

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Hawksbill Sea Turtle in Puerto Rico**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines Critical Habitat for the hawksbill sea turtle (*Eretmochelys imbricata*) in the Commonwealth of Puerto Rico. Nesting of this species occurs in scattered localities throughout the Caribbean although in no place is nesting as abundant as in the past. The beaches on Mona Island represent a significant nesting area for this species in the Caribbean and were singled out as of major importance at the World Conference on Sea Turtle Conservation held in November 1979 in Washington, D.C. Areas on the islands of Culebra, Culebrita, and Cayo Norte are also regularly used by nesting hawksbills. This document identifies habitat subject to Federal agency consultation pursuant to Section 7(a) of the Act.

DATE: This rule becomes effective on July 26, 1982.

ADDRESSES: Questions concerning this action may be addressed to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to the rule are available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background. The hawksbill sea turtle is a rare and critically Endangered reptile throughout the world (see Parsons, 1972; Carr and Stancyk, 1975; and Pritchard, 1979) 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 and the protection of nesting beaches is a strategy endorsed by scientists throughout the world (World Conference on Sea Turtle Conservation, 1979) for the conservation of this species. The Service recognizes that areas containing such beaches may qualify for recognition as Critical Habitat as referred to in Section 4 of the Act, thereby providing additional protection through Section 7.

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 responsibility for sea turtles while on land. Such responsibility includes proposing and designating Critical Habitat. The designation of marine Critical Habitat is the jurisdiction of the National Marine Fisheries Service; therefore, this rule includes only land areas.

Hawksbill sea turtles are known to nest on all of Mona Island's 7.2 kilometers of beaches. The offshore areas appear to support a somewhat stable and resident population (Thurston and Wiewandt, 1975; Wiewandt, 1973; A. Carr, pers. commun.). In addition, green turtles and, rarely, leatherback turtles may also nest on Mona (T. Wiewandt, pers. commun.). The designation of Mona Island as Critical Habitat for the hawksbill sea turtle was recommendation number 83 in the World Action Plan for the Conservation of Sea Turtles (World Conference on Sea Turtle Conservation, 1979). The entire island of Mona is already Critical Habitat for the listed yellow-shouldered blackbird, Mona ground iguana, and Mona boa.

Nesting of hawksbill sea turtles occurs on suitable sandy beaches on the north shore of Culebra Island, as well as the nearby islands of Cayo Norte and Isla Culebrita. Turtles are known to feed on the rich offshore reefs around these islands. In addition to hawksbills, occasional nesting has been reported for leatherback, loggerhead, and green turtles on these beaches (T. Carr, 1974). The Critical Habitat for the Endangered Culebra Island giant anole on Playa Resaca barely overlaps the Critical Habitat of the hawksbill.

The hawksbill sea turtle is a tropicopolitan species. It occurs in waters off the east coast of the continental United States (primarily Florida), the U.S. Virgin Islands, mainland Puerto Rico, the Hawaiian Islands, Pacific Trust Territory, American Samoa, Guam, and Territory of the Northern Marianas. Nesting is known to occur very rarely in Florida (Lund, 1978; R. Witham, pers. commun.) and more frequently in the Virgin Islands (Island Resources Foundation, 1978) and on remote islands under U.S. jurisdiction in the Pacific Ocean (Pritchard, 1977). Dodd (1978) has provided a list of nesting areas for the hawksbill in the United States and in areas under its jurisdiction.

The threats to the worldwide apparent decline in populations of the hawksbill sea turtle come from three main sources: killing the animal so that the scutes covering the bony shell may be removed to fashion tortoise-shell items, or the animal may be stuffed and sold to tourists; removal of eggs for human consumption or the destruction of eggs by predators; disruption or alteration of the nesting beaches. Additional problems that this species may encounter include killing for meat (this happens occasionally but hawksbill meat is considered poisonous in many parts of the world), incidental catch in trawls (a minor problem in the Caribbean), accidental entanglement in fishing nets, pollution and destruction of nesting and feeding reefs, and harassment while nesting and swimming. The problems faced by this species were treated in detail at the recent (November 26-30, 1979) World Conference on Sea Turtle Conservation held in Washington, D.C.

Critical habitat for beaches used by nesting hawksbills in the Commonwealth of Puerto Rico was proposed on May 24, 1978, in the **Federal Register** (43 FR 22224-22225). Those areas were withdrawn from consideration on March 6, 1979 (44 FR 12382-12384), because of the substantive changes made to the requirements for the determination of Critical Habitat by the Endangered Species Act Amendments of 1978. The areas in the final rule are essentially the same as those of the original and subsequent proposal. This rule is in compliance with the requirements of the 1978 and later amendments.

