United States Department of the Interior

FISH AND WILDLIFE SERVICE
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Atlanta, Georgia 30345

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Memorandum

To: Field Supervisor, Panama City Ecological Services Office

From: Deputy Deepwater Horizon, Department of the Interior Natural Resource Damage Assessment and Restoration (NRDAR), Case Manager Deborah L McCall

Subject: No Effect Determination for the Proposed Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements – Cash Bayou and Sand Beach, Florida

As you are no doubt aware, on or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico (the Gulf). These events resulted in the discharge of millions of barrels of oil into the Gulf over a period of 87 days. In addition, various response actions were undertaken in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (the Service) and other Bureaus, is a designated natural resource trustee agency 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. DOI is only one of several Trustees, including agencies of the state of Florida, so authorized. Consistent with their federal and state authorities, the Trustees are investigating the resource injuries and losses that occurred as a result of the Oil Spill and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. This process is known as a Natural Resource Damage Assessment (NRDA).

On April 20, 2011, DOI, the National Oceanic and Atmospheric Administration and the Trustees for the five Gulf states affected by the Oil Spill entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide $1 billion for early restoration projects in the Gulf to begin to address injuries to natural resources caused by the Oil Spill. The subject project is being evaluated by the Trustees as a potential early restoration project. The early restoration project has been proposed in a draft early restoration plan that was released for public comment and review on December 6, 2013. If the Trustees select the project after consideration of public comment and a stipulated agreement is reached with BP, the early restoration project will be implemented by the State of Florida. DOI, acting through the Service, will be a co-Trustee for the project, if it is selected and implemented.

The above facts lead us to the conclusion that consultation under Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), is required for the proposed early restoration project and we wish to engage in such consultation. Accordingly, we have reviewed the proposed Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements – Cash Bayou and Sand Beach, Florida, for potential impacts to listed, proposed, and candidate species and proposed and designated critical habitats in accordance with section 7 of the ESA and for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712), respectively. Consultation will also be initiated, if necessary, with National Marine Fisheries Service for species where ESA regulatory authority is shared and in regards to Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1461 *et seq.*).

This review addresses fishing and wildlife viewing access improvements proposed at two action areas within the Apalachicola River Wildlife and Environmental Area: Cash Bayou and Sand Beach. These actions are being evaluated together because they would occur in the same wildlife management area, have similar goals, are likely to involve similar implementation activities, and will affect similar resources. Figure 1 provides the relative location of the Cash Bayou and Sand Beach action areas. Figures 2 and 3 provide additional detail on the Cash Bayou and Sand Beach sites respectively. A site-visit to the action areas was conducted on January 9, 2014, and attended by the Trustees, consultants for the Trustees, National Marine Fisheries Service, and DOI Case Management Office Personnel. Each project is summarized independently in the rest of this memorandum.

Cash Bayou Wildlife Fishing and Viewing Access Improvements

As part of this action, the Trustees would construct an entrance kiosk, information station, and parking lot and facilities at Cash Bayou. While the design and exact location for each of the above-mentioned aspects is not yet known, the maximum footprint needed for the sum of all the projects is approximately 1.5 acres and is within the Department of Transportation right-of-way. The most likely location would be on a disturbed site off of Florida State Road (SR) 65. The parking lot will be designed to minimize tree removal. Figure 4 provides an example of a typical entrance package design including a kiosk and sign. The proposed parking lot would likely be constructed of shell rock.

The construction of a fishing structure and elevated wildlife viewing structure would be located along the bank of Cash Bayou; the final location would be determined based upon a wildlife viewing analysis of the site. The proposed structure is expected to disturb approximately 0.2 acres. While the design for the structure is currently unknown, it is likely to resemble either a wildlife viewing facility as seen in Figure 5 or a fishing dock as seen in Figure 6, both of which have been used at other Florida Wildlife Management Areas.

Figure 7 provides a view from the proposed location of the dock/viewing structure back toward the nearby bridge on SR 65. Habitat in the proposed parking and sign/kiosk area at Cash Bayou consists of uplands in pine plantation that has been harvested, disked/tilled, burned, and planted more than once. The fishing structure and wildlife viewing area would likely be constructed near the SR 65 bridge over Cash Bayou in disturbed uplands (currently used as unofficial parking for individuals fishing in the area) adjacent to the salt marsh edge and over part of the salt-marsh.

