

NEGOTIATED RULEMAKING COMMITTEE
3rd Regulatory Negotiation Meeting
Avon Fire Hall, Avon, NC

Draft Final Agenda
March 18-19, 2008

GOALS

- Balance opening up discussion and understanding of issues with seeking potential solutions and agreements
- Jointly map existing activities, access and closures
- Discuss “seasonal” and “natural resource” closures
- Identify issues, potential recommendations, and seek agreement, where possible
- Develop and organize work for coming months
- Obtain input from the public

DAY I

- 8:00 Breakfast
- 8:30 Welcome to All and Opening of the Meeting, *Mike Murray, NPS, Designated Federal Official (DFO)*
- 8:45 Review agenda, *Facilitators and Agenda Planning Committee*
Review and approve February meeting summary, *Facilitators*
- 9:00 Mapping *current* uses (people, birds and turtles, etc.), access, closures
- The Committee will build a common understanding of how the beach is used *currently* by people, birds, turtles, etc. through jointly viewing maps and discussing areas of use, access (locations and kinds), and closure
 - Once the current situation has been identified, the group may discuss understanding of *past* closures and openings prior to the present conditions
 - Identify areas of agreement and areas in dispute for further discussion
- 10:30 Break
- 10:45 Continue joint “mapping”
- 12:00 Public Comment
Specific comments are requested on the following --
- What are the most important issues about uses, access or closures and why?
 - What information does the Committee need to address these issues?
- 12:30 Lunch
- 1:15 Report from Seasonal Closure Work Group
- Topics discussed
 - Identify and discuss major issues
 - Seek agreement, to the extent possible, on definitions, dates and times, etc.
 - Next steps

- 3:00 Break
- 3:15 Natural Resource Closures
- NPS provides background presentation on how natural resource closures are currently managed, and implications of pending litigation
 - Identify and discuss major issues
 - Identify next steps to continue exploring issues and identifying options
- 5:00 Summary of Day and Closing Remarks
- 5:30 Adjourn
- 7:15 Socio-Economic Subcommittee Meeting and Discussion (?)

DAY II

- 8:00 Breakfast
- 8:30 Review of Day I and Day II Agenda
- 8:45 Work Group meetings
- Vehicle characteristics, Carrying Capacity, Permits/Passes
 - Other (?)
- 10:00 Break
- 10:15 Reports from Work Groups and Economic Subcommittee
- Summary of discussions
 - Identify recommendations, if any, and key topics for further discussion
 - Seek agreement, where possible, on specific issues
- 12:00 Public Comment
Specific comments are requested on the following --
- Issues and potential options for ORV management due to natural resource closures
 - Issues raised in Work Groups or Socio-Economic Subcommittee
- 12:30 Working Lunch
- 1:15 Continue discussion of Day 1 Issues or topics from Work Groups/Subcommittee
- 2:30 Break
- 2:45 Planning for future meetings
- Prioritize key issues for further discussion
 - Work Groups, Socio-economic Subcommittee, additional subcommittees?
 - Agenda topics for next meeting -- May
 - Action items
 - Other?

3:45 Summary and Closing Remarks
4:00 Adjourn

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**Cape Hatteras National Seashore Negotiated Rulemaking
Meeting 2 – February 26-27, 2008
Avon, NC
*Draft Meeting Summary***

Summary of Consensus Agreements

The Cape Hatteras National Seashore Negotiated Rulemaking Committee reached consensus on the following during the meeting:

1. Approved the January meeting summary, with one addition.
2. Approved the charge to the Socio-Economic Analysis and Agenda Planning subcommittees.
3. Removed campfires from the list of topics to be addressed by the Committee.
4. Identified the safety equipment required for vehicles traveling on the beach: a jack, a shovel, a low tire pressure gauge and a jack support.
5. Established 25mph as the maximum speed limit on the beach.
6. Approved language about warnings as general advice to NPS in the final report of the Committee rather than in the proposed regulation.
7. Formed four workgroups – carrying capacity; seasonal closures; vehicle characteristics; and permits, passes, cards etc.

Welcome to All and Opening of the Meeting

Mike Murray, Cape Hatteras National Seashore (CAHA) Superintendent and Committee member, opened the meeting in his capacity as the designated federal official (DFO) for the Cape Hatteras National Seashore Negotiated Rulemaking process. Mr. Murray welcomed everyone and gave an overview of the agenda items to be accomplished during the two-day meeting.

Updates

NEPA Process: NPS received 385 workbooks. NPS expects to make a summary of comments available by the March Committee meeting.

Notice of Upcoming Committee Meetings: The Federal Register notice of the next three Committee meetings should be published by February 29. [Note: the notice was published on February 28, 2008.]

Peer Reviews: The instructions for the peer reviewers of the Neal and Vogelsong studies are being reviewed by NPS. Once they are finalized, NPS will share them with the Committee and contact reviewers.

Committee Membership: There are two open alternate seats on the Committee, both for Civic and Homeowner Association seats. DOI will announce the vacancies and seek

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applicants through the Federal Register. NPS will advise the Committee when the notice is published.

Revised Proposed Rule: FWS will be releasing a revised proposed critical habitat rule and provide an opportunity for public comment. FWS also will be revising the economic analysis. A final decision is expected in fall 2008.

Related Litigation: On February 20, 2008, the Southern Environmental Law Center (SELC), on behalf of National Audubon and Defenders of Wildlife, requested the court issue a preliminary injunction. Committee members shared their views on the proposed injunction, including a commitment to keep working to resolve conflicts and to develop a proposed rule, concerns that the litigation distracts from the negotiated rulemaking efforts, and views about the economic and the ecological impact of vehicle use on CAHA. Committee members confirmed they are committed to the negotiated rulemaking as long as the Committee is working productively. Derb Carter addressed the following questions:

- *Will SELC, Defenders, and National Audubon consider a long-term plan that might include something less than what they requested from the court?* The lawsuit is aimed at the interim species management plan to find a solution that protects species on the seashore and is based on sound science. The preliminary injunction motion sought to have NPS allow ORV use only in the areas described in the moderate protection protocol identified by USGS for piping plover. SELC, Defenders, and National Audubon are willing to consider alternatives to the moderate protection protocol depending on the scientific basis and to consider implementation strategies.
- *Is the injunction intended to be in place from now until the negotiated rulemaking is completed, or just for this season?* This preliminary injunction was requested for this breeding season, and to stay in place until the court addresses the merits of the case, which could be before the next breeding season.
- *Does SELC have a direct financial interest?* No, SELC does not charge fees to their clients for representing them.

Spring Planning: NPS is in re-consultation with FWS on the interim management strategy. NPS anticipates an amended biological opinion in mid-March, after which staff will complete habitat assessments so that pre-nesting closures are based on habitat conditions and can be completed prior to April 1. NPS expects to share its reasoning on closures based on the interim species management strategy and the FONSI, with the public in advance of implementation.

Socio-Economic Analysis Subcommittee

The Committee reviewed the draft charge for the Socio-Economic Analysis Subcommittee. The draft charge was revised to clarify expectations on attendance and to add information about groundrules. The Committee adopted the revised charge.

Committee members briefly discussed the socio-economic analysis. There was suggestion to include “intangible values” in the analysis, and to ensure that any lists used for sampling are

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legitimate and inclusive. The Subcommittee will present any recommendations or joint advice to the Committee for decision-making.

Mike Murray informed the Committee that to avoid the perception of a conflict of interest NPS will fully fund the socio-economic studies done for the NEPA process and the negotiated rulemaking, rather than accepting funding from outside sources.

Agenda Planning Subcommittee

The Committee reviewed the draft charge for the Agenda Planning Subcommittee. The draft charge was revised to include the changes in the charge to the Socio-Economic Subcommittee concerning attendance and ground rules. The Committee adopted the revised charge.

Identifying Discussion Topics on ORV Management

The Agenda Planning Subcommittee recommended the Committee identify the topics for discussion at this meeting. The subcommittee members proposed to separate ORV management and natural resource issues and developed a matrix of ORV management topics based on the NEPA workbook. The matrix lists the issues without prioritization. Natural resource issues would be addressed later.

The Committee reviewed the issues matrix and discussed the:

- need for a distinct topic for access for commercial fishermen and to consider the impact on commercial fishing when considering the issues
- addition of “self-contained vehicles” to the list of vehicle types
- challenge of determining where NPS and private land meet near the villages
- statutory basis for determining carrying capacity and looking at all users, not just ORV users
- term access is used to describe both vehicular access generally and access for people with disabilities and that meets ADA requirements specifically
- authority for NPS to collect fees

Mike Murray reviewed the general authority for NPS to collect fees on CAHA under the Federal Lands Recreational Enhancement Act (FLREA) and the Park Uses Authority. The Park Uses Authority allows for special permitting of a particular subset of users if their activity is beyond typical recreational user activities and the Park incurs additional administrative costs. Permits under the Park Uses Authority are intended to cover program costs. An example is charging visitors a fee for participating in fishing tournaments. A user fee charged to all visitors to CAHA would fall under FLREA, which often requires additional amenities. The Committee’s discussions and decisions about revenue collection will determine which authority is triggered.

Committee members ranked the ORV management topics in the matrix into three categories for purposes of selecting topics for discussion at the meeting and identifying the major issues

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for the Committee to address. Committee members were asked to identify which issues were of high, medium and low importance to the their constituency.

All Committee members identified closures as an important issue. The following issues were considered high importance to the most Committee members: education, accessibility, frequency and kind of law enforcement, carrying capacity, permits/licenses/passes/cards, routes, signage seasons, times of day. Most Committee members considered the following issues of medium or lower importance: fees, ramps, village beaches, vehicle characteristics, parking, beach fires, fines and penalties, speed limits, warnings, mapping, outreach.

Speed Limits for Driving on CAHA

The Committee agreed the maximum speed limit for driving on CAHA will be 25mph, unless determined otherwise.

The Committee discussed a variety of options for speed limits, including a two-tiered and three-tiered approach, on the beach and in front of villages. The Committee also discussed the relationship of speed limits to other issues.

Committee members explored the reasons to limiting vehicle speed on the beach and in front of the villages. These included safety for drivers in uninhabited areas, the wellbeing of the resource itself, pedestrian safety, and the safety of wildlife species. Piping Plover chick behavior around vehicles also was discussed, and FWS noted that Plover chicks' instinct is to duck out of sight of predators and vehicles, rather than to move out of the way. Other species move out of the way of vehicles. Several committee members would like to identify clear criteria for determining when particular speed limits come into effect so that changes in speed limit are made formally, not subjectively. NPS and several others prefer speed limits that are simple for enforcement, signage, and driver understanding.

Open issues:

- Classifying places or times that will require lower speed limits, including:
 - inter-dunal roads/trails, sound side, ramps (possibly in the same category as inter-dunal roads), in front of villages, and near seasonal, safety or resource closures,
 - open (uninhabited), inhabited (in front of villages), areas of special concern (safety, resource closures, etc.)
 - open beaches with no houses in the low season (higher mph), in front of villages when they are open and on open beaches during the high season (lower mph)
 - open beach, within 100' of a person, vehicle or ramp
- Defining ramps, one suggestion being the area between the pavement and beach.
- Maximum speed limit for special areas/times – 10mph or 15mph. Some Committee members noted drivers often go slower than the speed limit on the beach near pedestrians and obstacles, and questioned the difference of an average driving speed of 10 or 15 mph on the beach. Some suggested that 10mph near densely populated

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areas would be safer for pedestrians. NPS staff said that implementing and enforcing a speed limit structured as a certain number of feet from a person or vehicle might be difficult and would require substantial driver education.

- Signage - NPS must make users aware of speed limits, whether through signs, maps, or other techniques. Frequent changes in speed limits in different areas of the beach or over time make this job more difficult for Park staff. Some Committee members suggested signs indicate the reason for a lower speed limit (e.g. Village, 15mph) and using signs saying “slow down” or “caution” in certain places such as on ramps, rather than formally reducing the speed limit.

Information requested:

- Possible resource-related reasons for 10mph rather than 15mph near a resource closure?
- Design specifications on ramps including construction standards, air tanks, signage, and facilities associated with them.

Access

Designating Routes and Areas

Designating routes and areas for access is a fundamental requirement of 36 CFR 4.10B and of Executive Order 11644. In designating routes and areas, the Endangered Species Act (ESA), the Organic Act, NPS Management Policies 2006 and relevant case law must be considered.

Open issues:

- Criteria for designating routes and areas. The Executive Order and the Bureau of Land Management both have criteria. Criteria mentioned by Committee members include designating areas and routes so as to be cognizant of:
 - minimizing damage to soil, water, vegetation or other federal lands resources
 - minimizing harassment of wildlife or significant disruption of habitat
 - minimizing conflicts between ORV and other existing or proposed recreational uses
 - minimizing noise in populated areas
 - not affecting natural, aesthetic or scenic values
 - not being situated in officially designated wilderness areas
 - recreational or economic needs of the community
 - protection of endangered and threatened species pursuant to ESA
 - the presence of vegetation
 - the need for flexibility given the ever-changing beach landscape
- Define terminology: routes, areas, trails and corridors, existing and proposed uses, impairment. Suggestions included:
 - Routes – a vehicle cannot travel off the route, linear area

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- Areas – general open space
- Existing and Proposed uses – should include historical use
- Trails – are typically what residents on CAHA call “roads,” for example Pole Road

Information requested:

- Large Maps showing what is open and closed to ORV driving and why (type of closure, if known), as well as areas important for different uses. Walker Golder volunteered staff from North Carolina Audubon to work with NPS to develop GIS mapping. The map will be for a particular date, and some Committee members requested NPS look at a date with maximal closures, perhaps from summer 2007.

Criteria for Change to Designated Routes and Areas (Closures)

Superintendents of National Seashores have the authority to institute ORV closures under 36 CFR §1.5 that are consistent with applicable policies. NPS currently places three types of closures at CAHA. Seasonal closures are closed May 15-September 15 or may be closed year round in specific locations, authorized locally under Superintendent’s Order #7. Natural resource closures are closed to protect particular resources, authorized under the Interim Species Management Strategy. Safety closures are primarily implemented for the safety of vehicle drivers and occasionally for other safety reasons, authorized locally under Superintendent’s Order #7.

Mike Murray indicated that he would like to base any changes to current management on logical criteria developed by the Committee. Someone raise the issue of closure-related compensation for drivers. There were divergent views on the starting point for this discussion, ranging from “open unless closed” to “closed unless open.” NPS requested that the Committee focus on what ORV management should be now and going forward. Some Committee members also raised concerns about closures that have never reopened and the need for closures to comply with all regulations.

Many Committee members expressed the importance of criteria for closures, monitoring and re-opening, and several that for every closing there be a trigger for reopening. Many also indicated the importance of closure terminology that accurately reflects the reason for closures. Committee members began discussing the need for criteria for changes to designated routes and areas (closures) and identified the following possible triggers for closures and re-openings:

- Fixed calendar date (for example May 15-September 15)
- Pedestrian density
- Area unsafe for driving or impassable (for example based on beach width or high/low tide marks)
- Natural resources in need of protection
- Incompatible use
- Historically closed areas

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Open issues:

- Type of closure – definitions or classifications and whether certain closures should apply to drivers and pedestrians
- Criteria – for NPS to use for closures, monitoring closed areas, and reopening closures
- Placement – the location of potential closures in ORV routes and areas
- Mitigation measures to reduce the impact of closures on ORV users (e.g. alternative access points)

Seasonal Closures

The Committee discussed seasonal closures, which might be described as pedestrian safety closures, as they are put in place primarily to protect pedestrians (as opposed to safety closures that are put in place primarily to protect drivers). Several committee members noted that natural resource closures could also be seasonal and that pedestrian safety/seasonal closures on a set calendar can be included in the regulation, rather than being listed as temporary closures. The following definitions were proposed for seasonal closures:

- A specific geographical area that can be predetermined to have a dense pedestrian walk-on population at particular times of year.
- A dense pedestrian or recreational use not compatible with an ORV area.
- A closure defined by dates.

Open issues:

- Do passive, non-ORV recreation areas that may be closed seasonally belong in this category?
- If dates are used as an opening/closing trigger, what criteria will be used to determine those dates?
- How to address the possibility of closing areas to ORV use at times and places without dense pedestrian use?
- Pedestrians may not use a beach with a lot of vehicular traffic, which would make it difficult to use pedestrian density as a trigger for closing a beach.

Safety Closures

The Committee discussed the current NPS definition for safety closures.* The Committee also discussed using NPS existing approach to monitoring and reopening safety closures

* “There may be situations that, for various reasons, the beach is not safe for vehicles to use. This has happened in the past and the park will continue to post cautionary signs near access ramps when possible. Providing for public safety is the responsibility of all CAHA employees. As such, CAHA law enforcement (LE) rangers have the authority to establish a safety closure for any condition, which provides a clear and imminent threat of significant bodily injury or death to the public or significant damage to personal property. Non-emergency service staff, when encountering such safety hazards,

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substituting weekly monitoring for monthly. Some Committee members expressed the desire to include mitigation measures such as providing alternative routes to the beach and questioned whether the approach would apply for all designated routes and areas.

Warnings

The Committee unanimously approved the following language on warnings to provide to NPS as general advice in the final report of the Committee rather than in the proposed regulation.

