



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
c/o TAMU-CC, Campus Box 338
6300 Ocean Drive
Corpus Christi, Texas 78412

September 26, 2002

Colonel Leonard D. Waterworth
District Engineer, Galveston District
Department of the Army, Corps of Engineers
P.O. Box 1229
Galveston TX, 77553-1229

Dear Colonel Waterworth:

The U.S. Fish and Wildlife Service has reviewed a Public Notice, dated August 27, 2002, for Texas Commission on Environmental Quality and Department of the Army, U.S. Army Corps of Engineers, Permit Application 22754. The applicant, BNP Petroleum Corporation, has requested authorization to dredge, to place fill, and to conduct oil and gas exploration and production in navigable waters. The surface location for the proposed project is located State Tracts 211, 214, 216, and 217 and the bottomholes for the proposed wells are ST 213 for Peach No. 1 and under Padre Island National Seashore for Plum No. 1, in the Laguna Madre, Kleberg and Kenedy Counties, Texas.

This report was prepared under the authority of and in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). It represents the coordinated views of the Department of the Interior. The recommendations in this report have been coordinated with representatives of the Texas Parks and Wildlife Department, the Texas General Land Office, the Texas Commission on Environmental Quality, the National Marine Fisheries Service, and the Environmental Protection Agency.

The applicant proposes to dredge an access channel approximately 12,100 feet long and 60 feet wide with a depth of -7 feet Mean Low Tide. The applicant proposes to dredge an irregularly-shaped basin with a maximum length of 435 feet, a maximum width of 210 feet, and a finished depth of -7 feet MLT. The applicant has estimated that 89,382 yd³ of material would be excavated from the proposed basin and channel and proposes to use the material to create a beneficial use (BU) site in State Tract 214. The proposed BU site is a currently unvegetated area with water depths of approximately -3 feet MLT. According to the permit application, the material dredged from the channel and basin would be pumped into a 400- by 1265-foot armored leveed area. The applicant proposes to contour the dredged material to create an island approximately 14 acres in size. As proposed, approximately 30% of the island would be at an elevation to support woody vegetation such as mesquite; approximately 30% at an elevation for sparse or unvegetated habitat; 30% a shallow water area; and 10% vegetated with high marsh. Trees and salt marsh species of plants are proposed to be planted and monitored for 3 years. The island is proposed by the applicant as a nesting island for colonial waterbirds that would be relatively free of predator activity.

The Service met with the applicant at the February 2, 2002, USACOE Joint Permit Evaluation Meeting, and at the June 11, 2002 JEM. A number of changes from the project originally proposed by the applicant are reflected in the current Permit Application 22754. One change is the relocation of the proposed BU site from an

area west of the drilling basin to a site approximately midway and to the east of the proposed access channel. The access channel alignment has been shifted from an orientation that cut through part of USACOE PA 197 to an alignment off of the Gulf Intracoastal Waterway south of, and outside of PA 197. The applicant eliminated from the published permit application an additional well site, known as Papaya Well No. 1. The applicant also eliminated from the current permit application, proposals for seagrass creation in areas within and adjacent to the BU site, and requests for advanced mitigation credit for unidentified projects. During the February 2nd JEM, the applicant noted that a Wasky-type production facility was proposed to be placed at the drilling basin, but the current permit application does not include any information regarding the a location for the production facility. Service files do not show that any information regarding the proposed location of gas lines for the two wells has been provided to the resource agencies to-date. With regards to the proposed BU site, the applicant was advised by the Service and other resource agencies to consult with experts in colonial waterbird island management. No clear record of communication between the applicant and appropriate experts has been made available to the Service. The Service was copied on one letter to the applicant's consultant; however, without the design that was being reviewed by that ornithologist, the Service cannot interpret the recommendations in the letter with regards to the current proposed design. At the June 11th JEM, the applicant was advised by the Service and other resource agencies that a BU site, with an island creation from unvegetated bay bottom may be supported if the need for the bird island was documented. Specific components of this documentation needed to include a location that could remain relatively predator-free, a design that was developed and supported by experts in colonial waterbirds, and well-defined success criteria. This documentation should be included in the issued permit, which would clearly establish its use as a bird nesting island. Also during the June 6th JEM, the applicant was queried about the quality of the soils proposed to be dredged and the agencies were advised by the consultant that although no sampling had been done to date, it was thought that there were good sandy soils in the proposed channel dredge area.

The Service's review of the coordination for the project proposed under Permit Application 22754 indicates that there are a number of unresolved issues. Furthermore, since the publication of Public Notice, the Service has been made aware of additional issues with regards to the proposed project. Neither the need for, nor the proposed design of a nesting island at the site identified in the permit application has been documented by the applicant, including appropriate support from colonial waterbird experts. Since the publication of the public notice, the Service and the other resource agencies have been advised by several members of the public that the project site is within a valuable recreational fishing area known as "The Meadows". The Laguna Madre, as a system, is well-documented as having high value for recreational and commercial fishing. Because the project area, in particular, has additional significance for recreational fishing raises an important issue of public interest that needs to be addressed by the USACOE and the applicant for the project in general, and the location of the proposed BU site in particular. This issue must be balanced with any proposals for bird island construction.

