

*Testimony of*  
*Derb. S. Carter, Jr.*  
*Director of the North Carolina Offices of the Southern Environmental Law Center*  
  
*on behalf of*  
  
*Audubon North Carolina and Southern Environmental Law Center*  
  
*Submitted to the*  
  
*Subcommittee on Public Lands and Environmental Regulation*  
*of the*  
*House Committee on Natural Resources*  
  
*on House Bill 819*  
*“Preserving Access to Cape Hatteras National Seashore Recreational Area Act”*  
  
*Hearing held on March 14, 2013*  
*Testimony submitted on March 12, 2013*

This testimony is submitted on behalf of Audubon North Carolina and Southern Environmental Law Center (SELC). In addition, SELC has represented Defenders of Wildlife in litigation prompting the rulemaking process, in the rulemaking process itself, and in intervening in litigation on the side of the National Park Service to defend the Final Rule that would be abolished by HR 819. SELC also represents National Parks Conservation Association in defending the Final Rule.

We strongly oppose HR 819. We support of the National Park Service’s Final Rule to manage off-road vehicle use on Cape Hatteras National Seashore in North Carolina. The bill would abolish the Final Rule which was adopted by the National Park Service after extensive public review and comment. The bill would eliminate sensible safeguards to preserve Cape Hatteras National Seashore for current visitors and future generations to explore and enjoy. In the one year of management under the Final Rule, visitation to the Seashore increased, tourism set record highs, and wildlife on the Seashore continued to rebound.

Passage of HR 819 would ignore and undermine:

Extensive public involvement in adoption of the Final Rule:

The public process informing the National Park Service’s management plan included numerous public meetings, a negotiated rulemaking process that included opportunity for public comment at each meeting, and two public comments periods, during which 21,258 written comments were received on the draft Final Rule and its supporting environmental impact statement. The vast majority of commenters wrote in favor of stronger wildlife protections and more stringent off-road vehicle (ORV) restrictions than even those contained in the Final Rule. The National Park Service weighed all the comments and public input and struck a careful and

fair balance among competing uses of the Seashore, which is embodied in the Final Rule. The Final Rule should be given a chance to succeed.

Detailed economic and environmental review:

The Park Service's extensive review culminated in lengthy economic reports and cost-benefit analyses, an environmental impact statement that examined six alternatives to the Final Rule, and a detailed biological opinion issued by the U.S. Fish & Wildlife Service, all of which supported the Final Rule as it was written. The management measures in the Final Rule are based on a robust scientific record supported by leading experts.

Balanced access for pedestrians and ORV users provided by the Final Rule:

The Final Rule provides a balanced approach to Seashore visitation, designating 41 miles (28 year-round and 13 seasonal) as ORV routes of the Seashore's 67 miles of beaches. Only 26 miles of beaches are designated as year-round vehicle-free areas for pedestrians, families, and wildlife, to promote pedestrian access and reduce user conflicts between motorized and non-motorized visitors. While limiting off-road vehicular traffic in these areas, the new plan will also provide new parking facilities and access ramps to facilitate visitor access to beaches.

The Final Rule and management plan only closes beaches when necessary to protect nesting waterbirds and sea turtles from disturbance. Today, one hundred percent of the Seashore beaches are open to pedestrians and 61% of the beaches are open to ORV and pedestrian use. The remaining 39% of the beaches are reserved for pedestrian use only. During the breeding season for waterbirds (late April through July) only those areas where birds are attempting to nest are closed when prescribed disturbance buffers require closure. Once nesting is completed, these areas are opened.

Most other national seashores either have regulations in place to manage and restrict ORV use or do not allow ORV use at all; only one national seashore continues to allow beach driving without a regulation in place. Four national seashores have long prohibited ORVs entirely, while four others have regulations restricting ORV use. All of those, except Padre Island, allow driving on a much smaller percentage of their beaches than does the Cape Hatteras Final Rule. Thus, the number of miles Cape Hatteras's beach set aside for ORV use in the Final Rule is significantly more extensive than most other national seashores.

The overwhelming weight of scientific authority:

In contrast to the utter dearth of science to support HR 819, an extraordinary amount of scientific evidence shows that the Final Rule's beach driving restrictions are warranted and are the minimum necessary to preserve the natural resources of the Seashore for future generations. The rulemaking record includes hundreds of peer-reviewed articles, the peer-reviewed protocols developed by the government's own scientists at the U.S. Geological Survey, and the support of scientists at the U.S. Fish & Wildlife Service and the North Carolina Wildlife Resource Commission. Arguments for ORV use on the entire Seashore are not only contradicted by substantial scientific studies at the Seashore and other locations, they are not supported by any scientific evidence in the record.

Five years of thriving tourism:

In the four years under reasonable wildlife protections and ORV restrictions similar to those implemented in the Final Rule<sup>1</sup> and one year under the Final Rule, tourism has thrived, park visitation has held steady and increased in some years, and tourism revenues grew. Notably, in the last two years, new records have been set for visitor occupancy and tourism revenue in Dare County, North Carolina, where much of the Cape Hatteras National Seashore land is located.

With the exception of 2011, when Hurricane Irene cut off access to Hatteras Island for nearly two months, visitation to Cape Hatteras National Seashore has remained steady or increased for the past nine years, from a low of 2,125,005 (in 2006) and a high of 2,302,040 in 2012. In the first year of management under the Final Rule, Seashore visitation was the highest since 2003.

<b>Year</b>	<b>Cape Hatteras National Seashore visitation</b>
<b>2012</b>	2,302,040
<b>2011</b>	1,960,711 *
<b>2010</b>	2,193,292
<b>2009</b>	2,282,543
<b>2008</b>	2,146,392
<b>2007</b>	2,237,378
<b>2006</b>	2,125,005
<b>2005</b>	2,260,628

\*Hurricane Irene cut access for nearly two months

(See “Annual Park Visitation” Report for CAHA at <http://www.nature.nps.gov/stats/park.cfm>)

Dare County, NC, where the majority of the Seashore is located, reports that visitor occupancy tax receipts for each year under the court ordered ORV restrictions (2008 to 2012) exceeded receipts in 2007 and prior years, with 2008, 2010, 2011, and 2012 setting successive records for all-time high receipts. Tourism revenue for Hyde County, NC (the Ocracoke Island portion of Cape Hatteras National Seashore) has held steady or increased since 2005, to a record high \$31.69 million in 2011. The chart below shows tourism revenue data for Hyde and Dare Counties, both before the court ordered ORV restrictions went into effect in 2008 and afterwards:

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<sup>1</sup> These wildlife protections were established in a consent decree was entered by the U.S. District Court for the Eastern District of North Carolina in the federal lawsuit entitled *Defenders of Wildlife et al. v. National Park Service et al.* (E.D.N.C. case no. 2:07-CV-45). It imposed protections and beach driving restrictions beginning in 2008 that are very similar to those in the Final Rule.

