



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

962 Wayne Ave • Suite 610 • Silver Spring, MD 20910

December 31, 2020

Office of Director
National Park Service
1849 C. Street, N.W.
Attention: Correspondence Control Unit (CCU)
1201 Eye Street NW
Washington, DC 20240

Email: Director@nps.gov

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

Dear Sir or Madam:

On July 26, 2020, Public Employees for Environmental Responsibility (PEER) submitted an Information Quality Complaint pursuant to the Data Quality Act of 2000, the Office of Management and Budget (OMB) Guidelines for Ensuring and Maximizing the Quality, Utility, and Integrity of Information disseminated by Federal Agencies, National Park Service (NPS) Director's Order #11B: Ensuring Quality of Information Disseminated by the National Park Service and the U.S. Department of Interior (DOI) Information Quality Guidelines.¹

PEER submitted this Complaint to the NPS 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 (STSR) at the Padre Island National Seashore (PAIS). 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 8.²

Through this Complaint, we sought the following relief to cure the specified violations of 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 Issue a public statement, posted on official websites, that the Review has been rescinded and withdrawn from further official consideration due to violations of the Information Quality Act.

¹ https://www.peer.org/wp-content/uploads/2020/07/7_16_20_DQA_Complaint_STSR_Review_Final.pdf

² https://www.peer.org/wp-content/uploads/2020/07/7_16_20_PAIS_STSR_Review_Report_final.pdf

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.

A document emailed to us on December 2, 2020 and e-signed by NPS Regional Director Michael T. Reynolds contained the following conclusion:

“After review and consideration, the remedy sought via your letter will not be granted and the Review report will not be retracted. The report has been amended and reposted with a new date.”³

We regard this December 2nd memo from Mr. Reynolds as a denial of our Complaint. Through this document, we hereby appeal this denial pursuant to the procedures laid out in NPS Director’s Order 11B.⁴

Before going into the specifics of our Complaint, three initial observations are in order:

1. Nature of NPS Response Confirms Substance of Complaint

In response to our Complaint, the NPS revised the Review by removing a section, inserting nine footnotes, and adding three Appendices.⁵ These actions are a backhanded acknowledgement that the Review was not “accurate, timely, and reflect the most current information available” as required by Director’s Order 11B⁶ in that it required amendment, amplification, and explanation.

Nor did Mr. Reynolds’ response explain why these revisions were appropriate rather than a complete retraction. Adding insult to the original injury, as detailed below, many of the representations in Mr. Reynolds’ short response are themselves inaccurate. Moreover, most of Mr. Reynolds’ 6-page response to our 28-page complaint consists largely of bland, conclusory denials with no supporting justification or explanation offered. The quality of this denial further indicates that Mr. Reynolds and his responsible staff do not have a firm grasp on the requirements – and certainly not the spirit – of the Information Quality Act.

2. The Review Is Clearly “Influential Information”

Our challenge pointed out that the Review constituted “influential” information, meaning that NPS is held to a higher, more rigorous standard, according to the DOI Information Quality Guidelines. Mr. Reynolds’ response disputes this characterization:

“The Review does not constitute ‘influential scientific, financial, or statistical information’ and is not subject to procedures for evaluating influential scientific information. The Sea Turtle Science and Recovery Program (STSR) Review is an operations evaluation, also commonly referred to as a management review.”

This response is incorrect for several reasons:

³ See Exhibit I

⁴ At IV G

⁵ This revised and re-dated Review is displayed at https://www.nps.gov/pais/learn/management/upload/PAIS-STSR-Review-Report_20201202_amended_signed_2.pdf

⁶ Sec. IIIB

- a) The cited 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.”⁷ There is no serious dispute that this Review affected PAIS and STSR practices on a number of topics.
- b) The challenged Review is full of “scientific” and “financial” information. Much of this information is incorrect, however, hence this Complaint.
- c) The characterization that this Review was merely a “management review” consisting of “recommendations regarding program operations for consideration by park management” is disingenuous, if not flat out false.

In a memo from Mr. Reynolds to the PAIS Superintendent dated June 8, 2020 – the same date on the issued Review – entitled “Report and Required Actions for the Sea Turtle Science and Recovery Program” lays out a detailed schedule for “Implementation of the report recommendations.”⁸

This Review was no causal assemblage of recommendations for possible future consideration. In fact, it was the blueprint for curtailing and restructuring the STSR effective immediately. The NPS staff persons behind this Review document may be hiding behind a label of “management review” but it is only a bureaucratic fig leaf. Nor is a management review exempt from compliance with the Information Quality Act or an exception to what may be considered influential information.

