

OFF-ROAD VEHICLE ACTIVITY REPORT

CAPE COD NATIONAL SEASHORE

2009

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Regulatory History (Included in previous annual reports)

Since the creation of Cape Cod National Seashore in 1961, Off-Road Vehicle (ORV) operations have been strictly regulated. During the 1960's and 1970's, ORV trails and routes were extensive. Almost the entire outer beach from Long Point in Provincetown to Nauset Inlet in Eastham was available for ORV use. Additionally, an extensive system of inner routes and trails behind the primary dune (i.e., landward) existed in Provincetown and North Truro. In 1978, Eastham closed the route between Coast Guard Beach and Nauset Inlet because the Blizzard of '78 had destroyed the available ORV route. At approximately the same time, Wellfleet Town Meeting banned the use of ORV's on their beaches between June 15 and September 15. Then in the early 1980's Wellfleet closed the outer beach to ORV use year-round. As a result, the ORV route on the back beach was limited to the area from the Wellfleet-Truro town line north to Long Point in Provincetown.

In 1980, the Conservation Law Foundation (CLF) sued the Seashore for what the CLF believed were inadequate controls over ORV driving within the Seashore. The Seashore created a new ORV management plan that addressed a variety of concerns. The ORV Management Plan of 1981 closed all inner routes and trails to the public except for dune cottage residents or their caretakers, dune tour operations, and National Park Service patrols. The 1981 plan also limited the ORV route on the back beach from Hatches Harbor to the Wellfleet town line, and only allowed ORV operation on the beach from Head of the Meadow in Truro to the Wellfleet town line at night.

In 1984, the judge hearing the CLF suit in Boston ruled that the Seashore's 1981 plan was adequate and suggested the plan could be improved but did not require that the plan be changed. Following the judge's suggestion, the ORV Management Plan of 1985 was implemented. The 1985 plan permanently closed the portion of the ORV corridor between High Head in Truro and the Wellfleet town line. It further restricted the use of ORV's by creating a season for general operation between April 15 and November 15. ORV's could operate on the beach between November 16 and April 14 only for the purposes of accessing town shellfish beds, picking up flotsam and jetsam, or in the case of dune cottage residents or their caretakers for accessing their cottage. A limited access pass (LAP) was required for these uses and no travel was permitted within 2 hours of high tide.

In 1986, the Piping Plover (*Charadrius melodus*), a small beach-nesting shorebird, was federally listed as a threatened species. The Seashore was required by law to protect threatened and endangered species occurring within the park. The Seashore began to routinely close portions of the existing ORV corridor when Piping Plover chicks were present. As the plover population on the Seashore increased, the amount of ORV corridor decreased during June and July each year. In 1995, as little as 0.3 mi. of ORV corridor was available for several weeks.

The need for new regulation was motivated by a number of events including management issues related to the inflexibility of the existing rule to deal with changing conditions on the beach. To revise the regulation, in 1995, the Seashore entered into a negotiated rule-making process along with 22 agencies, organizations, and interest groups with long-term interests and involvement in ORV management at the Seashore. Members from the environmental, mobile sports fishing, and ORV communities along with representatives from the U.S. Fish and Wildlife Service, Massachusetts Division of Fisheries and Wildlife, and the six towns in which the Seashore's boundary lies, comprised the rule-making committee. These groups met over a period of three

months with the objective of reaching consensus on a new ORV management plan. In November 1995, the committee presented a proposed rule for ORV Management at Cape Cod National Seashore. The rule was published in the Federal Register for public comment and became codified into 36 CFR in 1998 (36 CFR 7.67).

The Committee agreed to a variety of mutual concerns (see Federal Register 63:9143-9148 for the complete final rule). ORV use remained limited to April 15 through November 15. The designated route was established, including the back beach from Hatches Harbor to High Head in Truro. The portion of beach from Exit 8 to High Head would be closed from April 1 to July 20. The area from Coast Guard Beach in Truro to Longnook Beach in Truro would be open for the purpose of night fishing, and the area from High Head to Head of the Meadow Beach, including the access at Head of the Meadow, would be open from July 1 through August 31 (Figure 1.1). Plover nesting and other resource or public safety issues could require that all or portions of the corridor be closed for indefinite periods of time. The amount of open ORV corridor is typically less in the beginning of the season than in August due to the terms of the negotiated rule. Up to 10.5 miles of ORV corridor could potentially be open in late July and August, depending on the availability of the High Head portion of the corridor, condition of beach cuts and would require all plover chicks on the South Beach fledged.

The negotiated rule also addressed NPS responsibilities for monitoring the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources of vehicles in designated corridors. The rule further stated that information gathered from this process would be used as the basis for an annual report to the Secretary and the public describing the results of the monitoring conducted. This document represents the ninth annual ORV monitoring report as required by the negotiated rule.

