

Giuliani's dune scarab may be warranted due to *Factors B, C, or E*.

Because we have found that the petition presents substantial information that listing four of the six species may be warranted, we are initiating status reviews (12-month findings) to determine whether listing these four species under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In 12-month findings, we determine whether a petitioned action is warranted after we have completed thorough status reviews of the species, which are conducted following substantial 90-day findings. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that a 12-month finding will result in a warranted finding.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this document are the staff members of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

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

Dated: July 21, 2011.

**Gregory E. Siekaniec,**

*Acting Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2011-0045; MO 92210-0-0008-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition To Revise Critical Habitat for the Leatherback Sea Turtle

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and notice of 12-month determination.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding and 12-month determination on how to proceed in response to a petition to revise critical habitat for the leatherback sea turtle (*Dermochelys coriacea*) pursuant to the Endangered Species Act of 1973, as amended (Act). The petition asks the Service and the National Marine Fisheries Service (NMFS) (Services) to revise the existing critical habitat designation for the leatherback sea turtle by adding the coastline and offshore waters of the Northeast Ecological Corridor of Puerto Rico to the critical habitat designation. Our 90-day finding is that the petition, in conjunction with the information readily available in our files, presents substantial scientific information indicating that the requested revision may be warranted. Our 12-month determination is that we intend to proceed with processing the petition by assessing critical habitat during the future planned status review for the leatherback sea turtle.

**DATES:** The finding announced in this document was made on August 4, 2011.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R4-ES-2011-0045. Information and supporting documentation that we received and used in preparing this finding is available for public inspection by appointment, during normal business hours at the North Florida Ecological Services Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 and at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, Puerto Rico 00622. Please submit any new information, materials, comments, or questions concerning this finding to the above mailing address or the contact

as listed under **FOR FURTHER INFORMATION CONTACT**.

#### FOR FURTHER INFORMATION CONTACT:

Dave Hankla, Field Supervisor, North Florida Ecological Services Office, U.S. Fish and Wildlife Service, Attn: Leatherback CH Review; by mail at 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone (904-731-3336); by facsimile (904-731-3045); or by e-mail at [northflorida@fws.gov](mailto:northflorida@fws.gov). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(D) of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to revise critical habitat for a species presents substantial scientific information indicating that the revision may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. Our listing regulations at 50 CFR 424.14(c)(2) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain the physical and biological features essential to, and that may require special management to provide for, the conservation of the species; or information indicating that areas currently designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. If we find that a petition presents substantial information indicating that the revision may be warranted, we are required to determine how we intend to proceed with the requested revision within 12 months after receiving the petition and promptly publish notice of such intention in the **Federal Register**.

Critical habitat is defined under section 3(5)(A) of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our implementing regulations at 50 CFR 424.12 describe our criteria for designating critical habitat. We are to consider physical and biological features essential to the conservation of the species. Those features include, but are not limited to: (1) Space for individual and population growth, and 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 (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. Essential physical and biological features may include, but are not limited to, nesting grounds, feeding sites, water quality, geological formations, tides, and specific soil types. Our implementing regulations at 50 CFR 424.02 define "special management considerations or protection" as any methods or procedures useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the Act requires us to designate and make revisions to critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. Unless, he determines that the failure to designate such area as critical habitat, will result in the extinction of the species concerned.

#### *Previous Federal Actions*

In 1970, the leatherback sea turtle was listed as endangered (35 FR 8491; June 2, 1970) in accordance with the Endangered Species Conservation Act of

1969 (Pub. L. 91-135; 83 Stat. 275), a precursor to the Act. The Service designated critical habitat for the leatherback sea turtle on March 23, 1978 (43 FR 12050), in the U.S. Virgin Islands to include: "A strip of land 0.2 miles wide (from mean high tide inland) at Sandy Point Beach on the western end of the island of St. Croix beginning at the southwest cape to the south and running 1.2 miles northwest and then northeast along the western and northern shoreline, and from the southwest cape 0.7 miles east along the southern shoreline." This critical habitat designation appears in our regulations at 50 CFR 17.95(c). NMFS designated critical habitat for the leatherback sea turtle on March 23, 1979 (44 FR 17710), in the U.S. Virgin Islands to include: "The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42'12" North and 64°50'00" West." This critical habitat designation appears in the NMFS regulations at 50 CFR 226.207. In 1984, the Sandy Point National Wildlife Refuge was established; the refuge completely encompasses the stretch of beach that was designated as critical habitat in 1978.

