September 26, 2002

To: Arlene Wimer, Padre Island NS
cc: Robert Eaton, Carol McCoy, Linda Dansby, and regional files

From: Cheryl Eckhardt and Chris Turk, IMDE-PE

Re: Review Comments for the Response to Public Comments on the EA covering BNP's Plan of Operations for the Lemon/Lemon Seed Unit Wells No. 1-100S-1-008S.

Following are comments provided to you from a number of people including Robert Eaton (Office of the Solicitor), Carol McCoy (Geological Resources Division), Linda Dansby (Intermountain Oil and Gas/Minerals Coordinator), and Chris Turk (Intermountain Region Environmental Coordinator). These comments have been consolidated by the Intermountain Region to alleviate contradictory comments for easier incorporation into the document. Where conflicts arose, the comments from the Office of the Solicitor were generally given precedence.

The review comments are presented in the actual document as tracked changes (see following pages). Please be advised that I have included questions as well as editorial comments in the tracked changes. Therefore, I would recommend that you read through each comment before universally accepting all tracked changes, and then re-check formatting and spelling. Following incorporation of these comments, Robert Eaton would like to review the response to public comments once more before it is released to the public. For questions/concerns, please contact Cheryl Eckhardt at 303.969.2851.

General Comments

1. Please number the comments so they correspond to the responses (recommend placing a number directly left of the comment 'box').

2. Check acronyms. For example, verify that 'Padre Island NS' is consistently used as opposed to 'Padre Island National Seashore.'

3. The FONSI will need to include errata sheets to correct the changes made by your responses to comments. Also, the comment/response section is considered "errata to the EA," even though it's attached to the FONSI.

4. Please review carefully our rewrite of comment #35 – do you feel this text better responds to the comment?

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COMMENTS	RESPONSES

NATIONAL PARKS CONSERVATION ASSOCIATION
COMMENTS ON THE (REVISED) ENVIRONMENTAL ASSESSMENT FOR THE BNP PETROLEUM CORPORATION LEMON/LEMON SEED UNIT WELLS NO. 1-1000S AND NO. 1-1008S IN PADRE ISLAND NATIONAL SEASHORE, TEXAS
AUGUST 26, 2002

Superintendent
Padre Island National Seashore
P.O. Box 181300
Corpus Christi, Texas 78480

Dear Superintendent Whitworth:

The National Parks Conservation Association (**NPCA**) once again thanks you for the opportunity to comment on the Environmental Assessment (**EA**) for the BNP Petroleum Corporation (**BNP**) Lemon/Lemon Seed Unit Wells No. 1-1000S and No. 1-1008S within the Padre Island National Seashore, Texas. As you know, NPCA is a private, non-profit advocacy organization dedicated to protecting, preserving, and enhancing the U.S. National Park System. Founded in 1919, NPCA has over 350,000 members, with over 16,000 members in Texas.
NPCA submitted comments on the adequacy of the first Lemon-Lemon Seed Unit Wells EA on May 26, 2002. We therefore respectfully request that those comments be made part of the current administrative record for BNP's application on the Lemon/Lemon Seed Unit Wells.

NPCA recognizes that BNP holds the subsurface mineral interests in the area and that congressional legislation enabling the National

Response #1: The information presented in the Environmental Assessment for the Lemon/Lemon Seed Unit Wells (EA), along with the assessment of effects for the proposed action is sufficient to determine that an Environmental Impact Statement (EIS) is not required. The Oil and Gas Management Plan and EIS completed in February 2000, from which this EA is tiered, adequately addresses the expected impacts of drilling within Padre Island National Seashore for up to 17 natural gas (only natural gas? No possibility of oil?) well scenarios. The Record of Decision (ROD) documents that significant impacts would not occur. Current natural gas activities are well below the impact thresholds outlined in the Oil and Gas Management Plan FEIS. Therefore the completed EA for the Lemon/Lemon Seed Well Drilling incorporated applicable impact analysis and mitigation measures found in the EIS, and the EA presented adequate alternatives for the action.

The EA concluded that the proposed action, with appropriate mitigation measures and conditions of approval, will result in localized and long-term, negligible to moderate adverse impacts on air quality, geology and soils, water resources and floodplains, vegetation, natural soundscapes, wildlife, state and federally protected species, and visitor use and experience, but will not cause major impacts, or impairment, to the resources or values of Padre Island NS. **Compliance with environmental laws and regulations, Texas permitting requirements, etc., was completed in conjunction with the development of the Lemon/Lemon Seed EA. Concurrence from U.S. Fish and Wildlife Service and the Texas Historical Commission (Is this the correct name for the state office? State Historic Preservation Office?), for Endangered Species Act and Section 106 of the National Historic Preservation Act of 1966 respectively, was obtained. NPS non-federal oil and gas regulations (36 CFR 9B) were followed, and DO-12 NEPA

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Seashore recognized these valid, existing interests.

However, we believe that the National Park Service (**NPS**) again has not provided the public sufficient information in the EA to qualify the impacts of the proposal and to determine whether these impacts would or would not result in significant adverse environmental impact or result in the impairment of park resources and values.

procedures were completed.** Per Rob, 'I suggest you use active voice and simplify the portion of this paragraph' between double asterisks, as follows: 'In developing the Lemon/Lemon Seed EA, the NPS complied with all applicable federal and state laws and policies'. Per Rob, 'I suggest you try to use active voice (and eliminate passive voice) throughout the responses'.

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COMMENTS	RESPONSES
2 ased on the analysis contained within the current EA and upon n the Park Service's responsibilities under its Organic Act, General Authorities Act and Redwoods Act Amendments, and it responsibility for public disclosure under the National Environmental Policy Act (**NEPA**), we see no recourse other than the agency's adoption of Alternative A—The No Action Alternative—other than the decision to prepare a more thorough Environmental Impact Statement (**EIS**) for the proposed undertaking. This is because the current EA still fails to address other reasonable alternatives to the timing (i.e., seasonality) of drilling activities and ignores or contains fleeting references to potentially significant but unmitigable environmental impacts to, among other things, endangered species and the experience of visitors to the Seashore. Because Padre Island is a National Seashore—and the only National Seashore on the Gulf Coast of Texas—the public requires better assurances that its natural seashore will not be impaired. Alternative A—the "No Action" Alternative—is not only the environmentally preferred alternative as identified by NPS in Section 2.4, it is also the alternative that is most consistent with the purposes of a National Seashore and NPS principles of good stewardship. Pg 2 NPCA's claim that an EIS is necessary for this undertaking is based upon the fact that potentially significant impacts from BNP's drilling and production from the Lemon/Lemon Seed Unit Wells would indeed result from implementation of the NPS Preferred Alternative (i.e., the Proposed Action). And, coupled with the cumulative development scenario as described in the EA that is comprised of the drilling and production of at least 17 additional natural gas wells within the	**Response # 2**: Please refer to response item #1 above. Further, the U.S. Fish and Wildlife Service concurred that the drilling activity is "not likely to adversely affect" any of the 10 Federally listed species found in the park. It was determined, given past numbers of nesting sea turtle activity, the imposed mitigation measures and operating requirements, and the past history of vehicle use (clarify which vehicles – all or only those associated with oil and gas?)of the seashore within Padre Island NS, that the risk of adversely impacting sea turtle populations is negligible (See page 80 and 81 of Lemon/Lemon Seed EA for this discussion). The 2001 National Park Service Management Policies states at section 1.4.7 that the land manager determines what impact thresholds are used to define impairment. We typically use those impacts categorized as "major" to

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National Seashore, it is NPCA's opinion that such oil and gas activity will not be able to avoid adverse impact to the endangered Kemp's ridley sea turtle or to the experience of the many people that visit the Seashore.

Without more explicit documentation that these impacts are clearly below the threshold of significance, the NPS has no choice but to either adopt the "No Action" Alternative or to make a decision to prepare an EIS on the proposed Lemon/Lemon Seed Unit wells.

Our specific comments follow.

begin defining what impairment means for a particular park resource, if the resource impact is not, or cannot, be mitigated or somehow reduced below that threshold. The impacts to sea turtles are described on page 81, and impacts to visitors are found beginning on page 100. Neither is found to be in the "major" category; there is no impairment of park resources or values.

