

AMOY Buffer History at CAHA



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How we got to where we are today.

- Executive Order 11644 of 1972 (amended by EO11989 of 1977) requires federal agencies permitting ORV use on agency lands to publish regulations designating specific trails and areas for this use.
- In 2005, Defenders of Wildlife issued a notice of intent to sue for alleged violations of the ESA, Natl. Env. Policy Act, the Migratory Bird Treaty Act, the NPS Organic Act, and the enabling legislation for CAHA.
 - In 2005, approx 90% of the beach was open to vehicles and recreationists.

The Interim Strategy

- Interim Protected Species Management Strategy (Jan 2006, approved July 2007) was developed to guide management practices for recreation use and protection of species at CAHA for the next 3-4 years until the ORV and special regulation were completed.
 - A 100' wide ORV and pedestrian corridor established at the beginning of the nesting season.
 - Establish a 300'-450' buffer while maintaining an ORV corridor. Maintain a nest buffer of at least 150' from the ORV corridor.
 - A 300' buffer was established when unfledged chicks were present.
 - If recreation closures are created around nests, adjust ORV corridor whenever possible to allow vehicle passage.

USGS Protocols

- Park Management realized that management of natural resources at CAHA had been inconsistent over the previous decade and requested assistance from USGS Patuxent Wildlife Research Center to develop a scientifically-based series of protocols for the protection and monitoring of PIPLs, sea turtles, seabeach amaranth, AMOY, and CWBs for CAHA.
- AMOY Protocol (by J. Michael Meyers)
 - Option A: Completely close all areas used by nesting and foraging AMOY during the last 10 years to recreational activities from March 15 to Aug 15
 - Option B: Establish a 50 m pedestrian buffer in AMOY territories
 - Option C: Establish a 50 m pedestrian and ORV buffer from sunrise to sunset at all sites used in the last 10 years.

The Lawsuit!



- SELC filed a lawsuit against NPS in Oct 2007 for lack of an ORV management plan.
- In April 2008, the federal court issued a Consent Decree (CD) based on a compromise settlement between the NPS, Natl. Audubon Soc., Defenders of Wildlife, and intervenors.
 - The CD prevented an injunction against vehicle access.
 - The CD required CAHA to take immediate action to enhance its management of declining populations of nesting shorebirds and sea turtles.
 - The CD kept the selected alternative of the Interim Strategy in place but with modifications (larger buffers within shorter timeframes, penalties for violations)

Requirements of the CD

- Prenesting closures established only for PIPLs.
- Monitor spits and Cape Pt every 2 days from March 15-April 15 and daily from Apr 16-July 15.
- Prenesting closures could be removed after Jul 15 or 2 weeks after all breeding activity has ceased or chicks have fledged, whichever is later.



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Consent Decree Buffers

- If breeding activity (territorial behavior, courtship, mating, confirmed scrapes, or other nest building activities) is observed, buffers will be implemented within 8 daylight hours.
- When an active nest or chicks were found, protective measures will be taken immediately and buffers will always be established within 6 daylight hours.
- Locations of the buffers were adjusted to accommodate chick movement.

Species	Breeding/ Nest Buffer	Unfledged Chick buffer
Piping Plover	50 m	1000 m (ORV) 300 m (pedestrian)
Least Tern	100 m	200 m
Other Colonial Waterbirds	200 m	200 m
American Oystercatcher	150 m	200 m

Professional Strategies

- Always:
 - Know the reasons for the rules.
 - Remain calm.
 - Be polite.
 - Validate the visitor's reaction.
 - Explain options.
- When appropriate:
 - Apologize for the inconvenience.
 - Offer to contact a supervisor.
- **Never:**
 - Take it personally.
 - Argue with the visitor.

Consent Decree-Deliberate Violations

- At all established pre-nesting areas and buffers, if, in the opinion of NPS, a confirmed deliberate act that disturbs or harasses wildlife or vandalizes fencing, nests, or plants, is documented by NPS personnel, the pre-nesting area or buffer shall be expanded automatically by 50 m.
- If a second such act occurs at the same area, the buffer shall be expanded automatically by an additional 100 m.
- If a third such act occurs, the buffer shall be expanded automatically by an additional 500 m or more, if NPS determines it is necessary to minimize the extent of further disturbance.



