Federal Communications Commission.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 991116305–9305–01; I.D. No. 110599D]

RIN 0648–AL82

Designated Critical Habitat: Re-proposed Critical Habitat for Johnson's Seagrass

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of hearing; request for comments.

SUMMARY: NMFS re-proposes to designate critical habitat for Johnson's seagrass (*Halophila johnsonii*) pursuant to section 4 of the Endangered Species Act (ESA). Johnson's seagrass is found on the east coast of Florida from Sebastian Inlet to central Biscayne Bay. Within this range, 10 areas are proposed for critical habitat: a portion of the Indian River Lagoon, north of the Sebastian Inlet Channel; a portion of the Indian River Lagoon, south of the Sebastian Inlet Channel; a portion of the Indian River Lagoon near the Fort Pierce Inlet; a portion of the Indian River Lagoon, north of the St. Lucie Inlet; a portion of Hobe Sound; a site on the south side of Jupiter Inlet; a site in central Lake Worth Lagoon; a site in Lake Worth Lagoon, Boynton Beach; a site in Lake Wyman, Boca Raton; and a portion of the Biscayne Bay Aquatic Preserve.

The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

DATES: Comments on this proposed rule must be received by January 3, 2000. A public hearing on this proposed action is scheduled for Thursday, December 16, 1999, from 7:00 p.m.–9:00 p.m.

ADDRESSES: Written comments on this proposed designation of critical habitat should be addressed to Mr. Charles Oravetz, Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702–2432. Comments may be sent via facsimile (fax) to 727–570–5517. Comments will not be accepted if submitted via e-mail or Internet. A public hearing on this proposal will be held at the South Florida Water Management District auditorium, 3301 Gun Club Road, West Palm Beach, Florida, 33416–4680 (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Layne Bolen, Southeast Region, Protected Resources Division, NMFS, 727–570–5312, *layne.bolen@noaa.gov* or Marta Nammack, Office of Protected Resources, NMFS, 301–713–1401, *marta.nammack@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule to list Johnson's seagrass as a threatened species on September 15, 1993 (58 FR 48326) and a proposed rule to designate critical habitat on August 4, 1994 (59 FR 39716). A public hearing on both the proposed listing and critical habitat designation was held in Vero Beach, Florida, on September 20, 1994. As a result of public input during the comment period, NMFS postponed further action on listing. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468). In order to update the original status report (Kenworthy, 1993) and to include information from new field and laboratory research on species distribution, ecology, genetics and phylogeny, NMFS convened a workshop on the biology, distribution, and abundance of *H. johnsonii*. The results of this workshop were summarized in the proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997. The final rule to list Johnson's seagrass as a threatened species was published by NMFS on September 14, 1998 (63 FR 49035).

On February 23, 1999, NMFS established and convened a recovery team to prepare a recovery plan and develop recommendations for critical habitat for Johnson's seagrass. Based on these recommendations and the best available scientific data on the distribution, ecology and genetics of this species, NMFS has developed a new proposal to designate critical habitat for Johnson's seagrass. A draft recovery plan for Johnson's seagrass is anticipated by January 2000.

The proposed designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from designating critical habitat, over and above those that result from listing the species, are expected to be minimal.

NMFS has completed a conference opinion with the U.S. Army Corps of Engineers (COE) on maintenance dredging which will be used to fulfill the ESA section 7 consultation requirement. NMFS expects that normal maintenance dredging activities and routine operations on ports will not be negatively impacted by this proposed critical habitat designation.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. NMFS has determined that sufficient information exists to propose designating critical habitat for Johnson's seagrass currently listed as threatened under the ESA. NMFS will consider all available information and data in finalizing this proposal.

The use of the term ''essential habitat'' within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

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 of Commerce (Secretary) that such areas are essential for the conservation of the species.'' 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.''

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 (50 CFR 424.12(b)).

In addition, 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, food resources, water quality or quantity, and vegetation and sediment types and stability (50 CFR 424.12(b)).

Consideration of Economic and Other Factors

The economic, environmental and other impacts of a designation must also be evaluated and considered. NMFS must identify present and future activities that may adversely modify the proposed critical habitat or 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 (16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts that specifically result from designating critical habitat above the economic and other impacts attributable to listing the species or resulting from other authorities. These incremental impacts are expected to be minimal (see Significance of Designating Critical Habitat section). 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 under section 9 of the ESA and associated regulations. The term ''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.'' (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, rearing or migration (64 FR 60727; November 8, 1999).

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; as described here, this is not the case for threatened species. Section 4(d) of the ESA directs the Secretary to implement regulations ''to provide for the conservation of [threatened] species'' that may include extending any or all of the prohibitions of section 9 to threatened species.

Section 9(a)(2)(E) of the ESA also prohibits violations of protective regulations for threatened species of plants implemented under section 4(d). NMFS may issue protective regulations pursuant to section 4(d) for Johnson's seagrass in a future rulemaking.

Impacts attributable to listing also include those resulting from the responsibility of all Federal agencies under section 7 of the ESA to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or adverse modification of its habitat, whether or not that habitat has been designated as critical.

As indicated above, NMFS has completed a conference opinion with the COE on maintenance dredging. This conference opinion included an analysis of the effects of maintenance dredging on proposed critical habitat. NMFS concluded that normal maintenance dredging activities and routine operations on ports are not likely to destroy or adversely modify proposed critical habitat.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict state or private activities within the area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and describing the features within those areas that are essential to the species, thus alerting public and private entities to the importance of the area. 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, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the ESA 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 destroy or adversely modify the designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for both the survival and recovery'' of the species (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 (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would 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. Critical habitat may provide additional benefits to a species in cases where areas outside of the species' current range have been designated. In these cases, Federal agencies are required to consult with NMFS under section 7 (50 CFR 402.14 (a)), when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides Federal agencies with a clearer indication as to when consultation under section 7 of the ESA 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 habitat area when or where Johnson's seagrass is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to ESA section 7 (*i.e.*, activities that may affect essential features of the designated area). For example, disposal of waste material in water 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 also assists Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in ESA section 7 consultations. This is particularly true in cases where there

are alternative areas that would provide for the conservation of the species and the success of the action. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations that restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed, 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 proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features 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 is 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, a notification of the proposed critical habitat is published in the **Federal Register** for comment. After considering all comments and any new information received on the proposal, the final critical habitat designation is published. Final critical habitat designations may be revised, using the same process, as new data become available.

A description of the critical habitat, need for special management considerations, and impacts of designating critical habitat for Johnson's seagrass and the proposed action, are described in the following sections.

Critical Habitat of Johnson's Seagrass

The biology of Johnson's seagrass is discussed in the final rule to list the species as threatened (63 FR 49035, September 14, 1998) and includes information on the current status of the species, its life history characteristics and habitat requirements, as well as projects, activities and other factors affecting the species. The physical habitat that supports Johnson's seagrass includes both shallow intertidal as well as deeper subtidal zones. The species prospers and is able to colonize and maintain stable populations either in water that is clear and deep (2–5 m) or in water that is shallow and turbid. In tidal channels, it inhabits coarse sand substrates.

Based on published reports and discussions with seagrass experts, the distributional range of Johnson's seagrass is limited to the east coast of Florida from central Biscayne Bay (25°45′ N. lat.) to Sebastian Inlet (27°51′ N. lat.). There have been no reports of healthy populations of this species outside the presently known range. Although the species occurs throughout the Indian River Lagoon and Lake Worth, the 10 specific areas proposed for critical habitat encompass the largest known contiguous populations of Johnson's seagrass, those areas known to have persistent populations, those populations known to have persistent flowering, those populations found to have unique genetic variability, and/or populations that include the northern and southern limits of the species' range.

