

CITIZENS FOR ACCESS AND CONSERVATION

Mr. Joe Escoto, Superintendent
Attn: Beach Vehicle EA
Padre Island National Seashore
National Park Service
P. O. Box 181300
Corpus Christi, TX 78480-1300

Via e-mail to
pais_superintendent@nps.gov

Re: Comments (CAC comments) to Padre Island National Seashore (the Park) draft Beach Vehicle Environmental Assessment June 2011 (the Park EA) submitted by Citizens for Access and Conservation (CAC)

Dear Mr. Escoto:

CAC respectfully requests that the following CAC comments be considered in revising the Park EA.

The Park EA

The Park EA provides that four alternative actions are being evaluated:

- Alternative 1 would be no action (Alternative 1).
- Alternative 2 would implement a seasonal 15 mph speed limit for the entire beach beginning at the occurrence of the first Kemp's ridley turtle nest observed within the park or April 15—whichever is earlier—through the end of the Kemp's ridley nesting season, plus safety zones would be implemented within 100 yards of certain named hazards where the speed limit would be 15 mph (Alternative 2).
- Alternative 3 as modified by the Park EA would implement a 15 mph speed limit from March 1 through Labor Day for the entire beach. Outside of these dates (i.e. from the day after Labor Day 1 through February 28), the speed limit from MM 2.5 south to Mansfield Channel would be 25 mph (Modified Alternative 3). The original Alternative 3 proposed to implement a 15 mph speed limit from March 1 through November 30th for the entire beach.
- Alternative 4 would implement a 15 mph speed limit for the entire beach year-round (Alternative 4).
- Alternative 5 has two variations. Under the first (Option A) the speed limit would remain at 25 mph south of MM 2.5, but year-round safety zones would be implemented within 100 feet of people, pets, parked vehicles, and structures, in which the speed limit would be reduced to 15 mph. Under the second (Option B)

the 15 mph year-round safety zones would apply to driving within 100 feet of wildlife, people, pets, parked vehicles, and structures (collectively referred to as Alternative 5 and severally as Alternative 5 (Option A) or Alternative 5 (Option B)).

Need for an Environmental Impact Study (EIS)

Conspicuously absent is any meaningful discussion in the Park EA of why an EIS is not being required. CAC in its previous comments, and the amendments thereto (collectively, CAC's prior comments), to the Park's scoping brochure released by the Park on July 23, 2010 (the scoping brochure) on the proposed Beach Vehicle Environmental Assessment requested an EIS for the various reasons set forth in such comments.

As Johnny French has argued in prior responses (French demands for an EIS) to the Park EA and to the Park's prior scoping request on turtle cabins at the Park, the Park's turtle recovery program has been and is being operating without complying with the law since an EIS has not been secured as required by the National Environmental Policy Act (NEPA). CAC supports the French demands for an EIS.

The Park EA has cleverly and furtively avoided the issue of whether an EIS should be required by only focusing on one of Johnny French's comments in the French demands for an EIS that the turtle recovery program should be relocated. His major point is that an EIS is required and without it the Park's turtle recovery program has been and will continue to violate the law.

CAC has previously protested the Park's bias in the handling of the Park's scoping of its EA and now further complains of the biased and prejudicial manner in which the Park EA has been handled, as discussed in more detail below. CAC is of the opinion that after considering the cumulative impacts of the matters discussed in these comments, the Park EA should require an EIS on the Park's Kemp's ridley sea turtle recovery program addressing the issues raised by these comments (including, the number of such turtles which can be taken at the Park and the impact of access restrictions on Park visitors and others) and all other relevant issues, as discussed in more detail below and in CAC's prior comments.

Biased and Prejudicial Handling of Scoping and Park EA

The Park's turtle recovery program and the Park EA have recently been harshly criticized by David Sikes, outdoor editor of the Caller Times in its July 7, 2011 edition. <http://www.caller.com/news/2011/jul/07/15-mph-beach-speed-limit-an-unreasonable-reach/> Although the entire article is relevant and noteworthy, several comments are so pertinent that they merit quoting, such as:

A 155-page document called an Environmental Assessment just released was supposed to provide an unbiased and independent review of the situation to determine whether a sacrifice would be necessary. Instead, the **highly prejudiced**

document reads like a persuasive piece aimed at promoting the park's preferred plan, which loosely has been in place for the past two summers.

