

# OFF-ROAD VEHICLE ACTIVITY REPORT

## CAPE COD NATIONAL SEASHORE

2008

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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

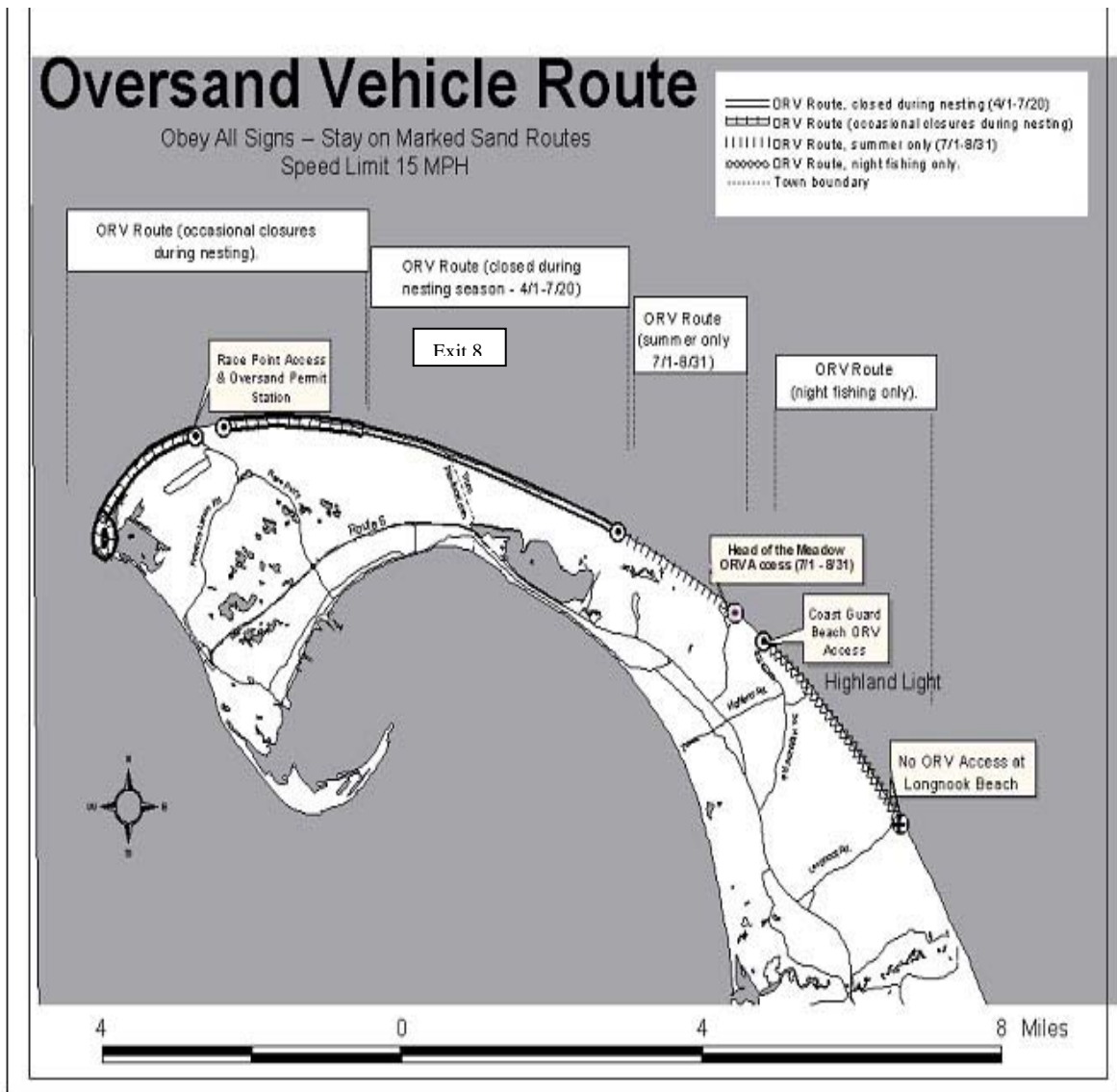
ORV management at the Seashore. Members from the environmental, mobile sports fishing, and ORV communities along with representatives from the U.S. Fish and Wildlife Service, Massachusetts Division of Fisheries and Wildlife, and the six towns in which the Seashore's boundary lies, comprised the rule-making 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 10% 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 70 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 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 have been implemented on a permanent basis.

