February 7, 2013

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 – Indian Creek Park* (Indian Creek Park) 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 Indian Creek Park project would improve the existing Indian Creek Park boat launch facility at North Bayshore Drive in Franklin County. The proposed improvements include constructing restroom facilities and connecting them to an existing central wastewater facility nearby, installing an informational kiosk, and renovating the existing boat ramp, bulkhead, and parking area to enhance water access. Figure 1 illustrates the general project location. The approximate center of activity for this project is located at Latitude 29.73873 N and Longitude 84.90052 W, marked by the green dot in Figure 1. Figure 2 provides a closer view of the project area and with a pin indicating the location of the boat ramp. The park and boat ramp are less than a half mile from the State Route 98 bridge to the South that connects Eastpoint to Apalachicola in an area off.

The restroom facilities would be constructed away from the shoreline in a developed area of the park to ease access to the water/wastewater utility connections.

While final plans have not been developed for this project, the construction work associated with repairs/replacement of a boat ramp can be summarized in terms of executing a number of specific tasks and subtasks including:

Task 1. Site Preparation

a. Prior to beginning any waterward work at the boat ramp site the project area needs to be surveyed and marked. Turbidity curtains are then installed to encapsulate the work area and other erosion control methods are put in place on the landward side of the project (e.g., placement of hay bales) to prevent erosion into the water from equipment movement and any work being performed on the upland areas.

Task 2. Ramp Repairs/Construction

a. The area for the ramp is surveyed in and marked by stake or pole (typically small diameter 2" or less PVC).
b. A coffer or bladder dam is installed and the water within the dam, between the waterward extent of the ramp and the land, is pumped out to upland storage ponds or run through a filter system to remove any sediment in the water before returning it to the receiving waterbody. The work area is kept dry by use of dewater pumps (ground water to be pumped is first sampled and tested for water quality) and disposed of in the same manner as the pumped surface water. This dewatering operation is run continuously throughout the construction of the ramps. Once the ramps are completed the dewatering pumps are shut down and the dams are removed.
c. Construction of the ramps begins once the area is sufficiently dry to remove unsuitable soils, if necessary, and replaced with suitable soil. This soil is then compacted to specification. Then the base material for the ramp is placed, usually a rock material. After placement and compaction of the base the ramp is formed, reinforcing steel placed and then the concrete poured and finished. Once curing of the concrete is complete the forms are removed and the coffer or bladder dams are removed.

Task 3. Monitoring

a. Every day, before the start of construction activities, the turbidity screen is checked and repaired if necessary.
b. The foreman or other designated individual checks the area inside the screen and the screen itself to see if any protected species (manatees, dolphins, small tooth sawfish etc.) have gotten trapped within the work area or in the screen. If so then appropriate (FWC) personnel are notified to request removal. No work is begun until the animal, fish or bird is removed.
c. During the work day the work area and area adjacent to the work are is monitored to make sure protected species have not ventured into the area. If so then work is stopped until the animal moves out of the area.
d. At the end of the day the area is checked for debris, sediment and possible spillage and these are properly removed and disposed of before shutting down the site.
e. If a storm is anticipated that might damage the turbidity screen it is removed and stored until the storm event has passed and seas have resided.

Similarly, plans for the bulkhead work have not been finalized but are likely to involve some combination of removing parts of the existing, failing, concrete structure and then rebuilding the bulkhead using isolated concrete forms to meet the final design specifications. In water work for the bulkhead repairs would also incorporate the use of silt curtains to limit turbidity impacts with some areas potentially requiring isolation and dewatering similar to the steps described for the boat ramp repairs. Neither the boat ramp or bulkhead repairs would involve the placing of pilings.

Critically, during any 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. 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 (the full scope of these conditions is described in the *Sea Turtle* component of the *Effects* section below). This work would not expand the developed footprint of the finished ramp and bulkhead.

Best management practices (BMPs) for erosion control would be implemented and maintained at all times during construction to prevent siltation and turbid discharges into waters of the state. This may include the use of filter fences (staked or floating), sedimentation screens, erosion control blankets or other appropriate erosion and turbidity control measures.

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 (6) abundant prey items necessary for normal behavior, growth, and viability of all life stages.

