

# **NPS ORV Management Alternatives**

## **Cape Hatteras National Seashore**

### **Negotiated Rulemaking Committee Meeting**

### **November 14, 2008**

(with revisions made 11/20/08)





## NPS Organic Act - 16 U.S.C. § 1 et seq.

- “...the fundamental purpose of said parks... is to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

## NPS Management Policies 2006, Section 1.4.3

- When there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.





**“Conservation is to be predominant” is how courts have consistently interpreted the Organic Act**

- For example, one court recently noted, in the context of snowmobile use at Yellowstone, that:**

**“Enjoyment is qualified in the Organic Act in a way that conservation is not. . . This is not blanket permission to have fun in the parks in any way the NPS sees fit. . . [T]he “enjoyment” referenced in the Organic Act is not enjoyment for its own sake, or even enjoyment of the parks generally, but rather the enjoyment of “the scenery and natural and historic objects and the wildlife” in the parks in a manner that will allow future generations to enjoy them as well. *Greater Yellowstone Coalition v. Kempthorne*, Civ. No. 07-2111 (EGS) (September 15, 2008)**

## CAHA Enabling Legislation - 16 U.S.C § 459a

- Administration, protection and development of the Seashore are subject to sections 1 – 4 of 16 U.S.C.
- Legal residents of the villages have the right to earn a livelihood by fishing
- Except for certain portions of the area, deemed to be especially adaptable for recreational uses, which shall be developed for such uses as needed, the area shall be permanently reserved as a primitive wilderness and no development for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in the area.



Fishing  
in  
1935







## Use of ORVs on Public Lands

EO 11644 (1972) as amended by EO 11989 (1979)

- Each agency shall develop regulations that designate areas and trails on which ORVs may be permitted. ORV areas and trails shall be located to minimize:
  - Damage to soil, watershed, vegetation, and other resources
  - Harassment of wildlife or significant disruption of wildlife habitats
  - Conflicts between ORV use and other existing or proposed recreational uses
  - To ensure the compatibility of such uses with existing conditions in populated areas

### 36 CFR § 4.10 (b)

- Designated ORV routes and areas shall be promulgated as special regulation and comply with EO 11644



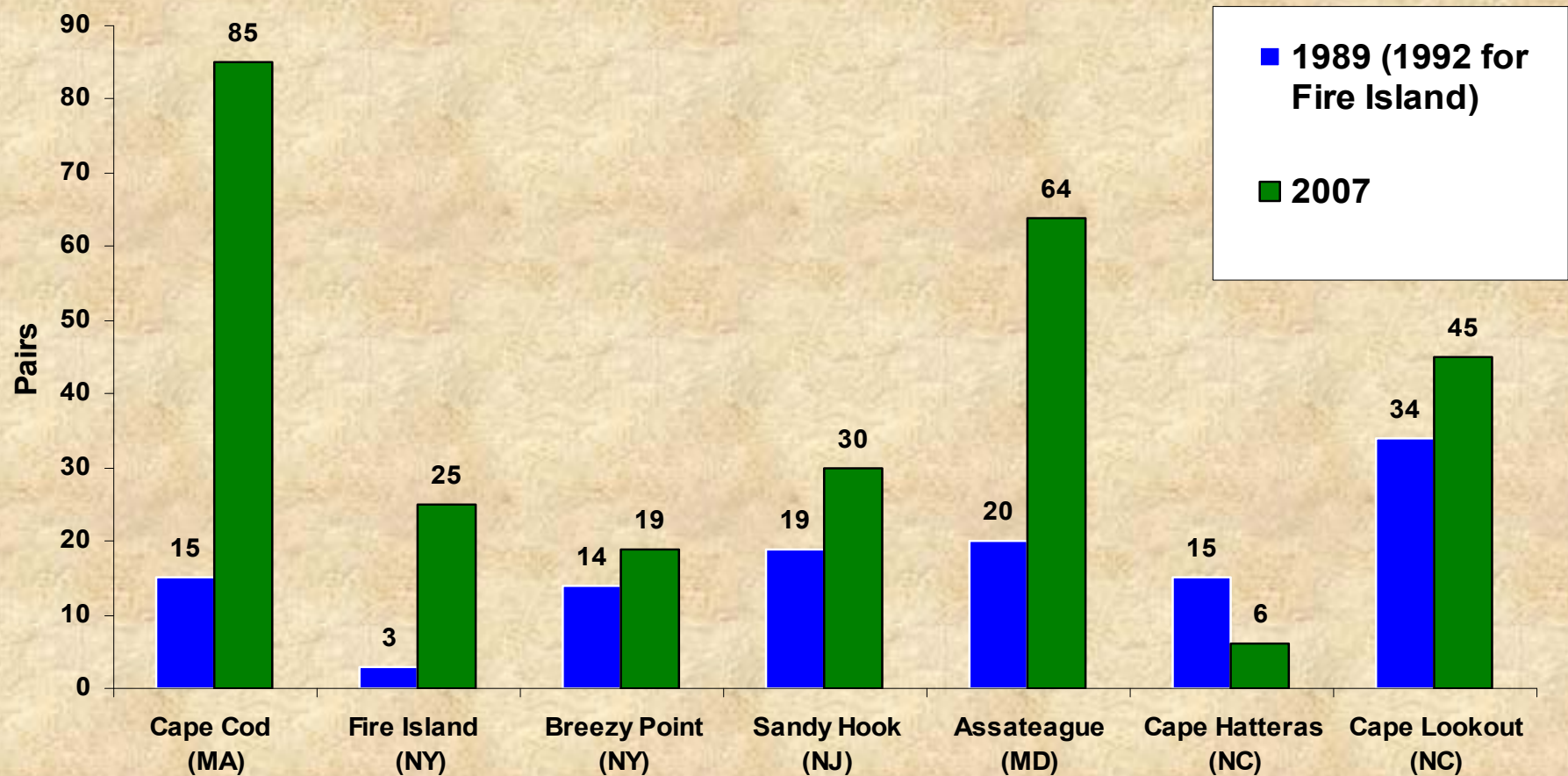
## Current Status of ORV Management at CAHA

