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Coalition for Beach Access
Cape Hatteras National Seashore Recreational Area
ORV Access Environmental Impact Position Statement

American Sportfishing Association
Avon Property Owners Association
Cape Hatteras Anglers Club
North Carolina Beach Buggy Association
Outer Banks Preservation Association
Rodanthe-Waves-Salvo Civic Association
United Mobile Sportsfishermen
Watersports Industry Association, Inc.

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1.0 BACKGROUND

In 1937, during the Great Depression, Congress established the Cape Hatteras National Seashore Recreational Area (Recreational Area)¹. The enabling legislation for the Recreational Area states, in part, “said area shall be, and is, established, dedicated, and set apart as a national seashore recreational area for the benefit and enjoyment of the people and shall be known as the Cape Hatteras National Seashore Recreational Area”.² A purpose of the national seashore was to lift the spirit of economically distressed citizens who could not otherwise afford other forms of recreation. The enabling legislation excepted certain portions of the Seashore Recreational Area from protection as a primitive wilderness area as contemplated and required by the NPS Organic Act of 1916 (Organic Act). Those portions excepted from protection were, “those areas deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities similar in nature”.³ Due to the nature of the activities specifically identified in the enabling legislation, the location of those areas necessarily included all waters and shorelines of the Recreational Area.

In 1952, with the completion of paving NC Highway 12 from Whalebone Junction to Oregon Inlet and from Pea Island’s northern boundary to Hatteras Village, visitation began to grow within the park. On October 27, 1952, Conrad Wirth, then Director of the National Park Service, wrote the people of the outer banks a letter assuring the people in the villages within the Recreational Area that vehicular access to the beach was guaranteed and the task of serving the visitors to the seashore should make the economy flourish. (See Exhibit A, and note Director Wirth used the term “Recreational Area” 19 times in his short letter) The Cape Hatteras National Seashore Recreational Area was officially dedicated in 1958, completing the process that began more than twenty years earlier.

Motor vehicles have been the typical form of transportation on the beaches since before the founding of the Recreational Area. Off-Road Vehicle (ORV) access was greatly improved in 1952 when beach access ramps were first installed in the Recreational Area. Until 1978, ORVs were used on the beaches from the boundary with Nags Head to Ocracoke Inlet. In 1978 ORV use in Pea Island was stopped and, due to heavy pedestrian traffic, seasonal closures to ORVs from Memorial Day to Labor Day were imposed within village limits.

In 1972, executive Order 11644 directed all national parks to prepare an ORV plan to insure environmental sustainability and enjoyable use for future generations of Americans.

The Redwoods Act of 1978 reiterated the purposes of the Organic Act by stating, “Authorization of activities... shall not be exercised in derogation of the values and purposes for which these various areas have been established, *except as may have been or shall be directly and specifically provided by Congress*” (emphasis added).⁴ As noted above, in the case of Cape

¹ Words “national seashore recreational area” replaced “national seashore” in 16 USC 459 pursuant to act June 29, 1940. The official title is used herein as it is more descriptive of the values embodied.

² 16 USC 459a-1.

³ 16 USC 459a-2.

⁴ 16 USC 1a-1.

Hatteras National Seashore Recreational Area, Congress did in fact specifically except areas whereby the no impairment standard and the no-derogation of values standard was to be applied on balance with the legislatively protected rights of recreation. The Organic Act gives the NPS broad discretion in determining what avenues best achieve the Organic Act's mandate.

In 1978, NPS Manteo produced an approved draft ORV management plan with the cooperation and assistance of the local communities, interest groups, and the visiting public. The draft plan was forwarded to the Regional Office in Atlanta, but approval was never completed. The document failed to be recorded in the Federal Register or signed by the Secretary of the Interior. Although the Plan was not official, due diligence was done by the local communities and NPS in completing their required task, implementing the 1978 plan and revising the plan in proper intervals.

Between 1978 and 2005, the NPS managed the Recreational Area using the draft 1978 plan plus revisions as a guideline. During that period, no environmental issues occurred as a result of ORV uses within the Recreational Area.

In 2005, in an acknowledgement of their failure to comply with Executive Order 11644, the NPS began a concerted effort to prepare and gain required approvals of an official ORV Management Plan for the Cape Hatteras National Seashore Recreational Area.

The parties identified on the cover (Coalition) present this ORV Access Environmental Impact Position Statement to identify management actions and ORV regulations that should be included in the ORV Management Plan. These actions and regulations will achieve the Organic Act and subsequent Redwoods Act mandates and fall well within the agency's broad discretion to balance no-impairment of park values with the legislatively protected rights of recreation at the waterline and within the water as memorialized by the enabling legislation.

2.0 INTRODUCTION

The following document is presented with the expectation that the long established values of ORV use will be appropriately recognized in the development of an ORV management plan that maintains the cultural, resource protection, and diverse visitor experience within the Cape Hatteras National Seashore Recreational Area. This position statement presents criteria that integrate uses of the seashore for enjoyment of its diverse cross section of visitors while ensuring adequate protection for natural resources.

Conflict between conserving resources and values while providing for their enjoyment is not necessary. The NPS has a duty not only to ensure that resources are conserved but to resist the lures to swing the "protection" pendulum too great a distance from its mandate to provide for the enjoyment of resources. One such lure is "ease of implementation". Managing the Recreational Area under the NPS Organic Act, its Enabling Legislation and other legal mandates is not intended to be easy or cheap. It can however be practicable and reasonable. Such an approach appears below.

The position statement balances the need to conserve natural resources with the mandate to provide for the enjoyment of them. It gives consideration to natural resource management within the context of all recreational uses of the beach, particularly emphasizing the distinct needs for

ORV access and management.

Most ORV users access the beach areas to reach an area to recreate outside the vehicle.

- Desirable areas require vehicular access due to their distance from the highway and parking areas.
- Equipment needed for recreating in area of beach accessed cannot be easily carried on foot. (Beach toys, umbrellas, beach chairs, coolers, fishing equipment, water-sports boards, cameras and binoculars)
- Visitors with disabilities and families with infants and young children must travel unwalkable distances to enjoy beach activities including swimming in safe areas at tidal pools, on the sound side of inlets and the west side of Cape Point.
- Elderly and health disadvantaged are able to enjoy beach activities they otherwise could not access.
- The principle activity aided by ORV access on these beaches is best described as multiple-use. This concept has developed over many years of public experience without resource conflict. ORV operation provides the flexibility to respond to the rapid weather and ecological changes that occur along these shifting strands of sand. Weather, wind, and waves often dictate where and when a particular recreation will be practiced. The proposal also gives consideration to year-round and seasonal pedestrian use. Seasonal ORV use is contemplated only in non-peak visitation times of the year in front of villages. Year-round pedestrian closures are contemplated where pedestrian visitors can easily access and use beaches free of ORV traffic.

Section 3.0 of this document describes the Importance of Public Beach Access by addressing the traditional and cultural values, recreational values, and commercial values which must be preserved. Section 4.0 explains the significance of motor vehicles as means of beach access within the Recreational Area. Section 5.0 discusses the relevance of selected legislation and current management policies in the development of an ORV plan. Section 6.0 details ORV Management Guidelines that should be implemented and includes topics such as hours of operation, ORV routes and areas, and Resource Protection Areas. The conclusion is presented in section 7.0.

3.0 IMPORTANCE OF PUBLIC BEACH ACCESS

The importance of public beach access on Cape Hatteras has been long recognized by residents and visitors alike. Today, seventy-three years after the Recreational Area was established, the wholesome, family experience found at Cape Hatteras is seldom found at other beaches. Many of the values cherished today were attributes that directly led to the establishment of the seashore. These values can be categorized into three areas: Traditional and Cultural Values, Recreational Values, and Commercial Values. These areas are discussed below.

3.1 TRADITIONAL AND CULTURAL VALUES

Access to the surf zone has long been of traditional and cultural importance on the Outer

Banks and continues to be so today. The Seashore beaches have traditionally been utilized by the Outer Banks communities for a broad and diverse range of social, economic, and other cultural activities. Traditional activities range from surf dory seine net fishing to social gatherings and community events, to hook and line surf fishing, and general recreation. These social and economic cultural activities represent an unbroken pattern of traditional land use that spans from historical times through the establishment of the Seashore up to the present day. Further, the continuation of these traditional practices is central to the preservation of the historic social and cultural fabric of Outer Banks villages.

It should be noted that the maintenance of barrier island culture is largely unique to portions of the North Carolina Outer Banks. Across much of the Eastern Seaboard, traditional barrier island settlement, economic systems, and life ways have been obliterated by a transformation of coastal areas into nothing less than urbanized commercial districts. Other areas, most notably the Virginia Eastern Shore barrier islands have been abandoned to human settlement and use, and are in conservation ownership as a wilderness reserve. The widespread loss of traditional barrier island culture makes protecting surviving elements of traditional Outer Banks life ways that much more important.

Perhaps even more important than the traditional economic and social aspects of beach access is the intangible interconnection between Outer Banks people and the surf zone. The surf zone has long helped to define the Outer Banks communities' sense of self, and continues to do so today. Much of the Outer Banks consists of a thin ribbon of land, portions of which lie nearly 30 miles from the mainland. As the transitional realm between this narrow island home and the sea, the surf zone landscapes provide island folk with a profound sense of place, and their continued use helps sustain the collective identity of their village communities.

This traditional social as well as economic and intangible cultural importance of surf zone access was officially recognized by the National Park Service during the creation of the Seashore decades before the Traditional Cultural Property concept was codified in the National Historic Preservation Act and its amendments.

3.2 RECREATIONAL VALUES

The purpose of this section is to demonstrate the desired recreational experiences and needs sought by the visiting public and the relevance of ORV accessibility. Each of these areas contains essential elements, such as physical attributes, and the obvious need for ORV accessibility in order for visitors to enjoy the sought-out experience. Recreational uses are indicated on *Recreational Use Maps* (see Exhibit D).

3.2.1 Criteria

These criteria are vital for the desired visitor experiences that have been traditionally expected and are a part of what makes this particular Recreational Area uniquely attractive. (Desired visitor experience is not limited to those out of town visitors upon whom the local and state economy is almost completely dependent, but also includes the residents that live within and adjacent to the boundaries of the seashore, the most frequent visitors to the seashore.)

Visitor experience will be significantly impaired if access is denied to the majority of those who seek out these recreational opportunities. Impaired visitor experience results in fewer visitations, which results in economic devastation to the eight villages located within the boundaries of the Recreational Area itself, along with broader reaching impacts to neighboring towns, local and state governments. The NEPA process requires economic impact analysis which must encompass a twelve month period. **The final plan must take into consideration economic, historical and logistical use in order to be viable.**

The purpose of the Executive Order 11644 was to “...*establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands and to minimize conflicts among the various uses of those lands*”. It was not intended to prevent the public from recreating on and enjoying the use of public lands.

It is imperative that ORV use be recognized for exactly what it is: A historical means of access to an area especially attractive for recreational opportunities. The use of an ORV is not considered a recreational activity in this Recreational Area. These recreational opportunities sought, allow the public to enjoy the Seashore’s resources and values. Denying access to recreational opportunities, many of which are specifically protected in the Enabling Legislation, denies the Seashore’s current visitors the opportunity to enjoy the park’s resources and values and denies future generations the opportunity to enjoy the park’s resources in direct violation of Park Services Management Policies. The vast stretches of undeveloped shoreline between villages are a major attraction for visitors. Closing as little as 20% of the 68 miles of shoreline forces more people into smaller areas, increasing the potential for user conflict and diminishing the attractiveness for visitors. It is unreasonable to expect, or attempt to provide, a beach wilderness experience with over two million annual visitors on only 68 miles of shoreline. The recreational activities outlined below are activities that do not cause harm or impairment to the parks resources or values, nor do they cause “unacceptable impacts”. All of these recreational activities are historic and traditional uses and meet the requirements outlined in the U.S.C. Code (5)

3.2.2 Birding/Wildlife Viewing

The opportunity to see a wide variety of shorebirds is desired by the birding public. Birding opportunities abound within the Recreational Area; however, viewing shorebirds can only take place at the shore when the birds are present. Many bird species are migratory and are found in the Recreational Area for only part of the year. Also, different bird species prefer to visit different locations within the Recreational Area. Often, ORV use allows birders to approach much closer to observe birdlife while inside their vehicles than they could as pedestrians. The areas denoted on the maps have been identified with the assistance of the Cape Hatteras Bird Club, in particular Neal and Pat Moore and “*The North Carolina Birding Trail*” publication, which includes input from David Allen, North Carolina Wildlife Resource Commission and Walker Golder, N.C. Audubon Society.

Wildlife other than birds also abounds within the Recreational Area and can be seen by the visiting public. Sea life such as crabs, dolphins, and whales can often be viewed from the beaches. Deer and a variety of reptiles and amphibians are often seen in areas away from the shore.

The visitors' opportunity to experience these birding and wildlife viewing activities is highly dependent on access. Many visitors enjoy the challenge of spotting different species of birds and other wildlife by driving along the open beaches in their ORVs; activities which are much more difficult to pursue on foot.

3.2.3 Fishing

Access to the shoreline is first and foremost when it comes to essential elements required in order to participate in this recreational opportunity. The people who fish at the Seashore Recreational Area represent all age groups, all physical conditions, men and women, and white collar and blue collar backgrounds. Surf fishing opportunities abound, but fishing visitors quickly learn that offshore structures dictate the location of the best areas for fishing, especially when one is targeting specific types of fish. Fish are constantly moving, searching for food, escaping from predators and do not necessarily remain in one area very long. Many anglers target fish that can be "put on the table", while others fish solely for sport, practicing catch and release. Large Red Drum, the most targeted game fish from the surf and the state fish of North Carolina, has to be released by law. The majority of those who surf fish target both types of fish. Anglers will often plan their trips to the Recreational Area knowing when the particular species they seek will be available. No matter the preference, access to the key fishing areas is vital to the enjoyment of surf fishing.

Strong indicators of the appeal of surf fishing at the Recreational Area are the nine or more surf fishing tournaments held within its boundaries each year. These tournaments (two of which are over 50 years old) bring much needed business to local merchants during the shoulder seasons. Teams can wait as long as 17 years to get into tournaments due to self-imposed, participant restrictions that will not over-utilize the available beach resources. Some fishermen have participated for over 30 years. Without ORV access to the beaches, these tournaments could not be staged.

The fishing areas denoted on the maps in Exhibit D were identified by members of the Cape Hatteras Anglers Club with input from local fishing enthusiasts and tackle shop employees. It should be noted that The Dare County Parks and Recreation Department also offers surf fishing camps during the summer to our youth, utilizing ORV areas as well as piers. Without ORV access there would be no place for them to park in order to teach children about fishing.

3.2.4 Horseback riding

Access to ORV areas is vital to equine interests as a result of current park policy that limits horses to ORV areas. While recognizing that the local management policy may be modified to permit horses in non-ORV areas, the accessibility of the non-ORV areas is still critical for those accessing the beach via horseback. Not all local horse owners have trailers to transport their horses to other areas. Furthermore, it is time consuming and

more costly to transport horses rather than riding them. Allowing horses in areas that are seasonally closed in front of the villages is dangerous for both the public and the horses and will cause user conflicts. The largest equestrian user on Hatteras Island accesses the beach via trails in the woods near her residence and has a very successful established riding business that provides a unique visitor experience to hundreds of park visitors every year via horseback. She cannot relocate this business. Many of the horse owners volunteer their time and horses to the local community by participating in school events, parades, girl scouts, therapeutic riding and working with disadvantaged students. Visitors from as far away as Massachusetts have brought their horses to Cape Hatteras. Local horse owners and equestrian interests from Hyde County, mainland Dare County, Currituck County and others from locations as many as 150 miles away identified the areas denoted on the maps in Exhibit D.

3.2.5 Shelling

Shelling/beachcombing is a huge attraction, especially for those who cannot partake in more strenuous physical activities. In 1965, the Scotch Bonnet was named the state shell of North Carolina. Scotch Bonnet shells wash ashore in abundance on North Carolina's Outer Banks as a result of Gulf Stream moving tropical waters close to the North Carolina coast. After storms, hundreds of Scotch Bonnets may be washed ashore on the Outer banks especially between Cape Hatteras and Cape Lookout due to the close proximity of the Gulf Stream to that section of the coast. They are rare elsewhere in the state. Scotch Bonnets are an attraction that draws many shell enthusiasts to our beaches, along with the wide variety of other shells to be found. Shell beds naturally appear and disappear from week to week. ORV access is vital to seeking out shell beds. The points and spits, as well as the South-facing beaches, are prime shelling areas.

Shelling/beachcombing information denoted on the maps were identified by Dewey Parr, native resident, business owner, and local shell authority-www.outerbanksshells.com as well as information gathered from the North Carolina Shelling Club and from VisitNC.com.

Sea Glass collecting has emerged as the newest form of beachcombing and the North American Sea Glass Association (NASGA) has developed as a result of the popularity of Sea Glass collecting. Linda Jereb who has lived in the Outer Banks for over 20 years owns *By the Sea Jewelry*. She was one of the founding members of NASGA. One of the current board members of NASGA, Richard LaMotte, author of *Pure Sea Glass*, has visited the Outer Banks numerous times for book signings and has given lectures about Sea Glass at the NC Aquarium in Manteo. NASGA also works closely with The American Shore & Beach Preservation Association and recognizes that the shores, beaches, and other coastal resources of America provide important quality-of-life assets within the reach of the largest possible number of people in accordance with the ideals of a democratic nation. NASGA is dedicated to preserving, protecting and enhancing the beaches, shores and other coastal resources of America. They pursue their mission by means of:

- Protecting and improving healthy and diverse recreational opportunities.
- Managing, protecting and enhancing environmental resources.
- Encouraging responsible and sustainable economic development.
- Preserving aesthetic values.
- Reducing damage from natural hazards and human activities.
- Mitigating human impacts to natural processes.

3.2.6 Swimming

Swimming was acknowledged in the enabling legislation as one of the premier values of the Recreational Area. It is one of the most popular activities during the late spring, summer and fall when the water temperatures are moderate. Areas in front of the villages and park service campgrounds are the most heavily utilized swimming areas due to easy access on foot to those renting ocean side homes, motel rooms or campsites. Beaches located near public parking are also heavily utilized, although parking spaces are limited, (NPS parking spaces have decreased since 1978) and some parking lots are located at beaches that are often closed to pedestrians for much of the summer due to resource protection measures. Very few of the beaches in the Seashore Recreational Area have lifeguards and are often manned only sporadically during the season by the NPS.

Many visitors prefer to access swimming beaches outside of the village boundaries, or away from the public parking areas. They prefer to travel via personal, motorized vehicles to find the perfect spot. This approach enables them to transport their beach umbrellas, chairs, etc., as well as visit beaches that often have more tranquil waters during the summer months. The normal, summertime movement of the beaches' sands, due to seasonal winds and currents, results in pools and flats protected by outer bars from strong wave action. These areas, perfect for children, the elderly, disabled and those that just aren't comfortable with rough surf, are often found at the spits, sound-side and south facing beaches, and at Cape Point; areas where recent resource protection policies have prohibited summertime pedestrian and ORV access.

3.2.7 Watersports

The geographical location of the Cape Hatteras National Seashore Recreational Area makes it one of the better places in the world for watersports, and unquestionably the best on the eastern seaboard. The Recreational Area attracts almost every type of watersport enthusiast to her shores. Surfing, windsurfing, kite boarding, kayaking, paddle boarding, skim boarding and body boarding are all environmentally friendly, non-polluting, family sports that rely solely on wind and water. The Cape Hatteras National Seashore Recreational Area is world renown to each of these sports and is a favorite destination for people who enjoy them.

