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## Conflict of Use at Moonstone Beach (R.I.); Nude Bathing at a National Wildlife Refuge

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CONFLICT OF USE AT MOONSTONE BEACH, RI.

NUDE BATHING

AT A NATIONAL WILDLIFE REFUGE

BY

MARIELENA SCANLON

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE

REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

IN

MARINE AFFAIRS

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1990

MASTER OF ARTS THESIS

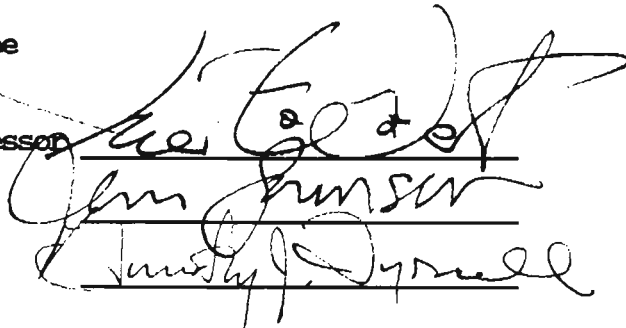
OF

MARIELENA SCANLON

APPROVED:

Thesis Committee

Major Professor



The image shows three handwritten signatures in black ink. The top signature is the most prominent and is written over a horizontal line. Below it are two more signatures, also written over horizontal lines. The signatures are cursive and somewhat stylized.

DEAN OF THE GRADUATE SCHOOL

UNIVERSITY OF RHODE ISLAND

1990

## ABSTRACT

Nude bathing in the coastal zone has become a challenging issue for coastal managers. This thesis focuses on the conflicts involving public uses of a beach on a national wildlife refuge. The beach is nesting habitat for the piping plover (Charadrius melodus), a species listed as threatened on the federal Endangered Species List. The beach has also been traditionally used by nude bathers. The study consists of six parts: a brief natural history of the piping plover; management problems of federal refuges; the history and political conflicts relevant to the recreational use of this beach; an analysis of the users and their use of National Wildlife refuges; and recommendations to coastal managers.

Local newspapers were used to document the history, and surveys were used to collect information about the nude bathers and the incidence of this activity on other Atlantic Coast refuges. The study found that several other coastal refuges had been used by nude bathers and also serve as habitat for piping plovers. Of the refuges surveyed all had closed at least a portion of the refuge to protect the plover.

The study concludes that nude bathing and wildlife preservation are not mutually exclusive activities. Accordingly, management recommendations are given to coastal managers who must confront the nude bathing issue and to the specific actors involved in this particular case study.

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To my family for their faith, relentless support, great sense of humor, friendship, passion for life, and respect: I love you all very much. Thank you for taking me seriously when it mattered and helping me keep things in perspective.

And last, but never least, to my husband Kevin Sheehan. Words are hard to find (believe it or not) but I will try. Thank you for encouraging me to come back to school; for being there for me, no matter how many demands you were facing in your graduate program. I treasure what we have achieved and trust that we will continue to grow together and independently. I love you Sheehan.

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## CHAPTER ONE

### INTRODUCTION, STATEMENT OF THE PROBLEM, AND METHODOLOGY

In a world where demand on natural resources is increasing, it is of considerable importance to study resource-use conflicts. This is especially true for non-renewable coastal resources. Circumstances in which there are user conflicts--whether perceived or actual--can present excellent opportunities for case studies of coastal management.

In the early 1960s President Johnson commissioned a group of experts to address the state of the nation in regard to its oceans. The Stratton Commission, as it became known, issued its report titled: Our Nation and the Sea. It contains several important suggestions regarding the nature and extent of federal involvement in coastal management as well as some prophetic caveats regarding the need for careful management of coastal recreation resources.

Because of the increasing use of most coastal areas particular attention should be paid to conflicts involving areas with specific missions, such as national wildlife refuges (NWR). These were set aside to provide habitats for wildlife and, in some cases, endangered or threatened species. Because NWR are expressly designated and ecologically-sensitive, increased use could severely limit their intended objectives. Coastal managers would benefit from an assessment of issues arising from beach use by any user-groups, but in particular those which have not been extensively studied. One such group includes the clothing-optional, or nudist, bathers. This thesis focuses on the

conflict of use between clothing-optional bathers and a federally-protected species on the ocean beach of a national wildlife refuge.

A review of the literature reveals that in the United States little research has been accomplished in the field of marine affairs/coastal zone management dealing specifically with the issues involving clothing-optional beaches (1). Although nude bathing is a national phenomena, controversy still exists surrounding this use and the traditional sites on which it has taken place: mainly remote beaches, private property, and ecologically-sensitive public lands (2).

Despite the degree of controversy and the conviction of some to deny this issue attention, numerous and legitimate policy issues do exist. Nude bathing, especially in the densely populated North Eastern United States has posed new and increasing challenges for coastal managers, particularly those in charge of areas that are not equipped to accommodate large groups of people. Not surprisingly when a beach is frequented by nude bathers its popularity increases among other nude bathers and, of course, among voyeurs and others. Whether beaches on national wildlife refuges can or should be used for coastal recreation and who is to provide for nude bathing opportunities are but two issues which arise in this case study of a conflict of use.

A review of the literature indicates that there are significant, sequential, yet solvable problems that characterize clothing-optional beaches. These issues include, but are not limited to, problems with: congestion, availability of parking spaces, voyeurs, access to the beach, trespassing, lack of sanitary facilities, lifeguards, and damage to nearby ecosystems.

Because of the lack of germane research on clothing-optional coastal recreation in the U.S. and its participants, information has been gathered by the author on the needs and preferences of this specific user group. It is important to assess which issues come into play, which are--or are not--manageable, and how coastal-area management policies have--or have not--addressed the issues involved.

In the United States it is not widely accepted that nude bathing is a legitimate form of recreation. Nonetheless, within the past 20 years numerous events have taken place that may collectively aid in the eventual acceptance of this activity. To begin with, nude bathing is no longer seen as an entirely unheard of activity. In addition, there are areas where large public gatherings of nude bathers are common. These gatherings have sometimes prompted a review of the management plans--in some instances resulting in plans which have accommodated clothing-optional use (3).

In Rhode Island there is an interesting example of nude bathing which can be characterized as an example of user-conflict in the coastal zone. The nature and degree of conflict has intensified as the amount of beach available for recreation has decreased.

Moonstone Beach is a barrier beach in southern Rhode Island and is bordered to the south by Block Island Sound and to the north by a few saltwater ponds (See Figure 1). The beach borders Truston Pond National Wildlife Refuge and has been a popular site with nude bathers for decades. For several years nude and clothed bathers have, with some difficulty, been able to share the mile-long beach relatively peacefully. However, within the past eight years the tolerance for

nude bathing has been threatened by two major events. The first occurred in the spring of 1982, when some property was transferred from the Audubon Society to the United States Fish and Wildlife Service (FWS). Shortly after the property transfer was announced (Fall, 1981) the FWS declared it would no longer permit nudity on its portion of Moonstone Beach. The second major event occurred in 1986 when the piping plover, a species nesting on the refuge, was listed as threatened and placed on the U.S. Endangered Species list. Despite the history of tacit compromise and tolerance, this action changed the rules related to the traditional uses of Moonstone Beach as there was a federal mandate to protect the species and the need to restructure the refuge's management plans. This second event placed the conflict on the public agenda.

The first event prompted the founding of a group which is still actively involved in the fight to maintain Moonstone as a clothing optional beach. This grassroots movement became known as the New England Naturist Association (NENA) and is still (early 1990) very actively involved in keeping the beach open.

The listing of the piping plover as a threatened species eventually led to the construction of a seasonal fence on the beach, thereby limiting the amount of area available to all users.

It is important to note that the management actions have affected both conventional and non-conventional users, although the nude bathers are the most affected for lack of another place to go. Furthermore, the case study involves confrontational interaction between federal, state and local officials.

This thesis focuses on the case of nude bathing on Moonstone Beach at Trustom Pond National Wildlife Refuge. This specific site was selected due to: spatial proximity, timeliness, and lack of suitable information on other areas. Nude bathers were selected because of the lack of information on them as a user group. For the purposes of this thesis the term "nude bathing" will be used more frequently than the term "clothing-optional" although it should be pointed out that clothing optional is a more accurate description of the conditions at Moonstone. Nude bathing is used more often because it is used by international nudist organizations and is more descriptive of the activity itself, while the other term stresses the freedom to choose whether or not to wear clothes.

There are numerous questions which could be addressed in a study of this kind. Many, though not all, will be addressed here. These issues deal with types of coastal recreation, uses of national wildlife refuges, degrees of endangeredness, and number and kinds of compatible uses. The issue raises several questions including:

- To what degree is nude bathing a constitutional right?
- Is nude bathing a legitimate form of coastal recreation?
- What is the demand for this type of recreation?
- Should this type of use be provided for by the public sector? And if so, where, how, and by whom?
- To what extent does the piping plover need the beach area at Moonstone Beach? Could it survive on a smaller area than currently is allocated?
- How endangered is the population? How resilient is it?
- Are swimming and sunbathing mutually exclusive activities with the protection of wildlife?
- Is the FWS conveniently ridding itself of having to deal with a non-conventional user group?
- What political and economic issues are involved?
- Is the FWS action of building a fence on the coastal zone consistent with the State's Coastal Zone Management Plan?
- Is the fence located on federal property and is it thus

exempt from the consistency requirement of the Coastal Zone Management Act?

Because there are several diverse issues involved in this case study this thesis cannot address them all. For example, an interesting issue which will not be addressed is whether nude bathing is a constitutionally-protected right. The thesis will address most of the above-mentioned questions with the exception of constitutional rights and the degree of endangeredness of the bird.

The issue of whether nude bathing is a legitimate form of coastal recreation is covered briefly; for the purposes of this study it will be assumed that at Moonstone Beach it has been legitimate and is deserving of further attention. This rationale is due, in part, to the persistent interest of groups like NENA, the lengthy period during which this activity has been tacitly accepted on this beach, the increased conflict at the national wildlife refuge, and the relative lack of sites along the New England coast.

In order to gain knowledge about the relationships between national wildlife refuges and clothing-optional beaches it was hypothesized that:

- a significant decline of available sites used by clothing-optional bathers along the Atlantic Coast has occurred;
- coastal wildlife refuges have experienced an increase in use by clothing optional users;
- use of the refuges by clothing optional bathers limits the effectiveness of the refuge in its goal of protecting wildlife;
- a significant number of those coastal national wildlife refuges that have implemented closures, have been used or are currently used by clothing optional bathers.



The majority of the information used for this thesis was compiled from local newspapers dating back at least 30 years, to the 1950s (4). Fish and Wildlife Service officials provided much of the information both in the form of interviews and through access to their newspaper files (5). Other information came from the compilation and review of a complete set of the NENA newsletter, the Sun Times, and interviews with numerous NENA representatives.

In order to gain information about the specific participants, surveys were distributed to NENA members and to non-members who participated in National Nude Day, July 1988. Information was also requested of nine coastal national wildlife refuge managers to assess the degree of use (if any) by this specific group. The findings from both these surveys are presented in Chapter Four - Analysis of Data; User Profiles and Coastal National Wildlife Refuges.

#### ENDNOTES FOR CHAPTER ONE

- (1) A review of the literature included, for example, coastal management and recreation journals. In addition, a search of the terms: nude/beach/bathing, was conducted in the indexes of major newspapers (such as the New York Times), dating back to 1970. About 85 articles documenting newsworthy incidents were found. The most extensive literature available on nude beaches is from sociological, behavioral and psychological disciplines, these were not used.
- (2) While nude bathing is a national phenomena, there are remarkably different regional approaches. On the East Coast there appear to be less opportunities and more opposition while in Northern California alone the San Francisco Bay Guardian has reported up to 50 beaches that can be used for nude bathing. (Every summer the paper puts out a special issue listing these area). The most famous (US) nude beach is Black's Beach in La Jolla, just north of San Diego.
- (3) Examples include: Hippie Hollow on Lake Travis near Austin, Texas, Coot Lake in Oregon and of course, Moonstone Beach, Rhode Island. It is important to note that accommodation has varied from tacit approval to specific site designation. More information is provided in Chapter Six.
- (4) Local newspapers included the Providence Journal Bulletin, the Providence Journal, the Narragansett Times and the Westerly Sun.
- (5) Many of the articles from the above mentioned papers were from the files of the Fish and Wildlife Service which has collected an extensive record of the history of the conflict.

## CHAPTER TWO

### BRIEF DESCRIPTION OF THE BIOLOGY AND NATURAL HISTORY OF THE PIPING PLOVER (*Charadrius melodus*)

#### Introduction

In order to understand why the piping plover (*Charadrius melodus*) is in need of protection a brief biological sketch is drawn together with a discussion of why this species is uniquely susceptible to a population decline.

#### Description and Natural History

The piping plover is a small shorebird approximately 7 inches long with a wingspread is approximately 15 inches (1). Its sandy color blends well with the sand and its markings on the forehead and collar resemble bits of seaweed. Though the camouflage hides it from its predators, it is also a liability when people accidentally step on the nest and eggs.

Along the Atlantic coast, piping plovers nest:

- on coastal beaches close to the high tide line;
- along mildly sloping foredunes;
- in blowout areas behind primary dunes;
- in washover areas cut into or between dunes; and
- on sand flats at the ends of sandspits and barrier islands.

In addition, they may nest on areas where acceptable dredge spoil has been deposited (2). The nests are shallow depressions in the sand that are sometimes lined with pebbles and bits of organic debris from the beach such as twigs or shells (3). Unfortunately, the areas where the bird prefers to nest are those which have seen much development and increased use as recreational sites.

Adult plovers have a tendency to return to the beaches where they have nested before. This trait is known as "place faithfulness." The birds return to their breeding grounds during March and April and remain until July and August. Nests are separated by a distance of 200 feet or more, and are seldom closer than 100 feet (4). Approximately four eggs are laid on the first clutch, and, if unsuccessful, additional nesting attempts may occur. On beaches with few pairs nesting, delayed hatching was observed (5) and on beaches where several pairs were nesting, better hatching success has also been observed (6).

The young are precocial and once their down is dry they leave the nest and forage in the intertidal zone. Feeding accounts for more than 90% of the activity of the young (aged 11-25 days old) (7). While feeding sites can be next to the nest, this is not always the case. Although piping plovers are known to defend parts of waterfront beach as feeding territories, the connections between nest site preference and quality and availability of feeding habitats are not well understood (8).

Piping plovers are well known among ornithologists for their display of distraction behaviors. These include: squatting, feigning injury, running, and false brooding. They have been known to respond quite aggressively toward gulls, crows and oystercatchers (9). The response toward humans was more intense than to non-predatory species or potential predators (10); and a direct relationship has been observed between the number of times an adult is disturbed and the amount of time it takes to resume normal behavior (11) -- the more frequent the disturbance, the longer it takes to recover.

### Brief History of Population Abundance

Piping plovers were common during much of the 19th century, but nearly disappeared due to excessive hunting for the millinery trade. After passage of the 1918 Migratory Bird Treaty Act (12) and changes in the fashion industry, their numbers recovered and they were considered common again. Following the 1938 hurricane which extensively destroyed much of the Rhode Island shoreline and flattened dunes due to overwash, their numbers increased to a 20th century peak during the 1940s (13).

After World War II, due to escalated development and recreational uses of beaches another population decline took place. The population recovered slightly in 1954 due to another hurricane and impacts on the dune system. Since then the species has continued to decline (14).

On the basis of available data, researchers have submitted that the entire population along the Atlantic has been declining since 1955 (15). The American Birds "Blue List" serves as an early warning system and the piping plover was listed in 1972. 1986 estimates of pairs of piping plovers along the Atlantic coast totalled 550 in the United States and 240 in Canada (16).

### Reasons for Population Decline

The initial decline in population was due to hunting. However, ever since the passage of the 1918 Migratory Bird Treaty Act, shooting of the piping plover is a federal offense. The FWS cites habitat loss and degradation, disturbance by humans and animals, and increased predation as the reasons for the recent decline (17). In addition, because there are sites where plovers have nested in the past which are

not being used now, it has been suggested that disturbance or direct loss of nests rather than shortage of habitat are (currently) the most important contributors to the population decline (18).

Which factor has played a bigger role in the population's decline cannot be determined. However, habitat loss has undoubtedly played a significant role. The beaches preferred by the birds are transitory in nature, these are the wide, sparsely vegetated, outer beaches that depend on natural forces for renewal. These are precisely the same areas that have seen major stabilization and residential developments with obvious impacts on the habitat. Man-made structures such as snow fences and other shoreline stabilization methods have contributed to the destruction of habitats used by the plover. These and other man-made environmental modifications--including construction and dredging of permanent breachways, building of breakwaters, and planting of dune areas were cited by researchers as contributors to the decline of the Rhode Island population (19). In addition, it has been noted that:

"..current management practices of stabilizing (dune) blowouts with discarded Christmas trees and snowfence removes potential nesting habitat and may lower piping plover reproductive success (20)."

Disturbance by humans and animals has played an important role in the population's decline. Distressed adults sometimes leave the nest and thus abandon the eggs, which may expose them to the hot sun, and/or leave the chicks to defend themselves. The adult may attempt to distract the disturber or may leave the nest altogether.

Foot and vehicular traffic can crush eggs or young (22) and animals, especially dogs and cats, have caused nest failure in some areas (23). Although research has shown that human disturbance may

prevent a pair from successfully carrying out the courtship activities necessary for renesting, birds on heavily used recreational beaches were more tolerant of people compared to those on isolated beaches (24). Despite these findings, chick survivorship decreased with higher levels of recreational activity. The same researcher suggested that high levels of recreational activity caused chick mortality due to interference with feeding at a point where their energy demands were critical (25).

Mammalian piping plover predators include: the Norway rat, racoon, opossum, dogs or cats, striped skunk, and Red fox (26).

#### Conservation Efforts

On January 10, 1986 the U.S. Fish and Wildlife Service listed the piping plover in the Federal Register (27) as an endangered and threatened species under the provisions of the Endangered Species Act of 1973 (28). The piping plover restricts its breeding to North America and more specifically to three geographic regions; there are populations in the Upper Great Lakes, the Northern Great Plains and along the Atlantic Coast. The population in the Upper Great Lakes was listed as endangered, while the other two were listed as threatened (29).

Conservation efforts to protect the piping plover consist of three general approaches:

- (1) habitat management strategies—including fencing/posting projects and public use restrictions;
- (2) increased studies on the biology of the piping plover-- including studies to determine the long-term impacts of human disturbance relative to other factors, on abundance, distribution, and reproductive success (30); and

(3) public education campaigns.

#### Recovery Goals

The primary objective of the Atlantic Coast Piping Plover Recovery Plan is to increase the Atlantic coast population to a self sustaining 1200 breeding pairs. It is important to note that this includes U.S. and Canada numbers and that the goal includes maintaining the current distribution pattern. Delisting may occur when these numbers are reached or exceeded while maintaining the same distribution for a period of five consecutive years (31).

It is important to note that once a species has been listed it continues to be under protection of the Endangered Species Act until it is removed (32). The National Wildlife Refuges and, in turn, their managers, have a clear mandate to do whatever is in their power to try to increase the number of individuals of that particular species. How effectively a refuge can protect an endangered population depends on many factors, most of which will be addressed in the following chapter.



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- (24) Supra, 3, Cairns, "Breeding biology and behavior.."; Supra, 2, p. 21.
- (25) Supra, 7, Flemming, "The status and responses...";
- (26) Supra, 7, Wilcox, (1939) "Notes on the life history.."; Supra, 13; MacIvor, L.H., C.R. Griffen, S.M. Melvin, 1985. Management, habitat selection and population dynamics of Piping Plovers on Outer Cape Cod, Massachusetts; Newell, R., 1985, The status of the Piping Plover on St. Catherine's River Annex to the Kejimikujik National Park, Nova Scotia. Unpublished Report. Contract K1-85-01-F. 33pp.
- (27) Federal Register, Vol. 50, No 238: 50727-733
- (28) Endangered Species Act of 1973, as amended, U.S.C. 16, 1531 et. seq.
- (29) Supra, 2, p. 1.
- (30) Ibid., p. 56.
- (31) Ibid., p. 26.
- (32) There are 409 species on the domestic Endangered Species List; 153 of these are plants and 130 of the 409 are classified as threatened. As of December of 1988 6 species were officially extinct, 5 were declared recovered, 10 were reclassified from endangered to threatened and 1 went from threatened to endangered. In the first 15 years since the passage of the 1973 Endangered Species Act 16% are improving, 37% are stable, 34% are declining, 2% are extinct and the status of the remaining 11% is unknown. U.S. Department of Fish and Wildlife provided these statistics in a telephone conversation in February of 1990.

## CHAPTER THREE

### NATIONAL WILDLIFE REFUGE OBJECTIVES AND MANAGEMENT PROBLEMS

#### Introduction

In order to understand why recreational use of National Wildlife Refuges (NWR) could pose conflicts of use, the purpose of the National Wildlife Refuge System and the kinds of commonly occurring uses within NWRs is reviewed. This chapter provides a brief history of this system, the management of refuges, and cites examples of conflicting uses.

#### Brief Summary of the History of the NWR System

The U.S. Fish and Wildlife Service (FWS) is the principal agency through which the federal government carries out its commitment to maintain, protect, and amplify the nation's wildlife and its habitats (1).

The National Wildlife Refuge System consists of a network of federal lands and waters that are managed specifically to enhance wildlife. Over 90 million acres are spread across the North American continent and include habitat from the north shore of Alaska to the Florida Keys, and cover tropical islands in the Caribbean and the South Pacific (2). In the fall of 1988, the system consisted of 452 refuges in 49 states and several U.S. territories (3).

In 1903 the first refuge was established by Theodore Roosevelt on Florida's Pelican Island. Today the National Wildlife Refuge System is visited by about 27 million people every year (4). The need for

refuges was established to protect wildlife against the demand by fashion and millinery industries for heron, egret, and piping plover feathers. Other anthropogenic pressures and natural calamities such as drought, drainage and development of marshes also played a role in establishing the need for refuge areas as they destroyed the natural habitat of many species (5).

#### Purpose and Objective of National Wildlife Refuges

Refuges were intended to preserve habitat—food, water, cover and space—for approximately 60 endangered species. Each refuge provides vital habitat for at least a portion of America's wildlife populations (6).

Many refuges, such as those on the East Coast, are located along the major Atlantic Flyway thus providing feeding and resting areas for the great semiannual migrations of ducks, geese and other birds.

One of the most important functions of the FWS is to provide protection to animals and plants that are in danger of extinction both in the United States and abroad. One FWS program of specific relevance and importance in this case study is the Migratory Bird Program; its goals are to:

- Prevent any migratory bird species from becoming threatened or endangered.
- Maintain populations for the use and enjoyment of people consistent with the amount and quality of habitats and the demands of society.
- Preserve and manage habitats needed to maintain migratory bird populations.
- Achieve migration and distribution patterns beneficial to birds and society.

- Minimize losses to disease, illegal hunting, crippling and other adverse influences (7).

More than one third of refuge acreage is wetlands (8).

### Management of National Wildlife Refuges

It is important to note that although it is called a system and the refuges are governed by the same federal statutes, each National Wildlife Refuge has its primary mission and its own management plan specially tailored to its geographical location, topography and biological composition.

The FWS uses a decentralized approach in overseeing management of the refuge. Refuge managers are in charge of the day to day operations of the refuge and, depending on the region, may also be in charge of overseeing a grouping of refuges--a complex. The refuge managers report to their refuge supervisors in one of seven Regional offices. The overall authority is provided by the refuge division at FWS headquarters (9).

Appendix 1 provides a partial listing of important pieces of legislation relevant to the management of national wildlife refuges.

Three key statutes in refuge management are:

- (1) The Refuge Recreation Act of 1962; which required any recreational use of refuge lands to be compatible with the refuge's primary purpose;
- (2) The National Wildlife Refuge System Administration Act of 1966, which reinforced the compatibility standard and expanded its applicability to all secondary uses of the refuge; and
- (3) The Endangered Species Act of 1973, which directs FWS to give enhanced attention to protecting endangered and threatened species in its management of the refuges (10).

The mission of the refuge is to:

"provide, preserve, restore and manage a national network of lands and waters sufficient in size, diversity, and location to meet society's needs for areas where the widest possible spectrum of benefits associated with wildlife is enhanced and made available (11)."

In order to meet that mandate specific goals are to:

- sustain the migratory bird resource;
- maintain natural diversity and abundance of fauna and flora on refuge lands;
- conserve, restore, and enhance in their natural ecosystems all species of animals and plants that are endangered or threatened with becoming endangered; and
- provide an understanding and appreciation of fish and wildlife ecology and humans' role in their environment and to provide refuge visitors with high-quality, safe, wholesome and enjoyable recreational experiences oriented toward wildlife, to the extent these activities are compatible with the purposes for which the refuge was established (12).

Beside the overall mission of refuges, most have individual missions specified in the executive order or legislative actions creating them. These specific charges, coupled with the statutes governing refuge management, provide the measure by which secondary uses of the refuge are deemed compatible (or not) with the purposes of the refuge (13). This latter point, the compatibility measure, has become an increasingly important aspect of refuge management.

#### Recent Trends in Refuge Management the Compatibility Mandate and Conflict of Use

National Wildlife Refuges with their high concentration of wildlife, beautiful scenery and recreation potential have attracted people in large numbers. The ability of refuges to serve their purposes has been threatened by many different demands placed on them. Many of these demands are not related to wildlife and therefore, are

considered secondary uses. The regulation of those uses on refuges has become a critical aspect of refuge management. Trustom Pond National Wildlife Refuge is not alone in having to deal with non-wildlife related uses of refuge lands.

