January 30, 2014

Dear Protected Resources Division:

We are requesting concurrence from the Protected Resources Division, NOAA Fisheries Service, Southeast Regional Office, that the proposed *Florida Wakulla County Mashes Sands Park Improvements* (Mashes Sands 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 Wakulla County Mashes Sands Park Improvements project would improve recreation areas at the Wakulla County Mashes Sands Park. The proposed improvements include constructing observation platforms, boardwalks, and walking paths; improving the boat ramp area (excluding work on the boat ramp itself) and picnic areas; renovating the parking area and the restroom facility; and constructing a canoe/kayak launch site. Figure 1 defines the project area for this work. The in-water aspect of this project would be limited to the work associated with the canoe/kayak launch. Currently, this activity is anticipated to take place at the northern terminus of the road that defines the northern end of the project area in Figure 1. This activity is located at approximately Latitude 29.97478 N and Longitude 84.34626 W in Figure 1 along the tidally influenced waterway at the end of the road.

Detailed construction methods and plans for the entire have not yet been fully developed and would be subject to the final design and contractor approach. Proposed construction includes upland observation platforms, boardwalks, and walking paths. Additional components include boat ramp area improvements such as picnic areas, renovations to parking and the restroom facility, and development of a canoe/kayak launch site. A range of hand tools and heavy construction equipment would be used to complete this project. Activities include grading, digging holes to place pilings or foundations for new structures, and removing old or damaged material from existing structures.

In upland areas without any connection to the water, pilings would need to be placed for the upland observation platforms and boardwalks and, depending on the nature of repairs required to picnic areas, they may be needed in those areas as well. Pilings would most likely be placed by mechanically auguring holes to place pre-formed pilings or to place forms that would be filled with pumped concrete to produce new pilings. The size and depth of the pilings would be approximately 1 to 2 feet in diameter, but the final size would depend on the engineering design requirements.

Construction materials would need to be staged in the project area; this would likely be accomplished in existing disturbed areas (e.g., parking lot areas). Construction Best Management Practices (BMPs) are as follows:

- All construction would be performed in accordance with all local, state, and federal requirements and all requirements of permits obtained so as to protect the surrounding vegetation and natural condition.
- The contractor would submit plan for control of surface water runoff in accordance with all local, state, and federal requirements and all requirements of permits obtained so as to protect the surrounding vegetation and natural condition.
- All construction adjacent to open water would be separated and confined by appropriate siltation screens and turbidity barriers so as to protect the quality of such open water.
- Upon completion of construction, the site would be cleared of all construction materials and restored to its natural state as shown on the drawings.
- The contractor would be responsible for assuring compliance with all permit requirements.

Construction could occur at any time but would ideally take place during the time of year when recreation use is lowest to minimize impacts. Construction work is expected to be completed over a year or more; however, only a small fraction of this would be in-water work associated with the canoe/kayak launch.

Based on a site visit conducted on January 10, 2014 with staff from NOAA, DOI and Florida DEP, it appears that the canoe/kayak launch area could be developed with potentially no required in-water work. This is based on the fact that vehicles already have access to the location and there is a gently sloping access to the waterway that would be suitable for canoe/kayak launching. Based on the site visit, the main improvement needed at this area would be the placement of some sort of barrier that would prevent a truck with a trailer from backing to the water's edge to facilitate launching. This could be achieve with the placement of a large rock or rocks or possibly sinking spaced posts at the end of the road. Because the area can be prone to flooding from tides/storms and the width of the waterway at the road's end the construction of significant launching infrastructure is neither necessary or desirable.

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

- Smalltooth Sawfish, *Pristis pectinata*, Endangered
- 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

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 part of the project area where there is potential for in-water work, exposure of Smalltooth sawfish to the proposed project is extremely unlikely. In addition, adverse effects due to the proposed project are not likely to be detectable or measurable due to the proposed implementation of the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) for any in-water work. Therefore, effects to Smalltooth sawfish due to the proposed project would be insignificant.

Gulf Sturgeon

The proposed project does not intersect identified Gulf sturgeon critical habitat areas. As a result of the specific project location for the potential in water work, a tidal waterway connecting parts of Apalachee Bay, we conclude Gulf sturgeon are extremely unlikely to be in the project area. However, implementation of the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) for any in-water work would likely eliminate any remaining risks should in-water work be necessary for the canoe/kayak launch improvements. As a result, adverse effects to Gulf sturgeon due to the proposed project are not likely to be detectable or measurable and, as a result, effects Gulf sturgeon would be insignificant.

Sea Turtles

The proposed project action area identified in Figure 1 does not intersect with identified critical habitat areas for any species of sea turtle. 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 Bald Point State Park, which is approximately 2 miles away. Figure 2, 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. The nesting data from Bald Point are summarized in Table 1 to provide some proxy of potential sea turtle presence in the project area.

