Kemp's Ridley Sea Turtle Emergency Restoration Plan

May 5, 2011

Approvals

The undersigned parties approve the following emergency restoration activities, under the terms of the EMERGENCY RESTORATION IMPLEMENTATION AGREEMENT For the MC-252 Oil Spill.

Texas Representative — Date: 5/9/2011

BP Representative — Date

Department of the Interior Representative — Date

Agencies (Designate Lead and define roles for each)

The U.S. Department of the Interior's National Park Service (NPS) will administer this Kemp's ridley sea turtle nest detection and protection project on the Padre Island National Seashore (PINS). The nest detection and protection efforts on the upper Texas coast (an area roughly 70 miles in length extending from Surfside northeast to High Island) will be administered by the Texas Parks and Wildlife Department, with field work conducted by the Sea Turtle and Fisheries Ecology Research Lab at Texas A&M University at Galveston. Nest detection and protection efforts will also take place on Brazoria National Wildlife Refuge, with field work conducted by refuge staff. Separate funding accounts will be set up for the Department of the Interior (representing the National Park Service and U.S. Fish and Wildlife Service) and the Texas Parks and Wildlife Department (contracting with Texas A&M University at Galveston).

Estimated Project Cost (including project breakouts for construction and operations)

Kemp's ridley sea turtle detection and protection on PINS ($33,500)

The proposed emergency project will include the construction and operation of a protective corral. With the funding provided under this Plan, NPS will use seasonal staff and purchase

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Greg R Thomas PhD Department of the Interior Representative	5/9/11 Date

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Estimated Project Cost (including project breakouts for construction and operations)

Kemp's ridley sea turtle detection and protection on PINS ($33,500)

The proposed emergency project will include the construction and operation of a protective corral. With the funding provided under this Plan, NPS will use seasonal staff and purchase

materials to construct and operate a corral at the 30 mile mark on PINS during the 2011 nesting season. Nesting operations include nest detection and relocation to corrals, corral monitoring, removing vegetation from corrals, setting and maintaining traps for ghost crabs, re-grading sand to keep eggs covered, watering the corrals, monitoring of egg hatching, and release of hatchlings.

The establishment of a corral at the 30 mile mark represents an increase in nest protection efforts relative to the 2010 nesting season, as only one corral at the 40 mile mark was operational in 2010 and planned for 2011 using appropriated funds. This addition is expected to enhance the survivability of hatchlings in the 2011 nesting season.

Item	**Cost**
Supplies	$2,500
Personnel	$28,000
Camp rate per diem	$3,000
Total	**$33,500**

The costs to implement this Plan itemized in the table above do not include transportation, tools, and some materials, which NPS will pay with appropriated funds.

BP shall provide funding for Kemp's ridley sea turtle detection and protection on PINS in the amount of $33,500, payable to DOI's Natural Resource Damages Assessment and Restoration (NRDAR) Fund, pursuant to wire instructions provided by DOI, by no later than 15 days after this Plan is effective. Upon receiving this funding the DOI's NRDAR Fund will assign an individual project number to this Plan.

Kemp's Ridley Sea Turtle Detection on the Upper Texas Coast ([redacted])

The project would expand upon current nest detection efforts taking place on the upper Texas coast (an area roughly 70 miles in length extending from Surfside northeast to High Island) and Brazoria National Wildlife Refuge for the 2011 nesting season. Specific conservation practices will include patrolling beaches on foot or on ATV/UTV to locate nests, safeguarding of nesting turtles, excavation and protection of nests, and transport of eggs to the existing egg incubation facility located at PINS headquarters. Expansion of these efforts on the upper Texas coast will 1) result in a 30% increase in TAMU Galveston-led patrol activities relative to the 2010 nesting season, as sufficient resources will, in addition to the already funded morning patrols, also be available to perform afternoon surveys from the East end of Galveston Island to Surfside during the peak nesting month of May; and 2) allow Brazoria NWR staff to devote staff to full-time instead of part time patrol activities within refuge boundaries.

Item	**Cost**
Supplies (TAMU Galveston)	[redacted]
Supplies (Brazoria NWR)	$1,000
Nesting patrol coordination and oversight (TAMU Galveston)	[redacted]
Staffing for nesting patrol (Brazoria NWR)	$8,000

Staffing for nesting patrol, response, and signage placement (TAMU Galveston)	[redacted]
Signage for active nesting beaches (TAMU Galveston)	[redacted]
Utility transport vehicle (UTV) (Brazoria NWR)	$12,000
Recovery vehicle and ATV/UTV rental, remote storage, fuel, and maintenance (TAMU Galveston)	[redacted]
Fuel and maintenance (Brazoria NWR)	$3,000
Total	[redacted]

BP shall provide funding for Kemp's ridley sea turtle detection on Brazoria NWR in the amount of $24,000 payable to DOI's NRDAR Fund, pursuant to wire instructions provided by DOI, by no later than 15 days after this Plan is effective. The DOI's NRDAR Fund will assign the same individual project number to the funding for Brazoria NWR and to the funding for PINS described above.

