February 7, 2014

Dear Protected Resources Division:

We are requesting concurrence from the Protected Resources Division, NOAA Fisheries Service, Southeast Regional Office, that the proposed *FWC Strategic Boat Access: City of Mexico Beach Marina* (Mexico Beach Marina) 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 Mexico Beach Marina project would improve the existing City of Mexico Beach Marina. Figure 1 illustrates the project area. The approximate center of activity for this project is located at Latitude 29.95297 N and Longitude 85.42965 W, marked by the green dot in Figure 1. Figure 2 provides a map with details for the action area within the marina.

More specifically, the proposed project consists of constructing a 1,700 LF steel sheet pile retaining wall approximately 2 feet in front of the existing wooden retaining wall on the northern and western side of the canal. Approximately 440 cubic yards of clean fill material (free of vegetative material, trash, garbage, toxic or hazardous waste or any other unsuitable materials) would be used to fill between this new retaining wall and the shore. This retaining wall work would address the leaking of sand from behind the current retaining wall into the canal. As part of this work, the existing boardwalk dock running along the current retaining wall would be removed and replaced with a concrete sidewalk located behind the proposed new steel sheet pile retaining wall. This would allow for an increase in the boardwalk width to 6'. The project would also include replacing 18 existing finger piers and creating 8 new finger piers that would be located along the northern and western edge of the canal. The existing 18 piers that would be replaced would be 16 feet long and 3 feet wide with a terminal piling being installed 19.5 feet from the canal edge. The boat slips would be 35.5 feet long. This would enhance 36 of the existing 55 boat slips in the marina.

This work would be performed from both upland and barge locations within the canal. During construction, turbidity barriers would be installed with weighted skirts that extend to within one foot of the bottom around all work areas that are in, or adjacent to, surface waters. These turbidity barriers would remain in place and be maintained until the authorized work has been completed and all erodible materials have been stabilized. Similarly, best management practices for erosion control would be implemented and maintained in upland areas at all times during construction to prevent siltation and turbid

discharges into surface waters. Methods for this control would include but are not limited to the use of staked hay bales, staked filter cloth, sodding, seeding, and mulching; and staged construction. The erosion control measures would remain in place and be maintained until all authorized work is completed and the site has been stabilized.

The specific methods to be used for the placement of the new sheet piling for the retaining wall and for the placement of pilings associated with the piers have not been determined and would be finalized in the final project design. In selecting appropriate methods there will be an emphasis on selecting the least disruptive method possible (e.g., water jetting) while also taking account of available measures to limit the noise impacts of the placement (e.g., bubble curtains) while also addressing engineering and equipment constraints. Development of final plans will also incorporate the guidance and requirements set forth in the *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat* (U.S. Army Corps of Engineers/National Marine Fisheries Service, 2001) should an SAV survey indicate sea grasses are located in the project area for the proposed pier work. Among other impacts, implementing these guidelines would require pilings for the dock expansion be placed a minimum of 10 feet apart.

During all in-water work, including transit to the project site, the measures within the *Vessel Strike Avoidance Measures and Reporting for Mariners* relevant for this project would be implemented. These measures, addressing vessel strike avoidance and reporting injured or dead animals, include:

Vessel Strike Avoidance
In order to avoid causing injury or death to marine mammals and sea turtles the following measures should be taken when consistent with safe navigation:

1. Vessel operators and crews shall maintain a vigilant watch for marine mammals and sea turtles to avoid striking sighted protected species.

2. When whales are sighted, maintain a distance of 100 yards or greater between the whale and the vessel.

3. When sea turtles or small cetaceans are sighted, attempt to maintain a distance of 50 yards or greater between the animal and the vessel whenever possible.

4. When small cetaceans are sighted while a vessel is underway (e.g., bow-riding), attempt to remain parallel to the animal's course. Avoid excessive speed or abrupt changes in direction until the cetacean has left the area.