On October 2, 2007, NMFS received a petition from the Center for Biological Diversity, Oceana, and Turtle Island Restoration Network to revise the leatherback sea turtle critical habitat designation. The petitioners sought to revise the critical habitat designation to include the area NMFS was already managing under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to reduce leatherback sea turtle interactions in the California-Oregon drift gillnet fishery targeting swordfish and thresher shark. This area encompasses roughly 200,000 square miles (321,870 square kilometers (km)) of the Exclusive Economic Zone from 45 degrees North latitude about 100 miles (160 km) south of the Washington-Oregon border southward to Point Sur and along a diagonal line due west of Point Conception, CA, and west to 129 degrees West longitude.

On December 28, 2007, NMFS published a 90-day finding that the petition presented substantial scientific information indicating that the petitioned action may be warranted and initiated a review of the critical habitat of the species to determine whether the petitioned action was warranted (72 FR 73745). On January 5, 2010, NMFS proposed regulations to designate specific areas within the Pacific Ocean

as critical habitat (75 FR 319). The areas proposed for designation encompass approximately 70,600 square miles (182,854 square km) of marine habitat. Specific areas proposed for designation include two adjacent areas covering 46,100 square miles (119,400 square km) stretching along the California coast from Point Arena to Point Vicente and an area covering 24,500 square miles (63,455 square km) stretching from Cape Flattery, WA, to the Umpqua River (Winchester Bay), OR, east of a line approximating the 6,562-ft (2,000-meter) depth contour. A final determination has not yet been published by NMFS.

#### *Petition History*

On February 22, 2010, the Service and NMFS received a petition dated February 22, 2010, from Craig Segall of the Sierra Club, requesting that we revise critical habitat for the leatherback sea turtle (*Dermochelys coriacea*) to include nesting beaches and offshore marine habitats in Puerto Rico pursuant to the Act and the Administrative Procedure Act (APA). Section 553 of the APA states that, "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule" (5 U.S.C. 553(e)).

The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). The petition asserted that the beaches of the Northeast Ecological Corridor (NEC) of Puerto Rico (which would fall under the jurisdiction of the Service) are "centrally important to the U.S. Caribbean leatherback population, and should be designated as critical habitat." The petition also maintained that the near-shore coastal waters off those beaches (which would fall under the jurisdiction of NMFS) "provide room for turtles to mate and to access the beaches, and for hatchlings and adults to leave the beaches." It likewise asserted that the coastal zone within the NEC is particularly vulnerable to developmental pressure and to the growing impacts of climate change, and so warrants protection as critical habitat.

The petition also requested that the agencies revise the recovery plan for the leatherback sea turtle at the earliest possible time, and that the agencies issue no Atlantic leatherback-related incidental take permits (save for permits supporting pure conservation research), issue no Atlantic leatherback-related habitat conservation plan, issue no Atlantic leatherback-related biological opinion, and take no other final agency action that could affect the Atlantic population of the leatherback sea turtle

or its habitat, until the petition to revise critical habitat was ruled on and without taking climate change fully into account. However, none of these additional requests are petitionable under the Act and, therefore, they are not addressed in this 90-day finding and 12-month determination.

Under the Act, the Service and NMFS each have respective areas of jurisdiction over sea turtles, as clarified by the 1977 Memorandum of Understanding Defining the Roles of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in Joint Administration of the Endangered Species Act of 1973 as to Marine Turtles. The Service has jurisdiction over sea turtles and their associated habitats when they are on land, while NMFS has jurisdiction over sea turtles and their associated habitats in the marine environment. Thus, if Federal agencies are involved in activities that may affect sea turtles involved in nesting behavior, or may affect their nests or their nesting habitats, those Federal agencies are required to consult with the Service under section 7 of the Act to ensure that their activities are not likely to jeopardize the continued existence of the sea turtles. If a Federal action may affect sea turtles while they are in the marine environment, the Federal agency involved must engage in a section 7 consultation with NMFS, to ensure that the action is not likely to jeopardize the continued existence of the sea turtles. Similarly, if critical habitat has been designated, and Federal actions may affect such habitat, a section 7 consultation under the Act would be required to ensure that the Federal action is not likely to destroy or adversely modify the critical habitat. If the critical habitat has been designated on land, the consultation would be with the Service; if the critical habitat has been designated in the marine environment, the consultation would be with NMFS.

On April 1, 2010, the Service sent a letter to the petitioner acknowledging receipt of the petition. On April 28, 2010, the Service received an e-mail from the Sierra Club transmitting a letter from 36 nonprofit organizations and conservation interests outlining the importance of the NEC of Puerto Rico and recommending that it be designated as critical habitat for the endangered leatherback sea turtle. On June 2, 2010, the Sierra Club sent a Notice of Intent To Sue over the alleged failure of the Service and NMFS to make a 90-day finding.