Temporary impacts to water quality could result from the boat ramp and bulkhead repair/construction work. However the use of turbidity curtains for any in water work would limit the potential for adverse water quality impacts from increased turbidity. BMPs to control erosion from the land during the upland restroom construction and parking area improvements will similarly limit the potential nature, duration, and severity of any turbidity impacts from the upland work. In particular, should the impermeable area

of the site increase as a result of the construction and parking area improvements a stormwater plan would be required for the project. 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 water's 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 by the isolation and dewatering of the ramp construction area, should the repairs extend to the in-water portion of the ramp (see Task descriptions above). In contrast, there are not expected to be direct risks associated with the bulkhead repairs because of the isolation of the work areas through the use of the turbidity curtains and/or dewatering. Work on the parking lot and restrooms would pose no direct risk to Gulf sturgeon from their upland locations. 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 in-water work 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 for the boat ramp was not directly surveyed, but data exists for St. George Island, which is approximately 5.5 miles away. The nesting data are 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, 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 ~5 miles away. 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

Table 1 suggests that some species of sea turtles, specifically Loggerheads, are more likely to be present in the general area of the project than others. However, the project location near a major bridge East Bay and the distance from the outer barrier islands may limit the presence of sea turtles generally. Additionally, 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 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 9 – Pensacola 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 may project 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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Simpfendorfer, C.A. and T.R. Wiley. 2005. Determination of the distribution of Florida's remnant sawfish population and identification of areas critical to their conservation. Final Report. Florida Fish and Wildlife Conservation Commission, Tallahassee, Florida.

