

## CRITICAL HABITAT DESIGNATION FOR LEATHERBACK TURTLES

On January 5, 2010, National Marine Fisheries Service (NMFS) published a proposed rule to designate critical habitat in the U.S. west coast Exclusive Economic Zone (EEZ) for the endangered leatherback sea turtle (Attachment 1). The designation proposal responds to a petition filed by the Center for Biological Diversity, Oceana, and Turtle Island Restoration Network on October 2, 2007. At Council request, NMFS subsequently extended the public comment period until April 23, 2010 (75 FR 7434). The Notice reproduced in Attachment 1 describes the proposed designation as:

two adjacent marine areas totaling approximately 46,100 square miles (119,400 square km) stretching along the California coast from Point Arena to Point Vicente; and one 24,500 square mile (63,455 square km) marine area stretching from Cape Flattery, Washington to the Umpqua River (Winchester Bay), Oregon east of a line approximating the 2,000 meter depth contour. The areas proposed for designation comprise approximately 70,600 square miles (182,854 square km) of marine habitat. Other Pacific waters within the U.S. EEZ were evaluated based on the geographical area occupied by the species, but it was decided to exclude those areas from the critical habitat designation because the potential costs outweighed the benefits of critical habitat designation and exclusion would not result in the extinction of the species.

Attachment 2 contains maps showing the boundaries of the three areas proposed for designation and the five areas excluded from the designation.

Critical habitat is defined in the Endangered Species Act (ESA) as areas whose physical and biological features are essential to the conservation of the species and which may require special management considerations or protection. Such areas may be within the area occupied by the species at the time of ESA listing or outside that area, if warranted. Section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify critical habitat.

The petitioners had asked that the current time/area closure for the west coast drift gillnet fishery (50 CFR 660.713(c)(1) be designated. Because of the extensive migrations of leatherback sea turtles, NMFS decided to consider designation beyond the area proposed by the petitioners, to include almost all of the west coast EEZ subdivided into eight areas, each of which was evaluated separately based on the requirement of ESA sec. 4(b)(2) requiring the agency to consider economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat.<sup>1</sup>

Regulations require agencies to focus on “Primary Constituent Elements” (PCEs) within the areas considered for designation, “which may include, but are not limited to, the following: spawning sites, feeding sites, water quality or quantity, geological formation, and tide.” Based

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<sup>1</sup> The reports and analyses NMFS used in choosing the three areas to propose may be found at [http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm#documents.\\*](http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm#documents.*)

on their analysis, NMFS identified the following PCEs: 1) Occurrence of prey species and 2) migratory pathways. A third PCE was considered but ultimately rejected: water quality. NMFS is explicitly seeking public comment on the exclusion of water quality as a PCE.

In evaluating the migratory pathways PCE, NMFS determined that only long-term structures that alter the habitat would be considered as having potential effects on passage. For this reason vessel passage and fishing gear were not considered potential threats to this PCE.

With respect to the criterion for critical habitat designation of “physical and biological features that may require special management considerations or protection,” NMFS sought to identify activities that may threaten the identified PCEs, since these impacts would constitute an impact to physical and biological features. NMFS identified eight classes of activity that may threaten the identified PCEs: Pollution from point sources (e.g., National Pollution Discharge Elimination System (NPDES)); runoff from agricultural pesticide use; oil spills; power plants; aquaculture; desalination plants; tidal energy or wave energy projects; and liquid natural gas (LNG) projects. NMFS also considered offshore wind energy projects, commercial fishing, and ocean acidification as activities that may threaten the PCEs but rejected these three types of activity. However, NMFS is seeking public comment on these decisions.

In considering commercial fishing as a threat to the PCEs, NMFS also considered the potential for fisheries targeting jellyfish (an important prey item) but concluded no such fishery will develop nor is bycatch of jellyfish in current fisheries significant. As noted above, only long-term, habitat altering structures were considered as a potential threat to the migratory PCE, so fishing gear was not considered an impediment to passage in this context. Additionally, NMFS found that “the direct take of the species in fishing gear is more appropriately considered under the jeopardy standard in ESA section 7 consultations.”

The Notice identifies the following issues on which NMFS is explicitly seeking public comment:

- The exclusion of water quality as a PCE (see page 324 in Attachment 1).
- The exclusion of offshore wind energy projects, commercial fishing, and ocean acidification as activities threatening the identified PCEs (see page 327 in Attachment 1).
- The decision rules used to determine which of the eight candidate areas to propose as critical habitat (see page 329 in Attachment 1).
- The areas excluded from the proposed critical habitat designation (see page 330 in Attachment 1 and Attachment 2).

The Council may also wish to comment on the areas included in the proposed designation and the specific boundaries for these areas and the excluded areas.

**Council Task:**

**Provide comments and recommendations on the proposed leatherback sea turtle critical habitat designation.**

Reference Materials:

1. Agenda Item G.4.a Attachment 1: Proposed Rule to Revise the Critical Habitat Designation for the Endangered Leatherback Sea Turtle (75 FR 319).
2. Agenda Item G.4.a, Attachment 2: Maps of Proposed and Excluded Leatherback Sea Turtle Critical Habitat Designations.

Agenda Order:

- a. Agenda Item Overview **Kit Dahl**
- b. NMFS Report
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. **Council Action:** Provide Comments and Recommendations on the Proposed Designation

PFMC  
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