April 9, 2014

Dear Protected Resources Division:

We are requesting concurrence from the Protected Resources Division, NOAA Fisheries Service, Southeast Regional Office, that the proposed *Florida Enhancement of Franklin County Parks and Boat Ramps – St. George Island Fishing Pier Improvements* (St. George Island Improvements) project is *not likely to adversely affect* listed species managed by the National Oceanic and Atmospheric Administration (NOAA) in the project area (see project description and list below). The Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (the Service) and other Bureaus, and the Department of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA) are designated natural resource trustee agencies authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal laws to assess and assert a natural resource damages claim for this Oil Spill.

Project Description

The proposed Franklin County St. George Island Fishing Pier Improvements project would enhance the existing public St. George Island Fishing Pier in Franklin County (Figure 1). The approximate center of activity for this project is located at Latitude 29.67278 N and Longitude 84.86833 W identified by the green dot in Figure 1 while Figure 2 provides a more detailed view of the project activity area. The proposed improvements to the pier facility resulting from this project would include constructing new restrooms and a holding tank that would be pumped out regularly since there is no central wastewater treatment facility on the island. The proposed improvements also include completing renovation work to the existing bulkhead that leads up to the pier and protects the road to the pier that was begun under an earlier separate funding stream. In addition, an informational kiosk would be constructed. This kiosk would be used to distribute information describing fishing ethics and litter control and provide contacts and information for specific topics (e.g., hooking a sea turtle).

Constructing the restroom facility at the fishing pier would require excavation to place a 1,500 gallon primary septic and 1,050 gallon overflow tank underneath the buildings. However, this work and the informational kiosk's construction would take place in the developed upland area and have no associated in-water work components. However, as part of the construction activity sediment/erosion controls would be implemented to ensure there are no turbidity impacts to nearby waters. BMPs for erosion control could include but are not limited to the use of staked hay bales, staked filter cloth, sodding, seeding, and mulching; staged construction; and installation of turbidity screens around the immediate project site.

Repair of the approximately 275 foot long section of degraded bulkhead would be performed from upland and in-water locations. In general, the repairs would consist of

removing existing, damaged/collapsed sections of the concrete sheet bulkhead that need to be replaced and placing new sections and constructing a new cap. As part of this work the rip-rap behind the existing bulkhead would be removed along with the degraded sections and then new sections would be placed and the riprap replaced (see Figure 3 for a cross section from the conceptual plans). This construction work would mainly take place using heavy equipment located in upland areas. However, the entire project area would be enclosed by an in-water turbidity barrier that would be secured to shore. Sections of the sheet pile being replaced would likely be push-driven or water jetted most of the way and then impact driven to a minimum of 3' below the mud line, as identified in the conceptual plans. After bulkhead installation, construction crews of two to three persons would install approximately 100 feet of rubber bumpers to the open water side of the bulkhead using hand held tools from a combination of upland areas and work skiffs in the water.

Best management practices (BMPs) for erosion control associated with the bulkhead work would be implemented and maintained at all times during construction to prevent siltation and turbid discharges into waters of the state. Upland silt and sedimentation control measures would be installed and properly maintained at all points where runoff from disturbed areas could result in water quality impacts. This may include the use of filter fences (staked or floating), sedimentation screens, erosion control blankets or other appropriate erosion and turbidity control measures. The in-water use of silt curtains and the dewatering of work areas would further help limit the scope, nature, and extent, of any turbidity impacts. The temporary staging area for the project materials, supplies, and equipment during construction would be located within the existing paved parking lot and material would be loaded directly onto the barge.

During all in-water construction activity, the conditions and guidelines of the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) would be implemented and adhered to. Additional, specific elements associated with implementation of these guidelines are provided below (see *Sea Turtles* component within the following *Effects* section). However, significant aspects of these provisions include stopping operation of any equipment if sea turtles or smalltooth sawfish come within 50 feet of the equipment until the time when animals leave the project area of their own volition.

This project could require up to a year of cumulative in-water work. The Florida Fish and Wildlife Commission (FWC) and Department of Environmental Protection (DEP) recognize that conducting the in-water construction elements of this project from May to September could reduce risk of adverse impacts to Gulf sturgeon as they are generally in freshwater riverine habitats during this period. However, the FWC and DEP currently face considerable uncertainty regarding project implementation timing as a result of multiple sequential factors including: the need to finalize the draft ERP/PEIS, reach agreements on project stipulations with BP, receive initial funding from BP, develop bid and procurement documents and select contractors. As a result of these and other factors, such as the additional cost that would be associated with shutting down projects and

timing issues with other species, FWC and DEP are unable to commit to conducting in-water activities during the period from May to September.