The Cape Hatteras National Seashore Recreational Area is the only place that offers a complete range of natural diversity like swell direction, flat water and accessible wind in any direction. The island provides conditions that are perfect for beginners as well as world class watersport athletes.

Each of these activities is dependent on shoreline access and has varying requirements based on wind direction, open water, water depths, consistent wave action, or curved shoreline. Both ocean and sound access is vital in getting to these areas that are dependent on wind direction and speed. Many key spots are only ORV accessible, like Cape Point and the Inlet Areas.

Watersports are an important industry in the Cape Hatteras National Seashore Recreational Area. There are numerous stores dedicated to each of these sports up and down the islands. Large numbers of people are drawn to this area for watersports from all over the country, Canada and Europe. According to industry numbers, upwards of 500,000 kiteboarders, 450,000 windsurfers, 20 million surfers and three times that number in kayakers visit the Cape Hatteras National Seashore Recreational Area annually.

Hatteras is a popular place for large competitions which attracts competitors and spectators from around the world. Nine time World Surfing Champion, **Kelly Slater**; former World Surfing Champion, **C. J. Hobgood**; 5 time World Kiteboarding Champion, **Aaron Hadlow**; 23 time World Windsurfing Champion, **Robby Naish** are some of big names who come to the Cape Hatteras National Seashore Recreational Area regularly. Jimmy Buffett, a world famous recording artist and self-proclaimed lifestyle champion, is an avid surfer and fisherman who is seen regularly on our beaches.

Watersport areas are denoted in Exhibit D.

3.2.8 High Recreational Value Ocean Beaches

All of the beaches within the Cape Hatteras National Seashore Recreational Area offer high recreational value to the public. While all of the beaches are suited and commonly used for swimming, sunbathing, wading, shelling and fishing, some beaches are uniquely more favorable for some specific activities. Frequent visitors often refer to the different geographical areas when they describe their experiences. These areas are mapped on Exhibit D and described below:

3.2.8.1 Bodie Island Spit (Oregon Inlet)

- Close proximity to highly populated northern towns, cities, and villages draws many year-round visitors.
- (Easter through January) - High use on holidays and summer for family gatherings
- (May to January) Prime fishing from ramp 2 to around spit
- Prime child-safe swimming area on sound side of spit
- Recreational and commercial cast-netting

3.2.8.2 Pea Island National Wildlife Refuge

- Managed under different regulations than remainder of the Recreational Area
- ORV access prohibited
- (Year-round) – Birding (pedestrian only access)
- (May – January) - Fishing (pedestrian only access)
- (May – September) –Swimming (pedestrian only access)
- Sunbathing (pedestrian only access)

3.2.8.3 Rodanthe to Cape Point (North Beach)

- (March to January) – Prime fishing areas at ramps and Cape Point
- (March through December) –Prime watersports at villages
- Favorite gathering area for locals and visiting families
- (Year-round) – Birding

3.2.8.4 Cape Point to the Frisco Village line (South Beach)

- (March to January) – Prime fishing area at Cape Point
- (May to September)- Favorite gathering area for “locals” and visiting families
- Prime shelling area
- Prime horseback riding area
- Recreational and commercial cast-netting at Cape Point
- Prime child-safe swimming area south of Cape Point to Frisco village
- Watersports
- Snorkeling
- Birding

3.2.8.5 Frisco Village East Line to Ramp 55

- (March-January) – Fishing
- (May-September)- Family gathering
- Watersports
- Birding
- Shelling

3.2.8.6 Ramp 55 to/including Hatteras Spit (Hatteras Inlet)

- (March-January) – Prime fishing area from ramp 55 around Hatteras Inlet spit
- Recreational and Commercial cast-netting
- (May-September)- Prime family gathering area for visitors in the Hatteras Village area
- Watersports
- (Year-round) - Birding

3.2.8.7 Ramp 59 to/including North end of Ocracoke (Hatteras Inlet)

- (March-December) – Prime fishing area from ramp to around spit
- Prime child-safe swimming on sound side of spit
- Recreational and commercial cast-netting
- Watersports
- (Year-round) – Birding
- Prime Shelling area from ramp to around spit

3.2.8.8 Ramp 59 to Ramp 67

- (Year-round) – Shelling
- (March –January) - Fishing
- (May – September) – Swimming
- Watersports

3.2.8.9 Ocracoke Day Use line (South end) to Ramp 70

- (March-January) – Fishing
- (Year-round) – Shelling
- (Year-round) - Birding
- (May-September) – Local and visitor family gathering
- Swimming
- Watersports

3.2.8.10 Ramp 72 to/including South Point of Ocracoke (Inlet/Spit)

- (April-October) – Prime local and visitor gatherings
- (March-December) – Prime fishing area from ramp 70 to ramp 72 and ramp 72 around spit
- Recreational and commercial cast-netting
- (Year-round) – Shelling
- Swimming
- Surfing
- Watersports
- Sunbathing
- Horseback riding

3.2.9 High Recreational Value Sound Side Locations

Sound side locations within the Recreational Area also provide unique visitor experiences as noted below:

3.2.9.1 Bodie Island Sound Side

- (Year-round) Watersports
- (April-September) Fishing
- Recreational and commercial cast-netting
- Crabbing
- Family gatherings

3.2.9.2 Salvo Day Use Area

- (Year-round) Prime watersports area
- Family gatherings
- (May-September) Fishing
- Recreational and commercial cast-netting
- Crabbing

3.2.9.3 Sound Access 47 / 48

- (Waterfowl hunting season) Traditional hunting area
- (Year-round) Watersports
- (May-September) Fishing
- Recreational and commercial cast-netting
- (June-September) Small boat launching area for sound fishing

3.2.9.4 Sound Access 52 (Little Kinnakeet Life Saving Station) 3 access roads

- (Year-round) Watersports
- (May-September) Fishing
- Recreational and commercial cast-netting
- Crabbing
- Family gatherings

3.2.9.5 Sound Access 57 / 58

- (Year-round) Watersports
- (May-September) Fishing
- Recreational and commercial cast-netting
- Crabbing
- (Waterfowl hunting season) Traditional hunting area
- (June-September) Small boat launching area for fishing and waterfowl hunting

3.2.9.6 Sound Access “ The Haulover”, Access 59 (Kite Point)

- (Year-round) Prime watersports areas
- (May-September) Fishing
- Recreational and commercial cast-netting
- Crabbing
- Family gatherings
- Wading
- (Waterfowl hunting season) Traditional “locals” hunting area
- (June-September) Small boat launching area for sound fishing and waterfowl hunting

3.2.9.7 Access behind Hatteras Coast Guard Station

- Child-safe swimming area
- Recreational and commercial cast-netting
- (Year-round) Fishing
- Clamming
- Crabbing
- Small boat launching
- (Winter) Scalloping

3.2.9.8 Access Cable Crossing off pole road

- (Year-round) Fishing
- Recreational and commercial cast-netting
- Clamming
- Crabbing

3.2.9.9 Access Spur Road off pole road

- (Year-round) Fishing
- Recreational and commercial cast-netting
- Clamming
- Crabbing
- Child-safe swimming area
- Birding

3.2.9.10 Ocracoke Island Borrow Pit Road

- Prime child-safe swimming area
- (May-September) Family gatherings
- Recreational and commercial cast-netting
- (Year-round) Fishing
- Clamming
- Crabbing
- Small Boat Launching
- (Winter) Scalloping

3.2.9.11 Ocracoke Island Cockrell Creek

- (Year-round) Fishing
- Recreational and commercial cast-netting
- Clamming
- Crabbing
- Small boat launching
- Commercial fishing

3.2.9.12 Ocracoke Island Quark Hammock

- (Year-round) Commercial fishing

3.2.9.13 Ocracoke Island Scrag Cedar Rd

- (Year-round) Fishing
- Recreational and commercial cast-netting
- Clamming
- Crabbing
- Small boat launching
- Commercial fishing

3.2.9.14 Ocracoke Island – South Point

Reopen sound-side access at South boundary of village if ownership dispute can be settled

Reopen sound-side access spur off South Point road opposite ramp 72

Maintain sound-side access at southern terminus of South Point road

- Prime child-safe swimming area
- (May-September) Family gatherings
- (Year-round) Fishing
- Recreational and commercial cast-netting
- Commercial fishing
- Birding
- Clamming
- Crabbing
- Small boat launching
- Shelling
- Birding
- (Winter) scalloping

3.3 COMMERCIAL VALUES

Commercial fishing has been a significant source of revenue to the State, and long an occupation and livelihood for residents of communities located within the Recreational Area. This activity has existed on the Outer Banks of North Carolina since the original settlers arrived. Indeed, this means of livelihood is specifically provided for by Congress and recognized as one of the important traditional and cultural activities protected in the legislation establishing the Recreational Area. Commercial Beach seining is one of the oldest Outer Banks commercial fisheries still practiced today. A beach seine crew consists of fishermen who stay on the beach with a line attached to one end of the net that is feed out by other fishermen in a small dory that is launched through the breakers. Originally pulled in with the help of horses, nets today are hauled in with a truck. A crew can consist of anywhere from as few as 2 fishermen to as many as 5 or 6. Participation in the fishery varies from year to year, but approximately 10 to 15 beach seine crews work on Cape Hatteras National Seashore Recreational Area. The primary species targeted by seiners include sea mullet, striped bass, speckled trout, flounder and star butterfish. Striped bass and speckled trout are among the species commanding the highest prices for Outer Banks inshore commercial fishermen.

3.4 ECONOMIC IMPACTS

When the Cape Hatteras National Seashore Recreational Area started to form, the National Park Service stressed to the local residents in 1949 that this park would be an economic asset to the villages located within the park's boundaries. In 1952, Park Superintendent Conrad Wirth wrote that the park and its staff would "bring enjoyment to millions of visitors and prosperity to you."

Subsequently, roads and bridges were built making these barrier islands very appealing to everyone. Conrad Wirth was correct - millions of visitors did come and the community did prosper. Family-owned businesses were created and became the very backbone of Hatteras, Ocracoke and Bodie Islands. The area was sheltered from the rampant overdevelopment that infected much of the country. Islanders resisted franchises and cookie-cutter stores, making the locally owned businesses as unique as the area.

The Seashore area provided so much opportunity for commerce. According to spending numbers released by the American Sportfishing Association, North Carolina is among the top ten states for fishing and created 1.2 billion dollars in revenue during 2006. Cape Hatteras National Seashore Recreational Area is one of the most popular destination places for this activity because it offers world-class fishing, both surf and sport. There are 1.2 million anglers that live in North Carolina and 810,000 in nearby South Carolina.

In addition to fishing, the waves and wind give watersport enthusiasts spectacular conditions for almost any type of watersport activity which attracts over one million visitors annually. Wildlife can be enjoyed in a natural setting. There is space for people to relax on the beach and enjoy the peace and quiet far from the hassles of everyday life.

Tourists are the lifeblood of the local economy. They stay at motels and rental houses. They eat at the restaurants and buy food from the grocery stores. They put gas in their vehicles. They support the local shops by getting bait and tackle, bathing suits, surf boards and books. They buy souvenirs, local art and T-Shirts to remember their time here on the islands. During the summer, it was difficult to find a place to stay if you didn't have a reservation and there were always long waits to get into restaurants. For decades, Cape Hatteras National Seashore Recreational Area was immune from recession including the fallout from Sept. 11, 2001. Economic downturns that would cripple the national economy tended to give a boost to the Hatteras economy because people were inclined to go to Hatteras for inexpensive, short-distance vacations.

The Consent Decree has taken a heavy toll on the local economy. Without sensible beach access, there is no reason for tourists to come here. Since 2008, successful businesses that are older than the park itself have started to fail. All walks of business are reporting that staffs have been reduced by 25 to 50% and the same for their sales figures. Restaurants are half full in summer and finding a place to stay is now easy. The people who are still working are earning less. Charity organizations are reporting a tremendous increase in the number of families needing their assistance, doubling every year since the Consent Decree took effect. Church donations have decreased. Area banks are reporting that businesses have exhausted most of their lines of credit trying to stay afloat. Dare County now has the highest rate of unemployment in the state of North Carolina.

The Consent Decree and the resulting soft economy happened months before the nation began suffering from the recession. When the stock market plunged in September 2008, the Hatteras and Ocracoke economies were rebounding because the beaches reopened the month before. Businesses located near closed ramps to the beach struggled while businesses near an open ramp blossomed, even if they were just a few miles apart. Previous bird protection plans, specifically the Interim Protected Species Management Plan, had no effect on the local business.

Commerce is at the very core of all civilizations and has existed in the seashore area for thousands of years. Nature provided the earliest Americans items to trade in order to keep the community clothed, healthy, fed and prosperous. Yaupon bushes grew medicinal berries that were vital to healing. The seas produced scallops, crabs, oysters and fish which fed the population. The maritime forest grew large trees from which tremendous canoes were carved. The canoes were used for travel to the mainland where these early Americans traded yaupon and seafood for animal skins, vegetables, tobacco and different foods.

Commerce is as important, necessary and natural today as it was then. The residents of these islands depend on nature's bounty as much as the Native Americans did. Our modern economy relies on the ability of visitors to access the beach, much of which is only accessible by ORV. The continuation of beach closures to pedestrians and ORVs will devastate the economies of Dare and Hyde counties.

4.0 SIGNIFICANCE OF MOTOR VEHICLES AS PRIMARY MEANS OF BEACH ACCESS

Section 3.0 of this document described the importance of public beach access within the Recreational Area for traditional, cultural, recreational and commercial values. *Recreational Use Maps* in Exhibit D show the geographical extent throughout the Seashore of the recreational activities described in Section 3.0. Visitors to the Area have limited opportunity to take advantage of these recreational activities without physical beach access. Even before the Recreational Area was established, residents and visitors alike understood that the primary means of such beach access had to be by motorized vehicle. The residents and visitors of Cape Hatteras and Ocracoke islands have enjoyed continuous, uninterrupted use of motor vehicles on the beaches since automobiles were first introduced (long before the enabling legislation).

A drive down Highway 12 offers limited views of the ocean. A limited number of parking areas for over-the-dunes beach walking access are provided. The physical exertion required to walk over the dunes at many of these parking areas makes access impractical for many of the elderly, young, and physically handicapped. Many of the most popular areas of the Seashore are not near parking areas and are physically impossible to access by foot for all but the strongest and most healthy visitors. Not a single public parking lot for beach access is available in the villages, and the NPS parking lots and parking spaces have decreased since 1978. During the same period, visitation has increased substantially. Historically, ORVs have been the primary modes of physical access to the Seashore beaches for many of the visitors, without this means of access, large portions of the Seashore are summarily CLOSED.

A common trait of each recreational activity is the challenge offered to the visitor to find just the perfect spot on the beach. One day, the best shells may be in one location, the next day in another. One day the wind may blow from the northeast and chase the visitors to the South Beaches; the next day the wind may blow from the southwest and chase the visitors to the North Beaches. One day the bait in the water will lead the bluefish and Spanish mackerel (and likewise, the fishermen) in one direction, and the next day in a different one. Each of these activities, as well as each of the other activities identified in Section 3.0, is made possible through the mobility afforded by personal, four-wheel-drive vehicles coupled with beaches open to access.

5.0 SELECTED LEGISLATION AND MANAGEMENT POLICIES RELEVANT TO AN ORV PLAN

As a National Seashore, the Cape Hatteras National Seashore Recreational Area is subject to legislation, rules and policies that affect how it is managed by its authorities and enjoyed by its visitors. Public access has been acknowledged as a key value since the inception of the Park Service and the Recreational Area. Many requirements of the legislation, rules and policies cannot be accomplished unless public access is guaranteed. Several significant references are provided below.

5.1 NPS ORGANIC ACT – 1916

The NPS Organic Act of 1916 defined the original responsibilities of the U.S. Department of the Interior and the NPS with regard to the management of units within the national park system. The act recognized both conservation and public access as responsibilities of these units as reflected in this quotation:

“The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” (NPS Organic Act, section 1)

5.2 THE CAPE HATTERAS NATIONAL SEASHORE RECREATIONAL AREA ENABLING LEGISLATION - 1937

The enabling legislation established the Recreational Area in 1937. This legislation was written and passed by Congress with full awareness of both the conservation and public access responsibilities of the Park Service which had been defined by the earlier Organic Act. In fact, the enabling legislation explicitly stated the responsibility of the NPS to preserve areas for recreational activities when instituting conservation measures,

“except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, the said area shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area . . .”⁵

5.3 DIRECTOR OF THE NATIONAL PARK SERVICE ACKNOWLEDGEMENT OF RECREATIONAL AREA

In 1952, Conrad Wirth, Director of the National Park Service, reiterated the responsibility of the NPS to assure vehicular access to the beaches for residents and visitors alike. (see Exhibit A)

5.4 16 U.S.C. SECTION 1A –1 – COMMITMENT TO NPS ORIGINAL PURPOSE

In the Redwood National Park Expansion act of 1978, Congress expressed its commitment to the original purpose of the NPS. 16 U.S.C. Section 1a-1 states,

⁵ Cape Hatteras National Seashore Recreational Area Enabling legislation (1. (Aug. 17, 1937, ch. 687, Sec. 4, 50 Stat. 670; June 29, 1940, ch. 459, Sec. 1, 54 Stat. 702; Mar. 6, 1946, ch. 50, 60 Stat. 32.)

“The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.”

The enabling legislation for the Recreational Area, as quoted in 5.2 above, clearly excepts areas “especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature”. This 1978 act was passed six years after the Executive Order requiring ORV plans and, it continued to authorize the exception of recreational areas as defined in the enabling legislation.

5.5 NPS MANAGEMENT POLICIES –2001: INTERPRETATION OF ORGANIC ACT- ENJOYMENT OF PARK RESOURCES AND VALUES

The NPS is challenged to interpret legislation to define management policies it uses to execute its responsibilities, just as all Federal agencies are so challenged. Management policies must clarify but not attempt to supersede the law. The NPS interpretation of the Organic Act, as reflected in published management policies, acknowledges the responsibility to provide for the enjoyment of park resources and values, but views conservation to be the predominant role of the NPS.

“The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States. The enjoyment that is contemplated by the statute is broad; it is the enjoyment of all the people of the United States and includes enjoyment both by people who visit parks and by those who appreciate them from afar. It also includes deriving benefit (including scientific knowledge) and inspiration from parks, as well as other forms of enjoyment and inspiration. Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act. (NPS Management Policies – 2001 – 1.4.3)

Clearly, conservation is a critical component of all legislation related to the NPS and the Recreational Area. However, the first sentence of the above quotation is the most significant. The NPS cannot be successful unless it provides “for the enjoyment of park resources and values by the people of the United States.” When conflicts between “conserving resources and values and providing for enjoyment of them” arise, **NPS is obligated to vigorously search for solutions, not to defer to potentially more easily implemented conservation measures.** The NPS Organic Act (see quote above) requires conservation of park resources in order to leave the parks “unimpaired for the enjoyment of future generations”. It does not require nor suggest the enjoyment of current generations should be impaired as a result of conservation measures.

The Coalition is confident that the ORV management guidelines it endorses allows the NPS

to fulfill its conservation responsibilities while allowing the enjoyment of the resources by current generations without impairment of future generations.

5.6 NPS MANAGEMENT POLICIES – 2001 -1.4.7.1 UNACCEPTABLE ENVIRONMENTAL IMPACTS

The NPS has defined in its policies unacceptable environmental impacts as “...those that are

- inconsistent with a park’s purposes or values, or
- impede the attainment of a park’s desired future conditions for natural and cultural resources as identified through the park’s planning process, or *create an unsafe or unhealthful environment for visitors or employees, or
- diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or
- unreasonably interfere with:
 - park programs or activities, or
 - an appropriate use, or
 - the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park
 - NPS concessionaire or contractor operations or services.”