<b>Year</b>	<b>Dare County tourism expenditures (millions of dollars)</b>	<b>Dare County percent change from prior year</b>	<b>Hyde County tourism expenditures (millions of dollars)</b>	<b>Hyde County percent change from prior year</b>
<b>2011</b>	\$877.18	+ 5.14	\$31.69	+ 2.6%
<b>2010</b>	\$834.29	+ 8.8%	\$30.90	+ 11.6%
<b>2009</b>	\$766.56	(-1.4%)	\$27.70	(- 1.5%)
<b>2008</b>	\$777.41	+ 1.9%	\$28.11	+ 3.0%
<b>2007</b>	\$762.65	+ 8.6%	\$27.29	(- 4.1%)
<b>2006</b>	\$702.25	+ 8.7%	\$28.46	+ 3.5%
<b>2005</b>	\$646.08	+ 4.8%	\$27.49	+ 7.6%

(See North Carolina Department of Commerce reports on tourism revenue at: [www.nccommerce.com/tourism/research/economic-impact/](http://www.nccommerce.com/tourism/research/economic-impact/))

The majority of the national seashore is on Hatteras Island in Dare County. Dare County reports that occupancy revenue from hotels, rental homes, campgrounds, etc. *on Hatteras Island* was seven percent *higher* in 2012 (the first year under the Final Rule) than in 2007 (the year that the Interim Management Strategy, to which HR 819 would return the Seashore, was in effect). This was true despite the fact that access to Hatteras Island was cut off after Hurricane Sandy for nearly two months in late 2012. Occupancy receipts have been steadily rising in recent years under reasonable wildlife protections and ORV restrictions similar to those implemented in the Final Rule. The Dare County Visitor’s Bureau reports that Hatteras Island visitors spent a record-setting \$27.8 million on lodging during the month of July 2010 (surpassing July 2009 by 18.5%). July 2011 occupancy receipts on Hatteras Island then set a new high of \$29.6 million. Then July 2012 set yet another new all-time occupancy high on Hatteras Island at \$30,577,703. July has the maximum restriction on ORV use due to seasonal safety ORV closures in front of villages, breeding bird closures, and night driving restrictions for nesting sea turtles. The occupancy receipts for June and September 2012, the first year under the Final Rule, also exceeded the levels for the prior years posted on Dare County’s Visitor’s Bureau website, and may also represent all-time records. (See <http://www.outerbanks.org/outerbanks-statistics/> (graphs for “Occupancy by District”)).

Although only 4-5% of Seashore visitors have an interest in driving on the beaches, these visitors have this opportunity at all times under the Final Rule. Since the Final Rule went into effect on February 15, 2012 (through March 4, 2013), the National Park Service has issued 32,893 permits to operate an ORV on Seashore beaches (9,086 annual and 23,807 weekly permits). Permits require an applicant to view a short educational video on safe driving on the beaches. In the first year under the permit system instituted by the Final Rule, speeding violations on the beaches decreased by 88% from 200 in the prior year to 23.

Recovery of protected species under reasonable ORV restrictions:

The various federally endangered, federally threatened, and state-protected species of shorebirds, water birds, and sea turtles that live and/or breed on Cape Hatteras National Seashore beaches have rebounded in the five years under court ordered ORV restrictions and the Final

Rule. These species are sensitive to human disturbance during the nesting season. All species had declined – and some had even disappeared from the Seashore - under the prior plan that HR 819 seeks to reinstate. Under the court ordered ORV restrictions and Final Rule, records have been set for the number of sea turtle nests, piping plover breeding pairs, piping plover fledged chicks, American oystercatcher fledged chicks, least tern nests, and gull-billed tern nests.

Sea turtle nests on Seashore beaches have nearly tripled from 82 in 2007 to a record 222 in 2012. The number of breeding pairs of threatened piping plovers increased from 6 pairs in 2007 to 15 in 2012. The number of nests of beach nesting colonial waterbirds including terns and black skimmers has quadrupled, from 314 nests in 2007 to 1314 nests in 2012. By all measures, the ORV use restrictions during the nesting season from May to July have been an unqualified success in restoring wildlife to the Seashore.

	2007	2008	2009	2010	2011	2012
<b>Sea turtle nests</b>	82	112	104	153	147	222
<b>Piping plover pairs</b>	6	11	9	12	15	15
<b>Piping plover fledged chicks</b>	4	7	6	15	10	11
<b>American oystercatcher pairs</b>	21	21	21	20	20	21
<b>American oystercatcher fledged chicks</b>	10	15	10	26	24	15
<b>Colonial waterbird nests</b>	314	255	691	414	1289	1314

(See *National Park Service, Cape Hatteras National Seashore Annual Reports 2012*)

The requirements of numerous federal laws:

Executive Order 11644 and 36 C.F.R. § 4.10 require all public land managers to adopt special regulations to authorize ORV use and requires that those plans not harm wildlife or degrade wildlife habitat.

The Park Service Organic Act declares that national parks and seashores must be managed “to conserve the scenery and the natural and historical objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. If a conflict exists between recreational uses and natural resource protection, natural resource protection predominates.

The enabling legislation for Cape Hatteras National Seashore declares that it shall be “permanently preserved as a primitive wilderness” and that “no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible [] with the preservation of the unique flora and fauna of the physiographic conditions now prevailing in the area.” 16 U.S.C. § 459a-2.

The Endangered Species Act requires that all federal agencies provide for the recovery of endangered species. 16 U.S.C. § 7(a)(1). HR 4094, in contrast, prescribes that any management plan for the Seashore only provide minimum protection to endangered species, but not recovery.

The National Environmental Policy Act requires preparation of an environmental impact statement (EIS) for federal actions that significantly affect the environment. The Final Rule is supported by an EIS, but the Interim Strategy mandated by HR 4094 is not.

### Conclusion

In marked contrast to the National Park Service's Final Rule, HR 819 would return Cape Hatteras National Seashore to the failed protocols of the Interim Protected Species Management Strategy that were proven to be devastating to birds, sea turtles, other natural resources, and the public's enjoyment of the Cape Hatteras National Seashore beaches prior to the introduction of the consent decree. Even the Interim Strategy itself states that it was not developed as a long-term solution for managing ORV use at Cape Hatteras National Seashore, but rather expressly and repeatedly states that it was intended only to be implemented temporarily until the Final Rule was in place. The Biological Opinion for the Interim Strategy reiterates that it will negatively impact the natural resources of the Seashore in the long-term.