Long-term monitoring and maintenance of the improved facilities, after completion of the project, will be undertaken by Franklin County as part of their regular public facilities maintenance activities. Franklin County will also be responsible for long-term maintenance of the restored bulkhead and will inspect it regularly. Regular pump-out of the holding tank will be contracted out and paid for by Franklin County. In addition in the event of a tropical storm or hurricane the facility's holding tank will be pumped out and the restrooms closed to public use to prevent discharge of sewage into the bay. Franklin County will also be responsible for contracting or control of garbage pick-up and litter control at the site.

Effect of the Proposed Action

As part of the project review process, we carefully reviewed and completed an initial National Marine Fisheries Service Endangered Species Checklist for this project on July 30, 2013. As part of this effort, we reviewed a list of species and their critical habitat that "may be present" within the project area. The 7 species from this list that may be present in the proposed project area, and their status, include:

- Gulf Sturgeon, *Acipenser oxyrinchus desotoi*, Threatened
- Smalltooth Sawfish, *Pristis pectinata*, Endangered
- Green Sea Turtle, *Chelonia mydas*, Endangered
- Loggerhead Sea Turtle, *Caretta caretta*, Threatened
- Hawksbill Sea Turtle, *Eretmochelys imbricate*, Endangered
- Leatherback Sea Turtle, *Dermochelys coriacea*, Endangered
- Kemp's Ridley Sea Turtle, *Lepidochelys kempii*, Endangered

An evaluation of potential impacts to each of these species, and any associated critical habitat areas, follows.

Gulf Sturgeon Critical Habitat

The proposed project intersects Gulf Sturgeon Critical Habitat Unit 13 (Apalachicola Bay Critical Habitat Unit – Federal Register, 2003). Primary constituent elements (PCEs) of Gulf sturgeon critical habitat include: (1) water quality; (2) migratory pathways; (3) Prey items, (4) riverine spawning sites, (5) flow regime, (6) sediment quality, and (7) abundant prey items necessary for normal behavior, growth, and viability of all life stages.

Temporary impacts to water quality could result during repair work on the bulkhead. However, these impacts would be limited in their spatial extent, duration, and severity through the use of the identified BMPs in upland areas as well as the turbidity barrier used to enclose the active project work area. Because any in water work would not expand the current footprint of developed areas or affect the nature of the project's

interface with the Bay the remaining PCEs should be unaffected – specifically prey, flow regimes, migratory pathways, and riverine sites and flow regimes would be unaffected. As a result, the project would not have a detectable or measurable adverse impact on the identified PCEs so the impacts of this project are insignificant to Gulf sturgeon critical habitat.

Gulf Sturgeon

Direct risks to Gulf sturgeon during project activity will be limited to the period of in-water work associated with the use of the barge and in-water work associated with bulkhead repair activity. The extent of this direct risk would be limited in scope and duration. The upland work in the existing developed area associated with the restroom facilities and information kiosk would pose no direct risk to Gulf sturgeon. As a result, the minimal physical extent of the potential in-water work will help reduce risks to Gulf sturgeon. In addition, Gulf sturgeon are mobile and will likely avoid any in-water project work area as a result of noise and activity. However, to minimize risks, the project will be implemented incorporating the guidelines identified within the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) to help to avoid any injury (see *Sea Turtles* section below for complete description of these guidelines). As a result of the limited expected potential for project activity interaction with Gulf sturgeon, and incorporation of the guidelines for minimizing in-water work risks, impacts to Gulf sturgeon are not likely be detectable or measurable so would be insignificant.

Smalltooth Sawfish

Encounter data indicate a resident population of Smalltooth sawfish exists only in southwest Florida (Simpfendorfer and Wiley, 2005). Only scattered individual encounters of species have occurred in areas north of Charlotte Harbor (Norton et al. 2012). In addition, most of the encounters reported from the Panhandle between 2001 and 2006 were associated with sandy beaches or in deeper water (NMFS 2009). Due to the lack of suitable habitat and extremely rare occurrence of Smalltooth sawfish in the project area, exposure to the proposed project is unlikely. In addition, adverse effects due to the proposed project are not likely to be detectable or measurable due to the proposed implementation of NMFS's *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006). Therefore, effects to Smalltooth sawfish due to the proposed project would be insignificant.