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The EA is Deficient in that it Does Not Address in Detail an Alternative that Includes a Seasonal Closure on Drilling Activities. The Kemp ridleys sea turtle is a federally endangered species—the only such species that NPS has specific responsibilities assigned by the U.S. Fish and Wildlife Service (**USFWS**) in terms of a Recovery Plan for Padre Island National Seashore. At a minimum, the EA must include alternatives that analyze well drilling activities outside of the nesting season for Kemp's ridley. To not include such alternatives is contrary to the objectives of the National Environmental Policy Act (NEPA), the Endangered Species Act, and NPS' own guidelines for implementing NEPA (i.e., NPS-12). The EA does not adequately discuss the total amount of potential truck traffic resulting from routine drilling operations in addition to scenarios where water would have to be hauled from the park's fire hydrant, from the existing Dunn-Murdock well, and where drilling mud and excess liquids would be transported by truck out of the park. As such, NPCA views the analysis in the EA to be flawed as it currently lacks an adequate accounting of the total potential for truck traffic along the Gulf Beach. Further, when viewed in this light, NPCA believes that NPS will be unable to justify allowing BNP to conduct well drilling operations during the sea turtle nesting season based on an apparent inability to actively schedule and monitor this extensive level of truck traffic. Without adequate reassurance in the EA and accounting from NPS that it has the manpower and resources to conduct such monitoring, we believe that the analysis in the EA to support its contention is flawed and that the potential to adversely impact sea turtles is extremely high and, thus, contrary to NPS resource protection mandates, NEPA, and the Endangered Species Act. Given that the two most controversial and potentially significant	**Response # 3**: The Seasonal Closure Alternative was considered but dismissed from further analysis because it was not a reasonable alternative (see page 31 of EA). **Examining the history of natural gas drilling on Padre Island NS, and most recently the last three gas wells developed on and adjacent to the park, the average time frame for drilling and well completion is around 4 months. To allow only 5 months for an operator to complete a well is an extremely tight schedule, and does not allow for any kind of extended operation. Examples include a drill bit being broken or stuck, the time it can take to find an available drill rig, or any of the other myriad of unforeseen, delays. Also, once started, the drilling operation cannot be quickly shut down or interrupted without creating many subsequent operation and environmental concerns. Further, the impacts to other federally listed species that utilize the Gulf shoreline or Laguna Madre, like the Piping Plover, Least Tern, Eastern Brown Pelican, etc., as important summer or wintering grounds must be considered. For example, Padre Island NS hosts over half the known population of Piping Plovers for over 9 months of the year (Blacklock personal communication, 2002). This use is typically as a spring/summer migrant or for wintering habitat, with highest numbers occurring August through December. Limiting oil and gas traffic to the winter months would place greater stress on, and cause detrimental impacts to, this endangered species. Our NPS policy is to not to manage for single-species, especially where numerous federally listed species are involved.** (Area between asterisks: Per Linda, 'do we need to re-iterate the EA or introduce new reasons here? Suggest deleting if the information is already presented in the EA.) We feel the EA analyzes reasonable alternatives and addresses concerns relative to wildlife and habitat protection, while allowing mineral owners and lessess to exercise their vested rights. **In looking at the seasonal closure alternative, we determined that increases in heavy truck traffic would occur because of the limited drilling window. In order to maximize efficiency and to utilize the

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issues associated with the proposed undertaking include project effects on the endangered Kemp ridleys sea turtle during the nesting/hatchling season and on the experience of visitors during the peak summer visitation to the Seashore, the NPS is required under NEPA and its own policies to include a full-blown alternative—to be discussed in comparable detail to that of the Proposed Action and No Action Alternative—that addressed these critical and controversial issues. The fact that the EA is limited to only two alternatives, with one being the action proposed by BNP and the other being
"No Action," is evidence enough that NPS has failed to take a hard look at a reasonable

entire open period, multiple drill rigs might need to be deployed in order to drill multiple targets. This would increase impacts from heavy traffic not only on birds, but also on visitors. The number of round trips allowed might need to be raised to handle the additional needs. Therefore, this alternative was considered not feasible due to increased impacts on protected wildlife, seashore habitat, and the visitor experience. We expect that over 95,000 people will use the seashore each year for recreational purposes below the five-mile marker. We do not feel that up to 20 round trips a day will cause major impacts to a majority of these visitors. ** (Area between asterisks: Per Linda, delete. 'Perhaps, it would be better to explain how BNPs Plan of Ops as submitted is one alternative; and additional mitigation measures applied by NPS as conditions of approval could have formed a separately identifiable alternative---but why go there now.')
In addition, there is still the need to allow trucks to service and maintain existing facilities at three or more sites. Access must be allowed for those large trucks in order to comply with existing plans of operation and to safeguard localized resources from spills and possible site contamination from overflow of stored fluids (saltwater and condensates). A seasonal closure would not allow for this important maintenance operation and environmental safeguard.

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Pg 3 range of alternatives to the proposed action. Significant NEPA case law exists to date that supports our contention that NPS has failed, in this case, to take a hard look at a reasonable range of alternatives in the Lemon/Lemon Seed Unit EA. This severe oversight on the part of NPS must be corrected before any approval of the subject EA; otherwise, it would not be difficult to demonstrate that such a decision was arbitrary, capricious, and an abuse of discretion. Further, without the inclusion of a seasonal drilling closure alternative in the EA, the NPS has failed the public by not providing an extremely valuable tool that clearly demonstrates the environmental tradeoffs associated with a seasonal closure for the drilling phase of proposed natural gas operations. We think, if viewed in full light and compared with the other two "alternatives," that an alternative that addressed a seasonal drilling closure would have clear environmental advantages over the current "Proposed Action." The only downfall we see to this new alternative is that it may require BNP to be more expeditious with respect to the drilling of its gas wells, but a five-month window each year in which to do so does not seem unreasonable. Thus, the faulty argument used by NPS to dismiss detailed analysis of a seasonal drilling closure (cited on page 31 of the EA) gives the appearance that NPS is more concerned with the economic costs to BNP for the drilling phase of the project as opposed to the environmental costs of drilling during the nesting season for Kemp's ridley, which corresponds with the time of highest public visitation. Indeed, the EA clearly states that if drilling were allowed to occur only during a five-month window from October through February that: "The public would not be subjected to the type of traffic volume during high visitation periods, and the risk of crushing or impacting nesting sea turtles,	**Response # 4:** Please refer to response #3. . .

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their nests, or any hatchlings left on the beach would be ***somewhat*** reduced" (emphasis added by NPCA for reasons explained below).

It appears that the EA was written in an attempt to mislead the public about the true environmental benefits of a seasonal closure to drilling. To say that the impact on sea turtles would be "somewhat reduced" as a result of a seasonal closure on drilling intentionally ignores the fact that Kemp ridleys sea turtles would rarely, if ever, visit Padre Island beaches from the months of October through February. Thus, if the EA

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presented an honest portrayal of the seasonal drilling closure 5 ernative it would be reworded to state that **impacts to Kemp's ridley sea turtles would be all but eliminated**. And any physical disturbance (e.g., deep tire ruts on the beach that could preclude turtle movement to the base of dunes, compaction of sands along foredunes) to Further, the alarmist statement in the EA that "A seasonal closure may also require that the drilling rig(s) to be (sic) demobilized and moved ***repeatedly*** up and down the beach…" (emphasis by NPCA) is a complete distortion of the possible outcome of a seasonal closure to drilling. Such a scenario may or it may not require such activity. In the case that it were, a drill rig would be required to move only if drilling of a particular well were not completed within the five-month time period and would be allowed to return to the drill site upon the end of the seasonal closure. It is NPCA's opinion that this "repeated" movement of drilling rigs outside the nesting season for Kemp ridleys would—only under a scenario made feasible by improper drill planning on the part of BNP—be highly preferred over the indiscriminate movement of drill rigs Pg 4 and attendant truck traffic during the drilling stage **THROUGHOUT** each nesting season for a possible period of **UP TO** 15 years (i.e., for the up to 17 wells identified under the EA's reasonably foreseeable development scenario). To give the impression that the repeated movement of drilling rigs would result in a disproportionate and adverse impact on resources at the Seashore as compared to a seasonal drilling closure alternative is outrageous at the least and irresponsible at the most.	**Response # 5**: Please refer to response # 3 above **Response #6**: Please refer to Response #3 above

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Text in the EA that dismisses further discussion of a seasonal drilling closure alternative even goes so far as to say "Even though there are added benefits to sea turtles and summer visitors, the potential for greater impacts due to heavier concentration of oil and gas activities created by the seasonal window outweighed the potential benefits." This claim is totally unsupported in the EA