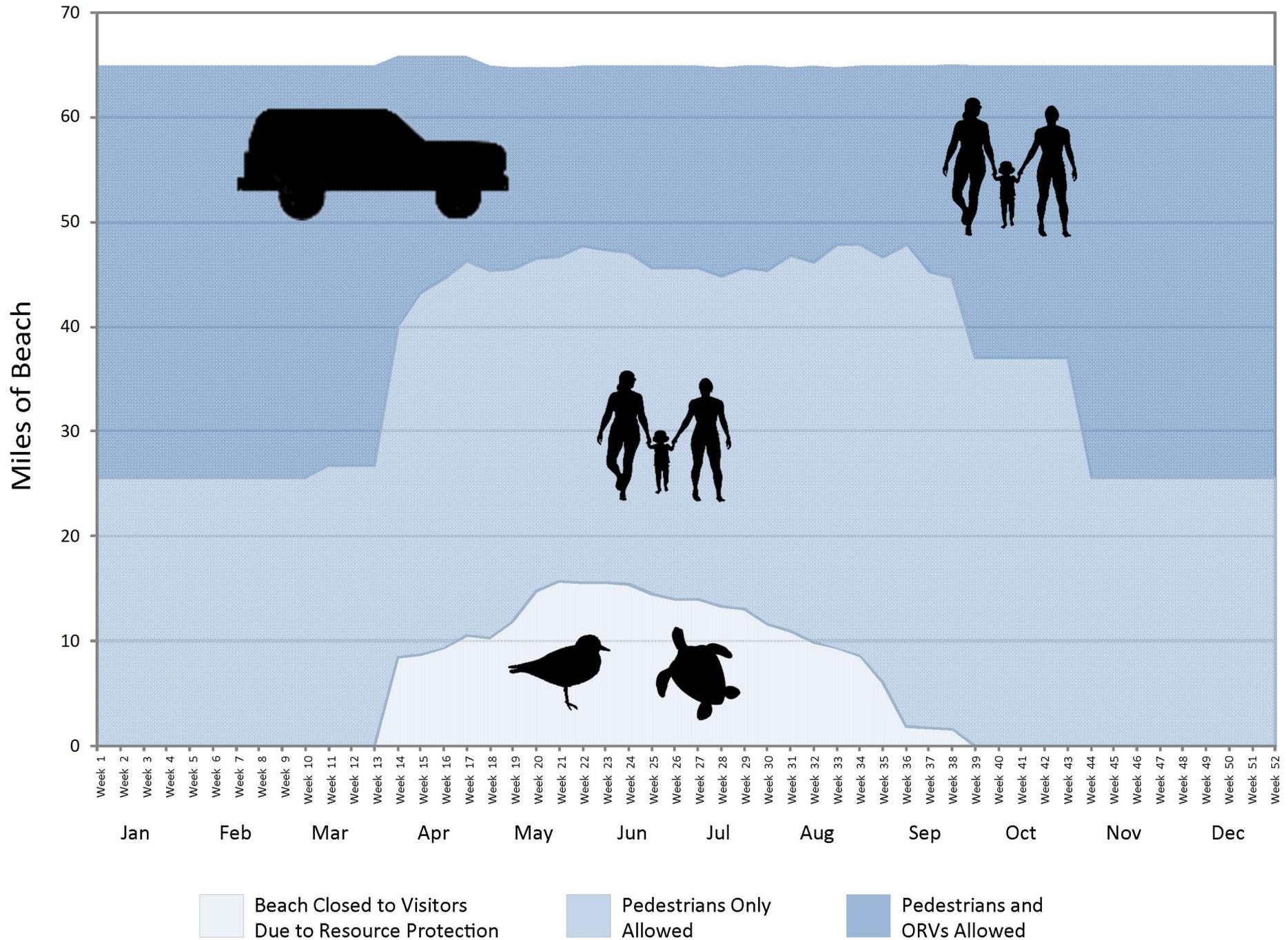
In contrast to the Final Rule, the Interim Strategy that HR 819 seeks to reinstate:

1. Was not supported by the same degree of public participation and contradicts the wishes of the vast majority of people who commented on the Final Rule;
2. Is not supported by any data or evidence that it will have a greater positive impact (or avoid a negative impact) on tourism than the Final Rule;
3. Is not supported by an environmental impact statement or extensive economic studies, as the Final Rule is;
4. Will reserve an extraordinary percentage of the miles of Seashore beaches for a small minority of park users, to the exclusion of the majority of park users who prefer to enjoy the Seashore without the danger, visual blight, noise, and odor of trucks monopolizing the beach;
5. Is not supported by the great weight of scientific literature, as the Final Rule is;
6. Was responsible, in part, for the decline in population of the many protected species at the Seashore by 2007; and
7. Will violate and undermine the requirements of the federal laws listed above.

