January 31, 2014

Dear Protected Resources Division:

We are requesting concurrence from the Protected Resources Division, NOAA Fisheries Service, Southeast Regional Office, that the proposed *Florida Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements – Cash Bayou* (Cash Bayou) 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 Florida project would improve public access at Cash Bayou in the Apalachicola River Wildlife and Environmental Area. The general location of this activity is identified in Figure 1. The proposed improvements include constructing a roughly 700' (i.e., 35' by 20') fishing and wildlife observation structure (see Figure 2 for an example of such a structure) and a parking area with an entrance kiosk and information station along State Route 65 in the area generally to the East of the bridge that crosses Cash Creek (see Figure 1). Final designs have not been prepared but during a site visit in January, 2014 it was discussed that the parking area and area with the fishing and wildlife observation structure could be developed in nearby but separate areas along State Route 65 because of space constraints. While, the design and exact location for each of the above-mentioned aspects is not yet known, the maximum footprint needed for the sum of all the projects is approximately 1.5 acres. The approximate center of activity for this project, focused on the Cash Creek site where the wildlife observation fishing structure would be developed, is located at Latitude 29.81896 N and Longitude 84.84994 W, which is approximately marked by the green dot in Figure 1. Figure 3 provides a view from the proposed site of the fishing and wildlife observation structure.

The construction of fishing structure and elevated wildlife viewing structure would be sited along the bank of Cash Bayou based upon a wildlife viewing analysis of the site. The proposed structure is expected to disturb approximately 0.2 acre. Construction of the fishing and wildlife viewing structure would require some limited in-water work to place pilings for the structure along the creek. Because a limited number of pilings would need to be placed and based on conditions at the site it is anticipated that placement could occur from land. During the rest of the construction process typical site maintenance BMPs (e.g., hay bailing to control runoff, fueling vehicles and equipment away from the water) will be followed to avoid impacts to the aquatic environment.

Basis for Conclusion of "Not Likely to Adversely Affect"

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 6 species from this list that may be present in the proposed project area, and their status, include:

- Gulf Sturgeon, *Acipenser oxyrinchus desotoi*, Threatened
- 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 that intersect the proposed project activity area, follows.

Gulf Sturgeon

The project location along Cash Creek is located outside of identified Gulf Sturgeon critical habitat units. As a result, of the limited spatial extent of the in-water activity and its anticipated limited duration there is a reduced expectation of encountering Gulf sturgeon. Further, Gulf sturgeon are mobile so any in the project area during the period of piling placement would likely relocate to avoid the noise and activity. However, during in-water construction activity, the best management practices identified within the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) will be implemented to help to avoid injury (details of conditions provided in *Sea Turtle* section below). As a result of the limited expected presence of Gulf sturgeon and the incorporation of the BMP's during in-water construction activity, direct impacts to Gulf sturgeon are not likely to be detectable or measurable so would be insignificant.

Sea Turtles

The project location does not intersect with any identified critical sea turtle habitat. However, the range of sea turtles suggests they could generally 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 St. George Island, which is over 10 miles away. 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.

Table 1. Summary of Sea Turtle Nesting and Occurrence Data from the nearest surveyed beaches to the project area (St. George Island ~13 miles away. See Figure 4 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 information in Table 1 indicates the high expected presence of loggerheads at the nearest surveyed beach. However, because of the distance of the surveyed nesting beach from the project site and the specifics of the project location (i.e., on a tidally influenced creek) suggests sea turtle presence would be significantly lower in the project area. Sea turtle exposure to the project would also be unlikely given the limited extent and duration of the anticipated in-water construction activity. However, to reduce the risk of adverse impacts 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, 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 - 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

Florida Fish and Wildlife Conservation Commission (FWC). 2013. Statewide Atlas of Sea Turtle Nesting Occurrence and Density. http://www.myfwc.com/research/wildlife/sea-turtles/nesting/nesting-atlas/ Accessed November 4, 2013.