Sand Beach Wildlife Fishing and Viewing Access Improvements

As part of this action, the Trustees would construct an elevated boardwalk. The boardwalk would be built on an existing, periodically wet interpretative trail and reduce visitor impact to the forest floor. No new trail would be constructed and no trees will need to be removed to build the boardwalk. The walkway would be approximately 6 feet wide and approximately 1,000-1,800 feet long to extend across approximately 6,000 to 11,000 square feet of existing trail. Figure 8 shows an example of an existing elevated walk way used at other Florida Wildlife Management Areas and Figures 9 and 10 provide views of the existing interpretative trail.

Habitat at Sand Beach in the area of the existing trail consisted of scrub/live oak hammock extending to salt marsh habitats.

Summary

We reviewed the species list for Franklin County, Florida where both action areas are located (Table 1)[1] and also considered the presence of bald eagles (*Haliaeetus leucocephalus*) and migratory birds. No habitat for listed, proposed, or candidate species known from Franklin County, Florida is present in the action area and no listed, proposed, or candidate species are expected to be in the action area. Therefore, we made a no effect determination for all listed, proposed, and candidate species known from Franklin County, Florida. No terrestrial critical habitat is designated or proposed in or near the action area; therefore, none will be adversely modified or destroyed.

Further, no bald eagles are known to nest near the project area. Migratory birds including passerines and marsh birds are present in the action area and may be feeding, resting, or nesting in the nearby marsh vegetation or the large trees on site. However, precautions during construction will be used to protect any migratory birds that may be in or near the project area. Such precautions include: avoiding the removal of trees and shrubbery during nesting season, minimizing construction noise to the extent practicable, using care to avoid birds when operating machinery or vehicles near birds, and general contractor awareness of bird presence. These measures should ensure that any take of migratory birds is avoided. Therefore, no impacts to bald eagles or migratory birds are anticipated.

Based upon the information presented above, we have determined the proposed project will have no effect to listed, proposed, or candidate species and will not result in adverse modification or destruction of proposed or designated critical habitat under the jurisdiction of the U.S. Fish and Wildlife Service. As mentioned previously, consultation will also be initiated with National Marine Fisheries Service if necessary.

We request your concurrence with our determination (see attached signature page). If you have questions or concerns regarding this request for consultation, please contact Holly Herod, Fish and Wildlife Biologist, at 404-679-7089 or holly_herod@fws.gov.

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[1] The U.S. Fish and Wildlife, Panama City office website (http://www.fws.gov/panamacity/specieslist.html) provides a county-based list of federal threatened, endangered, and other species of concern likely to occur in the Florida Panhandle. Information downloaded March 13, 2013

No Effect Determination for the Proposed Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements – Cash Bayou and Sand Beach, Florida

Concurrence [✓] Non-Concurrence [ ]

Comments (Attach Additional Pages if Necessary:

Donald C

Signature of Reviewing Field Office

2/18/14

Date

PROJECT LEADER

Title

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Figure 1. Relative Locations of Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements Project, Cash Bayou and Sand Beach action areas.

