

## COMMENTS

## RESPONSES

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September 23, 2002

Jock Whitworth  
Superintendent  
Padre Island National Seashore  
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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 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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- and the Endangered Species Act requires additional attention to those issues. There are also policy level matters, upon which the revised
- 35 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

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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 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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**Response # 35:** Please refer to Response #12 and #34 above. As legal owner of the mineral rights that lay beneath Padre Island NS, the mineral owner, or their authorized agent, must be given access to those minerals. Access to a site can be adjusted or altered by the surface owner, Padre Island NS, 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 be changed, but access cannot be denied without some liability occurring to the NPS. Efforts on the Lemon/Lemon Seed, and other proposed operations, have implemented and analyzed many alternatives and developed mitigation measures or permit conditions to protect natural and cultural resources, park values, and to meet land use policy and regulations, etc. ~~The alternative access proposals provided in the Lemon Seed EA, reflect four “feasible” alternatives, and other access routes, issues and potential well locations were considered.~~ These are described in the EA in Section 2.3. (Carol McCoy, do you want to add more/change this response?) *with dls. led*

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30 Section 1.2.2, NPS Nonfederal Oil and Gas Regulations, 36 CFR 9B  
39 - - 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 months

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.

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**Response# 36:** 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.

**Response # 37:** 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 the NPS 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 the NPS may seek to recover in court.

**Response #38:** Please refer to Response # 37 above.

**Response # 39:** It is true that the Dunn Murdock well took 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). It is true, that 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, and they will be kept informed of progress on the Lemons project.

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41 4., Mitigation Measures under Alternative B, Proposed Action,  
3,24 - -

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.)

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 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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**Response # 40:** BNP's proposal includes the use of a mud logger for both wells. The NPS appreciates your comment relating mud logging and shale densities to well control. 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, and applicable efforts are expected to follow normal oil and gas well development (Pat Odell Response??)

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st out of curiosity, how many wells are there within the P.I.N.S. in the Laguna Madre, and what is the park's policy about drilling directionally on 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

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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.

Consequently, I recommend additional consideration be given to accessing the Lemon/Lemon Seed sites from behind dunes, following existing and proposed pipeline, flowline, and road R-O-Ws to the extent possible.

Since these R-O-Ws are in large part already disturbed and used for vehicular access, mitigation requirements should be minimal, as should be the potential for increased unauthorized recreational vehicular use. The costs of additional road construction, wetland mitigation, fencing

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**Response # 42:** Currently there are no wells within Padre Island National Seashore boundaries in the Laguna Madre. The 2000 Oil and Gas Management Plan /EIS, 2-5 & 2-13, states, "wells can be drilled in the Laguna Madre from barges or directionally drilled from a surface location within the park." "Production operations must be located on upland locations within the park or outside the National Seashore." Presently, the state of Texas is not allowing production facilities on Laguna Madre waters

*Padre Island* — cited from PS 2-13 of FES

**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 certain members of the public, impacts to substantial wetland acreage and land resources, and road construction costs, the NPS dismissed this alternative from further consideration.

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44 and gates to cover any new R-O-W could be shared with BNP by the operators of the other 17 oil and gas exploration activities considered reasonably likely to occur in the vicinity. The obvious advantage of this behind-the-dunes access route is that it moots the issues of the impacts to sea turtles, dunes and park visitors from those future as well as the proposed activities

Finally, this section addresses and rejects the alternative of a seasonal closure of the Gulf beach to traffic generated by drilling activities between March 15 and September 30. Among the reasons given for this rejection is the assumption that such a closure would concentrate the impacts on Gulf beach fauna such as the piping plover, and that there would be increased mobilization-demobilization traffic on the beach. Assuming that the proposed drilling and production would not take more than 5 ½ months to complete, there seems to be little reason why the closure alternative would cause BNP much additional burden, especially as the decision to authorize those activities cannot come before August 26, 2002.

Apparently, the EA anticipates the closure would concentrate and increase the effects of other oil and gas exploration activities not yet proposed. While it is certainly proper for the NPS to consider the long-term effects of closure on other unrelated activities, this does not prevent its application of the closure to the specific proposed action alone, and to future actions on a case-by-case basis.

Please note that the piping plover does not nest in Texas, much less on the Gulf beach in the project area, as indicated in this section. Furthermore, I am unaware of any other shoreline birds that nest there. On the other hand, sea turtles most certainly do.