The species is distributed in patches within its range. The dimensions of patches range from a few square centimeters to approximately 327 square meters (sq.m.). The survival of the species likely depends on maintaining its existing viable populations, especially the areas where the larger patches are found. The Sebastian Inlet population is believed to be the northern limit of its distribution and includes flowering patches that have a known persistence of at least 10 years. Ft. Pierce Inlet and Jupiter Inlet are also found to have persistent and flowering populations. The other areas proposed for critical habitat designation represent the core range of the species where Johnson's seagrass is found to be abundant compared to other parts of its range, exhibits unique genetic make-up, or comprises the southern limit of its range. Spread of the species into new areas is limited by its reproductive potential. Johnson's seagrass possesses only female flowers; thus vegetative propagation, most likely through asexual branching, appears to be its only means of reproduction and dispersal. If an established community is disturbed, regrowth and reestablishment are extremely unlikely. If extirpated from an area, it is doubtful that the species would be capable of repopulation. This species' method of reproduction impedes the ability to increase distribution as establishment of new vegetation requires considerable stability in environmental conditions and protection from human-induced disturbances.

Based on the best available information, general physical and biological features of the areas proposed for critical habitat designation include adequate water quality, salinity levels, water transparency, and stable, unconsolidated sediments that are free from physical disturbance. The specific areas occupied by Johnson's seagrass are those with one or more of the following criteria: (1) Locations with populations that have persisted for 10 years; (2) locations with persistent flowering populations; (3) locations at the northern and southern range limits of the species; (4) locations with unique genetic diversity; and (5) locations with a documented high abundance of Johnson's seagrass compared to other areas in the species' range. Explanations for these criteria are:

1. Persistent populations. Surveys of *H. johnsonii* distribution and abundance in the Indian River Lagoon indicate that populations fluctuate dramatically. In some areas populations disappear and re-appear on both intra- and inter-annual time scales (Virnstein *et al.*, 1997). Some populations have disappeared and not returned. Since sexual reproduction and seed dispersal are unknown, this species may rely on vegetative fragmentation for recruitment and establishment of new populations. Recruitment from fragmentation and migration are random processes which do not guarantee the persistence of the species in any one location. Perennial populations which have persisted for 10 years exist in several locations, including Sebastian Inlet, Fort Pierce Inlet, Jupiter Inlet and Hobe Sound. Environmental characteristics of these sites appear favorable to the species, while in other locations in the lagoon, populations have disappeared. Locations where populations have persisted should receive critical habitat consideration.

2. Persistent flowering populations. The existence of male flowers or recruitment by seed have not been documented for *H. johnsonii*. These observations suggest that this species does not reproduce sexually, and if it does, it is a very rare event. Yet, large clones of mature female plants flower prolifically at several locations, including Sebastian Inlet, Fort Pierce Inlet, Jupiter Inlet and Lake Worth Lagoon. The environmental conditions at these sites appears to be suitable for

flowering, and if there are any males present, these would be likely habitats for successful reproduction. Locations where there are persistent flowering populations should receive critical habitat consideration.

3. Northern and southern ranges of the populations. The geographical limits of the distributional range of a species can indicate a reduction or expansion of the species' range. Greater adaptative stresses can occur at the limits of the species' range. If the range extension were shrinking, the edges should be protected to prevent further loss. Second, the distribution limits may be a point where the populations are expanding and invading new environments. The unique phenotypic and genotypic characteristics of these populations could be an important reservoir for characteristics resistant to extinction and conducive to survival and growth. The northern and southern ranges of Johnson's seagrass are defined as Sebastian Inlet and central Biscayne Bay, respectively. These limits to the species' range should receive critical habitat consideration.

4. Populations with unique genetic variability. The Boca Raton and Boynton Beach sites have populations which are distinguished by a higher index of genetic variation than any of the central and northern populations examined to date. These two sites possibly represent a genetically semi-isolated group which could be the reservoir of a large part of the overall genetic variation found in this species. Information is lacking on the geographic extent of this genetic variability. Locations with populations that have unique genetic variability should receive critical habitat consideration.

5. Areas of abundance. The Lake Worth Lagoon and Palm Beach County seagrass populations represent an abundant core of *Halophila* species, including Johnson's seagrass. Previously a freshwater lake, Lake Worth, was transformed into a lagoon beginning in 1877 when an ocean inlet was stabilized. With dredging of the Intracoastal Waterway, shoreline development, and sewage disposal, the lagoon was permanently altered. Presently, there are about 2000 acres of seagrass in the lagoon covering 35 percent of the bottom. It is estimated that between 20 and 25 percent of the seagrass coverage is comprised of mixed assemblages of *H. decipiens* and *H. johnsonii*. This is proportionately more *Halophila* coverage than occurs elsewhere along the southeast coast of Florida. Presently, conditions within Lake Worth Lagoon and in Palm Beach County in general appear to be conducive to the survival of *H. johnsonii*. Locations within Lake Worth and Palm Beach County should be considered as critical habitat.

The area proposed for critical habitat in Lake Worth Lagoon, near Bingham Island, consists of the largest recorded contiguous patch of Johnson's seagrass: a 30-acre meadow of Johnson's seagrass intermixed with sparse coverage of *H. decipiens* and *Halodule wrightii* (Smith and Mezich, 1991 and 1999).

Need for Special Management Consideration or Protection

NMFS has determined that the essential areas and features described here are at risk and may require special management consideration or protection. Special management may be required because of the following activities: (1) Vessel traffic and the resulting propeller dredging and anchor mooring; (2) dredging; (3) dock, marina, and bridge construction and shading from these structures; (4) water pollution; and (5) land use practices including shoreline development, agriculture, and aquaculture. Activities associated with recreational boat traffic account for the majority of human use associated with the proposed critical habitat areas. The destruction of the benthic community due to boating activities, propeller dredging, anchor mooring, and dock and marina construction was observed at all sites during a study by NMFS from 1990 to 1992. These activities severely disrupt the benthic habitat, breaching root systems, severing rhizomes, and significantly reducing the viability of the seagrass community. Propeller dredging and anchor mooring in shallow areas are a major disturbance to even the most robust seagrasses. This destruction is expected to worsen with the predicted increase in boating activity. Trampling of seagrass beds, a secondary effect of recreational boating, also disturbs seagrass habitat. Populations of Johnson's seagrass inhabiting shallow water and water close to inlets, where vessel traffic is concentrated, will be most affected.

The constant sedimentation patterns in and around inlets require frequent maintenance dredging, which could either directly remove essential seagrass habitat or indirectly affect it by redistributing sediments, burying plants and destabilizing the bottom structure. Altering benthic topography or burying the plants may remove them from the photic zone.

Permitted dredging of channels, basins, and other in-and on-water construction projects cause loss of Johnson's seagrass and its habitat through direct removal of the plant, fragmentation of habitat, and shading. Docking facilities that, upon meeting certain provisions, are exempt from state permitting also contribute to loss of Johnson's seagrass through construction impacts and shading. Fixed add-ons to exempt docks (such as finger piers, floating docks, or boat lifts) have recently been documented as an additional source of seagrass loss due to shading (Smith and Mezich, 1999).

Decreased water transparency caused by suspended sediments, water color, and chlorophylls could have significant detrimental effects on the distribution and abundance of the deeper water populations of Johnson's seagrass. A distribution survey in Hobe and Jupiter Sounds indicates that the abundance of this seagrass diminishes in the more turbid interior portion of the lagoon where reduced light limits photosynthesis.

Other areas of concern include seagrass beds located in proximity to rivers and canal mouths where low salinity, highly colored water is discharged. Freshwater discharge into areas adjacent to seagrass beds may provoke physiological stress upon the plants by reducing the salinity levels. Additionally, colored waters released into these areas reduce the amount of sunlight available for photosynthesis by rapidly attenuating shorter wavelengths of Photosynthetically Active Radiation.

Also, continuing and increasing degradation of water quality due to increased land use and water management threatens the welfare of seagrass communities. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous loading via urban and agricultural land run-off stimulates increased algal growth that may smother Johnson's seagrass, shade rooted vegetation, and diminish the oxygen content of the water. Low oxygen conditions have a demonstrated negative impact on seagrasses and associated communities.

Special consideration and protection for these and other habitat features are evaluated in the ESA section 7 consultation process. Special management needs and the protection of these habitat features are being addressed in the development and implementation of the recovery plan.