- NPS has not met the requirements of the EO's or the NPS regulation on ORV use (i.e., has not completed an ORV management plan or special regulation at CAHA)
- Long-term trend: Increased ORV use and decreased shorebird nesting success
- NPS issued "Interim Strategy" in 2006 to provide resource protection guidance until long-term plan and regulation could be completed
- 2007 Court Order: "...where the Park Service fails to create a plan for ORV use, ORV is prohibited."  
(*U.S. v. Matei*, No. 2:07-M-1075-BO, July 17, 2007)
- Lawsuit on the Interim Strategy resulted in Consent Decree in April 2008

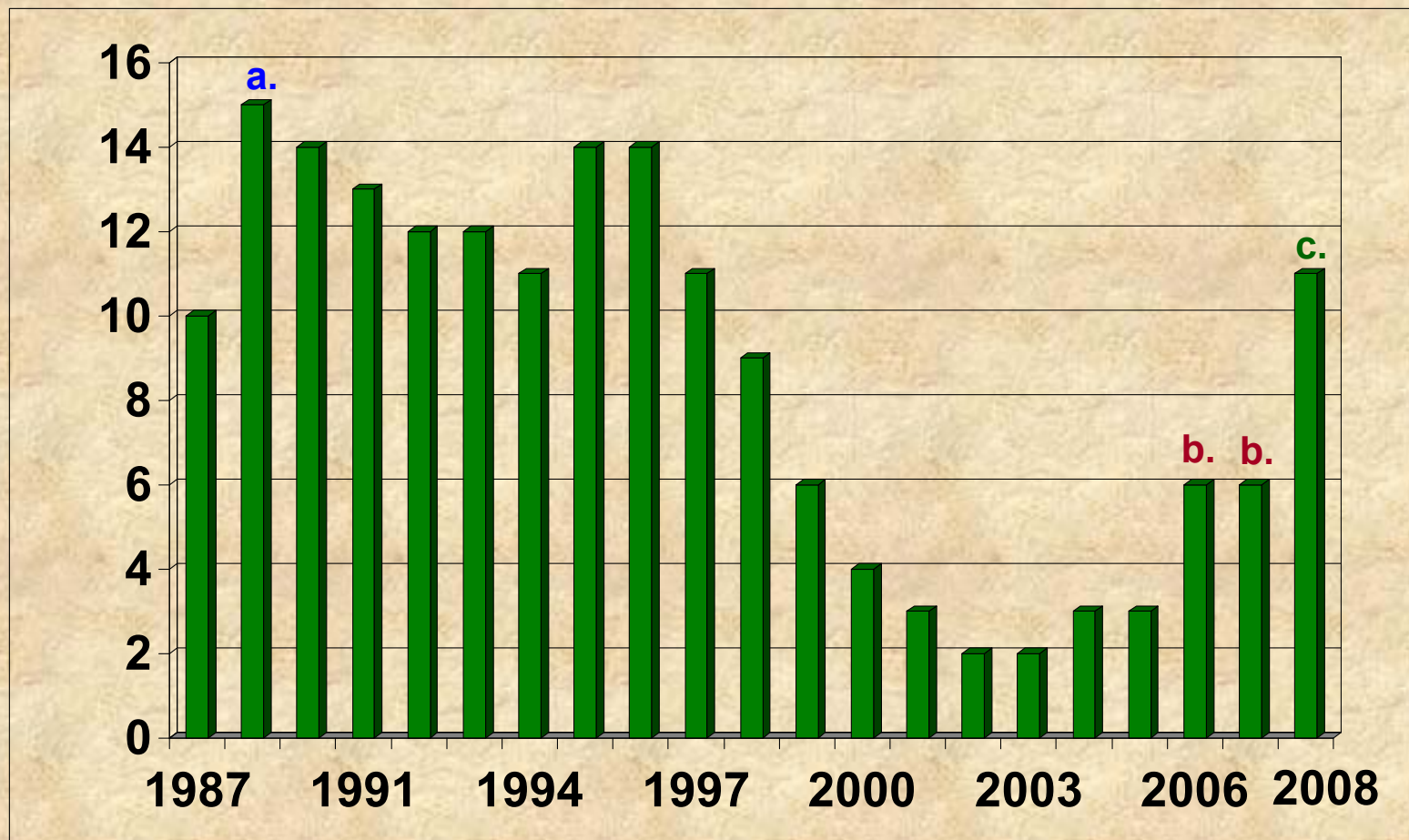




## Abundance of Breeding Piping Plovers, Atlantic Coast National Park Service Units 1989 vs. 2007



## Number of Piping Plover Breeding Pairs at Cape Hatteras National Seashore 1987 - 2008



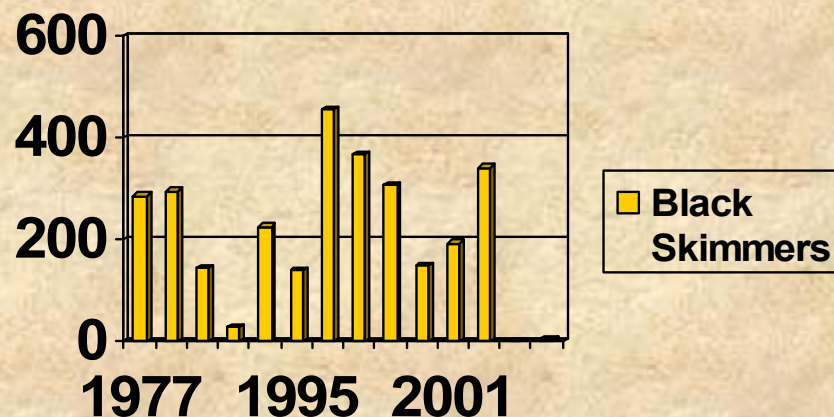
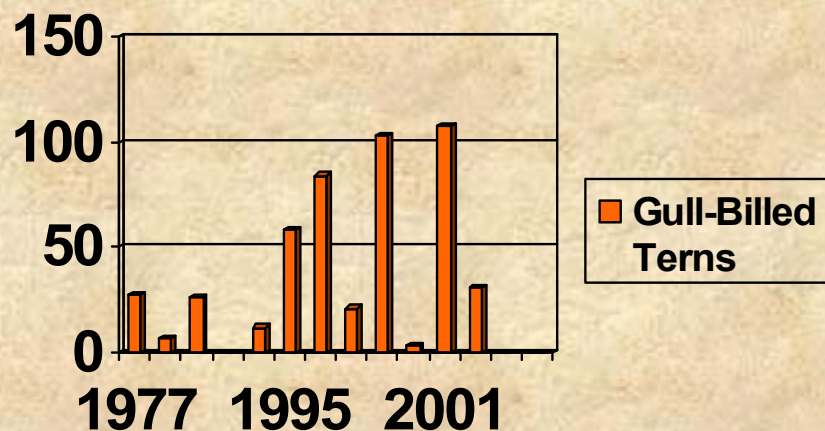
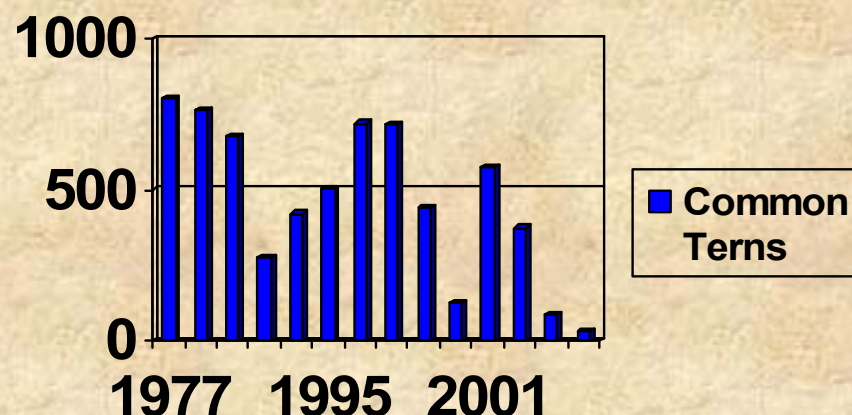
