January 29, 2014

Dear Protected Resources Division:

We are requesting concurrence from the Protected Resources Division, NOAA Fisheries Service, Southeast Regional Office, that the proposed *Scallop Enhancement for Increased Recreational Fishing Opportunity in the Florida Panhandle* (Scallop Enhancement) 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 Scallop Enhancement project involves enhancing local scallop populations in targeted areas through a combination of the collection and redistribution of naturally-occurring juvenile scallops, potentially supplemented with the stocking of juvenile scallops obtained from a commercial scallop hatchery if not enough are collected from the environment. This approach incorporates restoration methods previously developed by the Florida Fish and Wildlife Conservation Commission (FWC) to enhance bay scallop (*Argopecten irradians*) populations in the bays of Florida's Panhandle.

Specifically, the project would enhance local scallop populations in targeted areas (see Figure 1 for potential project locations) through a combination of the collection and redistribution of naturally-occurring juvenile scallops, referred to as spat, supplemented, if needed, with stocking from a commercial scallop hatchery. This collection and redistribution activity would take place year-round, consistent with existing scallop monitoring activities, as the timing of spawning peaks remains largely uncertain. The approximate centers of the water bodies identified in Figure 1, moving by county from West to East are as follows (values in decimal degrees):

- Escambia County – Latitude 30.32071 N, Longitude 87.35856 W
- Santa Rosa County – Latitude 30.38151 N, Longitude 86.94025 W
- Okaloosa County – Latitude 30.43566 N, Longitude 86.49395 W
- Bay County – Latitude 30.14685 N, Longitude 85.69132 W
- Gulf County – Latitude 29.79520 N, Longitude 85.35297 W
- Franklin County – Latitude 29.71066 N, Longitude 84.83418 W

Figure 2 provides an example of a typical spat collection device being deployed. This device is typically constructed out of a collection bag with a float, to keep it near the surface, anchored to a ½ cinderblock by a length of line generally 6-12 ft long. Spat

collected using this device would subsequently be released into the targeted bays from small workboats (e.g., similar in size to the one pictured in Figure 2) by pouring out a mixture of the spat and seawater into the receiving bay from holding containers (e.g., 5 gallon pails).

To date, with more than 20 years of experience operating these monitoring and collection devices, there is no record of species entanglement. To further reduce risks and help avoid in-water impacts to protected species, the recommendations for in-water work within the *Sea Turtle and Smalltooth Sawfish Construction Conditions* guidance (NOAA, 2006) would be adhered to.

Basis for Conclusion of "Not Likely to Adversely Affect"

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 that intersect the proposed project activity area, follows.

Gulf Sturgeon

The proposed action was evaluated for impacts to Gulf sturgeon and their critical habitat. Gulf sturgeon mortality may occur from certain in-water activities including boat traffic. Mortality due to boat collisions is rare, but can occur especially in shallow waters. Potential impacts from project activities may be avoided by imposing work restrictions during sensitive time periods (i.e., spawning, migration, staging, feeding) when sturgeon are most vulnerable to mortalities. However, the risks to Gulf sturgeon as a result of implementing this project are not expected to be detectable or measurable as of the infrequent nature of the boat operation associated with the project. Risks to Gulf sturgeon will be further mitigated as a result of the species' mobility and their ability and likely desire to avoid the project work areas as a result of noise and disturbance. Finally, the guidelines for boat operation incorporated in the *Sea turtle and Smalltooth Sawfish Construction Guidelines* (NOAA, 2006) would be implemented during spat collection

and transfers. As a result, we believe the project will result in impacts that are not detectable of measureable so are insignificant to Gulf sturgeon.

Gulf Sturgeon Critical Habitat

The proposed project currently intersects with a number of Gulf sturgeon critical habitat units, specifically:

- Unit 9: Pensacola Bay
- Unit 10: Santa Rosa Sound
- Unit 12: Choctawhatchee Bay
- Unit 13: Apalachicola Bay

Primary constituent elements (PCEs) of Gulf sturgeon critical habitat include: the following habitat features have been identified as important for review: (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. The critical project actions of transferring scallop spat from collection areas to targeted bays will not have a detectable or measurable adverse impact in the identified critical habitat units. As a result, we believe the impacts of this project are insignificant to Gulf sturgeon critical habitat.

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 extremely rare occurrence of Smalltooth sawfish in the project area, exposure to the proposed project activity 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 range of sea turtles suggests they could generally occur in the project area. In addition, the proposed project intersects with proposed critical habitat for loggerhead sea turtles (LOGG-N-FL-31 – see NOAA, 2013).

PCEs for proposed loggerhead critical habitat include: 1) Suitable nesting beach habitat that: (a) has relatively unimpeded nearshore access from the ocean to the beach for nesting females and from the beach to the ocean for both post-nesting females and hatchlings and (b) is located above mean high water to avoid being inundated frequently

by high tides. 2) Sand that: (a) allows for suitable nest construction, (b) is suitable for facilitating gas diffusion conducive to embryo development, and (c) is able to develop and maintain temperatures and moisture content conducive to embryo development. 3) Suitable nesting beach habitat with sufficient darkness to ensure that nesting turtles are not deterred from emerging onto the beach and hatchlings and post-nesting females orient to the sea.

The in-water nature of this project and lack of impacts to any lighting mean this project will not adversely affect these PCEs in a detectable or measurable way so impacts to proposed loggerhead critical habitat would be insignificant.