“Definitions: (1) Verbal or written notification made to an individual by a ranger that a violation of park regulations has occurred. (2) Does not carry a fine or require a court appearance. A record of a warning may or may not be kept on file.

“Possible Purposes, Interests and Questions: (1) A important tool to show understanding to first time offenders, separate mistakes and errors from disobedience, and signal that the Park seeks compliance from and not punishment of users. (2) Warnings are a traditional part of a “progressive” law enforcement program. NPS operates under the philosophy of using the “lowest effective level” of enforcement. For example, if a warning for a minor first offense corrects the behavior, then a warning is effective. If a blatant or serious offense occurs, a violation notice or an arrest may be the lowest effective level.”

This topic was discussed at an informal gathering of Committee members on the night of February 26. They reviewed the matrix language, believed warnings are a useful part of NPS enforcement protocol, and recommended the Committee adopt the matrix language on warnings. Other topics raised during the discussion concerned enforcement, monitors, and a possible neighborhood-watch type program that will be discussed with enforcement issues.

Campfires

The Committee agreed to remove campfires from the list of topics to be addressed by the Committee.

should establish initial safety precautions and contact the LE ranger staff to evaluate the situation and establish any necessary closures.

“A narrow beach, by itself, would not provide such a hazard. Tides which block access through portions of beaches occur periodically and predictably and are an obvious, easily avoidable hazard, and would not warrant a closure. Examples of hazards that would 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; or obstacles, such as exposed stumps or debris that blocks the entire width of the beach and can not be removed with out assistance or heavy equipment. Where hazards block only a portion of a beach, and safe access is available around the hazard, staff will mark and post the hazard to direct ORV traffic around the hazard.

“Safety closures will be monitored at least once monthly and reopened when the safety issue has sufficiently diminished to warrant reopening the section to ORV access. The same notification procedures as occurred when the closure was created will be followed when the closure is reopened.”

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An informal gathering of Committee members met on the night of February 26 discussed campfires, including: the current rules for campfires on the beach, whether there should be fees or permits for fires, whether NPS should count the number of fires on CAHA, and whether NPS should consider prohibiting campfires from midnight to 6:00 a.m. to reduce disturbances.

NPS noted that most fires are in front of villages and on spits. Some Committee members expressed concerns about banning campfires, and about the problems of rowdy beach parties on the Seashore. Many Committee members considered campfires outside the scope an ORV management plan.

Fines/Penalties

The topic of fines and penalties also was discussed briefly at the informal gathering of Committee members on the evening of February 26. They recommended the Committee not spend time discussing as a separate topic and instead discuss the types of sanctions NPS could use when discussing particular issues.

Vehicle Characteristics

The current standards for vehicles allowed to drive on CAHA follow the NPS code of regulations, which incorporates state regulations. Vehicles that drive on CAHA must be street legal in the state of origin. Vehicles prohibited from driving on highways in their own state are prohibited from driving on CAHA.

Some Committee members suggested that the goals of developing additional characteristics might be to ensure that drivers can rescue themselves, to prevent involuntary immobilization, or to encourage responsible use. Suggested issues to be addressed in a regulation include:

- Type of Vehicle (four-wheel drive or more, two-wheel drive, motorcycles, ATVs, DOT-approved)
- Safety Equipment (see below)
- Tire Pressure Requirements
- Tire Specifications
- First Aid Kits

There was discussion about inexperienced people getting stuck, whether getting stuck by, for example, not lowering tire pressure, and blocking traffic should be a violation, and the need for public education. Safe driving practices are important for responsible use, and if it's not required it's not enforceable.

Safety Equipment

The Committee agreed that vehicles traveling on the beach be required to carry a jack, shovel, low tire pressure gauge, and jack support.

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Committee members discussed the different types of safety equipment that could be required, the implications of requiring each piece of equipment, and whether the equipment should be required or recommended. The Committee decided not to specify the type of jack support. Discussion also included:

- The need for drivers on the beach to be prepared without placing burdensome requirements on beach visitors.
- A request for a transition time for adopting new requirements.
- Concern that often vehicles rescuing stuck vehicles are damaged.
- Concern that requiring equipment may lead inexperienced drivers to think they can safely operate that equipment.
- The suggestion that safety requirements for commercial fishermen should be managed separately.

Open issues:

- Should standards be set for vehicles (such as the ones in the list above) and operators (such as holding a valid state license, completing training, abiding by regulations)?
- Infrastructure needed for particular requirements? For example, if there are tire pressure requirements, should each ramp have an air pressure pump?
- How would NPS enforce the safety equipment requirement?

Tire Pressure

Committee members discussed whether a specific tire pressure should be required on the beach. Many recommended 20psi, if it was acknowledged that driving or extra weight could lead to tire pressure to increase closer to 25psi. NPS noted that their priority is for drivers to air down, rather than focus on a specific air pressure. The following suggestions were made: air down to 20psi prior to approaching a ramp and carry a tire gauge, and pull-outs at all access points if airing down is required. Tire pressure levels may be difficult to enforce.

Work Groups

Four workgroups were formed to set up discussions for the March meeting:

- Carrying capacity: Thayer Broili, Carla Boucher, Renee Cahoun, Susan Cameron, Bob Davis, Jim Keene and Jim Lyons
- Permits, licenses, passes or cards: Carla Boucher, Bob Eakes, Walker Golder, Larry Hardham, Destry Jarvis, Wayne Mathis, Mike Murray, Patrick Paquette, and Michael Peele
- Seasonal closures: John Alley, Frank Folb, Stephen Kayota, Jim Lyons, Wayne Mathis, Carolyn McCormick (or Renee Cahoun depending on availability), Judy Swartwood, Jeff Wells, and Pat Weston
- Vehicle characteristics (e.g. types of vehicles, tires, wheels and tire pressure): Ronald Bounds, Carla Boucher, Jim Keene, Patrick Paquette, and Paul Stevens (in place of Mike Murray, who initially indicated that he would participate)

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Public Comments (February 26 and 27)

Ted Hamilton advised the Committee to look at all habitat and land in the area, not just the land within Park boundaries when trying to understand and decide about future use and ORV issues. He also questioned the criteria for Committee participation and what happens if particular Committee seats are unrepresented at multiple Committee meetings.

Jim Harris requested the litigants to stop working through lawsuit, that critical habitat and ORV use be discussed together, and noted that the socio-economic analysis data may be ineffective if there are beach closures soon as a result of litigation. He noted that bumps and soft sand are both effective at keeping vehicle speeds low, especially on ramps. He also recommended prohibiting driving or walking that causes unreasonable damage.

Ginny Luizer noted the litigation was filed after the Notice of Intent for this Committee to be formed, and concern the litigants might have a fixed idea of acceptable negotiated outcomes.

Barbara Ackley spoke about pairs of nesting Piping Plover on CAHA over the past few years, and weather, predation and abandonment as the primary causes of nest loss in 2007. She noted the importance of looking at the connections between vegetation, habitat and ORV use and reminded Committee members that ORVs make recreation on CAHA possible for those unable to walk to or on the beach.

Richard Perkins, from the Ocracoke Invitational Surf Fishing Tournament, asked the Committee to protect vehicular access.

David Masters, from the Nags Head Surf Fishing Club, indicated that it would be impossible to run a tournament without vehicles on the beach, and that prohibiting ORVs on the beach would destroy the local economy.

Rob Alderman, the owner of three Hatteras Island businesses that depend on surf fishing, expressed concern for the future of people living on the Outer Banks due to this rulemaking. He also noted that signage will not prevent bad behavior on the beach.

Fleetwood Pierce expressed concern that the Committee would destroy what has brought him to the Outer Banks since the 1950s.

Mike Berry noted the litigation does a disservice to an inclusive public process and the importance of sound science and good public education.

John Mortenson, who uses an ORV for transportation to outdoor activities, suggested that closures attract species to an area and the species should be relocated to safer areas.

Anthony Fletcher indicated that driving on the beach has always been important and the regulatory negotiation threatens a way of life.

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Carol Garris expressed concern about the residents' economic survival if driving on the beach is prohibited, and indicated that peoples' lives are as important as birds' lives.

Hawk Hawkins indicated that four generations of his family have recreated on the beach with vehicles, and he wants a similar experience and memories for his children.

John Homely indicated NPS manages the beach well and requested families be allowed to keep recreating on the beach as is.

In response to questions posed during public comment about participation on the Committee, NPS referred to the Committee's groundrule on attendance, which provides that poor attendance or not participating in good faith are grounds for the DFO to recommend to the Secretary of Interior that someone be removed from the Committee. Committee members were requested to notify each other or the facilitators if they are unable to attend a meeting.

Mike Murray thanked participants for their efforts and adjourned the meeting at 4:00pm.

Attachments

- A. Attendance
- B. Action Items
- C. Materials Distributed to the Committee

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Attachment A: Attendance

REG NEG COMMITTEE MEMBERS					
Last Name	First Name	Seat	Organization	Principal or Alternate	Date Present
Alley	John	User Groups/Open Access	Outer Banks Preservation Assoc	P	Feb 26 & 27
Ballance	Gene	County Govt	Hyde County, NC	A	Feb 27
Benjamin	Pete	Federal Govt	USFWS, Raleigh Field Office	P	Feb 26 & 27
Boucher	Carla	User Groups/ORV Use	United Four Wheel Drive Assoc	P	Feb 26 & 27
Bounds	Ronald	User Groups/Rec Fishing	United Mobile Sportfishermen	A	Feb 26 & 27
Broili	Thayer	Federal Govt	Cape Hatteras National Seashore	A	Feb 26 & 27
Cahoon	Renee	Tourism, Visitation & Business	Outer Banks Visitor Bureau	A	Feb 27
Cameron	Susan	State Govt	NC Wildlife Res. Comm	A	Feb 26 & 27
Carter	Derb	Enviro. & Nat. Res. Cons. (S/R)	Southern Enviro. Law Center	P	Feb 26 & 27
Couch	John	User Groups/Open Access	Outer Banks Preservation Assoc	A	Feb 26 & 27
Davis	Robert	User Groups/Rec Fishing	Cape Hatteras Anglers Club	A	Feb 26 & 27
Doerr	Patricia	User Groups/Rec Fishing	American Sportfishing Assoc	A	Feb 26 & 27
Duke	C.A.	Civic & Homeowner Assoc	Rodanthe-Waves-Salvo Cvc Assoc	P	Feb 26 & 27
Eakes	Bob	User Groups/Rec Fishing	American Sportfishing Assoc	P	Feb 26 & 27
Esham	David Scott	County Govt	Hyde County, NC	P	Feb 26
Folb	Frank	Civic & Homeowner Assoc	Avon Property Owners Assoc	P	Feb 26 & 27
Foreman	Trip	Other User Group	Watersports Industry Association	P	Feb 26 & 27
Foster	William	Commercial Fishermen	NC Fisheries Association	A	Feb 26
Golder	Walker	Enviro. & Nat. Res. Cons. (S/R)	Audubon North Carolina	P	Feb 26 & 27
Goodwin	David	Tourism, Visitation & Business	Cape Hatteras Business Allies	A	Feb 26 & 27
Gould	Burnham	Other User Group	Cape Hatteras Recreation Alliance	A	Feb 26 & 27
Hagedon	Sam	Tourism, Visitation & Business	Outer Banks Chamber of Comm	A	Feb 26 & 27
Hardham	Larry	User Groups/Rec Fishing	Cape Hatteras Anglers Club	P	Feb 26 & 27
Jarvis	Destry	Enviro. & Nat. Res. Cons. (N)	Ntrl Rsrc Defence Cncl & The Wilderness Soc	P	Feb 26 & 27
Joyner	David	User Groups/ORV Use	NC Beach Buggy Assoc	A	Feb 26 & 27
Judge	Warren	County Govt	Dare County	P	Feb 26 & 27
Kayota	Steven	Civic & Homeowner	Hatteras Island Homeowners	P	Feb 26 & 27

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		Assoc	Coalition		
Keene	Jim	User Groups/ORV Use	NC Beach Buggy Assoc	P	Feb 26 & 27
Kingery	Roy	Civic & Homeowner Assoc	Hatteras Village Civic Assoc	P	Feb 26 & 27
Leggat	Scott	Tourism, Visitation & Business	Outer Banks Chamber of Comm	P	Feb 26 & 27
Lyons	Jim	Other User Group	Cape Hatteras Recreation Alliance	P	Feb 26 & 27
Maddock	Sidney	Enviro. & Nat. Res. Cons. (S/R)	National Audubon Society	A	Feb 26 & 27
Mathis	Wayne	State Govt	NC Marine Fisheries Commission	P	Feb 26 & 27
McCall	Aaron	Enviro. & Nat. Res. Cons. (N)	The Nature Conservancy	A	Feb 26 & 27
McCormick	Carolyn	Tourism, Visitation & Business	Outer Banks Visitor Bureau	P	Feb 26 & 27
Milne	Robert	Enviro. & Nat. Res. Cons. (N)	Coalition of NPS Retirees	P	Feb 26 & 27
Moore	Raymond Neal	Other User Group	Cape Hatteras Bird Club	A	Feb 26 & 27
Murray	Michael	Federal Govt	Cape Hatteras National Seashore	P	Feb 26 & 27
Paquette	Patrick	User Groups/Rec Fishing	Recreational Fishing Alliance	P	Feb 26 & 27
Peele	Michael	Commercial Fishermen	NC Fisheries Association	P	Feb 26 & 27
Piner	Lyle	User Groups/ORV Use	United Four Wheel Drive Assoc	A	Feb 26 & 27
Rettie	Dwight	Enviro. & Nat. Res. Cons. (N)	Coalition of NPS Retirees	A	Feb 26 & 27
Rylander	Jason	Enviro. & Nat. Res. Cons.(N)	Defenders of Wildlife	P	Feb 26 & 27
Swartwood	Judy	Tourism, Visitation & Business	Cape Hatteras Business Allies	P	Feb 26 & 27
Weston	Pat	Civic & Homeowner Assoc	Greater Kinnakeet Shores Homeowners Inc	A	Feb 26 & 27
Winslow	Sara	State Govt	NC Marine Fisheries Comm	A	Feb 26 & 27
Wrenn	Lee	County Govt	Dare County	A	Feb 26

AGENCY AND OTHER STAFF

<u>Last Name</u>	<u>First Name</u>	<u>Organization</u>	<u>Date Present</u>
Fox	Lori	Louis Berger	Feb 26 & 27
Holda	Cyndy	NPS	Feb 26 & 27
Martinez	Norah	NPS	Feb 26
Waanders	Jason	Office of the Solicitor	Feb 26 & 27
Ferguson	Ona	CBI	Feb 26 & 27
Field	Pat	CBI	Feb 26 & 27
Fisher	Robert	Fisher Collaborative Services	Feb 26 & 27

3/16/08

MEMBERS OF THE PUBLIC				
Last Name	First Name	Organization	Made Public Comment?	Date Present
Ackley	Barbara	Self	Y Y	Feb 26 & 27
Alderman	Rob		Y Y	Feb 26 & 27
Bell	John	Self		Feb 26
Benson	John	Self		Feb 27
Berry	Mik	Self	N Y	Feb 26 & 27
Cohen	Tunia	Self		Feb 27
Ebert	Jim	Self		Feb 26 & 27
Edwards	JB			Feb 27
Eubank	Peggy	North Banks Bird Club		Feb 26
Fletcher	Anthony	Self		Feb 27
Garris	Carol		Y	Feb 27
Gazaway	James	Self		Feb 26
Golding	Jeffrey	Self		Feb 27
Gueireri	Christian	Self		Feb 26
Hamilton	Ted	Self	Y Y	Feb 26 & 27
Harris	Jim	Self	Y	Feb 26 & 27
Hawking	Hawk	OBPA/IND.	Y	Feb 27
Homey	John	Self	Y	Feb 27
Keel	Earl	Self		Feb 26
Lauren	Diehl			Feb 27
Laws	Joe	Self		Feb 26
Loizer	Ginny	Self	Y	Feb 26
Masters	Dave	NHSFIT	Y	Feb 26
Moore	Pat	Cape Hatteras Bird Club		Feb 26 & 27
Mortensen	John	Self	N Y	Feb 26 & 27
Mulle	Robert	Self		Feb 26
Oakes	Bob			Feb 27
Perkins	Richard	OSFIT	Y	Feb 26
Pierce	Fleetwood	Self	Y	Feb 27
Pierce	James			Feb 27
Roach	Ronnie			Feb 27
Ryan	Steve	Self		Feb 26 & 27
Sybert	David	Self		Feb 26
Thomas	Nevin	Self		Feb 26 & 27
Weston	Jinn			Feb 26
Willard	Daniel	Self		Feb 26 & 27

3/16/08

Attachment B

**Cape Hatteras National Seashore Negotiated Rulemaking
Meeting 2 – February 26-27, 2008
Draft Summary of Action Items**

Task	From	To	Deadline
Distribute final versions of the January meeting summary, the socio-economic analysis subcommittee charge and the agenda planning subcommittee charge as adopted on February 26 and 27, 2008.	CBI	Committee	Done
Establish workgroups by sending workgroup email lists to participants of each workgroup.	CBI	Workgroups	Done
Distribute Action Item list from Meeting 2.	CBI	Committee	Done
Determine how to ensure any lists used for sampling are legitimate and inclusive.	Socio-Economic Analysis Subcommittee	Committee	Ongoing
Report on how non-economic values will be quantified.	CBI	Socio-Economic Analysis Subcommittee	Next Socio-Economic Analysis Subcommittee meeting
Manage the next socio-economic analysis subcommittee meeting.	CBI	Socio-Economic Analysis Subcommittee	Once NPS proposed survey approach is released
Develop draft agenda for March meeting.	Agenda Planning Subcommittee	Committee	March 11, 2008
Prepare draft meeting summary and distribute	CBI	Committee	March 13, 2008
Convene Permits/Licenses Workgroup	CBI	Workgroup	March meeting
Convene Seasonal Closures Workgroup	CBI	Workgroup	March meeting
Convene Carrying Capacity Workgroup	CBI	Workgroup	March meeting
Convene Vehicle Characteristics Workgroup	TBD	Workgroup	March meeting
Bring workbook maps to Committee meeting.	NPS	Committee	March meeting
Produce draft maps of CAHA showing areas open and closed for ORV use on a particular date, seasonal areas, ramps, data from 1978 plan and, if possible, resource closures and parking areas.	NPS and North Carolina Audubon	Committee	March or May meeting, depending on level of difficulty
Follow up on Ethics questions submitted to DOI office after January meeting	CBI	Committee	March

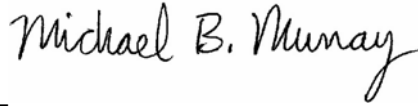
3/16/08

Attachment C

**Cape Hatteras National Seashore Negotiated Rulemaking
Meeting 2 – February 26-27, 2008
*Materials Distributed***

1. Draft Agenda, also distributed via email on February 19, 2008
2. Draft Socio-Economic Analysis Subcommittee Charge, dated February 15, 2008
3. Draft Agenda Planning Subcommittee Charge, undated
4. Issues Chart, dated February 19, 2008
5. Socio-Economic Analysis Subcommittee Charge, dated February 26, 2008
6. Agenda Planning Subcommittee Charge, dated February 26, 2008
7. Cape Hatteras National Seashore Off-Road Vehicle Routes map

**Superintendent's Order #07:
ORV Management**



Approved:

—
Michael B. Murray, Superintendent

Effective Date: May 9th, 2006

Sunset Date: When revised or amended by the Superintendent.