This is not about safety. It's about converting a visitor friendly national park into a turtle sanctuary.

The arguments presented by the feds are shallow, emotional, contrived, based on supposition and lacking any convincing data. (Bold added)

The Park previously represented that the EA would be a fair and impartial document prepared by an independent firm. As the Sikes' article correctly notes, the Park EA is clearly a prejudicial document. It should be apparent to anyone familiar with the facts that the compiler of the Park EA has not acted independently, but instead has acted in concert with the Park in promoting its agenda of turning the Park into a turtle sanctuary. The following comments will discuss in detail the Park's biased and prejudicial handling of the scoping on the Park EA, as well as the disingenuous nature of the Park EA, all of which mandate that an EIS be prepared. The following comments will also harshly condemn the compiler of the Park EA for not being independent. CAC hopes that the compiler will consider these comments from Park visitors' prospective and take them as constructive criticism; and that the compiler in modifying the Park EA will do so in an impartial manner taking these comments into consideration.

In the Park's scoping brochure, the speed limit alternative which CAC had previously advocated to the Park months before the release of the scoping brochure was intentionally omitted by the Park. In response to CAC's actions and the outcry from the surfing, fishing and beach access community, the Park added CAC's alternative as Alternative 5 at a public meeting held on September 14, 2010, by a small listing at the bottom of a bulletin board labeled as "CAC's Alternative" and by vaguely mentioning it on a slide in its slide show presentation listing something labeled as "CAC suggested alternative". Notwithstanding that the alternative which CAC advocated was technically added at the public meeting as noted above, the Park made no other effort to advise the public that an Alternative 5 existed and did not modify the NPS website Planning, Environment & Public Comment (PEPC) website listing documents and other information on the Park EA to list Alternative 5. CAC maintains that the biased and prejudicial handling of the scoping on the Park EA, together with the other matters discussed hereafter, evidences the Park's desire to foist its reduction of the speed limit at the Seashore on its visitors. The Park has not hesitated to contrive or engage in the deception hereafter discussed to accomplish its objectives.

In the scoping brochure Alternative 3 provided that the proposed 15 mph reduction in the speed limit at the Seashore was to be from March 1 to **November 30th**. The Park EA states repeatedly that the Park's Alternative 3 reduces the speed limit to 15 mph from March 1 through **Labor Day**. The Park EA does not acknowledge or discuss that Alternative 3 has been modified from the version previously published in the scoping brochure nor explain how the change occurred. The compiler of the Park EA by not disclosing in the Park EA the modification of Alternative 3, or discussing its involvement in the change, appears to have colluded with the Park to make its Alternative 3 more

favorable so that the compiler would be able to argue more persuasively that such Modified Alternative 3 is more preferable to the other alternatives. It is clearly irregular, improper and unfair for the compiler to conspire with the Park in modifying its Alternative 3 so that it is more acceptable to the compiler.

CAC in its prior comments made reference several times to the statement by Dawn Whitehead (the FWS statement) of the US Fish and Wildlife Service (FWS) at a meeting held on September 16, 2009 attended by representatives of the NPS, FWS, CAC and others, the minutes of which meeting are set forth in Meeting Notes of NPS/CAC Discussion of Padre Island Issues prepared by Chris Moore, the independent facilitator from CDR Associates in Boulder, Colorado. <http://cacrights.org/docs/cacpark1.doc> . At such meeting, the FWS statement was made (as recorded on page 10 of such Meeting Notes) “**that it would be possible to lose all of the turtles on Padre Island and that the species would still not be in jeopardy**”. The Park and compiler of the Park EA have deceitfully elected to ignore the FWS statement.

The Park EA discusses the 2010 Draft Bi-National Recover Plan (Plan) for the Kemp’s Ridley Sea Turtle and its discussion of the recovery data necessary for down listing the species to protected and for later delisting it. The Park EA fails to mention that the Plan anticipates that the turtle will be down listed from endangered to protected around 2015 nor does it mention how such down listing affects its analysis of the speed limit reduction.