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The reality is that there are several environmental advantages (already mentioned in this comment letter, above) to concentrating 7 e impact of drilling-related beach traffic during a five-month ndow when Kemp ridley sea turtles are not present at the Seashore. The EA further adds to its erroneous and misleading characterization of the seasonal drilling closure alternative by stating "Such a closure…may not allow for natural recovery of the beach and associated access routes between operations." This is completely unsupported speculation on a topic that is well within the authority of NPS to regulate and thus misleads the reader into assuming that NPS could not direct BNP to recontour beach access routes to their natural grade and appearance. And whether or not NPS would direct BNP to reclaim/recontour beach access routes after each season of drilling, a seasonal drilling closure alternative certainly would be preferable to up to15 years of unhampered and unreclaimed beach access routes. Thus, NPS appears to be throwing its hands up to the benefit of BNP before even trying to exert its discretionary authority over BNP's aggressive drilling schedule. The final clue that demonstrates the EA's inherent bias toward avoiding detailed analysis of a alternative for a seasonal drilling closure is the last paragraph on page 31 that invokes, without substantial support, the claim that such an alternative was dismissed because of "the potential impact to Piping Plovers and other…shorebirds…associated with more frequent or repeated mobilization of the drilling rig and associated equipment." Where did this supposed tradeoff come into the equation? The Piping Plover, although a federally threatened species, does not have the benefit of any established Critical Habitat along the	**Response # 7**: Please refer to response #3 above for clarification on this comment. Also, when Critical Habitat for the Piping Plover was first being considered by the USFWS, over 80 percent of Padre Island NS Gulf of Mexico and Laguna Madre shoreline habitat was included. It was, in part, removed from critical habitat designation by the USFWS because Padre Island NS has land management regulations and NPS policies in place that provide adequate protection for the bird and its habitat. The recovery plan for the Kemp's ridley sea turtle assigns a specific task for Padre Island NS ; however, for the other three species of sea turtles that utilize Padre Island NS, the recovery tasks we strive to follow are not park-specific. There are similar recovery plan tasks for the Piping Plover, and for all other sensitive species, that we consider in the management of Padre Island NS.

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route of proposed movement of drilling-related equipment (no federally listed species do) and the EA remains unclear how the added travel of equipment along the beach would disproportionately affect this species. Thus, the reader is lead to assume that this somehow outweighs the potential for crushing of Kemp's ridley sea turtles—a federally endangered species and the only such species in the Seashore for which the NPS has responsibilities under the species Recovery Plan—or their nests from unrestricted year-round access provided under the Proposed Action.

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The EA's conclusion of "no effect" to federally listed threatened and endangered species does not appear based on formal consultation with the U.S. Fish and Wildlife Service. The EA (page 67) mentions the fact that NPS prepared and submitted a Biological Assessment to the USFWS, who concurred on July 22, 2002, with the NPS' determination that with the application of mitigation measures, the proposed action "would (sic) 'not likely to adversely affect'" the species or suitable habitat of the species evaluated in (Section 3.9 of) the current EA. Thus, the	**Response # 8: For this project,** we, initiated informal consultation with the U.S. Fish and Wildlife Service (USFWS). Biological data and historical information were presented to the USFWS in a Biological Assessment. Based on the nesting data, history of the oil and gas program at Padre Island NS, and the potential to affect the sea turtle and other listed species, the USFWS concurred with the NPS's assessment that the proposed action was ***not likely to adversely affect*** the sea turtles or the other endangered or threatened species found at Padre Island NS. A copy of the concurrence from theUSFWS section 7(a) consultation is included with this document. (Per Rob, 'In this response, it probably would be a good idea to cite one or two facts from the BA that were important to FWS's concurrence)
Pg 5 EA is inadequate in that it fails to include copies of either the Biological Assessment or the response from USFWS. The omission of these documents in the EA begs the question as to which mitigation measures the USFWS apparently were referencing. Are these the exact same ones contained in the current EA? The omission of the BA as an attachment or appendix to the EA is even more glaring in light of the fact that the present EA does include both a Statement of Findings for Executive Order 11990 (Protection of Wetlands) and a Statement of Findings for Floodplains. In order to be consistent with Section 7 of the Endangered Species Act, it is NPCA's understanding that the current EA must incorporate the findings of the USFWS in the form of a Biological Opinion, which is not mentioned in the current EA.	
NPS' conclusion in the subject EA that the Preferred Alternative would not have the potential to adversely affect Kemp's ridley or other sea turtles is also not supported in the EA. As an example of the threat that is posed by such traffic, the acting regional director of NPCA's southwest regional office was escorted along the Gulf Beach by Padre Island National Seashore's superintendent on April 5, 2002, to view well drilling activities by BNP at the Dunn-	**Response # 9:** The words "truck trips per day" are missing from the text on page 80 of the EA. This was an oversight, not an intentional omission.

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Murdock site (beach mile 15). While enroute to the well site, both these individuals witnessed BNP's water hauling contractor exceeding the posted 25 m.p.h. speed limit and driving within the surf zone—both of which were actions in violation of BNP's existing permit for its Dunn-Murdock No. 1 gas well. Given that this infraction occurred during the sea turtle's known nesting period, it was entirely possible that such flagrant violation of BNP's permit could have resulted in injury or mortality to the endangered Kemp's ridley. As no NPS monitor was present along the beach immediately in front of this particular water truck, it further

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appears that the agency is unable to adequately monitor the enormous amount of truck traffic that could result from the current Lemon/Lemon Seed well proposal.

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Furthermore, given that the EA does not include the Biological Assessment, the public is unable to verify that this agency received adequate data on the number of potential truck trips along the Gulf Beach (from both the current proposal and cumulative development) and, thus, an ability to assess potential impact to the endangered Kemp ridley's sea turtle. As such, the NPS decision in the EA that the Preferred Alternative would not impact threatened or endangered species appears to have been made without thorough and adequate consultation with USFWS.

The EA provides additional erroneous data (page 80) by omitting some key words that make it appear that truck traffic associated with the proposed well drilling is much lower than actually stated elsewhere in the EA. This text specific to potential project impacts for Kemp's ridley states that truck traffic "would range from a low of 4 to a maximum of 20, with 13 trips being the project average over the busiest four months." The key words missing here are 'truck trips per day,' which is the actual expected level of truck traffic as shown in Table 3 (page 16) of the EA.

This further calls into question whether NPS forwarded the proper data on truck traffic to USFWS when that agency reportedly concurred with the NPS' determination of "not likely to adversely affect" threatened or endangered species.

Another significant misrepresentation provided in the EA occurs on page 81, and states "Drilling of the Lemon/Lemon Seed Unit wells would occur outside of the Kemp's ridley nesting season." One would wish this were a true statement for this and each of the 17 additional wells under the cumulative development scenario. The sad fact is that this is the only such text in the EA that

Response # 10: The text is corrected in the EA (see errata sheets).

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references any consideration to undertake the Proposed Action outside the nesting season for Kemp's ridley. Consequently, at most it represents wishful thinking on the part of NPS as the current proposal does not allow the agency to limit the timing of proposed drilling. It further reinforces the question as to whether USFWS was given adequate data from NPS from

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which to make an informed determination of affect on this 1 10 angered species. Table 10, Summary of Impact by Species, appears to have a series of typos under Alternative B: Proposed Action for the Kemp's ridley sea turtle. The text there reads that the "Lemon/Lemon Seed Unit wells would not be drilled, resulting in no new impacts on sea turtles" (emphasis NPCA's). The remainder of the text in this column reads verbatim from that under Alternative A: No Action, so it appears that this text was cut-and-pasted without begin revised to reflect impacts under the current proposal. Analysis of impacts to visitor experience as a result of the Preferred Alternative is inadequate. The current EA lacks adequate data to form the basis for the conclusion that the Preferred Alternative would not adversely affect the experience of visitors to Padre Island National Seashore. Given that 12.5 miles of the most heavily visited portion of the Gulf beachfront along the National Seashore would experience approximately 1,500 roundtrips by pickup trucks and large trucks over four-month period (one-third of which fall into the latter category, Table 3 of EA), it is hard to imagine that such constant traffic along the beach would not significantly and adversely affect the experience of Seashore visitors. 7. Coupled with a cumulative development scenario of up to 17 future wells, the potential is great for large amounts of heavy traffic to occur along the entire Gulf Beach over the course of many years (up to 15). The EA lacks a thorough analysis of the impact of any such traffic on the experience of visitors to the National Seashore and instead appears to attempt to obfuscate this very important point in a	**Response # 11**: Page 17 of the EA discusses use of water for drilling and gives options and worst-case scenario for acquiring water. The drilling of a water well at the Lemon site is justified by the amount of traffic it will eliminate. The 0.5-acre increase in the well pad was to accommodate additional storage capacity for liquids and cuttings to reduce the number of truck trips, and additional storage so BNP has greater flexibility in scheduling truck traffic. Both of these options allow BNP to work within the mitigation stipulations of no night traffic and up to 20 round trips per day for larger trucks, equipment, and commercial vehicles. In 1999, NPS, based on USGS assessment of remaining oil and gas resources beneath Padre Island National Seashore, formulated a hypothetical reasonably foreseeable development (RFD) scenario. The RFD scenario provides a means for **estimating** potential acres of surface disturbance and for analyzing site-specific impacts for the various environments (For the underlined text, per Linda, "No. Future oil and gas development may not occur as predicted in the RFD scenario. The numbers derived for the RFD scenario are based on the USGS estimates of hydrocarbon potential that was developed from well and production data gathered from various databases. The purpose of the RFD scenario is to provide a reasonable basis for analyzing the potential effects of oil and gas related operations in the park under the alternatives described and analyzed in the EIS". Clarify this in the following deleted text.). **Response # 12**: The EA states on page 1 that the park was established for public recreation, benefit, and inspiration; on page 58, that visitors come to the park "to get away," "be outdoors," and "for rest and relaxation;" and on page 99, "that visitors participate in numerous outdoor activities including fishing, camping, and others." These activities directly

