



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

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July 16, 2020

NPS Washington Administrative Program Center  
1849 C. Street, N.W. Stop 2605  
Attention: Correspondence Control Unit (CCU)  
1201 Eye Street NW Washington, DC 20240

Email: [Director@nps.gov](mailto:Director@nps.gov)

**Re: Complaint About Information Quality: REVIEW of the Sea Turtle Science and Recovery Program, Padre Island National Seashore**

Dear Sir or Madam:

Public Employees for Environmental Responsibility (PEER) hereby submits this Information Quality Complaint pursuant to the Data Quality Act of 2000,<sup>1</sup> the Office of Management and Budget (OMB) Guidelines for Ensuring and Maximizing the Quality, Utility, and Integrity of Information disseminated by Federal Agencies,<sup>2</sup> National Park Service (NPS) Director's Order #11B: Ensuring Quality of Information Disseminated by the National Park Service<sup>3</sup> and the U.S. Department of Interior (DOI) Information Quality Guidelines.<sup>4</sup>

PEER submits this Complaint on its own behalf as well as on behalf of our client, Dr. Donna Shaver, a biologist and long-time NPS employee serving as The Chief of the Division of Sea Turtle Science and Recovery (STRS) at the Padre Island National Seashore (PAIS).<sup>5</sup>

The challenged information is an NPS document entitled "REVIEW of the Sea Turtle Science and Recovery Program, Padre Island National Seashore" [hereinafter "the Review"], dated June 8, 2020 and approved by Michael Reynolds, Regional Director, NPS Regional Office serving DOI Regions 6, 7, and 8.

As outlined in this Complaint, the Review 1) does not comport with relevant laws and flies in the face of NPS Management Policies; 2) lacks the transparency required of influential information relied upon as the basis of official decision making; and 3) suffers from a lack of integrity, accuracy, completeness, and reliability.

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<sup>1</sup> Section 515 of the Fiscal Year 2001 Treasury and General Government Appropriations Act, Pub.L.106-554

<sup>2</sup> Office of Mgmt. & Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002)

<sup>3</sup> Fran P. Mainella, Director, National Park Service Director's Order 11B:

[HTTP://WWW.NPS.GOV/POLICY/DORDERS/11B-FINAL.HTM](http://www.nps.gov/policy/dorders/11b-final.htm)

<sup>4</sup> [tps://www.doi.gov/sites/doi.gov/files/uploads/doi\\_information\\_quality\\_guidelines.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/doi_information_quality_guidelines.pdf)

<sup>5</sup> PAIS is also abbreviated "PINS"

As a result, this Complaint seeks to have the Review retracted as an official NPS document and its conclusions barred from official use until the information is corrected.<sup>6</sup>

### **A. DESCRIPTION OF CHALLENGED “INFLUENTIAL INFORMATION” THAT NPS RELIES UPON AND “DISSEMINATES” TO THE PUBLIC**

The challenged information is an NPS-approved review of the STSR. This document clearly meets the definition of “influential” information within the meaning of the DOI Information Quality Guidelines in that it “will or does have a clear and substantial impact on important public policies...”<sup>7</sup>

With respect to “influential” information, NPS is held to a higher, more rigorous standard, according to the DOI Information Quality Guidelines, of utilizing “the best available science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed studies where available.”<sup>8</sup>

In addition, NPS has disseminated the information within the meaning of 5 CFR 1320.3(d) in that it has acted to “conduct or sponsor” the collection of information which comprises this Review. In that regard, the NPS provided this Review to third parties.

During the Management Team meeting on June 16, 2020 concerning the Review, PAIS superintendent Eric Brunnemann informed STSR staff that that the NPS Regional Public Information Officer was handling all media related to the Review and that park staff, including Dr. Shaver, were not to speak to the media about the Review. Mr. Brunnemann provided an electronic copy of the Review to a local newspaper, the *Corpus-Christi Caller Times*.<sup>9</sup> In addition, NPS made the Review available to outside academics and researchers, where, for example, it was posted in its entirety to the CTURTLE list-serve.<sup>10</sup> These distributions convey no suggestion that the Review is anything but a final, approved NPS document.

Further, Mr. Brunnemann has informed Dr. Shaver that the Review conclusions will guide NPS oversight of the STSR operations, and several of its recommendations are now being implemented.

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<sup>6</sup> These are the remedies stipulated in the DOI Information Quality Guidelines in Section III

<sup>7</sup> See DOI Guidelines at VII, Subsection 9

<sup>8</sup> DOI Information Quality Guidelines § II(4)(a)

<sup>9</sup> John Oliva, Report: PINS' Sea Turtle Science and Recovery program head for budget shortfall, CORPUS CHRISTI CALLER TIMES (June 13, 2020), <https://www.caller.com/story/news/local/2020/06/13/shortfall-forecast-sea-turtle-science-and-recovery-program/3177002001/>

<sup>10</sup> See June 24, 2020 listserv posting by Dr. Charles W. Caillouet, Jr. with notation “The US National Park Service's 53 page review of the Sea Turtle Science and Recovery Program at Padre Island National Seashore near Corpus Christi, Texas was approved 6/8/2020”, available at <https://lists.ufl.edu/cgi-bin/wa?A2=ind2006&L=CTURTLE&P=87927>

Lastly, the Review is a public record within the meaning of the Freedom of Information Act.<sup>11</sup> It is not a confidential document nor subject to any exemption which would prevent its release. As an official expression of the NPS which reflects its position on an important public resource management issue, this document clearly it falls within the ambit of the Information Quality Act.

## **B. THE INFORMATION IS NOT COMPLAINT WITH LAW and NPS POLICY CRITERIA AS REQUIRED NPS INFORMATION QUALITY GUIDELINES**

NPS Director's Order 11B declares: "All information will comply with current NPS and Departmental policies and guidelines."<sup>12</sup>

Yet, the Review not only conflicts with major NPS policies, but advocates that STSR and PAIS undertake actions that, on their face, appear to conflict with laws that NPS is required to uphold. Specifically, the findings and recommendations of the Review –

### ***1. Bypass ESA Consultation Requirements***

The Review notes that management of the STSR has direct impacts on compliance with the Endangered Species Act (ESA)<sup>13</sup>:

According to FWS [U.S. Fish & Wildlife Service] Ecological Services Office staff who were interviewed, the PAIS sea turtle program is considered part of the ESA baseline for the Kemp's listed population, due to the longevity of the park's program, and has been used as a static part of the analysis to assess the effects of and authorize take by other agencies and project proponents. Therefore, FWS asserts that any changes to the park's sea turtle program would require consultation under section 7 of the ESA (Dawn Gardiner, FWS Biologist, personal communication, Feb. 18, 2020). FWS staff in the local Corpus Christi office stated that over 20 BOs [Biological Opinions] (for other agencies' projects) would need to be re-evaluated if PAIS were to change their sea turtle management program.<sup>14</sup>

Nonetheless, the Review urged the STSR to undertake several steps (discussed in greater detail below) that would definitely change the park's sea turtle program, such as –

- Limiting stranding rescues to park boundaries;
- Decreasing work with threatened green and loggerhead turtle species; and
- Reducing beach patrols.

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<sup>11</sup> 5 U.S.C. § 552, as amended

<sup>12</sup> § III(C)

<sup>13</sup> 16 U.S.C. § 1531 et seq.

<sup>14</sup> Review at 13

The Review did not further analyze the need for PAIS and STSR to initiate formal consultation with FWS. Nor did the Review assess the time and expense of revising more than 20 Biological Opinions.

Moreover, the Review recommendation to discontinue work on greens and loggerheads, even when eggs are in jeopardy of being run over, appears to violate the legal obligation of STSR and PAIS to aid and participate in the recovery of listed species under the “proactive mandate” of the ESA.<sup>15</sup> Apart from threats from beach driving, STSR has a duty to prevent predation of loggerhead and green turtle nests by coyotes, badgers, and domestic dogs, and to prevent human tampering. The Review itself seems to concede this conflict but does not suggest how it will be resolved.<sup>16</sup>

Besides the endangered Kemp’s ridley, there are two threatened species within the PAIS boundaries, and NPS personnel have a duty to proactively protect these species with practices that are proven to be successful here and elsewhere in the world, contrary to the conclusions of the Review.

