

the commenters supported the proposed action. The commenters agreed with our assessment that the limited safety and environmental risk of the lines does not warrant applying Part 195 standards on top of the existing regulatory coverage by OSHA and the Coast Guard.

#### Advisory Committee Review

We presented the proposed rule change, including risk assessment and supporting analyses, for consideration by the Technical Hazardous Liquid Pipeline Safety Standards Committee at a meeting in Washington, D. C. on May 6, 1998. This statutory advisory committee reviews all safety rules RSPA proposes for hazardous liquid pipelines. The Committee comprises 15 members, representing industry, government, and the public, who are qualified to evaluate hazardous liquid pipeline safety standards. The Committee voted to recommend adoption of the proposed rule without change. The Committee's report on the matter is available in the docket of this proceeding.

#### Regulatory Analyses and Notices

##### A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this final rule document. DOT does not consider this action significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA prepared a study of the costs and benefits of the Final Rule that extended Part 195 to cover certain low-stress pipelines (Final Regulatory Evaluation, Docket No. PS-117). That study, which encompassed short or Coast Guard regulated interfacility transfer lines, showed that the Final Rule would result in net benefits to society, with a benefit to cost ratio of 1.5.

The Final Regulatory Evaluation determined costs and benefits of the Final Rule on a mileage basis. But while costs were evenly distributed, most of the expected benefits were projected from accident data that did not involve short or Coast Guard regulated interfacility transfer lines. Since the present action affects only these lines, it is reasonable to believe the action will reduce more costs than benefits. Thus, the present action should enhance the net benefits of the Final Rule. Because of this likely economic effect, a further regulatory evaluation of the Final Rule

in Docket No. PS-117 or of the present action is not warranted.

##### B. Regulatory Flexibility Act

Low stress interfacility transfer lines covered by the present action are associated primarily with the operation of refineries, petrochemical and other industrial plants, and materials transportation terminals. In general, these facilities are not operated by small entities. Nonetheless, even if small entities operate low-stress interfacility transfer lines, their costs will be lower because this action reduces compliance burdens. Therefore, based on the facts available about the anticipated impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

##### C. Executive Orders 13083 and 13084

This rule will not have a substantial direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government, and also would not significantly or uniquely affect Indian tribal governments. Therefore, the consultation requirements of Executive Orders 13083 ("Federalism") and 13084 ("Consultation and Coordination with Indian Tribal Governments") do not apply. Nevertheless, because states with hazardous liquid pipeline safety programs ultimately monitor the compliance of intrastate pipelines with the rule, RSPA routinely consults with state pipeline safety representatives during early stages of rulemaking.

##### D. Paperwork Reduction Act

This action reduces the pipeline mileage and number of operators subject to Part 195. Consequently, it reduces the information collection burden of Part 195 that is subject to review by OMB under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of Part 195 through May 31, 1999 (OMB No. 2137-0047).

##### E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least

burdensome alternative that achieves the objective of the rule.

#### List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR Part 195 as follows:

1. The authority citation for Part 195 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, and paragraph (b)(3) is revised to read as follows:

##### § 195.1 Applicability.

\* \* \* \* \*

(b) This part does not apply to—

\* \* \* \* \*

(3) Transportation through any of the following low-stress pipelines:

(i) An onshore pipeline or pipeline segment that—

(A) Does not transport HVL;

(B) Is located in a rural area; and

(C) Is located outside a waterway currently used for commercial navigation;

(ii) A pipeline subject to safety regulations of the U.S. Coast Guard; or

(iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

\* \* \* \* \*

Issued in Washington, D.C. on August 28, 1998.

**Kelley S. Coyner,**

*Administrator.*

[FR Doc. 98-23661 Filed 9-1-98; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 226

[Docket No. 971124276-8202-02; I.D. No. 110797B]

RIN 0648-AH88

##### Designated Critical Habitat; Green and Hawksbill Sea Turtles

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Endangered Species Act of 1973 (ESA), NMFS is

designating critical habitat for the threatened green sea turtle (*Chelonia mydas*) to include coastal waters surrounding Culebra Island, Puerto Rico, and the endangered hawksbill sea turtle (*Eretmochelys imbricata*) to include coastal waters surrounding Mona and Monito Islands, Puerto Rico. This designation of critical habitat provides explicit notice to Federal agencies and to the public that these areas and features are vital to the conservation of the species.

