

From: [Mike Murray](mailto:Mike_Murray@earthlink.net)
To: topsynturvy@earthlink.net
Subject: Fw: Safety Closures
Date: 12/20/2006 11:24 AM
Attachments: [Seasonal Closure Policy me.doc](#)

Dear Jim and Ginny,

I apologize for the belated response. Thank you again for the historical information you provided on off-season ORV access south of Ramp 49 and north of Ramp 55.

Since receiving your messages, I have reviewed the material you sent as well as the 1978 draft interim ORV management plan and Superintendent's Order # 7, visited the respective locations on several occasions, spoken with a number of park staff who have been involved with closure decisions and implementation of those decisions related to the area between Ramp 49 and Ramp 55 over the years, and spoken with several different stakeholders for their perspective.

There is consensus that the basis for maintaining the closure over the years has been due to a "narrow beach." It is also clear that prior to 2004 the park did NOT follow any specific beach width parameters, such as those identified in the draft interim 1978 plan, for justifying the need for safety closures "due to a narrow beach" at these locations. The concept of using the specific beach width parameters identified in the 1978 draft interim plan was initiated and formalized by Superintendent Belli in Superintendent's Order # 7 in May 2004. That change in policy, which adopted other aspects of the draft interim 1978 as well, was a point of contention for many stakeholders and has been in dispute ever since.

As you know, we are in the beginning stages of the Negotiated Rulemaking process. My plan is to maintain the current policy for now and defer further review of this issue to the negotiated rulemaking committee. With this in mind, the existing safety closure south of Ramp 49 to just north of Ramp 55 will remain in effect. Please understand that I am applying the same rationale of deferment to all requests that I have received to either expand or reduce the current off-season winter closures in front of Frisco-Hatteras and/or Buxton.

Thank you again for your time and interest in this issue.

Mike Murray
Superintendent
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
(w) 252-473-2111, ext. 148
(c) 252-216-5520
fax 252-473-2595

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----- Forwarded by Mike Murray/CAHA/NPS on 12/18/2006 08:55 AM -----

"Jim and Ginny"
<topsynturvy@earthlink.net>

To: <Mike_Murray@nps.gov>
cc:
Subject: Re: Safety Closures (Reply)

attached, in case you have difficulty with the formatting)

10/24/2006 10:15 AM AST
Please respond to "Jim and Ginny"

Dear Mike,

Thank you for your reply to my query regarding the traditional winter re-opening of summer seasonal closures.

In your reply, you note that:

The draft 1978 interim ORV management plan identified only three types of closures: summer seasonal closures in front of the villages, resource closures to protect bird and turtle breeding areas, and safety closures for areas with narrow beach. However, it is also clear that some areas in front of villages have been consistently closed during the winter for many years whether or not it exactly fit the criteria for one of those types of closures.

“Official” press releases do not support the above statement. According to these releases, there has **NEVER** been a winter closure of **ANY** beach for **ANY** reason other than either resource protection or safety concerns.

Furthermore, “official” press releases state:

1. that the re-opening of summer seasonal closures is based upon the 1978 Interim ORV Plan, and
2. that the 1978 Plan **WILL** be followed until such time as a new policy is developed as part of the upcoming rulemaking process.

The above statements are based upon a thorough review of all actions taken by CAHA for the period of 1978 to present. A table detailing the results of my research is presented below. In summary, the table documents the following facts:

1. The annual press release announcing the re-opening of summer seasonal closures always specifies the dates on which **ALL** summer seasonal closures are to open and close.
2. The only delays in the re-opening of summer seasonal closures have been the result of significant beach erosion caused by storm events or turtle closures.
3. All subsequent closures have been based upon resource closures (birds or turtles) or safety closures.
4. In the event that a closure is made based upon a safety closure, the related press release always states that the area **WILL** be reopened when the beach widens enough

to allow for safe ORV navigation.

Based upon the above, I respectfully request that you follow the long-standing policy of re-opening **ALL** summer seasonally closed beaches as warranted based upon current safety standards. If there has been a change in NPS policy regarding winter closures, please direct me to the relevant document.