In conjunction with the proposal for Critical Habitat, the Service held public meetings in Mayaguez (December 2, 1980), San Juan (December 3, 1980), and on Isla Culebra (December 4, 1980) to explain the proposal, answer public

questions, and to solicit additional information on the biology of the turtle and the economic effects of a Critical Habitat designation on federally authorized and funded projects in the area. All public comment periods were closed on January 21, 1981.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the *Federal Register* prior to adding any species to the List of Endangered and Threatened Wildlife and Plants or to the addition of Critical Habitat to an already listed species. In the October 22, 1980, *Federal Register* (45 FR 70198-70201), the Service proposed to list the Critical Habitat of the hawksbill sea turtle, *Eretmochelys imbricata*.

Comments received through January 21, 1981, on the proposed Critical Habitat of this turtle are summarized below. A total of 25 comments were received in response to the proposal.

All comments favored the proposal, except a letter signed by Mr. Frederick E. Rushford on behalf of Governor Carlos Romero Barcelo of Puerto Rico. Mr. Rushford simply acknowledged receipt of notification of the proposal but offered no comments on the proposal itself. Of the remainder, 21 comments offered no substantive comments or criticisms, but merely reiterated the information contained in the proposal.

In the additional three favorable comments, several suggestions were offered. One comment recommended exclusion of Playa de Pajaros and Sardinera Beach on Mona because these areas are used for camping or there are cottages constructed near them. The Service notes that both areas are used for nesting by this species and believes they are important to the survival of the nesting hawksbill on Mona. Neither camping nor already existing cottages would be affected by this rule since a designation of Critical Habitat only applies to federally authorized or funded projects. Harassing or harming of hawksbills is prohibited by other sections of the Act and have been since 1973.

One comment from the National Wildlife Federation noted the discrepancy between the width of the proposed Critical Habitat on Culebra and Culebrita (150 meters inland from mean high tide) and that recommended to protect marine turtles in the Draft Environmental Impact Statement with regard to the proposed land transfer on Culebra and Culebrita (167 meters from mean low tide contour). The Service

responds as follows: Recent legislation gave the Commonwealth title to all submerged lands around Puerto Rico and all its islands (including Culebra and Culebrita) for a distance of 3 marine leagues (=10.35 statute miles) beginning at mean high tide (Pub. L. 96-205, which amended the Puerto Rican Federal Relations Act of 1971, also known as the "Jones Act"). Legal citation for the current jurisdiction is 48 U.S.C. 749, as amended March 12, 1980. Based on this, the Service believes the Critical Habitat boundary at mean high tide is appropriate. The conveyance restrictions were first drafted prior to enactment of this amendment. Substantively, there is little difference between the two, since tidal fluctuations in Puerto Rico are reported to be extremely small.

While Defenders of Wildlife supported the proposal, they raised a number of questions concerning it, in addition to reiterating information contained in the proposal. Defenders noted past U.S. Navy involvement and the pending transfer of excess Navy lands to the Commonwealth of Puerto Rico and the Service. Defenders expressed concern that the beaches proposed as Critical Habitat be adequately protected and managed. The Service responds that the transfer of lands on Culebra to the Commonwealth of Puerto Rico was approved by the Secretary on February 1, 1982. The Department decided to deed 936 acres on Culebra, including most of the beach in this final rule, to the Commonwealth. Seven hundred and seventy six acres were deeded to the Service to be managed as part of the National Wildlife Refuge system. Culebrita, already within the Refuge system, will remain within Caribbean National Wildlife Refuge. An integral part of the transfer included conveyance restrictions to insure that no activities adverse to sea turtle nesting will occur on the beaches. These restrictions include prohibition of all night time uses, including recreation and anchoring of boats; prohibition of installation of lights or their use at night during the nesting season; prohibition of motorized vehicles and hoofed animals; limitation of daytime uses to hiking, picnicking, swimming, and similar compatible recreational activities; intensive beach patrols; and education of visitors to the protections provided to all Endangered species and marine mammals. In an intra-Service consultation completed on May 16, 1980, the Service determined that these restrictions would be sufficient to preclude adverse impacts to nesting and hatchling turtles.