**DATES:** Effective October 2, 1998.

**ADDRESSES:** Requests for copies of this final rule and/or the Environmental Assessment (EA) should be addressed to Barbara Schroeder, National Sea Turtle Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Michelle Rogers, 301-713-1401 or Colleen Coogan, 727-570-5312.

**SUPPLEMENTARY INFORMATION:**

### Background

Green and hawksbill turtles are largely restricted to tropical and subtropical waters. Once abundant throughout the Caribbean, green and hawksbill turtle populations have diminished significantly from historic levels. In response to this decline, the green turtle was listed as threatened under the ESA, except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered, on July 28, 1978 (43 FR 32800), and the hawksbill turtle was listed as endangered throughout its range on June 2, 1970 (35 FR 8495).

Green and hawksbill turtles, as well as other marine turtle species, are also protected internationally under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Without these protections, it is highly unlikely that either species, traditionally highly prized in the Caribbean for their flesh, fat, eggs, and shell, would exist today.

On February 14, 1997, NMFS announced the receipt of a petition presenting substantial information to warrant a review (62 FR 6934) to designate critical habitat for green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) turtles to include the coastal waters surrounding the islands of the Culebra Archipelago. At that time, NMFS also requested additional information concerning other areas in the U.S. Caribbean where the designation of critical habitat for listed sea turtles may be warranted.

On December 19, 1997, NMFS published a proposed rule (62 FR

66584) to designate critical habitat for the green turtle to include coastal waters out to 3 nautical miles (nm) surrounding Culebra Island, Puerto Rico, and for the hawksbill turtle to include coastal waters out to 3 nm surrounding Mona and Monito Islands, Puerto Rico.

NMFS also completed an EA, pursuant to the National Environmental Policy Act, to evaluate both the environmental and economic impacts of the proposed critical habitat designation. The EA resulted in a finding of no significant impact for the proposed action.

The proposed rule provided for a 60-day public comment period. During the comment period, public hearings were held in Mayaguez, Puerto Rico, on January 26, 1998, in San Juan, Puerto Rico, on January 27, 1998, and in Culebra, Puerto Rico, on January 29, 1998. After consideration of the public comments, NMFS is designating critical habitat for green and hawksbill turtles as described in the proposed rule (see Proposed Critical Habitat; Geographic Extent section of this rule).

In accordance with the July 18, 1977, Memorandum of Understanding between NMFS and the U.S. Fish and Wildlife Service (USFWS), NMFS was given responsibility for sea turtles while in the marine environment. Such responsibility includes proposing and designating critical habitat. The designation of critical habitat for sea turtles while on land is the jurisdiction of the USFWS; therefore, this rule includes only marine areas.

### Critical Habitat of the Green Turtle

Biological information for listed green turtles can be found in the Recovery Plan for U.S. Population of Atlantic Green Turtle (NMFS and USFWS, 1991), the most recent green turtle status review (NMFS in prep.), and the **Federal Register** documents of proposed and final listing determination (see 40 FR 21982, May 20, 1975; 43 FR 32800, July 28, 1978). These documents include information on the status of the species, its life history characteristics and habitat requirements, as well as projects, activities, and other factors affecting the species.

Green turtles are primarily restricted to tropical and subtropical waters. In U.S. Atlantic and Gulf of Mexico waters, green turtles are found from Massachusetts to Texas and in the U.S. Virgin Islands and Puerto Rico. Caribbean populations of green turtles have diminished significantly from historical levels, primarily due to the directed turtle fishery that existed prior to their listing under the ESA. Additionally, researchers have

documented that habitat loss is a primary factor slowing the recovery of the species throughout its range. Degradation of seagrass beds has slowed recovery of green turtles in the Caribbean due to reduced carrying capacity of seagrass meadows (Williams, 1988). Therefore, the extent of habitat required for foraging green turtles is likely to be increasing due to the reduced productivity of remaining seagrass beds.

Seagrasses are the principal dietary component of juvenile and adult green turtles throughout the Wider Caribbean region (Bjorndal, 1995). The seagrass beds of Culebra consist primarily of turtle grass (*Thalassia testudinum*). While seagrasses are distributed throughout temperate and tropical latitudes, turtle grass beds are a tropical phenomenon. In the Caribbean, turtle grass beds consist primarily of turtle grass, but may include other species of seagrass, such as manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), and sea vine (*Halophila decipiens*), as well as several species of algae including green algae of the genera *Halimeda*, *Caulerpa*, and *Udotea*.

