

## SOUTHERN ENVIRONMENTAL LAW CENTER

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November 28, 2011

**VIA U.S. MAIL AND E-MAIL**

Jonathan B. Jarvis  
Director, National Park Service  
1849 C Street NW  
Washington, D.C. 20240  
Email: Jon\_Jarvis@nps.gov

**Re: Management of Off-Road Vehicles at Cape Hatteras National Seashore**

Dear Director Jarvis:

As the National Park Service ("NPS") finalizes its off-road vehicle management regulation for Cape Hatteras National Seashore ("Seashore"), we write to bring to your attention the success experienced under existing protections, which form the foundation for the protections described in the record of decision ("ROD") for the final regulation.

Cape Hatteras is truly a success story for visitor and wildlife management. In order to maintain this progress, we respectfully request that you specify the ROD's management protections in the final regulation rather than leave wildlife protection to the discretion of the superintendent. We believe the wildlife management guidelines are working and are time-tested; by making them discretionary, the Seashore's superintendent will be under pressure to change them year to year by those opposed to improved wildlife management.

Wildlife Is Improving Under the Consent Decree.

The Seashore is currently managed, in part, pursuant to a Consent Decree negotiated between off-road vehicle ("ORV") enthusiasts, the NPS, and our organizations in Spring 2008. Those measures were put into place at the beginning of the 2008 breeding season and have been applied consistently for the last four breeding seasons. Under the Consent Decree, wildlife has rebounded at the Seashore, with several species showing significant improvements in nesting numbers and nesting success since 2007. The 2011 breeding season for shorebirds, waterbirds, and sea turtles continued the recent trend of success under the strengthened wildlife protections implemented in 2008. We have attached graphs showing these trends, based on the National Park Service's annual resource reports for the Seashore.

The Seashore attracted a record 15 pairs of threatened piping plovers this year, nearly triple the six pairs recorded in 2007 (the last year before current Consent Decree protections were put in place). Those 15 pairs fledged 10 chicks, down from last year's all-time high of 15

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chicks, but still the third best year on record and near triple the four fledged in 2007. American oystercatchers also had another strong year, fledging 24 chicks this year, after 26 last year.<sup>1</sup>

Black skimmers, after failing to nest on Cape Hatteras in 2007 and 2008, have returned, nesting for the third year in a row and laying 99 nests this season. Similarly, gull-billed terns also have returned to the Seashore, laying 15 nests this year after failing to nest from 2005-2009 and producing just one nest last year. Common terns also benefited from stronger protections, laying 112 nests – the most since 2004. Finally, least terns had a remarkable year, with 1,048 recorded nests, nearly tripling last year's 381 nests and more than five times as many as in 2007.

Sea turtles also continue to benefit from the current protections. This year continued the pattern of strong sea turtle nesting, with 147 total nests and only 129 false crawls. All four years under the Consent Decree protections have seen more than 100 nests, including last year's record of 153 nests. The previous best year, 2002, recorded only 98 nests, and the last year before the Consent Decree, 2007, recorded just 82 nests.

We are aware that turtle nests were lost to Hurricanes Irene and Katia this year and that ORV enthusiasts have often argued that such storm events cause more damage to existing nests than beach driving does. That argument is a red herring, though. It ignores the fact that, although the NPS cannot control the weather, it can control the actions of humans (such as night driving on the beach) that deter turtles from coming ashore to lay nests in the first place. And, in the last four years during which night driving has been curtailed under the Consent Decree protections, turtles have been nesting in the record numbers described above. In sum, management under the Consent Decree is significantly benefitting sea turtle nesting.

#### Tourism Is Thriving Under the Consent Decree.

Further, despite years of dire predictions by beach driving proponents that NPS efforts to manage beach driving will have a “devastating effect on the local economy,” those predictions have not come to fruition. The tourism industry seems to be thriving at the Seashore, and the local economy on Hatteras Island appears to be benefiting from the consistency provided by operating under the same management scheme for a fourth consecutive year. Based on statistics compiled by the Outer Banks Visitors Bureau, occupancy on Hatteras Island through September 2011 was down less than one percent, even factoring in a 24% decline in September caused when Hurricane Irene's destructive forces rendered the island inaccessible for approximately six weeks. Before Hurricane Irene hit, visitor occupancy on Hatteras Island in July 2011 was up 6.26 % over July 2010, which was itself an all-time-record-setting month for tourism spending.<sup>2</sup>

Likewise, visitation to the Seashore itself has remained steady. Through July 2011, the Seashore saw an overall increase in visitation of 1.7% compared to the same time last year, and a

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<sup>1</sup> This figure excludes chicks fledged on Green Island, an island that is part of the Seashore, but not accessible by vehicle. Four additional chicks fledged on Green Island.

