

Cape Hatteras Access Preservation Alliance
P.O. Box 1355
Buxton, NC 27920

April 10, 2015

Mr. David Hallac
Superintendent, Cape Hatteras National Seashore
1401 National Park Drive
Manteo, North Carolina 27954

Subject: Recent Legislation Affecting Access at Cape Hatteras National Seashore Recreational Area

Dear Mr. Hallac:

In recent weeks, representatives of CHAPA (OBPA, NCBBA, CHAC and representatives of the Hatteras Island business community) have met with Pete Benjamin from U.S. Fish and Wildlife Services, Gordon Myers and members of his staff from N.C. Wildlife Resources Commission, and you and members of your staff to discuss how the recent federal legislation may affect access within the Cape Hatteras National Seashore Recreational Area. We appreciate the time all of these groups have given us to explore options to fulfill the requirements of that legislation.

Earlier, we submitted written recommendations for the prioritization of ORV access infrastructure projects for your consideration. We appreciated the opportunity to provide input to the process and look forward to the completion of the projects to which we assigned a high priority.

The package covered by this letter refines and summarizes proposals we have previously discussed for changes to the current resource management policies and practices that we believe necessary for compliance with the portion of the legislation required to be implemented within 180 days of its passage.

We have not provided recommendations regarding the other aspects of the law which must be addressed by the end of the first year, but intend to do so later in the summer.

The basic requirements of the new law regarding resource management are to “ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species...” and to “designate pedestrian and vehicle corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open.” Compliance with these requirements will provide necessary and appropriate resource protection while allowing more reasonable pedestrian and ORV access than that available under the current management plan.

A document for each affected species (Piping Plover, Sea Turtles, American oystercatcher, colonial waterbirds) which details the current management process and revisions proposed by CHAPA in order to comply with the law is included in this package.

Also included in the package is a matrix which summarizes key information from the individual documents such as recommended buffer sizes for each phase of the breeding cycle for each species.

Within the documents for each species, an iterative process has been recommended to determine the appropriate protection measures which should be installed. The basic process is outlined below.

Buffer Establishment Steps:

Our proposal uses a six-step decision / three tiered buffer concept (i.e. standard, modified, minimum) to determine buffer sizes which provide adequate resource protection and minimize pedestrian / ORV access closures.

1. Determine Standard Buffer size and location. If location of Standard Buffer will prevent access, go to step 2.
2. If Standard Buffer will prevent access, determine if an alternate route or bypass, separated from the resource by natural or manmade barriers (e.g. dunes) is available to allow access. If alternate route or bypass is not available, go to step 3.
3. If alternate route or bypass is not available to prevent closure of access, determine if a temporary ORV only corridor can be opened around or through the Standard Buffer. If corridor is not available, go to step 4.
4. If ORV only corridor is not available to prevent closure of access, reduce the buffer size from Standard Buffer to Modified Buffer and determine if additional resources are required for implementation. If Modified Buffer prevents access, go to step 5.
 - Modified Buffer sizes are determined based on guidelines provided by NCWRC for NC species of concern and with consideration of the federal migratory bird act.
 - Modified Buffer sizes for Piping Plovers are determined based on guidelines found in the Piping Plovers Recovery Plan and consistent with NCWRC input.
 - Modified Buffer sizes for Sea Turtles are determined based on recommendations from the NCWRC, guidelines published in the NCWRC Turtle Handbook, and opinions offered by USFWS.
5. If Modified Buffer prevents access, determine Minimum Buffer size on a case by case basis at the discretion of the Superintendent.
 - NCWRC provides the superintendent with an option to establish buffers smaller than the Modified Buffer on a case by case basis for state species of concern.
 - Other circumstances unique to individual situations may warrant deviation from the modified buffer. For example, turtle nests laid late in the season may have no chance for survival until hatch and may not warrant hatch window protection measures.
6. Sea Turtles – If the above decision process does not prevent access closures, relocate the nest to nearby Vehicle Free Area (VFA).

Buffer Removal Steps:

To “ensure that the buffers are of the shortest duration...”, buffers must be promptly removed when the protected breeding event is completed. Specifically,

- Pre-nesting closures which prevent access should be removed no later than July 31 of each year.
- Buffers for lost or abandoned nests should be removed after a one week allowance for possible re-nesting.
- Buffers for un-fledged chicks should be removed promptly when fledging occurs. Buffers for turtle nests should be promptly removed after the hatch occurs or when it is determined that the nest is no longer viable or that a successful hatch is not realistic.

CHAPA believes the recommendations offered in this package can be implemented with minimal disruption to the NPS resource management processes already in place at the Seashore. Further, we believe the recommendations will balance resource protection and pedestrian / ORV access at the Seashore and that they are consistent with the letter and intent of the law.

We welcome any questions you may have to better understand our recommendations.

Sincerely,

David Scarborough
Treasurer, Outer Banks Preservation Association
Cape Hatteras Access Preservation Alliance

Attachments (5)

This letter and attachments are fully endorsed by:

The Outer Banks Preservation Association (OBPA)
The North Carolina Beach Buggy Association (NCBBA)
The Cape Hatteras Anglers Club (CHAC)

cc: The Honorable Richard Burr
United States Senate
Washington, DC 20510

The Honorable Thom Tillis
United States Senate
Washington, DC 20510

The Honorable Walter B. Jones
House of Representatives
Washington, DC 20515

Mr. Pete Benjamin
Field Supervisor, U.S. Fish and Wildlife Service
P.O. Box 33726
Raleigh, NC 27636

Mr. Gordon Myers
Executive Director, North Carolina Wildlife Resources Commission
1701 Mail Service Center
Raleigh, NC 27699-1701

Mr. Warren Judge
Dare County Commissioner
PO Box 1000
Manteo NC 27954

Cape Hatteras National Seashore Recreational Area

**American Oystercatcher (AMOY), Colonial Water Birds (CWB), Piping Plover (PIPL), Sea Turtles
Buffer and Corridors Decision Matrix – CHAPA Proposal 4/10/2015**