The natal beaches of Culebra's juvenile green turtles have not yet been identified. After emerging from nests on natal beaches, post-hatchlings may move into offshore convergence zones for an undetermined length of time (Carr, 1986). Upon reaching approximately 25 to 35 cm carapace length, juvenile green turtles enter benthic feeding grounds in relatively shallow, protected waters (Collazo *et al.*, 1992).

The importance of the Culebra archipelago as green turtle developmental habitat has been well documented. Researchers have established that Culebra coastal waters support juvenile and subadult green turtle populations and have confirmed the presence of a small population of adults (Collazo *et al.*, 1992). These findings, together with information obtained from studies conducted in the U.S. Virgin Islands, have reaffirmed the importance of developmental habitats throughout the eastern portion of the Puerto Rican Bank (Collazo *et al.*, 1992). Additionally, the coral reefs and other topographic features within these waters provide green turtles with shelter during interforaging periods that serve as refuge from predators.

The coastal waters of Culebra also provide habitat for hawksbill and leatherback turtles. Hawksbill turtles forage extensively on the nearby reefs, and both hawksbills and leatherbacks use Culebra's coastal waters to access

nesting beaches. Culebra and St. Croix beaches have the greatest density of leatherback nests within U.S. waters.

Culebra seagrasses provide foraging habitat for many valuable species. In addition to green turtles, the commercially important queen conch (*Strombus gigas*) and coral reef bony fishes (Class Osteichthyes), such as parrotfish (*Sparisoma spp.*), grunts (*Haemulon spp.*), porgies or sea breams (*Archosargus rhomboidalis*), and others, utilize this important habitat. Culebra's seagrass beds also provide habitat for the endangered west Indian manatee (*Trichechus manatus*) and several species of cartilaginous fishes (Class Chondrichthyes). Additionally, seagrass beds beneficially modify the physical, chemical, and geological properties of coastal areas. They provide nutrients, primary energy, and habitats that help sustain coastal fisheries resources while enhancing biological diversity and wildlife (Vicente and Tallevast, 1992).

#### Critical Habitat of the Hawksbill Turtle

Biological information for listed hawksbill turtles can be found in the Recovery Plan for the Hawksbill Turtle in the U.S. Caribbean, Atlantic and Gulf of Mexico (NMFS and USFWS, 1993), the Hawksbill Turtle Status Review (NMFS, 1995), and the **Federal Register** document of final listing determination (see 35 FR 8495, June 2, 1970). These documents include information on the status of the species, its life history characteristics and habitat requirements, as well as projects, activities, and other factors affecting the species.

The hawksbill turtle occurs in tropical and subtropical waters of the Atlantic, Pacific, and Indian Oceans. The species is widely distributed in the Caribbean Sea and western Atlantic Ocean. Within the United States, hawksbills are most common in Puerto Rico and its associated islands, the U.S. Virgin Islands, and Florida.

International commerce in hawksbill shell, or "bekko," is considered the most significant factor endangering hawksbill turtle populations around the world. Despite international trade protections under CITES, illegal trade in hawksbill shell continues. The illegal take of hawksbills at sea has not yet been fully quantified, but it is a continuing and serious problem.

Juvenile hawksbills are thought to lead a pelagic existence before recruiting to benthic feeding grounds at a size of approximately 25 cm straight carapace length (Meylan and Carr, 1982). Coral reefs, like those found in the waters surrounding Mona and Monito Islands, are widely recognized as the primary foraging habitat of

juvenile, subadult, and adult hawksbill turtles. This habitat association is directly related to the species' highly specific diet of sponges (Meylan, 1988). Gut content analysis conducted on hawksbills collected from the Caribbean suggests that a few types of sponges make up the major component of their diet, despite the prevalence of other sponges on the coral reefs where hawksbills are found (Meylan, 1984). Vicente (1993) observed similar feeding habits in hawksbills foraging specifically in Puerto Rico. Additionally, the ledges and caves of the reef provide shelter for resting and refuge from predators.

Hawksbills depend on coral reefs for food and shelter; therefore, the condition of reefs directly affects the hawksbill's well-being. Destruction of coral reefs due to deteriorating water quality and vessel anchoring, striking, or grounding is a growing problem.

