

**Cape Hatteras Access Preservation Alliance  
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**March 14, 2017**

## ***A significant milestone.....***

On January 20, 2017 the National Park Service (NPS) implemented a new ORV Management Rule at the Cape Hatteras National Seashore Recreational Area (Seashore). The new rule replaced the previous rule which had been in effect since February, 2012. With this action, the NPS has officially addressed each component of the Defense Authorization Act of Fiscal Year 2015, Section 3057: Cape Hatteras National Seashore Recreational Area (Act).

The completion of the NPS actions in response to the Act is a significant milestone in the efforts of beach access advocates which have been ongoing since the 1970s when executive orders were issued requiring the designation of ORV routes and areas on NPS lands.

The NPS aggressively began an effort to establish an ORV rule for the Seashore in 2005 in response to lawsuits from several environmental organizations in the previous few years. The Cape Hatteras Access Preservation Alliance (CHAPA), led by the Outer Banks Preservation Association (OBPA), North Carolina Beach Buggy Association (NCBBA) and the Cape Hatteras Anglers Club (CHAC), has fought for the past 17 years on behalf of the members of these organizations and for all beach access advocates to insure any rules or policies implemented would preserve and protect the natural resources and recreational opportunities within the Seashore without prohibiting the access formally promised to the public at the Seashore's dedication in 1958 by the director of the NPS, Conrad Wirth.

The first rule and associated wildlife management practices, which were implemented in February of 2012, had significant shortcomings. Congress recognized these shortcomings and passed the Act in December of 2014 requiring that they be addressed. The Act and many of the changes made by NPS to respond to the Act were influenced by recommendations made by CHAPA, its member organizations, representatives of local governments and the individuals who have advocated beach access throughout this process.

At this milestone, it is important to reflect on the changes made regarding pedestrian and ORV access to the Seashore as a result of the Act and to look forward to the future.

## **Successes**

### **Review and Adjustment of Wildlife Buffers**

Numerous wildlife protection buffers were modified on June 15, 2015 in response to the Act requirement that they be addressed within 180 days. Several of the changes significantly improved access in 2015/16. Some of the changes positively improved access in theory but only marginally in practice.

The amount of beach open to ORV and pedestrian access during the months of July, August, September and October was significantly greater in 2015 and 2016 than in the previous years under the 2012 ORV plan.

Table 1: Year Round ORV Oceanfront Access (excludes seasonally opened mileage)  
Smallest Amount Opened/Largest Amount Closed by Year

	Oceanfront ORV Miles Open	Oceanfront ORV Miles Closed	Oceanfront ORV Miles Total	Date of Largest Closure
2012	15.70	9.50	25.2	8/15/2012
2013	9.55	15.65	25.2	8/21/2013
2014	13.66	11.54	25.2	8/20/2014
2015 (pre 7/15)	16.95	8.25	25.2	6/3/2015
2015 (post 7/15)	20.29	4.92	25.2	7/22/2015
2016	20.70	4.50	25.2	6/8/2016

Approximately 4 -5 miles of oceanfront ORV access are closed for almost all of each summer due to buffers for nesting birds and chicks at the points and spits. In 2012, a tern colony closed the beach at ramp 27 for over two months preventing access to almost three miles of beach (prior to construction of Ramp 25). Prior to the changes made in 2015 (described below), turtle nests accounted for the majority of the other miles closed during the summer. In 2016, the low point for access occurred in early June. In July and August, ORV access ranged between 23 and 24.5 miles.

- Turtles

Changes in turtle nest management procedures were implemented on June 15, 2015. Smaller buffers around the nest when first laid allow for ORV passage behind or in front of the nest until the hatch window is reached except in extremely narrow sections of beach. During the hatch window, using procedures described by the North Carolina Wildlife Resources Commission, NPS personnel install a corridor in front of the nest for ORV passage during the day. In the evening, ruts within the corridor are raked smooth to provide clear passage for hatchlings should the hatch occur overnight. Driving corridors were placed in front of 47 sea turtles nests in 2016. These changes significantly reduced and almost eliminated ORV and pedestrian closures due to turtle nests in 2015 and 2016 (both record setting years for nesting).

- Piping Plovers

The changes regarding Piping Plover nest buffers (reduced from 75 meters to 50 meters) and unfledged chicks buffers (reduced from 1000 meters to 500 meters or 200 meters under certain conditions for ORVs, and reduced from 300 meters to 100 meters for pedestrians) reflect the guidelines published in the Piping Plover Recovery Plan and are consistent with the changes CHAPA had recommended. The size of closures due to piping plovers should be smaller than what has occurred over the past decade, but their impact on ORV and pedestrian access will be highly dependent on the physical locations of the nests and broods and on the landscape of the affected beaches.

The reductions in the size of pre-hatch plover and oystercatcher nest buffers increase the likelihood that closure of Cape Point in the spring will be delayed from mid-April until mid-May. This, in fact, happened in 2016.