5. Reduce vessel speed to 10 knots or less when mother/calf pairs, groups, or large assemblages of cetaceans are observed near an underway vessel, when safety permits. A single cetacean at the surface may indicate the presence of submerged animals in the vicinity; therefore, prudent precautionary measures should always be exercised. The vessel shall attempt to route around the animals, maintaining a minimum distance of 100 yards whenever possible. NMFS Southeast Region

Vessel Strike Avoidance Measures and Reporting for Mariners; revised February 2008.

6. Whales may surface in unpredictable locations or approach slowly moving vessels. When an animal is sighted in the vessel's path or in close proximity to a moving vessel and when safety permits, reduce speed and shift the engine to neutral. Do not engage the engines until the animals are clear of the area.

Injured or Dead Protected Species Reporting

Vessel crews shall report sightings of any injured or dead protected species immediately, regardless of whether the injury or death is caused by your vessel.

Report marine mammals to the Southeast U.S. Stranding Hotline: 877-433-8299

Report sea turtles to the NMFS Southeast Regional Office: 727-824-5312

If the injury or death of a marine mammal was caused by a collision with your vessel, responsible parties shall remain available to assist the respective salvage and stranding network as needed. NMFS' Southeast Regional Office shall be immediately notified of the strike by email (takereport.nmfsser@noaa.gov) using the attached vessel strike reporting form.

In addition, 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 (the specific conditions associated with these guidelines are presented below in the *Sea Turtles* component of the *Effect* section).

The project is anticipated to be completed within two years of its start with a realistic timeline of 6 months to a year, unless severe weather delays construction.

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

The project location is located outside of identified Gulf sturgeon critical habitat units (Federal Register, 2003) but is near part of Critical Habitat Unit 11 (Florida Nearshore Gulf of Mexico Critical Habitat Unit). The navigation channel for the Mexico Beach Inlet, which includes the canal and marina were constructed in roughly 1960 by local interests (US Army Corps of Engineers, 1989). The habitat in this area has already been extensively modified as a result of the original canal expansion; maintenance work, including canal dredging; and the proposed action would take place within this modified footprint. Considering the limited scope of the activity relative to the size of Critical habitat unit 11 which runs along the shore from the FL-AL border through Gulf County, FL, the project will have no impact on this Critical Habitat Unit, particularly considering the control measures that will be incorporated as part of the construction.

While Gulf sturgeon could enter the marina area, the noise and consistent activity from the boat operations and lack of any outlet or freshwater connection to the canal may make their presence less likely. In addition, Gulf sturgeon are mobile, so any in the project area during the period of sheet piling placement for the retaining wall or placement of the pilings for the boat slips would likely relocate to avoid the noise and activity. Finally, the project will be implemented incorporating the best management practices identified within the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) to help to avoid injury (described in detail below in *Sea Turtles* section). As a result of the potentially limited expected presence of Gulf sturgeon and incorporation of the BMP's during in-water construction activity suggests direct impacts would 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 and the nearby presence of a proposed nearshore reproductive loggerhead critical habitat area (LOGG-N-32) suggests they could occur in the project area although the lack of suitable nesting habitat and the turtles'

ability to avoid the general activity in the project area with the ramp may make this less likely during active construction periods while recognizing the aquatic habitat in question is not a natural habitat area (US Army Corps of Engineers, 1989). The proposed construction activities will have no impacts on this critical habitat.

Florida conducts sea turtle nesting monitoring which provides some indication of sea turtle activity levels in the area. The project area for the boat ramp was not directly surveyed, but data exists for nearby Mexico Beach and is summarized in Table 1 to provide some proxy of potential sea turtle presence in the project area. Figure 3, developed using the state's sea turtle nesting and occurrence reporting system (FWC, 2013a), 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 (Mexico Beach -see Figure 2 for orientation relative to project site)

Sea turtle	***Nesting density rank***[a]
Green sea turtles	Not present
Loggerhead sea turtles	Medium
Leatherback sea turtles	Low
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, 2013a

Sea turtles are mobile and will likely avoid the project area 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 adherence to relevant construction guidelines and vessel strike avoidance measures, 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.