The negotiated rule set a limit of 3400 ORV permits as the maximum amount to be sold annually. The rule specified that the 3400 permits were to be a combination of both annual oversand and self-contained vehicle (SCV) permits. In 1998, the first year that the negotiated rule was implemented, this cap was reached in the first week of September. Many people who traditionally came to Cape Cod in September and October to fish were unable to purchase a permit. In order to allow a more equitable distribution of permits throughout the season in 1999, the Seashore converted 200 of the 3400 permits available into rotating weekly permits based on the rationale that some of the people who purchase annual permits actually use the permit for 7 days or less. No more than 200 weekly permits were active at any one time so as not to exceed the 3400 permit cap from 1999 until 2004. From 1999 until 2004, the 3200 annual permits sold out on progressively earlier dates each year and there has been a corresponding increase in the number of weekly permits sold during the summer months. Annual permits went on sale on April 10 each year and sold out in late July 1999, early July 2000, late June 2001, May 24, 2002, April 26, 2003, and April 19, 2004.

The Seashore's shorebird management plays a significant role in the recovery of this species accounting for nearly 5% of the Atlantic Coast population of plovers. These protection measures along with other management actions taken has allowed plover populations within the Seashore to increase from 18 pairs in 1985 to more than 80 pairs in recent years.

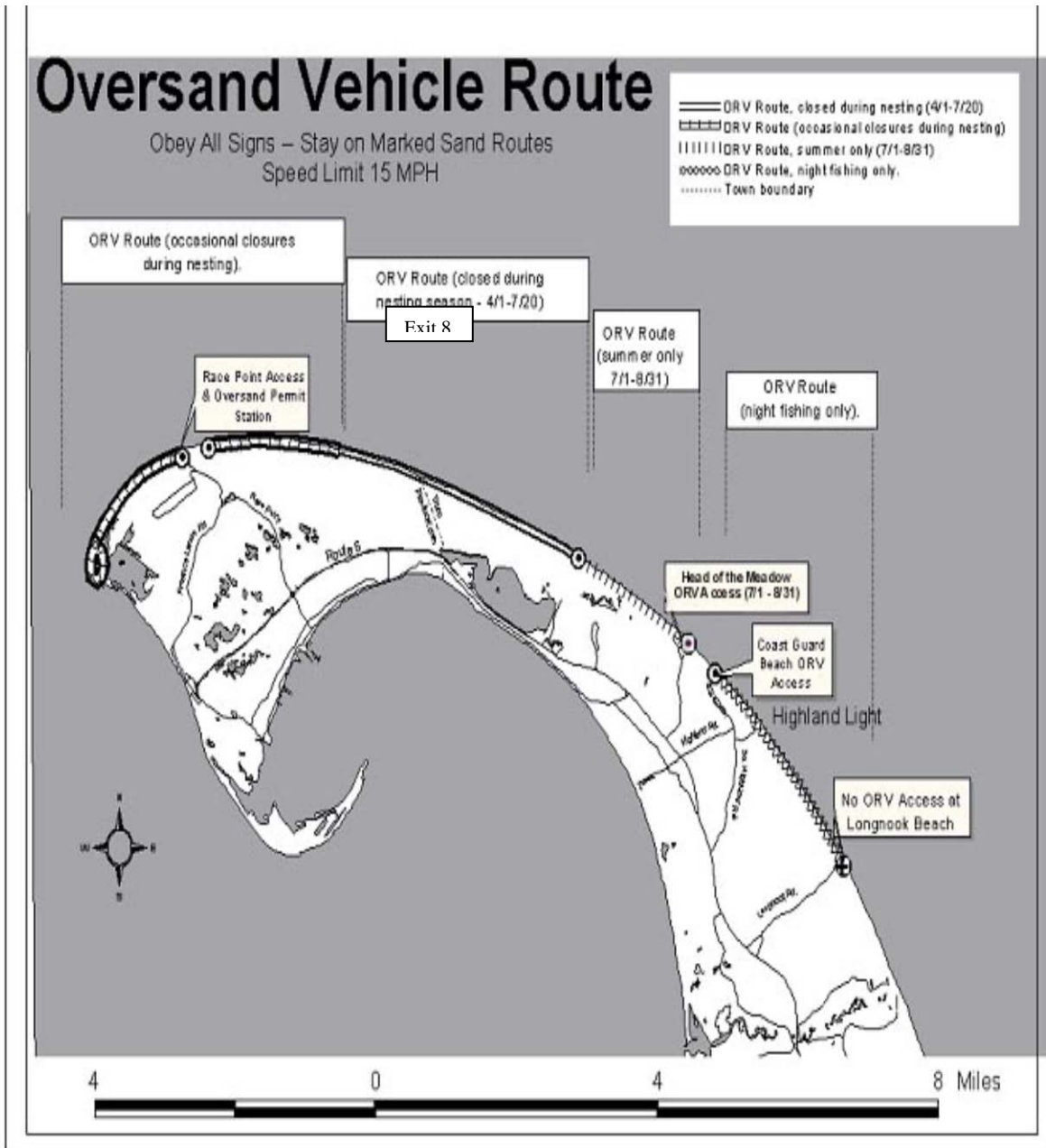


Figure 1.1 Map of the current oversand vehicle routes defined by the negotiated rule, Cape Cod National Seashore.