Introduction:

Off-road vehicles (ORVs) are considered a traditional and appropriate use at Cape Hatteras National Seashore. In accordance with the 1984 General Management Plan, selected beaches will continue to be open for ORV recreational driving. The Seashore is in the process of initiating a long term ORV management plan and regulation. Until the plan and regulation are established, this superintendent's order provides interim park policy on the management of ORV use and serves as a complement to the Interim Protected Species Management Strategy, which provides additional guidance on the use of ORVs in the vicinity of resource protection closures. All aspects of this policy are subject to change during the development of the long term plan and regulation.

Objectives:

The objectives of this policy are as follows:

To provide reasonable opportunities for motorized as well as non-motorized beach access and use.

To provide for resource protection as well as for safe and consistent management of ORV access and use on seashore beaches.

To provide for adaptive management and efficiency of implementation in response to a frequently changing coastal environment.

Protected Species Management:

Protected species management activities, including resource closures and ORV requirements related to resource closures, are addressed separately in the Interim Protected Species Management Strategy.

Responsibilities:

The Superintendent is responsible for review and approval of this policy.

The Chief Ranger is responsible for managing operational implementation of this policy.

Field law enforcement rangers are responsible for implementing this policy and are delegated the authority to place and move corridor signs and markers in accordance with this policy.

Identification and Marking of ORV Use Areas (Corridor):

ORV use areas (or ORV “corridor”) will be identified in certain sections of Cape Hatteras National Seashore (CAHA). The use areas are currently being set in response to beach and dune changes which result in the opening of sensitive habitat and to provide for more consistent identification of areas open to ORV use. Additional ORV use areas may be established, in the future, as additional storms alter dune lines, eliminating the dunes as a physical barrier to ORV use.

The ORV corridor will be similar in size and shape to the historical shoreline use patterns. Identification of ORV use areas will not impact the number of ramps open to allow ORV access to seashore beaches.

The ORV corridor will be marked by posts placed approximately 150 feet landward from the average, normal high tide line, or if less than 150 feet of space is available, at the vegetation or the toe of the remnant dune line; except as noted in the Interim Protected Species Management Strategy. The corridor width will fluctuate over time due to the dynamic nature of beach and surf. Beach areas landward of the post line, although not open to ORV use, will be open to pedestrian use unless otherwise posted. The location of the posts will be evaluated at least monthly for proper distance placement in relation to changing shorelines.

The park will transition from white carsonite posts to a standard use of brown carsonite posts to mark the ORV corridor and to post short-term traffic control signs. In most locations, posts will be evenly spaced and placed at a uniform distance of approximately 100 feet apart. However, more frequent posts may be placed in specific locations as needed where terrain, non-compliance with the corridor boundaries, and/or proximity to resource closures warrant it. Wooden posts will be used to post long-term signs or mile markers at fixed locations.

To alleviate confusion regarding public access, if resource closures extend up to or into ORV use areas, the posts marking the corridor will be removed, and the area will be posted with resource closure signing only. When the resource closure is removed, the posts marking the ORV corridor will be moved back to their original position or to the current corridor line.

An access corridor will be established to provide access from the ORV use area along the ocean beach to the northeast corner of the pond on Oregon Inlet Spit.

Speed Limits:

The speed limit in the ORV corridor will be 25 mph unless otherwise posted. The speed limit in narrow or congested areas will be posted as 10 mph. During off season, areas in front of villages that are open to ORV use will be posted with a 10 mph speed limit.

Seasonal Closures:

Seasonal ORV closures will be established annually in beach areas which by reason of heavy pedestrian, swimming, wildlife or other use are deemed seasonally unsuitable for ORV use from May 15 through September 15.

Seasonally closed areas shall consist of but are not be limited to the following areas:

- Bodie Island, Ramp 1 to 0.6 miles South of Ramp 2 (i.e., Coquina Beach);
- Hatteras Island, beach areas fronting the villages of Rodanthe, Waves, Salvo and Avon;
- Hatteras Island, beach from the north boundary of Buxton to Ramp 43;
- Hatteras Island, beach fronting the villages of Frisco and Hatteras;
- Ocracoke Island from 0.5 miles South of Ramp 67 to 0.25 miles North of Ramp 70.

Seasonally closed areas shall be identified by signs at both ends of the area, at all other vehicle access points to the area and shall be indicated on maps available for viewing at the offices of the Superintendent, each District Ranger, at each Visitor Center and at all other public contact stations.

Safety Closures:

There may be situations that, for various reasons, the beach is not safe for vehicles to use. This has happened in the past and the park will continue to post cautionary signs near access ramps when possible.

Providing for public safety is the responsibility of all CAHA employees. As such, CAHA law enforcement (LE) rangers have the authority to establish a safety closure for any condition which provides a clear and imminent threat of significant bodily injury or death to the public or significant damage to personal property. Non-emergency service staff, when encountering such safety hazards, should establish initial safety precautions and contact the LE ranger staff to evaluate the situation and establish any necessary closures.

A narrow beach, by itself, would not provide such a hazard. Tides which block access through portions of beaches occur periodically and predictably and are an obvious, easily avoidable hazard, and would not warrant a closure. Examples of hazards that would 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; or obstacles, such as exposed stumps or debris that blocks the entire width of the beach and can not be removed with out assistance or heavy equipment. Where hazards block only a portion of a beach, and safe access is available around the hazard, staff will mark and post the hazard to direct ORV traffic around the hazard.

Emergency/Safety Closure Notification:

Any employee initiating an emergency safety closure will notify their supervisor immediately. The Superintendent and Division Chief will be notified as soon as possible of any emergency closures. As soon as possible after the emergency closure has been established, the employee will complete a "Closure Request Form" (attached) and submit the form for final approval through the chain of command. 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.

Safety closures will be monitored at least once monthly and reopened when the safety issue has sufficiently diminished to warrant reopening the section to ORV access. The same notification procedures as occurred when the closure was created will be followed when the closure is reopened.

References:

1984: January. General Management Plan, Cape Hatteras National Seashore.

2006: Interim Protected Species Management Strategy and Environmental Assessment, Cape Hatteras National Seashore

TABLE 2: ACTION TO BE IMPLEMENTED —SPECIES MANAGEMENT

Activity	
<p>Closures/ Buffers</p>	<p><u>Pre-Nesting:</u> American oystercatcher: March 15 Activate closures if a territory is established or a nest located. Closures removed when areas have been abandoned for a two week period. Piping plover: April 1 In February or March of each year, NPS natural resource staff to conduct an annual assessment of piping plover breeding habitat to plan pre-nesting closures in recent breeding areas that are adapted to current habitat and physiographic conditions. Close recent breeding areas by posting symbolic fencing by April 1. Remove closures if no bird activity is seen by July 15 or when area has been abandoned for a 2-week period, whichever comes later. Colonial waterbirds: May 1 Activate closures if a territory is established or a nest located. Closures removed when areas have been abandoned for a two week period. All Species: Designate a 100-foot-wide ORV and pedestrian corridor. Outside of ORV corridor, prohibit pedestrian access to breeding areas beyond the symbolic fencing. Delineate the corridor with posts placed up to 100 feet above the high tide line. In areas of reduced corridor width (i.e., narrower than 100 feet), post a reduced speed limit of 10 mph.</p>
	<p><u>Courtship/Mating:</u> Piping plover: If courtship or copulations are observed outside of existing closures on two consecutive survey days, establish or expand buffer to ensure 150-foot buffer for the observed birds. If additional closures are created around courtship/mating areas, adjust the ORV corridor whenever possible to allow vehicle passage. Allow management to be responsive to individual bird behavior when determining adequacy of closure size. American oystercatcher and colonial waterbirds: If territorial or courting birds observed outside of existing closures, based on bird behavior and suitable habitat, expand buffers to accommodate the birds. Provide ORV/pedestrian corridor above the high tide line.</p>
	<p><u>Nesting:</u> Piping plover: Establish 150-foot buffer/closure around piping plover nests occurring outside existing closures. Expand closures, if necessary, using flexible increments dependent on observed bird behavior. When resource closures are created around nests, adjust the ORV corridor whenever possible to allow vehicle passage. Reduce the width of the ORV corridor if necessary. In areas in which the buffer zone would eliminate the ORV corridor, identify alternate ORV routes if available or provide a bypass (see "Short-term Bypass Route Criteria" on page 11 of this FONSI) if possible. American oystercatcher: Establish buffer/closure based on adult's reaction to human disturbance. Closures vary in size dependent on best professional judgment. (from alternative D) When resource closures are created around nests, adjust the ORV corridor whenever possible to allow ORV passage. Reduce width of ORV corridor if necessary. In areas in which the buffer zone would eliminate the ORV corridor, identify alternate ORV routes if available, or provide a bypass (see "Short-term Bypass Route Criteria" on page 11 of this</p>

TABLE 2: ACTION TO BE IMPLEMENTED —SPECIES MANAGEMENT

Activity	
	<p>FONSI) if possible. Allow observations to be responsive to individuality in bird behavior when determining adequate size of closure zones around nests.</p> <p>Colonial waterbirds: Establish a buffer/closure of 150 feet to 300 feet around the nest or colony based on observed bird behavior, while maintaining ORV/pedestrian corridor. If the buffer and the corridor overlap each other, then staff will reduce corridor width if necessary. In areas in which the buffer zone would eliminate the ORV corridor, identify alternate ORV routes if available, or provide a bypass (see "Short-term Bypass Route Criteria" on page 11 of this FONSI) if possible. Allow observations to be responsive to individuality in bird behavior when determining adequate size of closure zones around nests.</p> <p>Reduce width of ORV/pedestrian corridors for American oystercatcher and colonial waterbirds will be approached as a research opportunity to gather data useful for the long-term ORV management plan/EIS to test for the distance at which vehicle disturbance to nesting American oystercatcher and colonial waterbirds occurs.</p> <p>All species:</p> <p>Allow observations to be responsive to individuality in bird behavior when determining adequate size of closure zones around nests.</p> <p>If nest is lost, buffers remain in place 2–3 weeks after nest is lost to determine if pair will re-nest, if no other species nesting in area.</p>
	<p><u>Adult Foraging:</u></p> <p>Piping plover: For adults foraging outside of a closure on two consecutive surveys, expand buffer to include foraging site. These closures are intended to provide foraging opportunities close to breeding sites.</p> <p>Colonial waterbirds, American oystercatcher, and Wilson's plover: No additional buffers/closures.</p>
	<p><u>Unfledged Chicks:</u></p> <p>Piping plover: Establish a minimum 600-foot buffer on either side of brood based on observation of bird behavior and terrain conditions at site. Based on observed behavior, buffer area may require expansion up to 3,000 feet if chicks are highly mobile. Based on observed behavior (i.e., mobility of the brood) and the capability to continually observe mobility and behavior, buffer zone can be reduced after the first week to no less than 300 feet, but may require expansion up to 3,000 feet if chicks are highly mobile. Buffer moves with chicks. Close bypass route at night if buffer zone, is less than 600 feet (as identified on p. 8 of the USFWS Amended Biological Opinion (2007) (attachment 1 to this FONSI)).</p> <p>When resource closures are created around broods, adjust the ORV corridor whenever possible to allow vehicle passage. Reduce ORV corridor if necessary. In areas in which the buffer zone would eliminate the ORV corridor identify alternate ORV routes if available. If there are no alternate ORV routes, then if possible establish a bypass (see "Short-term Bypass Route Criteria" on page 11 of this FONSI). Close beach to recreation access down to the waterline, if necessary to allow chicks access to foraging areas.</p> <p>American oystercatcher: Establish 150-foot to 300-foot buffer zone when unfledged chicks are present. Adjust buffer zone as needed when chicks are mobile. Provide alternate ORV/pedestrian access route or bypass to open areas beyond the closure, if possible.</p> <p>Colonial waterbirds: Establish 150-foot to 300-foot buffer zone when unfledged chicks present. Adjust buffer zone as needed when chicks are mobile. Provide alternate ORV/pedestrian access route or bypass to open areas beyond the closure, if possible.</p>

TABLE 2: ACTION TO BE IMPLEMENTED—SPECIES MANAGEMENT

Activity	
Non Breeding/ Wintering Closures	<p>For all species: Allow observations to be responsive to individuality in bird behavior when determining adequate size of closure zones around broods.</p> <p>Reopen 100-foot-wide ORV corridor in recent or current nesting areas after chicks fledged. Areas outside of corridor, including the upper beach remain available for protected species use. Re-establish 150-foot ORV corridor after August 31.</p> <p>For piping plover: Suitable interior habitats at spits and at Cape Point closed year-round to all recreational users to provide for resting and foraging for all species. For example, at present, such suitable habitats include ephemeral ponds and moist flats at Cape Point, Hatteras Spit, Ocracoke, and Bodie Island Spit. Actual locations of suitable foraging and resting habitat may change periodically due to natural processes.</p>
Sea Turtles	
Nest Closures/ Buffers	<p>Establish a buffer approximately 30 feet by 30 feet with symbolic fencing and signage around nest.</p> <p>Approximately 50–55 days into incubation, closures expanded to the surf line. The width of the closure based on the type and level of use in the area of the beach where the nest was laid:</p> <ul style="list-style-type: none"> a. vehicle-free areas with little or no pedestrian traffic – 75 feet wide (total width); b. villages or other areas with high levels of day use – 150 feet wide (total width); c. areas with ORV traffic – 350 feet wide (total width). <p>Opposite the surf line on the upper end of the closure, the closed area expanded to 50 feet where possible, but no less than 30 feet duneward from the nest. Traffic detours behind the nest area clearly marked with signs and reflective arrows.</p> <p>Where present within closure, vehicle tracks manually smoothed with rakes or a steel mat attached to an ATV, so as not to impede hatchlings attempting to reach the surf.</p> <p>Use light filtering fence behind nests nearing hatch dates to block light pollution from the villages and vehicles operating on the beach after dark.</p>
Nest Relocation	<p>When a nest is found, staff assesses need for nest relocation and follows relocation guidance identified in the NCWRC handbook.</p> <p>If it is determined the nest will not be relocated, it will be immediately protected with a symbolic fence measuring approximately 30 feet by 30 feet and signage.</p> <p>If a nest is threatened by a storm event, NPS will consult NCWRC to determine appropriate action.</p>
Light Management	<p>Establish turtle friendly lighting standards for all Seashore (NPS) structures.</p> <p>Encourage concessioners to install turtle friendly lighting.</p>
Research	<p>Support research efforts looking at the sex ratios of turtles.</p>
Seabeach Amaranth (SBA)	

TABLE 2: ACTION TO BE IMPLEMENTED —SPECIES MANAGEMENT

Activity	
Buffers	<p>April 15 – November 30</p> <p>If a plant/seedling is found outside of an existing closure, the Seashore will erect symbolic fencing with signage creating a 30-foot by 30-foot buffer around the plant. If plants are located next to each other, the area will be expanded to create one enclosure protecting several plants.</p> <p>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.</p> <p>Areas reopened if no plants are present by September 1. Where plants occur, the closed areas will be reopened after the plants have died.</p>
Predator Management	<p>Trappers will target red and gray fox, raccoons, cats and other predators for removal.</p> <p>Piping plover: Nests surveyed to count eggs and look for predator tracks.</p> <p>As applicable, predator exclosures are erected when nest found with eggs.</p> <p>American oystercatcher and colonial waterbirds: Nests surveyed to count eggs and look for predator tracks.</p> <p>Sea Turtle: Nests surveyed to count eggs and look for predator tracks. Predator exclosures may be placed over nests if predator tracks or nest predation is evident.</p> <p>SBA: No predator management.</p>
Conservation Measures	<p>Conservation measures are discretionary activities intended to minimize or avoid adverse effects of an action on listed species or critical habitat, to help implement recovery plans, or to develop information. Conservation measures outlined in the USFWS Amended Biological Opinion (2007) (attachment 1 to the FONSI) will be considered for implementation. The Seashore will notify the USFWS when any of these conservation measures are implemented.</p>

1

2

PEER REVIEW INSTRUCTIONS

Thank you for agreeing to serve on a peer review panel as part of the planning and rulemaking process at Cape Hatteras National Seashore (CAHA). As the responsible official, I am managing the peer review and will compile your comments and forward them to the National Park Service (NPS) project manager for the CAHA Off-Road Vehicle (ORV) Management Plan/Environmental Impact Statement. In turn, the project manager will share the results with the negotiated rulemaking committee that has been formed to assist in developing the park's ORV plan. This committee is composed of NPS staff and representatives of stakeholder groups.