	Size						Duration	
	Current (a)	Proposed					Current (a)	Proposed (g)
		Standard Buffer(b)	Bypass or Alt. Route(c)	Corridor (d)	Modified Buffer (e)	Minimum Buffer (f)		
AMOY								
▪ Pre Nesting (1)	varies	n/a	n/a	n/a	n/a	n/a	7/31 -2wks	n/a
▪ Courtship	150 m	n/a	n/a	n/a	n/a	n/a	2 weeks	n/a
▪ Nesting (eggs observed)	150 m	150 m	if available	if available	50 m	<50 m	Hatched	Hatched
▪ Abandoned / Lost Nest	150 m	150 m	if available	if available	50 m	<50 m	2 weeks	1 week
▪ Un-fledged chicks	200 m	200 m	if available	if available	100 m	<100 m	fledged	Fledged
▪ Post Fledging (2)	200 m	n/a	n/a	n/a	n/a	n/a	2 weeks	n/a
CWB								
▪ Pre Nesting (1)	varies	n/a	n/a	n/a	n/a	n/a	7/31 -2wks	n/a
▪ Courtship	varies	n/a	n/a	n/a	n/a	n/a	varies	n/a
▪ Nesting (eggs observed)	200 m	150 m	if available	if available	50 m	< 50 m	Hatched	Hatched
▪ Abandoned / Lost Nest	200 m	150 m	if available	if available	50 m	< 50 m	2 weeks	1 week
▪ Un-fledged chicks	200 m	150 m	if available	if available	50 m	< 50 m	Fledged	Fledged
▪ Post Fledging (2)	200 m	n/a	n/a	n/a	n/a	n/a	2 weeks	n/a
PIPL								
▪ Pre Nesting (1)	varies	varies	If available	If available	varies	varies	7/31 – 2wks	7/31
▪ Courtship	75 m	50 m	if available	if available	50 m	< 50 m	2 weeks	2 weeks
▪ Nesting (eggs observed)	75 m	50 m	if available	if available	50 m	< 50 m	Hatched	Hatched
▪ Abandoned / Lost Nest	75 m	50 m	if available	if available	50 m	< 50 m	2 weeks	1 week
▪ Un-fledged chicks	1000 m	200 / 100m	if available	if available	200m/100m	< 100 m	fledged	fledged
▪ Post Fledging (2)	1000 m	n/a	n/a	n/a	n/a	n/a	2 weeks	n/a
Sea Turtles								
▪ Nesting (eggs-confirmed)	10 m	10-15 m	if available	if available	3 m (landward)	3 m (landward)	Until Day 55	Until Day 55
▪ Hatch Window (day-sides)	52.5 m	10-15 m	if available	if available	10-15 m	10-15 m	Hatched	hatched
▪ Hatch Window (day -landward)	10 -15 m	15 m	if available	if available	3 m	3 m	Hatched	hatched
▪ Hatch Window (night-sides) (3)	½ mile	15 m	if available	if available	15 m	15 m	hatched	hatched
▪ Hatch Window (night-landward)	closed	closed	If available	If available	Closed	Closed	Hatched	hatched

Footnotes:

(a) Current Buffers:

- Current buffers are those designated by the current (2/15/2012) Cape Hatteras National Seashore Recreational Area ORV Management Plan.

(b) Standard Buffers:

- Standard buffers should be the smallest required by recovery plans / peer reviewed documents / NCWRC recommendations. These buffers will be used unless they will result in access closure. If access closure is likely, bypasses or alternate routes, ORV corridors, modified buffers, or minimum buffers will be instituted (in that order) to preserve access.

(c) Bypass or Alternate Route:

- When standard buffers will result in access closure, NPS will determine if a bypass or alternate route can be used to provide detours around natural or man-made barriers to areas which would otherwise be accessible.

(d) ORV Only Corridor:

- When standard buffers will result in access closure and a bypass or alternate route is not available, NPS will determine if an ORV only corridor around or through the buffer can be established to provide access to areas which would otherwise be accessible.

(e) Modified Buffers:

- When standard buffers will result in access closure and a bypass or alternate route or and ORV only corridor is not available, NPS will proceed to the smaller modified buffer.
- Modified buffers may require NPS to devote additional resources to monitor the resources to ensure adequate protection.

(f) Minimum Buffers:

- The Superintendent has the discretion to reduce the buffers for individual occurrences to distances less than the recommended modified buffers when the reduction will not result in an unacceptable risk.
- NCWRC has recommended reduced buffers for NC species of concern when access would otherwise be prohibited.

(g) Proposed Duration of Closures:

- Pre –nesting: All pre-nesting closures which prevent access should be promptly removed on or before July 31. Any active un-hatched nests or un-fledged chicks will continue to be protected by buffers until fledging occurs.
- Abandoned / Lost Nests: Buffers around abandoned or lost nests will remain in effect for one week to determine if re-nesting will occur.
- Unfledged Chicks Closures: Un-fledged chicks buffers for all species will be promptly removed when fledging occurs.

(1) Pre-nesting Considerations:

- Pre-nesting closures for N.C. species of concern are not required by the Federal Migratory Bird Act and NCWRC recommends that such closures not result in access closures. The recommendations on the matrix indicate that pre- nesting buffers are not applicable (n/a) to determine access.
- When accretion or erosion occurs during the nesting season, pre-nesting buffers for all species shall be modified to preserve access.

(2) Fledging Considerations:

- Definition of Fledged:
 - AMOY – Chicks are considered fledged if they have been observed to either
 - Be proficient in flight or,
 - Observed in sustained flight of at least 30 meters.
 - CWB – Chicks are considered fledged if they have been observed to either
 - Be proficient in flight or,
 - Observed in sustained flight of at least 15 meters.
 - PIPL – Chicks are considered fledged if they have been observed to either
 - 35 days of age or,
 - Observed in sustained flight of at least 15 meters.
- Un-fledged chicks buffers for all species should be removed promptly after fledging occurs.

(3) Sea Turtles Night Buffer: The night buffer is only applicable for the period after September 15 each year during which ORV access is allowed.

CHAPA

Proposal for Changes to ORV Management Strategies for American Oystercatchers

4/10/2015

Issue: The current management strategy followed for American oystercatchers does not fulfill the requirements of the new law in that it does not “ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species...”. Nor does the current strategy comply with the requirement to “designate pedestrian and vehicle corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open.”

