Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Endangered Species Act, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Richard Howard, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend §17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Ground squirrel, northern Idaho.	*Spermophilus brunneus brunneus.*	U.S.A. (ID)	NA	T	693	NA	NA
*	*	*	*	*	*		*

Dated: March 29, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–8346 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 991116305–0083–02; I.D. No. 110599D][A]

RIN 0648–AL82

Designated Critical Habitat: Critical Habitat for Johnson's Seagrass

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

ACTION: Final rule.

SUMMARY: NMFS is designating 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 being designated as 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 Biscayne Bay. NMFS is modifying various aspects of the proposed rule, including the removal as critical habitat of the Intracoastal Waterway (ICW) channel in the designated areas, and enlarging the Lake Wyman site.

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: This rule is effective May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Layne Bolen, NMFS, Southeast Region, 850–234–6541 ext 237, or Marta Nammack, NMFS, Office of Protected Resources, 301-713-1401.

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. 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. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468). The final rule to list Johnson's seagrass as a threatened

species was published by NMFS on September 14, 1998 (63 FR 49035).

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. At the time of final listing, critical habitat was not determinable because new information needed to perform the required analysis was not yet available. 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 published a re-proposed rule on December 2, 1999 (64 FR 67536), to designate critical habitat for Johnson's seagrass. This final rule takes into consideration the new information and comments received in response to this re-proposed rule.

The final 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.

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)).

Benefits 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 ESA 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, in most cases activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, in most cases 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. No additional conservation regulations are associated with this critical habitat designation, however. Any future proposal would require a full, separate rulemaking. Other Federal, state and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

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 designated 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 Benefits 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.

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all persons and entities subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; however, 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(a)(2) 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.

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 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 stimulate 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 (USCG); 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.

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 being designated as critical habitat.

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 and 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 designated critical habitat areas 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 designated critical habitat areas 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 critical habitat areas 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 have been designated as critical habitat.

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 appear 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 have received critical habitat designation.

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. In the alternative, 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. Portions of these limits to the species' range have been designated as critical habitat for Johnson's seagrass.

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 have been designated as critical habitat.

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 ICW, 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*. Three locations within Lake Worth Lagoon have been designated as critical habitat. The critical habitat area 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).

NMFS is not including in the final designation any areas outside the species' currently known geographical range. 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 Biscayne Bay 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 designated as 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. Long-term surveys of the distribution of Johnson's seagrass may allow further refinement of the Biscayne Bay critical habitat area in the future. Additional areas that may be considered for critical habitat in future rulemaking include locations between Ft. Pierce Inlet and St. Lucie Inlet, west of the Jupiter Inlet, near the Boynton Beach Inlet and other areas of Lake Worth Lagoon. Also, if a male flower of Johnson's seagrass is identified in an area, this area should be designated as critical habitat.

The regulatory description of critical habitat for Johnson's seagrass can be found at the end of this **Federal Register** document.

Summary of Responses

Two public hearings were held on the proposed action: one in West Palm Beach, Florida, on December 16, 1999, and one in Miami, Florida, on January 31, 2000. Thirty-seven individuals provided oral testimony at the public hearings. Forty-nine comments were submitted in response to the proposed rule. Many comments were in support of designating critical habitat for Johnson's seagrass. However, the majority of comments were concerned about economic impacts from the designation. New information and comments received in response to the proposed rule are summarized here.

1. Economic Considerations

Many commenters believed that critical habitat designation would create a substantial economic burden that could delay projects and possibly prohibit certain activities, including recreational boating. The COE commented that critical habitat would place an unnecessary significance to these areas and an additional coordination and consultation burden that would be costly both in terms of the project delay and the cost directly associated with the consultation. Additional commenters believed that the designation would impose additional requirements or economic impacts upon small and/or private entities beyond those which may accrue from section 7 of the ESA.

Response: The designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself. Incremental costs are expected to be no greater than those which occurred at the time of listing (See Consideration of Economic and Other Factors).

ESA section 7 applies only to Federal actions and 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 result in the destruction or adverse modification of habitat determined to be critical. The consultation requirements of section 7 are non-discretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS to ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

Most of the effect on non-Federal interests will result from the no-jeopardy requirement of section 7 of the ESA, which is a function of listing a species, not designating its critical habitat. Whether or not critical habitat is designated, non-Federal interests must conduct their actions in a manner consistent with the requirements of the ESA. If the activity is funded, permitted, or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which results from listing a

species, not from designating its critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, pursuant to NMFS' ESA implementing regulations, in most cases any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species (See the definitions in 50 CFR 402.02). Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Notwithstanding its lack of economic impact, the designation of critical habitat remains important because it identifies habitat that is essential for the continued existence of a species and, therefore, indicates habitat that may require special management attention. This facilitates and enhances Federal agencies' ability to comply with section 7 of the ESA by ensuring that they are aware when their activities may affect listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2) of the ESA, critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

On September 1, 1998, NMFS completed a conference opinion (CO) with the U.S. Army Corps of Engineers (COE) on maintenance dredging which concluded that normal maintenance dredging activities and routine operations on ports are not likely to jeopardize the continued existence of Johnson's seagrass or adversely modify proposed critical habitat. If requested by the COE, NMFS will review the CO, and, if no significant changes have occurred in the action as planned or in the information used during the conference, NMFS will confirm the CO as the biological opinion on the project and no further section 7 consultation will be necessary. NMFS expects that maintenance dredging will not be negatively impacted by this final critical habitat designation.

2. Permitting Delays

Various commenters voiced concern that dredging projects, including maintenance dredging, would be impaired and possibly prohibited in these areas. Concerns were that the designation would: (a) disrupt the COE permitting process and result in major permitting delays from the section 7 consultation process; (b) impair Palm Beach Harbor expansion projects and Lake Worth Lagoon clean-up efforts; (c) prevent or slow down and make more costly, a dredging project to remove contaminated sediments of the Miami River; (d) essentially stop the maintenance dredging of inlets, the ICW, and many private marina facilities; and (e) further delay and possibly impede FDOT bridge construction and other projects due to the section 7 process.

Response: NMFS expects that normal maintenance dredging activities and routine operations on ports will not be negatively impacted by this critical habitat designation. The COE has already conferred with NMFS on the proposed designation for maintenance dredging. Furthermore, there are fewer delays in permitting because the Federal agency knows in the planning process where designated critical habitat areas are for the species (See Benefits of Designating Critical Habitat). The critical habitat areas account for approximately 7 percent of the entire range of the species, and the designation assists Federal agencies (or those delegated to represent Federal lead agencies) in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in ESA section 7 consultations. Individual permits issued by the COE are being dealt with through the ESA section 7 process and in review by the COE's Nationwide Permit process. These projects will be examined programmatically by waterbody and/or project type.

As noted earlier, excluding an area from critical habitat does not exclude it from consultation under ESA section 7, based on expected impacts to the species. The species has been listed since September 1998, and Federal agencies have been required to confer on impacts to this species since it was proposed for listing in 1994. The designation would not impair or prohibit the timely and economical maintenance of the ICW or other federally-funded projects. The requirement for a Federal action agency to consult on actions which may affect a listed species occurs at the time the species is listed.

3. Stop or Prohibit Projects/Activities

Many commenters believed that the outcome of critical habitat designation and the intention of NMFS is to stop or prohibit projects or activities. One commenter believed that NMFS seeks to ''kill the public's recreational use of Biscayne Bay.''

Response: The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery action. The designation of critical habitat helps alert public and private entities to the area's importance, and under section 7 provisions, a critical habitat designation requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to adversely modify or destroy critical habitat. The designation assists agencies in planning future actions. It is not the intention of NMFS to prohibit boating or other activities in the range of Johnson's seagrass.