Figures

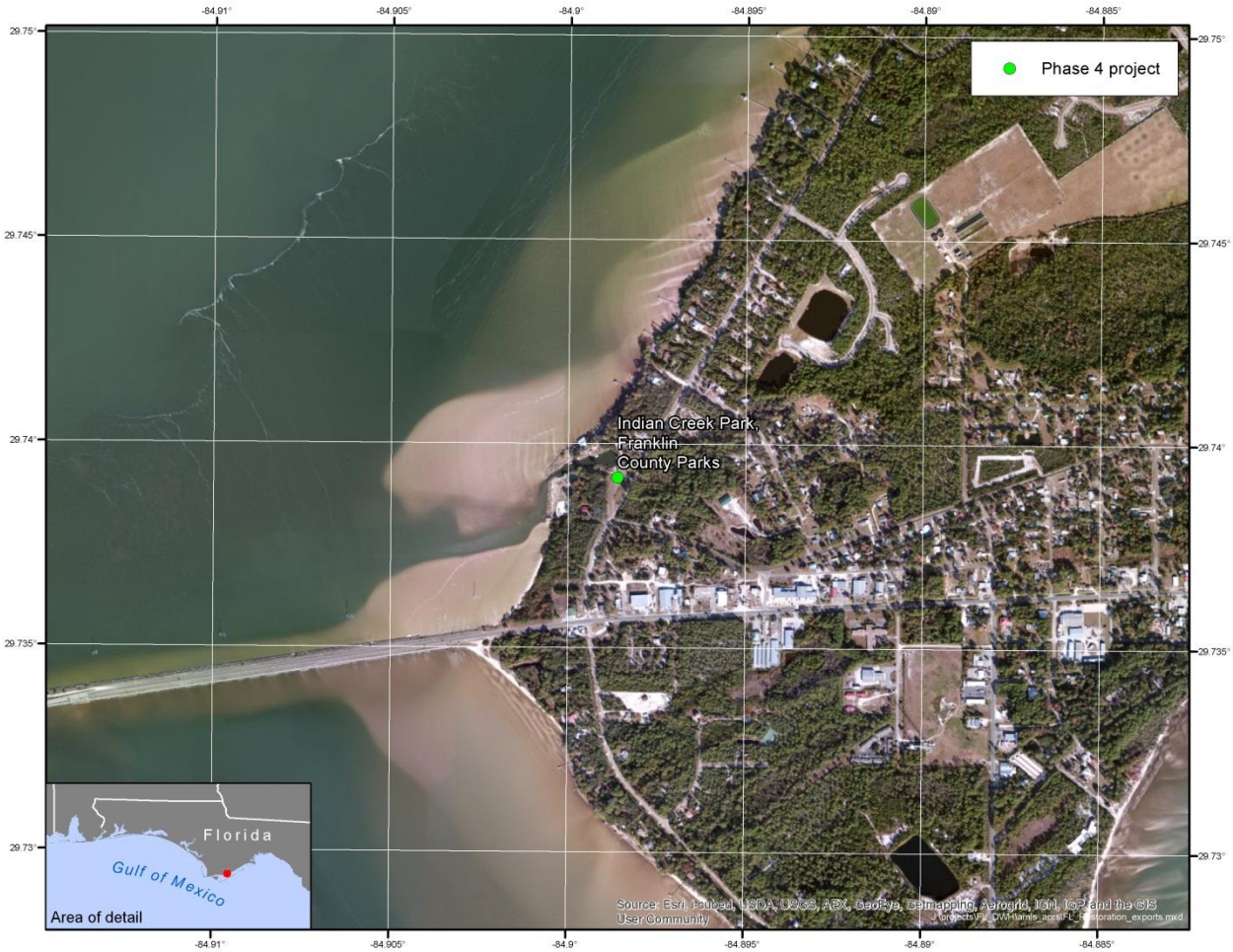

Figure 1. General location of the Indian Creek Park project.