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12 ries of statements that never directly address the visitor perience issue as it relates to such truck traffic.

The EA completely ignores the fact that many National Seashore visitors arrive at Padre Island carrying with them an expectation of a visit that will be dominated primarily by natural sights and sounds.

No doubt that the presence of truck traffic along many miles of the Gulf Beach during well drilling and production operations will come as a shock to many Seashore visitors and create conflicts with visitors sharing the beach driving corridor.

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15 Missing in the EA is any discussion or informal survey results about the expectations of visitors, the reasons they visit the seashore, their attitudes regarding heavy truck traffic along the beach, and the potential for such use and traffic conflicts

Without such information, the EA matter-of-factly states that such traffic "could last for up to 141 days" and then quickly concludes that the Preferred Alternative would not adversely affect the visitor experience.

Absent in the EA is a projection of the total amount of truck traffic over the life of the Lemon/Lemon Seed wells and the cumulative development scenario from which to form the basis of the conclusion that traffic resulting from the Preferred Alternative will not adversely affect the visitor experience over the long term.

Indeed, the EA (page 102) acknowledges that such cumulative impacts would result in "short to long-term, minor to moderate adverse impacts…on visitor use and experience" but nowhere does it specify what these impacts might be nor does the EA provide any mitigation measures for what

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would clearly be a significant impact to the experience of over 95,000 annual visitors (18% of total annual visitors, as cited on page 98) that traverse beyond Little Shell Beach, which extends from mile marker 6 to 9. Thus, the shear number of visitors who are likely experience this heavy on-beach traffic is **staggering**!

Yet the EA apparently relies on annual visitation data from a 1987 study that significantly under represents current Seashore visitation or it contains an important omission for the estimate of people who recreate on the Gulf Shoreline of South Beach each year, as described in the second to last paragraph on page 98.

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Response #12 cont: relate to the park's purpose and what visitors expect to experience upon their arrival. Drilling of a gas well will affect the "visitor experience," but mitigation measures outlined in Tables 4 and 5 will avoid or minimize these impacts and help visitors experience the park's natural sights and sounds while allowing the required access for mineral development.

Response # 13: This one needs to be rewritten; refer to the survey that was done on the oil and gas management plan
As mentioned on pages 98 through 102, NPS utilized the most recent information available on visitor use and experience and addressed how this project would affect the visitor's experience.

Response # 14: On page 16 of the EA, Table 3 shows that during a 117 day period 1,495 trucks traversed the Gulf beach and that 505 of these were escorted vehicles. These numbers fall within the limit of 20 round trips per day for escorted vehicles. Twenty trips per day equals 140 trips per week. According to the truck logs, the peak week had 90 round trip truck trips. Caravanning of vehicles reduces the "constant traffic" impression. Mitigation measures and conditions of approval listed in the EA (Tables 4 & 5) reduce the impact of the truck traffic upon the visitor experience. The limiting of escorted trucks to 20 round-trips per day was agreed upon by USFWS, USGS, and NPS, and implemented by BNP. Our conclusion remains that the impacts are minor to moderate, given the volume of recreational traffic moving up and down the beach.

Page 16 of the EA presents Weekly Number of Oil and Gas Vehicles Driving on the Gulf beach to access the Dunn-Murdock Well Location at Yarborough Pass, to provide an expected level of truck traffic for the Lemon wells. Each proposed well location is different, and the actual number of truck trips is difficult to predict. Again, the RFD scenario is for general information, not specifics. Large truck traffic

Nonetheless, the EA fails to acknowledge that a lot of people travel and recreate along this narrow strip of beach and that there invariably would be many, if not a majority, of these visitors whose Seashore experience would be adversely affected by encounters with the cited average daily 13 to 20 trucks each day that would traverse the beach for 12.5 miles ***both*** coming and going to the well location (i.e, in essence, 26 to 40 passes each day).

decreases as a well either goes into production or is plugged and abandoned. Thus, we decided that the resulting truck traffic will not adversely affect visitor experience over the long term.

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Given that the purpose of Padre Island National Seashore is "to save and preserve, for purposes of public recreation, benefit and 17 inspiration, a portion of the diminishing seashore of the United States that remains undeveloped" (EA, page 1), it is unreasonable for the EA to assume that this incredible level of Gulf Beach traffic—for months on end—would not adversely affect public recreation or convey the impression of a seashore that is not developed. To the contrary, it is only reasonable that the EA would conclude that the NPS "impairment" standard for recreational uses would be exceeded by such traffic. Yet the conclusion section that states "No impairment to visitor use and experience would result from implementation of (the Proposed Action)," is completely unsupported—despite significant data in the EA that would lead most people to an opposite conclusion. Using criteria found on page 3 of the EA for what NPS Management Policies define as constituting 'impairment,' it appears unfathomable to make the case—as is done throughout the EA—that heavy Gulf Beach traffic associated with drilling of the Lemon/Lemon Seed Unit wells, and anticipated cumulative development, would not "preclude opportunities for enjoyment of the park." If not the current proposal, then what on earth would the NPS argue would preclude opportunities for public enjoyment of the Seashore?	**Response # 15:** You correctly point out a typo/omission in that paragraph, … "use patterns, the park estimates approximately **527,800** people recreate on the Gulf shoreline of South Beach each…" The visitation figures are based on 2000 visitation records, and Ditton and Gramann's 1987 report. The report is used for the patterns (percentage) of visitor use and distribution. These percentages in conjunction with the visitation data were used to extrapolate current visitor distribution. The number of visitors using the beach may be "staggering," but the number of oil and gas related traffic is minimal in comparison (95,000 / 1,500). On page 99 of the EA, there is a discussion of the expected impacts upon the visitor, " ...expected to be from viewing the increased truck traffic and being subjected to the noise generated by the larger trucks." **Response # 16**: Please refer to Response # 15 and # 17. **Response # 17**: This project will have an effect on some of the park's visitors. As mentioned on pages 98 and 99, park visitors not only recreate in the project area but throughout the park in areas such as Bird Island Basin, Malaquite Beach, North Beach, and down-island in the remote portions of the park. This project will affect visitors who recreate in the project area, but it will have little or no impact on those who recreate elsewhere. How this project is expected to specifically affect the visitors, and for what length of time, is addressed on page 101. Mitigation measures to minimize or eliminate these impacts are listed in Tables 4 and 5, and again on pages 101 and 102.
The Methodology description that precedes the analysis on impacts to visitor use and experience defines a 'moderate' impact as one that "is readily apparent and/or will affect some visitors." Thus, the EA states (although indirectly) that truck traffic along the Gulf Beach would be 'readily apparent and/or will affect some visitors' over a timeframe that is defined as 'long term.' But again, the EA does not state ***how*** such activity will adversely	

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affect Seashore visitors or speculate as to how long.

Thus, any discussion of mitigating this clearly significant and adverse long-term effect is absent and the reader is led to conclude that NPS believes that visitors will just have to get used to such heavy truck traffic over the next 15 years or so.

To be consistent with NEPA requirements and NPS mandates, the EA must first attempt to qualify these impacts then lay out explicit measures to mitigate them. If adequate measures to reduce such impacts to levels below significance cannot be found, NPS would be required to either adopt the No Action Alternative or to prepare an EIS.