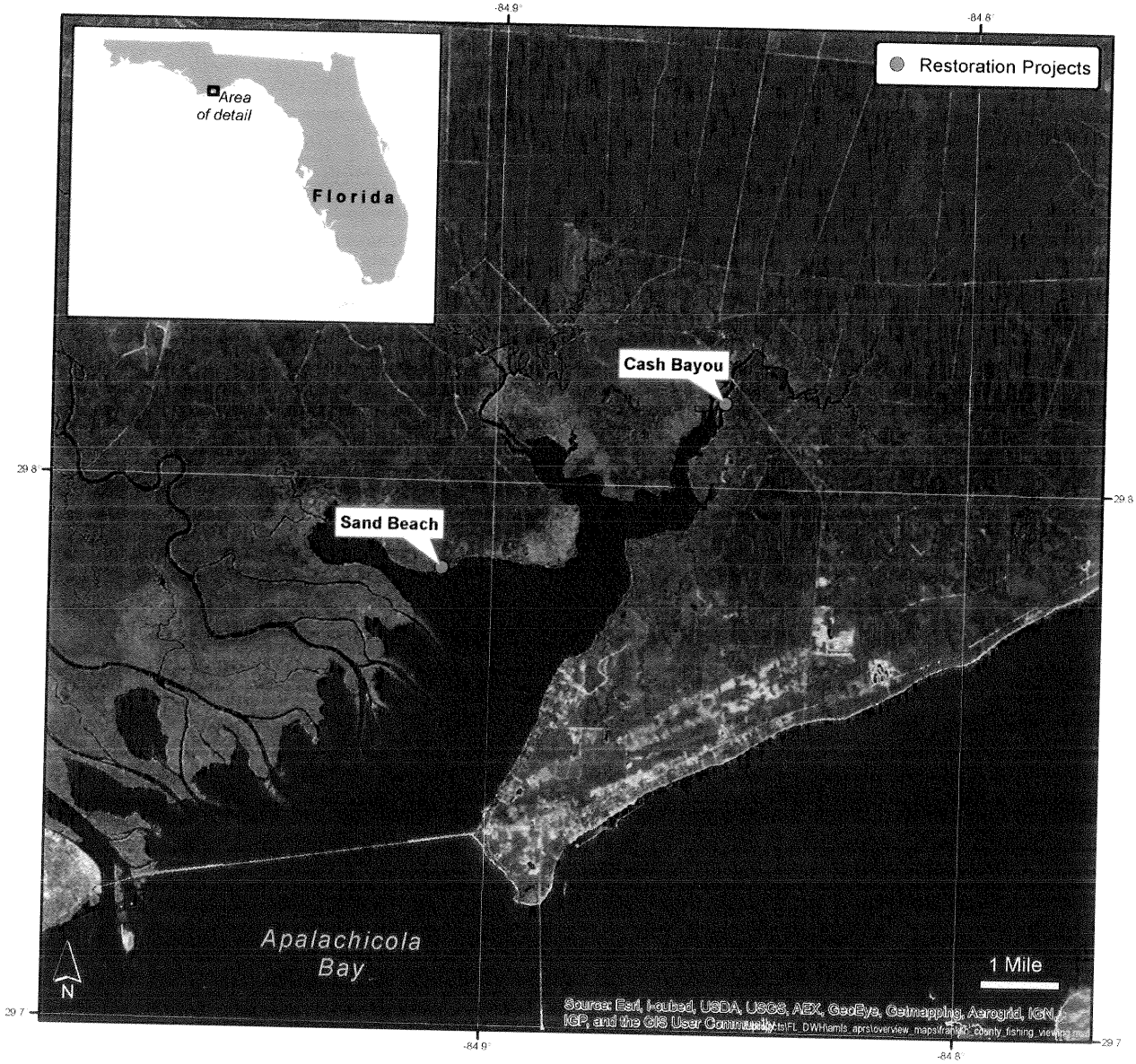

Figure 2. Location of Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements Project, Cash Bayou location.