- d) The Review was distributed to the public. Indeed, the revised Review added an email from the PAIS Superintendent (the new Appendix J) which was a transmittal for its distribution. Nor was this distribution limited to staff. Mr. Reynolds’ response does not deny that Superintendent Brunnemann provided an electronic copy of the Review to a local newspaper, the *Corpus-Christi Caller Times*, as noted in our Complaint.

This public distribution triggers the higher standard of accuracy, completeness, and objectivity required of influential information.

- e) Mr. Reynolds’ response offers a dubious explanation that NPS –

“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.”

⁷ See DOI Guidelines at VII, Subsection 9

⁸ Exhibit II

As discussed below, the Review was not distributed in draft form to solicit comments. Nor did the NPS solicit comment or make any visible attempt to collect information about the completed Review from third parties. Instead, the Review was assembled after a series of undocumented interviews⁹ and then a final, completed Review was disseminated as a completed action – a “done deal” – for which no further input was sought.

The fact Mr. Reynolds’ response disputes that the Review was “influential information” is itself a tacit acknowledgement that the Review cannot withstand the strict scrutiny required of this category of information. Instead, Mr. Reynolds seeks to mischaracterize the Review as loose talk, random suggestions, or a form of bureaucratic thinking out loud to justify its sloppiness and inaccuracy which should not be too carefully examined. In reality, the Review was carefully crafted to accomplish its predetermined goals of curtailing the scope, size, and effectiveness of the STSR program.

3. The Review and NPS Response Lack Transparency

As our Complaint points out, the NPS Information Quality Act guidelines stipulate that:

“Influential information will be produced with a high degree of transparency about data and methods. The information should include all pertinent information...”¹⁰

Mr. Reynolds’ response addresses this issue with the following statement: “The Review is transparent in describing why it was initiated and how it was conducted (Review, pg. 7).” The entire discussion on page 7 on how the Review was conducted consists of the following:

“The program review consisted of three parts: 1) evaluation of plans and documents, 2) personal interviews with all permanent STSR staff (two were interviewed by phone) and all members of the park management team conducted on December 12, 2019, and 3) phone interviews with other Federal and State agencies and partner organizations conducted during January-February 2020. Information from these sources was incorporated into the findings, discussion, and recommendations included in section 4.”

This cryptic explanation does not constitute any reasonable measure of transparency. As our Complaint points out, the Review –

- Generally, there are no identified sources for asserted conclusions;
- Contains no transcription or interview notes, so it is impossible to tell if the Review fairly summarizes what it has been told. This problem is amply illustrated by the NPS decision to add Appendix K to the Review. That Appendix is a three-page memo from Barbara Schroeder of the National Marine Fisheries Service explaining how her input to the Review team was mischaracterized and required clarification;

⁹ The Review team apparently failed to preserve notes of interviews or to allow interviewees the opportunity to review how interview contents were memorialized in the final Review

¹⁰ D.O. 11B at § III(A)

- People interviewed could not tell whether the Review’s authors understood what they were told. As the Complaint points out, a central figure in this matter, Dr. Shaver, certainly does not believe that her input was included in the Review.

Nor does Mr. Reynolds’ response address the fact that the Review was not circulated in draft form, so that persons interviewed could object if their views were not reflected or were distorted. As is done with literally hundreds of NPS documents each year, this Review was not posted at the NPS Planning, Environment and Public Comment (PEPC) website for public review and comment.

Instead of employing the open process usually associated with NPS planning documents, this Review was released as “approved” in final form and promptly distributed without any opportunity to review and comment upon it.

Our Complaint stressed that this lack of transparency is no mere procedural concern. The utterly opaque process pursued with this Review left it open to improper managerial influence in order to implement a personal agenda. This fundamental lack of transparency goes to the heart of crass bureaucratic manipulation that the Information Quality Act purports to prevent.

Finally, the lack of transparency envelops Mr. Reynolds’ response, as well. This response has still not been publicly posted to our knowledge. It does not appear on the NPS website page for Information Quality Correction Requests and Responses¹¹ although other non-substantive correspondence on this matter from Mr. Reynolds is posted. As a result of this continued non-transparent approach, a revised version of the Review is posted on the PAIS website without an explanation for why it was revised.¹² Furthermore, the PAIS website does not even disclose that the Review has been revised. The front page of the website states at the relevant link: “Read the June 2020 Review and National Park Service Statement.” So much for transparency.

