

Frequently Asked Questions

Service Designation of Terrestrial Critical Habitat for the Northwest Atlantic Population of Loggerhead Sea Turtles

Q: What action is the U.S. Fish and Wildlife Service taking?

A: The U.S. Fish and Wildlife Service (Service) is finalizing its designation of portions of island and mainland coastal beaches in six states along the Atlantic Ocean and the Gulf of Mexico as critical habitat for the Northwest Atlantic (NWA) population of loggerhead sea turtles.

Q: What areas are now designated as critical habitat in the terrestrial environment for the NWA population of loggerhead sea turtles?

A: In total, the Service is designating 685 miles in 88 units as critical habitat in the terrestrial environment (North Carolina–8 units, South Carolina–22 units, Georgia–8 units, Florida–45 units, Alabama–3 units, Mississippi–2 units). Land ownership of the critical habitat area consists of federal (21 percent), state (21percent), and private and others (including local governments–58 percent).

The final critical habitat designation was decreased by eight percent or 54.5 miles from the proposed rule due to exclusions for land covered in three habitat conservation plans in the Florida counties of St. Johns, Volusia and Indian River. The Service also received information from the National Park Service that resulted in a more accurate depiction of the available nesting habitat on Garden Key in the Dry Tortugas in Monroe County, Florida.

For a detailed list of counties, estimated shoreline miles within each unit and other information, please see the final rule available via the Federal eRulemaking Portal at <http://www.regulations.gov/> or at the Service's web site at <http://www.fws.gov/northflorida/>.

Q: How is critical habitat defined?

A: Critical habitat is a term in the Endangered Species Act (ESA) that identifies geographic areas containing features essential to the conservation of a listed species and which may require special management considerations or protection. Specifying the location of habitat essential to the conservation of the species helps federal agencies identify where to utilize their authorities to benefit listed species. The designation also helps focus the conservation efforts of other

conservation partners, such as state and local governments, non-governmental organizations and individuals. See <http://www.fws.gov/angered/what-we-do/critical-habitats.html>.

However, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Loggerhead sea turtles and their habitat are fully protected under the ESA wherever they occur. Federal agencies will continue to consult with the Service on any action they conduct, fund, and/or permit that might affect the species regardless of location or designation and the take of any individual of the species, including take caused by actions that affect habitat, is still prohibited without a federal permit. See <http://www.fws.gov/angered/what-we-do/consultations-overview.html>.

When critical habitat is designated, this responsibility broadens to include consideration of any destruction or adverse modification to critical habitat that could result from a proposed federal action. Designating critical habitat also provides non-regulatory benefits by informing the public of areas that are important to the species' recovery and identifying where conservation actions would be most effective.

Designation of critical habitat does not affect land ownership or establish a refuge or preserve. A critical habitat designation does not impose restrictions on non-federal lands unless federal funds, permits or activities are involved.

Q: What impacts does the designation of critical habitat for the NWA population of loggerhead sea turtles have on coastal landowners within or adjacent to these units?

A: For the most part, the regulated public will see negligible change in how the Service conducts business, now and in the future. The Service will continue to consult on projects federal agencies conduct, fund, and/or permit that may impact loggerhead sea turtles, regardless of whether these projects occur in designated critical habitat.

Designation of critical habitat also does not affect land ownership or establish a refuge or preserve. Nor does it generally impact private landowners taking actions on their land that do not require federal funding or permits.

Q: Why is critical habitat being designated for the NWA population of loggerhead sea turtles?

A: The areas identified in this final decision are critically important nesting sites where the highest concentration of nesting occurs within North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi. The areas include beaches adjacent to the high density nesting beaches to support population expansion. Under the ESA, critical habitat must be designated for any listed species to the maximum extent prudent and determinable. Such designations of critical habitat can only be completed by issuing a rule.

In September 2011, the Service and NOAA National Marine Fisheries Service (NMFS) jointly published a final rule revising the loggerhead's listing from a single worldwide threatened species to nine distinct population segments (DPS) listed as either endangered or threatened ([76 FR 58868](#)). The Northwest Atlantic DPS of loggerhead sea turtle is listed as threatened.

At that time, the Service and NMFS lacked the comprehensive data and information necessary to identify and describe physical and biological features of the terrestrial and marine habitats of the loggerhead and found critical habitat to be “not determinable.”

