

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

July 2, 2010

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

Re: Draft Environmental Impact Statement for the Cape Hatteras National Seashore
Off-Road Vehicle Management Plan

Dear Superintendent Murray,

We are writing on behalf of the Cape Hatteras Access Preservation Alliance (CHAPA) in response to the recent death of a nesting female loggerhead turtle that was struck and killed by an off-road vehicle (ORV) between Ramps 70 and 72 on Ocracoke Island sometime between 10pm on June 23 and 6am on June 24, 2010.

CHAPA and its members, like the many others that use and enjoy the beaches of Cape Hatteras National Seashore, are outraged over this recent incident. As we are all aware, there are protections in place, pursuant to the Consent Decree, designed to prevent such an unprecedented incident. Specifically, the Consent Decree requires the National Park Service (NPS) to “close all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) to nonessential ORV use from 10 p.m. until 6 a.m. from May 1 to November 15” in order to “increase the chances of successful turtle nesting.” As you know, CHAPA has offered a monetary award for information leading to the arrest and conviction of the person or persons responsible for this incident. It is our hope that the perpetrator will be caught and prosecuted to the fullest extent of the law.

Despite decades of ORV use at Cape Hatteras National Seashore, this is the first documented incident of a nesting sea turtle being struck and killed by an ORV at the Seashore. Yet, despite both the unprecedented nature of this incident and the terms of the Consent Decree, the National Audubon Society, Defenders of Wildlife, and Southern Environmental Law Center (collectively, SELC) unfortunately have decided to use this tragedy as an opportunity to press the

National Park Service (NPS) to immediately implement several new measures in order to prevent future harm to sea turtles.

CHAPA urges the NPS to increase its nighttime monitoring of beaches to detect and deter driving in violation of the night driving rules. Indeed, CHAPA has always believed that appropriate enforcement is critical. While we cannot be certain, it is at least likely that more diligent enforcement could have detected the recent violator before he or she struck and killed the sea turtle. Unfortunately, as demonstrated by the recent incident, regardless of the size of buffers and protections, it only takes one determined person to illegally enter the beach and wreck havoc. It is adequate enforcement, rather than expanded buffers and protections, that hold the greatest power to ensure that an incident like that which recently occurred does not happen again.

SELC's other requests, however, should be rejected outright. For instance, despite their prior agreement to the terms of the Consent Decree, SELC now asks the NPS to immediately expand the night driving ban to begin at sunset and end when the beach is cleared by the NPS turtle patrol in the morning. Yet, there is no indication whatsoever that the incident occurred between sunset at 10pm; so there is no justification for starting the ban earlier each night. This request reflects nothing more than an effort by SELC to undo the terms of the Consent Decree. With respect to the ending time of the night driving ban each morning, the Consent Decree specifically provided that the beaches would reopen to ORVs at 6am, explicitly recognizing that "some risk to turtles exists if beaches are open to ORVs prior to completion of turtle patrols" and provides that "NPS shall complete turtle patrols as expeditiously as possible each morning." The 6am reopening time was part of the "just, fair, adequate, and equitable resolution" that SELC agreed to in the Consent Decree. SELC should not be permitted to so easily seek to change the terms of this resolution.

SELC also asks the NPS to erect barriers to physically close all ORV ramps during the hours in which the night driving ban is in effect. As noted above, however, installing additional barriers is not the solution. If someone is bent on breaking the law, as the individual who recently struck and killed the sea turtle apparently was, there is no sound reason to believe that putting up chains between the ramp posts will be an impediment. Instead, it is more likely that the person would drive around the barrier, causing additional damage to the dunes in order to access the beach. Again, it is enforcement that is needed, not more barriers.

Finally, SELC requests that its letter be considered as a supplement to its original comments on the Draft Environmental Impact Statement (DEIS) for the Cape Hatteras National Seashore Off-Road Vehicle Management Plan. As SELC is well aware, the public comment period on the DEIS closed on May 11, 2010. Despite several requests for an extension, including requests by CHAPA and members of North Carolina's congressional delegation, the NPS refused to extend the comment period. It would be completely inappropriate and unfair for the NPS to allow SELC—almost two months after the public comment period closed—to now file additional comments, without affording a similar opportunity to the public. Accordingly, SELC's request to supplement its comments on the DEIS must be rejected.

As noted above, although ORVs have been used at the Seashore for decades, this is the first documented incident at the Seashore in which a nesting sea turtle has been struck and killed by an ORV. There is no indication, and SELC has presented no evidence to suggest, that the incident was the result of insufficient protections. Rather, this appears to have been a case of one individual egregiously flouting existing protections, protections which SELC specifically agreed to in the Consent Decree as sufficient pending the completion and implementation of a long-term plan and special regulation governing ORV use at the Seashore.

CHAPA continues to advocate the protection and preservation of the surrounding beaches and its wildlife within a framework of responsible and meaningful access to the sound and to ocean beaches for all users. As we stated in our comments on the DEIS, meaningful access to the shore is fundamental to the continued growth and economic vitality of the Outer Banks. CHAPA continues to be interested in working with the NPS and other stakeholders to develop an ORV management plan and regulation that will satisfy the concerns of protecting the Seashore's resources, but do so without compromising the area's distinctive beach-oriented culture and economy. As it moves forward, the NPS should not allow one bad actor to dictate its management of the Seashore and define how and when the public is permitted to access the Seashore and enjoy its resources.

Sincerely,

Larry Hardham
Cape Hatteras Access Preservation Alliance

Cc: Jonathan Jarvis, Director, NPS
Dan Wenk, Deputy Director, NPS
David Vela, Southeast Regional Director, NPS
Pete Benjamin, USF&W