Activities That May Affect Critical Habitat

A wide range of activities funded, authorized or carried out by Federal agencies may affect the essential habitat requirements of Johnson's seagrass. These include authorization by the COE for beach nourishment, dredging, and

related activities including construction of docks and marinas; bridge construction projects funded by the Federal Highway Administration; actions by the U.S. Environmental Protection Agency and the COE to manage freshwater discharges into waterways; regulation of vessel traffic by the U.S. Coast Guard; management of national refuges and protected species by the U.S. Fish and Wildlife Service; management of vessel traffic (and other activities) by the U.S. Navy; approval of changes to Florida's coastal zone management plan by NOAA's National Ocean Service, and management of commercial fishing and protected species by NMFS.

Expected Impacts of Designating Critical Habitat

This designation will identify specific habitat areas that have been determined to be essential for the conservation of Johnson's seagrass and that may be in need of special management considerations or protection. It will require Federal agencies to evaluate their activities with respect to the critical habitat of this species and to consult with NMFS pursuant to section 7 of the ESA before engaging in any action that may affect the critical habitat.

As discussed in the section on activities that may impact essential habitat and features, the Federal activities that may affect critical habitat are the same activities that may affect the species itself. For plants, this is particularly true when analyzing the impacts of designating critical habitat. For example, the activities that affect water quality, an essential feature of critical habitat, will also be considered in terms of how they affect the species itself.

Should this proposed designation of critical habitat be adopted, Federal agencies will continue to engage in ESA section 7 consultations to determine if the actions they authorize, fund or carry out are likely to jeopardize the continued existence of Johnson's seagrass; however, with designation, they would also need to address explicitly impacts to the species' critical habitat. This is not expected to affect materially the scope of future consultations or result in greater economic impacts, since most impacts to Johnson's seagrass habitat will already be considered in ESA section 7 consultations.

The economic costs to be considered in a critical habitat designation are the incremental costs of designation above the economic impacts attributable to listing or attributable to authorities other than the ESA. NMFS has determined that there are few, if any, incremental net costs for areas within the species' current distribution, and no areas outside the current range are proposed for critical habitat designation.

Proposed Critical Habitat; Geographic Extent

Based on available information, NMFS proposes to designate critical habitat that is considered essential for the survival and that may require special management consideration or protection. The critical habitat designation proposed by this rule includes: (1) Locations with populations that have persisted for 10 years; (2) locations with persistent flowering populations; (3) locations at the northern and southern range limits of the species; (4) locations with unique genetic diversity; and (5) core locations with a documented high abundance of Johnson's seagrass compared to other areas in the species' range.

NMFS is not including in the proposed designation any areas outside the species' currently known geographical area. NMFS has concluded that, at this time, proper management of the essential features of the areas around Sebastian and Ft. Pierce Inlet, Hobe Sound, Jupiter Inlet, Lake Worth, Boca Raton, and northern Key Biscayne will be sufficient to provide for the survival and recovery of this species. NMFS may reconsider this evaluation and propose additional areas for critical habitat at any time. Johnson's seagrass occurs in numerous locations throughout its range in areas outside of those currently being proposed for critical habitat. Information on genetic variability and persistence of Johnson's seagrass is currently lacking in these areas. Future research, however, involving genetic studies and comprehensive, long-term field surveys, could identify additional areas that are essential to the conservation of the species and require special management considerations, and would, therefore, warrant designation as critical habitat. Also, if a male flower of Johnson's seagrass is identified in an area, this area should be designated as critical habitat.

The 10 areas proposed for critical habitat designation include:

(1) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′15.03″N, 80°27′55.49″W
Northeast corner: 27°51′16.57″N, 80°27′53.05″W
Southwest corner: 27°51′08.85″N, 80°27′50.48″W
Southeast corner: 27°51′11.58″N, 80°27′47.35″W

(2) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′01.32″N, 80°27′46.10″W
Northeast corner: 27°51′02.69″N, 80°27′45.27″W
Southwest corner: 27°50′59.08″N, 80°27′41.84″W
Southeast corner: 27°51′01.07″N, 80°27′40.50″W

(3) A portion of the Indian River Lagoon in the vicinity of the Fort Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northwest corner: 27°28′06.00″N, 80°18′48.89″W
Northeast corner: 27°28′04.43″N, 80°18′42.25″W
Southwest corner: 27°28′02.86″N, 80°18′49.06″W
Southeast corner: 27°28′01.46″N, 80°18′42.42″W

(4) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Nettles Island to the Florida Oceanographic Institute, defined with the following coordinates:

Northwest corner: 27°16′44.04″N, 80°14′00.00″W
Northeast corner: 27°16′44.04″N, 80°12′51.33″W
Southwest corner: 27°12′49.70″N, 80°11′46.80″W
Southeast corner: 27°12′49.70″N, 80°11′02.50″W

(5) Hobe Sound beginning at State Road 708 (27°03′49.90″N, 80°07′20.57″W) and extending south to 27°00′00.00″N, 80°0532.54″W.

(6) Jupiter Inlet at a site located just west of the entrance to Zeek's Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56′43.34″N, 80°04′47.84″W
Northeast corner: 26°56′40.93″N, 80°04′42.61″W
Southwest corner: 26°56′40.73″N, 80°04′48.65″W
South central point: 26°56′38.11″N, 80°04′45.83″W
Southeast corner: 26°56′38.31″N, 80°04′42.41″W

(7) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates:

Northwest corner: 26°40′44.00″N, 80°02′39.00″
Northeast corner: 26°40′40.00″N, 80°02′34.00″W
Southwest corner: 26°40′32.00″N, 80°02′44.00″W
Southeast corner: 26°40′33.00″N, 80°02′35.00″W

(8) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the Intracoastal Waterway, defined by the following coordinates:

Northwest corner: 26°33′28.00″N, 80°02′54.00″W
Northeast corner: 26°33′30.00″N, 80°03′04.00″W
Southwest corner: 26°32′50.00″N, 80°03′11.00″W
Southeast corner: 26°32′50.00″N, 80°02′58.00″W

(9) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates:

Northwest corner: 26°22′27.00″N, 80°04′23.00″W
Northeast corner: 26°22′27.00″N, 80°04′18.00″W
Southwest corner: 26°22′23.00″N, 80°04′22.00″W
Southeast corner: 26°22′23.00″N, 80°04′19.00″W

(10) A portion of Northern Biscayne Bay, Florida, defined by the following: The northern boundary of Biscayne Bay Aquatic Preserve, N.E. 163rd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18–18.002 of the Florida Administrative Code (F.A.C.) excluding the Ortega River beyond its mouth, and all Federal navigation channels at the Port of Miami, not including the Intracoastal Waterway, to the currently documented southern-most range of Johnson's seagrass, Central Key Biscayne (25°45′N).

Maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the proposed critical habitat. They do not constitute the definition of the boundaries of critical habitat. Persons must refer to the regulations at 50 CFR 226.91 for the actual boundaries of the designated critical habitat. Figures 1 through 9 illustrate the ten areas proposed as critical habitat for Johnson's seagrass.

Request for Comments

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposal from all interested parties. NMFS will consider all information, comments and recommendations received before reaching a final decision.

The public hearing on this proposed action has been scheduled for Thursday, December 2, 1999. Interested parties will have an opportunity to provide oral and written testimony at the public hearing.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Layne Bolen (see **ADDRESSES**).

References

The complete citations for the references used in this document are available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

NMFS proposes to designate 10 areas in the range of Johnson's seagrass as critical habitat. 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 ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 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 that their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of additional habitat areas in the species' range and/or outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of the action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

The Assistant Administrator for Fisheries, NOAA, has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of Florida. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

In accordance with E.O. 13132, NMFS has prepared the following federalism summary impact statement. When NMFS issued a proposed rule to designate critical habitat for Johnson's seagrass in 1994, NMFS began consulting with the State of Florida. While the State expressed support for protection of Johnson's seagrass, it also expressed concern over the possible economic impacts of a critical habitat designation. NMFS understands the concerns of the State regarding timely maintenance of state and federal navigation channels, ports, and inlets, and NMFS' goal is to protect the species with minimal effects to these activities. Concerns regarding possible economic impacts of a critical habitat designation are addressed in the preamble to this rule. In addition, NMFS has completed a conference opinion with the COE on the effects of maintenance dredging on Johnson's seagrass and its proposed critical habitat. NMFS expects that operations on ports will not be negatively impacted by this proposed critical habitat designation.