You are being asked to provide written comments on two documents:

- Vogelsong, H. (2003). Cape Hatteras National Seashore visitor use study;
- Neal, W. (2005). The Lower Outer Banks of North Carolina: Results of a survey of residents, nonresident property owners, and visitors.

The Vogelsong report describes findings from a survey of visitors to CAHA conducted in 2001-2002. This survey was sponsored by the NPS. The Neal report describes findings from a survey of various groups, including visitors, conducted in 2002-2003. This survey was sponsored by the Outer Banks Preservation Association.

Context

The NPS plans to consider the Vogelsong and Neal studies, along with other research (e.g., studies from the Outer Banks Visitor's Bureau and the NPS Visitor Services Project survey conducted in 2000), to develop ranges of numbers for use in an economic impact analysis of alternatives for managing ORVs at CAHA. The alternatives could affect the number of ORVs on beaches at CAHA, with consequent changes in economic impacts from visitor spending. The NPS and the negotiated rulemaking committee are considering additional visitor use and economic data collection that could be obtained to add to the available information. Therefore, the two documents that you will review likely will not be the only sources of data that will be used in arriving at a final decision.

Instructions to Reviewers

Peer reviewers are expected to respond to ten questions, and are encouraged to include other comments that they feel are germane to the purpose of the review as identified in the following overarching question. This could include possible follow-up questions asked of the two principal investigators.

The overarching question guiding the review is:

1. Do either the Vogelsong or Neal surveys provide a sound scientific basis for estimating the total amount of ORV use at CAHA during the study period and the total visitor spending resulting from this activity? In other words, how suitable is the science of the studies for use in the planned role in decision-making?

To answer this question the following related points should be addressed:

2. The ability to generalize the results of the data collections to the universe of CAHA visitors and other populations (i.e., residents and property owners);
3. The design of the survey instruments and observation protocols;
4. The rigor of the data-collection methods in the field;
5. The appropriateness of the data analysis, including the characterization of uncertainty;
6. The use of other data sources included in the reports as cross-checks on key estimates of ORV use, including ferry counts and traffic counts;
7. The potential for non-response bias in the survey results;
8. The reasonableness of conclusions based on survey data and other evidence.

The original Vogelsong and Neal data files are available in SPSS and Excel formats. It is not the purpose of this review to re-analyze these data, but please respond to the following two questions:

9. Based on answers to the previous items, would there be value in re-analyzing the Vogelsong or Neal data? Why or why not? If yes, what key points should be examined as part of the re-analysis?
10. Would conducting additional social science research improve the ability to estimate the amount of ORV use at CAHA and the impact of this use on visitor spending? If so, what type(s) of research would be needed?

In some cases, reviewers may find that insufficient information is provided in the two technical reports to respond to some of the points listed above. If this occurs, reviewers should specify the additional information that is needed to make a determination.

Review Process and Dates

The review will follow a seven-step process, with the following milestones:

- **(March 28)**—Individual written assessments of the Vogelsong and Neal reports focusing on the ten points completed by peer reviewers and transmitted to the responsible official;
- **(April 4)**—Consolidation by the responsible official of the written assessments for presentation to the review panel;
- **(April 11)**—Conference call to allow peer reviewers to compare comments, share thoughts, and refine individual evaluations;
- **(April 16)**—Submission to responsible official of revised individual comments arising from the conference call;
- **(April 21)**—Compilation and synthesis of revised comments by the responsible official;
- **(April 25)**—Review of the compilation and synthesis by peer reviewers;
- **(April 30)**—Final compilation and synthesis, including individual comments, transmitted by the responsible official to the CAHA project manager.

Disclosure

These instructions have been reviewed and approved by appropriate NPS officials. Although this review has been determined to be of “informative” scientific information,¹ rather than “influential” scientific information, the process follows guidelines in Section II(3) of the “OMB Final Information Quality Bulletin for Peer Review;” the “NPS Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for NPS Cultural and Natural Resource Disciplines;” and the requirements of the Privacy Act, 5 U.S.C. §522a as amended. Specifically, the NPS will appropriately maintain records documenting the peer review, including:

- The name and position of the responsible peer review manager;
- The name, affiliation, and pertinent qualifications of each reviewer;
- Determinations of disclosures regarding conflict of interest;
- Identification of any conflicts that could affect the independence of individual reviews;²
- Objectives and structure of the review;
- Copies of reviewers’ comments and the compilation and synthesis of comments;
- Records of payment for reviewers’ services.

The NPS will disclose the names, affiliations, and qualifications of reviewers to members of the negotiated rulemaking committee and to the authors of the two technical reports. Reviewers’ comments will also be disclosed, but will not be specifically attributed. The compiled peer-review report by the responsible official will be disclosed to the negotiated rulemaking committee and to the authors.

The Department of the Interior does not have the statutory authority to protect confidentiality or to exempt reviewers’ comments, identities, or credentials from a request under the Freedom of Information Act. Materials that NPS provides to the negotiated rulemaking committee are part of the public record for the committee.

Contact Information for Responsible Official

Dr. Jim Gramann
 National Park Service Visiting Chief Social Scientist
 Phone (Washington, DC): (202) 513-7189
 Phone (Texas A&M University): (979) 845-4920
 Email: jgramann@tamu.edu

¹ Informative scientific information is defined by NPS as scientific or scholarly information that “serves to inform scientific, scholarly, and management awareness and decision-making generally, but that does not provide the sole or major component of information used in decision-making and does not, by itself, lead to a change in the direction of decision-making or to a decision that creates a clear and substantial impact on important public policies or private-sector decisions.”

² Peer reviewers are considered to be independent if they: 1) have no direct involvement in the development of the material under review; 2) have no indirect involvement by significant consultation during development or by supervising the personnel who produced the material under review; or 3) have no significant personal relationship to persons directly involved in development of the material under review.

Vehicle Characteristics Work Group

Vehicle Characteristics

1. All Vehicles should be registered, licensed, insured and comply with their state inspection regulations.
2. 4wd vehicles are permitted
 - i. 2wd vehicles are allowed after obtaining special use permit
 - ii. Street-legal motorcycles are allowed after obtaining special use permit
3. 2 Axle Minimum & 3 Axle Maximum (requirement is for primary vehicle only and does not include axles on a towed trailer)
4. Trailers are limited to no more than two axles
5. ATV's are prohibited
6. 30' Max Vehicle Length (requirement is for primary vehicle only and does not include length of a towed trailer)
7. U.S. D.O.T. Approved Tires Only

Should Not Be in Requirements

1. Max Vehicle Width
2. Max GVW
3. Ground Clearance

Required Equipment

1. Low Pressure Tire Gauge (5psi)
2. Shovel
3. Jack (except for Street-legal motorcycles allowed after obtaining special use permit)
4. Jack Support (except for Street-legal motorcycles allowed after obtaining special use permit)
5. Trash Bag or Container
6. Flashlight after dusk and before dawn
7. Copy of ORV Regulations
8. Copy of current ORV map

Recommended but not Required

1. 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-held winch.

Vehicle Operation:

1. Sleeping/Camping language must be developed (37 CFR 2.10)
2. Reporting motor vehicle accidents pursuant to 36 CFR 4.4
3. Obstructing Traffic pursuant to 36 CFR 4.13
4. Alcohol regulations (open container) pursuant to 36 CFR 4.14(a)
5. Seat Belt regulations pursuant to 36 CFR 4.15
6. Speed Limit Language to be determined
7. Valid Drivers License
8. Unsafe operation pursuant to 36 CFR 4.22

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9. Operating under the influence pursuant to 37 CFR 4.23

§ 4.4 Report of motor vehicle accident.

- (a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the superintendent as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the superintendent.
- (b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the superintendent unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the park area.
- (c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.
- (d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

§ 4.13 Obstructing traffic.

The following are prohibited:

- (a) Stopping or parking a vehicle upon a park road, except as authorized by the superintendent, or in the event of an accident or other condition beyond the control of the operator.
- (b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

§ 4.14 Open container of alcoholic beverage.

- (a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.
- (b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in a park area is prohibited.
- (c) This section does not apply to:
 - (1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or
 - (2) An open container stored in the living quarters of a motor home or camper; or
 - (3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.
- (d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

§ 4.15 Safety belts.

- (a) Each operator and passenger occupying any seating position of a motor vehicle in a park area will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

[62 FR 61633, Nov. 19, 1997]

§ 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

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

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

§ 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

[52 FR 10683, Apr. 2, 1987, as amended at 68 FR 46479, Aug. 6, 2003]

BRIEF SUMMARY: Permits, pass, licenses and cards

Work Group Call, Tuesday, 3/11/08

The participants discussed the following issues and offer this summary as background on the topic to the full group. Please note that the discussion in no way suggests participants agree with the use of permits, passes, licenses, or cards at this time.

If used, permits, pass, fees and licenses might have to consider one or more of the following, underlying issues or choices. Some noted that some or all of the following might be addressed by means other than permits or passes. It was also noted that commercial fishing would need its own treatment/approach given its role in the original legislation for the Seashore. Underlying themes include:

- The federal regulatory authority and its guidance/restrictions under which permit or pass is issued?
- Fees, if any, and if so, how much, if differentiated, and to what end?
- What restrictions, if any -- times, use, location, numbers, what kind of user?
- What requirements, if any -- educational, where posted, carried, etc.?
- Duration -- annual, daily, seasonal?
- Access – both in terms of obtaining one and where it can be used?
- Fairness – in terms of access and costs across user groups and demographic groups?
- Enforcement – how they may be used to manage/minimize scofflaws or “bad actors”?

Permit: a permit is usually considered a written authorization that allows activities otherwise regulated or prohibited. The NPS has special use permitting authority that is very broad and NPS can issue any number and kind of special permits (i.e., weddings, fishing tournaments, commercial services, back country camping, sand fencing, boardwalk construction). NPS may retain all of special use permit fees to support its program, ranging from supporting/building facilities, law enforcement, and other personnel resources. Permits do not have to be linked to fees, number limitations, or other attributes, though they can be.

Passes: a pass is a means to allow passage or access. Entrance or amenity fees (for campgrounds, etc.) are essentially a type of pass (you pay, you pass). Though the NPS has been charging for entrance fees to some parks for many decades (considered a kind of pass), Congress sought to bring all federal land agencies into some consistency with the Federal Lands Recreation Enhancement Act (FLREA).

The use of passes triggers FLREA which in turn triggers such requirements as: 1) development of a business plan; 2) conditions have to be met for area where pass is required (such as parking lots, bath house, toilets, ramps, interpretive services); 3) fees collected can be retained by local Park not to exceed 80% of that collected; 4) dollars collected restricted to be spent on costs of collecting fees and special projects approved by NPS above local Park level (but not for ancillary personnel costs like cleaning up trash at a campground with a fee/pass is not considered a fundable item with these monies). Generally, fees collected from passes limit local Parks' flexibility in using/spending more so than special permits.

Licenses: license typically allows an activity such as hunting, fishing, and driving licenses. These are typically issues by states or municipalities and not a term typically used by the NPS.

Card: perhaps similar to pass -- an identification paper or means of some sort.

Comments and Concerns noted:

Comments and concerns are noted below. Please note that some statements are in contradiction to others and thus reflect the range of views in the discussion, not areas of agreement.

Permits

- Permits might legally acknowledge and therefore protect lawfulness of permitted activities.
- Permits might be used to restrict, limit, or overly constrain activities over time.
- Permits are a fundamental element of an ORV management plan/system, but can be highly tailored, limited in intent/purpose, and their purpose/components negotiable.
- An effective ORV management plan/system can be developed without permits, licenses, passes or cards. In short, permits may not be necessary at all depending on other regulations that could or may be adopted.

Entrance Fees/Passes

- CAHA not likely to charge entrance fee/pass because of multiple access points to beach itself, state ownership of Highway 12 as a key access point to Park (though Park administratively responsible for 5 miles of Highway 12 on Bodie Island), and Highway 12 is an access means to significant number of private properties, businesses, and communities.
- CAHA could establish a north and south entry point (Bodie Island and Ocracoke), charge an entry/entrance fee, have a means to address impacts on residents of villages, and thus fairly charge all users, regardless of how they use the Park.
- Any system must take into account residents that are living inside or surrounded by the park boundaries (such residents' access has been addressed at other Parks like Yellowstone and Fire Island through various means). A daily entrance fee would affect residents adversely.

Sequence of Negotiating Issues

- This issues cannot be discussed in any depth until: 1) the purpose, goals or intent of what a permit, pass, license or card system would achieve; 2) where driving can and cannot occur is determined geographically and temporally. ORV management tools are designed to manage responsible operation in areas open to ORV use. There is real negotiation needed to determine that area, and since that is a fundamental question, negotiating other issues without knowing the actual land/areas/routes designation will be very difficult.
- The issue can be discussed separate and distinct from where driving may take place because these are or can be more generalized tools. It is not necessary to determine when and where ORVs might be permitted before permits can be addressed. These are two separate issues, they can be addressed separately, and decisions regarding permits can be made without defining when and where ORVs might be permitted.

Other

- It was noted that it is important to distinguish between access means (i.e., ORV, by foot, other) and intent of the access (fishing, bird watching, surfing, shelling, etc.).
- It would be possible to give ORV permits with preference to certain kinds of predominate, intended activities, like recreational fishing.
- Permits, passes, or other means, IF ever used, have to take into account fairness and not single out or target particular uses or intents.
- Concern that beaches in front of villages are being treated as special uses for adjacent residents only, which is not in keeping with public access and a national park.

BRIEF SUMMARY: Seasonal Closures

Work Group Call, Thursday, 3/13/08

The participants discussed possible definition/purpose/intent of what are currently referred to as seasonal closures. They talked about possible criteria for placing and re-opening seasonal closures, and they identified other questions to be decided on this topic in the future as well as related issues that will need to be addressed.

Areas of general agreement:

There should be ORV closures in front of all villages during the high season, at a minimum from sometime in the spring to sometime in the fall. The purpose of this type of closure is to reduce user conflicts and promote pedestrian safety in densely populated areas. This type of closure should be applied uniformly to all villages. Commercial fishermen should be permitted to drive within seasonal closures as they have historically done. Safety closures should be applied (separately from seasonal/village closures, as appropriate) in front of villages with narrow beaches.

Seasonal closure issues and questions remaining to be addressed:

- *Closure name* - Options suggested include: seasonal closures (as is), summer closures, village closures, or some combination of these three.
- *Other high use times* - Should seasonal closures in front of villages be applied during holiday (for example Thanksgiving, Christmas and Easter) weeks or other non-high season times of dense use? Or might this happen under safety closures? If so, how determine when? How determine if those visiting are planning to use ORVs or not?
- *Year round village closures* - Should closures in front of villages apply year round?
- *Village closure boundaries* - How will the village boundaries to which these closures are applied be determined?
- *Definition* – How will seasonal closures fit within the menu of all closures?
- *Criteria* - What criteria should be used for determining when these areas are closed and re-opened? Which would be practical and enforceable? Options suggested:
 - Dates that NC DOT changes the highway speed limits
 - Fixed dates, for example May 15-Sept 15
 - Closures in front of villages year round
 - Density of use, as determined by occupancy rates or other
- *Parking and Pedestrian Access* - How address parking and pedestrian access needs during these closures?

Related issues to be addressed:

- Public parking and pedestrian access to beach areas closed to ORVs.
- The need for prominent signage of pedestrian access and parking areas.
- Passive (use) areas / the desire for areas of the beach closed to ORVs that are not in front of villages.
- Bypass roads and ORV access to sections of the beach that lie between closures.

Discussion:

Overlap between seasonal/village and safety closures – Participants noted a range of reasons for year-round closures in front of particular villages. There was discussion of the fact that safety closures might mean that particular stretches of beach (near to or remote from villages) are closed year round.

It was noted that it is still possible to fish in front of the villages during seasonal closures, people are only prohibited from driving onto the beach at those times and places.

