

Jock Whitworth
05/14/02 04:20 PM CDT

To: Linda Dansby/SANTAFE/NPS@NPS, Ken McMullen/PAIS/NPS@NPS
cc:
Subject: Lemon/Lemon

FYI, here are USFWS' comments on the EA and BA.

Thanks for your help!

Jock

----- Forwarded by Jock Whitworth/PAIS/NPS on 05/14/2002 04:19 PM -----



Sharon_Becton@fws.gov
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05/13/2002 05:05 PM
MST

To: jock_whitworth@nps.gov
cc: darrell_echols@nps.gov
Subject: Lemon/Lemon

Attached are the EA and BA comments.

(See attached file: Lemon EA comments.doc)

Sharon Becton
Office Assistant
U.S. Fish & Wildlife Service



Corpus Christi, Texas 78412 Lemon EA comments.doc



Darrell Echols

05/14/02 09:07 AM
CDT

To: Jock Whitworth/PAIS/NPS@NPS, Arlene Wimer/PAIS/NPS@NPS
cc:
Subject: Lemon/Lemon

----- Forwarded by Darrell Echols/PAIS/NPS on 05/14/02 09:07 AM -----



Sharon Becton@fws.gov

05/13/02 05:05 PM
MST

To: jock_whitworth@nps.gov
cc: darrell_echols@nps.gov
Subject: Lemon/Lemon

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(See attached file: Lemon EA comments.doc)

Sharon Becton
Office Assistant
U.S. Fish & Wildlife Service



Corpus Christi, Texas 78412 Lemon EA comments.doc



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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May 13, 2002

Consultation # 2-11-02-I-0192

Jock Whitworth, Superintendent
National Park Service
Padre Island National Seashore
P.O. Box 181300
Corpus Christi, Texas 78480-1300

Dear Mr. Whitworth:

This letter responds to your April 4, 2002 request the U.S. Fish and Wildlife Service (Service) provide comments on the Environmental Assessment (EA), an informal Biological Assessment and Statement of Findings for Flood plains and Wetlands analyzing BNP Petroleum Corporation's proposal for the Lemon/Lemon Seed Unit Wells No. 1-1000S and No. 1-1008S within Padre Island National Seashore (PINS).

BNP Petroleum Corporation (BNP) plans to drill and produce the Lemon/Lemon Seed Unit wells from a surface location approximately 12.5 miles south, from the end of Park Road 22. The wells would be directionally drilled to bottom-hole locations east of the surface location in the Gulf Coast. Two alternatives were evaluated in the EA to drill and produce the Lemon/Lemon Seed Unit Wells. Alternative A, the environmentally preferred alternative, evaluated baseline conditions under No Action. No Action means that BNP would not drill the wells. Alternative B, the proposed action, evaluated the Plan of Operations, to drill and produce the wells.

The EA describes no impacts to seagrass beds or algal flats, trees, and cultural resources will occur due to mitigation measures, most notably directional drilling. Impacts on air quality, soils, water resources and flood plains, vegetation, natural soundscapes, wildlife, and visitor use and experience would be localized and long-term, with adverse impacts ranging from negligible to minor. A section of the foredunes would be impacted with the construction of a new access road. A small portion of emergent wetlands would be impacted during the construction of the pipeline. Sensitive resource areas would be managed as per mitigation measures established in the Padre Island Oil and Gas Management Plan (March 2001).

Comments were to be postmarked by May 6, 2002 and received at NS by 4 p.m. On May 2, 2002, Mary Orms of my staff contacted Mr. Ken McMullen of PINS requesting an extension of time until the 13th of May to finalize our comments. On May 3, 2002, Mr. McMullen agreed to the extension. The Service has reviewed the Lemon/Lemon Seed EA, BA, and Statements of Findings for Wetlands and Flood plains provides these comments.