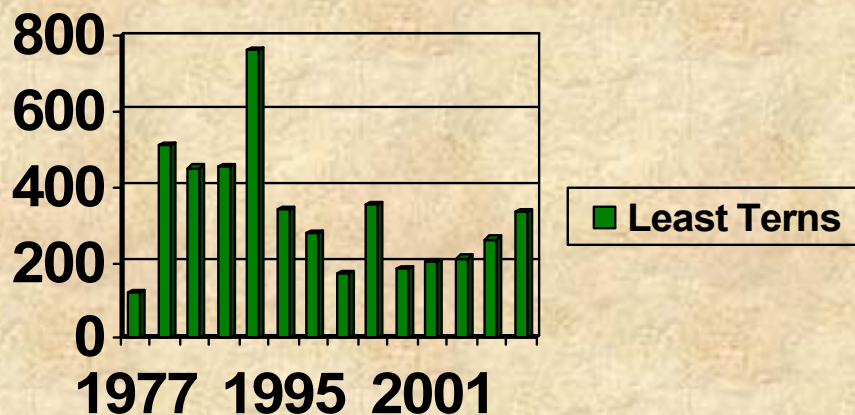
a. Historic high

b. Interim Strategy

c. Consent Decree



## Colonial Waterbird Nests at Cape Hatteras National Seashore 1977 - 2008





## Two Parallel Planning Processes with Civic Engagement NEPA – ORV Management Plan/EIS

- Public scoping Jan-Mar 2007 (4,000+ comments)
- Alternatives Options Workbook public comment period Jan-Feb 2008 (800+ comments)
- **NPS NEPA Alternatives prepared. Impact analysis underway**
- **Fall 2009 – NPS release Draft EIS for public comment**
- **Deadline for ROD – 31 Dec 2010**

## Regulatory Negotiation (RegNeg)

- **Committee established Dec 2007. Six 2-day meetings have been held. Public comment period each day at each meeting. Subcommittee work between meetings**
- **NPS NEPA Alternatives released to RegNeg Committee before mid-Nov meeting**
- **Meetings planned – Dec, Jan (2), and Feb (final meeting)**
- **Deadline for Final Rule – 1 Apr 2011**





## NEPA Alternatives

- NPS has developed full range of reasonable alternatives to be evaluated in the DEIS. Currently working on impact analysis for those alternatives
- RegNeg Committee to develop one consensus alternative that NPS will use as the basis for the proposed rule and as the preferred alternative in the DEIS
- When/if the Committee reaches a preliminary consensus, a preliminary NEPA impact analysis will be prepared and shared with the Committee. Based on the impact analysis, the Committee will be able to adjust the preliminary consensus before it makes its final recommendation



## **“No Action” Alternatives (serve as baselines)**

### **Alternative A: Interim Strategy**

- **Does not address EO requirements**
- **EA found it would result in long-term adverse impacts to species; BO found incidental take was expected and the piping plover population would remain low**
- **Access is somewhat unpredictable**
- **Requires 10.5 FTE of RM staff to implement**