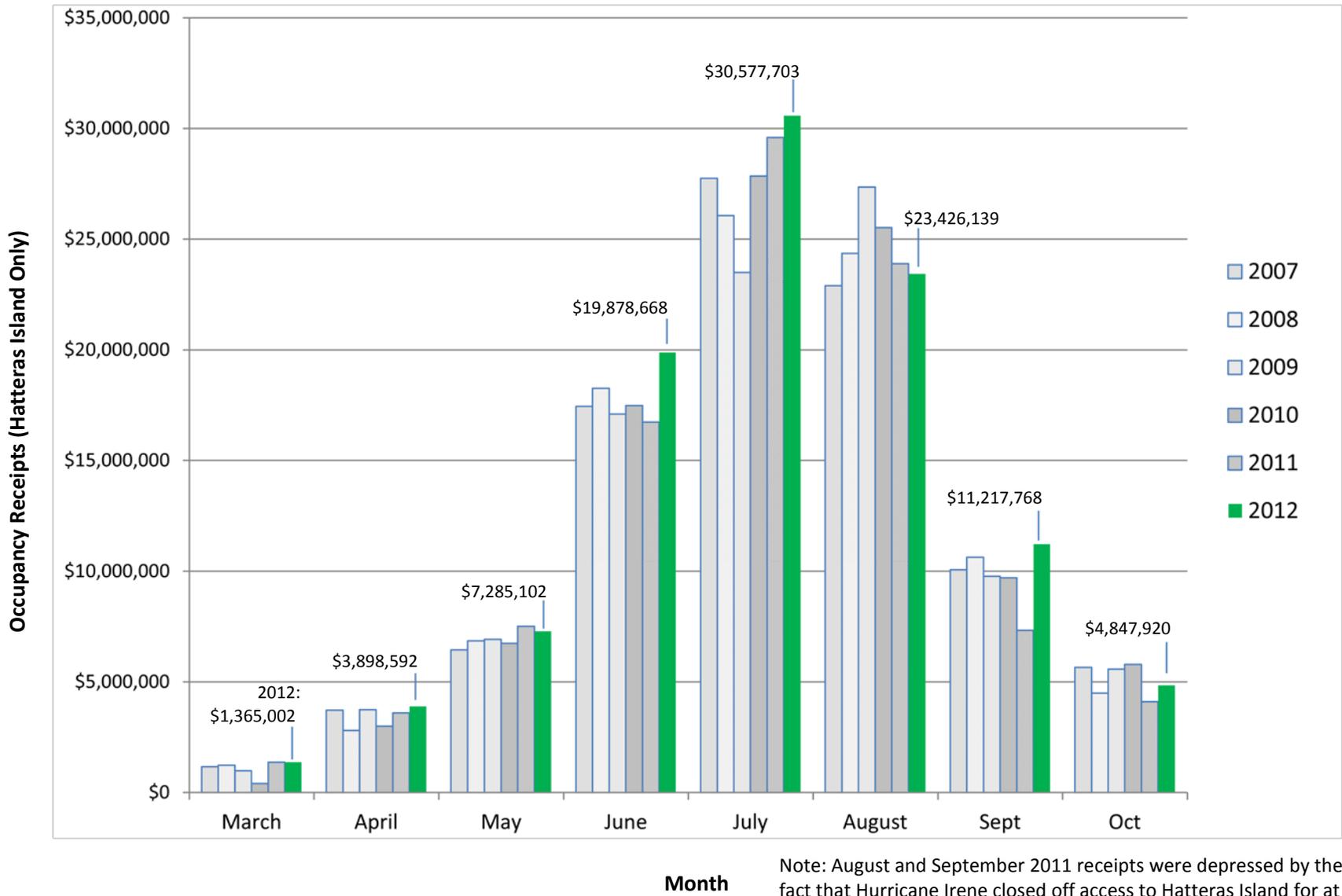
In sum, the National Park Service's Final Rule is a balanced plan to manage ORV use on Cape Hatteras National Seashore while providing areas for wildlife, and the vast majority of visitors who come to walk and not drive on the Seashore's beaches.

Please oppose HR 819, and instead support the National Park Service's balanced and common sense management plan for Cape Hatteras National Seashore.