General Comments

Although the Service and NPS and BNP and U.S. Geological Survey (USGS) have discussed the impacts to threatened and endangered species, in particular sea turtles, that may occur from BNP's operations and associated truck traffic the EA does not properly reflect our concerns and the measures being implemented to avoid and minimize impacts. There is no list of Federally or State-listed species that may occur at PINS and the analysis of impacts and avoidance and minimization efforts is inadequate. It is inappropriate to omit this section of discussion in anticipation of a "no effect" determination from the Service. The site visit of December 10, 2001 was an inspection of the well site, not an assessment of the access route for impacts to listed species. It creates the perception that the NPS has made a predetermination of effects. By omitting this section it is not possible to make an adequate assessment of impacts to listed species and to determine if the measures proposed or already being implemented at the Murdock well are sufficient to make the proper determination of effects.

There were two alternatives discussed in the EA, No Action and Proposed Action. There were other alternatives considered but dismissed from further analysis. If those options were considered they should have been analyzed and discussed in the same manner as the proposed action. As written now, the Service and the public are not offered the opportunity to fully evaluate those alternatives nor understand why the NPS has determined they were not viable alternatives.

The environmental consequences section mentions the possibility of a total of 18 wells being drilled in the future. With that in mind some sections include the cumulative effects of those 18 wells and others do not. There is also no discussion of direct, indirect or cumulative impact discussion on threatened and endangered species. Avoidance and minimization efforts proposed in this EA plus those being implemented, but omitted, from the EA may be sufficient to possibly warrant a "not likely to adversely effect" determination on Lemon/Lemon, however, cumulatively in the future for those 18 wells it may be more prudent to evaluate them as a whole. This may afford the NPS an opportunity to better analyze impacts from oil and gas operations on the PINS and determine whether it would result in an impairment to the park, if the Oil and Gas Management Plan EIS needs revision, and/or if formal consultation on endangered species is warranted. A definition of impairment would be helpful to understand NPS's evaluation.

The amount of truck traffic necessary for operations is of great concern. Monitors and escorts are discussed. The Service, NPS, BNP and USGS have discussed and reviewed the training of the monitors and requested additional monitoring during highly sensitive times and ensuring proper notification is being done. We have discussed limited truck traffic and ways to reduce the number of necessary trips. We have discussed the possibility of increased storage space for

liquids and cuttings to reduce loads, timing and staging of rigs and convoys, eliminating night trips, and other measures to avoid and minimize impacts. After the Murdock well is completed we have also proposed the possibility of not moving the well over to Lemon/Lemon site or if necessary moving the rig out preferably after turtle season through September or at least until July after the most critical nesting time of April, May and June. None of these discuss measures in this document. It is important that PINS present all the information to the public for review thereby, allowing them to understand the final determination.

The Service would recommend a revision of the EA and re-submittal for review to the public or issuing a Findings Statement that includes a full discussion as to how comments were addressed and revisions made to the EA.

Specific Comments

Page 1. 1.0 Purpose and Need: "The purpose of this analysis is to provide a decision-making framework ..."

Comment: The purpose of an EA has three defined functions: 1) determine whether to prepare an Environmental Impact Statement (EIS), 2) aid agencies in compliance if it is determined an EIS is not needed or 3) facilitate preparation of an EIS if needed.

Page 1. "The analysis area for this EA includes the area within the park that would be directly or indirectly affected by the operations...area for evaluating cumulative impacts on park resource and values includes the entire park..."

Comment: A map outlining the area of direct impact and areas that will be indirectly and cumulatively impacted is needed to better assess impacts to threatened and endangered species and other fish and wildlife issues.

Page 7. Table 2. Issue Statements Wetlands: "Construction of the pipeline could adversely affect vegetation and hydrology over the short term."

Comment: The 55.3-foot section that crosses an emergent wetland will take approximately one year to return to pre-disturbance state. No compensation is being requested because it impacts less than 0.1 acre of wetland. To ensure the wetland functions have not been permanently disrupted and have been restored properly and its disturbance has not resulted in a loss to wildlife we recommend a monitoring plan be developed and implemented.

Page 7. Table 2. Issue Statement Vegetation: "Vegetation removal could change the structure and composition of vegetation communities in the project area; alter wildlife habitat and species composition..."

