



United States Department of the Interior



NATIONAL PARK SERVICE INTERMOUNTAIN REGION

12795 West Alameda Parkway

PO Box 25287

Denver, Colorado 80225-0287

November 22, 2002

To: Superintendent and Resource Chief, PAIS

From: Assistant Regional Director, Natural Resources and Science

Subject: BNP Petroleum Plan of Operations Biological Assessment (BA)

I have reviewed subject draft BA and overall it looks very complete and accurate. I find no major flaws, errors, gaps or misstatements in it. Most of my comments are related to clarifications, suggested additions or deletions, and format. Previously I had faxed you the July 2001 Federal Register Notice re critical habitat for the piping plover. After conversing with Darrell Echols of your staff, I understand that the park itself was specifically excluded from the critical habitat rule for this species. I would still recommend that some reference be included to that critical habitat designation that encompasses many areas around the park, but which specifically excluded the park. Following are additional comments, and will refer to page numbers as they printed out from the file you sent me:

- P. 10, #9—Alternative Locations Discussion: This several page discussion attempts to briefly describe six alternatives to the proposed action. While this information might be useful for the Environmental Assessment or EIS on the project, the FWS Section 7 Consultation Guidelines (March 1998) explicitly states that "Biological assessments are not required to analyze alternatives to proposed actions. Environmental assessments are prepared pursuant to the NEPA." While it may be useful to have information on the pros and cons of alternatives, it would be best to use to include that in a NEPA document rather than the BA. Perhaps you have a good reason for wanting to include it, but its not necessary and, because of the brevity in the writeups, may not contain full discussion of the pros and cons of the six alternatives.
- P. 19, first para.: The sentence in the middle of that paragraph that begins with "The remaining 15 species....." seems to be an incomplete sentence.
- P. 19, Table 3 and throughout the document: Table 3 introduces the concept of "Species of Concern—SOC". I did not find any definition of this designation, and its not a legal designation in terms of the Endangered Species Act, and apparently not under the State's endangered species statutes either. If you are going to use this term and include the species that are "SOC's" in the document, a clear definition of the term and whether or not it pertains to federal, state or both should be included. As

with the discussion about alternatives, the impact of the project on "species of concern" should probably be left to the NEPA analysis rather than to the BA that is intended to address the more narrow focus of listed, proposed and candidate species under the Endangered Species Act.

- P. 19, Table 3: The Sooty Tern is shown in the table as a Federally listed threatened species. On page 42, in the discussion of the biology and ecology of the Sooty Tern, it indicates it is a State listed threatened species. I am confident that the text is correct and Table 3 incorrect—it is a State listed threatened species.
- P. 23-24, Texas Indigo Snake—seems to me that a Conservation Measure that should be cranked in to this species, and perhaps some of the other ones such as the birds or all species, is a training session that includes identification of the species. For example, for the Texas Indigo Snake, the conservation measures suggest that if one is observed, construction activities will cease and park personnel will be notified. This makes the assumption that a BNP vehicle or rig operator can accurately identify a Texas Indigo Snake and alert the park if one is observed. I suspect that's not a very safe assumption, hence some identification training on the species covered in the BA would be helpful.
- P. 25, the last paragraph under Biology/Ecology, just above the Critical Habitat section: Since the document indicates that all documented nests were in April-June period, the fact that a female with eggs was washed ashore in July and tracks seen in July as well, this suggests the possibility of nesting occurring later than June.
- P. 26, Potential Effects of Proposed Project (beginning page 25): The third paragraph on page 26, beginning with "To reduce direct impacts", this paragraph describes measures to lessen/mitigate impacts on turtles and nests. This information really is more of a conservation measure, hence should be moved to the Conservation Measure sections for those species to which it applies.
- P. 27, the two paragraphs before Conservation Measures: While this section is supposed to address the Kemp's ridley, it seems to cover three other species. Consider moving these paragraphs under the appropriate species, rather than under the Kemp's section.
- P. 27, 2d paragraph under Conservation Measures: It would be helpful if there is an estimate of the percentage of unfound nests vs. found nests to give the reader some perspective on likely impacts. Have any studies or analyses been done to give you an idea of "% found"?
- P. 28, first paragraph: In the last sentence, you indicate that Padre Island NS "would prefer to begin the project outside the sea turtle nesting season. . . ." I would suggest being more forthright by saying either than BNP *would* or *would not* require the project to begin outside the nesting season.
- P. 28, 2d paragraph: It isn't clear what, if any, measures are needed and/or will be taken to minimize the depth of the vehicle tracks in the sand. The document makes a strong case for impacts occurring if vehicle tracks are deep and steep, but I don't see where there is any effort to minimize the impact of these tracks.
- P. 29, Loggerhead Sea Turtle, Biology and Ecology, 1st paragraph: add "and state" after the term "federally listed".
- P. 31, Green Sea Turtle: same comment re "and state"

- P. 31, Green Sea Turtle, 3rd paragraph: Sentence beginning, "Additionally, a few green turtles....." Can you give an estimated number of strandings, vs. simply saying "many are found stranded...."
- P. 32, Atlantic Hawksbill Sea Turtle: add "and state" after federally.
- P. 33, Leatherback Sea Turtle: same comment re "and state".
- P. 42, Sooty Tern: see previous comment—is this a State or Federal level listing as threatened?
- P. 46, Piping Plover, Critical Habitat: just to reiterate, I suggest adding a reference to the July 2001 designation of critical wintering habitat and the fact that area all around the park was designated but the park was specifically excluded.
- P. 48, Bald Eagle, Biology and Ecology: In the second sentence of this section, it indicates that Bald Eagles declined "due to a pereception that they and other raptors were marauders....." They really didn't decline due to a perception I would revise the sentence to indicate that they were perceived by many farmers, ranchers and others as marauders that killed chickens, lambs, and other domestic, and as a consequence, were killed indiscriminantly as predators, causing a serious population decline.
- P. 50, 2d paragraph, sentence in the middle beginning as "Two are generally laid...." Add the word "eggs" between "Two" and "are".
- P. 54, 1st paragraph under Biology and Ecology: In the 2d sentence it uses the term "artic" tundra..... Correct spelling is "arctic".
- P. 60, last sentence above Conservation Measures: This sentence refers to the Black-capped Vireo, but the section is discussing the Tropical Parula.
- P. 61, Potential Effects of Proposed Project (Loggerhead Shrike), last sentence in 3rd paragraph: Should read ".....making loggerhead shrikes more susceptible to *being hit* by automobiles.
- P. 65, last line of the August 24, 2001, entry: I believe it should read, ".....evaluate habitats involved and to *propose rerouting the access road.*" Not "...and to *purpose* rerouting the access road.

This comprises my comments after a fairly quick review. If you need additional assistance or wish to discuss the BA or my comments, feel free to contact me.

/s/ Skip Ladd