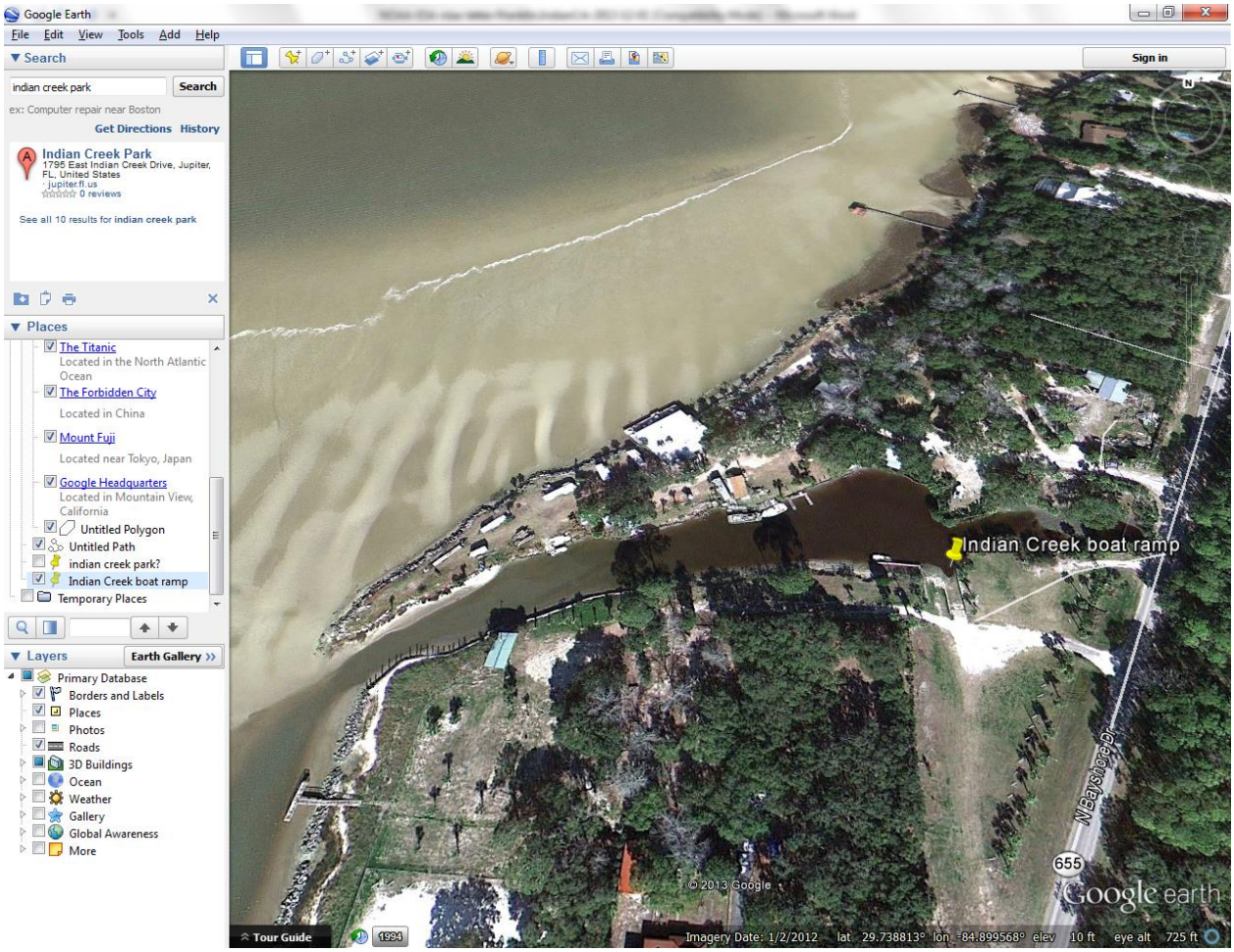

Figure 2. Detailed location of the Indian Creek Park project.

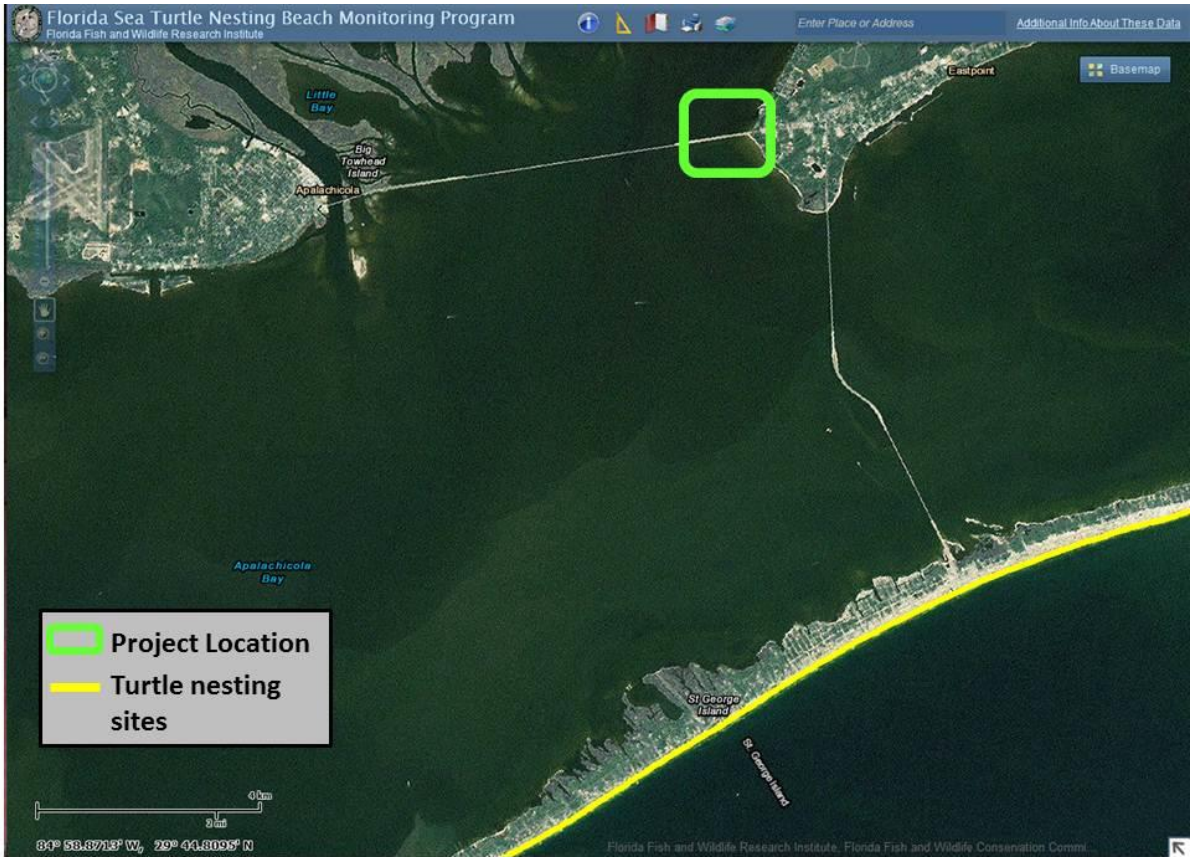

Figure 2. Image showing potential nesting locations for sea turtles relative to the project location.