Mona and Monito Islands are uninhabited natural reserves managed by the Puerto Rico Department of Natural and Environmental Resources. The coral reefs of Mona and Monito Islands are among the few known remaining locations in the Caribbean where hawksbill turtles occur with considerable density (Diez and van Dam, 1996). Researchers have shown that the large juvenile population of hawksbill turtles around Mona and Monito are long-term residents, exhibiting strong site fidelity for periods of at least several years (Diez, 1996). Recent genetic studies indicate that this resident population comprises individuals from multiple nesting populations in the Wider Caribbean. These data indicate that the conservation of the juvenile population of hawksbill turtles at Mona can contribute to sustaining healthy nesting populations throughout the Caribbean Region (Bowen *et al.*, 1996). Additionally, data on hawksbill turtle diet composition and foraging behavior suggest that this high-density hawksbill population may play a significant role in maintaining sponge species diversity in the nearshore benthic communities of Mona and Monito Islands (van Dam and Diez, 1997).

Hawksbills utilize both low- and high-energy nesting beaches in tropical oceans of the world. Both insular and mainland nesting sites are known. Hawksbills will nest on small pocket beaches and, because of their small body size and great agility, can traverse fringing reefs that limit access to other species.

Nesting within the southeastern United States occurs principally in Puerto Rico and in the U.S. Virgin

Islands, with the most important sites being Mona Island in Puerto Rico and Buck Island Reef National Monument in the U.S. Virgin Islands. Mona Island supports the largest population of nesting hawksbill turtles in the U.S. Caribbean. Considerable nesting also occurs on the beaches of Culebra, Vieques, and mainland Puerto Rico, as well as St. Croix, St. John, and St. Thomas.

The waters surrounding Mona Island also support a small green turtle population, which possibly is surviving only because of Mona's remoteness and the full-time presence of Puerto Rico Department of Natural and Environmental Resources fisheries/wildlife enforcement personnel. Limited green turtle nesting still occurs on Mona Island.

#### Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species \* \* \* 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 geographical area occupied by the species \* \* \* upon a determination by the Secretary that such areas are essential for the conservation of the species." (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means " \* \* \* to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS must consider the requirements of the species, including (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 disturbance or are representative of the historic geographical and ecological distributions of the species (see 50 CFR 424.12(b)).

In addition to these factors, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management

considerations or protection. These essential features may include, but are not limited to, breeding/nesting areas, food resources, water quality and quantity, and vegetation and soil types (see 50 CFR 424.12(b)).

### **Need for Special Management Considerations or Protection**

In order to assure that the essential areas and features described in previous sections are maintained or restored, special management measures may be needed. Activities that may require special management considerations for listed green and hawksbill turtle foraging and developmental habitats include, but are not limited to, the following:

(1) Vessel traffic—Propeller dredging and anchor mooring severely disrupt benthic habitats by crushing coral, breaking seagrass root systems, and severing rhizomes. Propeller dredging and anchor mooring in shallow areas are major disturbances to even the most robust seagrasses. Trampling of seagrass beds and live bottom, a secondary effect of recreational boating, also disturbs seagrasses and coral.

(2) Coastal construction—The development of marinas and private or commercial docks in inshore waters can negatively impact turtles through destruction or degradation of foraging habitat. Additionally, this type of development leads to increased boat and vessel traffic, which may result in higher incidences of propeller- and collision-related mortality.

(3) Point and non-point source pollution—Highly colored, low salinity sewage discharges may provoke physiological stress upon seagrass beds and coral communities and may reduce the amount of sunlight below levels necessary for photosynthesis. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous from urban and agricultural run-off and sewage can also stimulate algal growth that can smother corals and seagrasses, shade rooted vegetation, and diminish the oxygen content of the water.

(4) Fishing activities—Incidental catch during commercial and recreational fishing operations is a significant source of sea turtle mortality. Additionally, the increased vessel traffic associated with fishing activities can result in the destruction of habitat due to propeller dredging and anchor mooring.

(5) Dredge and fill activities—Dredging activities result in direct destruction or degradation of habitat as well as incidental take of turtles. Channelization of inshore and nearshore habitat and the disposal of dredged

material in the marine environment can destroy or disturb seagrass beds and coral reefs.

(6) Habitat restoration—Habitat restoration may be required to mitigate the destruction or degradation of habitat that can occur as a result of the activities previously discussed. Additionally, habitat degradation resulting from such episodic natural stresses as hurricanes and tropical storms may require special mitigation measures.

### **Activities That May Affect Critical Habitat**

A wide range of activities funded, authorized, or carried out by Federal agencies may affect the critical habitat requirements of listed green and hawksbill turtles. These include, but are not limited to, authorization by the U.S. Army Corps of Engineers for beach renourishment, dredge and fill activities, coastal construction such as the construction of docks and marinas, and installation of submerged pipeline; actions by the U.S. Environmental Protection Agency (EPA) to manage freshwater discharges into waterways; regulation of vessel traffic by the U.S. Coast Guard; U.S. Navy activities; authorization of oil and gas exploration by the Minerals Management Service (MMS); authorization of changes to state coastal zone management plans by NOAA's National Ocean Service; and management of commercial fishing and protected species by NMFS.