The Coalition recognizes the NPS responsibility to avoid unacceptable environmental impacts and is confident that such impacts will not occur as the result of the ORV management guidelines it endorses.

5.7 NPS MANAGEMENT POLICIES - 2001: SECTION 1.4.6 RESOURCES AND VALUES SUBJECT TO NO-IMPAIRMENT

“The NPS has defined in its policies “park resources and values” that are subject to the no-impairment standard to include:

- the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural sound scrapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park’s role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and

- any additional attributes encompassed by the specific values and purposes for which the park was established”

The Coalition recognizes the NPS responsibility to avoid impairment to the Recreational Area’s “resources and values” and is confident that impairments will not occur as the result of the ORV management guidelines it endorses.

6.0 ORV MANAGEMENT GUIDELINES

Exhibit B – *ORV Management Guidelines Summary* identifies practices which the Coalition believes are critical to a successful ORV Management Plan for the Cape Hatteras National Seashore Recreational Area. Selected guidelines addressed in Exhibit B are further discussed in the narrative below due to their critical importance to the Coalition’s position.

6.1 ORV OCEAN SIDE RAMPS

Ramps are indicated on *ORV Designated Routes and Areas Maps* (see Exhibit C). Ramps exist or are proposed at intervals to provide access while maintaining resource protections. Proposed new ramps are intended to help avoid past situations where an area becomes effectively closed to access (“landlocked”) because there is no practical ingress due to necessary, temporary protection or safety closures.

Ramps must be maintained as two lanes wide because deep loose sand at ramps often requires continuous forward motion to avoid getting the ORV stuck. The necessity of continuous forward motion requires greater safety precautions to avoid interaction between vehicles, and between vehicles and pedestrians.

“High Use Ramps” include 2, 4, 23, 34, 38, 43, 44, 45, 49, 55, 59, 70, and 72.

6.2 HOURS OF ALLOWABLE ORV OPERATION ON BEACH

Pedestrian and ORV access to the beaches should be allowed twenty-four hours per day. Closures, such as those used during the years of the Consent Decree, are not necessary to provide the required level of protection to nesting sea turtles. See Exhibit E *Nighttime Beach Access During Sea Turtle Nesting & Hatchling Season*.

The Northwest Atlantic Population of the Loggerhead Turtle Recovery Plan does not prohibit the movement of vehicles on the beach at night. Since 2005, NPS management practices have prohibited ORV driving between the hours of 10:00 p.m. and 6:00 a.m. from May 15 until September 15. No evidence supports the concern that night driving here on the Recreational Area beaches has jeopardized the recovery of the Loggerhead Sea Turtle or contributed to the degradation of nesting habitat in compliance with the recovery plan.

Resource Management techniques discussed elsewhere in this document are more likely to contribute positively to the turtle recovery plan than seasonal prohibition of night beach driving. Nighttime utilization is particularly suitable for Cape Hatteras National Seashore Recreational Area in light of the historical statistics of turtle nesting and hatching locations and times of day at Cape Hatteras. Notably, only three times in the past 12 years have turtle

nests been recorded within the unit prior to May 27, representing only two tenths of one percent (0.20%) of all turtle nests in 12 years. During the same 12-year period only 13 nests remained viable after August 28, representing just over one percent (1%) of all turtle nests. In over half of the 12 years reported, zero nests remained viable after August 28.

Nighttime driving during the nesting season does not equate to zero protection of turtle nests. The likelihood of an ORV / turtle encounter is remote in the first place. In the best of years, approximately 1 nest and 1 false crawl occur nightly during nesting season over the seventy miles of beach. This very low density of nightly turtle activity, combined with naturally lower ORV activity at night, makes ORV / turtle encounters highly unlikely. All other traditional protection measures at each nest site would continue to be employed, including beach closures around a nest during the hatching period.

6.3 ORV ROUTES AND AREAS

Visitors accessing the Seashore by ORV must drive only on areas and routes designated open for ORVs and must comply with posted restrictions. ORV access will be prohibited in all areas of the seashore not designated open as an ORV area or route. Routes and areas are presented graphically in Exhibit C *ORV Designated Routes and Areas Map*. Routes and areas, as well as points of ingress and egress via ramp are listed in Exhibit F-*Routes and Areas Table*.

6.4 SAFETY CLOSURES

Objective criteria which the NPS can use to temporarily close segments of a beach that pose a safety hazard to ORVs or their drivers, as well as criteria for reopening closed segments are presented in Exhibit G *Safety Closures*. The emphasis on the criteria is to balance safety with the desire to only close the beach in situations where the threat of life and property destruction is imminent. The pedestrian safety recommendations were based on a desire to reduce the likelihood of unsafe pedestrian vehicle interaction. These recommendations mimic vehicle regulations and driving etiquette most commonly understood while driving on-highway or during front-country driving with the belief that such regulations and etiquette will be second nature to ORV drivers and thus compliance will occur consistently.

6.5 RESOURCE PROTECTION MEASURES

Appropriate measures will be taken to protect the natural resources within the Seashore. Techniques that will allow public access without impairment to endangered and threatened species will be identified and implemented. Alternatives including, but not limited to, restrictive fencing, buffers, access corridors, nest relocation and vegetation controls will be considered.

Resource protection buffers, breeding, and non-breeding protection measures are outlined in Exhibit H, *Resource Protection Table*. Buffers and other protection measures outlined in Exhibit H are based on scientific studies supporting these recommended buffers and protection measures.

6.5.1 Species Management Buffers / Closures

Temporary buffers and closures to ORV and pedestrian access will be used during bird and turtle breeding seasons to provide resource protection while maintaining public beach access. Buffers and closures will be frequently monitored on defined schedules to ensure both resource protection and public access are optimal.

6.5.2 Wintering buffers:

Wintering buffers should allow Pedestrian / ORV access to the greatest extent possible while balancing the need for protection of birds.

“To assure that important sites where nesting birds are successful and where management is possible, **we recommend that ORV traffic be allowed in such key colony sites as Cape Point, Hatteras Inlet**(emphasis added), Power Squadron Spit, and the west end of Shackleford Island during the fall and winter to assist in maintaining the bare or nearly bare upper beach habitat necessary for nesting terns and skimmers. Terns and skimmers that nest on bare or nearly bare sites need the most assistance.”⁶

“We make the following recommendations to help enhance the populations of CAHA [Cape Hatteras] and CALO...At present, **beach closures are unnecessary and are not likely to favorably impact breeding piping plovers on the islands**.(emphasis added)”⁷

6.5.3 Pedestrian/ORV Access Corridors:

Pedestrian / ORV corridors will be maintained through temporary resource closures to provide access to otherwise open areas of beach. Access corridors are particularly well suited at Cape Hatteras National Seashore Recreational Area due to the lower latitude and environment in North Carolina.

“Our brief study of piping plover breeding biology has revealed that factors affecting reproductive success in North Carolina are different than those in northern regions. Being along the edge of the piping plover's breeding range and at lower latitude, the environment at North Carolina seashores is likely to have different conditions for survival and reproduction. Storms in the early part of the breeding season cause breeding losses and delays, and high temperatures, especially late in the breeding season, impose heat stress that may indirectly cause chick mortality. For these reasons, productivity goals set in the recovery plan (1.5 fledged chicks/pair/year), established from studies of more northern populations, **are probably unrealistic for North Carolina**.”⁸(Emphasis added)

⁶ Jaime A. Collazo, J.R. Walters, and J.F. Parnell, Factors Affecting Reproduction and Migration of Waterbirds on the North Carolina Barrier Islands, Final Report to the National Park Service Cape Hatteras and Cape Lookout Seashores (1995).

⁷ Jaime A. Collazo, J.R. Walters, and J.F. Parnell, Factors Affecting Reproduction and Migration of Waterbirds on the North Carolina Barrier Islands, Final Report to the National Park Service Cape Hatteras and Cape Lookout Seashores (1995).

⁸ Jaime A. Collazo, J.R. Walters, and J.F. Parnell, Factors Affecting Reproduction and Migration of Waterbirds on the North Carolina Barrier Islands, Final Report to the National Park Service Cape Hatteras and Cape Lookout Seashores (1995).

Flushing of incubating American Oystercatchers (AMOY) should not be dispositive in determining whether pass-through corridor widths should be adjusted.

“Regression models showed that there was **little or no association between ORV traffic and the rate at which incubating oystercatchers**(emphasis added) made trips to and from their nests or the percent time they spent incubating.”⁹

6.5.4 Vegetation Control Measures:

Vegetation control measures should be implemented at Cape Point and at Bodie Island spit. Such controls could contribute to more successful reproduction rates through the improvement of the natural habitat for the piping plover, and to the reduced likelihood of human interaction

“We make the following recommendations to help enhance the populations of CAHA [Cape Hatteras] and CALO... Continue vegetation removal at Cape Point along the south shore of the brackish pond. To delay the re-growth of vegetation in these treated areas, **it** may be beneficial to use raking machinery after disking to prevent vegetative growth from cuttings. Growth of vegetation in other piping plover foraging and nesting areas of CAHA should be monitored; additional areas may need to be maintained. Preservation of interior wet and mud flats on CAHA is critical; otherwise piping plovers may only find suitable foraging habitat along the ocean intertidal zone where human disturbance is a problem.”¹⁰

6.5.5 Non-breeding Migratory Shorebird Protection Measures:

Extraordinary protection measures consisting of large segments or a sizable percentage of protection area within Cape Hatteras National Seashore are unwarranted for non-breeding migratory shorebirds, particularly where protection measures are greater than those measures afforded to species which have been vetted through the listing process under the Endangered Species Act. For example, large segments of ORV and/or pedestrian free beaches during migration season are unwarranted for Red Knots at Cape Hatteras. Red Knots are not a listed species under the Endangered Species Act nor is the species listed in North Carolina as protected species. The numbers of Red Knots that utilize Cape Hatteras account for less than 3% of the population. This proposal provides adequate levels of protected shoreline in relation to the potential for positive impact upon the relatively low numbers of individuals using Cape Hatteras as a migratory stop-over. Thus, the additional protection measures provided for in this document compared to past practices are sufficient to meet the burden of non-impairment.

⁹ Conor P. McGowan, Simons, T.R., *Effects of Human Recreation on the Incubation Behavior of American Oystercatchers*, The Wilson Journal of Ornithology 118(4): 485-493, 2006, at 489.

¹⁰ Jaime A. Collazo, J.R. Walters, and J.F. Parnell, *Factors Affecting Reproduction and Migration of Waterbirds on the North Carolina Barrier Islands*, Final Report to the National Park Service Cape Hatteras and Cape Lookout Seashores (1995).

6.6 PERMITS

Historically, special use permits for ORV use within the Recreational Area have not been required. . The Coalition supports the use of permits as a method to increase user education. Further, the Coalition advocates beach access permits issued to qualified drivers should be free. Additional permit guidelines are stated in Exhibit B. A permit system must be mindful that the original promises of the National Park Service to the people of the islands was to work cooperatively with them so that they may enjoy “the prosperity [they] so rightfully deserve because of long occupancy on [the] lands” within the Recreational Area.¹¹

6.7 OFF-ROAD VEHICLE REQUIREMENTS

Recommended Off-road vehicle requirements appear in Exhibit I, *Off-road Vehicle Requirement and Characteristics*.

7.0 CONCLUSION

The positions stated in this document and its attachments represent a common sense, reasonable approach to address two of the most significant responsibilities the National Park Service must fulfill within the ORV Management Plan. These responsibilities are

- the protection of resources without impairment **to or from** the visiting public and
- the protection of Traditional, Cultural, Recreational and Commercial values for the visiting public with limited disruption.

The goals written by Congress in the enabling legislation that created the Recreational Area recognized these responsibilities.

The Coalition is confident ORV access to the beaches has not historically adversely affected the Recreational Area environment. The Coalition is equally confident that, in the future, the ORV management plan guidelines it endorses will not negatively impact the environmental qualities that were responsible for the creation of the Cape Hatteras National Seashore Recreational Area and its continued popularity.

¹¹ Conrad Wirth, Director, National Park Service, 1952, letter to the people of Ocracoke, Hatteras, and Bodie Islands. Copy provided in Exhibit A.

EXHIBIT A

Retyped from copies of The Coastland Times, Manteo, N. C.

Friday, October 31, 1952 The Coastland Times, Manteo, N.C.

A LETTER TO THE PEOPLE OF THE OUTER BANKS

When I visited with you earlier this month, I told you that we would study further some of the problems that were bothering you and see if some adjustments in the boundary of the Cape Hatteras National Seashore Recreational Area could be made to meet our joint problems more satisfactorily. This we have done. Rather than make another three-day trip to your Islands, I believe that the best way to get the results of these studies to all of you in a clear and concise way is to print them in your local paper. Victor Meekins has agreed to see that every family on Ocracoke, Hatteras, and Bodie Islands, south of Whale Bone, gets a copy.

This issue of The Coastland Times contains a set of maps and descriptions which show in detail the new boundary lines for the Cape Hatteras National Seashore Recreational Area. In general, the new lines leave more room for expansion around the towns and they bring in the boundary at Pamlico Sound to within 150 feet of the shores of Ocracoke and Hatteras Islands. The new boundary lines have the approval of the Secretary of the Interior; and I have discussed them with Mr. George Ross, Director, North Carolina Department of Conservation and Development, who also approves of them.

During the week of October 6, I met with many of you individually and in public meetings held in the towns of Ocracoke, Hatteras, Avon, and Rodanthe, to answer questions about the Cape Hatteras National Seashore Recreational Area project. We discussed its purposes, boundary lines, and the programs for its acquisition and development. Congressman Herbert C. Bonner and others joined in several of the meetings and discussions. You asked many questions; many of these were on how the establishment of the Recreational Area would affect you personally, your business, or your property. I hope, and believe that those questions were answered to the satisfaction of those who asked them.

In the public meetings, you brought out four main points:

1. Many of you were uncertain as to just where the Recreational Area boundary lines would be around the communities and felt that not enough room was being left for community expansion.
2. There was the question as to the rights of individuals to continue commercial and sport fishing.
3. There was concern as to whether your present hunting rights would be affected.
4. There was a feeling that once the Recreational Area is established the local people would be denied access to the ocean beach.

I wish to re-emphasize the answers to these questions, with the aid of the accompanying maps.

As to the first question, I promised you that we would restudy the boundaries and change them if necessary and desirable. The study was based on a personal visit to all of the communities and the Recreational Area, as well as the statement made to me by many local people personally and in public meetings. Our studies showed that the old Recreational Area boundary lines were too confining, so we have changed them in all cases by moving the boundary lines around the communities close to the ocean. On the ocean side of the towns, the new, approved boundary

EXHIBIT A

Retyped from copies of The Coastland Times, Manteo, N. C.

lines include in the Recreational Area only those lands along the ocean which are necessary to protect and control the sand dunes, to re-establish them where necessary, and hold them to protect the communities from the intrusion of the ocean. The National Park Service intends to resume the sand fixation work that it started in the 1930's and more firmly establish the dunes. The boundary line has also been changed on the Sound Side. It has been moved in to a distance of 150 feet from the shore lines of Ocracoke and Hatteras Islands, except in front of the communities, and the offshore islands outside of that line are eliminated from the Recreational Area. The boundary line of the Cape Hatteras National Seashore Area does not extend in front of the communities on the Sound side. In the case of Bodie Island it was more practical to describe a meets and bounds line, as shown on the accompanying maps, than it was to use an irregular line 150 feet offshore.

In regard to fishing and hunting (questions 2 and 3), - under the basic legislation authorizing the Cape Hatteras National Seashore Recreational Area, fishing and hunting rights in the Sound were reserved to the people. That being the case there is no real need to include Pamlico Sound waters in the Recreational Area. This is so because the North Carolina fishing and hunting laws and regulations and those of the Federal Government which have been in effect for a great many years in the Sound area will still apply to waters both inside and outside the Recreational boundaries. Therefore, the new boundary line in the Sound has been set only 150 feet offshore from Hatteras and Ocracoke Islands. That is purely an arbitrary distance. It brings the line close enough in so that everyone can know definitely where it is. Due to the irregularity of the shore line, it may be necessary to make minor adjustments in some places so that any small offshore islands will be either wholly in or wholly out of the Recreational Area. In other words, the line won't split any islands.

The following larger islands are excluded from the Recreational Area:

Off Bodie Island – those among others: Pond, Grun, House, Warren, Headquarters, Bells, Bowser, Cedar, Cutoff and Herring Shoal, Big Tim, and Little Tim Islands.

Off Hatteras Island – these among others: both Great Island, Midgett, Noache, Bull, Big, and Kings Islands.

Off Ocracoke Island – these among others: Outer Green, Cockrel, and Negro Islands.

The guarantee in the laws relating to hunting and continuation of commercial fishing in the waters of the Sounds will apply within this 150 offshore strip exactly as they do outside of it. The State and Federal fishing and hunting regulations within this strip cannot be affected by any National Park Service regulation.

The law says that hunting will be permitted on Ocracoke Island, at the waters of the Sounds and on not more than 2,000 Island Refuge and its waters. The law requires the Secretary of the Interior to designate the 2,000 acre hunting area would be selected by a committee composed of two representatives of the State of North Carolina, to be designated by the Governor, and one each from the Fish and Wildlife Service and the National Park Service of the Department of the Interior. The National Park Service will move toward the establishment of this committee and the designation of these lands at the earliest possible moment, after the lands have been acquired. Of course, no part of the 2,000 acres will be in the Pea Island Refuge.

EXHIBIT A

Retyped from copies of The Coastland Times, Manteo, N. C.

Concerning access to the beach (question 4), - - when I met with you I explained that when the lands for the Recreational Area are acquired and become public property there will always be access to the beach for all people, whether they are local residents or visitors from the outside. However, it will be necessary to establish certain regulations, such as to designate places for vehicles to get to the beach in order to reduce said dune erosion to a minimum; to manage ocean fishing where large numbers of bathers are using the beach; and to confine bathing to certain areas. These latter are safety measures, as it would be dangerous to permit surf fishing where there are large numbers of people in bathing and, likewise, fishermen would not want bathers to interfere with their fishing.

With the changed boundary lines in the Sound and the enlargement of the areas excluded for community expansion, as indicated on the accompanying maps the establishment of the committee to determine the 2,000 additional acres of land on the islands to be open to hunting, and making clear the problem of access to the ocean beach, I feel that we have found a reasonable solution that meets the needs of the Recreational Area. I might add that if, at any time, the State is in a position to build a road on Ocracoke, we can easily reach agreement on the right-of-way for it.

Now a word concerning the future development of the Area. As state above, the National Park Service proposes to resume the sand fixation work; to re-establish the natural plant and wild-life within the area; and to provide access to the beach for everybody. We plan also to tell the story of the sea. Cape Hatteras has perhaps one of the most interesting and heroic sea histories in the entire United States, if not the world. It is the plan of the National Park Service to establish a museum to tell the story of the sea, and especially the part that the Cape Hatteras coast line and you people have played in it. The fascinating history of the Outer Banks, combined with the story that is told at the Wright Memorial and at Fort Raleigh on Roanoke Island will make this part of the North Carolina one of the most important tourist objectives in the United States.

As our plans move forward we will call upon the people of the communities on Ocracoke, Hatteras, and Bodie Island to work with us in establishing the museum. Many of you have relics of the past and stories of great accomplishments handed down through your families that are needed to record and relate this history. It is hoped that when the museum is ready you will see fit to donate or loan appropriate objects for exhibit purposes. When our plans are formulated in more detail they will be made known to you, and we are going to ask for your advice and suggestions.