The infrequent, short term, operation of a small outboard boat such as the one pictured in Figure 2 by trained Florida Fish and Wildlife Conservation (FWC) combined with fact the boats will be operated by trained staff complying with the guidance incorporated in the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) means the direct risks of sea turtle-boat collisions from the project is not likely to be detectable or measurable. Furrther, risks to sea turtles during the spat collection phase of the project are not likely to be detectable of measurable as there is no record of entanglement in the collection device by sea turtles, or other species, over multiple years of operation by FWC in the proposed project areas. Therefore, direct 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 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.
    - Gulf Sturgeon Critical Habitat – The project footprint does fall within identified Gulf sturgeon critical habitat units (9, 10, 12, and 13); however, it has been determined that project implementation will not adversely modify designated Gulf sturgeon critical habitat.
- 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.
    - Proposed Loggerhead Critical Habitat – The project footprint does fall within proposed loggerhead critical habitat; however, the project activities associated with this project will not adversely modify designated critical habitat or adversely affect identified primary constituent elements.

- 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.

National Marine Fisheries Service (NMFS). 2009. Recovery Plan for Smalltooth Sawfish (*Pristis pectinata*). Prepared by the Smalltooth Sawfish Recovery Team for the National Marine Fisheries Service, Silver Spring, Maryland.

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.

NOAA. 2013. Proposed Loggerhead Sea Turtle Critical Habitat. http://www.nmfs.noaa.gov/pr/species/criticalhabitat_loggerhead.htm. Accessed October 22, 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. Location of Potential Locations for Activity as part of the Scallop Enhancement for Increased Recreational Fishing Opportunity in the Florida Panhandle Project.

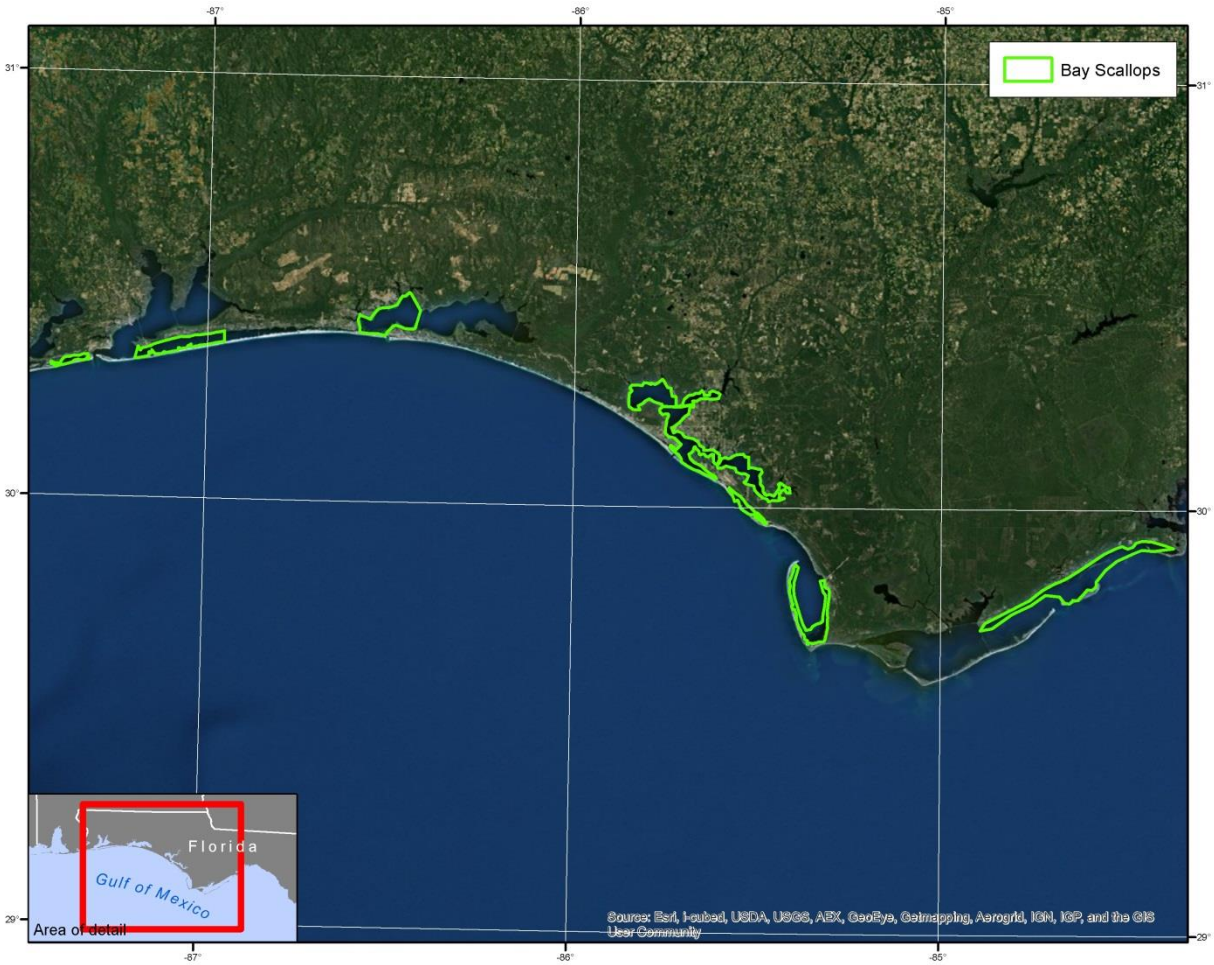

Figure 2. Example of Scallop Spat Collection Device being Deployed