Back in the office...

- NPS contracted with the US Institute for Environmental Conflict Resolution to use negotiated rulemaking to reach consensus among interested parties in the development of the special regulation.
 - Stakeholder groups were very polarized!
- CAHA was forced to come up with their own preferred alternative.



Final Rule

- The final rule document for the management of ORV use at Cape Hatteras National Seashore (Seashore) was published in the Federal Register on 1/23/12. The rule can be found at: <https://www.federalregister.gov/>
- The final rule became effective on Wednesday, February 15, 2012. The rule designates off-road vehicle (ORV) routes and authorizes ORV use within Cape Hatteras National Seashore (Seashore) in a manner that will protect and preserve natural and cultural resources, provide a variety of safe visitor experiences, and minimize conflicts among various users.
- The final rule is available on the NPS Planning, Environment & Public Comment (PEPC) website at: <http://parkplanning.nps.gov/parks.cfm>.

Changes in Management Resulting from the ORV Management Plan (vs. CD)

- Prenesting closures established for PIPL, WIPL, and AMOY by March 15 if nesting occurred in more than 1 of the last 5 years and April 15 for CWBs.
- Mar 15-Jul 15 prenesting closures will be monitored 3X/week.
(May 1 for CWBs)
- Maintained the buffers established in the CD, 150 m breeding activity/nesting buffer and 200 m chick buffer
- Prenesting closures can be removed after **Jul 31** or 2 weeks after all chicks have fledged, whichever is later.
- Permanent VFAs.



Not over yet!

- In 2012 the Cape Hatteras Access Preservation Alliance filed a lawsuit in the US District Court in Washington, DC claiming improper procedures in developing the rule.
- Lawsuit claims that the buffers are too restrictive and that the NEPA process was flawed (failed to give meaningful consideration to any views, data, or info that was inconsistent with the agency's desired result).
- DC Court turned this case over to the court in NC

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	
CAPE HATTERAS ACCESS)
PRESERVATION ALLIANCE)
46813 Highway 12)
Buxton, NC 27920,)
Plaintiff,)
v.)
KENNETH LEE SALAZAR, IN HIS)
OFFICIAL CAPACITY AS)
SECRETARY, UNITED STATES)
DEPARTMENT OF THE INTERIOR;)
JONATHAN B. JARVIS, IN HIS)
OFFICIAL CAPACITY AS DIRECTOR,)
NATIONAL PARK SERVICE;)
NATIONAL PARK SERVICE;)
DEPARTMENT OF THE INTERIOR)
1849 C Street, NW)
Washington D.C. 20240,)
and)
MICHAEL B. MURRAY, IN HIS)
OFFICIAL CAPACITY AS)
SUPERINTENDENT OF THE CAPE)
HATTERAS NATIONAL SEASHORE)
RECREATION AREA)
1401 National Park Drive)
Manteo, NC 27954,)
Defendants.)
Case No.	
Case: 1:12-cv-00219	
Assigned To : Sullivan, Emmet G.	
Assign. Date : 2/9/2012	
Description: Admin. Agency Review	
<u>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</u>	

In addition to the lawsuit...

- There is currently a bill (S486) in Congress that could potentially overturn the ORV Management Plan. ORV users and local merchants think the Plan is too restrictive.
- The bill has passed the House Committee but not the Senate.
- If the bill is passed, management at CAHA would revert back to the Interim Strategy.

Preserving Public Access to Cape Hatteras Beaches Act

- **Buffer modifications** - In modifying wildlife buffers under subsection a), the Secretary shall, using adaptive management practices
 - Ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species, as determined in accordance with peer reviewed scientific data; and
 - Designate pedestrian and vehicle corridors around areas of the Natl. Seashore closed because of wildlife buffers, to allow access to areas that are open.
- **Coordinate with State** - The Secretary, after coordinating with the State, shall determine appropriate buffer protections for sp. that are not listed under the ESA.