The section closes with a summation of reasons for dismissing the seasonal closure, beginning with a reference to "the lack of data supporting a seasonal beach closure as applied to oil and gas operator

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access in particular." This does not mean, of course, that such data does not exist, nor that very similar seasonal closures are not currently applied to other species, e.g., the brown pelican and the "

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**Response # 44:** You are correct, however this statement refers to shorebirds in general, and the Piping Plover as an example of a species that uses the Gulf beach, for nesting, foraging, and loafing is partly incorrect. The Piping Plover has not been documented nesting on Texas Gulf beaches, but other shorebirds have. The Interior Least Tern is a shorebird species that has been documented nesting, foraging, and loafing along the park's Gulf beach shoreline. For clarification, the Piping Plover reference has been removed and replaced by the Interior Least Tern.

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- 45 whooping crane. In fact, within the park itself there are seasonal restrictions preventing oil and gas exploration and maintenance dredging of navigation channels near bird rookeries, and there is a seasonal Gulf shrimp closure adjacent to the park that was applied in part due to sea turtle nesting on the very beaches in question.

The EA should investigate whether there are other seasonal restrictions of human activities, including but not limited to oil and gas operator access, already applied elsewhere to sea turtle nesting sites.

The NPS bears the obligation not only to find and discuss existing closures ("use the best scientific information available," in ESA jargon), but also to demonstrate convincingly how similar or even identical measures cannot be applied to the proposed action. The U.S. Supreme Court's handling of the famous snail darter case provides the following commentary on the extent of the obligation mandated by the ESA.

"[Section 7] substantially amplifie[s] the obligation of [federal agencies] to take steps within their power to carry out the purposes of this act. A recent

article...illustrates the problem which might occur absent the new language in the bill. It appears that the whooping cranes in this country, perhaps the best known of our endangered species, are being threatened by Air Force Bombing activities along the gulf coast of Texas. Under existing law, the Secretary of Defense has some discretion as to whether or not he will take the necessary action to see that this threat disappears...[O]nce the bill is enacted, [the Secretary of Defense] would be required to take the proper steps.

"Another example [has] to do with the continental population of grizzly bears which may or may not be endangered, but which is surely threatened... Once this bill is enacted, the appropriate Secretary, whether of Interior, Agriculture, or whatever, will have to take action to see that this situation is not permitted to worsen, and that these bears are not driven to extinction. The purposes of the bill included the conservation of the species and of the ecosystems upon which they depend, and every agency of the government is committed to see that For example, under the impact topic of Nonfederal Oil and Gas

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Response # 45: All NPS areas have the same responsibilities to manage their parklands and ensure that species listed under the Endangered Species Act and their habitats are protected in the best possible manner. ~~Not many other park units have the requirement to provide legal access to sub-surface mineral owner(s) in their enabling legislation. While it is true that other areas have seasonal restrictions on certain human activities on their shoreline, Padre Island National Seashore has not recently considered a seasonal restriction alternative (beach closure).~~ For purposes of this project, a seasonal closure is considered on pages 31 and 32 of the EA. The analysis of this alternative's practicality and feasibility is based on the parks enabling legislation, laws, policies, and guidelines. ~~To address a change in beach management that affects all visitors is better suited for a larger planning effort. A review of current park beach use and the management options will be discussed in 2003 when the park undertakes the updating of its General Management Plan.~~

Suggest deleting:  
park legislation  
may be silent to  
specifying applicability  
of 9B's to nonfederal  
oil & gas operations -  
re Lake Meredith's but  
where was nonfederal oil/g  
exists beneath NPS unit's  
& entities propose to  
explore & develop it,  
the 9B's  
are implied.

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their purposes are carried out. [T]he agencies of Government can no longer plead that they can do nothing about it. *They can, and they must. The law is clear.*" 119 Cong. Rec. 42913. (Emphasis added [by the Supreme Court].)

The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost. This is reflected not only in the stated policies of the Act, but in literally every section of the statute. All persons, including federal agencies, are specifically instructed not to "take" endangered species, meaning that no one is "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" such life forms. 16 U.S.C. §§1532(14), 1538(a)(1)(B). Agencies

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in particular are directed by §§2(c) and 3(2) of the Act to "use *all methods* and procedures which are necessary" to preserve endangered species. *Id.*, §§1531(c), 1532(2) (emphasis added [by the Supreme Court].) In addition, the legislative history undergirding §7 reveals an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species. The pointed omission of the type of qualifying language

Of previously included in endangered species legislation reveals a conscious decision by Congress to give endangered species priority over the "primary missions" of federal agencies." *Tennessee Valley Authority v. Hill*, US 1976, 11 ERC 1716,1717 (Footnotes omitted.)