The National Wildlife Refuge System Administration Act dictates that the FWS cannot provide for secondary uses at a refuge unless the uses are deemed compatible with the primary purposes of the refuge-- protecting and enhancing wildlife and their habitat. Secondary uses, such as non-wildlife recreation, are to be provided for only when they are seen as compatible with the mission of the refuge. Compatible uses are those that will not "materially interfere with, or detract from the purposes for which the refuge was established (14)." Secondary uses on national wildlife refuges are listed in Table 1, taken from a U.S. General Accounting Office (GAO) study.

Despite the compatibility mandate many refuges are experiencing secondary uses, many of which are potentially harmful to wildlife and which limit the effectiveness of the refuge. For example, there are military ground and air exercises, drilling for natural gas and power boating, to name a few.

Secondary uses, their effects and the amount of management that they require have been a concern of wildlife managers and public officials for over 20 years. Several commissions and task forces have studied this problem and while the problem has been acknowledged, little has been done (15).

Concern by congressional leaders over the effectiveness of the national wildlife refuge system in light of the increased secondary

TABLE 1

## SECONDARY USES ON NATIONAL WILDLIFE REFUGES

Use category	Refuges where occurring <sup>a</sup>	
	Number	Percent
<b>Public</b>		
Wildlife-oriented recreation:		
Wildlife observation	356	83
Walking/hiking	330	77
Environmental education	311	73
Interpretive tours	283	66
Nonwildlife-oriented recreation:		
Nonmotorized boating	193	45
Picnicking	192	45
Horseback riding	115	27
Beach use/swimming	96	22
Camping	83	19
Hunting dog field trials	56	13
Hunting:		
Big game	164	38
Waterfowl	163	38
Small game	162	38
Motor boating:		
Small (low-horsepower) power boats	148	35
Large (high-horsepower) power boats	114	27
Waterskiing	53	13
Airboats	36	8
Recreational fishing	244	57
Recreational trapping	78	18
Off-road vehicles	37	9
<b>Economic</b>		
Agricultural:		
Grazing	151	35
Farming	150	35
Haying	132	31
Beekeeping	128	30
Rights-of-way	211	49
Logging	79	19
Commercial fishing	76	18
Commercial trapping	75	18
Mining	26	6
<b>Military</b>		
Air exercises	55	13
Ground exercises	29	7

<sup>a</sup>Total number of respondents equals 428.

U.S. General Accounting Office, Report to Congressional Requesters, September, 1989, National Wildlife Refuges, Continuing Problems With Incompatible Uses Call for Bold Action. GAO/RCED-89-196.



uses led to a recent study by the U.S. General Accounting Office (GAO) (16). The study sought to assess how compatibility issues arose at a NWR and how the FWS worked toward solutions. Sixteen NWR were selected for case studies. These are briefly summarized in Table 2.

TABLE 2

SUMMARY OF NATIONAL WILDLIFE REFUGES  
 USED AS CASE STUDIES IN THE U.S. GAO REPORT:  
National Wildlife Refuges: Continuing Problems With  
 Incompatible Uses Call for Bold Action

<u>Name and state</u>	<u>Level of use (where given)</u>	<u>Conflicting Use or Problem Issue</u>
Bosque Del Apache New Mexico	> 84,000/year	Water rights
Browns Park Colorado	Few recreational pressures	Economic use--cattle grazing
Cabeza Prieta Arizona	Little public use	Military activities air-to-air gunnery missile firing and low level flight corridor
Chincoteague Virginia	1.5 million in 1986 750,000 for beach use	Public recreational use of beaches
D'arbonne Louisiana		Subsurface resources not under FWS ownership. Gas operators drilling on refuge.
Des Lacs North Dakota		Recreational boating activities (power boating and water skiing)
Desoto Nebraska	25,000 swimmers 41,000 waterskiers	Recreational boating activities (power boating and water skiing)

TABLE 2  
(continued)

<u>Name and state</u>	<u>Level of use (where given)</u>	<u>Conflicting Use or Problem Issue</u>
Great Swamp New Jersey		Protest against hunting as a management tool
Malheur Oregon		Livestock grazing, predator control
Minnesota Valley Minnesota		Mosquito control practices
Sand Lake South Dakota		Management practices that decreased hunting opportunities
Stillwater Wildlife Management Area Nevada		Decrease in water availability from sources and decreasing quality of available water supply
St. Marks	>200,000	Thinning of Florida forest lands for wildlife habitat--logging
Truston Pond Rhode Island	116,000 90% non-wildlife related	Public recreational use of beach
Upper Mississippi Mississippi		Private barge fleeting and other navigational operations
White River Arkansas		Operation of houseboats

The GAO has produced several other documents addressing national wildlife refuge use (17).

Response rate for the GAO study was very high, ninety-six percent of the refuges responded. The findings of the study are alarming: more

than 90% had at least 1 secondary use, more than 70% had at least 7, and 30% had at least 14 (18).

The secondary uses are diverse and often seemingly incompatible with the goals of a refuge (Table 1). While some of the uses listed are non-consumptive others are not. The study found that secondary uses are placing increasing demands on the management staff and, more importantly, environmentally harmful effects are occurring on nearly 60% of wildlife refuges. It is clear that despite the compatibility requirement on secondary uses many different uses have been permitted (19).

Not only do secondary uses divert scarce resources from refuge management, but often the primary purpose of the refuge cannot be fulfilled. Conflicts intensify when the secondary use is a well-established one that enjoys strong local support, and when there is little or no data to show the harmful effect on the refuge.

Many more studies are needed. In particular, the FWS needs to have a clear assessment each refuge's performance potential. Lack of such appraisals make it difficult to estimate the overall impact of secondary uses, and weaken arguments for their elimination.

The report by the GAO cited two reasons why harmful secondary uses are occurring: (1) FWS has allowed the use in response to pressure from local public or economic interests; and (2) FWS has not been able to control the harmful uses because it does not have full ownership of, or control over refuge lands (20). In the case of Moonstone Beach at Trustom Pond NWR, it would appear that both factors are present.

Chapter Six presents a more detailed discussion of these as they pertain to TPNWR.

In light of the widespread conflicts between primary and secondary uses, the FWS may need to reevaluate the manner in which decisions are being taken with regard to compatibility of secondary uses. Currently, the determination lies with the individual refuge manager who makes a decision on a case-by-case basis, subject to FWS review. The refuge manager has significant discretion in implementing the guidelines. Managers are authorized to negotiate with proposers of secondary uses and to resolve conflicts (21). While this system is beneficial to those who seek to practice the secondary uses, it may be more beneficial for the refuge managers to rely on a set of national policies toward managing refuges. Currently each individual refuge is managed independently and consequently, degrees of success vary widely.

ENDNOTES FOR CHAPTER THREE

- (1) Fish Wildlife and People, brochure, 1984, United States Department of the Interior, Fish and Wildlife Service.
- (2) National Wildlife Refuge System, pamphlet, Department of the Interior, U.S. Fish and Wildlife Service.
- (3) U.S. General Accounting Office, Report to Congressional Requesters, September, 1989, National Wildlife Refuges, Continuing Problems With Incompatible Uses Call for Bold Action. GAO/RCED-89-196, p. 10.
- (4) Supra, 2.
- (5) Ibid.
- (6) Ibid.
- (7) Supra, 1, p. 4.
- (8) Supra, 3.
- (9) Ibid.
- (10) Ibid., p. 2.
- (11) U.S. Fish and Wildlife Service. 1982 and 1986. Refuge Manual. Washington, DC.
- (12) Supra, 3.
- (13) Ibid., 11.
- (14) Ibid.,
- (15) As early as 1969 the Leopold Committee was formed to study the problems of refuge development and management. In 1978 there was a report issued by the National Wildlife Refuge Study Task Force, which addressed recreation, grazing and logging, hunting and oil and gas extraction. In 1982 the Department of the Interior used a questionnaire to assess the extent of the problem of secondary uses. Two reports were produced: FWS issued Field Station Threats and Conflicts and Interior released Fish and Wildlife Service Resource Problems.
- (16) Supra, 3, p. 12.
- (17) Other reports produced by the GAO on FWS are: National Direction Required for Effective Management of America's Fish and Wildlife (1981); Economic Uses of the National Wildlife Refuge System Unlikely to Increase Significantly (1984); Parks and Recreation: Access Permits to Back Bay National Wildlife Refuge Improperly Granted (1986); and Wildlife Management: National Wildlife Refuge Contamination is Difficult to Confirm and Clean Up (1987).
- (18) Supra, 3, p. 3.
- (19) Ibid.
- (20) Ibid.
- (21) Ibid., 13.

## CHAPTER FOUR

### BACKGROUND OF USE MOONSTONE BEACH, RHODE ISLAND

#### Introduction

Early use of Moonstone Beach did not generate much conflict because there was ample space available for multiple uses. The nude bathers would congregate on the western end of the beach and the Town of South Kingstown would operate a town beach on the eastern end. While each group was aware of the other, in order to be offended by nudity one would have to walk far from the town beach to do so.

With the increasing pressures on coastal areas to provide for developmental, conservation and recreational uses, there has been an increase in the number of cases exhibiting what is known as conflict of use.

At Moonstone Beach in Rhode Island nude bathing has been taking place, by some accounts, as far back as 70 years (1). The Town has operated a beach there since the early 1970s, and the FWS has had property there since 1974. Over the years each beach property owner had to juggle competing interests of those wanting to use the beach as a clothing optional beach, as a town beach, and as a refuge. While at first the beach appeared to be able to accommodate all three uses, this no longer is the case according to the FWS.

The problems have become aggravated within the past few years due to the increased popularity of the Beach and the fact that it is used for nesting by the piping plover, (Charadrius melodus), a species with threatened status on the federal endangered species list. The biggest

problem--to date--arose when the beach was closed during the nesting season, a period which coincides with the peak summer months.

In an effort to document the extent and nature of Moonstone Beach's use over the years, a history of the Beach has been compiled. The information is presented chronologically in this background chapter. Figure 1 is a base map of the area under study. A list of acronyms and abbreviations is provided in Appendix 2, and a summary of important events and their dates is included as Appendix 3.

#### Outline of Actors and Issues

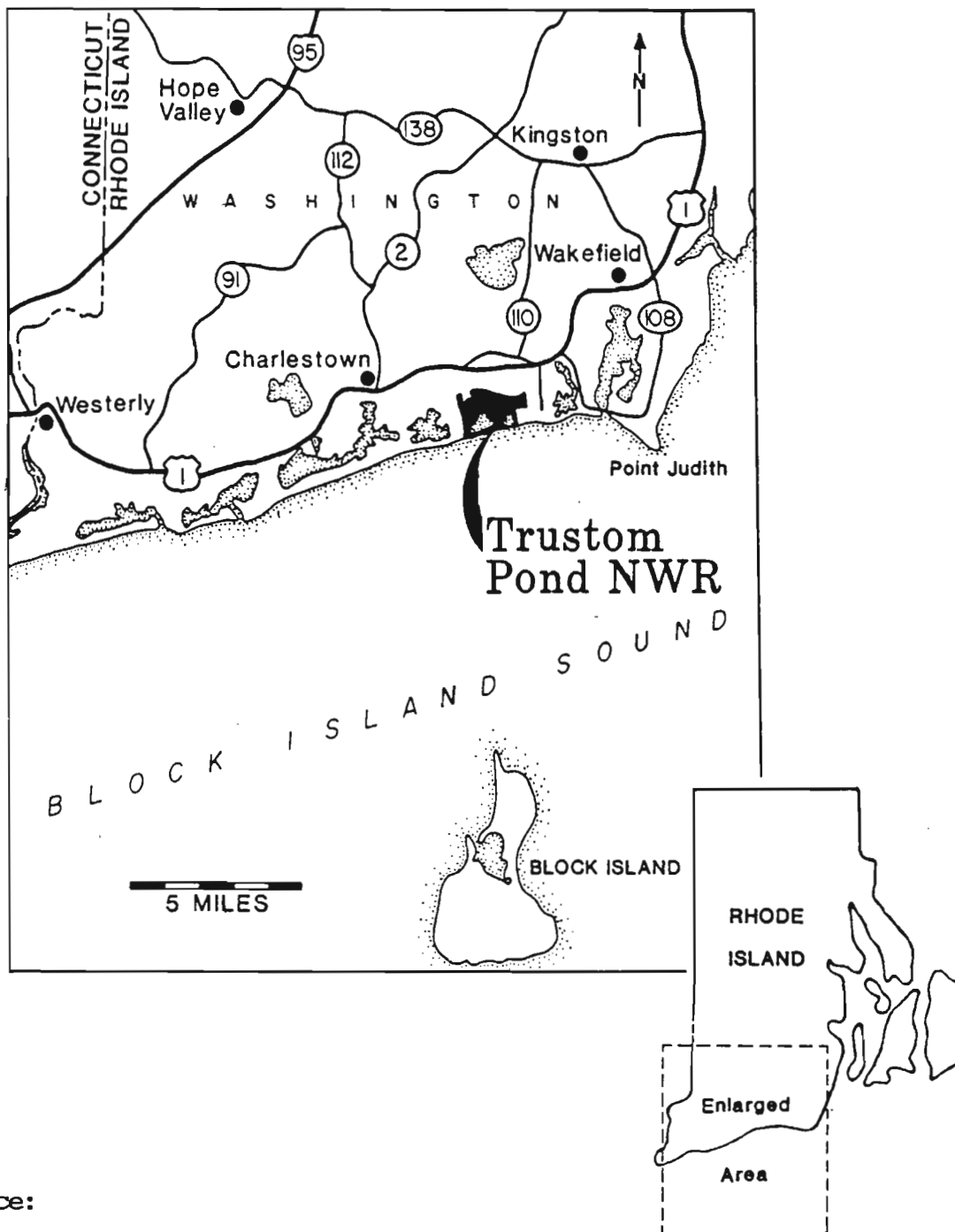
The circumstances surrounding the conflict of use at Moonstone Beach date back several years. The history of its ownership, management, and use has been marred by several periods of discord between the users and other interest groups. The actors include: the Town of South Kingstown (TSK), the nude bathers (mostly NENA members), the United States Fish and Wildlife Service (FWS), the Taxpayers for Access to Moonstone Beach (TAMB), the Audubon Society (AS), and the general public.

The issues have involved: an initially undermanaged beach, conflict over nude bathers, designation as a refuge vs. an area for multiple use, and most recently, public access to the shoreline. The history of interactions is complex, extensive, and currently at a vital point because the conflicts are intensifying. The following points are important to note:

- the amount of beach available for public recreation has decreased;
- two grassroots groups have been formed;

FIGURE 1

BASE MAP



Source:

U.S. Department of the Interior, Fish & Wildlife Service. May 1987  
Draft Environmental Assessment. Master Plan for Trustom Pond National  
Wildlife Refuge, South Kingstown, Rhode Island.



- litigious action has been initiated twice; and,
- the number of sites available to nude bathers has declined on the East coast.

Although some will argue that the nude bathing is still the most controversial component in this case study, many hold the view that the most important issue is that of public access to the shoreline. The latter belief is usually supported by the fact that on more than one occasion, the FWS has contemplated limiting or prohibiting all beach uses, regardless of kind. If that was the case, then the issue of clothing would be of secondary significance. Although it is possible that the FWS no longer cares whether beach users are dressed or not, a review of the background suggests that nude bathers have represented a convenient group to ban--albeit indirectly--and that clothed bathers have found it easier to gain access to the beach.

#### Litigious Action

On two separate occasions, first in 1981 and then in 1988, the New England Naturist Association (NENA) sued the FWS. Notwithstanding the litigation, it is important to note that the relations between the United States Fish and Wildlife Service (FWS), the Town of South Kingstown (TSK), and the nudists have not always been strained; there have been periods of exceptional cooperation as well. It is safe to say that without those periods, nude bathing would not have persisted as long as it has. Moonstone Beach, until recently, was an exceptional example of the cooperation that can exist between user groups and those charged with management of a public area.

In addition to organized grassroots groups like the New England Naturists Association (NENA) another group was formed, the Taxpayers for Access to Moonstone Beach (TAMB), who work to preserve and increase beach access to Moonstone Beach.

This chapter provides a record of the background of Moonstone Beach's recreational use and the groups involved with the controversy. Discussion of the political issues and some economic aspects will be provided in the following chapter.

#### 1950-1980 — Moonstone Beach Comes of Age

References to Moonstone Beach, its ownership and maintenance, date back to at least 1950. At that time, the Providence Journal ran an article in which Roger Wheeler, then State Recreational Safety Director criticized the littered condition of the Beach. At that time, TSK denied ownership and expressed reluctance to commit to maintenance of Moonstone Beach for fear the state would drop its obligations (2).

Eventually, due to decreasing state funds TSK did provide a lifeguard and trash removal services (3). The beach had become a popular site frequented by many people, and continued to be used by those seeking clothing optional recreation. At first, it appeared that mostly homosexuals used the beach and would tend to congregate at the western end of the beach, near the Green Hill Beach. Some accounts place nude bathing at Moonstone Beach as far back as the 1930s, while other accounts credit the members of the Theatre By The Sea for establishing the tradition. The precise number of years the beach has been used for nude bathing has proven difficult to ascertain.

In 1967 the Audubon Society was deeded 116 acres of property along Moonstone Beach by C. Prescott Knight with the stipulation that it be kept in a natural state. As the beach increased in popularity over the years, the Audubon Society began to express concern over the degree of use and the amount of trash and disruption to wildlife.

While the earliest issues associated with Moonstone Beach involved determining who was going to pay for its maintenance, the problems became more complex. At first increased use by nude bathers was not a significant problem because the beach was sufficiently large to accommodate all.

The problems began when the number of visitors exceeded the services available. At that point, the early 1970s, the Audubon Society, unable to restrict the level of beach activity and unable to provide adequate maintenance and patrolling, approached TSK suggesting a lease agreement for the beach. The agreement would triple the beach area available to TSK to 600 linear feet at a cost of \$1.00/year with a renewal option. The stipulations included that: non-residents be barred [sic]; trash cans be available; there be strict enforcement of a ban on open fires and alcoholic beverages; there be designation of a distinct swimming area; and that beach car stickers would be used for admission to replace the use of the town dump sticker (4). The Town accepted the offer and continues to use a portion of the beach to this day. Access is provided by an annual Special Use Permit available from the FWS.

The mid 1970s were a time of change for both Moonstone Beach and clothing optional recreation in general. In August of 1974, the

Trustom Pond National Wildlife Refuge (TPNWR) was established, made available by a gift of 365 acres from Ann Kenyon Morse. Throughout the country, public nude bathing was on the rise, a phenomena also seen at Moonstone Beach. In 1975, the FWS arrested people for nudity on federal land and for trespassing beyond the area open to the public. During this period the AS continued to express concern over the increase in nude bathing, their lack of enforcement powers and hence their inability to effectively restrict it.

#### 1975-1976--Pivotal Events Increase Popularity of Moonstone Beach

Two events in 1975 and 1976 had a significant impact on the number of visitors seeking Moonstone Beach. The first event, in 1975 was the adoption by the National Park Service (NPS) of a temporary anti-nudity regulation on Cape Cod National Seashore (CCNS). On the advice of the local (and quite vocal) CCNS Advisory Commission, the NPS decided to ban nudity on all federal beaches on the Cape's National Seashore. The NPS maintained the regulation was needed to protect the fragile dune ecology from trampling by the large crowds that nude bathing attracted. The second event was the 1976 notice about Moonstone in a New York City newspaper The Village Voice, after this, cars from all over New England were seen there and up to 350 cars were counted on hot sunny days. Both of these events had a big impact on Moonstone Beach by increasing the number of visitors.

Despite unsuccessful attempts to restrict nude bathing at Moonstone Beach and previous unlawful arrests in the early 1970s the police tried late in the summer of 1976 to present an anti-nudity

ordinance to South Kingstown. In regard to previous attempts to restrict nude bathing Captain Ronald Hawksley said:

"Three or four years ago, we tried to crack down. We went to the beach and arrested 35-40 of them. After we brought them back to the station, we called the Attorney General's office to find out what we could charge them with. And they told us we couldn't charge them. We had to let them go (5)."

The motion to secure an ordinance proved unsuccessful and police were once again left to respond to individual complaints. The State has an indecent exposure statute and if a person files a complaint it would have to be based on the indecent exposure law.

During the early 1980s the increased popularity of the beach was reflected in the problem of a high demand for parking. Many were ignoring the \$10 fine for illegal parking and on some sunny weekends more than 200 cars per day would be ticketed. On a busy day the number of visitors on the beach was estimated at 2,500 (over the course of a full day). At that time, the preferred section of the beach for nude bathing was the isolated western end, approximately 300 yards from the town-leased portion.

1981-1986 Transfer of Ownership:  
Motions to Restrict Activity on the Beach

The period between 1981-1986 represents the time frame of most activity. The AS transferred its property to the FWS due to its inability or unwillingness to control activities at the beach. The FWS threatened to ban first nude bathing, and then all use of Moonstone Beach due to perceived conflicts between beach recreation and wildlife management. In sum, during this period the type and amount of beach space available for all users was in constant flux, and the final

outcome was that the amount of beach available for public recreation decreased, while the amount of land comprising the federal refuge (TPNWR) increased.

1981 -- Audubon Society Plans a Property Transfer:  
A Grassroots Movement is Formed

Upon the announcement by the AS that it would transfer its property to the FWS, the latter announced that it would no longer permit nude bathing--specifically--within the refuge. Some townspeople supported the proposed transfer as a means to ban nude bathing.

At the same time nude bathers on the federal portion of the Moonstone Beach refuge were asked to dress or leave the area. Patrols were authorized to issue citations of \$25.00 or to arrest people and an official of the Regional FWS was quoted as saying:

"Arrest is a last resort and normally only done in life-threatening situations (6)."

The following factors led to the formation of the first grassroots movement, then called the New England Naturalists Association (NENA).

- the increasing popularity of the beach among nude bathers;
- the threats of impending restrictions;
- the loss of the Cape's public beaches to nude bathing; and,
- the established clothing optional use of the beach.

During September the group put out its first publication, the Moonstone Newsletter.

The first issue of what was to evolve into a monthly and then bi-monthly publication encouraged its readers to help block the proposed property transfer from the AS to the FWS. Readers were encouraged to join the Audubon Society and thus to vote against the transfer and to

vote themselves onto the Board of Directors. The specified goal, as stated in the Moonstone Newsletter was to pass a resolution which stated that:

"..the deed to the property cannot be transferred to anyone and must stay in the possession of the Audubon Society for 5 years so that, during that time, an effective land management program can be worked out (7)."

The Audubon Society learned of the plan and set up a special session--two days before the scheduled annual meeting--to vote on the property transfer. In the meeting, the Audubon Society agreed to transfer the land, including that portion leased to TSK, to FWS (115 acres). Afterwards a FWS spokesman was quoted as saying that the gift was "...likely to end the practice of nude sunbathing at the public beach" (8).

It is important to point out that during the fall of 1981 and continuing throughout the years of conflict, monies were being procured in Washington DC for the purpose of increasing the size of TPNWR (9).

While many people have asserted that the FWS has not singled out nudity as an issue, many of its actions have suggested otherwise. For example, while both the FWS and the AS contended that overuse was the only issue they were concerned with, they announced that continuing to lease to the Town was not seen as a problem. Upon learning this, Town officials requested the FWS draft a lease agreement enabling TSK to lease a portion of the beach under conditions similar to those it had had with the AS.

Nude bathers' reactions to these actions and comments were swift. With some help from The Naturist Society, a group dedicated to what was known as the Free Beach movement, NENA launched the first lawsuit. Two

individuals representing NENA filed suit in U.S. District Court to prevent FWS from prohibiting nude bathing on beach. They contended that the state, not the federal government had jurisdiction over the littoral area. The grounds for the suit were that the FWS was exceeding its jurisdiction and that prohibition of nude bathing would constitute violation of bathers' right to freedom of expression (10).

1982 — Property is Transferred:  
Town of South Kingstown Petitions U.S. Fish and Wildlife Service  
for Special Use Permit

The January 1982 edition of Audubon carried a short article which mentioned the transfer of property to the FWS. The article stated:

"The beach, it seems, had become a sanctuary for an unwelcome species of wildlife—nude bathers...Although the nudists were trespassing on private property, the society had neither the funds nor personnel to police the beach. So last fall, when another piece of property was threatened by development, the society decided to tackle two problems at once. It offered to donate its land for the refuge if the Fish and Wildlife would purchase the threatened land (11)."

South Kingstown succeeded in obtaining a Special Use Permit from the FWS for use of about 600 feet of beachfront, west of the 50 foot right of way (ROW). Due to the rumored sale of town dump stickers on the black market, the parking lot was expanded and a new system for beach stickers was adopted with the first fee set at \$1.00 (12).

Discussion of parking revenues is provided in Chapter Five.

Delays in the transfer of property from the AS to the FWS were encountered during the late spring of 1982. About this time the NENA newsletter was officially named the Sun Times and NENA defined:

"Our goal, as a group, is to see that Moonstone Beach retains its longstanding tradition of clothing—optional bathing (13)."



In April the U.S. Attorney was granted, a Motion to Dismiss the fall 1981 complaint filed by NENA. Dismissal was granted because:

- [1] the plaintiffs lacked standing;
- [2] the complaint failed to state that a claim upon relief could be granted, and;
- [3] there was no subject-matter jurisdiction in that, the plaintiffs' claim was premature.

Regarding the last point, the action--the transfer of property--had to take place in order for the plaintiffs to have standing (14).

