

**Off-Road Vehicle (ORV) Management  
Cape Hatteras National Seashore (CAHA)  
Superintendent Mike Murray  
NCBIWA Conference  
November 17, 2008**





## Cape Hatteras in the Past

1.

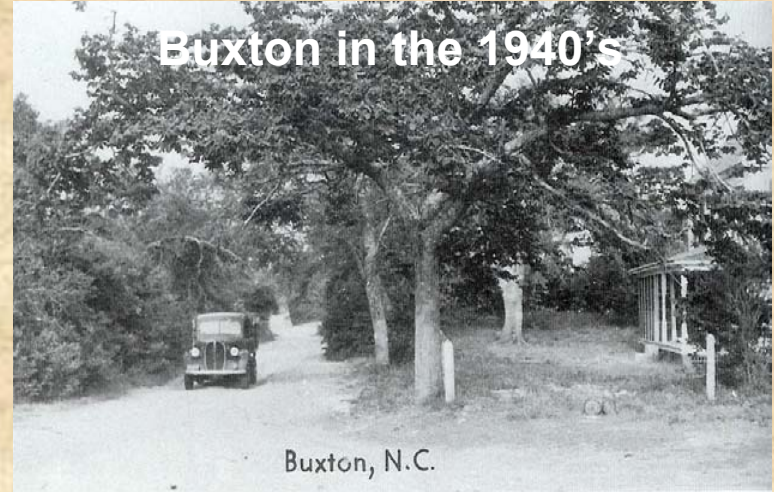
Cape Hatteras 1936



**Beach driving pre-dates the park**

2.

Buxton in the 1940's



**Beaches and sand trails were the primary transportation routes until...**

3.

Waiting for Oregon Inlet Ferry 1955



**New highway completed in 1954**

4.

*Herbert C. Bonner Bridge*



**Bonner Bridge Completed in 1963**



## Cape Hatteras Today

- Outer Banks is within 5 hours drive of 5.5 million people
- Year-round population: (Dare County) 35,000
- Summer population: 250,000+ within 30 minute drive
- Seashore has 1,040 parking spaces!!





## ORV Management at CAHA

### Applicable Laws, Regulations and Policies

- **NPS Organic Act of 1916**
- **NPS Management Policies 2006**
- **CAHA Enabling Legislation of 1937**
- **Two Executive Orders on ORV Use**
- **Title 36 of the Code of Federal Regulations**
- **National Environmental Policy Act of 1969 (NEPA)**
- **Endangered Species Act of 1973 (ESA)**
- **Migratory Bird Treaty Act of 1918 (MBTA)**
- **NC Coastal Area Management Act**



## 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 Title 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 Off-road Vehicles (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) (NPS regulation)**

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



## Current Status of ORV Management

- **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**



## Natural Resources at CAHA

### Federally listed species

- Piping Plover (threatened)
- Seabeach Amaranth (threatened)
- 4 species of sea turtles (3 threatened, 1 endangered)



### State listed species

- Gull-billed tern (threatened)