Pre-nesting Closures/Buffers Management Strategy:

Current Strategy (edited and condensed for relevance and brevity):

- Pedestrian and ORV access is prohibited within all pre-nesting closures.
- Pedestrians may access shoreline in front of pre-nesting closures until breeding activity is observed.
- Potential breeding habitat is evaluated by March 1 and pre-nesting closures implemented by March 15 of each year.
 - Includes areas with individual AMOY nests since AMOYs do not colonize.
- Includes newly created habitat deemed by the resource management staff to be suitable for nesting.
- Once implemented, pre-nesting areas are not reduced if erosion occurs to accommodate an ORV corridor.
- Pre-nesting closures are removed if no breeding activity is seen by July 31.
- If breeding activity has occurred, the pre-nesting closure will not be removed until 2 weeks after all chicks have fledged, or July 31, whichever comes later.
- The NPS retains discretion at all times to enforce more protective closures or take other measures, if considered necessary, consistent with its obligations under the law.
- **ORV corridors at Cape Point and South Point:**
 - The ORV access corridor width will be reduced from the normal 50 meters to 35 meters when pre-nesting closures are implemented.
 - Once established, the pre-nesting closure will not be modified if the beach erodes into the ORV corridor or into the protected habitat.
 - The ORV corridor width will be restored to 50 meters when pre-nesting closures are removed.

Proposed Modifications to Current Strategy:

- Any pre-nesting closures installed for AMOY must not prohibit pedestrian and ORV access to the shoreline.
 - The American Oystercatcher is a North Carolina species of concern monitored by the North Carolina Wildlife Resource Commission (NCWRC).
 - The Migratory Bird Act prohibits the take of birds or their nests for species listed within the Act. Neither the Migratory Bird Act, nor the U.S. Fish and Wildlife Service (USFWS) nor the NCWRC have established laws/regulations for buffers for pre-nesting American oystercatchers.
 - Until nesting activity occurs, nests are not at risk of take.
 - Pedestrian / ORV access to routes and areas shall not be closed before AMOY nesting occurs, consistent with recommendations of NCWRC.

Courtship/Mating Buffers Management Strategy:

Current Strategy (edited for relevance and brevity):

- A 150 meter buffer will be established for AMOY pairs displaying breeding activity.
- Buffers outside of pre-nesting areas will be removed if no breeding activity is observed for a 2-week period or when breeding activity has concluded.

Proposed Modifications to Current Strategy:

- Consistent with the proposal for AMOY pre-nesting closures, any courtship/mating buffers established for AMOY will not prohibit pedestrian and ORV access to the shoreline. (See proposed modification to Pre-Nesting Strategy above.)

Scrape/Nest Buffers Management Strategy:

Current Strategy (edited and condensed for relevance and brevity):

- “In unprotected areas, a buffer will be established immediately when a nest with egg(s) is found. Prior to hatching, vehicles may pass such areas within designated ORV access corridors that have been established along the outside edge of nesting habitat where, in the judgment of Seashore resources management staff, steep topography, dense vegetation, or other naturally-occurring obstacles minimize the risk of human disturbance.”
- “Buffers will remain in place for 2 weeks after a nest is lost to determine if the pair will re-nest.”
- “For buffers that occur outside of, or that expand, the original pre-nesting areas, the buffer or expansion will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded.”
- 150-meter buffer/closure around AMOY scrapes or nests.
- “If buffer falls within the intertidal zone, a full beach closure will result.”

Proposed Modifications to Current Strategy:

- Temporary ORV corridors will be provided around or through AMOY scrape/nest buffers consistent with guidelines developed in coordination with NCWRC for state species of concern.
- Buffer sizes will be set at the minimum size allowed based on peer reviewed science and coordination with the NCWRC for state species of concern.
- Standard buffers of 150 meters (NCWRC recommendation) will be established around AMOY nests if access will not be prevented.
- If standard buffers prevent access, the use of a bypass or alternate route to allow access will be evaluated.
- If a bypass or alternate route is not feasible, the use of a temporary ORV corridor around or through the standard nest buffer will be evaluated.
- If a temporary ORV corridor is not feasible, the buffer size will be reduced to the modified buffer size of 50 meters designated for AMOY (NCWRC recommendation).
- If the modified buffer size prevents access, the superintendent will evaluate and install smaller buffers on a case by case basis to preserve access.
- Buffers which prevent access will remain in place for 1 week after a nest is lost to determine if the pair will re-nest.

Unfledged Chicks Management Strategy:

Current Strategy:

- “Brood will be observed at least once daily.”
- “Observations will end once the chicks have fledged.”
- “A 200 meter buffer will be established around the unfledged chicks’ location.”
- “Foraging and roosting habitat will be included from the ocean (low water line) to the dune (or sound shoreline, if accessible).”
- “Buffers will be adjusted / increased as needed when the chicks are mobile.”
- “Buffers will move with the chicks.”
- Vehicles and/or pedestrians may be allowed to pass through portions of the buffers or closures that are considered inaccessible to the chicks because of steep topography, dense vegetation, or other naturally occurring obstacles.”
- ORV “...buffers will remain until 2 weeks after American oystercatcher chicks have fledged...”
- “Access corridors outside of the pre-nesting area will be reopened after the chicks fledge...”
- “Chicks are considered fledged if they have been observed to [either]
 - Be proficient in flying [or]
 - Observed in sustained flight of at least 30 meters.”
- “Pre-nesting closures can be removed after July 31, or 2 weeks after all breeding activity has ceased or chicks have fledged, whichever is later.”

Proposed Modifications to Current Strategy:

- Temporary ORV corridors will be provided around or through unfledged chicks’ buffers consistent with guidelines developed in coordination with NCWRC for state species of concern.
- Buffer sizes will be set at the minimum size allowed based on peer reviewed science and coordination with the NCWRC for state species of concern.
- Standard buffers of 200 meters (NCWRC recommendation) will be established around AMOY chicks if access will not be prevented.
- If standard buffers prevent access, the use of a bypass or alternate route to allow access will be evaluated.
- If a bypass or alternate route is not feasible, the use of a temporary ORV corridor around or through the unfledged chicks’ buffer will be evaluated.
- If a temporary ORV corridor is not feasible, the buffer size will be reduced to the modified buffer size of 100 meters designated for AMOY (NCWRC recommendation).
- If the modified buffer size prevents access, the superintendent will evaluate and install smaller buffers on a case by case basis to preserve access.
- Buffers for unfledged chicks shall move with the chicks but not expanded in overall size.
- All normal access corridors, whether inside or outside of pre-nesting areas, will be reopened immediately after chicks fledge or are lost rather than the later of July 31 or 2 weeks after chicks have fledged.