BILLING CODE 3510–22–P

Figure 1

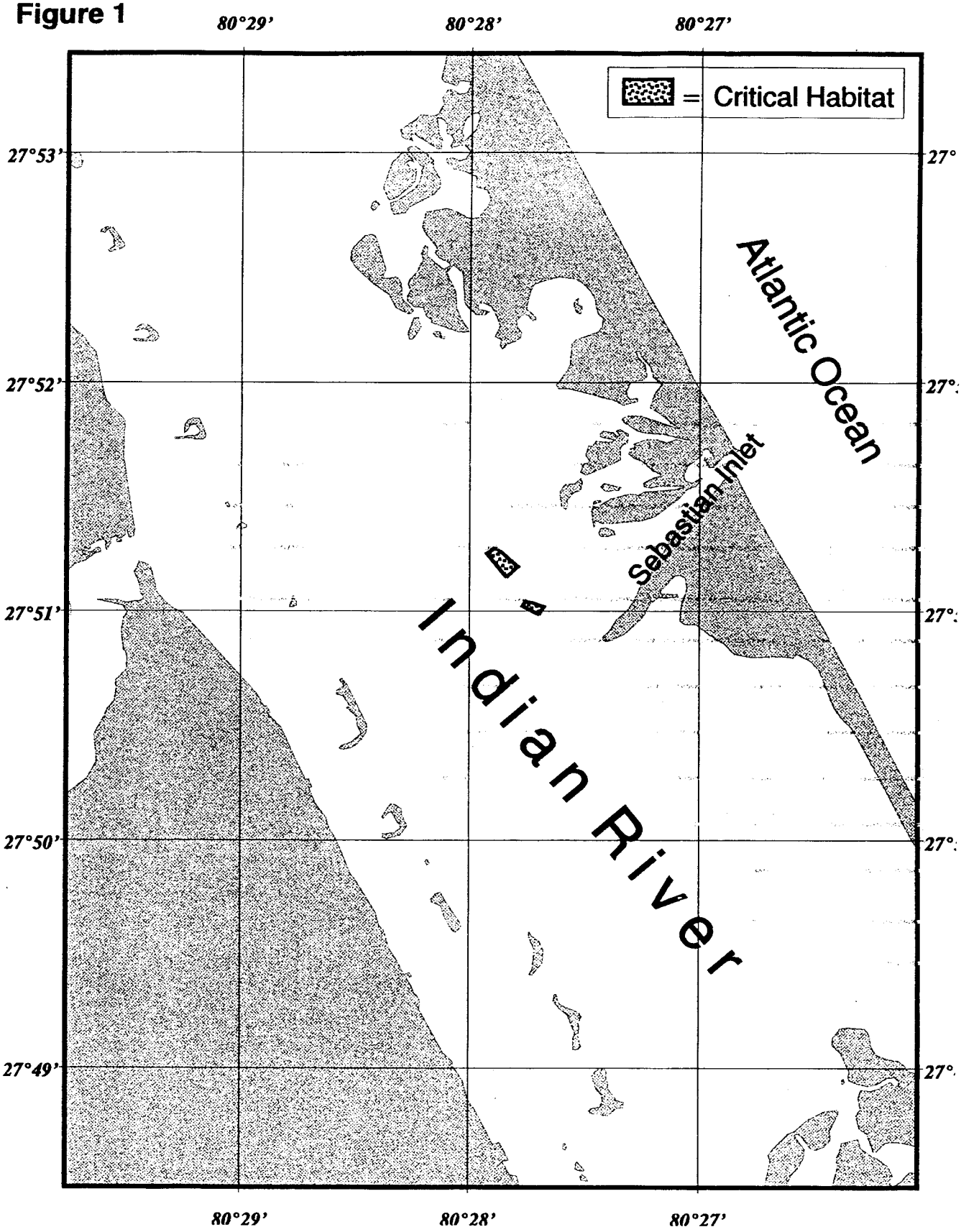

80°29'
80°28'
80°27'
= Critical Habitat
27°53'
27°52'
27°51'
27°50'
27°49'
Atlantic Ocean
Sebastian Inlet
Indian River

Figure 2

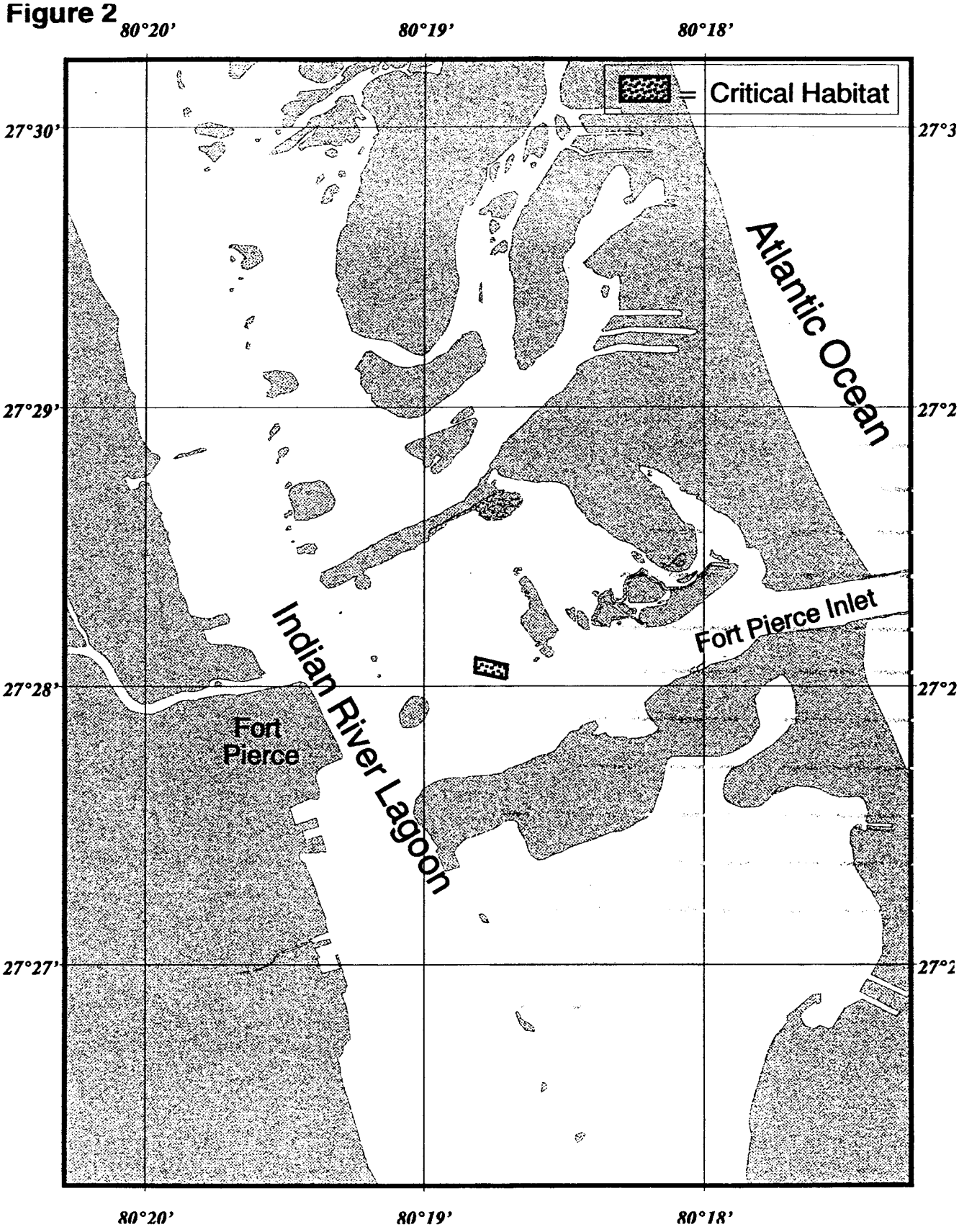

80°20'
80°19'
80°18'
= Critical Habitat
27°30'
27°29'
27°28'
27°27'
Atlantic Ocean
Fort Pierce Inlet
Indian River Lagoon
Fort Pierce

