

Cape Hatteras Access Preservation Alliance  
P.O. Box 1355  
Buxton, NC 27920

September 23, 2016

The Honorable Richard Burr  
United States Senate  
Washington, DC 20510

The Honorable Thom Tillis  
United States Senate  
Washington, DC 20510

The Honorable Walter B. Jones  
House of Representatives  
Washington, DC 20515

Subject: National Park Service Proposed Changes to the Final Rule for ORV Management at the Cape Hatteras National Seashore Recreational Area (RIN) 1024-AE33

Dear Senator Burr, Senator Tillis and Congressman Jones:

The purpose of this letter is to share our reactions to the proposed rule published by the National Park Service (NPS) in the Federal Register on August 22, 2016 (FR Doc. 2016-19844) (Special Regulations; Areas of the National Park System, Cape Hatteras National Seashore—Off-Road Vehicle Management) and to ask for your assistance to convince NPS to make modifications prior to promulgating the final version. The public comment period for the proposed rule ends on October 21, 2016. We ask that you consider our request with that deadline in mind.

The proposed rule, which will institute modifications to the current rule (enacted in 2012), was prepared by the NPS as a direct result of the legislation you sponsored and led to passage as part of the National Defense Authorization Act for Fiscal Year 2015. The intent of that legislation was to preserve access to the Seashore by requiring changes to actions taken in original ORV management plan and rule that were deemed overly restrictive and inappropriate. A subsection of the legislation required the NPS to review and modify the rule as appropriate.

The Cape Hatteras Access Preservation Alliance (CHAPA) (Outer Banks Preservation Association, North Carolina Beach Buggy Association, Cape Hatteras Anglers Club and representatives of the Hatteras Island business community) believe that, while the proposed changes to the rule will have a favorable impact on access, additional changes are necessary if the legislation is to be viewed as a success.

In March, 2016 CHAPA submitted comments for the action alternatives described in *Cape Hatteras National Seashore – Consideration of Modifications to the Final Rule for ORV Management Environmental Assessment* to the NPS. We agreed that the “Preferred Alternative” was a good starting point but that additional

changes should be incorporated into the Final Rule. Specific recommendations for modifications to the “Preferred Alternative” were submitted during the official comment period and discussions with NPS leaders at the Seashore were held. Over the past ten years, we have repeatedly compromised our positions in an effort to resolve differences with other groups and NPS. That continued to be the case with our most recent recommendations.

NPS decided none of the changes submitted by CHAPA were warranted; hence, the proposed rule is essentially the same as the “Preferred Alternative”. While NPS has reacted to the “letter” of the law, changes reflecting the intent of the law are minimal.

The goal of our recommendations is to establish an ORV rule that will both insure resource protection and allow maximum access for both pedestrians and ORVs.

The Seashore encompasses 80 miles of oceanfront shoreline. Before the construction of highways, that shoreline was the only road at Cape Hatteras. Shortly after highways were built, vehicle access to the 13 miles of Pea Island National Wildlife Refuge (embedded within CAHA) was prohibited. The remaining 67 miles of shoreline are regulated by the ORV rule. Over the years, and most recently due to the 2012 rule, vehicle access has been reduced to 28 miles year round access. Year round Vehicle Free Areas (VFA) total 39 miles 49% of the 80 mile shoreline. The proposed rule will reduce VFAs by 3 miles.

The CHAPA recommendations will reduce total VFAs within the Seashore (including Pea Island) from 39 miles to 31.5 miles; reduce the VFAs regulated by the rule by 7.5 miles from 26 miles to 18.5 miles; decrease the year round ORV routes from 28 miles to 26.7 miles; and increase the seasonal (winter only) routes from 13 miles to 19 miles. These recommendations are intended to optimize pedestrian access during the summer and ORV access during the winter. Existing resource protection measures will continue to be followed and take precedent over access as they do with the current rule.

None of our recommendations submitted in March to the Environmental Assessment (EA), in whole or in part, were incorporated into the proposed rule. NPS determined that changes to the preferred alternative published in the EAs were not warranted. A list of our recommendations which were not accepted is attached.

CHAPA believes our proposals are consistent with the language and intent of the legislation. We believe these proposals can be implemented with minimal impact to NPS resources and will not impair resources protection efforts. And most importantly, we believe these proposals will significantly improve the visitor experience through greater access as intended by Congress.

We ask for your help to require NPS to give further consideration to the CHAPA recommendations before the Final Rule is set and to explain “why not” for those recommendations not chosen.

As always, thank you for all you have done in the past to get to this point, and thank you for your continued dedication to this effort.