Although disappointed, NENA persisted. The editor and co-founder of NENA, Michelle Handler, was known for her relentless efforts to seek harmony between all parties. Conversations between she and TSK Town Manager Stephen Alfred eventually led to the now widely used Free Beach Etiquette: A Guide to Gracious Sunbathing (FBE). The FBE, which have undergone few changes, suggest participants:

- 1 Obey parking regulations;
- 2 Help control the litter;
- 3 Stay out of the dunes;
- 4 Stay within the established limits of the nude beach area;
- 5 Sexual activity is a big issue;
- 6 Respect other people's property;
- 7 Speak up;
- 8 Be polite (15).

After the Motion to Dismiss had been granted, NENA learned that some FWS officials considered their anti-nudity regulation to have been held up in court due to the dismissal of the lawsuit, and that the FWS would continue to enforce its anti-nudity regulation on the Refuge portion of the beach. NENA members visiting the Refuge beach donned whistles to warn each other of approaching rangers on the beach. In the meantime the help of the American Civil Liberties Union was sought. Local newspaper articles began to cite accounts dating nude bathing

back 30 years and federal officials started saying nudity was not the problem, but rather the number of people visiting the beach (16).

In an effort to seek a compromise NENA members requested, and were granted, a meeting with Regional Office FWS officials. During this meeting, NENA representatives learned that officials believed that up to 10,000 people were crowding the beach on hot summer days, a number two to three times the actual amount (17). Subsequent issues of the newsletter encouraged readers to send letters to the FWS Regional Office to provide more realistic numbers.

During the 1982 summer, just weeks before the AS property transfer to the FWS, the Assistant Director of FWS announced the loss of three species of nesting birds at Moonstone Beach. The reason cited was increased recreational activity over the previous 5-10 years. Consequently, the FWS announced a possible recommendation to ban all human activity at Moonstone Beach above the Mean High Tide (MHT) line (the median between the spring and neap tides) from April to August. Other options included closing part of the beach or allowing continued use. The final decision was to be made by FWS officials in Washington. The FWS likened the problems at Moonstone Beach to those at Cape Cod National Seashore, where nude bathing was banned on the grounds that attracted too many people to a fragile area (18).

Given the events which had transpired to this point, it is difficult to determine whether the FWS was focusing efforts on eliminating nude bathing--specifically. For example, a local newspaper article noted:

"A management plan to enforce the ban on nudity has been in the works for several months, but so far no steps to force the nudists

off the beach or into swimsuits has materialized. A spokesman said yesterday that an announcement would come any day (19)."

Late in June the parcel of land was accepted and FWS announced it would not close the beach for the remainder of that summer, but that all activity would be banned from much of beach starting in 1983.

The new rules did not define a ban on nudity, and enforcement officials would not tell bathers to get dressed, only to stay out of the dunes. On the contrary, the FWS planned to ban all activity above the spring high tide (SHT) from April 15 to October 15 of each subsequent year. The FWS noted that use of SHT line left more room than the line drawn by the MHT line. The FWS repeated that activity on behalf of nude bathers and voyeurs was detrimental to nesting shore birds but that areas to be closed that summer were only the already-sighted nesting areas and the dunes. Much to the relief of TSK residents who used the beach, the impending restrictions would not apply to the easternmost 600 feet--the area traditionally leased to them. NENA members perceived this exclusion as a clear sign of discrimination and vowed to continue the fight to keep the beach open in 1983. They also threatened a new lawsuit (20).

In an effort to have access for the following year, NENA sought a Special Use Permit--like the Town's-- for use of a 1,200 foot area. The editor of the Sun Times, pointed out that such a compromise would leave approximately 3/4 mile for nesting birds. Their request was turned down.

The Sun Times (July 1982) encouraged its readers to speak up and identify themselves to local businesses as an economic asset. The same edition announced that if the issue became strictly a matter of nudity,

the RI chapter of the American Civil Liberties Union was prepared to assist NENA by filing a friend of court brief (21).

In December the FWS announced it would conduct an environmental assessment and obtain public comment on the proposed (1983) actions it had announced six months prior. The [then] Refuge Manager Don Tiller told a reporter that the FWS still intended to impose the ban but not until after the environmental assessment and public comment. The reporter noted that the move to conduct an environmental assessment was attributed to:

"..unspecified "changes," rather than a law requiring federal agencies to prepare assessments, or impact statements, before undertaking actions with significant environmental, social and economic consequences. We don't think banning the public comes under the law, but there have been changes in the national administration and service personnel and other pressures I'm not aware of (22)".

The options presented in the summer of 1982 and which were under consideration for the summer of 1983 included:

- No action--continue the [then] present practices.
- Alternative One--Closing the entire beach area by controlling access below the mean high water line (MHW).
- Alternative Two--Closure of entire beach above spring high water line (SHW).
- Alternative Three--Closure of entire beach above mean high water line (MHW).
- Proposed Action--Closing a portion of beach by division perpendicular to dune line.

After a comment period, a draft environmental assessment was to be released stating the preferred management alternative and public comment would be invited on the draft assessment. Figure 2 illustrates each of the above-mentioned alternatives.

### 1983--Proposal and Implementation of the First Set of Restrictions

The watershed year for Moonstone Beach and its user groups was 1983. Despite the many previous warnings of FWS to ban nude bathing, to ban all use, close the entire beach, etc., this was the first summer when restrictions would come into effect.

Although the simplest--if most restrictive--option was to ban all use landward from either the SHF or MHT line, a series of alternate proposals were advanced. In the interest of simplicity, the details of each will not be discussed here but it should be noted that serious efforts were made by FWS to meet the needs of both birds and people (23). It is important to note as well, that although FWS announced previously that the restrictions were to be imposed at the SHF, they were at the MHT line, closer to the water.

Local groups did not view FWS proposals as compromises and opposed bans of any kind at Moonstone Beach. The South Kingstown Planning Board, for example, opposed any proposal which closed the beach to bathers (24). State and Town officials sided with the Planning Board and recommended instead that the beach remain open and that strict supervision of users and their pets should be pursued instead (25). Understandably, beach users opposed bans because a decrease in available beach would create crowdedness--on a beach where distance, privacy, and social space were crucial to maintain harmony.

In contrast, the FWS received support to restrict use of Moonstone Beach from the executive director of the RI Audubon Society. A local newspaper generously excerpted the letter in which it was noted that

the AS had no problem with the FWS continuing the Special Use Permit to TSK to operate a municipal beach but that:

"the issue of nudity, it seems to us, is beside the point, since the results of allowing (those) activities will be the same whether the perpetrators are clothed or naked...The only impact of nudity, were it to be sanctioned, would be to compound the despoliation (26)."

Furthermore:

"In summary, we can see little to be gained by the public in sanctioning nude or any other disruptive form of beach activity at Trustom during the critical nesting season or at any other time."

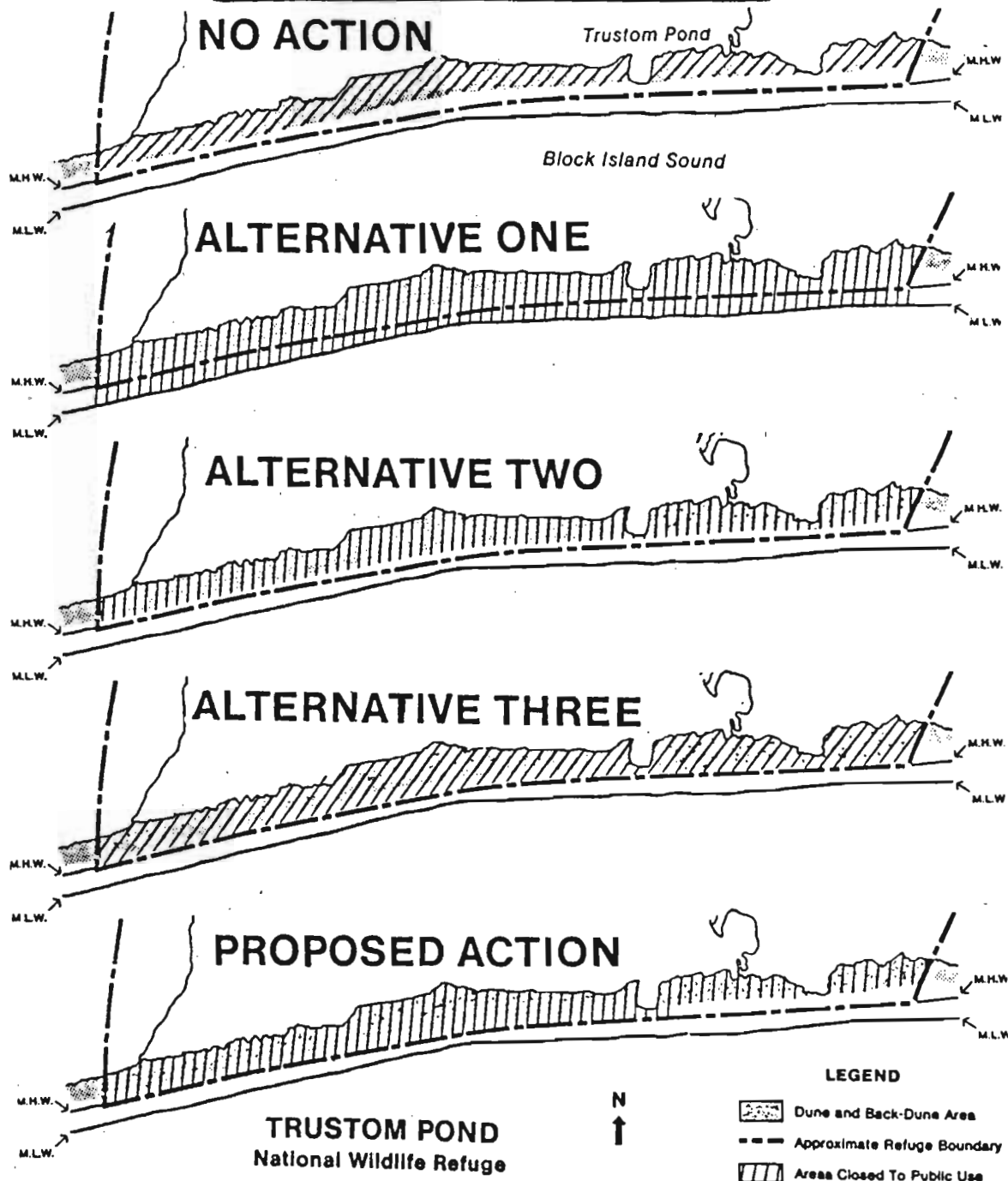
"We see no reason why the U.S. Fish & Wildlife Service should be manipulated into service in the cause of nudism or any form of outdoor recreation, especially if it conflicts with, or even somewhat interferes with, the principal mission of the Service, which is the protection, management and enhancement of wildlife and wildlife habitat for all of the public."

"The states, the federal government, and municipalities provide throughout the northeast, extensive and convenient public recreation beaches. There is no reason whatsoever to add the beach at Moonstone to this number, when its prime value and declared dedication is to provide wildlife habitat--a legally established and recognized public value in and of itself (27)."

Finally, after much debate over different proposals, and their relative merits the FWS proposal was announced in the spring. Under it 800 feet of the beach would be federally managed--open to all, and the remaining 600 feet were to be managed by TSK. All other parts of the beach were to remain off limits between May 1 to August 31 at a point above the MHT line.

FIGURE 2

U.S. FWS PROPOSALS FOR BEACH USE IN 1983



Modified from:

U.S. FWS, Environmental Assessment. Management of Beach Habitat of Trustom Pond National Wildlife Refuge for Nesting Least Terns and Piping Plovers, Use By Migratory Birds, and Other Wildlife. 4/28/83.

Nude bathing was not specifically banned under the proposal, only the amount of area available was much smaller. The Town rejected the plan because of the proximity of the clothing optional beach to the town beach and TSK officials requested a 900 foot area and control of a 300 foot buffer (28).

On May 1, 1983 the Environmental Assessment was signed by Howard Larsen, Regional Director FWS. The chosen alternative was the Proposed Action (see Figure 2), closing a portion of the beach by a division perpendicular to the dune line. The Town would be in charge of 800 feet (not 900), and 750 feet would be managed by the federal government and would be available to "all others". In essence, the total area available comprised the eastern third of Moonstone Beach. The remaining two-thirds of the beach would be closed at a point above the MHT between May 1 and August 31. Figure 2 shows the area used prior to (No Action) and after (Proposed Action) the summer of 1983.

Prior to the rearrangement, clothing optional use of the beach was restricted to the westerly portion of Moonstone Beach, where it was well isolated from the Town's portion, with a minimal 500 foot buffer.

It is important to note that the final FWS report abandoned three controversial proposals. The first, requesting the State to close the intertidal area. Those opposed cited concern over a) blocking public access to the shoreline, and b) blocking access to those parking at Green Hill and other beaches. The second proposal dropped was that TSK manage the entire 1400 feet, which was vigorously opposed by the Town. The final proposal dropped was the suggestion of a possible eastward expansion of closure if the birds did well.



### Summer 1983—Uneventful Coexistence at Moonstone Beach

A nationwide Gallup poll conducted in May, 1983 and commissioned by The Naturist Society found that 72% of the population believed that people who enjoy sunbathing in the nude should be able to do so without interference from officials, as long as it was done at a beach accepted for that purpose. The survey, however, also found that:

"Even though most adults express tolerance toward nude sunbathing in a designated area, 39% believe public land should be set aside for this purpose while 54% are opposed and 7% say they don't know (29)."

The early summer was fraught with apprehension on behalf of some Moonstone users due to the decreased buffer zone. Nonetheless, the annual July celebration of National Nude Day at Moonstone Beach was an uneventful success, approximately 800 people attended and no problems were reported. During this period the Refuge Manager sighted 7 baby piping plovers on the controversial beach which represented an improvement of 700% over the previous year (30). The birds appeared to respond to the increase in undisturbed habitat.

The rest of that summer was quiet. Addressing himself to the readers displeased with the crowded conditions at Moonstone Beach, the editor of the Sun Times, urged the readership to be grateful for the compromise which was reached, to observe the buffer zone, and to speak up to those who disregarded the Free Beach Etiquette. The editor wrote that the town manager had not received complaints regarding the reduced buffer zone; he did warn that anyone caught within the buffer zone was subject to arrest. That mailing of the NENA newsletter included a circular from FWS and a plea to keep beach clean (31).

That fall, NENA reported that the FWS issued only half of the citations (for dune trespassing and littering) compared to the previous year. Also announced were the bans at the beach on: glass, flying kites, open fires, vehicles on the beach, swimming in Truston Pond, and pets. Some of the bans would be new for the 1984 summer season, and readers were asked to take note and to inform others.

1984 -- NENA Collaborates with Fish and Wildlife Service.  
Piping plovers are Considered for Increased Protection

The April-May, edition of the Sun Times contained an announcement that because budget cutbacks to FWS had resulted in loss of personnel, the membership was solicited to help put up signs and snow fences. The collaborative effort became known as the Moonstone Beach Volunteer Project. The group assisted the FWS with their beach patrols by keeping people off dunes, out of restricted areas, by keeping the beach clean, and by putting up snow fences along the dunes. Volunteers on the patrol were equipped with a 2-way radio to enable contact with Rangers.

During this year, several regional naturist groups merged: Greater Boston Naturists, Maine Beachfront, Free Connecticut and NENA, merged into the New England Naturists Association (NENA). The peace and tranquility which characterized the 1983 and 1984 summers was short lived. Late in the year the FWS announced a proposal to list the piping plover as a threatened species under the protection of the Endangered Species Act (16 U.S.C. 1531 et. seq.).

This announcement and subsequent actions represent a critical point in the history of this case study because the listing would

necessitate a total re-evaluation of the management strategies and would increase the pressure to set aside protected habitat. FWS' mandate to protect wildlife on the refuge would be dramatically heightened by the listing of the bird on the Endangered Species List. Biological evidence suggests that the piping plover had been in trouble for several years and had been one of the birds listed on the American Birds Blue List which serves as an early warning mechanism (32).

#### 1985 -- Fish and Wildlife Service and NENA Collaboration Continues

Early in the year NENA officials met with Refuge Manager Charlie Blair to discuss the changing status of the piping plover and the effect such a change would have on beach use. NENA's efforts and assistance were praised by the Refuge Manager. In part due to the NENA patrol, only 45 citations for trespassing and littering had been issued the year before.

The continuing problems cited concerned the Green Hill Area and the FWS' limited manpower. Continued help was sought from NENA's beach patrol. Because the federal government had given the FWS permission to accept material donations at Moonstone Beach. NENA established the TPNWR Refuge Fund to help purchase materials. Money was not directly acceptable and so NENA had to purchase materials and then donate it to the Refuge. Sun Times readers were encouraged to donate to the Refuge Fund (33).

In late April the FWS held public hearings to receive input on the draft of the Truston Pond National Wildlife Refuge's 20-year master plan. The overwhelming public message was the desire to continue use of the refuge while at the same time protecting wildlife (34). At

least 50% of 54 attending the public meeting were NENA members. The FWS noted that the bird population at refuge continued to increase and the refuge manager commented that: "I have found the people who use the public beach to be well-behaved, law abiding families that just prefer to enjoy the Refuge unclothed. Your efforts have not gone unnoticed or unappreciated (35)."

#### 1986-1989 Renewed Tension and Litigious Action

1986 marked a turning point in how the FWS would proceed in managing the refuge. On January, 10 the piping plover was listed on the federal endangered species list (36). The bird was listed as threatened along the Atlantic Coast and endangered along the Upper Great Lakes region. When a species is listed as threatened if measures are not taken to protect the population, the species' numbers decline and there is the danger of being reclassified as endangered. At the time of its listing, it was estimated that there were a total of 700 pairs of piping plovers in the United States and Canada.

To protect the piping plover, the FWS proposed a new boundary for the use of Moonstone Beach by increasing the area set aside for the birds by 500 to 700 feet--corresponding to the area traditionally used by nude bathers. As a result of the new boundary all groups were to be moved eastward. Not surprisingly, TSK opposed the new proposal on the grounds that:

- the proposed area was less desirable for swimming because it was near a potential breach way;
- it would require residents to walk almost a 1/4 mile from the parking lot; and

- it would place nude bathers closer to the main access way-- requiring townspeople to walk closer to the clothing optional beach on their way to the town-leased beach located farther to the east.

Those involved showed little interest in cooperating; TSK refused to meet with NENA because it did not recognize them. NENA opposed the new proposal because of the Town's refusal to move and because it declared intentions to arrest anyone nude on the Town-leased beach. In sum, neither party was pleased with the new proposal. The FWS agreed to review the objections and TSK vowed to appeal to the State congressional delegation if the FWS did not change the proposed boundaries (37).

One of the most contentious points became the location of Senator Chafee's summer house. The Senator and his sister own a summer house at Matunuck, east of Moonstone Beach (Figure 3). Some townspeople accused the FWS of moving them--rather than the nude bathers--closer to the Senator's property. The FWS acknowledged that they were aware of the location of the home and that it had been taken into consideration when they proposed the new boundary, but the refuge manager also stated that:

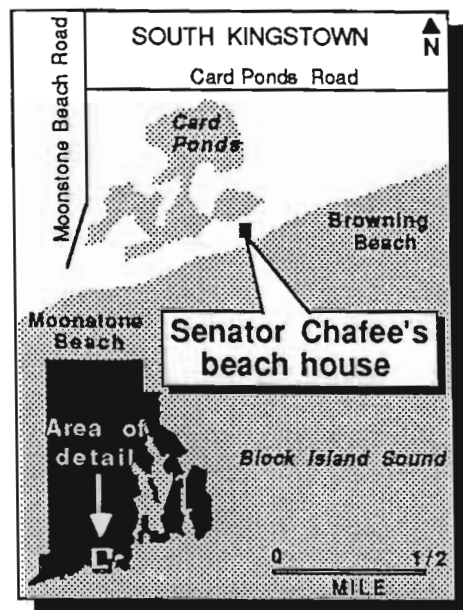
"The house was a factor. All the houses (at the beach) were a factor (38)."

For his part, Senator Chafee asked that his view not be a factor in where to allow nude bathing. The FWS stated that they had considered the proposal the best because it offered the widest buffer between Town beach and the nude section (39).

In mid-March the FWS announced the revised boundaries. The Town's concerns had been addressed. The birds were given 3,700 feet at the

FIGURE 3

LOCATION OF SENATOR CHAFEE'S HOUSE RELATIVE TO MOONSTONE BEACH



—Journal-Bulletin Graphic

Source:

The Providence Journal-Bulletin, 75 Fountain Street, Providence, RI 02902.

westernmost portion of the beach, TSK was given 800 feet adjacent to the right of way at the end of Moonstone Beach Road, and the nude bathers were assigned a new stretch—600 feet at the easternmost end of the beach.

Effectively this involved "leapfrogging" the nude bathers over the Town's portion of the beach. The nude bathing section was more than 1,000 feet from the Senator's summer home. The new proposal appeared satisfactory to all. The NENA membership was particularly pleased because they received more space and because the new location was closer to (other) available parking. Figure 4 shows the original and revised zones of Moonstone.

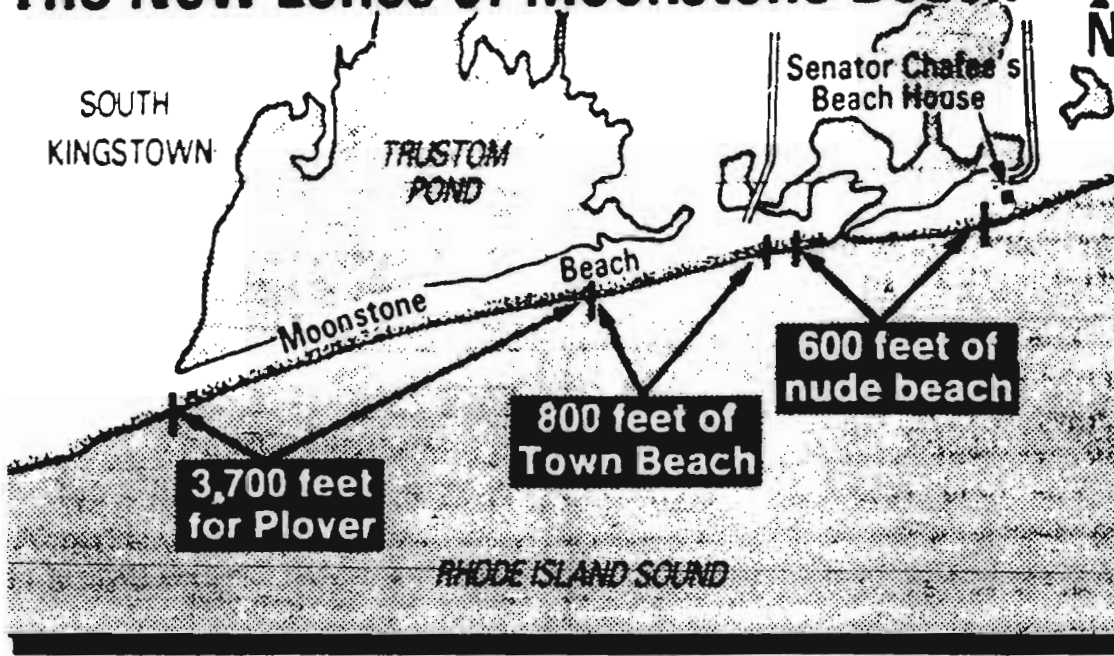
As usual Townspeople expressed concern regarding nudity and the adequacy of the buffer zone. At the Town Council meeting in late June or early July, the possibility of adopting a nudity ban at Moonstone Beach was discussed. The Town Council President asked the FWS to put forth sample ordinances used elsewhere. The FWS maintained that they did not want to become involved in regulating nudity on their land, but they would be required to enforce any state or town ordinance. The FWS planned to provide the Town Council with copies of local ordinances used at other refuges: Newburyport, MA and Chincoteague, VA (40).

NENA remarked it preferred negotiation to litigation and that South County would be hurt economically if such an ordinance was passed. Although intrusion of the buffer zone seemed to be the biggest concern, some Town Council members did not want nudity in their town while others declared better management was a more viable solution and

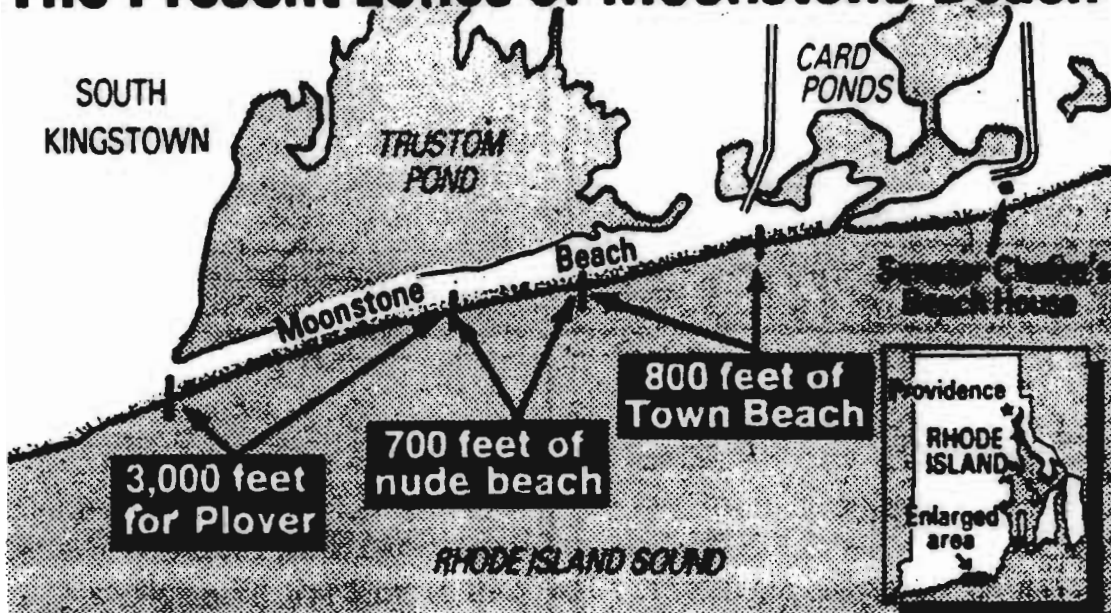
FIGURE 4

1986 ORIGINAL AND REVISED ZONES OF MOONSTONE

# The New zones of Moonstone Beach



# The Present zones of Moonstone Beach



Source:

The Providence Journal-Bulletin, 75 Fountain Street, Providence, RI 02902.



complained that the federal government was "passing the buck". Others, particularly those with small children expressed their displeasure that Cards Pond--popular with children--was now in the nude bathers' area (41).

