

**From:** [Mike Murray](#)  
**To:** [Britta Muiznieks](#); [Cyndy Holda](#); [Darrell Echols](#); [Eric Frey](#); [Marie Reed](#); [Paul Stevens](#); [Thayer Broili](#); [William P Thompson](#); [Catherine McCurdy](#); [Michael Piatak](#); [Jocelyn Wright](#)  
**Cc:** [Darrell Echols](#)  
**Subject:** Interim Strategy by-pass criteria  
**Date:** 07/22/2011 02:15 PM  
**Attachments:** [Fonsi BypassCriteria.pdf](#)  
[CAHA IPSMS FONSI Table 3.doc](#)

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All,

See attached Interim Strategy by-pass criteria (pp. 10-11 of the FONSI) and Table 3 of the FONSI. The consent decree, in effect, assimilated this criteria and did not alter it, except that for any remaining turtle nests after September 15 (i.e., when the night driving prohibition is relaxed) are required to have a full beach closure for ORVs. Prior to September 15, the by-pass criteria is in effect and can be used at our discretion provided the by-pass criteria in the FONSI are met. The intent of the by-pass criteria was to allow the flexibility to temporarily re-route ORV traffic around turtle nests, if appropriate, if the nest would otherwise block access to an open area.

To my knowledge we have not used this provision for a temporary by-pass because the right circumstances have not occurred (e.g., it would not be feasible in most locations, with a narrow beach backed by a stable dune line). The so-called "by-pass" at the narrows south of Ramp 44 was installed using this reasoning, in part; however, before it was installed we acknowledged that it would likely be used on a recurring basis (i.e., it would not be "temporary" and vegetation would not be expected to recover naturally within one year of its use). As a result, we consulted the USFWS and CAMA about that specific by-pass and received a Federal Consistency Determination before it was installed.

In the case of a turtle nest on a wider section of beach without a continuous dune line behind it (rather than on the typical narrow beach backed by a large unbroken dune line), we do have the authority and existing compliance to utilize the "temporary by-pass" criteria. Implementing a by-pass obviously requires some evaluation of on-site conditions, judgment to determine the most appropriate route to minimize impacts, and adequate signing and enforcement presence (and restrictions, such as limited hours it is open, if needed) to ensure a reasonable level of compliance. If we cannot manage the use and potential impacts effectively, then we are not obligated to provide a by-pass; but if we can manage it, we should allow it since that is the stated intent in the FONSI.

In any case, a temporary by-pass of the turtle nest south of the narrows is authorized under the Interim Strategy criteria. The question is where and how to install the by-pass in a way that minimizes impacts.



Fonsi BypassCriteria.pdf



CAHA IPSMS FONSI Table 3.doc

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▼ Catherine McCurdy/CAHA/NPS

**Catherine  
McCurdy/CAHA/NPS**

07/22/2011 11:30 AM

To Mike Murray/CAHA/NPS@NPS, Cyndy Holda/CAHA/NPS@NPS, Darrell Echols/CAHA/NPS@NPS, Paul Stevens/CAHA/NPS@NPS, Thayer Brolli/CAHA/NPS@NPS, Marie Reed/CAHA/NPS@NPS, Britta Muiznieks/CAHA/NPS@NPS, Eric Frey/CAHA/NPS@NPS, William P Thompson/CAHA/NPS@NPS

cc

Subject Draft map for activity on east side of Cape Point

I've posted a map on the shareall showing the locations of the this year's turtle nests and the 30 foot buffers for the 3 nests in question. I've also included this year's PIPL nest in blue and the locations of the 2008 - 2010 PIPL nests in grey. Call me if you'd like to see anything else added.