Sea Turtles

The project location does not intersect with any identified critical sea turtle habitat (NOAA, 2013). However, the range of sea turtles suggests they could occur in the project area. Florida conducts sea turtle nesting monitoring which provides some indication of sea turtle activity levels in the area. The project area was not directly surveyed, but data exists for the southern beaches on St. George Island. The nesting data are summarized in Table 1 to provide some proxy of potential sea turtle presence in the project area. Figure

4, developed using the state's sea turtle nesting and occurrence reporting system (FWC, 2013), shows the portion of the surveyed beach nearest to the project location (note the surveyed beach is on the ocean side while the project activity is on the bay side of the island).

Table 1. Summary of Sea Turtle Nesting and Occurrence Data from the nearest surveyed beaches to the project area. See Figure 2 for orientation relative to project site

Sea turtle	***Nesting density rank***[a]
Green sea turtles	Low
Loggerhead sea turtles	High
Leatherback sea turtles	Not Present
Sea turtle	***Nesting occurrence data***[b]
Hawksbill sea turtles	Absent
Kemp's ridley sea turtles	Absent

[a] Nesting habitat for these species is ranked based on quartiles of observed density in the state along surveyed reaches of beach based on data from 2008-2012. Low values were in the lower quartile, high values in the highest quartile and the Medium value reflects an observation from the middle two quartiles. Not present indicates no observed nesting from 2008-2012.

[b] The available data from 2008-2012 for these species is summarized only in terms of whether the species nested (i.e., present) or not (i.e., absent) during the period in the surveyed area.

Source. FWC, 2013

The high nesting density for loggerhead on the Gulf side of the island suggests that loggerhead sea turtles, in particular, could enter the project area despite the distance from the openings from St. George Island to Apalachicola Bay and the project site (a minimum distance of 6 miles to the West at Government Cut). However, sea turtles are mobile and will likely avoid the limited project area associated with the bulkhead repairs during periods of in-water work as a result of noise and activity. However, to reduce the risk of adverse impacts to sea turtles, and other species, the best management practices identified within the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) will be implemented during periods of in-water work. These conditions specify the following:

a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.

b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.

c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.

d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.

e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.

f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.

As a result, of the consideration of the possible presence of sea turtles along with the limited scope of in-water work and adherence to relevant construction guidelines, adverse effects to sea turtles due to the proposed project are not likely to be detectable or measurable so would be insignificant.

Determination of Effect

Based upon this review, we conclude the proposed action "may affect, but is not likely to adversely affect" the following protected species and associated critical habitats in the project area:

- Gulf Sturgeon Critical Habitat- The proposed project footprint falls within an identified Gulf sturgeon critical habitat unit (Critical Habitat Unit 13 –

Apalachicola Bay); however, it has been determined that the construction activities associated with this project will not adversely affect the PCE's associated with this habitat or modify designated Gulf sturgeon critical habitat.

- Gulf Sturgeon - The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- Smalltooth Sawfish – The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- Green Sea Turtle - The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- Loggerhead Sea Turtle - The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- Hawksbill Sea Turtle - The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- Leatherback Sea Turtle - The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- Kemp's Ridley Sea Turtle - The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.

References

Federal Register. 2003. 68 Federal Register 13369-13418; Department of the Interior, Fish and Wildlife Service, 50 CFR (Code of Federal Regulations) Part 17; Department of Commerce, National Oceanic and Atmospheric Administration, 50 CFR Part 226. *Endangered and Threatened Wildlife and Plants, Designation of Critical Habitat for the Gulf Sturgeon, Final Rule*. March 19, 2003.

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Norton, Shelley L., Tonya R. Wiley , John K. Carlson , Amanda L. Frick , Gregg R. Poulakis & Colin A. Simpfendorfer (2012) Designating Critical Habitat for Juvenile Endangered Smalltooth Sawfish in the United States, Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science, 4:1, 473-480, DOI: 10.1080/19425120.2012.676606.

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Figures

Figure 1. Location of the St. George Island project.