The point I wish to make using the citation above is that, beyond its duty under section 7 (a)(2) of the ESA to consult with the Fish and Wildlife Service and to avoid jeopardizing endangered species like the sea turtles, the NPS has an substantive obligation to conserve them as well, meaning that it must "halt and reverse the trend towards species extinction, whatever the cost." Taking whatever measures are necessary to avoid driving vehicles up and down the portions of the beach where and when the turtles are nesting are a part of that conservation effort.

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NPS DOCUMENT # 634

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Table 8, Comparative Summary of Impacts, pp.34-38 - - The table's comparison of impacts from the "No Action" and "Proposed Action" alternatives presents a problem regarding cumulative impacts from future actions not yet proposed, but apparently considered reasonably likely to occur by those preparing the table. The problem is one of consistency.

For example, under the impact of Nonfederal Oil and Gas Development, the table opines that if the Lemon/Lemon Seed wells are not drilled or developed, as prescribed by the "No Action" alternative scenario, BNP may decide not to drill future wells, thus having a moderate to major cumulative adverse impact on BNP and a moderate impact on domestic energy supplies. In other words, "No Action" regarding the proposed action means "No Action" regarding future oil and gas operations, as well. However, under all but one of the other impact topics, the table states there **would** be cumulative impacts from future oil and gas operations under the No Action" alternative scenario. The lone exception is under the impact topic of State and Federally Protected Species; cumulative impacts under the "No Action" alternative from future oil and gas operations are not mentioned here at all. The table should be revised to reflect a single scenario/definition of the "No Action" Alternative regarding future oil and gas operations and apply it consistently to all impact topics.

Section 3.0. Affected Environment and Environmental Consequences, p. 39 - - The section provides this definition of impairment: "a **major**, adverse impact to a resource or value whose conservation is: 1) necessary to fulfill a specific purpose identified in the establishing legislation of Padre Island National Seashore; 2) **key** to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or 3) identified as a goal in the park's general management plan or other relevant NPS planning documents." (Emphasis added.) The problem is that terms like "major" and "key" are subjective; what I might consider major and key impacts are probably very different from what a BNP executive would believe them to be, for example.

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*State and Federally Protected Species*

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**Response # 46:** Thank you for the comment on this point. This omission in the T&E discussion has been corrected.

Yes, we applied a different approach to assessing cumulative impacts on Nonfederal Oil and Gas Development compared to the remaining impact topics. Under this topic, we assessed the impact on the nation's domestic energy supply, ~~in addition to~~ <sup>and</sup> the economic impact on BNP. For the latter, we felt it relevant to assess the impact on BNP should a decision to not drill the wells resulted in not proceeding with future development under the NPS's reasonably foreseeable development (RFD) scenario. ~~We do not view this as a problem.~~

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- 47 The definition needs quantification and examples, and, most of all, a  
 48 clear delineation of what level, or threshold, of impact constitutes an  
 49 impairment and is therefore considered unacceptable.  
 50 In many subsequent sections this EA, just such thresholds are  
 described and exemplified for subjective terms, ranging from  
 negligible to major, as applied to various impacts. adverse impacts to  
 various impacts.

Please supply a similar series of thresholds for the EA's definition of  
 impairment.

Section 3.5, Impact to Wetlands, pp. 51-53 - - This section is one of  
 many which promote the restriction of vehicular access on the Gulf  
 beach associated with this project to an area described as above the  
 "wet-line." In this section, the specific reason given for this restriction is  
 that it would prevent excessive erosion along the beach, but the  
 prevention of rutting and compaction of the beach sand, as well as  
 limiting dispersion of pollutants from poorly maintained vehicles, are  
 also implied goals of the restriction. However, in my opinion, this  
 restriction is literally misplaced. The sand below the wet-line is firmer  
 than that above the wet-line, and is less likely to erode or form ruts.

When any compaction or rutting occurs below the wet-line, the next  
 high tide erases these impacts, and it isn't necessary to "groom" what  
 little ruts may form in the so-called "wet-zone" with a grader or  
 backhoe. Poor vehicle maintenance is inexcusable, regardless of  
 where the operator's vehicles might go, and hence should be remedied  
 by proper attention to the sources of leaks, not by avoidance of the best  
 driving site on the beach. See comments below regarding impacts of  
 the proposed wet-line policy on benthic organisms and sea turtles.