### **Alternative B: Consent Decree**

- **Does not address EO requirements**
- **Access is unpredictable and unreliable**
- **Requires 13.5 FTE of RM staff to implement**



# National Park Service

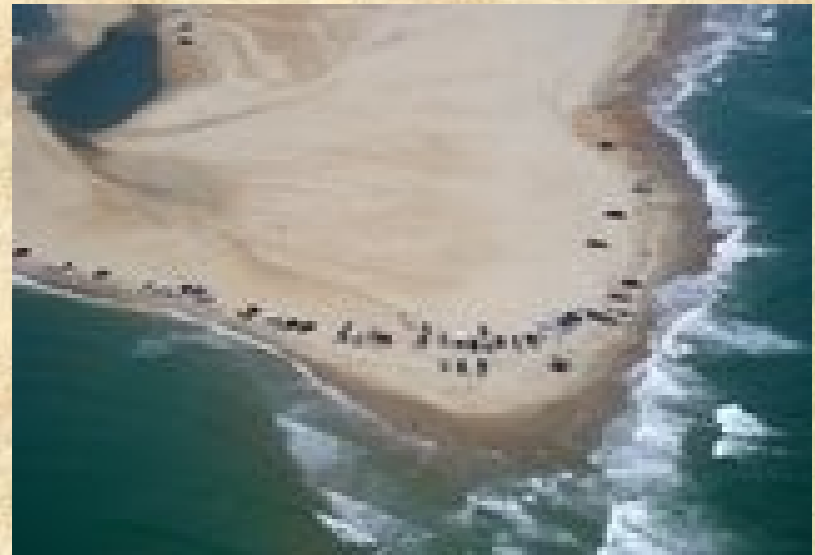


## NPS Action Alternatives

C. Seasonal Management

D. Increased Predictability  
and Simplified Management

E. Variable Access and  
Maximum Management





## NPS Action Alternatives – Features common to all

- ORV areas/routes designated in accordance with EO requirements; sensitive “resource areas” are identified
- Desired Future Condition of resources is identified
- Species Management (SM) measures are identified (2 levels)
  - SM1: less intensive management effort (larger buffers; no ORV or ped. access in Resource Areas under SM1)
  - SM2: more intensive management (more flexible buffers)
- Year-round vehicle-free areas for low density visitor experience of natural beach environment
- Night driving restrictions during sea turtle nesting season (May 1 – Nov 15)
- ORV special use permit required, with an education requirement and a permit fee subject to cost recovery
- Overcrowding (carrying capacity) is addressed
- New access points and parking areas are identified
- Commercial fishing vehicles exempted from some ORV restrictions if not in conflict w/ resource protection





## **Alternative C: Seasonal Management**

- **Designates ORV routes/areas largely based on the seasonal resource and visitor use characteristics of various Seashore areas. Includes:**
  - **Year-round ORV routes/areas in locations without sensitive resources or high pedestrian use**
  - **Seasonal non-ORV areas (become seasonal ORV routes/areas in the off-season) at locations with seasonally sensitive resources (e.g., breeding season at spits and points) or high density pedestrian use (e.g., village beaches)**
  - **Year-round non-ORV areas**



## **Alternative C** *(continued)*

- **SM1 species management at most locations; except SM2 at some spits & Cape Point**
- **Standard dates for all seasonal ORV closures (Mar 15 – Oct 14)**
- **Beach driving prohibited 7 p.m. to 7 a.m. during turtle nesting season**
- **Seasonal ORV carrying capacity (# of vehicles per mile)**
- **Requires 13.5 FTE of RM staff to implement**
- **Consistent dates of seasonal ORV restrictions provide predictability and operational efficiency**





## Alternative D: Increased Predictability/Simplified Mgt

- Designates ORV routes/areas only where sensitive resources or high pedestrian use generally do not occur year-round (i.e., where seasonal or other closures are not likely to be needed). Includes:
  - Year-round ORV routes/areas in locations without sensitive resources or high pedestrian use
  - Year-round non-ORV areas; open to pedestrian use, except when resource closures in effect. Includes all village beaches and spits and points
- Eliminates most seasonal changes in routes and areas. Increases predictability of where and when ORV use is allowed. Simplifies management and operations