<sup>2</sup> Rob Morris, “Dare Occupancy Receipts Reach an All-Time High,” The Outer Banks Voice, Sept. 16, 2010, available at: <http://outerbanksvoice.com/2010/09/16/occupancy-dollars-hit-an-all-time-high/>.

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4.1% increase in July 2011 over July 2010. Visitation in August – after the majority of wildlife resource closures ended – declined 22% compared to 2010, but the year-to-date visitation at the end of the month was down only 3.8%. And, as discussed above, those recent decreases are likely attributable to revenues lost after Hurricane Irene rendered Hatteras Island inaccessible. Importantly, tourism at Cape Hatteras has remained largely consistent through the recession of the last several years, a statement that cannot be made for all of North Carolina's tourist destinations. Dare County has fared much better than most counties in North Carolina. In 2010, it had the fourth highest revenue attributable to tourism of North Carolina's 100 counties and the 23rd highest percentage increase in such revenue over 2009.<sup>3</sup>

And it comes as no surprise that visitation would continue to be strong while wildlife protections are in place. Studies reported in the NPS's FEIS show that visitors to the Seashore are more likely to be interested in non-driving activities than in beach driving. In addition, based on our review of comments submitted on the DEIS and the draft regulation (and the NPS's analysis of those comments), the public overwhelmingly supports restrictions on off-road vehicle use that protect wildlife and provide vehicle-free areas to enjoy the Seashore without the noise, danger, visual clutter, and other impacts of beach traffic. In fact, we understand that the large majority of those comments supported more expansive vehicle-free areas for quiet contemplation and enjoyment of the unspoiled landscape of the Seashore even than those provided by the draft regulation.

#### Need for Regulation to Contain Specific Wildlife Protections

The experience under current management at the Seashore demonstrates that consistent, protective management of off-road vehicles benefits both wildlife and the economy of the Outer Banks. When the protections provided by the Consent Decree were implemented, uncertainty and fear created a tumultuous environment for residents and visitors alike. As the communities and visitors have adjusted to existing protections, a sense of predictability and normalcy has returned. The final regulation must carry that predictability forward, and can only do so by incorporating the protections described in the FEIS and ROD into the regulation so that wildlife is protected as required by law and so that NPS staff, residents, and visitors know what to expect as those protections are implemented.

Legally, the final regulation must incorporate the protections from the selected alternative in the ROD and from Alternative F of the FEIS to implement the record of decision and comply with NEPA. Each and every alternative evaluated in the FEIS included specific protections for wildlife and designated ORV routes. The proposed regulation took a different course, leaving wildlife protections to the near-complete discretion of the Seashore superintendent. That new alternative fails to implement the ROD's selected alternative and also represents a management strategy of discretionary closures that was not evaluated in the NEPA process. Moreover, a regulation without specified wildlife protections cannot meet the requirements of the federal regulations it is intended to satisfy (36 C.F.R. § 4.10; Executive Order 11644). Finally,

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<sup>3</sup>“The 2010 Economic Impact of Travel on North Carolina Counties,” N.C. Dept. of Commerce, available at <http://www.nccommerce.com/tourism/research/economic-impact/teim>.

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burdening the superintendent with that level of discretion would unnecessarily subject him and park staff to constant pressure from members of the public opposed to wildlife protections.

In sum, wildlife at Cape Hatteras National Seashore has benefitted and tourism has thrived under protective, reasonable management for the last four breeding seasons. The ROD's selected alternative would implement many of those important protections going forward. It is essential that the final regulation published by the NPS include the specific wildlife protections and management practices described in the FEIS and the ROD.

We appreciate all the hard work by the NPS that has gone into developing the regulation and more generally into preserving America's natural and cultural heritage for future generations. We look forward to a final Hatteras beach driving regulation that allows the successes of the last four years to continue, addresses our concerns, and restores a balance to the Seashore consistent with the NPS's obligation to protect the natural resources for future generations.