Virginia L. Luizer

Location	Fall 1978 Through Spring 2003 ¹ Action	Fall 2003/Spring 2004 ³ Action	Fall 2004/Spring 2005 Action	Date	Fall 2005/Spring 2006 ⁴ Action	Date	Fall 2006/Spring 2007 Action	Date
Rhodante/Salvo/Waves	Generally open	Open for most of season	OPEN- Ramp 23 north 1.3 miles	9/16/2004 PR 9/13/04	???	OPEN PR 11/10/05	OPEN- Ramp 23 north 3 miles	9/16/06 PR 9/15/06
			OPEN- Ramp 23 north 2.8 miles, NPS deemed safe to navigate	11/5/2004 PR 11/04/04				
Avon Village	Generally open	Open for most of season	OPEN- Ramp 34 south 1.6 miles	9/16/2004 PR 9/13/04	CLOSED- as of 11/10/05- narrow beach	PR 11/10/2005	OPEN- Ramp 34 to ramp 38	9/16/06 PR 9/15/06
			OPEN- Entire stretch from ramp 34 to ramp 38, NPS deemed safe to navigate	10/20/2004 PR 10/19/04	OPEN- Ramp 34 to Avon Pier- sometime during the winter	PERSONAL OBSERVATION	CLOSED- .2 miles south of Avon Pie- narrow beach	9/18/06 PR 9/18/06
			CLOSED- 1.3 miles south of ramp 34 to ramp 38- narrow beach	10/29/2004 PR 10/28/04	OPEN- Ramp 38 north as far as I could see- sometime during the winter	PERSONAL OBSERVATION	CLOSED- Ramp 38 north to .2 miles south of Avon Pier- narrow beach	9/18/06 PR 9/18/06
	North end		North end					

Ramp 38 to Ramp 43	opening varied with beach width ²	North end opening varied with beach width	opening varied with beach width		North end opening varied with beach width		OPEN- Ramp 38 south 1.5 miles	9/16/06 PR 9/15/06
Ramp 49 to Frisco Pier	South end generally closed due to narrow beach ²	South end opening varied with beach width	OPEN- Ramp 43 north 1 mile	10/29/2004 PR 10/28/04	CLOSED- as of 11/10/05 PR 11/10/2005		OPEN- Ramp 43 north .4 miles	9/16/06 PR 9/15/06
Ramp 49 to Frisco Pier	Generally closed due to narrow beach ²	Open for most of season	OPEN- Ramp 49 south for 1.7 miles	9/16/2004 PR 9/13/04	CLOSED- as of 11/10/05- narrow beach PR 11/10/2005		OPEN- Ramp 49 south 1.1 miles	9/16/06 PR 9/15/06
			CLOSED- Ramp 49 south reduced to .9 miles- narrow beach	2/18/2005 PR 2/18/05				
Frisco Pier to Hatteras Village	North end generally closed due to narrow beach ²	North end generally closed due to narrow beach	North end generally closed due to narrow beach		CLOSED- North end, as of 11/10/05- narrow beach PR 11/10/2005		CLOSED- North end- narrow beach	9/16/06 PR 9/15/06
	South end opening varied with beach width ²	South end opening varied with beach width	OPEN- Ramp 55 north 1.4 miles	9/16/2004 PR 9/13/04	CLOSED- Ramp 55 north, as of 11/10/05- narrow beach PR 11/10/2005		CLOSED- Ramp 55 north remains at seasonal line- narrow beach	9/16/06 PR 9/15/06
			CLOSED- Ramp 55 north .2 miles- turtle nest	9/16/2004 PR 9/16/04				
			OPEN- Ramp 55 north 1.4 miles- turtle nest gone	9/26/2004 PR 9/27/04				
			CLOSED- Ramp 55 north- narrow beach	10/23/2004 PR 10/22/04				

¹ As per Section 9, Special Protection of the Public Lands of the Draft Interim ORV Management Plan of 1978:

Annually, on September 10, areas of heavy pedestrian use, closed to ORVs seasonally in summer since 1974 to preserve

public safety and minimize use conflicts, are normally totally reopened to off-season ORV use.

Also, for an example of the typical press release, see press release dated 9/19/2002

² As per Section 9, Special Protection of the Public Lands of the Draft Interim ORV Management Plan of 1978:

In September 1978, about 28 miles of National Seashore beach, including portions both inside and outside established seasonal closures, were found at normal high tide to be too narrow for use by ORVs without danger to vehicles or damage to adjacent dunes and private property. This condition arose during a stormy preceding winter followed by a summer deficient in normal beach accretion.

³ Hurricane Isabel devastated the Island on 9/18/03. While I could not find any press releases for the Fall/Winter of 2003/2004, the following obtained from the recap of a meeting held on 5/21/2004 at NPS headquarters (<http://www.obpa.org/cgi-bin/boards/obpauadmin.cgi?read=65>) documents that the seasonal closures were open during this period.

NPS apologized for the early closures in front of the villages of Frisco, Avon, Rodanthe, Waves and Salvo and stated that seasonal closure dates of the 1978 Interim Plan of May 15th to Sept. 15th would be used until the new ORV Plan is adopted.

