both the owners (The American Public) and the natural resources within CHNSRA. The Proposed Rule as presented was conceived with disregard for the input of dedicated participants presented during Regulated Negotiation that lasted 14 months and 9 days and the Proposed Rule was written with disregard for and in violation of the NEPA process that we as negotiators were sworn to respect and the Proposed Rule was written with disregard for the enabling legislation that created CHNSRA and was written with disregard for persons with disabilities.

The resulting Proposed Rule is deficient as specified in the following outline as well as in many other areas called to your attention by public input as called for by the Federal Register publication:

ORV PERMITS: NCBBA opposes the institution of fees for "ORV Permits" as an unjust form of taxation since the proposed fees are being proposed to apply to ORV drivers only while the use of these fees directed to general fund spending. The ORV community should not be responsible for and required to support activities available to the public at large when there is no proposed fee for the public in general. There has been no accounting for the proposed expenditures that require these fees.

If NPS institutes an "ORV Permit" as a means of educating ORV drivers it is our belief that the cost of these fees should be minimal so the average family should not have to consider the cost of a permit when budgeting the families' vacation. The comparable \$150-\$200+ permit costs @ some seashores is uncalled for in this Recreational Area. Any permit should be readily available on the internet, the NPS could not possibly process the volume of visitors arriving on a mid-summer weekend and would thus cause an uncalled for backup of visitors



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AFFILIATIONS

★ Member International Game Fish Association, Inc.

★ Recreational Fishing Alliance

★ United Mobile Sportfishermen

and unnecessary hours of extended operations for the NPS. Educational requirements could also be met via the same internet connection.

If instituted, ORV permits should be for 12 months from the date of issue or prorated based on the date of issue thus eliminating long lines on a single day/s as experienced @ Cape Cod and Assateague Island. As proposed, the persons who visit in July and wish to return in January are only getting a 6 month permit and must purchase another permit.

Special use permits: (transportation of mobility impaired individuals) We appreciate a permit being made available but to require the immediate removal of the vehicle presents a potential safety hazard should the vehicle be required to immediately transport the impaired person in the event of an unforeseen occurrence such as a weather event or illness.

Special use permits should be offered for all VFAs and not only "in front of the villages". The establishment of VFAs closes vast areas within CHNSRA to all mobility impaired visitors. These proposed VFAs close areas that have traditionally been available to the mobility impaired as well as the healthy individuals capable of walking to desired locales. To not allow this access to continue, the NPS is discriminating against the aged and infirm members of the public.

ORV Routes: While the chart references ramps 2.5, 32.5, 47.5, 59.5 and several interdunal roads, no mention is made of how or when these routes will be constructed. The Superintendent appears to be preparing to close as much beach access as possible while delaying or certainly not preparing to produce alternate means of access for the ORV community including those with mobility impairments. Nothing should be closed unless and until the proposed infrastructure is in place and usable. Parking areas must also be constructed to enable parking for all of the vehicles denied the right to park at favored areas on the beach and roadside parking will be needed to accommodate the persons who wish to walk to the VFAs.

VFAs should not be permanently designated areas; CHNSRA is a recreational area and not a wildlife refuge as is the case with the Pea Island National Wildlife Refuge that is incorporated within CHNSRA. NPS has refused to recognize the 16+ miles of VFA within its' own border and has instead elected to remove additional access from the visiting public. VFAs should not be permanently designated areas and only instituted when found to be necessary by the superintendent. This rule should provide latitude for the superintendent to adaptively alter designated routes, including the designation of new routes in recognition of the ever changing landscape of CHNSRA (as evidenced by the recent dissection of Bodie Island Spit by hurricane Irene). To attempt to set fixed routes on an ever changing landscape is either folly or a blatant attempt to close as much of this seashore as possible. Any VFA that is not being regularly used by a justifiable number of pedestrians or nesting animals should be reopened for ORV access. No cited document used in the formulation of this proposed rule requires the establishment of VFAs. The term VFA exists nowhere else in NPS documents is not fully explained in the proposed rule and therefore should not be used without full disclosure of its meaning.

Rules for vehicle operation: ORV use during the village winter season...; the dates for village winter season access should not be fixed by the Proposed Rule but rather cooperatively determined, as has been the tradition, by the superintendent with input from NCDOT, Dare County officials & Hyde County officials. There is no justification given for the arbitrary dates used in the Proposed Rule.

Night driving restrictions: This restriction is based on supposition rather than science. There is no peer reviewed research to prove that night driving @ CHNSRA has had an adverse effect on the turtles that visit our shore. Never was there a reported incident of a turtle fatality, caused by a vehicle, until 2010 – after night driving restrictions were in place. Night driving by responsible persons can deter irresponsible actions by the few lawbreakers that may cause harm to the resource as well as provide a reporting service for resource management. NPS should welcome night drivers and solicit their help rather than ban their night driving.

Buffers & closures: Piping Plover closures are excessive in both scope and duration. Neither the ESA nor The Piping Plover “revised” Recovery Plan require the scope of closures that are in the Proposed Plan. With CHNSRA being the Northernmost wintering area and the Southernmost nesting area for the PPL, the proposed closures will have little or no effect on either the survival or population growth of the PPL. A more reasonable closure plan based on flush distances and movable boundaries that reflect the brood movement are far more realistic if a balance between resource protection and visitor usage is truly the NPS objective.

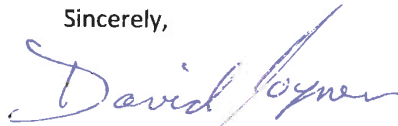
The unrealistic closures for non-ESA species is a fabrication based on pressures from “environmental groups” and not on any recognized and reviewed science. Species of concern are listed by NC Natural Resources for the purpose of continuing study only (as made clear in their FEIS response letter that NPS seems to totally ignore).

TCPs: Traditional Cultural Properties have been ignored (except for a single letter to an Indian Tribe headquartered in western NY). While we recognize the existence of the Tuscarora Nation and their interactions, including warfare with local tribes our requests for a TCP investigation requires a review of the cultures and traditions of the local families who have occupied the area now encompassed by CHNSRA. These local families, many having occupied these lands for multiple centuries have been ignored by NPS in this Proposed Rule. As requested, since 2008, the National Historic Preservation Act of 1966, as amended, requires a section 106 review as a part of the NEPA process and this should have been completed in conjunction with the NEG-REG process. This review must be completed prior to the enactment of the Proposed ORV Rule.

Conclusion: The NCBBA with its’ 4400 members who visit CHNSRA from 44 different states, territories and APOs are totally appalled by the decisions made by NPS in the presentation of the Proposed ORV Rule. We have been supportive of the NPS efforts within CHNSRA since the founding of our organization almost 50 years ago. In conjunction with our efforts, we have never asked for any special considerations for our organization or member of our organization.

We have always asked only for fairness, openness and consistency. No group has been more supportive of the LE Rangers than NCBBA when these rangers were being fair and consistent with enforcement efforts. You may remember one of our earliest conversations when I stated that there were far too few LE Rangers to properly protect CHNSRA. With the recent lawsuits and resulting decree you have lost sight of reasonable resource protection and visitor expectations in favor of closure. Closure – the cheap and easy way - not the right way. You pile rules on top of regulations rather than enforce existing regulations –closures, the easy way out. You must enforce ESA but you have lost site of the latitude granted within the ESA. You have responsibilities required by the Organic Act but have lost sight of the differences between a National Park and a Recreational Area established for the benefit of the masses. It is time for you to do the right thing and not take the easiest way out.

Sincerely,



David Joyner, President
NCBBA



W. James Keene, Director
NCBBA