On July 16, 2010, NMFS published in the **Federal Register** its 90-day finding on the portion of the petition that falls

under its jurisdiction and determined that the petition did not present substantial scientific information indicating that the petitioned action may be warranted (75 FR 41436). On November 2, 2010, the Sierra Club submitted to NMFS a second petition that included additional data supporting the requested action. In response to the second petition, NMFS made a 90-day finding that the petition presented substantial information indicating that the petitioned revision of designated critical habitat for leatherback sea turtles may be warranted (May 5, 2011; 76 FR 25660).

On February 23, 2011, the Sierra Club sent a Notice of Intent To Sue over the alleged failure of the Service and NMFS to make both the 90-day and 12-month findings. On March 18, 2011, we sent a letter to the Sierra Club acknowledging receipt of the February 23, 2011, Notice of Intent To Sue. On May 27, 2011, the Sierra Club filed a complaint over the alleged failure of the Service to respond to the petition dated February 22, 2010, to revise critical habitat. This finding addresses the portion of the petition under the Service's jurisdiction.

This 90-day finding and 12-month determination is responsive only to aspects of the petition that fall under the Service's jurisdiction, the terrestrial portion of the area as identified in the petition as "The coastline of the Northeast Ecological Corridor of Puerto Rico, running from Luquillo, Puerto Rico, to Fajardo, Puerto Rico, including the beaches known as San Miguel, Paulinas, and Convento, and extending at least .025 mile (132 feet) inland from the mean high tide line."

#### *Species Information*

##### Worldwide Distribution

Leatherback sea turtles have the widest distribution of sea turtles, nesting on beaches in the tropics and subtropics and foraging into higher-latitude subpolar waters. In the Pacific, they extend from the waters of British Columbia (McAlpine *et al.* 2004, entire) and the Gulf of Alaska (Hodge and Wing 2000, entire) to the waters of Chile and South Island (New Zealand), and nesting occurs in both the eastern and western Pacific (Márquez M. 1990, pp. 54–55; Gill 1997, entire; Brito M. 1998, entire). They also occur throughout the Indian Ocean (Hamann *et al.* 2006, entire). In the Atlantic, they are found as far north as the waters of the North Sea, Barents Sea, Newfoundland, and Labrador (Threlfall 1978, p. 287; Goff and Lien 1988, entire; Márquez M. 1990, pp. 54–55; James *et al.* 2005, entire) and as far south as Argentina and the Cape

of Good Hope, South Africa (Márquez M. 1990, pp. 54–55; Hughes *et al.* 1998, entire; Luschi *et al.* 2003, entire; Luschi *et al.* 2006, pp. 53–54), and nesting occurs in both the eastern and western Atlantic. Although leatherback sea turtles occur in Mediterranean waters, no nesting is known to take place in this region (Casale *et al.* 2003, pp. 136–138).

Historical descriptions of leatherback sea turtles are rarely found in the accounts of early sailors, and the size of their population before the mid-20th century is speculative (NMFS and Service 2007, p. 26). Even for large nesting assemblages like French Guiana and Suriname, nesting records prior to the 1950s are lacking (Rivalan *et al.* 2006, p. 2). By the 1960s, several nesting sites were being discovered in the western Atlantic, in Pacific Mexico, and in Malaysia. Soon after, other populations in Pacific Costa Rica and Mexico were identified. Today, nesting beaches are known in all major ocean basins with catastrophic declines observed in the eastern Pacific (Spotila *et al.* 2000, entire) and Malaysia (Chan and Liew 1996, pp. 196–197).

In the eastern Pacific, important nesting beaches occur in Mexico and Costa Rica, with scattered nesting along the Central American coast (Márquez M. 1990, pp. 54–55). Nesting is very rare in the Gulf of California, Mexico (Seminoff and Dutton 2007, p. 139). In the western Pacific, the main nesting beaches occur in the Solomon Islands, Papua, Indonesia, and Papua New Guinea (Limpus 2002, p. 44; Dutton *et al.* 2007, pp. 49–50). Minor nesting occurs in Vanuatu (Petro *et al.* 2007, entire), Fiji (Rupeni *et al.* 2002, p. 122), and southeastern Australia (Dobbs 2002, p. 81; Hamann *et al.* 2006, p. 20); and it is very rare in the North Pacific (Eckert 1993, p. 73). In the Indian Ocean, major nesting beaches occur in South Africa, Sri Lanka, and Andaman and Nicobar islands, with smaller populations in Mozambique, Java, and Malaysia (Hamann *et al.* 2006, p. 8).

