

Author: The primary author of this notice is Paul Hartfield (see ADDRESSES section).

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 11, 1997.

**H. Dale Hall,**

*Acting Regional Director, Fish and Wildlife Service.*

[FR Doc. 97-33140 Filed 12-18-97; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 971124276-7276-01; I.D. No. 110797B]

RIN 0648-AH88

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

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

**ACTION:** Proposed rule; request for comments; and notice of public hearings.

**SUMMARY:** NMFS proposes to designate critical habitat pursuant to the Endangered Species Act of 1973 (ESA) for the threatened green turtle (*Chelonia mydas*) to include waters extending seaward 3 nautical miles (nm) [5.6 kilometers(km)] from the mean high water line of Culebra Island, Puerto Rico (see Figure 1), and for the endangered hawksbill turtle (*Eretmochelys imbricata*) to include waters extending seaward 3 nm (5.6 km) from the mean high water line of Mona and Monito Islands, Puerto Rico (see Figure 2). The 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:** Comments must be received on or before February 17, 1998.

The public hearings on this proposed action are scheduled from 7 p.m. to 9 p.m. as follows:

1. Monday, January 26, 1998—Eugene Francis Conference Room, Physics Building, University of Puerto Rico at Mayaguez, Palmeras Road, Mayaguez, Puerto Rico.

2. Tuesday, January 27, 1998—Puerto Rico Department of Natural and Environmental Resources, Central Office Auditorium, Munoz Rivera Avenue (Bus Stop 3½), Puerta Tierra, Puerto Rico.

3. Thursday, January 29, 1998—Center for Multiple Use, Williamson Street, Culebra, Puerto Rico.

**ADDRESSES:** Comments and requests for a copy of the environmental assessment (EA) for this proposed rule 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 Bridget Mansfield, 813-570-5312.

#### SUPPLEMENTARY INFORMATION:

##### Background

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 all 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.

Upon further review, NMFS has determined that substantial information exists to warrant the designation of critical habitat for green and hawksbill turtles in the Caribbean. Therefore, NMFS proposes to designate critical habitat for the threatened green turtle to include coastal waters surrounding Culebra Island, Puerto Rico, and for the endangered hawksbill turtle to include coastal waters surrounding Mona and Monito Islands, Puerto Rico (see Proposed Critical Habitat; Geographic Extent section of this notice). This designation of critical habitat for the hawksbill turtle complements the U.S. Fish and Wildlife Service (USFWS) action which designated critical habitat for this species to include all areas of beachfront on the west, south, and east sides of Mona Island, as well as certain nesting beaches on Culebra, Cayo Norte, and Culebrita in the Culebra archipelago (47 FR 27295, June 24, 1982).

In accordance with the July 18, 1977, Memorandum of Understanding between NMFS and the 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.

Green and hawksbill turtles are largely restricted to tropical and subtropical waters. Once abundant

throughout the Caribbean, green and hawksbill turtle populations have diminished to the point where they may likely be extirpated from this area. The green turtle is listed as threatened under the ESA, except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered. The hawksbill turtle is listed as endangered throughout its range.

Additionally, green and hawksbill turtles, as well as other marine turtle species, are 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.

The extensive seagrass beds of the Culebra archipelago support a large juvenile population of green turtles. Researchers estimate that over 150 juvenile green turtles are resident on Culebra seagrass beds at any given time. Additionally, a small population of adult green turtles have been documented in these waters (Collazo *et al.*, 1992).

On November 10, 1993, the USFWS designated Culebra seagrass beds as Resource Category 1, recognizing these seagrasses as critical foraging habitat for juvenile green turtles (USFWS, 1993). The USFWS mitigation policy classifies habitats into different resource categories according to their importance on a national or ecoregional scale. This classification provides guidance to the USFWS, NMFS, action agencies, and private developers that mitigation may be necessary if impacts to these habitats are anticipated. Resource Category 1 designation recognizes the habitat as unique and irreplaceable on a national or ecoregional level and states that loss of the habitat is not acceptable.

Green turtles nest sporadically on Puerto Rico's beaches. Green turtle nests have been observed on the main island of Puerto Rico, as well as on Mona and Vieques Islands, and have been reported periodically on Culebra Island (Bacon *et al.*, 1984; Carr, 1978; Pritchard and Stubbs, 1981). The natal beaches of Culebra's juvenile green turtles and the location of their nesting beaches are unknown.

The coastal waters of Culebra provide habitat for hawksbill and leatherback turtles as well. 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.

Mona and Monito Islands are uninhabited natural reserves managed by the Puerto Rico Department of Natural and Environmental Resources. The waters surrounding Mona Island are one of 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). Mona Island supports the largest population of nesting hawksbill turtles in the U.S. Caribbean. During the most recent nesting season, a record 354 nests and 288 false crawls were recorded from July 31, 1996, to January 17, 1997 (Diez, 1996).

Additionally, the waters surrounding Mona Island 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.

Use of the term "essential habitat" within this Notice refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et sec.

#### 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)).

#### 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. 1532(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from a 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 proposed 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 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 or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, or sheltering.