In 2004 the seasonal permit sales process was overwhelmed by the turnout of people starting April 10. The 3,200 seasonal permits sold out in 10 days. Three public meetings were held in 2004 to seek input on how to improve the permit sales distribution system. Seven changes were incorporated into the permit sales process for the 2005 season.

In 2005, the seven changes made to ORV permit sales created a smooth seasonal permit sales process. By the end of the 2005 season, 261 seasonal permits were still available and the weekly permits did not sell out on any days. The Park implemented all changes on a trial basis in 2005. The results of the changes made to ORV permit sales in 2005 were overwhelmingly positive and were made permanent.

In 2006 the sales process continued to run smoothly. Seasonal permits were available throughout the season and there were adequate weekly permits available each day. The ORV corridor, in 2006, was completely closed for daytime recreational use for the first time, and there was a near to total closure from June 11 – July 12. The Seashore began efforts to explore possible options, which would allow for adaptive management alternatives. The Seashore hosted an informational public meeting on the ORV closures during the 2006 season on July 18. The Seashore's Citizens Advisory Commission hosted an ORV and Piping Plover Public Meeting and Workshop in December.

In 2007 the Seashore completed an Environmental Assessment (EA) to improve ORV access while maintaining piping plover protection. The Selected Alternative from the EA provided three management options to improve access to the ORV Corridor if there was a near (<0.5 miles) or total daytime ORV corridor closure. On June 22, the three ORV accesses near Race Point Beach closed and 0.5 miles of corridor was opened at the High Head access, which was one of the options made available from the 2007 ORV EA. High Head remained open until July 13, when a total daytime closure occurred. Hatches Harbor was closed from May 28 through July 27, due to a plover nest that was established six feet from the Pole Line Road, and then due to protection of unfledged plover chicks. In 2007 the entire ORV corridor reopened on August 29.

In 2008 a portion of the ORV corridor remained open during the bird nesting season. This was the first time this had happened since 2005 and was directly attributed to the 2007 ORV EA. Total ORV permit sales declined approximately 15% when compared to 2007 sales. Seasonal permits went on sale Wednesday, March 26, 2008. The self-contained vehicle reservation system that was instituted for the July 4th and Labor Day holidays was discontinued. There were 1,402 seasonal permits available at the end of the season, which haven't sold out since 2004.

2009 ORV MANAGEMENT ACTIONS AND ACTIVITIES

Regulatory and Policy Changes

From 2005 – 2008 seasonal permit sales began on the last Wednesday in March. This was one of the seven changes that were implemented in 2005 to help take pressure off the seasonal permit sales. Seasonal permit sales began April 10 in 2009, which was the date when seasonal permit sales began prior to 2005. The change was made because demand for seasonal permits no longer warranted an earlier start date. Seasonal permit sales ran very smoothly with the later start date. The April 10 start date for seasonal permit sales will continue to be used in future years.

The major policy change that affected the ORV program in 2009 was how the Seashore managed tern nesting activities. The least tern is not a Federally listed species. However, they are listed in Massachusetts as a Species of Concern. In past years, tern colonies were protected by leaving the symbolic fencing from the Piping Plover protection activities in place if tern colonies were being established. The fencing was extended to help protect tern colonies if nests were established outside these fenced areas. When tern chicks hatched, symbolic fencing was extended down near the high tide berm, but a track was maintained on the lowest part of the beach and the corridor remained open.

In 2009, the Seashore closed sections of the ORV corridor in numerous areas when tern nesting activities started. This was done for both individual tern nests and tern colonies (several nesting pairs or more). If the areas remained open to vehicles when the nests were established, they were closed when the eggs hatched. These sections of the ORV corridor remained closed until the chicks fledged or in some cases until the adults cease feeding the fledged chicks. Tern nesting activity began in the Race Point Beach area just before the Race Point South corridor was going to open due to fledging of piping plover chicks. Both the Race Point North and South accesses remained closed after the plover chicks had fledged to protect least tern nests with eggs. A 0.3 mile section of Race Point North beach opened near the access after predators impacted most of the nests. The 0.3 mile section of Race Point North beach near the access opened on July 16 and closed again on July 23, when a least tern nest hatched near the access.

Number and Type of Permits Issued

Total permit sales were up 1.3% as compared to same sales in 2008. Revenue was down just over \$4,000 due to a higher number of the permits sold that were weekly permits. This followed a 15% decline in total sales from the 2007 to 2008 season. The seasonal ORV permits declined from 1457 in 2008 to 1340 for the 2009 season, a decrease of 8.0%. The weekly ORV permits were up from 2294 in 2008 to 2445 in 2009, a 6.5% increase. Seasonal SCV sales decreased from 139 in 2008 to 133 in 2009. Weekly SCV permit sales increased from 65 in 2008 to 93 in 2009. This is a positive sign for permit sales after three years of significant declines (see figure 1.4).

