

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 226—DESIGNATED CRITICAL HABITAT

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, breeding, and as access to and from their nesting areas on Sandy Point Beach. All Federal departments and agencies are required to insure that actions authorized, funded, or carried out by them do not result in the destruction or adverse modification of the critical habitat.

DATES: This rule becomes effective on March 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Roe, Acting Deputy Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, (202) 634-7287.

SUPPLEMENTARY INFORMATION: On November 29, 1978 (43 FR 55806), the National Marine Fisheries Service (NMFS) published a proposed determination of critical habitat for the leatherback sea turtle (*Dermochelys coriacea*). This critical habitat was described as:

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.

The leatherback sea turtle has been listed as endangered since 1970 (35 FR 19320). Although the leatherback spends most of its life in waters of 150

feet depth or greater, it comes ashore to nest and lay eggs.

Courtship and mating are believed to occur in waters adjacent to nesting beaches just prior to the time of egg laying. Accordingly, the survival and recovery of the leatherback depends on the maintenance of suitable and undisturbed nesting beaches and protection of waters adjacent to those beaches.

During the early summer of 1977 the U.S. Fish and Wildlife Service (FWS) identified a nesting aggregation of leatherback sea turtles occurring at the western end of the island of St. Croix, U.S. Virgin Islands. Personnel of the FWS, NMFS, U.S. Coast Guard, and Government of the Virgin Islands conducted observation on St. Croix during the month of June. In excess of 70 leatherback nests were discovered on the 0.8 mile by 0.1 mile strip of Sandy Point Beach during these observations. This area constitutes a major beach under U.S. jurisdiction used for nesting by the endangered leatherback. The FWS designated Sandy Point Beach on St. Croix as critical habitat for the leatherback sea turtle on September 26, 1978 (43 FR 43688).

Pursuant to an agreement between the FWS and the NMFS, the FWS has jurisdiction over sea turtles on the land and the NMFS over sea turtles in the marine environment. These regulations designate as critical habitat an area of the marine environment adjacent to a nesting beach previously designated as critical habitat by the FWS.

The Endangered Species Act Amendments of 1978 define the term "critical habitat" as follows:

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Since the area designated as critical habitat is used by the leatherback for courting and mating activities and provides an access to and from an important nesting beach, the NMFS believes the area is essential for the conservation of the leatherback sea turtle and requires special management protection. As such, these waters qualify for designation as critical habitat under the Endangered Species Act, as amended.

REVIEW OF RELEVANT IMPACTS AND SUMMARY OF COMMENTS AND RECOMMENDATIONS

In the proposal to designate this area as critical habitat, it was noted that NMFS was unaware of any current plans to develop this area. In the course of this rulemaking, efforts were made to obtain information concerning all economic and other relevant impacts of the proposed designation and all public and private activities which may adversely modify the critical habitat or may be impacted by this designation. To this end, notice of the proposed designation appeared in Virgin Islands newspapers, was distributed to local government personnel, and written comments were solicited from the public. Consultation with the U.S. Coast Guard, U.S. Navy, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and Government of the U.S. Virgin Islands indicated that the proposed designation would generate no significant impacts. A public meeting regarding the proposed designation was held, as required under the 1978 amendments to 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 use of the shelf area seaward of Sandy Point as a sand mining site. A two-year study is in progress by the West Indies Laboratory (funded by Office of Sea Grant, NOAA) to identify potential 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.

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 Tangle, 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 this 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 affected by designating 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 recommended the 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 this 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. 20235, 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 new 50 CFR Part 226, and NMFS considers it appropriate to promulgate these general provisions at this time.

Under Executive Order 12044 (43 FR 23170) and Department of Commerce

Administrative Order 218-7 (44 FR 2082), 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.

AUTHORITY.—Endangered Species Act of 1973, section 7, Pub. L. 93-205, 16 U.S.C. § 1536.87 Stat. 884.

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.

Dated: March 16, 1979.

WINFRED H. MEIBOHM,
*National Marine
Fisheries Service.*

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