BP shall provide funding for Kemp's ridley sea turtle detection on the upper Texas coast in the amount of [redacted] payable to the Texas Natural Resource Trustees Deepwater Horizon Account held by the Texas Safekeeping Trust Company, pursuant to wire instructions provided by Texas, by no later than 15 days after this Plan is effective.

Project Benefits (ecosystem, infrastructure, economic)

These projects would help prevent mortality to the population through detection and protection of nesting turtles and nests on Gulf of Mexico beaches, and by enhancing the survivability of hatchlings. The Kemp's ridley is the most endangered sea turtle species in the world (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and SEMARNAT. Draft Bi-National Recovery Plan for the Kemp's Ridley Sea Turtle [*Lepidochelys kempii*], Second Revision. National Marine Fisheries Service. Silver Spring, MD) and most of the individual sea turtles that were recovered during the Deepwater Horizon event were this species.

The Kemp's ridley life cycle is tied more closely to the Gulf of Mexico than is any other sea turtle species, and Gulf of Mexico waters provide important foraging and migratory habitat. Some Kemp's ridley turtles likely never leave the Gulf of Mexico. Most adults occur in the Gulf of Mexico and virtually all reproduction occurs on Gulf beaches (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and SEMARNAT. Draft Bi-National Recovery Plan for the Kemp's Ridley Sea Turtle [*Lepidochelys kempii*], Second Revision. National Marine Fisheries Service. Silver Spring, MD). This project would help protect Kemp's ridley sea turtles at nesting beaches in the Gulf of Mexico.

Project Feasibility

Timing of Project (include timelines from start to finish):

Once funds are received, nest detection and protection efforts on PINS and upper Texas coast can begin immediately, and will continue through the end of the nesting season (approximately 15-31 July 2011).

Necessary NEPA/Permits/Consultation/Other Clearances:

All permitting and engineering issues have been addressed (see attached documents).

Monitoring/Operations and Maintenance Requirements:

The National Park Service will be responsible for operating and maintaining all project components implemented on PINS. The Sea Turtle and Fisheries Ecology Research Lab at Texas A&M University at Galveston, and the U.S. Fish and Wildlife Service, Brazoria National Wildlife Refuge will be responsible for implementing the project components on the upper Texas coast. BP or its designated representative will be afforded opportunities to observe all activities described by this plan.

Cost Effectiveness:

State and federal agencies, non-governmental organizations, and volunteers will assist with project implementation. In most instances, existing facilities and organizational structures will be utilized. Sea turtle restoration begins at birth, and this project will result in more eggs being protected and successfully hatched. Conducting nest detection and protection activities in the past resulted in population increases, and the project proponents anticipate this project will have a beneficial impact on the survivability of the hatchlings of female turtles that may have been exposed to DWH oil during the 2010 nesting season.

Alternatives Analyzed:

Please see attached Environmental Assessment.

Relevance to Deepwater Horizon:

More Kemp's ridley sea turtles were documented oiled as a result of the Deepwater Horizon spill event than any other sea turtle species. This project will help reduce mortality to the population through detection and protection of nesting turtles and nests on Gulf of Mexico beaches, and by enhancing the survivability of hatchlings. The spill location overlaps with the known distribution of important Kemp's ridley foraging and migratory habitat. Many of the adult females that were equipped with satellite tags after nesting in Texas and Mexico during 2010 moved to the vicinity of the spill and may have been exposed to oil in the marine environment. Since Kemp's ridley turtles nest an average of every other year, most of the females that nested in 2010 should nest again in 2012. Those that did not nest during 2010, and may have been exposed to DWH oil while foraging or swimming in waters near the spill, would be expected to nest during 2011.

Tie to Existing DOI or Bureau Policy:

Nest detection and protection activities are high priority recovery task items in the Kemp's Ridley Sea Turtle Endangered Species Act Recovery Plan. The projects can be completed on a near term basis and will have a beneficial impact on the survivability of hatchlings and adult female turtles that may have been exposed to DWH oil during the 2010 nesting season.

Emergency Restoration Implementation Agreement:

The terms and conditions contained in the Emergency Restoration Implementation Agreement for the MC-252 Oil Spill, with an effective date of May 9, 2011 shall apply to and govern this Plan.