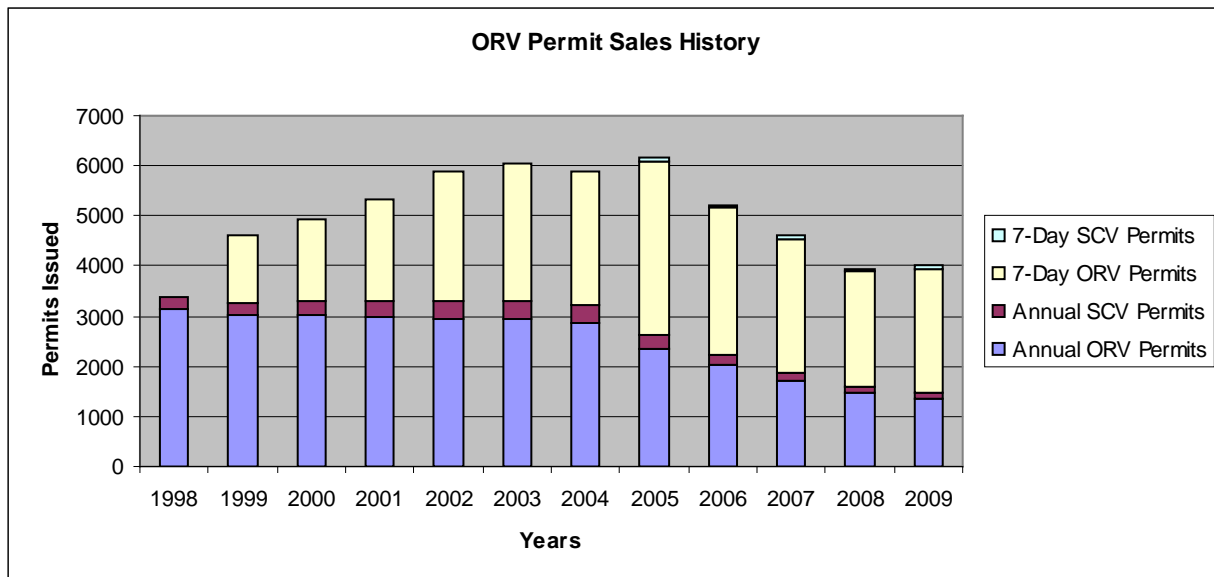


Figure 1.2 Bar graph of recent history of permit issuance in the ORV program.

In 2009, 1,473 seasonal permits were issued out of the 3,000 seasonal permits that were available. Of the 1,473 seasonal permits sold, 1,340 were issued to seasonal ORV operators and 133 were issued to seasonal SCV operators. In addition to the seasonal permits, there were 2,445 ORV weekly permits issued and 93 SCV weekly permits issued in 2009, bringing the total number of permits issued to 4,011. Total permit sales have declined from a high of 6,164 total permits sold in 2005 to 4,011 in 2009, a decline of 34.9%.

YEAR	Seasonal ORV Permits	Seasonal SCV Permits	Total Seasonal Permits	Weekly ORV Permits	Weekly SCV Permits	Total Permits Sold
1999	3006	259	3265	*N/A	*N/A	3400
2000	3003	285	3288	1649	*N/A	4937
2001	2990	314	3304	2026	*N/A	5330
2002	2957	335	3292	2592	*N/A	5884
2003	2951	349	3300	2739	*N/A	6039
2004	2881	353	3234	2644	*N/A	5878
2005	2361	280	2641	3463	60	6164
2006	2021	221	2242	2936	49	5227
2007	1697	171	1868	2659	89	4616
2008	1457	141	1598	2294	65	3957
2009	1340	133	1473	2445	93	4011

Figure 1.3 Permit Sales History

* weekly permits not sold

Seasonal Permit Process

Seasonal permits went on sale Friday, April 10, 2009. Permit sales went very smoothly again, as was the case since changes were made to the permit sales process in 2005. Seasonal permits have not sold out since 2004, when all 3,200 available seasonal permits sold out in 10 days.

Weekly Permit Process

For the fifth year, weekly permits were available using an advanced sales system. Users were able to buy weekly permits for any week in the 2009 season starting March 1. After weekly advanced sales forms were processed, the permittee was contacted and provided a confirmation number. The computerized reservation system continued to work well. There was an adequate amount of weekly advanced sales permits (200) and first-come first-served permits (200) available throughout the season.

Weekly permits were available to SCV users through the advanced sales system or first-come first-served system again in 2009.

Temporary ORV Corridor Closures

The ORV corridor, for the second time in four years, did not completely close during the 2009 season due to bird nesting activities. During the 2009 season, the ORV corridor was temporarily closed many times due to storm conditions. On June 20th a spring nor'easter hit hard with high surf and wind causing a one day closure of the corridor. During this particular storm, approximately 47 unfledged piping plover chicks were lost.

Hurricane Bill passed east of Cape Cod on Saturday, August 22, 2009. The swells began to build on Friday, with 7 -10' surf. All SCV's were required to leave the beach at noon on Saturday due to waves affecting the SCV area at high tide. The entire corridor closed by 6pm. The surf continued to build and the seas eventually reached 12 – 16'. The ORV corridor remained closed on Sunday August 23rd due to the storm, and reopened Monday morning the 24th.