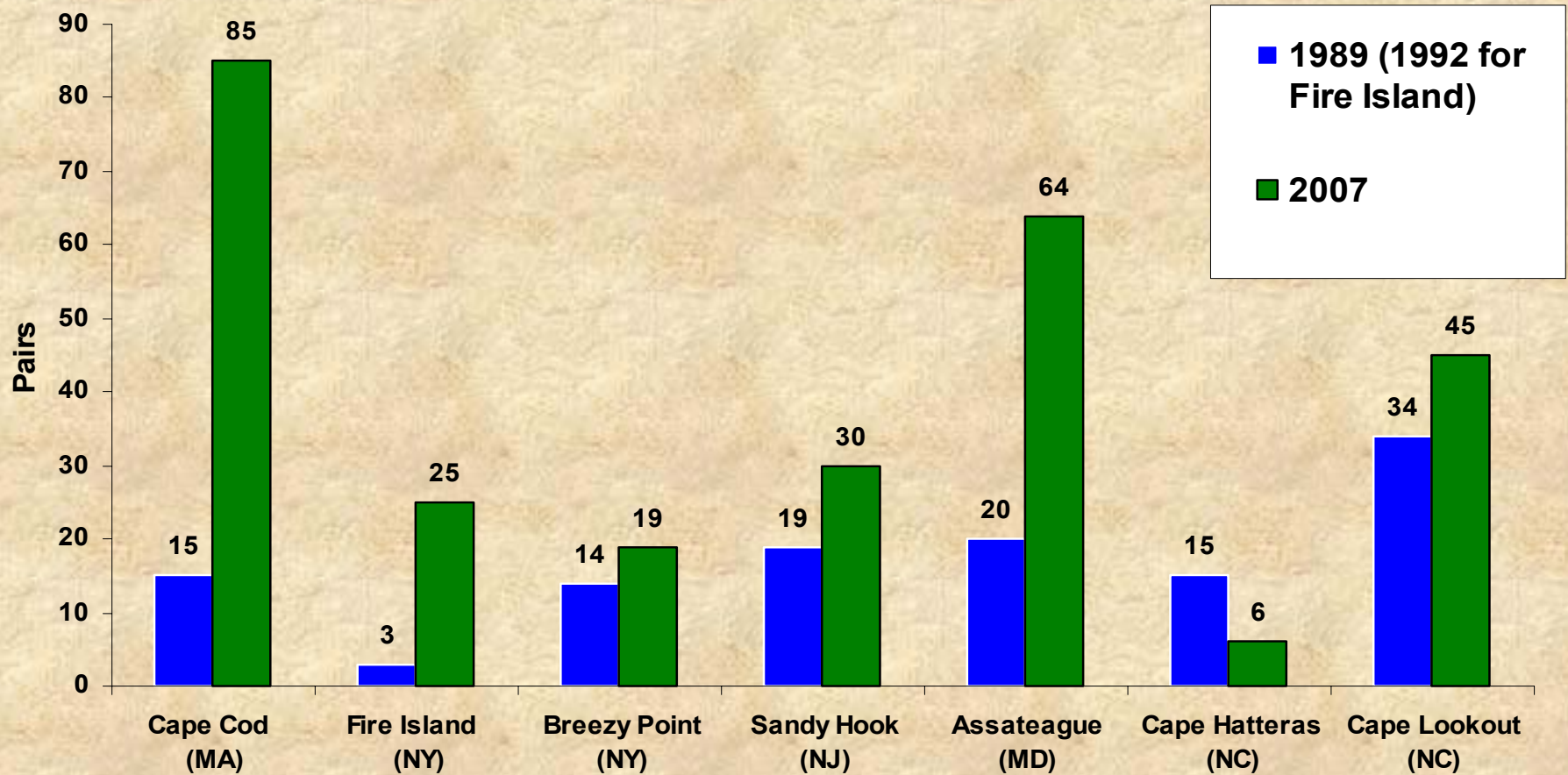
### Federal, State or Local “Species of Concern”