Access to Data:

All data generated under this Plan, including data describing the number of sea turtle nests and eggs observed and/or collected, will be provided to BP or its representative in the following increments: August 1, 2011 (preliminary 2011 nest data); and September 15, 2011 (all additional 2011 data). The Parties each reserve its right to produce its own independent interpretation and analysis of any data generated under this plan.

No later than October 1, 2011, DOI and the Texas Parks and Wildlife Department shall provide a report to BP describing the work that was conducted pursuant to this Plan, including but not limited to, the number of surveys that were completed, the construction of the corral at PINS, the number of staff members involved, and the areas where nest detection and protection efforts were conducted. The report shall also describe how the funds provided pursuant to this plan were distributed and used.

Expenditure of Funds:

All funds provided by BP under this Plan will be used exclusively for the purpose of implementing this Plan.

4. Provide better distribution of cabins for more efficient daily and 24-hour operations of sea turtle monitoring and egg extraction efforts.
5. To expand the turtle incubation facility in the Headquarters compound to provide expanded hatching capacity in a climate-controlled, predator-free environment.

Under alternative B, the cabins would replace the original two cabins that were lost in 1999 to Hurricane Bret. Construction of these two cabins would provide better distribution of park staff to begin and end their patrols each day, allowing for more work hours applied towards monitoring, while also reducing fuel consumption and the park's carbon footprint for total miles surveyed. During times of inclement weather and emergency situations, the extra cabins would allow for additional places within the park where park staff could find refuge or shelter.

In addition, under alternative B the sea turtle incubation facilities would be expanded. This expansion includes corrals at each of the cabins, as well as the expanding the size of the sea turtle egg incubation laboratory at Park Headquarters. Situating the corrals near the cabins provides overnight oversight and safety for the eggs. Having the corrals located at the National Seashore's 30, 39, and 50-mile marks would allow for optimum locations for park staff to deposit eggs to one of these incubation repositories shortly after being excavated from their nest. This action would thereby reduce transport time of eggs in vehicles and the potential for egg embryo injury. Once sea turtles emerge from hatching, the hatchlings would be released at the 30, 39, or 50-mile mark incubation facility, thereby dispersing the hatchlings along the Gulf of Mexico beach and providing releases closer to where the nests were found. Expansion of the facilities at Park Headquarters would allow for climate-controlled conditions, free of any predator or potential disturbance.

The proposed action of building two sea turtle patrol cabins and expanding the Headquarters incubation facility under alternative B is warranted not only to address the recovery task priority items in the Kemp's Ridley Recovery Plan, but also necessary for park staff to proactively manage the park's number one natural resources management priority, as identified in the approved Padre Island National Seashore 1995 Resource Management Plan. As a result of the sea turtle backcountry monitoring patrol efforts and the Headquarters incubation efforts, backcountry staff has doubled in size and the number of Kemp's ridley nests recovered in the park has increased to 118 for 2009, which includes one green sea turtle nest. Building two new cabins would provide adequate housing for the patrollers, and provide additional space for future growth and supporting operations. Each cabin would be able to accommodate up to twenty-three overnight campers. Expansion of the headquarters incubation facilities would provide sufficient space to handle the anticipated increase in sea turtle nests and operational space to provide the appropriate care.

Mitigation Measures

The following mitigation measures were developed to minimize the degree and or severity of adverse effects and would be implemented during construction of the action alternative, as needed:

- Construction activities would be scheduled to minimize construction-related impacts upon visitors. Areas not under construction would remain accessible to visitors as much as is safely possible.
- The National Seashore's facility manager would be responsible for ensuring that their crew performs the necessary work in accordance with instructions and standards provided by the National Park Service.
- The National Park Service would coordinate with contractors and any volunteers to monitor construction activities per National Park Service standards. Specifically, Padre Island National Seashore would monitor and or direct vehicles transporting materials to their designated

locations.