In July NENA announced that it would conduct an economic impact study to estimate the money brought into South County by nude bathers.

In mid July more than 75 people took part in a Town Council Meeting. People spoke regarding the proposed anti-nudity regulation and the majority agreed that they liked the beach as it was. The summer residents of the area told the Town Council that the proximity and location of the nude beach was the issue and not nudity itself. The Town Council took no action on the issue since it was not an agenda item. Due to lack of support for an anti-nudity regulation, the proponent of the regulation favored looking at other solutions before banning nudity outright (42).

Late in the summer NENA announced the results of a survey done in early July which included 254 respondents. According to the survey, \$240,000 dollars were spent during a summer in the area. They declared roughly 81% of the people would not return to the beach if nudity was prohibited. The average cost per visit was given as \$43.16 (43).

#### 1987--New Boundaries Proposed--Talk of Litigation is Resumed

In the spring the FWS announced that TSK residents and others would again be sharing the beach. The South Kingstown Town Council noted that the FWS should clearly mark where town beach begins and ends. The possibility of drawing up an anti-nudity ordinance was discussed once again, but it was noted that there was little support

for one. Council members also noted that the Town solicitor and the Attorney General's office had both advised that such ordinances had not always held up in court. In addition, TSK hoped that its imminent plans to open the nearby Matunuck as a new Town beach would make the yearly debate of nudity at Moonstone Beach a moot point (44).

The FWS released its Draft Environmental Assessment (EA) for Truston Pond National Wildlife Refuge late in the spring. The Draft EA presented and compared four alternatives for the long-range management of TPNWR (Figure 5 provides a comparison of these alternatives). The purpose of the Draft was to help decide whether an environmental impact study (EIS) would be prepared for the plan (45); a public hearing was scheduled for June 4, 1987. Alternatives A and B are mapped together because they differ only in that one allows for hunting while the other does not.

The four management alternatives in the Draft were:

"The Proposed Action, Alternative A, initiates new or modified management activities for a variety of wildlife species and provides a program of wildlife-oriented public uses compatible with maximum wildlife use of the refuge. It **terminates public use of the beach during the piping plover and least tern nesting season** [emphasis added] and proposes controlled recreational hunting on some upland portions of the refuge. Alternative B differs from the Proposed Action by not proposing to open any portion of the refuge to hunting. Alternative C allows recreational use on 1,550 of beachfront during the nesting season, and specifies criteria that will be used to select the segment of beach allocated to public use each year. Alternative C also provides for controlled hunting. These alternatives are contrasted with the alternative of taking No Action, that is, continuing current refuge management (46)."

In order to terminate public use of the beach during the nesting season the Proposed Action, (Alternative A) involved the following:

- banning beach use from April 1-August 31 beginning in 1988 (at a point below the MHW line);

- ending the federal government's Special Use Permit agreement with the Town of South Kingstown; and
- FWS requesting the State of Rhode Island grant a management agreement to prohibit public use of the beach in the intertidal area below the MHW line.

The NENA Board of Directors held an emergency meeting on May 26th to encourage members to support Alternative C, provided that both beaches--Town and nude bathing--would retain their boundaries.

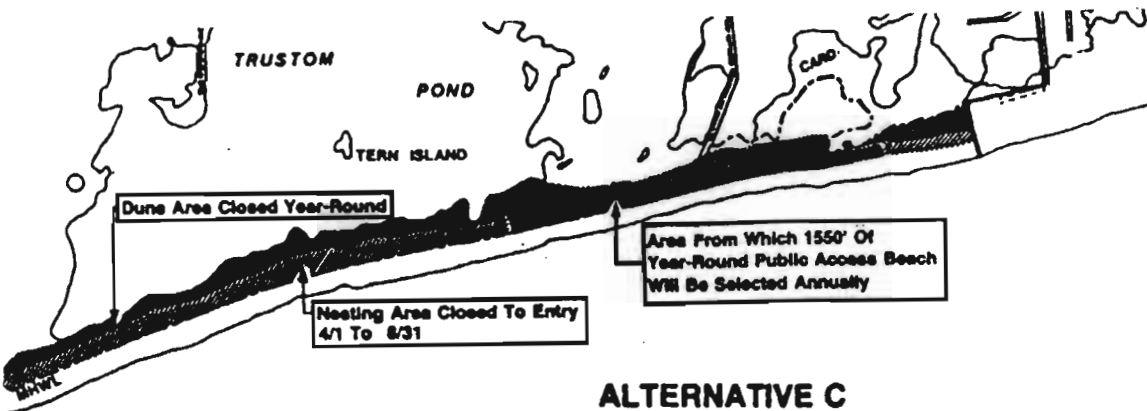
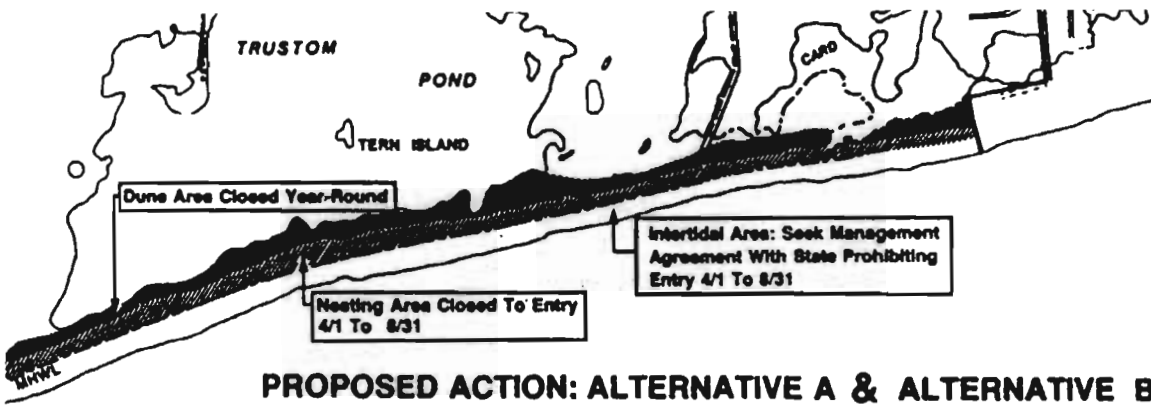
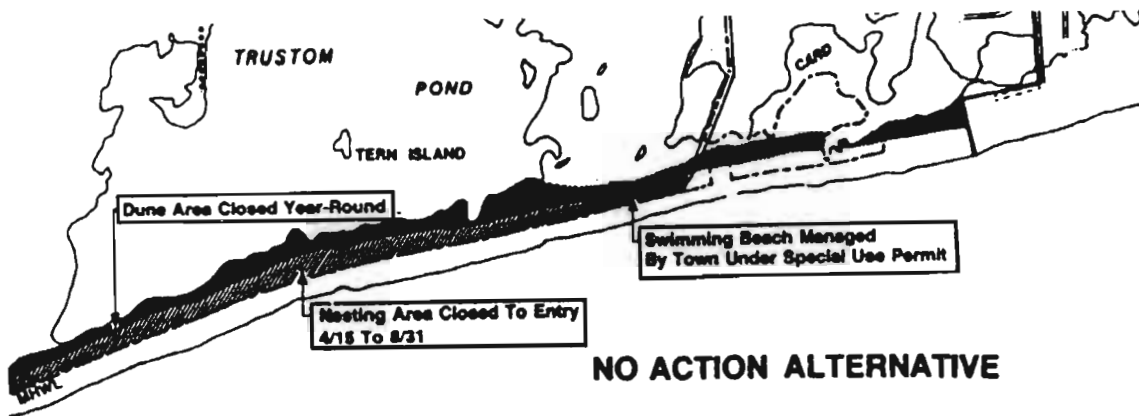
Not surprisingly, the proposal favored by the FWS angered many people. The number of concerned citizens and the range of public opinion was expressed during the late spring and early summer when many letters to the editors of the local papers were received. Everyone had an opinion on what should be done at the Beach. The FWS was repeatedly accused of using the piping plovers as a smoke screen to get rid of the nudists. The media attention, much to the dismay of non-nudists, focused almost solely on the nudity issue. Headlines like "The rare vs. the bare" were not unusual.

At that time, it was estimated that approximately 550 pairs of piping plover remained on the New England coast, 14 of which nested annually in Rhode Island. Because of its threatened status, other refuges were increasing efforts to protect piping plover habitat, as well.

The June 4 public meeting was exceptionally well-attended and well covered by the media. Approximately 260 people attended and roughly three fourths of those who spoke were against closing the beach to the public. South Kingstown urged the FWS to continue the lease agreement despite the Town's plans to open a new small beach at Maturuck. Dick

FIGURE 5

COMPARISON OF ALTERNATIVES FOR BEACH USE, 1988



Source:

U.S. Department of the Interior, Fish & Wildlife Service. May 1987  
Draft Environmental Assessment. Master Plan for Trustom Pond National  
Wildlife Refuge, South Kingstown, Rhode Island.

Dwyer, the Head of the FWS piping plover Recovery Team noted there were more bald eagles nesting in the United States than there were piping plovers. Only 564 pairs were said to be mating from Maine to the Carolinas (48). Some property owners vowed to sell their property if the beach was closed. The NENA vice-president accused the FWS of having made up its collective mind and assured the FWS they would meet in court. Many people at the meeting urged consideration of the financial boom that was provided to the town by people visiting Moonstone Beach (49).

With increased competition for diminishing beach space, the public got increasingly hostile. Some residents, upset because too little attention was being given to the public access element, remarked that if TSK taxpayers wore bathing suits, they were an endangered species themselves. Nude bathers claimed that they were an endangered species due to decreasing availability of sites along East coast. And the FWS was quoted as saying "We do not recognize nudity (50)."

The plight of the birds at Moonstone Beach was complicated when eight plover eggs were destroyed by predators. The FWS noted it had been a skunk or crow or other predator probably attracted by the left over trash at the beach. The refuge manager stated that the incident did not strengthen nor diminish the FWS proposal to close the beach during the summer. Only 2 pairs of piping plover nested on Moonstone Beach during 1987 (51).

In early July TSK resident Cornelia Pike wrote to the Narragansett Times to encourage people to speak up so the conflict was not just between nudists and wildlife, and to write to their state and federal

elected officials to protest the FWS' actions. Mrs. Pike was instrumental in rallying support for the second grassroots movement which later formed in 1988 (52).

The written response of the citizens on the proposal to close the beach was impressive. The FWS received 252 letters and the mail ran 3-1 against closing entire beach (53). Much to the chagrin of many, one letter even threatened the birds:

"If you attempt to bar people from the beach we are simply going to kill the birds. We have talked it over and we know we can easily kill all the piping plovers (54)."

Notwithstanding all of the commotion, by the end of the summer five plovers had hatched on Moonstone Beach (55).

Announcement of the management plan for Moonstone Beach was delayed and the beach was declared open during the rest of the summer, meaning the previous summer's boundaries would be in effect. Plans for the following season were supposed to be announced in July of 1987 but were not announced until January of 1988.

By the end of the summer, the conflict and the public's reaction had attracted the attention of many state and local politicians. Officials from Representative Claudine Schneider's office, for example, stated they would work toward a solution that would protect the birds and provide public recreation. Governor DiPrete and State Representative St. Germain also expressed support for a compromise at Moonstone Beach (56). Letters of support for some form of public access were sent to FWS on behalf of Representative Schneider and officers of the Department of Environmental Management; these were included in the final document, released in January, 1988.

South Kingstown presented its draft plans for the new Town beach and a public hearing was planned for August 22 to discuss them. Nudity would not be allowed and the Town Council announced that no matter what the FWS position, TSK would continue to keep the 50 foot right-of-way open at end of Moonstone Beach Road (57).

#### 1988—Fish and Wildlife Service Announces Plans to Close Moonstone

1988 would be a year in which FWS would execute its plans with little room for compromise. Unlike previous years where only the western portion of the beach had been partially fenced, virtually the entire length of the FWS property would be fenced.

In January the long-awaited final Master Plan was released by FWS. A Finding of No Significant Impact (FONSI) was signed by the FWS Regional Director, indicating that an EIS would not be needed. The chosen management plan was Alternative A, the one proposed by the FWS (see Figure 5, Alternative A). Legally, the fence could not be closer to the water than the MHW line, therefore, the FWS restated its plan to request a management agreement with the State of Rhode Island to bar any access below the MHW line during the nesting season of the protected species.

The latter point is an exceptionally controversial issue. Speculation exists as to whether the state would ever agree to such a request, particularly since public access is provided for in the Rhode Island State Constitution. More discussion of this and other issues will be provided in Chapter Six.

After the FWS announcement, TSK sought a Special Use Permit for 160 feet of beach adjacent to the 50 foot right-of-way. Town officials

were disappointed that FWS had denied TSK use of 400 feet by the right-of-way (58); and they reminded FWS that they had leased beach for many years and could assist in enforcing the rules. Furthermore, as mentioned before, notwithstanding the FWS action, TSK vowed to keep a lifeguard and a gatekeeper at the end of Moonstone Beach Road (59).

The debate between public access and preservation, prompted the FWS to state in the final document:

"The Service is fully cognizant of the rising demand for and decreasing supply of beach recreation opportunities and of the intensifying difficulties of recreational beach access. However, the public must realize that these same pressures increase the problems of wildlife seeking nesting and feeding opportunities. And for wildlife, these opportunities are vital to their survival (60)."

Late in the spring, the Sun Times listed the potential legal avenues available to NENA, These were:

- 1 discrimination against nude bathers;
- 2 the FWS overstepping its boundaries in their effort to protect the species; and,
- 3 the official location of the property line vis-a-vis the State statutes applying in the littoral zone.

NENA Attorney Stephen Fortunato was studying the best course of action.

In the meantime, NENA had to wait for FWS to implement its plans because until then, the plans represented merely intentions (61).

#### Fish and Wildlife Service Builds Fence Encloses Piping Plover Habitat

The plans were carried out on April 1, when FWS built a mile-long, 4-foot high fence at the MHT line along the FWS property on Moonstone Beach. The fence enclosed the nesting habitat until August 31. The FWS also hired 3 full time officers to increase beach patrols.



Upon the construction of the fence, NENA officers declared they would challenge the FWS' authority by seeking an injunction in the U.S. District Court (62).

Six other beaches along the east coast had been closed to protect the piping plover, terns and other species. Although some were closed for the first year, others were being closed for the second and third consecutive years. Beaches closed in addition to TPNWR included:

- Chincoteague NWR 2.5 mi.
- Back Bay NWR 1.0 mi.
- Holgate Unit, Edwin B. Forsythe NWR 2.5 mi.
- Morton NWR 1.0 mi.
- Monomoy Island NWR, & Parker River NWR. 3.25 mi. (63).

Because these sites have been used by nude bathers it is natural for NENA to accuse the FWS of planning to oust them from NWRs. This issue will be addressed in Chapter Five containing data from the NWRs.

Shortly after the FWS had raised the fence, the RI Coastal Resources Management Council (CRMC) received a letter from NENA member and TSK resident Joe DiPippo, who protested that FWS was impeding passage and public access to the beach. Subsequently, a violation notice was issued by CRMC because the FWS had not applied for the proper permit as required by law.

The refuge manager said he was unaware of the requirement and that in past years fences did not elicit citations. Further, he agreed to apply for a permit as soon as possible. The action was not stopped as the citation was not a restraining order (64).

NENA had raised \$10,000 for legal fees and for a study on the potential impact of beach closure on the area's economy. The study estimated that \$7 million dollars in tourist trade would be lost

annually (65). About this time NENA vice president Joe DiPippo alleged that Senator Chafee was behind the effort to get rid of nudists (66).

Senator Chafee denied any influence over closing the beach, and in response to charge that he authored the amendment to ESA (16 U.S.C. Sec. 4321 et. seq.), he noted the birds were already covered, and the amendment simply increased penalties and added species (others) to the list. When challenged on having remained uninvolved despite local opposition to the closure, he stated he had purposely stayed away because of the house he and his sister own nearby. "Any position I took, people would say it was influenced by personal considerations (67)."

#### NENA Resumes Legal Action

Less than a week after the fence had been installed, NENA asked the U.S. District Court to bar the FWS from closing Moonstone Beach by issuing a Temporary Restraining Order. Although the Court denied the request, Federal Judge Ernest C. Torres agreed to hear NENA's request for a Preliminary Injunction on May 9. NENA sought to make four points at such a meeting:

- 1 the beach closure infringed on the public's right to beach use and on the rights of nude bathers who had used the beach for 40 years;
- 2 the FWS did not obtain the necessary permits from the CRMC;
- 3 access to the shoreline is provided under the Rhode Island State Constitution; and,
- 4 while the FWS had the obligation to protect the bird species, it should do so in "a reasonable manner" (68).

The FWS announced legal counsel was being sought from the U.S. Attorney in order to determine whether the CRMC permit was needed; the

CRMC announced that if the application was not filed, the case would be turned over to the State Attorney General's office (69). The conflict had escalated to federal-state levels at which issues of authority had to be addressed.

A timely economic study was released by researchers at the URI Office of Travel, Tourism and Recreation. The report, titled: Tourism Profile; South County, showed that South Kingstown ranked second in South County travel--with 21% of the revenues--and that 51% of the employment in South County catered to tourism (70). These findings emphasized the importance of tourism to South County's economy and helped dispel any notion that tourist dollars could be taken for granted. More discussion of the findings of this study and its relevance to Moonstone Beach will be provided in Chapter Six.

#### Formation of a New Grassroots Group: Taxpayers for Access to Moonstone Beach

During the spring of 1988 a new grassroots group was formed to protest the actions of the FWS; the group was named the Taxpayers for Access to Moonstone Beach (TAMB). Their concerns were that the FWS was planning to close the intertidal and that most of the attention focused on birds and nude bathers and not on the views of residents.

The FWS sought the closure to protect the fledglings feeding there, yet TAMB worried about precedents and feared private property owners might close off beaches seaward of their land (71). In a letter to the editor of The Narragansett Times the group wrote:

"We believe it is important for elected officials to be aware of broad, grassroots support for this open access to Moonstone Beach. We favor a class-action suit in court, if necessary, to insure that Rhode Island laws, mandating access to coastal beaches are

applied as intended. We believe that the preservation of endangered species and access to Moonstone Beach are not incompatible (72)."

The group's membership totalled more than 50 individuals and included members of the Green Hill Civic Association, which represented more than 150 families (73).

Not surprisingly, given the wide attention the conflict had received, the State Attorney General became involved. He wrote a letter to FWS Refuge Manager, entering objection to the placement of the fence without first having complied with the requirements of the Coastal Zone Management Act (74).

#### Attorneys for Both Sides Present Testimony

After hearing testimony, Judge Ernest C. Torres allowed NENA and FWS to file Memoranda of Law by May 26. The FWS, represented by Assistant U.S. Attorney Everett Sammartino, maintained that:

- the fence was between 57 - 83 feet above the MHT mark and thus on federal—not state—land;
- no CRMC permit was needed; and,
- the FWS was mandated by the Endangered Species Act (16 U.S.C. 1531 et. seq.) to protect the piping plover;
- the fence was there to stay (75).

The FWS have asserted that the land was surveyed prior to the establishment of the fence to ensure it was on federal land (76).

The CRMC noted that before taking further action, it would await a final ruling on: whether the fence was on state or federal land, and whether it was consistent with the Coastal Management program (77).

Late in the spring the FWS announced that 187 feet of Moonstone Beach frontage (adjacent to the TSK right of way) would remain open

because the area had no breeding potential. The refuge manager said:

"The land adjacent to the town's right-of-way is open to anyone in the state or the nation or from anywhere in the world for that matter..no distinction is made by the Service between those who wear suits and those who don't (78)."

South Kingstown was granted the Special Use Permit by the FWS to maintain the public beach (79). And, although the FWS would not make a distinction between clothed and unclothed bathers by banning the latter, the Town once again banned nude bathing on its portion of the beach. The ban on nudity applied to: the 50 foot right of way; the 187 feet granted under the permit; and two 200 foot buffers flanking the Town beach. Figure 6 depicts the 1988 beach use. The ban would be enforced under the State's disorderly conduct law and signs would be posted at the borders of the beach reading "No nudity beyond this point (80)."

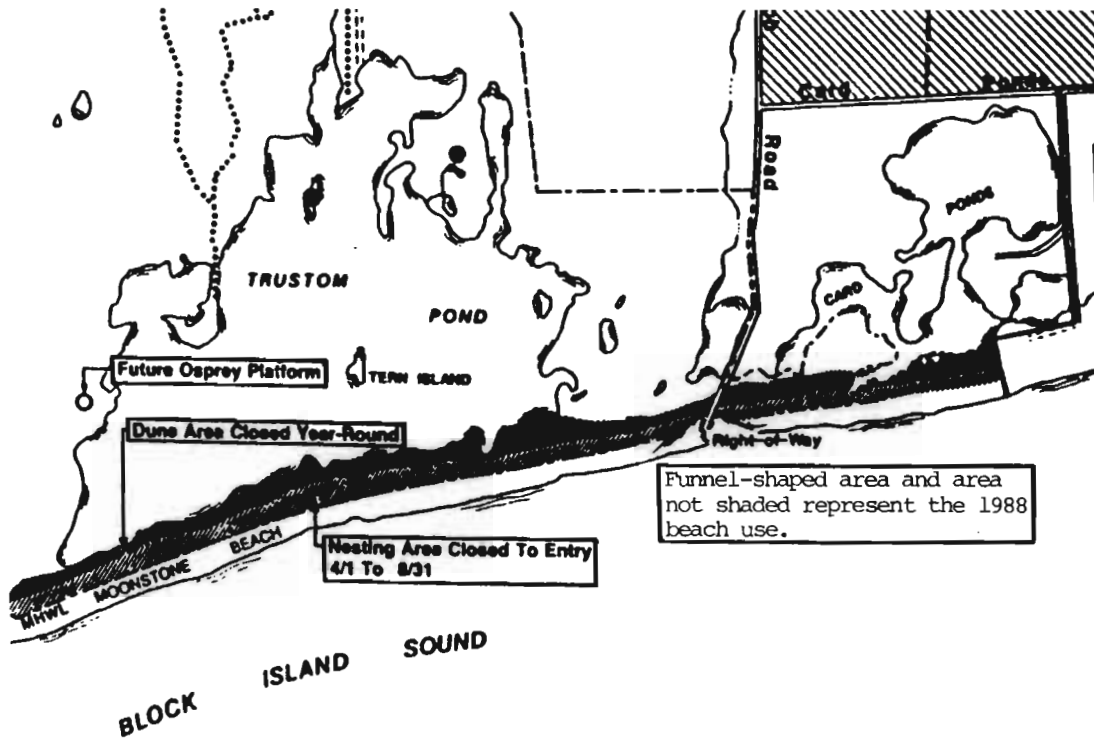
NENA officer DiPippo and TSK officials agreed that nude bathers would not use the TSK beach and would stay out of the sight of the residents. DiPippo said they would congregate below the fence eastward of the Town's beach and that:

"..we're trying to cooperate with the Town as much as we can...We'll try obviously, not to be in sight, we like our privacy too...I'm happy that town got the beach...But I'm disappointed that Fish and Wildlife didn't open up a little more area for all of us (81)."

Although NENA vowed to observe the buffer zones, it guaranteed it would continue to fight the fence and they warned that nudity would take place outside the buffers and below the fence (82).

In response to the ubiquitous concern over intrusion of the buffer zone, TSK police planned to videotape offenders and provide

FIGURE 6  
1988 BEACH USE



Modified from:

U.S. Department of the Interior, Fish and Wildlife Service.  
Environmental Assessment, January 1988, Master Plan Trustom Pond  
National Wildlife Refuge, South Kingstown, Rhode Island.

blankets to cover offenders en-route to the police station for arraignment (83). However, after the first holiday weekend of the summer it was clear that the expected problems regarding the buffer zones did not materialize. Signs protesting the closure went up briefly, but NENA representative DiPippo pointed out that a court decision was expected shortly (84).

Due to the limited space available to nude bathers at the beach--particularly at high tide--the Sun Times carried a tide chart to help visitors plan their visits to the beach accordingly (85).

#### TAMB Launch Letter-Writing Campaign

In mid-June, the TAMB launched a letter-writing campaign and later began the circulation of a petition supporting the Attorney General's letter. The Group sought reversal of the Moonstone Beach closure and wanted to get more than 1,000 signatures to deliver to elected officials (86). By the end of the summer the TAMB had collected 1,200 signatures and they sent copies to the Attorney General, the CRMC, the refuge manager, and Representative Claudine Schneider.

Despite crowded conditions on a much smaller beach, 1988 was a relatively smooth summer. Nude bathers were known to set up wind screens at either end of town beach to allow for more privacy. National Nude Weekend was celebrated and more than 2,000 people attended over the course of the day (87). The new TSK Town Beach at Matunuck was full at its official opening on July 4, and there seemed to be no problems at Moonstone (88).