## ***2. Circumvent Public Involvement and Assessment Required by NEPA***

The Review was conducted out of public view and solicited no public input. It identified and recommended several significant changes in STSR operation, all of which would require public notification and an Environmental Assessment under the National Environmental Policy Act (NEPA)<sup>17</sup> but did not include NEPA compliance as recommended step.

The Review’s only acknowledgement of NEPA’s legal obligations was made in the context of urging more “in situ nest management”<sup>18</sup> but elsewhere concedes that significant in situ management is not possible, or advisable, so long as beach driving is widely allowed at PAIS.<sup>19</sup>

Thus, NPS undertook this Review without any opportunity for public input, either before or after the document as finalized. There was no coherent examination of alternatives to its several preferred actions. To that end, NPS circumvented its legal obligations under NEPA.

## ***3. Violate NPS Management Policies on Protection of Listed Species***

As noted, the Review advocates several restraints on STSR operations to the detriment of affected sea turtles, including:

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<sup>15</sup> ESA § 7(a)(1)

<sup>16</sup> Review at 10

<sup>17</sup> 42 U.S.C. § 4321 et seq.

<sup>18</sup> Review at 15

<sup>19</sup> Id at 10

- “The collection, incubation, and release of green and loggerhead eggs should be discontinued. Correspondingly, project funds should not be solicited for the study and management at PAIS of sea turtle species other than Kemp’s.”<sup>20</sup>
- “Green and loggerhead sea turtle eggs collected at PAIS, and those collected elsewhere along the Texas coast and sent to the park, are incubated at the park and the hatchlings are released on park beaches. There seems to be no conservation reason to maintain this practice, and no EA, BO, or other directive exists to support this management action. The majority of organizations interviewed suggested that this practice should stop.”<sup>21</sup>
- “Stranding response should be focused to inside the boundaries of PAIS and partners and other agencies should respond to non-NPS locations.”<sup>22</sup>

Eliminating all “management” of “sea turtles other than Kemp’s” means that in case of stranding events, entanglements, and exposed eggs in beach driving zones, these threatened turtles will surely perish. This outcome runs counter to NPS Management Policies that require NPS units to protect rare, threatened, or endangered species and actively work to recover and restore all species native to parks listed under the ESA.<sup>23</sup>

Finally, the Review’s call to confine stranding responses to park boundaries would hinder STSR’s long-term work in bi-national collaborations with Mexico. Both the Kemp’s ridley and green turtle stocks in Texas are shared with Mexico. Kemp’s ridley is considered one genetic stock and one management unit. The work at PAIS serves as a critical barometer for the species. Because of cartels, difficulty of getting samples across the border, etc. it is often not feasible to conduct this work in Mexico. The data STSR collects have already been used in the critical Natural Resource Damage Assessment (NRDA) study to determine impacts of the Deepwater Horizon Oil Spill (DWH) spill to nesting Kemp’s ridley turtles and their eggs and in population models to try to understand and predict future trends of the species. Inhibiting this work conflicts with the NPS Management Policy calling for international cooperation and coordination in the monitoring and management of marine turtle populations.<sup>24</sup>

#### ***4. Conflicts with Scientific Integrity Policy***

The Review urges that the scope of scientific research by the STSR be curtailed and limited to “efforts that directly improves management of the species within the park.”<sup>25</sup> (emphasis added)

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<sup>20</sup> Id at 15

<sup>21</sup> Id at 14-15

<sup>22</sup> Id at 18

<sup>23</sup> NPS Management Policies 4.4.2 and 4.4.2.3, respectively

<sup>24</sup> See Management Policy 4.4.1.1

<sup>25</sup> Review at 18

This stance suggests that STSR scientific work should be limited only to matters with direct application to park management, no matter how otherwise valuable those inquiries might be. It also ignores the need for deeper understanding of issues, such as species dynamics, threats, and external developments, taking place beyond park boundaries.

STSR runs the only long-term, continuous mark-recapture program on nesting Kemp's ridley turtles on the planet.<sup>26</sup> Long term data on the number of nests found and the mark-recapture study are vital to understand trends for the species and to make management decisions for it. This study includes turtles from the entire state. Further, limiting data collection to only PAIS would ruin the dataset.

Moreover, Kemp's ridley turtles often nest on multiple beaches, meaning that a turtle may nest on North Padre and then Mustang Island. Due to the wide-ranging nature of this species, only understanding and managing for PAIS will fail to protect the PAIS nesting population.

Limiting research to park boundaries also runs counter to the policy behind DOI's Scientific Integrity Policy, promoting the value of "science and scholarship" in fulfilling the Department's overall mission, especially with respect to the conservation and understanding of natural resources.<sup>27</sup> Moreover, these scientific inquiries are meant to be useful beyond park boundaries to further the "credibility and value with all sectors of the public."<sup>28</sup>

It should be emphasized that these sea turtles are migratory species. For research to be relevant for their management it must include data from outside the park. The Division of Sea Turtle Science and Recovery was created to protect all sea turtles, not just Kemp's ridley sea turtles. It also hinders the ability of both PAIS and NPS to learn about species trends and address issues within PAIS if studies of other sea turtle species outside PAIS are forbidden.

We are also unaware of any park unit that is being restricted as to what research can be done or be subjected to a geographic limitation that is jurisdictional in nature in seeking research data.

Lastly, the Review advocates that STSR research activities be removed from the Chief of the Division of Sea Turtle Science and Recovery and be placed under the direct control of a non-scientist, the park superintendent.<sup>29</sup> This arrangement creates opportunities for "outside interference" in scientific work, where scientific activities are hindered by political motivations, which the Scientific Integrity Policy defines as a form of scientific misconduct.<sup>30</sup>

## ***5. Restricts Free Flow of Scientific Information***

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<sup>26</sup> The Mark-Recapture technique is used to estimate the size of a population where it is impractical to count every individual

<sup>27</sup> DOI DM § 305 3.4

<sup>28</sup> Id at § 3.4 A (2)

<sup>29</sup> Review at 19

<sup>30</sup> DOI DM 305 § 3.5 A

For years, STSR staff have been free to answer media inquiries. Dr. Shaver has been an invaluable resource both for local reporters and for media representing national and even international outlets. The Review would change that by recommending:

“News releases and other media contact should be handled by the Park Public Information Officer (PIO). After consultation with the Park PIO, and in accordance with Superintendent guidance/policy, STSR staff members may do interviews with media.”<sup>31</sup>

This recommendation flies in the face of the DOI Scientific Integrity Policy’s call for agency managers to “Facilitate the free flow of scientific information...”<sup>32</sup> More directly, the Review’s proscription conflicts with the Scientific Integrity’s directive against managerial censorship to –

“Ensure that public communications policies provide procedures by which scientists and scholars may speak to the media and the public about scientific matters based on their official work and areas of expertise.”<sup>33</sup>

Thanks to this review, free exchange of scientific information with the public and media has come to an end and may continue only at management discretion.

