

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[50 CFR Part 226]

CRITICAL HABITAT OF ENDANGERED AND
THREATENED FISH AND WILDLIFEProposed Determination of Critical Habitat for
Kemp's Ridley and Loggerhead Sea TurtlesAGENCY: National Marine Fisheries
Service.ACTION: Proposed Designation of
Critical Habitat.

SUMMARY: The National Marine Fisheries Service (NMFS) hereby proposes to designate Critical Habitat for the Kemp's ridley, *Lepidochelys kempii*, and loggerhead, *Caretta caretta*, sea turtles in the Port Canaveral navigation channel, Cape Canaveral, Fla. The proposed action is being taken under section 7 of the Endangered Species Act of 1973 (the Act) to provide protection to hibernating sea turtles. This proposal would establish a new Part 226 in Title 50 of the Code of Federal Regulations for designating Critical Habitat for endangered and threatened species under the jurisdiction of NMFS.

DATES: Comments must be received on or before December 4, 1978. Requests for a public hearing and justification for such a request must be received by November 20, 1978.

ADDRESSES: Submit comments to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION
CONTACT:

Mr. Richard B. Roe, Acting Director,
Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, 202-634-7287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Mature Kemp's ridley sea turtles are found within the Gulf of Mexico and immature Kemp's ridleys range from central Florida as far north as Massachusetts, and across the Gulf Stream to Europe. The only remaining established nesting beach for Kemp's ridleys is at Rancho Nuevo, Mexico.

The loggerhead sea turtle occurs in tropical and temperate regions of the World and has been recorded from Chile to California and from Rio de la Plata to Nova Scotia. In the western

Atlantic, the major loggerhead nesting region is from North Carolina to Florida, and to a lesser extent along the gulf coast of the United States. Significant nesting occurs on the Yucatan Peninsula and in Cuba, but is either sparse or absent farther south in Central America and the West Indies. Other places where loggerhead sea turtles have been found include Africa and the western Pacific.

The Kemp's ridley sea turtle was listed as endangered on December 2, 1970 (35 FR 18320) and the loggerhead sea turtle recently was listed as threatened (43 FR 32800). This latter listing took effect on September 6, 1978.

In accordance with a July 18, 1977, Memorandum of Understanding between the NMFS and the Fish and Wildlife Service (FWS), the NMFS was given the responsibility for sea turtles while in the marine environment and the FWS was given the responsibility for sea turtles while on land.

A definition of the term "Critical Habitat" was published by the FWS and the NMFS in the FEDERAL REGISTER on January 4, 1978 (43 FR 870) (hereinafter referred to as Regulations) and is reprinted below:

"Critical Habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of Critical Habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the Regulations, the Director (Assistant Administrator for Fisheries) will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (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 disturbances or are representative of the geographical distribution of listed species.

The continued survival and recovery of the Kemp's ridley and loggerhead sea turtle species depends in part on

the maintenance of suitable and undisturbed hibernation areas. The NMFS believes that such hibernation areas qualify for designation as Critical Habitat as referred to in section 7 of the Act and defined in the Regulations.

In early 1978, the NMFS received reports that shrimp vessels had incidentally captured large numbers of loggerhead sea turtles while trawling late November 1977, in the Port Canaveral ship channel, Brevard County, Fla. One shrimp vessel caught 15 turtles during a 20 minute tow, and another vessel caught 66 turtles in 60 minutes. The turtles were reported to be listless and their shells showed clearly demarcated bare areas and muddy, barnacle encrusted zones. The appearance and behavior of the turtles led the fishermen to believe that the turtles had been buried in the sediment.

These observations, in addition to other reports of high incidental turtle capture by shrimp vessels, prompted NMFS to conduct trawl surveys of the middle and outer reach of the Port Canaveral ship channel on February 14-15 and March 15-17, 1978. Results from these trawl surveys corroborated the earlier reports.

Results from the February survey indicated that the turtles were hibernating in the mud. Their bodies were stained black from long-term contact with these sediments. The captured animals were torpid and appeared to experience difficulty in diving when released. Turtles captured during the March survey appeared to be emerging from hibernation, being more active, and diving quickly upon release. During the 2 surveys a total of 271 loggerhead, mostly subadult, and 3 immature Kemp's ridley turtles were captured; 98 percent of these turtles were taken in the navigation channel, although only 64 percent of the sampling effort was conducted in the channel. Turtles captured during the surveys exhibited shell damage which may have been caused by contact with trawl doors or vessels.