In August, Federal Judge Ernest C. Torres announced his ruling. NENA was denied the injunction for removal of the fence because:

- NENA failed to demonstrate a likelihood of success;
- granting the injunction would cause more harm than good; and,
- nude sunbathing on a public beach was not a constitutional right.

The Judge ruled that the location of fence was between 57 - 83 feet above MHT and was clearly on federally-owned property (89). The Judge also noted that there was no need to file a permit with the CRMC because of the fence's location. Disappointed but not subdued NENA sought a court hearing (90).

By the end of the summer, NENA had gained the praise of the TSK police chief who noted that the nude bathers had cooperated fully (91). Also by the end of the summer at least two piping plovers had hatched at Moonstone Beach--three pairs nested and two pairs produced six young. One bird from each group survived (92).

At the end of 1988 a court date had not yet been established for the NENA petition, and the organization was pursuing several avenues including: working with other coastal organizations to change the State laws regarding the location of the littoral jurisdictional boundaries, and laws regarding prescriptive rights.

#### 1989--Current Status

The following year (1989) was relatively uneventful with regard to beach use but momentous with regard to new NENA strategies. Events during the year included meetings with NENA and state officials, proposed meetings between federal and state officials, and NENA's decision to propose civil disobedience. Available beach space declined as was noticed by many; the change being attributed--for the most part--to erosion and sea level rise (93).



In early February, NENA members met with staff of the RI State Attorney General's office to discuss the status of the beach. NENA was interested in how to change the laws governing property boundaries in the coastal zone and the organization learned that any change would require an amendment to the State Constitution. At this meeting it was agreed that the State Attorney General's office would seek an informal meeting of the key parties in an effort to negotiate an agreement on beach use suitable to all those concerned (94).

In March it was announced that the piping plover had done well in 1988 and its population was rising. The increase was attributed both to increased protection and more thorough counting methods. The number of pairs were: 547 (1986), 570 (1987), and 644 (1988). No changes were planned by FWS for 1989 use of Moonstone Beach and it was expected that TSK would be granted a Special Use Permit (95).

At the now annual NENA's membership meeting, a property fund was approved by the membership for potential beach site acquisition. NENA's strategy had changed to focus on public access to the shoreline, to forge alliances with other beach access groups (96). Civil disobedience would not be considered until later in the summer.

The fence built in the spring were by some estimates 10-15 feet closer to the water than in 1988. FWS told NENA that the property had been surveyed and that the location was correct (97). Over the course of the summer, many people remarked that the fence seemed closer to the water than the past year (98). Rising sea levels and coastal erosion played a part in the location of the fence as well. Another factor may have been the reconstruction of the fence. Because of storms, portions

of the fence had to be rebuilt several times; over the course of six weeks some parts were constructed four times (99).

NENA sent out a mailing in the early summer, announcing plans for a mass protest rally in July at the National Nude Day celebration. Participants were asked to wear clothing during the protest to focus attention on the issue of access; to bring signs, yellow ribbons to put on the fence; to keep the beach clean, and to respect the boundaries. A short message was included citing civil disobedience as an option under consideration (100).

On July 8, National Nude Day took place and more than \$700 was raised for NENA's cause. A group of about 50 people demonstrated and were briefly taunted by others on the beach. The FWS, however, escorted the hecklers off the beach. More than 2,500 people attended over the course of the day and James Kurth, FWS refuge manager noted that aside from the small incident there were no problems (101).

The Town Manager noted at a meeting in mid-July that the nude bathers were sitting closer to the buffers. This was a matter that was causing increased concern and which the Town said it would have to deal with next summer. Mr. Alfred was quoted as saying:

"We want to keep Moonstone as a family beach. We want to keep those people's rights protected (102)."

The 1989 Refuge piping plover population numbers were announced in September and another increase had taken place. Four pairs of birds nested, and seven young fledged--that was five more than the previous year when the same number of pairs had raised two young to the fledgling stage (103).

Due to concerns over nude bathers travelling across the Town beach scantily clad--not necessarily NENA members it was pointed out-- and irritation over those who remove their clothes as soon as they reach the end of the buffer zone, Town council member Charles F. Moffitt asked for a report on how often the lifeguards heard complaints about this and how often they had to ask people to clothe. Mr. Moffitt said the situation was worse this summer because the fence was closer to the water and that a solution he said he would like to see is for the nude bathers to gather on an area at one end of the beach, not on both ends (104).

In late September, Cornelia Pike of the TAMB wrote to the Narragansett Times. Mrs. Pike pointed out that the Master Plan for TPNWR calls for FWS to request an agreement with the State for complete closure of the intertidal zone during the nesting season, and that the fence was closer to the water in 1989. She asked:

"Does anyone see the writing on the wall? We are in very real danger of losing this beautiful beach in its entirety (105)."

There is much debate as to whether this will happen or not. Discussion of this and other political developments of importance particularly in 1989, will be addressed in the chapter on politics and economics.

#### ENDNOTES FOR CHAPTER FOUR

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- (4) Providence Journal, "Bigger Moonstone Beach," 6 August 1970, p. 29. Although the article stated specifically that non-residents should be barred, it should be pointed out that the reporter likely made a mistake. It is possible that reference was being made to parking and not beach access.
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- (6) Providence Journal, "Nude Bathers at Moonstone Beach may be rebuffed if the state moves in," 9 August 1981, sec. C, p. 6.
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- (14) Ibid.
- (15) Ibid.
- (16) Westerly Sun (RI), "Battle Lines Drawn as Battle Over Moonstone Beach Nears," 19 May 1982; Goldstein, Gerald S., "Nudists Don Whistles and Await Feds at Moonstone," Providence Journal, 30 May 1982.

- (17) *Supra.*, 13, p. 3. Several years later, this author was cited the same number by regional FWS officers.
- (18) Newport (RI) Daily News, "Moonstone may ban clad bathers, as well," 11 June 1982;; Goldstein, Gerald S., "Wildlife Service Official may seek ban on Moonstone Bathing during bird nesting," Providence Journal 10 June 1982, sec. A, p. 9.
- (19) Dufresne, Marcel, "Nudists take on feds in battle for beach," Narragansett Times, 24 June 1982.
- (20) Goldstein, Gerald S., "U.S. rules favor Moonstone birds, indifferent to nudes," Providence Journal, 29 June 1982;; "Trustom Parcel is Formally Accepted," Westerly Sun (RI), 29 June 1982; "U.S. Accepts Donation of Audubon Property at Trustom Pond" United States Department of the Interior NEWS, Press Release (no date given) FWS, One Gateway Center, Newton Corner, MA 02158; "Nudists Remain for the Summer," Westerly Sun (RI), 30 June 1982.
- (21) Sun Times August 1982, vol. 12. p. 2.
- (22) Frederiksen, Robert C., "Impact Study Planned on banning nudes at Moonstone Beach," Providence Journal, 16 December 1982.
- (23) Mendels, Pamela, "Wildlife Service proposes keeping open 1,400 foot section of Moonstone Beach," Providence Journal Bulletin, 26 February 1983. For example, one of the more interesting suggestions by FWS included: [1] closing 3/4 mile of beach from May 1-August 31; and [2] increasing (to 1,500 feet) the area managed by the Town if the latter would supply trash cans and sanitary facilities. TSK, however, did not approve for fear that the nude bathers would be on their area, and the nude bathers disliked it because of a potential ban on nudity in that area by the Town. TSK may have missed a good opportunity to secure a large portion of the beach.
- (24) Narragansett Times, "South Kingstown Planners Oppose Moonstone Ban," 13 January 1983.
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 [1] there are few public areas where nudity is sanctioned;  
 [2] condoning implies legal responsibility for toilets, running water, lifeguards, emergency services, convenient parking, additional policing, improved access roads; [3] past experience shows that the rest of the public is "forcibly excluded" from the area or [that] the additional visitors who come to observe may be equal to or greater than the nude crowds; (4) to encourage a large number of visitors at the beach would put a strain on the small refuge staff.  
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  - (31) Sun Times, August 1983, vol. 20.
  - (32) The Blue List is published by the journal American Birds on an annual basis and serves as an early warning system to list species which may need to be considered for listing on the endangered species list. The piping plover was listed as early as 1972; Thayer, Betty J., Narragansett Times, 6 December 1984.
  - (33) Sun Times, February/March 1985, vol. 32, p. 1-2.
  - (34) Narragansett Times, "Compromise sought for birds, bathers," 2 May 1985.
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  - (36) U.S. Fish and Wildlife Service. 1985. Federal Register 50: 50726-34.
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  - (38) Ibid.
  - (39) Ibid.; Murphy, Tim, "Chafee asks that his view not be a factor in where to allow Moonstone nudists," Providence Journal, 6 March 1986, sec. A, p. 17.
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  - (41) Ibid.; Fitzpatrick, Colleen, "South Kingstown Council considers nudity ban at Moonstone Beach," Providence Journal, 9 July 1986.
  - (42) Perlstein, Steven M., "75 pack council chambers for debate on nudity issue at Moonstone Beach," Providence Journal, 16 July 1986; Thayer, Betty J., "Residents say proximity, not nudity, the issue," Narragansett Times, 17 July 1986.
  - (43) Thayer, "Residents say proximity.."; and conversations with NENA officials.
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  - (45) Draft Environmental Assessment. Master Plan for Truston Pond National Wildlife Refuge, South Kingstown, Rhode Island United States Department of the Interior, Fish & Wildlife Service.
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  - (49) Ibid.; Rezendes, Michael, "Endangered: Nude Bathers," Washington Post, 13 June 1987.

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- (99) U.S. Fish and Wildlife Service, "1989 Piping Plover Summary for Truston Pond National Wildlife Refuge".
- (100) "On that day [NND] we will respect the fences and obey the rangers. However, if it becomes necessary, in the future, to go a step farther to prove we mean business about our rights to the beach, then civil disobedience is an option under consideration" Special Announcement, June 1989 from Ron Marsh, NENA. Late in the 1989 summer NENA's increasing frustration was evident in the Sun Times cover story: "[We're] looking at the past several years of fighting to keep Moonstone Beach open as a public access beach for nude as well as clothed users. While we have been successful in keeping Moonstone open for many years, the U.S. Fish and Wildlife Service has been chipping away at the available linear footage we have used for as many years, now limiting us to the intertidal zone in front of the bird sanctuary fences in front of the Card Ponds. It has long been our position that these fences have been placed on state land illegally, and that an overzealous policy for the preservation of the piping plover bird has been forced upon us by persons in the government who have never been to Moonstone Beach and who have no regard at all for what this beach has meant, and continues to mean, to thousands of users each season. While we agree that conservation measures are necessary, we must also realize that the actions taken at Moonstone to shut out the general public are more than extreme in nature, especially when other nesting areas for the plovers (including some considered to be more important to the plover population than the refuge at Moonstone Beach)

are easily controlled by the posting of signs, having no fences at all, and the public continues to have free access....If our message is ignored, and if further talks at the negotiation table are unyielding, it may be necessary for us to take stronger action to show that we mean business...NENA is now investigating the staging of a planned act of civil disobedience, which may include crossing into the fenced area of the refuge." Sun Times, August/September 1989, vol. 59.

- (101) Camara, Christina, "Nudists demonstrate to gain more access at Moonstone," Narragansett Times, 12 July 1989.
- (102) Harrington, Mary, "Green Hill lacks town lifeguard," Narragansett Times, 19 July 1989.
- (103) Harrington, Mary, "Rare piping plover count 7 more among their rank," Narragansett Times, September 1989.
- (104) Supra, 93, Harrington, "Council member.."
- (105) Supra, 93, Pike, "Don't let Moonstone..."

## CHAPTER FIVE

### ANALYSIS OF DATA: USER PROFILES AND COASTAL NATIONAL WILDLIFE REFUGES

#### Introduction

Little formal research has been done on clothing optional coastal recreation; therefore it was both difficult and important to determine which information to gather and which to exclude. In order to collect material useful to coastal managers, both managers of coastal national wildlife refuges (NWR) and clothing optional sunbathers (COS) were surveyed (the surveys are included as Appendix 4).

Information collected from NWRs included:

- quantitative and qualitative use by COS;
- local opposition to COS;
- presence of endangered or threatened species on refuge;
- user impacts on refuge;
- total or partial closure of refuge;

Information gathered from the COS included:

- number of years as a COS;
- frequency of beach visits;
- perception regarding changes in site availability;
- distance travelled to participate in COS;
- use of national wildlife refuges (NWR) by COS;
- degree of commitment to preserve beach use;
- preferred term;
- site preference;
- characteristics of an ideal spot;
- level of education;
- level of income;
- occupation;
- gender;

Information regarding participant's age was not collected due to oversight, sexual preference is not included either because it was

deemed a highly personal, sensitive question of little relevance to this particular study.

### User Profiles

#### Methodology

One of the goals of the thesis research was to obtain information about this poorly studied user group, specifically those interested in clothing-optional coastal recreation. In an effort to focus on the users of Moonstone Beach a survey was distributed in the early summer of 1988 via the NENA newsletter the Sun Times. The survey went out to approximately 700 households and 130 were returned for a response rate of 18.6%.

In addition, a nearly identical questionnaire was distributed to non-NENA members--specifically people at Moonstone Beach--on National Nude Day in July 1988. To avoid duplication, these people were asked if they were NENA members. Members were not given a questionnaire because it was assumed they had already had an opportunity to respond via the mail. 150 questionnaires were distributed to non-NENA members and 58 were returned for a response rate of 38.7%.

As evidenced by the relatively high response rates there was great willingness on behalf of these groups to participate in the study. And, although anonymity was requested, most mail respondents included their return address and sometimes invited further queries.

While it was initially thought the two groups would differ little in their responses, a careful comparison revealed interesting differences. Characteristics which highlighted the differences were:

- (average) number of years as a COS;

- (average) frequency of beach visits;
- (average) maximum distances travelled to pursue COS;
- gender;
- preferred term;
- level of education;
- type of occupation;
- degree of commitment (only with respect to donating money).

The differences observed between these two groups are interesting yet there are important characteristics which illustrate their similarities. The similarities are most clearly seen in their degree of commitment to this form of recreation where most of their answers were close, with the important exception of donating money.

The first part of the discussion focuses on data from both groups. The second will center on their differences. Table 3 summarizes the joint data and Table 5 outlines their differences. Table 4 is a list of reasons non-NENA members gave for not belonging to the organization.

#### Compiled Characteristics--NENA and Non-member COS

##### The Typical CO Sunbather

The typical COS is male making more than \$30,000 per year, who resides in Massachusetts, has been practicing COS for 6-10 years, travels 50-100 miles to Moonstone (most frequented site) and spends 90 - 100% of his beach time on a clothing-optional beach. The standard COS has used national wildlife refuges but believes that toilet and shower facilities, along with reasonable parking, are characteristics of an ideal site.

The average COS is of the opinion that there has been a decrease in site availability since 1980. When asked which beaches specifically were no longer available, the beaches of the Cape and at least one

other site were typically listed. Interesting comments were given in response to this question. A sampling follows:

"It is the perception that is important and not specific areas. We must be like thieves to steal c.o. time before rangers, police or the general public approaching may, in turn, report us to the former".

"Sandy Hook, NJ. Plover: fences and signs were put up this spring next to the clothing-optional area. Is the next step to close the clothes-optional area? (Moonstone revisited). For such an endangered bird, the plover seems to populate a number of beaches".

"I think that most areas have decreased due in great part to population increase, building, expansion and increased pressure by law enforcement".

Interesting management conclusions that can be drawn from an analysis of the typical COS. There is a need and desire for recreational opportunities of this kind and people are willing to pay for this and to travel to available sites. COS visit refuges mostly by default, not because they are their first choice. A first choice would include a more developed beach with sanitary and possibly food facilities. Refuges have been used for the most part, because they are available and other places are not, at least not on the East Coast.

TABLE 3

SUMMARY OF JOINT FINDINGS  
 NENA AND NON-NENA CLOTHING OPTIONAL SUNBATHERS

<u>Number of Years as a COS</u>	<u>Percent Respondents (#)</u>
1 - 5	32.8 (61)
6 - 10	39.8 (74)
11 - 20	22.0 (41)
21 - 30	3.3 (6)
31 - 40	1.0 (2)
41 - 50	0.5 (1)
> 50	0.5 (1)
<u>Distances Travelled</u>	<u>Percent Respondents</u>
0 - 49	19.7
50 - 100	43.2
101 - 150	17.5
151 - 200	6.5
> 200	13.1
<u>Proportion of Time on CO Beaches</u>	<u>Percent Respondents</u>
100	29
90 - 99	28
80 - 89	6
< 80	30
<u>State of Residence</u>	<u>Percent Respondents</u>
Massachusetts	47.3
Connecticut	28.7
Rhode Island	10.1
New Hampshire	4.3
New York	2.6
Maine	1.6
Maryland	1.6
Pennsylvania	0.5
other	3.2
<u>Site most frequented</u>	<u>Percent Respondents</u>
Moonstone Beach, RI	75.0
<u>Site availability</u>	<u>Percent Respondents</u>
Has decreased	64.5
Remained the same	16.0
Has increased	5.9
No answer or don't know	13.3

TABLE 3  
(continued)

<u>Use NWR?</u>	<u>Percent Respondents</u>
No	24.5
No--but collected at MB	22.3
Yes	44.1
No answer	5.8

<u>Characteristics of ideal spot</u> (mentioned > 20 times)	<u>Number of Times Cited</u>
Toilet/Shower Facilities	72
Reasonable/Convenient/Free Parking	51
Accessible	30
Clean Beach	28
Privacy from public	26
Refreshment stand/concession	25
Garbage container/collection	24
Beach/oceanside	20

<u>Income Level</u>	<u>Percent Respondents</u>
< than \$20,000	11.2
\$20-\$30,000	26.6
> than \$30,000	58.5
No answer	3.7

Differences Between NENA and Non-member Clothing Optional Sunbathers

Although there were many similarities between NENA members and non-members, there were some interesting differences. These differences and the level of statistical significance are given in Table 5.

On the average, NENA members appear to have been practicing COS longer than non-members (11.7 years versus 7.8). This finding is not surprising as those who have been practicing COS longer are more likely to join an organized group.

NENA members frequent the beach less often than non-members (average 14.5 times/season versus 21.4 times/season). One possible



interpretation is that NENA members participate in other clothing optional activities and that beach recreation is just one of them.

Although non-members visit the beach more frequently, NENA members have travelled longer distances to pursue this form of recreation (an average of 207.7 miles versus 117.6 miles for non-member). This may reflect a preference for fewer, better visits on behalf of the members. Of those who travelled longer distances, several expressed a preference for the well-established Caribbean and European beaches. It is important to point out that the differences between the two groups in this category are not statistically significant.

The non-members had a higher proportion of women (29.3%) than did the NENA group (19.2%). This reflects a pattern common in organized nudist groups which tend to have higher male memberships. At beaches the ratio is usually 3:1, males to females, although the more family-oriented the site, the more evenly distributed the ratio.

After respondents were asked to give their preferred term, they were asked to list what they perceived to be the difference in terms. In general, the term nudist (NUD) still has negative connotations and was selected by few. Naturist (NAT) was selected by those who wished to portray their feelings of unity with nature and Clothing Optional Sunbather (COS) was selected by those who wished to emphasize the optional nature of their activity and in some cases their non-involvement with other forms of nude recreation.

The majority in both groups preferred the term COS. The second choice was also the same for both groups: NAT. A difference is observed between the groups in the second highest choice. Although

NENA members chose COS nearly as often as NAT (37.7 vs. 35.4), non-members chose COS more than twice as often as NAT (48.3 COS vs. 20.7 NAT).

Neither group was enthusiastic about the term Nudist, although it is important to note that NENA members picked it nearly three times more than the non-members (15.4% versus 5.2%).

Finally, another difference in terminology of choice is that NENA members picked ANY only 1.5% of the time, while non-members picked ANY 13.8% of the time. It is possible that organized COS have more knowledge of the difference between terms and thus might care more about terminology. A combination of terms was given approximately 10% of the time by each group.

NENA members had a higher percentage of people who had continued their studies beyond high school, with 76.9% going to college and graduate school vs. 63.8% of the non-members. These findings are not inconsistent with the concept that as people are more educated they are more inclined to join organized groups representing their interests.

The respondents' occupations were categorized into white collar, blue collar, etc. While both groups had a similar representation of white collar workers, NENA members had approximately twice as many professionals. Non-members had more blue collar members but not by much (24.1% vs. 19.2%). Students were equally represented in both groups, and while NENA members had 6.1% retired people, the non-members had none. Interestingly, and likely due to their unwillingness to commit, non-members declined to give an answer 12.1% of the time as compared to NENA's 3.8%.

Respondents were asked which activities they would be willing to participate in to protect clothing optional beaches. Because many people listed more than one activity, rather than list the percentages for each individual combination, total percentages of each are given instead. The activities were: A - Go to public meetings; B - Write to officials; C - Give money to legal funds; D - Carry out acts of civil disobedience; E - Get arrested.

NENA members were more willing to attend public meetings than non-members, although not remarkably so (74.6% vs 60.3%). And, although non-members are not as organized, they were nearly as willing to write to public officials as NENA members were (87.7% vs. 82.7%). Not surprisingly, NENA members were more willing to donate monies to the legal fund than were non-members (93.1% vs. 72.4%). Both groups, however, were almost equally willing to carry out acts of civil disobedience (26.2% and 22.4%); and get arrested (9.2% vs. 8.6%).

In the survey of non-members one question was included to ask why they were not NENA members. Table 4 lists their answers.

TABLE 4

REASONS FOR NOT BELONGING TO NENA

11	no answer	3	just joined (that day)
9	unaware of	3	dislike attention through mail
9	insufficient interest (had not mailed the check, kept losing application etc)	2	don't want to pay fee
6	would be soon	1	too new to activity
5	distance	1	take themselves too seriously
5	no real reason	1	gay, single, not openly welcome
		1	sent money to the legal fund and never got acknowledged
		1	unfriendly to single men

TABLE 5  
DIFFERENCES BETWEEN TWO COS POPULATIONS

<u>Characteristic</u>	<u>NENA MEMBERS</u>	<u>NON MEMBERS</u>	<u>STATISTICAL SIGNIFICANCE (1)</u>
Number of years as COS (avg.)	11.7	7.8	.025
Frequency of visits (avg. number/season)	14.5	21.4	.005
Maximum distance travelled to pursue COS (avg. # mi.)	207.7	117.6	Not significant
	<u>Percentages</u>		$\chi^2$
Gender	No answer	3.5	
	Female	29.3	.05
	Male	<u>67.2</u>	
		100.0	
Preferred term			
	COS	48.3	Not significant
	NAT	20.7	.02
	NUD	5.2	.02
	ANY	13.8	
	OTHER	<u>12.1</u>	
	(combinations)	100.1	
Level of education			
	Beyond High School	63.8	.05
	High School	<u>34.5</u>	
		98.3	
Occupation			
	White collar	46.6	
	Professional	10.3	
	Blue collar	24.1	
	Self employed	5.2	
	Homemaker	-	
	Student	1.7	
	Retired	-	
	No answer	<u>12.1</u>	
		99.1	
Level of dedication			
	Public meetings	60.3	
	Write to officials	82.7	
	Donate money	72.4	
	Civil disobedience	22.4	
	Get arrested	8.6	

## Coastal National Wildlife Refuges

### Methodology

One of the goals of this study was to collect information regarding the clothing optional use of coastal national wildlife refuges. Working in collaboration with the Region 5 FWS officials in Boston, a survey was devised and mailed to eight coastal refuges (2). Seven were returned for a response rate of 87.5%. Tables 6 and 7 summarize the data. The information provided and the high response rate allowed for some important observations to be made.

The goals of the survey were several, but principally it was to collect information on some of the many questions posed earlier in this thesis. Managers were asked, for example, whether there had been use of the refuge by COS, and if so, whether there had been an increase in recent years. Second, whether there had been local opposition to the COS and whether or not an ordinance had been passed to ban it. Third, the managers were asked regarding the presence of endangered or threatened species on the refuges and whether or not the COS use (if any) has had impacts on the refuge. Finally, information was sought regarding partial or complete closure of the refuge for the purposes of protecting species during critical points in their life cycle.

The names and locations of these nine national wildlife refuges are: Truston Pond, RI; Edwin B. Forsythe, NJ; Parker River, MA; Back Bay, VA; Wertheim, NY; E.Shore of Virginia, VA; Chincoteague, VA; and Prime Hook, DE.

TABLE 6

SUMMARY OF REFUGE PROFILES  
Part 1

Refuge Name	Approx.# Users (annual)	CO Use	Measurable Increase	Impact on refuge (see below)
Trustom Pond	116,000	yes	yes	yes
Parker River	400,000	yes	slight	yes
Wertheim	138,000	yes	unknown	n/a
E.B. Forsythe	240,000	occasional	no *	n/a
Back Bay	139,000	yes	yes	yes
E. Shore VA	3,000	no	n/a	n/a
Chincoteague	1,500,000	yes	yes	yes
Prime Hook	---	---	---	---

no \* "Nudist occurs on such a sporadic basis that it would be difficult to determine. About 7 years ago there was a publication listing areas for nudists and a slight increase was noted for the following couple of years."

Impacts on refuges included:

competition for the same resource, controversy, increased law enforcement, trespass into dunes, increased disturbance to wildlife and habitat, dune and dike erosion, and litter.