## **Alternative D** *(continued)*

- **SM1 species management at all locations**
- **Beach driving prohibited 7 p.m. to 7 a.m. during turtle nesting season**
- **ORV permit has simpler educational requirement than Alternatives C or E**
- **One-vehicle deep parking restriction to address carrying capacity**
- **Eliminates NPS-imposed “safety closures” by relying on ORV drivers to judge whether an area is too narrow to drive safely**
- **Requires 12.0 FTE of RM staff to implement**





## **ALTERNATIVE E: VARIABLE ACCESS AND MAXIMUM MANAGEMENT**

- Designates ORV routes/areas with the most complexity and intensive management requirements. Includes:
  - Year-round ORV routes/areas where sensitive resources or high pedestrian use generally do not occur
  - Seasonal ORV routes/areas in some sensitive resource areas only during the non-breeding season and in congested pedestrian areas open to ORVs only in the off-season
  - Restricted seasonal ORV routes at three key sites (Bodie Island Spit, Cape Point and South Point) with a conditional “pass-through” ORV corridor during the breeding season. Relies on increased monitoring to detect species activity necessitating closure of the route
  - Year-round non-ORV areas



## **Alternative E** *(continued)*

- **SM1 species management at most locations; except SM2 at spits and Cape Point**
- **Standard dates to close to ORVs the identified Resource Areas during breeding season (March 15 – August 31)**
- **Standard dates to close to ORVs areas with seasonally high levels of pedestrian use (April 1 – October 31)**
- **Beach driving prohibited 10 p.m. to 6 a.m. during turtle nesting season. Areas with low density of turtle nests open to night driving Sept 16 - Nov 15**





## **Alternative E** *(continued)*

- Enhances options for pedestrian access to Bodie Island Spit and South Point Ocracoke by promoting water taxi service when closed to ORVs
- Research project, with adaptive management component, to restore habitat lost due to changes in man-manipulated environment (e.g., Cape Point)
- Seasonal ORV closures at spits and Cape Point will be 6 weeks shorter than under Alternative C
- Intensive management will result in more frequent unpredictable closures and less predictability for the visitor, with increased possibility of access to popular sites during the breeding season
- Requires 15.0 FTE of RM staff to implement

