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DATE: September 12, 2002 19 pages attached

TO: Chris Turk, REC, IMDE-PE

MESSAGE: Here are my edits on the draft responses to comments for the Lemon/Lemon Seed Unit Wells EA.

Linda

foxed @ 11:20am

NPS DOCUMENT # 634

General Comment - Need to place Comment # directly left of the comment.

COMMENTS



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 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.

why would impact intensity thresholds be different?

RESPONSES

Response #1: The information presented in the Environmental Assessment for the Lemon/Lemon Seed Well Drilling Program (EA), along with the analysis of impacts and 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 well scenarios. The Record of Decision (ROD) documents that significant impacts would not occur at those levels. Thresholds set in the Final EIS and ROD were established and were compared to the Lemon/Lemon Seed EA for current natural gas activities and are found to be 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.

It is found that the action, approved with mitigation measures and conditions of approval, will not cause major impacts, or impairment, to the resources or park values of Padre Island NS. Compliance with environmental laws and regulations, Texas permitting requirements, etc., was completed in the development of the Lemon/Lemon Seed EA. Concurrence from U.S. Fish and Wildlife Service and the Texas Historical Commission for Endangered Species Act and Section 106 of the National Historic Preservation Act respectively, was obtained. NPS non-federal Oil and Gas Regulations (36 CFR 9B) were followed, and DO-12 NEPA procedures were completed. The Environmental Assessment is deemed appropriate under these guidelines and policies.

will result in localized and long-term, negligible to moderate adverse impacts on air quality, geology and soils, water resources and floodplains, vegetation, natural sandscapes, wildlife, state and federally protected species, and visitor use and experience. But, the proposed action...

redundant delete one

OK

discussed in

Suggest Deleting

State Historic Preservation Office

COMMENTS

2 based on the analysis contained within the current EA and upon on the Park service's responsibilities under its Organic Act, General Authorities Act and Redwoods Act Amendments, and its 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.

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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 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.

RESPONSES

Insert deleted best from Response #1, 2 sentences.

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 of the seashore within the 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 2000 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 begin defining what impairment means for a particular park resource, if the resource impact is not, or can not, be mitigated or somehow reduced below that threshold. The impacts to sea turtles are described on page 81, and for the visitor they can be found beginning on page 100. Neither is found to be in the “major” category, therefore impairment is not anticipated.

COMMENTS

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 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

RESPONSES

considered but dismissed from further analysis because it was not reasonable
Response # 3: The Seasonal Closure Alternative was addressed and assessed for its impacts and feasibility (see page 31 of EA). As discussed on page 31, there are several reasons why the seasonal closure is not felt to be an acceptable alternative.

Examining the history of natural gas drilling here 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 four (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 can be a drill bit being broken or stuck, the time it can take to find an available drill rig, or any of the other unforeseen, but not always predictable, breakdowns or delays (weather, accidents, compliance issues, etc.). 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 could place greater stress on, and cause detrimental impacts to, this endangered specie. The policy of the National Park Service is to not single species manage, especially where federally listed species are involved. We feel the EA provides feasible alternatives and addresses all species concerns relative to wildlife and species habitat protection, while allowing mineral rights to be honored.

analysis reasonable

In looking at the seasonal closure alternative, it was determined that increases in heavy truck traffic would occur because of the limited drilling window. In order to maximize efficiency and to utilize the entire open period, multiple drill rigs could be deployed in order to drill multiple targets. This would increase impacts from heavy traffic not only on birds, but also on the visitor. Instead of a limited number of twenty round trips per day, the number allowed may have 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. Using a conservative view, it is still expected 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.

Do we need to re-iterate the EA or intro see new season here? Suggest Publishing.
Dilute
Could explain how BNP's Plan of Ops as submitted is 1 alternative; & additional mitigation measures applied by NPS as Conditions of approval could have formed a separately identifiable alternative & but why go there now.