Table 1. Summary of Sea Turtle Nesting and Occurrence Data from the nearest surveyed

beaches to the project area (Bald Point State Park ~2 miles away. See Figure 2 for orientation relative to project site)	
Sea turtle	***Nesting density rank***[a]
Green sea turtles	Low
Loggerhead sea turtles	Low-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

Generally, the data in Table 1 indicate a low expected presence for Loggerhead and Green sea turtles in the nearest surveyed area. However, because of the specific project location and the low probability of in-water work we believe exposure to sea turtles during project activities is extremely unlikely. Remaining risks would then be addressed with the implementation of the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) for any in-water work. As a result, we conclude that adverse effects due to the proposed project are not likely to be detectable or measurable. Therefore, effects to sea turtles due to the proposed project 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 in the project area (no identified critical habitats intersect the project action area):

- Smalltooth Sawfish – The proposed project may affect, but is not likely to adversely affect and will not jeopardize the continued existence of the species.
- 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.

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.

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. Detail of the project action area for the Mashes Sands Park project.

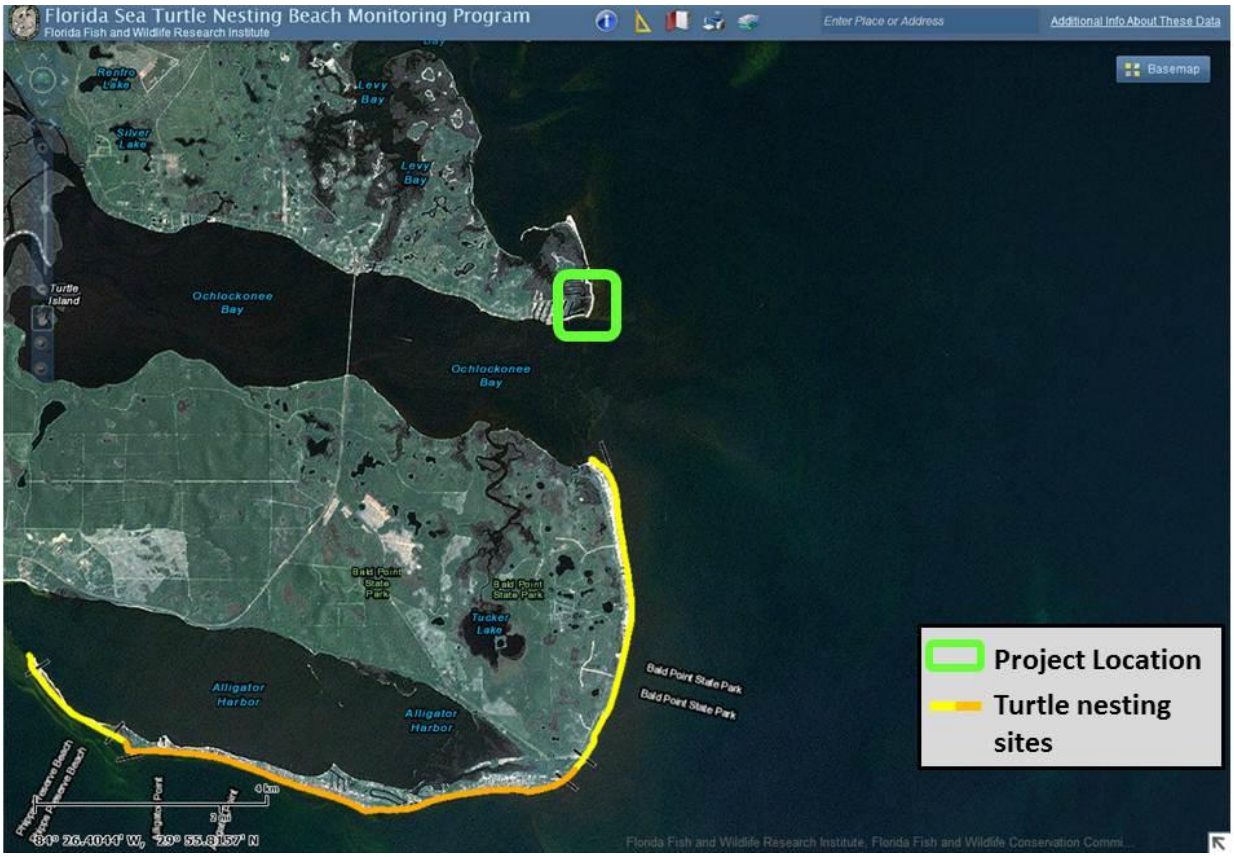

Figure 2. Image showing potential nesting locations for sea turtles relative to the general project location.