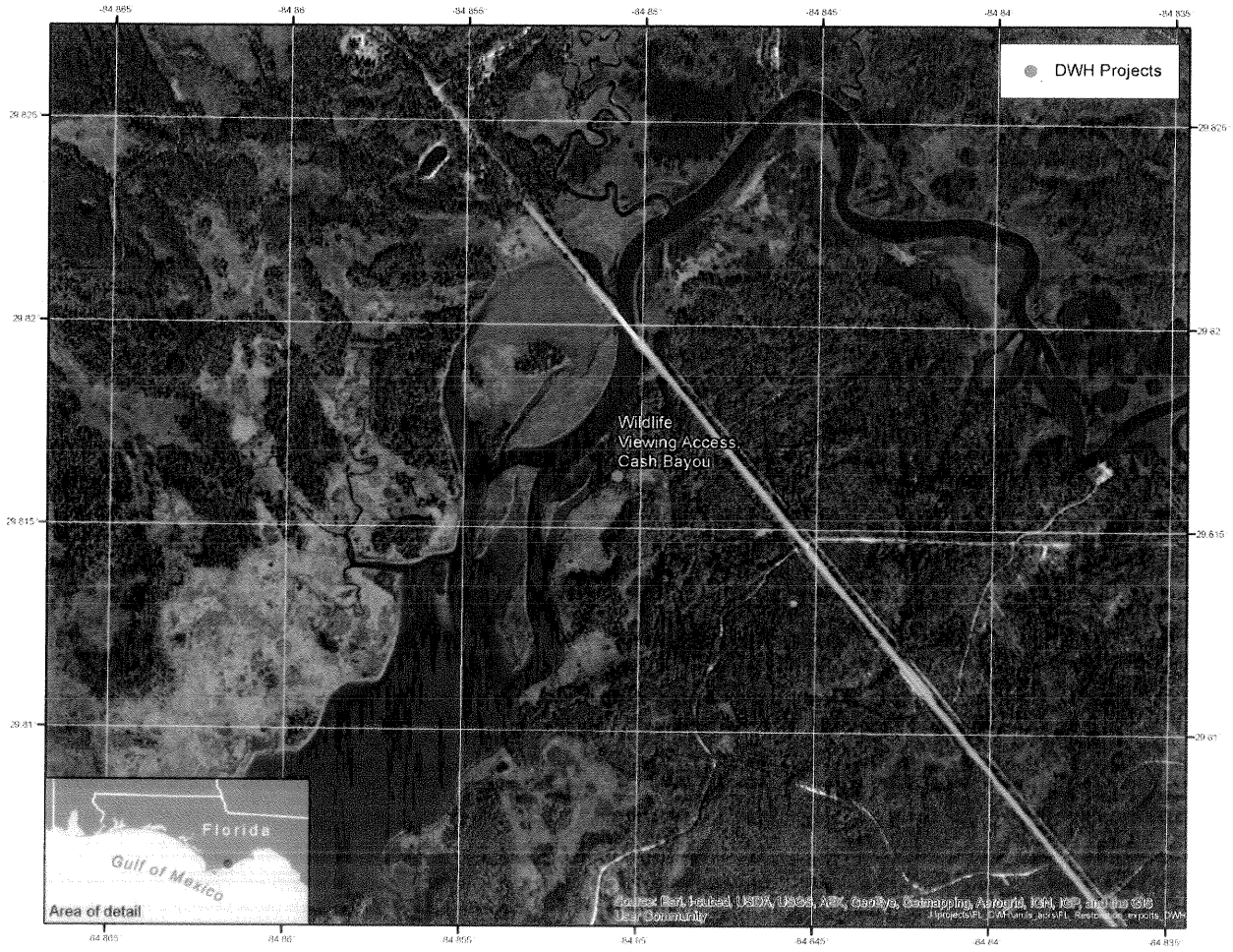

Figure 3. Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements Project, Sand Beach location.

Figure 4. Example of typical entry package design with sign, informational kiosk, and parking area.

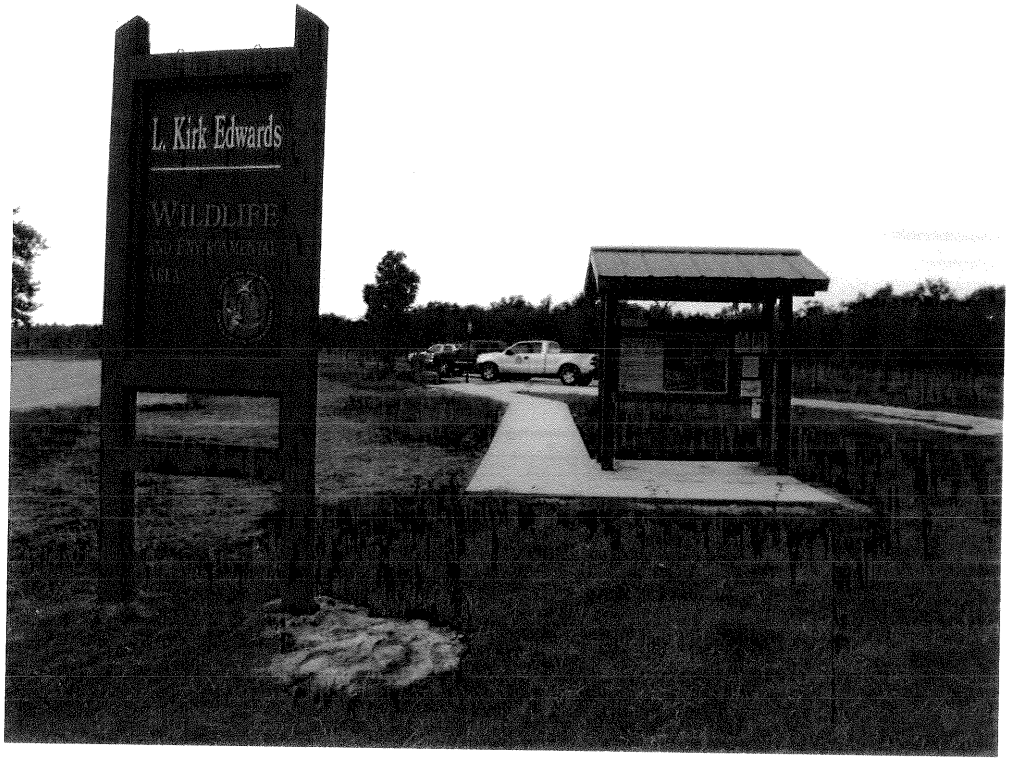

Figure 5. Example of typical wildlife viewing structure.

