

UNITED STATES DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration NATIONAL MARINE FISHERIES SERVICE Silver Spring, MD 20910

February 4, 2014

David Bernhart Assistant Regional Administrator for Protected Resources NOAA Fisheries Service, Southeast Regional Office 263 13th Avenue South Saint Petersburg, Florida 33701

Re: DWH-ERP-Request for section 7 Endangered Species Act Informal Consultation for *Deepwater Horizon* Oil Spill Phase III Early Restoration Plan project *Bald Point State Park Recreation Area (Bald Point)* 

Dear David,

The National Oceanic and Atmospheric Administration (NOAA) Restoration Center requests informal consultation with your office, under section 7 of the Endangered Species Act (ESA), for impacts from the Bald Point Project. This project may affect, but is not likely to adversely affect the following federally listed species administered by NOAA Fisheries:

Sea Turtles (Green-T, Hawksbill-E, Leatherback-E, Loggerhead-T, Kemp's Ridley-E)

Gulf sturgeon-T

Smalltooth Sawfish-E

The NOAA Restoration Center, a Lead Federal Agency, is requesting consultation on behalf of the Natural Resource Trustees for *Deepwater Horizon* Oil Spill. Enclosed please find a Biological Assessment and a NMFS ESA Checklist for this Phase III Early Restoration Project.

For further questions about the project, please contact Jamie Schubert of our staff at 409-621-1248.

Thank you for your assistance.

Sincerely,

Leslie

Supervisor, Southeast Region, NOAA Restoration Center NOAA Fisheries Office of Habitat Conservation



#### 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 *Bald Point State Park Recreation Area* (Bald Point) 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**

As part of this project, the Florida Park Service (FPS) and the Florida Department of Environmental Protection (FDEP) propose to make a number of improvements to the currently existing and utilized Bald Point State Park located in Franklin County, Florida. Bald Point State Park is located in Franklin County, Florida (see Figure 1 for the relative location of the park). Park features include waterfront access for swimming, sunbathing, fishing, canoeing, kayaking, and upland activities such as hiking and wildlife viewing (See Figure 2 for a map of current park amenities).

The proposed project would construct a visitor day-use area that includes picnic pavilions, boardwalks, a restroom with an aerobic treatment system and associated drainfield in upland areas along with a canoe/kayak launch and floating dock. These amenities would be constructed, under current plans, just to the East of the marked bridge along Chaires Creek off of Range Road in Figure 2. Figure 3 provides a conceptual plan for this development while the exact placement of these items would be determined once the project has final design plans.

The proposed canoe/kayak launch and floating dock would be constructed along Chaires Creek which is part of the estuarine tidal system through Chaires Creek. As part of this construction approximately 23 cubic yards of material would be excavated from Chaires Creek, which has been dredged previously, to connect the creek to Lake Tucker, and to facilitate installation of a pier (See Figure 3). This work has been approved in a US Army Corps of Engineers permit. Work would be completed almost entirely from the uplands and would, according to the current conceptual plan, require placing roughly 11 pilings in the river for the construction of the roughly 520 square foot dock and canoe/kayak launch.. The approximate location for the proposed dock and canoe/kayak launch is Latitude 29.92892 N and Longitude 84.35917 W.

Piling placement/construction methods would be delineated in the final project design. All permit conditions and best management practices (BMPs) would be followed to ensure potential impacts to species and habitat are minimized. In-water project work is expected to take 12 to 18 months, including permitting and construction. The total duration of in-water work would be a small fraction of this total time.

# 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 project location currently under consideration is located outside of identified Gulf Sturgeon critical habitat units. As a result, there is a reduced expectation of encountering Gulf sturgeon during the execution of the project. In addition, the project will be implemented incorporating the best management practices identified within the *Sea Turtle and Smalltooth Sawfish Construction Conditions* (NOAA, 2006) to help to avoid injury. As a result of the limited expected presence of Gulf sturgeon and incorporation of the BMP's during in-water construction activity suggests direct impacts would 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 of Smalltooth sawfish to the proposed project is very 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. However, the in-water work would not take place in identified critical habitat areas for any sea turtle species (nearest proposed critical habitat is for loggerheads LOGG-N-FL-31 – see NOAA, 2013).