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 provide 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.

## **2008 ORV MANAGEMENT ACTIONS AND ACTIVITIES**

### **Regulatory and Policy Changes**

There was one change made to the ORV program between 2007 and 2008. The SCV reservation system used for the July 4 and Labor Day holiday weekends was suspended. Recent trends showed that there was not enough available beach during the July 4 weekend, due to bird nesting activities, to allow for any sizable SCV area. Having 100 reservations during this time still required a first-come, first-served situation if any beach was available. Recent trends also showed that we were able to accommodate all SCV units, with or without reservation, during the Labor Day weekend. Trends will be evaluated and future use of a reservation system will be considered if circumstances dictate the need for one.

### **Number and Type of Permits Issued**

Total permit sales were down 15% as compared to same sales in 2007. This followed a 12% decline in total sales from the 2006 to 2007 season. Permit sale declines were experienced in all four permit types. The four year decline in total permit sales is mostly attributed to the total or near total ORV corridor closures experienced in June and July over the last four seasons (see figure 1.4).

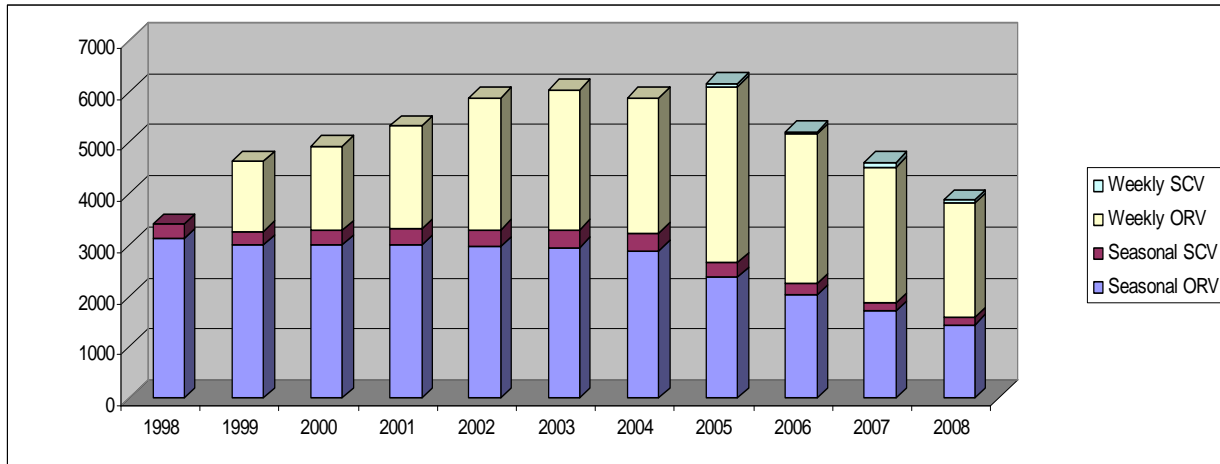


Figure 1.2 Bar graph of recent history of permit issuance in the ORV program.

In 2008, 1,598 seasonal permits were issued out of the 3,000 seasonal permits that were available. Of the 1,598 seasonal permits sold, 1,457 were issued to ORV operators and 141 were issued to SCV operators. In addition to the seasonal permits, there were 2,294 ORV weekly permits issued and 65 SCV weekly permits issued in 2008, bringing the total number of permits issued to 3,957 (Figure 1.3). Total permit sales have declined from a high of 6,164 total permits sold in 2005 to 3,957 total permits sold in 2008, a decline of 36%.

YEAR	Seasonal ORV Permits	Seasonal SCV Permits	Total Seasonal Permits	Weekly ORV Permits	Weekly SCV Permits	Total Permits Sold
1998	3125	275	3400	*N/A	*N/A	3400
1999	3006	259	3265	1367	*N/A	4632
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

Figure 1.3 Permit Sales History

\* weekly permits not sold

## Seasonal Permit Process

Seasonal permits went on sale Wednesday, March 26, 2008. 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. There were 1,402 seasonal permits available at the end of the season.

## Weekly Permit Process

For the fourth year, weekly permits were available using an advanced sales system. Users were able to buy weekly permits for any week in the 2008 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 2008.