Figure 3

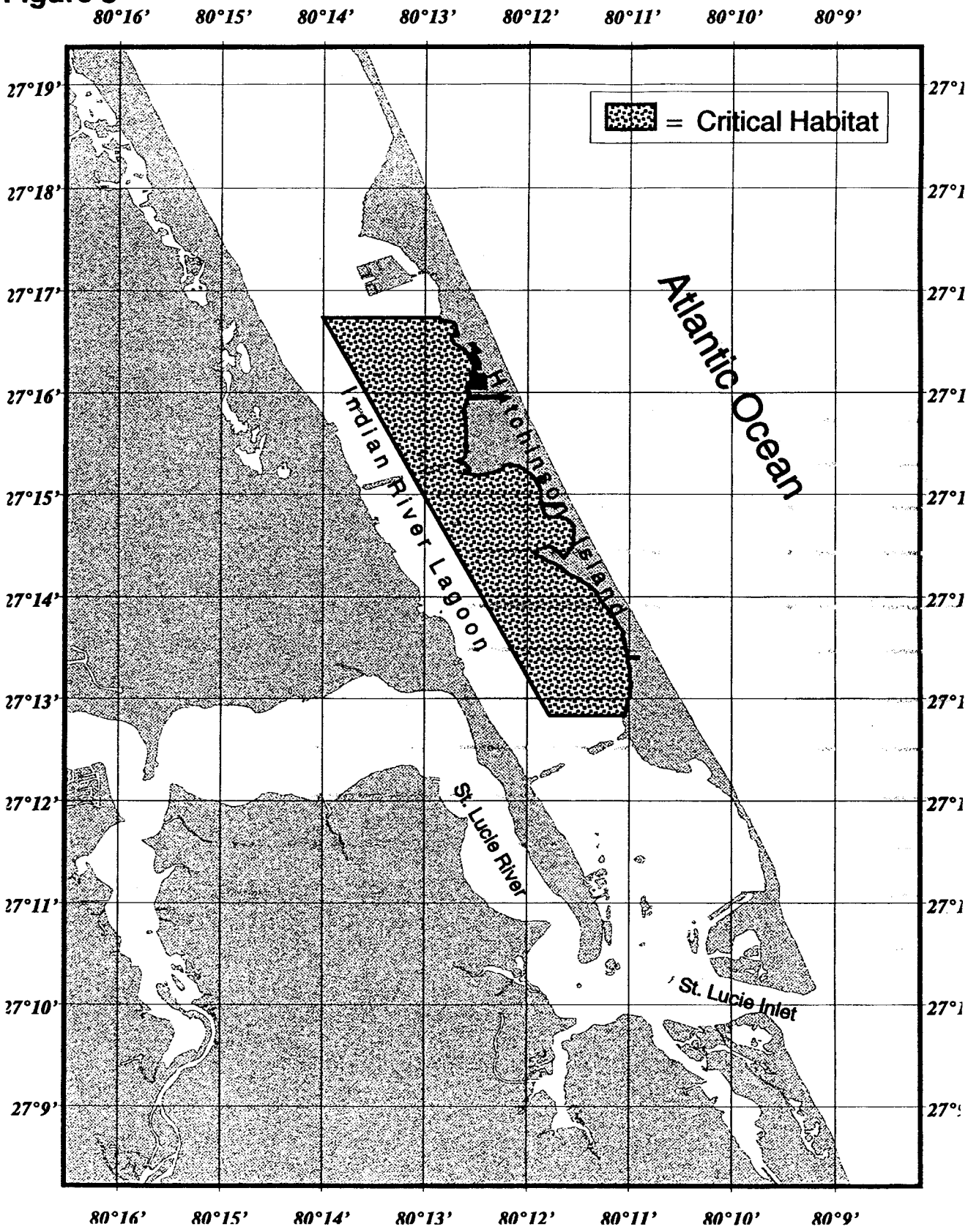

80°16'
80°15'
80°14'
80°13'
80°12'
80°11'
80°10'
80°9'
27°19'
27°18'
27°17'
27°16'
27°15'
27°14'
27°13'
27°12'
27°11'
27°10'
27°9'
= Critical Habitat
Atlantic Ocean
Hutchinson Island
Indian River Lagoon
St. Lucie River
St. Lucie Inlet

Figure 4

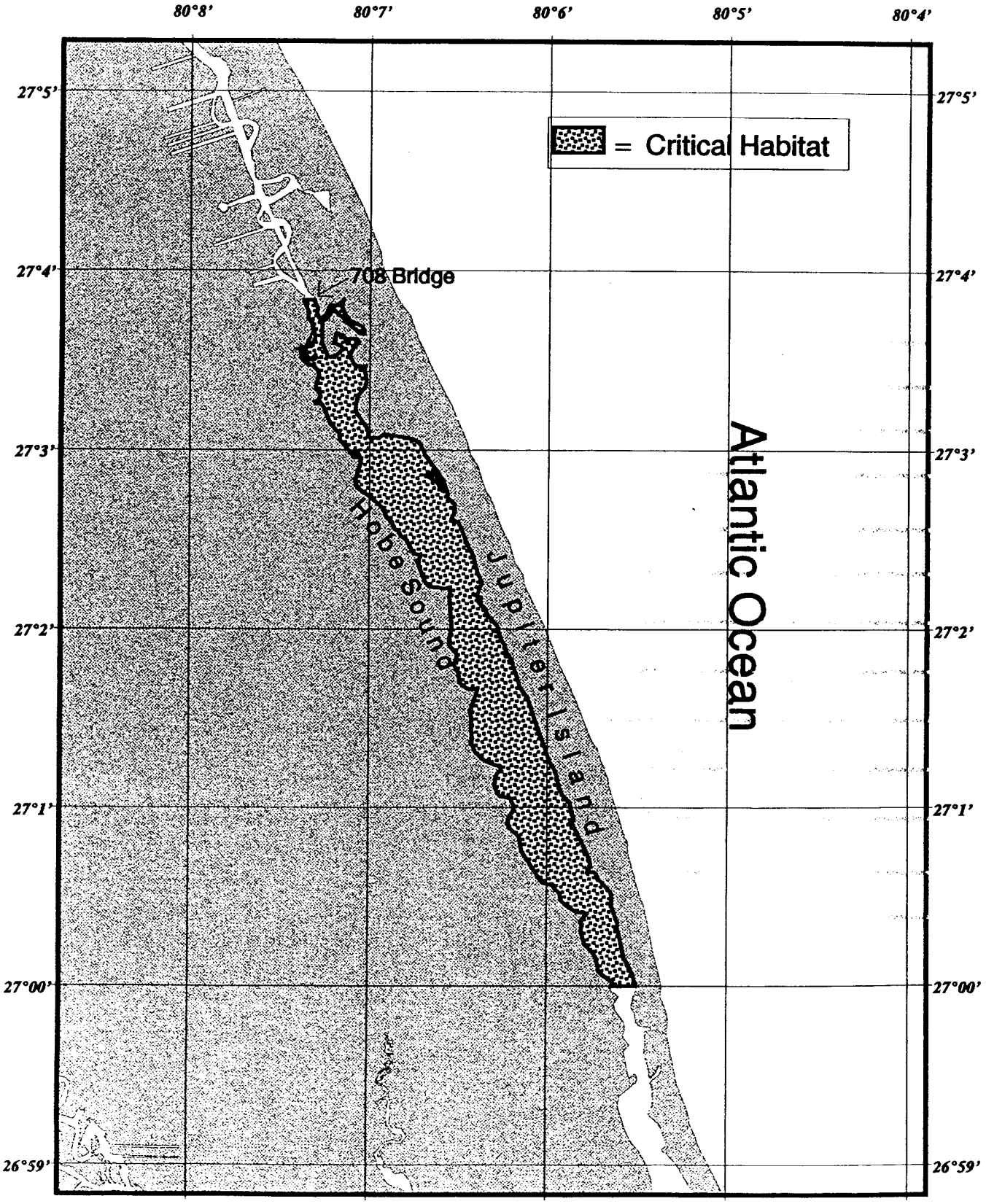

80°8'
80°7'
80°6'
80°5'
80°4'
27°5'
27°4'
27°3'
27°2'
27°1'
27°00'
26°59'
= Critical Habitat
708 Bridge
Jupiter Island
Hobe Sound
Atlantic Ocean