Comment: It is important that areas be revegetated with native species and monitoring of such areas that are restored be monitored for success for an established period of time.

Page 8. Table 2 Issue Statement Natural Soundscapes: "Equipment used for construction and

maintenance...could result in increased noise, adversely affecting wildlife..."

Page 8. Table 2 Issue Statement Wildlife: "Oil and gas activities... could adversely impact wildlife,... confuse birds, causing mortality...result in loss of habitat...increase edge effects...injure or kill wildlife species..."

Page 8. Table 2 issue Statement Threatened and Endangered Species: "...sea turtles..

Comment: Kemp's Ridleys have been experiencing a successful nesting year. Some potential impacts not discussed in the document include crushing of turtles coming onto the beach and/or hatchlings leaving the nest. Crushing could occur due to BNP or regular visitor traffic driving at high speeds and failure to detect the turtles. Deep rutting could hamper the nesting turtles or trap them on the beach. Compaction of sand could make excavating a nest cavity impossible and could make it difficult to locate a nest and result in harm to the eggs. Disorientation from lights could also impact turtles. There is also no discussion on other sea turtles, loggerhead, green turtles or hawksbills, nor a schedule of the turtle nesting season available to help better plan operations.

USGS/NPS conducts an extensive patrol program to detect and protect nesting sea turtle and their eggs. Eggs located are transported to incubation facility for protected care. Monitors should be well trained and training should be developed and implemented by NPS and in coordination with Dr. Donna Shaver of USGS. A trained escort on an all terrain vehicle should escort all trucks to ensure speed and other restrictions are not violated. The document does talk about truck loads needed, however it does not provide consideration of any measures to reduce numbers of loads. Truck traffic allowed on the Park should be limited and staged. It has been reported that elimination of visible lights from the rig at Murdock have been successful by downshielding and directing the lights. The dunes have offered some protection also. The Lemon/Lemon site may be closer to the Gulf Beach than Murdock, therefore, dune structure and lighting must be carefully considered. All these issues and any others NPS is aware of for avoidance and minimization efforts should be presented in this EA. If impacts cannot be properly addressed and there is a "may affect" situation to listed species, the NPS should request formal consultation.

We recommend that BNP trained monitors report sea turtles or tracks to the NPS Dispatcher and Dr. Donna Shaver, Texas Coordinator of Sea Turtle Strandings and Salvage Network. We also recommend the training protocol and front end loader protocol be included as an appendix.

Page 9, State and Federally Listed Threatened and Endangered Species and their Critical Habitat: Please see General Comments

Page 10, Alternatives: Please see General Comments.

Page 16, Access: "water funneling"

Comment: Is it possible for the road to affect the normal hydrology of the dunes or beach?

Page 17, Surface Location and well pad: "artificial lighting"... Please see Specific comments previously provided for page 8.

Page 17, Use of Water for Drilling: "...high pressure kick..."

Comment: What this is and the resulting impact is not well described, please explain.

Page. 19, Mitigation Measures # 3: "If possible, BNP would avoid moving the rig via the Gulf beach during the months of April through September..."

Comment: Please see General Comments.

Page 20, Mitigation Measures, #15: Please see General Comments.

Page 22, Mitigation Measures, # 21: If the well results in production, what would that mean in terms of operations and short-and long-term impacts outside and during sea turtle season in the future.

Page 21, #25: Please consult with experts to determine appropriate vegetation is used for plantings and if it appropriate to revegetate the area.

Page 23, #46: A front end loader is now being used to prevent rutting issues, however, protocol for such operations is not discussed.

Page 24, #48: There is concern for potential spills and contamination and impacts to the park and threatened and endangered species. Please ensure a proper spill contingency plan is in place and may be helpful to include as an appendix to the EA.

Page 24, # 54: We recommend the list of conduct and operating procedures be included as an appendix and the consequences that will be imposed if they are not adhered to.

Page 24, # 55: The placement of the dispatcher inside or outside the park was of concern to NPS at one time because of visitor use. Has this been resolved?