In the eastern Atlantic, a globally significant nesting population is concentrated in Gabon, Africa, with widely dispersed but fairly regular nesting between Mauritania in the north and Angola in the south (Fretey *et al.* 2007, entire). Important nesting areas in the western Atlantic Ocean occur in Florida (USA); St. Croix, VI; Puerto Rico; Costa Rica; Panamá; Colombia; Trinidad and Tobago; Guyana; Suriname; French Guiana; and southern Brazil (Márquez M. 1990, pp. 54–55; Spotila *et al.* 1996, pp. 212–213; Bräutigam and Eckert 2006, p. 8). Other minor nesting beaches are scattered throughout the Caribbean, Brazil, and

Venezuela (Mast 2005–2006, pp. 18–19; Hernández *et al.* 2007, p. 81).

For additional information on the biology, status, and habitat needs of the leatherback sea turtle, refer to the Leatherback Sea Turtle (*Dermochelys coriacea*) 5-Year Review (NMFS and Service 2007, entire); the Recovery Plan for Leatherback Turtles (*Dermochelys coriacea*) in the U.S. Caribbean, Atlantic, and Gulf of Mexico (NMFS and Service 1992, entire); and the Recovery Plan for U.S. Pacific Populations of the Leatherback Turtle (*Dermochelys coriacea*) (NMFS and Service 1998, entire), available on the Internet at <http://www.regulations.gov>.

### Evaluation of Information for the 90-Day Finding

In making this finding, we relied on information provided by the petitioners, sources cited by the petitioners, and information readily available in the Service's files. We evaluated the information in accordance with 50 CFR 24.14(c). Our process for making this 90-day finding under section 4(b)(3)(D) of the Act and 50 CFR 424.14(c) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific information" threshold. In making a finding, we consider whether the petition provides the following in accordance with 50 CFR 424.14(c)(2):

- (i) Information indicating that areas petitioned to be added to critical habitat contain physical or biological features essential to, and that may require special management to provide for, the conservation of the species involved; or
- (ii) Information indicating that areas currently designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

The Service's evaluation of this information is presented below. We have organized the petition's claims into four categories relative to 50 CFR 424.14(c)(2)(i) as described above:

(1) *Petition claims the leatherback sea turtle nesting sites in Puerto Rico represent the second most significant nesting activity in the United States, and that the beaches of the Northeast Ecological Corridor are the most important leatherback sea turtle nesting sites on the main island of Puerto Rico.*

The petition claims "[t]he United States contains at least three significant leatherback nesting areas: Sandy Point on St. Croix in the U.S. Virgin Islands, which hosted 1,008 nests in 2001, Brava and Resaca Beaches on Puerto Rico's island of Culebra, and the beaches around Fajardo and Luquillo in the

Northeast Ecological Corridor of Puerto Rico. The Puerto Rican beaches cumulatively hosted a minimum of 469–882 nests each year between 2000 and 2005." The petition cites a Puerto Rico Department of Natural and Environmental Resources (PRDNER) management plan that describes the Corridor's beaches as "'one of the most important leatherback nesting areas in Puerto Rico and in the jurisdiction of the United States,' noting that from 1993 to 2007, 3,188 nests have been recorded, for an average of 213 nests annually." The petition asserts that revision of leatherback sea turtle critical habitat to include the beaches of the NEC of Puerto Rico is necessary to protect leatherback sea turtles. The petition states that the NEC, including its coastal waters, is "a centrally important space for 'individual and population growth,' because it is also a site for 'breeding, reproduction, [and] rearing of offspring.'" It asserts that "[a]s two decades of data demonstrate, it is a 'nesting ground' or 'reproduction [site]' which includes the sandy beaches and open access to the ocean that constitute the 'soil type' and 'physical constituent elements' that leatherbacks need to survive."

The Service assessed information provided by the petitioner and available in our files. The Service agrees with the petitioner that Sandy Point in the U.S. Virgin Islands, Brava and Resaca Beaches on Puerto Rico's Island of Culebra and the Northeast Ecological Corridor on the main island of Puerto Rico are important nesting areas for leatherback sea turtles in the United States. However, important leatherback sea turtle nesting habitat also occurs in Florida, as well as elsewhere in Puerto Rico on the Island of Vieques and in the Maunabo area on the main island. A summary of key leatherback nesting beaches in the United States is provided below.