## Temporary ORV Corridor Closures

The ORV corridor, for the first time in three years, did not completely close during the 2008 season. Management was able to utilize one of the options made available by the 2007 ORV EA when all three accesses near Race Point Beach were closed. The options made available in the 2007 ORV EA allowed for daytime use of a section of the corridor south of Coast Guard Beach in Truro. There was a minimum of 0.5 miles of corridor available throughout the 2008 season.

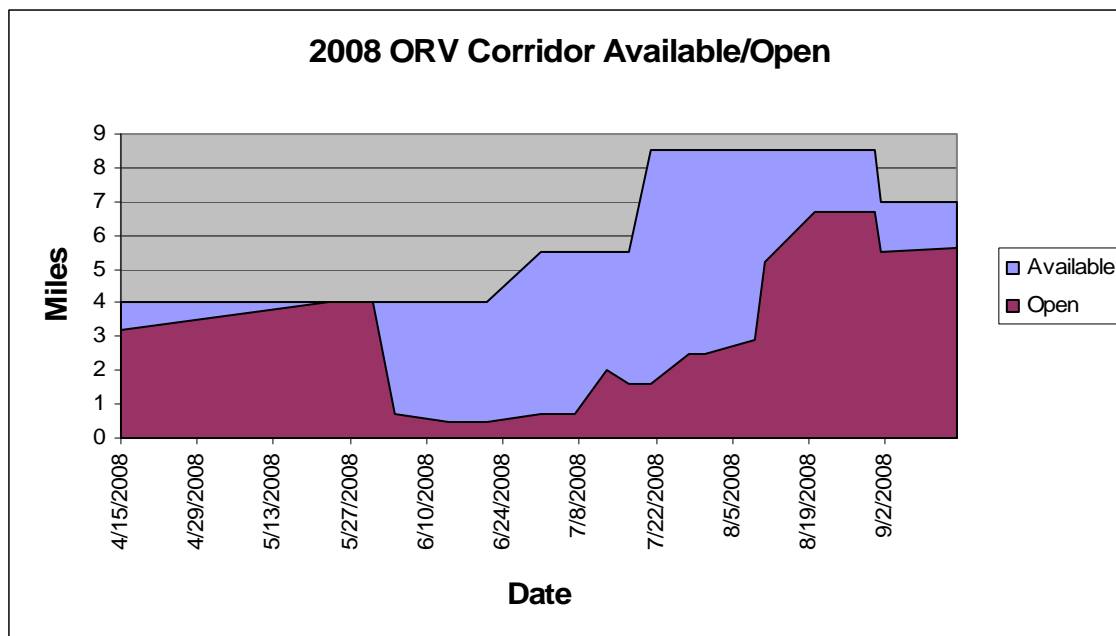


Figure 1.4 Chart showing available and open ORV corridor for the 2008 season.

## Synopsis of 2008 ORV Corridor Openings and Closings

(Coast Guard night fishing area not included):

April 15		ORV Corridor Opens
April 15 – 20	3.2 mi. open	Race Point North (RPN) open to crossover Closed from crossover to Hatches Harbor - narrow Beach Hatches Harbor open Race Point South (RPS) open approximately 1 mile Both SCV areas open
April 21 – 27	4.0 mi open	RPS opened to Exit 8
April 28	2.4 mi open	RPS open 0.2 miles due to high tides and narrow beach RPS SCV area closed due to high tides.
May 11	4.0 mi open	RPS reopened to Exit 8 RPS SCV area reopened
May 12-14	4.0 mi open	Both SCV Areas Closed Due to High Tides
May 14 – 15	2.4 mi open	RPS open 0.1 miles RPN SCV area opened Race Point Beach closed to ORV traffic
May 16	3.0 mi open	RPS opened 0.9 miles RPS SCV area reopened
May 21-31	4.0 mi open	RPS reopened to Exit 8
June 1-3	3.5 mi Open	RPN access and RPN SCV area closed RPS opened to Exit 8 RPS SCV area open
June 3	0.5 mi open	RPN access and Pole Line Road closed Hatches Harbor closed
<b><u>2007 EA option utilized</u></b>		
Coast Guard opened 0.5 miles day use Fees waved on North District beach parking areas for ORV permit holders. SCV areas opened in designated parking lots		
July 1-3	0.7 mi open	RPN, RPS and Hatches Harbor remained closed High Head 0.7 miles opened Coast Guard day use closed
July 4	1.2 mi open	High Head 0.7 miles open