# 2012 Beach Access at Cape Hatteras National Seashore



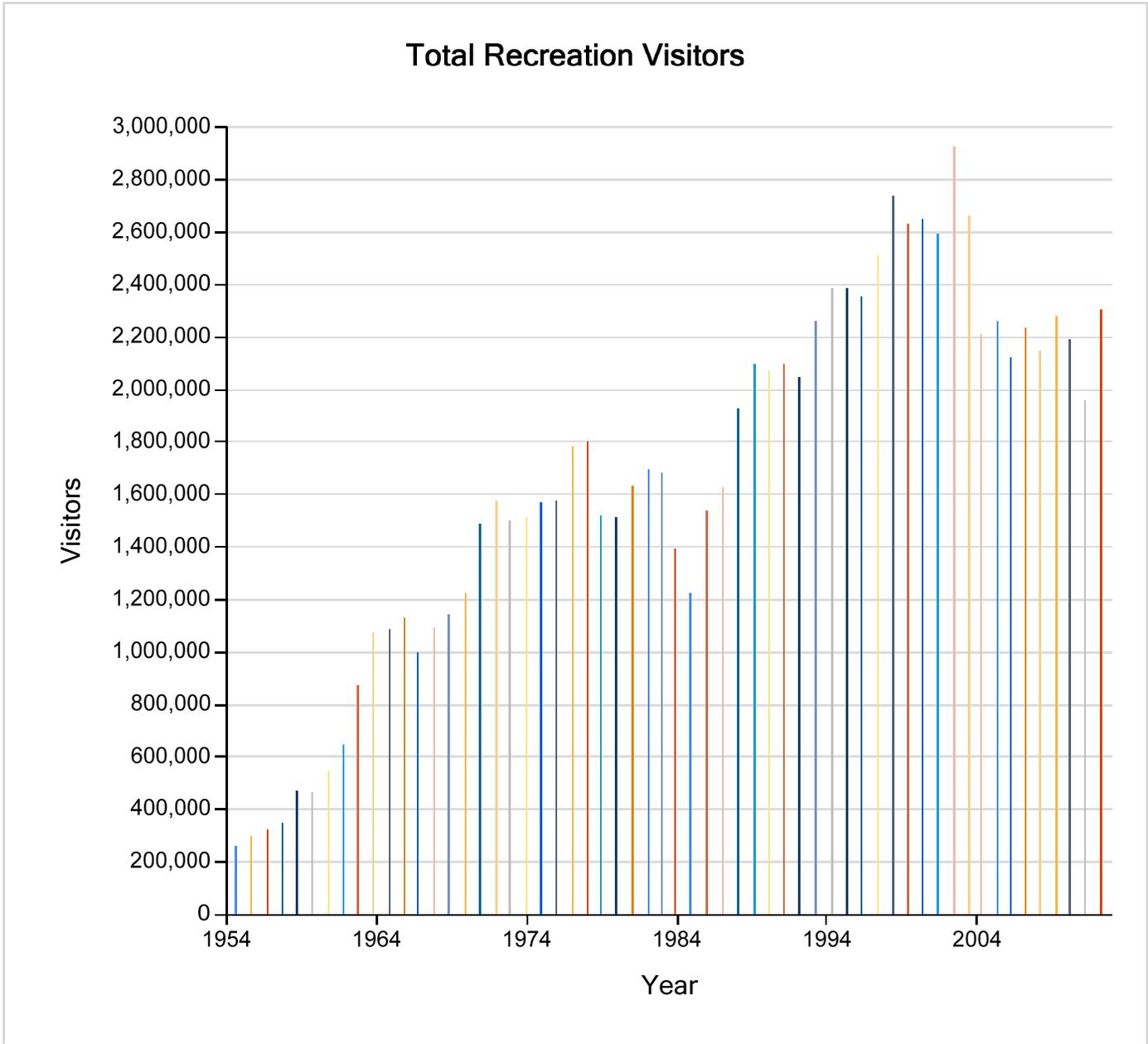
# Hatteras Island Occupancy 2007-2012



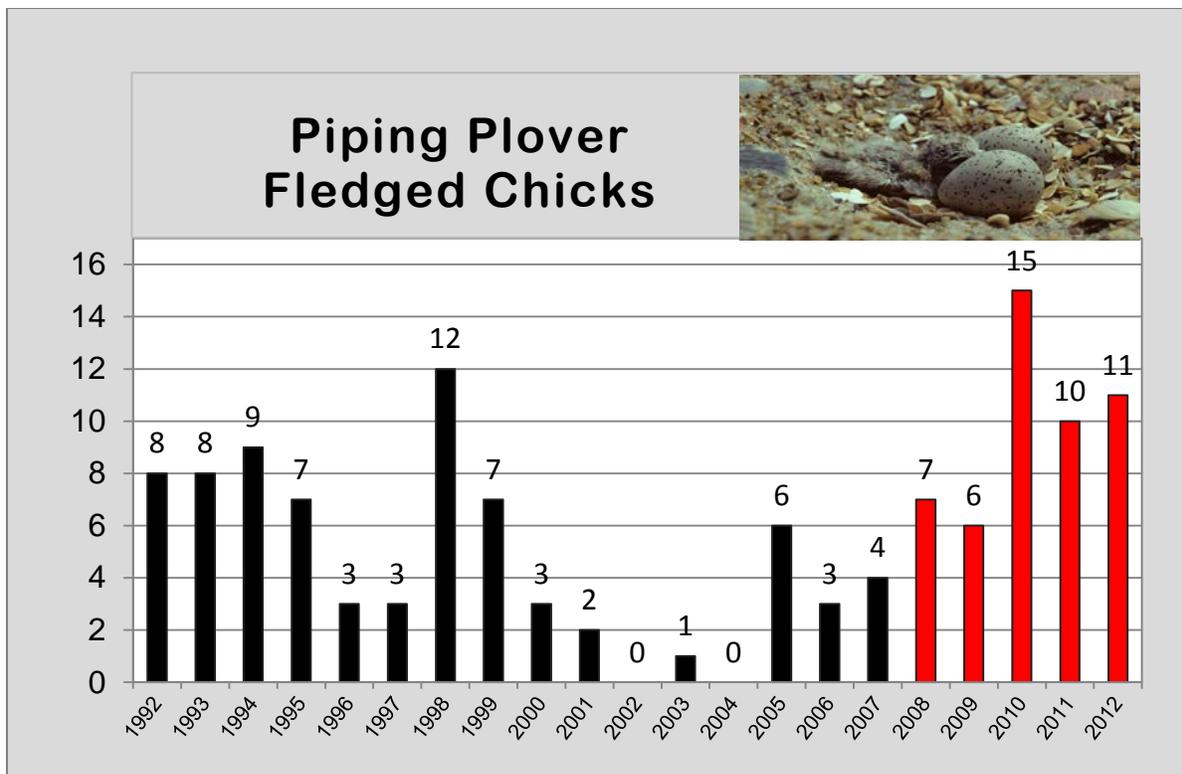
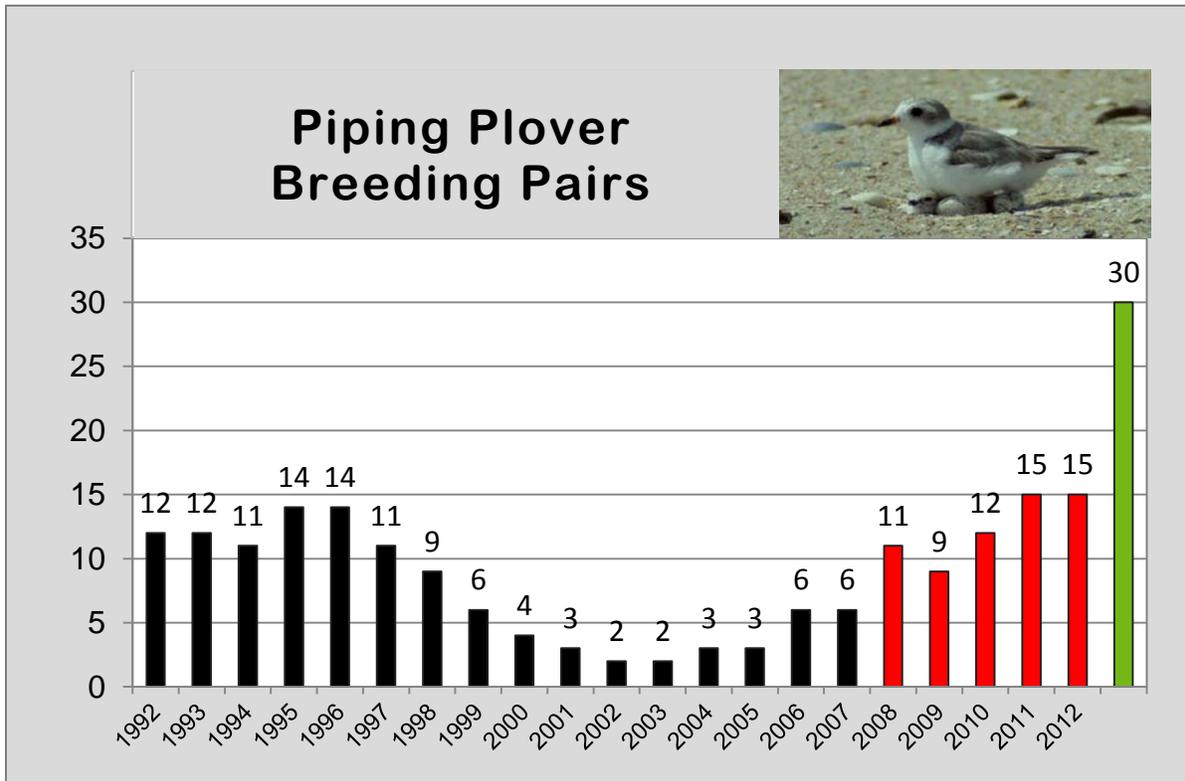
Note: August and September 2011 receipts were depressed by the fact that Hurricane Irene closed off access to Hatteras Island for at least six weeks beginning in late August 2011.