CHAPA

Proposal for Changes to ORV Management Strategies for Colonial Waterbirds

4/10/2015

Issue: The current Management Strategy in place for colonial waterbirds does not fulfill the requirements of the new law in that it does not “ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species...”. Nor does the current strategy comply with the requirement to “designate pedestrian and vehicle corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open.”

Pre-nesting Closures/Buffers Management Strategy:

Current Strategy (edited and condensed for relevance and brevity):

- Pedestrian and ORV access is prohibited within all pre-nesting closures.
- Pedestrians may access shoreline in front of pre-nesting closures until breeding activity is observed.
- Potential breeding habitat is evaluated by April 1 and pre-nesting closures implemented by April 15 of each year.
 - Includes areas with concentrations of more than 10 CWB nests in more than 1 of the past 5 years.
- Includes newly created habitat deemed by the resource management staff to be suitable for nesting.
- “Because CWB colonies may shift locations from year to year, ORV ramps and pedestrian access points that have had colonies in more than one of the past five years will remain open until scraping or nesting is observed. Pre-nesting closures adjacent to such ramps and access points will still be established in these areas, subject to standard buffers once scraping or nesting is observed.”
- Once implemented, pre-nesting areas are not reduced if erosion occurs to accommodate an ORV corridor.
- Pre-nesting closures are removed if no breeding activity is seen by July 31 (or August 15 for black skimmers).
- If breeding activity has occurred, the pre-nesting closure will not be removed until 2 weeks after all chicks have fledged, or July 31/August 15, whichever comes later.
- The NPS retains discretion at all times to enforce more protective closures or take other measures, if considered necessary, consistent with its obligations under the law.
- **ORV corridors at Cape Point and South Point:**
 - The ORV access corridor width will be reduced from the normal 50 meters to 35 meters when pre-nesting closures are implemented.
 - Once established, the pre-nesting closure will not be modified if the beach erodes into the ORV corridor or into the protected habitat.
 - The ORV corridor width will be restored to 50 meters when pre-nesting closures are removed.

Proposed Modifications to Current Strategy:

- Any pre-nesting closures installed for CWB must not prohibit pedestrian and ORV access to the shoreline.
 - CWB are North Carolina species of concern monitored by the North Carolina Wildlife Resource Commission (NCWRC).

- The Migratory Bird Act prohibits the take of birds or their nests for species listed within the Act. Neither the Migratory Bird Act, nor the U.S. Fish and Wildlife Service (USFWS) nor the NCWRC have established laws/regulations for buffers for pre-nesting colonial waterbirds.
- Until nesting activity occurs, nests are not at risk of take.
- Pedestrian / ORV access to routes and areas shall not be closed before CWB nesting occurs, consistent with the recommendations of NCWRC.

Courtship/Mating Buffers Management Strategy:

Current Strategy:

- “Buffer establishment will be based on the location of scrape(s) and not location of copulation or ‘fish flashing’.”

Proposed Modification to Current Strategy:

- Consistent with the proposal for CWB pre-nesting closures, any courtship/mating buffers installed for CWB must not prohibit pedestrian and ORV access to the shoreline. (See proposed modification to pre-nesting strategy above.)

Scrape/Nest Buffers Management Strategy:

Current Strategy (edited for relevance and brevity):

- “In unprotected areas, a buffer will be established immediately when a nest with egg(s) is found. Prior to hatching, vehicles may pass such areas within designated ORV access corridors that have been established along the outside edge of nesting habitat where, in the judgment of Seashore resources management staff, steep topography, dense vegetation, or other naturally-occurring obstacles minimize the risk of human disturbance.”
- “Buffers will remain in place for 2 weeks after a nest is lost to determine if the pair will re-nest.”
- “For buffers that occur outside of, or that expand, the original pre-nesting areas, the buffer or expansion will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded.”
- 100-meter buffer/closure around least tern scrape, nest, or colony.
- 200-meter buffer/closure around common terns, gull-billed terns, or black skimmers scrape, nest, or colony.
- “If buffer falls within the intertidal zone, a full beach closure will result.”

Proposed Modifications to Current Strategy:

- Temporary ORV corridors will be provided around or through scrape/nest buffers consistent with guidelines developed in coordination with NCWRC for state species of concern.
- Buffer sizes will be set at the minimum size allowed based on peer reviewed science and coordination with the NCWRC for state species of concern.
- Standard buffers of 150 meters (NCWRC recommendation) will be established around CWB scrapes or nests if access will not be prevented.
- If standard buffers prevent access, the use of a bypass or alternate route to allow access will be evaluated.
- If a bypass or alternate route is not feasible, the use of a temporary ORV corridor around or through scrape/nest buffers will be evaluated.

- If a temporary ORV corridor is not feasible, the buffer size will be reduced to the modified buffer size of 50 meters designated for CWB (NCWRC recommendation).
- If the modified buffer size prevents access, the superintendent will evaluate and install smaller buffers on a case by case basis to preserve access.
- Buffers which prevent access will remain in place for 1 week after a nest is lost to determine if the pair will re-nest.

Unfledged Chicks Management Strategy:

Current Strategy:

- “Colony will be observed daily.”
- “Observations will end after no unfledged chicks have been observed on three consecutive days.”
- “Chicks are considered fledged if they have been observed to [either]
 - Be proficient in flying [or]
 - Observed in sustained flight of at least 15 meters.”
- “... 200 meter buffer will be established around the chicks’ location.”
- “Buffers will be adjusted as needed when the chicks are mobile.”
- Vehicles and/or pedestrians may be allowed to pass through portions of the buffers or closures that are considered inaccessible to the chicks because of steep topography, dense vegetation, or other naturally occurring obstacles.”
- “Access corridors outside of the pre-nesting area will be reopened after the chicks fledge...”
- “Pre-nesting closures can be removed after July 31, or 2 weeks after all breeding activity has ceased or chicks have fledged, whichever is later.”