Appeal Specifics

Our Complaint laid out two categories of specific issues and instances where the Review violates Information Quality Act standards:

- A. Lack of Integrity, Accuracy, Completeness and Reliability
- B. Review Lacks the Required Integrity, Accuracy, Completeness and Reliability

As detailed below, we believe that every one of the elements specified in our Complaint still applies to the revised Review. In reply to each of the 17 specifications detailed in the Complaint, Mr. Reynolds’ response generally consists of approximately one or two sentences per issue. As discussed below, these responses offer little detail, and are unsupported by any evidence, references, or reasoning.

The cursory nature of Mr. Reynolds’ response reinforces our contention that the NPS Regional staff responsible for both the Review and the response do not understand their statutory

¹¹ <https://www.nps.gov/aboutus/information-quality-corrections.htm> (accessed 12/24/20)

¹² <https://www.nps.gov/pais/learn/management/sea-turtle-review.htm> (accessed 12/24/20)

responsibilities under the Information Quality Act to provide accurate, objective, and reliable information in official documents – especially, documents affecting NPS operations.

Discussing, each in turn –

A. Noncompliance with Law and NPS Policy

1. *Bypass ESA Consultation Requirements.*

The Complaint explains how the changes recommended in the Review impacted STSR and PAIS operations affecting endangered Kemp’s ridley and two threatened sea turtle species. As pointed out above, several of these steps involving issues such as beach patrols and responses to stranding events have already been implemented. Moreover, the Review failed to assess the time and expense of revising more than 20 Biological Opinions referenced in the Complaint in order to fully implement its recommendations.

In response, Mr. Reynolds’ response says only:

“The NPS understands the need for appropriate consultation and will conduct Section 7 consultation under the Endangered Species Act (ESA) as necessary and required at the appropriate step in implementation of the Review’s recommendations.”

This blanket assurance provides no timelines or budget for this work. Moreover, it ignores that several recommendations have been implemented or are in the process of being implemented without required consultations.

In the succeeding months since the June 2020 issuance of the Review, no ESA consultations have taken place or have even been scheduled. The cavalier approach to ESA compliance evidenced by Mr. Reynolds’ response is not in keeping with the “proactive mandate” under ESA to prevent jeopardy.¹³ Mr. Reynolds’ failure to make a specific commitment on the timing and scope of required consultations an invitation to litigation.

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

The Complaint points out that the Review was conducted out of public view and solicited no public input. It identified and recommended several significant changes in STSR operations, all of which would require public notification and an Environmental Assessment under the National Environmental Policy Act (NEPA) but the Review did not include NEPA compliance or even identify it as a recommended step.

In response, Mr. Reynolds asserts:

“The Review is a recommendation, not an action directive, and so is not the appropriate place for NEPA evaluation or public input. Compliance with NEPA, including public involvement, will be initiated at a later stage as required or necessary.”

¹³ Review at 10

This assertion is both unspecific and deceptive. As discussed above, several of the Review recommendations have already been implemented without benefit of NEPA compliance. In addition, NEPA requires public input at the earliest stage of planning, such as scoping, well before a single “preferred alternative” is identified. In this case, the Review admittedly identified preferred alternatives on a number of major operational changes which should have triggered public notice and comment requirements.

The suggestion that NEPA will be triggered only “as required or necessary” reinforces our contention that this Review was designed from its outset to exclude public input for fear that public input would vociferously oppose Review recommendations, such as cutting back on beach releases (something the Review conceded was very popular). The very nature of how this Review was conducted underlines that it was “an inside job” for which the authors patently had no interest in public input.

Moreover, Mr. Reynolds’ response does not identify what the “later stage” will be or when promised NEPA compliance will take place. To date, there is no public sign that PAIS plans to undertake a single step required by NEPA. Rather than dismissing our charged violation of policy, Mr. Reynolds’ cursory response only reinforces our point.

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

The Complaint listed several Review recommendations for restraints on STSR operations that would operate to the detriment of listed sea turtles, including:

- Discontinuing “collection, incubation, and release of green and loggerhead eggs;”
- Ending study and management “of sea turtle species other than Kemp’s;”
- Ceasing incubation and release of green and loggerhead “sea turtle eggs collected at PAIS, and those collected elsewhere along the Texas coast and sent to the park;” and
- Limiting stranding response “to inside the boundaries of PAIS.”