Figure 6. Fishing dock example.

Figure 7. View from proposed Cash Bayou waterfront location looking back toward state route 65.

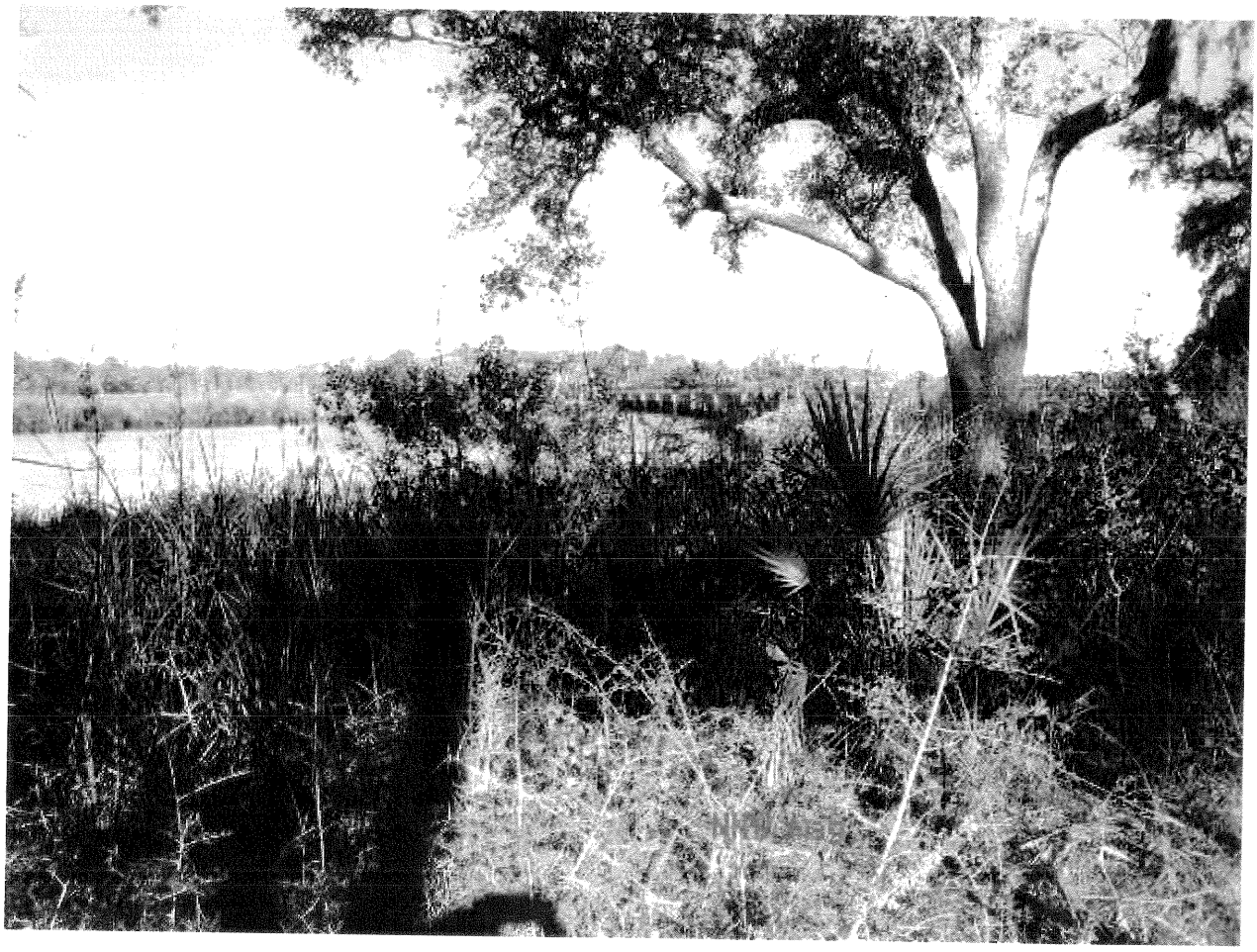

Figure 8. Example of an elevated walkway.

Figure 9. View of existing interpretative trail at Sand Beach.

Figure 10. Additional view of existing interpretative trail at Sand Beach showing a wet area.