Sincerely,



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Geoff R. Gisler, Staff Attorney  
Southern Environmental Law Center

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Walker Golder, Deputy State Director  
National Audubon Society (North Carolina State Office)

Jason Rylander, Senior Staff Attorney  
Defenders of Wildlife

Chris Watson, Program Manager  
National Parks Conservation Association

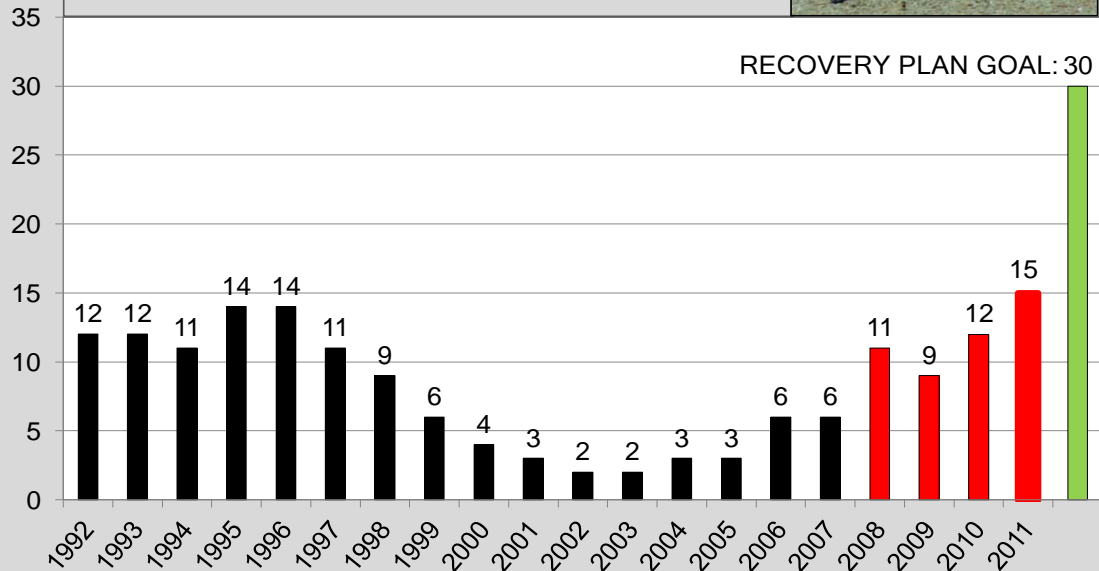
Enclosures

cc (with enclosures, via email and U.S. Mail):

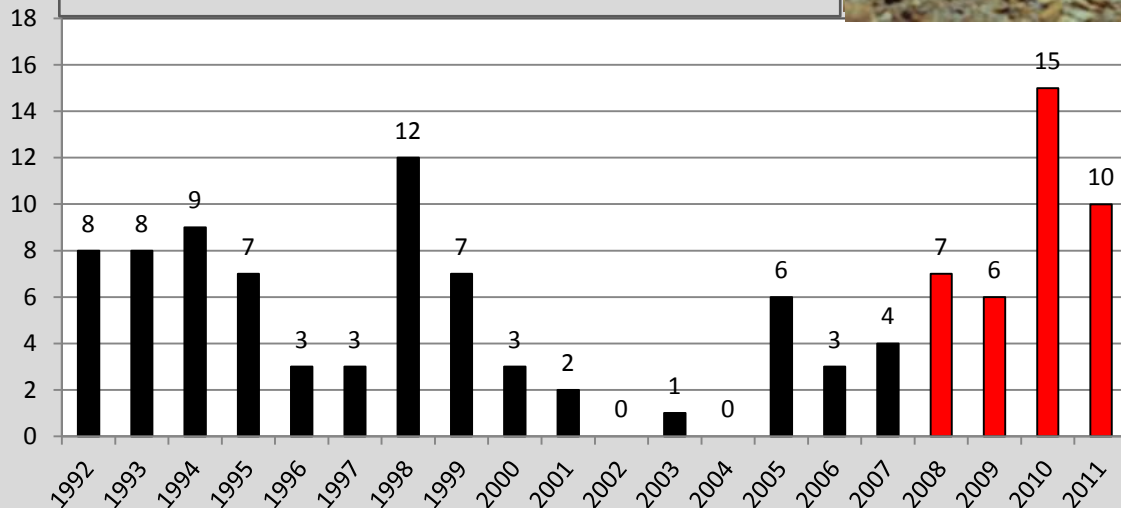
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Representative Walter B. Jones, Jr. ([Josh.bowlen@mail.house.gov](mailto:Josh.bowlen@mail.house.gov))

