

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Critical Habitat for the Leatherback Sea Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines critical habitat for the leatherback sea turtle (*dermochelys coriacea*) in a portion of its range. This action is being taken to insure the integrity of the only major nesting beach used by leatherbacks in the United States or its territories and makes all provisions of section 7 of the Endangered Species Act of 1973 available to this species. In accordance with section 7, all Federal agencies will be required to insure that actions authorized, funded, or carried out by them do not adversely affect this critical habitat. The areas determined as critical habitat are located on Sandy Point at the western edge of St. Croix, U.S. Virgin Islands.

DATE: This rule becomes effective on October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In the FEDERAL REGISTER of March 23, 1978 (43 FR 12050-12051), the Fish and Wildlife Service published a proposed determination of critical habitat for the leatherback sea turtle (*Dermochelys coriacea*). This critical habitat was described as:

U.S. Virgin Islands—A strip of land 0.1 mile wide (from mean high tide inland) at Sandy Point Beach on the western end of the island of St. Croix beginning at the southwest cape to the south and running 0.8 mile northwest and then northeast along the shoreline.

In the March 23, 1978, FEDERAL REGISTER proposed rulemaking (43 FR 12050-12051) and associated March 28, 1978, press release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All public comments received during the period March 23, 1978, to July 20, 1978, were considered.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

A total of 14 comments were received in response to the proposal for critical habitat for this species; no comments were received which opposed designating Sandy Point Beach as critical habitat for the endangered leatherback. Comments were received from Gov. Juan Luis of the U.S. Virgin Islands, John Yntema and Otto Tranberg (Virgin Islands Department of Conservation and Cultural Affairs), Capt. F. P. Schubert (U.S. Coast Guard), Christina Palacio (New York Zoological Society), Craig Van Note (monitor), Omar Munoz-Roure (Caribbean Fishery Management Council), and seven private individuals. Only Governor Luis, Mr. Yntema, and Mr. Tranberg added information to that contained in the original proposal.

Both Governor Luis and John Yntema expressed concern that the width of the proposed critical habitat, 0.1 mile, might be too narrow to include all areas of suitable nesting habitat for the leatherback. Both recommended widening the area to 0.2 mile. In addition, Governor Luis noted past cooperation between Federal agencies and Virgin Islands personnel and expressed support for continued cooperation. Governor Luis also noted that it is the desire of the Virgin Islands to eventually acquire a major portion of the holdings.

Mr. Tranberg noted that records of the Virgin Islands Department of Conservation and Cultural Affairs indicate that a total of 86 leatherbacks actually nested on Sandy Point in 1977 and that as of the date of his letter May 18, 1978), 17 leatherbacks had nested. He noted that as much as 10 percent of nesting activity is actually occurring adjacent to the area proposed as critical habitat. Mr. Tranberg therefore recommended that the area be enlarged 0.7 mile on the south shore and 0.4 mile on the north shore. He also stated that 15 leatherback nests have been found to date in 1978 in the Shoys Beach area near Christiansted, St. Croix.

CONCLUSION

All information received by the Service indicates that the area proposed as critical habitat on Sandy Point for the leatherback does indeed qualify as critical habitat under that definition (see the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876)). In addition, information received during the comment period suggests that the critical habitat should be expanded somewhat to include areas of additional nesting activity on Sandy Point Beach. Ac-

ordingly, the Director hereby determines final critical habitat for the leatherback sea turtle to be as follows (exclusive of those existing manmade structures or settlements which are not necessary to the normal needs or survival of the species):

U.S. Virgin Islands—A strip of land 0.2 mile wide (from mean high tide inland) at Sandy Point Beach on the western end of the island of St. Croix beginning at the southwest cape to the south and running 1.2 miles northwest and then northeast along the western and northern shoreline, and from the southwest cape 0.7 mile east along the southern shoreline.

EFFECT OF THE RULEMAKING

The effects of this determination are involved primarily with section 7 of the Act, which states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "critical habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876) and is reprinted below:

"Critical habitat" means any air, land, or water area (exclusive of those existing manmade structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for interagency cooperation as published in the January 4, 1978, FEDERAL REGISTER (43 FR 870-876), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally,

(5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

In accordance with the July 18, 1977, memorandum of understanding between the Fish and Wildlife Service and National Marine Fisheries Service, the Fish and Wildlife Service was given the responsibility for sea turtles while on land. Such responsibility includes the determination of critical habitat. Since the only time leatherback sea turtles leave the water to come onto beaches in the U.S. Virgin Islands is to lay eggs, the areas included in this determination are areas where leatherback sea turtles nest. All the beaches in this rulemaking provide sites for the incubation of eggs and are known to provide proper sand size, moisture, and temperature conditions for successful development and hatching. There may be many kinds of actions which can be carried out within the critical habitat of a species which would not be expected to adversely affect that species. This point has not been well understood by some persons. There has been widespread and erroneous belief that a critical habitat designation is something akin to establishment of a wilderness area of wildlife refuge, and automatically closes an area to most human uses. Actually, a critical habitat designation applies to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursu-

ant to section 7 of the Act are applicable in a certain area.

A critical habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a critical habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of critical habitat delineations. Such questions should, and can more conveniently, be dealt with after critical habitat has been designated. In this respect, the Service in cooperation with other Federal agencies had drawn up a set of regulations which, in part, establish a consultation process for helping to evaluate the possible effects of actions on critical habitat. Regulations for inter-agency cooperation were published on January 4, 1978, in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared in conjunction with this rulemaking. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C.

20240, and may be examined during regular business hours or obtained by mail. The assessment is the basis for a decision that the determinations of this rulemaking are not major Federal actions 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.

The primary author of this rulemaking is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, 202-343-7814.

REGULATION PROMULGATION

§ 17.95 [Amended]

Accordingly, 50 CFR 17.95(c) is amended by adding critical habitat of the leatherback sea turtle after that of the giant anole as follows:

* * * * *

(c) *Reptiles.* * * *

LEATHERBACK SEA TURTLE
(*Dermochelys coriacea*)

U.S. Virgin Islands—A strip of land 0.2 mile wide (from mean high tide inland) at Sandy Point Beach on the western end of the island of St. Croix beginning at the southwest cape to the south and running 1.2 miles northwest and then northeast along the western and northern shoreline, and from the southwest cape 0.7 mile east along the southern shoreline.

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMD Circular A-107.

Dated: September 18, 1978.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

[FR Doc. 78-26993 Filed 9-25-78 8:45 a.m.]