Instead, the Park and the compiler of the Park EA in a clever deception designed to mislead readers of the EA into thinking that the Park’s turtle recovery program has had a significant role in the recovery of the species, states that 117 nests were documented in the Park in 2009 and that “The 117 nests documented in 2009 are 16.7% of 702 nests recorded worldwide at the low point of Kemp’s ridley nesting in 1985.” The Park and the compiler of the EA have intentionally and covertly ignored facts presented by CAC reflecting that, in fact, the Park’s turtle recovery program, although a public relations success, is so immaterial and insignificant that pursuant to the Plan **the turtles nesting at the Park are not even counted** in determining whether to down list the species to protected.

Continuing the subterfuge, the Park and the compiler of the Park EA surreptitiously failed to note that the number of Kemp’s ridley sea turtles documented as nesting at the Park (117 nests in 2009) was **less than six tenths of one percent of the total turtles nesting worldwide** in 2009 of 20,000 nests (as discussed in the Plan). This data was clearly called to the Park’s and the compiler’s attention in CAC’s prior comments, but was ignored in the Park EA.

Failure to acknowledge the future down listing of the species and the immateriality and insignificance of the Park’s turtle recovery program to the ultimate survival of the species is clearly an intentional distortion of the facts by the Park and the compiler of the EA, and an attempt to mislead the public into believing that the Park’s turtle recovery program has had a meaningful role in the survival of the species. This

deceit and complicity by the compiler in magnifying the importance of the Park's turtle recovery program in the Park EA clearly demonstrates that rather than acting independent of the Park, it is acting in concert with it to foist a speed limit alternative acceptable to the compiler and the Park on Park visitors.

CAC has repeatedly maintained in CAC's prior comments that the Park EA must determine the maximum permitted taking under the Endangered Species Act (ESA) of Kemp's ridley sea turtles at the Park by vehicles during a specified period (a year or multi-year period) based upon the worldwide populations of such species (the taking issue). Consistent with its prior biased and prejudicial actions, the Park and the compiler of the Park EA have ignored such taking issue.

Notwithstanding that CAC's prior comments have mentioned that two other national seashore parks (Gulf Islands National Seashore and Assateague Island National Seashore) have, as result of congressional action, 25 mph speed limits on their beaches and a safety zone of 15 mph while within 100 feet of any person not in a motor vehicle, the Park and the compiler of the Park EA have intentionally omitted discussion of the safety zones at these other parks.

The Park EA and the compiler of the Park EA by ignoring in the Park EA the FWS statement and the uncontroverted and overwhelming data that the Park's turtle recovery program is immaterial or insignificant when measured against the worldwide recovery of the species, and by failing to address the taking issue, have acted surreptitiously and in an arbitrary and capricious manner and otherwise not in accordance with the law.

CAC is of the opinion that because of the Park's bias on the speed limit issue, the prejudicial and improper manner in which the Park has handled the scoping on the Park EA as well as (a) the biased and prejudicial nature of the Park EA (together with the matters above discussed), (b) the Park's prior failure to secure an EIS and (c) the segmenting of EAs, that the Park EA should now conclude that an EIS is required on the Park's turtle recovery program. Further, since the Park's turtle recovery program has never been lawfully authorized, is costly and is causing and will continue to cause significant cumulative negative impacts on the human environment (and the proposed Modified Alternative 3 will have an adverse impact on Park's visitors enjoyment of the Seashore), CAC believes that preparation of an EIS is mandated under NEPA and the CEQ guidelines.

CAC recognizes that pending issuance of an EIS that the speed limit on the Seashore needs to be addressed to cover what happens during the interim, and thus is addressing such issues, as well as related issues.