The following week, tropical storm Danny hit and the ORV corridor was closed again on Friday and Saturday, August 28th and 29th. Danny's impact was not as great as Hurricane Bill, but still caused high surf, and a two-day closure of the ORV corridor. All SCV were off by 4pm on Friday due to surf affecting the SCV area at high tide, with a complete ORV corridor closure by 10pm.

From November 6th - 8th, the entire ORV corridor was closed due to high surf and beach erosion.

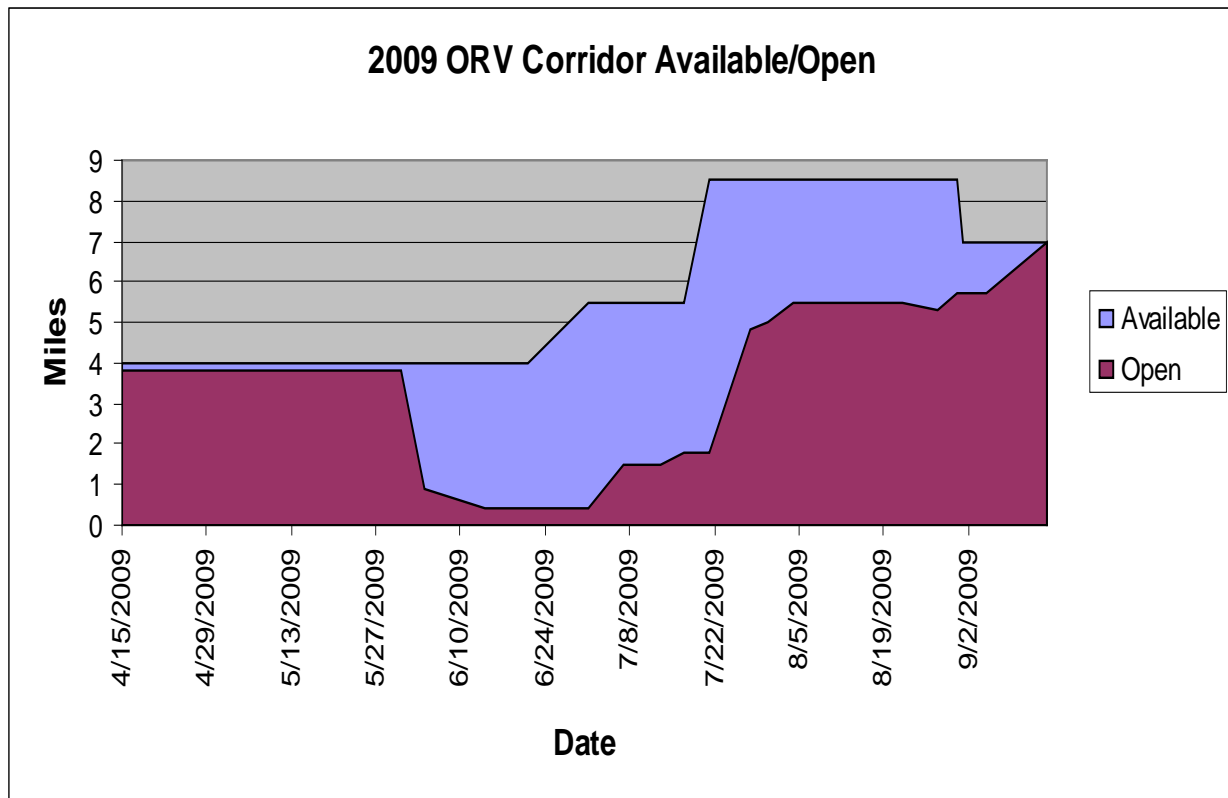


Figure 1.4 Chart showing available and open ORV corridor for the 2009 season (storm closures not shown).

Synopsis of 2009 ORV Corridor Openings and Closings (Coast Guard night fishing not included)

April 15		ORV Corridor Opens
April 14 – May 22	3.8 mi open	RPS open to Exit 8 RPN open to the crossover SCV areas RPN and RPS
May 23 – May 30	3.8 mi open	RPN 2.0 RPS 1.8 Hatches Harbor open 8am – 8pm SCV areas RPN and RPS
May 31	3.8 mi open	RPN 2.0 RPS 1.8 Hatches Harbor closed SCV areas RPN and RPS
June 1	3 mi open	RPN 1.2 RPS 1.8 Hatches Harbor closed SCV areas RPN and RPS
June 2	1.2 mi open	RPN 1.2 RPS Closed Hatches Harbor closed SCV area RPS Closed
June 3-4	.9 mi open	RPN .9 RPS Closed Hatches Harbor closed SCV area RPS Closed
June 5-6	.4 mi open	RPN .1 RPS Closed High Head .3 Hatches Harbor closed SCV areas RPN / RPS closed
June 7-19	.4 mi open	RPN .1 RPS Closed High Head .3 Hatches Harbor open 8am-8pm SCV areas RPN/RPS closed