As the Complaint points out, the Review recommendations mean that affected threatened green and loggerhead turtles will surely perish – an outcome that runs counter to NPS Management Policies requiring 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.

Mr. Reynolds’ response addresses none of the specific concerns raised in the Complaint. Instead, it airily asserts –

“The Review is consistent with Management Policies as it recommends options that balance managing for natural processes and active management for threatened and endangered species.”

Characteristically, Mr. Reynolds provides no explanation. Curtailing STSR operations does not reflect any “balance” as the Review offers no compensatory expansion to match reductions. The rationale the Review offers for these cutbacks is somewhat illusory, other than fiscal steps to save NPS money. However, that is exactly contrary to the Management Policy directive to

protect rare, threatened, or endangered species and actively work to recover and restore all species native to parks listed under the ESA.¹⁴

4. Conflicts with Scientific Integrity Policy.

This specification of the Complaint was rooted in the Review recommendation 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.”¹⁵ As the Complaint points out, limiting research to park boundaries runs counter to the goal of 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. Moreover, these scientific inquiries are meant to be useful beyond park boundaries to further the “credibility and value with all sectors of the public.”¹⁶

Nor does the Review or Mr. Reynolds’ response acknowledge that much of the STSR research work has direct application to PAIS and NPS management issues. For example, findings from STSR scientific research were used to help settle the DWH case with BP and to develop the closed area off south Texas to shrimping, after which nesting began to increase.

In addition, the Complaint argues that implementing this Review recommendation would force STSR to end the only long-term, continuous mark-recapture program on nesting Kemp’s ridley turtles on the planet. Limiting data collection to only PAIS would disrupt the dataset tracking trends that are key to understanding the status of this endangered species and to make informed management decisions about it.

Mr. Reynolds’ response misses both of these contentions completely. Instead, the response states:

“The Review was not conducted to assess the body of scientific work produced by the program. Rather, the Review recommends re-examining the scientific work through obtaining a literature review, developing a science plan with priorities, and adhering to DOI and NPS requirements regarding scientific and scholarly activities.”

Mr. Reynolds’ response is obviously incorrect. The Review, without offering any support, reached a conclusion that the collection of important biological data outside park boundaries was of limited value and should cease. Moreover, if STSR is the only source of such biological data, the suggestion that it conduct a “literature search” makes no sense. Finally, the Review makes no recommendation that STSR develop a “science plan” other than the cessation of scientific data collection.

Mr. Reynolds’ response suggests that our raising this issue in our Complaint caused the authors of the Review and his response to look up Interior’s Scientific Integrity Policy for the first time. That perusal resulted in the response citing an irrelevant provision of the DOI policy about lack

¹⁴ See NPS Management Policies 4.4.1.1, 4.4.2 and 4.4.2.3

¹⁵ Review at 18.

¹⁶ DOI DM § 305 3.4 and § 3.4 A (2), respectively

of “scientific integrity.”¹⁷ The Complaint did not allege lack of scientific integrity or an act of scientific misconduct. The Complaint faults the Review’s dismissal of the value of STSR scientific work as running counter to the promotion of scientific inquiry in NPS operations, which is the spirit behind that Policy.

5. Restricts Free Flow of Scientific Information.

The Complaint points out that as a result of the Review, Dr. Shaver has been under a “gag order” and forbidden to speak to the media or answer media inquiries, as she has done for years.

Mr. Reynolds’ response does not deny this but instead somewhat obliquely states:

“Departmental and NPS guidance provide for administrative review of material planned for dissemination to the public and also provide for scientists to discuss their science with the press and the public. Park management provides the administrative review and also provides 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.”

The response does not provide a citation to identify where this “guidance” or the referenced review “procedures” can be found. The prior longstanding practice of reporters directly contacting Dr. Shaver violated no known NPS rule or procedure. Further, since the issuance of the Review, PAIS has denied several media requests to interview Dr. Shaver, and, to our knowledge, has not granted one. These media requests certainly concerned matters that are in Dr. Shaver’s “area of expertise.” Nor have PAIS officials identified any procedures Dr. Shaver must follow in order for her to once again conduct media interviews.

The NPS’ treatment of Dr. Shaver flies in the face of the DOI Scientific Integrity Policy’s call for agency managers to “Facilitate the free flow of scientific information...”¹⁸ In addition, it violates 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.”¹⁹

6. Inhibit Public’s Environmental Education Opportunities.

The Division of Sea Turtle Science and Recovery conducts an extensive public education program regarding these issues and many other sea turtle issues. It is widely recognized that these public education efforts the STSR conducted have been directly responsible for public knowledge that sea turtles inhabit this area.