There is a lack of user data that makes it difficult to know how extending the seasonal closures would affect people visiting the seashore.

It was noted that beaches should be available for multiple use to the extent possible and that there is a difference between closing particular areas for pedestrian safety and closing them because certain pedestrians want to be able to access beach areas without vehicles.

When determining the start/end dates of seasonal closures, consider: pedestrian safety, enforcement and practicality, aesthetic preferences, user conflicts, and access for fishermen.

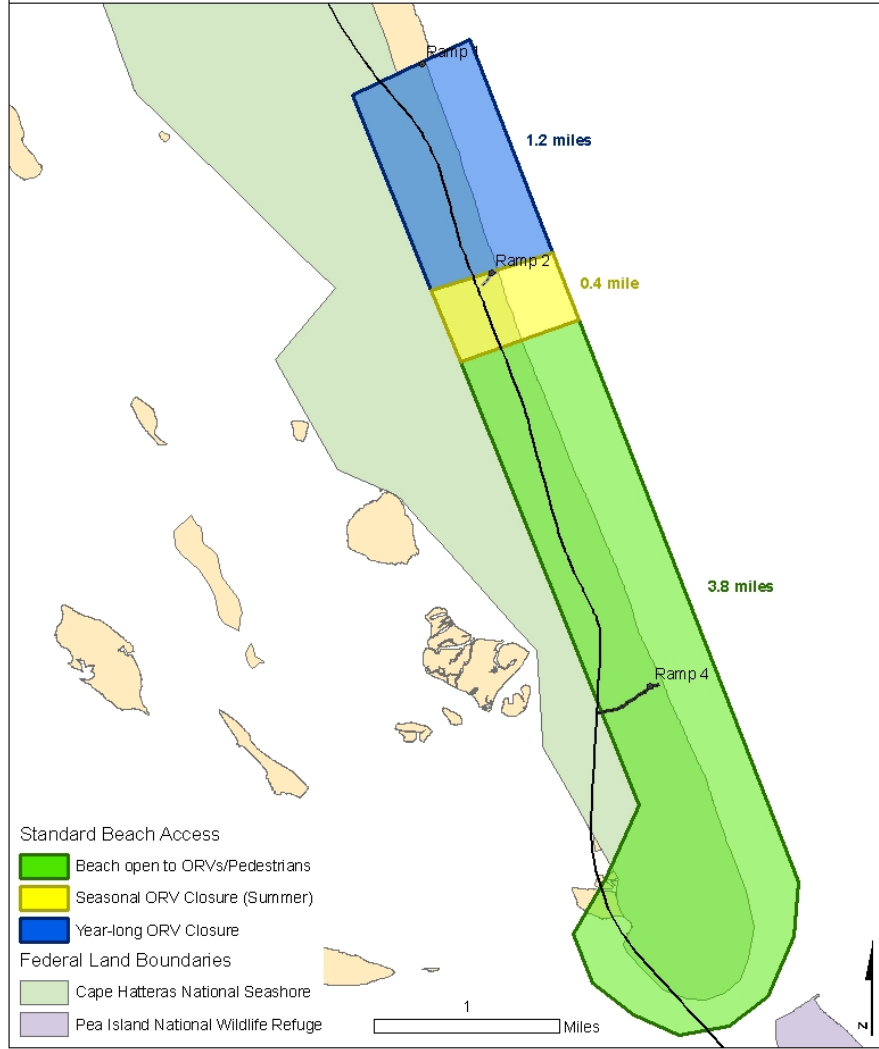
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Cape Hatteras National Seashore
North Carolina

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U.S. Department of the Interior



Seasonal ORV Closures - Bodie Island District



Produced by CAHA RMACZ

13 March 2008

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Cape Hatteras National Seashore
North Carolina

National Park Service
U.S. Department of the Interior





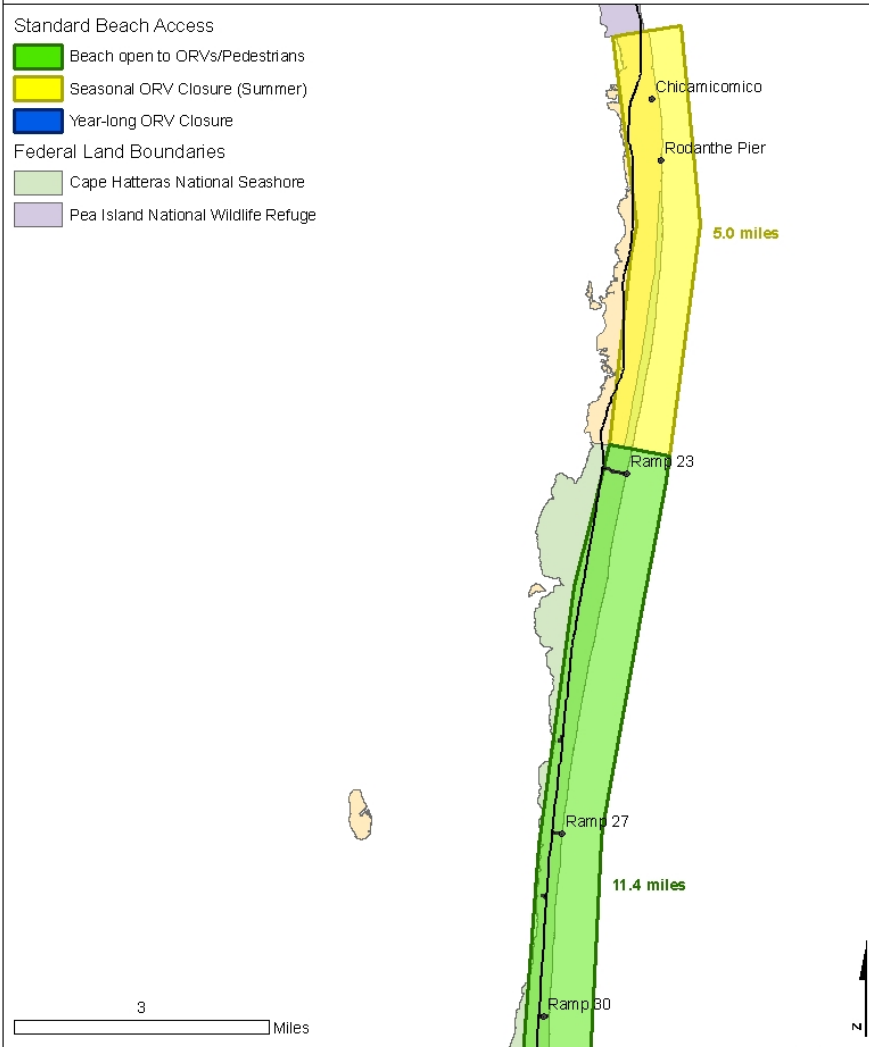
Seasonal ORV Closures - Bodie Hatteras District

Standard Beach Access

-  Beach open to ORVs/Pedestrians
-  Seasonal ORV Closure (Summer)
-  Year-long ORV Closure

Federal Land Boundaries

-  Cape Hatteras National Seashore
-  Pea Island National Wildlife Refuge



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Cape Hatteras National Seashore
North Carolina

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U.S. Department of the Interior





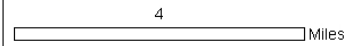
Seasonal ORV Closures - North Hatteras District

Standard Beach Access

-  Beach open to ORVs/Pedestrians
-  Seasonal ORV Closure (Summer)
-  Year-long ORV Closure

Federal Land Boundaries

-  Cape Hatteras National Seashore
-  Pea Island National Wildlife Refuge



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North Carolina

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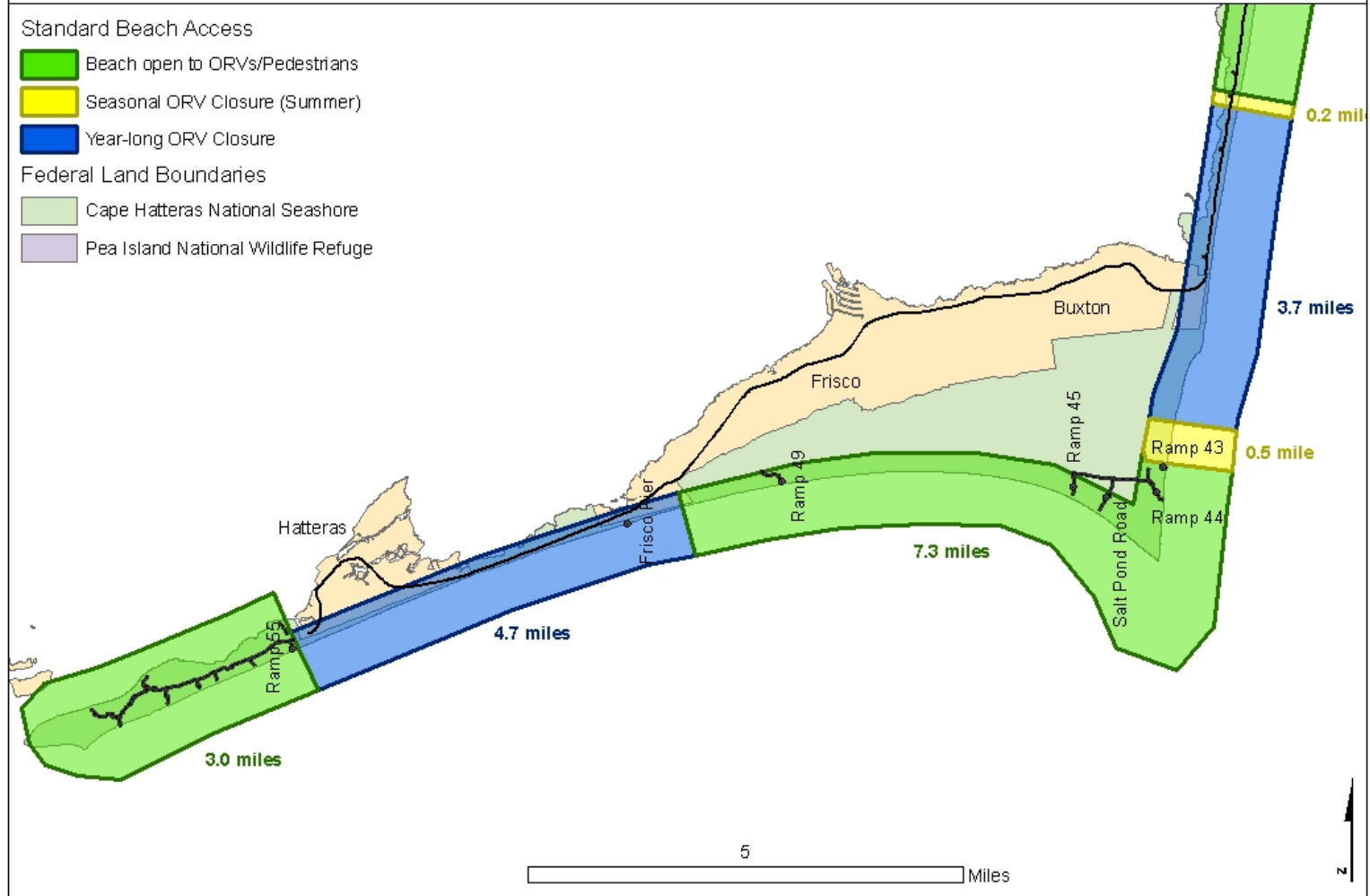
Seasonal ORV Closures - South Hatteras District

Standard Beach Access

- Beach open to ORVs/Pedestrians
- Seasonal ORV Closure (Summer)
- Year-long ORV Closure

Federal Land Boundaries

- Cape Hatteras National Seashore
- Pea Island National Wildlife Refuge



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North Carolina

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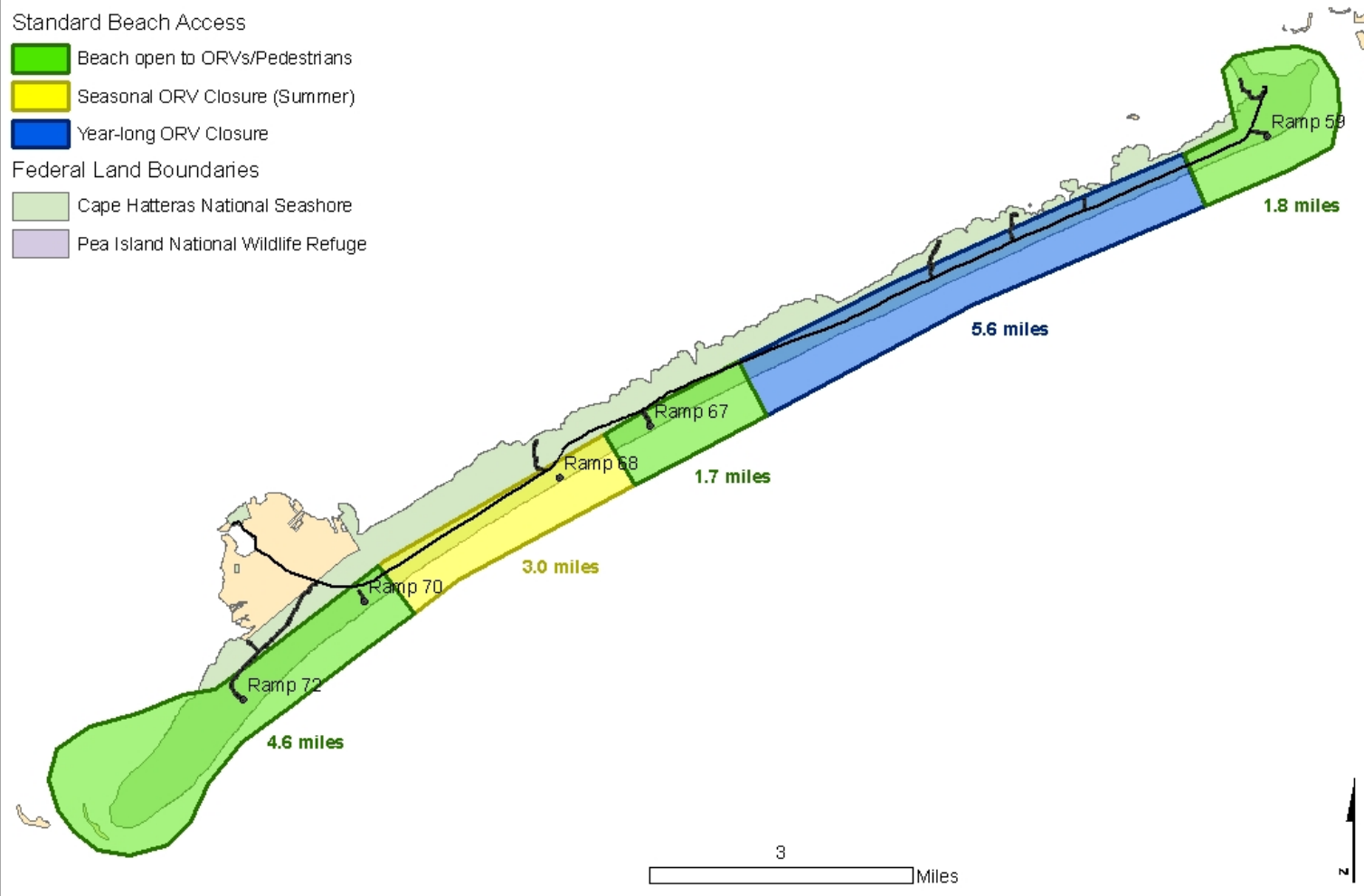
Seasonal ORV Closures - Ocracoke Island District

Standard Beach Access

-  Beach open to ORVs/Pedestrians
-  Seasonal ORV Closure (Summer)
-  Year-long ORV Closure

Federal Land Boundaries

-  Cape Hatteras National Seashore
-  Pea Island National Wildlife Refuge



Maximum Summer Beach Closures Aug. 14, 2007

This spreadsheet for use with Maximum Closure Maps

<u>Closure Type</u>	<u>Miles</u>	<u>Location</u>
ORV(year-long)	1.2	Ramp 1 - 2
ORV(summer)	0.4	Ramp 2
Open	2.9	Ramp 4
Resource	0.9	Bodie Spit
ORV(summer)	5	Tri-Villages
Open	0.7	Ramp 23
Resource	3.7	
Open	2.5	Ramp 27 - 30
Resource	3.3	
Open	1.2	Ramp 34 - Avon
ORV(summer)	2	Avon
ORV(year-long)	1.5	Avon
Open	1.7	Ramp 38
ORV(summer)	0.2	Haulover
ORV(year-long)	3.7	Buxton
ORV(summer)	0.5	Lighthouse
Open	1.9	Cape Point
Resource	0.9	Salt Pond Road
Open	2.2	Ramp 45
Resource	0.1	
Open	1.2	Ramp 49
ORV(year-long)	4.7	Frisco
Open	3	Hatteras Spit
Open	1.8	Ramp 59
ORV(year-long)	5.6	
Resource	0.9	
Open	1.7	Ramp 67
ORV(year-long)	3	Ramp 68
Open	4.6	South Point
<u>Totals</u>	<u>Miles</u>	
Open	25.4	
Resource	9.8	
ORV(summer)	8.1	
ORV(year-long)	19.7	
TOTAL	63	