## ***6. Inhibit Public’s Environmental Education Opportunities***

The Review strongly urges that a reduction in “the number of public sea turtle release events to reduce costs and reduce the impact on staff from other divisions.”<sup>34</sup> The Review even goes so far as to suggest that public releases be confined to only “one week” with a re-branding as “‘Turtle Week!’ or ‘Turtle Daze!’”<sup>35</sup>

The Division of Sea Turtle Science and Recovery conducts an extensive public education program regarding these issues and many other sea turtle issues. The Review largely ignored this broad public education program conducted by STSR and the tremendous impact that it has had to build goodwill in the community. It is widely recognized that the public education efforts STSR conducted have been directly responsible for public knowledge that sea turtles inhabit this area. As a result, the Kemp’s ridley is the iconic species for PAIS. Before this program came into existence, PAIS was known mainly for its abundant trash on the beach, deposited by ocean currents and the visiting public.<sup>36</sup>

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<sup>31</sup> Review at 29

<sup>32</sup> Id at § 3.4 A (5)

<sup>33</sup> Id at §3.4 A (7)

<sup>34</sup> Review at 29

<sup>35</sup> Id at 26

<sup>36</sup> See NPS, Padre Island Environmental Factors (last updated 2015)

<https://www.nps.gov/pais/learn/nature/environmentalfactors.htm> (“Padre Island's location in the northwest corner means that the southeasterly winds prevailing in the Gulf blow many objects, both natural and artificial, onto its shore as well as creating longshore currents which can bring much material for good or bad. Probably the most

Apart from the impracticality of pre-scheduling releases, the clear thrust of the Review is to reduce public engagement in hatchling releases. Currently these public releases are not only popular, but memorable to participating visitors. These are precisely the type of education programs that NPS policies promote, those that “forge emotional and intellectual connections among park resources, visitors, the community, and park management.”<sup>37</sup>

### **C. THE CHALLENGED REPORT WAS DEVELOPED WITHOUT THE REQUISITE TRANSPARENCY REQUIRED OF INFLUENTIAL INFORMATION**

The NPS Information Quality Act guidelines specify that:

“The NPS's methods for producing quality information will be made transparent, to the maximum extent practicable, through accurate documentation, use of appropriate internal and external review procedures, consultation with experts and users, and verification of the quality of the information disseminated to the public.”<sup>38</sup>

As noted above, the challenged document is classified as “influential” for which the NPS Information Quality Act guidelines further stipulate that:

“Influential information will be produced with a high degree of transparency about data and methods. The information should include all pertinent information...”<sup>39</sup>

Such transparency is clearly lacking in this Review. Only on one or two occasions is the source for a conclusion even identified. Moreover, the Review contains no transcription or interview notes, so it is impossible to tell if the Review fairly summarizes what it has been told. Moreover, people interviewed cannot tell whether the Review’s authors understood what they were told. A central figure in this matter, Dr. Shaver, certainly does not believe that her input was included in the Review.

In this manner, the Review was presented as a black box, utterly opaque to independent or outside review. As such, it is the antithesis of the high degree of transparency needed to ensure public confidence in the integrity and accuracy of information shaping public policy.

Further, the Review was not circulated in draft form, so that persons interviewed could object if their views were not reflected or were distorted. Instead, the Review was released as “approved” in final form and promptly distributed.

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serious damage to the National Seashore's environment is done by trash, which washes onto the beaches from offshore.”).

<sup>37</sup> D.O. at 6

<sup>38</sup> D.O. 11B at § III(A)

<sup>39</sup> Id



This transparency is also a safeguard against political or managerial influence over technical and scientific reports. This failure also allows Review interviewees or authors to implement a personal agenda under a facade of objectivity. This fundamental lack of transparency goes to the heart of bureaucratic manipulation that the Information Quality Act purports to prevent.

#### **D. THE CHALLENGED INFORMATION DOES NOT COMPLY WITH THE GUIDELINES BECAUSE IT DOES NOT REPRESENT THE INTEGRITY, ACCURACY, COMPLETENESS AND RELIABILITY REQUIRED BY NPS INFORMATION QUALITY GUIDELINES**

NPS Information Quality Act guidelines provide that “All information will be accurate, timely, and reflect the most current information available. All information sources will be documented.”<sup>40</sup> These guidelines further promise that “Information will be developed only from reliable data sources based on accepted practices and policies utilizing accepted methods for information collection and verification. It will be reproducible to the extent possible.”<sup>41</sup>

Despite these standards, the Review is riddled with inaccurate and misleading statements, conclusions for which no evidence is cited, and confusing, as well as contradictory, conclusions, as detailed below:

##### ***1. Inappropriately Minimizes the Significance of STRS Operations***

In its typically cursory fashion, the Review downplays the significance of the STRS, stating at one point:

“From web documents and recent and revised recovery plans, the FWS does not consider the PAIS nest relocation program the most important factor that would contribute to overall recovery of Kemp’s.”<sup>42</sup>

Even if FWS does not consider the STRS program “the most important factor,” the Review appears to concede – yet not state – that FWS considers it an important factor and, likely, a very important factor. This sort of imprecision and unclarity is precisely what the Information Quality Act guidelines are supposed to prevent.

Nor does it contextualize other statements within the Review that suggest the opposite, such as –

“The STRS program has contributed significantly to sea turtle science over the years through research and dozens of professional publications. The park’s sea turtle nest protection/relocation/egg incubation program can be credited for improving the science and techniques for hatchling production.”<sup>43</sup>

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<sup>40</sup> D.O. 11B III(B)

<sup>41</sup> Id at III(A)

<sup>42</sup> Review at 33

<sup>43</sup> Id at 3

The Review does not explain whether its authors believe this is still the case. Nor does the Review mention that these methods were successful at increasing numbers of Kemp's ridley turtles nesting at PAIS and overall in Texas. This conclusion also ignores findings that proved that hatchlings released 12-16 years ago have returned to PAIS to nest, thereby directly contributing to the increase in nesting documented in recent years.<sup>44</sup>

In addition, the Review states:

“The work conducted in the 1980s and 1990s demonstrates that PAIS can serve an important role as an alternate nesting site for a segment of the population in the event of a catastrophic population crash in Mexico.”<sup>45</sup>

Yet, the Review provides no indication as to whether this is still the case. If it is still the case, how does that reconcile with the Review's urging that the STSR confine its work to park boundaries? Neither does the Review reference the sharp cuts to Mexico's National Commission of Protected Areas, the key agency charged with protecting sea turtles.<sup>46</sup> Thus, the Review omits timely developments that could change its assessment of STSR.

Instead, it repeats conclusionary statements, without context, such as “Kemp's ridley nesting in Texas and at PAIS represents about 1% of the worldwide total.”<sup>47</sup> This is a misleading conclusion because, among other reasons, it omits the fact that more than 50% of the U.S. nesting by Kemp's ridleys occurs at PAIS.<sup>48</sup>

The overall point that the Review misses is that a secondary nesting colony of Kemp's ridleys is being successfully established at PAIS – a feat that no other park has accomplished. It declares that the secondary nesting colony has been successfully established, but that has not occurred. Although progress has been made, more work must be done, and nest numbers must substantially increase and cluster sufficiently for the survival strategy for this species (predator swamping).

The Review also downplays the significance of green and loggerhead turtles at PAIS.<sup>49</sup> These statements do not reflect the fact that both small populations could represent unique genetic stocks which have not yet been studied sufficiently. Genetics studies examining loggerhead and green turtle nests on the east coast of the U.S. have not included Texas nests. It is scientifically

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<sup>44</sup> From Scientific Poster: Frey, A., P.H. Dutton, J. Shelby Walker, C. Rubio, H. Frandsen, and D.J. Shaver. Using genetic kinship analysis to census nesting Kemp's ridley (*Lepidochelys kempii*) in Texas, USA. 5<sup>th</sup> Southeast Regional Sea Turtle Network Meeting, Corpus Christi, Texas (Feb. 4-6, 2020)

<sup>45</sup> Review at 12

<sup>46</sup> See “‘Unprecedented’ Cuts to Mexico's Park Service Threaten Conservation In Sonora, Arizona” by Kendal Blust, *Fronteras NPR*, June 24, 2020

<sup>47</sup> Review at 3

<sup>48</sup> Shaver, D.J., C. Rubio, J. Shelby Walker, J. George, A.F. Amos, K. Reich, C. Jones, and T. Shearer. 2016. Kemp's ridley sea turtle (*Lepidochelys kempii*) nesting on the Texas coast: Geographic, temporal, and demographic trends through 2014. Special Issue of Gulf of Mexico Science 33(2):158-178

<sup>49</sup> Review at 14

irresponsible to advocate sentencing these nests to death before we even know their role in the genetic and stock structuring globally for these species.