COMMENTS

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4 range of alternatives to the proposed action. Significant NEPA case law exists date that supports our contention that NPS has failed, in this case, to take a 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, 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

RESPONSES

Response # 4: Recreational use is an important impact that we must weigh when assessing the impacts of heavy trucks on the seashore. Limiting the number of vehicles on the Gulf shoreline is a good idea, but restricting only the large trucks does not accomplish full resource protection. Removing oil and gas truck traffic will not "eliminate" the risk of impacts on the Kemp's ridley and other sea turtle species, it would only "reduce" the potential impact, as there is still a vast majority of public vehicle use on the beach during the nesting season.

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.

Why?
go
here
when
seasonal
closure
was
dismissed

NO
"issue" or
"concern" or
"impact" topic

COMMENTS

RESPONSES

6 presented an honest portrayal of the seasonal drilling closure alternative it would be reworded to state that impacts to Kemp's ridley sea turtles would 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

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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.

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

Response # 5: Please refer to response # 3 above

Response #6: Please refer to Response #3 above

COMMENTS

The reality is that there are several environmental advantages (already mentioned in this comment letter, above) to concentrating the impact of drilling-related beach traffic during a five-month window when Kemp ridley 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 to 15 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 an alternative for a seasonal drilling closure is the last paragraph on page 51 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 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.

RESPONSES

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 of the bird and its habitat. The Kemp's ridley has a specific task for Padre Island NS in it's recovery plan, however for the other three species of sea turtles that can 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 strive to include in the management of this National Park Service unit.

COMMENTS

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

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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-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

RESPONSES

makes

Response # 8: The NPS, as the land management agency, has the decision to request formal or informal consultation with the U.S. Fish and Wildlife Service (USFWS) based on a variety of sources and expert opinions, biological data, and historical information. This information was presented to the USFWS in a Biological Assessment. The USFWS has the decision to concur with informal consultation, or require formal consultation. Based on the nesting data, history of the oil and gas program at Padre Island NS, and based on the potential to affect the sea turtle, and other listed species, the USFWS agreed to informal consultation and concurred with the NPS 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.

The National Park Service does not normally provide the Biological Assessment (BA) to the public. This is done in order to safeguard sensitive information relative to listed species, and to reduce the potential of inappropriate harassment or taking of these species based on information held within the BA. In NPS DO-12, 5.4 (G), "Consultation and coordination," it states that "Memoranda of agreement or understanding, ... or documentation indicating final compliance with applicable laws or regulations should be appendices to the EA or readily available for public inspection." A copy of the Concurrence from USFWS Section 7(a) consultation is included with this document

Response # 9: *and* Yes, "truck trips per day" is missing from the text on page 80 of the EA. ~~It was just an oversight, not an intentional omission, being it is "meant" in this section and talked about in other places within the text, (see Table 3)~~

You are correct. The words

COMMENTS

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.

9 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

Pg 6 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

RESPONSES

Response # 10: ~~Thank you,~~ It has been corrected in the EA (included).

COMMENTS

1 12

...which to make an informed determination of affect on this endangered species.

...e 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 series of statements that never directly address the visitor experience 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.

RESPONSES

Response # 11: On page 17 of the EA, the NPS discusses use of water for drilling and gives options and worst-case scenario for acquiring water. The ~~additional~~ 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.

Future oil and gas development may not occur as predicted in the RFD scenario. The numbers
In 1999, the NPS, based on USGS assessment of remaining oil and gas resources beneath Padre Island National Seashore, and 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. The Reasonable Foreseeable Development Scenario used follows: (O&G Plan/EIS, page. S-5).

Following a 3-D seismic survey over the entire park, only 6 exploratory wells would be drilled inside Padre Island National Seashore at separate sites. Of these 6 wells, 2 would be dry holes and would be immediately plugged and the sites reclaimed. Each of the remaining 4 wells would produce a given field. Of the 4 wells, adding more wells to each exploratory well in order to fully develop each of the 3 fields would further develop 3. The 4th well, would be the only well to develop the 4th field. Therefore, of the 12 wells drilled, 10 would be placed in production over the next 30 years.

To simplify describing potential impacts, it was decided to evaluate full field development for each hypothetical 6-development field. This increased the number of proposed wells to be drilled in the RFD from 12 to 18.