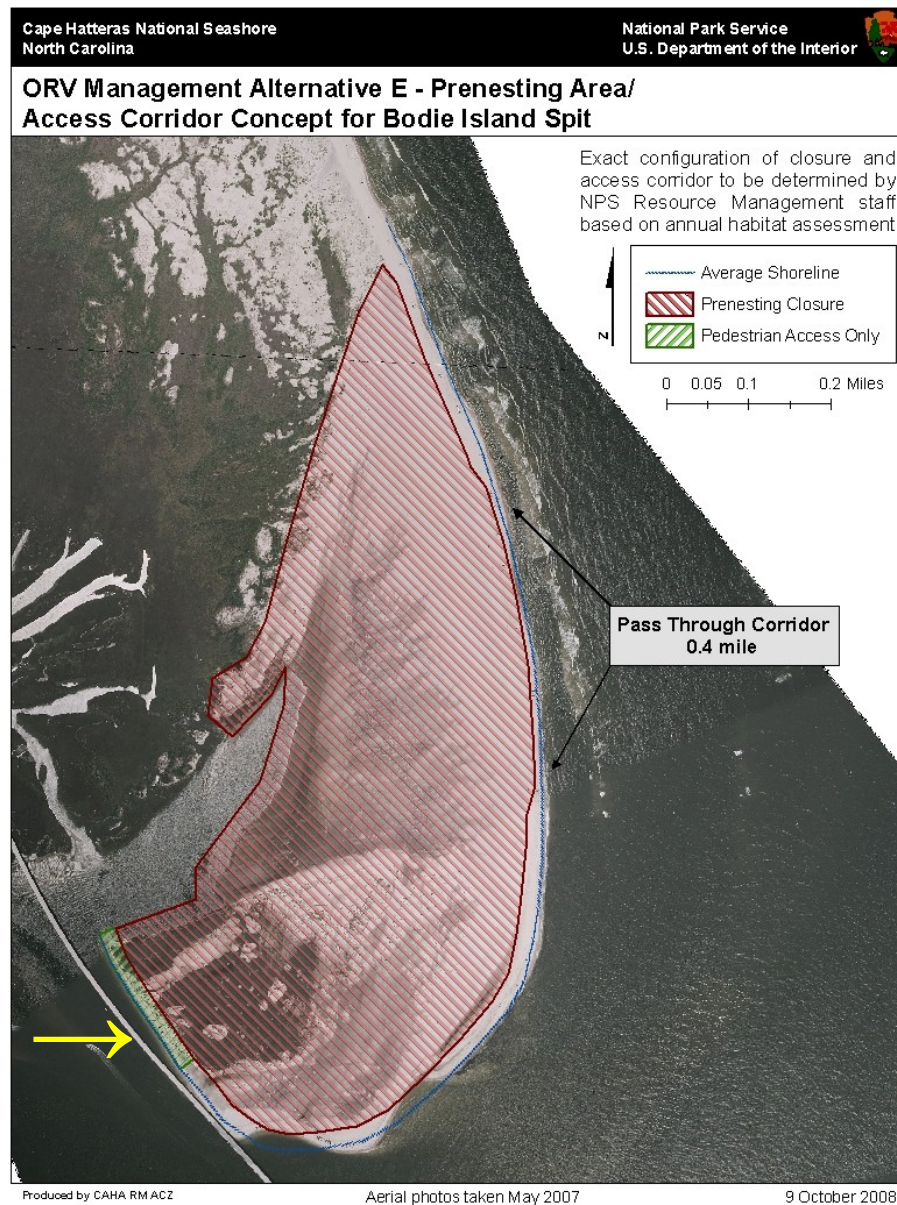




## Alternative E - Bodie Is. Spit

- Pass-through corridor subject to closure, if needed, to prevent disturbance to nesting birds and when unfledged chicks are present
- Water taxi option

Possible Water  
Taxi Landing Zone







## ORV Management Alternative E - Prenesting Area/Access Corridor Concept for Cape Point

### Alternative E - Cape Point

- Interdunal road extension
- Pass through corridor
- Adaptive management with
  - Vegetation management project
  - Social attraction research

Exact configuration of closure and access corridor to be determined by NPS Resource Management staff based on annual habitat assessment



0 0.2 0.4 0.8 Miles



Interdunal Road Extension  
1.5 miles

Pass-thru  
corridor



Cape Hatteras National Seashore  
North Carolina

National Park Service  
U.S. Department of the Interior



## ORV Management Alternative E - Prenesting Area/Access Corridor Concept for South Point

### Alternative E – South Point Ocracoke

- Pass through corridor
- Water taxi option

Possible Water  
Taxi Landing  
Zone



Pass Through Corridor  
0.8 mile

Exact configuration of closure and access corridor to be determined by NPS Resource Management staff based on annual habitat assessment