#### 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 designation of critical habitat would require 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 will also assist 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.

#### Process for Designating Critical Habitat

Developing a proposal for critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and habitat areas and features that are essential to the conservation of the species are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features are evaluated. Finally, the probable economic and other

impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat designation is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within one year of the proposed rule. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the critical habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections for green and hawksbill sea turtles.

#### 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** notices 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.

While the precise space requirements for populations of green turtles are unknown, globally this species is 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.

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** notice 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, 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 suggest 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.

The hawksbill's dependence on coral reefs for shelter and food links its well-being directly to the condition of reefs. Destruction of coral reefs due to deteriorating water quality and vessel anchoring, striking, or grounding is a growing problem.

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). Recent genetic studies indicate that this resident population of immature hawksbills 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 by other species.

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

### 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 episodic natural stresses such 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 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; 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 U.S. Environmental Protection Agency; the U.S. Coast Guard, the U.S. Navy, the Minerals Management Service, and NOAA. This designation will provide 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, of the boundaries of the habitat, and of the protection provided for that habitat by the section 7 consultation process. 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.

#### **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 proposed 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 impacts associated with this critical habitat designation.

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

NMFS is proposing to designate the waters surrounding Culebra, Mona, and Monito Islands, Puerto Rico, as critical habitat necessary for the continued survival and recovery of green and hawksbill sea turtles in the region.

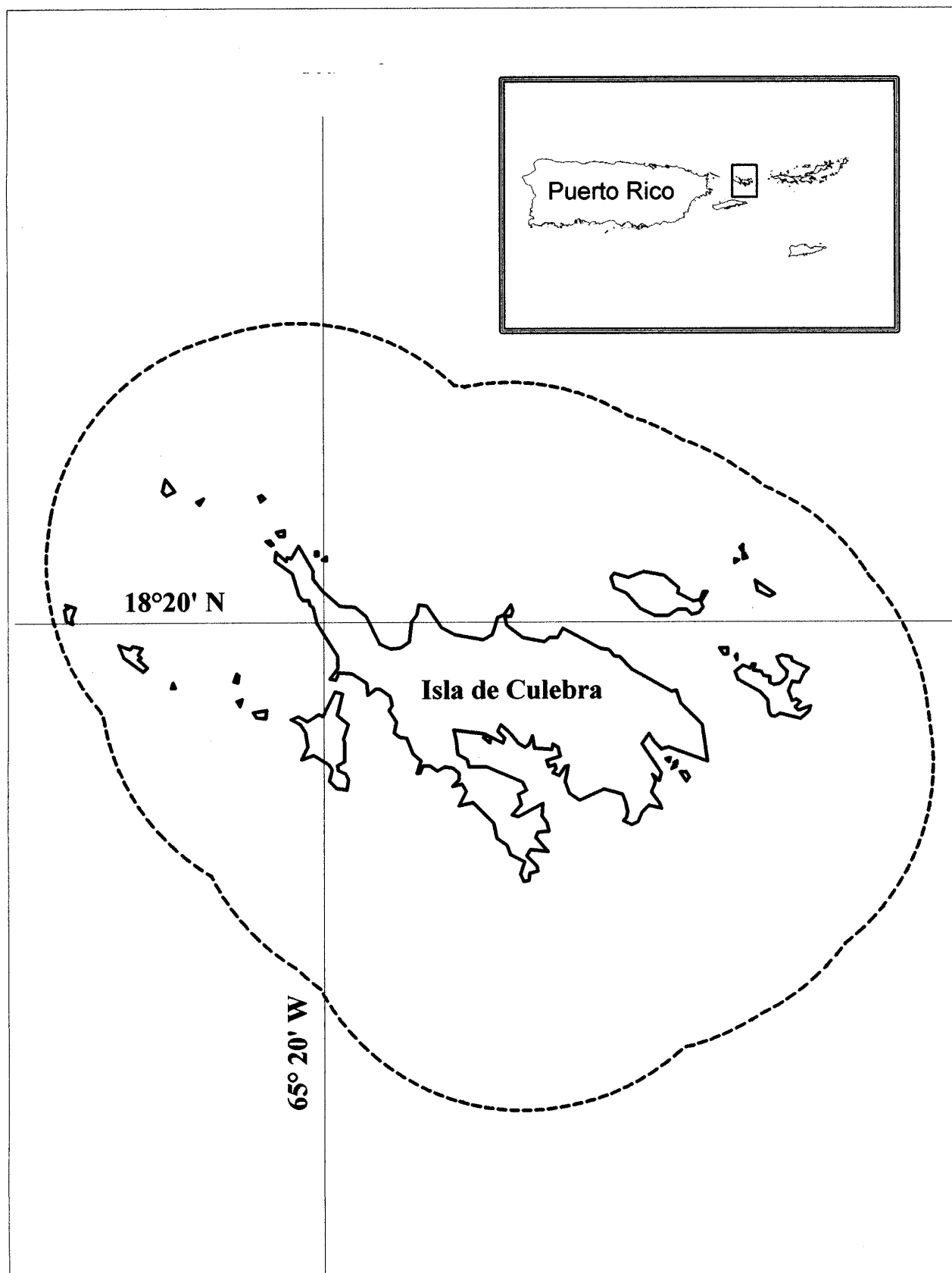
Proposed critical habitat for listed green turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Culebra Island, Puerto Rico. These waters include Culebra's outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de 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.