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 since it is an inland water body, but data exists for the Bald Point State Park beach and is summarized in Table 1 to provide some proxy of potential sea turtle presence in the project area. Figure 4, 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 (Bald Point State Park, see Figure 4 for orientation relative to project site)

Sea turtle	Nesting density rank <sup>a</sup>
Green sea turtles	Low
Loggerhead sea turtles	Low-Medium
Leatherback sea turtles	Not Present
Sea turtle	Nesting occurrence data <sup>b</sup>
Hawksbill sea turtles	Absent
Kemp's ridley sea turtles	Absent

<sup>a</sup> 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.

<sup>b</sup> 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 Leatherback, Hawksbill, and Kemp's ridley turtles would be extremely unlikely to be in the project area while there is some low chance for Green and Loggerhead turtles to be present. However, the location of the project on a tidally influenced creek further reduces expectations of encountering these species and lowers the chance for adverse impacts. 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 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 (there are no 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.
- 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.

Florida Fish and Wildlife Conservation Commission (FWC). 2013. Statewide Atlas of Sea Turtle Nesting Occurrence and Density. <u>http://www.myfwc.com/research/wildlife/sea-turtles/nesting/nesting-atlas/</u> Accessed October 29, 2012.

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. 2013. Proposed Loggerhead Sea Turtle Critical Habitat. <u>http://www.nmfs.noaa.gov/pr/species/criticalhabitat\_loggerhead.htm</u>. 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.





Figure 1. Location of Bald Point State Park Recreation Area.



Figure 2. Recreational map for Bald Point State Park Recreation Area. Lake Tucker is the proposed location for the canoe and kayak launch.

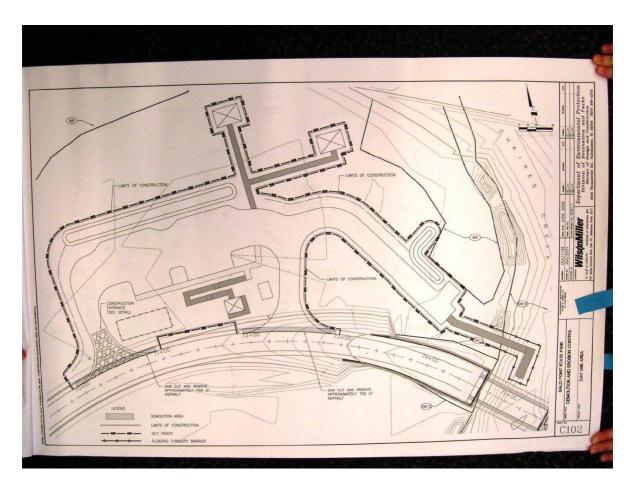


Figure 3. Additional detail for proposed facilities to be developed at Bald Point State Park Recreation Areas near Chaires Creek.

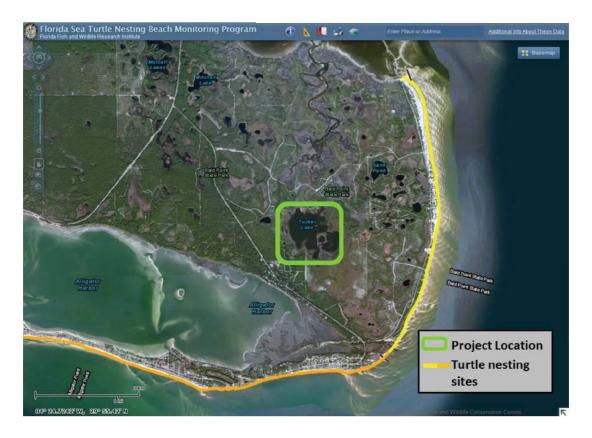


Figure 4. Image showing potential nesting locations for sea turtles near general Bald State Park project area.

# NMFS Endangered Species Act Section 7 Checklist for Federal Action Agencies

# **A) Project Identification**

Lead Action Agency: Florida Department of Environmental Protection/NOAA			
Agency Contact: (Phone, E-mail) Regional Office, Jamie Schubert, 409.621.1248, Jamie.Schubert@noaa.gov.			
Applicant Name: Prepared by Stratus Consulting (representing the State of Florida Natural Resource Trustees – The Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commissions)			
Project Name & ID #: Bald Point State Park Recreation Areas			

# **B)** Project Location

1. Address and description of property (i.e., public, residential, commercial, industrial, etc.):

Bald Point State Park is located in Alligator Point, Franklin County, FL. The project location is a State Park with some amenities, the surrounding area is not developed.