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Pg [illegible]

21 ıe EA lacks adequate data from which to base conclusions about
22 ɛ project's impact to natural quiet.

..ıe EAs one attempt to provide data on expected sound levels from natural gas operations is wholly inadequate (Section 3.7, Impacts to Natural Soundscapes).

Although it starts by clearly stating that "the natural quiet of Padre Island National Seashore contributes heavily to a positive visitor experience," and that the L90 is "a useful measure of background sounds," these concepts are quickly thrown out and neither are invoked again in the subsequent Impact discussion (note: L90 is not a unit of sound measurement equivalent to the generic term 'decibel,' which is used elsewhere in the EA text).

The EA (page 59) erroneously states that "Sound levels could reach 90 decibels on the drill rig," when it is widely know that most drill rigs (Table 4 states only that BNP will attempt to secure a quieter, diesel-electric rig—it makes no real commitment) are capable of sound levels in excess of 100 to 110 decibels.

The EA further states that, "At 1,500 feet from the drill rig, sound levels would approach background levels (i.e., from the surf) ranging from 30 to 45 decibels." The EA thus makes no distinction between human/visitor perception of the natural (i.e., background) noise levels of the surf versus noise levels resulting from constantly running machinery such as a drill rig.

Most studies of noise suggest that people who are recreating within natural environs are much more irritated at such machinery-type noises, which can readily be discerned over the more natural ambient—and thus more pleasing—noise levels.

Nonetheless, the offering of a decibel range at 1,500 feet from the rig is totally superfluous, as page 14 of the EA states "the well site

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Response # 18: Please refer to Response # 19 and 20 below.

Response # 19: As mentioned on pages 58 through 60 under the impact sections for both alternatives, the EA refers several times to sound levels associated with different drilling activities, such as 90dB at the drill rig, and recreational use, such as exceeding 60dB when radios are played loudly. In addition, the EA refers to how these impacts will affect the park visitors by increasing noise levels that could be heard by visitors located near these sources. As stated on page 58, under the Affected Environment section, the term L90 is defined as the sound level *(decibel)* observed 90% of the time. It is not considered a unit of measurement but rather an indication of the maximum sound level that would likely be heard most of the time. In other words, sound levels would exceed this value less than 10% of the time.

Response # 20. The 90-decibel (dB) level was provided in the Plan of Operations for the Lemon/Lemon seed well. This level is comparable to other compressor and drilling rig sound levels provided by various sources. These sound levels are listed below and include typical equipment utilized in the drilling of a well.

Diesel compressors and generators:

Approximately 59 dB at 450 feet (Foch, 1998)
Less than 90 dB at 50 feet (EPA, 1974)
Less than 85 dB at 50 feet (EPA, 1974)

Drilling rig:
70 dB at 200 ft, (Miccosukee 3-1 Exploratory Well, Broward County, Florida, 1994)
80 dB near rig (Miccosukee 3-1 Exploratory Well, Broward County, Florida, 1994)

Diesel trucks:
Less than 95 dB at 50 feet (EPA, 1974)
92 dB at 25 feet (Miccosukee 3-1 Exploratory Well, Broward County, Florida,

would be located approximately 900 feet west of the Gulf Beach." Thus, the location of most actual Seashore visitors would be 40 percent closer than for where the location of the noise estimate is given in the analysis (which, in this case, is the noise level 600 feet offshore, but still not given in the accepted L90 convention).

Given that sound attenuation principles do not follow linear mathematical models (the rule of thumb is that sounds decrease by about 10 decibels with each doubling of distance from the noise source—that is, a logarithmic

1994)

Based on these values, we determined that the 90 dB level provided by the operator was adequate for the analysis of impacts to the park's natural soundscape.

Response # 21 As stated under the Affected Environment section on page 58, the natural sound levels that are observed on the beach are about 62 decibels 90% of the time. Based on research data that shows a 5 dB reduction with a doubling of distance (Foch, 1998), sound levels produced from this drilling operation should be near 55 dB on the beach.

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COMMENTS	RESPONSES
24 lationship), the EA thus completely lacks data that can be used estimate noise levels as perceived by Seashore visitors. Consequently, the conclusion in the EA (page 60) that "No impairment that to natural soundscapes would result from implementation of this alternative," is made completely without support of the necessary data and analysis. Particularly when the preceding statements acknowledge that the current well proposal would result in "short to long-term, negligible to moderate, adverse impacts on natural soundscapes" (emphasis by NPCA). Yet no mitigation measures are offered to ameliorate these identified impacts other than the possibility (but no commitment) to use a diesel-electric rig. The current EA is further absent any analyses on the effects to the visitor experience from the use of natural gas compressors during the estimated 20-year life of each well. Although it is currently unknown whether indeed compressors would be necessary at each well, it is reasonable to assume that multiple compressors would be necessary under the cumulative development scenario of up to 17 wells. Yet the EA lacks any discussion on expected noise levels from a hypothetical compressor and possibility of their use is given only fleeting reference in Table 4 (number 33). The current EA and the previous EA also are absent any analyses on the effects to the visitor experience from the common venting of natural gas wells under a process known as well "blow down." Pg 9 During the production phase, most natural gas wellheads must be continually vented to the atmosphere several times a week (or daily) to prevent the dangerous buildup of formation pressures and condensation in the wellhead. This process, know as blow down,	**Response # 21 cont.** This sound level is less than the natural sound level of 62 dB generated by the surf and wind and therefore should not be noticeable by visitors recreating on the beach for the majority of their visit. **Response # 22**: See comments under # 21 aboveIf a person visited the park when the wind was not blowing and stood on top of a dune directly across from the drilling location, that visitor may be able to hear the drilling rig. However, given that daily southeast winds average 12-15 mph, that the beach is upwind and "in front" of the dune line from the proposed drilling operation, and that. park visitors usually recreate on the Gulf beach and generally remain between the water and the fore dunes, the noise impact to park visitors from the well site is considered negligible. In addition, measures outlined in Tables 4 and 5 will be imposed to mitigate impacts to the park's soundscape from this operation. These measures include the use of a diesel electric drilling rig, use of hospital mufflers on compressors, planting native vegetation to act as a noise screen, and the elimination of truck traffic at night. **Response # 23**: Multiple compressors will likely be needed if all producing gas wells are placed into production in the future. The actual number of compressors that will be required is unknown because compressors are only needed when pressure levels are not naturally high enough to extract gas. There is no prediction of when a compressor will be needed, but compressors are generally installed after the well has produced gas for a period of time and are not always required for the entire life of the well. It is also likely that multiple wells could utilize a single compressor that would help to reduce the noise levels and visual impacts. Compressors generate higher noise levels the closer to the compressor one gets (refer to comment 14). The mitigation measure of using hospital mufflers will reduce the level of impact to the park's natural

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forces tremendous pressure through a relatively small orifice that can often be heard from distances of many miles—and sounds much like a jet engine. Assuming that blow down events will be necessary throughout the expected 20-year production life of wells subject to the Lemon/Lemon Seed EA, the NPS must analyze the probability of such occurrences, their impact on visitors and wildlife at the Seashore, and provide adequate mitigation to ensure that the Preferred Alternative and cumulative development of up to 17 additional wells will not adversely affect the visitor experience and natural soundscape of Padre Island National Seashore.

soundscape by 10-40 dB depending on the sound frequency (Beaird Industries, Shreveport Louisiana). The use of hospital mufflers on all compressors has been required by the park and will continue to be required. As mentioned on EA pages 58 and 59, the NPS considers the impacts to the visitors experience to be localized, long-term, and negligible to minor.

Response #24: The process of "blow down" and the reasons for doing it do not occur at Padre Island as part of routine operations. The impacts of such operations are therefore not a consideration in this assessment. (Actually, if this is a "reasonably foreseeable future effect," we are required to analyze it. You should explain why it doesn't apply.)

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COMMENTS **RESPONSES**

In conclusion, NPCA views the existing EA as deficient in its analysis of potential impacts and respectfully requests that NPS either adopt the No Action Alternative (Alternative A) or immediately initiate a more detailed EIS for the proposed undertaking. As currently proposed, the Park Service's approval of the Lemon/Lemon Seed wells and potential cumulative development of up to 17 additional wells would have a tremendous potential to result in both short-term and long-term impairment of National Seashore resources and values. It is our opinion that this federal undertaking must be the subject of more comprehensive environmental analysis (i.e., an EIS)—as any decision by NPS to approve BNP's current plan of operation as submitted could be considered as arbitrary, capricious, and an abuse of discretion.