Proposed Modifications to Current Strategy:

- Temporary ORV corridors will be provided around or through unfledged chicks’ buffers consistent with guidelines developed in coordination with NCWRC for state species of concern.
- Buffer sizes will be set at the minimum size allowed based on peer reviewed science and coordination with the NCWRC for state species of concern.
- Standard buffers of 150 meters (NCWRC recommendation) will be established around CWB colonies with chicks if access will not be prevented.
- If standard buffers prevent access, the use of a bypass or alternate route to allow access will be evaluated.
- If a bypass or alternate route is not feasible, the use of a temporary ORV corridor around or through the colony will be evaluated.
- If a temporary ORV corridor is not feasible, the buffer size will be reduced to the modified buffer size of 50 meters designated for CWB (NCWRC recommendation).
- If the modified buffer size prevents access, the superintendent will evaluate and install smaller buffers on a case by case basis to preserve access.
- Buffers for unfledged chicks shall move with the chicks but not expanded in overall size.
- All normal access corridors, whether inside or outside of pre-nesting areas, will be reopened after chicks fledge or are lost.

CHAPA

Proposal for Changes to ORV Management Strategies for Piping Plovers and Wilson's Plovers 4/10/2015

Issue: The current Management Strategy followed for Piping Plovers and Wilson's Plovers does not fulfill the requirements of the new law in that it does not "ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species...". Nor does the current strategy comply with the requirement to "designate pedestrian and vehicle corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open."

Pre-nesting Closures/Buffers Management Strategy:

Current Strategy (edited and condensed for relevance and brevity):

- Pedestrian and ORV access is prohibited within all pre-nesting closures.
- Pedestrians may access shoreline in front of pre-nesting closures until breeding activity is observed. ORVs may not access this area unless corridors have been established.
- Potential breeding habitat is evaluated by March 1 and pre-nesting closures implemented by March 15 of each year.
 - Includes "Areas of suitable habitat that have had individual PIPL or WIPL nests, in more than one of the past five years, and new habitat that is particularly suitable for shorebird nesting ...".
- Includes newly created habitat deemed by the resource management staff to be suitable for nesting.
- Once implemented, pre-nesting areas are not reduced to accommodate an ORV corridor.
- Pre-nesting closures removed if no breeding activity is seen by July 31.
- If breeding activity has occurred, the pre-nesting closure will not be removed until 2 weeks after all chicks have fledged, (or July 31, whichever comes later)
- The NPS retains discretion at all times to enforce more protective closures or take other measures, if considered necessary, consistent with its obligations under the law.
- **ORV corridors at Cape Point and South Point:**
 - "When pre-nesting closures are implemented, the ORV access corridor at Cape Point and South Point will be reduced from 50 meters during the non-breeding season to 35 meters."
 - Once established, the pre-nesting closure will not be modified if the beach erodes into the ORV corridor or into the protected habitat.
 - The ORV corridor width will be restored to 50 meters when pre-nesting closures are removed.

Proposed Modification to Current Strategy:

- Temporary ORV corridors, bypasses, or alternate routes will be implemented when pre-nesting closures would result in no access to Cape Point, Oregon Inlet Spit, South Point or any otherwise open beach area.
- ORV corridors will be modified (or temporary bypasses or alternate routes will be implemented), if changing beach conditions affect the corridor designated when pre-nesting closures were first implemented.

Courtship/Mating Buffers Management Strategy:

Current Strategy (edited for relevance and brevity):

- Pre-nesting buffers will be expanded or new buffers established to ensure a 75 meter buffer for PIPL and WIPL displaying breeding activity.
- “Buffers will be increased in 50-meter increments if human disturbance occurs.”
- Buffers outside of pre-nesting areas will be removed if no breeding activity is observed for a 2-week period.

Proposed Modification to Current Strategy:

- Pedestrian and ORV Buffer distances will be established based on peer reviewed science utilizing the least restrictive alternative available. Additional resource management personnel and other resources will be engaged if necessary to implement the least restrictive alternative.
- Courtship / Mating pedestrian and ORV buffers will be set in compliance with minimal requirements of *The Piping Plover Recovery Plan (PIPL Plan)* to 50 meters. (see footnote 1)
- Temporary ORV corridors, bypasses, or alternate routes will be implemented when courtship/mating buffers closures would result in no access to Cape Point, Oregon Inlet Spit, South Point or any otherwise open beach area.

Scrape/Nest Buffers Management Strategy:

Current Strategy (edited and condensed for relevance and brevity):

- “In unprotected areas, a buffer will be established immediately when a nest with egg(s) is found. Prior to hatching, vehicles may pass such areas within designated ORV access corridors that have been established along the outside edge of nesting habitat where, in the judgment of Seashore resources management staff, steep topography, dense vegetation, or other naturally-occurring obstacles minimize the risk of human disturbance.”
- “Buffers will remain in place for 2 weeks after a nest is lost to determine if the pair will re-nest.”
- “For buffers that occur outside of, or that expand, the original pre-nesting areas, the buffer or expansion will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded.”
- 75-meter buffer/closure around Piping Plover scrapes or nests.
- “If buffer falls within the intertidal zone, a full beach closure will result.”

Proposed Modification to Current Strategy:

- Temporary pedestrian and ORV corridors will be provided around scrape/nest buffers.
 - Pedestrian and ORV buffer sizes will be set at the minimum size required by the PIPL Plan.
 - The maximum nest buffer size will be set to 50 meters on each side of the nest. If adult PIPL Plover behavior is adversely affected, buffer size will be increased to 100 meters. (see footnote 1)
- ORV corridors will be adjusted, or alternate ORV routes will be identified when nest buffers would otherwise result in closure to ORV access.