¹⁷ The citation in the Response is “The Department recognizes that managers exercise judgment every day to make decisions in the context of complex fact patterns, divergent opinions, and uncertainty, and disagreement with management decisions does not itself constitute a case for loss of scientific integrity.” (305 DM 3, Section 1.4, Scientific Integrity Procedures Handbook)

¹⁸ DOI DOM at § 3.4 A (5)

¹⁹ Id at §3.4 A (7)

Nonetheless, the Review strongly urges a reduction in “the number of public sea turtle release events to reduce costs and reduce the impact on staff from other divisions.”²⁰ The Review even goes so far as to suggest that public releases be confined to only “one week” in the entire year, re-branded as “Turtle Week!” or ‘Turtle Daze!’”²¹

Incredibly, Mr. Reynolds’ response incorrectly maintains: “The Review does not recommend eliminating or inhibiting educational opportunities.” Yet, it cannot be disputed that the public hatchling releases are educational opportunities for the public. Instead, Mr. Reynolds asserts that “The Review recommends options regarding the STSR program functions to address operational, personnel, and budgetary concerns.”

That response is patent nonsense. The Review clearly advocates a major curtailment of the main public education program conducted by STSR. In so doing, the Review and Mr. Reynolds’ response both ignore the tremendous impact these public releases have on visitors, especially children, as well as the apparent large reservoir of goodwill these public events build in the community.

B. Review Lacks the Required Integrity, Accuracy, Completeness and Reliability

This category of the Complaint has eleven specifications:

1. Inappropriately Minimizes the Significance of STSR Operations.

The Complaint itemizes a number of statements made in the Review that downplay the significance of the STSR, including minimizing –

- The importance of its nest relocation program to the overall recovery of Kemp’s;
- The significance of establishing a secondary nesting colony of Kemp’s ridleys, the most endangered sea turtle on the planet;
- The value of work with green and loggerhead turtles at PAIS and that approximately 85% of green turtle nests in Texas are found at PAIS while more loggerhead nests are found at PAIS than anywhere else in Texas; and
- The role played by STSR in providing training, technical guidance, and record keeping and reporting for all nesting and stranded sea turtles on the Texas Gulf coast.

Mr. Reynolds’ response does not reply to any of these contentions. Instead, it only refers to a correction made in the revised Review to correct “an internal contradiction and possible error concerning the historic evidence of Kemp’s nesting at Padre Island National Seashore (PAIS).” While we appreciate the correction of that obvious error, we view Mr. Reynolds’ total lack of a response to the issues noted above as confirmation of the validity of this Complaint specification.

2. Misstates Purpose of STSR.

²⁰ Review at 29

²¹ Id at 26

The Complaint took issue with the Review’s incorrect statement that –

“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.”²²

STSR does not exist to facilitate beach driving. The program incubates turtle eggs because it does not have the power to stop beach driving or control several other threats that would greatly reduce egg and hatchling survival.²³ This is a fundamental misperception of STSR’s purpose calls into question the reliability and objectivity of this Review.

Mr. Reynold’s response deflects but does not respond to this issue by saying “One purpose of STSR is to mitigate impacts associated with beach driving.” This equivocation is a different statement than that contained in the Review. Moreover, it masks the important issue that the STSR’s main purpose is to establish and maintain a vitally needed secondary Kemp’s ridley colony on the Gulf coast.

The Complaint also faults the Review’s incorrect assessment that ocean pollution and marine debris are not threats that “directly apply to PAIS operations or are within the discretion of park management.”²⁴ As the Complaint points out, the STSR records and reports turtle entanglements with debris. While the origin of marine debris may be outside park control, the response to debris inside park waters is within its purview. Moreover, 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.

Mr. Reynolds at least recognizes this point but does not refute it when he states the following:

“A misunderstanding may exist regarding the statement about park operations and discretion with respect to marine debris...Marine debris is an external impact over which the park has no control, except in a reactive manner once debris is deposited on the beach.”

This non-denial denial ignores the impact of debris on listed sea turtle species – an issue over which STSR has some control through its rescue operations.

3. Is Based Upon an Unrealistic Assumption.

The Complaint objected that the Review’s principal critique of STSR is premised upon the cessation of beach driving yet neither the PAIS Business Plan nor its Foundation Document mention elimination of beach driving.