In Florida, the majority of leatherback sea turtle nesting occurs along the Southeast Atlantic coastline in Brevard through Broward Counties. These counties encompass approximately 206 miles (332 km) of sandy coastline fronting the Atlantic Ocean (Clark 1993, p. 17). Within these counties, approximately 89 miles (143 km) have been identified as conservation lands (NMFS and Service 2008, pp. V–36–V–39). Conservation lands are defined as public ownership (Federal, State, or local government) and privately owned lands (*e.g.*, nonprofit conservation foundations) that are generally managed in a way to benefit sea turtle conservation (NMFS and Service 2008, p. V–33). Therefore, beaches identified

as conservation lands in Brevard through Broward Counties represent approximately 43 percent of all oceanfront beaches in these counties.

The Florida Statewide Nesting Beach Survey (SNBS) program documented an increase in leatherback sea turtle nesting numbers from 98 nests in 1989 to between 453 and 1,747 nests per season in the 2000s, with the highest number of nests recorded in 2009 (Florida Fish and Wildlife Conservation Commission SNBS data). Although the SNBS program provides information on distribution and total abundance of sea turtle nesting statewide, it cannot be used to assess trends because of variable survey effort. Therefore, leatherback nesting trends are best assessed using standardized nest counts made at Index Nesting Beach Survey (INBS) sites surveyed with constant effort over time (1989–2010). Under the INBS program, approximately 30 percent of Florida's SNBS beach length is surveyed. The INBS nest counts represent approximately 34 percent of known leatherback nesting in Florida. An analysis of the INBS data has shown an exponential increase in leatherback sea turtle nesting in Florida since 1989. From 1989 through 2010, the annual number of leatherback sea turtle nests at the core set of index beaches ranged from 27 to 615 (Florida Fish and Wildlife Conservation Commission INBS data). Using the numbers of nests recorded from 1979 through 2009, Stewart *et al.* (in press) estimated a population growth of approximately 10.2 percent per year.

In the U.S. Virgin Islands, leatherback sea turtle nesting has been reported on the islands of St. Croix, St. Thomas, and St. John. However, the most significant leatherback sea turtle nesting activity occurs on Sandy Point, St. Croix (NMFS and Service 1992, p. 2). Leatherback sea turtle nesting on Sandy Point was first brought to the attention of biologists in the mid-1970s (Boulon *et al.* 1996, p. 141), and flipper tagging of nesting turtles began in 1977 (Dutton *et al.* 2005, p. 186). Since 1982, the Sandy Point beach has been consistently monitored each nesting season. In 1984, the Sandy Point National Wildlife Refuge was established and encompassed the Sandy Point beach. Between 1982 and 2010, the number of nests recorded on Sandy Point ranged from a low of 82 in 1986 to a high of 1,008 in 2001 (Garner and Garner 2010, pp. 18–20). Dutton *et al.* (2005, p. 189) estimated a population growth of approximately 13 percent per year from 1994 through 2001 for this nesting population. Using the number of observed females at Sandy Point from 1986 to 2004, the Turtle Expert Working

Group (2007, pp. 48–49) estimated a population growth of approximately 10 percent per year.

In Puerto Rico, the main nesting areas are at Fajardo (NEC) and Maunabo on the main island, and on the islands of Culebra and Vieques. Between 1993 and 2010, the number of nests recorded in the NEC in the Fajardo area ranged from a low of 51 in 1995 to a high of 456 in 2009 (C. Diez, PRDNER, unpublished data). In the Maunabo area, the number of nests recorded between 2001 and 2010 ranged from a low of 53 in 2002 to a high of 260 in 2009 (C. Diez, PRDNER, unpublished data). On the island of Culebra, the number of nests recorded between 1993 and 2010 ranged from a low of 41 in 1996 to a high of 395 in 1997 (C. Diez, PRDNER, unpublished data). Approximately two-thirds of Vieques Island was occupied by the U.S. Navy beginning in the early 1940s and was used by the U.S. Department of Defense for military practices until 2002, when most of the U.S. Navy lands on Vieques Island were transferred to the Department of the Interior to form part of the Service's National Wildlife Refuge System.

Monitoring of sea turtle nesting beaches on Vieques Island has been challenging due to access restrictions imposed during military operations and the presence of unexploded ordnance throughout most of the areas formerly used for military training by the U.S. Navy. On beaches managed by the Commonwealth of Puerto Rico on the island of Vieques, PRDNER recorded annually 14–61 leatherback nests between 1991 and 2000; 145 nests in 2002; 24 in 2003; and 37 in 2005 (C. Diez, PRDNER, unpublished data). The number of leatherback sea turtle nests recorded on Vieques Island beaches managed by the Service were as follows:

- 32 in 2001;
- 163 in 2002;
- 13 in 2003;
- 28 in 2004;
- 88 in 2005;
- 92 in 2006;
- 93 in 2007;
- 52 in 2008;
- 155 in 2009; and
- 132 in 2010.