Table 1. Summary of Federally Listed Species in Franklin County Florida						
Resource category	**Common name**	**FWS status**	**State status**	**Natural communities**	**Species impacts (NE, NLAA, MAA)**	**Justification**
Amphibians	Frosted flatwoods salamander	T (CH)		Palustrine: wet Flatwoods, dome swamp, basin swamp, Terrestrial: mesic flatwoods (reproduces in ephemeral wetlands within this community).	NE	Listed natural community is inconsistent with the project habitat
Amphibians	Gopher frog	SSC	ce	Terrestrial: sandhill, scrub, scrubby flatwoods, xeric hammock (reproduces in ephemeral wetlands within these communities).	NE	Listed natural community is inconsistent with the project habitat
Birds	Arctic peregrine falcon	ce	E	Terrestrial: various, ruderal; winters along coasts.	NE	Listed natural community is inconsistent with the project habitat
Birds	Bald eagle	BGEPA		Estuarine: marsh edges, tidal swamp, open water Lacustrine: swamp lakes, edges Palustrine: swamp, floodplain Riverine: shoreline, open water Terrestrial: pine and hardwood forests, clearings.	NE	Listed natural community is inconsistent with the project habitat
Birds	Least tern		T	Terrestrial: beach dune, ruderal. Nests common on rooftops.	NE	Listed natural community is inconsistent with the project habitat
Birds	Piping plover	T (CH)	T	Estuarine: exposed unconsolidated substrate Marine: exposed unconsolidated substrate Terrestrial: dunes, sandy beaches, and inlet areas. Mostly wintering and migrants.	NE	Listed natural community is inconsistent with the project habitat
Birds	Red knot	P		Estuarine: exposed unconsolidated substrate Marine: exposed unconsolidated substrate Terrestrial: dunes, sandy beaches, and inlet areas. Mostly wintering and migrants.	NE	Listed natural community is inconsistent with the project habitat
Birds	Red-cockaded woodpecker	E		Terrestrial: mature pine forests.	NE	Listed natural community is inconsistent with the project habitat (pine is likely slash and is small in diameter)
Birds	Reddish egret	ce	SSC	Estuarine: tidal swamp, depression marsh, bog, marl prairie, wet prairie Lacustrine: flatwoods/prairie lake, marsh lake Marine: tidal swamp.	NE	Listed natural community is inconsistent with the project habitat
Birds	Southeastern kestrel	ce	T	Terrestrial: open pine forests, clearings, ruderal, various.	NE	Listed natural community is inconsistent with the project habitat
Birds	Southeastern snowy plover	ce	T	Estuarine: exposed unconsolidated substrate Marine: exposed unconsolidated substrate Terrestrial: dunes, sandy beaches, and inlet areas.	NE	Listed natural community is inconsistent with the project habitat
Birds	Wakulla seaside sparrow	ce	SSC	Estuarine: tidal marsh Marine: tidal marsh.	NE	Listed natural community is inconsistent with the project habitat
Birds	Wood stork	E	E	Estuarine: marshes Lacustrine: floodplain lakes, marshes (feeding), various Palustrine: marshes, swamps, various.	NE	Listed natural community is inconsistent with the project habitat
Fish	Gulf sturgeon	T (CH)	SSC	Estuarine and Marine: sandy sediments for foraging and resting; Riverine: alluvial and blackwater streams.	---	Not considered, will be addressed in consultation with NMFS, if necessary
Mammals	Florida black bear	ce	T	Palustrine: titi swamps, floodplains Terrestrial: pine and hardwood forests.	NE	Listed natural community is inconsistent with the project habitat