The Federal agencies that will most likely be affected by this critical habitat designation include the U.S. Army Corps of Engineers, the EPA, the U.S. Coast Guard, the U.S. Navy, the MMS, and NOAA. This designation provides clear notification to these agencies, private entities, and the public of the existence of marine critical habitat for listed green and hawksbill turtles in the U.S. Caribbean, the boundaries of that habitat, and the protection provided for that habitat by the interagency consultation process, pursuant to section 7 of the ESA. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed green and hawksbill turtles and their critical habitat and in determining when consultation with NMFS would be appropriate.

### **Significance of Designating Critical Habitat**

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery action. A critical habitat designation

contributes to species conservation primarily by identifying critically important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and does not affect exclusively state or private activities.

Under the section 7 provisions, a critical habitat designation requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to adversely modify or destroy the designated critical habitat. Activities that adversely modify or destroy critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (see 50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (see 50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat may also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision.

A designation of critical habitat, in addition to emphasizing and alerting public and private entities to the critical importance of said habitat to listed species, provides a clear indication to Federal agencies regarding when section 7 consultation is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists Federal action agencies in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area). For example, discharge of sewage or disposal of waste material, or construction activities that could lead to soil erosion and increased sedimentation in waters in, or adjacent

to, a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation also assists Federal agencies in planning future actions since the designation establishes, in advance, those habitats that will be given special consideration during section 7 consultations. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

#### **Consideration of Economic, Environmental, and Other Factors**

The economic, environmental, and other impacts of a critical habitat designation have been considered and evaluated. NMFS identified present and anticipated activities that (1) may adversely modify the areas being considered for designation and/or (2) may be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from the critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this final rule). In general, the designation of critical habitat highlights geographical areas of

concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the "take" prohibitions contained in section 9 of the ESA and in associated regulations. "Take," as defined in the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (see 16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether designated as critical or not) that significantly impairs essential behaviors, including breeding, feeding, or sheltering.

#### **Expected Economic Impacts of Designating Critical Habitat**

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic, Environmental and Other Factors section of this final rule). Incremental impacts result from special management activities in areas outside the present distribution of the listed species that have been determined to be essential to the conservation of the species. However, NMFS has determined that the present range of both species contains sufficient habitat for their conservation. Therefore, NMFS finds that there are no incremental economic impacts associated with this critical habitat designation.

#### **Summary of Comments Received in Response to the Proposed Rule**

NMFS solicited information and comments from the public (62 FR 6934, February 14, 1997 and 62 FR 66584, December 19, 1997), and considered all comments received during the public comment period (ending on February 17, 1998) to make this final determination.

During the comment period, NMFS held three public hearings on the proposed rule. During the public hearings, five oral testimonies and nine written comments were received from private citizens, government officials and environmental organizations. No comments were received on the proposed rule outside the realm of the public hearings.

The testimony and comments received during the public hearings generally fell into one of the following categories: (1) Those who were in favor of the designation as proposed; (2) those who were in favor of the designation as

proposed, but recommended that additional areas be considered for designation; and (3) those who were in favor of the designation, but concerned about the possibility of future use restrictions in the designated areas. Comments are addressed by category as follows:

*Category 1:* Those who were in favor of the designation as proposed. Several comments supported the designation as proposed, discussing the importance of habitat protection in the proposed areas.

*Response:* NMFS agrees that habitat protection is vital to the recovery and conservation of listed species and is, therefore, designating critical habitat for green and hawksbill turtles as proposed.

*Category 2:* Those who were in favor of the designation as proposed, but recommended that additional areas be considered for designation. Several commenters recommended that, in addition to the areas proposed for designation, other areas in Puerto Rico and the Caribbean should be considered for critical habitat designation as well. One commenter recommended that Culebra, Mona, and Monito islands be designated for both green and hawksbill turtles rather than as proposed, and another commenter asked why NMFS had not considered protection for Vieques Island, located approximately 9 miles south of Culebra.