# Cape Hatteras NS

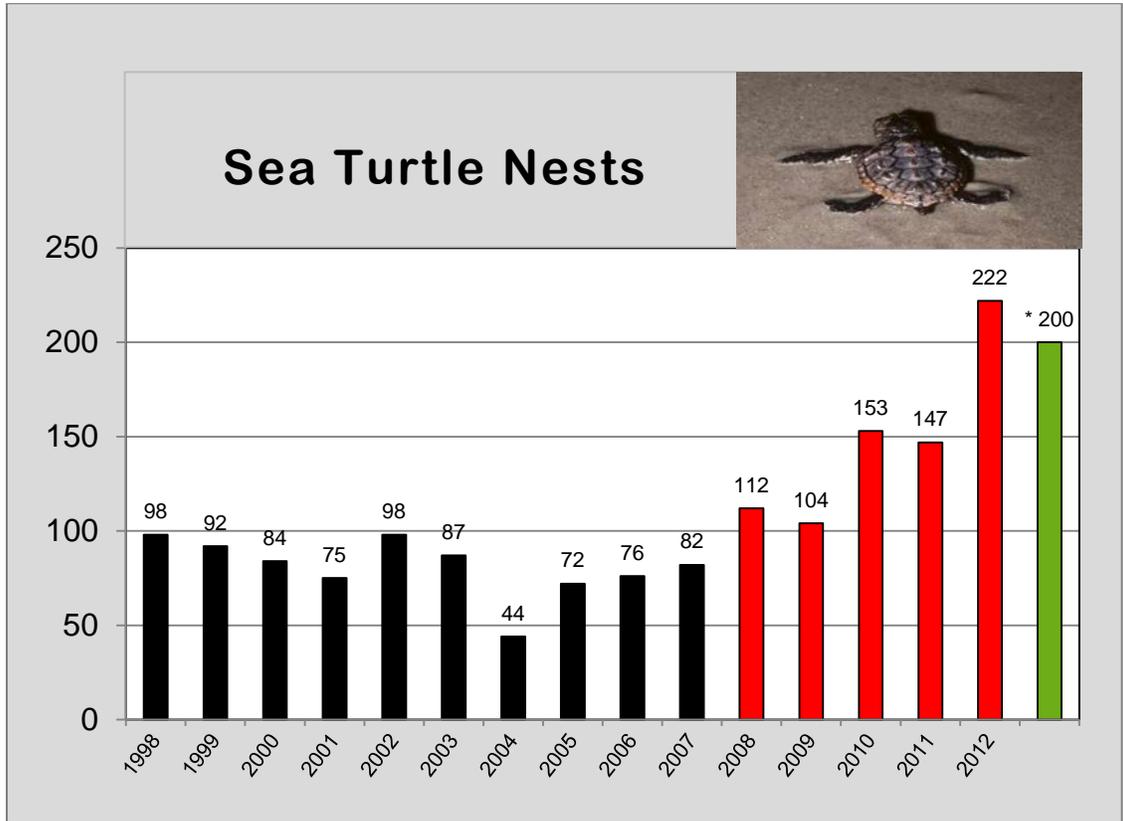
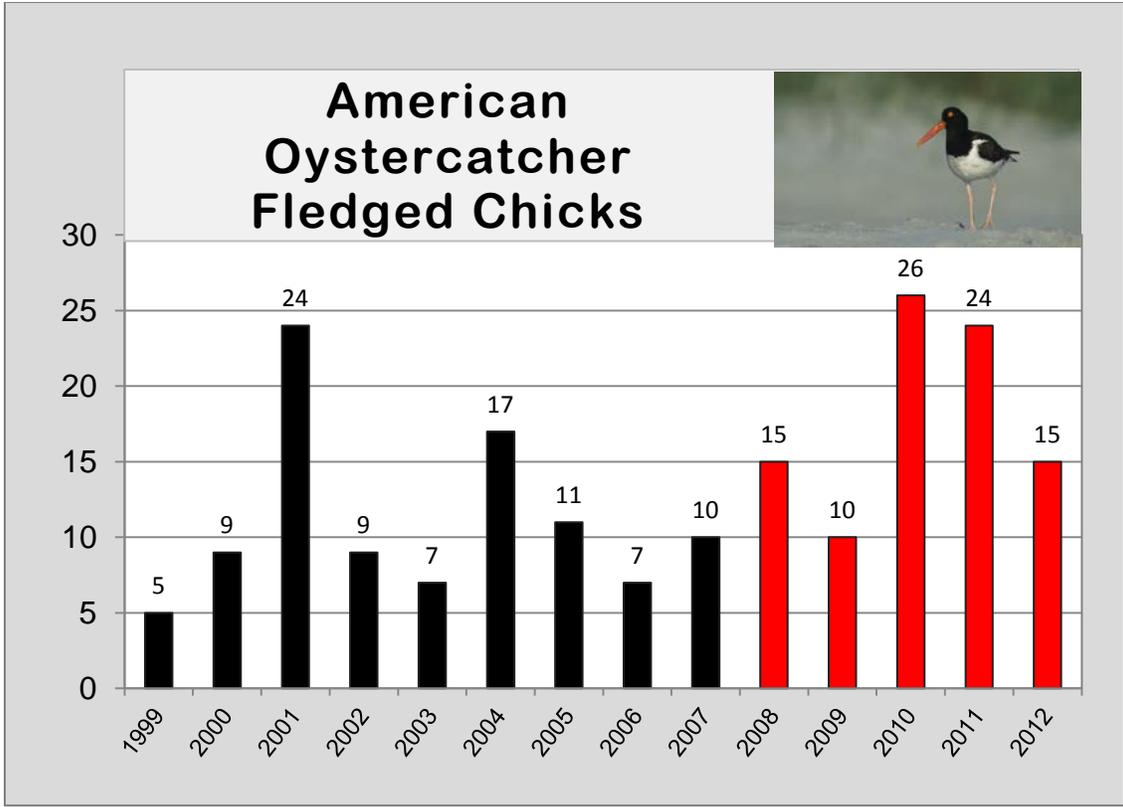
Bookmark this report: [https://irma.nps.gov/Stats/SSRSReports/Park Specific Reports/Annual Park Visitation Graph \(All Years\)?Park=CAHA](https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Visitation%20Graph%20(All%20Years)?Park=CAHA)