- 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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U.S. Army Corps of Engineers/National Marine Fisheries Service. 2001. *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat.* August.

Figures

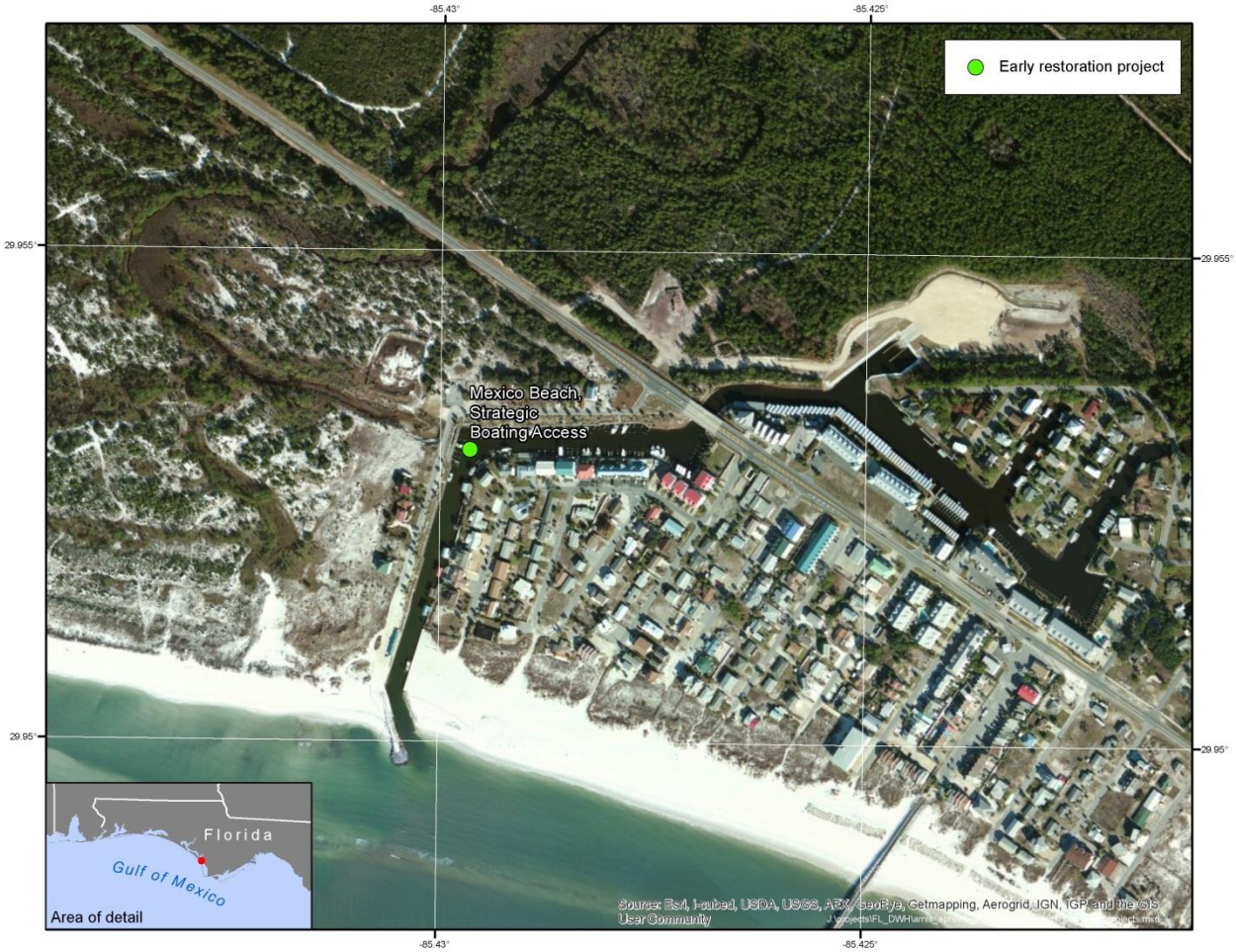

Figure 1. Location of the FWC Strategic Boat Access: Mexico Beach Marina project.