The designation of critical habitat allows for early consultation and development of project alternatives. The Section ''Need For Special Management Considerations'' provides an overview of recognized impacts or threats to the species and its primary constituent elements (such as water quality and substrate stability) that may require special management considerations. 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.

4. Intracoastal Waterway and Maintenance Dredging

This is a subset of the concerns raised earlier. A number of commenters felt that the inclusion of the channel of the ICW was unnecessary for the conservation of the species and an economic burden to maintenance dredging of the waterway and that it would impair and probably prohibit the proper maintenance of the ICW. Similar comments were that the proposed designation would potentially decrease or possibly eliminate maintenance dredging of the ICW in Martin County, substantially impacting public safety and Martin County's economy, and that loss of ICW maintenance dredging may include total prohibition of boating activity within the critical habitat limits.

Response: After re-evaluation of the information, feedback from Recovery Team members with expertise in the distribution, abundance and habitat needs for the species, and public input, NMFS has determined that the (approximately 18.5 km) Federally marked navigation channel of the ICW occurring in the critical habitat areas will be excluded from critical habitat designation. NMFS has determined that the exclusion of the channel of the ICW is possible while still allowing for conservation of the species. The exclusion of the ICW channel occurs in

the following critical habitat areas: (1) An interior portion of the Indian River Lagoon, north of the St. Lucie Inlet; (2) Hobe Sound; (3) the site in central Lake Worth Lagoon near Bingham Island; (4) a site in Lake Worth Lagoon, Boynton Beach; (5) a site in Lake Wyman, Boca Raton; and (6) a portion of Biscayne Bay Aquatic Preserve.

As stated earlier, the COE requested formal conference with NMFS when the species was proposed for listing in order to address and plan for the maintenance dredging projects. The NMFS' CO, issued September 1, 1998, concluded that the maintenance dredging of the ICW and ports in the range of Johnson's seagrass is not likely to jeopardize the continued existence of the species, and is not likely to destroy or adversely modify its proposed critical habitat. Johnson's seagrass is known to occur in parts of the ICW, but the exclusion of the ICW channel in the designated area will not affect NMFS' ability to review and prohibit adverse impacts to the species. The CO contains pre-dredging survey guidelines which provide that the number and severity of impacts to the species be tracked over time in conjunction with other impacts affecting the species in its range. New dredging or expansion projects will be reviewed separately under section 7.

5. Exclusion of Other Project Types or Areas

Some commenters requested exclusion of other project types or areas besides that of the ICW channel, including: (a) the ICW right-of-way in addition to the channel; (b) all Florida Department of Transportation right-of-way and Submerged Land Easements which encompass existing bridges; (c) current docks, canals, and areas requiring dredging and boat use; (d) public boat ramps and existing basins; (e) any access channels and public and private maintenance of existing channels and piers and docking facilities; (f) public navigation channels; (g) areas adjacent to the Town of Jupiter; (h) Sealine Marina Yachting Center basin; (i) clean-up dredging of the Miami River. One commenter recommended exclusion of: (1) a 500-ft. (152.4 m) buffer adjacent to all privately-owned uplands, (2) the ICW and its adjacent right-of-way, (3) all areas within the preempted area of State submerged land leases, easements, consents of use or other State proprietary authorizations, (4) all marina facilities in existence at the time of listing, and (5) all existing access channels.

Response: The ICW channel has been excluded from critical habitat since it involves ongoing maintenance of a disturbed area. The CO developed for these ICW and ports maintenance projects analyzed the impacts of these activities on Johnson's seagrass. The CO did not consider new ICW dredging or expansion projects involving deepening or widening of the right-of-way. Because of the additional adverse impacts these projects will have on the species and habitat, above those considered in the CO, these projects will be considered separately in the ESA section 7 process. With regard to other areas, the critical habitat designation may be revised in the future as data become available. Critical habitat designation should have no effect on currently existing structures such as docks, marinas, and basins in designated critical habitat unless Federal authorization is required. NMFS would review, at that time, any proposed changes to those structures or facilities. In Biscayne Bay, the Miami River, the Little River, and the Oleta River are excluded from Johnson's seagrass critical habitat beyond its mouth. Any proposed dredging projects of this river that are authorized, funded, or carried out by a Federal agency may be reviewed under the section 7 process for impacts to listed species under NMFS purview.

6. Submerged Land Lease Holding

One commenter, representing a private party holding the lease to submerged lands included in critical habitat designation, questioned how this party would be compensated for loss of this land.

Response: The land designated as critical habitat is not a taking of private property. A critical habitat designation does not impose any additional burdens on private property rights than those imposed by the species listing. A private landowner continues to be free to use his land as he sees fit, using care that his land management does not violate any ESA 4(d) regulations. The critical habitat designation simply clarifies the areas within which one's activity may impact Johnson's seagrass. The designation may affect such property if there is a Federal action that triggers the section 7 process.

7. Biscayne Bay Comments

There were numerous comments on the size of Biscayne Bay compared to the other areas proposed for designation in the north and central part of its range. Some commenters supported the designation. Comments opposed to the size of the designation included: (a) the area should not be so big because it is highly industrialized, with heavy commerce and recreational boating and development; (b) the area is too large as most of it is already dredged and seawalled; (c) the size of the area is not scientifically supported and is overreaching; and (d) the designation will stall and frustrate the orderly expansion of facilities to support recreation in the Bay. Those in support of the designation believed it to be beneficial to the species where the risk of development is great. One commenter suggested a more focused approach in Biscayne Bay Aquatic Preserve.

Response: NMFS believes that this designation, based upon criteria for Johnson's seagrass critical habitat, is currently appropriate and necessary for the survival of Johnson's seagrass in its southern range. Based on comments received, this critical habitat area was re-evaluated by NMFS and by members of the Recovery Team.

The species, by nature, is patchily distributed. Johnson's seagrass occurs in approximately a 2-percent abundance in comparison to all species of seagrass throughout its range. In Biscayne Bay, a highly-impacted system, Johnson's seagrass is not known to occur in the same abundance or to be as widely distributed as in areas of its northern and middle range. Larger seagrasses, predominantly *Thalassia*, begin to out-compete Johnson's seagrass in this area. Eiseman and McMillan (1980) documented Johnson's seagrass in the vicinity of Virginia Key, Key Biscayne (Lat 25°45′); this location is considered to be the southern limit of the species range. There have been no reports of this species further south of the currently known southern distribution.

The presence of Johnson's seagrass in northern Biscayne Bay (north of Virginia Key) is well documented. In addition to localized surveys, the presence of Johnson's seagrass has been documented by various field experiences and observations of the area by Federal, state and county entities. Johnson's seagrass has been documented in various COE and USCG permit applications reviewed by NMFS. The Dade County Department of Environmental Resources has mapped a general seagrass coverage of Biscayne Bay, and a wide-range, long-term monitoring program for Johnson's seagrass is recommended.

Development, man-made impacts, and human use of the submerged lands in this waterbody are heavy and there is a management need to protect critical habitat for Johnson's seagrass based on this pressure. Protection of the northern and southern ranges of the species is identified as a criteria essential to the protection of Johnson's seagrass. Genetic diversity in its southern range may be

greater than in the north or central parts of the range and unique from either the north or central range. 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 State of Florida designated Biscayne Bay as an aquatic preserve, recognizing it as ''an exceptional area of submerged bay lands and natural waterways tidally connected to the bay'' (Florida Administrative Code 18–18). Concurrently, the section of Biscayne Bay Aquatic Preserve designated as critical habitat for Johnson's seagrass is considered by NMFS to be essential to the survival of the species. Final critical habitat designation may be revised as new data become available. New information, possibly through a long-term, wide-range monitoring program and increased ground-truthing of seagrass species in the Bay, could identify the distribution, abundance, and persistence of Johnson's seagrass. This new information could allow NMFS, in the future, to further refine areas in the southern end of the species' range. The species may not occur in 100 percent of the area. However, protection of Johnson's seagrass throughout this area is considered by NMFS to be essential to the conservation and survival of the species.