Visitors' Enjoyment of the Seashore

On pages 13 and 14, the Park EA states that

According to NPS *Management Policies 2006*, the **enjoyment** of Seashore resources and values by people is part of the fundamental purpose of all NPS units

(NPS 2006). The NPS is committed to providing appropriate, high-quality opportunities for visitors to enjoy the parks, and will maintain within the parks an atmosphere that is open, inviting, and accessible to all persons. Further, the NPS will provide opportunities for the **enjoyment** of recreation and leisure activities that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks.

One primary visitor activity is the **enjoyment** of the beach and its resources. This may include beachcombing, fishing, bird and other wildlife watching, relaxing, and swimming. All down island environments of the Seashore are accessed by driving on the beach. Some users prefer to travel down island to Mansfield Channel, which is located at the south end of the Seashore; however, due to the difficulty of accessing this area, only a small percentage of Seashore visitors frequent this area. Because the proposed project would potentially change the travel time to down island locations, and could affect visitor expectations, this topic was carried forward for further analysis. (Bold added)

The Park EA emphasizes the importance of “enjoyment” of the Park by using the term 17 times in the first 39 pages of the EA, but does not use it again until Appendix A at the end of the EA. When last used on pages 38 and 39, the Park EA artfully uses the following statement to avoid having to address enjoyment of the Park by its visitors in evaluating the various Alternatives:

Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that **when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.** (Bold added)

The Park EA then embellishes the importance of the Park’s turtle recovery program in the EA so as to justify interfering with Park visitors’ enjoyment of the Seashore on the spurious basis of conserving a resource.

Earlier on page 10 of the Park EA, the compiler laid the foundation for avoiding discussing which Alternative resulted in visitors’ greatest “enjoyment” of the Seashore by the following discussion on “impairment”:

According to NPS *Management Policies 2006*, an action constitutes an impairment when an impact “would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values” (NPS 2006, sec. 1.4.5). Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts. An impact on any park resource or value may constitute impairment, but an impact would be more likely to constitute impairment to the extent it affects 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 to the opportunity for enjoyment of the park
- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

In this document, impairment findings are **not** provided for **visitor use and experience**, visitor and employee safety, Seashore operations and management, or **socioeconomics** because impairment findings relate back to park resources and values. These impact areas are not generally considered to be park resources or values according to the *Organic Act*, and cannot be impaired the same way an action can impair park resources and values. A draft impairment determination for the NPS preferred alternative is provided in appendix A of this document. Park resources considered in this determination include wildlife and special-status species. (Bold added)

In this manner the Park EA avoided discussing that Modified Alternative 3 would have a greater adverse impact on visitor enjoyment of the Seashore than would Alternative 5. It is interesting to note that the Park EA nevertheless discussed socioeconomic matters in concluding that interfering with down island visitors' access rights to the Seashore would have an insignificant financial impact on local businesses.

The Park was established "to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped", **not** as a turtle sanctuary. Since the Park's turtle recovery program is insignificant and immaterial to the worldwide recovery of the species, and since other wildlife are insignificantly impacted by the speed limit reduction issue, a major focus of the Park EA (after finding that an EIS is required) should be which Alternative maximizes visitor enjoyment of the Park the most.

Discussion of the "Taking Issue"

The Park EA has justified adoption of Modified Alternative 3 by ignoring data supporting adoption of Alternative 5 and based upon several erroneous assumptions, including, having the mendacity to suggest that the Park's turtle recovery program is important to the worldwide recovery of the Kemp's ridley sea turtle.

The Park EA dedicates a considerable discussion to expounding on the success and implied importance of the Park's turtle recovery program and the alleged need to protect nesting turtles from vehicles. No mention is made (a) of the FWS statement, (b) of the fact that the turtle may be down listed from endangered to "protected" in a few years, or (c) that turtles nesting on the Seashore are immaterial and insignificant to the worldwide recovery effort of the endangered species. Without addressing and

controverting the foregoing, no justification exists for the adoption in the Park EA of an alternative which infringes on Park visitors' enjoyment of the Seashore.