- All crew members, contractors, and volunteers assisting with work efforts would be educated about the importance of avoiding impacts to sensitive resources that have been flagged for avoidance, which may include natural and cultural resources.
- An archaeological survey would be performed prior to any construction; however, should construction unearth previously undiscovered cultural resources, work would be stopped in the area of discovery and the recreation area would consult with the state historic preservation officer and the Advisory Council on Historic Preservation, as necessary, according to 36 CFR 800.13, *Post Review Discoveries*. In the unlikely event that human remains are discovered during construction, provisions outlined in the Native American Graves Protection and Repatriation Act (1990) would be followed.
- To minimize the amount of ground disturbance, staging and stockpiling areas would be in previously disturbed sites, away from visitor use areas to the extent possible. All staging and stockpiling areas would be returned to pre-construction conditions following construction.
- Construction zones would be identified and fenced with construction tape, silt fencing, or some similar material prior to any construction activity. The fencing would define the construction zone and confine activity to the minimum area required for construction. All protection measures would be clearly stated in the construction specifications and workers would be instructed to avoid conducting activities beyond the construction zone as defined by the construction zone fencing.
- Revegetation and recontouring of disturbed areas would take place following construction and would be designed to minimize the visual intrusion of the structure. Revegetation efforts would strive to reconstruct the natural spacing, abundance, and diversity of native plant species using native species. All disturbed areas would be restored as nearly as possible to pre-construction conditions shortly after construction activities are completed. Weed control methods would be implemented to minimize the introduction of noxious weeds. Some shrubs and grasses would be removed, but other existing vegetation at the site would not be disturbed to the extent possible. A monitor would be onsite for identification and protection of any rare, protected plant species.
- Because disturbed soils are susceptible to erosion until revegetation takes place, standard erosion control measures such as silt fences and/or sand bags would be used to minimize any potential soil erosion.
- Fugitive dust generated by construction would be controlled by spraying water on the construction site, if necessary.
- Employees and construction crews would be required to park their vehicles on the beach, away from the flow of beach driving traffic to ensure enough capacity and access to the National Seashore for visitors.
- To reduce noise and emissions, construction equipment would not be permitted to idle for long periods of time.
- To minimize possible petrochemical leaks from construction equipment, park staff would regularly monitor and check construction equipment to identify and repair any leaks.
- Construction workers and supervisors would be informed about special status species. Contract provisions would require the cessation of construction activities if a species were discovered in the project area, until park staff re-evaluates the project. This would allow modification of the

contract for any protection measures determined necessary to protect the discovery. A monitor would assist for identification of special status species.

- If any contractors would be involved with this project, the National Park Service would inform them of the penalties for illegally collecting artifacts or intentionally damaging paleontological materials, archeological sites, or historic properties. Contractors and subcontractors would also be instructed on procedures to follow in case previously unknown paleontological or archeological resources are uncovered during construction. Trained park staff would be onsite for the action and monitor for the discovery of any new findings.
- To minimize the potential for impacts to nesting sea turtles, a trained escort would accompany and lead vehicles down beach. Construction vehicles traveling to construction sites would coordinate times of work so convoys may be implemented.
- Construction workers and supervisors would be informed about the special sensitivity of the National Seashore's values, regulations, and appropriate housekeeping.
- According to 2006 *Management Policies*, the National Park Service would strive to construct facilities with sustainable designs and systems to minimize potential environmental impacts. Development would not compete with or dominate monument's features, or interfere with natural processes, such as the seasonal migration of wildlife or hydrologic activity associated with wetlands. To the extent possible, the design and management of facilities would emphasize environmental sensitivity in construction, use of nontoxic materials, resource conservation, recycling, and integration of visitors with natural and cultural settings. The National Park Service also reduces energy costs, eliminates waste, and conserves energy resources by using energy-efficient and cost-effective technology. Energy efficiency is incorporated into the decision-making process during the design and acquisition of buildings, facilities, and transportation systems that emphasize the use of renewable energy sources.

Alternatives Considered

Two alternatives were evaluated in the environmental assessment including the no-action alternative and one action alternative. Under alternative A, No-Action, construction of the sea turtle patrol cabins and incubation laboratory would not occur. Alternative B, Expansion of Facilities Supporting Sea Turtle Science and Recovery, is the preferred alternative, as described in the previous section.

Environmentally Preferred Alternative

Alternative B is the environmentally preferred alternative. The environmentally preferred alternative is determined by applying the six criteria suggested in §101 the National Environmental Policy Act. According to these criteria, the environmentally preferred alternative should 1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; 2) assure for all generations safe, healthful, productive, and esthetically and culturally pleasing surroundings; 3) attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences; 4) preserve important historic, cultural and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice; 5) achieve a balance between population and resource use that would permit high standards of living and a wide sharing of life's amenities; and 6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

Alternative B is the environmentally preferred alternative because it best addresses these six evaluation factors. Alternative B, Expansion of Facilities Supporting Sea Turtle Science and

Recovery, would provide a working environment for Padre Island National Seashore staff that meets health and safety recommendations, while minimizing environmental impacts to the extent possible. As these facilities would be permanent, they would be used by future generations working as stewards and trustees of the land. Staging from the new cabins would allow for more efficient operations and be more environmentally-friendly by reducing the carbon footprint for the number of miles surveyed for nesting sea turtles. Expansion of the sea turtle egg incubation laboratory and construction of the cabins would assist with preserving a species and supporting ecological diversity. Release of sea turtle hatchlings from the incubation laboratory would provide recreational and educational opportunities for visitors. Sea turtle patrols from the cabins would provide for better nest location and extraction, thereby reducing the likelihood for Endangered Species Act incidental take and allowing the beaches to remain open to vehicle access.