8. Additional Areas Recommended For Critical Habitat Designation

Various parties recommended the increase in the size and/or the addition of sites in the north and central parts of the range. Commenters believed that the modest acreage proposed, representing only about 7 percent of the species' range, does not fully represent the area occupied by the respective beds over time. The following areas were recommended for expansion: (a) Sebastian Inlet, (b) Fort Pierce Inlet, (c) Jupiter Inlet, (d) Jupiter Sound, (e) Lake Worth/Bingham Island, and (f) Lake Wyman.

The following new areas were recommended to be added as new critical habitat: (a) The entire area of Indian River Lagoon, from Ft. Pierce Inlet to St. Lucie Inlet; (b) Herman's Bay, St. Lucie County; (c) three sites in the Loxahatchee River/Estuary; (d) a site south of Lake Worth Inlet and Peanut Island; (e) a site at Royal Park Bridge, Palm Beach County; (f) two sites south of Boynton Inlet; and (g) site(s) in Broward County. A few commenters believed that the 10-year persistence criterion eliminates significant populations from critical habitat consideration, and that it is too strict. They recommended reduction in the time frame to 3 years to identify a persistent population of Johnson's seagrass.

Response: Five criteria for designating Johnson's seagrass critical habitat were developed by the members of the recovery team (See Critical Habitat for Johnson's seagrass). The size of the areas in the north and central part of the species range were based on the criteria for persistent and flowering populations and indicate the shoals of persistent beds. These areas have been studied for 10 years and have shown the ability to persist where other areas in the general vicinity have not. Johnson's seagrass is patchily distributed, has rapid growth and turnover, and migrates across the sea floor. Recruitment from fragmentation and migration are random processes which do not guarantee the persistence of the species in any one location. The areas designated in Indian River Lagoon, Hobe Sound, Jupiter Inlet, and Lake Worth Lagoon indicate populations that have persisted and flowered for 10 years despite these species characteristics. Environmental characteristics of these sites appear favorable to the species, while in other locations in the lagoon, populations have disappeared. Based upon the Recovery Team recommendations, NMFS believes that 10-year persistence is a valid criterion for designating critical habitat for Johnson's seagrass. Refinement of these areas was possible due to the information from permanent transects, genetic information, State of Florida marina siting and dock shading studies, and Palm Beach County Lake Worth Lagoon surveys.

The Lake Wyman site is a critical area for the existing genetic variability of Johnson's seagrass found in the central part of its range. With a re-examination and further interpretation from Florida Fish and Wildlife Conservation Commission's (FFWCC) marina survey and dock shading data, NMFS concurs that the proposed designation of 3.3 acres excluded the contiguous and dense beds of Johnson's seagrass southward. As a result, NMFS has expanded the southern boundary of this area approximately 1500 ft. (457.2 m) in order to more adequately protect this genetic variability in the central range, particularly from stochastic events.

Some of the recommendations to add new areas were based on reducing the criterion for persistence from 10 years to 3 years. However, NMFS believes, based on Recovery Team recommendations, that the 10-year time period most accurately identifies persistent areas of Johnson's seagrass. The Loxahatchee Estuary, just west of the Jupiter Inlet, holds a large monotypic population of Johnson's seagrass. However, historical survey data on the persistence of Johnson's seagrass in this area do not currently exist. Future data on the ability of Johnson's seagrass to persist in this euryhaline (wide range of salinity) environment, with its extreme changes in salinity, may indicate this to be a unique site for Johnson's seagrass. NMFS may, therefore, consider this site as critical habitat in future rulemaking based on its unique environmental characteristics.

Comments were made that there should be more than two areas proposed for critical habitat designation in Lake Worth Lagoon, which is an essential area of abundance for *Halophila* species. Further analysis from FFWCC, and a re-evaluation of the data provided by Palm Beach County and State of Florida marina siting surveys and dock studies, support the addition of a critical habitat site in Lake Worth Lagoon, south of Lake Worth Inlet and Peanut Island. The population of Johnson's seagrass in this area is well-documented as an abundant, persistent (at least 10 years) and flowering population of mixed *Halophila* and monotypic Johnson's seagrass. Any additions or revisions that may be made in the future to this final rule will go through another proposed and final rule process with public input.

9. Protection of All Seagrasses/ecosystem

Many individuals expressed support for the designation and voiced the need to protect all seagrasses, emphasizing the ecological benefits (such as a nursery/spawning ground) of seagrass conservation, not only for a single species, but for the ecosystem. Many commenters expressed concerns about massive releases of freshwater by the COE from Lake Okechobee and threats to the entire system from development.

Response: NMFS supports efforts and plans to conserve and manage ecosystems and appreciates the role that the ESA can take in protecting those species most threatened or endangered in these systems. NMFS' authority is under the ESA in protecting listed species, and NMFS believes that the ESA section 7 consultation process benefits the protection of other seagrasses and the diversity of the shallow estuarine ecosystem. NMFS appreciates the opportunity to participate in the Lake Worth Lagoon project, Indian River Lagoon Management Plan, Biscayne Bay initiative and the South Florida Ecosystem Restoration Plan.

10. Lack of Scientific Information

A few commenters suggested that critical habitat was not determinable and should not be designated at this time. Reasons given included: (a) a lack of information on how the species propagates; (b) the need for further study on habitat preferences; and (c) a lack of essential information determining the physical and biological features that are essential to the conservation of a given species.

Response: These factors were considered in the decision to list the species. Essential information does exist for Johnson's seagrass, as provided at the time of listing. The range of the species has been delineated and there is a clear understanding of how the species grows and propagates (Kenworthy, 1999, 1997). Since its listing, further information in terms of genetic variability, patch dynamics, persistence and abundance, and transplanting capabilities has been found for Johnson's seagrass. Further studies will be valuable in answering questions about the species' patch and population dynamics, dispersion, and transplanting capabilities. However, NMFS believes that sufficient and conclusive information exists at this time for the designation of critical habitat for Johnson's seagrass.

11. Critical Habitat is Only to be Designated Where Species Physically Occurs

Some commenters interpreted the ESA definition of ''critical habitat'' (section 3 (5)(i); ''The specific areas within the geographic area occupied by the species'') as meaning that critical habitat can only be designated where the species physically occurs.

Response: A species does not have to occupy 100 percent of a critical habitat area. This would be similar to drawing a ''box'' around a plant or animal but not providing it with its requirements for space, population growth, normal behavior, food, or other physiological, nutritional, and reproductive requirements (See Definition of Critical Habitat). NMFS must focus on the primary constituent elements within the designated areas that are essential to the conservation of the species and that may require special management considerations or protection, and not only the space taken up by the species. This final rule designates ''critical habitat'', as defined by the ESA, for Johnson's seagrass.

12. Existing Regulations

Some commenters questioned the current regulations for the protection of seagrass habitat and whether these were not enough to assure the protection of Johnson's seagrass.