Date: 4/18/2013

Number: HI-13-008-A

To: Wildlife Biologist and Chief of Resources Management
From: Lead Biological Technician (District: Hatteras)

Subject: RESOURCE CLOSURE DOCUMENTATION FORM

Type of closure:

- ☐ prenesting (list species)
☒ breeding (list species AMOY)
☐ nonbreeding (list species)
☐ vegetation/dune (list any T&E species)

☐ New Closure - ☒ Modification of Existing Closure - ☐ Removal of Closure

Actual installation date: 4/18/2013

Reason for closure, modification or removal:

An AMOY scrape was found outside of the existing closure by approximately 10 meters.

Physical location: 1.3 mi S of R38

☒ ORV area - ☐ VFA - ☐ Village (Seasonal ORV Route) - ☐ Other()

Description of Action (If shoreline closed include length of original closure and length of expansion):
The north end of the existing closure will be extended approximately 0.1 mi farther north to ensure a sufficient 150 meter buffer around the observed scrape. This area is currently pedestrian access only. This modification will prohibit all entry for an additional 0.1 mi, making the total area closed for this closure 0.3 mi (1.3 - 1.6 mi S of R38).

Submitted by: E. Frey Date: 4/18/2013

Approved by: E. Frey Date: 4/18/2013

Provided to Superintendent for review? Yes No ☒ X

Removal certification:
Name

Date

Cape Hatteras National Seashore
North Carolina

National Park Service
U.S. Department of the Interior



2013 HI-13-008-A Closure Documentation Map



Produced by: Tolckens, RM, 4/18/2013 01:36 PM

Imagery Date: October 2012

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Google Earth Link From the CAHA Website

Current Interactive Beach Access Map using Google Earth

Google Earth is a virtual globe program that maps the earth by the superimposition of images obtained from satellite imagery, aerial photography and GIS 3D globe. The viewer is available for free download at [Google Earth](#). The product is designed for use on newer computers with broadband or higher levels of connection.

Once you have downloaded Google Earth, you can click on this updated [December 04, 2013](#) beach access map link and zoom-in to the shoreline area in which you are interested to see the current access status. The color-coded "access line" indicates the status of shoreline access at the time the map was updated and is based on recent GPS coordinates of the actual shoreline. The underlying Google Earth photo image is dated and may not accurately reflect the current location of the shoreline. **Closure conditions may change in the field on short notice. On-site signage, rather than the Google Earth map, is the most accurate and current indication of what is open or closed to the public.** Closed areas are clearly marked in the field with closure signs or "symbolic fencing" consisting of posts, closure signs, string and flagging tape. Knowledge of tidal changes and caution should be exercised while traveling the beaches of the park.

Please Note: As you close Google Earth, the program will ask you if you wish to save these items in My Places. To ensure that you continue to view the most current beach access map, select "**Discard**".

References to non-U.S. Department of the Interior (DOI) products do not constitute an endorsement by the DOI. By viewing the Google Maps API on this web site the user agrees to these [Terms of Service](#) set forth by Google.