## CAPE HATTERAS NATIONAL SEASHORE: SPECIES REBOUNDED UNDER CONSENT DECREE

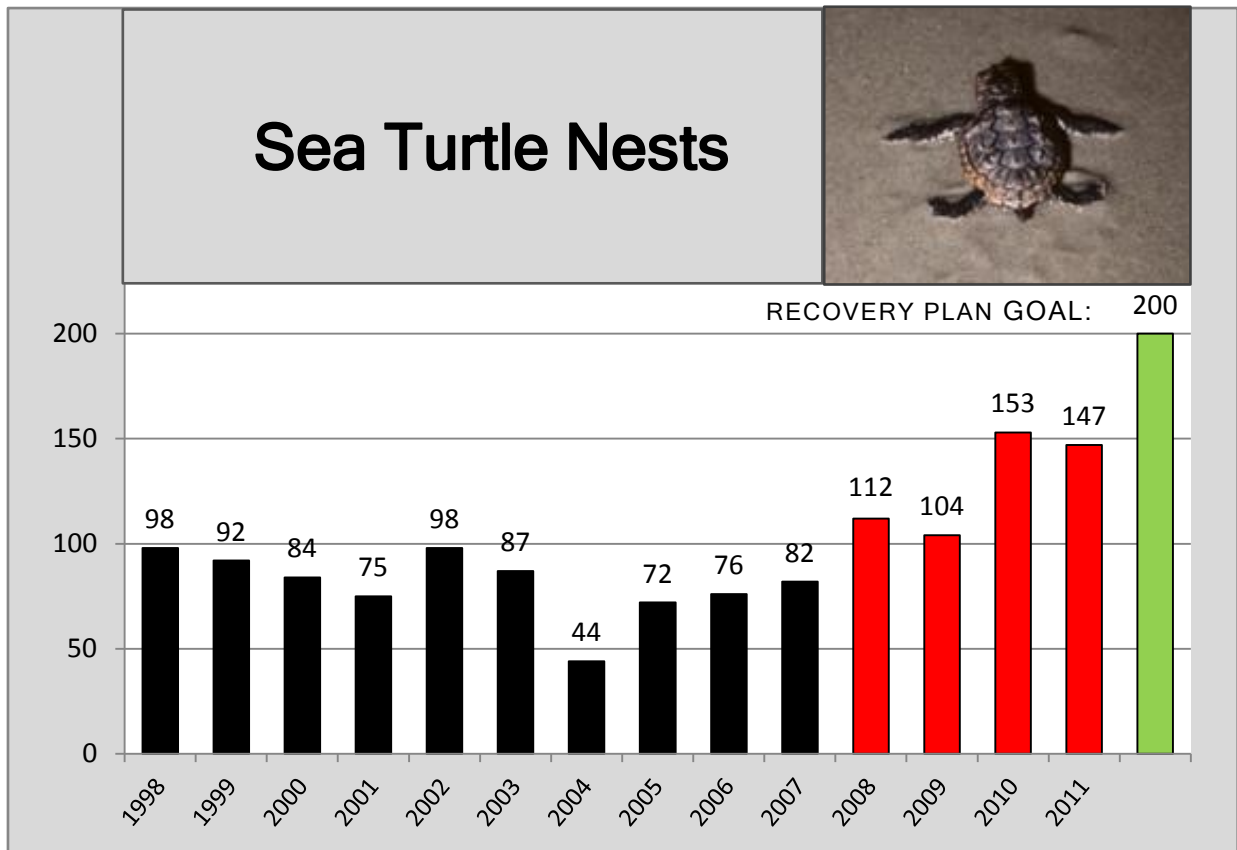
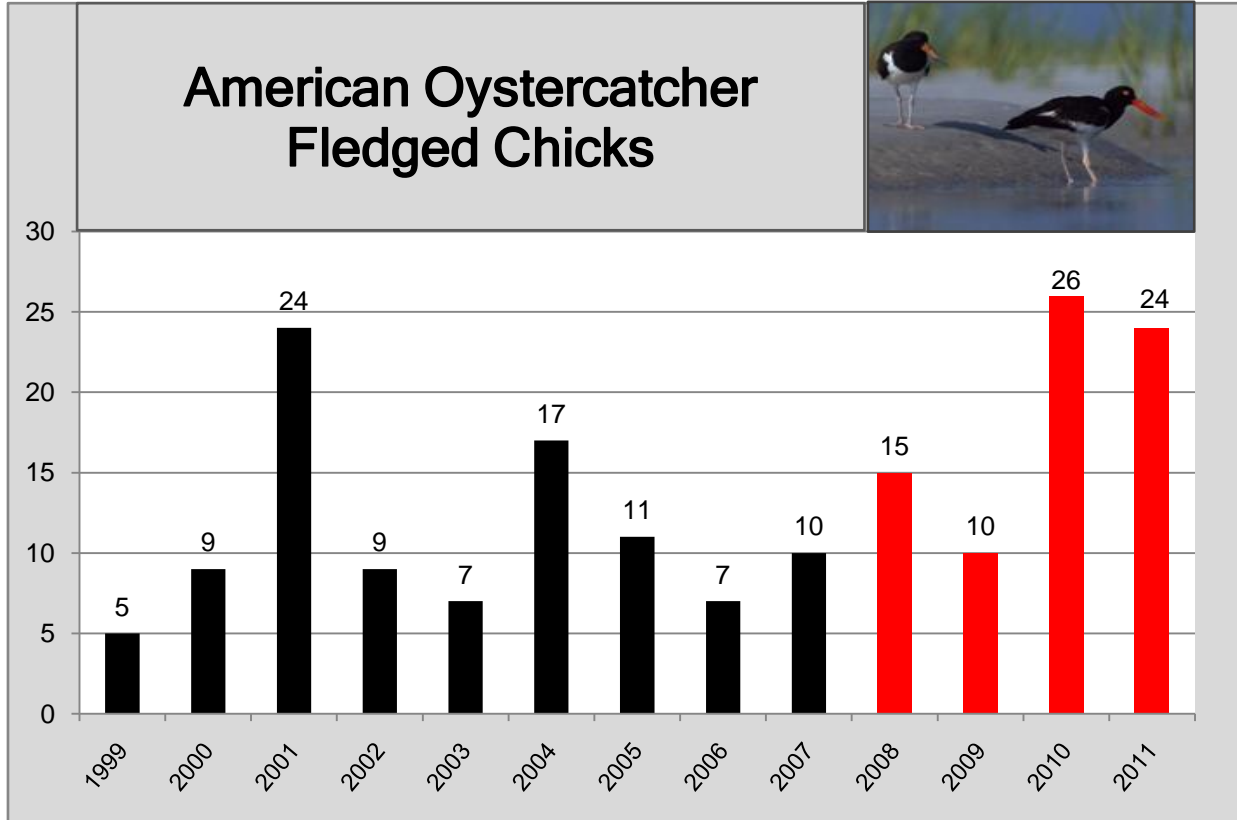
### Piping Plover Breeding Pairs