		<p>Pole Line Road opened to Hatches Harbor  RPN open 0.2 near crossover  Pole Line Road closed at 3:30 PM. Fledged 35 day old  piping plover chick found dead on Pole Line Road</p>
July 5 – 11	0.7 mi open	<p>RPN, RPS and Hatches Harbor closed  High Head 0.7 miles open</p>
July 11	1.1 mi open	<p>Hatches Harbor and RPN 0.4 miles reopened via Pole Line  Road  High Head 0.7 miles open</p>
July 13- 15	2 mi open	<p>RPN and Hatches Harbor 0.8 miles open  RPS 0.5 miles opened  RPN and RPS SCV areas reestablished  High Head 0.7 miles open</p>
July 16-22	1.6 mi open	<p>RPN and Hatches Harbor open 0.4 miles  RPS and High Head 1.2 miles open</p>
July 23-31	2.5 mi open	<p>RPN and Hatches Harbor 0.5 miles open  Head of the Meadow access reopened 0.1 miles  RPS 1.2 miles open  High Head 0.7 miles open</p>
August 1 -4	2.1 mi open	<p>High Head 0.3 miles open</p>
August 5 – 7	2.0 mi open	<p>High Head 0.5 miles open  Head of the Meadow 0.1 miles open  RPS 0.2 miles open  RPN and Hatches Harbor 1.2 miles open</p>
August 8 – 11	2.9 mi open	<p>RPN and Hatches Harbor 2.2 miles - completely reopened  with one way section around tip at the Race  RPS 0.2 miles open  High Head 0.4 miles open  Head of the Meadow 0.1 miles open</p>
August 11 -27	5.2 mi open	<p>RPN and Hatches Harbor 2.2 miles open  RPS 0.2 miles open near access, 0.9 miles “drive only”, 0.7  miles open beyond “drive only” area  High Head and Head of the Meadow 1.2 miles opened  (beach cut)</p>
August 28 - 31	6.7 mi open	<p>RPN and Hatches Harbor 2.2 miles open  RPS 3.3 miles opened (two beach cuts near High Head)</p>

High Head to Head of the Meadow 1.2 miles open (beach cut)

September 1 5.5 mi open      Head of the Meadow to High Head closed (negotiated rule)  
RPN and Hatches Harbor 2.2 miles open  
RPS 3.3 miles opened (two beach cuts near High Head)

Other occurrences on the ORV corridor between September and November were as follows:

In early September, 0.1 miles opened up north of the High Head access.

In October RPS was open 3.8 miles through the 24<sup>th</sup>, at which time the RPS corridor was reduced to 1.0 miles due to beach cuts. Beach cuts on RPS persisted through the remainder of the season. On October 15 the ORV corridor was opened across the Race Point protected beach

November 16 – ORV corridor closed. Limited Access Passes became available for individuals that had a permit in 2008.

## **Piping Plover Breeding Success**

In 2008, Cape Cod National Seashore staff documented 86 nesting piping plover pairs and a total of 109 nests were found. There were 158 piping plover chicks that fledged during the 2008 season. The plover productivity rate, a number derived by dividing the total number of chicks fledged by the total number of plover nesting pairs, was 1.84 in the Seashore in 2008.

On the 8.5 mile ORV corridor, there were 30 nesting pairs and 30 nests were found. The fledge rate for piping plovers that nested on the ORV corridor was 2.43, compared to a 1.08 fledge rate for all other areas in the Seashore.