Since then, Service biologists completed reviews of updated data, recently published journal reports and other information and identified the key terrestrial features and elements necessary to develop a process for selecting areas to designate as critical habitat. The Service published its proposal on March 25, 2013. Today's decision finalizes the areas selected for designation as terrestrial critical habitat for the Northwest Atlantic DPS of loggerhead sea turtle.

NMFS is finalizing in a separate rule the designation of specific areas in the marine environment as critical habitat for the DPS.

Q: Does a critical habitat designation change protection under the ESA?

A: No. As a listed species under the ESA, loggerhead sea turtles are already protected wherever they occur, and federal agencies are required to consult on any action they conduct, fund and/or permit that might affect the species. The ESA requires the Service to identify the location of habitat essential to the conservation of the species, which the ESA terms “critical habitat.”

This identification of critical habitat helps federal agencies identify actions that may affect listed species or their habitat, and work with the Service to avoid or minimize those impacts. Identifying this habitat also helps raise awareness of the habitat needs of imperiled species and focus the conservation efforts of other partners such as state and local governments, non-governmental organizations and individual landowners.

Only if an action is authorized, funded or carried out by a federal agency will the agency need to work with the Service to help landowners avoid, reduce or mitigate potential impacts to listed species or their identified habitat.

Q: What terrestrial features or elements were identified in the final decision as important to loggerhead sea turtle conservation?

A: Habitat features essential to the species survival identified as “primary constituent elements” (PCEs), in the final rule include:

- Suitable nesting beach habitat that has (a) relatively unimpeded near shore access from the ocean to the beach for nesting females and from the beach to the ocean for both post-nesting females and hatchlings; and, (b) is located above mean high water to avoid being inundated frequently by high tides.
- Sand that (a) allows for suitable nest construction, (b) is suitable for facilitating gas diffusion conducive to embryo development, and (c) is able to develop and maintain temperatures and moisture content conducive to embryo development.
- Suitable nesting beach habitat with sufficient darkness to ensure nesting turtles are not deterred from emerging onto the beach, post-nesting females re-orient back to the sea and emerging hatchlings orient correctly towards the sea.
- Natural coastal processes or artificially created or maintained habitat mimicking natural conditions. This includes artificial habitat types that mimic the natural conditions described in the PCEs above for beach access, nest site selection, nest construction, egg deposition and incubation, and hatchling emergence and movement to the sea.

Q: What process was used to select critical habitat?

A: The key features important to loggerhead sea turtle conservation and nesting beach threats were considered for each of the four recovery units occurring within the United States as identified in the 2008 Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (available at <http://go.usa.gov/gbBP>).

The selected primary beaches have the highest nesting densities within each of the four recovery units, have good spatial distribution that will help ensure the protection of genetic diversity, and collectively provide a good representation of total nesting.

The selected beaches adjacent to the primary high density nesting beaches can serve as expansion areas should the high density nesting beaches be significantly degraded or temporarily or permanently lost through natural processes or upland development.

Q: What does this final decision mean for those beach shorelines outside of critical habitat but where loggerhead sea turtles still nest?

A: Loggerhead sea turtles and their habitat are fully protected under the ESA wherever they occur; both inside and outside those areas designated as critical habitat. As such, federal agencies continue to consult with the Service on any action they conduct, fund and/or permit that might affect the species. The NWA population of loggerheads occurs and continues to be protected in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas.

However, sea turtle beach habitat is dynamic, and species may move from one area to another over time. The Service recognizes that critical habitat designated at a particular point in time may not include all of the habitat areas that it may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not support the conservation of the species.

Also, areas that are occupied by the species, both inside and outside the critical habitat designation, continue to be subject to conservation actions implemented under the ESA, regulatory protections for federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and section 9 of the ESA's prohibitions on take of any individual of the species, including take caused by actions that affect habitat. [See response to "Does a critical habitat designation change protection under the ESA" question for additional information.]

Q: What are the threats to terrestrial nesting beach habitat?

A: For loggerhead sea turtle terrestrial habitat, primary threats are generally grouped into 12 categories: recreational beach use; beach driving; predation; beach sand placement activities; in-water and shoreline alterations; coastal development; artificial lighting; beach erosion, including that resulting from natural disasters such as hurricanes; climate change; habitat obstructions; human-caused disasters and response to all types of disasters; and military testing and training activities.

It is important to note that under the ESA, the Service must identify and consider threats to federally listed species when conducting its analysis. Identifying these threats aids federal agencies in considering impacts projects might have and what steps or actions might be considered to offset or mitigate those impacts. Identifying threats does not mean they must be eliminated; only that they exist and need to be considered by federal action agencies.