Response: This concern was also covered at the time the species was listed. Despite existing Federal and Florida State laws aimed to conserve and protect seagrass habitat, there is a continued and well documented loss of seagrass habitat in the United States. NMFS acknowledges that many portions of the proposed critical habitat for Johnson's seagrass overlap with other special areas, such as the Indian River Lagoon and Biscayne Bay Aquatic Preserves. The critical habitat designation will underscore and strengthen the protective goals of these areas.

Changes to the Proposed Rule

Based on comments and new information received on the proposed rule, NMFS is modifying the proposed critical habitat designation for Johnson's seagrass as follows:

(1) Exclusion of Federal navigation channels of the ICW that occur in critical habitat areas. This includes the following areas: (a) An interior portion of the Indian River Lagoon, north of the St. Lucie Inlet; (b) Hobe Sound; (c) the site in central Lake Worth Lagoon near Bingham Island; (d) a site in Lake Worth Lagoon, Boynton Beach; (e) a site in Lake Wyman, Boca Raton; and the portion of Biscayne Bay designated as critical habitat.

(2) Extension of Lake Wyman critical habitat area by 1500 ft. (457.2 m) south from the proposed area.

(3) Exclusion of the Miami River and Little River beyond their mouths at Biscayne Bay.

Maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat. They do not constitute the definition of the boundaries of critical habitat. Persons must refer to the regulations at 50 CFR 226.213 for the actual boundaries of the designated critical habitat. Figures 1 through 9 illustrate the ten areas being designated as critical habitat for Johnson's seagrass. These maps do not illustrate the exclusion of the ICW channel.

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 is designating ten 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 to 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 critical habitat designation 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 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 final 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 final rule. In addition, NMFS has completed a conference opinion with the COE on the effects of maintenance dredging on Johnson's seagrass and its critical habitat. NMFS expects that maintenance dredging will not be negatively impacted by this final critical habitat designation.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: March 30, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is 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 226.213 is added to part 226 to read as follows:

§ 226.213 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 by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):

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 and excluding the federally-marked navigation channel of the ICW.

(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 and excluding the Federally-marked navigation channel of the ICW:

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 ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

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 and excluding the Federally-marked navigation channel of the ICW:

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′05.00″N, 80°04′16.00″W
Southeast corner: 26°22′05.00″N, 80°04′18.00″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 Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson's seagrass, Central Key Biscayne (25°45′N).

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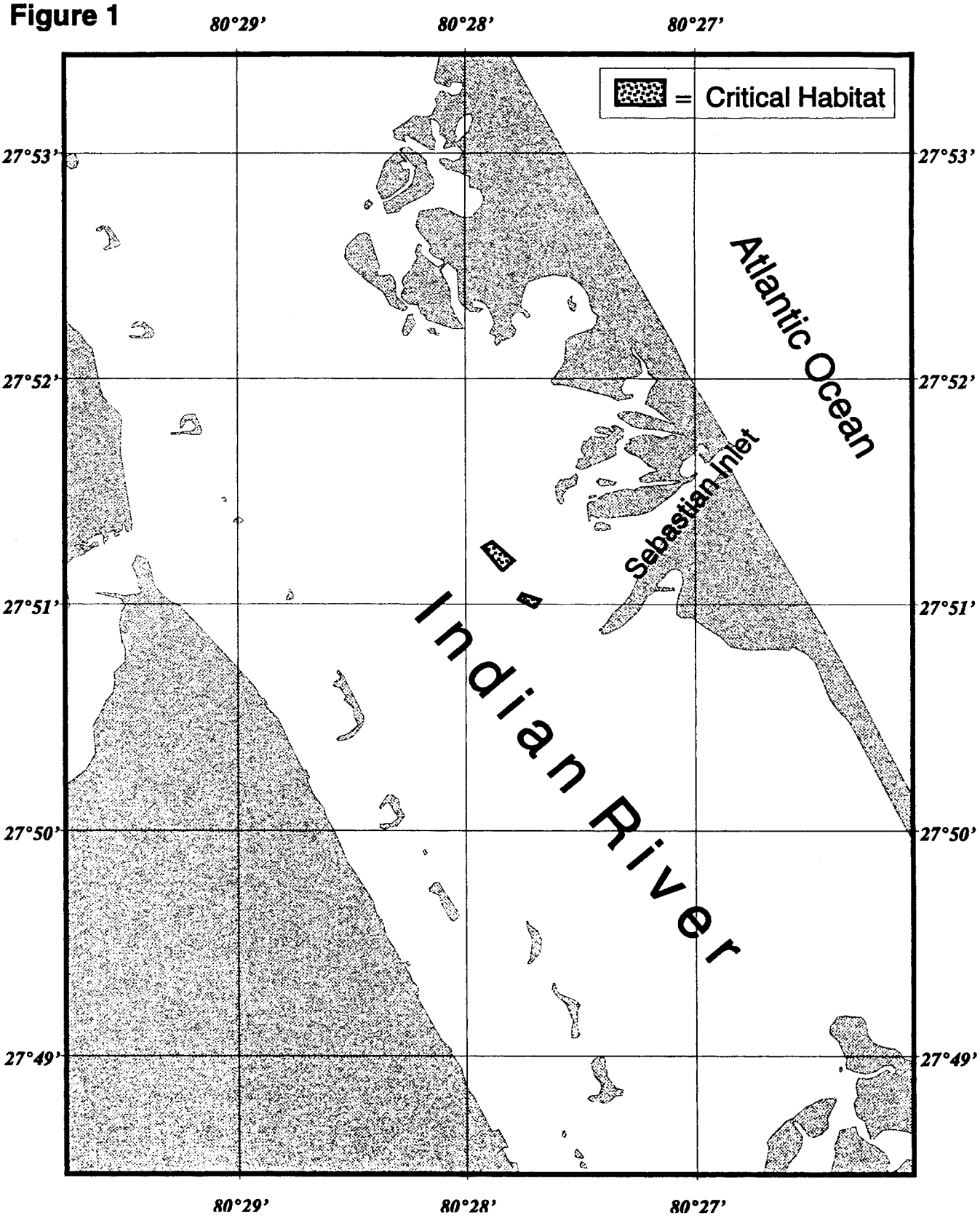
Figure 1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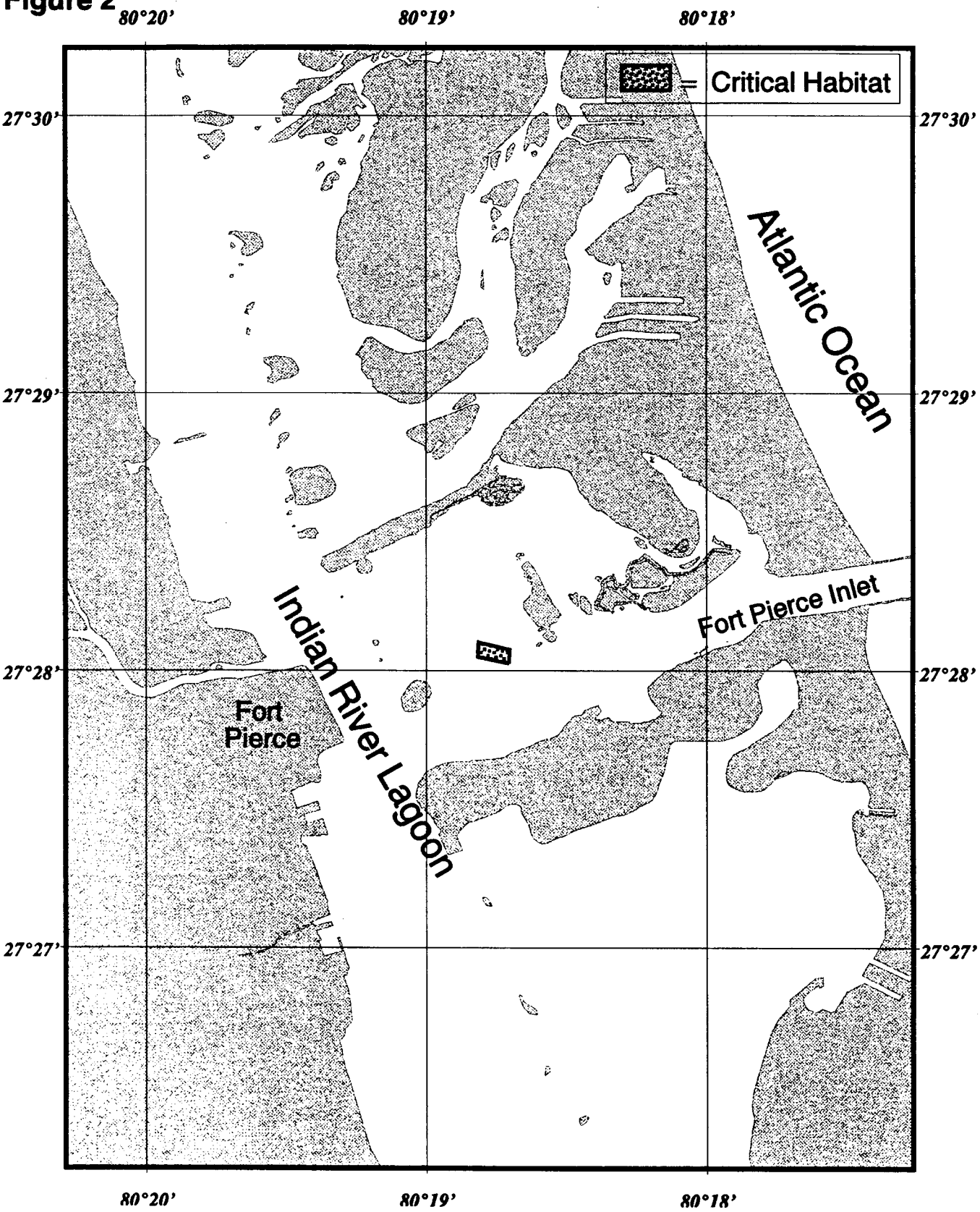
Sebastian Inlet
Indian River