(For more detailed information reference *Monitoring and Management of Piping Plovers and Colonial Waterbirds at Cape Cod National Seashore 2008*)

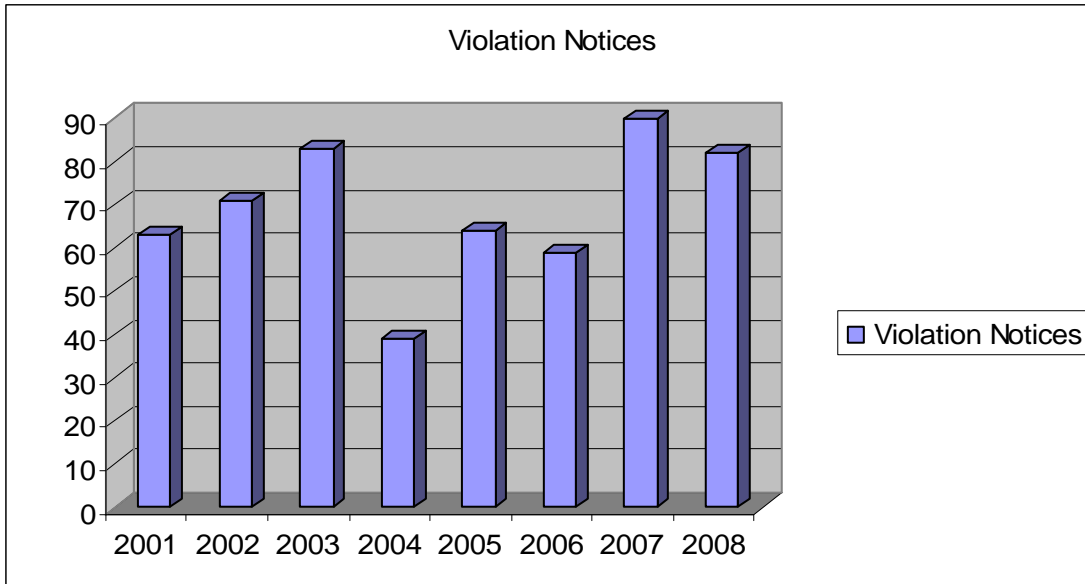
## **Education**

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. For the eighth year, 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

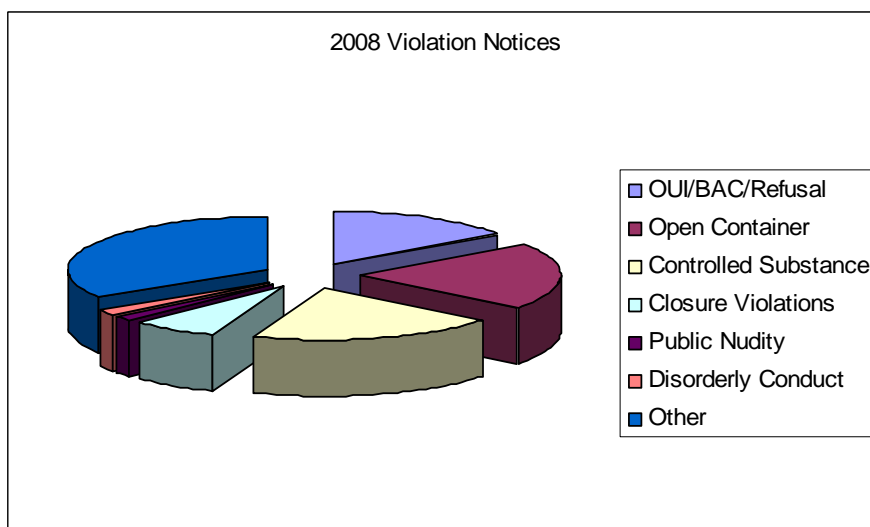
Numerous law enforcement contacts were made on a daily basis to help inform and educate the ORV users about Seashore regulations and ethical use of the ORV corridor. Enforcement actions continued to be one tool of a multi-pronged approach in this effort.

There was a total of 82 violation notices issued to ORV visitors in 2008, down from 90 issued during the 2007 season.



**Figure 1.5 Violation Notices Associated with ORV Activities**

There were 33 violation notices issued (40%) for safety infractions relating to driver impairment – operating under the influence of alcohol (OUI), open container of alcohol and controlled substance possession. This was down from 48 violation notices issued for similar offences during the 2007 season. There were 22 violation notices issued for driving a vehicle on the corridor without a permit. This was in line with numbers experienced in past seasons.



**Figure 1.6 Chart of major violation groupings**

2008 ORV Violation Notices	
2008 Violation Notices	
No ORV Permit	22
OUI/BAC/Refusal	9
Open Container	12
Controlled Substance	12
Closure Violations	4
Public Nudity	1
Disorderly Conduct	1
Other	20
Total	81

**Figure 1.7 Violation Notices Issued in 2008**

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.