The following statement appeared in CAC's prior comments in discussing the Park's scoping brochure and is relevant to this discussion –

CAC believes that the Park elected to ignore its request to address the maximum permitted taking at the Park by vehicles during a specified period (a year or multi-year period) based upon the worldwide populations of Kemp's ridley nesting turtles in the year(s) of such taking because the Park desired to avoid an official finding that the Park's Kemp's ridley sea turtle recovery program is insignificant or immaterial to the worldwide recovery effort. CAC feels that unless the taking issue is addressed that any conclusions reached in the Park EA assuming that the Park's turtle recovery effort is material and that taking of turtles would damage the worldwide recovery effort would be arbitrary and capricious, thereby rendering any finding in such EA flawed and not in compliance with NEPA or the CEQ guidelines.

In view of the foregoing, no reduction is justified of the speed limit on the Seashore without an EA or EIS addressing the taking issue and controverting the FWS statement. The Park EA's current approach of trying to avoid any taking of a "single" nesting turtle without addressing the taking issue is arbitrary and capricious and an unnecessary infringement on visitors' enjoyment rights at the Park.

Discussion of the Speed Limit on the Seashore and Alternatives

The Park EA notes that 34 accidents have occurred over a 10 year period on the approximately 60 miles of the Seashore. Of those, only 12 occurred south of MM 20. It is ludicrous to suggest that any speed limit restrictions should be imposed based on the foregoing statistics, especially since no findings are submitted that had a reduced speed limit been in effect that fewer accidents would have occurred. It is submitted that in all likelihood the vehicles involved in the majority of the accidents, if not all of them, were traveling in excess of 25 mph. Clearly, it is speculative supposition and imprudent to suggest or assume that had Modified Alternative 3 been in force that it would have reduced the number of accidents. More likely, better enforcement of the existing 25 mph speed limit and DWI laws would have had a greater impact.

The Park EA acknowledges repeatedly that numerous calls are received each weekend during the busy season complaining of speeders. Notwithstanding that the Park is not now effectively enforcing the existing speed limit (as evidenced by the calls), the Park EA naively assumes that Park visitors will voluntarily comply with a very unpopular speed limit reduction just because it is adopted, when they are already ignoring the existing speed limit.

The Park EA ignores CAC's statement in its prior comments that since a reduced speed limit will result in a less patrolled Seashore (since rangers can't travel that far

down the Seashore at 15 mph before having to return to headquarters) that we will have an effectively unenforced speed limit further south down the Seashore. Instead the Park EA endeavors to avoid the issue by stating that a ranger can exceed the speed limit if on a call (that obviously won't result in more speeders being caught or greater compliance with the speed limit).

Since the Park has not effectively enforced the speed limit in the past, CAC suggests that a more realistic approach would be to adopt an alternative providing speed limit restrictions (like Alternative 5) that most Park visitors would deem reasonable and would be inclined to follow rather than to attempt to impose an unpopular reduced speed limit which most Park visitors will deem unreasonably slow and will disregard (in all likelihood exceeding 25 mph since they are already exceeding the posted speed limit), except if a ranger vehicle is nearby. Any assumption by the Park EA that Park visitors will follow Modified Alternative 3 on an unpatrolled portion of the Seashore is naive at best, and the assumption that benefits to wildlife, including turtles, will flow from implementation of such unenforced Alternative is clearly unjustified and spurious.

The Park EA in discussing the stopping distance for a vehicle traveling on the Seashore at 25 mph and 15 mph concludes that the overall average stopping distance at 25 mph and 15 mph to be 107.5 feet and 54 feet, respectively. The Park EA suggests that Alternative 5's 100 foot safety zone may not allow for enough stopping distance to avoid a collision based on the stopping distance tests conducted at the Seashore. It advocates a 100 yard safety zone. The Park EA ignores the following discussion in CAC's prior comments:

CAC suggests that the proposed safety zones suggested by the Park be modified. CAC was present when the stopping distance tests were performed at the Park and is aware that it takes a substantial distance to stop a vehicle in soft sand. As a result, it was initially thought that imposing a safety zone of 100 feet (as is the statutory test in both of the other federal seashore parks with speed limits of 25 mph) did not allow enough stopping distance. Upon reflection, however, the statute should not deal with how long it takes to get down to zero or 15 mph, but should only address the area in which the vehicle should be traveling no more than 15 mph. Thus, a person should not be given a speeding ticket if they are traveling in excess of 15 mph 75 yards away from a Park visitor, but only if they are traveling in excess of 15 mph in the near vicinity (say within 100 feet) of such visitor. Thus, CAC suggests that the safety zone use 100 feet instead of 100 yards. It is the responsibility of the driver to brake his vehicle soon enough (whether or not beginning 100 yards away) so that by the time he or she is within 100 feet of a Park visitor, etc. that he or she is not exceeding 15 mph.