Unfledged Chicks Management Strategy:

Current Strategy:

- “Brood will be observed at least once daily.”
- “Observations will end once the chicks have fledged.”
- “A 1000-meter ORV buffer and, where disturbance can be minimized, a 300-meter pedestrian buffer will be established on either side of the [PIPL] nest when unfledged chicks are present.”
- “A 200-meter buffer will be established around the unfledged [WIPL] chicks’ location.”
- “Buffers move with the chicks.”
- “Vehicles and/or pedestrians may be allowed to pass through portions of the buffers or closures that are considered inaccessible to the chicks because of steep topography, dense vegetation, or other naturally occurring obstacles.”
- “Chicks are considered fledged at [either]
 - 35 days of age [or]
 - Observed in sustained flight of at least 15 meters.”
 - Note: In practice, only the second of the two options has been followed to determine if PIPL chicks are fledged.
- “Access corridors outside of the pre-nesting area will be reopened after the chicks fledge...”
 - NOTE: In practice, the access corridors have not been opened until 2 weeks after chicks fledge, which is inconsistent with the stated management strategy.
- “Pre-nesting closures can be removed after July 31, or 2 weeks after all breeding activity has ceased or chicks have fledged, whichever is later.”

Proposed Modification to Current Strategy:

- Temporary pedestrian and ORV corridors will be provided around unfledged chicks buffers consistent with the minimal requirements of the PIPL Recovery Plan.
- Pedestrian and ORV buffer sizes will be set at the minimum size allowed based on requirements of the PIPL Plan.
 - Additional resource management personnel and other resources will be engaged if necessary to implement the least restrictive alternative.
 - The maximum nest buffer size will be set to 200 meters on each side of the brood during the first week and 100 meters on each side of the brood in subsequent days. (see footnote 1)
- Buffers for unfledged chicks shall move with the chicks but not expanded in overall size.
- All normal access corridors, whether inside or outside of pre-nesting areas, will be reopened immediately after chicks fledge.

Footnotes:

The proposed buffer distances are the minimum required by in the Piping Plover Recovery Plan (USFWS 1996a- appendix G). These buffer distances were described in the *Final Environmental Impact Statement* (FEIS) in Alternative A (also known as the Interim Plan) (see page 352).

- Courting / mating buffer: 50 meters (164 feet)
- Nesting buffer: 50 meters (164 feet)
- Unfledged Chicks: 183 meters (600 feet) – first week (rounded to 200 meters)
- Unfledged Chicks: 92 meters (300 feet) – after first week (rounded to 100 meters)
 - The PIPL Recovery Plan specifies that a plan that “Provides for monitoring of all broods during the chick-rearing phase of the breeding season and specifies the frequency of monitoring” can implement buffers of 200 meters/100 meters.
- NPS will engage any additional personnel, resources or actions necessary to ensure the smallest buffers allowed under the PIPL Plan are implemented.
- The Interim Plan fully titled ***Interim Protected Species Management Strategy / Environmental Assessment*** was published in January, 2006. The USFWS reviewed and concurred with the Interim Strategy “Finding of No Significant Impact” in the Biological Opinion submitted to NPS on August 14, 2006. The strategy was signed into effect in July, 2007.

CHAPA
Proposal for Changes to ORV Management Strategies for Sea Turtle Nests
4/10/2015

Issue: The current Management Strategy in place for Sea Turtles does not fulfill the requirements of the new law in that it does not “ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species...”. Nor does the current strategy comply with the requirement to “designate pedestrian and vehicle corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open.”

Nest Closures/Buffers Management Strategy:

Current Strategy:

- Before nest enters hatch window
 - 10 meter x 10 meter symbolic fencing. Closure size may be modified depending on environmental conditions at the nest site.
- During hatch window (50 – 55 days into incubation)
 - Closure expanded to surf line
 - VFAs with little or no pedestrian traffic – 25 meters wide (i.e. 12.5 meters on either side of the nest).
 - Village beaches with high levels of pedestrian and other non-ORV use – 50 meters wide(i.e. 25 meters on either side of nest)
 - ORV Use beaches – 105 meters wide (i.e. 52.5 meters on either side of nest)
- 15 meter closure on landward side of nest where possible, but no less than 10 meters. Traffic detours behind nest if appropriate.
- Light-filtering fence in U-shaped configuration installed when in the hatch window to block light pollution
- Nests are not relocated to accommodate pedestrian ORV access

Proposed Modifications to Current Strategy:

- When a turtle nest is first observed, it will be evaluated to determine the least intrusive management protocol appropriate to protect the resource and provide ORV / pedestrian access until it hatches.
 - Option 1 – Standard Buffers
 - Buffers of no more than 15 meters will be set on each side of the nest
 - North Carolina Wildlife Resource Commission *Handbook for Sea Turtle Volunteers in North Carolina = Revised:2006* (p.12) specifies buffers of 15 meters, however, NCWRC officials have indicated that standard buffers as small as 10 meters may be sufficient at the Seashore.
 - Buffer will be extended seaward to the water during the hatch window.
 - U-shaped fencing will be extended to the surf line during the hatch window to direct hatchlings to the water.
 - If standard buffers will result in access closure prior to hatching, other options will be considered.
 - Option 2 - Temporary Bypass or Alternate Route
 - If Option 1 will prevent access, a temporary bypass or alternate route may be opened.
 - Exhibit 1 illustrates a situation from 2013 where a request was made and denied for this technique to be used to keep Cape Point open during a hatch window.

- Option 3– Modified Buffer on Landward Side
 - Landward side buffer may be reduced to 3 meters to preserve access
 - If modified landward side buffer will result in access closure prior to hatching, consider options 4 and 5.
- Option 4 – Seaward Side Daytime Corridor during hatch window
 - If Options 1, 2 or 3 prevent daytime access during the hatch window due to the absence of a landward corridor, a daytime seaside corridor managed in accordance with the NCWRC Sea Turtle Handbook (p.12) may be used.
- Option 5 - Nest Relocation
 - If none of the other options are feasible to preserve access, nest may be relocated to the nearest Vehicle Free Area or a nearby beach where ORV access will not be obstructed.
- Special Considerations - nests which enter hatch window after September 15
 - Buffers and nest management procedures should follow the guidelines described in the following section titled **Night Driving Restrictions Management Strategy** for viable active nests when night driving restrictions are removed on September 15 each year.
 - This strategy will avoid half mile night time ORV access closures which occur under current management practices with the intention to mitigate risk of hatchling distraction due to light pollution.