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.
Since the RFD is a hypothetical [best guess] scenario, it is mentioned as contributing to cumulative effects, but not in specifics as if they were actually in the process of working or even proposed wells. The RFD number of wells is also used to set NPS target thresholds, and can be used to reevaluate the O&G/EIS, 2000 in the future.

Response # 12: The NPS states on page one (1) of the EA 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

COMMENTS

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 sheer 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.

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).

RESPONSES

result in Avoiding or minimizing
Response #12 cont: relate to the park's purpose and what the visitor expects to experience upon their arrival. The ~~NPS~~ acknowledges that the drilling of a gas well will affect the "visitor experience," but mitigation measures outlined in Tables 4 and 5 will minimize these impacts and help visitors experience the park's natural sights and sounds while allowing legal access for mineral development.

Response # 13: ~~No recent informal or formal surveys were conducted regarding the visitor's expectations or impressions of beach traffic. However,~~ As mentioned on pages 98 through 102, the NPS did utilize the most recent information available on visitor use and experience and addressed how this project would affect the visitor's experience. A formal survey is planned for 2003 in conjunction with the development of an updated General Management Plan for Padre Island National Seashore.

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 agreement of 20 round trips per day for escorted vehicles. At 20 trips a day that 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 the 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.

In the EA, page 15, the Weekly Number of Oil and Gas Vehicles Driving of the Gulf beach, to access the Dunn-Murdock well location at Yarborough Pass, was provided to provide an expected level of truck traffic for the Lemon wells. Each proposed well location can be different and a specific number of truck trips would be difficult to predict. Again the RFD scenario is for general information not specifics. Large truck traffic increases are associated with the construction / drilling phases of the wells and will decrease as the well either goes into production or is plugged and abandoned. Thus, our decision that the resulting truck traffic will not adversely affect visitor experience over the long term.

Suggest deleting - If we don't have sufficient data to make a decision - NPS should not proceed. I suggest the 1987 survey & visitor comments collected since then are sufficient to decide approving LLS P/ops.

COMMENTS

17

Given that the purpose of Padre Island National Seashore is “to save and preserve, for purposes of public recreation, benefit and inspiration, a portion of diminishing seashore of the United States that remains undeveloped” (EA, e 1), it is unreasonable for the EA to assume that this incredible level of f 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?

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 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.

RESPONSES

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: The NPS acknowledges that this project will have an affect 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. For those visitors that recreate in the project area of the Gulf Beach, this project will have an affect on their park experience, while visitors that travel to other locations in the park will have less or no impact on their experience. 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.

COMMENTS

RESPONSES

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22

e EA lacks adequate data from which to base conclusions about the project's impact to natural quiet.

ie 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 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

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, 1994)

Based on these values, the NPS does not feel that the 90 dB level provided by the operator was unrealistic and therefore considered it 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.

COMMENTS

- 24 ationship), the EA thus completely lacks data that can be used to 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."

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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, known as blow down, 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.

RESPONSES

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 above. Further, the NPS agrees that if 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 the typical environmental conditions of daily southeast winds, averaging 12-15 mph, and that the beach is located upwind and "in front" of the dune line from the proposed drilling operation, and typical visitor use patterns, (e.g. park visitors usually recreate on the Gulf beach and generally remain between the water and the fore dunes), the noise impacts to park visitors from the well site is considered negligible. In addition, measures outlined in Tables 4 and 5 will be imposed by the NPS 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 to name a few.

Response # 23: The NPS agrees that multiple compressors will likely be needed if all many producing gas wells are placed into production in the future. The actual number of compressors that will be required is unknown since 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 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.

COMMENTS

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 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
Acting Director
National Parks Conservation Association

Southwest Regional Office
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Albuquerque, NM 87102

RESPONSES

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COMMENTS

RESPONSES

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



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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 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.

NPS DOCUMENT #

634

COMMENTS

26 The National Environmental Policy Act Requires Further Analysis
27 The revised Environmental Assessment provides some additional
mentary regarding the proposed oil drilling and the Park Service's rationale
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

EA establishes that the agency's action ‘may have a significant impact on the
environment’ then an EIS must be prepared.”) (citation 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

RESPONSES

Response # 25: The Lemons EA refers to existing operations and the RFD scenario.
However, Gulf of Mexico spills are a more serious threat to the park. Operations in
the park have mitigations in place 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 of 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, or the Oil and Gas Management
Plan/EIS, given operating requirements, mitigation measures, and conditions of
the permit, as required. Therefore, it is the NPS decision to not require an EIS.