NOAA. 2006. Sea Turtle and Smalltooth Sawfish Construction Conditions. http://sero.nmfs.noaa.gov/pr/endangered%20species/Sea%20Turtle%20and%20Smalltooth%20Sawfish%20Construction%20Conditions%203-23-06.pdf Accessed July 16, 2013.

Figures

Figure 1. Location of the Cash Bayou project.

Figure 2. Example of a Fishing and Wildlife Viewing Structure similar to that planned for Cash Bayou.

Figure 3. Approximate location of planned fishing and wildlife viewing structure on Cash Creek (photo looking roughly Northeast to bridge on State Route 65).

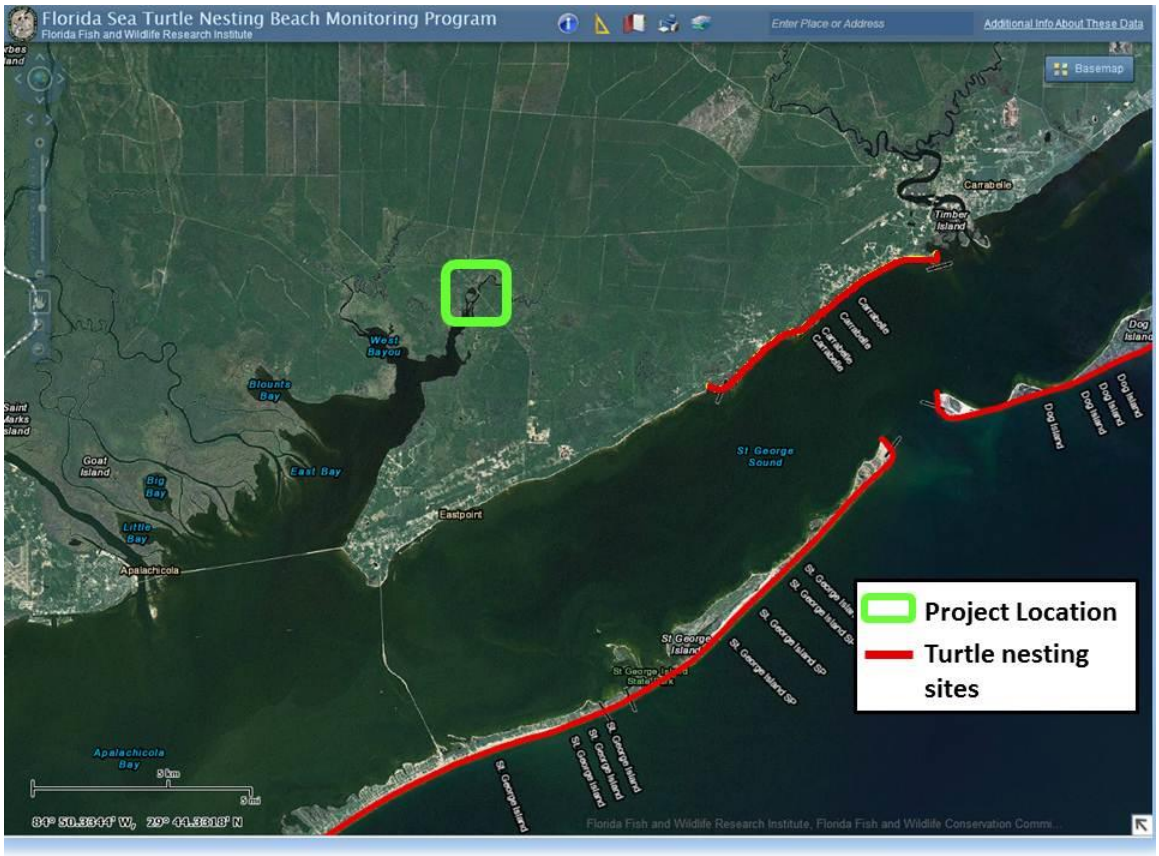

Figure 4. Image showing potential nesting locations for sea turtles relative to the project location.