NPCA also encourages NPS to immediately a request a Biological Opinion from USFWS on this topic, as there is no evidence in the current analysis that adverse impacts to endangered species such as Kemp's ridley sea turtle would be avoided under the current Plan of Operation. Further, should the NPS not adopt the "No Action" Alternative, NPCA recommends that the Biological Opinion and related documentation from USFWS be attached as an appendix to the forthcoming EIS.

We again thank you for this opportunity to comment on this controversial and highly visible project. It is our hope that BNP can work cooperatively with NPS and the public to ensure that no significant impacts would occur within National Seashore as a result of planned hydrocarbon development projects.

Sincerely,

Randall Rasmussen

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Acting Director
National Parks Conservation Association

Southwest Regional Office
823 Gold Avenue, SW
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Lone Star Chapter of the Sierra Club
Comments to Padre Island National Seashore, U.S. National Park Service
Re: ENVIRONMENTAL ASSESSMENT - BNP PETROLEUM CORPORATION LEMON/LEMON SEED UNIT WELLS NO. 1-1000S AND NO. 1-1008S; July 2002

SIERRA CLUB
FOUNDED 1892

Summary

Despite a second iteration of the Environmental Assessment (EA) on the proposed Lemon/Lemon Seed natural gas development, the National Park Service still has not adequately considered the impact of drilling operations, in particular the adverse impact on endangered sea turtles. NPS has therefore failed to satisfy the requirements of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

Moreover, the second EA for Lemon/Lemon Seed, like the first EA for Lemon/Lemon Seed and the EA for Dunn-Murdock, also fails to properly account for the impact of drilling operations on visitor experience, both in the short and long term. Based on information provided by NPS, it is reasonable to expect that heavy truck traffic and destruction of dune habitat in support of BNP's drilling campaign would be nearly continuous for the next fifteen years. The Sierra Club believes this will have a long-term and severe adverse impact on visitor experience, and therefore constitutes an impairment that is prohibited by the National Park Service Organic Act and the General Authorities Act. At the very least, those impacts require full consideration in an Environmental Impact Statement (EIS).

In these respects and many others, the second EA for

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Lemon/Lemon Seed, like the first, fails to adequately account for the cumulative impacts of the 15 or more separate drilling operations that BNP is expected to propose. In this EA and all future ones, the park should explicitly consider the cumulative impacts of the entirety of BNP's proposed drilling campaign on all of the resource categories that must be reviewed pursuant to the statutes listed above. Again, this requires NPS to prepare an Environmental Impact Statement.

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26 **T" e National Environmental Policy Act Requires Further alysis** ..nile the revised Environmental Assessment provides some additional commentary regarding the proposed oil drilling and the Park Service's rationale for permitting it, the NPS has yet to fulfill the National Environmental Policy Act's fundamental 'look before you leap' mandate. 42 U.S.C. § 4321 et seq. ("NEPA"). The Assessment acknowledges at several points that the environmental impacts of an oil spill related to the Lemon or Lemon-Seed Well would be severe. E.g., EA at 79 ("Leaks and spills from oil and gas operations could be serious . . . ."). Those potential impacts are not analyzed, however, in either the Assessment or the Environmental Impact Statement for the Seashore's Oil and Gas Management Plan. Those documents do not disclose the Park Service's estimate of the likelihood of such events. See 40 C.F.R. § 1502.22 (outlining information to be included in EIS in case of uncertainty). Absent some discussion and assessment of the risk of an oil spill, and the impacts should one occur, the Park Service cannot claim to have taken a "hard look" at the impacts of oil and gas drilling. For the same reason, the Service cannot rationally conclude that no EIS is necessary for the Lemon and Lemon Seed Wells. See National Parks Conservation Ass'n v. Babbitt, 241 F.3d 722, 736 (9th Cir. 2001) ("[W]here significant environmental damage may occur to a treasured natural resource, the studies must be conducted first, not afterwards."). The Assessment suggests that the proposed alternative will have impacts that warrant preparation of an Environmental Impact Statement. Babbitt, 241 F.3d at 730 ("If the Pg.2	**Response # 25**: The Lemon/Lemon Seed EA refers to existing operations and the RFD scenario;however, Gulf of Mexico spills are a more serious threat to the park. (Pquestion from Rob, "Why are Gulf spills a more serious threat? Historically, frequency or severity). The NPS requires operators in the park to implement the following mitigation measures to reduce the occurrence and severity of spills: - 20 mm thick polyethylene liners under the caliche pad - Berms around the pad, and should the well go into production, a liner and berm would be required around the tank battery. - A cellar around the well that's designed to collect spilled contaminating substances and facilitates their removal. - Drainage ditch dug on the pad to route all run off to cellar. - Blowout preventer installed on the well, along with additional control equipment to reduce blowout potential. - Use of a closed loop "zero discharge system" and no open pits. - A Contaminating or Toxic Substance Spill Control Plan in place. **Response # 26**: Please refer to Response # 1 above. There are no impacts that meet the NPS definition of "major" in this EA, given operating requirements, mitigation measures, and conditions of the permit. Therefore, an EIS is not required. **Response # 27**: Please refer to Response # 1, # 3 and #26 above. There are tradeoffs on the endangered species issue and the requirement to allow "reasonable" access to the mineral estate. It is our analysis that a seasonal closure does not provide a feasible alternative to the proposed action, given all legal and NPS land-management responsibilities and concerns.

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27	EA establishes that the agency's action '*may* have a significant ıpact on the environment' then an EIS must be prepared.") itation omitted). Moreover, the Assessment indicates that an alternative seasonal closure might results in benefits to "shoreline species, e.g. Piping Plover," and would reduce "the risk of crushing or impacting sea turtles, their nests, or any hatchlings left on the beach." EA at 31. Nevertheless, the Service dismisses that alternative based upon a conclusory statement that there may be "potential for greater impacts due to heavier concentration of oil and gas activities," and "potential impact to Piping Plovers and other protected and non-protected species of shorebirds, and the	

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pected increase in [BNP's] costs." EA at 31-32. Such uncertain trade-offs between impacts upon unique – indeed, endangered – resources are precisely the matters that demand fuller consideration.

40 C.F.R. § 1508.27; Babbitt, 241 F.3d at 733 ("[G]eneral statements about possible environmental effects fail[] the 'hard look' test required under NEPA.").

The Endangered Species Act Requires Formal Consultation With the U.S. Fish & Wildlife Service

Likewise, the Park Service is required by law to procure a biological opinion addressing the impacts of the proposed drilling operations on threatened and endangered species before it approves those operations.

The Environmental Assessment notes, at several points, potential impacts to species protected by the Endangered Species Act, e.g., EA at 81 (noting that "the primary impact would be obstacles to emerging hatchlings from unfilled ruts, from vehicle traffic, and the possibility of crushing"), in particular significant adverse cumulative impacts, e.g., EA at 77 ("Operation of all vehicles, including oil and gas heavy equipment, on the beach can crush nesting turtles, stranded turtles, hatchlings, and some eggs, producing an immediate, lethal impact and may cause changes in the structure or density of beach sand, indirectly affecting nesting and incubation habitat."). And, as set forth above, the Assessment notes, but fails to analyze, the severe harm that would occur as a result of an oil spill related to oil and gas operations.

The Service dismisses these potential impacts as "short-term" and "minor," and has not, to our knowledge, initiated formal consultation with the U.S. Fish & Wildlife Service. The impacts themselves, however – which include potential "take" of listed

Response # 28: Please refer to Response # 8 above.

Response # 29: Please refer to Response # 8 above.There are no planned activities or operations that "are likely to adversely affect a species covered under the Endangered Species Act. The USFWS hasconcurred in this assessment. A copy of the concurrence from USFWS is attached at Appendix 1.

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species under the Act – ill fit those descriptions. Section 7 of the Endangered Species Act and its implementing regulations require
29 e Park Service to initiate formal consultation before permitting any activity that "may affect" listed species, excepting only those activities that are "not likely to adversely affect" those species. 50 C.F.R. §§ 402.13-14. The impacts described in the Assessment are not of the sort that qualify for the "not likely to adversely affect" exception.