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.

... but with mitigation
measures, the intensity of
impacts would be reduced.

COMMENTS

- 28 ected increase in [BNP's] costs." EA at 31-32. Such uncertain trade-offs
29 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 species under the Act – ill fit those descriptions. Section 7 of the Endangered Species Act and its implementing regulations require the 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

RESPONSES

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

Response # 29: Please refer to Response # 8 above. Again, there are no planned activities or operations that “may affect” a species covered under the Endangered Species Act. The NPS and USFWS concurred on this assessment. A copy of the Concurrence from USFWS is attached at **Appendix 1.**

COMMENTS

- 31 BNP project are expected to be from viewing the increased truck traffic,
 30 being subjected to the noise generated by the larger trucks used for hauling
 ling 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.

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.

Sierra Club members have conveyed to the Lone Star Chapter staff how camping and birding trips on PAIS have been ruined by the 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.

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.

RESPONSES

Response # 30. It is acknowledged in the EA the impacts to visitor experience throughout the park are expected to 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. This is not considered impairment. Please refer to response #12 and # 34 for a discussion of impairment.

Also see NPS response # 15 and # 17. NPS is planning this calendar year to initiate a park revised General Management Plan for Padre Island. A visitor survey is part of the information gathering process. Oil and gas, along with many other issues, will be addressed in that survey.

Response # 31: The park 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 rig set-up and removal. Some visitors will never see the activity as 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.

Not relevant to this decision. Delete

COMMENTS

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

- 34 unclear if this means that NPS has taken a survey on visitor experience or if 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 evaluate 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 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 EA is what was intended by Congress in all laws relevant to this action.

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

RESPONSES

Response # 33: No visitor surveys have occurred since the permitting of the Dunn-Murdock well. Please refer to Response # 32, and # 34 below.

Response # 34: Under the NPS Organic Act, Congress vested the NPS with the responsibility of making decisions on behalf of units of the National Park System so as to "leave them unimpaired for the enjoyment of future generations." Under our modern structure of governance, Congress has a long-standing practice of delegating decision-making authority to agencies. In doing so, Congress provides some degree of flexibility to the agencies so that they can contend with changing scientific knowledge, technology and a myriad of factual situations. It is not practical to expect that Congress could make or even be involved in the multitude of daily decisions being made across federal agencies, in general, or the NPS, in particular.

In the 2001 NPS Management Policies, the Service set forth expanded guidance to park decision makers on how to go about determining whether a proposed action could lead to an impairment. While the 2001 Management Policies lay out specific factors for park managers to consider in making impairment determinations, this document contains text that recognizes that ultimately such determinations rest on the professional judgment of park managers. The EA for the Lemon/Lemon Seed Unit Wells draws heavily on this guidance in describing to the public what factors enter into an impairment determination. Based on the data presented in the EA, including supporting documents, the NPS determined that the proposed action with mitigation would not cause an impairment to park resources, including soundscape.

~~Section 1.2.3 of the EA discusses two different authorities the NPS has for holding operators liable for damages to park resources if they fail to adhere to the terms of their approved plan of operations. The first authority, the 36 CFR 9B regulations, sets forth a means for revoking plan approval and recovering damages to federally-owned or controlled lands, waters, or resources through a trespass action in federal court. The second authority, 16 USC section 19jj, is a strict liability statute for recovering damages to park system resources. As a strict liability statute, 16 USC 19jj provides a means for the Federal Government to recover damages without having to establish the intent of the operator. In pursuing legal action under both authorities, the NPS will seek recovery from all responsible parties, who may be wholly or partially liable for damages.~~

good text
but doesn't
answer entirety of the
blocked text

COMMENTS

"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.

Submitted by the Sierra Club, August 26, 2002

Questions about these comments should be directed to:

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RESPONSES

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