Why the Preferred Alternative Would Not Have a Significant Effect on the Human Environment

As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect would be beneficial.

Implementation of the preferred (selected) alternative would result in some adverse impacts; however, the overall benefit of the project, particularly to park operations, outweighs these negative effects. The adverse effects are summarized as follows. Construction of the two cabins would cause a minor, long term, adverse effect to the park's viewshed along the Gulf of Mexico beach at the two designated project locations. The park has more than 65 miles of Gulf of Mexico shoreline; therefore, it is thought to be minor when considering this action and when considering this action with the cumulative effects. There would also be a minor to moderate adverse effect to the geology of the park, but this would only be temporary because of the mitigation of re-establishing and recontouring any dunes affected.

The overall benefit of implementing the preferred (selected) alternative is that park operations would be improved to a moderate degree because of the improved health and safety opportunities brought about by constructing the cabins along the Gulf of Mexico shoreline. More specifically, these cabins would provide shelter during times of inclement weather, while also providing refuge if a dangerous situation should arise along the beachfront. The cabins would provide known locations where staff, contractors, or visitors could find first aid supplies, or communications to call for assistance. The new building would also benefit seasonal employees by providing additional overnight accommodation. The locations for the cabins would allow for better distribution along the Gulf of Mexico shoreline, allowing for more efficient operations, and less of a carbon footprint for the amount of miles surveyed for nesting sea turtles. Further, the new cabins would provide for locations to incubate sea turtle eggs within safe, predator-free environments. Release of hatchlings from these locations would allow for greater distribution of sea turtle hatchlings, allowing for them to return to the sea closer to where the nest was located.

The degree to which the proposed action affects public health or safety

The preferred alternative would have an overall beneficial effect on public health and safety, particularly for the National Seashore's employees that would be within the backcountry of the park. The new cabins would provide shelter from inclement weather, and would provide refuge and a known location with communications should shelter or communications be needed during a severe weather event or emergency situation.

Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas

The preferred alternative would not impact unique characteristics of the area including park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas because these resources do not exist in the project area.

The degree to which the effects on the quality of the human environment are likely to be highly controversial

Throughout the environmental process, the proposals to expand the sea turtle facilities was not highly controversial, nor are the effects expected to generate future controversy. Some confusion was generated during the public review period because an environmental assessment that was analyzing the impacts of beach vehicles was going through public scoping during the same time frame. While these two documents were either scoped or under public review, the National Seashore received a couple of comments for this project which should have been directed towards the beach vehicle environmental assessment. These comments were respectfully attached with the beach vehicle environmental assessment, where they could be commented on more appropriately. Of all the public comments received for this project, most were in favor.

The degree to which the possible effects on the quality on the human environment are highly uncertain or involve unique or unknown risks

The effects of expanding the sea turtle facilities are fairly straightforward and do not pose uncertainties. The environmental process has not identified any effects that may involve highly unique or unknown risks.

The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

The preferred alternative is not expected to set a precedent for future actions with significant effects, nor does it represent a decision in principle about a future consideration.

Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

Cumulative effects were analyzed in the environmental assessment and no significant cumulative impacts were identified.

The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

There are no listed, or eligible to be listed, districts, sites, highways, structures, or objects in the National Register for Historic Places; therefore, there would be no adverse effects that would occur from this action to listed, or eligible to be listed, sites on the National Register of Historic Places. A letter dated April 27, 2010 from the Texas State Historic Preservation Office concurs with the NPS determination of *no adverse effect* per §106 of the National Historic Preservation Act.

The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

A visit with the U.S. Fish and Wildlife Service (USFWS) on March 16, 2010 indicated that since the proposed action of constructing cabins would occur in areas where endangered sea turtles nest, and since the proposed action would be occurring during the nesting sea turtle season, additional consultation under §7 of the Endangered Species Act was necessary. The park and the Corpus Christi USFWS field office initiated formal consultation, where the National Seashore developed a biological assessment, and the USFWS developed a biological opinion. Through the consultation process, impacts to nesting sea turtles were analyzed and conservation measures have been identified. In the Biological Opinion dated January 19, 2011, the USFWS stated, "It is the opinion of the Service that the construction of two cabins is not likely to jeopardize the continued existence of the Kemp's ridley, green, or loggerhead sea turtles".

Further, a letter from Texas Parks and Wildlife Department dated March 15, 2010 indicated the state-listed species and habitat within the proposed project area, and they provided recommendations for minimizing the impacts to these species. These recommendations were reviewed and included within the environmental assessment or they covered by the consultation with the USFWS and outlined within the biological opinion's conservation measures.

Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment

The action would not violate any federal, state, or local laws or environmental protection laws. The National Seashore coordinated with the Texas Coastal Management Program (TCMP), Texas General Land Office's Beaches and Dunes Program, where they stated within letter dated December 1, 2010 that this NPS project is located on Excluded Federal Lands, and thereby is excluded from consistency review. While this exclusion is recognized, the National Seashore intends to maintain consistency with all regulations as identified by the Coastal Zone Management Act and the Texas Open Beaches Act.

Appropriate Use

Sections 1.5 and 8.12 of NPS *Management Policies* underscore the fact that not all uses are allowable or appropriate in units of the National Park system. The proposed use was screened to determine consistency with applicable laws, executive orders, regulations, and policies; consistency with existing plans for public use and resource management; actual and potential effects to park resources; total costs to the National Park Service; and whether the public interest would be served. Program support facilities are common and vital structures in most park units. Proper location, sizing, as well as construction materials and methods would ensure that unacceptable impacts to park resources and values would not occur. The proposed expansion of the park's sea turtle facilities is consistent with current park plans. With this in mind, the National Park Service finds that constructing the sea turtle patrol cabins and expanding the sea turtle egg incubation laboratory is an acceptable use at Padre Island National Seashore.

Impairment

National Park Service's *Management Policies, 2006* require analysis of potential effects to determine whether or not actions would impair park resources. The fundamental purpose of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act,

as amended, begins with a mandate to conserve park resources and values. National Park Service managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adversely impacting park resources and values.

However, the laws do give the National Park Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, as long as the impact does not constitute impairment of the affected resources and values. Although Congress has given the National Park Service the management discretion to allow certain impacts within park, that discretion is limited by the statutory requirement that the National Park Service must leave park resources and values unimpaired, unless a particular law directly and specifically provides otherwise. The prohibited impairment is an impact that, in the professional judgment of the responsible National Park Service manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of these resources or values. An impact to any park resource or value may, but does not necessarily, constitute impairment, but an impact would be more likely to constitute an impairment when there is a major or severe adverse effect upon a resource or value whose conservation is:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- key to the natural or cultural integrity of the park; or
- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

An impact would be less likely to constitute an impairment if it is an unavoidable result of an action necessary to pursue or restore the integrity of park resources or values and it cannot be further mitigated.

The park resources and values that are subject to the no-impairment standard include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

Impairment findings are not necessary for visitor use and experience, socioeconomics, public health and safety, environmental justice, land use, and park operations, because impairment findings related back to park resources and values, and these impact areas are not generally considered park resources or values according to the Organic Act, and cannot be impaired in the same way that an action can impair park resources and values.

Impairment may result from National Park Service activities in managing the park, visitor activities, or activities undertaken by concessioners, contractors, and others operating in the park. The NPS's threshold for considering whether there could be impairment is based on whether an action would have major (or significant) effects. The following analysis evaluates whether or not the applicable resources carried forward in this document would be impaired by the preferred alternative.

Public Involvement

Prior to creation of the environmental assessment, a scoping brochure was released to the public for thirty days to get any additional ideas and to choose the best alternative to be implemented for this project. Of the twenty comments received from the public, seventeen were in favor, one was non-supportive, and one was out of scope. Once the environmental assessment was written it was made available for public review and comment during a thirty-day period, which ended October 11, 2010. To notify the public of this review period, a press release was mailed to stakeholders, the affiliated Native American tribe, interested parties, and newspapers. Copies of the document were sent to all certain agencies, interested parties, and to anyone who requested a copy. Copies were made available in local repositories and posted on the National Park Service Planning, Environment, and Public Comment website. Eleven comments were received during this review period, where four comments were supportive of the project, four were non-supportive of the project, and three were out of scope. The public review of this environmental assessment occurred at the similar time as the release of the park's Beach Vehicle Environmental Assessment's public scoping phase. The Beach Vehicle EA is a hot topic because it involves lowering of the beach's speed limit for passenger vehicles. The out of scope comments, as which can be said for others that were against this project, are fueled by the strong disapproval of lowering the beach's speed limit. Of the eleven comments only one was substantive, which focused around the topic of authority to carry out the sea turtle program. These comments are addressed in the Errata Sheets attached to this FONSI. The FONSI and Errata Sheets would be sent to all commenters.

Native American Consultation

The Tonkawa Tribe of Oklahoma is the only known Native American tribe that has potential lineage to the Native Americans that once inhabited Padre Island. They were contacted at the beginning of this project to determine if they had any concern over ethnographic resources in the project area, and asked if they wanted to be involved in the environmental compliance process. There were no objections received from the Tonkawa Tribe to the proposed project.