I:\DIVISION FOLDER-RES MNGT\Maps for Superintendent\DraftCapePointActivityforreview\_072211.pdf

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TABLE 3: RECREATION AND SEASHORE MANAGEMENT

| Activity                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>ORV</b>                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Pre-Nesting Closures</b>     | Between identified pre-nesting closures dates (see table 1), designate an ORV corridor up to 100 feet wide along oceanside and soundside shoreline in recent breeding areas. Delineate corridor with posts placed up to 100 feet above the high tide line. In areas with a reduced corridor width due to species management actions, maintain the corridor with a posted speed limit of 10 mph.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>ORV Corridors and Access</b> | <p>April 1 – August 31</p> <p>Piping plover: Designate approximately 100-foot-wide ORV corridor above mean high tide line in breeding areas used within past three years.</p> <p>Delineate corridor with posts placed up to 100 feet above the high tide line.</p> <p>In areas of reduced corridor width (i.e., less than 100 feet), post traffic signs and 10 mph speed limit. Adjust the ORV corridor whenever possible to allow vehicle passage. If an ORV corridor is not feasible for safety reasons or insufficient area, identify alternate ORV route if possible. If there is no alternate route available, Seashore staff will consider establishing a bypass route (see “Short-term Bypass Route Criteria” on page 11 of this FONSI). Seashore staff will allow observations to be responsive to individuality in bird behavior when determining adequate size of closure zones.</p> <p>If alternate route or bypass is not feasible, initiate an ORV closure.</p> <p>American oystercatcher and colonial waterbirds: Provide ORV/pedestrian corridor above the high tide line. In areas of reduced corridor width (i.e., less than 100 feet), post traffic signs and 10 mph speed limit. Adjust the ORV corridor whenever possible to allow vehicle passage. If an ORV corridor is not feasible for safety reasons or insufficient area, identify alternate ORV route if possible. If there is no alternate route available, Seashore staff will consider establishing a bypass route (see “Short-term Bypass Route Criteria” on page 11 of this FONSI). Seashore staff will allow observations to be responsive to individuality in bird behavior when determining adequate size of closure zones.</p> <p>If alternate route or bypass is not feasible, initiate an ORV closure.</p> <p><u>Sea Turtles: May 1 – September 15</u></p> <p>Outside of recent bird breeding areas, ORV use will be restricted to a corridor 150 feet duneward of the mean high tide line and seaward of the toe of the dunes or vegetation line, whichever is less. A 30-foot by 30-foot buffer zone of signed, stringed fencing will be placed around each nest in any place where recreation occurs. When a nest is approximately 50 days old, where possible, ORV traffic will be routed around the nest on the duneward side, maintaining a buffer of 50 feet where possible, but no less than 30 feet. If the filter fence closure for hatchlings will block access to spits and Cape Point, identify an alternate route (e.g., existing interdunal road, NC-12). If an alternate route is not available, an attempt will be made to identify a bypass route on the duneward side of the nest.</p> |
| <b>Night Driving</b>            | <p>No restrictions.</p> <p>The Seashore will provide periodic night time patrols to observe and enforce compliance with regulations and closures.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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| Activity                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Pedestrian</b>                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Pedestrian Access Outside of Bird Closures</b>                 | Pedestrians allowed 24-hour access to all Seashore beaches outside of existing resource closures.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Pedestrian Access in Turtle and Seabeach Amaranth Closures</b> | Pedestrians allowed 24-hour access to all Seashore beaches outside of existing resource closures.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Other Recreation</b>                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Boat Access</b>                                                | <p>36 CFR 3.6 prohibits launching non-commercial, recreational boats/vessels except at designated launch sites.</p> <p>Permits may be issued for commercial fishing to allow ORV access or boat launching in pedestrian-only areas as well as in ORV areas, but not in areas closed for resource protection.</p> <p>Along sound shoreline where resource closures occur attempt to keep boats 150 feet from the habitat, the extent of the seashore jurisdiction. Erect signs, where practicable, around the perimeter of the closures to alert boaters of closures.</p>                                                                                                                                                                                     |
| <b>Pets</b>                                                       | <p>36 CFR 2.15, Pets: pets must be crated, caged, restrained on a leash, or otherwise physically confined at all times in all areas of the Seashore.</p> <p>Pets prohibited, even if on leash, from the landward side of the posts delineating the ORV corridor at the spits (Bodie, Hatteras, Ocracoke) and Cape Point.</p> <p>Pets prohibited within symbolic fencing around any bird closure area.</p>                                                                                                                                                                                                                                                                                                                                                    |
| <b>Other</b>                                                      | <p>Kite flying, kite boards, and ball and Frisbee tossing prohibited within or above all bird closures.</p> <p>36 CFR 2.38, Explosives: all fireworks are prohibited in the Seashore at all times.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Seashore Management</b>                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Essential Vehicle Use</b>                                      | <p>Essential vehicles allowed in closures subject to guidelines in Essential Vehicles section of Appendix G of the U.S. Fish and Wildlife Service Piping Plover (<i>Charadrius melodus</i>), Atlantic Coast Population, Revised Recovery Plan (USFWS 1996a, as cited in the strategy/EA).</p> <p>In the event of an emergency, the protection of human life takes precedence over all other management activities. 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.</p> <p>Essential vehicles will avoid driving within turtle nest closures.</p> |