Respectfully,

David M. Scarborough, Treasurer  
Outer Banks Preservation Association  
Cape Hatteras Access Preservation Alliance

This letter and attachments are fully endorsed by:  
The Outer Banks Preservation Association (OBPA)  
The North Carolina Beach Buggy Association (NCBBA)  
The Cape Hatteras Anglers Club (CHAC)

Attachment

cc: The Honorable Lisa Murkowski  
Chairman, Senate Energy and Natural Resources Committee  
United States Senate  
Washington, DC 20510

The Honorable Rob Bishop  
Chairman, House Natural Resources Committee  
House of Representatives  
Washington, DC 20515

Mr. Stan Austin, Regional Director  
National Park Service Southeast Region  
100 Alabama Street, SW  
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Mr. David Hallac, Superintendent  
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Mr. John Couch, President  
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Mr. Larry Hardham, President  
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Mr. Bill Smith, President  
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**CHAPA Assessment of Proposed ORV Rule  
Cape Hatteras National Seashore Recreational Area**

1. *ORV permits are valid for the dates specified on the permit.....*- permits to be issued for a 12 month period rather than the current Jan 1 thru Dec 31 period. ORV 7 day permit be changed to a 10 day permit. This is as requested in our original submissions.
2. *ORV Routes....ramps for access to ocean beaches: 2, 4, 23, 25, 27, 30, 32, 34, 38, 43, 44, 48, 49, 55, 59, 63, 67, 68, 70 and 72.*

NPS presented three alternatives in the “Consideration of Modifications to the Final Rule for ORV Management Environmental Assessment, February 2016”. Alternative 2 was the NPS *Preferred* alternative in that document. CHAPA submitted recommendations during the official comment period to change some ORV route designations in the preferred alternative.

Vehicle Free Areas (VFA) designated by the rule combined with the Pea Island Wildlife Refuge total 39 miles under the current rule and 36 miles under the proposed rule. CHAPA recommendations would re-designate an additional 4.5 miles of current VFAs as seasonal (+4.0 miles) or year round (+.5 miles) ORV access.

**Table 1 : Impact of Alternatives**

<b>Route Designation</b>	<b>Alternative 1 No Action</b>	<b>Alternative 2 Preferred and Selected</b>	<b>Alternative 3</b>	<b>CHAPA Recommendations Submitted as Comments to EA</b>
VFA (Vehicle Free Areas)	26.0 mi	- 3 mi = 23.0 mi	- 4 mi = 22.0 mi	- 7.5 mi = 18.5 mi
Beachfront Seasonal ORV route	13.0 mi	+ 2 mi = 15.0 mi	+ 3 mi = 16.0 mi	+ 6.0 mi = 19.0 mi
Beachfront year-round ORV route	25.2 mi	+ 1 mi = 26.2 mi	+ 1 mi = 26.2 mi	+ 1.5 mi = 26.7 mi
Pole, Spur, Cable Crossing roads	2.8 mi	2.8 mi	2.8 mi	2.8 mi
Total miles Considered by Rule	67.0 mi	67.0 mi	67.0 mi	67.0 mi
<i>VFA - Pea Island Wildlife Refuge</i>	<i>13.0 mi</i>	<i>13.0 mi</i>	<i>13.0 mi</i>	<i>13.0 mi</i>
<i>Total Seashore Oceanfront</i>	<i>80.0 mi</i>	<i>80.0 mi</i>	<i>80.0 mi</i>	<i>80.0 mi</i>

NPS determined the recommendations which differed from the preferred alternative should not be adopted.

**Table 2: Alternative Changes by Route Location**

Route	Length	Alternative 1 No Action	Alternative 2 NPS Preferred and Selected	Alternative 3	CHAPA Recommendations Submitted as Comments to EA
Ramp 1 S (right)	.5 mi	VFA	VFA	VFA	Seasonal
Ramp 2 S (right)	.5 mi	VFA	Year-round	Year-round	Year-round
Ramp 4 S (right) at spit	.75 mi	VFA	VFA	VFA	Seasonal
Ramp 23 N (left)	.5 mi	Seasonal	Seasonal	Seasonal	Year-round
Ramp 23 S (right)	1.5 mi	VFA	Seasonal	Seasonal	Seasonal
Ramp 32 S (right)	1.0 mi	VFA	VFA	Seasonal	Seasonal
Ramp 34 N (left)	1.0 mi	VFA	Seasonal	Seasonal	Seasonal
Ramp 43 N (left)	.6 mi	VFA	VFA	VFA	Seasonal
Ramp 45 E (left)	1.2 mi	VFA	VFA	VFA	VFA with Special Circumstances
Ramp 45 W (right)	1.3 mi	VFA	VFA	VFA	Seasonal
Ramp 48 E (left)	.5 mi	VFA	VFA	VFA	Year-round
Ramp 59 E (left)	.5 mi	VFA	Year-round	Year-round	Year-round

**Recommendations Declined by NPS - Why Not?**

(The many areas of agreement have been left out for the sake of brevity.)

(maps for NPS proposed rule available at <http://parkplanning.nps.gov/caha-orv-ea>.)

a. Bodie Island ORV Routes

- Ramp 1; we requested the reopening of Ramp 1 on a seasonal basis.
- Ramp 4; we requested Ramp 4 be opened on a seasonal basis around to the “bait pond”.
- Soundside; we requested soundside access on Bodie Island.

b. Hatteras Island ORV Routes

- Ramp 23-north; we requested opening north 0.5 mile year round (now VFA).
- Ramp 23-south; we requested seasonal opening 1.4 miles south (NPS proposal seasonal opening 0.1 mile south of Rodanthe Pier to 1.5 south of Ramp 23 – an increased area).