Nesting data for 2006 and 2010 include nests found on beaches off Service lands (8 and 6 nests, respectively). Since several beaches on Vieques' eastern portion are not regularly monitored for sea turtle nesting activity due to logistical difficulties and presence of unexploded ordnance, the average yearly number of sea turtle nests on Vieques Island is likely to be greater. Using the numbers of nests recorded in

Puerto Rico between 1984 and 2005, the Turtle Expert Working Group (2007, p. 47) estimated a population growth of approximately 10 percent per year.

Fajardo (NEC) and Maunabo are the primary leatherback sea turtle nesting areas on the main island of Puerto Rico. The NEC of Puerto Rico, running from Luquillo to Fajardo, PR, includes approximately 3,200 "cuerdas" (3,108 acres or 1,259 hectares) within the properties referred to as San Miguel I and II, Las Paulinas, El Convento Norte, and Seven Seas. Three of these properties (Las Paulinas, El Convento Norte, and Seven Seas) are owned by the Puerto Rico Industrial Development Company (PRIDCO) and the National Parks Company (NPC), while the remaining properties are privately owned.

Beaches within the NEC comprise approximately 5.43 miles (8.74 km) of sandy beaches that support leatherback nesting. Maunabo is located on the southeastern coast and has approximately 3.93 miles (6.32 km) of sandy beaches suitable for leatherback sea turtle nesting. Although beaches in Maunabo are public domain, uplands adjacent to these beaches are privately owned with the potential for future development. On the island of Culebra, the majority of leatherback sea turtle nesting occurs on Brava and Resaca beaches. Brava Beach is approximately 0.78 mile (1.25 km) in length, while Resaca Beach is 0.62 mile (1.00 km) in length. All of the land surrounding Resaca Beach and part of the land surrounding Brava Beach is owned by the Service as part of the Culebra National Wildlife Refuge. Therefore, Resaca Beach is relatively protected from development.

Although at present there is no development on the private land near Brava Beach, there is the potential for future development. On the island of Vieques, leatherback sea turtles nest on both the southern and northern beaches on the eastern portion of the island within the Vieques National Wildlife Refuge. The refuge encompasses approximately 18.09 miles (29.11 km) of sandy beaches that may support leatherback sea turtle nesting. These beaches are protected from development.

Although other important leatherback sea turtle nesting beaches occur in the United States besides those identified in the petition, the Service believes the information submitted by the petitioner about the importance of the NEC to leatherback sea turtle nesting in the United States is substantial for this claim.

(2) *Petition claims that leatherback sea turtles in the Atlantic Ocean have declined and could experience a similar decline as those in the Pacific Ocean if their habitat is not protected.*

The petition cites a number of studies about the population decline of leatherback sea turtles in the Pacific Ocean, and concludes that leatherback sea turtles in the Atlantic Ocean could experience a similar decline if their habitat is not protected. The petition also states that conditions in the Atlantic and Caribbean are relatively more stable than those in the Pacific, but that some declines in nesting have been documented or are believed likely to have occurred based on estimates on nesting declines for other sea turtle species. However, the petition did not cite or provide information about the status of leatherback sea turtle populations in the Atlantic Ocean.

In 2007, the Turtle Expert Working Group published *An Assessment of the Leatherback Turtle Population in the Atlantic Ocean* and estimated a population size of 34,000–94,000 adult leatherback sea turtles in the North Atlantic (Turtle Expert Working Group 2007, p. 59). An increasing or stable population trend was seen in all regions of the Atlantic except West Africa for which no long-term data were available (Turtle Expert Working Group 2007, pp. 48–51). The nesting trend for the North Caribbean population, which includes Puerto Rico, was characterized as increasing. Furthermore, a near record number of leatherback nests (1,330 nests) was laid on Florida index beaches in 2010. Leatherback nest counts have been increasing exponentially in Florida (<http://myfwc.com/research/wildlife/sea-turtles/nesting/beach-survey-totals-1989-2010/>).

The petition does not provide information to support the claim that leatherback sea turtle populations have substantially declined in the Atlantic since the 1978 critical habitat designation in St. Croix, VI. Thus, the Service does not believe the petition or information in our files presents substantial information to support this claim. The Service also does not believe the petition or information available in our files presents substantial information to support the claim that the leatherback sea turtles in the Atlantic Ocean are likely to experience declines similar to those in the Pacific if critical habitat is not revised to include the beaches of the NEC. Therefore, the Service finds that the petition does not present substantial information for this claim.