TABLE 7

SUMMARY OF REFUGE PROFILES  
Part 2

Refuge Name	Local oppos. to COS	ordin. passed	Endangered or threatened Species	Portion of refuge closed to whom
Trustom Pond	yes	yes *	yes--Pp	Y/P/S/A
Parker River	yes	yes	yes--Pp	Y/P/S/A
Wertheim	no	no	yes--Pp	Y/P/S/A
Forsythe	grlly unawr	n/a	yes--Pp	yes **
Back Bay	individuals	yes	yes--Pp	yes ***
E. Shore VA	n/a	n/a	yes--Pp	Y/P/S/A
Chincoteague	yes	yes	yes--Pp	Y/P/S/A
Prime Hook	---	---	---	---

---

yes\* Anti-nudity ban on Town-leased portion of beach only  
Y/P/S/A Yes/Portion/Seasonal/All  
yes\*\* some closed to hunting and/or trapping, dunes closed to all  
yes\*\*\* non-wildlife uses are banned year round such as swimming, sunbathing and kite flying; seasonal closures apply to pets and deer hunting

## Findings--Coastal National Wildlife Refuges

### Incidence of CO Use and Increase in Use

Of the seven responding NWRs, five, or 71% have been used by COS. (One manager indicated that the COS was uncommon and thus it was counted as a no). Of the 71% which saw COS use, four, or 80% have observed a measurable increase in COS use since 1980. Of the other two, one noted a slight increase and the other was not known.

Because of the high percentage of NWRs which have seen use by COS (71), it is considered that a significant portion have been used--at one point by COS. It should be noted that some NWRs are no longer used for this form of recreation, either because of a local ordinance or because all non-wildlife related use has been limited. Data supporting this claim is presented below. It was not possible to gather sufficient data to assess whether the increase in incidence of COS activity was related to the perceived decline in available sites.

### Impact on the Refuge

Eighty percent of the refuges (4) which had been used by COS noted that there had been an impact on the refuge. Specific impacts listed included: 1) competition for the same resource, 2) trespass into dunes, 3) increased disturbance to wildlife and habitat, 4) dune and dike erosion, 5) controversy, 6) increased law enforcement, and 7) litter.

### Local Opposition to COS and Passage of Local Anti-nudity Bans

Of the refuges which had been used by COS, 60% (3) noted there had been local opposition to it. Of those used for COS, 80% (4) were able to ban nudity by means of either an anti-nudity ordinance (not federal)

or other measure which effectively banned nudity on all or part of the refuge. (This latter distinction is made for Moonstone Beach in which case an ordinance has not been passed, but the Town portion of the Refuge is off limits to nude bathing.)

In effect, only one (Wertheim NWR, NY) of the five refuges which had been used by COS has not seen an anti-nudity ordinance develop. The remainder have seen various types of restrictions on nudity and in most cases these restrictions are in addition to bans on beach recreation of any kind. It is not possible to tell from the information available, whether the local bans preceded the implementation of refuge closures.

#### Presence of Endangered or Threatened Species on the Refuge

All of the responding refuges (7) had at least one species on the refuge which was either endangered or threatened. Five of the seven had more than two listed species. One had two species and the seventh had one species. All seven responding refuges were used by the threatened piping plover (Charadrius melodus). Other threatened or endangered species included: osprey, least tern, peregrine falcon, loggerhead sea turtle, brown pelican and the Delmarva peninsula fox squirrel.

#### Complete or Partial Refuge Closure

All refuges which responded had implemented closures of different kinds to protect the listed species. The closures were not specifically for COS bathers, but for non-wildlife related recreational activities including: swimming, sunbathing, and kite flying. Other



activities that were restricted, either seasonally or year round included: unleashed pets, ORV (off road recreational vehicles), and hunting.

ENDNOTES FOR CHAPTER FIVE

- (1) To get an idea of whether the differences between these two COS populations were larger than the differences within each individual group, some basic statistical analyses were run. Levels of significance were sought for those categories which were tested (first three on Table 5). Regression was used to analyze whether membership (independent variable) influenced the answers given for the categories tested (dependent variable). In categories where a frequency was given rather than an average,  $X^2$  was used to test whether or not the frequencies which were observed were significantly different than those which were expected. In this case, the expected would be for both groups to be the same in their levels of frequency. The  $X^2$  indicates whether the actual frequency is significantly different from the expected one, and at what level. Notations given as NS indicate that the differences between the two populations for these variables were not statistically significant.  
In the case of preferred term and level of education, only 2 X 2  $X^2$  contingency tests were run. With the term, the categories COS, NAT, and NUD were run against the total of all others. In the case of level of education, the breakdown was between education at a high school level and that which went beyond.
- (2) Initially the goal was to mail a questionnaire to each and every Atlantic Coast NWR. However, the Region 5 Office of the FWS encouraged that we write to the eight chosen and were discouraging of trying to survey any others. This may have been because they did not provide habitat for the plover, or possibly because nude bathing had been observed at those refuges as well.

## CHAPTER SIX

### POLITICAL AND ECONOMIC ASPECTS OF THE CONFLICT OF USE AT MOONSTONE BEACH

#### Introduction

The politics of Moonstone Beach are complex, fascinating and impossible to describe without offending at least a few in the process. The issues and conflicts are many and complex as each group has its own set of politico-economic concerns.

What is involved at Moonstone Beach, in the simplest of terms, is a unique user group sincere in its pursuit of coastal recreation, a reluctant provider, and a municipality wishing to get the best of all possible worlds.

A recurrent question is that of the legitimacy of clothing optional coastal recreation. Although there are many who actively participate in this activity, many more still view it as socially taboo, or at the very least inappropriate.

This chapter profiles the political and economic aspects issues involved. The main actors are: the FWS, NENA, and TSK. Other actors and associated issues are: the TAMB, and State Federal relations (through the Assistant U.S. Attorney, the State Attorney General's Office and the CRMC).

#### Clothing-Optional Recreation as a Legitimate Form of Coastal Recreation

Inevitably one of the first questions that arises is whether nude bathing is a legitimate form of coastal recreation. Whether or not policy makers wish to condone this activity, participants such as NENA,

The Naturist Society, the American Sunbathing Association and others, are legitimizing it by advocating clothing optional beaches whenever they can, wherever they can. The sooner coastal managers prepare for what was once a novelty on the beaches of Europe, the better off they will be when faced with the demand themselves.

Signs of its gradual acceptance in the United States include areas, notably Florida, where the private sector is beginning to meet the demand for topless bathing. European--particularly Scandinavians--and Brazilians visit Florida during their winter seeking as complete a tan as possible (1). While the topless rather than nude option is what is currently being accommodated, in the 1970s topless bathing used to be the rage in Europe and is now generally accepted. The phenomenon in this country is now being referred to as the "European option".

Many people are spending money for vacations to foreign beaches to pursue the all-over tan. In response many Caribbean islands and others with secluded beaches in warmer climates are accommodating these sun-seekers and their wallets, as well (2).

#### The New England Naturist Association, Inc.

NENA is the most vulnerable group in this case study, yet for nearly nine years it has been actively involved in maintaining the clothing-optional tradition at Moonstone Beach. Ever since its formation in the fall of 1981, the organization has been working toward this end. And while its approach has evolved and intensified from quiet diplomacy to litigation, the NENA organization is still quite open to compromise, and will likely drop its current suit against the FWS.

As a user group that is actively involved in trying to formalize its existence, NENA's stakes are highest. It stands to lose the most if it cannot use the beach and may also gain the most if a viable compromise is attained. Despite recent litigation and protests, the group has always been the most flexible and most willing to compromise. These traits and its willingness to assist the FWS and respect the TSK borders appear to have been a politically wise policy. In addition to helping the group's public image, it has helped in terms of gaining respect by supporting the goals of local residents.

#### Displaced by the piping plover

Between 1985-1989 NENA's newsletter the Sun Times documented a long period of tension, struggle, hope, patience, compromise, litigation, and finally, exasperation. Given the fact that there are several other Atlantic coast beaches used by COS which have also been closed--usually to protect the piping plover--NENA has no problem believing there might be an overall FWS plan to end nude bathing on all FWS beaches. While this is difficult to prove, it is likely that eliminating nude bathing has been a welcome side effect of protecting the piping plover. This issue will be discussed in greater detail below.

At this point, the problem is that NENA believes the FWS is not interested in working with them at all. In all likelihood NENA is right. This is probably why the organization has chosen to pursue litigation, planned protests and civil disobedience for the spring of 1990 (3). Quite simply the group is discouraged and feels that it has exhausted the options, although this may not necessarily be so.

exhausted the options, although this may not necessarily be so. However, the FWS refuses to negotiate with those who are suing (4).

#### The United States Fish and Wildlife Service (FWS)

As stated above, the mission of national wildlife refuges is to protect wildlife first, and to provide for public recreation only when the forms of recreation are seen as compatible with the primary mission of the refuge. Unlike some other federally managed lands, recreation is not the primary purpose of the national wildlife refuge system; nonetheless, many refuges have served this function as well.

While the FWS is one of the most dominant actors at Moonstone Beach, it also lacks jurisdiction over important areas surrounding the refuge. This lack of control has had an indelible effect on the way TPNWR is managed and on how its politics are carried out.

Few refuges are managed exclusively for wildlife and TPNWR is no exception. In this case it is because the FWS: [1] has tried to accommodate local concerns; and [2] it lacks control in areas of critical importance. Some specific examples of how the FWS lacks jurisdiction at Moonstone Beach follow:

- It does not own the entire beachfront area--some is privately owned and some is owned by the Town of South Kingstown;
- it lack jurisdiction over the parking lot used at Moonstone Beach, it is owned by the Meyer family who leases it to the Town;
- the federal government lacks authority to close or restrict passage along the intertidal below their property line, in RI the MHW line. The area is under the jurisdiction of RI State.

These limits of authority have restricted the control FWS has in determining the uses to allow at Moonstone Beach. The FWS legally cannot limit access to the beach without the agreement of the CRMC

representing Rhode Island; they cannot control the number of cars that are parked at the lot without the concurrence of the Town of South Kingstown; nor can they close off the beach below the MHW. Given these factors it is not surprising the FWS has sought to control recreational use of this popular beach in any way possible.

#### Banning nudity

Although the FWS was confident at first that they would be able to ban nude bathing, they have so far (Spring, 1990) been unable to do so. With the exception of the regulation at Cape Cod National Seashore, there is no federal law banning nudity. Applicable bans on nudity would have to be drafted by the state or the local governments. Once passed the FWS, in their constabulary role, would be obliged to enforce any such ban.

However, every time it has been proposed, South Kingstown has never passed a local anti-nudity ban, although nudity is prohibited on their section of the beach and the buffer zones. There appear to be several reasons why local ordinances have not been pursued which can be summarized under two headings: political and economic.

To begin with it is questionable whether an ordinance would be upheld (5), because it is not known whether the courts would find that nude bathing at Moonstone constitutes lewd behavior; some courts have ruled that being nude on a beach does not constitute lewd behavior (6). Presently, the only way nudity can be cited is under disorderly conduct ordinances (7).

### Struggle for control

Given the relative lack of control over the recreational use of the beach, the FWS has exerted control by any means possible. In the case of Moonstone this has been accomplished by building a fence at the property boundary line during the bird's nesting season which also coincides with the time of peak recreational use. The fence has excluded clothed as well as nude individuals. Although habitat protection has been cited as justification for building the fence, it is likely that the FWS also tried to increase their control while skirting the issue of clothing optional coastal recreation.

### Nude versus clothed bathers

During the early history of Moonstone Beach when the AS transferred the property to the FWS, one of the goals was to put an end to the nude bathing (8). This proved difficult to do however, because Moonstone had a well-established tradition of nude bathing and because there was never enough local support to ban it.

In addition, it appears that the FWS cited the overall increase in use as the overriding problem hindering wildlife management and that this was a more politically savvy approach to take. Banning nude bathers specifically could get legally difficult if not impossible and banning all use made more sense. Therefore, the agency put out the message that overuse by all bathers was the real problem, not nude bathers specifically.

The listing of the piping plover on the endangered species list may have further supported or enhanced the FWS' aim. This single act provided FWS with an excellent opportunity to limit all uses of the



Beach. Although all users have been displaced, the fence has had the biggest impact on nude bathers and has nearly eliminated them; this might represent a side effect welcomed by the FWS. Quite simply, the agency has appeared reluctant to provide for clothing optional recreation.

It is important to emphasize this last point within the context of interagency politics. The FWS is reluctant to set any precedents which in effect would result in it being the federal agency to condone this form of recreation. The National Park Service is the primary federal agency charged with recreation as its primary mission (9), yet it has successfully banned nudity at Cape Cod National Seashore. It is ironic that the NPS has chosen to ban nude bathing outright (to protect the dunes, presumably), while the FWS--if their goal was to ban nude bathing--resorted to indirect means to do so.

#### Closing the intertidal below the MHW line

Although the FWS would like to close all access to the beach during the nesting season of the piping plover, it is not likely to be able to do so.

There are several reasons why it is unlikely Moonstone will be closed below the MHW line. First, the Town has jurisdiction on Moonstone Beach Road and over the right of way (ROW) at the end of the road; and as long as TSK is unwilling to cede that authority, it will be difficult for FWS to completely restrict access. Second, the Town has repeatedly asserted that no matter how much additional space would be granted by FWS under a Special Use Permit, it would continue to

operate the town beach on its right of way and to lease the parking lot from the Meyer family.

Third, and most important, the intertidal zone is under State jurisdiction; it doubtful that any plan to limit access to the shoreline would be supported by the State.

The RI State Constitution includes a provision for the public's right to the shore (10) and a case decided in 1941 (11) further defined the rights to include passage along the shore as one of the privileges granted the public; other activities cited included: fishing from shore, taking seaweed from the shore; leaving the shore to bathe in the sea. The residents of the Ocean State not only cherish their shoreline access, they think highly of politicians who protect it, one need only reflect on the case of Black Point to support this.

An important point should be made with regard to the status of the constitutionally-protected right of shoreline access. As a provision of the constitution, it is less subject to invalidation under the Eleventh Amendment (Federal Supremacy) than if it were a state statute. The issue would be such a contentious one that it is doubtful that many politicians would be willing to become involved in such a conflict (12).

#### Incentives to Accommodate Moonstone's Users

It is important to assess what the FWS stands to gain by accommodating the users of Moonstone Beach. Aside from winning the support of TSK, NENA and TAMB, the FWS would be in a much better position to educate people about the wildlife on the refuge and to recruit assistance to keep the beach clean, keep people out of the

dunes, etc. Yet, unless detailed plans for cost-sharing are drawn up, providing for public recreation on the beach represents a cost to the FWS. First, they must provide additional staff to patrol the area, and second, there may be an environmental liability in terms of the cost to the wildlife if the recreational use makes the area less suitable for wildlife. Although the latter is less readily quantified, if proven, it could be considered a cost as well.

The challenge to manage refuges becomes more difficult with every budget cut and with the increasing demands for outdoor recreation. The politics discussed here should illustrate the reluctance of the FWS to accommodate recreation at Moonstone. Specific recommendations will be presented in the final chapter.

#### Town of South Kingstown

The town is one of the most interesting actors in this case study. It has displayed the most different and at times inconsistent views of the beach. In the 1950s TSK wanted little to do with Moonstone, yet, over the years as the beach's popularity and potential to generate revenue increased, so has its importance to the town. Once persuaded by the AS to manage a portion of the beach, the popularity of the beach has increased among regular and COS users alike.

As the Town's policies toward the beach evolved they established, and subsequently increased parking fees, and enlarged the parking lot, resulting in significant increased revenues. Although TSK now has another Town beach (South Kingstown Town Beach at Maturuck) Moonstone's beauty, popularity and generation of income have been difficult to give up.

## Relations with NENA

South Kingstown, although never very supportive of NENA and its goals, has developed a cordial relationship with the organization. When the town seeks the occasional meeting to negotiate with NENA, it is usually over concern regarding the buffer zones.

The town has not had problems with the group per se but with the nude bathers (not necessarily NENA members) that choose to ignore common courtesy rules agreed on by TSK and NENA (13). One of these rules, for example, is the observation of the buffer zones and covering oneself when walking on the town beach.

Town residents on occasion become irate when nude bathers dress scantily while crossing the town beach, and or undressing immediately upon reaching the limit of the buffer zones (14). It is this kind of behavior which discourages TSK from actively seeking to accommodate the nude bathers. If the town were to secure a small area for clothing optional recreation on its town beach, the motion would go far with groups such as NENA, and the latter would likely assist in eliminating those who did not observe the rules and common courtesy etiquette. Moreover, the town could almost guarantee a specific amount of income this way.

The proposal that the town set aside a small parcel of space for nude bathers is not totally unfounded. In 1983 the FWS offered the town an opportunity to manage 1400' feet of beach, yet, TSK declined because it feared there would be nudists on a portion of the beach. Rather than seek a compromise with the nude bathers for specific zones

on the town-managed beach, TSK chose instead to have a smaller area available, with bigger buffers between themselves and the nude bathers.

#### Cautious Politics

Although the town has much control in the area with jurisdiction over the access road, the parking lot and the 50' right of way, it still relies on the FWS to be able to operate a reasonable town beach at Moonstone. It appears that TSK prefers to maintain the status quo as long as some beach space is available to operate the parking lot, and thus justify its expenses. Although it is unlikely FWS would deny the town a Special Use Permit if they allowed nude bathers, TSK has not taken any chances; it carefully manages its relations with NENA. In addition, the town has kept a low profile with regard to nude bathing because although residents have tolerated the nude beach, they would be likely to object to plans that appeared to displace them.

By not taking sides with the NENA, the town has been able to play it safe and not jeopardize its relations with the FWS and its residents.

#### Resistance to Passing Anti-Nudity Ordinances

Another example of how TSK has remained neutral with regard to nude bathers is its stance toward a potential anti-nudity ordinance. On the several occasions when such an ordinance was proposed, the town has repeatedly resisted passing one, probably because many residents have spoken out against such an ordinance and as indicated above because it is questionable whether such a ban could be enforced.

More likely TSK has studied the situation carefully and has determined that there is no real need to pass any ordinance as long as NENA and others respect their part of the beach. In addition, if such a measure were passed the number of non residents willing to come to the beach and pay \$20 per day for parking would promptly decline. Few people would drive the distances they currently do for the sole privilege of sunning with local residents—while fully dressed.

For the most part, it appears that the town has wanted to get the best of all possible worlds when it comes to the beach and its clothing optional users. First, TSK appreciates the revenues the beach generates due to its popularity, yet it has repeatedly avoided any attempt to allocate even the smallest portion of their section to these users. Second, although the town values the revenues generated, it does not actively work to find a designated area; and third there is the reluctance to pass any potentially harmful and unpopular nudity ban.

#### Tensions with FWS

Strains in relations between the town and the FWS are infrequent but when they do occur they are intense. Every year the town seeks use of additional beach space at Moonstone by requesting a Special Use Permit from the FWS. On those occasions when the FWS has proposed to eliminate all beach use or otherwise restrict TSK's area, the town has had vocal, swift and forceful responses. On more than one occasion, TSK has complained to State Representatives regarding what they consider unjust treatment by the federal government. This has commonly concerned public access to the shoreline.

Because the town will continue to operate a (profitable) beach—no matter how small—at Moonstone, it is to the advantage of FWS to renew the Special Use Permit (SUP) with TSK and, if necessary, review the terms of such. In the past the terms of the agreement were that the town would provide sanitary facilities and garbage removal services. These are things that have benefitted FWS as well. At some point, the FWS might deem that increased garbage collection and sanitary facilities are needed.

The Taxpayers for Access to Moonstone Beach (TAMB)

The political issues for the Taxpayers for Access to Moonstone Beach (TAMB) are to protest the actions of the FWS and the narrow attention given to the conflicts at Moonstone Beach. It is TAMB's contention that too much media attention centers on the birds and nude bathers. They were also concerned that coastal private property owners might follow the example of the FWS by closing off access to the beaches adjacent to their property.

TAMB has played an important part in questioning the FWS plan to close the intertidal. By the end of 1988 more than 1500 signatures had been collected by the group to support the State Attorney General's letter. These letters were sent to state and local officials. Because of the widespread attention the case has received it is not likely any proposal to close the intertidal would succeed without loud public outcry, mostly due to the large publicity that this group generated.

Recently, during a telephone conversation with one of TAMB's founders it was learned that the State Attorney's Office had advised the organization not to associate themselves with the nude bathers

because of the controversy associated with the CO users. One can only speculate how much political pressure could have been brought to bear had these two groups forged an alliance (15).

#### State—Federal Relations in the Coastal Zone

In addition to the actors and issues mentioned previously, there are state-federal questions that come into play. These are dictated for the most part, by the 1972 Coastal Zone Management Act (16). Under the CZMA, states are given three incentives to develop their own coastal management programs, these are:

- financial assistance;
- technical support; and
- assurance that federal activities directly affecting the coastal zone will be consistent with the (federally approved) coastal management programs.

The last is known as the consistency clause, and while in theory it has been laudable, in practice it has been elusive. Specifically the statute reads:

"Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs (17)".

Difficulty in enforcing the clause is due, in part, to the use of the vague term "directly affecting"; there is much room for interpretation regarding what constitutes a direct effect. In addition, the ruling of the U.S. Supreme Court on this matter (18) was relatively narrow and left many questioning what actions could qualify as directly affecting the coastal zone.



Another reason the consistency clause has posed problems is because the CZMA provides for the exclusion of lands from the coastal zone. The statute reads:

"...Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents (19)."

This exclusion has further eroded the applicability of the clause to federal activities in the zone.

#### State—Federal Relations Pertaining to Moonstone Beach

The Moonstone Beach case study raises questions which highlight the interplay between federal and state agencies in coastal management. Specifically, it illustrates difficulties in the management of this zone. In the best of times federal-state coastal zone relations are strained. In this case the situation is further complicated because the federal Endangered Species Act (20) and the use by the public of an ecologically-sensitive area are also involved. Problems specific to this case are:

- location--was the fence on federal or state land; i.e. at or below the MHW line;
- procedure--was the establishment of the fence done according to the procedures of the RI CRMP; i.e. was the federally built fence consistent with the Rhode Island CMP;
- directly affecting--was the fence directly affecting the coastal zone;
- exclusion--is the land in question, by virtue of it being a federal enclave in the coastal zone, excluded from the need to file a consistency determination with the Rhode Island CRMC;
- closing the intertidal--is the Federal government (FWS) likely to succeed in its pursuit to close the intertidal zone.

Other details to consider are:

- the definition of the coastal zone;
- the difficulty in determining the location of the MHW mark for jurisdictional purposes.

An issue which has been brought up in the courts and whose importance will continue to increase as more coastal boundary cases are heard, is determination of the exact boundary lines. The case used to determine how boundaries are set is Borax Consolidated Ltd. v. City of Los Angeles (1935) (21). The ruling, however, relies on a formula excluding both spring and neap tides, and makes the procedure so cumbersome it becomes virtually useless. This is because Borax calls for determination of the MHW based on an average the high tide marks over an 18.6 year period, a time frame far too lengthy for effective resolution of many future coastal boundary disputes.

Position of the Federal and State Governments regarding Moonstone

During the fall of 1989 the CRMC, the State Attorney General's Office and the Assistant U.S. Attorney were contacted to determine the status of the case. The positions taken by the different units are somewhat predictable and are given here.

#### The Federal Government

Little has changed since the U.S. District Court Judge Ernest Torres entered judgement for the United States in August of 1988. From a review of the ruling and from a conversation with Assistant U.S. Attorney Everett Sammartino the following summarize the position of the federal government (22):

- the fence is on federal land;
- because it is a federal property, the refuge is exempt from the consistency clause and from the need to file a consistency determination with the CFMC;
- the fence does not directly affect the coastal zone;
- the federal government is not likely to request an agreement from Rhode Island to restrict access to the intertidal, to State lands.

Regarding the last point, Mr. Sammartino noted it was a big problem so politically sensitive, it would probably not be pursued. As was briefly mentioned earlier, the provision for access is part of the Rhode Island Constitution and not a statute enacted by the legislature; as such it is legally much stronger. Although the conflict lies between the federal Endangered Species Act (23) and the RI State Constitution the latter prevails. If on the other hand, this was a conflict between a federal and state statute, under the federal supremacy clause of the 11th Amendment, the federal government would likely prevail (24).

#### The State Government

The State Attorney General's Office, notwithstanding the location of the fence would like to see all users be accommodated. They do not see the conflict as a zero sum game.

In June of 1989 an exploratory meeting was called by Attorney Michael Rubin of the State Attorney General's Office. Present at the meeting were the Assistant U.S. Attorney, NENA, and Attorney Rubin. A suggestion was proposed by the State for the FWS to reconsider the location of the fence (25). The action was similar to a strategy considered by the FWS (26) and involved snaking the fence along the

beach in an effort to create artificial blow-outs, popular at other piping plover sites. Such a structure, asserted Rubin, could be below the MHW (on State property) in some places and be above the MHW (federal property line) in others.

Although Atty. Sammartino told Atty. Rubin that he would get back to him on this suggestion, Rubin had not heard from him in November (1989), nearly six months later. Attorney Sammartino confirmed that the federal government was not going to accept such a proposal and Mr. Rubin stated that because he had not heard from the Assistant U.S. Attorney he had assumed the proposal had been rejected (27).

Currently the State Attorney General's Office is waiting for an answer from the U.S. Attorney regarding the exploratory meeting proposal. Much of what happens now will depend on the amount of time people have to dedicate to something like this and on how successful they could be. In other words, the issue does not appear to be a priority issue.

#### The Coastal Resources Management Council

The CRMC believes that the fence is on federal property. As to whether the fence is directly affecting the coastal zone the FWS staff spoke with CRMC staff and agreed to file a petition with the CRMC justifying the fence and explaining how it was consistent with the state CMP. However, by the fall of 1989, no petition had been filed with the CRMC nor had they heard from the FWS (28).

Whether or not CRMC takes further action remains to be seen. Had there been less controversy surrounding the case the CRMC may have been more actively involved. There may also be elements of defeatism when

dealing with the federal government and notwithstanding the State Attorney General and the TAMB, there is surely reluctance to being portrayed as lobbying for NENA.