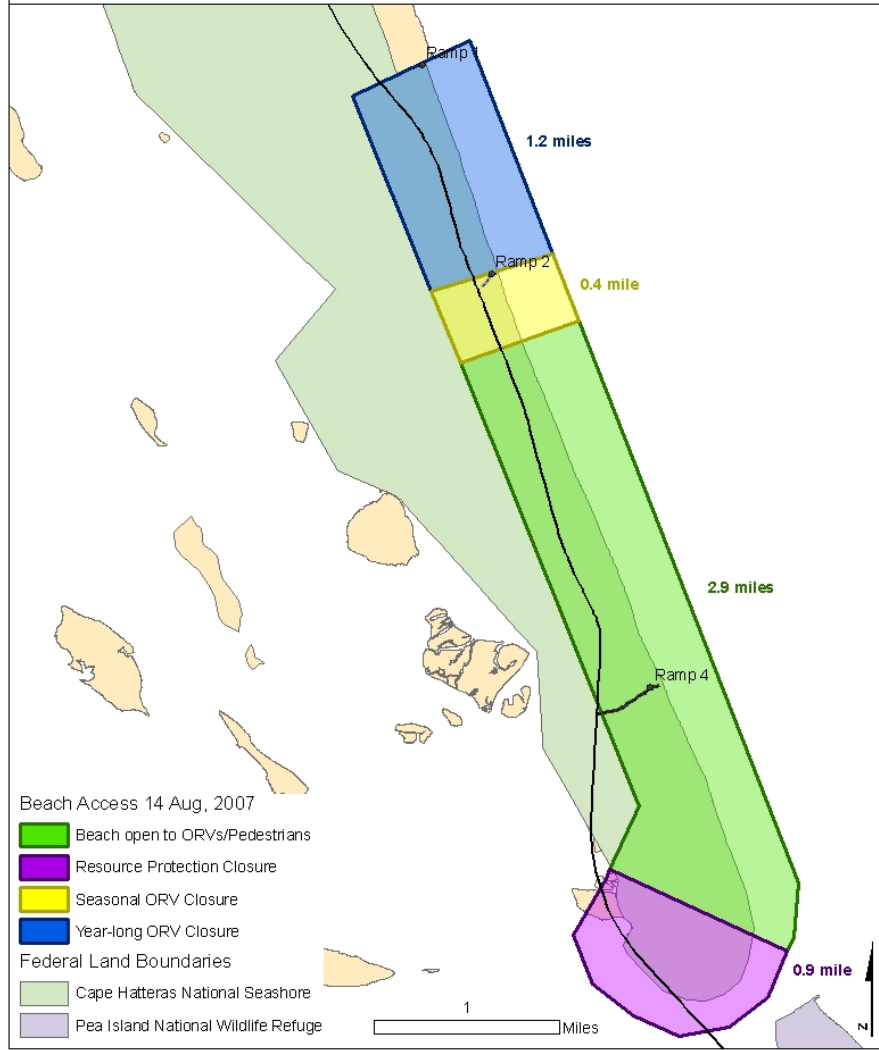
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North Carolina

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Maximum Beach Closures 8/14/07 - Bodie Island District



Produced by CAHA RMACZ

13 March 2008

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North Carolina

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



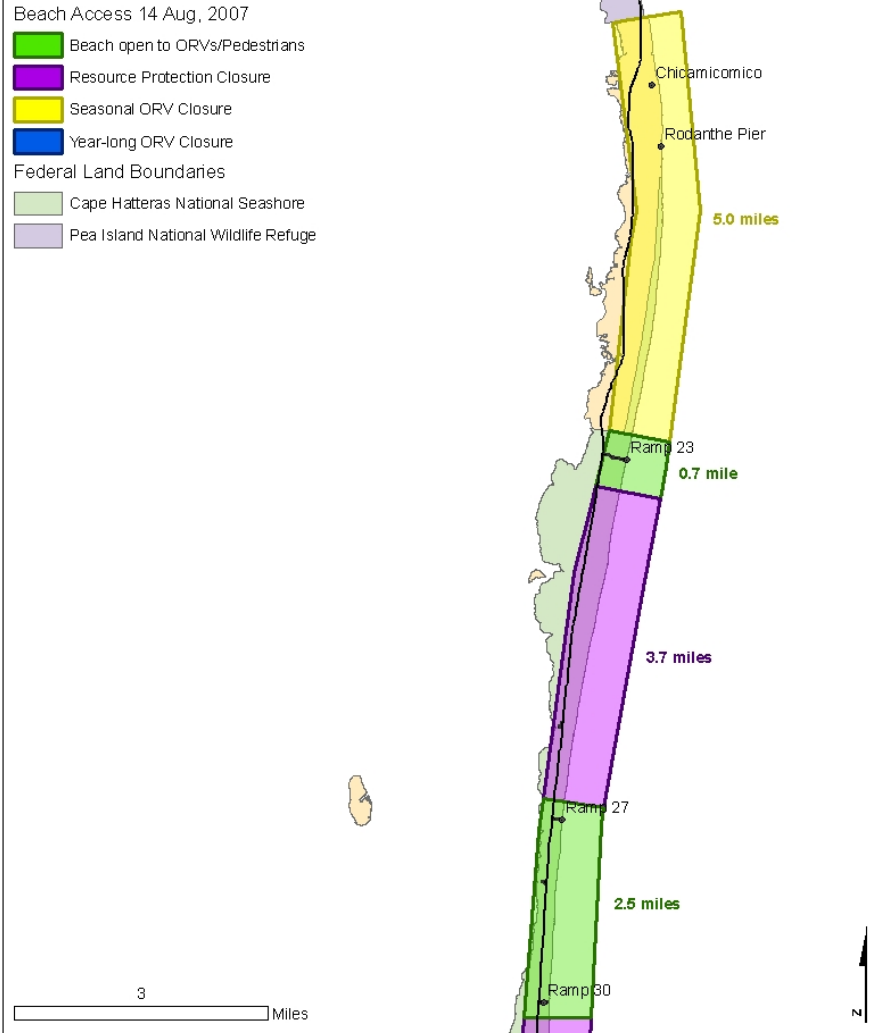
Maximum Beach Closures 8/14/07 - Bodie Hatteras District

Beach Access 14 Aug, 2007

-  Beach open to ORVs/Pedestrians
-  Resource Protection Closure
-  Seasonal ORV Closure
-  Year-long ORV Closure

Federal Land Boundaries

-  Cape Hatteras National Seashore
-  Pea Island National Wildlife Refuge



Produced by CAHA RMACZ

13 March 2008

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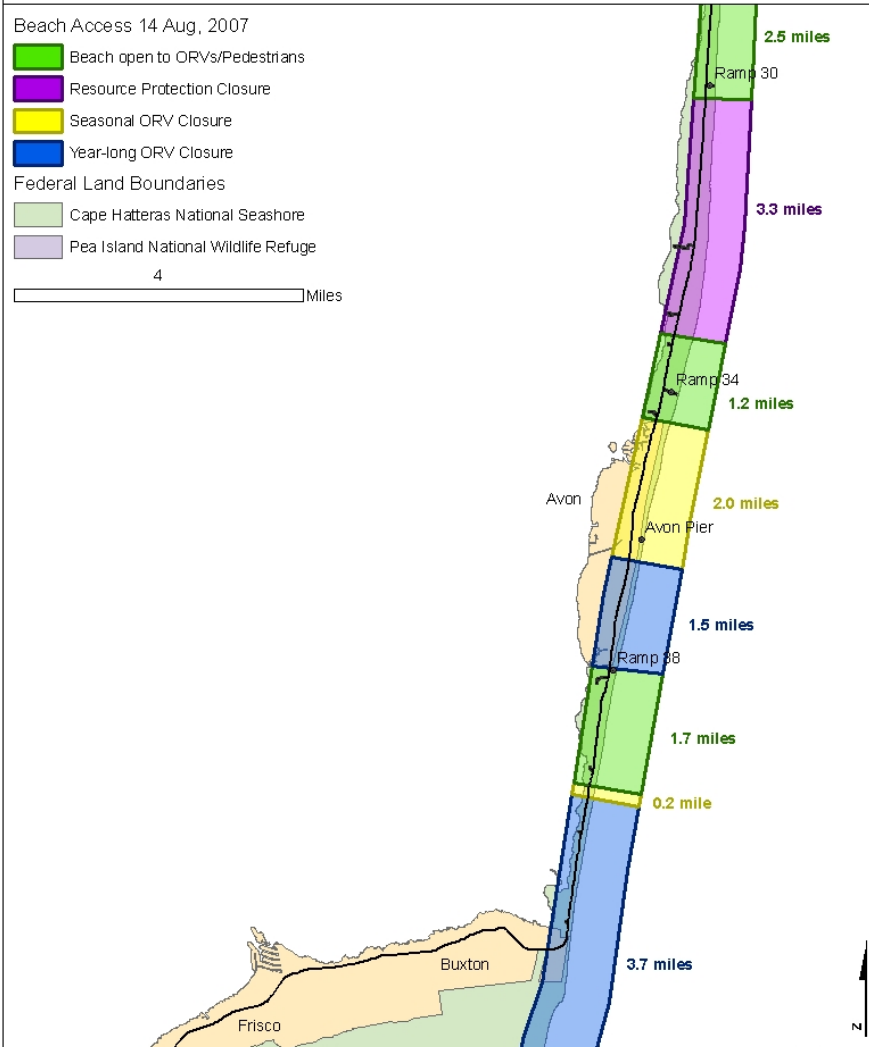
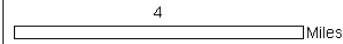
Maximum Beach Closures 8/14/07 - North Hatteras District

Beach Access 14 Aug. 2007

- Beach open to ORVs/Pedestrians
- Resource Protection Closure
- Seasonal ORV Closure
- Year-long ORV Closure

Federal Land Boundaries

- Cape Hatteras National Seashore
- Pea Island National Wildlife Refuge



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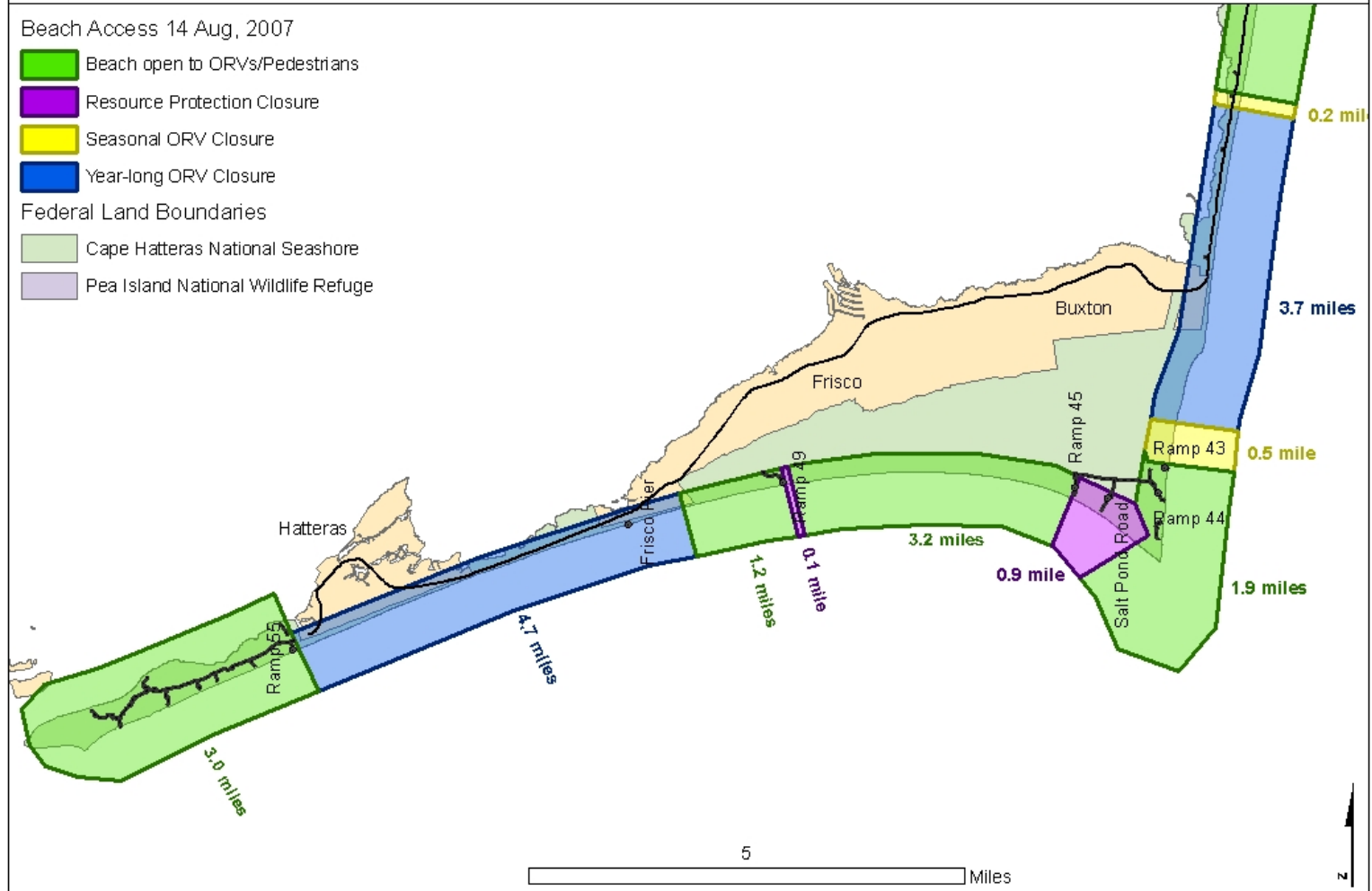
Maximum Beach Closures 8/14/07 - South Hatteras District

Beach Access 14 Aug, 2007

- Beach open to ORVs/Pedestrians
- Resource Protection Closure
- Seasonal ORV Closure
- Year-long ORV Closure

Federal Land Boundaries

- Cape Hatteras National Seashore
- Pea Island National Wildlife Refuge



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North Carolina

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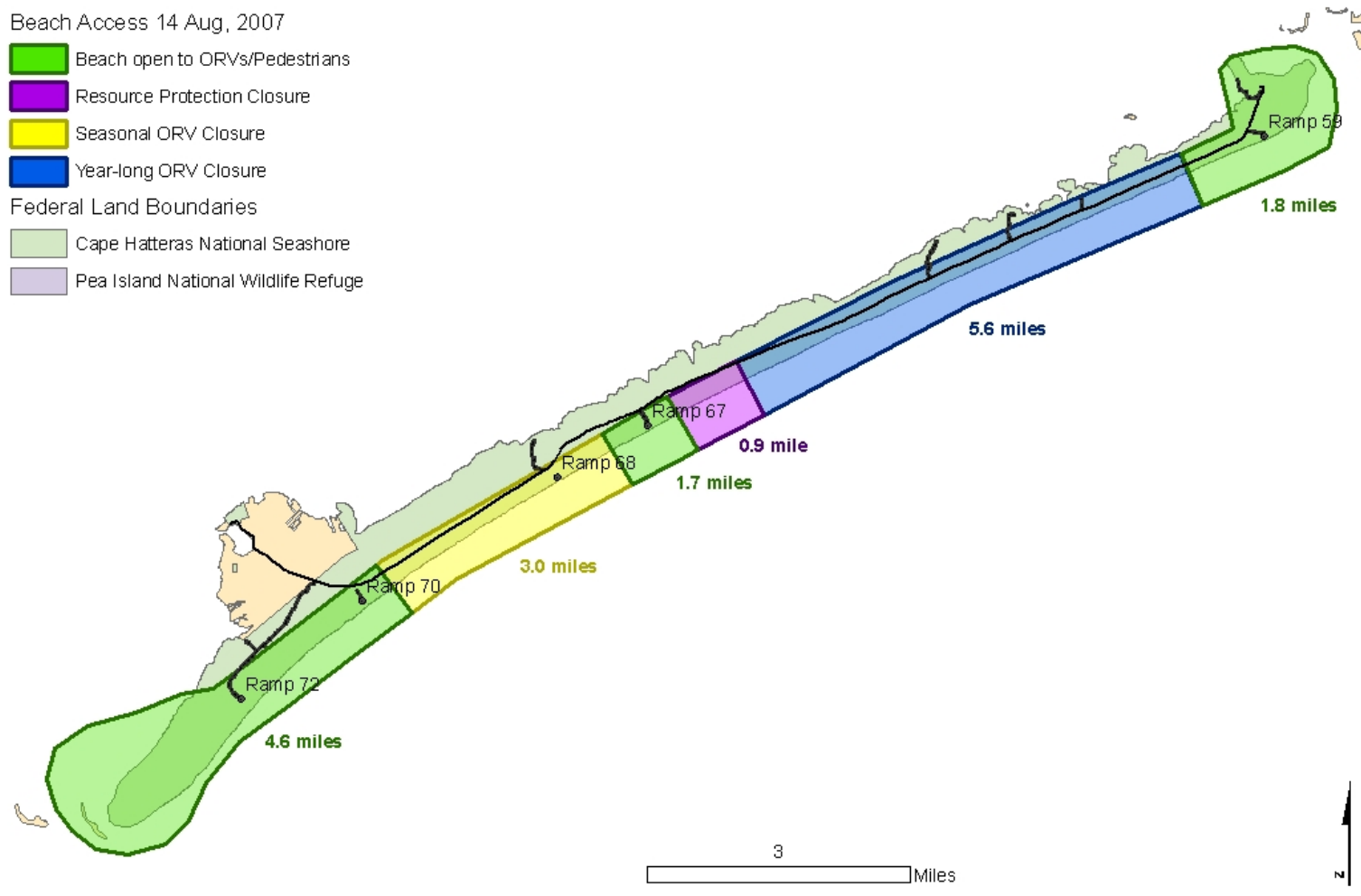
Maximum Beach Closures 8/14/07 - Ocracoke Island District

Beach Access 14 Aug, 2007

- Beach open to ORVs/Pedestrians
- Resource Protection Closure
- Seasonal ORV Closure
- Year-long ORV Closure

Federal Land Boundaries

- Cape Hatteras National Seashore
- Pea Island National Wildlife Refuge



Recommendations for 2008 Pre-nesting closures

The pre-nesting closures have been identified and are based on recent PIPL breeding areas. As stated in the FONSI, the closures provide for continued recreational use and access consistent with required management of protected species. These closures will meet the requirements to provide protection from adverse impacts related to recreational uses as required by laws and policies, such as the Migratory Bird Treaty Act, the ESA, and NPS *Management Policies 2006*. Natural resource staff conducted an annual assessment of PIPL breeding habitat on February 25-26, 2008 and March 5, 2008. The Park's dynamic shorelines and the behavior of the PIPLs may result in modifications which may result in less access to certain areas. Following are recommendations for the 2008 pre-nesting closures:

Bodie Island

Recent PIPL Breeding History: The PIPL nest in 2007 was located in the southern end of the small dunes. Although nests have been documented in this area historically, 2007 was the first time in over 20 years that a chick fledged from this area. No known PIPL nesting occurred in 2005 and 2006.

