February 10, 2014

Dear Protected Resources Division:

We are requesting concurrence from the Protected Resources Division, NOAA Fisheries Service, Southeast Regional Office, that the proposed *Florida Navarre Beach Park Coastal Access Project* (Navarre Beach 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 Florida Navarre Beach Park Coastal Access project would construct new infrastructure to increase the public's opportunities to safely access coastal resources including the beach and waters of Santa Rosa Sound. The project includes design and construction of two new beach access boardwalks from existing pavilion/parking lot areas to the Santa Rosa Sound. Additionally, a new kayak/canoe launch would be constructed to increase opportunities/access for recreational boating in the waters of the Sound, and would be approximately 542 sq. ft. The approximate center of activity for this project is located at Latitude 30.38412 N and Longitude 86.85917 W, marked by the green area in Figure 1.

The project would also restore a roughly 1 acre area of degraded dune habitat to enhance the recreational experience by helping return the area to a more natural state. This restoration would involve planting gaps in the existing dune within the project area. All plants would be grown from seeds or cuttings from the Alabama or North Florida coast to ensure appropriate genetic stocks are used in the project. See Figure 2 for a conceptual design of the proposed project highlighting the new access structures and the area for dune restoration footprint.

The extent of the in-water work with the project is limited to the construction of the new canoe-kayak launch. Final project plans, including plans for this launch have not been developed. However, the conceptual designs in Figure 2 indicate this launch could be 80-120 feet long based on the relative length of the pier to structures that are already in place and measurable (e.g., the parking lot). Pilings would need to be placed to support the new kayak/canoe launch but the exact number and location have not been determined pending final design. Final design and location of the pier would reflect, among other things, the results of a submerged aquatic vegetation (SAV) survey in the potential placement areas. This survey typically involves an initial review of aerial photos and existing seagrass maps. Initial results are then confirmed with an onsite visual survey typically conducted from a boat. In areas with visibility issues the assessment may involve attaching a small

rake head to a line and dragging it through the area of interest to see if seagrasses are present. Snorkel assessments would then be used to verify results.

The techniques used to place any additional pilings would be determined based on an engineering assessment of the site requirements while taking into account which options would minimize disruption to the aquatic environment including available BMPs (e.g., use of bubble curtains). Should SAV be identified in the potential project area where pilings would need to be placed, the conditions 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) would be implemented. Among other elements this would require pilings for the canoe/kayak launch be placed a minimum of 10 feet apart.

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 the *Sea Turtles* component within the following *Effect* 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.

BMPs for erosion control in upland areas would also be implemented and maintained at all times during construction periods to prevent siltation and turbid discharges into surface waters that could adversely impact water quality. Methods 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.

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 10 (Santa Rosa Sound 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 the placing of the pilings for the canoe/kayak launch. However, these impacts would be limited in their spatial extent, duration, and severity with the selection of a placement method attempting to identify the least impactful, feasible option. BMPs to control erosion from the land during the upland construction and parking area improvements will similarly limit the potential nature, duration, and severity of any turbidity impacts (potential control measures are described above). Because of the limited nature of the in water work with respect to the area of the critical habitat unit, especially as the launch would not support use of motorized watercraft, we would expect the remaining PCEs to be unaffected. Specifically, Gulf sturgeon prey, flow regimes, migratory pathways, and riverine spawning sites in the critical habitat unit would not be affected by the placement of the proposed canoe/kayak launch. 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 placement of pilings. Consequently, the extent of this exposure would be limited in scope and duration. As a result, the relatively minimal physical extent of the potential in-water work will help reduce risks to Gulf sturgeon. Perhaps as important, 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 reducing potential risks from 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 general project area. Florida conducts sea turtle nesting monitoring which provides some indication of sea turtle activity levels in the area. The southern facing beach of Santa Rosa Island was directly surveyed, and 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 (See Figure 3 for orientation relative to project site)

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

[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 distance of the project site to the Gulf side openings on Santa Rosa Island, roughly 20 miles to the East in Destin and 25 miles to the West in Pensacola, suggest sea turtles may be less frequently encountered in the project area. 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 10 – Santa Rosa Sound); 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

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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