June 20	Nor'easter	Major spring storm/coastal erosion with loss of 47 piping plover chicks
June 21-22	.4 mi open	RPN .1 RPS Closed High Head .3 Hatches Harbor closed
June 23 – 25	.1 mi open	RPN .1 RPS closed High Head closed Hatches Harbor closed
June 26 – 30	.4 mi open	RPN .1 RPS closed High Head .3 Hatches Harbor closed
July 1	.4 mi open	RPN .1 RPS closed High Head .3 Hatches Harbor closed SCV areas RPN/RPS closed
July 2- July 8	.3 mi open	RPN closed RPS closed High Head .3 Hatches Harbor open 8am-8pm SCV areas RPN and High Head
July 9 – 15	1.5 mi open	RPN closed RPS closed High Head 1.5 Hatches Harbor closed SCV area High Head
July 16 – 23	1.8 mi open	RPN .3 RPS closed High Head 1.5 Hatches Harbor closed SCV area High Head
July 24	1.5 mi open	RPN closed RPS closed

		High Head 1.5 Hatches Harbor closed SCV High Head
July 25 – 27	4.8 mi open	RPN 1.5 RPS 1.8 High Head 1.5 Hatches Harbor closed SCV area High Head and RPN
July 28	3.8 mi open	RPN .5 RPS 1.8 High Head 1.5 Hatches Harbor closed SCV area High Head and RPN
July 29 – 30	5 mi open	RPN 1.5 RPS 2 High Head 1.5 Hatches Harbor closed SCV area High Head,RPN,RPS
July 31	2 mi open	RPN closed RPS 2 High Head 1.5 Hatches Harbor closed SCV area RPS
August 1 – 2	3.3 mi open	RPN Closed RPS 1.8 High Head 1.5 SCV areas RPS and High Head
August 3 - 17	5.5 mi open	RPN 2.2 via Pole Line Rd only RPN Access closed RPS 1.8 High Head 1.5 SCV areas RPN and RPS
August 18	4.7 mi open	RPN 2.2 via Pole Line Rd only RPN Access closed RPS 1 High Head – HOM 1.5 SCV areas RPN and RPS
August 19	5.5 mi open	RPN 2.2 via Pole Line Rd only RPN Access closed

		RPS 2.2 High Head 1.5 SCV area PRN and RPS
August 20	5.5 mi open	RPN 2.2 RPN Access open RPS 2.2 High Head 1.5 SCV area PRN and RPS
August 22	Corridor Closed	Hurricane Bill – off coast SCV area closed at noon ORV (all users off by 6 pm)
August 23	Corridor Closed	Hurricane Bill High Surf
August 24 - 27	5.3 mi open	RPN 2 RPS 1.8 High Head 1.5 SCV area PRN and RPS
August 28 -29	Corridor Closed	Tropical Storm Danny SCV area closed at 4 pm ORV (all users off by 11 pm)
August 30 –Sept. 4	5.7 mi open	RPN 2.2 RPS 2 High Head 1.5 SCV areas RPN and RPS
Sept. 5 – 9	8.3 mi open	RPN 2 RPS 4.8 High Head 1.5 SCV areas RPN and RPS
Sept. 10 – 18	7 mi open	RPN 2.2 RPS 4.8 High Head – HOM Closed SCV area PRN and RPS
Sept. 19 - 29	5.65 mi open	RPN 2.2 RPS 3.2 High Head .25 SCV area PRN and RPS
Sept. 30 – Oct. 14	7 mi open	RPN 2.2 RPS – HH 4.8 SCV area PRN and RPS

Oct 15	5.75 mi open	RPN 2.2 RPS to Exit 9 2.8 Protected Beach Open HH .75 SCV area PRN and RPS
Oct 16 - 19	CLOSED	All access closed due to storm conditions
Oct 20 - 28	2.75 mi open	RPN 2.2 RPS .50 SCV area RPN
Oct 29 – 31	7 mi open	RPN 2.2 RPS to HH 4.8 SCV area RPN
Nov. 1 – 3	6 mi open	RPN 2.2 RPS to HH 4.8 SCV area RPN
Nov 4 - 5	2.80 mi open	RPN 2.2 RPS .6 SCV area RPN
Nov 6 – 8	CLOSED	Due to storm conditions
Nov 9 – 15	2.80 mi open	RPN 2.2 RPS .6 SCV area RPN
Nov 16	CLOSED FOR SEASON	

November 16 – ORV corridor closed. Limited Access Passes became available for individuals that had a permit in 2009.

Piping Plover Breeding Success

In 2009, Cape Cod National Seashore staff documented a total of 87 nesting pairs of piping plovers. There were 60 documented chicks that fledged in 2009. This was compared to 158 recorded fledged plover chicks in 2008. The productivity rate for piping plovers at the Seashore in 2009 was 0.70. The Seashore does not have a documented year with this low of a productivity rate since the plovers were listed as endangered in 1986. The June 20 Nor'easter, which was the cause of the loss of 47 unfledged plover chicks, was the main reason for the extremely low productivity rate.