It should be noted that approximately 85% of green turtle nests in Texas are found at PAIS. And more loggerhead nests are found at PAIS than anywhere else in Texas.<sup>50</sup>

Nor does the Review acknowledge that as part of the Sea Turtle Stranding and Salvage Network (STSSN), PAIS is responsible for responding to all stranded sea turtles on the Texas Gulf coast. It is not clear whether the Review is urging that PAIS should withdraw from the STSSN.

Simply put, by saving juveniles, STSR is giving them a better chance to make it to adulthood and thus give them an opportunity to contribute to reproduction, thus, helping these threatened populations recover.

Lastly, the Review mischaracterizes history when it stated:

“While there is some documentation that suggests occasional and limited nesting of Kemp’s historically occurred at PAIS (likely opportunistic), there is nothing in the scientific literature that suggests PAIS ever hosted robust or even sustainable populations of Kemp’s.”<sup>51</sup>

This contradicts a key NPS planning document which concluded that:

“Padre Island was once a major nesting site of the Atlantic Ridley Turtle. Accounts from old-time residents relate how they traveled by wagons along the beach and had to wait while turtles traveled from their nests to the water.”<sup>52</sup>

This anecdotal information about abundance was sufficient for the National Park Service to prepare the Bi-National Kemp’s Ridley Sea Turtle Action Plan which began the effort to form a secondary nesting colony at PAIS.

This statement also does not reflect that nesting by this species was neither understood nor well described in the scientific literature until 1963 when a film was discovered showing an estimated 40,000 females nesting on one day in 1947 at the main nesting beach for Kemp’s ridley turtles, less than 200 miles south of the U.S./Mexico border. This massive nesting aggregation went unrecognized to science until 1963 when Dr. Henry Hildebrand discovered this film, showed it at a herpetological conference, and published this scientific record.<sup>53</sup>

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<sup>50</sup> Shaver, D.J., H.R. Frandsen, J.A. George, and C. Gredzens. In Review. Green turtle (*Chelonia mydas*) nesting underscores the importance of protected areas in the northwestern Gulf of Mexico. *Frontiers*

<sup>51</sup> Review at 11-12

<sup>52</sup> NATIONAL PARK SERVICE, NATURAL RESOURCES MANAGEMENT PLAN FOR PADRE ISLAND NATIONAL SEASHORE (1974), available at [https://www.google.com/books/edition/\\_/Oio3AQAAAMAJ?hl=en&gbpv=1](https://www.google.com/books/edition/_/Oio3AQAAAMAJ?hl=en&gbpv=1)

<sup>53</sup> Hildebrand, H.H. 1963. Hallazgo del area de anidacion de la Tortuga marina “Iora” *Lepidochelys kemp*i (Garman) en la costa occidental del Golfo de Mexico. *Ciencia* 22:105-112

Furthermore, because the species is not described as numerous at PAIS in modern scientific literature this does not mean it was never numerous there. The island was inhabited by Archaic Indians then the Karankawa and Coahuiltecan people for thousands of years. There is no account of what animals were present or their numbers because this occurred before the existence of written records.<sup>54</sup> To the contrary, that any historic records exist at all regarding Kemp's ridley nesting on Padre Island may indicate that it was in fact an important nesting ground for this species that succumbed to burdens of consumption.<sup>55</sup>

## ***2. Misstates Purpose of STSR***

In characterizing the STSR, the very program it is supposed to evaluate, the Review states –

“The park’s intensive sea turtle nest monitoring and management program has continued to be implemented to allow unrestricted public beach driving with motor vehicles and in response to reported beach inundation that may be associated with ongoing erosion and sea level rise.”<sup>56</sup> (emphasis added)

That is absolutely incorrect. STSR does not exist to facilitate beach driving. The program incubates turtle eggs because it does not have the power to stop beach driving. This fundamental misperception of STSR’s purpose calls into question the reliability and objectivity of this Review.

The Review also states that ocean pollution and marine debris are not threats that “directly apply to PAIS operations or are within the discretion of park management.”<sup>57</sup> Again, this is not true. The STSR records and reports turtle entanglements with debris. While the origin of marine debris is outside park control, the response to debris inside park waters is within its purview.

Ocean pollution and marine debris are also the subjects of several STSR studies, precisely the sort of important scientific research that this Review seeks to discourage.

## ***3. Is Based upon an Unrealistic Assumption***

The Review’s principal critique of STSR is that the program should “allow for natural, *in situ* nesting whenever and wherever possible.”<sup>58</sup> This conclusion is based upon the Review’s preference that PAIS “Engage with the State to establish limits on beach driving during sea turtle nesting season.”<sup>59</sup>

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<sup>54</sup> Sheire, J.W. 1971. Padre Island National Seashore Historic Resource Study. U.S. Department of Interior, National Park Service, Washington, D.C

<sup>55</sup> Id

<sup>56</sup> Id at 10

<sup>57</sup> Id at 11

<sup>58</sup> Id at 32

<sup>59</sup> Id at 33

In this regard the Review is premised on what its authors think ought to be, rather than reality.

Neither the PAIS Business Plan nor its Foundation Document mention elimination of beach driving. We are aware of no NPS effort to limit beach driving at PAIS.<sup>60</sup> Yet, the Review repeatedly references such a development.

The Review also distorts the meaning of NPS policy when it declares:

“Generally, the collection of all eggs to eliminate potential mortality due to beach driving, predation, or ocean inundation is inconsistent with NPS Management Policies (Chapter 4), which requires natural processes to occur uninhibited to the degree possible.”<sup>61</sup>

This statement completely ignores harm caused to a critically endangered species by human activities (beach driving) – not natural processes. The Review also fails to acknowledge the unique management challenges that exist in Texas at PAIS, including year-round beach driving along all 61 miles of beach (except for 4 ½ miles that are closed) and the fact that Kemp’s nest during the day. These circumstances present challenges for sea turtle conservation (even in a “protected” national park unit) that are not present in other coastal NPS units.

Significantly, STSR research shows that a single vehicle drive-over will crush eggs in the nest.<sup>62</sup> Yet, the results of these NPS-funded studies were not cited or referred to in the Review. The Review also ignored STSR data showing that *in situ* incubation in Texas results in at least 20% lower hatching success and the hatchlings are not protected as they enter the sea and then suffer high loss.<sup>63</sup>

In short, the Review urges that a template from other national park units be imposed on PAIS, even though those templates do not fit.

#### ***4. Dismisses the Value of STSR Research without Justification***

The Review suggests that the scope of scientific research conducted by STSR be limited, stating:

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<sup>60</sup> Only one part of PAIS is off-limits to beach driving, named Closed Beach. NPS, Driving Down Island Tips and Regulations (April 22, 2017), <https://www.nps.gov/pais/planyourvisit/drivingdownisland.htm>

<sup>61</sup> Review, at 12

<sup>62</sup> Shelby Walker, J. 2008. Protecting endangered Kemp’s ridley sea turtle nests from vehicular traffic at Padre Island National Seashore. Final Completion Report for Padre Island National Seashore Intermountain Region NRPP

<sup>63</sup> Shaver, D.J., H.R. Frandsen, J. Shelby Walker, and J.A. George. In Review. Threats to Kemp’s ridley sea turtle (*Lepidochelys kempii* Garman, 1880) nests incubating *in situ* on the Texas coast. Herpetology Notes

“Those research projects should then be prioritized and conducted in a manner so that the results would directly inform key management questions and assist with adaptive management.”<sup>64</sup>

Characteristically, the Review does not explain this cryptic advice. There is little specification of which research should be suspended or how research would better support *ad hoc* park “adaptive management” decisions – or even indicate what adaptive management issues it is referencing.