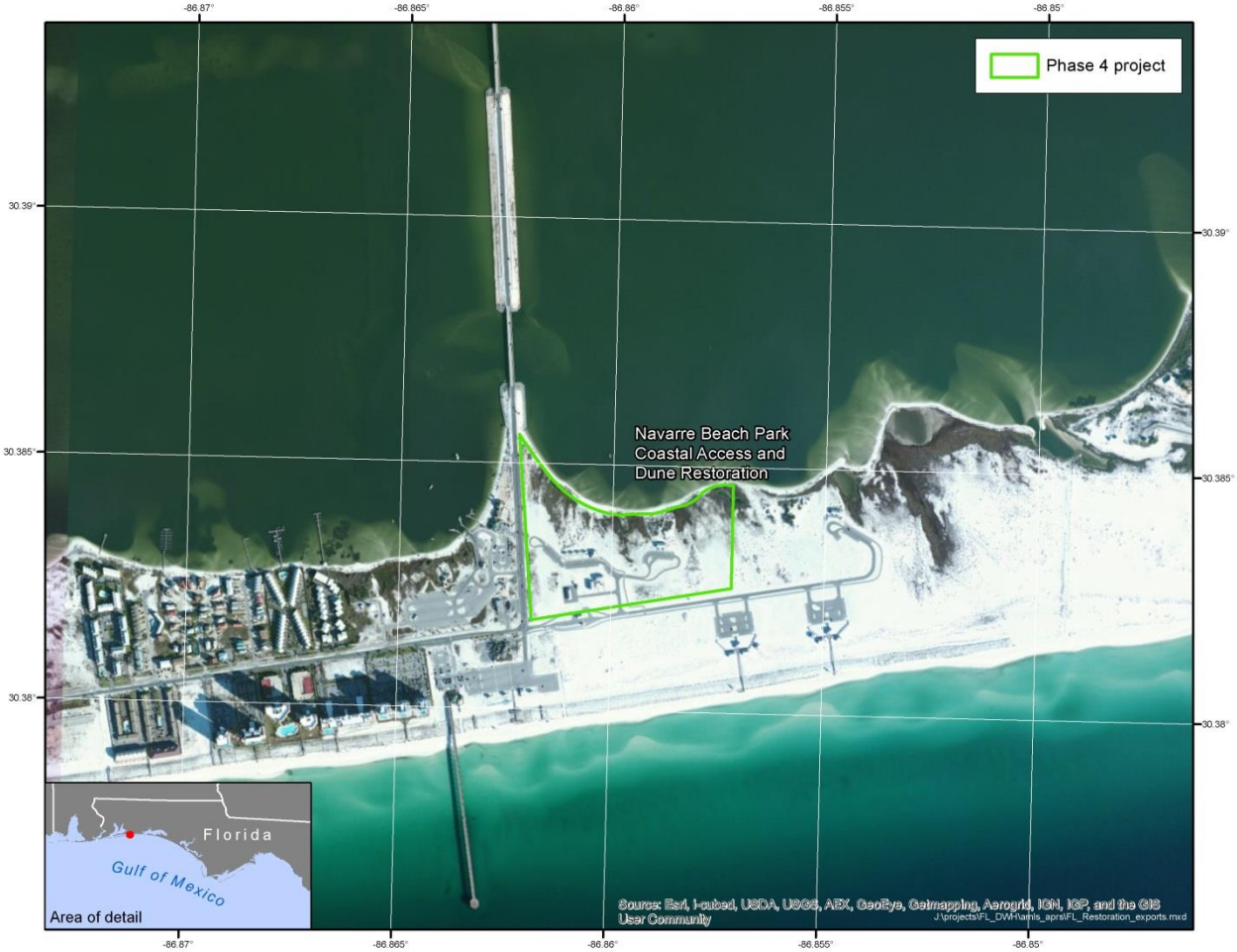

Figure 1. Location of the Navarre Beach Park project.