If the driver of a vehicle has reduced its speed to 15 mph 100 feet from a parked vehicle, visitor, etc. and then applies its brakes, that should leave over 40 feet (100 feet less 54 feet) within which to stop. A 100 yard safety zone as preferred by the Park EA is no safer than a 100 foot safety zone if the driver of the vehicle does not apply brakes to reduce the vehicle's speed below 15 mph more than 54 feet from the parked vehicle,

visitor, etc. So long as the vehicle is traveling at 15 mph when approximately 100 feet from a parked vehicle, visitor, etc., the important factor is when the driver commences braking below 15 mph to avoid a collision, not when the driver starts braking to reach 15 mph.

The Park EA has ignored the fact that as a result of a federal statute two seashore national parks, Gulf Islands National Seashore and Assateague Island National Seashore, which have 25 mph speed limits on their beaches, have a safety zone of 15 mph while within 100 feet of “any person not in a motor vehicle”. Thus, Congress deemed 100 feet to be a reasonable safety zone and did not mandate a reduced speed limit around wildlife or when vehicles pass. It should be noted that the State of Texas has never implemented a reduced speed limit on its two lane roads and highways when vehicles pass each other. Such roads and highways generally have speed limits considerably in excess of 25 mph and are generally narrower than the Seashore.

In general, the Park EA concludes that the speed limit of a vehicle has little impact on wildlife, other than possibly a nesting turtle, using phrases such as short- and long-term negligible to minor adverse or that cumulative impacts on wildlife would be long-term minor adverse. The Park EA generally concludes after extensive analysis that a reduced speed limit is not justified for protection of wildlife (other than turtles).

As discussed in CAC’s prior comments, CAC also suggests that safety zones not include wildlife. Since birds normally fly and other wildlife (other than turtles) normally runs off whenever vehicles are nearby, this provision would be very difficult to enforce, would probably be routinely ignored and could be controversial or subject to enforcement abuse. CAC also questions the wisdom of creating a 15 mph safety zone specifically for wildlife (effectively a “**safe harbor**” speed around wildlife) since doing so implies that passing a turtle or other wildlife at 15 mph is prudent and condoned. By not specifically mentioning wildlife and thus not establish a “safe harbor” speed limit, drivers would be required to drive a reasonable and prudent speed under the circumstances under Texas law and the ESA, which is probably a speed considerably less than 15 mph in the near vicinity of a nesting turtle. Although it is CAC’s desire that the speed limit alternative adopted be one which least impacts Park visitors’ enjoyment of the Park and is readily enforceable, nevertheless, CAC is agreeable to Alternative 5 (Option B) being adopted (but prefers Alternative 5 (Option A) since it believes that it is safer for wildlife without presenting the enforcement and abuse problems mentioned above).

Since the length of the safety zone is not material so long as a vehicle is not exceeding 15 mph approximately 100 feet from a parked vehicle, visitor, etc. and the likelihood of a beach vehicle impacting wildlife (other than possibly a nesting turtle) is minimal, after cutting through all of the legal verbosity and deception, the alternative selected in the Park EA is really about protecting Kemp’s ridley sea turtles nesting at the Park, which is an improper consideration in absence of an EA or EIS addressing the taking issue.