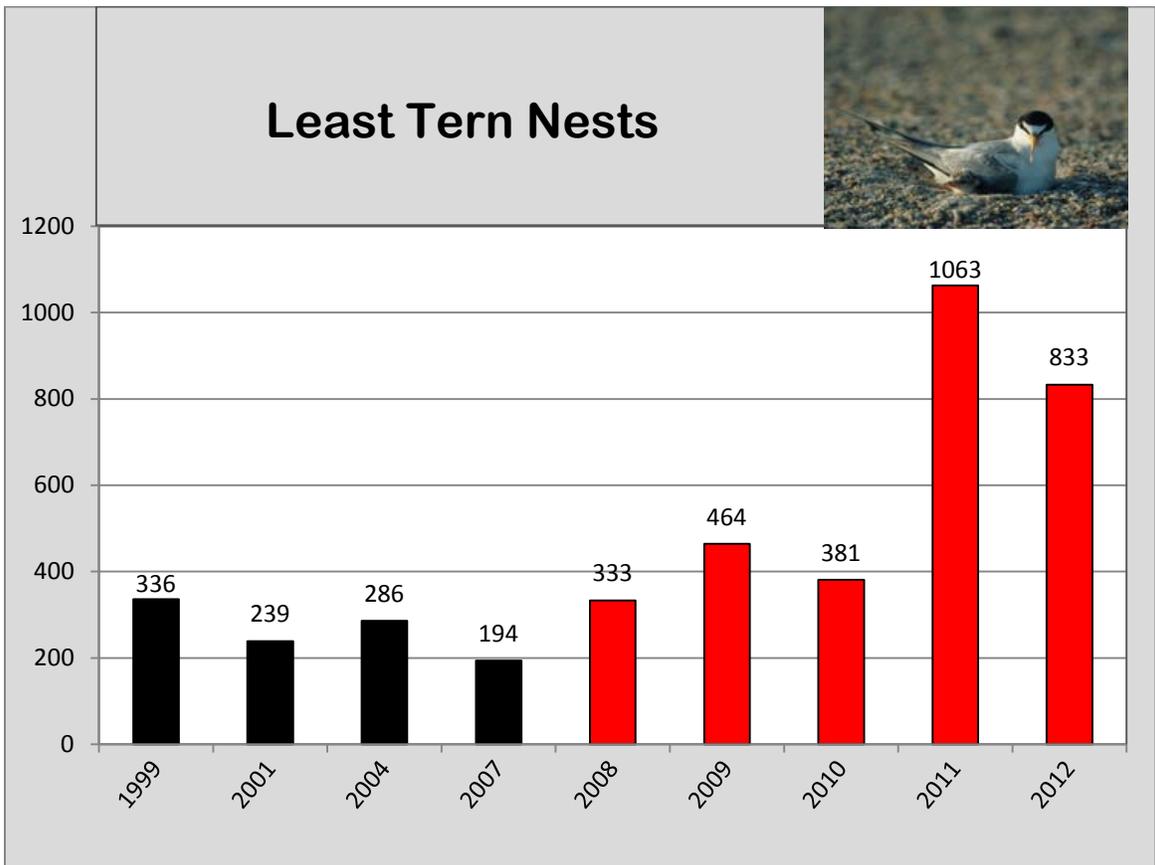
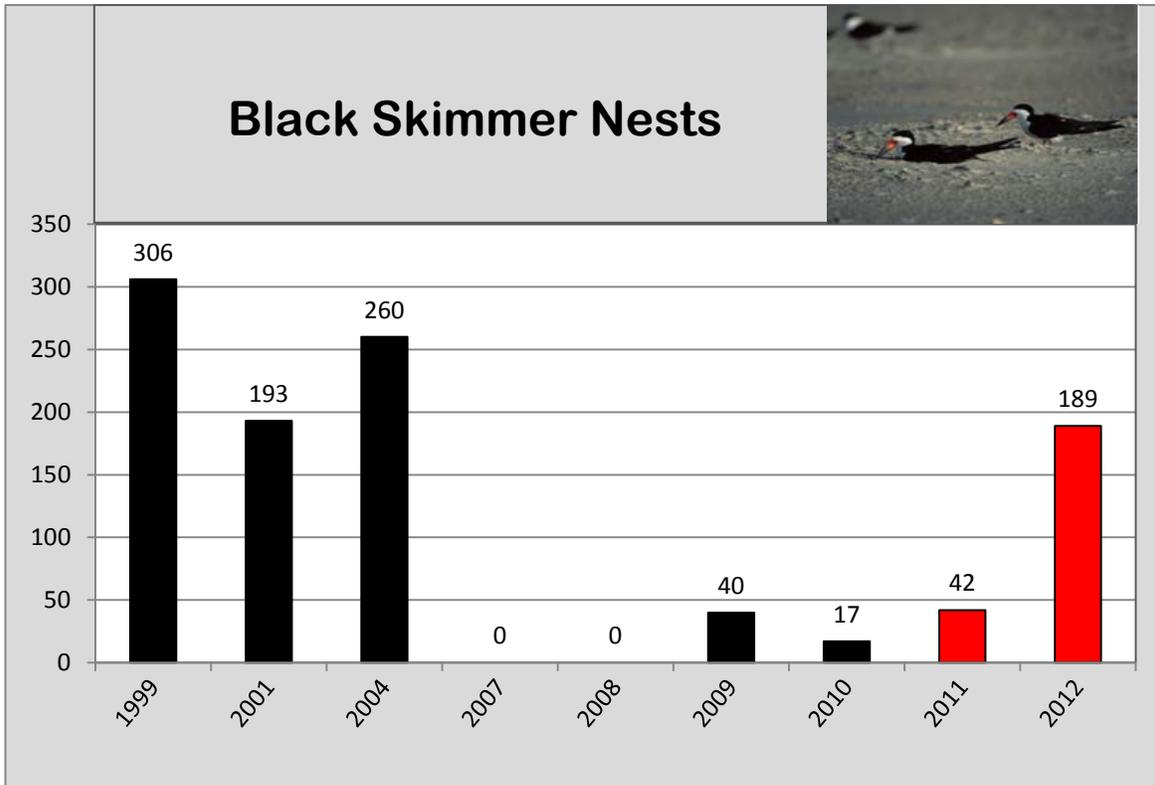
## CAPE HATTERAS NATIONAL SEASHORE: SPECIES REBOUNDING UNDER NEW PROTECTIONS



Statistics for all species are based on the Cape Hatteras National Seashore 2012 Annual Resource Reports. Statistics exclude nests laid on Green Island, which is not accessible by vehicle.



\* The Loggerhead Recovery Plan goal is 200 nests.



\* The 2010 annual report states that a “change in survey dates from the previous year led to a potential under-estimate of [colonial waterbird] nests for the Seashore” in 2010.