Adding to the confusion, the Review admits that it has no basis for its judgment on this topic because it “did not address whether the research substantially contributed to, addressed, or guided park management actions related to sea turtle management or other park activities at PAIS.”<sup>65</sup>

More fundamentally, the Review appears to take the position that long-term research about species, habitat, or threats are of little value. Yet a broader understanding of these issues – not necessarily confined to park boundaries – should assist PAIS in making natural resource management decisions. As an agency which claims its decision-making is rooted in science, NPS should encourage, rather than discourage, the type of scientific research conducted by STSR.

One of the very few specific points the Review makes about STSR concerns necropsies, is the following:

“NMFS indicated that the park is performing more necropsies than is required, and that they have communicated to park staff that a reduction (sub-sample) is appropriate. Other suggestions from NMFS included not completing the full stranding form, measurements, or tagging each animal during mass stranding events. The level of effort currently being done by the park is not recommended by NMFS, as there is no conservation benefit.”<sup>66</sup>

Yet, the Review references no formal directive issued by NMFS to reduce the number of necropsies. In fact, NMFS send their mortality investigation staff to PAIS to perform them regularly. Secondly, the NMFS official to whom this statement was attributed wrote a clarifying email that this and other statements were not portrayed accurately.<sup>67</sup> Her objections were not reflected in the Review.

It is also dubious that the additional information drawn about these federally listed sea turtles has “no conservation benefit” at all. It is rare to hear that scientific investigators complain they have too much information, and not too little.

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<sup>64</sup> Review, at 19

<sup>65</sup> Id., at 18

<sup>66</sup> Id., at 17

<sup>67</sup> Email to PAIS superintendent Eric Brunnemann from National Sea Turtle Coordinator- NMFS

The Review's authors do not appear to grasp that the point of the STSSN stranding form is for data collection so STSR can detect trends in species, sex, age class and causes of stranding, etc. STSR conducts the only long-term, continuous mark-recapture study of nesting Kemp's ridley turtles in the world. Data from this study are essential for agency officials trying to manage this species and population modelers trying to understand trends in the species' numbers. This information is important for scientific understanding of trends and other changes, even if NMFS does not see a short-term regulatory value.

It is noteworthy that the Review does not mention, let alone recognize, the value of the STSR's continuous mark-recapture study for Kemp's ridley. This species is by no means recovered and the value of this quality research to track changes in key population parameters is ignored by this Review. This research is not being done anywhere else and is key to determining continuously changing environmental threats to this species.

Despite its criticism of the value of STSR scientific research, the Review then goes on to praise that work, writing:

“It is clear that PAIS has made substantial contributions to the overall body of research and scientific knowledge of sea turtles. Park staff's significant production of science via peer reviewed publications represents an exceptional contribution to the state of knowledge on sea turtle biology, ecology, and coastal biological resource management.”<sup>68</sup>

These compliments appear to contradict the Review's conclusion that STSR research should be deemphasized or constrained. Nonetheless, this pattern of inconsistency epitomizes the nature of this Review.

##### ***5. Urges Reduction of Beach Patrols with No Rationale or Assessment of Consequences***

The Review reaches the following, somewhat startling conclusion:

“Patrols on down island stretches should be reduced to five days per week (e.g. Thursday through Monday), 8- or 10-hour days, and one or two patrols per day (as was done in the past). Patrols can focus on protecting nests from beach driving and monitoring to assess the potential impacts of inundation and predation.”<sup>69</sup>

First, the Review does not offer a rationale for this recommended reduction. There is a suggestion that it might lower costs, but the Review offers no estimate of savings.

It should be recognized that these patrols are the primary mitigation measure that enables a successful, harmonious balance between visitor access and conservation. Patrols are absolutely

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<sup>68</sup> Review at 18

<sup>69</sup> Id at 16

necessary to maintain the survival of nesting turtles and eggs; nests cannot be driven over and survive, nesting turtles cannot flee from passing vehicles and will be crushed. If the public is allowed to access the beach, the patrols must occur to protect the turtles from the public.

In short, reduced patrol coverage greatly increases the risk to the turtles and the likelihood of turtle deaths.

Additionally, the patrols save the turtles and eggs from predators and nuisance coastal flooding that is increasing in prevalence on PAIS beaches, which are engineered systems.<sup>70</sup> The cuts recommended in the program would not enable sufficient patrol coverage to minimize sea turtle mortality and contentious occurrences that threaten sea turtle survival.

Moreover, this proposed economy measure makes little sense. The Review recommendation would prevent staff who will already be camping to make as many passes as they can instead of confining them to sit at the cabin for hours in between their two patrols. Given the way these staff are deployed, they can cover 7 days with little to no issues.

Further, not having patrols on the weekends when traffic is the greatest is a recipe to have nesting and stranded turtles and sea turtle nests driven over and killed. To avert this mortality, there needs to be sufficient patrols to document all nests laid during Kemp's ridley arribadas and protect the females from being run over by vehicles while nesting. Tracks blow away very quickly and without the patrol coverage there would be many nests that are missed.

This recommendation also seems to conflict with the Review's call for more *in situ* nest management, especially the recommendation to screen/protect nests from traffic.

Unlike other marine turtle species, Kemp's ridley tracks are frequently blown out by strong winds and high temperatures, paired with the small size of adult animals. For this reason, tracks by Kemp's ridleys do not persist on the beach for anywhere near as long as the larger species (i.e., green and loggerhead). This makes identification of missed nests difficult and could result in additional takes if undocumented nests are depredated, crushed by vehicles, or inundated by high tides.

STSR has perfected over the years a patrol schedule that covers the terrain repeatedly, with the hopes of seeing most of the nesting turtles to protect them from poaching, being driven over, or being killed by coyotes. This appears to be a case of the Review seeking to fix something that is not broken.

Lastly, a drastic reduction in patrol coverage as recommended would undermine two major data collection efforts. First, it would impede the STSR's mark-recapture study. Second, it would render the STSR long-term database of nesting numbers and trends useless for analysis of overall species level changes. These data were used for the DWH Oil Spill work. Because of STSR's

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<sup>70</sup> Dr. Philippe Tissot presentation at the Southeast Regional Sea Turtle Network Meeting, February 2020



long-term database DOI requested that Dr. Shaver serve as the Principal Investigator or the impacts of the DWH spill to nesting Kemp's ridley turtles and their eggs. Without a reliable baseline, a timely assessment of natural resources damages needed to support a liability settlement agreement would not have been possible.

Ironically, Dr. Shaver's work on this study helped frame DWH legal case settlement terms and resulted in the Restoration dollars that are now being provided to numerous entities, but not to Dr. Shaver's projects.

#### ***6. Embraces In Situ Incubation and Reduced Use of Incubation Facility without Supporting Analysis***

The Review recommends leaving nests in place with fencing to protect nests in certain parts of PAIS:

“In down island areas that receive less beach driving, reductions in nest relocation should be the desired condition, including *in situ* nest protection where nests are marked, fenced, and traffic is diverted around them; similar to typical sea turtle nest management performed on beaches elsewhere in the country.”<sup>71</sup>

On that same page, the Review also urges a somewhat contradictory relocation effort, described as a “more intensive strategy of nest protection via relocation of all nests and eggs to corrals.”<sup>72</sup> By requiring all nests to go to corrals this means not using the Padre Island National Seashore Incubation Facility which was constructed as one of the Secretary of the Interior's “Top 12 Projects to Restore America's Parks” in 2002. This facility continues to be a highly effective means for protected care of eggs, yet success of efforts from this facility are downplayed. Inferences are made about deleterious long-term impacts to natural selection by eliminating environmental factors, but no data are presented to substantiate this concern.

The Review concludes that PAIS should not relocate eggs because it could cause the NPS to receive pressure from other NPS units that may want to relocate eggs.<sup>73</sup> Yet, multiple NPS units already relocate eggs from nests that are threatened by inundation so it is disingenuous to not acknowledge that this practice is already occurring there.