*Response:* NMFS was originally petitioned to designate critical habitat to include only the waters surrounding the Islands of the Culebra Archipelago for both green and hawksbill turtles. In the **Federal Register** document announcing receipt of the petition (62 FR 6934, February 14, 1997), NMFS requested additional information regarding other areas in the Caribbean where the designation of critical habitat for listed sea turtle species may be warranted. During review of the petition, NMFS determined that there were not enough data to support the inclusion of Culebra as critical habitat for hawksbill turtles; however, NMFS determined that there was substantial information, from other sources, to conclude that Mona and Monito Islands warranted designation as critical habitat for this species.

NMFS does not have information to support the inclusion of other areas in Puerto Rico and the Caribbean in this critical habitat designation. However, when NMFS acquires information to support the designation of critical habitat for green and hawksbill turtles in areas not covered by this designation, that information will be considered and, if warranted, NMFS will propose a modification to this designation.

*Category 3:* Those who were in favor of the designation, but concerned about

the possibility of future use restrictions in the designated areas. One commenter expressed concern that future use of the designated areas by the public, fisherman, and the tourism industry may be restricted.

*Response:* NMFS has not proposed any special management actions for the designated critical habitat areas. If NMFS determines that certain management considerations, such as those listed in the Need for Special Management Considerations or Protections section of this final rule, are necessary to sufficiently protect the designated habitat areas, NMFS will propose a separate regulation, which will include a public comment period and public hearings.

#### **Critical Habitat; Geographic Extent**

NMFS is designating the waters surrounding Culebra, Mona, and Monito Islands, Puerto Rico, as critical habitat necessary for the continued survival and recovery of green and hawksbill turtles in the region. Critical habitat for listed green turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Culebra Island, Puerto Rico. These waters include Culebra's outlying Keys, including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven (see Figure 1). Culebra Island lies approximately 16 nm (29.7 km) east of

the northeast coast of mainland Puerto Rico. The area in general is bounded north to south by 18°24' North to 18°14' North and east to west by 65°11' West and 65°25' West.

Critical habitat for listed hawksbill turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Mona and Monito Islands, Puerto Rico. (see Figure 2). Mona Island lies approximately 39 nm (72 km) west of the southwest coast of mainland Puerto Rico. The area in general is bounded north to south by 18°13' North to 18°00' North and east to west by 67°48' West and 68°01' West.

**Note:** Figures 1 and 2 will not be published in the Code of Federal Regulations.

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Figure 1—Critical Habitat for Green Turtles. Critical Habitat Includes Waters Extending Seaward 3 nm (5.6 km) From the Mean High Water Line of Isla de Culebra (Culebra Island), Puerto Rico