Conclusion

As described above, the preferred alternative does not constitute an action meeting the criteria that normally require preparation of an environmental impact statement (EIS). The preferred alternative would not have a significant effect on the human environment. Environmental impacts that could occur are limited in context and intensity, with generally adverse impacts that range from localized to widespread, short- to long-term, and negligible to moderate. There are no unmitigated adverse effects on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative

effects, or elements of precedence were identified. Implementation of the action would not violate any federal, state, or local environmental protection law.

Based on the foregoing, the National Park Service has determined that an EIS is not required for this project and thus would not be prepared.

Approved: 2/22/11

John Wessels Date

Director, Intermountain Region, National Park Service

Errata Sheets

Expansion of Facilities Supporting Sea Turtle Science and Recovery
Padre Island National Seashore

Of the eleven replies that were received during public review of the EA, one of the replies had a few comments considered substantive. According to NPS policy, substantive comments are those that 1) question the accuracy of the information in the EA, 2) question the adequacy of the environmental analysis, 3) present reasonable alternatives that were not presented in the EA, or 4) cause changes or revisions in the proposal.

Some substantive comments may result in changes to the text of the EA, in which case, they are addressed in the *Text Changes* section of the Errata Sheets. Other substantive comments may require a more thorough explanatory response and are addressed in the *Response to Comments* section. NPS responds to all substantive comments in either or both of these sections.

Substantive comments for this EA centered on one topic: the authority to carry out the sea turtle program. These concerns resulted in minor changes to the text of the EA and are also explained more thoroughly in the *Response to Comments* section.

Text Changes

Page 6, *Background* – the fourth paragraph, where it states that the USFWS Kemp's ridley recovery plan gives the park the authority to protect sea turtles, Endangered Species Act and NPS policy was also added.

Page 7, *Purpose and Need* – the first full paragraph, where it states that the USFWS Kemp's ridley recovery plan gives the park the authority to protect sea turtles, Endangered Species Act and NPS policy was also added. Success of the program was removed from this location.

Page 50, *Environmental Consequences, Park Operations* – The paragraph before the Cumulative Effects, where it speaks of funding for this project, was added to the text after receiving the public's review. It states "The total cost for this proposed action would be $400,000 for both of the cabins, as well as $400,000 for the lab expansion."

Response to Comments

Comment 1 – The sea turtle program at Padre Island National Seashore needs an Environmental Impact Statement completed to analyze the effects of the program.

Response 1 – Please be aware, the National Park Service is responding to nesting sea turtles along the Gulf of Mexico shoreline within Padre Island National Seashore. The proposed action is so Padre Island National Seashore can respond appropriately as required by the Endangered Species Act, as well as the NPS Organic Act. NPS Policies 2006 Section 4.4.2.3, Management of Threatened or Endangered Plants and Animals, states the NPS would survey for, protect, and strive to recover all species native to national park system units that are listed under the Endangered Species Act. The NPS would fully meet its obligations under the NPS Organic Act and the Endangered Species Act to both proactively conserve listed species and prevent detrimental effects on these species. Also, as identified by the park's Resource Management Plan, sea turtle protection is considered the highest priority for all of the park's natural resources management. No significant impacts were identified by National Park Service staff, other government organizations or the public during the Environmental Assessment scoping and review processes, because of this no Environmental Impact Statement will be necessary.

Comment 2 – "There is no Wetlands section in the Environmental Consequences chapter, nor is it listed in the Table of Contents. The only Wetlands section found was among the list of impact topics on Page 20."

Response 2 – USACE wetland compliance/concurrence was stated within the EA, in section "Impact Topics Dismissed from Further Analysis", page 20. As stated by the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, Section 1502.16, the Environmental Consequences section should not duplicate discussions in Sec. 1502.14 (i.e., Impact Topics Dismissed from Further Analysis section, page 20), and it further reads Sec. 1502.16 (h) the means to mitigate adverse environmental impacts would be covered under Environmental Consequences section, if not fully covered under Sec. 1502.14(f), Include appropriate mitigation measures not already included in the proposed action or alternatives. [Emphasis added.]

Comment 3 – "If the proposed building construction were indeed within the intertidal zone or even within 200 feet landward of the mean high line, it would require authorization from the Texas General Land Office (TGLO) in accordance with the Texas Open Beaches Act (TOBA). Likewise, if the construction would impact dune features, as the Turtle Cabin EA describes vaguely at several points, that would require authorization from the TGLO under Texas's Dune Protection Act."