Following this recommendation will doom the success of the PAIS effort and the critically endangered Kemp's ridley sea turtle eggs being laid there. Different species require different management techniques and PAIS is the only NPS unit where Kemp's ridley, the most critically endangered sea turtle in the world is the primary nesting sea turtle species. Additionally, the geographic features, remoteness and inaccessibility, and legal requirements for Texas and PAIS regarding beach access pose significant challenges unique to PAIS among NPS units with nesting sea turtles.

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<sup>71</sup> Review at 16

<sup>72</sup> Id

<sup>73</sup> Id at 12-13

The area referenced by these Review recommendations are very narrow. Combined with high tides during April-May, the nests left *in situ* would be flooded.

The Review also does not account for hurricanes. One reason for relocating nests to the Incubation Facility during the later parts of the season is the increased risk of hurricanes. That risk would not be mitigated for nests in a corral.

Moreover, these nests left *in situ* in the base of the embryonic dunes will likely succumb to inundation by coastal flooding before the eggs complete the entire incubation period. Based on results of an NPS funded study, nest fencing and markings would likely be washed out, driven over, or tampered with.<sup>74</sup>

Although down island receives less beach driving and camping than further north in the park, there is still very heavy traffic on weekends and holidays with visitors specifically driving to the Mansfield Channel at the end of PAIS in large groups of vehicles to fish and camp. Furthermore, Kemp's nests left at the base of the embryonic dunes (most of the nests) will be at risk from human and domestic dog tampering.

Additionally, as visitors travel further and further south, there is less law enforcement presence. Both the lack of enforcement and lower traffic levels mean that visitors typically drive well above the established speed limit. There would be higher chance of vehicles driving over nesting turtles and hatchlings for speeding vehicles because drivers have less control over their vehicles and time to react even if they did see fencing. Also, with the lack of law enforcement, the chances of egg or hatchling poaching will increase.

The Review does not discuss these high vehicle speeds which may obviate the effectiveness of fencing for *in situ* nests.

Especially in the southern beach portions, where the beach has narrowed due to lack of Maintenance dredging of the Mansfield Channel, traffic will not easily be diverted from Kemp's ridley nests that are in the roadway or on the beachfront. Besides the risk to sea turtles and their eggs, the caging or staking of nests on a beach would create a public driving hazard due to fencing and other obstructions erected on a narrow stretch of beach.

From 2005-2007, STSR conducted a study to evaluate the potential for impacts to *in situ* nests from predators, tidal inundation, human tampering, and vehicle driving.<sup>75</sup> Another STSR study from 2008-2010 evaluated techniques for the use of corrals to incubate Kemp's eggs.<sup>76</sup> Those studies found that visitors did not respect the signage and equipment was destroyed. The Review did not cite the results of this research, although they were listed in the Review's bibliography.

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<sup>74</sup> Shelby Walker, J. 2008. Protecting endangered Kemp's ridley sea turtle nests from vehicular traffic at Padre Island National Seashore. Final Completion Report for Padre Island National Seashore Intermountain Region NRPP

<sup>75</sup> Walker and Shaver, 2008

<sup>76</sup> Walker and Shaver, 2011

It should be underlined that the dangers from beach driving are broader than the Review indicated. Dr. Shaver provided the Review authors on at least two occasions results of an NPS-funded study showing that vehicles driven over confiscated nonviable sea turtle eggs broke at least some eggs in all trials. For actual nests, the broken eggs would drip yolk onto viable eggs, attracting pests and predators. Eggs not broken by the vehicles would be more likely to be killed by bacterial and fungal growth, pests, and predators.

This year, two nests were found on San Jose Island within 24 hours after egg laying. When the nest was opened broken eggs were found (likely slit open by ghost crabs) and pests had already attacked the nest. Eggs were salvaged to avoid the pests. Within 10 days pests hatched out of that clutch and all the remaining eggs had been contaminated and rendered non-viable. Thus, even a single crushed egg in the nest cavity will increase harmful bacteria and fungi, thus causing harm to the remaining developing eggs.

In sum, management procedures of nests should not change before ensuring that any changes do not put nests of all sea turtle species at risk in the park.

Lastly, in addition to everything else, the Review does not indicate the source of funds for building and maintaining corrals, which is especially problematic as it urges STSR funding be reduced. Costs to care for eggs in the corral are higher than in the incubation facility since only paid staff members are stationed at the cabin to aid with egg care and hatchling release from the corral there. In contrast, most personnel helping to care for eggs in the incubation facility and with release of hatchlings from there are volunteers.

### ***7. Asserts Without Basis That Fewer Public Hatchling Releases Saves Money***

The Review finds a need to “Reduce the number of public sea turtle release events to reduce costs and reduce the impact on staff from other divisions.”<sup>77</sup>

The Review is incorrect in claiming that public hatchling releases are costly to the park. Nor does the Review does estimate the size of a cost reduction from eliminating a single release.

Throughout the entire 42-year duration of the Kemp’s ridley project, the park has opened a portion of hatchling releases held each year to the public, free of charge. These have been incredibly popular with the public, which receives an educational briefing about what they are about to see and why it is important, and then get to see these tiny turtles take their first steps in life, crawl into the Gulf of Mexico, and swim free.

Over the last decade, 20-30 public releases have been held at PAIS each year attracting between 10,000 and 20,000 annual attendees, generating about one million dollars of ecotourism revenue for the local community annually.

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<sup>77</sup> Id at 29

Further, most personnel working the public releases are volunteers. STSR personnel have held these releases without assistance from other park Divisions on numerous occasions throughout the years. Previous superintendents, proud of the Kemp's ridley project, requested STSR move the public releases to the front of the Visitor Center. The superintendents instructed each Division Chief to schedule at least one representative from their Division to be present for each release because they wanted to show off this NPS Legacy Project.

As has been noted, the public hatchling releases are very popular with visitors, many of whom schedule their visits to participate. Attendees come from the local community, across Texas, much of the U.S., and even from other countries. Releases receive extensive media and social media coverage, no doubt increasing tourism to the area and attendance at the park. Many people who learn about the park for the first time through the releases return to visit, purchasing annual passes, and making it a part of their normal beach visitation pattern for their families and friends.

Since hatchlings operate on their own schedule, the number of releases is determined by the turtles themselves. Since these hatchling releases are what draw visitors from all over the state, country, and the world, limiting releases to one week could cause safety issues due to the overwhelming number of visitors during the short period the Review wants to call "Turtle Daze!" Holding 20-30 public hatchling releases spreads out the visitation, thereby increasing safety, and enables the STSR Division to hold public hatchling releases without burdening other Divisions.

Furthermore, this Review recommendation is not feasible. It is rare that hatchlings are available for a public release for one week straight. Releases depend on the availability of hatchlings, which must come from incubated nests. Interestingly, the Review contradicts itself by suggesting that STSR greatly curtail the number of nests relocated to the incubation facility, which would greatly reduce the chances of being able to hold public releases. Any week-long event would need to be in addition to, not instead of, regular public releases.

This finding and accompanying recommendation, like much of the Review, are not reliable, since the basis for their conclusions is not revealed. Similarly, the accuracy of the Review statements appears questionable, at best.

#### ***8. Unreliably Predicts a Future Budget Shortfall***

The overall premise for this Review is the finding that "In 3-5 years, the program is projecting a budget shortfall."<sup>78</sup>

This conclusion is an unwarranted overstatement. As the Review concedes, the STSR has been very successful in obtaining project funding for nearly 20 years.<sup>79</sup> The Review notes that the

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<sup>78</sup> Id at 3

<sup>79</sup> Id at 22-23

“program has been very successful in obtaining outside funding, over \$14M in project funds since 1994.”<sup>80</sup> In addition, it notes that there is nearly six years of outside funding is available to support the STSSN activities<sup>81</sup> – the very activities that the Review seeks to restrict.

The Review does not mention that Dr. Shaver is proactively lining up NPS support in her efforts to obtain Restoration funding to fill any future funding gap well in advance of any potential shortfall. As has been the case for the past 20 years, there is every expectation that these grants would be approved if not for the intervention of this Review.