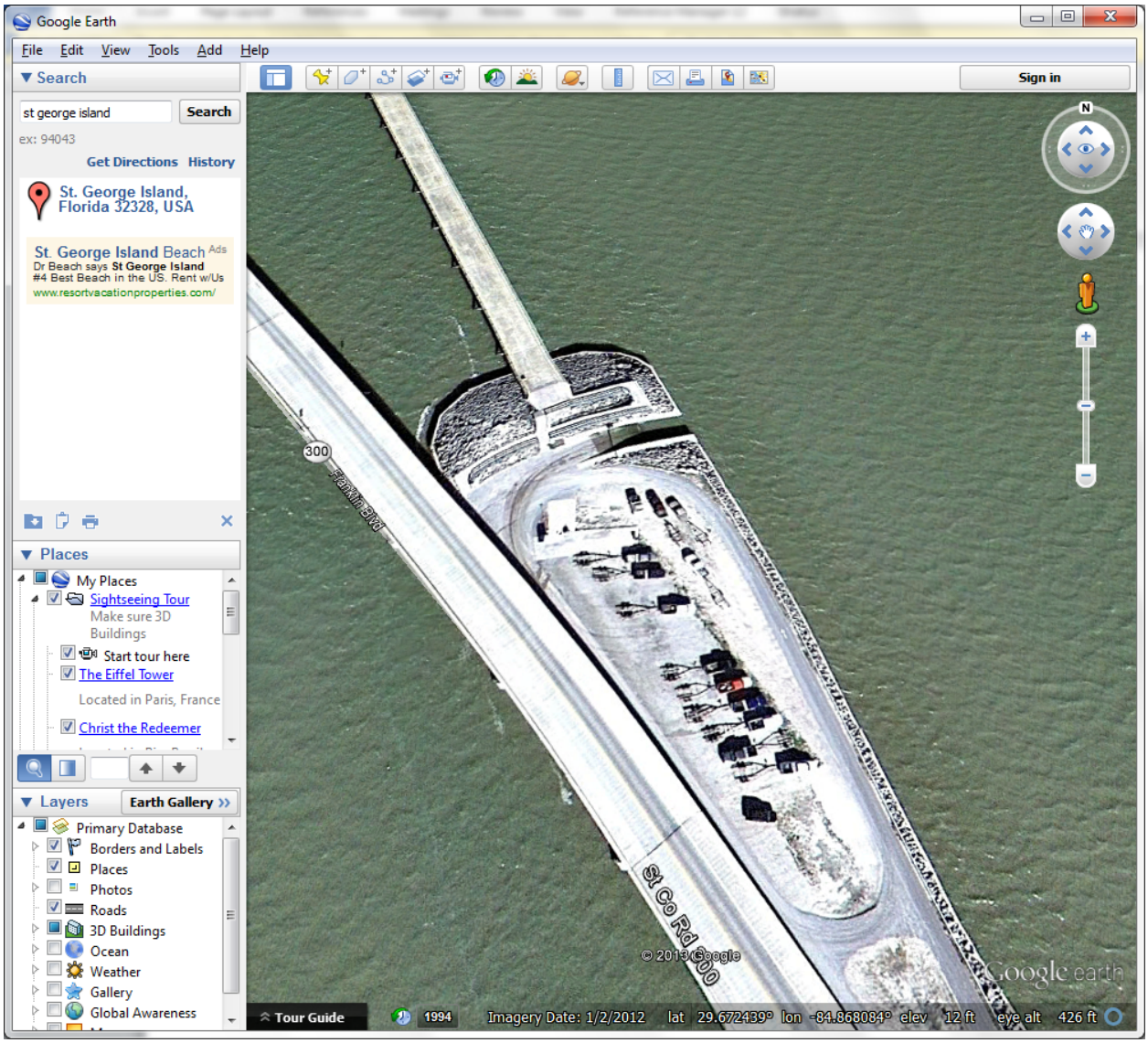

Figure 2. Detailed image showing initial portion of the St. George Island fishing pier and associated parking area.

