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

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

Dear Superintendent Murray:

The Cape Hatteras Access Preservation Alliance (“CHAPA”) submits the following comments in response to the National Park Service’s (“NPS”) Proposed Rule referenced as RIN 1024-AD85, Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore, published in the Federal Register on July 6, 2011.

The Outer Banks Preservation Association (“OBPA”) organized CHAPA as an alliance for the purpose of preserving and protecting a lifestyle and way of life historically prevalent on the Outer Banks of North Carolina, including the area now comprising the Cape Hatteras National Seashore Recreational Area (“CHNSRA”). The alliance includes the Cape Hatteras Anglers Club (1,100 members), the North Carolina Beach Buggy Association (4,700 members), and OBPA (with over 4,300 members located in more than 20 states and Canada). The individuals represented by CHAPA regularly operate off-road vehicles (“ORVs”) as the primary means of transport to access beaches at CHNSRA for both recreational and commercial purposes.

Throughout the ORV planning and rulemaking process over the past six years, CHAPA has advocated the protection and preservation of CHNSRA beaches within a framework of responsible and meaningful access to the ocean beaches and sound for all users, including pedestrians and properly licensed drivers and their vehicles. Meaningful access to the shore is fundamental to the visitor experience and the continued growth and economic vitality of the Outer Banks. CHAPA has actively participated in all phases of the planning and rulemaking processes and has offered criticisms and suggestions with the hope of satisfying the concerns of protecting natural resources as required by Executive Orders 11644 and 11989 respecting ORV use, but without compromising the area’s distinctive shore-oriented culture and economy. In this regard, as set forth in its prior comments, CHAPA continues to believe that the Final Environmental Impact Statement (“FEIS”) and ORV Management Plan suffer from substantial problems, and that some of the fundamental aspects of those documents are without sound scientific basis and reflect a flawed economic analysis. The comments and suggestions offered during each phase have been ignored. Proposed and planned regulations have become more restrictive of access at each step. We believe the effort to arrive at this point has been ineffective and the negotiating rule making

process was inherently flawed. We oppose this regulation in general because of the flawed process and disregard for the public input which has been offered. Nonetheless, in compliance with the rule making comment period instructions, we submit the following specific comments.

CHAPA has a number of concerns regarding the amendments proposed to 36 CFR part 7 which we believe must be addressed by the NPS in order to ensure that the final rule is in the best interest of the public. In addition to CHAPA, these comments are endorsed by the Coalition for Beach Access (“Coalition”), which includes the following governmental and non-governmental entities: Dare County Board of Commissioners; Hyde County Board of Commissioners; Outer Banks Chamber of Commerce; Cape Hatteras Business Allies; Rodanthe-Waves-Salvo Civic Association – Board of Directors; Ocracoke Civic and Business Association; Hatteras Village Civic Association; American Sportfishing Association; Avon Property Owners Association; United Mobile Access Preservation Alliance; Watersports Industry Association; United Four Wheel Drive Associations; Recreational Fishing Alliance; Kinnakeet Shores Property Owners Association; and Greater Kinnakeet Shores Homeowners, Inc. Cape Hatteras Anglers Club, Outer Banks Preservation Association, North Carolina Beach Buggy Association, Coastal Conservation Association North Carolina.

These comments are organized by reference to the paragraphs of concern within the Proposed Rule.

Section 7.58(c)(2) ORV Permits.

The Coalition supports the proposed rules for ORV permits with the following two exceptions:

The Coalition does not support the institution of fees for ORV permits within the CHNSRA.

ORVs are the primary means of visitor access to the majority of the beaches and sound shores within the CHNSRA. This has been true since before the inception of the recreational area and will continue to be in the future. Drivers of ORVs should not be singled-out through what amounts to a discriminatory access fee for resources being used by the general visitor population.

(v) – The words “in person” should be removed from paragraph (v).

The Coalition supports the implementation of a comprehensive educational program for all visitors to ensure they understand safety and resource protection concerns within CHNSRA. We also support the institution of a process to issue permits to ORV drivers who have successfully completed the ORV portion of this educational program. However, we do not believe visitors should be required to complete these programs “in person” at the CHNSRA. Such a requirement would place significant hardships on visitors with little or no additional benefit to what could be accomplished with other available training processes.

Visitor patterns to the CHNSRA widely vary. Some come for a week or two; some come for a long weekend; some come every weekend. Many of these visitors have a primary goal of spending every minute possible enjoying the beaches of CHNSRA, particularly when they may only be visiting for a short time. During the summer, the process to complete an educational program and acquire a permit through restricted windows of availability will result in long lines

and frustrated visitors, anxious to begin their vacations. In the fall, weekend visitors will no longer be able to plan a late Friday night arrival, driving straight to the beach in hopes of catching a trophy fish before heading back home on Sunday afternoon. These are just a couple of examples of visitor patterns that will not likely be accommodated by an “in person” program.