There are two inconsistent sentences in this section. On p. 52, it  
 states: "If there is standing water, sedimentation could indirectly impact  
 a larger area around the [flowline] worksite." On p. 53, it states: "No  
 indirect wetlands impacts from the construction of the flowline is  
 anticipated;..." The former sentence is presumed to be the only correct  
 one.

Section 3.8, Impacts on Wildlife, p.62 - - In regard to the possible  
 impacts of driving below the wet-line on benthic organisms, this

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**Response # 47:** Please refer to Response # 34 above. Also, 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.

Padre Island NS uses the "major" impact threshold to begin the determination to characterize "impairment," based on DO-12 and the definition described above, and in Response # 34. Since our assessment of impacts falls mostly below the "moderate" level, impairment was not determined to occur under the proposed action with mitigation measures and permit conditions of approval. **Chris and Carol are there additional ideas or comments???**

**Response # 48:** While it is true that the sand below the "wet line" is firmer and facilitates driving along the beach, there are park resources at risk other than just the compaction and rutting of the Gulf beach. The vast majority of park shorebirds that occur along the Gulf shoreline are found in the area between the waters edge and the high tide line. In sections 3.8 and 3.9, the EA makes numerous references to which species can be found in the wet area and how driving in this area can impact them. Driving above this line is a mitigation measure designed to minimize impacts to both federal protected species and the 10's of thousands of shorebirds that use this habitat. In addition, as stated on page 67, the US Fish and Wildlife Service concurs with the NPS's determination that this project is not likely to adversely affect species protected by the Endangered Species Act.

**Response # 49:** The statement on page 52 refers to existing pipeline maintenance and/or repairs. Impacts to wetlands during regular maintenance can be mitigated by:

- timing activities when conditions are dryer
- choice of vehicles to be used

If work must be done during wet periods choice of the vehicle, use of silt fencing, and side casting of removed vegetation for replanting would reduce impacts.

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51 tion makes an interesting inference and conclusion: "In a study  
52 ducted by Texas A&M, Center for Coastal Studies (Englehard and  
ners 1997), it was found that benthic organisms recovered quickly,  
hin 10 days of the disturbance, following mechanical raking of the  
beach. Some loss of benthic organisms would be

expected due to crushing by tires and changes in the aerobic  
conditions of the compressed wetted sand environment. It is expected  
that similar recovery of the benthic organisms would occur in the case  
of infrequent vehicle traffic in the wet zone. Vehicle impacts would  
result in localized, short-term, negligible to minor,

Table 10, Summary of Impacts by Species, p. 68 - - Under the category  
of sea turtles, the description of the impacts of the Proposed Action  
alternative is a repeat of the description for the No Action alternative.

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Section 3.9, Impacts on State and Federally Protected Species, pp. 77-  
81 - - This segment of this section addresses impacts to sea turtles.  
On the specific issue of impacts from driving vehicles associated with  
oil and gas operations, the section first states that all vehicles operating  
on the beach can crush nesting turtles, stranded turtles, hatchlings and  
some eggs, as well as remove sea turtle tracks used by the NPS and  
USGS to locate the nests

Unfortunately, nowhere in the EA, including in this section, does it  
describe where nesting occurs in relation to the wet-line.

Perhaps it's not too unscientific of me to guess that sea turtles nest  
somewhere above the wet-line; otherwise, I presume the eggs and  
hatchlings would drown/suffocate.

This leaves me to conclude that nesting turtles, eggs and hatchlings  
are more likely to be crushed, and their tracks at their nest sites  
obscured, if the NPS requires the vehicles to drive above the wet-line,  
rather than in the wet-zone below that line. If this conclusion is correct,  
then the NPS would conserve sea turtles better by changing the driving  
restrictions proposed in this EA.

The section also finds that tire ruts trap hatchlings and smaller

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**Response #49 cont.** The statement on page 53 refers to construction of a new  
flowline. Mitigation measures used during construction of this line would limit  
impacts to less than 1/10 acre. Based on these measures and staff recommendations  
the Superintendent determined that compensation for direct/indirect impacts on  
wetlands would not be required under NPS Director's Order 77.1

**Response # 50:** Thank you for this comment. This error has been corrected.

**Response # 51:** Some confusion was caused by only saying that the sea turtle  
nested on the beach. Where nesting occurs in relation to the "wet-line" or "swash  
zone," and a clear definition of this zone was inadvertently left out of the EA.  
The term "wet line" is referenced in the mitigation measures and the Impact  
Analysis sections for protected species. For the purposes of this EA, the "wet-  
line" is defined as the days high tide line. At Padre Island National Seashore, sea  
turtle nests have been documented anywhere along the beach from the days tide  
line into the dunes. The definition of "wet-line" has been included under "access"  
in Section 2.2, and where nesting occurs can be found under the "Affected  
Environment" section for sea turtles.