Defenders noted that Playas Blanca and Flamenco, both proposed in 1978 by the Service (see the *Federal Register* of May 24, 1978; 43 FR 22224-22225), were absent from the reproposal. They questioned this, as well as why beaches on Vieques were not included. The Service notes that Playa Blanca and Playa Flamenco were deleted from the reproposal because of the lack of hawksbill turtle nesting there and the intensive recreational use of the area. Other beaches mentioned in the letter were not included in either the original proposal or the reproposal because of lack of definitive data on turtle use.

The Service notes that the article cited by Defenders (Dodd, 1978) included areas under review for Critical Habitat status, not areas already determined to be biologically Critical Habitat. In any case, the article does not present Service positions, only the professional opinion of one biologist as to which areas may qualify.

Finally, Defenders noted that the proposed Critical Habitat in 1978 (previously referenced) proposed Critical Habitat to extend 0.1 mile inland whereas the reproposal extended only 150 meters inland. The Service believes, however, that the decision to change the Critical Habitat boundary from 0.1 mile (161 meters) to 150 meters from the high tide line makes no substantive difference; the beaches are fully protected regardless of which is chosen. As it is, there is extensive overlapping on Culebrita and all beach areas are included within the Critical Habitat boundaries.

After a thorough review and consideration of all the available information, the Secretary has determined that those areas proposed in the October 22, 1980, *Federal Register* (45 FR 70198-70201) should be determined as Critical Habitat for the Endangered hawksbill.

Critical Habitat

The Act defines "Critical Habitat" as: (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 considerations or protection; and (ii) specific areas outside the geographic 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.

The Service believes that certain beaches and adjacent landward areas within the geographical area occupied by the hawksbill sea turtle in the Commonwealth of Puerto Rico should be designated as Critical Habitat. This species is highly susceptible to changes in its nesting habitat and unless these areas are managed carefully with regard to nesting and the successful incubation and hatching of eggs, the species could disappear from these beaches, which are reputed to be among the best in the world for hawksbills. The Service believes that the designation of Critical Habitat is essential to the conservation of this species and will work carefully in cooperation with the Department of Natural Resources in Puerto Rico to insure survival of the species, which requires special management consideration and protection.

Section 424.12(b) of 50 CFR further states that, when considering the designation of Critical Habitat, the Service shall focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the Critical Habitat description. The following elements are known or believed to be constituent elements in the nesting habitat of the hawksbill sea turtle.

1. *Presence of clean sand*—The hawksbill sea turtle requires clean sand, free of pollutants such as oil, to have successful incubation of its eggs.

2. *Obstructions*—Tree roots, beach debris, steep banks, and offshore obstructions such as rocks or jetties may prohibit or hinder successful nesting. Beaches should be free from or have a minimum of such obstructions.

3. *Depth of sand*—There must be sufficient depth of sand to allow successful incubation and hatching without the eggs being drowned by sea water intrusion.

4. *Lights on land*—Areas behind and on the nesting beach should be free of lights. Lights may inhibit females from nesting and disorient hatchlings (Philibosian, 1976).

5. *Beach disturbance*—Beaches should receive a minimum of disturbance, especially after dark. Loud noise and even silhouettes may inhibit females from nesting. In addition, vehicles on a beach or even careless human walking may collapse nesting cavities.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any determination of Critical Habitat be accompanied by a brief description and

evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act. At this time, no Federal activities are known which would be affected by this action.

Examples of activities that could be detrimental to the environment of this species and lead to further reduction of its range include:

1. The destruction of reef areas needed for feeding and resting or actual physical disturbance or pollution.

2. The modification of nesting beaches through removal of sand.

3. The placement of artificial lighting too near the nesting beach which could disorient hatchlings.

4. Putting human recreational facilities too close to nesting beaches which could allow the destruction of already completed nests or the spooking of nesting females as they come onto shore to deposit eggs.

5. Pollution of the nesting beaches by oil or other fouling materials.

6. The use of off-road vehicles on nesting beaches.

7. The creation of offshore barriers which could prevent the females from reaching the beaches.

8. General harassment by people and domestic and introduced animals.

The above eight examples are provided as illustrations of the types of activities which may be detrimental to the physical environment of hawksbill sea turtle nesting beaches. They are not necessarily examples of what is actually happening at each of the areas determined as Critical Habitat.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis and believes at this time that economic and other impacts of this section are not significant in the foreseeable future. The Service is notifying Federal and Commonwealth agencies that may have jurisdiction over the land and water under consideration in this action.