The Park EA states on page 87 that “During the 25 years that systematic monitoring for turtle nests has occurred at the Seashore (1986 to present), there has not been a documented incident of a vehicle hitting a nesting sea turtle or emerging hatchlings at the Seashore (Shaver 2010b). There has also not been a documented incident of a vehicle crushing a turtle nest by driving over it.” To further emphasize the naivety of the Park EA in assuming that a 15 mph speed limit would reduce turtles fatalities, it should be noted that, as the Park EA discusses on page 90, that “outside of the Seashore where vehicle speed limits are 15 mph versus 25 mph in the Seashore south of mile marker 2.5, there have been three instances where vehicles struck nesting Kemp’s ridley sea turtles, killing at least two of them, and one instance of a vehicle striking and killing a nesting loggerhead turtle.” Thus, the only turtles documented as injured by a vehicle were on a beach where the speed limit is 15 mph, so such reduced speed limit was ineffective. Concluding that Modified Alternative 3 will result in less turtles being injured at the Seashore is clearly unsubstantiated supposition based on superficial conjecture that a lower speed limit must be better.

Although the compiler of the Park EA relied upon a strict construction of what constitutes an “impairment” to avoid addressing visitor enjoyment of the Park, that did not deter it from discussion socioeconomic data to its liking. The Park EA concludes after an extensive discussion of socioeconomic data concerning Park visitors and their spending habits that down island visitors represent a small percentage of total Park visitors and they spend a relatively low amount compared to other visitors. It states on page 112 that

Fishing is one of the primary activities enjoyed by down island Seashore visitors. It has been estimated that a group of 2-3 vehicles having 7-8 passengers purchases between \$100 and \$150 on bait and tackle supplies (LBG 2010). Additional purchases may include food, beverages, and gas, among other goods and services. Local fishermen are likely already purchasing food and beverages in the local economy so additional spending associated with down island visits would be primarily associated with bait and tackle supplies and may introduce only a small amount of revenue into the local economy. **Because down island visitors represent a small percentage of total Seashore visitors and spending by local fisherman on goods and services associated with fishing activities over and above daily spending patterns is estimated to be relatively low, it is anticipated that down island spending accounts for a very small portion of the visitor spending to the Seashore.** (Bold added)

The Park EA later states on page 115 in analyzing the impact of Modified Alternative 3 that

It is possible that because of the longer travel times and the unique quality of the down island experience, which includes fishing, at the Seashore, visitors would extend their stays to the Seashore should it take longer to travel down island. However, it is also possible that some users may elect to go to a beach farther away or not to take a beach trip at all as a result of the longer travel time to points down island. Local businesses that were interviewed indicated they do not

anticipate that visitors frequenting points south of Big Shell would stop doing so because of a reduction in the speed limit (LBG 2010). Therefore, any change in visitation as a result of the reduced speed limit would be slightly greater than under alternative 2. **However, it is anticipated that any change in visitation would be so slight that beneficial effects associated with Seashore visitor spending to local economies under alternative 2 would remain unchanged.** (Bold added)

The Park EA thereby concludes that it is acceptable to infringe on and interfere with the access and enjoyment rights of fishermen who travel down island since they spend little in the local economies. By focusing on how little down island visitors spend, the Park EA is implying that if Park visitors are poor or do not spend much in the local community or at the Park itself that they should not be extended the same privileges at the Park as others who spend more. CAC maintains that the Park EA by discriminating against visitors who are poor or do not spend much in the local community or at the Park is acting improperly and contrary to the law. The Park EA by relying on such reasoning to justify adoption of Modified Alternative 3 is being arbitrary and capricious and otherwise not in accordance with the law.

The Park EA acknowledges that reduction of the speed limit at the Seashore under Modified Alternative 3 would significantly extend the travel time of down island visitors. Visitors traveling 30 miles down the Seashore would experience 80 minutes of additional driving time roundtrip and visitors traveling to Mansfield Channel would experience a little over 3 hours of additional driving time roundtrip. The Park EA states that as a result of a reduced speed limit a visitor desiring to travel to Mansfield Channel and return home in one day may no longer be able to do so.

The Park EA states that “Throughout the year, Facility Management staff conducts hazardous materials clean-up runs which currently require a full day to complete. Under a 15 mph speed limit, this task would take two days to complete, including an overnight stay, resulting in a long-term moderate adverse impact on Seashore operations and management.” No mention is made in the Park EA of the impact Modified Alternative 3 would have on the annual Big Shell Clean Up. The additional travel time caused by the speed limit reduction will probably have a serious long term adverse impact on the Clean Up and, perhaps, result in its termination.