Observations: A site visit was conducted on February 26, 2008. When compared to last year, a lot of beach to the east of the small dunes has disappeared. At high tide there would not be enough room for a 100 foot wide ORV corridor between the signs and the high tide line. During the habitat assessment there was barely enough room for one vehicle to pass through the area at high tide. It is difficult to predict what this area will look like when the pre-nesting closures are installed.



(Red line denotes approximation of high tide line on 3/5/08)

Recommendation: Install a closure similar to last year except in the area east and southeast of the small dunes where the current winter closures will remain in place. In this area it will not be possible to leave a 100 foot wide ORV corridor between the dunes and the high tide line because of changes in the shoreline. It will be left to the discretion

of the driver as to whether they want to drive through salt water to gain access to the inlet and the bridge. If ORVs are documented driving into the closure to avoid the high tides, access to the inlet beyond the “pinch point” will not be allowed and a safety closure will be installed. The bait pond will only be accessible by driving around the spit and then driving north, parallel with the Bonner Bridge. There will be no access to the bait pond from the east (or ocean-side). ORV access to the bait pond will be maintained in this area as long as resource closure violations (i.e. driving in the vegetation parallel to the Bonner Bridge at high tides) are not documented.

Cape Point/South Beach

Recent PIPL Breeding History: In 2007 this area was the Park’s most productive PIPL breeding area. In 2007 the Park documented four pairs and nine nests at Cape Point and none at South Beach. In 2006 three pairs (two at Cape Point and one on South Beach) attempted nesting in this area. Only one of the nests at Cape Point successfully fledged young, the only nest in the entire Park that successfully fledged young in 2006. In 2005 a nest on South Beach successfully fledged 3 chicks and there were no documented nests at Cape Point.

Observations: During the site visit on February 26, 2008 there was a large creek coming out of the winter closure and emptying out into the Atlantic just west of “The Hook”.



A sandbar is forming where this creek empties into the Atlantic and if it doesn’t dry up has the potential to be excellent PIPL foraging habitat.



Recommendation: Install a pre-nesting closure that allows ORV and pedestrian access from Ramp 44 to the Point and from the Point approximately 450 meters west/northwest of the Point. The western end of the full beach closure would end near the halfway point between Salt Pond Ramp and Ramp 45. The shoreline closure will encompass the drainage near where we had a foraging closure in 2007. Approximately 1 mile of shoreline would be closed to pedestrians and ORVs. Salt Pond Ramp would be closed to pedestrian and ORV access because of the location of a PIPL nest in this area in 2007. Approximately 1.5 miles of the upper beach west of Ramp 45 (i.e. South Beach) will be included in the pre-nesting closure to encompass PIPL scrapes documented in 2007.

Overwash Fans

Recent PIPL Breeding History: No nests have ever been documented in this area. In 2007 PIPL were observed foraging on the sound-side and ocean-side. After plovers were observed foraging on the ocean-side in late April, we installed a foraging closure on April 28th. No PIPLs were observed using the closure after its establishment and it was removed on May 8th after a storm came through and removed most of the signs. We believe these were PIPL that were migrating through the area. In 2006 and 2005 PIPL were documented scraping and foraging within the proposed pre-nesting closure area. We do not have GPS locations for the scrapes but believe the proposed pre-nesting closure encompasses them.

Recommendation: Install a pre-nesting closure similar to the closure in 2007, which requires the closing of Pole Road and re-routing of traffic to the spurs off of the Pole Road onto the ocean-side shoreline.

Hatteras Inlet Spit

Recent PIPL Breeding History: In 2007 a single PIPL was observed making a “roosting” scrape but no breeding behavior was observed since it was a lone individual. In 2006 scrapes were documented but no nest was ever found. In 2005 one nest successfully fledged three young.

Observations: The spit is beginning to accrete from where the vegetation stops and is forming a small point with tidal pools. In comparing the 2005 aerials to shorelines documented in March of 2008, we have lost 68 acres of sand and vegetation from this area. Much erosion has also occurred on the ocean-side and the high tide line is currently within the winter closure boundaries. The 2005 nest location is now in the surf zone. Potential breeding habitat remains in the flats to the east of the old nest site.



Recommendation: The full beach closure would begin at approximately 0.1 mile from Pole Road Ramp. This will be accomplished by bringing the southeast corner of the winter closure down to the shoreline. Approximately 0.5 miles of shoreline will be closed to ORVs and pedestrians. Pedestrians will be allowed access to “The Rip” via the Spur Road but not to the ocean-side shoreline beyond the spit (i.e. where the vegetation starts on the oceanside). No ORVs or pets will be allowed in the “pedestrian only” area of the spit. If plovers are observed foraging on the spit, pedestrian access will be prohibited from the area.

North Ocracoke

Recent PIPL Breeding History: Although plovers historically used this area, no recent breeding activity has been observed. A pair was observed in 2007 but no breeding activity or scrapes were documented. A possible scrape was identified by a novice birder south of Ramp 59. When we sent out an experienced birder to confirm the possible scrape it could not be confirmed.

Observations: Very little changes in habitat were observed from this time last year. Some possible accretion occurred on the spit towards the inlet and sound side but we have not yet mapped out the current shoreline for a comparison to 2007.

Recommendation: Install a pre-nesting closure similar to the first closure on north Ocracoke in 2007. The closure will begin 0.3 miles north of Ramp 59. Where the spit opens up, the closure will extend from the duneline to the shoreline in a north-easterly direction. If foraging plover are observed outside of the established pre-nesting closure, foraging closures will be established in those areas.

South Ocracoke

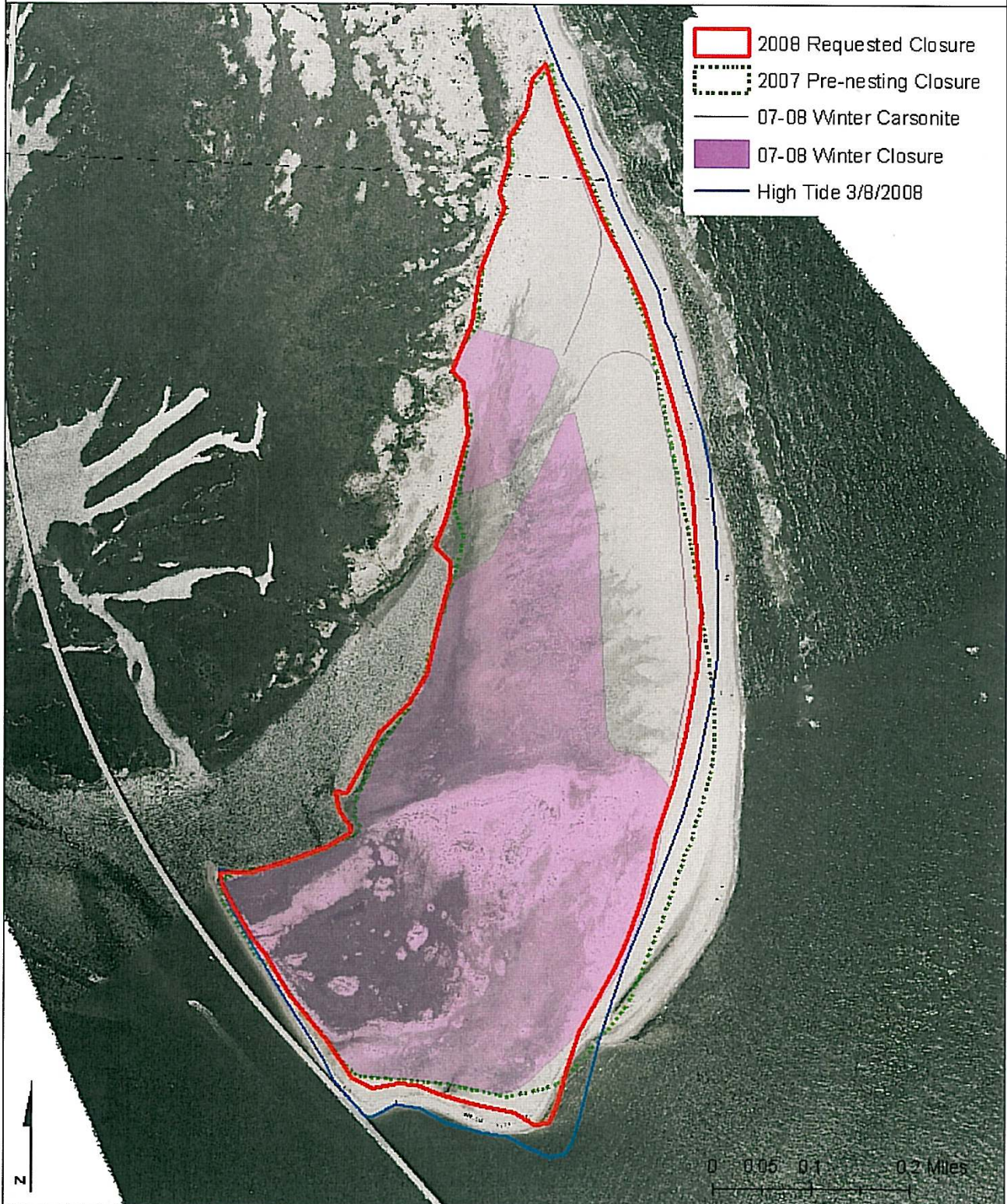
Recent PIPL Breeding History: A single pair nested on the edge of the dunes (east side) just north of the large flats in 2007 and 2006. Although the nests successfully hatched, the young were lost soon after hatching. A breeding pair with scrapes was documented in 2005 but no nest was ever located. No copulation, high step tattoo or parallel runs were observed.

Observations: Little to no changes in the habitat was observed from this time last year.

Recommendation: Install closure of the same specifications as in 2007 except for the installation of a full beach closure ~100 feet east from where Ocracoke Inlet meets the sound. A foraging closure on the ocean-side will probably need to be installed shortly after the PIPLs arrive. For the past two years the pair has consistently foraged on the ocean-side shoreline in the area across from their nesting location.

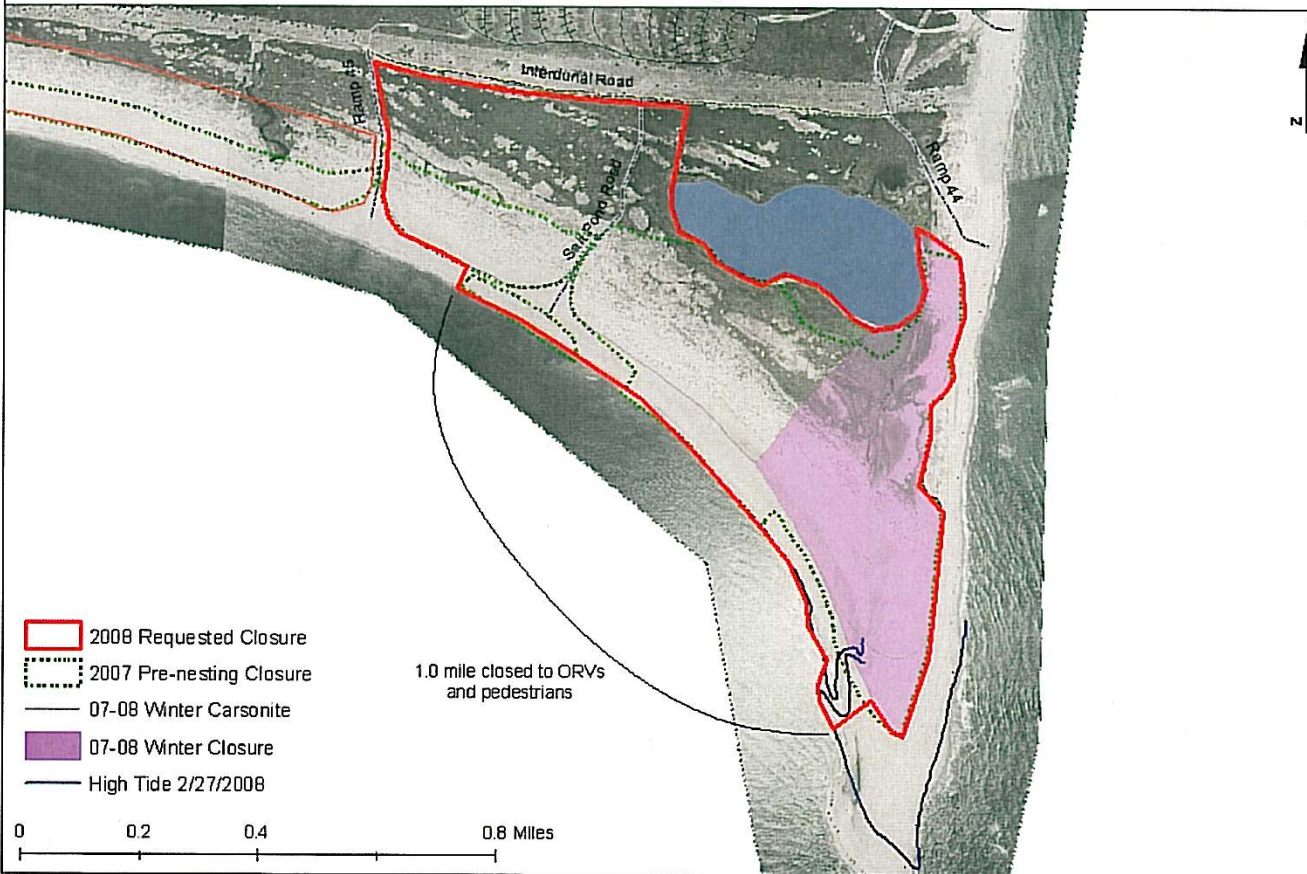


BI08-001 Bodie Island Pre-nesting Closure Request





HI08-001 Cape Point Pre-nesting Closure Request

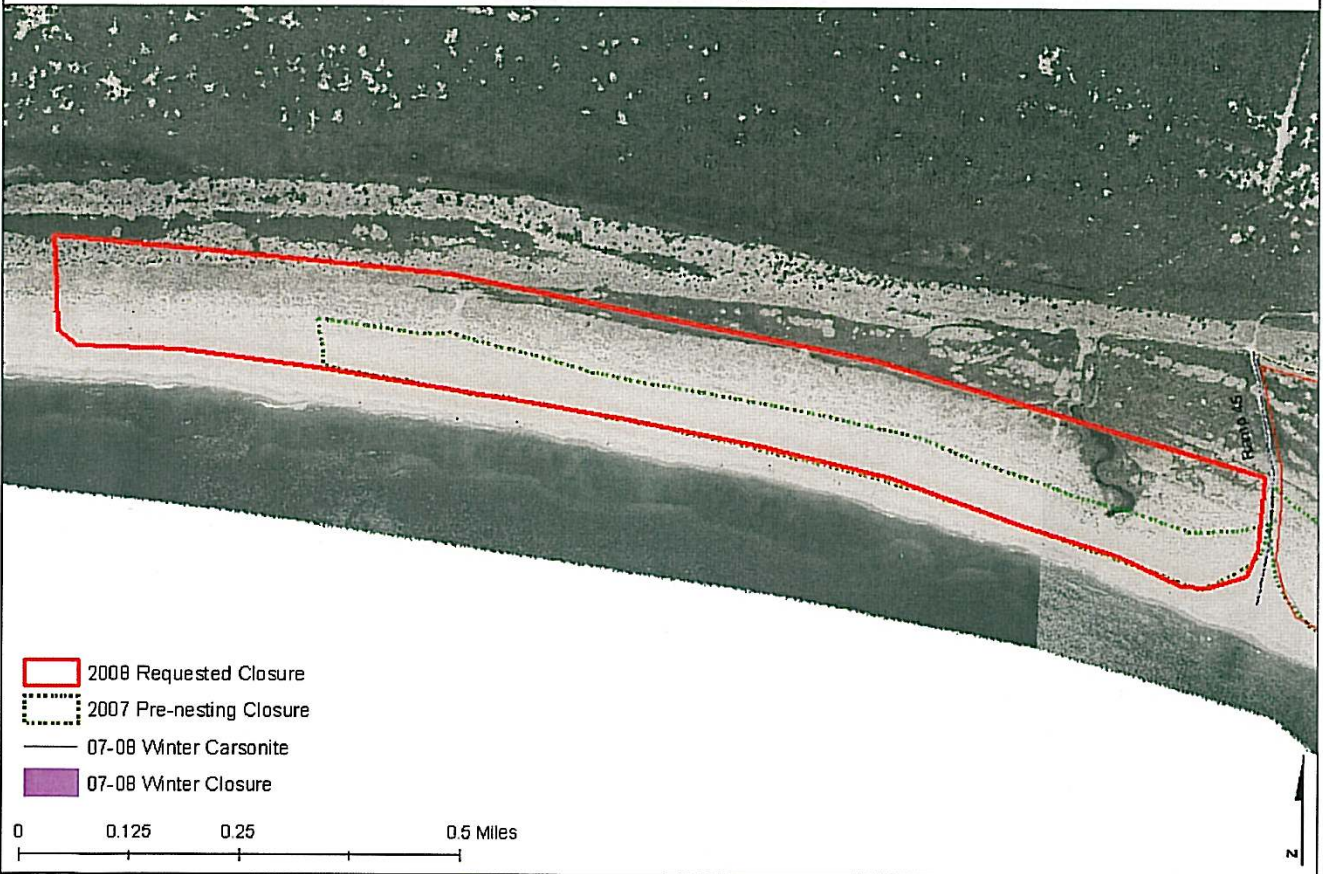


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HI08-002 South Beach Pre-nesting Closure Request