The reduction in size of closures for unfledged plover chicks also increases the likelihood that ramp 44 will be open to ORV access in June, July and August. In 2016, Ramp 44 was closed for a period due to flooding from excessive rain events over the previous six months; however, it was never closed due to unfledged plover chicks. Flooding at Cape Point also likely caused plovers to locate their nests further to the west than in previous years, further reducing the threat to closure of Ramp 44. While the physical location of the unfledged chicks will continue to determine where closures are necessary, the smaller buffers are a positive change which should favorably affect ORV and pedestrian access in the future.

- American Oystercatchers

Nesting and pre-fledged buffers for American Oystercatchers (AMOY) were not changed because the NPS did not find adequate peer-reviewed scientific data to support a change. However, peer-reviewed scientific data was identified that supported the use of an ORV only corridor located between 50 meters and 25 meters from the nest location until the eggs hatch. The use of the ORV-only corridor was adopted by the NPS. As noted above, Cape Point remained open a month longer in the spring due to this change, combined with the changes made for piping plovers' nests. However, closures due to unfledged AMOY chicks continued to prevent access for part of the summer.

- Colonial Waterbirds

Nesting buffers for Colonial Waterbirds were not changed because the NPS did not find adequate peer-reviewed scientific data to support a change. The buffer for unfledged least tern chicks was reduced from 200 meters to 100 meters. This change did not affect access favorably or unfavorably in 2015/16. Conceivably, if least terns establish colonies on a wide expanse of beach, such as at Cape Point or South Point, this change in policy could allow sections of the beach to remain open when they would have previously been closed. However, beaches in other locations are generally too narrow to benefit from the change from 200 to 100 meters. The 2012 Ramp 27 closure described earlier would still occur in the future should terns choose to nest at that location again.

### **Modifications to Final Rule**

Several significant changes to the ORV rule were implemented on January 20, 2017. All of these changes have a positive impact on ORV access.

- One mile of Vehicle Free Areas (VFAs) was re-designated as year-round ORV access. Ramp 2 was restored and reopened and the plan to replace ramp 59 was cancelled. At each location, a half mile of beach previously designated as VFA was re-opened to year -round access.
- Two miles of VFAs were re-designated as seasonal ORV routes. 1.5 miles of VFA south of Ramp 23 and one mile of VFA north of Ramp 34 were re-opened.

- Seasonal ORV routes will open 2 weeks earlier in the fall (October 15) and close two weeks later in the spring (April 14) providing an additional month of ORV access in front of the villages.
- Ten priority ORV routes will open at 6:00 a.m. in May, June, July; open at 6.30 a.m. in August and September; open at 7:00 a.m. in October, November. Non-priority routes will open at 7:00 a.m. Priority routes include Ramps 2, 4, 25, 27, 43, 44, 48, 49, 70, and 72. Previously, all ORV routes were opened at 7:00 a.m. from May 1 until the later of September 15 or when turtle nests had hatched within each route.
- Annual ORV permits will begin and end on date issued. 7-day permits will be replaced with a 10-day permit.
- The bypass road was extended north to Ramp 44 and south to the open beach approaching Cape Point and was designated part of the route. This change will reduce the likelihood that access to Cape Point will be closed due to erosion, ocean over wash, or turtle nests within this stretch of beach.

### **Construction of New Vehicle Access Points**

A number of positive infrastructure projects have been authorized and many completed over the course of the past two years.

The NPS identified and prioritized 29 infrastructure projects it deemed important to public access at the Seashore in July, 2013. In March 2015, Superintendent David Hallac initiated a review of those projects with objectives to update both the projects on the list and their priorities. CHAPA met with the NPS on several occasions to provide recommendations for changes, many of which were adopted. Several of the projects identified in 2013 along with several new projects were placed on a fast track to completion due to the Act.

Some of the completed projects are:

- New ORV Ramp 32 on Hatteras Island was constructed and opened in late summer of 2015.
- The inside ORV road connecting ramp 49 to ramp 44 was completed in early winter of 2016.
- New ORV Ramp 48 on Hatteras Island was constructed and opened in late fall of 2015.
- Plans to construct a new ramp south of ramp 2 on Bodie Island were scrapped and existing ramp 2 was reopened.
- Plans to construct a new ramp west of ramp 59 on Ocracoke were scrapped and existing ramp 59 will remain open in the future.
- New ORV bypass extending approximately 2,800 feet from ramp 44 to Cape Point behind dunes was constructed and opened in late January, 2017.
- Ramp 49 on Hatteras Island was elevated three feet to reduce the threat of flooding similar to what occurred during the fall, winter and spring of 2016. This project was completed in early fall, 2016.
- Project to elevate Ramp 44 on Hatteras Island by two feet to reduce the threat of flooding similar to what occurred during the fall, winter and spring of 2016 was initiated in late fall of 2016 and will be completed by early spring of 2017.
- New ORV ramp 63 on Ocracoke was constructed and opened in 2016.