While we are not aware of any publicly available NPS effort to limit beach driving at PAIS, the Review repeatedly references such a development. Nor does the Review acknowledge the unique

²² Review at 10

²³ A noteworthy example is poaching of nesters, eggs, and hatchlings. Law enforcement rangers are rarely on remote beach areas. If STSR staff on these beaches, there would much more poaching.

²⁴ Id at 11

management challenges that exist in Texas at PAIS, including year-round beach driving provided as a matter of state law.

The Complaint also explained the Review was inaccurate in accusing STSR of actions inconsistent with NPS Management Policies requiring natural processes to occur uninhibited to the degree possible.

Finally, the Complaint faulted the Review for not citing STSR research showing that a single vehicle drive-over will crush any eggs in a nest. 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.

In response, Mr. Reynolds does not appear to dispute these points but suggests that the Review “recommends testing alternate management strategies. The recommendations focus on program management operations and encourage the park to integrate the STSR with its other natural and cultural resource programs.”

This response both ignores the points made in the Complaint and is barely coherent. It is not clear, based on Mr. Reynolds reading, precisely what PAIS and STSR are supposed to do. Neither the Review nor Mr. Reynolds’s response identify any STSR research conducted during the past decade using NPS funds which does not inform alternate management strategies. Consequently, both the Review and Mr. Reynolds’ response are neither reliable nor complete as required by the Information Quality Act.

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

The Complaint took issue with the Review prescription that STSR “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”²⁵ without what management issues it was referencing. This central recommendation lacks basic clarity required to make it complete or reliable.

Mr. Reynolds does not address this fundamental issue in his response. Instead, he cites the addition of two appendices and footnotes clarifying inaccurate statements in the review. While these additions concede the validity of specific points the Complaint makes, they are inadequate to cure violations of the Information Quality Act for three reasons:

- a) Rather than remove inaccurate statements, Mr. Reynolds decides to insert footnotes to a new Appendix K, consisting of a memo from a NMFS official seeking to clarify how NMFS input was misquoted in the Review. Here is a typical example from that memo:

“2. STSR Review Report Statement (page 18): 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.

²⁵ Review at 19

NMFS Clarification: This comment was specific to necropsies associated with large cold-stun events. When large numbers of turtles die from a known cause of mortality, such as a cold-stun event, it is appropriate to sub-sample for necropsies. Since the number of strandings varies by year, we cannot set a target for number of necropsies to conduct each year. Moreover, the number of necropsies indicated depends on the circumstances and concurrent findings. For example, more necropsies may be necessary to investigate unusual events or strandings suspected to be caused by human activities. Our goal is to enhance mortality investigations and ensure they are done systematically and consistently. It is true that Texas has conducted more necropsies than Florida (Gulf coast only) each year under the DWH Sea Turtle Early Restoration project. Necropsies are a critical part of the DWH Sea Turtle Early Restoration Project and we intend to continue these collaborative efforts across the GOM to enhance mortality investigations. NOAA has provided in-person support for necropsies in Texas and will continue to provide that support at PAIS and elsewhere in Texas as long as it is needed and welcomed.”

It is clear from the NMFS clarification that the Review statement is inaccurate, and the issues are far more nuanced than the Review portrays. Rather than removing or rewriting this inaccurate Review observation, the language is left unchanged in the revised Review, adding a footnote with a reference to Appendix K. This requires the reader to go find the clarification at the end of the Review in order to draw a different conclusion from that of the inaccurate Review text. This approach is both cumbersome and misleading.

- b) The three pages of NMFS clarifications following publication of the Review suggests that interviews were not fully or accurately recorded or reflected in the Review’s final text. As a misdirected attempt at explanation, Mr. Reynolds’ response states that “A copy of the questions used for interviews with PAIS staff and external cooperators was added to the Review report as Appendix I.”

Clearly, the problem is not so much the questions but that the answers were not accurately recorded. If each interviewee felt compelled to add three pages of clarifications, the clarifications would exceed the length of the Review text.

In particular, the Complaint points out that Dr. Shaver, the longtime STSR Director, did not feel that her interview content was reflected in the final Review. Nor was she asked to comment upon or explain any of the supposed critiques from other interviewers.

This failure to accurately record interview notes and then double-check with interviewees denotes a basic lack of professionalism that does not befit an NPS management document.