Table 1. Summary of Federally Listed Species in Franklin County Florida						
Resource category	**Common name**	**FWS status**	**State status**	**Natural communities**	**Species impacts (NE, NLAA, MAA)**	**Justification**
Mammals	Florida mouse	ce	SSC	Terrestrial: scrub, sandhill, scrubby flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Mammals	West Indian manatee	E	E	Estuarine: submerged vegetation, open water Marine: open water, submerged vegetation Riverine: alluvial stream, blackwater stream, spring-run stream.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Fat threeridge	E (CH)		Riverine: main channels of small to large rivers in slow to moderate currents; fine to medium silty sand, also mixtures of sand, clay, and gravel. Panhandle drainages: Chipola and Apalachicola Rivers.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Gulf moccasinshell	E (CH)		Riverine: medium-sized creeks to large rivers with sand and gravel substrates in slow to moderate currents. Panhandle drainages: Econfina Creek and Chipola River.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Oval pigtoe	E (CH)		Riverine: medium-sized creeks to small rivers; various substrates; slow to moderate currents.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Purple bank climber	T (CH)		Riverine: small to large rivers in sand, sand mixed with mud, or gravel substrates with slow to moderate currents. Panhandle drainages: Chipola, Apalachicola, and Ochlockonee Rivers.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Shinyrayed pocketbook	E (CH)		Riverine: medium-sized creeks to mainstem rivers in a range of substrates including sand, clay, and gravel with slow to moderate current. Panhandle drainages: Econfina (Creek),Chipola, and Ochlockonee (upstream of Lake Talquin) Rivers.	NE	Listed natural community is inconsistent with the project habitat
Plants	Apalachicola dolls daisy	ce		Palustrine: Floodplain Forest.	NE	Listed natural community is inconsistent with the project habitat
Plants	Bent golden aster	ce	E	Terrestrial: pine forest, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Plants	Buckthorn	ce	E	Palustrine: hydric hammock, floodplain swamp.	NE	Listed natural community is inconsistent with the project habitat
Plants	Carolina grass-of-parnassus	ce	E	Palustrine: seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Chapman's butterwort	ce	T	Palustrine: wet flatwoods, seepage slopes, bog, dome swamp, ditches; in water.	NE	Listed natural community is inconsistent with the project habitat
Plants	Chapman's crownbeard	ce	T	Palustrine: seepage slope Terrestrial: mesic flatwoods with wiregrass (Aristida stricta).	NE	Listed natural community is inconsistent with the project habitat

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Resource category	**Common name**	**FWS status**	**State status**	**Natural communities**	**Species impacts (NE, NLAA, MAA)**	**Justification**
Plants	Corkwood		T	Estuarine: tidal marsh Palustrine: freshwater tidal swamp, hydric hammock.	NE	Listed natural community is inconsistent with the project habitat
Plants	Curtiss' loosestrife	ce	E	Palustrine: wet Flatwoods edges, floodplain swamp, seepage slope, dome swamp edges Terrestrial: seepage slope.	NE	Listed natural community is inconsistent with the project habitat
Plants	Florida bear-grass	ce	T	Terrestrial: mesic flatwoods grassy areas.	NE	Listed natural community is inconsistent with the project habitat
Plants	Florida skullcap	T	E	Palustrine: seepage slope, wet flatwoods, grassy openings Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Godfrey's (violet) butterwort	T	E	Palustrine: wet flatwoods, wet prairie, bog; in shallow water Riverine: seepage slope; in shallow water. Also, roadside ditches and similar habitat.	NE	Listed natural community is inconsistent with the project habitat
Plants	Godfrey's blazing star	ce	E	Terrestrial: sandhill, scrub, coastal grassland; disturbed areas.	NE	Listed natural community is inconsistent with the project habitat
Plants	Gulf coast lupine	ce	T	Terrestrial: beach dune, scrub, disturbed areas, roadsides, blowouts in dunes.	NE	Listed natural community is inconsistent with the project habitat
Plants	Harper's beauty	E	E	Palustrine: wet prairie, seepage slope, roadsides, edges of titi swamps.	NE	Listed natural community is inconsistent with the project habitat
Plants	Harper's grooved yellow flax	ce		Palustrine: wet Flatwoods Terrestrial: mesic flatwoods; in site-prepped areas.	NE	Listed natural community is inconsistent with the project habitat
Plants	Harper's yellow-eyed grass	ce	T	Palustrine: seepage slope, wet prairie, bogs.	NE	Listed natural community is inconsistent with the project habitat
Plants	Hooded pitcher plant		T	Palustrine: wet flatwoods, wet prairie, seepage slope.	NE	Listed natural community is inconsistent with the project habitat
Plants	Hummingbird flower		E	Palustrine: seepage slope, dome swamp edges, floodplain swamps Riverine: seepage stream banks Terrestrial: seepage slopes.	NE	Listed natural community is inconsistent with the project habitat
Plants	Large-flowered-grass-of-parnassus		E	Palustrine: dome swamp margins, seepage slope Riverine: spring-run stream edge Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Large-leaved jointweed	ce	T	Terrestrial: scrub, sandpine/oak scrub ridges.	NE	Listed natural community is inconsistent with the project habitat
Plants	Meadow beauty	ce	E	Palustrine: dome swamp margin, seepage slope, depression marsh; on slopes; with hypericum.	NE	Listed natural community is inconsistent with the project habitat
Plants	Panhandle spiderlily	ce	E	Palustrine: dome swamp edges, wet prairie, wet flatwoods, baygall edges, swamp edges Terrestrial: wet prairies and flatwoods.	NE	Listed natural community is inconsistent with the project habitat