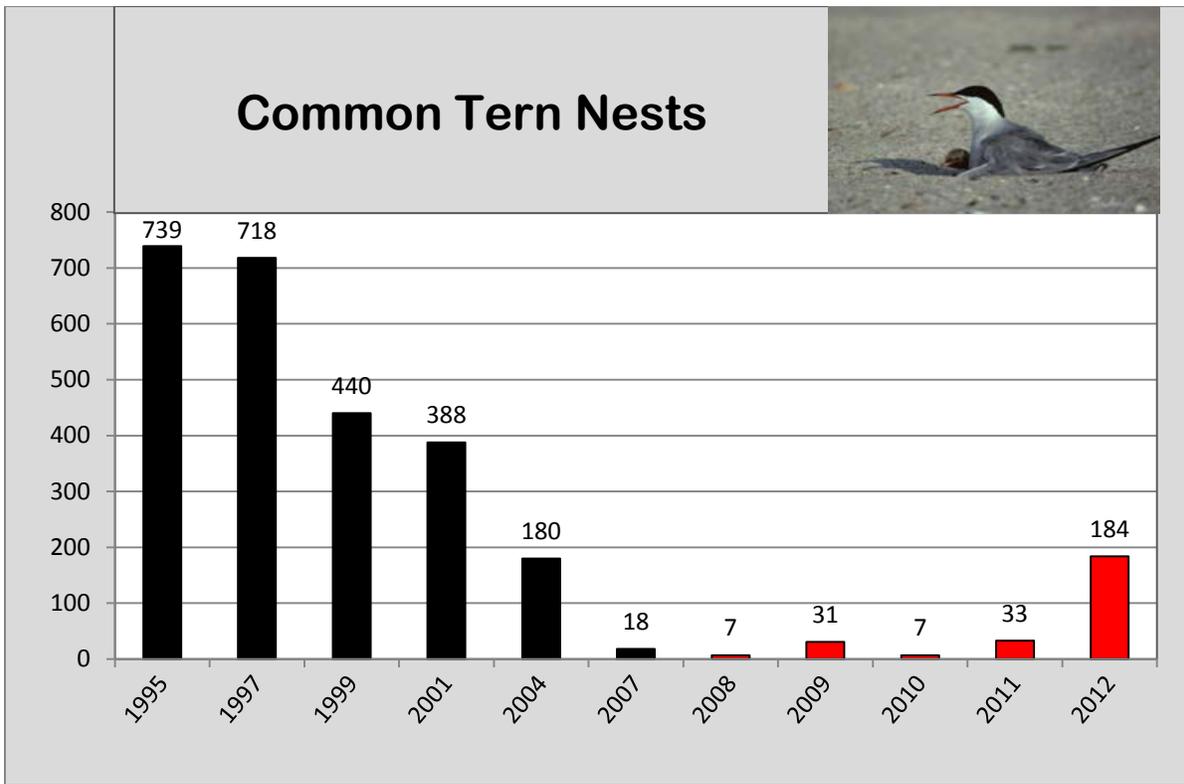


Photo Walker Golder

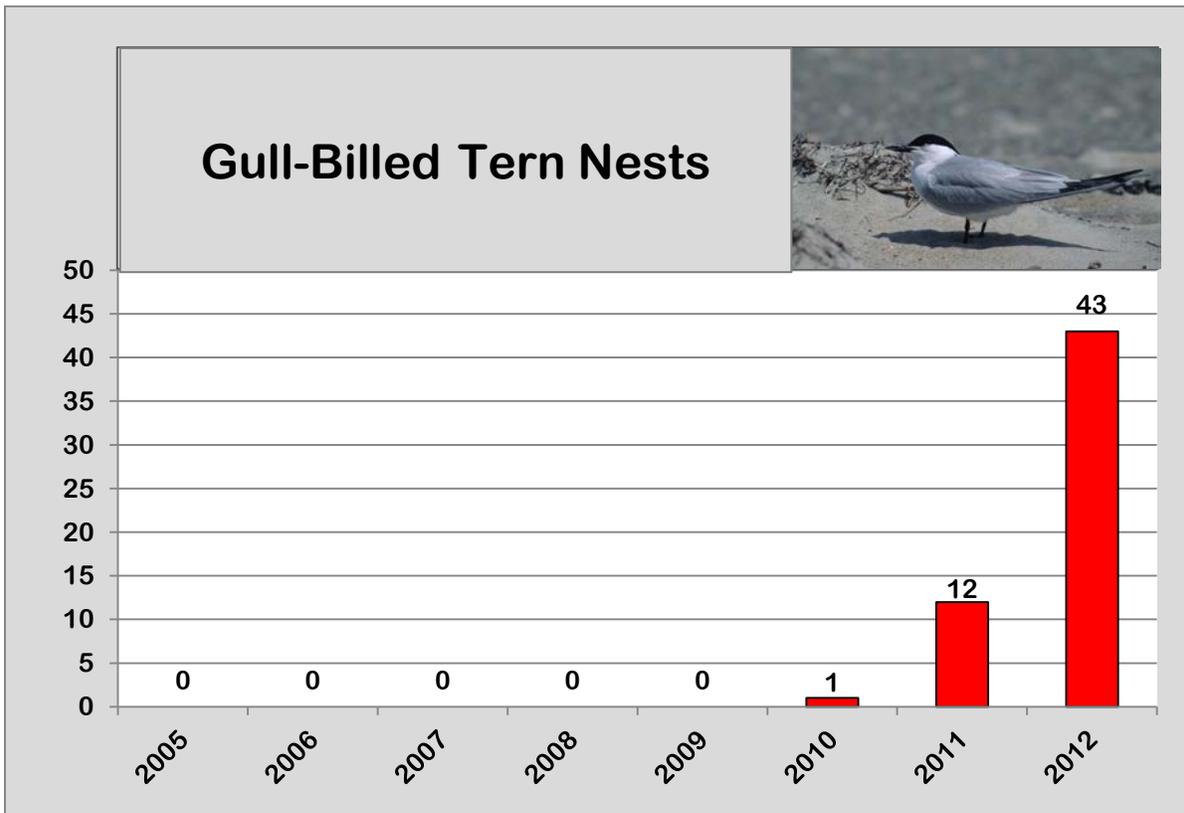


Photo Walker Golder

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# PHOTOGRAPHS OF CAPE HATTERAS NATIONAL SEASHORE



NATIONAL PARK SERVICE



NATIONAL PARK SERVICE

*"...to conserve the scenery...and wildlife therein...and leave them unimpaired for the enjoyment of future generations."*  
— National Park Organic Act of 1916.



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*"...permanently preserved as a primitive wilderness. No...plan for the convenience of visitors shall be undertaken which would be incompatible...with preservation of the unique flora and fauna."*  
— Cape Hatteras National Seashore Enabling Act of 1937.



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