The Park EA contains considerable information on the history and establishment of the Kemp’s ridley sea turtle on the Seashore. The Park EA mentions that the first documentation of a Kemp’s ridley sea turtle nesting on the Seashore was made in 1948. No mention has ever been made of true “arribadas” occurring on the Seashore. Generally, a true arribada is a large aggregation of female sea turtles coming ashore together to nest at the same time and the same place in large enough numbers to cause a predator overload. Without the turtles nesting in sufficient numbers to cause a predator overload, any turtles nesting at the Park cannot contribute to a self-sustaining population of turtles. Since no evidence exists historically that arribadas ever occurred on the Seashore, a self-sustaining population never existed on the Seashore. Any turtles nesting

historically at the Seashore were turtles who failed in their journey to reach their historical nesting habitat in Mexico, in other words, they were lost.

Modification of Alternative 5

Since the Park modified its Alternative 3 in concert with the compiler of the Park EA, CAC felt that it should offer to make reasonable modifications to Alternative 5 to make it more acceptable to the compiler of the Park EA to induce it to adopt Alternative 5 instead of Modified Alternative 3. For example, if it is determined by analyzing the experience of the 100 foot safety zones at Gulf Islands National Seashore and Assateague Island National Seashore that it would be advisable to lengthen the 100 foot safety zone, CAC is willing to consider such modification. Similarly, since a significant number of visitors travel south past MM 2.5 to the 4 wheel drive sign between Memorial Day and Labor Day, CAC is willing to consider expanding the 15 mph speed limit during such high use period for an appropriate distance past MM 2.5. CAC would also be willing to consider other reasonable modifications to either Alternative 5 (Option A or B) to induce the compiler to select this Alternative over Modified Alternative 3 or any other Alternative.

Concluding Remarks

The Park's turtle recovery program is an elaborate program with significant governmental and private funding which, although it has been around since the early 1980s, has never been authorized by an EIS.

An old southern saying is apropos to this discussion. The saying is "that you can't turn a sow's ear into a silk purse". The same is true of the Park's turtle recovery program. No matter how much the Park distorts the facts and misleads the public, the Park's turtle recovery program has not and never will be material or significant to the worldwide recovery effort of the Kemp's ridley sea turtle. Although the number of such turtles nesting at the Park will continue to be immaterial and insignificant in relation to the worldwide recovery effort of the species, CAC is concerned that their mere existence at the Seashore, even if down listed to protected, will continue to be used to justify improperly imposing restrictions on visitors' access to the Seashore, unless an EIS is prepared. The Park's turtle recovery program will continue to be costly and is causing and will continue to cause significant cumulative impacts on the human environment (particularly under subsections (b)4, (b)5, (b)6, and (b)7 of Section 1508.27 of NEPA) thereby mandating preparation of an EIS under NEPA and the CEQ guidelines.

As a result of the Park's biased and prejudicial handling of scoping on the Park EA, the deception and disingenuousness apparent in the preparation of the Park EA, and its willful and intentional failure to address the matters above discussed, which were previously addressed in CAC's prior comments, the Park EA has failed to comply with NEPA and the CEQ guidelines. An EIS is needed to insure that the Park does not continue to impose unreasonable restrictions on Park visitors' access rights and does not continue to segment cumulative impacts with subsequent biased EA scoping requests.

Further, in view of the current emphasis on cutting the federal budget, the failure of the Park's turtle recovery program to be operating lawfully under an EIS could impact its future funding.

CAC does not believe that the compiler of the Park EA has acted in a fair, independent and impartial manner. CAC hopes that after reviewing these comments that the compiler of the Park EA will take them as constructing criticism and will rectify its prior biased actions.

Pending issuance of an EIS, for the reasons set forth above or if one is not required, CAC requests that either Alternative 5 (Option A) or Alternative 5 (Option B) be adopted

Please send me copies of any subsequent associated public hearings and draft documents.

Respectfully submitted,

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