- 2. Latitude & Longitude:
  - i. Decimal Degrees and Datum [e.g., 27.71622° N, 80.25174° W (NAD83)] ii. Online conversion: <u>http://transition.fcc.gov/mb/audio/bickel/DDDMMSS-decimal.html</u>

i. See attached figure, "BaldPointStatePark.jpg", which illustrates the targeted areas with latitude and longitude coordinates.

3. Waterbody:

i. Name of the body of water on which the project is located (e.g., St. Johns River, Tampa Bay, Suwannee River) ii. If riverine or estuarine, approximate navigable distance from marine environment (e.g., Atlantic, Gulf of Mexico)

i. Bald Point State park is located on the Gulf of Mexico, a portion of the project is located on Chaires Creek, immediately upstream of its confluence with the Gulf of Mexico.

ii. The project is located on the Gulf of Mexico, see attached figure, "BaldPointStatePark.jpg".

# C) Project Description

1. Existing Structures: (Describe current and historical structures in project area.)

- i. Marina, seawall, riprap, dock, etc.
- ii. Number of slips, size (area of overwater structures), liner footage, location, orientation, etc.

i. The project area is a recreational facility with some amenities, all current structures are in the upland area.

ii. There are no slips or over-water structures in the project area.

2. Existing Conditions: (Describe the project area.)

i. Substrate type, water quality, depth, current, etc.

i. The existing conditions include mostly undeveloped upland/shoreline habitat including vegetated and sandy beach areas. The inwater habitat is shallow, nearshore Gulf of Mexico, and open-water Gulf of Mexico habitat.

3. Seagrasses & Other Marine Vegetation:

- i. If a benthic survey was conducted, provide date of survey and a copy of the report.
- ii. Species area of coverage estimates and density of species coverage (percentage) estimates.
- iii. Location relative to proposed structures. Provide detailed sketch of action area and location of seagrasses.

N/A, no seagrass is present.

## 4. Mangroves:

i. Species (red, black, or white)

ii. Area (square footage and linear footage). Provide detailed sketch of action area and location of mangroves.

N/A, no mangroves are present.

#### 5. Corals:

- i. Species area of coverage estimates (percentage) and density of species estimates.
- ii. Location relative to proposed structures. Provide detailed sketch of action area and location of corals.

N/A, no corals are present.

# **D) Project Construction Methods**

### 1. Methods:

- i. Construction methodology (Please provide detail)
- ii. Demolition/removal of existing structures/debris
- iii. Location of work (e.g., barge, upland, or both)

i. Standard construction methods will be used to build new picnic pavilions, boardwalks, a restroom, an aerobic treatment system and drainfield, and a floating dock. Specific construction methods will be finalized in the final project design. A temporary soil stockpile area will be located near the construction area. All permit conditions and BMPs will be followed for construction activities.

ii. Approximately 23 cubic yards of material will be excavated from Chaires Creek to facilitate installation of a pier - this work has been approved in a US ACE permit.

iii. Work will be completed almost entirely from the uplands. A small portion of work (associated with building the floating dock) may take place in-water.

#### 2. Docks:

- i. Is this a fishing pier? (public or private)
  - 1. If so, how many people are expected to fish per day?
  - 2. How do you plan to address hook and line captures?
- ii. Type of decking
  - 1. Grated (In Florida) -

Dock Guidelines - http://sero.nmfs.noaa.gov/pr/endangered%20species/Section%207/DockGuidelines.pdf Dock Key - http://sero.nmfs.noaa.gov/pr/endangered%20species/Section%207/DockKey.pdf

- a. Grating type/design
- b. Manufacturer's name and address
- c. Percent light transmittance (%LT)
- 2. Wooden planks or composite planks
  - a. Proposed spacing between boards (0.50-inch, 0.75-inch, etc.)
- ii. Height above Mean High Water (MHW) elevation
- iii. Directional orientation
- iv. Shading impacts (calculate square footage)
- v. Sea Turtle and Smalltooth Sawfish Construction Conditions, dated March 23, 2006

http://sero.nmfs.noaa.gov/pr/endangered%20species/Sea%20Turtle%20and%20Smalltooth%20Sawfish%20Construction%