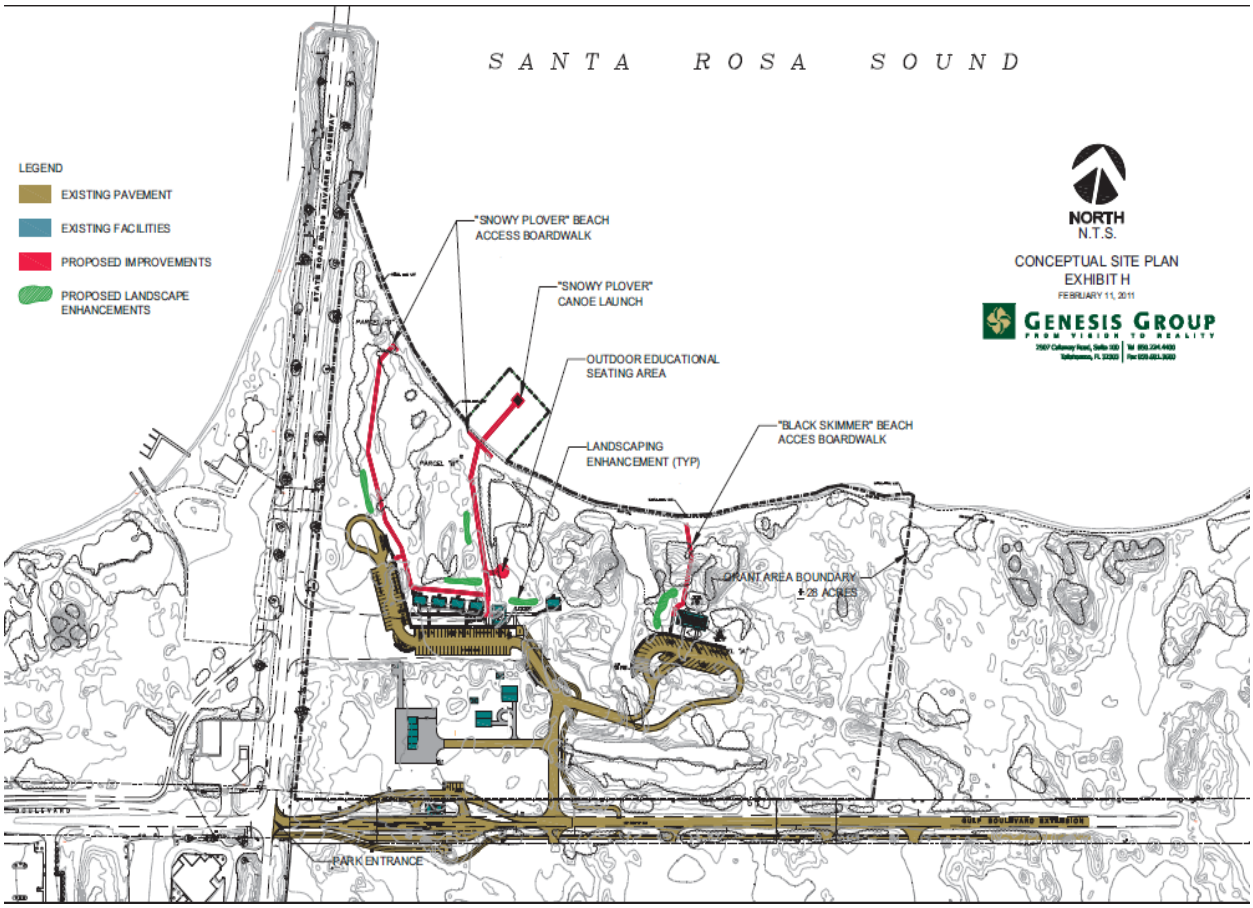

Figure 2. Conceptual plan for the proposed Navarre Beach Park Coastal Access Project.

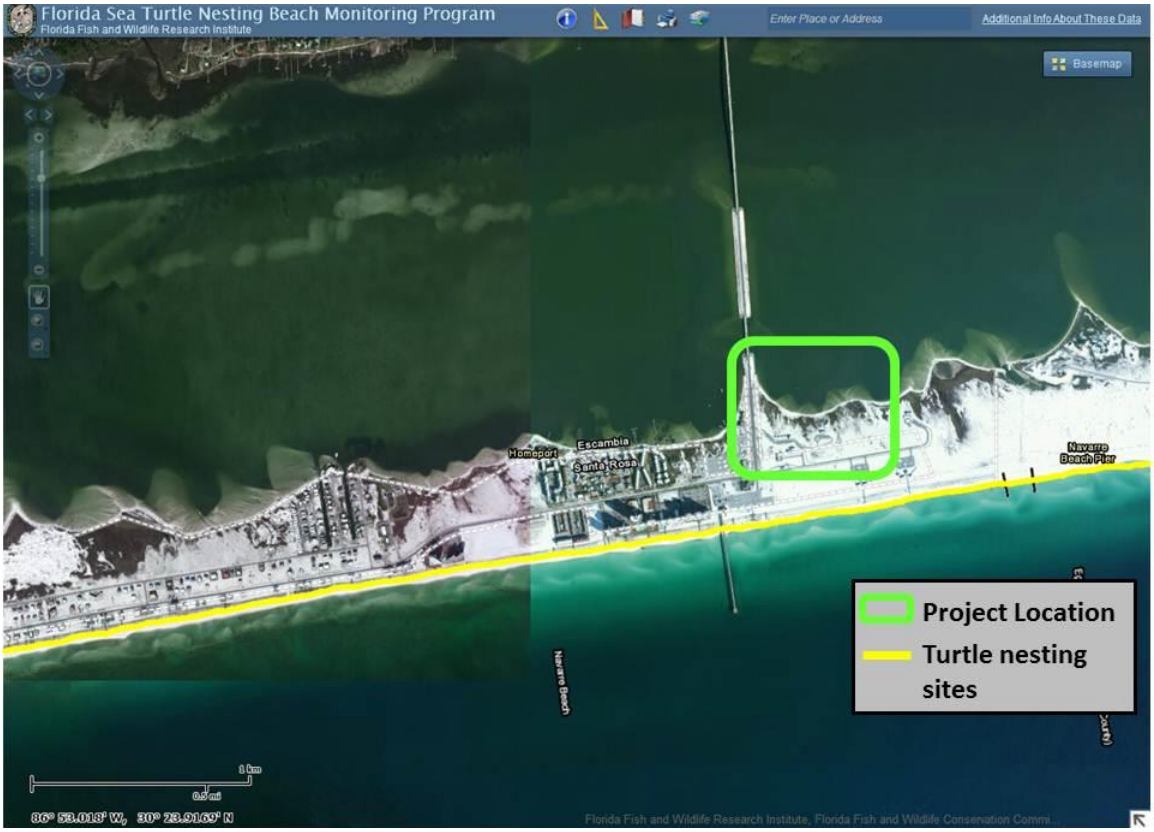

Figure 3. Image showing potential nesting locations for sea turtles relative to the project location.