The National Park Service has always believed in free enterprise, and has practiced it in all the area of the National Park System. In the case of the Cape Hatteras National Seashore Recreational Area, we expect the people in the communities on the Islands of Ocracoke, Hatteras and Bodie to take care of the tourists. No developments for tourists accommodations are planned or will be permitted on government property. Consequently, the property within the communities will, without any doubt, have an increasing commercial value because of the existence of the Recreational Area; its greatest value will be for use in taking care of the public.

Exhibit B
ORV Management Guidelines Summary

Cape Hatteras National Seashore Recreational Area		
Visitors shall be allowed ORV access to designated routes and areas via access points provided and maintained by the NPS. Visitors are subject to the ORV rules and regulations established by the NPS.		
ORV Access Ramps and Roads		
	Ocean side Ramps	<ul style="list-style-type: none"> • Two-lane marked ramps provide access to beach ORV routes.
	Interdunal Roads	<ul style="list-style-type: none"> • Two-lane interdunal roads shall connect ramps behind dune lines rather than by beach routes.
	Sound side Access	<ul style="list-style-type: none"> • Sound side access points are accessed by spur roads off of highway 12, Pole Road, and some ramps.
Hours of Allowable ORV Access		
<i>See Exhibit E – Night ORV Beach Access Guidelines</i>		
		<ul style="list-style-type: none"> • ORV access to routes and areas designated as open 24 hrs/day. • Free, night-time use permit required for after dark access between May 15 and September 15.

Exhibit B
ORV Management Guidelines Summary

ORV Routes and Areas		
<p>ORV access shall be prohibited in all areas of the Recreational Area except where routes and areas are specifically designated. See <i>Exhibit C - ORV Designated Routes and Areas Maps</i> for color-coded visual of designated routes and areas. See <i>Exhibit F – ORV Designated Routes and Areas Table</i> for description and mileage for designated routes and areas.</p>		
	Ocean side	<ul style="list-style-type: none"> • Routes are designated to be the area seaward from the toe of the dune or vegetation line to the waterline. • Routes are designated to be <ul style="list-style-type: none"> ○ Open year-round, ○ Closed year-round, or ○ Open during off-season (September 16-May 14) • Routes are accessed via marked, NPS maintained ramps crossing dunes. • Driving on dunes is strictly prohibited. • New ocean side ramps are indicated on Exhibits C, F.
	Interdunal	<ul style="list-style-type: none"> • Routes are marked and accessed from ocean side ramps or paved road surfaces. • Roadbeds are maintained with appropriate drainage and surface. • 4 wheel drive required. • New interdunal roads are indicated on Exhibits C, F.
	Sound side	<ul style="list-style-type: none"> • Routes are marked and accessed from ocean side ramps, Interdunal roads, or paved road surfaces. • Signage posted at primitive parking areas to prevent resource damage.
Safety Closures		
See <i>Exhibit G – Safety Closures</i> for Recreational Area guidelines		

Exhibit B
ORV Management Guidelines Summary

Resource Protection Measures		
<i>See Exhibit H – Resource Protection Position Statement for details on the following topics</i>		
	Species Management Buffers / Closures	<ul style="list-style-type: none"> • Temporary buffers or closures to ORV and pedestrian access shall be used to provide resource protection while maintaining public beach access. • Buffers / closures will be frequently monitored to ensure both resource protection and public access are optimal.
	Wintering Buffers	<ul style="list-style-type: none"> • Winter closures will be determined and installed when PIPL are present at the beginning of the migratory season. • ORV access will be maintained via the shoreline.
	Pedestrian / ORV Access Corridors	<ul style="list-style-type: none"> • ORV / pedestrian corridors shall be maintained through temporary resource closures to provide access to otherwise open areas of beach. • Under all circumstances, pedestrians shall be granted a waterline corridor using the concept that “footprints washed away by the next wave” are in the water.
	Non-breeding Migratory Shorebirds	<ul style="list-style-type: none"> • Protection measures for non-breeding migratory shorebirds shall not exceed those vetted through the listing process under the ESA. Access corridors shall be maintained through any areas where protection measures are implemented.
	Habitat Restoration	<ul style="list-style-type: none"> • Historical habitat at spits and points should be restored to favorable conditions through removal of overgrown vegetation and other appropriate measures. • Dredge and spoil islands shall be recognized and managed jointly with proper authorities in the assessment of resource status. • Restoration actions should maintain ORV / Pedestrian access.




Exhibit B
ORV Management Guidelines Summary

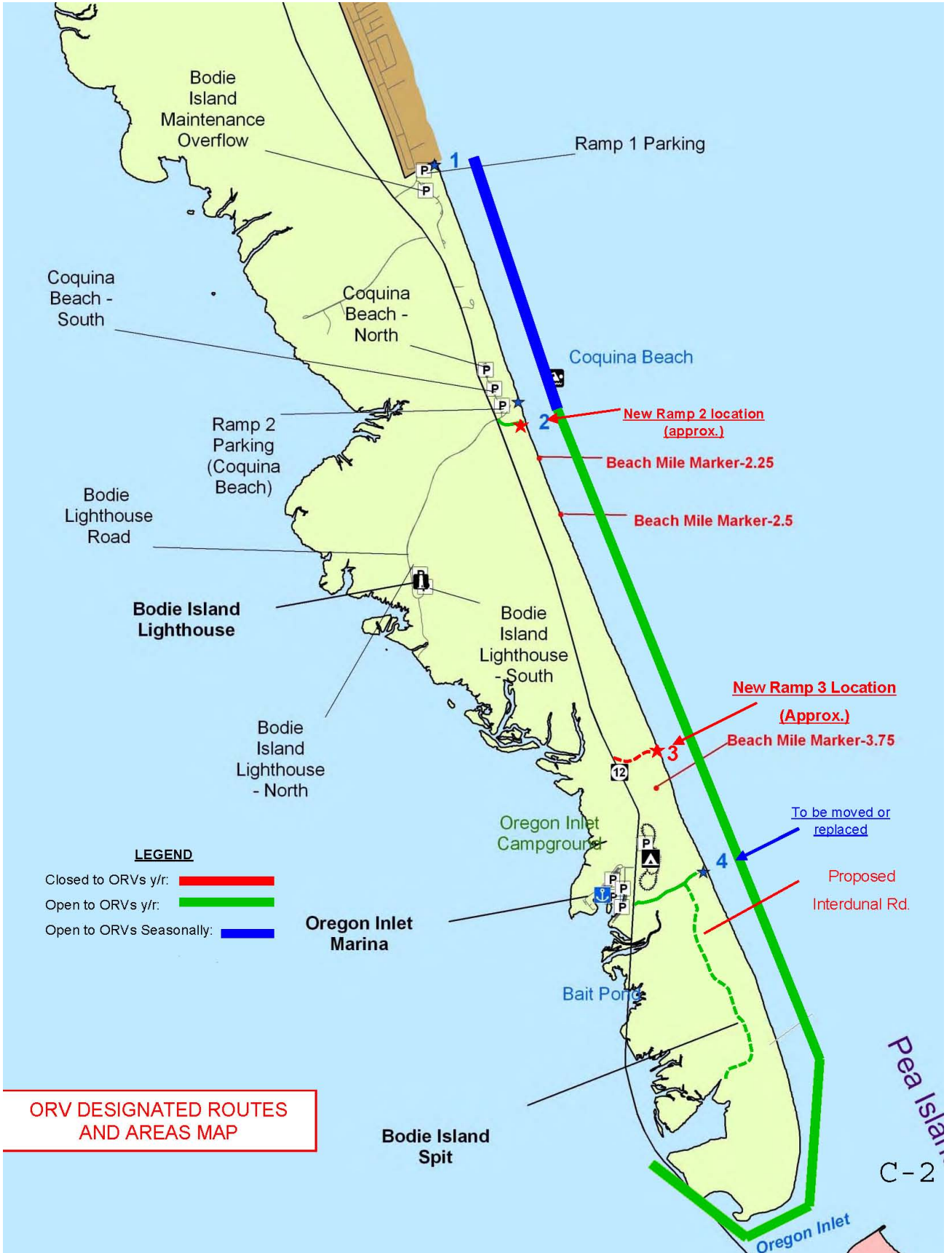
Permits		
	Requirement	<ul style="list-style-type: none"> • All ORV drivers must carry a personally issued operator permit.
	Distribution	<ul style="list-style-type: none"> • Permits shall be available at NPS designated locations and on-line.
	Issuance Requirement	<p>Applicant must</p> <ul style="list-style-type: none"> • read, understand, and accept by signature <ul style="list-style-type: none"> ○ the rules and regulations, ○ safety requirements, ○ vehicle requirements, ○ resource protection requirements and ○ personal responsibilities.
	Issuance Limits	No limit on the number of permits granted per year
	Types	<ul style="list-style-type: none"> • Annual operator permits • Night ORV access permits (see Exhibit E) • “Self-Contained Vehicle” permits (see Exhibit I) • Commercial fishing permits
	Fees	<ul style="list-style-type: none"> • ORV beach access permits shall be free to qualified drivers.
	Permit Display	<ul style="list-style-type: none"> • Display in vehicle or carry on permit holder as directed by NPS
	Revocation	Permits may be revoked after conviction for violation of applicable park regulations, or terms and conditions of the permit, for a period of time commensurate with the violation.
Vehicle Characteristics, Equipment and Operations		
<i>See Exhibit I – Vehicle Characteristics, Equipment and Operations</i>		
ORV Management Advisory Committee		
Shall be established to annually, or when convened by the superintendent, meet to consider changes to the plan to recognize changing conditions. The committee shall represent a reasonable cross section of Recreational Area visitors.		

EXHIBIT C

ORV DESIGNATED ROUTES AND AREAS MAP

LEGEND

- Closed to ORVs y/r: 
- Open to ORVs y/r: 
- Open to ORVs Seasonally: 



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Note: Pea Island NWR shall be considered as an addition to any area designated as pedestrian-only.



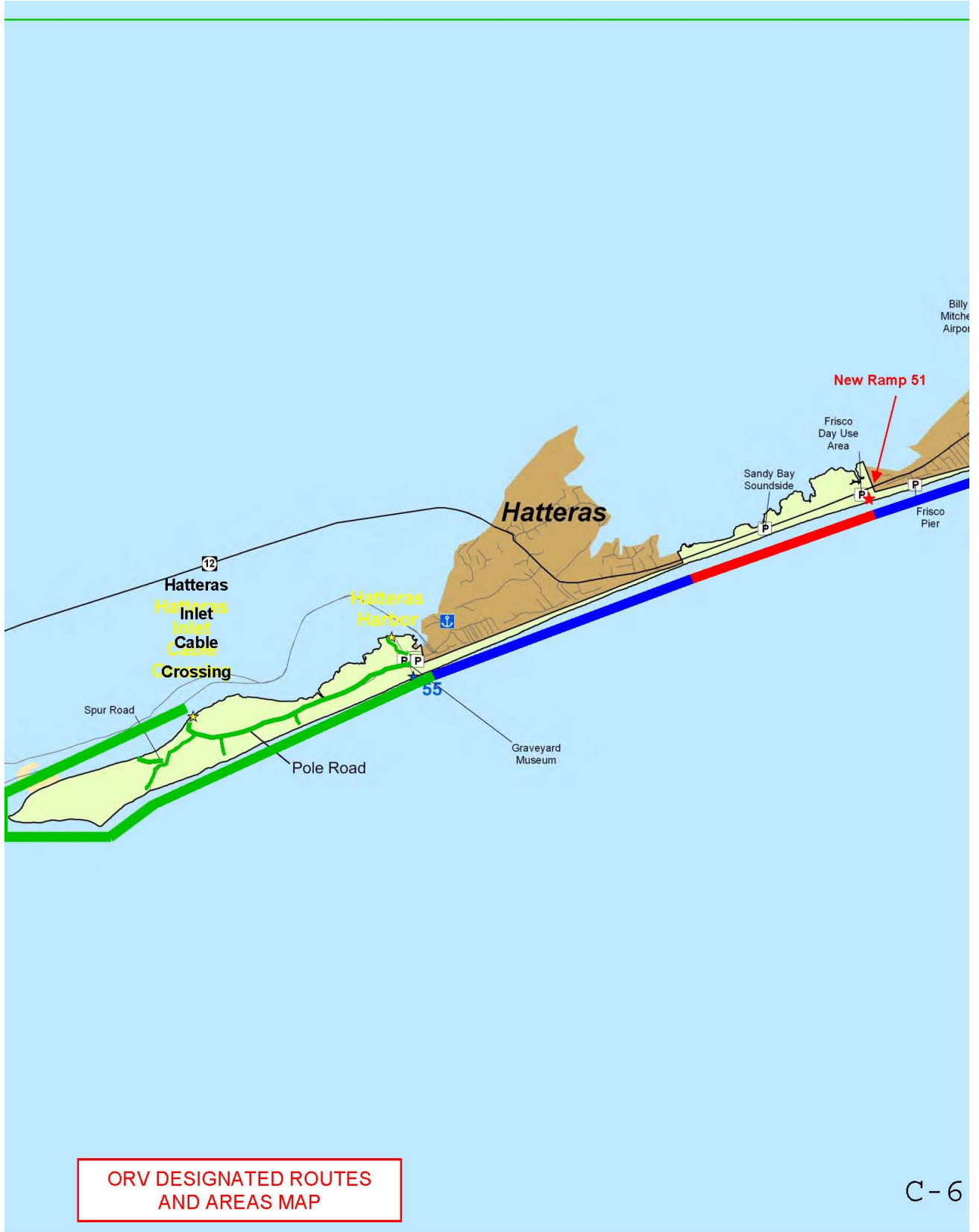
ORV DESIGNATED ROUTES
AND AREAS MAP



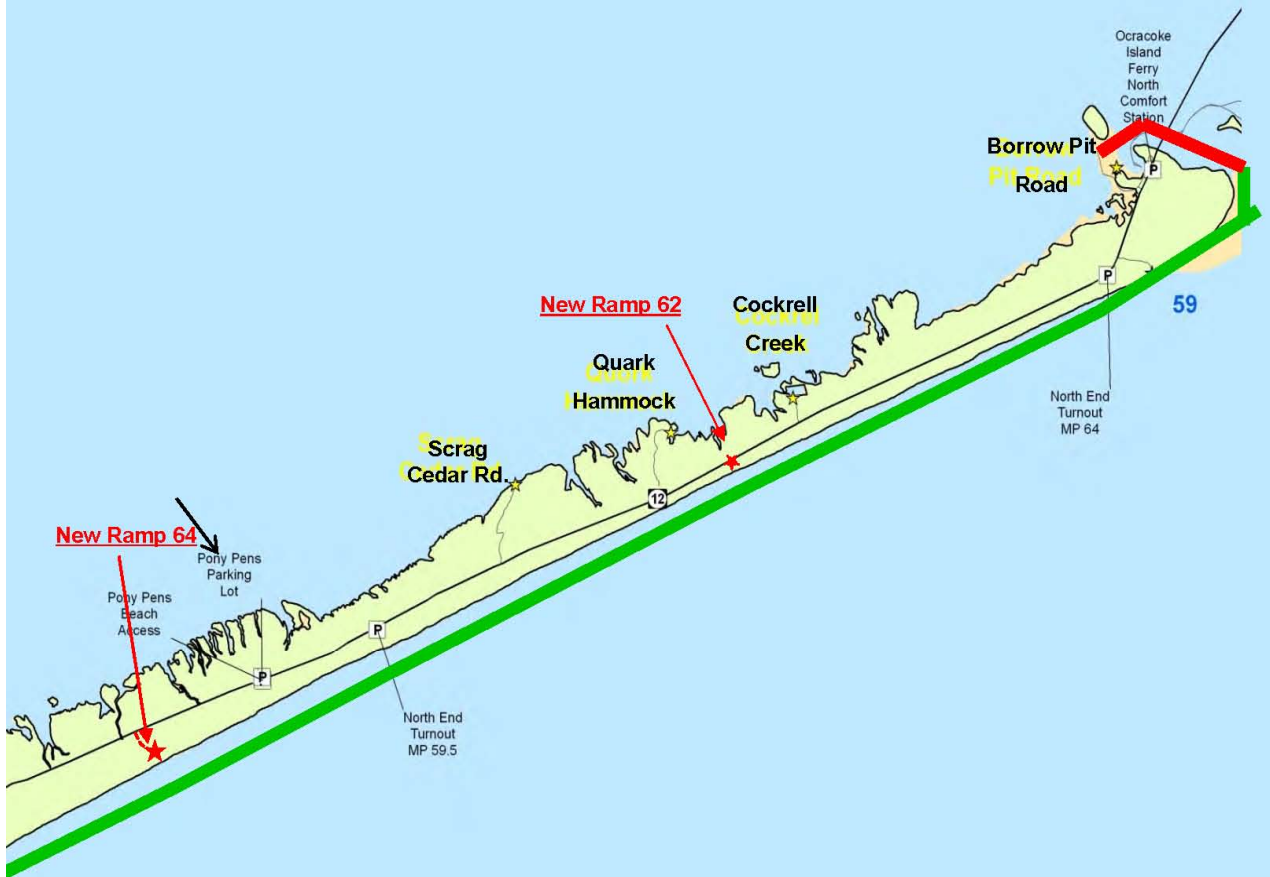
ORV DESIGNATED ROUTES AND AREAS MAP

ORV DESIGNATED ROUTES
AND AREAS MAP





ORV DESIGNATED ROUTES AND AREAS MAP



ORV DESIGNATED ROUTES AND AREAS MAP



ORV DESIGNATED ROUTES
AND AREAS MAP



EXHIBIT D

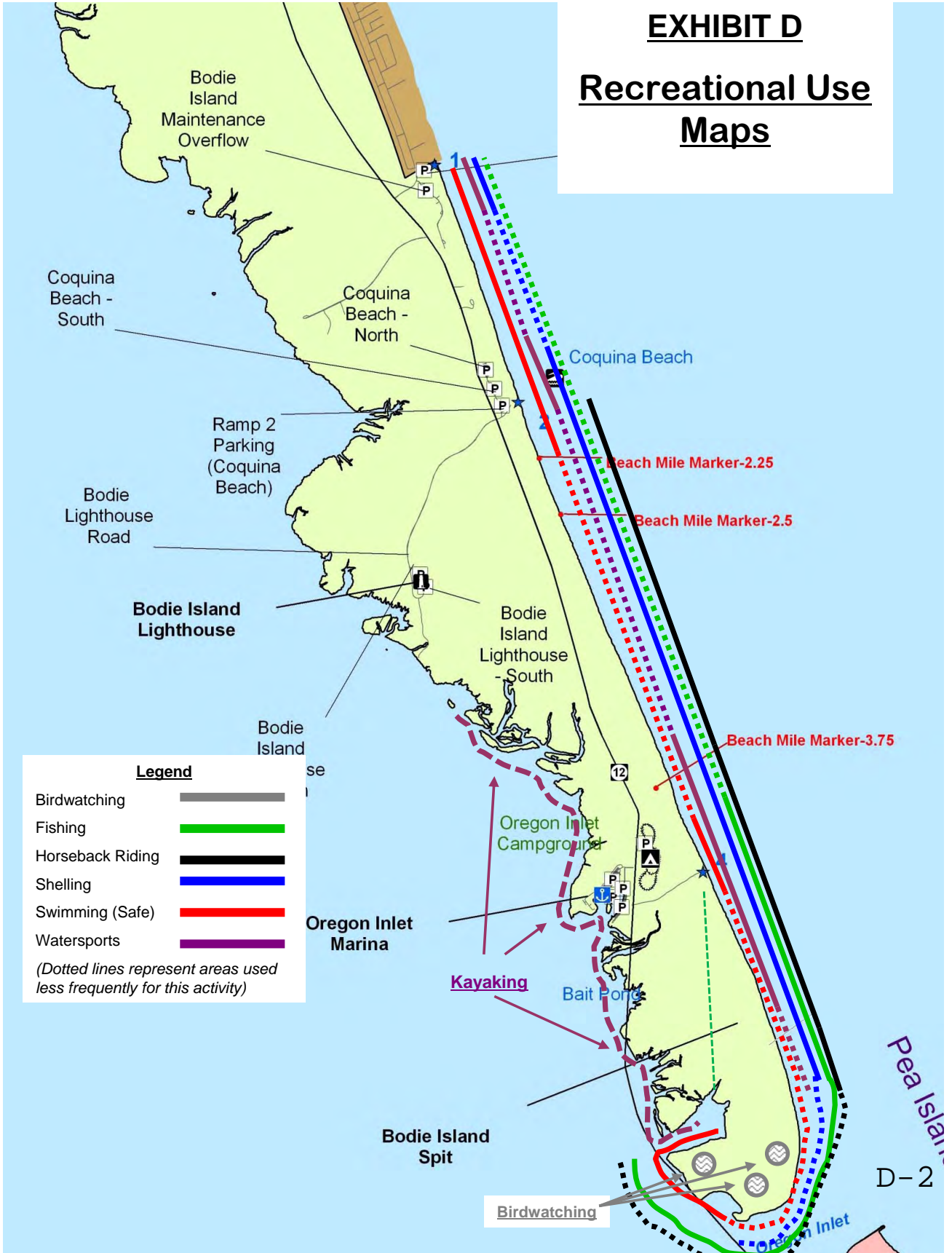
RECREATIONAL USE MAPS

Legend






Birdwatching	
Fishing	
Horseback Riding	
Shelling	
Swimming (Safe)	
Watersports	

(Dotted lines represent areas used less frequently for this activity)