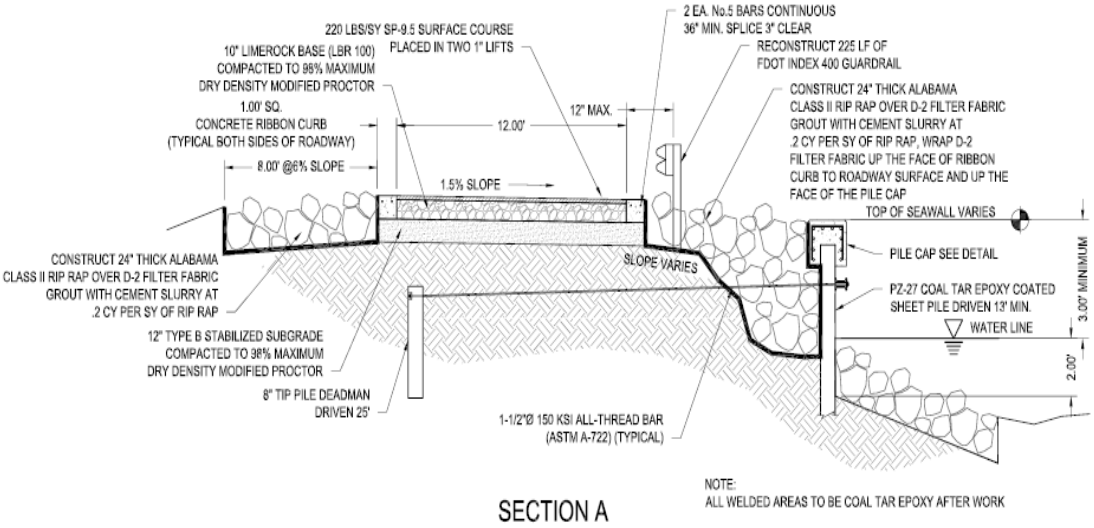

Figure 3. Detailed image from conceptual plans for the bulkhead reconstruction associated with the St. George Island fishing pier.

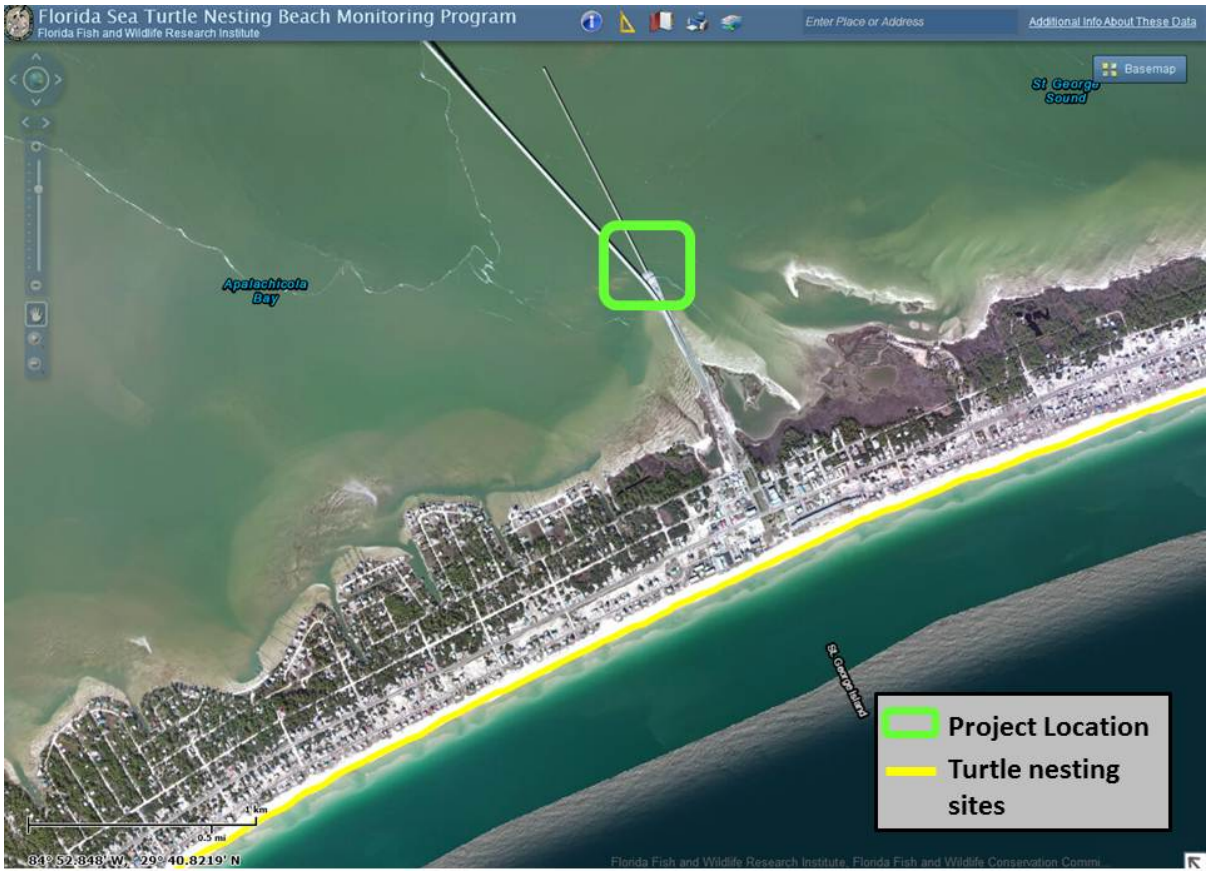

Figure 3. Image showing potential nesting locations for sea turtles relative to the project location.