Night Driving Restrictions Management Strategy:

Current Strategy:

- ORV night-driving prohibited from 9:00 p.m. until 7:00 a.m. –May 1 until September 15

The prohibition of night driving between May 1 and September 15 prevents access to historically popular beaches within the Seashore. This regulation is intended to protect female sea turtles during the nesting event. The new law requires a review of night driving restrictions as part of paragraph (c) “Modifications to Final Rule”. NPS will address this topic after completion of the efforts required to meet the 180 day deadline which applies to paragraph (b) “Review and Adjustment of Wildlife Protection Buffers.” CHAPA will provide recommendations for consideration with regard to paragraph(c) in a future document.

- ORV night-driving allowed on routes with no turtle nests remaining – September 15 until November 15

The manner by which this strategy is currently administered results in buffers that are much larger than the “smallest area necessary to protect a species” and does not provide “corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open to extensive stretches of beach that would otherwise be open.” In practice, the NPS establishes a nighttime ORV buffer of one half mile on either side of a nest within the hatch window. An example of the problem this practice creates occurred in the fall of 2014. The ORV route to Cape Point fell within the one half mile buffer resulting in night-driving closures from October 6 until November 25 – one of the prime night time fishing windows at the seashore that attracts visitors from throughout the east coast. The size of the buffer is intended to prevent light pollution that might adversely affect the hatchlings trip to the water. The proposed modifications to the current strategy will mitigate this issue.

Proposed Modifications to Current Strategy (Sept 15 – Nov 15):

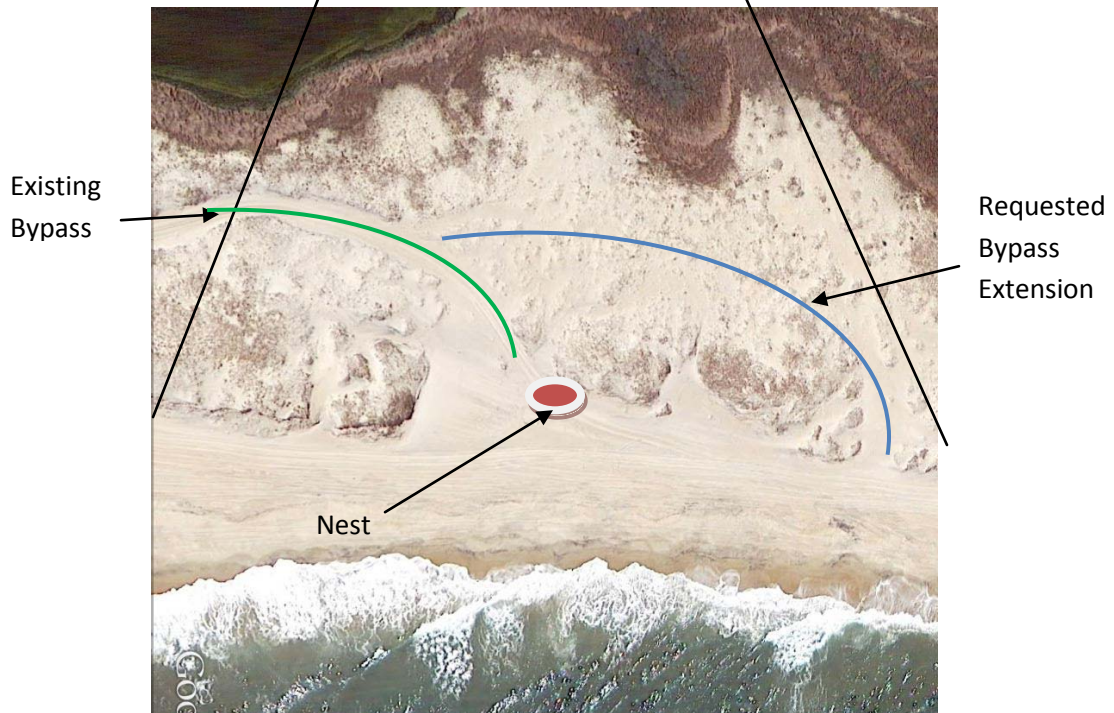
- Night-driving buffers around nests within the hatch window should remain at the 50 feet on either side of the nest recommended for daytime driving buffers.
- Solid light-impermeable fencing 3 or 4 feet high installed in a U shaped configuration extending to high tide line at a maximum distance of 10 feet on each side of the nest.
 - The distance from the nest should be as short as practical without impeding the hatch event. The effectiveness of the light screening as well as protection from predators such as ghost crabs will be inversely proportional to the distance between the barriers on each side of the nest. Additionally, a narrow funnel will reduce the ability for the hatchlings to expend energy before reaching the water.
 - The potential light pollution from vehicles on the beach can be reasonably predicted based on line of sight calculations. Charts on Exhibit 2 show that four feet high light barriers installed on each side of the nest will block a light source positioned 12 feet above the plane of the nest at a distance of 60 feet. Three feet high light barriers will block a light source positioned 9 feet high at a distance of 60 feet.
 - Four feet high light barriers positioned at 5 feet from the nest would block light from sources as high as 12 feet at a distance as close as 25 feet from the nest. Three feet barriers at 5 feet would block light from sources as high as 9 feet at a distance as close as 25 feet from the nest.
 - The typical height for a full size pick-up truck headlight is 3.5 – 4 feet. Beach terrain, while not flat, does not come close to a 10 foot variation between the location of nests and the location of the ORV route. Only dunes where ORVs are not allowed would exceed the 9-12 feet height maximum.