- Two soundside access areas with parking were designated on Ocracoke (Devils Shoals Road and South Bitterswash Creek).

## **Disappointments and Failures**

The changes which have occurred in response to the Act have all positively impacted visitor access to the Seashore to one degree or another. However, a number of CHAPA recommendations were not adopted by NPS. These unfulfilled recommendations represent missed opportunities to further improve the visitors’ abilities to use the Seashore in ways to which they have been accustomed since its inception.

### **Wildlife Buffers**

With regard to wildlife management, buffers and closures for unfledged piping plovers, American oystercatchers and colonial waterbirds will continue to prevent pedestrian and ORV access during most of the summer at key locations within the seashore, including Bodie Island Spit, Cape Point, Hatteras Inlet (when not flooded), Ocracoke at Hatteras Inlet and South Point. Although the buffer for unfledged plover chicks has been significantly reduced, the buffers for unfledged oystercatchers and colonial waterbirds have changed only minimally. Given the historical location of nests for these species, odds are high that Cape Point and South Point will continue to be closed from the middle of May until late August.

As you can see in Table 2, although piping plover chicks fledged by mid July, the Point did not reopen until late August in 2013, 2014, and 2015. It remained closed because of unfledged oystercatchers and colonial waterbirds. The earlier re-opening in 2016 occurred because an oystercatcher was lost earlier than expected, likely due to predation.

Table 2: Cape Point Historical Close / Reopen Dates

Year	Closed	Reopened	Plover Fledged Date
2011	3/11/2011	7/18/2011	7/18/2011
2012	4/09/2012	8/03/2012	8/03/2012
2013	4/09/2013	8/23/2013	7/16/2013
2014	4/02/2014	8/26/2014	7/18/2014
2015	4/06/2015	8/30/2015	7/15/2015(?)
2016	5/11/2016	7/27/2016	7/15/2016(?)

Other areas of otherwise open beach are also at risk for closure should oystercatchers or colonial waterbirds choose to nest in these areas.

The Act required that 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.” Scientific data for these species are limited. As a result, the NPS was conservative in the changes it was willing to adopt. Attention must be given to identifying or developing science regarding these non- threatened non-endangered species that will provide options to preserving access.

### **ORV Rule**

Collectively, the changes in ORV routes which were recommended by CHAPA but not adopted by NPS would have moderately increased the amount of beach available for access without compromising any of the objectives which were sought through the designations of routes in the original rule in 2012. A summary of CHAPA recommendations for ORV routes follows.

- Year-round Vehicle Free Areas should be reduced 7.5 miles (from 26 miles to 18.5 miles). The new rule reduced VFAs by 3 miles (from 26 miles to 23 miles).
- Bodie Island Spit and the South Beach (from Cape Point towards Frisco) continue to be classified as Vehicle Free Areas and remain closed year round to ORV access. Further, the rule does not provide for designation of a temporary ORV corridor from old Ramp 45 to Cape Point when circumstances such as flooding or erosion prevent access from Ramp 44, a modification to the rule which had been proposed by CHAPA.
- One and a half miles of beachfront should be re-designated to year round ORV routes (from 25.2 miles to 26.7 miles). The new rule increases year-round routes by 1 mile, .5 mile less than CHAPA's recommendation.
- Six miles of VFAs on the oceanfront should be re-designated to Seasonal ORV routes (from 13 miles to 19 miles). The new rule increases Seasonal routes by two miles, four miles less than CHAPA's recommendation.
- Seasonal ORV Routes open on October 1 and close on April 30 rather than the October 15 – April 14 dates chosen for the new rule.

## **Future**

CHAPA believes the future will offer opportunities to further improve the visitor experience through greater access as intended by Congress, and without impairment to resource protection objectives. Continued compliance with the Act will be a requirement when changes to wildlife buffers or to the ORV rule are considered in the future. We will continue to make recommendations to the NPS for changes consistent with Act, the enabling legislation, and the objectives of the organizations and people we have represented over the past 17 years.

CHAPA believes the changes which have been made to wildlife protection buffers and to the ORV rule over the past two years signal a turning point in our effort to preserve visitor access to the beaches at the Seashore. We look forward to partnering with the NPS to find solutions to resolve the disappointments and failures described above as well as to find solutions for new issues that arise in the future.

We urge all who advocate access at the Seashore to remain involved and to stay aware of what is happening, let the rangers and volunteers at the Seashore know you appreciate their work, and take a personal interest in making our Seashore the best it can be. Our efforts will insure the Seashore remains the Cape Hatteras National Seashore **Recreational Area** for now and for future generations.

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The Cape Hatteras Access Preservation Alliance (CHAPA) is a project of the OBPA