Impacts to Visitor Experience

Section 3.10 analyzes impact of operations on visitor experience. This section shows a significant improvement over Section 3.9 of the first EA on Lemon/Lemon Seed by correctly noting that "impacts on the visitor from

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31 BNP project are expected to be from viewing the increased ck traffic, and being subjected to the noise generated by the 30 ger trucks used for hauling drilling and production equipment, etc. to and from the site." Sadly, Section 3.10 concludes by finding that "no impairment to visitor use and experience would result from implementation of this alternative." In essence, NPS finds that there will be no significant difference in the visitor experience on the 12.5 miles of beachfront between the end of the Park Road 22 and the Lemon/Lemon Seed site whether 20 heavy trucks rumble down the beach each day or not. One needs only to witness a series of three 18-wheeler trucks barrel down the beach between campers, fishermen and beach bathers to know that this conclusion is fundamentally wrong. Industrial trucks are significantly louder and more disruptive in their presence than passenger vehicles. This is why many neighborhoods in Texas fight to have heavy truck traffic excluded from their area. It is why roads and bridges that receive truck traffic require repair more frequently than roads and bridges that do not. This finding flies on the face of common sense. As we noted in our comments on the first Lemon/Lemon Seed EA, any visitors who are seeking solitude, tranquility, or opportunities for recreation in the 12.5 mile stretch of beach between the end of the paved road and the well site have a high likelihood of their experience being degraded or ruined by the heavy trucks. 3 Comments indicating serious visitor dissatisfaction with the truck traffic have been found in the press, have been made to park managers, and have been shared with the Sierra Club.	**Response # 30**. The EA acknowledges that there will be some impacts to visitor experience but concludes that those impacts will be localized, short to long-term, negligible to minor, and adverse within the analysis area. The impact is expected to be from viewing the increased truck traffic and being subjected to the noise generated by the larger trucks. Because there are no major adverse effects related to park resources and values, there is no impairment of park resources. Please refer to response #12 and # 34 for a discussion of impairment. Also see NPS response # 15 and # 17. (Per Linda, this is not relevant to this decision.) **Response # 31**: The NPS acknowledges that some visitor dissatisfaction with past drilling truck traffic has occurred. As mentioned under Response # 30 above, the largest amount of impact to the visitor experience will occur within the project area for this operation. Mitigation measures will be imposed to reduce these impacts. **Response # 32**: It is the conclusion from the Lemon/Lemon Seed EA, pages 101 –102, that minor impacts to some visitors will occur. This is expected during the heaviest truck traffic, during pad construction, and during rig set-up and removal. Some visitors will never see the activity because it occurs beyond their travel distance or outside their area of use, or they may arrive when the activity is not being conducted, or when the activity is much reduced (when drill rig is operational, etc.). So, not all visitors will be impacted by this use. Please see Response # 15 and # 17 for further review of your concern, and the definition of Impairment below at Response # 34.

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Sierra Club members have conveyed to the Lone Star Chapter staff how camping and birding trips on PAIS have been ruined by truck traffic. Some of Sierra Club members have told us that they will not return to the park as long as the truck traffic continues.

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Given that BNP's operations could easily continue for fifteen years, it is not credible for NPS to conclude that BNP's drilling campaign will not have a serious, long-term adverse impact on visitor experience, thus constituting an impairment that is prohibited by the National Park Service Organic Act and the General Authorities Act.

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At the beginning of Section 3.10, it is stated that visitor surveys, among other findings, have been used to evaluate the effects on
34 tor experience for the purpose of estimating the effects of the ons in the alternatives.

It is unclear if this means that NPS has taken a survey on visitor experience since it granted BNP a permit to begin operations on the Dunn-Murdock well. If it has, it should share the results of that survey in the EA. If it has not, we reiterate our belief that a survey of visitors on their attitudes towards the BNP operation is essential in order to properly evaluates the effects of this drilling campaign on visitor experience.

What is Meant by Impairment?

Mr. Johnny French, formerly with the USFWS, notes in his comments on this EA, as he did in his comments on the first Lemon/Lemon Seed EA, that NPS has failed to define "impairment" for the purposes of this EA, the ones preceding it, and the Oil and Gas Management Plan (February 2000). The Sierra Club seconds this point, again, and urges NPS to define impairment so that objective measures of evaluating potential damage to Seashore's resources can be fairly made, and so that these evaluations are not subject to undue political influence.

NPS has informed the Sierra Club that the determination of what defines impairment ultimately rests with park managers. But when parties disagree strongly on matters such as this and emotions can be expected to have a potential impact on policy decisions, having a fixed definition of impairment is essential in order to maintain the integrity of NPS's NEPA evaluations. It is also a necessity if the Sierra Club and NPS are to come to terms on a negotiated resolution of the current legal complaint pending against NPS and USFWS. Without some sort of baseline terms that are agreed upon, and without a definition of impairment that unifies the parties together in agreement that each side is interested first and foremost in the protection of the seashore and

Response # 33: No visitor surveys have occurred since the permitting of the Dunn-Murdock well. Information relied on for the effect determination was from surveys conducted for the oil and gas management plan. Please refer to Response # 32, and # 34 below.

Response # 34: Please refer to response #30. Under the NPS Organic Act, Congress vested NPS with the responsibility of managing units of the National Park System so as to "leave them unimpaired for the enjoyment of future generations."

The *2001 NPS Management Policies* provides guidance to park decision makers on how to determine whether a proposed action could lead to an impairment. Section 1.4.5 of those policies states "The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for th enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts." The EA describes direct, indirect, and cumulative effects and assign intensity levels, based on the definitions provided, for each impact topic. Any major adverse effects are flagged for consideration as to whether or not impairment may occur. Based on the data presented in the EA, including supporting documents, we determined that the proposed action with mitigation would cause no major adverse effects, there fore there is no impairment to park resources, including soundscape..

(This does not respond to the comment)

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its resources, resolution of this dispute will be far more difficult.

To this end, the EA should clarify in objective terms what is meant by its use of the word impairment, and demonstrate that NPS' application of the

term in the EAis what was intended by Congress in all laws relevant to this action.

Section 1.2.1, "NPS Organic Act and General Authorities Act," states:

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"The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that would otherwise be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts."

Although Congress sought to permit impairment only by law and in specific instances, the EA's definition of impairment as quoted above thwarts Congress' purposes by making the term "impairment" subjective and unspecific. As a consequence, each time the EA identifies the destruction or diminishment of a park resource or value, the impact is dismissed without explanation as resulting in no impairment. The EA should go back to the usage of impairment which Congress intended, that is, the plain definition found in dictionaries and used in federal courts, and then explain for each identified adverse impact which particular law directly and specifically provides for that impairment to occur.

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Submitted by the Sierra Club, August 26, 2002

Questions about these comments should be directed to:

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Communications Director

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COMMENTS	RESPONSES
JOHNNY D. FRENCH 4417 CARLTON STREET CORPUS CHRISTI, TEXAS 78415-5211 361-853-9331 jfrench@stx.rr.com September 27, 2002 Jock Whitworth Superintendent Padre Island National Seashore P.O. Box 181300 Corpus Christi, TX 78480 RE: Environmental Assessment, BNP Petroleum Corporation Lemon/Lemon Seed Units No. 1-1000S and No.1-1008S, Padre Island National Seashore, Texas, July 2002 Dear Jock, I appreciate once again the opportunity to review and comment on the EA and the proposed drilling and production activities. The following comments are provided, as the salutation in your July 25, 2002 cover letter correctly indicates, in the spirit of friendship to the National Seashore. If the format and language are somewhat stilted and preachy, please understand that old habits are hard to break. GENERAL COMMENTS The revised EA is a great improvement over its predecessor and, while by no means perfect, comes closer to achieving its	INTENTIONALLY LEFT BLANK

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procedural goal of taking a hard look at the proposed action and its alternatives

However, there are still substantive issues surrounding whether, when and where vehicles associated with the proposed drilling and maintenance should take place on the Gulf beach. The sea turtles,

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COMMENTS	RESPONSES
and the Endangered Species Act requires additional attention to those issues. There are also policy level matters, upon which the 35 ised EA expands, that go beyond this activity and the National Seashore, and hence probably need to be addressed outside the scope of this environmental document. SPECIFIC COMMENTS Section 1.2.1, NPS Organic Act and General Authorities Act – Prevention of Impairment, p. 3 - - This section makes another attempt at defining impairment, but again runs up against the problem of subjectivity when Pg 2 the definition incorporates reliance upon "the judgment of the responsible NPS manager." In my comments on the previous EA, I had asked for more objectivity in the definition, particularly in the area of what Congress intended impairment to mean. I still recommend this, not just because it would enhance consistency in the application of the word to the proposed action, but also because it would shift the responsibility of making the impairment call from your shoulders to those of Congress. This recommendation has nothing to do with the professional capabilities of you or your fellow supervisors to make such a call, but is an attempt to protect the managers of parks, refuges, wilderness areas and the like from political pressures. If you state flatly that an impact is or is not an impairment because Congress says so, those pressures disappear, and the public can appeal the manager's decision to authorize or deny permission for that impact to the correct responsible party: Congress. For example, suppose the manager for the Arctic National Wildlife Refuge was	**Response # 35**: Please refer to Response #12, 30, and #34 above. Congress authorized NPS (and its park managers) to oversee parks and make decisions about protecting resources and providing for visitor enjoyment. Our guidance on impairment comes from the 2001 *Management Policies*, specifically sections 1.4.3-1.4.7 and 8.1. Additional guidance is also available on the NPS web page at http://www.nps.gov/protect.This EA is consistent with all applicable guidance. Comments on the *Management Policies* (and whether the impairment decision should be made by the park superintendent) would be most effective if they were sent to our NPS Director at 1849 C Street, NW, Washington, DC 20240.