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Resource category	**Common name**	**FWS status**	**State status**	**Natural communities**	**Species impacts (NE, NLAA, MAA)**	**Justification**
Plants	Parrot pitcher plant		T	Palustrine: wet flatwoods, wet prairie, seepage slope.	NE	Listed natural community is inconsistent with the project habitat
Plants	Pine-woods aster	ce	E	Palustrine: seepage slope Terrestrial: sandhill, scrubby and mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Scare-weed	ce	T	Terrestrial: mesic flatwoods, sand hill; on disturbed sites.	NE	Listed natural community is inconsistent with the project habitat
Plants	Southern milkweed	ce	T	Palustrine: wet prairie, seepage slope edges Riverine: seepage stream banks Terrestrial: mesic flatwoods, drainage ditches.	NE	Listed natural community is inconsistent with the project habitat
Plants	Southern red lily		T	Palustrine: wet prairie, wet flatwoods, seepage slope Terrestrial: mesic flatwoods, seepage slope; usually with grasses.	NE	Listed natural community is inconsistent with the project habitat
Plants	Spoon-leaved sundew		T	Lacustrine: sinkhole lake edges Palustrine: seepage slope, wet flatwoods, depression marsh Riverine: seepage stream banks, drainage ditches.	NE	Listed natural community is inconsistent with the project habitat
Plants	Sweet shrub		E	Terrestrial: upland hardwood forest, slope forest, bluffs Palustrine: bottomland forest, stream banks, floodplains.	NE	Listed natural community is inconsistent with the project habitat
Plants	Telephus spurge	T	E	Terrestrial: mesic flatwoods; disturbed wiregrass (Aristida stricta) areas, coastal scrub. All known sites are within 4 miles of Gulf of Mexico.	NE	Listed natural community is inconsistent with the project habitat
Plants	Thick-leaved water willow	ce	E	Palustrine: dome swamp, seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Tropical waxweed	ce		Palustrine: wet prairie, seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	West's flax	ce	E	Palustrine: dome swamp, depression marsh, wet flatwoods, wet prairie, pond margins.	NE	Listed natural community is inconsistent with the project habitat
Plants	White birds-in-a-nest	T	E	Palustrine: seepage slope Terrestrial: grassy mesic pine flatwoods, savannahs, roadsides, and similar habitat.	NE	Listed natural community is inconsistent with the project habitat
Plants	White-top pitcher plant	ce	E	Palustrine: wet prairie, seepage slope, baygall edges, ditches.	NE	Listed natural community is inconsistent with the project habitat
Plants	Wiregrass gentian	ce	E	Palustrine: seepage slope, wet prairie, roadside ditches Terrestrial: mesic flatwoods, planted slash pine.	NE	Listed natural community is inconsistent with the project habitat
Plants	Yellow butterwort		T	Palustrine: flatwoods, bogs.	NE	Listed natural community is inconsistent with the project habitat

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Resource category	**Common name**	**FWS status**	**State status**	**Natural communities**	**Species impacts (NE, NLAA, MAA)**	**Justification**
Plants	Yellow fringeless orchid	ce	E	Palustrine: wet prairie, seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Alligator snapping turtle	ce	SSC	Estuarine: tidal marsh Lacustrine: river floodplain lake, swamp lake Riverine: alluvial stream, blackwater stream.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Barbour's map turtle	ce	SSC	Palustrine: floodplain stream, floodplain swamp Riverine: alluvial stream.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Eastern indigo snake	T	T	Estuarine: tidal swamp Palustrine: hydric hammock, wet Flatwoods Terrestrial: mesic flatwoods, upland pine forest, sand hills, scrub, scrubby flatwoods, rockland hammock, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Florida pine snake	ce	SSC	Lacustrine: ruderal, sandhill upland lake Terrestrial: flatwoods, xeric hammock, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Gopher tortoise	C	SSC	Terrestrial: sandhills, scrub, scrubby flatwoods, xeric hammocks, coastal strand, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Green turtle	E	E	Terrestrial: sandy beaches; nesting.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Hawksbill turtle	E	E	Marine: open water; no nesting.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Kemp's ridley turtle	E	E	Terrestrial: sandy beaches; nesting.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Leatherback turtle	E	E	Terrestrial: sandy beaches; nesting.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Loggerhead turtle	T	T	Terrestrial: sandy beaches; nesting.	NE	Listed natural community is inconsistent with the project habitat