- c) The core issue here is the duplicitous approach taken by the Review, which contains denigrating comments amidst this startling admission that 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.”²⁶ This conclusion underlines what a confusing, unsupported mish-mash the Review is, reflecting defects that no additional footnotes or appendices can cure.

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

The Complaint faults the total lack of justification for the following recommendation:

“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.”²⁷

Mr. Reynolds’ response does not defend this recommendation but instead shifts to describe something different from what the Review clearly stated. In Mr. Reynolds’ retelling the Review was only recommending development of a “natural resource science plan [that] would provide information that would help with development of potential improvements in beach patrol practices. Implementation of the recommended nesting beach management plan would include an evaluation of beach patrol alternatives and their environmental consequences.”

Setting aside that this mischaracterizes what the Review stated, Mr. Reynolds’ reformulation is confusing doubletalk that does not specify the alternatives to be tested or the criteria by which they are to be evaluated. As such, neither the Review nor Mr. Reynolds’ new version provides reliable or complete information on which to base management options.

6. Embraces In Situ Incubation and Reduces Use of Incubation Facility without Supporting Analysis.

The Complaint recounts several Review passages urging PAIS to stop relocating eggs, even suggesting at one point 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.²⁸ The Complaint points out that relocation is necessary to save the eggs from destruction. In addition, the Complaint notes that multiple NPS units already relocate eggs from nests that are threatened by inundation.

Again, Mr. Reynolds ignores the central point of the Complaint. Again, he tries to rewrite the Review so that now, in his words:

“The recommended nesting beach management plan as described in the Review would be used to fully evaluate and assess the potential effects of different beach, environmental, and human behavior characteristics on nest management strategies.”

It is not clear what this even means (for example, which “human behavior characteristics” does he want to assess?). Again, Mr. Reynolds posits a further review process that is not even

²⁶ Id at 18

²⁷ Id at 16

²⁸ Id at 12-13

referenced in the Review. In short, the shortcomings of the Review identified by the Complaint are not addressed – and perhaps are even magnified – by Mr. Reynolds’ response.

7. Asserts without Basis that Fewer Public Hatchling Releases Saves Money.

The Complaint cited the total absence of justification or supporting data for this unambiguous Review recommendation: “Reduce the number of public sea turtle release events to reduce costs and reduce the impact on staff from other divisions.”²⁹

Mr. Reynolds’ response does not provide any such documentation or supporting detail. Again, his response constitutes a confusing recharacterization of what the Review clearly said:

“Changing the approach to public hatchling releases can help the park adjust budget imbalances, reduce stress on intra-park communications, and alleviate some of the overtime excesses as described in the Review.”

Mr. Reynolds does not explain what “budget imbalances” he is referencing (or how much money could be saved). Nor does he explain what he means by “stress on intra-park communications.” Is he saying that a reduction in public hatchling releases is needed or that a different “approach” is called for instead? Nor does he address the clear benefits from these public releases that are articulated in the Complaint.

By seeking to water down the Review’s recommendations after the fact Mr. Reynolds offers no meaningful defense to the Complaint’s charges of Information Quality Act violations.

8. Unreliably Predicts a Future Budget Shortfall.

The Complaint points out that the Review’s conclusion of an impending budget shortfall is an unwarranted overstatement. The Review concedes that there is nearly six years of outside funding is available to support the sea turtle rescue activities – the very activities that the Review seeks to restrict.

Further, the Complaint points out that the Review’s recommendations placing strictures on STSR financing make its prediction of a shortfall a self-fulfilling prophecy. As further evidence supporting this point, after the Review was issued NPS ordered STSR to turn back approximately \$300,000 in grant funds it had been awarded for green turtle recovery work through 2023³⁰ even though Padre Island is the most important green turtle nesting beach in the U.S. northwestern Gulf of Mexico.

In addition, the Complaint faulted as misleading the Review’s conclusion that ongoing STSR program operations should not be funded by special project funding but out of the park base funding. 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

²⁹ Id at 29

³⁰ https://www.peer.org/wp-content/uploads/2020/09/9_10_20_Loss_Green_Turtle_Grants.pdf

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.

Finally, the Complaint faulted the Review's implication STSR is draining resources from other PAIS resource activities when, in fact, 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.

Mr. Reynolds again ignores the substance of this specification. He merely repeats that Deepwater Horizon restoration funding, which constitutes "approximately 26% of the total STSR projected total funding," will run out over "the next five to ten years." His non-response ignores the actions that Dr. Shaver had in place to meet any projected shortfall as well as NPS actions, presumably on his say-so, to block those actions. As a result, his response is as incomplete and misleading as are the Review conclusions that are the subject of the Complaint.