- Common tern, Least tern, Black skimmer, American Oystercatcher



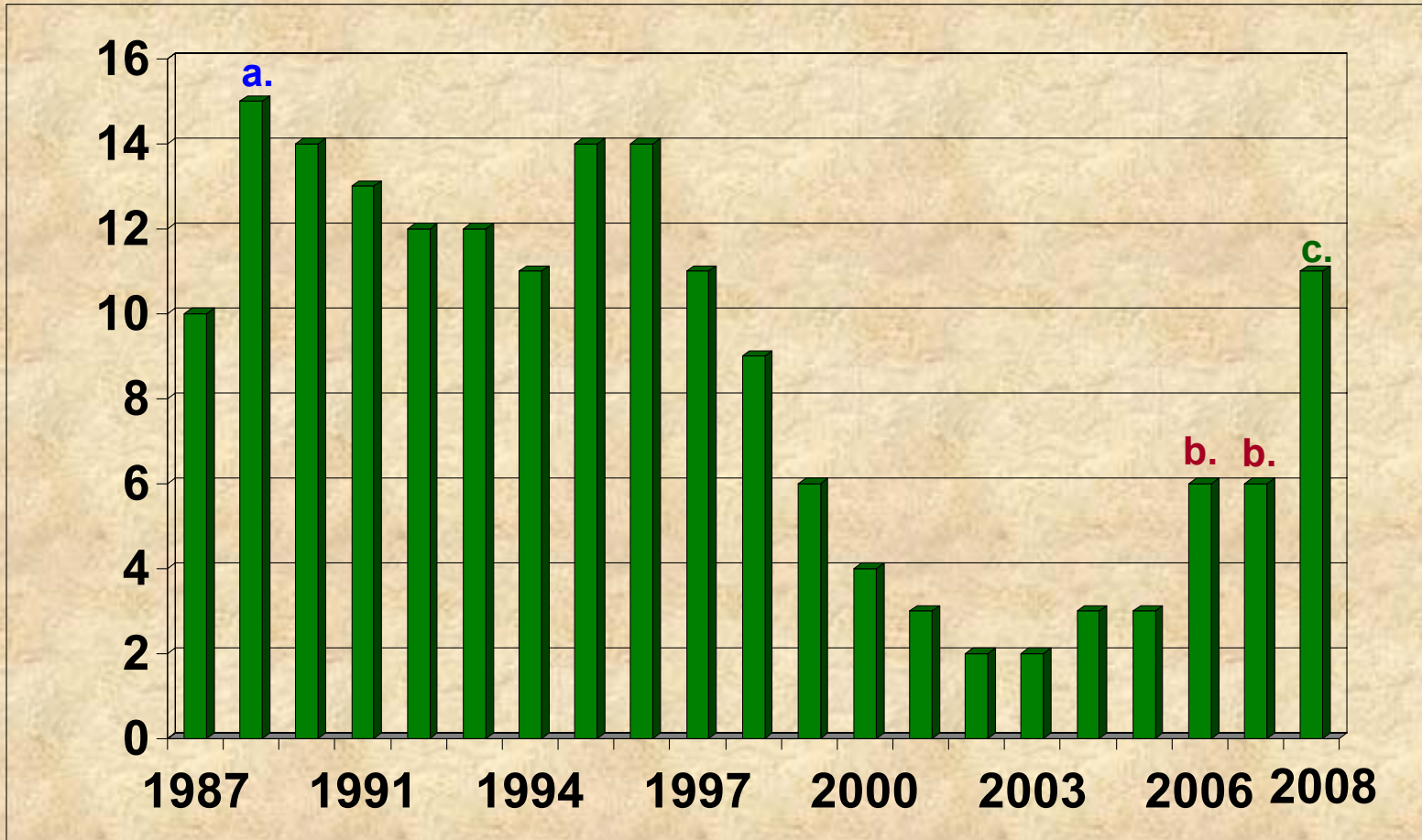


## Abundance of Breeding Piping Plovers, Atlantic Coast National Park Service Units 1989 vs. 2007





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




a. Historic high

b. Interim Strategy

c. Consent Decree



## 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)
- **Current status**  **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)

- **Regulatory Negotiation Committee established under the Federal Advisory Committee Act (FACA)**
- **30-member committee composed of diverse stakeholders, including Plaintiffs and Intervenor-Defendants from Interim Strategy lawsuit**



## Regulatory Negotiation (*continued*)

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

## Role of NPS and Committee in NEPA Process

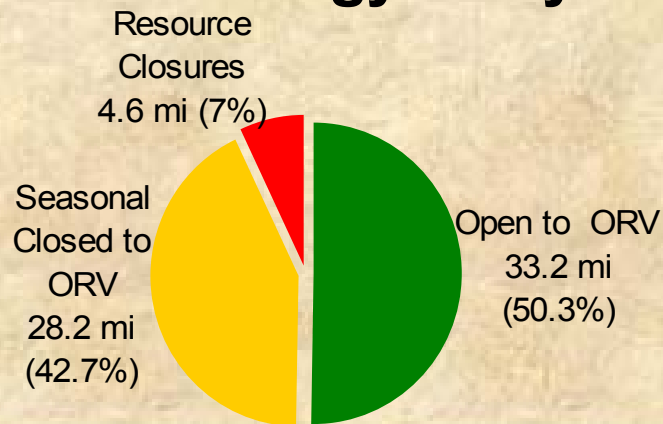
- NPS has developed full range of reasonable alternatives to be evaluated in the DEIS
- RegNeg Committee to develop one consensus alternative that NPS will use as the basis for the proposed rule and as the preferred alternative in the DEIS



## Comparison by % Total Beach Miles

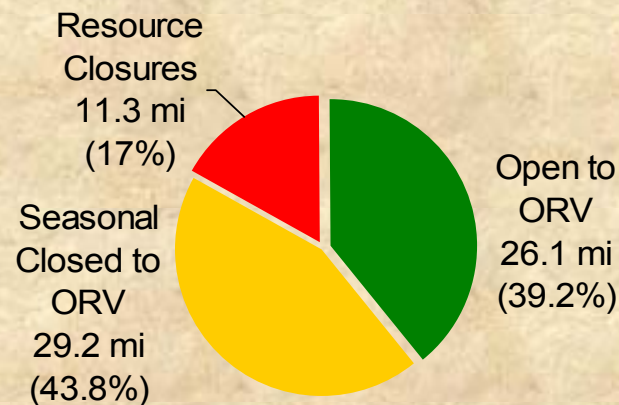
### Alternative A

#### Interim Strategy - July 07



### Alternative B

#### Consent Decree - July 08



## Thank you for your time and attention!