Figure 5

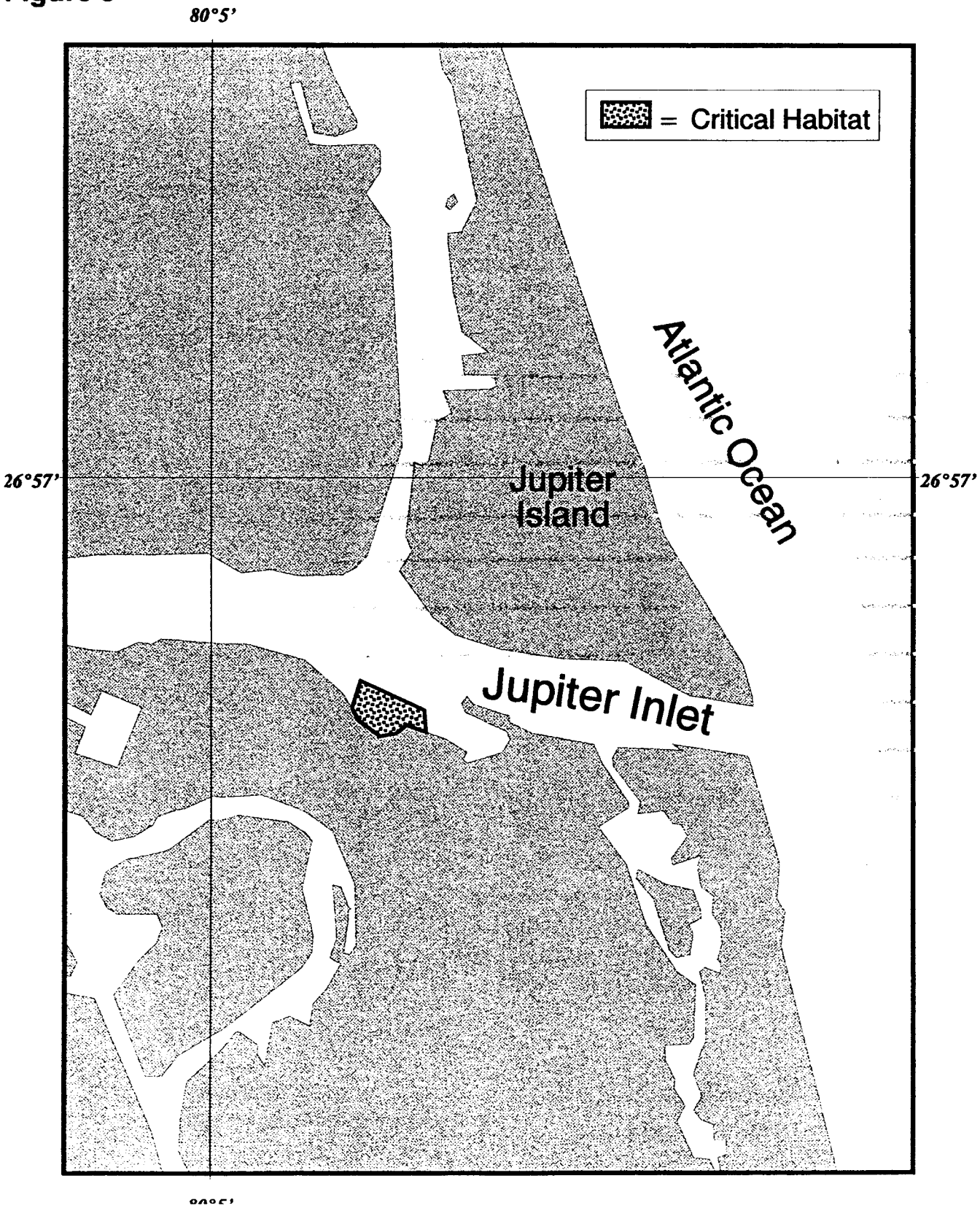

80°5'
= Critical Habitat
Atlantic Ocean
26°57'
Jupiter Island
26°57'
Jupiter Inlet

Figure 6

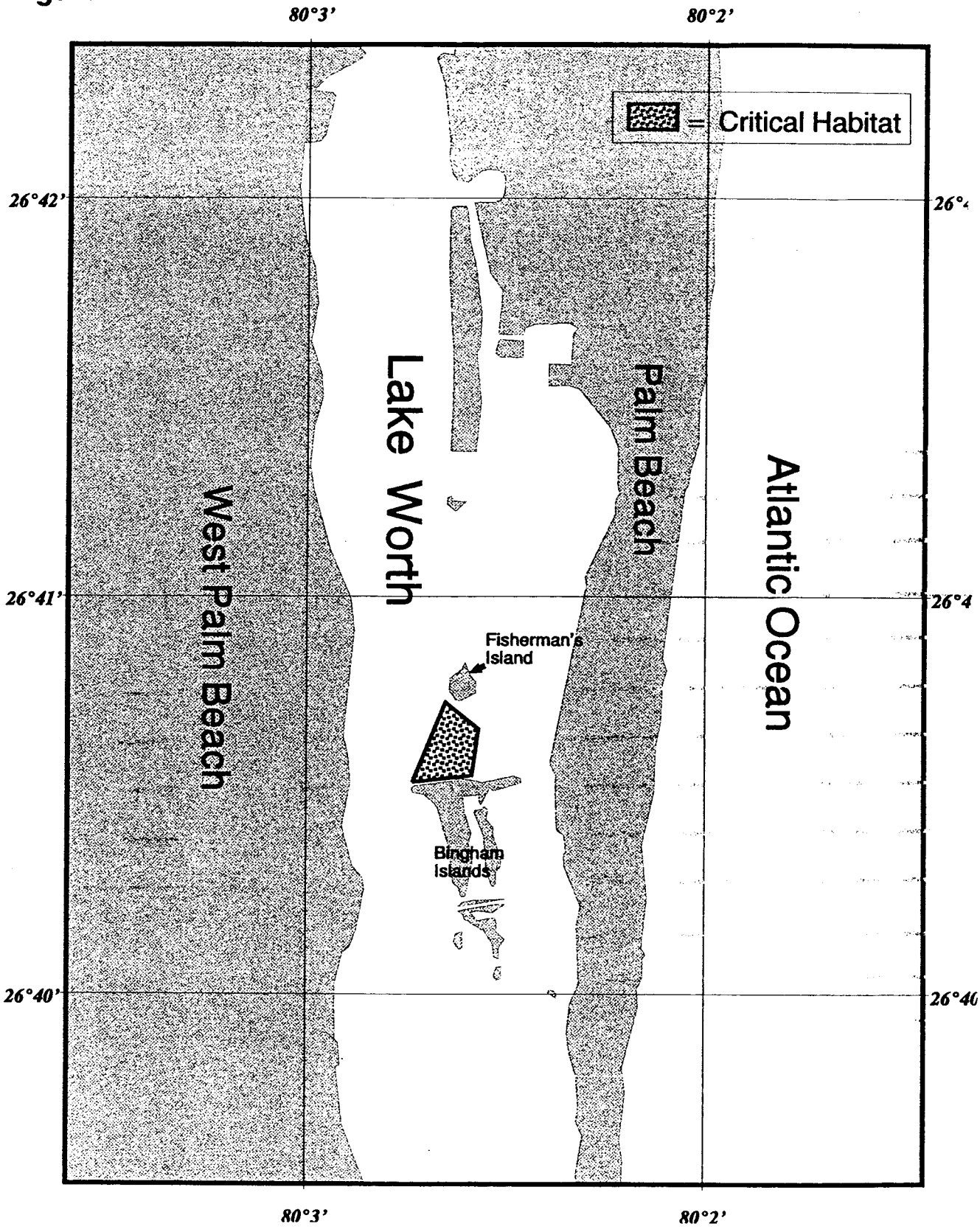

80°3'
80°2'
= Critical Habitat
26°42'
26°41'
26°40'
Lake Worth
Palm Beach
Atlantic Ocean
West Palm Beach
Fisherman's Island
Bingham Islands