Perhaps intentionally, the Review’s recommendations would place strictures on STSR financing that make its prediction of a shortfall a self-fulfilling prophecy. In fact, the Review recommends removing funding for STSR, downsizing the program, and eliminating its programmatic identity.<sup>82</sup>

One especially misleading Review statement is that ongoing STSR program operations should not be funded by special project funding but out of the park base funding.<sup>83</sup> However, project funds are not used for permanent STSR personnel. There are some permanent staff funded by Early Restoration Funds, which are not special, soft project funds. Permanent positions paid from this funding were approved by the NPS. The Review masks the fact that base funding for the Division of Sea Turtle Science and Recovery was obtained entirely due to proposals that Dr. Shaver wrote for those base increases, which came to the park as line items in the Green Book specifically for the sea turtle program.

Moreover, the Review implies that the STSR is draining resources from other PAIS resource activities. That is not true, and the opposite is the case. Funding that Dr. Shaver has secured for STSR has helped defray indirect PAIS costs though the many actions of STSR staff that aid most other park Divisions during the nesting patrol season and other times that they are working on the beach. Often STSR staff members are the only PAIS staff on the beach during the nesting season, providing an invaluable visitor services to the public down island.

The Review’s only recommendation that would produce increased funding is that NPS should seek funding from FWS<sup>84</sup> and from NMFS.<sup>85</sup> Yet, the Review offers no insight as to whether that recommendation is at all realistic or recommended means for doing so.

### ***9. Criticisms of Overtime and Staff Training Unwarranted***

The Review criticizes the overtime usage by STSR staff, accompanied by a recommendation to hire more staff:

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<sup>80</sup> Id at 24

<sup>81</sup> Id at 25

<sup>82</sup> Id at 18-33

<sup>83</sup> Id at 4, 23

<sup>84</sup> Id at 14

<sup>85</sup> Id at 18

“Based on the overtime pattern that has occurred for at least five years, the work attributed to these hours is assumed to be a critical need and should be addressed by additional personnel, rather than significant amounts of overtime being incurred over a long period of time. This represents approximately seven seasonals (at 1040 hours/season) or 10 seasonals (for the nesting season of 720 hours). If additional staff were hired to cover the above hours, total costs would be less than what was paid out of overtime since these staff would presumably be accomplishing the hours of extra work deemed critical at standard pay rates.”<sup>86</sup>

The Review does not specify that previous superintendents/management approved the use of administratively uncontrollable overtime (AUO) and ordinary overtime. In fact, it was the previous superintendent who recommended the use of AUO for the STSR supervisors, prepared the detailed package requesting it, and submitted it for NPS Regional Office and Washington Office approvals. Ironically, that package was approved by Michael Reynolds in his capacity as Acting Director of the NPS. This is the same Michael Reynolds who, as a Regional NPS Director, approved the Review report criticizing what he had previously approved.

Notably, the text of the Review does not mention the number of unfilled vacancies of Full-Time-Equivalent (FTE) positions within STSR. Only by turning to the Appendix can one see a chart listing 14 of a total 22 STSR positions that are vacant.<sup>87</sup> Most are seasonal positions which are hired in December and January, to begin work and their two-week training program in mid-March.

Nor does the Review reconcile its recommendation to hire more employees with its recommendation for reduced funding of STSR. For this recommendation to be realistic, it is incumbent on the Review authors to identify what source of funds will be available and sufficient to support new positions.

It should also be noted that the STSR does not have independent hiring authority. New hiring is dependent on PAIS and NPS administration. The Review does not mention that every year in the recent past STSR has requested full support to hire the full seasonal staff with adequate time to recruit, interview and onboard before the nesting season. That request has not been met due to hiring inadequacies beyond the control of STSR.

The Review mentions the check-in and check-out system that is already established.<sup>88</sup> STSR has been operating under a system of safety check-ins and check-outs for many years. The Review makes it seem as if staff and volunteers are unaccounted for and not monitored after normal business hours or while working alone. That is not true.

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<sup>86</sup> Id at 20-21

<sup>87</sup> Id at 42

<sup>88</sup> Id at 4

During the nesting and hatching season, STSR does not work under normal business hours. During the nesting season, STSR operates office hours from 6:00 a.m. to 7:30 p.m. This Division operates with a full-time radio dispatching system run nearly 100% by volunteers during the nesting and hatching season and about 60% during the fall and winter months.

Many checks and balances are in place to monitor the work areas, patrol routes, assignments and there is accountability for the personnel and volunteers working. Office staff are in place to monitor the radio and account for staff/volunteers deployed in the field during all work hours by assigning office staff to work a morning or an afternoon work shift (various shift tour of duties), so that all work hours of the day are covered. During the hatching season, staff/volunteers are in place all night to monitor the radio and phones.

The Review team never queried STSR staff to learn about the patrol shifts, office shifts, hatching shifts or any type of work schedules or requested copies of the patrol routes for the nesting and hatching seasons.

The Review also recommends a 10 hour-per-day cap:

“The park should limit the number of employees that work more than 10 hours/day, particularly for routine, operational field activities like nest patrols. Nesting season activities and patrols are predictable, planned, and an operational function of the program.”<sup>89</sup>

The Review’s premise is incorrect. Field work with these threatened and endangered species, where their survival is dependent on STSR actions, is often unpredictable in timing and duration in this vast, remote area. Days when nesting or stranding events will occur are unknown. Duration of arribada nesting is not predictable. Stranding events are similarly unpredictable, as are transport times driving under variable beach conditions, vehicle break-downs, and visitor assists. With maxi-flex scheduling, STSR staff work in shifts of more than 10 hours because it is necessary to protect endangered species nesting on the beach and their eggs. Hours are then reduced from subsequent days in the pay period with no nesting activity, but sometimes the entire pay period is busy, and this staged hour cutback is not possible.

Lastly, the Review concludes that acceptable levels of risk of beach travel are not clear to STSR staff.<sup>90</sup> This is also incorrect. All STSR employees receive training on proper risk assessment with GAR (Green-Amber-Red) and use it to assess remote beach driving risks. STSR personnel are briefed about expected weather and beach conditions and other dangers they may encounter. In this assessment team member fatigue is considered as a key component as are environmental conditions. STSR employees down island are contacted multiple times per day for briefing via satellite phone.

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<sup>89</sup> Id at 30

<sup>90</sup> Id at 52-53

Information from these briefings is passed on to seasonal employees. Communication is via the park radio, verbal communications and personnel crisscross on the beach throughout the day, cell phone, satellite phone, and personal locator beacon for emergencies. STSR staff are also provided training on how to use the full-sized vehicles on the beach and how to correct minor issues in the field (flat tire, stuck vehicle, etc.).

Minor vehicle issues (for both SUVs and UTVs) are tracked using the STSR dispatch system – staff report when they are stuck or need to fix a flat tire and it is recorded. Mechanical issues (minor and major) are tracked by submission of work requests to the Division of Maintenance.

In short, and contrary to Review findings, STSR makes an extensive effort to inform staff about any foreseeable risks and to have a timely response capability for any issues that may arise.

### ***10. Falsely Alleges STSR Is Not Aligned with PAIS Priorities***

The Review declares that –

“NPS funding, particularly PAIS funding, for Kemp’s recovery is disproportionately high compared to the number of partners involved and the percentage of the turtle population being addressed.”<sup>91</sup>

“The funding level of the STSR program is not aligned with overall park priorities.”<sup>92</sup>

The basis for these statements is never laid out. The Review never identifies a yardstick for proportionality. Nor does it spell out what it means by proper alignment.

Numerous scientific documents report that Padre Island National Seashore is the most important Kemp’s ridley nesting beach in the U.S. The FWS manages the U.S. population of threatened and endangered species. In the U.S., STSR efforts to preserve this species at the developing secondary nesting colony, where at least half of all domestic Kemp’s ridley nests are found, is critically important to fulfilling its ESA responsibilities.