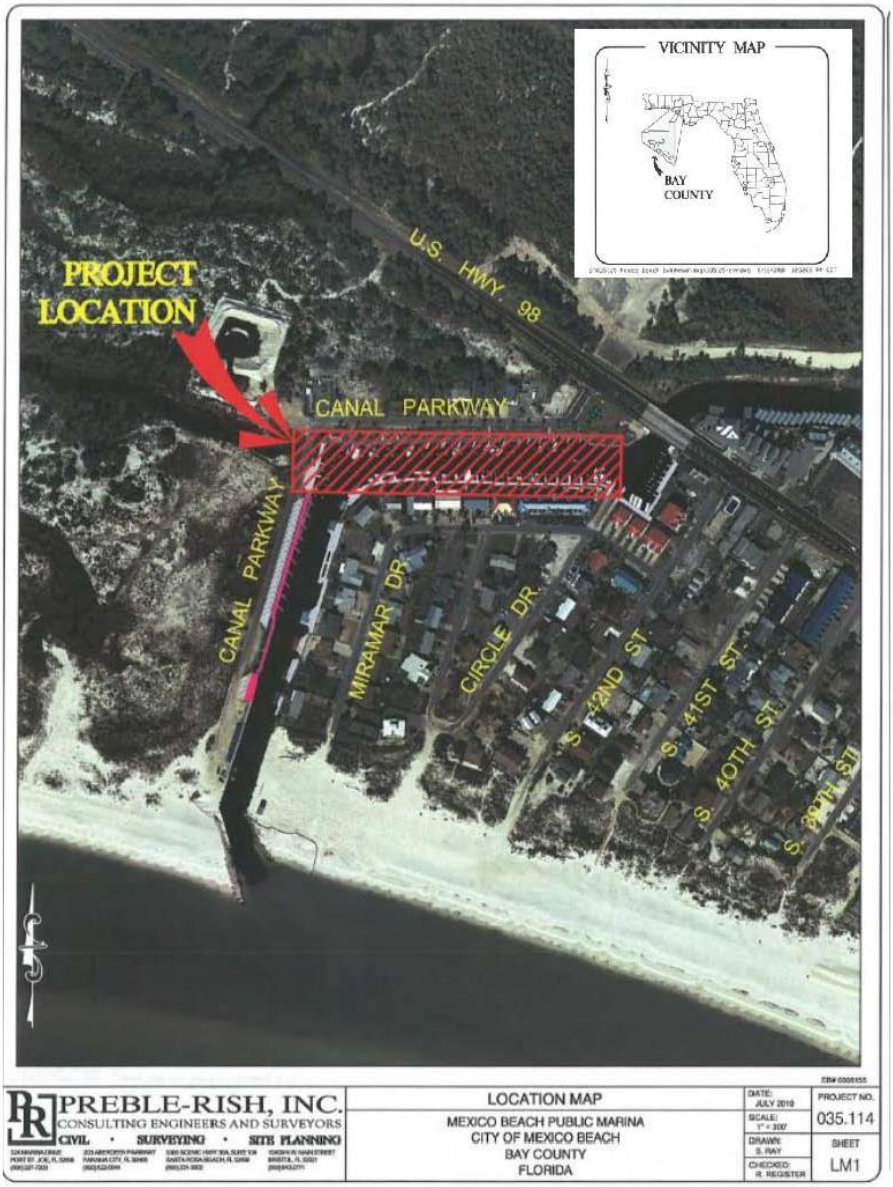

Figure 2. Project details for City of Mexico Beach Marina action

Figure 3. Image showing the turtle nesting locations for sea turtles. Only loggerhead and leatherback sea turtles have been found to nest near the locations highlighted in yellow.