# 20Conditions%203-23-06.pdf

i. No, there are no fishing piers within this project.

ii. For the dock to be used as a canoe/kayak launch, the grating design, manufacterer's information, %LT, the type of decking that will be used, and the spacing between boards will be delineated in the final project design.

ii. The dock will be floating, so will be approximately even with MHW elevation.

iii. The current dock design is for an L-shaped structure, the floating portion will run SW to NE, the ramp section and boardwalk over upland areas will run NW to SE, perpendicular to the floating dock.

iv. The approximate size of the floating dock is 520 square feet.

w. See Twittle and Smallte ath Saufish Construction Conditions will be

v. Sea Turtle and Smalltooth Sawfish Construction Conditions will be followed.

#### 3. Pilings & Sheetpiles

- i. Construction methodology (i.e., pile driving, vibratory hammer, jetting).
- ii. Must provide piling size, material, and number of pilings.
- iii. Have potential impacts to species been adequately addressed (including marine vegetation)?

i. Piling construction methods will be delineated in the final project design.

ii. The piling size, material, and number of pilings will be provided in the final project design.

iii. Potential impacts to species are currently being evaluated, all permit conditions and BMPs will be followed to ensure potential impacts to species are minimized.

### 4. Boat Slips

- i. Number and size of new slips, change from existing
- ii. High-and-dry boat storage: vessel storage capacity
- iii. Estimated shadow effect of the boat (square footage of shaded area beneath boat)

N/A, there are no boat slips at this project location.

#### 5. Boat Ramp

- i. Number of ramps and size of ramps
- ii. Number of vessels that can be moored (i.e., staging area)
- iii. Trailer parking lot capacity

N/A, the project does not involve boat ramp construction or repair.

#### 6. Shoreline Armoring: Seawalls, jetties, etc.

i. Project description, linear footage, square footage, material, etc. Provide detailed sketch of action area and location of structure.

N/A, the project does not include shoreline armoring.

### 7. Dredging

- i. Dredge type (hopper, cutterhead, clamshell, etc.)
- ii. Depth of cut
- iii. Area (square feet) to be dredged
- iv. Volume of material (cubic yards)
- v. Spoil disposition plans (i.e., where is dredged material being disposed of? Location of disposal area (upland/openwater/ beneficial use site), sediment type at disposal area, thickness of fill placement)
- vi. Hydrodynamic description (i.e., average current speed/direction)

N/A, the project does not include dredging.

### 8. Blasting

- i. Explosive weights
- ii. Blasting plan

N/A, the project does not include blasting.

#### 9. Artificial Reefs

Please refer to the Section 7 Checklist procedures for directions on how to complete this question. For additional information and detailed guidance on artificial reefs, please refer to the *Guidelines and Management Practices for Artificial Reef Siting, Use, Construction, and Anchoring in Southeast Florida* http://www.dep.state.fl.us/coastal/programs/coral/reports/MICCI/MICCI\_18\_19.pdf

N/A, no artificial reefs are associated with this project

#### 10. Construction Schedule

- i. In-water work
- ii. Number of days/weeks/months

i. A small portion of work will take place in-water.

ii. Project work is expected to take 1-1.5 years, including permitting and construction. The total duration of in-water work will be a small fraction of this total time.

## 11. Mitigation/ Protective Measures:

Will the project follow the August 2001 (2008 Revision) Dock Construction Guidelines?

N/A

Will the project follow the October 2002 Johnson's Seagrass Key?

N/A					
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Will the project follow the March 2006 Sea Turtle and Smalltooth Sawfish Construction Conditions?

If NO, please explain why the deviation is necessary for this project.