**Response #52:** The NPS acknowledges that a possibility exists that nesting sea  
turtles, eggs, and hatchlings could be crushed if a vehicle drives over them. As  
addressed under both alternatives on pages 74 through 81, this threat exists from any  
vehicle whether it is an operator, contractor, gas vehicle, ATV, or a park visitor's  
vehicle. The mitigation measures outlined in Table's 4 and 5, and the ongoing sea  
turtle monitoring project at the park, will help minimize the likelihood of the  
crushing of sea turtles, eggs, or hatchlings, or removal of nesting tracks.

*reduce*

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53 stranded sea turtles in direct proportion to the depth and steepness of slopes of the ruts. As discussed above, vehicles moving below the wet-line create shallower ruts than those moving above that line, and those ruts formed below the line disappear with each passage of high tide, while those formed above the line get deeper and deeper until backfilled by heavy earth-moving equipment, which also may impact eggs in nests that the ruts formed above the wet line have obscured. The section states it has no data to indicate the level of sand compaction necessary to inhibit nesting and/or hatchling emergence, nor how much backfilling ruts would contribute to sand compaction. To err on the side of the sea turtles, it appears prudent once again to restrict vehicular traffic to the beach below the wet-line.

Near the top of p. 81, the section states: "Drilling of the Lemon/Lemon Seed Unit wells would occur outside of the Kemp's ridley nesting season; therefore, direct impacts would be few to none as a result of the drilling phase, mostly occurring to any unfound nests that produce hatchlings." This statement's accuracy is dependent upon completion of those drilling activities prior to next April, when the next Kemp's ridley nesting season commences.

A similar presumption about the completion of BNP's Dunn-Murdock drilling activity proved false, if you will recall. I recommend again that you either require use of a vehicular access route behind the dunes or strictly enforce a seasonal closure of the Gulf beach. If you will do neither, at the very least confine the project-related driving to the beach below the wet-line.

This concludes my comments on the July 2002 EA and the proposed activities.

Sincerely,

Johnny D. French

## RESPONSES

**Response # 53:** It is expected that drilling will be completed prior to the nesting season. If, due to delays discussed in the EA, or as discussed in Responses #3, #35, and #39 above, drilling extends into the sea turtle nesting season the USGS and USFWS will be notified and approved mitigation measures implemented. This would also hold true if there is a future proposal that would occur during the sea turtle nesting season. Please remember that Section 7 informal Consultation did occur with the USFWS, and is completed for such a scenario.

## COMMENTS

## RESPONSES

COASTAL BEND ENVIRONMENTAL COALITION  
P.O. BOX 3512 Corpus Christi, 78404

August 23, 2002

Mr. Jock Whitworth, Superintendent  
Padre Island National Seashore  
P.O. Box 181300  
Corpus Christi, TX 78480

Re: Environmental Assessment, BNP Lemon/Lemon Seed wells

Dear Mr. Whitworth:

The Coalition appreciates the opportunity to comment on the EA for the proposed drilling of two wells, Lemon/Lemon Seed within the Padre Island National Seashore.

We remain distressed that the current disruption and degradation of the Seashore will be continued into the indefinite future.

We recognize that the law creating the Seashore allowed for mineral extraction. However, we also recognize that in the 1960s there were very few people who had the equipment to drive down the beach to the Mansfield Channel. Therefore, only those few were effected by any oil/gas drilling which took place.

In the year 2002, however, the National Seashore has some 900,000 visitors who are adversely effected.

Members of the Coalition and those who attended the Save our Seashore (SOS) in the summer of 2001 were contacted for their input into this comment list. None contacted were in favor of the continued use of the 18-wheeler trucks on the beaches. Their reasons will be listed below.

Environmentally, the main reason for restricting access to the beaches of the Seashore by oil field equipment is the adverse impact on the visitors. None came to the island to experience the constant traffic of the big trucks and other vehicles between their camping space and the water. Even if the drivers try to go slowly, just their presence and the pollution from their diesel engines are a detriment. The Seashore was created for the enjoyment and recreational use of the barrier island as well as protection of the special characteristics of this area.