Figure 2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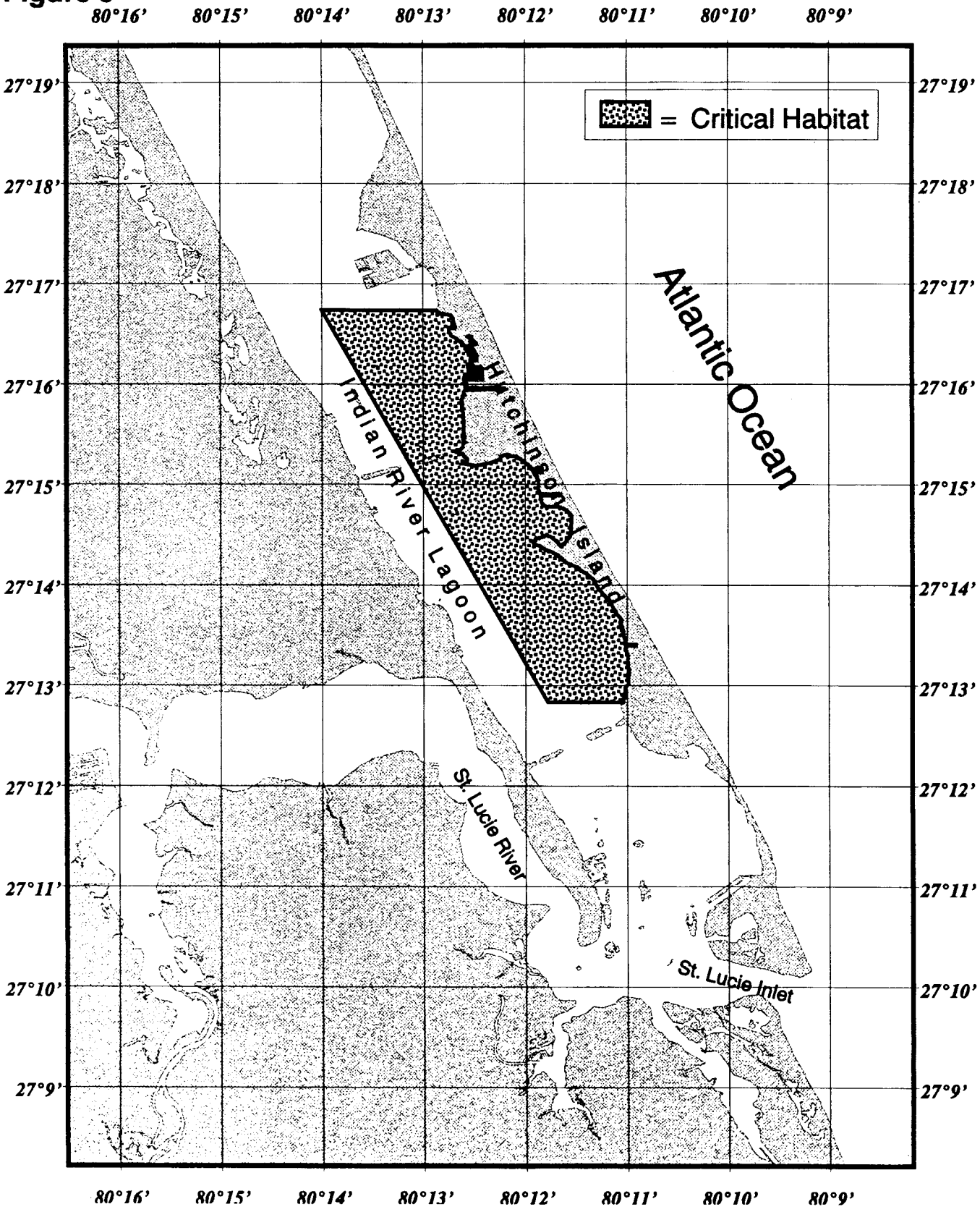
Atlantic Ocean
Fort Pierce Inlet
Indian River Lagoon
Fort Pierce