# E) Effects of the Project

1. Listed Species and Critical Habitat within the Action Area (see effects determination guidance)

Not Likely to Adversely Effect	Green Sea Turtles
Critical Habitat Not in Critical Habitat	<b>┘</b>
Not Likely to Adversely Effect	Hawksbill Sea Turtles
Critical Habitat Not in Critical Habitat	_
Not Likely to Adversely Effect	Kemp's Ridley Sea Turtles
Critical Habitat No Critical Habitat	
Not Likely to Adversely Effect	Leatherback Sea Turtles
Critical Habitat Not in Critical Habitat	
Not Likely to Adversely Effect	Loggerhead Sea Turtles
Critical Habitat No Critical Habitat	
Not Likely to Adversely Effect	Olive Ridley Sea Turtle
Critical Habitat No Critical Habitat	
Not Likely to Adversely Effect	Smalltooth sawfish
Critical Habitat Not in Critical Habitat	
Species Not in Action Area	Largetooth sawfish
Critical Habitat No Critical Habitat	_
Species Not in Action Area	Shortnose sturgeon
Critical Habitat No Critical Habitat	
Species Not in Action Area	Atlantic sturgeon
Critical Habitat No Critical Habitat	
Not Likely to Adversely Effect	Gulf sturgeon
Critical Habitat Not in Critical Habitat	
Not Likely to Adversely Effect	Johnson's seagrass
Critical Habitat Not in Critical Habitat	
Species Not in Action Area	Staghorn coral
Critical Habitat No Critical Habitat	
Species Not in Action Area	Elkhorn coral
Critical Habitat No Critical Habitat	_
Species Not in Action Area	Pillar coral
Critical Habitat No Critical Habitat	
Species Not in Action Area	Lobed star coral
L	

Yes

Critical Habitat No Critical Habitat			
Species Not in Action Area	Mountainous star coral		
Critical Habitat No Critical Habitat	<b>_</b>		
Species Not in Action Area	Knobby star coral		
Critical Habitat No Critical Habitat			
Species Not in Action Area	Rough cactus coral		
Critical Habitat No Critical Habitat			
Species Not in Action Area	Lamarck's sheet coral		
Critical Habitat No Critical Habitat			
Species Not in Action Area	Elliptical star coral		
Critical Habitat No Critical Habitat			
Species Not in Action Area	North Atlantic right whales		
Critical Habitat Not in Critical Habita	t		
Species Not in Action Area	Humpback whales		
Critical Habitat No Critical Habitat			
Species Not in Action Area	Blue whales		
Critical Habitat No Critical Habitat			
Species Not in Action Area	Fin whales		
Critical Habitat No Critical Habitat			
Species Not in Action Area	Sei whales		
Critical Habitat No Critical Habitat			

# 2. Effects to Species

- i. Explain potential effects to each species checked above
- ii. Consider vessel traffic impacts, speed zones (if present), anchoring impacts, keel/propeller impacts
- iii. Noise impacts from construction (i.e., pile driving, blasting, etc.)

i. Impacts to listed species will be minimal and indirect. Some increased recreation may be observed in nearby Gulf Sturgeon critical habitat if boaters using the Bald Point location reach that area. However, the boat launch will be for human-powered vessels (canoes and kayaks), so any impacts from increased boat activity are expected to be minimal.

No actions needed to minimize impacts in the terrestrial environment. All construction conditions identified in the Sea Turtle and Smalltooth Construction Conditions (NOAA, 2006) would be implemented an adhered to during project construction to minimize the risk of collisions.

ii. Because boat traffic from the Bald Point location will be human-powered, few, if any, impacts are expected from speed or anchoring. iii. Noise impacts from construction will occur.

Applicable BMPs and permit conditions will be followed to minimize potential adverse impacts caused by construction.

# 3. Effects to Critical Habitat:

- i. Identify which essential feature(s) are present, if they will be impacted, and how they will be impacted
- ii. Size of area affected (square footage) Mangroves (linear footage of shoreline)
- iii. How will the habitat be changed/altered as a result of the action

i. Essential habitat features for gulf sturgeon at or near the site include water quality, safe and unobstructed migratory pathways, sediment quality, and abundant prey items. Some temporary decrease in water quality may result from increased turbidity during construction. The project is not expected to obstruct migratory pathways, or affect prey items.

ii. A floating dock, approximately 520 square feet, will be constructed at the site and used as a canoe and kayak launch. iii. Habitat beneath the dock will be shaded, no other changes to in-water habitat are anticipated.

Revised on: May 16, 2013