Historical experience at the CHNSRA and reported by the NPS confirms that visitor safety and resource protection have not been seriously threatened by ORVs without an educational program for their drivers. Nonetheless, we believe it is reasonable to implement a formal educational program for the future to ensure the protection of the resources at CHNSRA. However, the program should be available through paper application, on-line application, and on-line, around-the-clock kiosks within the CHNSRA. Proven techniques are available to ensure that the quality of remote training processes attains the desired level of education for many subjects at a much lower cost and in a much more convenient manner than a traditional classroom setting. The NPS should avail itself of these techniques and not require by rule that such training occur “in person”.

Section 7.58(c)(7) *Special use permits for off-road driving, temporary use.*

The Coalition supports the proposed rules for special use permits with the following exception:

- (iii) – The proviso stating that “*provided that, the vehicle must return to the designated ORV route or Seashore road immediately after the transport*” raises significant safety concerns and should be eliminated.

The purpose of paragraph (iii) is to provide an access option for mobility impaired individuals in pre-designated areas in front of villages during the time of year when ORV access is not otherwise permitted. This option will allow such individuals the opportunity to accompany others within their group to the village beaches. This provision will be an important option for many visitors who would not otherwise be able to enjoy the CHNSRA.

Removal of the vehicle, however, is an unreasonable and unnecessary requirement of this special use. The fact that the individual for whom a temporary permit would be issued is mobility impaired recognizes that special care may be required. The driver of the ORV may be the impaired individual, or the primary care giver. The impaired individual may need constant attention by the care giver. Access to supplies within the vehicle may be needed. Quick and orderly transport from the beach (unexpected events, thunderstorm, etc.) may be needed. The remaining language in paragraph (iii) (*Allow vehicular transport of mobility impaired individuals via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a designated vehicle-free area in front of a village;*) is adequate to prevent abuse of the temporary use permit for what will be a small, but important subgroup of the overall visitor population.

Section 7.5.8(c)(9) *ORV Routes.*

The Coalition believes the designated routes on the tables within the ORV Routes section of the rule have major shortcomings that will significantly impair the visitor experience for the majority of visitors to the CHNSRA.

- Historically Recognized Routes have been excluded from the tables

Eleven historically recognized and utilized ORV routes have been excluded from the tables. The Coalition believes these routes should continue to be available for public access via ORVs. Several of these areas have been excluded with the intention to provide visitors access to areas without the presence of vehicles. We believe this intention is misguided and that if ORV access is denied, the closed areas will not be used. The underutilized beaches of the Pea Island National Wildlife Refuge, areas north of Coquina Beach, and areas temporarily closed to ORV access for resource protection but not pedestrian access clearly demonstrate that most visitors seek beaches accessible by ORVs. CHAPA has previously submitted photographic logs which document the sparse use of several areas closed to ORV access. If the NPS moves forward with its plan to close these areas that have historically been accessible to ORVs, it should revise the rule to provide for an adaptive management process pursuant to which the NPS could reopen these closures when the future visitor use patterns confirm the Coalition's position. These routes include:

1. Bodie Island – ramp 1 to 0.5 mi south of Coquina Beach
 2. Bodie Island – eastern confluence of Atlantic Ocean and Oregon Inlet to the “bait pond”
 3. Hatteras Island – ramp 23 south to proposed new ramp 25.5
 4. Hatteras Island – ramp 27 south to ramp 30
 5. Hatteras Island – proposed new ramp 32.5 to ramp 34
 6. Hatteras Island – 0.3 mi west of Cape Point hook to proposed new ramp 47.5
 7. Hatteras Island – bone road beach exit around spit to Pamlico Sound
 8. Ocracoke Island – confluence of Pamlico Sound and Hatteras inlet to proposed new ramp 59.5
 9. Ocracoke Island – proposed new ramp 63 to 1 mi ne of proposed new ramp 67
 10. Ocracoke Island – ramp 68 to .4 mi ne of ramp 70
 11. Ocracoke Island – Inlet shoreline along South Point
- ORV access restrictions during the fall and spring seasons are excessive and punitive to the typical visitor during those periods.

Historically, beaches fronting the villages within the CHNSRA have been opened to ORV access during the tourist “off-season”, beginning September 15th and continuing until May 15th. Reduction of “off-season” access to the November 1st to March 31st period will effectively privatize these beaches for the fortunate few who can afford oceanfront homes and discriminate against those who cannot. Smaller crowds, fewer children, shorter days, less predictable weather, more wind, and migrating fish all affect visitor use patterns on the beaches

in front of the villages. Should use patterns of these beaches change significantly in the future, recognition of longer tourist seasons and shorter “off-seasons” may be appropriate. Recent trends do not yet reflect this need.

The Coalition believes seasonal dates should not be permanently established by rule, but determined annually by the Superintendent through consultation with Dare County, Hyde County and North Carolina Department of Transportation officials.

Section 7.5.8(c)(10) Superintendent’s closures.