Exhibit 1 - Turtle Nest Blocking Cape Point ORV Access – September 2013

Wide Angle view of Bypass Area

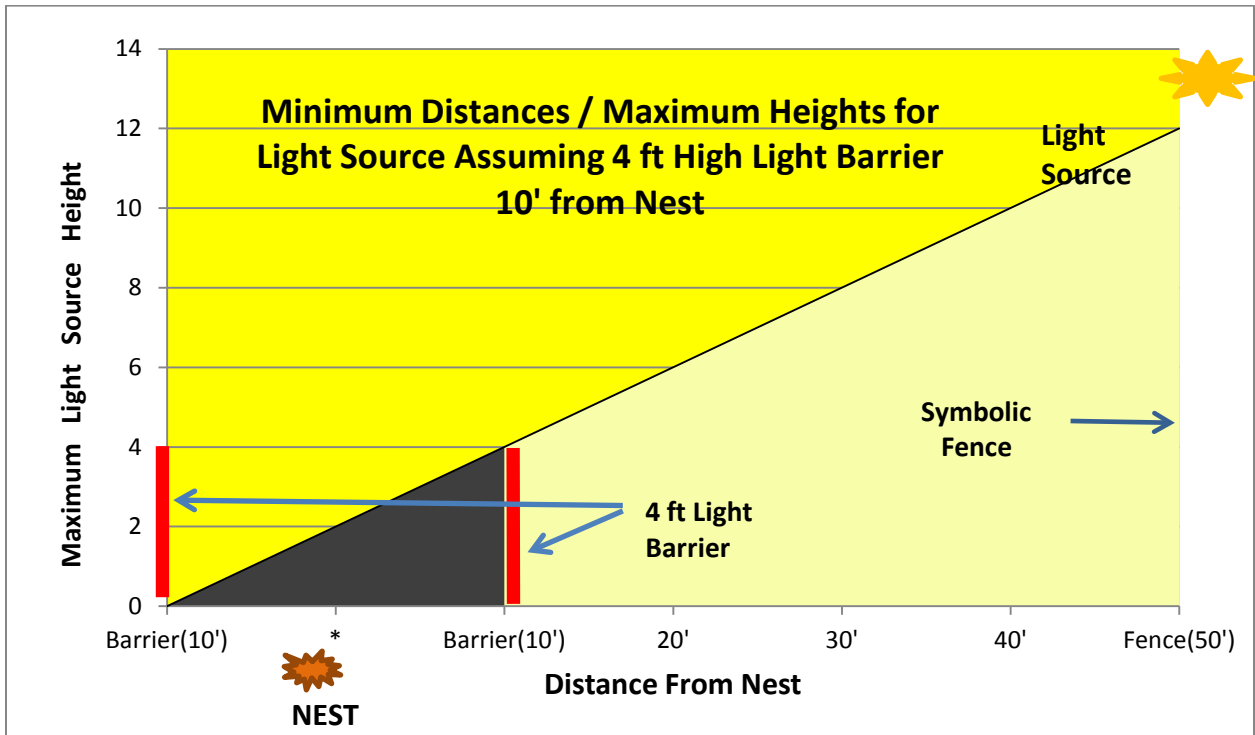


Zoomed in View of Nest Location and Requested Bypass Extension with minimal vegetation disturbance

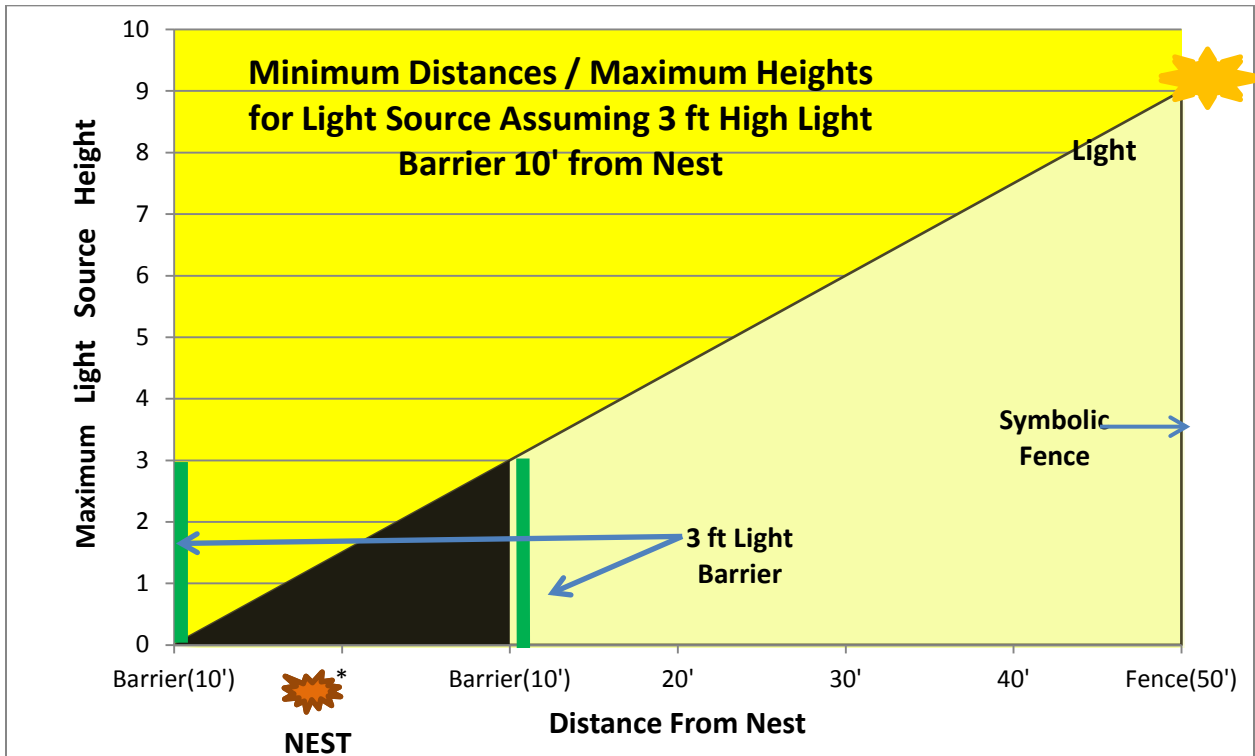


Request for Bypass Extension was denied. Day and night ORV access to the Point was closed for approximately two weeks in late September, early October of 2013.

Exhibit 2 – Light Pollution Mitigation through Use of Light Barriers



Another Option – If barriers are set to 5 feet instead of 10 feet on each side of nest, light pollution would be blocked from a source at 12 feet height at 25 feet distance from nest.



Another Option – If barriers are set to 5 feet instead of 10 feet on each side of nest, light pollution would be blocked from a source at 9 feet height at 25 feet distance from nest.