

PROPOSED RULES

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED
WILDLIFE AND PLANTSProposed Determination of Critical
Habitat for the Leatherback Sea
TurtleAGENCY: Fish and Wildlife Service,
Interior.

ACTION: Critical Habitat proposal.

SUMMARY: The Service hereby proposes Critical Habitat for the leatherback sea turtle (*Dermochelys coriacea*) in the U.S. Virgin Islands. This proposal would make this area subject to full protection under Section 7 of the Endangered Species Act of 1973 and is being taken to insure the integrity of Sandy Point Beach, an area which contains the largest nesting aggregation of leatherbacks in lands under United States jurisdiction.

DATES: Comments from the public must be received by May 22, 1978. Comments from the Governors of States involved with this action must be received by June 21, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

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.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The leatherback sea turtle is a rare and critically Endangered reptile throughout the world, and has been officially listed as Endangered since 1970. Much of the hope for the survival and recovery of this species depends upon the maintenance of suitable and undisturbed nesting beaches. The Service recognizes that areas containing such beaches may qualify for recognition as Critical Habitat as referred to in Section 7 of the Act.

During the early summer of 1977, the Service became aware of a newly discovered nesting aggregation of

leatherback sea turtles occurring at the western end of the island of St. Croix, U.S. Virgin Islands. Personnel of the Fish and Wildlife Service, National Marine Fisheries Service, U.S. Coast Guard, and Government of the Virgin Islands conducted observations on St. Croix during the month of June. 76 to 79 leatherback nests were discovered, and evidence of poaching and potential development were noted. Nesting activity was seen to occur on the 0.8 mile long by 0.1 mile wide strip of Sandy Point Beach. This small area constitutes the only known beach under U.S. jurisdiction used extensively for nesting by the Endangered leatherback.

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."

An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs or survival of that species; (2) actions by a Federal agency affecting Critical Habitat of a species would not conform with section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out with in the Critical Habitat of a species which would not be expected to adversely affect that species.

This last 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 or wildlife refuge, and

automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant 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 has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat. Provisions for Interagency Cooperation were published on January 4, 1978, in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with their responsibilities under section 7 of the Endangered Species act of 1973.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate as

possible in delineating the Critical Habitat of the leatherback sea turtle. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party on these proposed rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is 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.

The primary author of this proposed rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

§ 17.95 [Amended]

The Service proposes to amend § 17.95(c) by adding Critical Habitat of the leatherback sea turtle after that of the giant anole as follows:

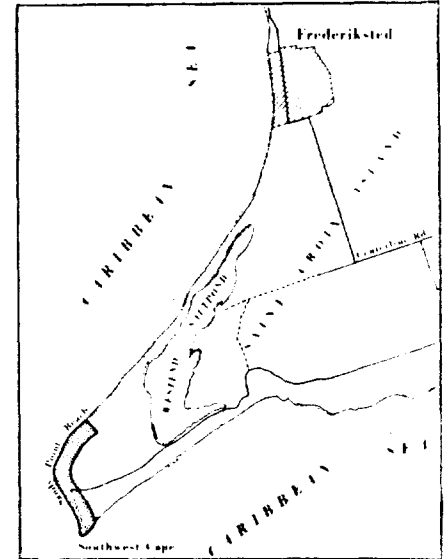
(c) *Reptiles.* * * *

LEATHERBACK SEA TURTLE (*Dermochelys coriacea*)

U.S. Virgin Islands. A strip of land 0.1 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.

LEATHERBACK SEA TURTLE
VIRGIN ISLANDS



Proposed critical habitat for the leatherback sea turtle.

NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: March 8, 1978.

LYNN A. GREENWALT
Director,
Fish and Wildlife Service.

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