Proposed 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.

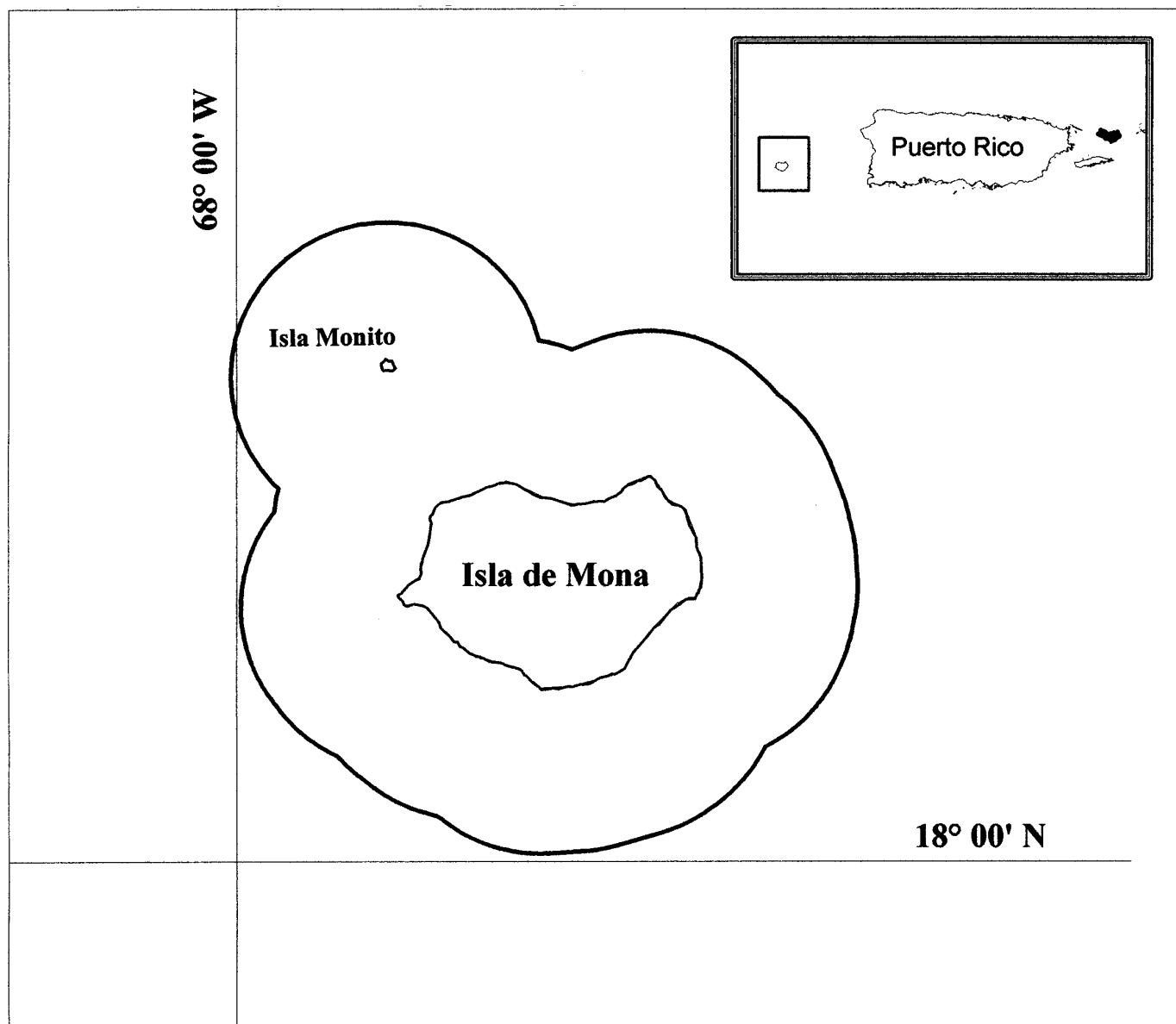
**Note:** Figures 1 and 2 will not be published in the Code of Federal Regulations.

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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**



### Public Comments Solicited

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposed rule from all concerned parties (see **ADDRESSES**). NMFS will consider all information, comments, and recommendations received before reaching a final decision.

Department of Commerce ESA implementing regulations state that the Secretary "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to designate critical habitat." (see 50 CFR 424.16(c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters.

The public hearings on this proposed action have been scheduled for the month of January, 1998 (see **DATES**). Interested parties will have an opportunity to provide oral and written testimony at the public hearings. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Bridget Mansfield (see **FOR FURTHER INFORMATION CONTACT**).

### 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 proposes to designate 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. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has 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.

The AA has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the Commonwealth of Puerto Rico. This determination will be submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

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 proposed critical habitat designation, NMFS has prepared an EA. Copies of

the assessment are available on 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: December 15, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be 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 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.

(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]

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