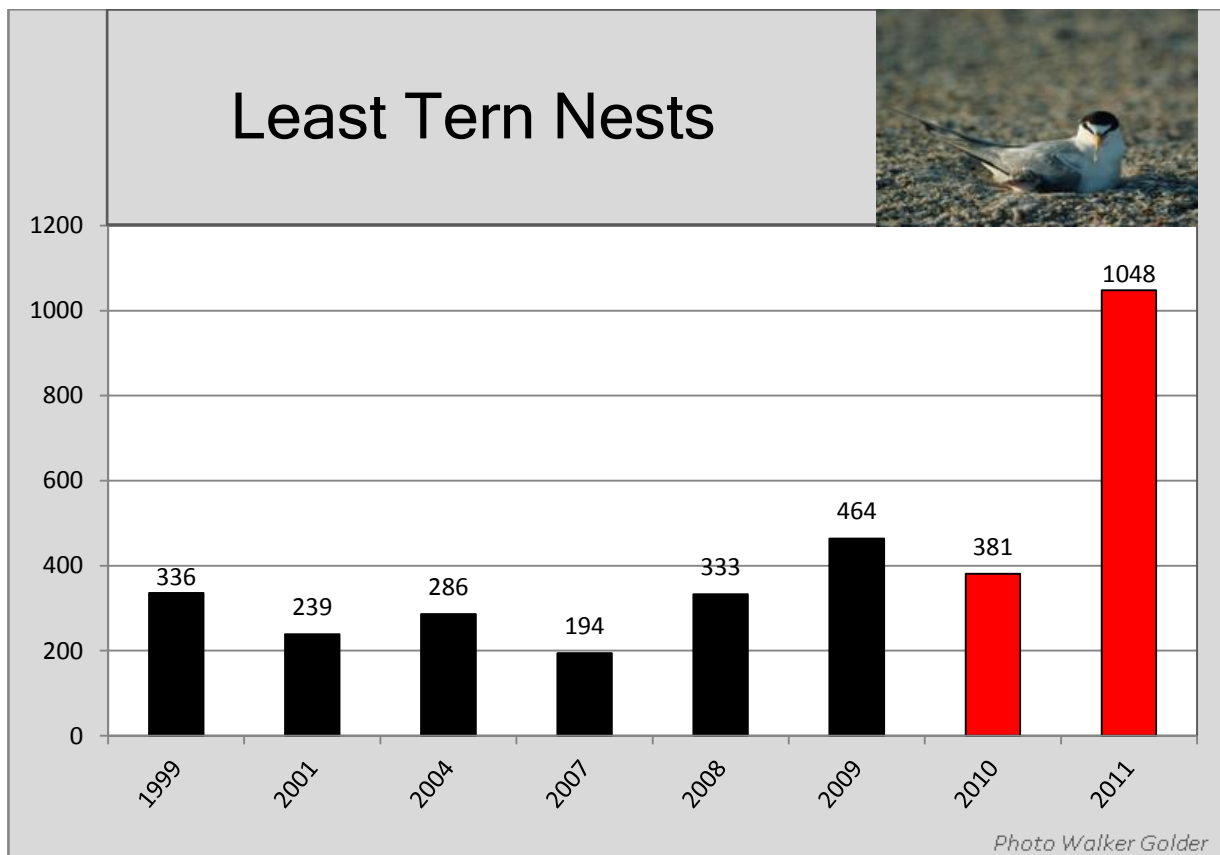
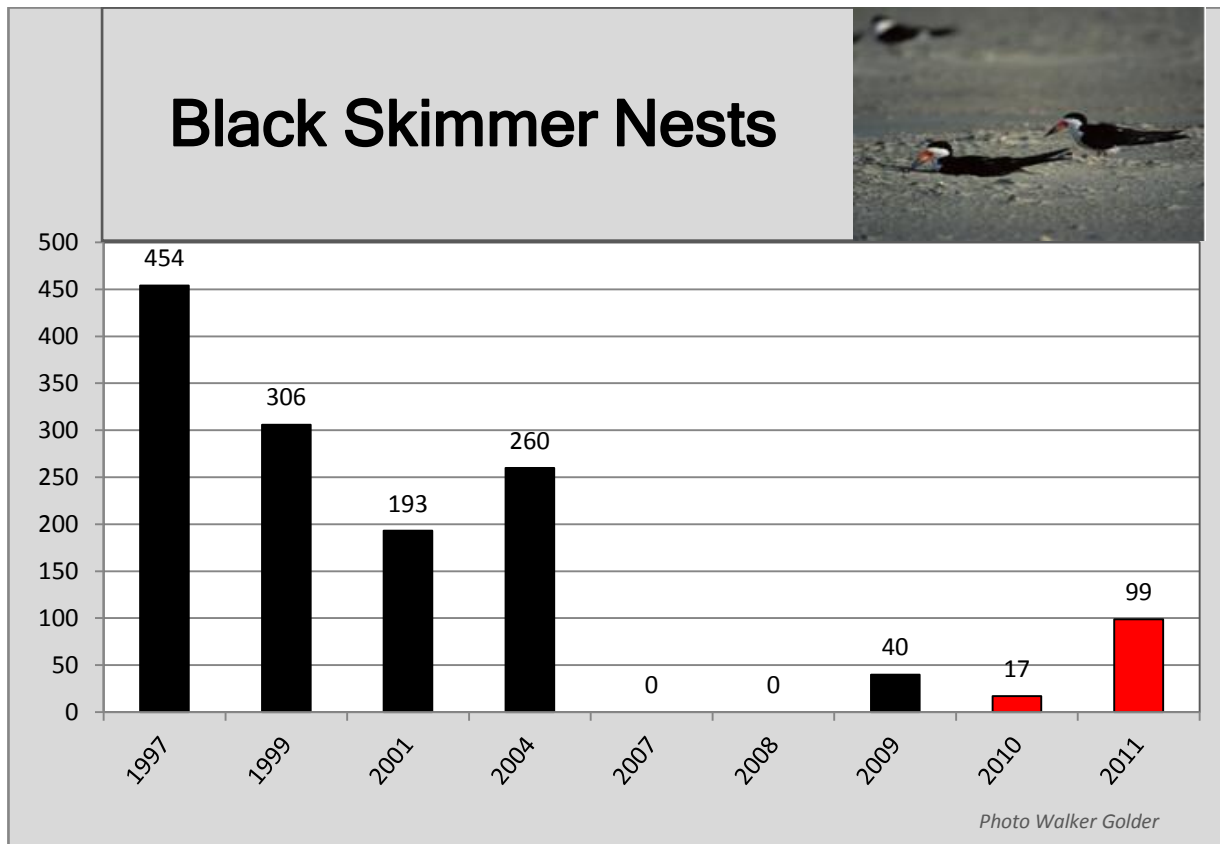