Figure 7

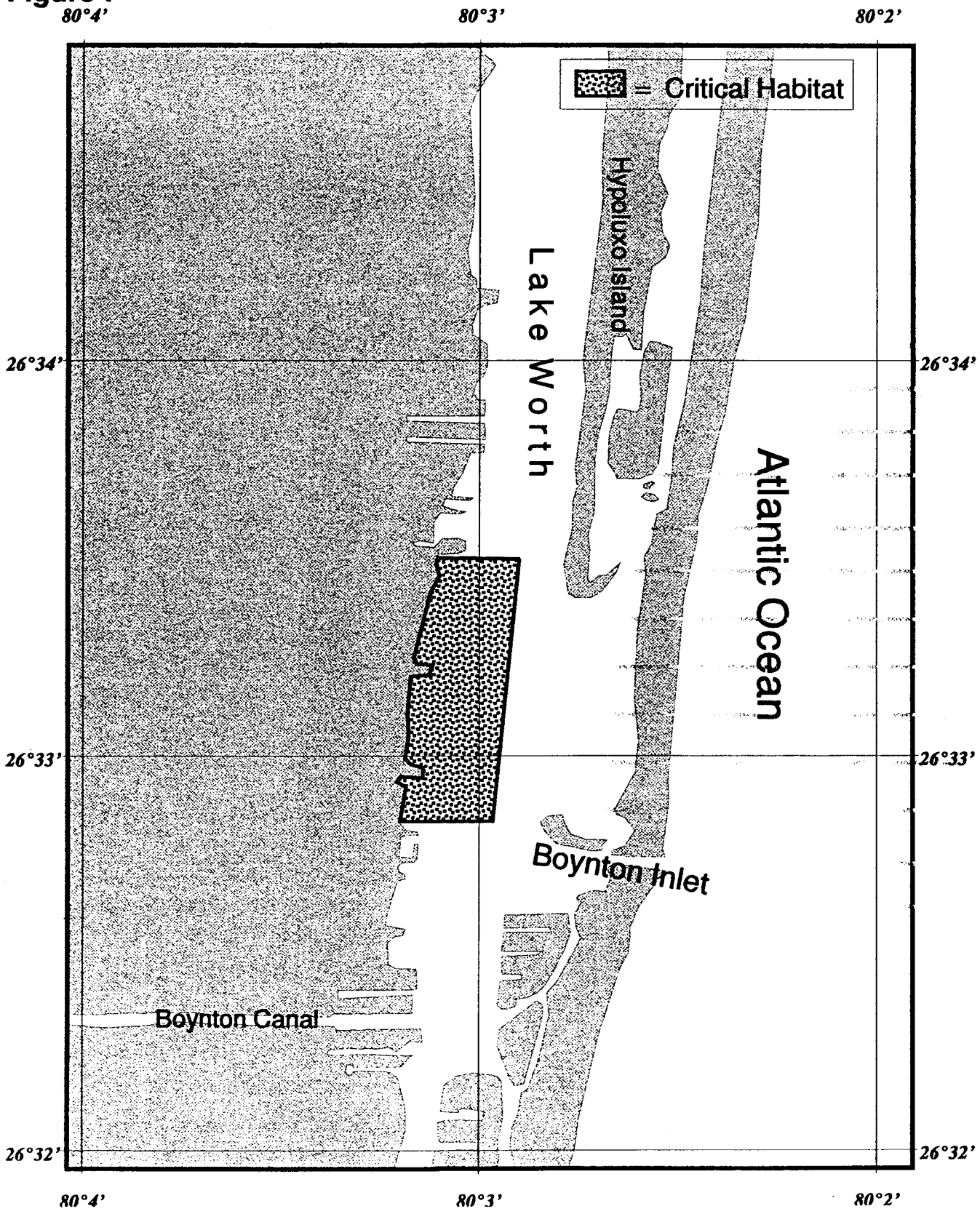

80°4'
80°3'
80°2'
= Critical Habitat
Hypoluxo Island
Lake Worth
Atlantic Ocean
26°34'
26°33'
26°32'
Boynton Inlet
Boynton Canal

Figure 8

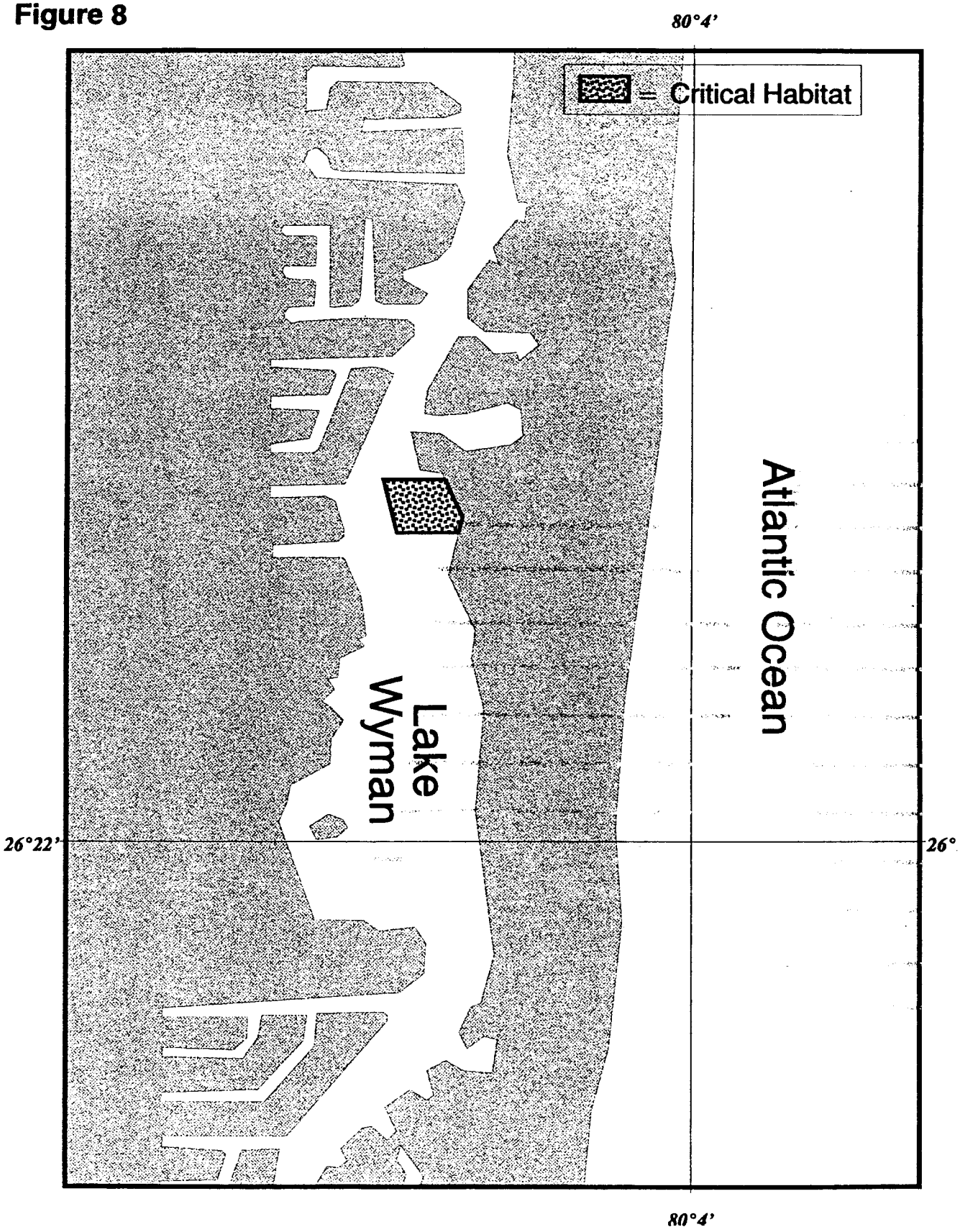
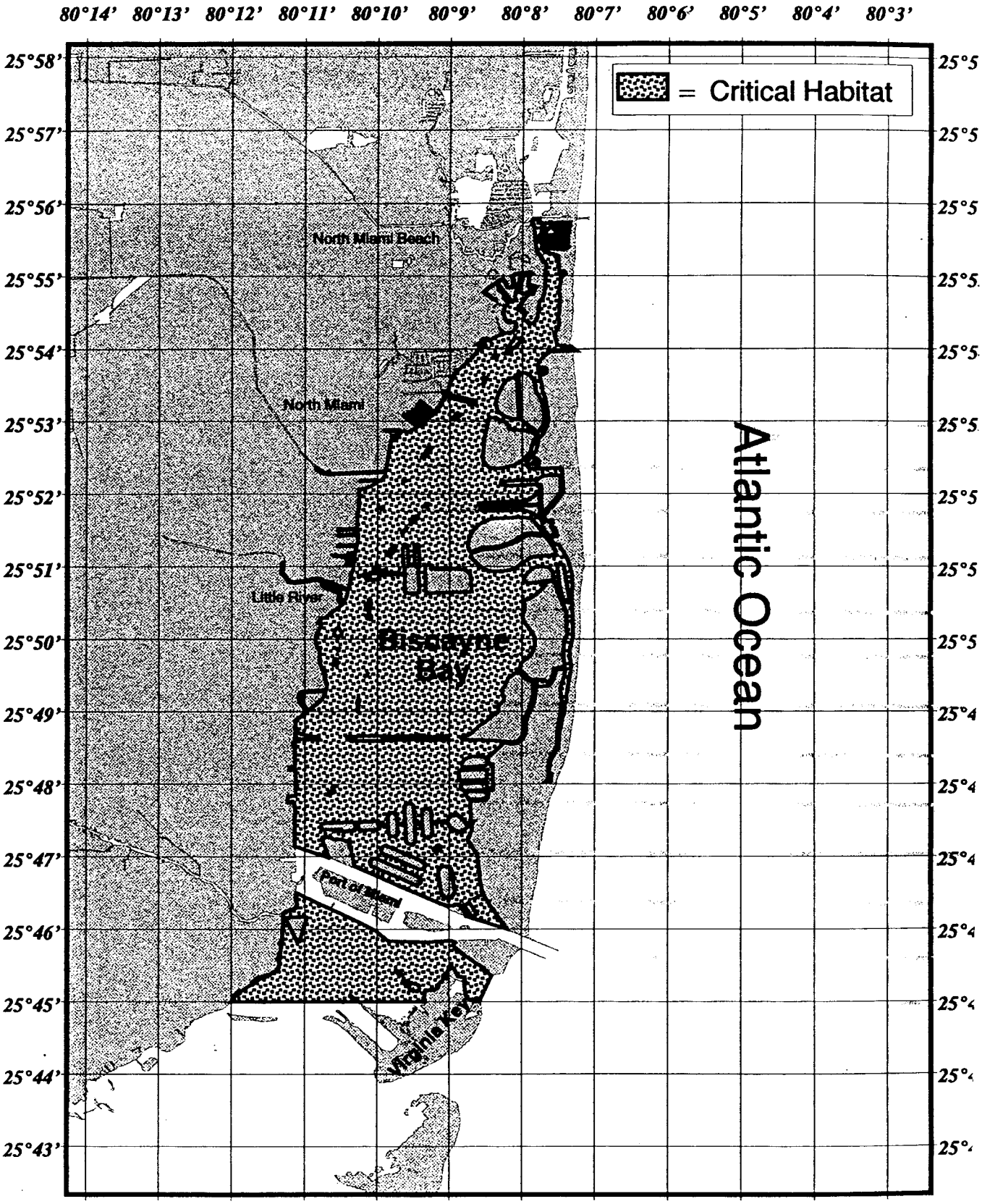