(For more detailed information reference *Monitoring and Management of Piping Plovers and Colonial Waterbirds at Cape Cod National Seashore 2009*)

Education

All hills and areas identified as bottlenecks/visibility problems along the ORV corridor were posted with safety related advisory signs. There was a continued effort to educate ORV users in the “Low and Slow” (low tire pressure and slow vehicle speed) concept. All access areas were posted with the developed informational signs. The information/regulation brochure, the handouts, signs and information posted at the ORV Permit Station emphasized that ORV users follow the “low and slow” advice. ORV information and regulations were posted on the bulletin boards at the Oversand Permit Building and at the Race Point air-up lot. Both bulletin boards were updated throughout the season and displayed current ORV route information. Plover information, seal information, and ORV special activity or event information was also posted.

Enforcement

Numerous law enforcement contacts were made on a daily basis to help inform and educate the ORV users about Seashore regulations and ethical use of the ORV corridor. Enforcement actions continued to be one tool of a multi-pronged approach in this effort.

There was a total of 25 violation notices issued to ORV visitors in 2009, down from 82 issued during the 2008 season.

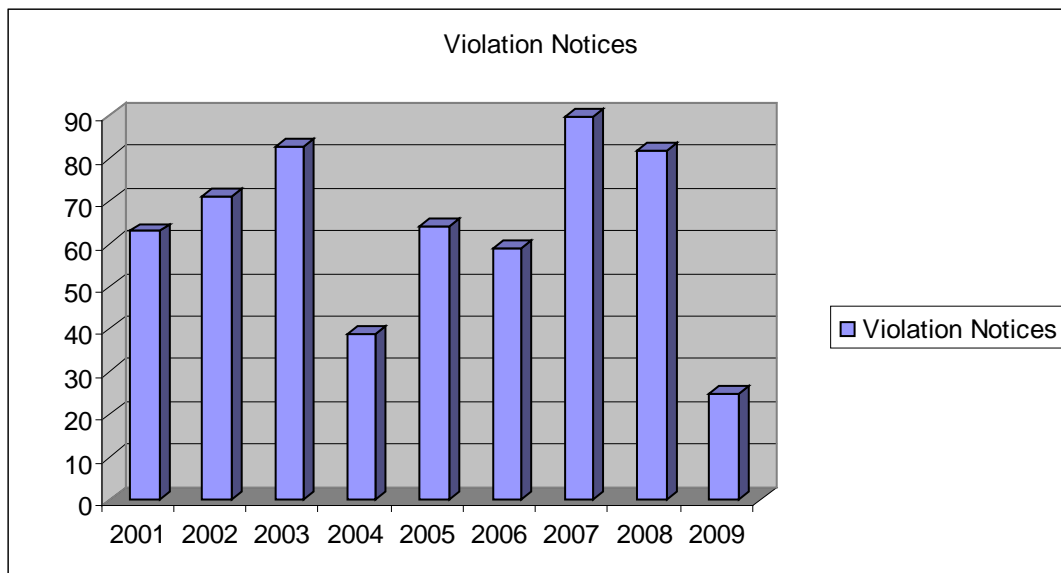


Figure 1.5 Violation Notices Associated with ORV Activities

There were six violation notices issued for safety infractions and 10 violations issued for operating without a permit. All 10 of the visitors that were operating without a permit were found to be operating in the open ORV corridor. All violation numbers were down when compared to 2008 numbers. Written warning numbers were added for the first time in this report. Keep in mind, the citations and written warnings were issued to visitors on the ORV corridor. As in previous years many of these infractions involve visitors that are found on the ORV corridor, but are pedestrians that are not part an ORV user.