9. Criticisms of Overtime and Staff Training Unwarranted.

The Complaint contended that Review criticism of overtime ignored the number of unfilled vacancies of Full-Time-Equivalent (FTE) positions within STSR: 14 of a total 22 STSR positions are vacant. 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.

For those reasons, the Complaint maintains that the Review's critique on this topic is unfair. Yet, Mr. Reynolds does not address these arguments at all. Instead, he concludes that "The Review addressed nesting patrols and activities and recommended developing a staffing plan to provide beach patrol coverage to cover a 40-hour work week for employees and recommended implementing an Incident Command System for unpredictable events." But, as noted, these staffing issues are beyond the control of STSR and should appropriately be directed to the PAIS Superintendent.

10. Falsely Alleges STSR is Not Aligned with PAIS Priorities.

The Complaint cited the lack of factual support for Review declarations 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."³¹

"The funding level of the STSR program is not aligned with overall park priorities."³²

³¹ Review at 4

³² Id at 20

Mr. Reynolds does not defend these inaccurate, bias-laden statements. Nor does he explain why they were not removed from the Review.

Instead, once again, he changes the subject, asserting that “The Review considers how the park natural resource program and some operational aspects of STSR would benefit from restructuring.” He does not explain specifically how the park resource plan would benefit but he does not consider how the Review’s recommendations would hurt the STSR. The net result is that inaccurate, inappropriate statements in the Review are left uncorrected.

The Review also omits mention of the fact that 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.

In addition, left uncorrected are Review statements about the extent of special project financial support for STSR. Base, grant, and special project funding that Dr. Shaver and her staff received have paid for Division costs. 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.

In short, all of the budgetary Review sections should be rescinded as inaccurate – for which Mr. Reynolds offers no defense.

11. Cites Irrelevant Issues in Assessing STSR.

The Complaint cited the Review’s use of irrelevant issue to criticize operation of the STSR. One issue cited was bookstore sales that reflected a high visitor interest in sea turtle-related items. In response, Mr. Reynolds stated, “Discussion of the Bookstore has been removed.”

While that removal is welcome, Mr. Reynolds ignored the Complaint’s underlying point: inclusion of these irrelevant issues in the Review as points of criticism reflect an inappropriate bias against the STSR by Review authors.

The other issue was trash. The Complaint argued that this criticism should be directed to the PAIS superintendent, not to sea turtle researchers. In addition, the Review failed to mention that STSR personnel collect more trash off the beach than any other Division at PAIS and are often thanked and praised for picking up trash by visitors.

In response, Mr. Reynolds claims “This section of the Review provides overarching park recommendations to which STSR currently contributes (in the case of trash) or can contribute in the future.” He did not explain how STSR operations contribute to trash or make a specific recommendation as to what the sea turtle researchers are supposed to do differently to reduce trash. In short, the Review’s criticism of STSR on this score, like many of its conclusions, is misplaced.

Conclusion

Significantly, Mr. Reynolds' denial did not dispute that PEER and Dr. Shaver are "affected individuals" (within the meaning of DOI Information Quality Act policy), who have standing to bring this Complaint and Appeal.

Nor does the Reynolds denial dispute that Dr. Shaver has engaged in a protected disclosure covered by the Whistleblower Protection Act³³ by filing this Complaint –and this Appeal – as she is disclosing violations of law, rules, and agency policy. This law outlaws retaliatory action taken against employees in connection with their protected disclosures. To that end, we would request that you notify responsible managers and supervisors that such reprisals are legally categorized as a "prohibited personnel practice" subject to discipline, up to and including termination.

For all of the reasons articulated above, we believe that not only are there several blatant Information Quality Act violations that remain uncorrected but that these violations are so extensive that rescission of the entire Review is the only appropriate remedy.

Finally, should you concur with our assessment of this matter, we also would ask that you undertake an evaluation of the fitness of Mr. Reynolds and the Regional staff responsible for this Review and his overdue and utterly unpersuasive response to continue in their current positions.

Thank you for your attention to this matter. We look forward to your determination.

Sincerely,



Jeff Ruch
PEER Pacific Director

Cc. Mike Reynolds
NPS Correspondence Control Unit (CCU)

³³ 5 U.S.C. § 2302(b)(8)-(9), Pub.L. 101-12 as amended