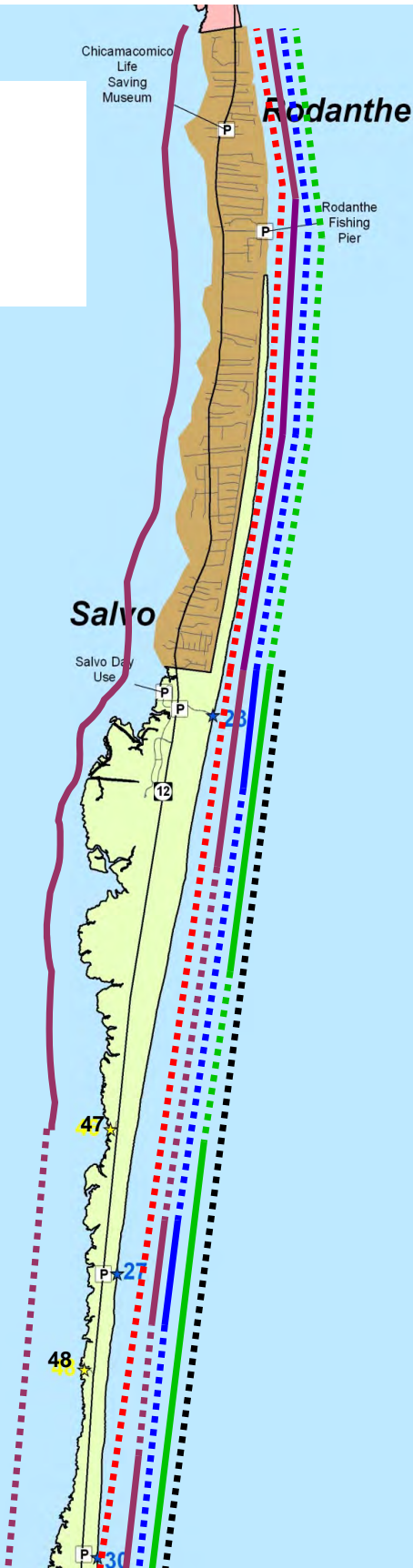
EXHIBIT D Recreational Use Maps



Legend

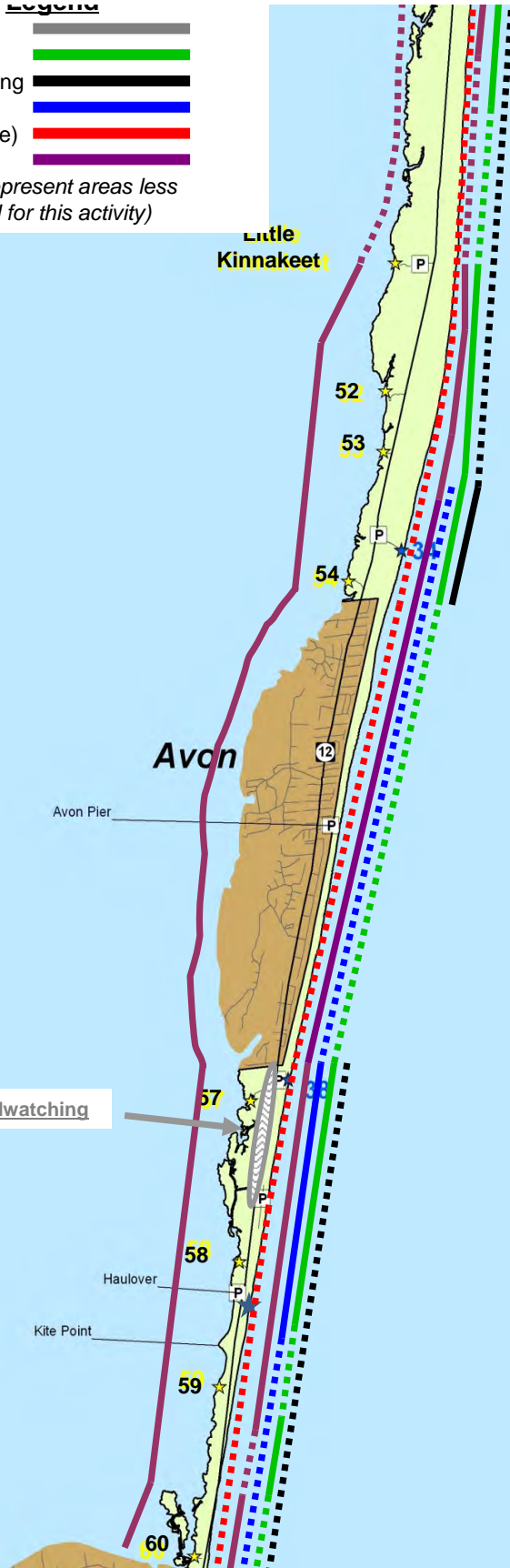
- Fishing 
- Horseback Riding 
- Shelling 
- Swimming (Safe) 
- Watersports 

(Dotted lines represent areas less frequently for this activity)



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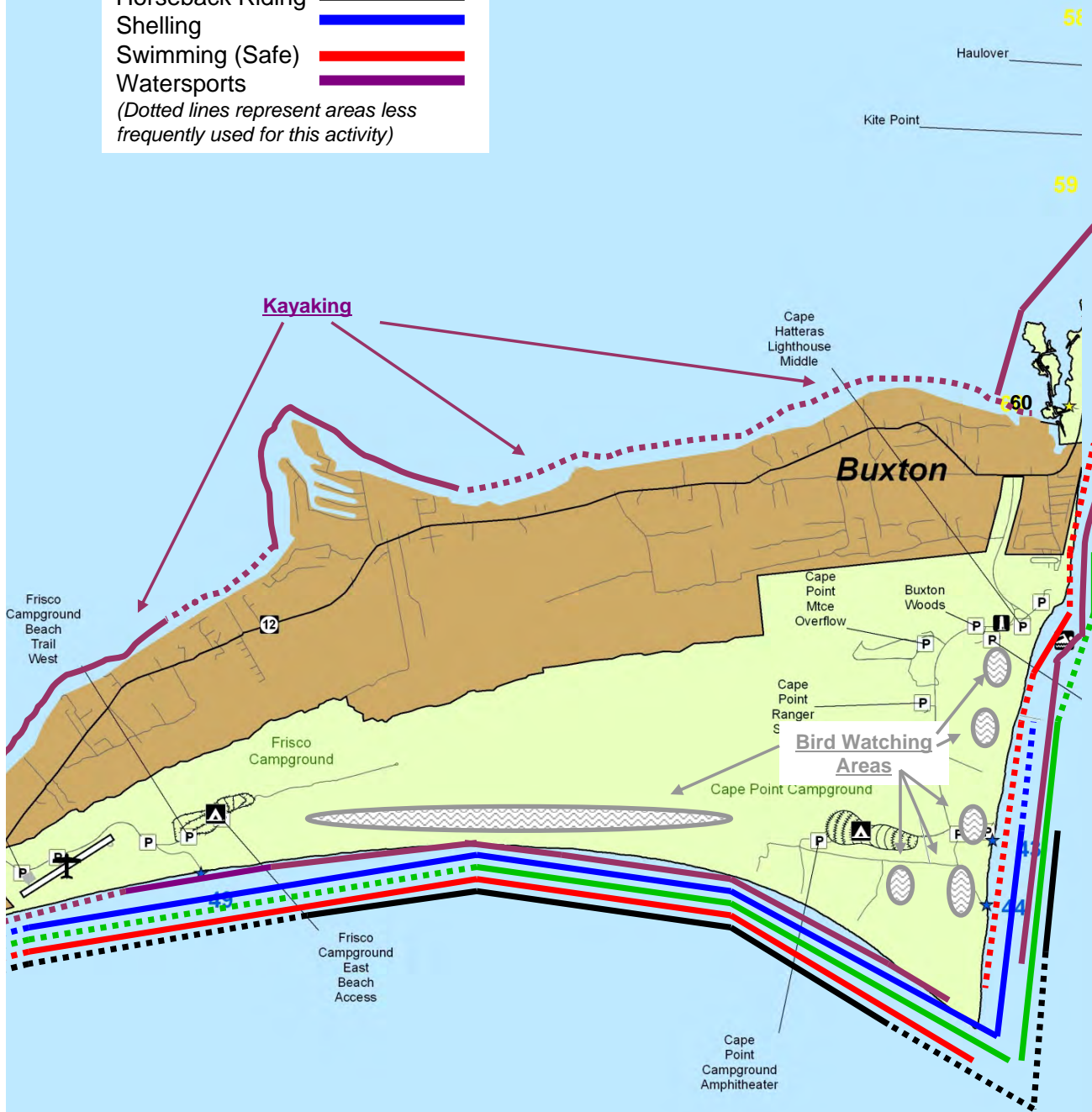
- Legend**
- Birdwatching (Grey line)
 - Fishing (Green line)
 - Horseback Riding (Black line)
 - Shelling (Blue line)
 - Swimming (Safe) (Red line)
 - Watersports (Purple line)
- (Dotted lines represent areas less frequently used for this activity)*



Legend

- Birdwatching
- Fishing
- Horseback Riding
- Shelling
- Swimming (Safe)
- Watersports

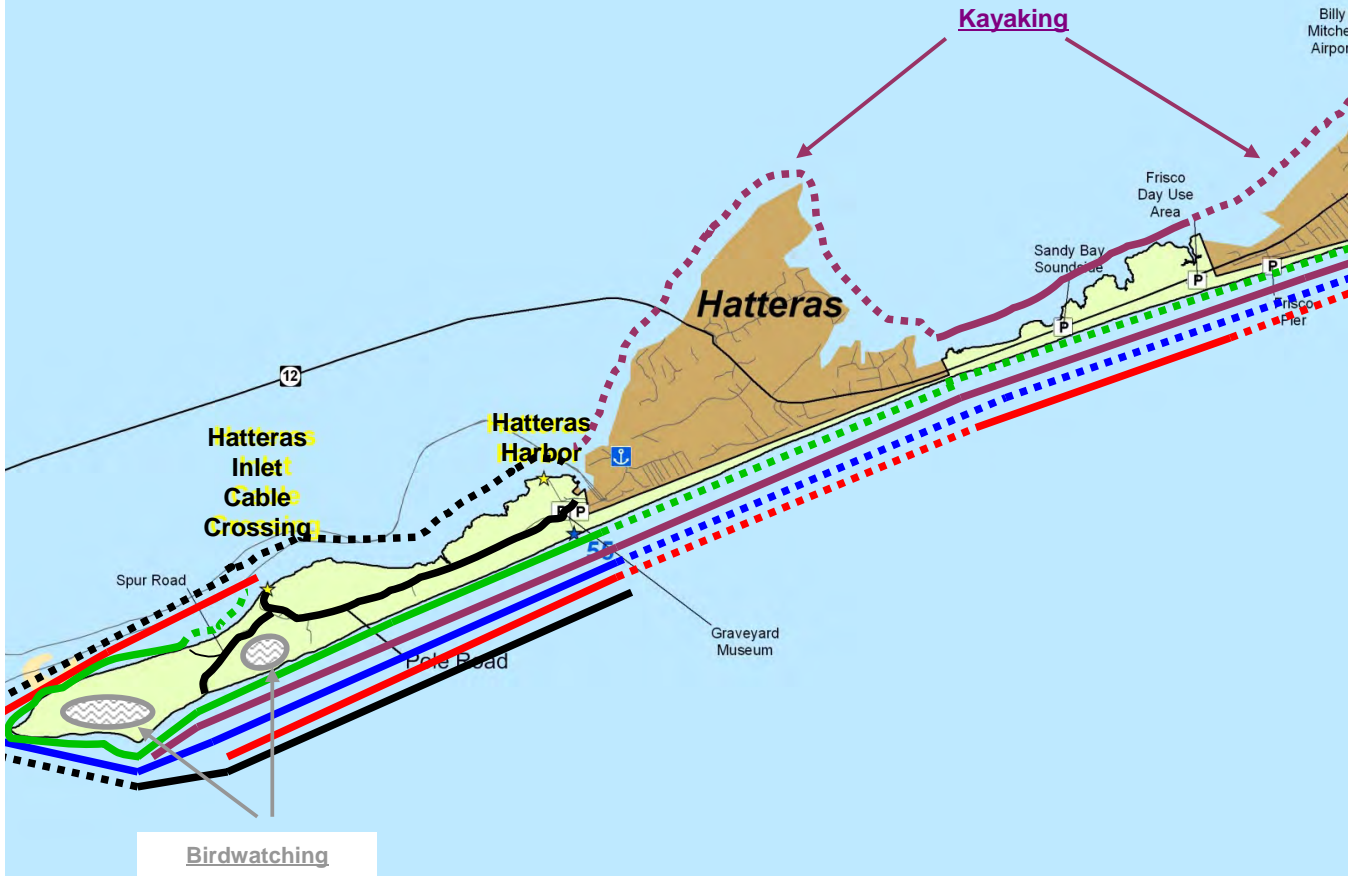
(Dotted lines represent areas less frequently used for this activity)



Legend

- Birdwatching (Grey line)
- Fishing (Green line)
- Horseback Riding (Black line)
- Shelling (Blue line)
- Swimming (Safe) (Red line)
- Watersports (Purple line)

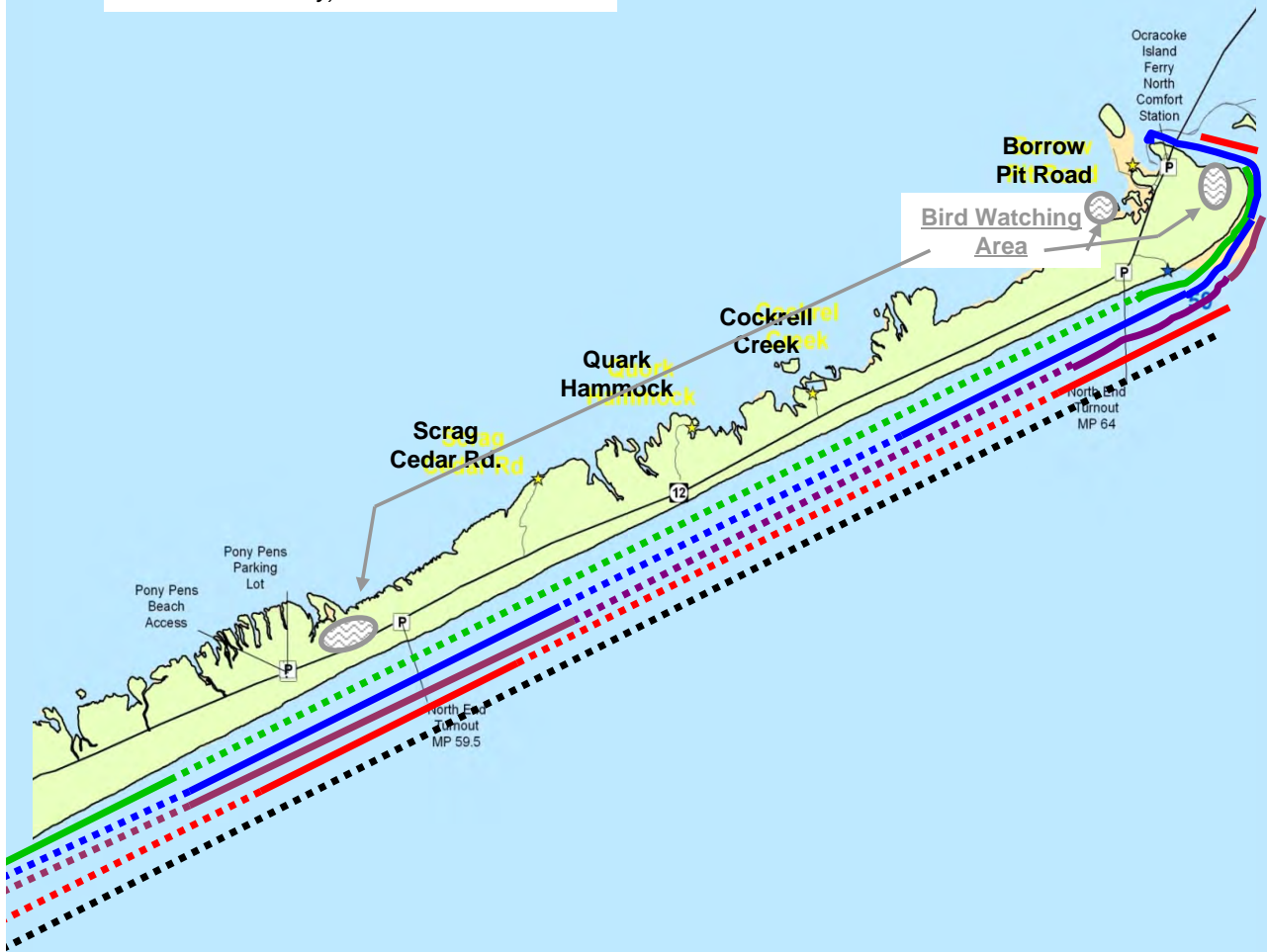
(Dotted lines represent areas less frequently used for this activity)



Legend

- Birdwatching (Grey line)
- Fishing (Green line)
- Horseback Riding (Black line)
- Shelling (Blue line)
- Swimming (Safe) (Red line)
- Watersports (Purple line)