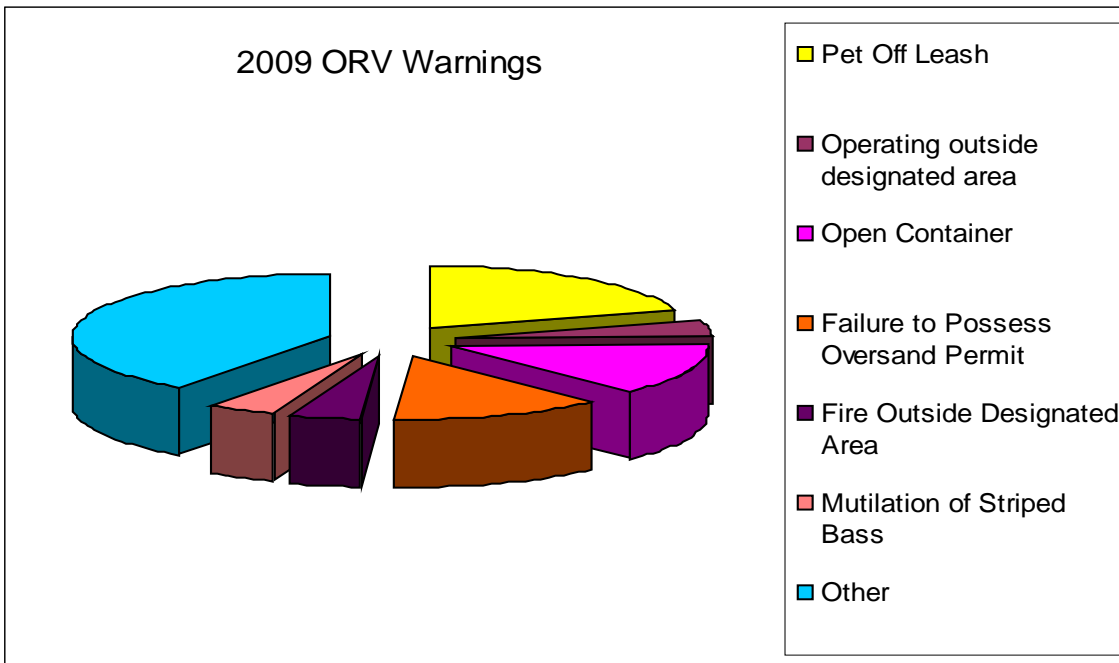
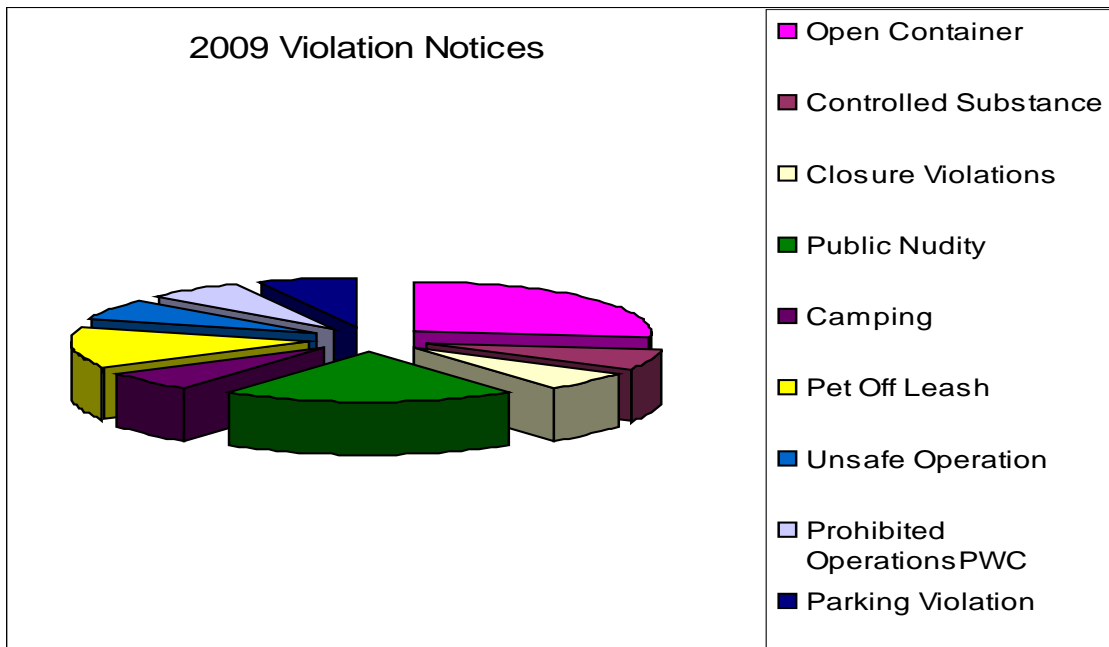


Figure 1.6 Chart of violation groupings

2009 Violation Notices		2009 Written Warnings	
No ORV Permit	10	No ORV Permit	6
Open Container	4	Open Container	6
Controlled Substance	1	Controlled Substance	0
Closure Violation	1		
Public Nudity	3		
Camping	1		
Pet Off Leash	2	Pet Off Leash	9
Unsafe Operation	1		
Prohibited Operations(PWC)	1		
Parking Violation	1		
		Operating Outside Designated Area	2
		Fire Outside Designated Area	2
		Mutilation of Stripped Bass	2
		Other	18
TOTAL	25	TOTAL	45

Figure 1.7 Violation Notices and Warnings Issued in 2009 issued on the ORV corridor

A concerted effort has been made over the last three years to address the safety concern of drivers operating vehicles while impaired. This effort was been district wide and not ORV corridor specific.

Permitted users were once again a significant and important ally in the protection and management of the ORV program. Their continued diligence in noting and reporting non-permitted vehicles, illegal driving behavior, resource related concerns, and other aspects of resource and visitor protection was an extremely valuable and important part of the ORV program. Without this voluntary partnership, the ORV program would not be as successful.

Improvements

Four of the ORV access gates were replaced during the year. Improvements were also made to the air-up station at Race Point Beach. A new compressor, which was purchased in 2008, was installed and the old and new compressor tanks were plumbed into one air reservoir. If any future mechanical issues occur with the compressor, staff will be able to start the second compressor, putting the system back on line. A heavy duty compressor was also purchased in 2009 that will be installed for the 2010 season. This compressor will replace the old compressor. Plans are to have all three compressor tanks plumbed into one air reservoir. The installation of a new heavy duty compressor and a one year old compressor should reduce any down time caused by mechanical failure of the equipment.