Until recently, the Service had the impression that the only issue for the USACOE's GIWW maintenance dredging program was for the access channel not to cut through an designated USACOE Placement Area. However, additional information provided to the Service from members of the Interagency Coordination Team, that advises the USACOE, highlighted other concerns that would impact several features of the proposed project. PA 197, which borders the GIWW west of the proposed project area has historically been utilized for placement of maintenance dredge material approximately every 3 years. PA 197 is not leveed, and the dredge pipes are placed so that material flows east away from the GIWW. Information provided to the Service notes that the dredged material typically consists of

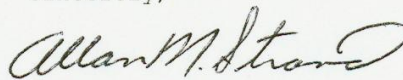
approximately 25% sand. The Service was advised that some ICT members, including the USACOE, are very concerned that the material could flow into the applicant's channel, if constructed as proposed, and that the USACOE could be held liable for that impact. The Service is concerned that because soil sampling has not been undertaken by the applicant, the material proposed for the BU site creation may be of questionable suitability. Furthermore, the permit application does not include a plan for maintenance dredging the access channel, nor a site for placement of that maintenance material. If the sediments along the proposed access channel route contain a high percentage of fines, the applicant must address issues of turbidity that could result from both initial dredging and subsequent maintenance dredging, and the potential to impact the seagrass beds which parallel portions of the project area on the east and west.

The USACOE routinely issues permits for oil and gas well exploration projects that do not include attendant features of a producing well, specifically a production facility and pipelines. For many oil and gas wells, especially those with surface locations in deep unvegetated waters, this separation of the project into two components is an issue of little concern. This is not the case for the proposed project. The surface location for the wells is just to the east of Padre Island National Seashore, and the Service is aware that the applicant may seek authorization to locate some of these attendant features within PAIS. The park's managers have clearly defined Federally mandated responsibilities for review and authorization procedures for such proposals. Projects such as that proposed under Permit Application 22754 must be given thoughtful consideration by PAIS, weighed against the other mandated responsibilities of the park resource managers, and carefully documented before any authorization is finalized. The Service is very concerned that if the proposed oil and gas wells are authorized separate from the attendant features, unnecessary pressure would fall on both the PAIS and the BNP project managers to meet production time lines. The Service is also aware that PAIS resource managers are concerned about the impact of the bright lights typically used on other similar drilling structures, and the potential for light pollution affecting wildlife, including nesting migratory birds in nearby areas, and islands within PA 197.

With regards to Federally listed threatened and endangered species, the Service recommends that the USACOE consult with the National Marine Fisheries Service for potential impacts to the green sea turtle (*Chelonia mydas*). Tracking and stranding information for this species documents the use of the Laguna Madre in general as an important foraging area. The role of the proposed project area, "The Meadows" in the life cycle of green sea turtles, and the potential impacts of any initial and maintenance dredging activity, the impacts of creating an island in shallow open waters, and the potential for impacts of project lighting on this species should be assessed.

Pursuant to Section 404q Memorandum of Agreement between the Department of the Army and the Department of the Interior, the project as proposed may have substantial and unacceptable impacts to aquatic resource of national importance, and the Service recommends that Permit Application 22754 not be approved as proposed. In the event that the USACOE determines to proceed with the issuance of Permit Application 22754, the Service will proceed with its determination as to the need for higher level review.

Sincerely,



ALLAN M. STRAND
Field Supervisor

cc:

D. Watkins, U.S. Fish and Wildlife Service, Albuquerque, NM
A. Wimer, Padre Island National Park, Corpus Christi, TX
M. E. Vega, Texas Parks & Wildlife Department, Corpus Christi, TX
R. MacRae, Resource Protection Branch, TPWD, Austin, TX
M. Freytes, Field Operations, TGLO, Corpus Christi, TX
S. Davenport, Texas General Land Office, Coastal Mgmt. Div., Austin, TX
R. Swafford, Habitat Conservation Division, NMFS, Galveston, TX
M. Fisher, 401 Coordinator, TCEQ, Austin, TX
N. Sears, Federal Activities Branch (6E-F), EPA, Dallas, TX

U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
FIELD SUPERVISOR (ES)
C/O CCSU, CAMPUS BOX 338
6300 OCEAN DRIVE
CORPUS CHRISTI, TEXAS 78412
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

FIRST CLASS

A. Wimer
Padre Island National Park
P.O. Box 181300
Corpus Christi, Texas 78480-1300



OF THE INTERIOR
INT-423

2002 0 8 43S

78480-1300