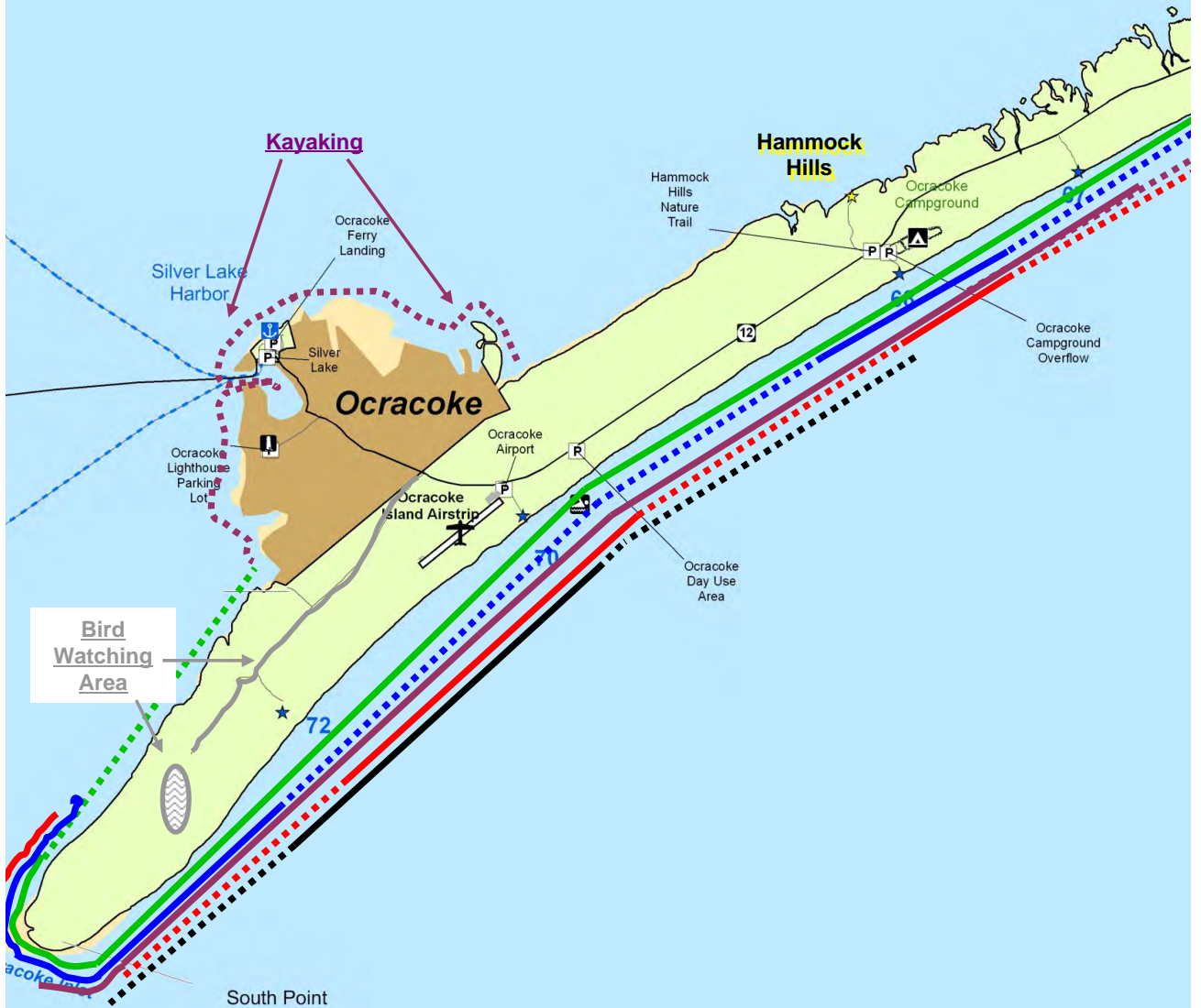
(Dotted lines represent areas less frequently used for this activity)



Legend

- Birdwatching (Grey line)
- Fishing (Green line)
- Horseback Riding (Black line)
- Shelling (Blue line)
- Swimming (Safe) (Red line)
- Watersports (Purple line)

(Dotted lines represent areas less frequently used for this activity)





KITE SURF STANDUP STYLE
REALWATERSPORTS.COM

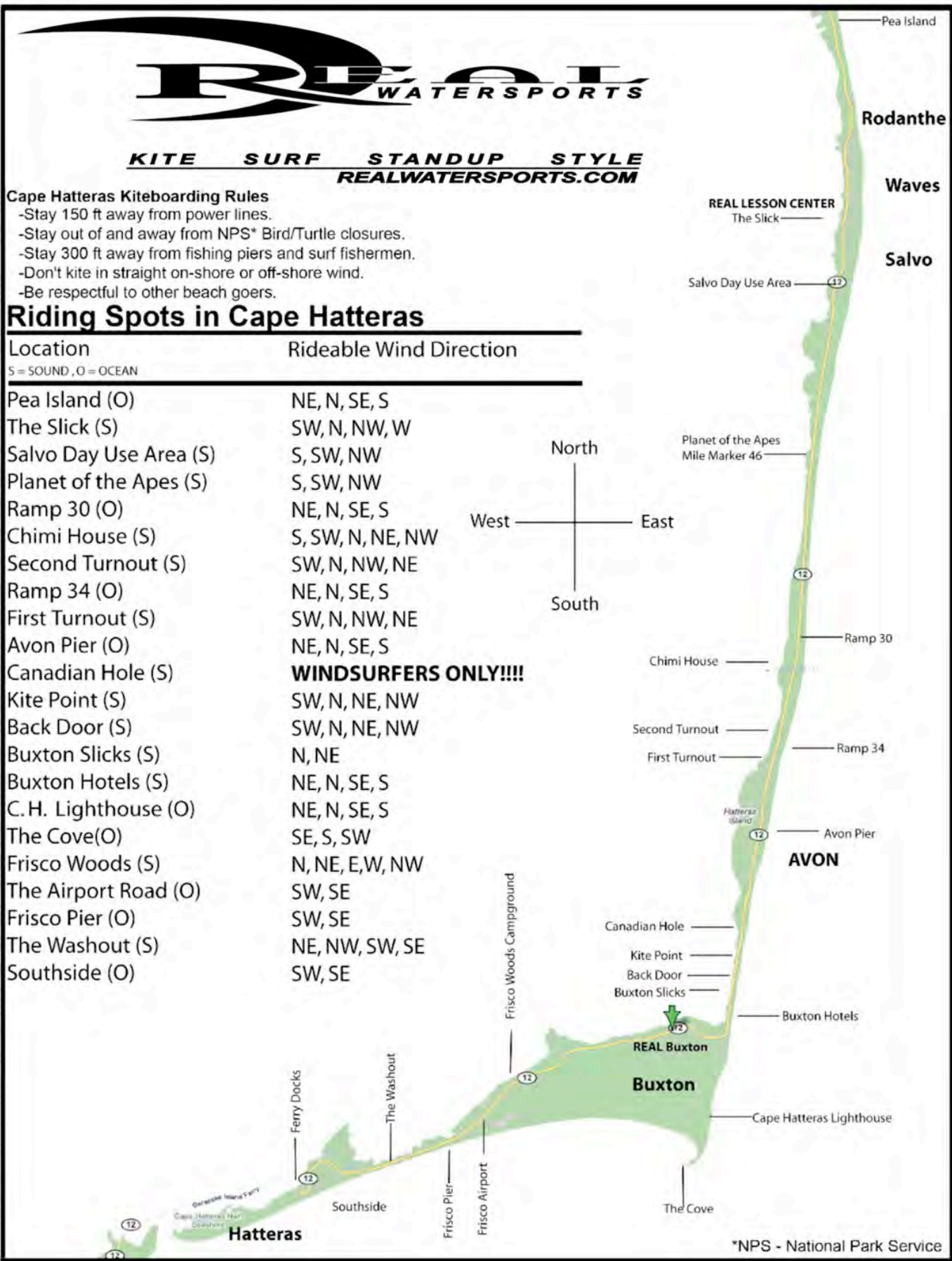
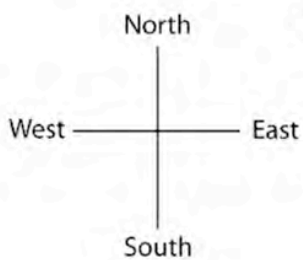
Cape Hatteras Kiteboarding Rules

- Stay 150 ft away from power lines.
- Stay out of and away from NPS* Bird/Turtle closures.
- Stay 300 ft away from fishing piers and surf fishermen.
- Don't kite in straight on-shore or off-shore wind.
- Be respectful to other beach goers.

Riding Spots in Cape Hatteras

Location	Rideable Wind Direction
----------	-------------------------

Location	Rideable Wind Direction
Pea Island (O)	NE, N, SE, S
The Slick (S)	SW, N, NW, W
Salvo Day Use Area (S)	S, SW, NW
Planet of the Apes (S)	S, SW, NW
Ramp 30 (O)	NE, N, SE, S
Chimi House (S)	S, SW, N, NE, NW
Second Turnout (S)	SW, N, NW, NE
Ramp 34 (O)	NE, N, SE, S
First Turnout (S)	SW, N, NW, NE
Avon Pier (O)	NE, N, SE, S
Canadian Hole (S)	WINDSURFERS ONLY!!!
Kite Point (S)	SW, N, NE, NW
Back Door (S)	SW, N, NE, NW
Buxton Slicks (S)	N, NE
Buxton Hotels (S)	NE, N, SE, S
C. H. Lighthouse (O)	NE, N, SE, S
The Cove (O)	SE, S, SW
Frisco Woods (S)	N, NE, E, W, NW
The Airport Road (O)	SW, SE
Frisco Pier (O)	SW, SE
The Washout (S)	NE, NW, SW, SE
Southside (O)	SW, SE



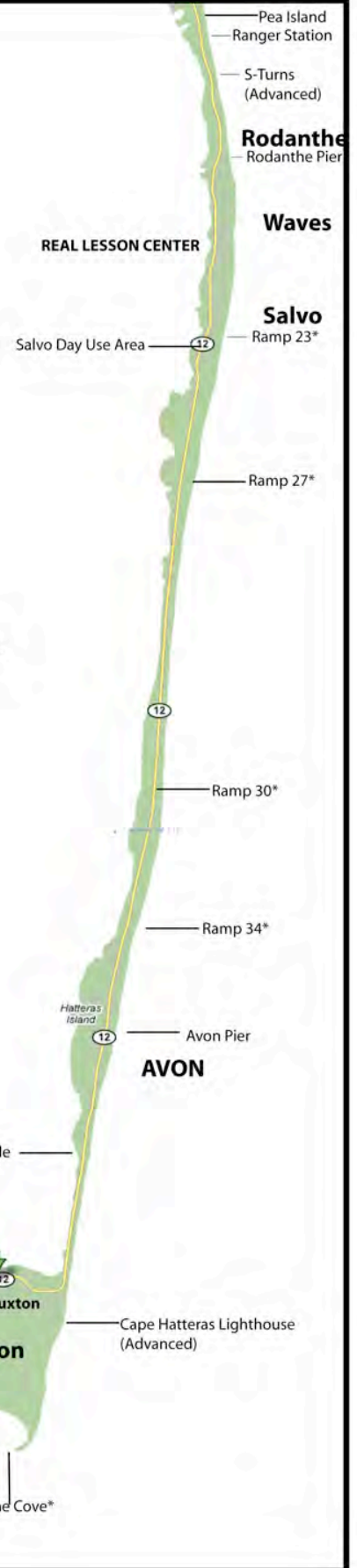
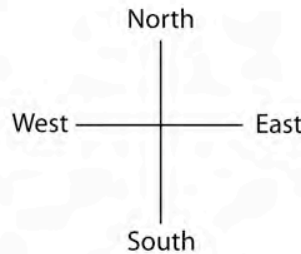
*NPS - National Park Service



Surfing Spots in Cape Hatteras

Location	Off-Shore Wind Direction
Ranger Station	SW, W, NW
S-Turns	SW, W, NW
Mirlo Beach	SW, W, NW
Ramp 23	SW, W, NW
Ramp 27	SW, W, NW
Ramp 30	SW, W, NW
Ramp 34	SW, W, NW
Avon Pier	SW, W, NW
Askins Creek	SW, W, NW
Old Road	SW, W, NW
Buxton Hotels	SW, W, NW
Cape Hatteras Lighthouse	SW, W, NW
Baby Beach	SW, W, NW
Joe P Beach	SW, W, NW
The Point	SW, W, NW
The Cove	NW, N
Frisco Airport Rd.	W, NW, N, NE
Frisco Pier	W, NW, N, NE

* requires 4x4 vehicle or an extended walk



Nighttime Beach Access during Sea Turtle Nesting and Hatchling Season

OVERVIEW

The Coalition for Beach Access recognizes the importance of protecting the threatened loggerhead sea turtle species and encourages the NPS, the USFWS, and the NCWRC to adopt progressive, protective measures. The Coalition believes the adoption of resource protection guidelines documented in Exhibit H and management procedures followed in other states along the southeast coast and Gulf of Mexico can benefit the success rate of the species in North Carolina without impairing the visitor experience. Specifically, full night beach access closures are not necessary to avoid impairment of the species. Further, the Coalition believes night driving closures cannot be justified even if recommended guidelines and peer group procedures are not adopted.

The NPS has chosen to follow the recommendations of the USFWS and NCWRC in the development of their management policies for loggerhead sea turtle recovery in the Recreational Area. Three objectives have been stated:

1. Increase the number of nesting females
2. Increase the number of nests
3. Increase the number of hatchlings to reach the water.

History shows that ORV access has not impaired loggerhead sea turtles within the Cape Hatteras National Seashore Recreational Area.

HISTORICAL ANALYSIS

The theory inferred in the 2008 Consent Decree is:

Night driving on the beaches negatively impacts the Recreational Area management policy Sea Turtle recovery objectives and, therefore, must be prohibited during the nesting and hatchling season.

Although this practice was implemented as a result of the Consent Decree, historical evidence collected by the three agencies for the Recreational Area does not support the underlying theory.

Assumption #1: ORVs directly kill adult turtles, eggs, or hatchlings at night.

1. No adult turtle was killed by ORV or pedestrian, day or night, during the past ten years.
2. Seven turtle eggs or hatchlings were killed by ORVs, day or night during the past ten years.
3. Twenty- three turtle eggs or hatchlings were killed by pedestrians, day or night, during the past ten years.
4. Total turtle eggs laid during the ten year period is estimated at 94,000.
5. 0.007% of total potential hatchlings were killed by ORVs during the past ten years.
6. 0.024% of total potential hatchlings were killed by day or night pedestrians during the past ten years.

Conclusion: Neither ORVs or pedestrians have directly killed a material number of turtles, eggs, or hatchlings --day or night-- over the past ten years. **Assumption is invalid.**

Exhibit E

Assumption #2: ORVs violate turtle closures at night, potentially impairing reproduction.

1. ORV and pedestrian closure violations have been inconsistently tracked and reported over the past ten years, limiting the ability to thoroughly evaluate historical trends.
2. Violations occur more frequently in high pedestrian use areas than other areas of the beach.
3. The average turtle closure remains on the beach for at least 60 days (the typical incubation period).
4. The number of ORV violations is low (maximum of 45 reported in 2003) in comparison to the length of time in which incursions could occur. (from 2,500 nest days in 2004 to 6,700 nest days in 2008)¹
5. No ORV turtle closure violations have been reported as the caused the death of a turtle, egg, or hatching during the past ten years.

Conclusion: ORV turtle violations, day or night, have not killed eggs or hatchlings during the past ten years. Violations can be reduced or eliminated by management techniques other than full beach closures to night driving. **Assumption is invalid.**

Assumption #3: ORVs are responsible for “Potential Incidental Take” (PIT) by;

- Disturbing nests,
 - Trapping hatchlings in tire ruts,
 - Disorienting adult, egg-laying females,
 - Disorienting hatchlings seeking ocean.
1. Classification of events as PIT only began in 2008, limiting the ability to identify historical trends.
 2. 12 total PIT events were reported in 2008: 0 ORV, 6 pedestrian, 6 natural events.²
 3. Nine total PIT events were reported in 2009: 2 ORV, 5 pedestrian, 2 natural events.
 4. Unfortunately, several ORV violations in 2008/9 were intentional. This inappropriate behavior may have been in protest of the Consent Decree and is not condoned by the Coalition.
 5. Neither of the 2 ORV PIT events in 2009 resulted in reported deaths.

Conclusion: The two ORVs “Potential Incidental Take” events recorded during the past two years have not resulted in deaths. **Assumption is invalid.**

Other Observations:

Other information provided by the official reports documents that 37.2% of turtle nests in the Recreational Area are completely lost annually due to natural occurrences including weather events and predation. An additional 6.2% of nests successfully hatched fewer than 10% of laid eggs. So, 94,000 eggs were laid during the previous ten years; 40,200 were lost to natural occurrences; 30 eggs or hatchlings were lost to ORVs or pedestrians.

Another concern that has been voiced by some proponents of nighttime ORV access restrictions is the potential for overnight ORV tracks to obscure the identification of new nests by the morning beach patrols. Historical statistics for “missed nests” are not available in the published annual reports. Conversations with park officials indicate hatchlings were discovered from twelve nests that were not identified by the morning patrols over the ten year period. Given that an average of less than two crawls

¹ 2004: 43 nests x 60 days = 2580; 2008: 112 nests x 60 days = 6720

² More aggressive management policies could reduce the risk of incidental takes by natural events. See Exhibit H for more information of active management practices employed at other beaches.

Exhibit E

(false or successful) are recorded per night during the nesting season¹ within the entire Recreational Area, the likelihood that ORVs would encounter and obscure signs of a crawl or nest before the morning patrol is remote. However, the importance of turtle patrol to being on the beach at twilight cannot be overstated. Late patrols, starting after sunrise, heighten the risk that weather events, tides, birds and pedestrians will destroy the nesting evidence.

CONCLUSION

Historical records clearly show night ORV access to the Recreational Area beaches has not impaired the recovery of the Loggerhead Turtle species. The implementation of ORV Night Driving Policies outlined below will ensure impairment does not occur in the future. The NPS, USFWS, and NCWRC should focus their energy on implementing resource management policies that compensate for the natural events that are most destructive. Exhibit H of this document identifies management practices that can positively impact the recovery of the Loggerhead Turtle without impairment to the visiting public experience. ORV access to the Recreational Area should be allowed 24 hours per day.

ORV Night Driving Policies

1. PERMITS: Night permits required for vehicle operator.
2. PROTOCOL:
 - a. Driver education/instruction should be provided by NPS at visitor centers
 - b. Permit must be in driver's possession
 - c. Driver must have access to cell phone with NPS contact number
 - d. Driver must have nest flags provided by NPS in possession
3. OPERATION:
 - a. Night driving is a privilege, not for frivolous use. Driving time with headlights on should be kept at a minimum.
 - b. If a turtle crawl or nest is detected;
 - 1) Turn off all lights including flash lights
 - 2) Contact NPS with location
 - 3) Mark nest with flags
 - 4) Warn any other vehicles or pedestrians.
 - c. Speed limit should be 15mph at night
4. ENFORCEMENT:

Failure to carry night permit, flags in vehicle, or have phone access, is grounds for probation or revocation of night driving privileges.

¹ NPS 2009 Annual Sea Turtle Report – 104 nests, 101 false crawls, 205 total crawls over the 138 day monitoring period between May 1 and September 15, 2009.

Exhibit E

**Cape Hatteras National Seashore Recreational Area – Sea Turtle Counts
Summary Statistics from NPS Annual Reports 2000 - 2009**

Year	Nests Laid ¹	Potential Eggs / Hatchlings ²	Eggs / Hatchlings Killed		Closure Violations ³	
			by ORV	by Pedestrian	by ORV	by Pedestrian
2000	84	9,408	1	5		
2001	75	8,400	0	0		
2002	99	11,088	0	0		
2003	87	9,744	0	1	45	70 ⁴
2004	43	4,816	0	0	30	107 ⁵
2005	73	8,176	2	0		
2006	76	8,512	0	0	23	14 ⁶
2007	82	9,184	4	0	13	na ⁷
2008	112	12,544	0	17	**	**
2009	104	11,648	0	0	**	** ⁸
Total	835	93,520	7	23		

¹ Source: 2009 NPS Annual Report

² NPS estimates an average of 112 eggs laid per nest

³ Closure Violations have been inconsistently reported within the annual reports over the past ten years. The NPS cites difficulty tracking precise numbers of violations due to the absence of personnel at all sites at all times. Numbers as reported for 2003 - 2008 are provided to give some indication of recent experience.