Page 25, Alternatives: Please see General Comments.

Page 31, Environmental Consequences: Please see General Comments on cumulative impacts and impairment.

Page 46, Individuals and Agencies Consulted: It is noticeable that Texas Sea turtle Stranding Network Coordinator, Dr. Donna Shaver, from USGS has been omitted from the list of agencies consulted. The Service considers this USGS researcher a valuable resource for her knowledge of sea turtles and could have provided some important technical expertise in the development of the EA and BA. We recognize the NPS has afforded her the opportunity to comment on the training, and completed EA and the Service has sought her input, but by omitting her on the list it appears she has not been consulted with and thus NPS did not use all its resources to use the best scientific expertise available to make its determination.

General Comments on Biological Assessment Form

The purpose of a BA is to help make the determination of whether the proposed action is "likely to adversely affect" listed species and critical habitat. To make such a determination, all species must be addressed. The BA should present a clear line of reasoning that explains the proposed project and how you made your decisions regarding the effects of the project on threatened and endangered species. The contents are discretionary, but generally include results of on-site inspections determining the presence of listed or proposed species, and an analysis of the likely effects of the actions on the species or habitat based on biological studies, reviews of the literature, and the views of species experts.

Specific Comments on Biological Assessment Form

#4 & 5: Development Action Planned and Development Action Objectives: The action description should include any related actions which could have environmental impacts and any conservation measures proposed as part of the action.

#6. Alternatives to Proposed Actions: BA's are not required to analyze alternatives to proposed actions. It is unclear as to what the statement "No legally supportive alternative means? Does this mean that NPS has no other recourse but to permit BNP to develop their mineral lease or does it mean that there are no other alternatives besides the two alternatives addressed in the EA?

#7. Brief Description of Endangered Species Surveys: The site visit was conducted in December 10, 2001 however, no actual surveys were performed for endangered species. The BA also does not include any discussion as to whether past surveys were performed for each species and if future surveys will be needed. It does not offer a clear description of survey methods and appropriate times of the year or dates such surveys should be performed. The mountain plover, a species proposed for listing as threatened, is listed in the Oil and Gas Environmental Impact Statement as occurring on PINS but is not included in this section.

#8. Listed or Proposed Species or critical habitat: within the action area: The action area includes all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action therefore, the entire 15 miles of beach needed to access the well site is part of the action area and all species that may occur on that beach area should be assessed for impacts.

#9. Analysis of Impacts/Actions on Endangered /Threatened Species:

A biological assessment is required if listed species or critical habitat may be present in the action area. It is optional if only proposed species or proposed critical habitat is involved. However if both proposed and listed specie are present a biological assessment is required and must address both proposed and listed species. The species should be described in terms of overall range and population status and how many occur on or near the project site. There should be some discussion as to what part of the population will be affected by this project. Related items of past management for the species, such as habitat improvements, or loss of habitat or individuals caused by previous projects or expected to be impacted by this project.

The ESA requires that you consider all effects when determining if an action funded, permitted or carried out by a federal agency may affect listed species. Effects you must consider include direct, indirect and cumulative effects. Effects included those caused by interrelated and interdependent actions, not just the ones that are direct. Measures taken to avoid, reduce, eliminate adverse effects or enhance beneficial effects to T/E species should be specifically outlined.

10. Conclusion: A conclusion of "not likely to adversely affect" the species means that all effects are either beneficial or are negligible. For a project that has all adverse effects or mixed adverse and beneficial effects to species, the legally proper conclusion that the project is likely to adversely affect. If that is the determination then formal consultation with the Service should be initiated. The decision is made by the federal action agency which is accountable for its actions and seeks concurrence from the Service. Because the Service believes that the BA does not properly address all issues we are unable to concur with the determination of "is not likely to adversely affect" at this time. We recommend revision of the BA and resubmittal for consideration of concurrence.