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the sole entity needed to approve or deny oil and gas exploration and production on the North Slope, based upon his authority to determine whether the environmental impairments associated with these activities were consistent with the analogous organic act behind the Refuge's formation. If you were in his or her shoes, would you want to be the only one to take the heat for making a subjective call, or would you choose to refer to written expressions of specific Congressional Intent.

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COMMENTS	RESPONSES
38 :tion 1.2.2, NPS Nonfederal Oil and Gas Regulations, 36 CFR p.4 - - The section states "The 9B regulations apply to operations that require access on or through federally owned or controlled lands or waters in connection with nonfederally owned oil and gas in all National Park System units (36 CFR § 9.3(a))." Does the verb "require" mean that there must be no feasible alternatives to such access before the manager permits it, or do the regulations give the manager leeway to allow access merely because it would be cheaper or more convenient? If granting access would adversely impact a federally-listed species or otherwise impair a park resource, is that access still required? If "require" is not an absolute in these and other circumstances, the EA should clarify the meaning of the quoted statement. Section 1.2.3, NPS Oversight and Monitoring of Nonfederal Oil and Gas Operations, pp. 4,5 - - The section's statements about strict liability for damages and the Superintendent's authority to suspend operations violating terms or conditions of operating plans are very encouraging. However, does holding any person strictly liable for damages or injury also mean the person will be held wholly liable? Condition Number 2 in Table 5 on p. 27 indicates that BNP's liabilities are severely limited. Is it correct to assume the NPS would be stuck with paying for damages exceeding $50,000 per well? Section 2.2, Alternative B, Proposed Action, pp.15,16 - - This section and Table 3 indicate BNP's drilling operation at the Dunn-Murdock location at Yarborough Pass, 2 ½ miles south of the proposed Lemon/ Lemon Seed locations, spanned four	**Response# 36**: Mineral owners, or their authorized agents, must be given access to those the minerals beneath Padre Island NS. Access to a site can may be regulated by NPS under authorization of 36 CFR 9 B regulations and other authorities described in the "Authorities" section of the EA. To protect natural resources and comply with land management (surface ownership) requirements or policy, access routes can may be changed, but access cannot be denied without incurring liability. This should be **Response #37**. With regards to the second highlighted comment beginning with 'However, does holding…"., per Rob, "What about CERCLA, CWA, and OPA? Probably should mention all of them and emphasize that the NPS will utilize all legal authorities to hold responsible parties wholly liable". Need an answer here. **Response # 38**: No. The $50,000 represents a regulatory limit on the amount the NPS can require to bond against the liability imposed by section 9.51(a) ("damages to federally owned or controlled lands, waters, or resources"). The performance bond requirement is a mechanism that allows us to respond to resource damage and to restore resources if the operator fails to take action. The bond limitations under section 9.48 do not, however, represent a cap on total damages we may seek to recover in court. **Response #38:** Please refer to Response # 37 above. **Response # 39:** The Dunn Murdock well did take four months to drill. Why did it take so long? Drilling has improved greatly with the advent of various technologic advances, but there are still many unknown factors that make having a precise timetable impossible, (see comment #3 above). The proposed operations could very well extend into the 2003 turtle season. U.S. Fish and Wildlife Service concurred that the mitigations would adequately address the situation,

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months

39 Why did it take so long? What is the likelihood that it could take so long to complete the proposed operations that associated vehicular activities on the Gulf beach for the latter would extend well into the sea turtle nesting period in 2003?

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See comments below on impacts to turtle nesting.

and USFWS will be kept informed of progress on the project.

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COMMENTS	RESPONSES
41 Table 4., Mitigation Measures under Alternative B, Proposed Action, pp. 23,24 - - The EA does not indicate that the proposed drilling activities would include the services of a mud logger, much less that a continuous record of shale densities would be made during those activities. Over 25 years ago, such records were a routine method for anticipating over-pressured sands before they were encountered, giving the operator time to prepare for a possible "kick" by increasing the mud weight and reducing the drilling rate, thus potentially preventing a blowout. As directional drilling, such as that proposed, can be particularly vulnerable to blowouts because of the increased exposed surface area, compared to that of a vertical hole, of the annulus within a newly-drilled sand formation, I again strongly recommend you require the continuous measurement and graphing of shale densities as a mitigation measure. (In case you're wondering, I was a mud logger for Baroid before I went to work writing environmental impact statements for the Bureau of Natural Gas in 1975. I've done shale densities and seen a kick when no one paid to record them at a hole here in South Texas.)	**Response # 40**: BNP's proposal includes the use of a mud logger for both wells. In addition to the benefit of having a mud logger on location, BNP's proposal includes all required factors related to well control equipment and practices. **Response # 41**: The operator will utilize the mud logger's expertise.(Pat Odell Response??)
Section 2.3, Alternatives Considered but Dismissed from Further Analysis, pp 29-32 - - This section briefly discusses alternative surface locations for the proposed holes on land north and south of the proposed location and offshore in the Gulf. These discussions do not include mention of what specific advantages each such alternative might have over the proposed location, and hence have the appearances of being examinations of straw men chosen merely to make the proposed action look comparatively	

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better. Each alternative must have its pros as well as its cons discussed and compared, or the "hard look" required under the National Environmental Policy Act will not have been demonstrated.

At the end of the discussion about the Gulf alternative, the section includes the increased risk and potential of a spill event, visual impacts to park visitors, as well as increased costs, among the reasons to dismiss the offshore alternative from further consideration.

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COMMENTS	RESPONSES
42 st out of curiosity, how many wells are there within the P.I.N.S. the Laguna Madre, and what is the park's policy about drilling directionally from land to bottom hole locations beneath the lagoon to avoid increased spill risks and potentials, increased costs, and visitor impacts associated with drilling in the water? This section also discusses alternative flowline locations and well access routes. From these it is apparent that at least two existing gas pipelines extend north-south near the proposed drilling sites. Elsewhere in the EA, it is noted that the existing pipelines and the proposed flowline require(d) vehicular access routes for their construction and maintenance. Presumably, the width of disturbance for constructing the rights-of-way for the existing pipelines exceeded that proposed for the much smaller flowline, and a narrow track for maintenance equipment access is still Pg 4 followed alongside the active pipeline within the wider construction R-O-W. Although the section states in its discussion of the alternative well access route that such a "route would entail six and one-half (6.5) miles of **new** road from Park Road 22, connecting to an existing unpaved route at the Pan Am Road for approximately three (3) miles, then construct new road for the next two and one-half (2.5) miles to the proposed well site" [emphasis added], if the existing pipeline R-O-W runs anywhere close to Park Road 22, there may be an opportunity for the construction equipment and other vehicles to follow its maintenance path in accessing the proposed drilling sites. Likewise, since the proposed flowline R-O-W would be impacted by the proposed action anyway, extending the access road from the existing pipeline to those drilling sites would not require much, if any, additional R-O-W.	**Response # 42**: Currently there are no wells within Padre Island National Seashore boundaries in the Laguna Madre. RED #1 inhe 2000 Oil and Gas Management Plan /EIS, 2-5, states, "The development of wells may be drilled in the Laguna Madre from barges or directionally drilled from a surface on the western side of the National Seashore." Production facilities must be located on upland locations within the park or outside the National Seashore. Presently, the state of Texas does not allow production facilities on Laguna Madre waters **Response # 43**: This alternative is addressed under the "Alternative Well Access" section, on pages 30 and 31. Due to the potential misuse of these roads by unauthorized recreational vehicle use, impacts to substantial wetland acreage and land resources, and road construction costs, the NPS dismissed this alternative from further consideration. .

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