Q: Was the public given an opportunity to engage in the decision-making process?

A: Yes. The first comment period was initiated by the publication of the proposed rule on March 25, 2013 (78 FR 17999), and closed on May 24, 2013. The second comment period, which included an opportunity to comment on the draft economic analysis (DEA), was open from July 18, 2013 (78 FR 42921), to September 18, 2013. The Service also held three public hearings in August 2013: Wilmington, North Carolina; Morehead City, North Carolina; and Charleston, South Carolina.

Additionally, the Service contacted appropriate federal, state, county and local agencies, scientific organizations, and other interested parties, and invited comment on the proposed rule and the DEA during these comment periods.

Q: What was the overall response during the comment periods?

A: During the first comment period, the Service received 19,969 comment letters addressing the proposed critical habitat designation. The majority of these comments were form letters and letters with multiple signatures. During the second comment period, the Service received 2,206 comment letters addressing the proposed critical habitat designation, the DEA or both. The majority of these comments were also form letters and letters with multiple signatures. Three of four peer reviewers also provided comment on the proposed rule. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications and suggestions to improve the final rule.

Q: Were all comments and information considered by the Service in making the final decision?

A: Yes. Service staff reviewed all comments and information and gave these consideration as they worked through the final decision-making processes. Stakeholders and the general public played an important role in helping the Service ensure the final designation was not only based on the best scientific and commercial information available, but was also accurate and more effective in conserving the species.

Q: Where can I find the comments and information submitted during the decision-making process?

A: All comments and information are available at the Federal eRulemaking Portal: <http://www.regulations.gov>. Search under Docket No. FWS-R4-ES-2012-0103.

Q: Did the Service consider the economic impacts the designation of critical habitat might have on coastal communities and landowners?

A: Yes. The Service made the DEA available for public review and comment on July 18, 2013. The final economic analysis incorporates to the greatest extent possible comments and information received during the public comment period and is available at the Federal eRulemaking Portal: <http://www.regulations.gov>. Search under Docket No. FWS-R4-ES-2012-0103.

Q: Why were Department of Defense (DOD) facilities exempted in the Service's final decision? Are not these areas just as important for sea turtle conservation?

A: Section 4(a)(3)(B)(i) of the ESA was amended in 2004 through the National Defense Authorization Act of 2004 (Pub. L. 108-136) to provide that: "The Secretary [of the interior] shall not designate as critical habitat any lands or other geographic areas owned or controlled by

the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

Service staff analyzed the integrated natural resources management plans (INRMPs) developed and implemented by DOD military installations within the range proposed as critical habitat to determine if the INRMPs met the exemption criteria found in section 4(a)(3) of the ESA. The Service’s analysis resulted in the determination that Marine Corps Base Camp Lejeune in North Carolina, and Cape Canaveral Air Force Station, Patrick Air Force Base and Eglin Air Force Base in Florida are DOD lands with completed INRMPs that provide benefits to the loggerhead sea turtle. Accordingly, the Service exempted these areas from the designation.

The Service agrees that all nesting areas support the conservation and recovery of sea turtles and other species that rely on beach habitat. This is true regardless of whether or not a nesting beach is in an area designated as critical habitat.

Q: How did the Service reach the decision to exclude nesting habitat in locations where a habitat conservation plan (HCP) is in place?

A: The Service is required by section 4(b)(2) of the ESA to take into account national security, economic and other relevant impacts of critical habitat designation. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the ESA and its associated legislative history are clear that the Secretary of the Interior has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In making our final decision, Service staff reviewed HCP annual reports and other information in our files and took into consideration information received during the open public comment periods to determine whether these or other locations proposed as critical habitat might be appropriate for exclusion under section 4(b)(2) of the ESA. An HCP is a plan that provides for both conservation of a species and continued development and other activities.

When considering the benefits of exclusion the Service’s staff considers, among other things, whether exclusion of an area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. The exclusions identified in the proposed critical habitat rule were based on the presence of HCPs.

When the Service evaluated the existing conservation or management plans, we considered a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable

expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

The Service found that the St. Johns, Volusia and Indian River Counties' HCPs met the criteria for exclusion.

Q: Where can I find more information on sea turtle conservation?

A: Visit the Service's web site at <http://www.fws.gov/northflorida>.