(3) *Petition claims that the evidence supporting designation of the Northeast*

*Ecological Corridor as critical habitat is stronger than the evidence used by the Service to designate critical habitat for Sandy Point, St. Croix, VI.*

The petition cites the 1978 critical habitat designation of the nesting beaches of Sandy Point, St. Croix, as a rationale for likewise designating the beaches of the NEC of Puerto Rico as critical habitat. The petition indicates that the current level of leatherback sea turtle nesting within the NEC is greater than the level of nesting that was observed at Sandy Point in 1977, which was used as justification for its designation as critical habitat.

At the time of the 1978 critical habitat designation, Sandy Point in the U.S. Virgin Islands was the only known beach under U.S. jurisdiction used extensively for nesting by leatherback sea turtles. Its designation as critical habitat was "taken to insure the integrity of the only major nesting beach used by leatherbacks in the United States or its territories" (43 FR 43688; September 26, 1978). Since that time, as described in the *Species Information* section above, additional beaches have been identified in the United States as important for leatherback sea turtle nesting, including beaches in Puerto Rico and Florida. Therefore, the rationale used for the Sandy Point critical habitat designation is not applicable for the NEC. Therefore, the Service finds that the petition does not present substantial information for this claim.

(4) *Petition claims that threats on the nesting beach are substantial and that global climate change is exacerbating the situation.*

The petition claims threats to leatherback sea turtle nesting beaches, exacerbated by global climate change, further justify the need for designation of the NEC as critical habitat. The Service agrees there are substantial threats affecting leatherback sea turtle nesting habitat in the U.S. Atlantic. Leatherback nesting habitat is affected by development, including the construction of buildings, beach armoring, renourishment, and sand mining (Crain *et al.* 1995, entire; Lutcavage *et al.* 1997, pp. 388–391; Witherington 1999, pp. 180–181). These factors may directly, through loss of beach habitat, or indirectly, through changing thermal profiles and increasing erosion, serve to decrease the amount of nesting area available to nesting females, and may evoke a change in the natural behaviors of adults and hatchlings (Ackerman 1997, pp. 102–103; Mosier 1998, pp. 42–47; Witherington *et al.* 2003, pp. 7–10). In addition, coastal development is usually

accompanied by artificial lighting. The presence of lights on or adjacent to nesting beaches alters the behavior of nesting adults and is often fatal to emerging hatchlings as they are attracted to light sources and drawn away from the water (McFarlane 1963, p. 153; Philibosian 1976, p. 824; Ehrhart and Witherington 1987, pp. 66–67; Witherington and Bjorndal 1991, pp. 146–147; Witherington 1992, pp. 36–38; Villanueva-Mayor *et al.* 2003, entire).

In 1990, a major part of the NEC was included as part of the coastal barrier system under the Coastal Barrier Resources Act (CBRA), as requested by the Puerto Rico Planning Board (PRPB). The CBRA encourages the conservation of hurricane-prone, biologically rich coastal barriers by restricting Federal expenditures that encourage development, such as federally subsidized flood insurance (16 U.S.C. 3501–3510). In 1996, the PRPB rezoned the lands within the NEC as a tourist-residential development zone, allowing for recreational and tourism development of the area. Although the NEC had been designated as a Natural Reserve by the former Puerto Rico Governor in 2007, the new administration repealed the designation in October 2009. Thus, lands within the NEC continue under private and Commonwealth (PRIDCO, NPC) ownership, and are subject to potential future development. The NEC remains a unit within the CBRA system.

Between 2007 and 2008, the Service awarded more than \$4,000,000 for the acquisition of over 400 acres in the San Miguel area, and continues to support acquisition in the area to ensure long-term conservation of these lands, particularly for leatherback sea turtle nesting. However, development pressures exist, and there are no lighting codes or regulations in Puerto Rico. Therefore, development could threaten leatherback nesting within the NEC.

As indicated in the petition, another factor that may affect leatherback sea turtle nesting habitat is climate change. Impacts from climate change, especially due to global warming, are likely to become more apparent in future years (Intergovernmental Panel on Climate Change 2007, pp. 12–17). The global mean temperature has risen 0.76 degrees Celsius over the last 150 years, and the linear trend over the last 50 years is nearly twice that for the last 100 years (Intergovernmental Panel on Climate Change 2007, p. 5). One of the most certain consequences of climate change is sea level rise (Titus and Narayanan 1995, pp. 123–132), which will result in increased erosion rates along nesting beaches.