Effect of this Final Rule

Section 7(a) of the Act provides (in part):

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the Act. All other Federal agencies shall,

in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purpose of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to Section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as "agency action") is not likely to jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to Subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

This final rule now requires Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the hawksbill sea turtle, but also requires them to insure that their actions are not likely to result in the destruction or adverse modification of its Critical Habitat which has been determined by the Secretary. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Literature Cited

- Carr, T. 1974. The marine turtles and terrestrial reptiles of Culebra Island. Rept. to U.S. Fish and Wildlife Service, Washington, D.C. 28 pg., 24 fig.
- Carr, A. and S. Stancyk. 1975. Observations on the ecology and survival outlook of the hawksbill turtle. Biol. Conserv. 8:161-172.
- Dodd, C. K., Jr., 1978. Terrestrial Critical Habitat and marine turtles. Bull. Md. Herp. Soc. 14:233-240.
- Island Resources Foundation. 1978. Report on sea turtle nesting, sighting, eggs and hatchlings for 1978 in the U.S. Virgin Islands and a recommended research methodology for dealing with hatchling disorientation on the beach (with special reference to leatherback nests at Sandy Point, St. Croix). Rept. to NOAA/NMFS on purchase order 01-8-D08-00187. 29 pp.
- Lund, F. 1978. Atlantic hawksbill. pp. 24-25 In: R. W. McDiarmid (ed.), Rare and Endangered Biota of Florida, Amphibians & Reptiles, Vol. 3, Univ. Press of Florida, Gainesville.
- Parsons, J. J. 1972. The hawksbill turtle and the tortoiseshell trade. Études de géographie tropicale offertes a Pierre Gourou, Mouton & Co., Paris. pp. 44-60.

- Philibosian, R. 1976. Disorientation of hawksbill turtle hatchlings, *Eretmochelys imbricata*, by stadium lights. *Copeia*. 1976:824.
- Pritchard, P. C. H. 1977. Marine turtles of Micronesia. Chelonia Press, San Francisco, California. 83 pp.
- Pritchard, P. C. H. 1979. Encyclopedia of Turtles. T. F. H. Publ. Inc., Neptune, N.J. 895 pp.
- Thurston, J. and T. A. Wiewandt. 1975. Management of sea turtles on Mona Island. In: Unit Plan for the Management of the Mona Island Forest Reserve, Dept. of Natural Resources, San Juan, PR.
- Wiewandt, T. A. 1973. Mona amphibians, reptiles, and mammals. In: Mona and Monito Islands, an assessment of their natural and historical resources. Vol. II. Environmental Quality Board of Puerto Rico, San Juan.
- World Conference on Sea Turtle Conservation. 1979. Sea Turtle Conservation Strategy, IUCN, Gland, Switzerland. 38 pp.

An environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969, implemented at 40 CFR Parts 1500-1508.

Note.—The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291, and does not have a substantial effect on a significant number of small entities under the Regulatory Flexibility Act. These determinations are discussed in more detail in a Determination of Effects which has been prepared by the U.S. Fish and Wildlife Service.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

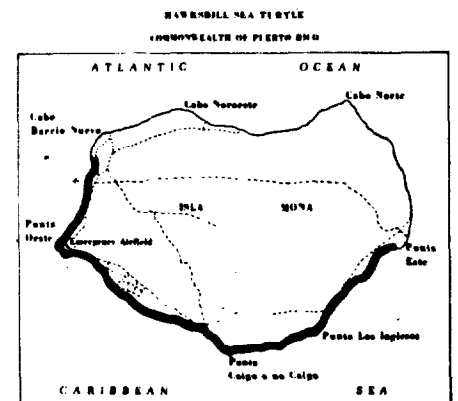
1. Section 17.95(c), Reptiles, is amended by adding Critical Habitat of the hawksbill sea turtle before that of the leatherback sea turtle as follows:

§ 17.95 [Amended]

Hawksbill Sea Turtle

(*Eretmochelys imbricata*)

Puerto Rico: (1) Isla Mona. All areas of beachfront on the west, south, and east sides of the island from mean high tide inland to a point 150 meters from shore. This includes all 7.2 kilometers of beaches on Isla Mona. (2) Culebra Island. The following areas of beachfront on the north shore of the island from mean high tide inland to a point 150 meters from shore: Playa Resaca, Playa Brava, and Playa Larga. (3) Cayo Norte. South beach, from mean high tide inland to a point 150 meters from shore. (4) Isla Culebrita. All beachfront areas on the southwest facing shore, east facing shore, and northwest facing shore of the island from mean high tide inland to a point 150 meters from shore.



Dated: May 14, 1982.

J. Craig Potter,
Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 82-17038 Filed 6-23-82; 8:45 am]

BILLING CODE 4310-55-M