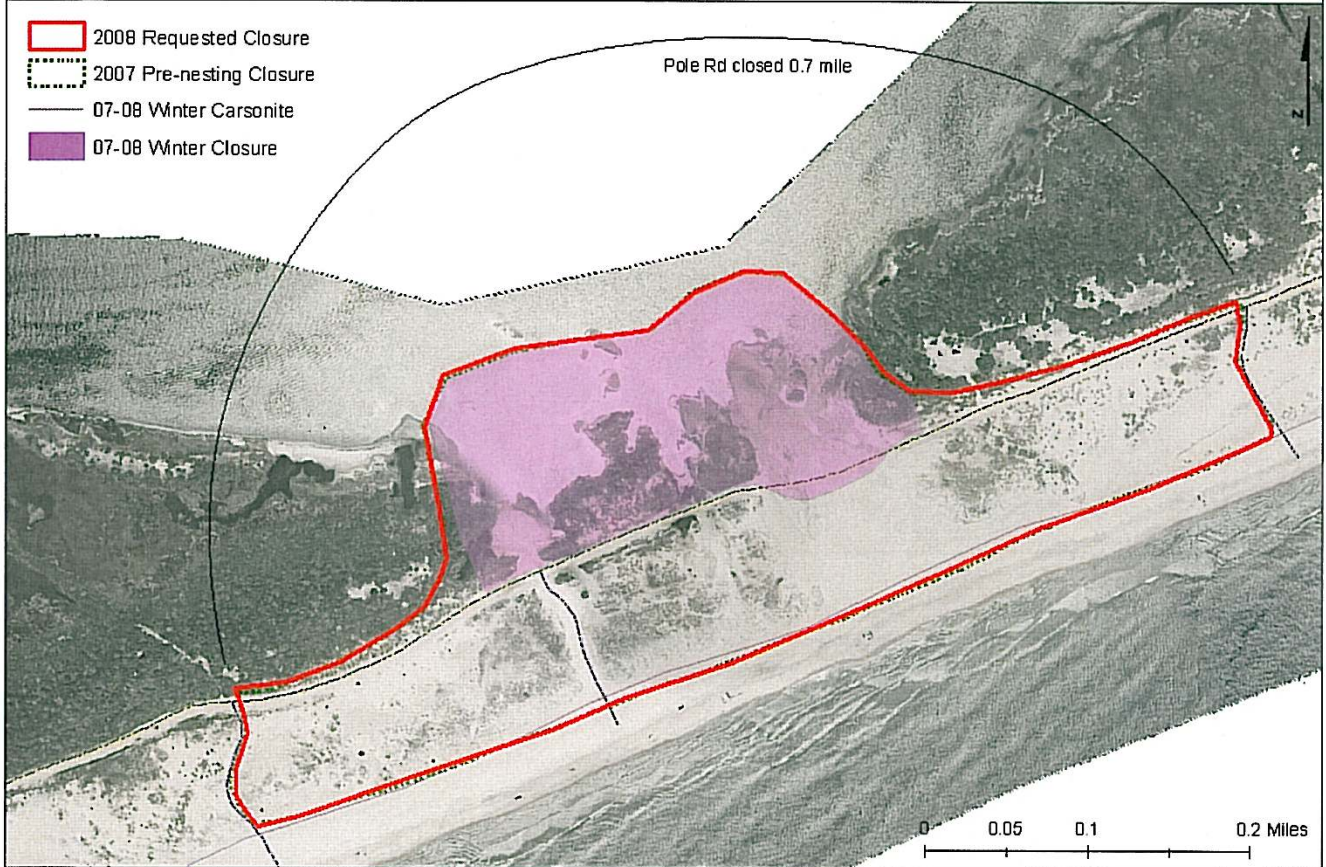


Cape Hatteras National Seashore
North Carolina

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HI08-004 Overwash Fans Pre-nesting Closure Request

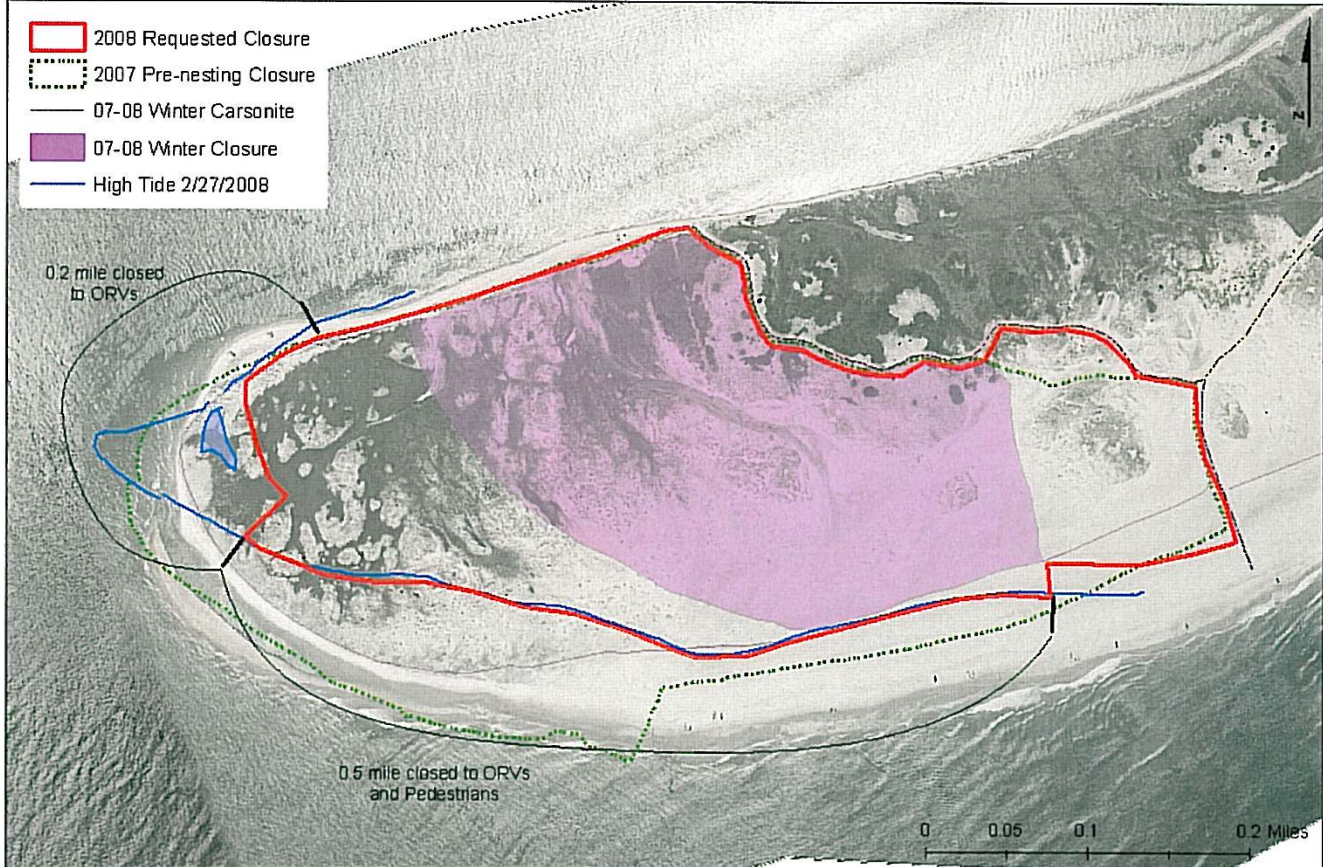


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HI08-003 Hatteras Inlet Spit Pre-nesting Closure Request

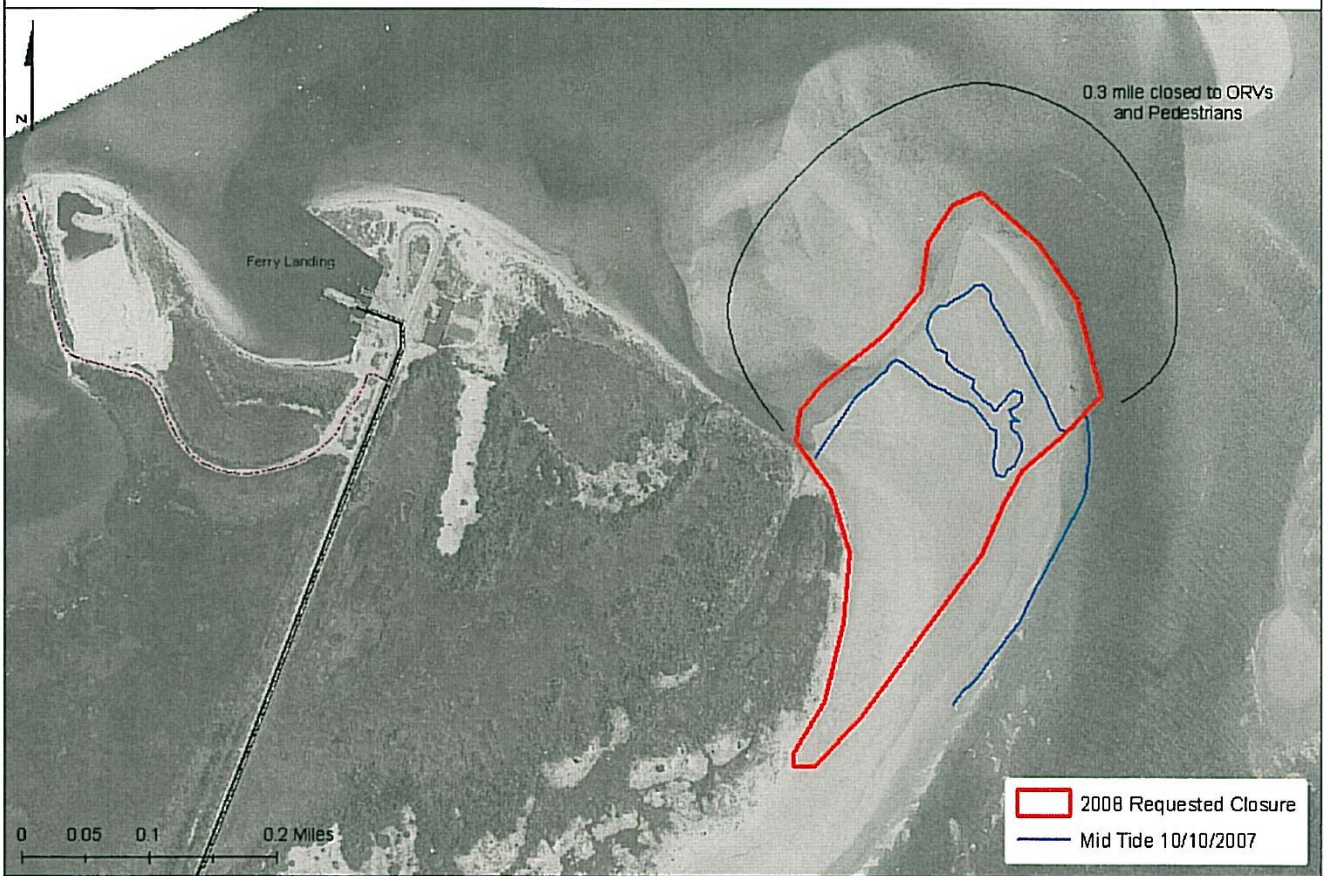


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OI08-002 North Ocracoke Pre-nesting Closure Request

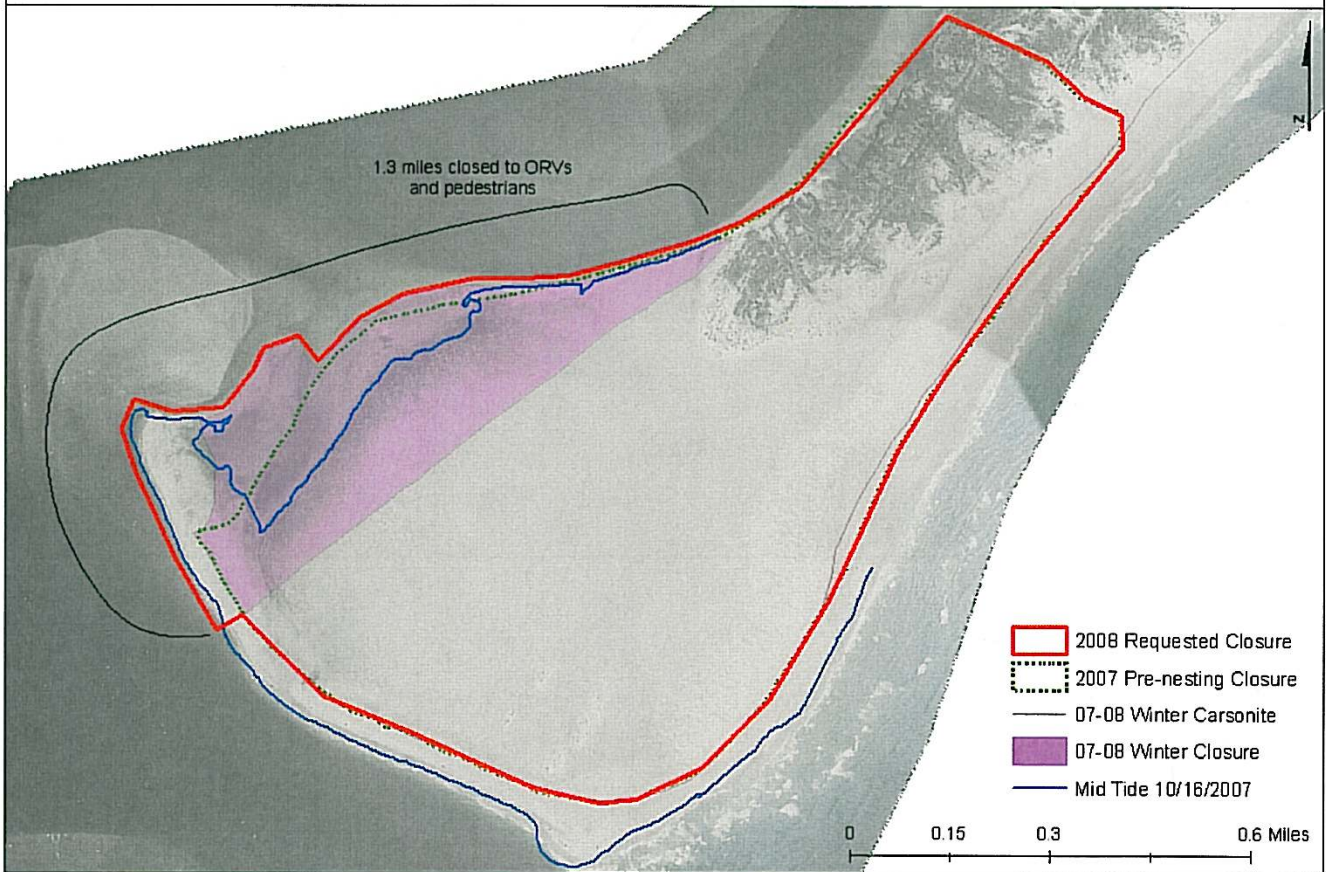


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OI08-001 South Ocracoke Pre-nesting Closure Request



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