Response # 54: Please refer to Responses # 1, 2, 3 & 8 above.

Response # 55: We are not aware that 900,000 people were adversely affected by the BNP operation. Visitation data does not show that we had that many visitors to the park, and that that many utilized the Gulf Shoreline. However, we do recognize that some impacts to some visitors can occur. Please refer to Response # 15 and # 17 above for further discussion.

## COMMENTS

Padre Island National Seashore is the longest undeveloped barrier island in the world and is home to several endangered species. The species most in danger of disturbance are the endangered sea turtles. These are more or less easy to see. But many birds need the beach for their food resources and resting sites. They fly away

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when the trucks come, but their food resources are destroyed by compaction and crushing. Even Governor Perry recognizes the uniqueness of the National Seashore and its "natural beauty and fragile ecosystems".

The members of the two groups involved in the comments recorded here realize that some way needs to be found to allow drilling on the Seashore if in fact such a thing is to be continued.

We believe that Congressional relief needs to be sought for this National Seashore as well as other national parks where the same restrictions as far as mineral rights are concerned apply.

These parks were created for people to enjoy and ecosystems to be maintained, not for private gain. At least in this case, 40 years is a long time for the same rules to be followed and it is in the best interests of the 900,000 visitors to the Seashore that these rules be changed.

Other ways to get the equipment to the proposed well site might be considered.

We understand that there is a minor roadway along the route of the pipeline behind the dunes which might be used for transport of equipment. There is also the possibility of using helicopters to bring in the machinery needed for drilling. The fact that this might be more expensive should not be a consideration for the Park Service. The law does not require that the least expensive methods be used.

Slant drilling from outside the Park in Laguna Madre or offshore should also be high on the list.

The Coalition (2500 members) and the SOS people believe that the degradation and severe impact on the visitors and the environment needs to be further considered.

If the Park Service is determined to allow the drilling of the Lemon/Lemon Seed wells, then any drilling activity should be restricted to the months when the sea turtles are not trying to nest. And some way, alternate truck routes

## RESPONSES

Response # 56: ~~This is one option that will be considered in any future proposal for Padre Island NS. Industry assessments of the value of the minerals underlying Padre Island NS can be in the hundreds of millions of dollars (US). NPS estimates differ from that value, but even this value approaches 500 million dollars (US).~~  
Carol/Linda - Any other estimates here from the O&G EIS???

Response # 57: Please refer to Responses # 35 above.

Response # 58: Where feasible, other opportunities that utilize areas outside of Padre Island NS have been explored. The distance one can slant drill is limited, and is based on many subsurface characteristics. Where possible, we will continue to promote mineral exploration outside of the park, however there are tradeoffs in visual quality, resource protection, and legal agreements with the State of Texas that need to be addressed and honored.

Response #59: Please refer to Response # 3 and # 8 above.

The option of "No nonfederal oil and gas development" was considered in the Oil and Gas Management Plan/EIS (2000), but was eliminated from detailed analysis because this option would not allow access for holders of the nonfederal mineral interest beneath the park to explore for or develop these rights. In future project-specific analyses, the NPS will consider the alternative "NPS Acquisition of the Mineral Rights that are Paid of the Operator's Proposal."

Response to Comments on EA covering BNP's Plan of Operations for the Lemon/Lemon Seed Unit Wells No. 1-100S and 1-1008S

In the event that a proposed operation cannot be sufficiently modified to prevent the impairment of park resource and values, the NPS may seek to extinguish the associated mineral rights through acquisition, unless otherwise directed by Congress. ~~Where mitigation measures must~~  
~~reduce the potential for adverse impacts to~~  
~~park resource and the values, the~~ .

**COMMENTS**

either on the wet beach or back of the dunes be found to allow the birds (and people) to use the beach without the fear of being run over.

In the summer of 2001, people were very concerned about the possible degradation of the park experience by the bombing range proposed in Kennedy County and by a possible space station in more or less the same area. It seems to us that this concern is the same for the disruption of a wilderness experience expected by visitors to the National Seashore.

We urge the Park Service to look for another way.

We consider that the current proposal is in violation of the Endangered Species Act and the Migratory Bird Act.

Sincerely,

Patricia H. Suter, President

**RESPONSES**

**Response # 60:** Please refer to Response # 8 above.

NPS DOCUMENT #

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