The NPS has worked for 42 years to form a secondary nesting colony of Kemp’s ridley turtles and has achieved some promising signs of success. The NPS has obligations under the ESA for management of these threatened and endangered species within their boundaries and cannot merely walk away from these responsibilities and expect that others will pay for or conduct the work if the NPS does not. This work must take place at PAIS because it is the epicenter of sea turtle nesting and stranding in Texas.

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<sup>91</sup> Id at 4

<sup>92</sup> Id at 20



Also as previously noted, this effort has had tremendous public appeal and become an important source of public engagement, education, and inspiration. The Foundation Document and Business Plan clearly state that it is fundamental to the park's purpose, as stated in its Enabling Legislation, "To save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing shoreline of the United States that remains undeveloped."<sup>93</sup>

The PAIS Business Plan, Condition Assessment, and Foundation Document cite the high priority of STSR efforts, with the Kemp's ridley project considered one of the foremost Resources Management Projects to not only PAIS, but to the entire NPS.<sup>94</sup> The documents also specify STSR sea turtle activities include research, conservation, and public education on all five sea turtle species, inside and outside the park.<sup>95</sup> These key documents place STSR activities as at the core of this park's mission and inextricably aligned with park priorities, contrary to the Reviews assertion.

Moreover, these statements seem to contradict other Review statements about the extent of special project financial support for STSR. The Review is not forthcoming about the fact that the STSR annual funding has been raised entirely by the efforts of its staff, unlike any other Division at the park. Dr. Shaver obtained the entire annual Base Account funding received by STSR from competitive proposals she wrote that resulted in line items in the NPS Green Book specifically to fund this sea turtle work at PAIS. Base, grant, and special project funding that Dr. Shaver and her staff received have paid for Division costs. It must be stressed that these funds would not be at PAIS if it were not for the efforts of STSR and that the park benefits greatly from the work conducted by this Division and the funds that they bring in.

It should also be noted that the project funding that STSR regularly wins is solely for the purpose of supporting sea turtles and may not properly be redirected to other park programs and, thus, does not compete with other park programs for funding.

Significantly, the above cited Review statements are value-laden and made without precision or specifics. These sweeping unsupported statements appear to reflect a general bias against or hostility toward STSR and do not belong in a government report. Nor are they balanced by the single page of praise for the program tucked at the end of the Review narrative.<sup>96</sup>

## ***11. Cites Irrelevant Issues in Assessing STRS***

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<sup>93</sup> Public Law 87-712. An Act, to provide for the establishment of the Padre Island National Seashore

<sup>94</sup> Padre Island National Seashore Business Plan, Fiscal Year 2002. U.S. Department of the Interior, National Park Service. Padre Island National Seashore, Corpus Christi, Texas and Foundation Document Padre Island National Seashore, Texas. 2016. U.S. Department of the Interior, National Park Service

<sup>95</sup> Padre Island National Seashore Natural Resource Condition Assessment Natural Resource Report NPS/PAIS/NRR-2014/747. U.S. Department of the Interior, National Park Service, Fort Collins, Colorado

<sup>96</sup> Review at 34 "Program Successes"

The apparent bias in the Review is also illustrated by issues it highlighted that are not material to an assessment of the STSR program. Two examples are –

- **Bookstore Sale Items**

The Review contains what appears to be a criticism about items sold in the PAIS bookstore:

“The approved items for sale in the bookstore appear primarily focused on sea turtles. The approved inventory should represent the full suite of park resources, values, and interpretive themes so that the park’s public education goals can be achieved.”<sup>97</sup>

This is a petty point about something completely outside of the control of STSR staff. STSR does not decide what is sold in the bookstore. What is sold is decided by the private cooperating “partner” organization, based upon NPS selection criteria.

Bookstore management is also market driven and presumably takes advantage of the huge interest in selling sea turtle themed items. After hatchling releases, patronage at the bookstore spikes, bringing in sales that helps this cooperating organization and the park, which gets a portion of sales proceeds.

It is undeniable that sea turtles are a huge draw to this park. That should be a point of pride, rather than of disapproval.

- **Trash**

Members of the review team wrote that they “were shocked at the volume and extent of trash on the PAIS beaches; in some areas, the entire sandy beach was covered by trash.”<sup>98</sup>

This criticism should be directed to the PAIS superintendent, not to sea turtle researchers.

Notably, the Review failed to note the impact of trash and debris on sea turtles. STSR staff find sea turtles wrapped in marine debris, including discarded or lost fishing gear, within park boundaries. STSR actually spends considerable time collecting data on turtles caught in nets and marine debris ingestion and entanglement, and report these events to NMFS, the Texas Parks & Wildlife Department, and the U.S. Coast Guard.

Furthermore, STSR personnel during an entire patrol season collect more trash off the beach than any other Division at PAIS. This is a duty of the position and is documented in the patrol log. Division staff are often thanked and praised for picking up trash by visitors.

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<sup>97</sup> Id at 27

<sup>98</sup> Id

Regular visitors to the park are aware that they can ask any turtle patroller for garbage bags if they need one. Furthermore, the STSR Future Park Leaders intern is studying the presence of microplastics in sea turtles. In addition, STSR personnel have attended and been active participants in the Big Shell Clean-Up for over 20 years.

In short, the Review criticism of STSR on this score, like many of its conclusions, is misplaced.

#### **E. DR. SHAVER AND PEER ARE AFFECTED BY THE INFORMATION ERRORS**

Dr. Shaver is affected by these informational errors in the Review. The PAIS superintendent has informed Dr. Shaver that Review recommendations will be implemented to the detriment of the STSR program. The efficacy of Dr. Shaver's work on this program is being improperly and directly compromised by the many errors contained in this Review.

PEER is a non-profit organization chartered in the District of Columbia with the mission to hold government agencies accountable for enforcing environmental laws, maintaining scientific integrity and upholding professional ethics in the workplace. PEER is an "affected person" in that PEER 1) has been an active participant in wildlife management issues confronting units of the National Park System; 2) PEER is the principal watchdog organization tracking NPS compliance with its governing statutes, Management Policies, and statutes and rules designed to ensure the scientific quality of NPS technical work, including compliance with the requirements of the Information Quality Act; and 3) on behalf of PEER members who are current and former NPS employees, PEER has a vital interest in ensuring that NPS comply with applicable laws, regulations and its own policies.

#### **F. LEGALLY PROTECTED NATURE OF THIS COMPLAINT**

By disclosing violations of law, rules, and agency policy, Dr. Shaver is engaged in a protected disclosure covered by the Whistleblower Protection Act<sup>99</sup> by filing this Complaint. This law outlaws retaliatory action taken against employees in connection with their protected disclosures. Managers or supervisors who undertake such reprisals are committing what this law categorizes as a "prohibited personnel practice" subject to discipline, up to and including termination.

#### **G. CORRECTION OF THE INFORMATION CHALLENGED BY THIS COMPLAINT**

Since the challenged document is "influential" information, we urge NPS reviewers of this complaint to employ the more rigorous standard of review called for in the DOI guidelines. Regardless of the review standard employed, however, this challenged Review does not exhibit the qualities of integrity, reliability and accuracy required by the Information Quality Act as implemented by the NPS and DOI Guidelines.

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<sup>99</sup> 5 U.S.C. § 2302(b)(8)-(9), Pub.L. 101-12 as amended

Accordingly, Dr. Shaver and PEER respectfully request NPS take the following steps to comply with the Information Quality Act:

1. Retract or rescind the Review from official files, cease any further reliance upon it, cease further distribution, and correct its online and printed information on this matter.
2. Issue a public statement, posted on official websites, that the Review has been rescinded and withdrawn from further official consideration due to violations of the Information Quality Act.
3. Direct the superintendent at PAIS and relevant NPS regional officials that the findings and recommendations of the Review should not be the basis for any official action.

Pursuant to the NPS Guidelines, we look forward to your response to this Complaint within 60 days. Thank you in advance for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Ruch", written in a cursive style.

Jeff Ruch  
PEER Pacific Director