⁴ Damage from Hurricane Ophelia delayed opening of seasonally closed beaches until 10/11/05, see press release dated 10/7/05.

The above press release did not identify the specific areas that would remain closed due to narrow beach. The only other press release I could find was dated 11/10/05. This press release identified the only area actually reopened as Rohdante/Salvo/Waves. Additional openings are based upon my personal observations

----- Original Message -----

From: Mike_Murray@nps.gov

To: [Jim and Ginny](#)

Sent: Tuesday, October 17, 2006 4:16 PM

Subject: Re: Safety Closures

Hi Ginny,

Thanks for asking the question. I've found the policy behind the long-standing winter closures in front of several of the villages, including Frisco-Hatteras, and its implementation over the years can be confusing. The draft 1978 interim ORV management plan identified only three types of closures: summer seasonal closures in front of the villages, resource closures to protect bird and turtle breeding areas, and safety closures for areas with narrow beach. However, it is also clear that some areas in front of villages have been consistently closed during the winter for many years whether or not it exactly fit the criteria for one of those types of closures. There may have been other reasons behind these closures; however, if there were, they are not clear. As a result, I have struggled with the issue of the winter closures, how to treat them, what to call them and on what criteria to base them pending the start of negotiated rulemaking.

I think the policy needs to be clarified; however, at this point I am planning to defer doing so to the negotiated rulemaking process. The

winter closure policy has implications for various user groups and whatever I do unilaterally will undoubtedly be controversial. To do this issue and other related ORV access issues justice, I think we need to have an open discussion with opportunities for public input before I or the NPS simply change the policy. I have heard that the NPS unilaterally closed some of these areas without discussion in the past. To that I can only state that it is my intention to find solutions to these issues rather than exacerbate the conflict. I, and I'm sure other stakeholders, will ensure that this specific policy gets addressed during the negotiated rulemaking process in the months ahead. This does not necessarily mean we need to wait 2-3 years for the final rulemaking to be completed to address this. The Negotiated Rulemaking Feasibility Report recommended that the Committee through its charter be authorized to advise NPS on actions related to ongoing ORV use management issues during the negotiation process, in addition to developing the ORV regulation. If this occurs, we could likely make interim changes in the winter closure policy or other specific policies as soon as the Committee discusses the specific issue and provides a recommendation or some advice.

Please understand that deferring this issue to the negotiated rulemaking process should not be construed that I necessarily agree with the status quo or think it is the best approach. I know the policy is a very sensitive issue with opposing view points that deserve to be heard. Meanwhile, I acknowledge that the current situation sometimes seems inconsistent with the stated rationale or criteria.

I would appreciate your patience and understanding as we try to work toward solutions. Thank you again for your inquiry.

Mike Murray
Superintendent
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
(w) 252-473-2111, ext. 148
(c) 252-216-5520
fax 252-473-2595

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"Jim and Ginny"
<topsynturvy@eart> To: "Mike Murray"
<Mike.Murray@nps.gov>
hlink.net> cc:
Subject: Safety Closures
10/15/2006 09:20

AM AST
Please respond to
"Jim and Ginny"

During the past 2 weeks several visitors have asked me why the beach in front of Frisco and Hatteras Villages are still closed. As per your press release of 9/15, I reported that the closures were ORV safety closures. The visitor's didn't quite understand this explanation. I told the visitors that the safety closures for Frisco and Hatteras Villages were based upon the condition of these beaches observed when 2 hurricanes were passing off shore and that the beaches were, in fact, quite narrow at that point in time. Furthermore, I told the visitors that I did witness a considerable amount of pedestrian traffic during the last to 2 weeks of Sept. (due in part to some sort of Surfing event).

I did tell the visitors that, as per the press release dated 9/13, the NPS is scheduled to reassess these areas within the next few days.

"Narrow areas of ocean beach temporarily closed to ORV use are assessed monthly by park rangers and re-opened if the beach width has expanded."

Based upon the facts

1. that the beach area in front of Frisco Village is currently wider than that area between ramp 49 on the closure,
2. that the portion of beach in front of the parking area at ramp 55 is at least as wide as the area immediately south of the closure, and
3. that pedestrian traffic has decreased significantly, with most users being fisherman and women instead of sunbathers, swimmers, and surfers,

I respectfully request that you give serious consideration to opening these beach fronts so that those who are not technically handicapped but don't have the stamina to make long walks to these areas as the puppy drum and specks. start to show up in good numbers may participate in the fall season for these species.

Thank you



Virginia Luizer Seasonal Closure Policy me.doc