Proposed Section 7.5.8(c)(10) would give the Superintendent power to “terminate access to routes or areas designated for off-road use after taking into consideration” several factors. This section should be revised to state that the Superintendent may “terminate access to routes or areas designated for off-road use *or open access to routes or areas previously closed to off-road use* after taking into consideration” these factors.

The NPS discussed the value and importance of adaptive management techniques in the Final Environmental Impact Statement / Off-Road Vehicle Management Plan. For adaptive management to be successful, the Superintendent must have the latitude to not only terminate access, but to also open routes and areas as conditions change. The CHNSRA is a dynamic environment. Erosion and accretion patterns on the beaches often change from year to year, season to season, and sometimes month to month. As a result of these changes, visitor use patterns change. Wildlife usage patterns change. The Superintendent should have the discretion to authorize enhanced access when he or she determines that such enhanced access is appropriate based upon consideration of the relevant factors.

Section 7.5.8(c)(12) Night Driving Restrictions.

The Coalition believes night time driving restrictions listed in the Proposed Rule should be eliminated. These restrictions have been proposed as protection measures for the threatened Loggerhead turtle. The Coalition presented significant comments regarding turtle protection during the Draft Environmental Impact Statement (DEIS) comment period. We do not believe those comments were appropriately considered during the preparation of the Final Environmental Impact Statement / ORV Management Plan. For the purpose of this document we have focused on the specifics of the proposed rule rather than re-presenting the comments submitted to the DEIS.

Without question, the 2010 incident, when a nesting turtle was killed by an ORV on Ocracoke, was tragic, but it was also an isolated event. Historical NPS records confirm that ORV access has not been responsible for material risk to nesting sea turtles within CHNSRA. In the most active years, nesting density within CHNSRA averages only two nests per mile of beach. Additionally, the average number of turtles nesting nightly along the entire seashore in ORV areas and non-ORV areas during the prime months of June and July is only four, including false crawls. The odds of a turtle encounter with visitors leaving the beach after dark, or arriving on the beach at sunrise, are extremely low and do not justify night time closures to ORVs .

It is important to note that the NPS has the latitude to use resource management processes at CHNSRA (unrelated to ORV access) that, in one year, can save more hatchlings than have died due to ORV or pedestrian events during the entire history of CHNSRA. Historical records show that natural events including predation and ocean over wash pose significant threats to the success of turtle nests at CHNSRA. Over the past couple of years, the NPS appears to have given more consideration (although still inadequate) to nest relocations for at-risk nests and has better managed hatch corridors during hatch windows. The Coalition encourages NPS to more strongly pursue best practices for turtle resource management at other locations.

Additional, Overriding Concerns

As stated in the preamble, the proposed rule relies on certain mitigation measures to address the potential negative impacts of the rule on the visitor experience and the local economy. The preamble states: "The proposed rule includes a number of measures designed to mitigate effect on the number of visitors as well as the potential for indirect economic effects on village businesses that profit from patronage by Seashore visitors using ORVs. These include: New pedestrian and ORV beach access points, parking areas, pedestrian trails, routes between dunes, and ORV ramps to enhance ORV and pedestrian access; a designated year-round ORV route at Cape Point and South Point, subject to resource closures when breeding activity occurs; and pedestrian shoreline access along ocean and inlet shorelines adjacent to shorebird pre-nesting areas until breeding activity is observed. In addition, we will seek funding for an alternative transportation study and consider applications for businesses to offer beach and water shuttle services. These extra efforts to increase overall access and visitor use under the Selected Action, which we developed with extensive public involvement, should increase the probability that the economic impacts are on the low rather than high end of the range."

However, the proposed rule provides no timeframe or certainty that any of these measures will actually be implemented. Although we continue to believe that the stated mitigation measures are insufficient to address these potential impacts, what is clear is that the failure to implement these measures, or implementation of these measures only after the rule's restrictions go into effect, will have irreversible consequences. With these concerns in mind, the Coalition believes closures must not be implemented to historically accessible routes until the mitigating infrastructure has been completed. This condition should be explicitly stated in the rule.

Also, the preamble's reference to the term Vehicle Free Areas (VFAs) raises concerns. The manner in which this term is used in the preamble and in the FEIS/ORV Management Plan implies broad-based regulatory status. However, VFA (Vehicle Free Areas) is a term not used in any other NPS venue, its use is not totally defined, and it should be struck from this document.

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Conclusion

The enabling legislation for CHNSRA made clear the responsibility of NPS to preserve recreational activities when instituting conservation measures. At CHNSRA, the primary recreational activities enjoyed by visitors require meaningful access to the beaches. Access to the beaches in many cases is not practical using any means other than ORVs. The final rule must provide meaningful access to the shore, including through the use of ORVs. The rule also must provide flexibility to adaptively manage the regulations as change occurs within CHNSRA. We urge the NPS to consider the comments offered in this document, ask questions if they are not clear, and make changes to the final rule that will better serve the public.

Respectfully,

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