Google Earth Access Map



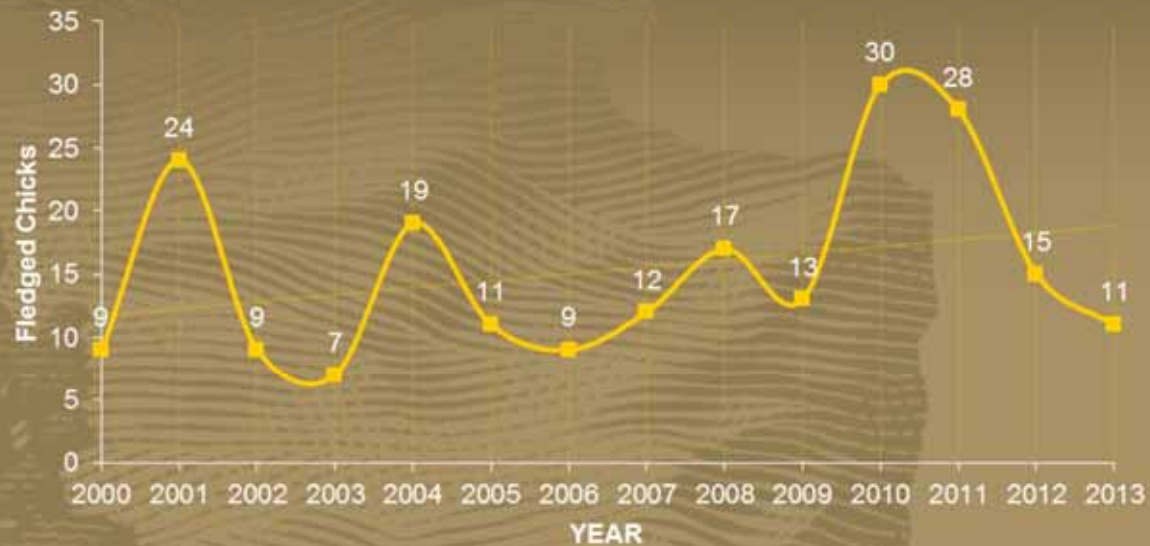
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AMOY Productivity



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Fledged Chicks and Breeding Pairs



Moving Forward

- Adaptive Management Initiatives
 - After desired future conditions are met (5 yr. avg. of 30 nesting prs. and 0.4 productivity), the NPS will seek funding to develop the following adaptive management initiatives related to resource protection buffers for shorebirds.
 - Pass-through buffers during the incubation period: An adaptive management study or studies to evaluate whether a reduced buffer distance is adequate to prevent disturbance caused by ORVs driving past PIPL, AMOY, and CWB nest sites if all other recreation is prohibited within the reduced buffer, and to determine whether a reduced buffer is adequate to prevent disturbance caused by peds walking below the high tide line past PIPL, AMOY, or CWB nest sites.

Demographics

Banded/Banded	Banded/UNB	UNB/UNB
Gr07/GrU5	Gr01/UNB	BHAM04
Gr11/GrUM	Gr87/UNB	BIAM02
Gr14/GrN7	GrAT/UNB	GIAM03
Gr27/GrT4	GrC9/UNB	OIAM5
Gr52/GrL9	GrC0/UNB	OIAM6
Gr57/GrH2	GrHX/UNB	
Gr76/GrX1	GrL0/UNB	
GrH3/GrAW	GrL6/UNB	
GrL5/RdC9	GrLM/UNB	
GrLY/GrXT	GrR0/UNB	
GrW3/GrXW		
11 prs	10 prs	5 prs

Gr07/UNB

Breeding pop. consists of :

32 banded (15 adults, 17 chicks)/20 UNB

6 banded as chicks in other locations

CALO

Gr76-2004

Gr87-2004

GrN7-2006

GrU5-2006

Shell Castle

GrHX-2009

N Rock Island

GrLM-2010

Age Distribution

Chicks	Adults
(4) 9 yo HY'04	(6) 9+ yo
(2) 8 yo HY'05	(2) 8+ yo
(2) 7 yo HY'06	
(1) 6 yo HY'07	(3) 6+ yo
(2) 5 yo HY'08	(3) 5+ yo
(2) 4 yo HY'09	(1) 4+ yo
(4) 3 yo HY'10	