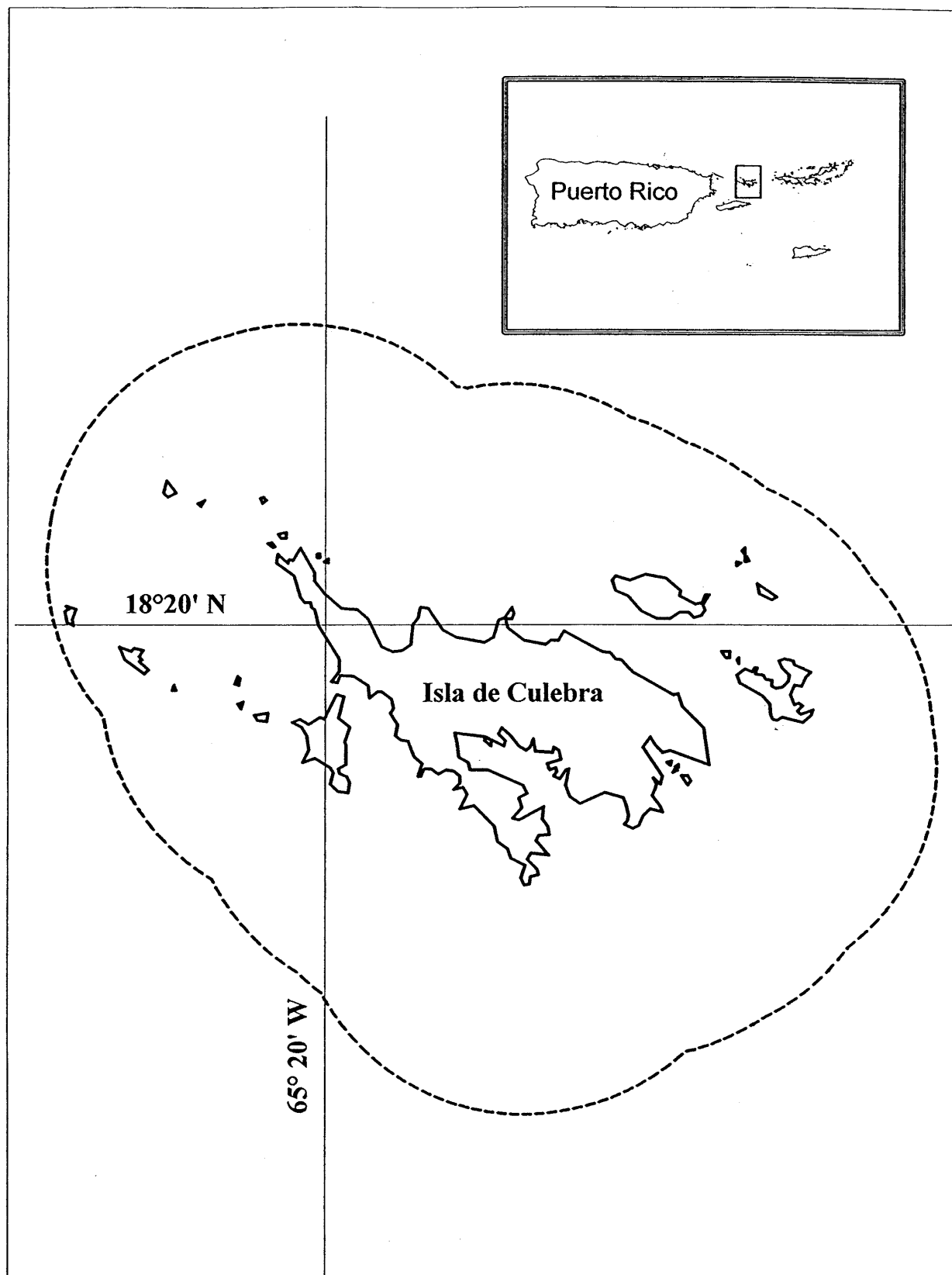
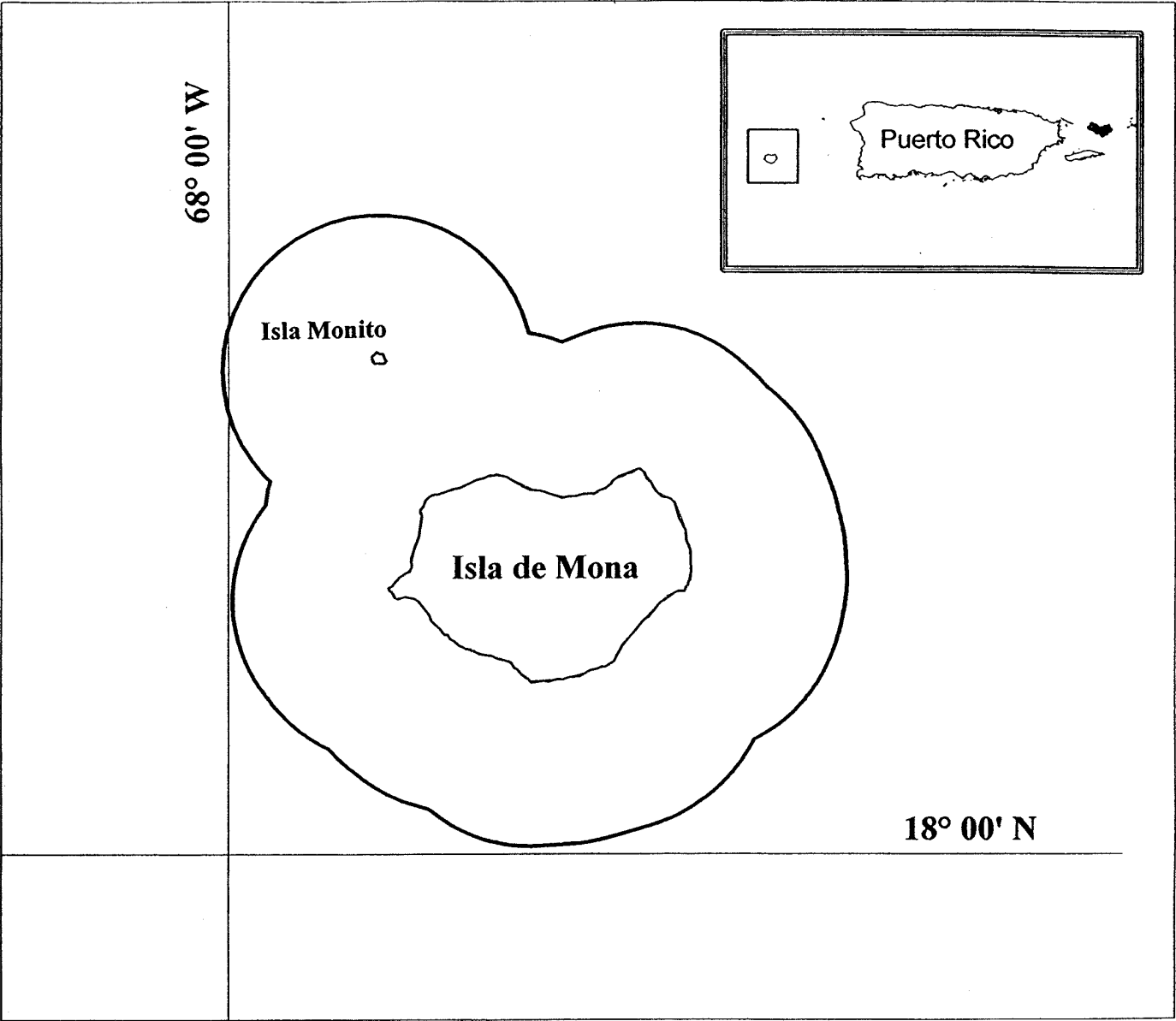


