Determination of Critical Habitat for the Leatherback Sea Turtle

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) determines critical habitat for the leatherback sea turtle (Dermochelys coriacea) in waters adjacent to Sandy Point Beach, St. Croix, U.S. Virgin Islands. The action is being taken under Section 7 of the Endangered Species Act of 1973, as amended. 16 U.S.C. 1531 et. seq. (the "Act") to provide protection to sea turtles using these waters for courting, mating activities and nesting by the endangered leatherback turtle. This designation as critical habitat under the Act, in Fredericksted, St. Croix on December 5, 1978 (43 FR 55806).

The meeting was attended by 11 individuals representing: the NMFS; the U.S. Fish and Wildlife Service; Department of Conservation and Cultural Affairs (DCCA), U.S. Virgin Islands; the West Indies Laboratory of Fairleigh Dickinson University in St. Croix; and interested members of the public. None of the attendees expressed opposition to the proposal.

At the public meeting, representatives of DCCA indicated that several species of sea turtles nest on 42 of 43 identified beaches on St. Croix. The NMFS has requested DCCA to provide additional information on this matter.

Representatives of the West Indies Laboratory discussed the critical shortage of sand in the Virgin Islands and the potential for the development of offshore sandmining sites. At this time, it is unknown whether offshore sandmining is economically and technologically feasible and if so, where it might occur. It is conceivable however, that mining in this area, if it were ever proposed, might be impacted by this designation.

It was noted at the meeting that designating this area as critical habitat will require any Federal department or agency that authorizes, funds, or carries out activities that might result in the destruction or adverse modification of the area to comply with Section 7 of the Act.

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RULES AND REGULATIONS

Written comments were received from Mr. Glen O. Clark, Acting Superintendent, Virgin Islands National Park, U.S. Department of the Interior and from Ms. Laura Tangley, Defenders of Wildlife, both supported the proposed designation.

Mr. Clark indicated that staff of Christiansted National Historic Site and Buck Island Reef National Monument have inspected the proposed critical habitat area and concur in the designation of the area as critical habitat for the leatherback sea turtle.

Defenders of Wildlife noted that the proposed area is of critical importance to the leatherback in the course of carrying out its normal courting, breeding, and nesting activities, and falls within the definition of critical habitat under the Endangered Species Act of 1973 as well as the Act's 1978 amendments. In addition to supporting this designation, Defenders of Wildlife further recommended that NMFS identify other areas under U.S. jurisdiction that may be essential to the conservation of the species and designate these areas as critical habitat.

Defenders of Wildlife expressed concern that although private activities in the Sandy Point Beach area such as commercial and recreational fishing, boating, swimming, and diving are not directly designed to designate the area as critical habitat, these private activities could potentially have a detrimental impact on leatherback sea turtles at times of courting, breeding, and nesting. Defenders of Wildlife further recommended that NMFS investigate the impacts of these private activities on leatherback sea turtles, and should the research show it necessary, seasonally close the area to one or more of such private activities. Defenders of Wildlife further recommended that NMFS provide the turtles additional protection by locally publicizing their endangered status and by concentrating enforcement efforts in the area.

The NMFS received no requests for a public hearing on the proposal.

The only activities that have been identified as possibly modifying this critical habitat of being impacted by its designation are recreational activities such as boating and swimming and sandmining. Recreational activities may result in disturbances in the water column that could affect the critical habitat but designation of this habitat will not impact private recreational activities. Sandmining may result in increased turbidity in the water column which may result in adverse modification of this habitat.

CONCLUSION

All information available to NMFS indicates that the area proposed as critical habitat needs to be protected to help conserve the leatherback sea turtle. In addition, the economic and other impacts of this designation are either speculative or nonexistent. Based on the best scientific and commercial data available, the Assistant Administrator for Fisheries hereby determines that the waters adjacent to Sandy Point Beach, St. Croix, U.S. Virgin Islands are critical habitat for the leatherback sea turtle.

EFFECT OF THE RULEMAKING

The major effect of designating this area as critical habitat will be to require any Federal department or agency that authorizes, funds, or carries out activities that might result in the destruction or adverse modification of the critical habitat to comply with Section 7 of the Act. At this time there are no known Federal activities planned for the area.

Private activities are not directly affected by designating an area as critical habitat. The taking of any endangered turtle is presently prohibited by the provisions of the Endangered Species Act of 1973.

NATIONAL ENVIRONMENTAL POLICY ACT

The Assistant Administrator for Fisheries has determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. An environmental assessment has been prepared in conjunction with this rulemaking. It is on file in the NMFS Office of Marine Mammals and Endangered Species, 3300 Whitehaven Street, N.W., Washington, D.C. 20225, and may be examined during regular business hours or obtained by mail.

MISCELLANEOUS

On October 4, 1978, NMFS proposed to add a new Part 226, entitled Designated Critical Habitat, to Title 50 of the Code of Federal Regulations; and, to designate the Port Canaveral Navigation Channel, Cape Canaveral, Florida, as a critical habitat under 50 CFR Part 226 (43 FR 45905). The public comment period on establishing a new Part 226 closed on December 4, 1978. The designation of the Port Canaveral Navigation Channel is still pending. Nevertheless, no comments were received on the general provisions of the proposed Part 226, and NMFS considers it appropriate to promulgate these general provisions at this time.

Under Executive Order 12044 (43 FR 29170) and Department of Commerce Administrative Order 219-7 (44 FR 20821), the Assistant Administrator for Fisheries has made an initial determination that this is not a significant regulation.

The primary author of this rulemaking is Mr. Richard B. Roe, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, (202) 634-7287.

REGULATION PROMULGATION

Accordingly, 50 CFR is amended by adding a new Part 226 as follows:

PART 226—DESIGNATED CRITICAL HABITAT

Subpart A—Introduction

Sec. 226.1 Purpose of regulations.

226.2 Scope of regulations.

Subpart B—Critical Habitat for Marine Mammals

226.11-30 [Reserved]

Subpart C—Critical Habitat for Marine Fish

226.31-70 [Reserved]

Subpart D—Critical Habitat for Marine Reptiles

226.71 Sandy Point, St. Croix, U.S. Virgin Islands.


Subpart A—Introductions

§ 226.1 Purpose of regulations.

The regulations contained in this Part identify those habitats designated as critical under section 7 of the Endangered Species Act, as amended, by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, for those endangered and threatened species under the jurisdiction of the Secretary of Commerce. The list of these species is found in 50 CFR § 222.23(a) for endangered species and 50 CFR § 227.4 for threatened species.

§ 226.2 Scope of regulations.

(a) The critical habitat designations contained in this Part apply only to the endangered and threatened species listed in this Part.

(b) Regulations implementing section 7 of the Endangered Species Act, as amended, are found in 50 CFR Part 402.

(c) The provisions in this Part are in addition to, and not in lieu of other regulations of Parts 217-227 and 402 of this Chapter.
Subpart B—Critical Habitat for Marine Mammals

§§ 226.11-226.30 [Reserved]

Subpart C—Critical Habitat for Marine Fish

§§ 226.31-226.70 [Reserved]

Subpart D—Critical Habitat for Marine Reptiles

§ 226.71 Sandy Point, St. Croix, U.S. Virgin Islands

Leatherback Sea Turtle (Dermochelys coriacea)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42'12" North and 64°50'00" West.


WINFRED H. MEIBOHM,
National Marine Fisheries Service.

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