TABLE 3: RECREATION AND SEASHORE MANAGEMENT

| Activity                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <b>Essential Vehicles:<br/>Speed</b> | Not to exceed 10 mph, whenever possible.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Outreach and Compliance              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                      | <p><u>General:</u></p> <p>Provide information about endangered species at the visitor centers.</p> <p>Enforce proper trash disposal (pack in/pack out) and anti-wildlife feeding regulations throughout the Seashore, including proper disposal of fishing bait and filleted fish carcasses. Provide education and outreach materials regarding the impacts of trash disposal, wildlife feeding, fireworks, and pets on sensitive Seashore species.</p> <p>Solicit from interested parties how to convey information about the species management program.</p> <p>Notify the public of species management closures that will temporarily limit ORV traffic. Send a press release to local and regional newspapers and contact local tackle shops and ORV organizations when species closures established or reopened.</p> <p><u>Piping plover:</u></p> <p>Provide periodic patrols to observe and enforce compliance with piping plover closures.</p> <p><u>Sea Turtles:</u></p> <p>Conduct educational programs during the sea turtle hatching season where public school students could learn about sea turtles by participating in post-hatching nest examinations.</p> <p>Provide information to the public about nesting sea turtles and measures taken by the Seashore to protect nests and hatchlings.</p> <p><u>Seabeach Amaranth:</u></p> <p>Post information about seabeach amaranth at all ORV ramp bulletin boards.</p> <p>Notify public of resource closures and openings.</p> |

enforcement situations must be attended to during high visitation periods. It is the responsibility of the Superintendent and law enforcement managers to direct their resources where most needed depending on circumstances. If, and as this occurs, law enforcement staff may not be able to dedicate as much time to species protection.

15. The level of effort for outreach and compliance will now include:
  - a. The Seashore will enforce proper trash disposal and anti-wildlife feeding regulations to reduce the attraction of predators to the area.
  - b. Annual protected species reports regarding the previous breeding season will be published on the Seashore website and an initial bird posting plan for the upcoming season will be drafted that provides pre-nesting closures.
  - c. A variety of educational and outreach materials will be developed regarding the impacts of trash disposal, wildlife feeding, fireworks, and pets on sensitive Seashore species. These will be distributed through a variety of methods that could include press releases, email announcements, and the use of local volunteer and community organizations.
  - d. Interpretive signage will be developed for certain species.

Under the selected alternative (modified preferred alternative – *Alternative D (Access/Research Component Focus) with Elements of Alternative A*), the Seashore will implement protective measures seasonally for recent piping plover breeding areas (areas used at some time during the past three breeding seasons). The Seashore will establish resource closures when nesting behavior is observed, rather than establishing pre-nesting closures, for those state-listed species and species of special concern outlined previously. Sea turtle protections will be the same as alternative A with some variation in management. Seabeach amaranth resource closures will be established when a plant/seedling is found outside of an existing resource closure.