Figure 2—Critical Habitat for Hawksbill Turtles. Critical Habitat Includes Waters Extending Seaward 3 nm (5.6 km) From the Mean High Water Line of Isla de Mona (Mona Island) and Isla Monito (Monito Island), Puerto Rico





## Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS is designating only areas within the current range of these sea turtle species as critical habitat; therefore, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA § 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside either species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact of a substantial number of small entities, as described in the Regulatory Flexibility Act. No comments were received regarding this certification. As a result, no regulatory flexibility analysis was prepared.

NOAA Administrative Order 216-6 states that critical habitat designations under the ESA are categorically excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to more clearly evaluate the impacts of the critical habitat designation, NMFS prepared an EA. Copies of the assessment are available upon request (see ADDRESSES).

## References

The complete citations for the references used in this document can be

obtained by contacting Michelle Rogers, NMFS (see **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 26, 1998.

**Rolland A. Schmitt**,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

## PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

2. Sections 226.72 and 226.73 are added to subpart D to read as follows:

### § 226.72 Green Sea Turtle (*Chelonia mydas*).

(a) Culebra Island, Puerto Rico—Waters surrounding the island of Culebra from the mean high water line seaward to 3 nautical miles (5.6 km). These waters include Culebra's outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniqui, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven.

(b) [Reserved]

### § 226.73 Hawksbill Sea Turtle (*Eretmochelys imbricata*).

(a) Mona and Monito Islands, Puerto Rico—Waters surrounding the islands of Mona and Monito, from the mean high water line seaward to 3 nautical miles (5.6 km).

(b) [Reserved].

[FR Doc. 98-23533 Filed 9-1-98; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 980429110-8110-01; I.D. 081998A]

### Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closures of the Ocean Recreational Salmon Fisheries From Cape Alava to Queets River, Washington, and Leadbetter Point, Washington, to Cape Falcon, Oregon

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closures; request for comments.

**SUMMARY:** NMFS announces the closures of the ocean recreational salmon fisheries from Cape Alava to Queets River, Washington, and Leadbetter Point, Washington, to Cape Falcon, Oregon, that were effective at midnight, August 9, 1998. This action was necessary to conform to the 1998 management measures and was intended to ensure conservation of coho and chinook salmon as well as to maximize the harvest of coho and chinook salmon without exceeding the ocean share allocated to the recreational fishery in these subareas.

**DATES:** Closures effective 2400 hours local time, August 9, 1998. Comments will be accepted through September 16, 1998.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., Building 1, Seattle, WA 98115-0070. Information relevant to this document is available for public review during business hours at the same office.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson, 206-526-6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, the Secretary will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1998 management measures for ocean salmon fisheries (63 FR 24973, May 6, 1998), NMFS announced that the recreational fishery in the area from Cape Alava to Queets River opened for all salmon on August 3, 1998, through the earlier of September 24 or 600 coho subarea quota, with an inseason management guideline of 100 chinook, and Leadbetter Point to Cape Falcon opened for all salmon on August 3, 1998, through earlier of September 24, 1998, or 7,000 coho subarea quota, with an inseason management guideline of 1,050 chinook.

The best available information on August 7, 1998, indicated that the catch and effort data and projections