Finally, although unlikely, if the FWS filed a consistency determination for the fence the CRMC would be likely approve its presence because it would be seen as being directly related to conservation (29).

#### Economic Considerations

As in most issues there are economic components as well. NENA has maintained that beach closure will have a big effect on the economy of the region and should be studied further; TSK has been spending and earning money at the beach for years; and the FWS claims that the closure will not have a significant impact on the economy.

There have been three efforts to assess the relative importance of the beach to the area's economy (30). Two of the surveys were carried out by NENA and the other was an estimate on behalf of the FWS.

Another, more comprehensive study conducted by researchers at URI (31) showed that tourism was the third largest industry in Rhode Island and the largest in terms of numbers of consumers. In 1987 more than 1 billion dollars were generated by tourism in Rhode Island and the share of South County sales, wages and taxes totalled more than \$57 million (32).

#### Tourism and Moonstone

The Travel Tourism and Recreation (TTR) South County study showed that South Kingstown ranked second in South County travel and that in

1986 the town contributed approximately \$30 million dollars to South County total sales of \$150 million (33). The findings emphasized the importance of tourism to the regional economy and helped dismiss any notion that tourist dollars could be taken for granted. When asked what impact the closure of Moonstone Beach would have on local revenues, Professor Tyrrell at URI noted that it would depend on what people did as a substitute and who might substitute for discouraged COS.

A misconception is that the numbers given in the report do not include day trippers, seasonal boat owners, campers, boaters, those visiting friends or relatives, and those passing through. The study did include an estimate for these, but their numbers were not itemized. In other words, their influence is taken into account, but their specific contribution is not detailed. More detailed studies are needed to get a complete assessment of the economic picture of the region (34).

#### Fish and Wildlife Service Estimates and NENA Studies

In their 1988 Environmental Assessment the FWS cited approximate estimates made of the economic impact of closing the beach. A decrease of 170,000 visits was estimated and it was hypothesized that half of those were from out-of-state and spent an average of \$25.00 per person per day. On the basis of this their estimate of losses to the area in gross tourist revenues were approximately \$2.1 million dollars (35) or 1.4% of the 1986 total sales of \$150 million. The amount of money lost from the other, local, visitors was not included in their calculations.

This is presumably because FWS felt those visiting within the state would stay within the region.

NENA disagreed with the FWS numbers in particular with the amount of money FWS said people were spending. Based on the NENA-conducted study in July of 1986, 254 people were estimated to spend an average of \$43.16 per day. The second NENA study was conducted in the spring of 1988 after the FWS Environmental Assessment figures were announced. That study estimated that an average of \$41.64 per visit was spent by the 206 respondents who participated in the study. The latter study included both day and overnight visitors.

The major goal of the second NENA study was to show that the numbers used by the FWS--both for out of state visitors and for average expenses--were low. To this end the second study based its estimates on the number of reduced visits cited by the FWS (170,000) and used their estimate of the average cost per visit of \$41.64. This estimate totalled \$7.0 million--4.9 million dollars more than the FWS projected figure (36), or 4.7% of the 1986 total South County sales.

Realistically speaking the actual figure may lie somewhere between the numbers cited by NENA and the FWS. Much of what the overall, final impact of closing the beach depends on whether or not the individuals using the beach are likely to continue to visit the area and frequent other South County beaches, such as Maturuck, or whether other tourists would replace them.

#### Financial Aspects for South Kingstown

Currently the town operates a lucrative parking lot at Moonstone Beach. This arrangement is by lease agreement with the owners of the

lot, the Meyer family, who have agreed to let the town use it—for no fee—as long as the town can provide for its maintenance. This is the single, most important, most direct financial benefit to the town.

It is important to point out that the town incurs expenses including lifeguards, trash collection, maintenance of the portable sanitary facilities, fencing, paving and other parking lot maintenance, car towing, public safety, highway, and entrance gate personnel (37).

It was difficult to assess the direct benefits and costs of Moonstone Beach, specifically. The town financial records are not kept separately for Moonstone, instead it is included in the aquatics fund. This fund includes revenues and costs for several other local aquatics programs including a URI summer program, and now the new Town beach at Matunuck. Average costs for maintenance are about \$30,000 annually (38). Table 8 shows a partial listing of beach fees and parking revenues at Moonstone.

The information used for Table 8 was compiled from reports in the local newspapers describing the increases in beach fees and the reported revenues for Moonstone. Data was not available for all years, yet the revenues derived from Moonstone appear to rise. These figures show that there has been much income generated at the beach, income which may be lost if there is little to no area left on which to accommodate Moonstone's users.



TABLE 8

PARTIAL LISTING OF  
BEACH FEES AND PARKING REVENUES AT MOONSTONE

<u>Year</u>	<u>Resident fee</u>	<u>Non-resident fee</u>	<u>Revenues</u>
1977	0	\$2 weekdays \$3 weekends/holidays (39)	
1982	0	\$3 weekdays \$4 weekends/holidays (40)	
1982	\$1	same as above (41)	
1985	\$3	\$5 weekdays \$7.50 weekends/holidays (42)	\$50,000 (43)
1986	\$7	\$15 weekdays \$20 weekends/holidays (45)	\$58,562 (44)
1987	\$10	\$20 per day \$10 per 1/2 day (46)	\$75,000 (47)
1988	\$15 \$1 *	same as above (48)	

\* Beach passes were initially proposed at \$15 each for Moonstone and the new beach at Matunuck, but the town changed its policy and decided to offer the second one for an additional dollar.

FWS Financial Considerations

There is little direct economic incentive for the FWS to provide beach recreation. One of the biggest incentives to renewing the Special Use Permit has undoubtedly been the agreement that the Town provide portable sanitary facilities and trash removal services among others.

Operating a public recreation beach at Moonstone represents a cost to the FWS in the form of increased personnel to patrol the beach. There is also the cost to the wildlife if the activity represents a hindrance to it. Operating costs could be defrayed by the

implementation of user fees although this would require an attendant at an entrance gate. More likely, reactivation of a group like the NENA patrol would enable FWS to sustain the budget cutbacks as the NENA could assist in beach clean ups, patrolling the beach to keep people out of the dunes, and in putting up snow fences to protect the dunes.

The final chapter provides a discussion on the compatibility of coastal recreation with wildlife management. In addition, specific recommendations for coastal managers, FWS, TSK and NENA will be offered.

## ENDNOTES FOR CHAPTER SIX

- (1) Jordana Schuner, Miami Florida Chamber of Commerce, personal communication, 11-15-89; and Suzanne Frish, Palms Hotel, Surfside, FL, personal communication, 11-15-89, regarding a coed topless deck on their premises. It appears that although use is still somewhat tacit (no advertising), hotels such as the Fountainbleu with its large grounds are popular for topless bathing and tolerate it on the beach. When entering the pool area, however, one is asked to "dress".
- (2) Newsletters for NENA and other groups advertise travel agencies which plan for tropical vacations and trips to France.
- (3) See note (100) in Chapter Four, which excerpts a letter in the August/September 1989, vol. 59, edition of the Sun Times.
- (4) During conversations with Jim Kurth, the newest refuge manager, he mentioned that FWS attorneys have advised them not to speak with NENA, "We don't talk with people who are suing us."
- (5) Attorney Robert Gates who acts as Town Solicitor, notes that several years ago, when first considering an anti-nudity ordinance it was found that, particularly in California, being nude was found to not be lewd. Although he could not name specific cases, it was his general impression that the avenues being proposed then were not viable options. In his impression, the State law can suffice, though it does require a complaint and allegations of lewd and lascivious behavior. Personal communication, fall 1989, winter 1990.
- (6) The California State Supreme Court ruled in 1972 that being nude on a beach does not necessarily constitute lewd behavior.
- (7) Under the Crimes Assimilative Act, the federal government can adopt state law as its own when they have jurisdiction over land in that state. Under RI General Laws (11-45-1) listed under disorderly conduct is the following law:  
"A person commits disorderly conduct if he intentionally, knowingly, or recklessly.....(g) exposes his or her genitals to the view of others under circumstances in which his or her conduct is likely to cause affront, distress or alarm to such other person".
- (8) NENA co founders Michelle Handler and Joe DiPippo stated on numerous occasions that the FWS in those days would routinely drive by and tell them to "enjoy it while you can..."
- (9) President Woodrow Wilson established the National Park Service on August 25, 1916 and proclaimed: "..The Service thus established shall promote and regulate the use of federal areas known as national parks, monuments and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic 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." The organic act for the establishment of Yellowstone—the first National Park—was the Yellowstone Act signed on March 1, 1872 by President Ulyses S. Grant. It reads in part: "...is hereby reserved and withdrawn from settlement, occupancy or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people...." Finally, the 1988-1989 edition of The Government Manual reads under its description of the National Park Service: "...administers for the American people an extensive system of national parks, monuments, historical sites and recreation areas. The objectives of the National Park Service are to administer the properties under its jurisdiction for the enjoyment and education of our citizens, to protect the natural environment of the areas, and to assist states, local governments, and citizen groups in the development of park areas, the protection of the natural environment; and the preservation of historical properties." (p. 346).

- (10) Article 1, Section 17.
- (11) *Jackvony v. Powel*, 67 RI 218, 21 A2d 554 (1941).
- (12) November 1, 1989, personal communication with Assistant U.S. Attorney Everett Sammartino, Atty. Mike Rubin of the State Attorney General's Office and Tim Dillingham of the RI CRMC to get an update on the status of the case, all three made reference to what a politically sensitive issue this was.
- (13) Stephen A. Alfred, South Kingstown Town Manager, personal communication, 11-3-89.
- (14) *Ibid.*
- (15) Cornelia Pike, personal communication, 1-21-90.
- (16) 16 U.S.C. Sec. 1451, et. seq.
- (17) 16 U.S.C. Sec. 1456 (c) (1).
- (18) Secretary of the Interior v. California 464 U.S. 310 (1984).
- (19) 16 U.S.C. Sec. 1453 (1).
- (20) 16 U.S.C. 1531 et. seq.
- (21) 296 U.S. 10, 56 S. Ct. 23, 80 L. Ed. 9.
- (22) Assistant U.S. Attorney Everett Sammartino, personal communication, 11-1-89; and New England Naturist Association, Inc., et al, v. Howard N. Larsen, et al, United States District Court for the District of Rhode Island. C.A. No. 88-0218T.
- (23) *Supra*, 20.
- (24) *Supra*, 22.
- (25) Attorney Michael Rubin of the Rhode Island State Attorney General's Office, personal communication, 11-1-89.
- (26) The action was listed in the appendix to the final EA. United States Fish and Wildlife Service, Environmental Assessment, January 1988, Master Plan Truston Pond National Wildlife Refuge, South Kingstown, Rhode Island, Appendix.
- (27) *Supra*, 22, and 25.

- (28) Tim Dillingham of the Coastal Resources Management Council, personal communication, 11-1-89.
- (29) Ibid.
- (30) NENA, July 1986 Economic Study, New England Naturist Association, P.O. Box 3209, Wayland Square, Providence, RI 02906; 1988 Tourism Assessment an Analysis of Lost Revenues, Dr, W.J. Landry; and U.S. Fish and Wildlife Service, Environmental Assessment January 1988 Master Plan Trustom Pond National Wildlife Refuge, South Kingstown, Rhode Island.
- (31) Office of Travel, Tourism and Recreation at URI, South County Tourism Council and, The Quality Inn. 1988, Tourism Profile: South County. TTR, Department of Resource Economics, 312 Lippitt Hall, University of Rhode Island, Kingston, RI 02881.
- (32) Ibid.
- (33) Ibid.
- (34) Ibid.
- (35) Supra, 26. "U.S. Fish and Wildlife Service" p. 4.
- (36) Supra, 30, Landry, "1988 Tourism Assesment [sic]".
- (37) Stephen A. Alfred, South Kingstown Town Manager, personal communication, 11-3-89.
- (38) Ibid.
- (39) Cataldi, Angelo A. "Parking rules tightened at Moonstone," Providence Journal Bulletin, 23 July 1977, p. 4.
- (40) Berke, Craig N. "Moonstone Parking Fee Eyed," the Narragansett Times, 11 March 1982.
- (41) Narragansett Times, "Moonstone Beach Parking Stickers \$1," 20 May 1982.
- (42) Fitzpatrick, Colleen, "Moonstone fees raised," the Providence Journal Bulletin, 29 April 1986.
- (43) Providence Journal. "Moonstone Beach \$20 parking fee burns them up," the Providence Journal, 12 May 1986, sec. A. p. 3. Of the \$50,000 that were generated in previous year from parking fees, only \$6,500 came from residents, \$43,500 came from non-residents. The cost of beach maintenance was \$30,000, and the \$20,000 balance of revenue went to South Kingstown's general fund.
- (44) The number of non-resident visitors decreased by 50%. The portion of fees from non residents was \$42,130 and \$16,432.50 from residents. After deduction of expenses, the town netted about \$20,000. Mooney, Tom, "Moonstone revenues were 'excellent' despite poor weather, smaller crowds," the Providence Journal, 19 September 1986.
- (45) Supra, 43.
- (46) Cotter, Tim, "Residents, nudists to share Moonstone Beach," the Narragansett Times, 16 April 1987.
- (47) LaPlante, Joseph R., "The birds win out over nude bathers; Moonstone closed," the Providence Journal Bulletin, 4 February 1988.
- (48) Harrington, Mary, "Council sets beach fees," the Narragansett Times, 12 May 1988.

## CHAPTER SEVEN

### RECOMMENDATIONS AND CONCLUSIONS

#### Introduction

A question this case study raises is whether or not a NWR beach should be used for coastal recreation or wildlife. In this study the general conflict between wildlife preservation and outdoor recreation is complicated by nude bathing and whether it should be recognized as a legitimate form of recreation within a NWR.

In the case of Moonstone Beach the 1986 listing of the piping plover, sea level rises and coastal erosion may have answered the question already; there may be too little room to serve more than one function, unless there are changes in management plans.

Other coastal areas, however, may be faced with similar, less complex questions of how to deal with nude bathing as a form of coastal recreation. This chapter addresses the compatibility of CO recreation with wildlife protection; presents general recommendations for coastal managers and specific ones for FWS, TSK and NENA; and concludes with a summary of the study and future areas to be researched.

#### Compatibility of Wildlife Protection and Clothing-Optional Recreation

Combining recreation and protection for the Piping plover are not mutually exclusive. Much depends on the selection of management strategies and the willingness to implement them. At Crane's Beach, in Ipswich, Massachusetts, the Trustees of the Reservation successfully

provided protection for the piping plover while allowing for public recreation as well.

In the summer of 1989 fourteen pairs of plovers nested and 37 chicks fledged. By contrast, in 1986 only five pairs produced five chicks. The Trustees implemented the use of special enclosures to protect the birds nest from both predators and humans. The two-inch mesh cage allows the small birds to go in and out but keeps out skunks and others, while single strand barriers and signs alert people to the birds. Frederic Winthrop Jr. Trustee Director stated:

"I consider this one of our real challenges: How do you manage a large number of people and at the same time manage the natural resource. Here we found a way to let people have a good time while we've had phenomenal success with an endangered species" (1).

The role of assessing areas' potential and individually-tailored management strategies will be discussed below.

#### Recommendations to Coastal Managers in General

There are many Americans interested in pursuing nude bathing as a form of outdoor recreation. Commitment is evidenced by membership in groups like the American Sunbathing Association (2), the New England Naturist Association (3), the Naturist Society and others (4).

Most people do not mind nude recreation as long as the activity does not take them by surprise; knowing ahead of time that one might encounter nudity beyond a designated point is usually appreciated for it allows one the option of whether to proceed or retreat. In places where nude bathing has been successfully accommodated, clearly marked areas and courtesy to other bathers have been important factors in their success (5).

Managers are referred to the Parks and Recreation Journal for articles by Goodrich and Harker respectively, regarding what management strategies have and have not worked well (6). Some of their findings as they apply to Moonstone will be presented here. It is important that coastal managers confronting such use address it on a case-by-case basis.

#### Management Issues on Nude Beaches

When a beach is used by nude bathers, the following pattern of events usually occurs:

- Private landowners complain, sometimes file suit on trespassing or indecent exposure charges;
- passersby complain if clearly visible from nearby public road or facility;
- media "discovers" beach, publicizes in newspapers or television;
- publicity draws crowds of both sincere seekers and onlookers;
- the legal governing body studies relevant laws to determine if nudity is illegal. If no law bans nudity, may enact their own;
- publicity dies down, policy may take effect, crowds diminish, operations return to normal (7).

Some other common complaints include: illegally parked cars (including on private property), trespassing, vegetation destruction, damage to dunes, and most importantly, lack of sanitary facilities or garbage disposal areas.

Coastal managers may find themselves spending a considerable amount of time attempting to either ban nudity or rally support for such a ban. Unless there is pronounced local opposition to the activity it is best to retain as much control as possible by drawing up



a management plan. Every plan should be tailored to the needs and resources present in each area so as to allow for local input as well.

#### Proposed Elements for a Management Plan

Coastal planners are advised to take a case by case approach to the possibility of nude bathing on their beaches. The reasons for this are simple. When planning for nude bathing it is essential to have local support and while some areas of the country are quite liberal especially on the west coast, other regions are considerably more conservative, including the Virginia shoreline and Bible belt region.

In general planners are advised to:

- Limit the space, the area available for CO recreation;
- Provide adequate maintenance services such as portable toilets and trash containers and their removal;
- Provide adequate parking or arrangements for a shuttle from adequate (possibly inland) parking areas;
- Limit the number of vehicles which will be allowed on either a spatial (lot capacity) or temporal (gates close as soon as lot is full and do not reopen) basis;
- Do not mark areas with signs that say "Nudity allowed";
- Do mark areas with signs that say "No nudity beyond this point";
- Whenever possible work with local naturist groups, if any, and establish a contact for them who will be their spokesperson and will relay your messages/concerns;
- Avoid publicizing the site, if possible work with naturist group to keep publicity down.

In cases where nudity has been successfully accommodated facilities have been provided and tacit or implied recognition is given to nude bathing, areas have maintained their low profile and complaints are handled on an individual basis.

It should be recognized that in general the needs and preferences of this group are like those of other outdoor recreation groups with the exception that they do not have as many choices of where to go. This is especially so for beaches. If managers plan adequately for increased use and possibly charge user fees, they will find it easier to control garbage and excessive use. If nude bathing were to be provided for at several alternate locations, the overall impact to any one site would be greatly reduced.

It is important to note that in many cases where nude bathing has been tolerated it has occurred over time and as a tacit acknowledgement of the activity, as opposed to an official designation. In other words, if coastal areas become more popular with this group, it is best to plan for the use without actually designating an official status. This last point need only be true until there are several areas open to CO recreation such that the impact is distributed over several.

When an official designation is given, two developments are likely to occur: first the number of users increases and secondly, so does the publicity. (Usually in the category of a "human interest" story). Allowing nude bathing without an official designation addresses the management problems while avoiding the problem of an official designation. The problem of designation is not just one of increased use. Goodrich summarizes:

"With nudity legal in most states, park and recreation departments often find themselves walking a fine line between the public outrage brought on by designation and the accusation of discrimination brought on by neglect and inaction (8)".

Neglect and inaction do not only provoke criticism from those whose recreational needs are not met, property owners in the vicinity of the area also suffer when inadequate action is taken. Indeed for many it is the inaction that is more frustrating than the nude bathing itself. As one property owner in San Diego near Black's Beach noted after the designation of 900 feet of the 1200 foot beach as clothing-optional:

"....John W. Landis, president of the General Atomic Company, said most of the homeowners would not care what took place on the beach if they could be relieved of traffic and crowds of strangers clambering over their properties looking for routes down to the inaccessible beach. 'Nudity has nothing to do with our objections,' Mr. Landis said. 'Ninety percent of the people who come to the beach are fine and decent. I blame the situation on the City Council who passed this ordinance without making any provisions for parking or handling the crowds.' (9)".

If adequate provisions are made the crowds are generally very agreeable. According to Kenneth Lucas, [then] park manager at Rooster Rock State Park on Oregon's Columbia River:

"Essentially what we have is a nucleus of users, sincere in their search for nude bathing opportunities. These users are responsible. They want to maintain the beach and retain use of it, so they tend to police themselves (10)."

If the numbers of visitors are kept at a manageable level it is possible to maintain the beaches in good shape. Numbers might be kept low by not reporting on the beach and not designating any official status. Furthermore, it is reasonable to expect that if given legitimate recognition on public lands, this group would be exceptionally cooperative and appreciative of such acceptance. To their credit, clothing optional bathers are uniquely conscious about the environment and quite diligent about policing themselves.

In sum, it is recommended that managers take advantage of these groups' willingness to take care of the environment in exchange for

available coastal spaces, by carefully planning how to accommodate some without degradation to the very environment they are seeking.

#### Recommendations to the Fish and Wildlife Service

It is recommended that the FWS re-evaluate the suitability of Moonstone Beach for protected piping plover habitat. The topography changes due to erosion, snow fences, and possible sea level rise may have diminished the effectiveness of the beach. Perhaps better efforts would be spent on creating new habitats.

One of the practices which should be reviewed are the use of snow fences for dune stabilization. Strauss reported that:

"..current management practices of stabilizing (dune) blowouts with discarded Christmas trees and snowfence removes potential nesting habitat and may lower piping plover reproductive success (11)."

Management plans in use at places like Crane's Beach in Ipswich, Massachusetts should be reviewed for possible application of some of their management techniques, particularly since they have had a high degree of success with this species.

In sum, FWS is encouraged to consider the following proposals:

- using small enclosures for the birds nest and posting signs to keep people away from the birds rather than build a mile long fence which may have to be rebuilt several times after collapsing during storms;
- increase enforcement of no pets rule;
- increase foot patrols of the beach during the peak feeding time for fledglings (a.m.) to discourage early morning walkers from walking their pets without a leash;
- increase public education campaign encouraging people to take their garbage home and to keep pets—when allowed—on a leash;

- seek a management agreement with TSK and NENA to: limit beach use during summer, by either closing the parking lot when it is full or during peak feeding times (early a.m), increase trash collection and number of sanitary facilities;
- reactivate the NENA beach patrol and equip them with two-way radios to maintain contact with FWS.

In the case of Moonstone it is recommended that the FWS work closely with NENA and consider the possibility of issuing them a Special Use Permit for at least a small portion of the eastern end of the beach. The benefits of this are twofold: it would allow access to the shoreline for COS and therefore enables FWS to reactivate their collaboration with NENA in the form of the beach patrol, beach cleanup, public education and if requested furnishing of sanitary facilities, trash collection and a lifeguard.

Were such a proposal to be considered the FWS would undoubtedly want to: make clear that this would not be considered to be a precedent and that accommodating COS on a small scale at Moonstone could not guarantee similar arrangements elsewhere, nor does it secure for similar arrangements in subsequent seasons. The objective should be to make an attempt to accommodate all use without adverse impact to the piping plover.

If the opportunity for NENA to reestablish its legitimacy with FWS is coupled with increased petitions and negotiations with the NPS and other recreational groups, it is possible that the FWS could help NENA build a case for use of NPS and other lands. In the long run this would benefit FWS by increasing the number of areas which are available for COS and which could accommodate COS instead. This could be presented as a long term goal and be a condition of any arrangement.

It would be important for the FWS to emphasize that publicity should be kept at a minimum and that cooperation of all parties is expected. NENA should increase efforts to access other, non FWS areas by increasing negotiations with NPS and other recreation agencies.

#### Recommendations to the Town of South Kingstown

It is recommended that TSK find some way to provide for the continuation of nude bathing in South County. This is urged in light of the following.

TSK residents have become relatively accustomed to nude bathing at Moonstone Beach; revenues from the parking lot have been helpful in financing other town projects including the new town beach; several opportunities have presented themselves for passage of an anti-nudity ordinance but there has been insufficient support for enactment to date; NENA members are frequent beach users and bring revenues to the area and have generally cooperated with the town.

The advantages to this are several and include being able to provide for a form of recreation that has become part of the region's folklore (12). Many summer visitors have come to expect the added bonus a CO beach. Secondly, it may provide the town with an opportunity to secure a certain amount of parking income. Moonstone Beach users from out of state continue to pay \$20 per day and \$10 per half day for the privilege of going to the beach without clothing. Third, it would allow the town more latitude in controlling "fringe element" behavior.

Users like those who belong to organized groups like NENA are in

such dire need for sites that they make exceptionally responsible beach visitors.

Were the town to consider such a proposal, they should try to:

- have a clear plan in mind, this could include time share, NENA use every third Wednesday of the month or portions of specific days;
- canvass the residents, particularly businesses which may be affected by the loss of business created by this group, to assess their receptivity, guarantee the town residents that they will not be displaced, prepare information regarding revenue so people can see the direct benefit;
- consider a trial-basis option with limited participation via restrictions on the number of cars, days to visit, etc.

In the event space at Matunuck is not available for the above mentioned proposal the town should seek an increase in beachfront from the FWS under the terms of the Special Use Permit in exchange for managing the nude beach and also increasing the extent of the town's maintenance at the beach.

Recommendations to the New England Naturist Association, Inc.

It is recommended that NENA consider the following:

- Dropping the lawsuit against the FWS. Doing so will increase the chances of renewing dialogue and will save money on legal fees and improve the public image. As complex as the issues are, most people still think in terms of the "rare vs. the bare";
- Abandon plans for further protest and acts of civil disobedience;
- Continue to actively seek and plan for acquisition of beach property to open up a NENA beach club;
- Resume tacit negotiations with TSK and FWS and attempt to negotiate with TSK and FWS for some—albeit small—special use agreement, propose using part of a beach on either a specific weekday (third Wednesdays of a month, for example) or during specific hours on specific days.