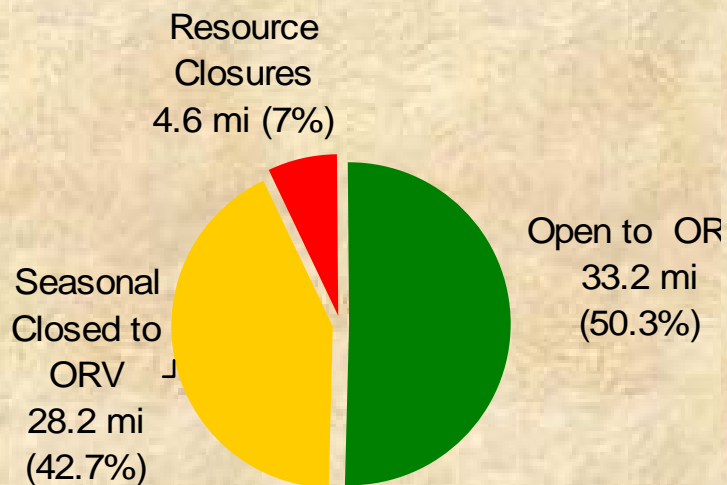
0 0.125 0.25 0.5 Miles



## Comparison by % Total Beach Miles

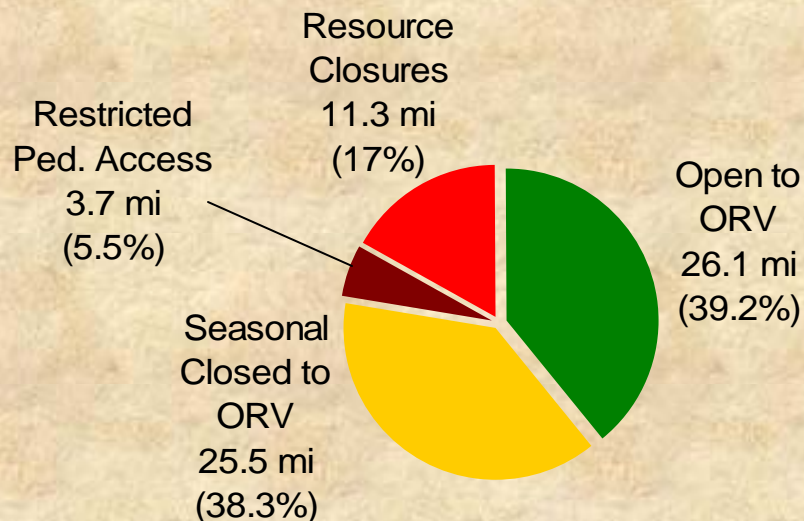
### Alternative A

#### Interim Strategy - July 07



### Alternative B

#### Consent Decree - July 08

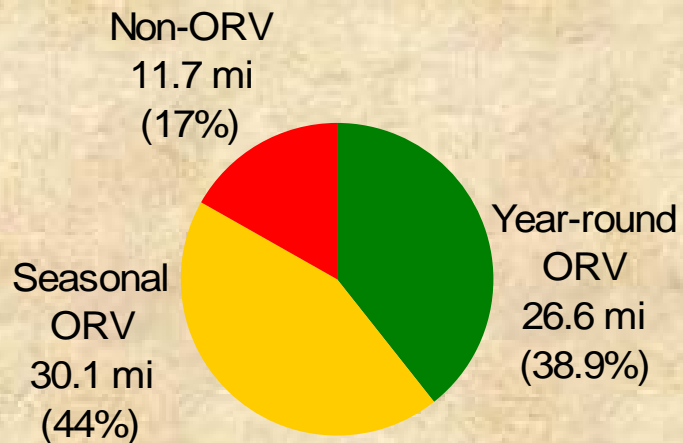


(Alt B graph revised 11/20/08)

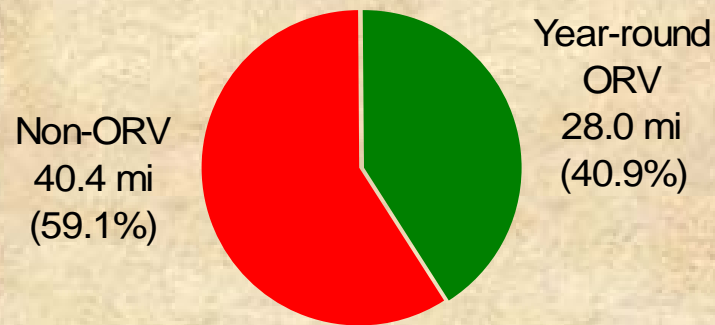
**Note:** Mileages shown do not include Pea Island NWR. This statement added 11/20/08.



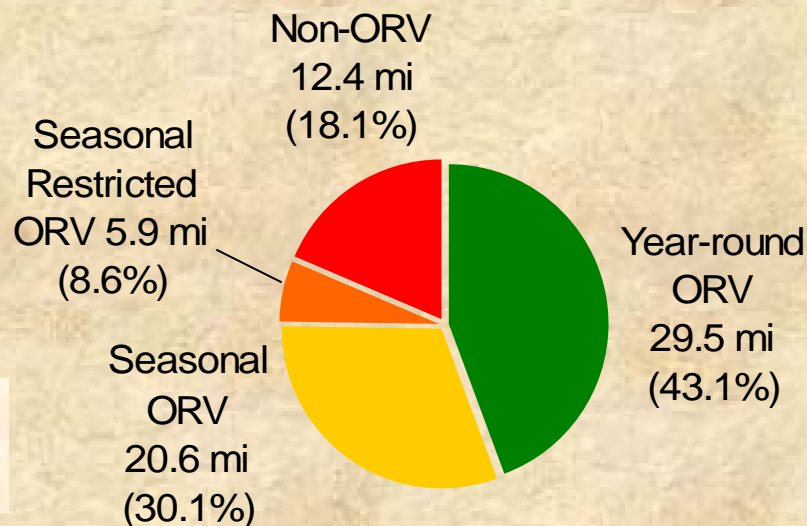
## Alternative C



## Alternative D



## Alternative E



**Note:** Mileages shown do not include Pea Island NWR. This statement added 11/20/08.



**Thank you for your time and attention!**