### Piping Plover Fledged Chicks

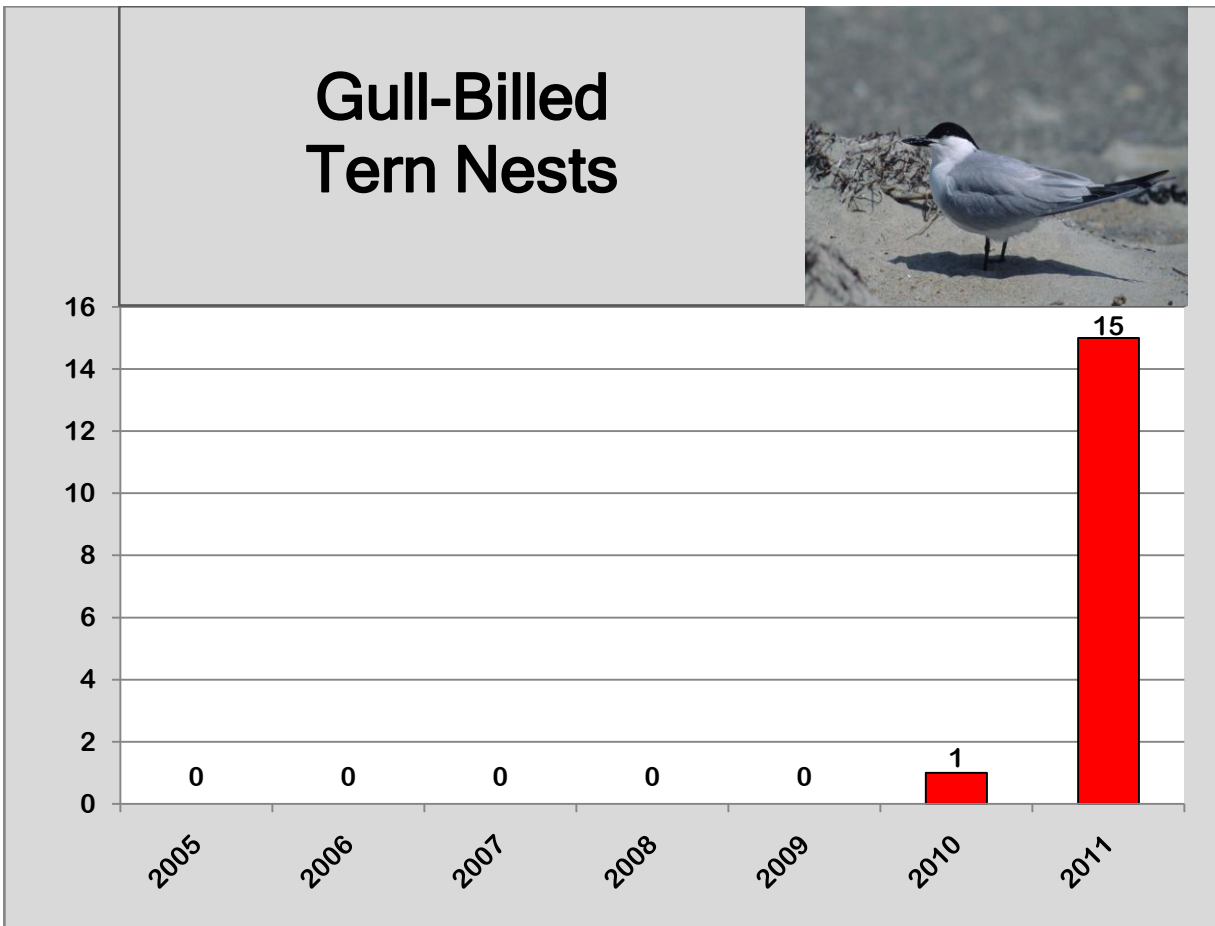
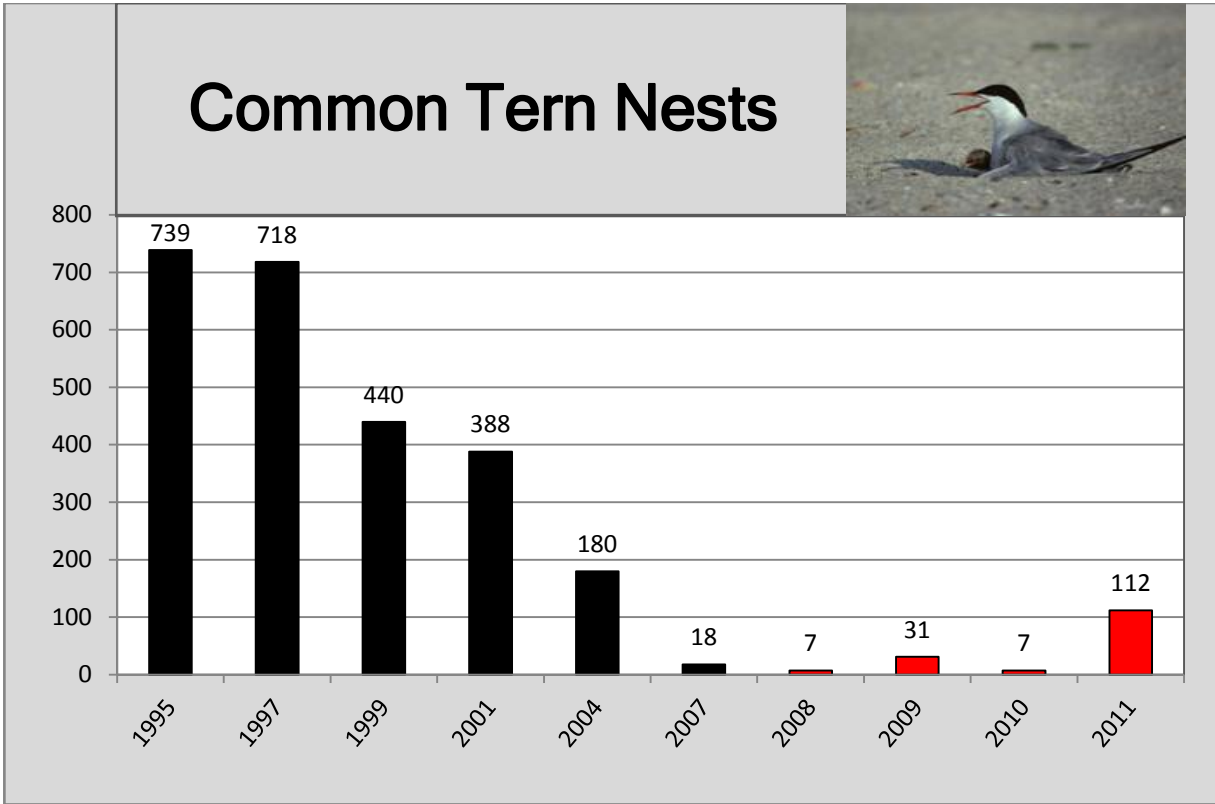


Statistics are based on the Cape Hatteras National Seashore 2010 Annual Resource Reports by NPS, except 2011 statistics, which are based on the NPS Resource Management Field Summary for 2011 Breeding Season. Statistics exclude nests laid on Green Island, which is not accessible by vehicle.





The 2010 annual report states that a “change in survey dates from the previous year led to a potential under-estimate of [colonial waterbird] nests for the Seashore” in 2010.



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