Figure 3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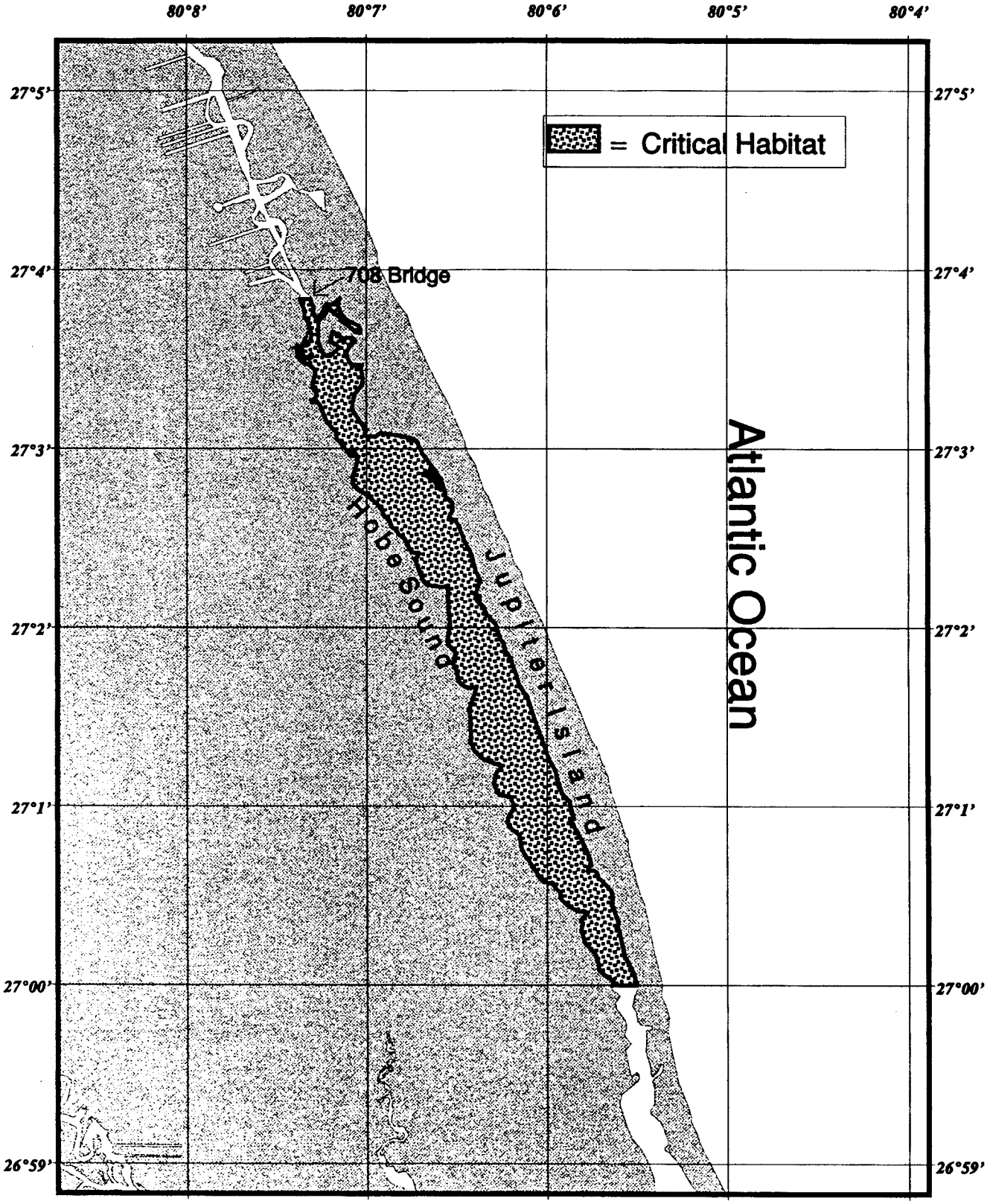
27°12'
27°11'
27°10'
27°9'
= Critical Habitat
Atlantic Ocean
Hutchinson Island
Indian River Lagoon
St. Lucie River
St. Lucie Inlet

Figure 4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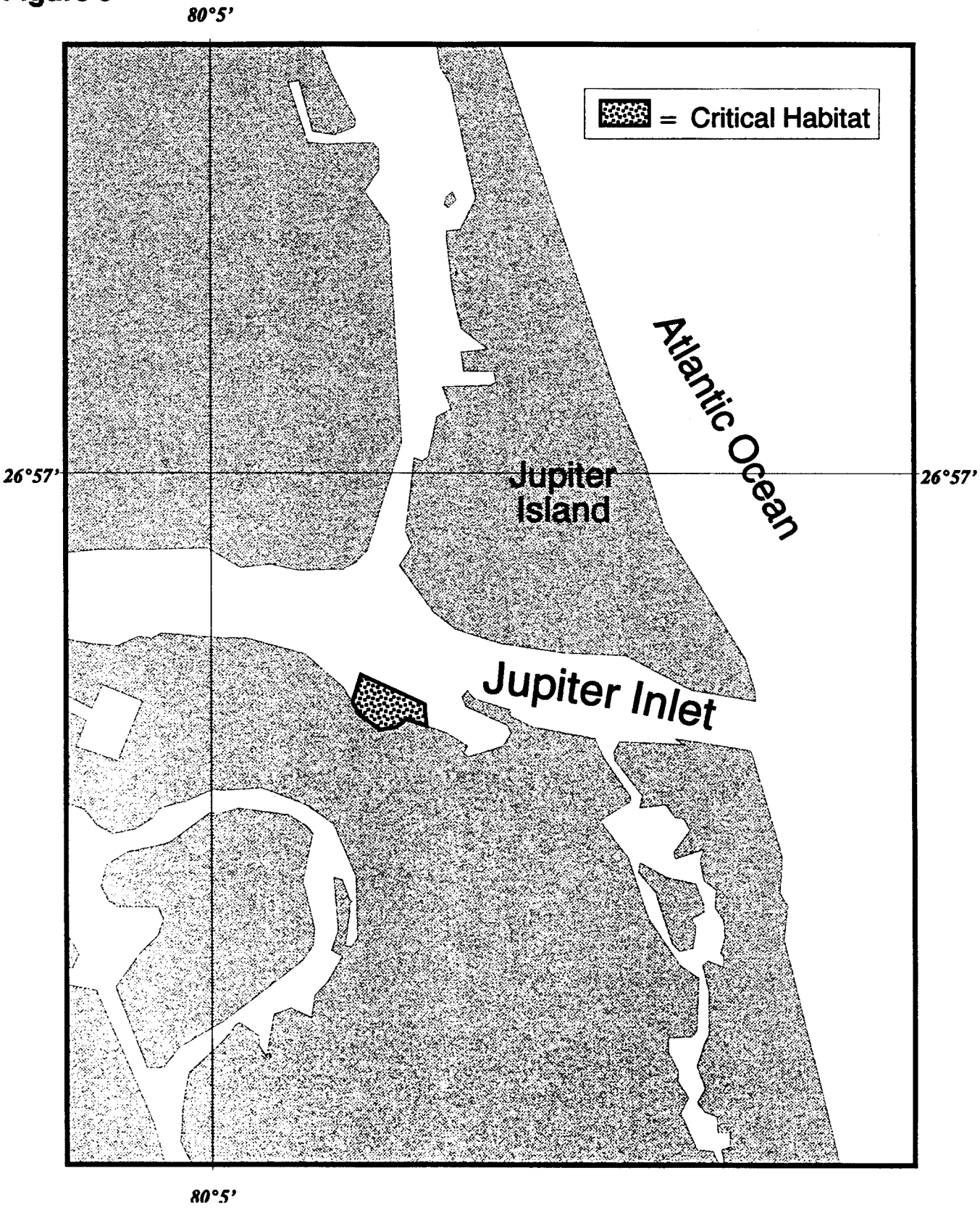
708 Bridge
Jupiter Island
Hobe Sound
Atlantic Ocean

Figure 5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Jupiter Island
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Jupiter Inlet
80°5'