On some undeveloped beaches, shoreline migration will have limited effects on the suitability of nesting habitat. Bruun (1962, pp. 123–126) hypothesized that during sea level rise, a typical beach profile will maintain its configuration but will be translated landward and upward. However, along developed coastlines, and especially in areas where erosion control structures have been constructed to limit shoreline movement, rising sea levels are likely to cause severe effects on nesting females and their eggs (Hawkes *et al.* 2009, p. 139; Poloczanska *et al.* 2009, pp. 164, 174). Erosion control structures can result in the permanent loss of dry nesting beach or deter nesting females from reaching suitable nesting sites (National Research Council 1990, p. 77). Nesting females may deposit eggs seaward of the erosion control structures potentially subjecting them to repeated tidal inundation.

For additional information on threats affecting leatherback sea turtle nesting beaches, refer to the Leatherback Sea Turtle (*Dermochelys coriacea*) 5-Year Review (NMFS and Service 2007, pp. 32–34); the Recovery Plan for Leatherback Turtles (*Dermochelys coriacea*) in the U.S. Caribbean, Atlantic, and Gulf of Mexico (NMFS and Service 1992, pp. 9–14); and the Recovery Plan for U.S. Pacific Populations of the Leatherback Turtle (*Dermochelys coriacea*) (NMFS and Service 1998, pp. 21–23), available on the Internet at <http://www.regulations.gov>.

The Service agrees with the petition that threats to leatherback sea turtle nesting habitat are substantial. We find the information submitted by the petitioner related to this claim to be substantial information for this claim.

#### 90-Day Finding

Based on the above information and information readily available in our files, and pursuant to criteria specified in 50 CFR 424.14(b), we find the petition presents substantial scientific information indicating that revision of the critical habitat designation for the leatherback sea turtle may be warranted.

#### 12-Month Determination

Pursuant to the provisions of the Act regarding revision of critical habitat and petitions for revision, we find that revisions to critical habitat for the leatherback sea turtle under the Act should be made. As described in the *How the Service Intends to Proceed* section below, we intend to fully assess critical habitat during the future planned status review for the leatherback sea turtle.

The Service intends that any revisions to critical habitat for the leatherback sea turtle be as accurate as possible. To ensure that the status review is comprehensive, the Service will request scientific and commercial data and other information regarding the leatherback sea turtle from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding when we initiate the review.

Until the Service is able to revise the critical habitat designation for the leatherback sea turtle, the currently designated critical habitat, as well as areas that support leatherback sea turtles but are outside of the current critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Federal agency actions are subject to the regulatory protections afforded by section 7(a)(2), which requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

#### How the Service Intends To Proceed

One of the recommendations contained in the 5-year reviews for listed sea turtle species, completed in 2007, was that the Service and NMFS conduct an analysis and review for each listed sea turtle (except the Kemp's ridley sea turtle) to determine the application of the distinct population

segment policy. After completing the reviews, the Service and NMFS made a decision to conduct the recommended sea turtle status reviews in the following order: (1) Loggerhead sea turtle, (2) Green sea turtle, (3) Olive ridley sea turtle, (4) Leatherback sea turtle, and (5) Hawksbill sea turtle.

The loggerhead status review was selected to be conducted first because the species is listed as threatened worldwide, and there were substantial concerns about the status of some nesting populations. The green and olive ridley turtles were selected to be the second and third status reviews conducted because they have multiple vertebrate populations listed under the Act, some listed as threatened and some as endangered, and an assessment is needed to determine if these populations qualify as individual distinct population segments (DPSs) or are part of larger DPSs. The leatherback and hawksbill sea turtles were selected as the last two status reviews to be conducted because both species are listed as endangered worldwide and receive the fullest protection under the Act; therefore, the need for status reviews for these two species was deemed not to be as urgent as for the other species.

Once a status review is completed for each species, a rulemaking process would be conducted, if appropriate, to revise the species' status, list a DPS of the species, or designate or revise critical habitat if prudent and determinable. The status review for the loggerhead sea turtle has been

completed (Conant *et al.*, 2009) and rulemaking is in progress (75 FR 12598; March 16, 2010); status reviews for the other species have not been initiated because they have been precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. It is our intention to assess leatherback sea turtle critical habitat as part of the future planned status review for the leatherback sea turtle.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the North Florida Ecological Services Office, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**) and the Caribbean Ecological Services Field Office (P.O. Box 491, Boquerón, PR 00622; telephone 787-851-7297).

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

Dated: July 26, 2011.

**Eileen Sobeck,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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