⁴ 2003 NPS Annual Report – 19 ORV incidents, 45 sets of vehicle tracks; 29 pedestrian incidents, 70 set of human tracks

⁵ 2004 NPS Annual Report – 18 ORV observations, 30 vehicles; 38 pedestrian observations, 107 pedestrians

⁶ 2006 NPS Annual Report – 23 ORV, 14 pedestrian incursions

⁷ 2007 NPS Annual Report - records did not distinguish ORV from Pedestrian violations in 2007

⁸ 2008-9 NPS Annual Reports – Closure violation counts were not provided. “The most common type of violation occurred with the entry of pedestrians in the intertidal zone of expanded turtle closures.” “ORV violations of turtle closures were relatively rare.” “There were two violations in 2009 that were considered to be serious or intentional violations under the C(onsent) D(ecree).”

Exhibit F- ORV Routes and Areas Table - Pro-Access Coalition Position Summary

Oceanside Access		ORV Route Status	Route Distance			
Route ID	Location Boundaries	Open to ORV use in off-season 9/16 - 5/14	Closed Year Round	Open Year Round	Open Off Season	
Bodie Island						
1S	ramp 1 to ramp 2	off season			2.0	
2S	ramp 2 to ramp 4	open		1.5		
4S	ramp 4 to inlet and around to "Bait Pond"	open		2.6		Traditional and Cultural Recreational Area
Hatteras Island						
Pea Island	Pea Island National Wildlife Reserve	closed	15.0			
23N (tri-village)	south boundary PINWR to south boundary Salvo	off season			5.3	
23S	south boundary Salvo to ramp 27	open		4.4		
27S	ramp 27 south to ramp 28 (new ramp)	open		1.0		
28S (new)	ramp 28 south to ramp 30	open		1.2		
30S	ramp 30 south to north boundary Avon	open		4.3		
34S (Avon)	north boundary Avon to south boundary Avon	off season			3.8	
38S	south boundary Avon to ramp 38, continuing to ramp 39 (new ramp)	open		2.0		
39S (new)	ramp 39 south to north Buxton boundary	open		1.7		
40S (new) (Buxton)	north Buxton boundary to Buxton jetties	off season			0.6	
Jetties	Buxton jetties to .07 miles north of ramp 43	closed	1.0			
43N	0.7 miles north of Ramp 43 to ramp 43	open		0.7		
43S	ramp 43 south to ramp 44	open		0.4		
44S	ramp 44 south to Cape Point then west to ramp 45	open		2.4		Traditional and Cultural Recreational Area
45W	ramp 45 west to ramp 49	open		3.4		Traditional and Cultural Recreational Area
49W	ramp 49 west to north boundary Frisco Village	open		1.2		
51 (new) (Frisco)	north boundary Frisco to south boundary Frisco (new ramp 51)	off season			1.0	
Sandy Bay Narrows	south boundary Frisco (new ramp 51) to north boundary Hatteras	closed	2.0			
55E (Hatteras Village)	north boundary Hatteras to south boundary Hatteras	off season			1.3	
55W	south boundary Hatteras to Pole road exit	open		2.2		
Hatteras Spit	Pole road around Inlet to cable crossing	open		2.7		Traditional and Cultural Recreational Area
Ocracoke Island						
North Spit	Borrow road to mid point of spit	closed	2.0			
59N	mid point of spit to ramp 59 (relocated south approx. 1 mi)	open		1.2		
59S	ramp 59 (relocated) south to ramp 62 (new)	open		2.7		
62S (New)	ramp 62 (new) south to 1 mi north of pony pens	open		2.0		
64N (New)	1 mi north of pony pens to 1 mi south of pony pens	open		2.0		
64S (New)	1 mil south of pony pens to campground (new ramp 64)	open		1.5		
68S	campground to Ocracoke day use area	off season			3.1	
70S	Ocracoke day use area to 0.5 mi south of Ramp 72	open		2.7		
72S	0.5 mi south of ramp 72 around Ocracoke Inlet	open		2.6		Traditional and Cultural Recreational Area
Total Miles			20.0	46.4	17.1	83.5
			24%	56%	20%	

Pedestrian paths should be provided at ramps where boardwalks are not present.

Exhibit F- ORV Routes and Areas Table - Pro-Access Coalition Position Summary

Interdunal Roads

The following interdunal roads should be open to ORV use year round.

Route ID	Location Description
4 - interdunal (New)	from ramp 4 south towards inlet, terminating on sound
44 - interdunal	from ramp 44 to ramp 45
45 - interdunal (New)	from ramp 45 to ramp 49

Soundside Access

The following sound access points or routes should be open to ORV use year round.

Route ID	Location Description
Bodie Island	
Bodie Light Rd	turns off Bodie Island Lighthouse road
Off Island Rd	turns off Bodie Island Lighthouse road
Hatteras Island	
Salvo Day Use	south of Salvo, at old campground location
#46	near Highway 12 milepost 46
#48	near Highway 12 milepost 48
Little Kinnakeet #1	Little Kinnakeet Life Saving Station
Little Kinnakeet #2	Little Kinnakeet Life Saving Station
Little Kinnakeet #3	Little Kinnakeet Life Saving Station
#52	near Highway 12 milepost 52
#53	near Highway 12 milepost 53
#54	near Highway 12 milepost 54 just north of Avon
#57	near Highway 12 milepost 57 just south of Avon
#58	near Highway 12 milepost 58
Haulover	Highway 12 parking area, also known as "Canadian Hole"
#59	near Highway 12 milepost 59, also known as "Kite Point"
#60	near Highway 12 milepost 60 just north of Buxton
Sandy Bay	at west end of current parking lot between Frisco and Hatteras
Coast Guard Station	at terminus of Highway 12 on Hatteras Island
Pole Road	from terminus of Highway 12 on Hatteras Island to Hatteras Inlet
Cable Crossing	spur off of Pole Road to sound
Spur Road	spur off of Pole Road to sound
Ocracoke Island	
Borrow Pit Road	just south of ferry landing
Cockerel Creek	
Quark Hammock	(commercial use only)
Scrag Cedar Road	
Pony Pens	
Hammock Hills	also known as Dump Station Road
Ocracoke Inlet #1	spur to sound off of ramp 72 at south end of village
Ocracoke Inlet #2	spur to sound off of ramp 72 near where oceanside ramp turns east
Ocracoke Inlet #3	spur to sound along front of dunes south off of ramp 72

EXHIBIT G

SAFETY CLOSURES**ORV SAFETY CLOSURE**

PURPOSE: To Ensure the safety of the public when natural conditions within a specific area of the Recreational Area present a clear and imminent threat of (a) significant bodily injury or death to the driving public or other visitors or (b) significant damage to personal property, primarily vehicles and their contents.

SCOPE: May be applied within any routes, trails, and areas designated for ORV driving.

TRIGGERS FOR CLOSURE: Conditions listed below may trigger an ORV Safety Closure in the event of a clear and imminent threat of significant bodily injury or death; and/or damage to personal property, primarily vehicles and their contents. Examples of hazards that could justify a closure include, but are not limited to:

- deep beach cuts which block the beach from dune to surf with no obvious way around;
- obstacles, such as exposed stumps, shipwrecks, or debris that cannot be safely bypassed or that block the entire width of the beach and cannot be easily removed;
- severe beach slope that puts vehicles in an unsafe gradient position that increases the chances of the loss of vehicular control;
- A high concentration of pedestrian users coupled with a narrow beach

Triggers do not include:

- a narrow beach, by itself;
- tides which block access through portions of beaches occur periodically and predictably and are an obvious, easily avoidable hazard;
- hazards blocking only a portion of the beach, where safe passage is available around the hazard.

While the above criteria provide the rationale for what does or does not constitute a "safety closure," the Superintendent retains the authority under 36 CFR §1.5 (a) to close all or a portion of a park area to all public use or to a specific use or activity, based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities. For any such closures implemented, the public will be notified in accordance with the public notice requirements identified in 36 CFR § 1.7.

RECREATIONAL AREA PERSONNEL ACTION: Providing for the public safety is the responsibility of all Recreational Area employees. The following is expected of personnel.

- Law enforcement (LE) rangers should have the authority to enact closures consistent with the triggers noted above.
- Non-emergency service staff, when encountering safety hazards, should establish initial

EXHIBIT G

safety precautions and contact the LE ranger staff to evaluate the situation and establish any necessary ORV Safety Closures.

- Where hazards block only a portion of the beach, staff will mark and post the hazard to direct ORV traffic safely around the hazard.

MONITORING: ORV Safety Closures shall be monitored on a weekly basis.

DEMARCATIION: ORV Safety Closures shall be clearly marked by posts and signs indicating the area is closed to ORV use. The signs used for this purpose shall indicate that safety is the reason for the closure.

ORV SAFETY CLOSURE NOTIFICATION AND CONTINUANCE: Any employee initiating an emergency ORV safety closure will notify their supervisor immediately. The Superintendent and Division Chief will be notified as soon as possible of any such emergency ORV safety closure. As soon as possible after the initial closure has been established, but no later than one week, the employee will complete a "Closure Request Form" and submit the form for final approval through the chain of command. Such form should include the coordinates of the closure, the specific reasons for the closure, the dates of action, and the employee taking action. Completion of a "Closure Request Form" will only be required when a complete beach closure is established and does not apply to any modification of the ORV corridor width that does not preclude access. As long as the area is closed, the form shall be updated weekly to include a brief description of the condition of the area based on the weekly monitoring.

TRIGGERS FOR RE-OPENING: Sufficient diminishment, reduction or elimination of the conditions and hazards described under *TRIGGERS FOR CLOSURE* would constitute the trigger for re-opening a closure. ORV safety closures are intended to be in effect only as long as visitor safety or personal property is clearly and imminently threatened.

STAKEHOLDER INPUT: The Park shall establish and maintain a standing stakeholder advisory committee pursuant to the Federal Advisory Committee Act (FACA) with representatives from various sections/geographies of the Park representing diverse and balanced interests to provide input to the Park on, among other things, safety closures and openings.

PEDESTRIAN SAFETY

Due to ambient level of natural sounds on the beach (from surf, wind, etc.), and other inherent distractions in the beach setting, pedestrians may not be attentive to or aware of moving vehicles (ORVs) on the beach, especially those vehicles approaching from the sides or from behind. It is the legal responsibility of the ORV operator to always give pedestrians the right of way on the beach. The following federal regulations currently apply to motor vehicle operation in the vicinity of pedestrians:

- 36 CFR § 4.20 *RIGHT OF WAY* An operator of a motor vehicle shall yield the right of way to pedestrians, (saddle and pack animals, and vehicles drawn by animals). Failure to yield the right of way is prohibited.
- 36 CFR § 4.22 *UNSAFE OPERATION*

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(b) The following are prohibited:

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

In addition, the following measures apply :

- 1) When approaching or passing a pedestrian(s) on the beach, ORVs shall move to the landward side of the available ORV driving corridor to the extent practicable without driving on the toe of the dune or the dune itself in order to yield the wider portion of the beach corridor to the pedestrian(s).
- 2) ORVs shall slow to the slowest practical speed to maintain traction and control when traveling within 10 meters (30 ft) or less of pedestrians at any location on the beach at any time of year.
- 3) Pedestrians should not block access ramps and should use pedestrian ramps/boardwalks where available. If a pedestrian walkover is not available, pedestrians should walk to the side of ORV ramps, not in the tire tracks.
- 4) Pedestrians should avoid establishing their stationary area on the sand where vehicle tracks exists as the tracks are a clear indication of the most frequently traversed segment of the sand by vehicles.

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
Common Guidelines for All Bird Species	<p>Species Management: Temporary buffers or closures to ORV and pedestrian access shall be used to provide resource protection while maintaining public beach access. Buffers / closures will be frequently monitored to ensure both resource protection and public access are optimal.</p> <p>ORV/Pedestrian Corridors: ORV / pedestrian corridors shall be maintained with adequate monitoring through temporary resource closures to provide access to the beach.</p>		
Pre-Nesting Surveys	<p>By March 1, all potential habitats will have been evaluated. PIPL pre-nesting closures will be recommended based upon that habitat evaluation. Those closures will be installed by March 15, while maintaining ocean side corridors.</p> <p>March 15 – July 15: survey recent breeding areas (last three years) three times per week (or every other day). Survey potential new and or former habitat two times per week. Survey for Wilson’s plover during piping plover surveys. The PIPL pre-nesting areas will be surveyed 3 times per week if piping plovers are present in the area. To mitigate disturbance to nesting birds, surveys may need to be curtailed.</p> <p>Pre-nesting buffers will be modified in cases where the beach erodes into the buffered habitat.</p>	<p>March 15 – July 15: survey recent breeding areas (last three years) two times per week.</p> <p>Post July 15 - Turtle patrol will take over monitoring.</p>	<p>April 1 – July 15: survey recent breeding areas (last three years) two times per week.</p> <p>Post July 15 - Turtle patrol will take over monitoring.</p>

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
<p>Pre-Nesting Buffers</p>	<p>Annually, in February or March, NPS Resources Management staff will conduct an assessment of piping plover breeding habitat to plan pre-nesting closures in recently successful fledging areas that are adapted to current habitat and physiographic conditions. Symbolic fencing will be posted to close these areas by March 15.</p> <p>Closures will be removed if no breeding activity is seen in the area by June 15th or when area has been abandoned for a 2 week period, whichever comes later.</p>	<p>Pre-nesting closures will not be established for AMOY.</p>	<p>Pre-nesting closures will not be established for CWB.</p> <p>Note: CWBs do not return to exactly the same location every year making it difficult to predict where nesting will occur.</p>

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
Courtship/Mating Surveys:	If PIPL, AMOY, or CWB are observed exhibiting territorial or courtship behavior in suitable habitat during two separate observations in recent breeding habitat, observe 3 times per week. If scrapes are observed in the absence of courtship behavior, survey three times per week. Survey potential new habitat 2 times per week.		
Courtship/Mating Buffers:	<p>If courtship or copulation is observed outside of existing pre-nesting closures, establish or expand buffer to ensure a 50 meter buffer for the observed birds.</p> <p>The 50 meter buffer / closure may be increased by 15 meters beyond human flush distance if flushing occurs due to human disturbance.</p> <p>If a buffer / closure prevents human access to open areas of beach, an ORV / pedestrian access corridor will be established.</p> <p>Pets will be restricted to vehicle while vehicle is in corridor. In the case of pedestrian use of corridor, pets must be kept on 6' leash.</p>	<p>A 30 meter buffer / closure will be installed when a scrape is being maintained by pairs of known or unknown nesting history. If, in the judgment of NPS Resources Management staff, a pair has abandoned a scrape, the buffer will be removed.</p> <p>The 30 meter buffer/ closure may be increased by 15 meters beyond human flush distance as determined by NPS observation of individual nests.</p> <p>If a buffer / closure prevents human access to open areas of beach, an ORV / pedestrian access corridor will be established.</p> <p>Pets will be restricted to vehicle while vehicle is in corridor. In the case of pedestrian use of corridor, pets must be kept on 6' leash.</p>	<p>A 30 meter buffer / closure will be established when a scrape is being maintained. If, in the judgment of NPS Resources Management staff, a colony has abandoned a territory and established a new territory at another location, the buffer will be removed at the abandoned territory.</p> <p>The 30 meter buffer / closure may be increased by 15 meters beyond human flush distance as determined by NPS observation of individual nests or colonies.</p> <p>If a buffer / closure prevents human access to open areas of beach, an ORV / pedestrian access corridor will be established.</p> <p>Pets will be restricted to vehicle while vehicle is in corridor. In the case of pedestrian use of corridor, pets must be kept on 6' leash.</p>

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
Nesting Surveys:	Observe nests daily from a distance that does not disturb the birds, based on professional judgment. Approach nests once per week to observe and record data.	Observe nests daily from a distance that does not disturb the birds, based on professional judgment. For incubating birds that cannot be observed from a distance, check nests every three days.	Colonies will be surveyed by foot during the “peak” nesting period which is during the last week of May and the first week of June. Observe nests daily from a distance that does not disturb the birds, based on professional judgment. For incubating birds that cannot be observed from a distance, check colonies every three days.
Nesting Buffers:	All Species: The park retains the discretion to expand buffers depending on bird behavior. In unprotected areas, a closure will be established immediately when a nest with egg(s) is found. When nesting occurs in the immediate vicinity of paved roads, parking lots, campgrounds, building and other facilities, NPS retains the discretion to provide resource protection to the maximum extent possible while still allowing those sites to remain operational. Buffers will remain in place for 2 weeks after a nest is lost to determine if pair will re-nest, if no other species nesting in area. After August 1, closures will be removed if all nesting is complete.		

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
<p>Nesting Buffers (cont.):</p>	<p>Establish 50 meter buffer / closure around piping plover nests that occur outside of pre-nesting closures.</p> <p>If flushing off nest occurs due to human / ORV disturbance, buffer will be increased using 15 meter increments dependent on observed bird behavior.</p> <p>If a buffer / closure prevents human access to open areas of beach, an ORV / pedestrian access corridor will be established.</p> <p>If the buffer falls within the intertidal zone a full-beach closure will result and an ORV corridor will be established.</p> <p>Pets will be restricted to vehicle while vehicle is in corridor. In the case of pedestrian use of corridor, pets must be kept on 6' leash.</p>	<p>Use a flush plus 15 meter guideline for buffer / closures around AMOY nests. This is estimated to be approximately 30 meters when the nests are first located.</p> <p>If flushing off nest occurs due to human disturbance, buffer will be increased using 15 meter increments dependent on observed bird behavior.</p> <p>If a buffer / closure prevents human access to open areas of beach, an ORV / pedestrian access corridor will be established.</p> <p>If the buffer falls within the intertidal zone a full-beach closure will result and an ORV corridor will be established. If flushing off nest occurs due to pedestrian disturbance, corridor access will be limited to ORV.</p> <p>Buffer / closure will not be increased if flushing of nest occurs due to ORV activity.</p> <p>Pets will be restricted to vehicle while vehicle is in corridor. In the case of pedestrian use of corridor, pets must be kept on 6' leash.</p> <p>Closures will be removed when areas have been abandoned for a two week period. After July 15 the 2-week removal period will no longer be required for closure removal.</p>	<p>Establish 30 meter buffer / closure around terns, skimmers and other CWB when nests are located.</p> <p>If flushing off nest occurs due to human disturbance, buffer will be increased using 15 meter increments dependent on observed bird behavior.</p> <p>If a buffer / closure prevents human access to open areas of beach, an ORV / pedestrian access corridor will be established.</p> <p>If the buffer falls within the intertidal zone a full-beach closure will result and an ORV corridor will be established. If flushing off nest occurs due to pedestrian disturbance, corridor access will be limited to ORV.</p> <p>Buffer / closure will not be increased if flushing of nest occurs due to ORV activity.</p> <p>Pets will be restricted to vehicle while vehicle is in corridor. In the case of pedestrian use of corridor, pets must be kept on 6' leash.</p> <p>Closures will be removed when areas have been abandoned for a two week period. After July 15 the 2-week removal period will no longer be required for closure removal.</p>

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
Adult Foraging Surveys & Buffer:	For breeding adults (with an associated scrape or nest territory) foraging outside of a closure on two consecutive surveys, establish or expand the buffer using flexible increments based on observed bird behavior to include foraging site if the foraging area is associated with a pre-nesting closure. These closures are intended to provide foraging opportunities close to breeding sites. Remove closure if no foraging observed for a 2-week period during the breeding season, or when associated breeding activity has concluded.	No additional buffers / closures	No additional buffers / closures
Unfledged Chicks Surveys:	Observe brood am and pm daily. Have monitor(s) present during periods of ORV or pedestrian access. Observations end once chicks have fledged. Chicks are considered fledged at 35 days or are observed in sustained flight of >15 m.	Observe brood once daily. Observations end once the chicks have fledged. Chicks are considered fledged if they have been observed in sustained flight of >30 m.	Colonies will be surveyed by foot during the “peak” hatching period which should fall 21 days after initial nest counts. A follow-up survey by foot should be conducted during the “peak” fledge which should fall 20 days after hatch counts. Observe colony at two-three day intervals; or daily if shoreline is open to ORV use. Observations end after no unfledged chicks have been observed on two consecutive occasions. Closure will be removed after all chicks have fledged.