Figure 6

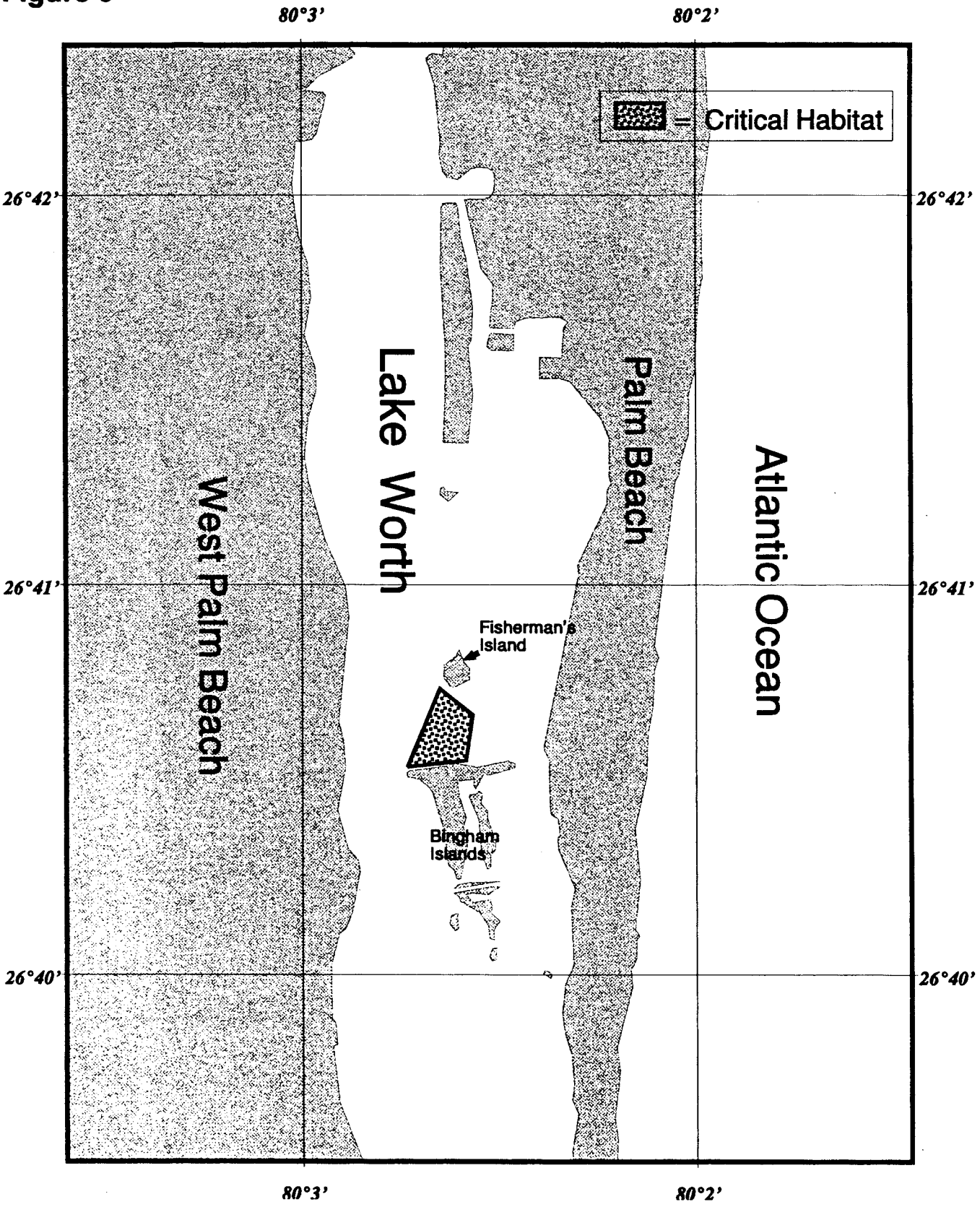

80°3'
80°2'
= Critical Habitat
26°42'
26°41'
26°40'
Lake Worth
Palm Beach
Atlantic Ocean
West Palm Beach
Fisherman's Island
Bingham Islands

Figure 7

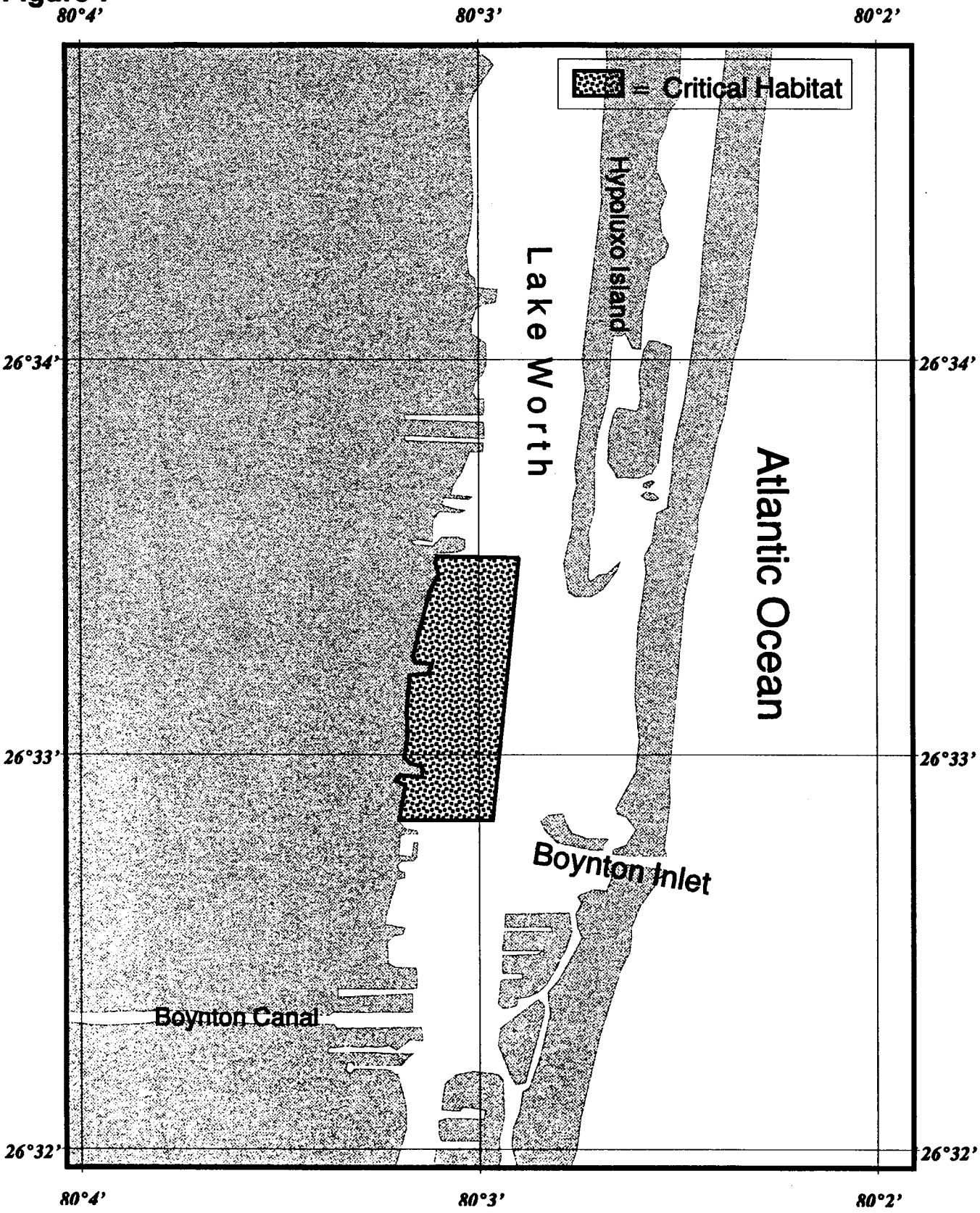

80°4'
80°3'
80°2'
= Critical Habitat
Hypoluxo Island
Lake Worth
Atlantic Ocean
26°34'
26°33'
26°32'
Boynton Inlet
Boynton Canal