- Request a Special Use Permit with FWS for use of the eastern end of the beach in exchange for: agreement to actively seek other sites and increase efforts to lobby NPS and other recreation agencies/groups; reactivate NENA beach patrol collaboration with FWS; continue beach cleanups; provide portable toilets; trash containers and frequent removal; and willingness to assist with maintenance procedures.
- Become actively involved in South County volunteer and other charitable events as a group to renew positive public image, continue to do public service such as phone banks for WGBH fundraiser, blood drives, etc.;
- Continue to be politically organized, in particular work with American Sunbathing Association Lobbyist in Washington to assist in recognition as a user group by NPS and other groups, set aside political differences between different naturist groups;
- Increase sales of merchandise to increase monies in property fund, carry out more fundraisers to increase monies for this goal.

#### Conclusion

Management of wildlife and public recreation are not mutually exclusive but merely require well-planned management strategies. This is particularly true for the clothing optional bathers. As a sincere group in pursuit of natural recreation, with few public places to go, and a strong commitment to the natural environment, they are predisposed to protect any resource they are provided access to.

Managers should recognize the need for advanced planning with regard to clothing-optional recreation. Although the 1980s were quiet years because of the Reagan-Watt administration, it is likely that demographic changes will see more people pursuing this relatively innocuous form of recreation; the baby-boomers, in particular, may chose to pursue this form of recreation in larger numbers.



When devising management strategies it is important that they be done on a case by case basis, not only to incorporate public comment on the proposals, but also to take into consideration specific, geographic, topographic and jurisdictional features. For example, Crane's Beach is different from TPNWR in the following ways:

- Trustees of the Reservation charge for admission, therefore there are more monies available for management tools and there is an economic incentive involved;
- The Trustees have control of the parking lot and close it once it is full. No matter how many cars leave no more come in. This not only has the effect of controlling how many people come, there is a peak impact which is not protracted;
- The topography of Crane's Beach differs from that of Moonstone. Crane's has "blow outs", indentations into the dunes which are favored by the piping plover for their added protection; whether removal of the snow fences at Moonstone would yield these or not remains to be seen.

How extensively an area is used by COS will be affected depends on the management plan in effect and on the availability of other, nearby, available sites. It is for this reason that it is important to open more areas for COS, to decrease the impact on areas currently used.

It is believed that the issues which arise from COS use can be resolved with suitable advanced planning. It is important, however, to face the use as one of high demand as opposed to one of strictly nudity.

It is also believed that by not providing for this form of recreation at suitable sites slated for recreational purposes, a great disservice is being done to the sites which have been used instead, in this case the NWRs. Specifically, the National Park Service is not fulfilling its mission as the provider of the American public's outdoor recreational needs. This agency has the mandate to provide for outdoor

recreation, regardless of recreational preference, and particularly with a group whose impacts are arguably less harmful than others. (For example, some more consumptive uses include: off-road recreational vehicles, motor boating and snow skiing, to name a few).

If the FWS could legitimize this form of recreation with the eventual goal of locating it on recreation lands, then it might work to serve their long term goals as well.

COS should continue to increase their membership drives and should actively encourage others to petition public agencies charged with recreation to help establish the need for COS sites in order to secure other lands.

#### Future Areas to be Researched

Finally, in order to increase the amount of information available regarding this user group and the challenges of managing these areas, managers are encouraged to keep close records of the amount of use, degree of services needed, complaints/citations issued, and what methods did or did not work.

Recreation planning professionals would do well research this user group more closely to determine the demand for this form of recreation. The private sector should continue and increase its receptiveness to provide for this form of recreation not just for visiting South Americans and Europeans, but for those members of the American public who have adopted CO recreation and who have travelled widely in its pursuit. The private sector should also keep records whenever possible to facilitate future academic research endeavors.

ENDNOTES FOR CHAPTER SEVEN

- (1) The Boston Globe, "Endangered Plover Rebounds in Ipswich," 2 September 1989.
- (2) The American Sunbathing Association represents most organized nudists in North America. It began as the American League for Physical Culture in 1929 and now has approximately 30,000 members who belong to 200 nudist clubs.
- (3) The New England Naturist Association (NENA) has approximately 750 households as members.
- (4) The Naturist Society is another well established organization Others include the National Nudist Council, and the International Naturist Federation.
- (5) An example is the most renown nude beach, Black's Beach in San Diego, California; and of course, Moonstone, Rhode Island.
- (6) Goodrich, Kristina, "Skinny Dipping: The Old Swimming Hole Breeds New Controversy," Parks and Recreation, May, 1980, V. 15, N. 5. and Harker, George R., "Nude Bathing: No Controversy," Parks and Recreation, August, 1987, V. 22, No. 8.
- (7) Ibid.
- (8) Ibid., 33.
- (9) Nordheimer, Jon, "Conservative La Jolla Finds Coexistence Difficult With Pioneer Nude Bathing Beach" The New York Times, June 24, 1974, Section I, Page 9, Column 1.
- (10) Supra, 4, p. 36.
- (11) E. Strauss, November 1 1989, DRAFT COPY Foregone Profile, Nest Site Selection and Reproductive Success in Piping Plovers (Charadrius melodus) Nesting at Sandy Neck Beach; Associated Management Implications, U.S. Fish and Wildlife Service Contract Report # 50181-88-81092.
- (12) Norris, Doug, "That hot old pastime - it's beachin'!, There's a beach for everybody - nudists to noshers," the Narragansett Times, 15 July 1988, South County Life Section; and Poon, Chris, "Moonstone remains only nude beach in Northeast," the Narragansett Times, 11 August 1989.

APPENDIX 1

PARTIAL LIST OF KEY STATUTES PERTAINING TO  
NATIONAL WILDLIFE REFUGE MANAGEMENT

EXECUTIVE ORDER	March 14, 1903
MIGRATORY BIRD HUNTING AND CONSERVATION STAMP ACT (DUCK STAMP ACT)	16 U.S.C. 718 <u>et seq.</u>
LAND AND WATER CONSERVATION FUND	16 U.S.C. 460L-5 <u>et seq.</u>
THE FISH AND WILDLIFE ACT OF 1956	16 U.S.C. 742 (a) <u>et seq.</u>
REFUGE RECREATION ACT	16 U.S.C. 460k <u>et seq.</u>
NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966 AS AMENDED	16 U.S.C. 668dd <u>et seq.</u>
ENDANGERED SPECIES ACT OF 1973 AS AMENDED	16 U.S.C. 1531 <u>et seq.</u>
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980	16 U.S.C. 3120
THE MIGRATORY BIRD TREATY ACT	16 U.S.C. 703-711
THE MARINE MAMMAL PROTECTION ACT	16 U.S.C. 1361 <u>et seq.</u>
THE LACEY ACT	16 U.S.C. 3371

APPENDIX 2

LIST OF ACRONYMS/ABBREVIATIONS

NENA	New England Naturist Association
FWS	United States Fish & Wildlife Service
TSK	Town of South Kingstown, Rhode Island
AS	Audubon Society
TAMB	Taxpayers for Access to Moonstone Beach
CRMC	Coastal Resources Management Council
MHT	Mean High Tide
SHT	Spring High Tide
TPNWR	Truston Pond National Wildlife Refuge
EA	Environmental Assessment
FBE	Free Beach Etiquette
SUP	Special Use Permit
ROW	Right of Way
MB	Moonstone Beach

APPENDIX 3

SUMMARY OF IMPORTANT EVENTS - MOONSTONE BEACH CASE STUDY

<u>Year</u>	<u>Event</u>
1950	Roger Wheeler scorns beach condition
1967	C. Prescott Knight gives property to AS
1970	AS approaches TSK with lease agreement
1974	TPNWR established via gift from A. Kenyon Morse
1975	FWS arrests nude bathers on federal land
1976	NPS implements anti-nudity ordinance on Cape Cod National Seashore
"	<u>Village Voice</u> (New York City newspaper) lists Moonstone as a nude beach
"	TSK police unsuccessfully attempt muster support for passage of an anti-nudity ordinance
1981	AS announces plans to transfer property to FWS
"	FWS announces no nudity will be allowed
"	NENA formed, files lawsuit against FWS
1982	Court dismisses NENA lawsuit--property transfer not complete, hence no standing
"	Free Beach Etiquette formulated and adopted by NENA
"	FWS announces plans to restrict beach use in 1983
"	AS transfers property to the FWS
"	TSK learns 1983 restrictions do not apply to their (leased) section of beach
"	FWS denies NENA a Special Use Permit for 1,200' beach
"	NENA membership at end of first year includes 300 households
"	FWS announces Environmental Assessment to be conducted for 1983 plans
1983	FWS announces 1983 boundaries--1st summer of Nationwide Gallup Poll shows tolerance for nude bathing in specifically designated areas
"	
1984	Moonstone Beach Volunteer Project assists FWS Greater Boston Naturists, Maine Beachfront, Free Connecticut, and NENA merged to become NENA
"	FWS proposes to list Piping plover on ES list
1985	FWS and NENA officers meet to discuss implication of listing Piping plover
"	NENA establishes TPNWR Refuge Fund
"	FWS holds public meeting for input on draft 20 year master plan for TPNWR
1986	Piping plover is listed as a threatened species on the federal endangered species list
"	FWS announces new boundaries for beach use--nude bathers leapfrogged over town after objection by TSK that nude bathers had gotten beach next to accessway

- " NENA holds first general membership meeting for election of the Board of Directors
- " TSK briefly reconsiders an anti-nudity ordinance
- " NENA conducts an economic study of MB users ave. cost/visit given as \$43.16, ave. income to area/summer was noted as \$240,000
- 1987 FWS announces more plans to limit MB use
- " TSK reconsiders an anti-nudity ordinance--none passed
- " FWS releases Draft EA for long-range management of TPNWR--proposed action bans all beach use from MHW from 4-1 to 8-31
- " Well-attended public meeting showed little support for beach closure
- " NENA VP threatens FWS with court action
- " 8 Piping plover eggs destroyed by predators
- " Piping plover shot in Long Island, New York
- " State officials write to express support for compromise
- " TSK unveils draft plans for new beach--no nudity to be allowed and plans to keep right of way open at MB despite FWS position
- 1988 Master Plan released by FWS--FONSI filed by FWS Regional Director. Action chosen includes building a fence along beach at MHW
- " TSK seeks use of 160' Special Use Permit from FWS
- " NENA newsletter lists legal recourses available
- " FWS builds 4' high, mile long fence--4/1 to 8/31
- " NENA seeks Injunction against FWS
- " 6 other Atlantic coast beaches closed for PP (to date)
- " CRMC issues violation notice to FWS after receiving letter from NENA VP
- " NENA's request for a Temporary Restraining Order denied
- " Tourism Profile, South County released by URI
- " TAMB grassroots group formed
- " Attorney General O'Neil writes to FWS to protest regarding the fence in the coastal zone
- " FWS and NENA attorneys allowed until May 26 to file Memoranda of Law with Federal Court
- " FWS renews TSK Special Use Permit--TSK establishes 2 (200') buffers
- " TAMB launches letter-writing campaign--circulates petition supporting Attorney General's letter
- " TSK Town Beach at Matunuck opens
- " Federal Judge Ernest Torres refuses to grant NENA an injunction against FWS--NENA seeks court date
- " Two piping plover hatch at Moonstone Beach
- " More than 1500 people had signed TAMB petition

- 1989 NENA officers meet with State Attorney General's  
Office--AG agrees to seek conference with  
other players
- " Property fund approved at NENA membership meeting
- " Fence closer to water due to erosion and sea-level  
rise
- " NENA plans mass protest at MB on National Nude Day
- " Spring 1990 civil disobedience contemplated
- " Peaceful protest takes place at MB--anti-NENA  
hecklers escorted off beach by FWS officials
- " Seven piping plover fledged at Moonstone Beach
- " NENA demonstrates at FWS Headquarters in So. County  
for public access



## APPENDIX 4

### SURVEYS USED FOR COS AND FOR NATIONAL WILDLIFE REFUGES

#### QUESTIONNAIRE FOR CLOTHING-OPTIONAL SUNBATHERS

Please note, do not mark the enclosed questionnaire in any way that might reveal your identity. Completion and return of this is completely voluntary. Thank you.

Dear NENA member:

I am a graduate student in the Department of Marine Affairs at the University of Rhode Island. For my master's thesis I plan to study clothing-optional beaches within the context of coastal management. I met some of you met me at the annual membership meeting on April 17th. As I mentioned at that meeting, I need your help to carry out this part of the research.

Little, if any, work has been done on clothing-optional beaches from the perspective of coastal management. If clothing optional sunbathers are to be accommodated by coastal management policies, research must be conducted to assess the interests and issues of your group.

Some people feel they have a right to be able to sunbathe without having to be exposed to nude sunbathers, and natural sunbathers have expressed the desire to sunbathe without being bothered by onlookers. In order to formulate fair management policies both naturist and non-naturist interests must be kept in mind by coastal managers and policies. One of the problems is that the naturist perspective has not always been taken into account nor even taken seriously.

Would you be so kind as to take some time to complete this brief questionnaire? Please rest assured that your responses will remain completely confidential. In order to ensure that, please do not mark the form in any way that would reveal your identity. If you have family membership, please try to have both adults (if applicable) respond, using different colors of ink may help to distinguish the two answers. Thank you in advance for your help and feel free to add comments on the back of the form!

- 1 In which state and county do you live?
  
- 2 Which is the term you prefer be used to describe your sunbathing preference?
  - a. clothing-optional sunbather
  - b. naturist
  - c. nudist
  - d. other \_\_\_\_\_ (please specify)
  
- 3 What do you perceive to be the difference?

- 4 How often do you visit clothing-optional beaches in a season?
- 5 How many years have you been a clothing-optional sunbather (or naturist/nudist)?
- 6 What is the maximum distance you have travelled to get to your most available site during the past year?
- 7 What proportion of the time you spend on beaches in any given season is spent on clothing-optional beaches?
- 8 Which beach site(s) do you frequent the most?
- 9 Which is your favorite?
- 10 Are you a member of any special interest group(s) SIGs?
- 11 If so, which one(s)?
- 12 Is it your general impression that within the past eighteen years--since 1970--, the number of beach sites available for clothing-optional sunbathing has:
  - a. remained the same
  - b. has increased
  - c. has decreased
- 13 If you answered (c) in the previous question, i.e. that the COS beach sites have decreased, can you please name those sites no longer available, or those whose use has declined? If possible, give beach name, general area (e.g. Cape Cod National Seashore) and state. List as many as you can remember (even if you do not recall all of the information for each one).

- 14 Do you use National Wildlife Refuges (NWR) for COS?
- 15 If you answered yes to the previous question (#14), is there any specific reason(s) for using NWRs?
- 16 Would you be interested in sunbathing in places other than National Wildlife Refuges?
- 17 If your answer to the previous question was yes, is there any area(s) in particular?
- 18 If your answer to question number 16 was no, what are your reasons?
- 19 What characteristics would you like to see included if you were to pick the ideal spot for COS? List as many things as you feel are needed.
- 20 Once clothing-optional sunbathers have achieved recognition and protection for their right to sunbathe naturally, on which beaches would you like to see it be provided for? Check as many as apply.
- a. entire public beaches set aside
  - b. portions of public beaches
  - c. portions of National Seashores
  - d. portions of National Wildlife Refuges
  - e. other \_\_\_\_\_ (please specify)
- 21 Do you belong to any environmental group, besides the NENA? If so please specify which group(s)

- 22 Have you ever taken a biology or ecology course(s)? Please specify which of the two.
- 23 If you answered yes to the previous question, at what level of school did you take the course(s)?
- 24 Please name the organizations which you think are typically involved in coastal management in Rhode Island and/or your state of residence.
- 25 Which of the following activities would you be willing to take part in order to protect your right to visit clothing-optional beaches? Check as many as apply.
- a. attend public meetings
  - b. write to local, state and federal officials
  - c. contribute to legal funds
  - d. carry out acts of civil disobedience
  - e. get arrested
  - f. other \_\_\_\_\_ (please specify)
- 26 How many years did you go to school?
- a. through junior high school
  - b. through high school
  - c. through college
  - d. through graduate school
- What is your occupation? (optional)
- 28 What is your annual income?
- a. under 20,000
  - b. 20,000-30,000
  - c. over 30,000
- 29 Are you a male \_\_\_\_\_ or a female \_\_\_\_\_

Thank you very much for your time and interest. Please return the questionnaire to the address given below.

Marielena Scanlon-Gomez  
48 Nonantum Street #2  
Brighton, MA 02135

Please return this questionnaire to the researcher as soon as you complete it today, (7/9/88) or mail it directly to her home address. Thank you! (if you chose to mail, please try to do so by August 31, 1988).

Marielena Scanlon-Gomez  
48 Nonantum Street #2  
Brighton, MA 02135

#### Questionnaire for Clothing-Optional Sunbathers

Please note, do not mark the questionnaire in any way that might reveal your identity. Completion of this is completely voluntary, thank you.

I am a graduate student in the Department of Marine Affairs at the University of Rhode Island. For my master's thesis I plan to study clothing-optional beaches within the context of coastal management.

Little, if any, work has been done on clothing-optional beaches from the perspective of coastal management. If clothing-optional sunbathers are to be accommodated by coastal management policies, research must be conducted to assess the interests and issues of your group.

Some people feel that they have a right to be able to sunbathe without having to be exposed to nude sunbathers, and natural sunbathers have expressed their desire to sunbathe without being bothered by onlookers. In order to formulate fair management policies, both naturist and non-naturist interests must be kept in mind by coastal managers and policies. One of the problems is that the naturist perspective has not always been taken into account, nor even taken seriously.

Would you be so kind as to take some time to complete this brief questionnaire? Please rest assured that your responses will remain completely confidential. In order to ensure that, please do not mark the form in any way that would reveal your identity. If there are more than one of you answering this, please distinguish your answers if at all possible, possibly with two different pens. Thank you in advance for your help, and feel free to add comments on the back of the form!

- 1 In which state and county do you live?
- 2 Which is the term you prefer to be used to describe your sunbathing preference?
  - a. clothing-optional sunbather
  - b. naturist
  - c. nudist
  - d. other \_\_\_\_\_ (please specify)
- 3 What do you perceive to be the difference?
- 4 How often do you visit clothing-optional beaches in a season?
- 5 How many years have you been a clothing-optional sunbather (or naturist/nudist)?
- 6 What is the maximum distance you have travelled to get to your most available site during the past year?

- 7 What proportion of the time you spend on beaches in any given season is spent on clothing-optional beaches?
- 8 Which beach site(s) do you frequent the most?
- 9 Which is your favorite?
- 10 Are you a member of any special interest group(s) SIGs?
- 11 If so, which one(s)?
- 11a Why are you not a member of NENA (New England Naturist Association)?
- 12 Is it your general impression that within the past eighteen years--since 1970--, the number of beach sites available for clothing-optional sunbathing has:
- a. remained the same
  - b. has increased
  - c. has decreased
- 13 If you answered (c) in the previous question, i.e. that the COS beach sites have decreased, can you please name those sites no longer available, or those whose use has declined? If possible, give beach name, general area (e.g. Cape Cod National Seashore) and state. List as many as you can remember (even if you do not recall all of the information for each one).
- 14 Do you use other National Wildlife Refuges (NWRs) for Clothing-Optional Sunbathing?
- 15 If you answered yes to the previous question (#14), is there any specific reason(s) for using NWRs?
- 16 Would you be interested in sunbathing in places other than National Wildlife Refuges?
- 17 If your answer to the previous question was yes, is there any area(s) in particular?
- 18 If your answer to question 16 was no, what are your reasons?
- 19 What characteristics would you like to see included if you were to pick the ideal spot for COS? List as many things as you feel are needed.

- 20 Once clothing-optional sunbathers have achieved recognition and protection for their right to sunbathe naturally, on which beaches would you like to see it be provided for? Check as many as apply.
- a. entire public beaches set aside
  - b. portions of public beaches
  - c. portions of National Seashores
  - d. portions of National Wildlife Refuges
  - e. other \_\_\_\_\_ (please specify)
- 21 Do you belong to any environmental group? If so, please specify which group(s)
- 22 Have you ever taken a biology or ecology course(s) Please specify which of the two.
- 23 If you answered yes to the previous question, at what level of school did you take the course(s)?
- 24 Please name the organizations which you think are typically involved in coastal management in Rhode Island and/or your state of residence.
- 25 Which of the following activities would you be willing to take part in, in order to protect your right to visit clothing-optional beaches? Check as many as apply.
- a. attend public meetings
  - b. write to local, state and federal officials
  - c. contribute to legal funds
  - d. carry out acts of civil disobedience
  - e. get arrested
  - f. other \_\_\_\_\_ (please specify)
- 26 How many years did you go to school?
- a. through junior high school
  - b. through high school
  - c. through college
  - d. through graduate school
- 27 What is your occupation? (optional)
- 28 What is your annual income?
- a. under 20,000
  - b. 20,000-30,000
  - c. over 30,000
- 29 Are you a male \_\_\_\_\_ or a female \_\_\_\_\_

Thank you very much for your time and interest. Please return the questionnaire either to the researcher herself, or to the address given below. If you decide to mail her the questionnaire, please do so by August 31, 1988.

Marielena Scanlon-Gomez  
 48 Nonantum Street #2  
 Brighton, MA 02135

QUESTIONNAIRE FOR MANAGERS OF COASTAL NATIONAL WILDLIFE REFUGES

I am a graduate student in the Department of Marine Affairs at the University of Rhode Island. For my master's thesis I plan to study the potential user-conflict between manager and consumer, using the case of Moonstone Beach at Truston Pond National Wildlife Refuge as a clothing-optional beach. I need additional information about other National Wildlife Refuges and have been referred to you by Charlie Blair, the Manager at TPNWR. Please feel free to contact me if you have any questions about this study.

Little work has been done on clothing-optional beaches from the coastal management perspective. There are many, complex, issues surrounding clothing-optional beaches.

Members of clothing-optional groups seek consistent recognition as a legitimate recreational group. It will therefore be important to give more attention to the needs and issues characteristic of clothing-optional users. Coastal managers need more information about the kinds of issues that come up with clothing-optional beaches and about the possible solutions to the various problems that arise.

As coastal areas come under increasing pressure to provide for recreational uses, so will the pressures on ecological areas. It is hoped that this study will provide information about the appropriateness or inappropriateness of ecologically-sensitive areas for clothing-optional use. By conducting research on the issues surrounding clothing-optional beaches, I hope to get the kind of information needed by coastal managers to accommodate the needs of clothing-optional sunbathers.

Some people have expressed a desire to sunbathe without having to be exposed to nude sunbathers. Conversely, most natural sunbathers have expressed the desire to sunbathe without being bothered by voyeurs. The sooner these and other issues are addressed fairly, the sooner we can begin to address the issues brought forth by this user group. Although I am not a member of any naturist/nudist group, I believe that recognition of this recreational use would help further appropriate coastal management policies, and possibly help reduce the impact that large, unplanned for, groups can have on environmentally-sensitive coastal areas.

In order to be able to include your answers in this study, I need to procure your informed consent. You have a right to privacy, if you wish for your answers to remain anonymous, please do not include any information that might reveal your identity. Furthermore, if you include your identity and, after returning this questionnaire you decide that you do not want the results to be included, please get in touch with me. You are free to withdraw at any time without prejudice.

If you agree to this, please sign below. Thank you.

\_\_\_\_\_  
signature

\_\_\_\_\_  
National Wildlife Refuge  
(optional)



If you have any other information which you feel would be useful, or if additional pages are needed, please feel free to include them. Your cooperation is greatly appreciated.

- 1 What is the annual number of users at your NWR?
  
- 2 What is the breakdown by user groups, i.e. birders, fishermen, hunters, beach users, etc.? Please list all known groups.
  
- 3 Is your NWR used (or was it ever used) by clothing-optional sunbathers, also known as nudists, naturists? (noted here as COS)
  
- 4 Do you have annual information regarding the breakdown of the numbers of users in the categories mentioned in questions 2 and 3 above (i.e. birders, fishermen, COS, etc.)?
  
- 5 If your answer to question 4 was yes, could you provide the information here? If at all possible please provide numbers from 1970 to 1987-88, if not, for whatever years you may have readily available.
  
  
  
  
  
  
  
  
  
  
- 6 Has there been an increase in the number of COS using your NWR within the past eighteen years?

- 7 If the answer to Question 6 is yes, what, if any, have been the effects on the NWR?
- 8 Are there any endangered or threatened species which inhabit the NWR? If so, please list them and their usual time of stay (for example, during mating season April through August).
- 9 Has there been a formal proposal by a Regional Director of the USFWS to close the NWR (or parts of it) to public use for the whole year, or parts of it?
- 10 If the response to the previous question yes, please give effective date and, if applicable, dates of restricted use.
- 11 If there has been a formal proposal for closure (or an actual closure), what are the primary reasons requiring one?
- 12 Has any specific group been banned from using the NWR or parts of it during specific times of the year?

- 13 If the NWR sees use by COS, have there been local, ~~community~~-based objections to this kind of use?
- 14 Have these objections been enough to consider a ban on COS use in this NWR?
- 15 If a ban was considered, was it implemented?
- 16 If appropriate, please list the species which restriction on usage is designed to protect, if any.
- 17 Has there been measurable opposition to the (proposed or actual) closure? If so, is there any group in particular which has voiced opposition? Please name the group or list if more than one.

Thank you very much for your time, cooperation and interest in completing this questionnaire. Please return to the address given below. If you should have questions, I can be reached at the same address.

Marielena Scanlon-Gomez  
48 Nonantum Street #2  
Brighton, MA 02135  
(617) 787-4826

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