Response 3 – Correspondence was sent to Texas General Land Office Beaches and Dunes Program for their concurrence with the Texas Dune Protection Act, Texas Open Beaches Act, and any requirements from FEMA. All correspondence regarding Coastal Zone Management Act and the Texas Open Beaches Act is included with this FONSI.

Comment 4 – "Perhaps the greatest and therefore the most significant of the cumulative environmental impacts would come if, responding to the arribadas' seasonal blockage of public beach access, the TGLO enforced the TOBA by requiring the construction of an alternative access route behind the dunes."

Response 4 – In the unlikely event of a true arribada occurring, these nesting events occur on a single day, perhaps one to two times per year. Removal of sea turtle nests by park staff maintains beach driving by clearing routes for vehicles to drive.

Comment 5 – "The Turtle Cabin EA fails to provide the cost of the proposed new facilities, much less of the existing and destroyed ones the new ones would replace or enhance. Agency funding is one measure of significance and should have been revealed."

Response 5 – The costs of construction are listed in the EA on page 50, in the second paragraph under the Impacts of Alternative B (Preferred Alternative). The total cost for this proposed action would be $400,000 for both of the cabins, as well as $400,000 for the lab expansion.

OTHER COMPLIANCE/CONSULTATIONS FORM

Park Name: **Padre Island NS**

Project Number:

Project Type: **Capital Improvements (CI)**

Project Location: **Kenedy County, Texas**

Project Originator/Coordinator: **Donna Shaver and Larry Turk / Wade Stablein**

Project Title: **Expansion of Sea Turtle Facilities Supporting Division of Sea Turtle Science and Recovery**

ESA

Any Federal Species in the project Area? **YES**

If species in area:

Was Biological Assessment prepared? **YES**

If Biological Assessment prepared, concurred? **YES**

Formal Consultation required? **YES**

Formal Consultation Notes: **Consultation No. 21410-2010-F-0244**

Formal Consultation Concluded:

Any State listed Species in the Project Area? **YES**

Consultation Information: **TX Parks and Wildlife Dept.**

Data Entered By: **Wade Stablein**

ESA Mitigations

Mitigation ID Text:

Floodplains/Wetlands/§404 Permits

Question	Yes	No	Details
A.1. Is project in 100- or 500-year floodplain or flash flood hazard area?	X		Statement of findings approval date:
A.2. Is project in wetlands?		x	Exempt from compliance with executive order: Statement of findings approval date:
B. COE Section 404 permit needed?		x	Issue Date: Expiration Date: Request Date:
C. State 401 certification?		x	
D. State Section 401 Permit?		N/A	Issue Date:

			Expiration Date:
Question	**Yes**	**No**	**Details**
E. Tribal Water Quality Permit?		x	
F. CZM Consistency determination needed?	x		Required Date: 1/9/2011 Reviewed Date: 12/1/2010
G. Erosion & Sediment Control Plan Required?		x	
H. Any other permits required?		x	Permit Information:

Data Entered By: **Wade Stablein**

Mitigation ID Text: **No Floodplains/Wetlands mitigations are associated with this project. Conservations measures were identified by the USFWS in a biological opinion for this project.**

Other Permits/Laws

Question	Yes	No
A. Consistent with Wilderness Act if Wilderness, or Not Applicable otherwise?	X N/A	
B. Wilderness minimum requirement (tool) decision needed?		x
C. Wild and scenic river concerns exist?		x
D. National Trails concerns exist?		x
E. Air Quality consult with State needed?		x
F. Consistent with Architectural Barriers, Rehabilitation, and Americans with Disabilities Acts or not Applicable? (If N/A check Yes)	x	
G. Other:		

Other Information:

Data Entered By: **Wade Stablein**

Wilderness Compliance

Question	Yes	No	
A. Does this project occur in or adjacent to Designated, Recommended, Proposed, Study, Eligible, or Potential Wilderness?		X	
B. Is the only place to conduct this project in wilderness?		X	
C. Is the project necessary for the administration of the area as wilderness?		X	
D. Would the project or any of its alternatives adversely affect (directly or indirectly) Designated, Recommended, Proposed, Study, Eligible, or Potential Wilderness (If Yes, Minimum Requirements Analysis required)?		X	
E. Does the project or any of its alternatives involve the use of any of the Wilderness Act Section 4(c) prohibited uses: commercial enterprise, permanent road, temporary road, motor vehicles, motorized equipment, motorboats, landing of aircraft, mechanical transport, structure, or installation (If Yes, Minimum Requirements Analysis required)?		X	
F. If the answer to D or E above is "Yes" then a Minimum Requirements Analysis is required. Describe the status of this analysis in the column to the right.			Initiation Date: Completed Date: Approved Date:

G. Other Information:

Data Entered By: **Wade Stablein**