

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON CRITICAL HABITAT DESIGNATION FOR LEATHERBACK TURTLES

The National Marine Fisheries Service (NMFS) has a proposed rule to revise the Critical Habitat Designation for leatherback sea turtles, in response to a petition to add areas of the west coast Exclusive Economic Zone (EEZ). Ms. Elizabeth Petras of the Southwest Regional Office presented a summary of the proposal and Dr. Scott Benson of the Southwest Fisheries Science Center was available to answer questions.

Section 7 of the Endangered Species Act prohibits adverse modification or destruction of the “primary constituent elements” (PCEs) of the habitat, which were identified by NMFS as “passage” (i.e., migration behavior) and the primary prey of leatherbacks, the brown sea nettle jellyfish. The Scientific and Statistical Committee (SSC) agrees with the proposed rule that direct or indirect effects of fisheries on these PCEs are not an immediate concern, based on available data. Incidental catch and gear entanglement are designated as “takes” and evaluated under a separate Section 7 impact assessment, so fisheries were not included as a threat to habitat. However, Section 7 consultation is required for any federally permitted actions that may jeopardize a listed species directly or indirectly, even if Critical Habitat has not been designated. The SSC expects little additional impact of the proposed rule on Pacific fisheries.

The SSC noted that the methods used to identify habitat area boundaries and assignment of ratings for conservation value (low, medium, and high) were largely based on expert opinion and were not well documented for each area. Conservation value was based on a relative scale, with areas of high turtle sightings and prey rated “high” and areas with few or no observations rated “low”, but within the “medium” rating, some areas were further stratified based on additional criteria that were not documented (see the table footnote on page 20 of *Revisions of Critical Habitat for Leatherback Sea Turtles – Biological Report, Nov. 2009*).

The SSC received the lengthy economic report too late to provide a thorough review. Nevertheless, the SSC is concerned by the lack of explanation or justification for assignment of “very low” to “high” ratings of potential cost across economic scales. The economic costs in the report are given the ratings in Table 3 of the Federal Register on page 329. The procedure used to assign these ratings is important because those assignments are used to evaluate the tradeoffs between economic costs and conservation ratings at each level. The analysis that compares these ratings (see Table 4 in the Federal Register, page 329) gives a false impression of a strong analytical framework for comparing the economic and conservation ratings, which is not supported in the documentation. A more qualitative discussion that compares the actual median annualized cost to the conservation value rating would provide a more clear and substantiated analysis.

Although the proposed rule does not appear to have immediate impacts on fisheries, it will set a precedent for additional Critical Habitat Designation for leatherback turtles and possibly other protected species. The public comment period for the rule is now open, and the Council may want to use that opportunity to comment on documentation and methodology concerns that can be addressed in the final ruling.