- Ramp 32; we requested seasonal opening 1.0 mile south (now VFA).
- Ramp 34; we requested seasonal opening 1.0 mile north (now VFA).
- Ramp 43; we requested seasonal opening 0.6 miles north (NPS proposal 0.4 miles north).
- Ramp 45; we requested seasonal opening 1.3 miles west (NPS proposal 0.3 miles west of the hook-without defining “the hook”).
- Ramp 48; we requested year round opening to 0.5 miles east (now VFA).
- Ramp 59; we requested year round access to 0.5 miles east (now VFA).

c. Hours of Operation; May 1 thru Sept 14 closed @ 9 p.m. and open no earlier than 6:00 a.m..

We requested night time closures @ 10:00 p.m. with priority ramps opening @ 6:00 a.m., proposed language leaves opening time @ anytime after 6:00 a.m.

d. Seasonal ORV dates; in front of villages October 15 through April 14.

- We requested October 1 through April 30.
- We requested seasonal routes (not in front of villages) Sept 1 through Apr 30.

Comparison of Alternatives Table

Alternative	No Action Alternative	Alternative 1	Alternative 2 NPS Preferred and Proposed	Alternative 3	CHAPA - 8/2015 Recommendations Confirmed 3/2016 : Reconfirmed 9/2016
<b>Morning beach openings</b>	All beaches would continue to open to ORV use at 7:00 a.m.	Open priority routes (Ramps 2, 4, 25, 27, 43, 44, 48, 49, 70, and 72) at 6:30 a.m. All non-priority routes open at 7:00 a.m.	Priority routes (same beaches as in alternative 1) open at 6:00 a.m. May, June July; open at 6:30 a.m. August and September; open at 7:00 a.m. Oct–Nov. 15 All non-priority routes open at 7:00 a.m.	Priority routes (same beaches as in alternative 1) open at 6:00 a.m. All non-priority routes open at 7:00 a.m.	Same as Alternative 3 (ramps 25, 27, 70 were not requested as priority). Also recommended routes remain open until 10:00 pm.
<b>Seasonal ORV routes</b>	No change from existing management Villages/Ocracoke campground open seasonally to ORVs (Nov 1–Mar 31) ; Routes not at villages (Sep 15 – Mar 15)	Extend seasonal ORV use two weeks in spring and fall in front of Villages and Ocracoke campground (Oct 15–Apr 14)	Same as alternative 1 (Oct 15– Apr 14)	Extend seasonal ORV use by four weeks in spring and fall in front of Villages and Ocracoke campground (Oct 1–Apr 30)	Same as Alternative 3, plus extend seasonal routes not at villages to Sep 1 – Apr 30.
<b>Vehicle-free areas</b>	No change from existing management	Restore Ramp 2 and use Ramp 59, extending each existing year-round ORV route approximately 0.5 mile in both locations	Same as alternative 1, plus: VFA south of Ramp 23 (1.5 miles) would be redesignated as a seasonal ORV route; a portion of the VFA north of Ramp 34 (1 mile) would be redesignated as a seasonal ORV route, and Ramp 45 designated as a park road	Same as alternative 2, except: the entire VFA at Ramp 34 (north) would be redesignated as a seasonal ORV route (2 miles)	Same as Alternative 3, plus: Redesignate VFAs at ramp 1 south(.5 mi), Bodie Island spit (.75 mi), ramp 43 north (.6 mi), ramp 45 west (1.3 mi) as seasonal ORV routes; ramp 48 east (.5 miles) as year round.  Redesignate ramp 23 north (.5 mi currently designated as seasonal) as year round route.
<b>Access improvements</b>	None	Road improvements and parking area installation at Bitter Wash Creek and Devil Shoals Road sites; both are designated as park roads	Same as alternative 1, plus: Extend bypass road north to Ramp 44 for 0.4 mile, and install a parking area near Ramp 45	Same as alternative 2	Same as Alternative 2,(parking area at ramp 45 was not requested) plus: Provisions for temporary ORV corridor from Ramp 45 to Cape Point when conditions prevent access from the east beach and when risk to wildlife not present; Ssoundside access on Bodie Island.
<b>Permits</b>	7-day, annual by calendar year	Annual by date of issue, 7-day permit, and 14-day permits available	Annual by date of issue, and 10day permits available	Annual by date of issue, 3day, 7-day, and 14-day permits available	Same as Alternative 2
<b>Total VFA and ORV route mileage</b>	28 miles of year-round ORV routes 13 miles of seasonal ORV routes 26 miles of VFAs	29 miles of year-round ORV routes 13 miles of seasonal ORV routes 25 miles of VFAs	29 miles of year-round ORV routes 15 miles of seasonal ORV routes 23 miles of VFAs	29 miles of year-round ORV routes 16 miles of seasonal ORV routes 22 miles of VFAs	26.7 miles of year round of year round Oceanfront ORV routes , 19 miles of seasonal ORV routes, 18.5 mi of VFAs. (NPS year round routes include 2.8 miles which are not Oceanfront access)