Figure 9



BILLING CODE 3510–22–C

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: November 29, 1999.

Penelope D. Dalton,

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. Section 226.211 is added to part 226 to read as follows:

§ 226.211 Critical habitat for Johnson's seagrass

Critical habitat is designated to include substrate and water in the following ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson's seagrass.

(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′15.03″N, 80°27′55.49″W
Northeast corner: 27°51′16.57″N, 80°27′53.05″W
Southwest corner: 27°51′08.85″N, 80°27′50.48″W
Southeast corner: 27°51′11.58″N, 80°27′47.35″W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′01.32″N, 80°27′46.10″W
Northeast corner: 27°51′02.69″N, 80°27′45.27″W
Southwest corner: 27°50′59.08″N, 80°27′41.84″W
Southeast corner: 27°51′01.07″N, 80°27′40.50″W

(c) A portion of the Indian River Lagoon in the vicinity of the Fort Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northwest corner: 27°28′06.00″N, 80°18′48.89″W
Northeast corner: 27°28′04.43″N, 80°18′42.25″W
Southwest corner: 27°28′02.86″N, 80°18′49.06″W
Southeast corner: 27°28′01.46″N, 80°18′42.42″W

(d) A portion of the Indian River Lagoon, Florida, North of the St. Lucie Inlet; from South Nettles Island to the Florida Oceanographic Institute, defined with the following coordinates:

Northwest corner: 27°16′44.04″N, 80°14′00.00″W
Northeast corner: 27°16′44.04″N, 80°12′51.33″W
Southwest corner: 27°12′49.70″N, 80°11′46.80″W
Southeast corner: 27°12′49.70″N, 80°11′02.50″W

(e) Hobe Sound beginning at State Road 708 (27°03′49.90″N, 80°07′20.57″W) and extending south to 27°00′00.00″N, 80°05′32.54″W.

(f) Jupiter Inlet at a site located just west of the entrance to Zeek's Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56′43.34″N, 80°04′47.84″W
Northeast corner: 26°56′40.93″N, 80°04′42.61″W
Southwest corner: 26°56′40.73″N, 80°04′48.65″W
South central point: 26°56′38.11″N, 80°04′45.83″W
Southeast corner: 26°56′38.31″N, 80°04′42.41″W

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates:

Northwest corner: 26°40′44.00″N, 80°02′39.00″W
Northeast corner: 26°40′40.00″N, 80°02′34.00″W
Southwest corner: 26°40′32.00″N, 80°02′44.00″W
Southeast corner: 26°40′33.00″N, 80°02′35.00″W

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the Intracoastal Waterway, defined by the following coordinates:

Northwest corner: 26°33′28.00″N, 80°02′54.00″W
Northeast corner: 26°33′30.00″N, 80°03′04.00″W
Southwest corner: 26°32′50.00″N, 80°03′11.00″W
Southeast corner: 26°32′50.00″N, 80°02′58.00″W

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates:

Northwest corner: 26°22′27.00″N, 80°04′23.00″W
Northeast corner: 26°22′27.00″N, 80°04′18.00″W
Southwest corner: 26°22′23.00″N, 80°04′22.00″W
Southeast corner: 26°22′23.00″N, 80°04′19.00″W

(j) A portion of Northern Biscayne Bay, Florida, defined by the following: The northern boundary of Biscayne Bay Aquatic Preserve, NE. 163rd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18–18.002 of the Florida Administrative Code (F.A.C.) excluding the Ortega River beyond its mouth, and all Federal navigation channels at the Port of Miami, not including the Intracoastal Waterway, to the currently documented southernmost range of Johnson's seagrass, Central Key Biscayne (25° 45N).

[FR Doc. 99–31304 Filed 11–29–99; 4:07 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991104295–9295–01; I.D. 100599D]

RIN 0648–AM74

Fisheries of the Northeastern United States; Dealer and Vessel Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the existing reporting requirements for dealers and vessels issued a Federal permit to operate in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid and butterfish, surf clam or ocean quahog fisheries. The provisions of this proposed rule would also be applicable to dealers and vessels federally permitted in the spiny dogfish and Atlantic bluefish fisheries when regulations implementing the Spiny Dogfish Fishery Management Plan (FMP) and Amendment 1 to the Atlantic Bluefish FMP go into effect. This action would improve the collection of fisheries-dependent data by modifying or clarifying several dealer and vessel reporting requirements. Proposed changes to the regulations include increasing the record retention requirement for dealer and vessel records to 3 years; requiring federally permitted dealers to complete all sections of the Annual Processed Products Report; clarifying that a vessel