Alternative D provides for adaptive management in that the NPS can adjust the ORV corridor to allow for passage when necessary. If a buffer zone will eliminate the ORV corridor, the NPS will identify alternative ORV routes (if available) or provide a bypass (if possible). Additional management will include continued predator removal, additional recreation use restrictions, and public outreach. The selected alternative will allow for some variability in species management based on the individual species behavior and will adapt management strategies to afford access where feasible while protecting species.

## **RECREATION AND OTHER SEASHORE MANAGEMENT**

Between April 1 and August 31 each year, a 100-foot-wide ORV corridor will be designated, where possible, above the mean high tide line in piping plover breeding areas used within the past three years or new habitat identified during the annual habitat assessment. Breeding areas outside the ORV corridor used within the past three years will be closed to pedestrian access using symbolic fencing at the same time. The ORV corridor will be delineated with posts below the dune line, maintaining a 100-foot corridor where possible taking into consideration necessary species closures.

Education will be provided for visitors regarding the wildlife values. In areas of reduced corridor width (i.e., narrower than 100 feet) a reduced speed limit of 10 miles per hour will be posted. Additionally, periodic patrols to observe and enforce compliance with closures will occur. During other times of the year ORV and pedestrian access will be restricted year-round to a corridor 150 feet duneward of the ocean mean high tide.

Pedestrian access will be maintained outside of the symbolically fenced areas. If no bird activity is seen by July 15, or if the area is abandoned for two weeks, whichever is later, the closure area will be reopened to recreation use.

Because closure zones will adjust to individual bird behavior, an ORV corridor may not be feasible for safety reasons or due to insufficient area. In these cases, the Seashore will attempt to identify an alternate ORV route. If no alternate route is available, a bypass will be considered using the bypass criteria outlined below. In piping plover breeding areas, an ORV closure will be implemented in the event an alternate route or bypass is unavailable.

Recent piping plover breeding habitats within the spits and Cape Point will be closed to ORVs and pedestrians beginning April 1. An ORV and pedestrian corridor will provide access around these closures, unless foraging chicks or safety issues require that the access route be closed. If a closure is required, the decision-making process for providing continued ORV access will include consideration of an alternate ORV route or a bypass. **If a turtle nest hatching could lead to the blocking of access to the spits, Cape Point or South Beach, access will be provided, if feasible, via alternate route or bypass.** Seabeach amaranth occurring outside of existing species management closures will be protected from ORV and pedestrian access.

**Short-term bypass route criteria:**

- a. The bypass area will be routed around dunes and vegetation if possible. If necessary, ground leveling, consistent with the state coastal management program, may be considered if dune fields do not exceed 36 inches in height. Leveling will be done by hand (no machinery will be used).
- b. The bypass will take advantage of natural terrain (e.g., blowouts) to minimize ground altering disturbance to the natural areas and avoid impacts to wetlands.
- c. The bypass will be at a minimum wide enough to allow one ORV to safely pass, and a maximum of two lanes if "line of sight" vision is compromised.
- d. Natural area disturbance to accommodate avoidance of turtle or bird nesting will not exceed 6,000 square feet.
- e. Minimal vegetation impact will be allowed.

Federal or state-listed plants or plants falling under the category of special concern (e.g., seabeach amaranth, dune blue curls) will not be compromised.

Vegetation in altered areas will be expected to recover within the following growing season. If vegetation does not recover within one growing season, or by other natural process (such as overwash creating habitat), the Seashore will initiate restoration of vegetation.

Any vegetation removal will be performed with hand tools (no machinery will be used).

Areas will be restored if predicted recovery period exceeds one season. Bypass routes will not infringe upon or fragment an adjacent resource/safety closure. Bypass routes will not disturb or impact any cultural resource (i.e., shipwrecks).