Figure 8

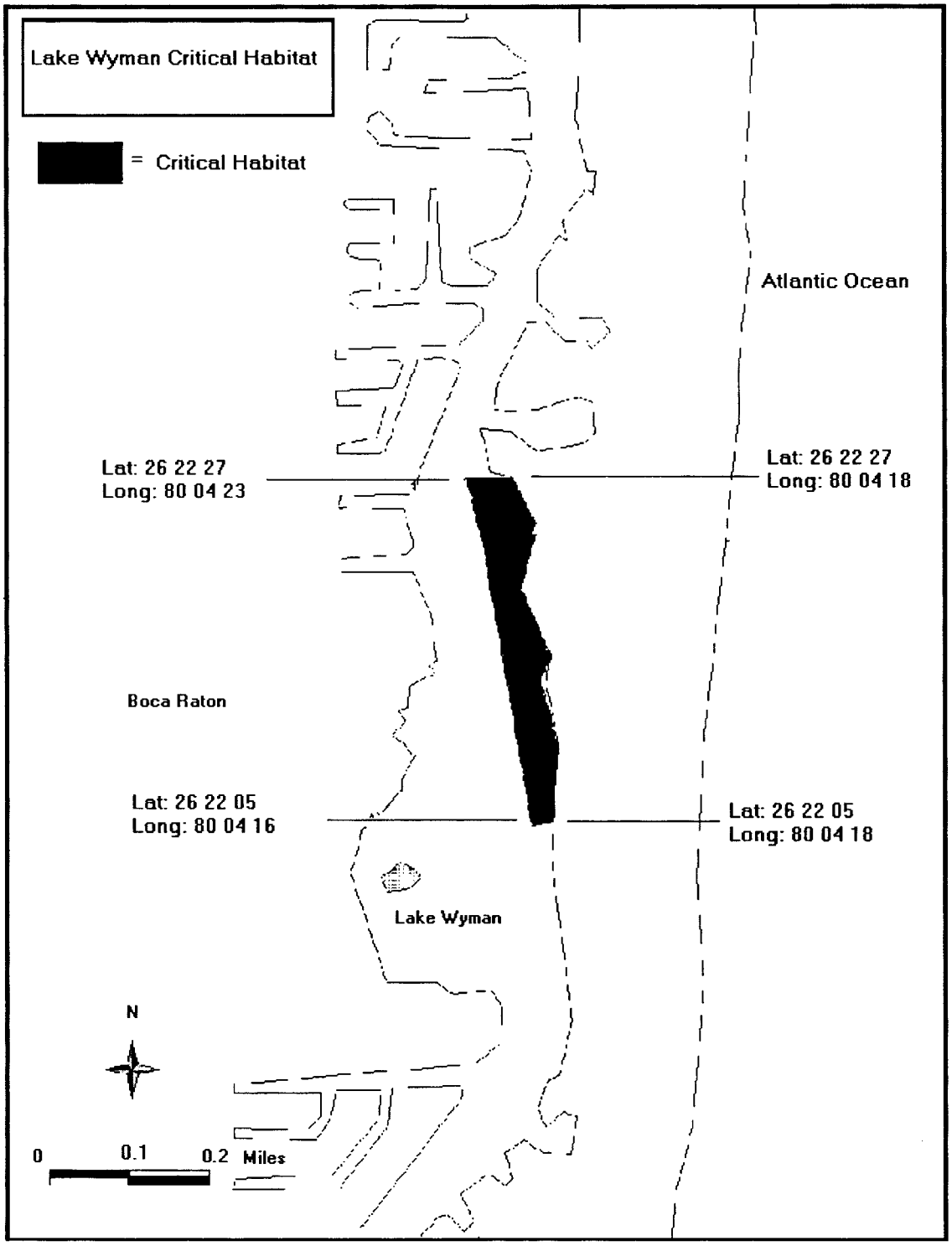
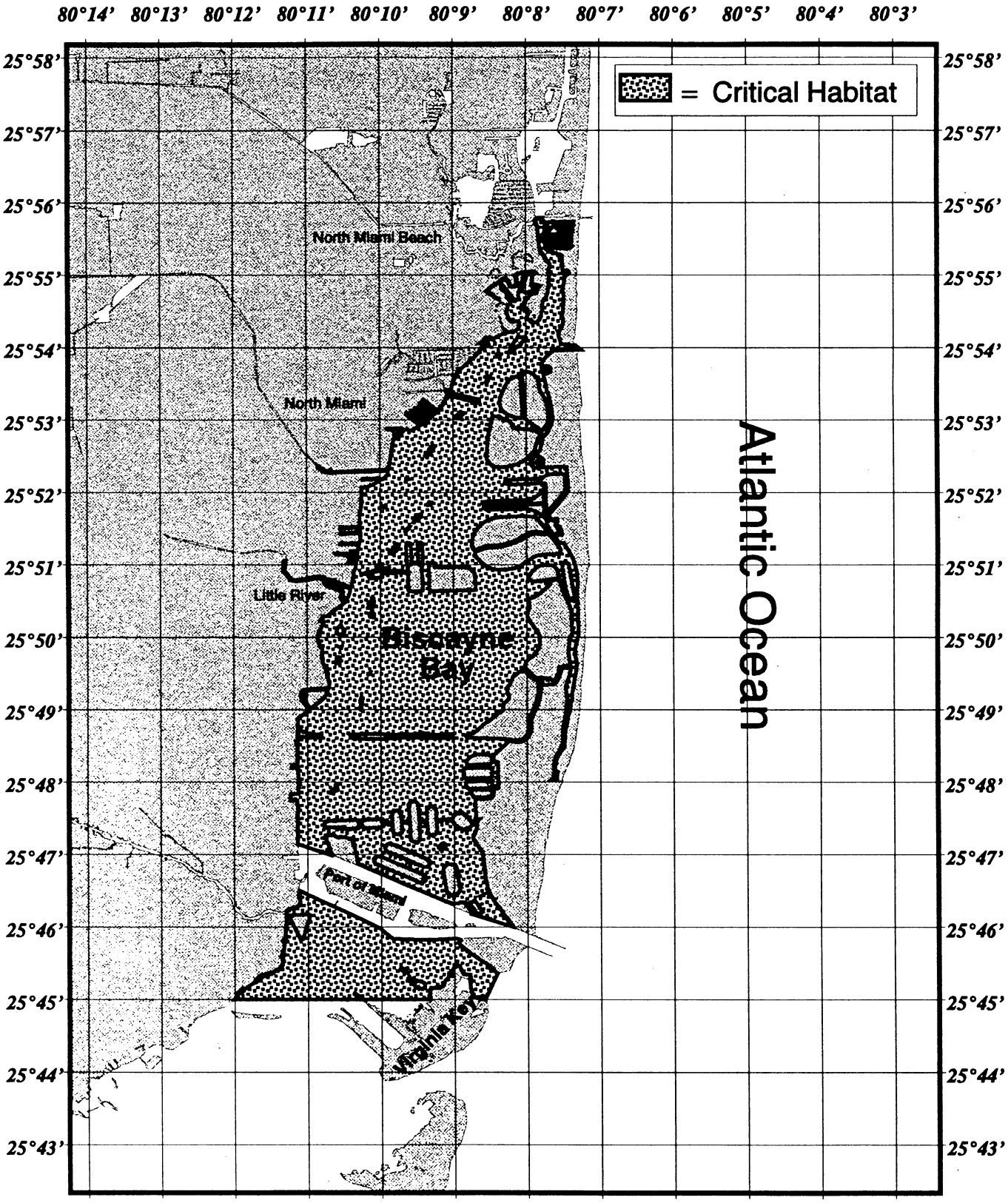

Lake Wyman Critical Habitat
= Critical Habitat
Atlantic Ocean
Lat: 26 22 27
Long: 80 04 23
Lat: 26 22 27
Long: 80 04 18
Boca Raton
Lat: 26 22 05
Long: 80 04 16
Lat: 26 22 05
Long: 80 04 18
Lake Wyman
N
0
0.1
0.2
Miles

Figure 9



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