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
<p>Unfledged Chick Buffers:</p>	<p>Establish a 200 meter buffer / closure around the unfledged chick(s) location. Adjust buffer as needed when chicks are mobile.</p> <p>Establish ORV/Pedestrian access corridors.</p> <p>Vehicles may be allowed to pass through portions of the protected area that are considered inaccessible to PIPL chicks because of steep topography, dense vegetation, water or other obstacles.</p> <p>Morning access to the points and spits may be delayed until chicks have been located if the access corridor passes between the waterline and through the buffer area that would otherwise be closed.</p> <p>Reopen access corridor outside of pre-nesting area after chicks fledge. Remove pre-nesting closure 2 weeks after all chicks in the area have fledged.</p>	<p>Establish a 30 meter buffer/closure around the unfledged chick(s) location. Adjust buffer as needed when chicks are mobile. Monitor daily.</p> <p>Establish ORV/Pedestrian access corridors.</p> <p>Buffers/closures will be removed after AMOY chicks have fledged (observed flight of 30 meters).</p>	<p>Establish a 30 meter buffer/closure around the chick(s) location. Adjust buffer as needed when chicks are mobile. Monitor daily.</p> <p>Establish ORV/Pedestrian access corridors.</p> <p>Buffer/closure will be removed after all chicks have fledged.</p>
<p>Non-breeding / Wintering Survey</p>	<p>NPS will monitor presence, abundance and behavior of migrating and wintering PIPL at the points and spits July 1 through May 31 following the existing NPS winter monitoring protocol. In addition, the International Shorebird Survey (ISS) protocol will be used to document other migrating/wintering species.</p>		

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
<p>Non-breeding / Wintering Buffers</p>	<p>Annual habitat assessment will be conducted after all birds have fledged from the area. Winter closures will be based on the presence of birds at the beginning of the migratory season, and the suitable habitat types based on the results of the annual survey.</p> <p>All winter closures will be installed when birds are present. Actual locations of suitable resting habitat may change periodically due to natural processes.</p> <p>Access will be maintained to inlet and sound front shoreline via the ocean shoreline.</p>	<p>No closures.</p>	<p>No closures.</p>

Exhibit H – Resource Protection Position Statement

Event	Piping Plover	American Oystercatcher	Colonial Waterbirds
Data Collected	<p>GPS will be used to document nest locations.</p> <p>Record locations where territorial/courtship behavior occurs, including scrape locations. Estimate where adult and chick foraging occurs. Chicks should never be disturbed to obtain this information. Record presence and abundance of birds. Assess productivity and known reasons for nest failure and chick loss.</p>	<p>GPS will be used to document nest locations.</p> <p>Record presence and abundance of birds. Assess productivity and known reasons for nest failure and chick loss.</p> <p>Nearby villages, dredge and spoil islands will be considered part of the same ecosystem as the Recreational Area. NPS will coordinate the tracking of information with the jurisdictional authorities for those locations. Bird activity will be tracked accordingly and will be included in target productivity levels. Fluctuations in bird populations should be measured on a regional level rather than limited to island counts.</p>	<p>GPS will be used to document colony locations.</p> <p>Record presence and abundance of birds .</p> <p>Assess productivity and known reasons for nest failure and chick loss.</p> <p>Nearby villages, dredge and spoil islands will be considered part of the same ecosystem as the Recreational Area. NPS will coordinate the tracking of information with the jurisdictional authorities for those locations. Bird activity will be tracked accordingly and will be included in target productivity levels. Fluctuations in bird populations should be measured on a regional level rather than limited to island counts.</p>

Exhibit H – Resource Protection Position Statement

Sea Turtles (a minimum of 7 field personnel is required to meet the daily monitoring requirements on the Park's 67 miles of shoreline)	
Survey Time and Frequency	<p>Sea turtle patrol will begin on May 1. Patrol will continue until September 15, or two weeks after the last sea turtle nest or crawl is found, whichever is later.</p> <p>Patrol will be on the beach by twilight before dawn to conduct daily morning surveys using ATV/UTVs and possibly ORVs to locate crawls and nests on all beaches.</p> <p>Daily surveys for nests end September 15, or two weeks after the last sea turtle nest or crawl was found, whichever is later.</p> <p>Periodic monitoring (e.g., every two to three days) for unknown nesting and emerging hatchlings will continue, especially in areas of high visitation from that date until November 15.</p> <p>Monitoring will also occur for post-hatchling washbacks during periods when there are large quantities of seaweed washed ashore or following severe storm events.</p> <p>Nest observations stop when all nests have hatched or excavation indicates that the nest was not viable.</p> <p>Nests will be monitored daily during hatch window for signs of hatchling emergence.</p>
Data Collected	<p>Follow the North Carolina Wildlife Resources Commission Handbook and record:</p> <ul style="list-style-type: none"> • Turtle species • Nest vs. false crawl • nests lost to storms, overwash, predators, etc. • Location (physical description, distance from spring high tide, and GPS locations) • management category (ORV, Non-ORV, Resource Closures, Limited Access, Villages and heavy pedestrian use areas) • If nest needs to be relocated and, if so, <ul style="list-style-type: none"> • why and where (new physical description and GPS location), • number of eggs relocated, and time of day, • necessary protective measures for nest and hatchlings, • information regarding any post hatching nest excavation and analysis. <p>Examine all nests after hatching to determine productivity rates.</p> <p>Excavate nests in the evening a minimum of 72 hours after hatching event.</p>

Exhibit H – Resource Protection Position Statement

	<p>In cases where hatching events or dates were unknown, unearth nest cavities 80–90 days after the lay date. Any live hatchlings found during excavations will be released after dark on the same day as excavation.</p> <p>For strandings the following will be recorded:</p> <ul style="list-style-type: none"> • species, • location, • measurements, • signs of human interactions, • samples and photos will be collected when necessary, • necropsies will be conducted when possible.
<p>Nest Closures/ Buffers</p>	<p>Establish a buffer approximately 10 meters square with symbolic fencing and signage around nest. Closure size may be modified due to environmental conditions at the nest site.</p> <p>Approximately 50– 55 days into incubation, closures expanded to the surf line from one hour before sunset until midnight or when “Turtle Watch” volunteers leave the beach, whichever is later. The width of the closure– 10 meters wide (total width).</p> <p>NPS staff supplemented by volunteers will watch nests at night as is done at Pea Island. When “Turtle Watch” volunteers arrive, garden fencing will be placed in a keyhole pattern around nests and to the surf line with a wire cage over the nest site.</p> <p>When “Turtle Watch” volunteers leave the beach they will remove garden fencing leaving the symbolic fencing and the cage over the nest. Each nest will be checked at dawn to retrieve any hatchlings in the cages and remove the cage.</p>
<p>Nest Relocation</p>	<p>NCWRC Handbook relocation guidelines must be modified by substituting “seaward of the debris line marking spring high tide” for “average high tide line” as the line below which a nest will be relocated.</p> <p>By April 15th, areas deemed unsuitable for turtle nests (i.e. high erosion rate, within one mile of an inlet, pier or Cape Point, poor historical success or with no beach above the debris line of the spring high tide) will be identified by Park staff. Any sea turtle nests laid in these unsuitable areas will be relocated. Relocation areas (safe areas) will be identified each spring by Park staff after the “spring high tide” on each island (at least one site on Ocracoke Island, at least three sites on Hatteras Island and one site on Bodie Island) and once put in use will be marked off as “Resource Closures” with no pedestrian or ORV use allowed inside but an ORV/pedestrian pass-thru corridor in front or if space allows behind.</p> <p>The areas set aside for these “safe areas” will be determined by NPS staff using the following criteria:</p> <ol style="list-style-type: none"> 1) The open beach (i.e. without dense vegetation) must be wide enough above the debris line of the spring high tide to accommodate relocated nests, 2) The area will not be within one mile of an inlet (where hatchlings could be swept into the sound), a pier (where hatchlings entering the water are likely to fall prey to predator fish attracted to piers) or at Cape Point (where hatchlings

Exhibit H – Resource Protection Position Statement

	<p>could be swept into the “washing machine” and its concentration of predator fish at the Point).</p> <p>3) The areas will be located so they are accessible for “Turtle Watch” volunteers but not directly in front of a ramp where access would be blocked in both directions.</p> <p>4) The area has had an above average track record for successful hatches.</p> <p>5) The area has a low historical erosion rate.</p> <p>6) The area is not in an otherwise protected area.</p> <p>All nests outside of a “safe area” or other resource closure will be watched and protected in a similar manner. When a nest is found, staff assesses need for nest relocation and follows relocation guidance identified in the NCWRC handbook. If a nest is threatened by an imminent storm event, NPS will consult with NCWRC to determine appropriate action.</p>
Light Management	Establish turtle friendly lighting standards and/or reduce light for all Seashore (NPS) structures. Encourage concessioners to install turtle friendly lighting. Develop educational material to inform visitors about their impact on the success of sea turtle nests.
Research	Support research efforts looking at the sex ratios of sea turtles. Respond to sea turtle strandings in a timely manner, and report all information, pictures, and signs of human interaction to NCWRC. Necropsies of strandings will be done when possible.
Seabeach Amaranth	
Survey Time and Frequency	August An annual survey of potential habitat will be conducted. Some bird closure areas may not be surveyed due to the potential to disturb nesting birds. Some areas may not be surveyed until just prior to re-opening an area to ORV traffic. July–September Before opening any species closure or identifying alternate ORV corridors, survey for seedlings/plants. End observations when all plants have died back.
Data Collected	Record location of all individual plants or plant clusters using a GPS and note if the plant is located in an area open or closed to recreational use.
Buffers	April 15 – November 30 If a plant/seedling is found outside of an existing closure, the Seashore will erect symbolic fencing with signage creating a 10 meter by 10 meter buffer around the plant. If plants are located next to each other, the area will be expanded to create one enclosure protecting several plants. If a SBA is found during the survey prior to reopening a bird closure to ORV and pedestrian use, the Seashore will protect the SBA as described above and reopen the areas of the bird closure where no plants exist. Areas reopened if no plants are present by September 1. Where plants occur, the closed areas will be reopened after the plants have died.

Exhibit H – Resource Protection Position Statement

Shorebird / Waterbird Buffer Summary

	Breeding Behavior/ Nest Buffer	ORV Pass-through	Unfledged Chicks
Piping Plover	50 m	30 m	200 m
American Oystercatcher	Flush + 15m	Flush + 15m	Flush + 15m
Least Terns	30 m	30 m	30 m
Other Species CWB	30 m	30 m	30 m

EXHIBIT I

Vehicle Characteristics, Equipment and Operations**I. GENERAL**

ENFORCEMENT: Such regulation shall be enforced by the NPS according to graduated law enforcement principles.

STAKEHOLDER INPUT: The Park shall establish and maintain a standing stakeholder advisory [FACA] committee with representatives from various sections/geographies of the Park representing diverse and balanced interests to provide input to the Park on, among other things, ORV-related issues via a standing ORV subcommittee.

ESSENTIAL VEHICLES: Essential vehicles are allowed in non-ORV areas, and within resource closures subject to guidelines in Essential Vehicles section of Appendix G of the U.S. Fish and Wildlife Service Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as cited in the strategy/EA). To the extent practicable, emergency response vehicle operators will consult with trained resources management staff regarding protected species before driving into or through resource closures; however, prior consultation may not always be practical.

In the event of an emergency, the protection of human life takes precedence over all other management activities.

Essential vehicles will avoid driving within turtle nest closures.

COMMERCIAL FISHING: ORV operations by commercial fishermen will be addressed in the Commercial Fishing CFR (CFR 7.58) and any associated permits.

II. VEHICLE CHARACTERISTICS

PURPOSE: Manage and regulate the type of vehicle allowed to drive on Recreational Area beaches.

SCOPE: Applied for all driving on all routes, trails, and areas designated for ORV driving.

VEHICLE CHARACTERISTICS: All vehicles must exhibit the following characteristics to drive on the Park's beaches. Drivers are responsible for ensuring their vehicles meet these characteristics.

1. All vehicles must be registered, licensed, and insured and comply with inspection regulations within the state, country or province where the vehicle is registered.
2. Four-wheel drive vehicles are allowed.
3. Motorcycles are allowed.
4. Two wheel drive vehicles are allowed after the operator obtains a special use permit.
5. All-Terrain Vehicles (ATVs) are prohibited. ATVs are defined as a type of off-highway vehicle that travels on three or more low-pressure tires; has handle-bar steering; is less than or equal to 50 inches in width; and has a seat designed to be straddled by the operator.

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6. The Park Superintendent will determine the acceptability of new or state of the art vehicles (those that are not listed in items 2-5) for driving on Recreational Area beaches as needed, with input from the standing advisory group and/or state law.
7. There is a three axle maximum for vehicles (this is the axle maximum for the powered vehicle only and does not include the additional number of axles on towed trailers).
8. Any trailers are limited to no more than two axles.
9. The maximum vehicle length is thirty (30') feet (this is the maximum length for the powered vehicle and does not include the additional length of a towed trailer).
10. Tires must be U.S. Department of Transportation listed and/or approved tires only.

III. REQUIRED AND RECOMMENDED EQUIPMENT

PURPOSE: To identify special equipment required and recommended to safely operate a vehicle on the beach

REQUIRED EQUIPMENT: All vehicles operated on the beach shall contain the following required equipment:

1. A low-pressure tire gauge effective down to 5 psi
2. A shovel
3. A jack
4. A jack support
5. Trash bag or container
6. A flashlight
7. Copy of the current NPS ORV regulations and map.

HIGHLY RECOMMENDED EQUIPMENT: The following equipment is recommended but not required.

1. A full size spare tire
2. First aid kit
3. Fire extinguisher
4. Tow strap with loop ends, no hooks, with a rating capacity at or above the GVW of item being recovered or moved unless vehicle is equipped with an operable electric or hand winch

IV. VEHICLE OPERATIONS

PURPOSE: Ensuring the safety of all public users of the Park and protection of Park resources.

SCOPE: Applied for all driving on all routes, trails, and areas designated for ORV driving.

DRIVER'S LICENSE: All drivers must carry a valid driver's license.

SPEED LIMITS: The speed limit on Recreational Area beaches is 25 mph year-round, unless otherwise posted.

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TIRE PRESSURE: When driving on designated routes, tire pressure must be lowered sufficiently to maintain adequate traction within the posted speed limit. Twenty (20) psi is recommended for most vehicles. The softer the sand, the lower the pressure needed. When you return to paved roads, inflate the tires to normal as soon as possible.

RIGHT OF WAY: Right of way shall be as follows:

1. A vehicle exiting the beach via a Ramp or Interdunal Road has the right of way until reaching state-regulated roads.
2. When traveling parallel to the ocean or sound, the vehicle with the water to its right side has the right of way.
3. Vehicles must yield to pedestrians at all times, including on beaches and ramps.

SELF-CONTAINED VEHICLE CAMPING: Self contained vehicle camping is allowed in the Recreational Area and will be managed under a special use permit system. The special use permit will be an addition to any other broad beach access permit or pass system required.

The special use permit will include a fee whose price will be determined under NPS rules, regulations, and policies regarding a value of service determination.

Self-contained vehicle camping is limited to designated areas in the beach environment only. At all designated times there will be at least one designated area on each of the three islands (Bodie, Hatteras & Ocracoke) contained within the Recreational Area. These areas include Oregon Inlet Campground, Cape Point Campground, and Ocracoke Campground.

For the purpose of this Recreational Area-specific regulation, a self-contained vehicle camper is defined as follows:

- Self-contained vehicle campers must meet the ORV characteristics and requirements.
- Self-contained vehicles must be 4WD only. 2WD campers are prohibited.
- Self-contained vehicles are limited to a maximum length of thirty feet (30') including front racks and rear decks.
- Self-contained vehicles must have a self-contained water or chemical toilet and a separate permanently installed holding tank for both black and grey water, each with a minimum capacity of 3 days waste.
- Tents and camping trailers are prohibited.

There will be no limit to the total number of available self-contained vehicle permits.

The number of self-contained vehicle campers allowed to camp in Recreational Area at any one time will be limited by the space available in the designated self-contained vehicle camping areas. The camping space limits are as follows:

- Oregon Inlet Campground: not more than 100 spaces
- Cape Point Campground: not more than 100 spaces
- Ocracoke Campground: not more than 50 spaces

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The NPS will provide no services for self-contained vehicles other than parking space, garbage and waste-water dumping services. The experience is intended to be a primitive, beach camping experience within appropriate self-contained vehicles. When possible, the only access to the camping will be via a four-wheel drive only path or road (i.e., access to Cape Point Campground only via the interdunal road).

Self-contained camping will be allowed from November 1 until March 31.

Self-contained camping permits will be offered either weekly or annually.

There will be a self-contained camping limit of no more than seven consecutive days/six nights) in any one visit.

There will be a self-contained camping limit of no more than one visit per month.

All self-contained beach camping spaces are available on a first-come, first-served basis.

All self-contained vehicles arriving for an overnight stay must check in/register via a system to be determined before entering the self-contained camping area. An overnight authorization must be displayed at all times the vehicle is in the designated self-contained camping area.

Self-contained vehicles MUST exit the self-contained camping area after no longer than 72 consecutive hours in order to empty holding tanks and gray water at an established waste-water dumping facility.

Any permittee who violates the terms and conditions of the self-contained vehicle (SCV) permit is subject to being cited for the violation, will have his/her SCV permit revoked, and may be denied from obtaining any ORV related permit at Recreational Area for a period of at least one year.

Generally, the NPS will work to discourage illegal camping on any and all NPS properties via signage, education, information, and/or other appropriate and effective means

OTHER RELEVANT REGULATIONS: Other pertinent and relevant federal or state regulations include:

- Camping is only allowed at designated areas. (36 CFR 2.10)
- Obstructing traffic on park roads is prohibited. (36 CFR 4.13)
- Driving under the influence of alcohol or drugs is prohibited. (36 CFR 4.23)
- All drivers and passengers are required to wear seatbelts. (36 CFR 4.15)
- A valid state driver's license is required for all operators of motor vehicles on park roads. (36 CFR 4.2)
- Operating a motor vehicle without due care or at a speed greater than which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character is prohibited. (36 CFR 4.22)
- Operators of motor vehicles involved in accidents resulting in property damage, personal injury, or death shall immediately report the accident to park rangers. (36 CFR 4.4)
- The operators of authorized emergency vehicles, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law may disregard traffic control divides, exceed the speed limit, and obstruct traffic. (36 CFR 4.3)