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AMOY History (2002-Present)											
Age When Banded		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Band	Adults										
01	2004	Territorial UNB	Territorial 26	Nesting HI 26	Nesting HI 26	Nesting HI L8	No Observation Recorded	Nesting (1) BH UNB	Nesting BH UNB	Nesting (1) BH UNB	Nesting BH UNB
06	2004	Territorial 05	Nesting HI UNB	Nesting HI UNB	Observed	Nesting HI UNB	Observed BH 7/21	Observed (w / GrWP, UNB)	Observed w / UNB HI	Observed HI Feb-June	Observed HI Jan-Sep 8X
07	2004	Nesting HI UNB	Nesting (1) HI A7	Nesting HI A7	Nesting (1) HI A7	Nesting (1) HI A7	No Observation Recorded	Nesting (3) HI A7	Nesting HI A7	Nesting (2) HI UNB	Nesting HI UNB/U5
11	2004	Nesting (?) GI UNB	Nesting (?) GI UNB	Nesting (1) GI UNB	Nesting (2) GI UNB	Nesting (2) GI UNB	Nesting GI UNB	Nesting (2) GI UNB	Nesting (2) GI UM	Obs/scraping(?) on GI (no nest documented)	Nesting GI UM
14 (Female)	2004	Nesting (2) OI OGSO	Nesting (1) OI OGSO	Nesting OI OGSO	Nesting OI OGSO	Nesting (2) OI L7	Nesting OI L7	Nesting OI L7	Nesting (2) OI N7	Nesting OI N7	Nesting (2) OI N7
27	2004	Nesting (1) HI 26	Nesting (1) BH UNB	Nesting (1) BH UNB	Nesting BH T4	Nesting (3) BH T4	Nesting (1) BH T4	Nesting BH T4	Nesting (3) BH T4	Nesting (1) BH T4	Nesting BH T4
Red C9(Male)	2004	Banded (Dec)	Nesting HI A6	Nesting HI UNB	Nesting (1) HI UNB	Nesting (2) HI L5	Nesting HI L5	Nesting (3) HI L5	Nesting (2) HI L5	Nesting (1) HI L5	Nesting HI L5
C9	2005		Nesting BI UNB	Nesting BI UNB	Nesting BI UNB	Nesting BI UNB	Nesting BI UNB	Nesting BI UNB	Nesting (1) BI UNB	Nesting BI UNB	Nesting BI UNB
C0	2005		Nesting (1) E Waterbird Is UNB	Nesting E Waterbird Is UNB	Nesting(?) E Waterbird Is UNB	Nesting (1) BI UNB	Nesting (1) BI UNB	Nesting (2) GI UNB	Nesting (1) GI UNB	Nesting UNK UNB	Nesting GI UNB
AT (previously R6, banded AT 2009)	2007				Nesting HI R5	Nesting (2) HI UNB	Nesting (1) HI UNB	Nesting (3) HI UNB	Nesting (1) HI UNB	Nesting (1) HI UNB	Nesting HI UNB
R0	2007				Nesting HI A5	Nesting HI 12	Nesting (3) HI 12	Nesting (2) HI 12	Nesting (1) HI 12	Nesting (2) HI 12	Nesting HI UNB
T4	2007				Nesting BH 27	Nesting (3) BH 27	Nesting (1) BH 27	Nesting BH 27	Nesting (3) BH 27	Nesting (1) BH 27	Nesting BH 27
L5(Female)	2008					Nesting (2) HI Red C9	Nesting HI Red C9	Nesting (3) HI RdC9	Nesting (2) HI RdC9	Nesting (1) HI RdC9	Nesting HI RdC9
L6(Female)	2008					Nesting HI A5	Nesting HI A5	Nesting (3) HI A5	Nesting (1) HI A5	Nesting (1) HI UNB	Nesting HI UNB
L9	2008					Nesting BH C8	Nesting BH C8	Nesting (3) BH C8	Nesting (1) BH 52	Nesting (1) BH 52	Nesting BH 52
AW	2009						Nesting (2) HI H3	Nesting (2) HI H3	Nesting (2) HI H3	Nesting (2) HI H3	Nesting HI H3
KX	2010							Nesting HI KY	Observed HI & BH May - June	Observed HI & BH May - June	Observed BH June-July
UM	2010							Nesting East Island Oregon Inlet	Nesting (2) GI 11	Observed GI Mar-Aug	Nesting GI 11



Britta Muiznieks

Wildlife Biologist

Cape Hatteras National Seashore

Britta_Muiznieks@NPS.gov

Office: (252) 475-9625

Cell: (252) 475-8348



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