General Comments on Statement of Findings for Executive Order 11990 (Protection of Wetlands)

Findings Summary:

Pipeline alternatives considered to avoid wetlands included: 1) no action, 2) the proposed alternative, and 3) an alternative that was considered but dismissed for further analysis. The first alternative was considered the environmentally preferred alternative but was not selected since the enabling legislation of PINS honors existing non-federal oil and gas rights. The second alternative, the proposed action would lay the pipeline within a trench (25' wide by 55.3' long) through a wetland resulting in temporary wetland impacts of 1,382.5 ft² (0.03 acres). Alternative 3 would route the pipeline approximately 15,900 feet to the south of the preferred alignment and would have connected with an existing pig station at Yarborough Pass. This alternative would be more costly and would impact more than 18 acres of upland and almost 0.25 acres of wetlands, therefore this alternative was dismissed from further analysis.

Alternative #2 alignment was routed around several wetlands along the 4,300 ft. length and resulted in temporary impacts to one wetland that could not be avoided. By reducing the work corridor width at the wetland site from 50 ft. to 25 ft impacts will be reduced from 0.06 to 0.03 acre. The wetland to be impacted is derived from runoff, precipitation, and a seasonally high water table. The wetland serves to collect runoff water and eroded sediment, recharge the water table and store flood waters.

Compensation to offset impacts from the pipeline will be waived because the impact is less than 0.1 acre, temporary, and the area will be restored immediately upon completion using sidecast soil and reserved native vegetation. Loss of wetland functions is considered to be minimal because PEMC wetlands are common throughout the park. The site is expected to return to its full pre-disturbance wetland functions within one year.

Comment: We highly commend PINS and BNP for aligning the pipeline route around other

wetlands, thus reducing impacts, however, it is not clear as to why it would be necessary to move this pipeline 15,900 ft. to the south to avoid this wetland. Providing a better description of existing conditions may help our understanding of necessary impacts. The size of the work corridor is given for the entire pipeline route, however, no details are provided as to how the work will be performed, the type of equipment necessary and if this corridor will be utilized in the future for possible maintenance needs.

Procedural Manual # 77-1, section 5.2.C states that compensation can be waived but it is strongly encouraged. It also states that total adverse impacts from the entire project must include direct plus indirect impacts and should total less than 0.1 acres for waiver. Impact analyses should include both impacts associated with direct trenching and displacement of habitat as well as offsite impacts to wetland functions, such as flood attenuation, ground water recharge and discharge, erosion and sediment control or floral and faunal productivity. There is no discussion explaining how the natural functioning processes of the wetland will be retained or restored by the methods being used. It is estimated one year will be necessary to return wetland functions to pre-disturbance status. We would recommend a monitoring plan be developed and implemented to monitor effects of the disturbance to the wetland and ensure the restoration was successful.

**General Comments on Statement of Findings for Floodplains Executive Order 11988:
Flood Management**

Findings Summary: The NPS concluded that there is no practical alternative for the placement of BNP's proposed construction, maintenance, drilling and production of the wells because the entire park is in a flood plain. The proposed action would result in localized, short to long-term minor adverse impacts on water resources and flood plains.

Project impacts would be reduced by locating proposed operations on upland and by mitigation and restoration measures such as installing culverts along the access roads were needed, collecting sewage and hauling it offsite for disposal, and constructing a berm around the drilling equipment area and well/production pad to provide primary and secondary spill containment to prevent the release of any leaked or spilled hydrocarbons and contaminating or hazardous substances off the operations pad into the environment.

Comment: If any structure or proposed operation is not able to be located outside the flood plain, Executive Order 11988, Section 3(b) states such structures or facilities must be located in the flood plain agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land to achieve flood protection. "Base flood" is defined as a flood which has a one percent or greater chance of occurrence in any given year.

Thank you for the opportunity to comment. If you have any questions please contact Mary Orms at 361-994-9005 or e-mail at mary_orms@fws.gov.

Sincerely,

//S//

Allan M. Strand
Field Supervisor

cc: BNP
USGS, Attn: Donna Shaver
Susan MacMullin, USFWS-R2, Albuquerque, NM