Although only three Kemp's ridleys were captured during the trawl surveys, the status of this species is so fragile that the habitat and animals found therein must be protected.

Based on the trawl surveys and other observations, NMFS investigators believe that: (1) Some unknown number of loggerhead and Kemp's ridley sea turtles hibernate in the Port Canaveral ship channel from at least November to March; (2) turtles dislodged from their hibernaculum may not successfully reenter their muddy retreats, especially if the water temperature is so low that normal swimming and reburrowing activity is inhibited; and (3) the dislodged turtles may be further weakened by exposure

to the lower ambient seawater temperature and possible shell passively at the surface.

The Assistant Administrator has concluded that designating the Port Canaveral navigation channel as Critical Habitat is necessary for the continued survival and recovery of Kemp's ridley and loggerhead sea turtles which hibernate there. Activities of Federal agencies including but not limited to maintenance dredging of the channel and passage of variable draft vessels (submarines) at other than minimum draft conditions at certain times of the year should be reviewed under section 7 of the act.

Consultation with representatives of the State of Florida on the designation of the Cape Canaveral ship channel as Critical Habitat has been conducted by the NMFS.

As information becomes available, additional areas may be proposed as Critical Habitat for these species.

EFFECT OF THE RULEMAKING

Section 7 of the Endangered Species Act states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Critical Habitat designation affects only the actions of Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 of the Act are applicable in a certain area.

Questions of whether, and to what extent, certain kinds of actions would adversely affect listed species are not relevant to the biological basis of Critical Habitat delineations. Such questions are properly dealt with after Critical Habitat has been designated. In this respect, the NMFS and FWS, in cooperation with other agencies, have drawn up a set of regulations and assistance process for helping to evaluate the possible effects of action on Critical Habitat. The Regulations were published to assist Federal agencies in complying with section 7 of the Act.

PUBLIC COMMENTS SOLICITED

The Assistant Administrator desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested person on these proposed rules. Any final promulgation of Critical Habitat regulations will take into consideration the comments received by the Assistant Administrator. Such statements and any additional information received may lead the Assistant Administrator to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the NMFS Office of Marine Mammals and Endangered Species, Page Building No. 2, 3300 Whitehaven Street NW., Washington, D.C., and may be examined during regular business hours or can be obtained by mail.

The primary author of this proposed rule is Mr. Richard B. Roe, Office of Marine Mammals and Endangered Species, 202-634-7287.

REGULATIONS PROMULGATION

Accordingly, NMFS proposes to add a new Part 226 to read as follows:

PART 226—DESIGNATED CRITICAL HABITAT

Subpart A—Introduction

- Sec.
- 226.1 Purpose of regulations.
- 226.1 Scope of regulations.

Subpart B—Critical Habitat for Marine Mammals

226.11-30 [Reserved].

Subpart C—Critical Habitat for Marine Fish

226.31-.70 [Reserved].

Subpart D—Critical Habitat for Marine Reptiles

- 226.71 Port Canaveral Navigation Channel, Cape Canaveral, Florida.
- 226.72-.99 [Reserved].

AUTHORITY: Endangered Species Act of 1973, section 7, Pub. L. 93-205, 16 U.S.C. § 1536, 87 Stat. 884.

Subpart A—Introduction

§ 226.1 Purpose of regulations.

The regulations contained in this Part identify those habitats designated as critical under section 7 of the Endangered Species Act by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, for those endangered and threatened species under his jurisdiction. The list of these species is found in 50 CFR § 222.23(a) for endangered species and 50 CFR § 227.4 for threatened species.

§ 226.2 Scope of regulations.

(a) The critical habitat designations contained in this Part apply only to the endangered and threatened species listed in this Part.

(b) Regulations implementing section 7 of the Endangered Species Act are found in 50 CFR Part 402.

(c) the provisions in this Part are in addition to, and not in lieu of other regulations of Parts 217-227 and 402 of this Chapter.

Subpart B—Critical Habitat for Marine Mammals

§ 226.11-226.30 [Reserved]

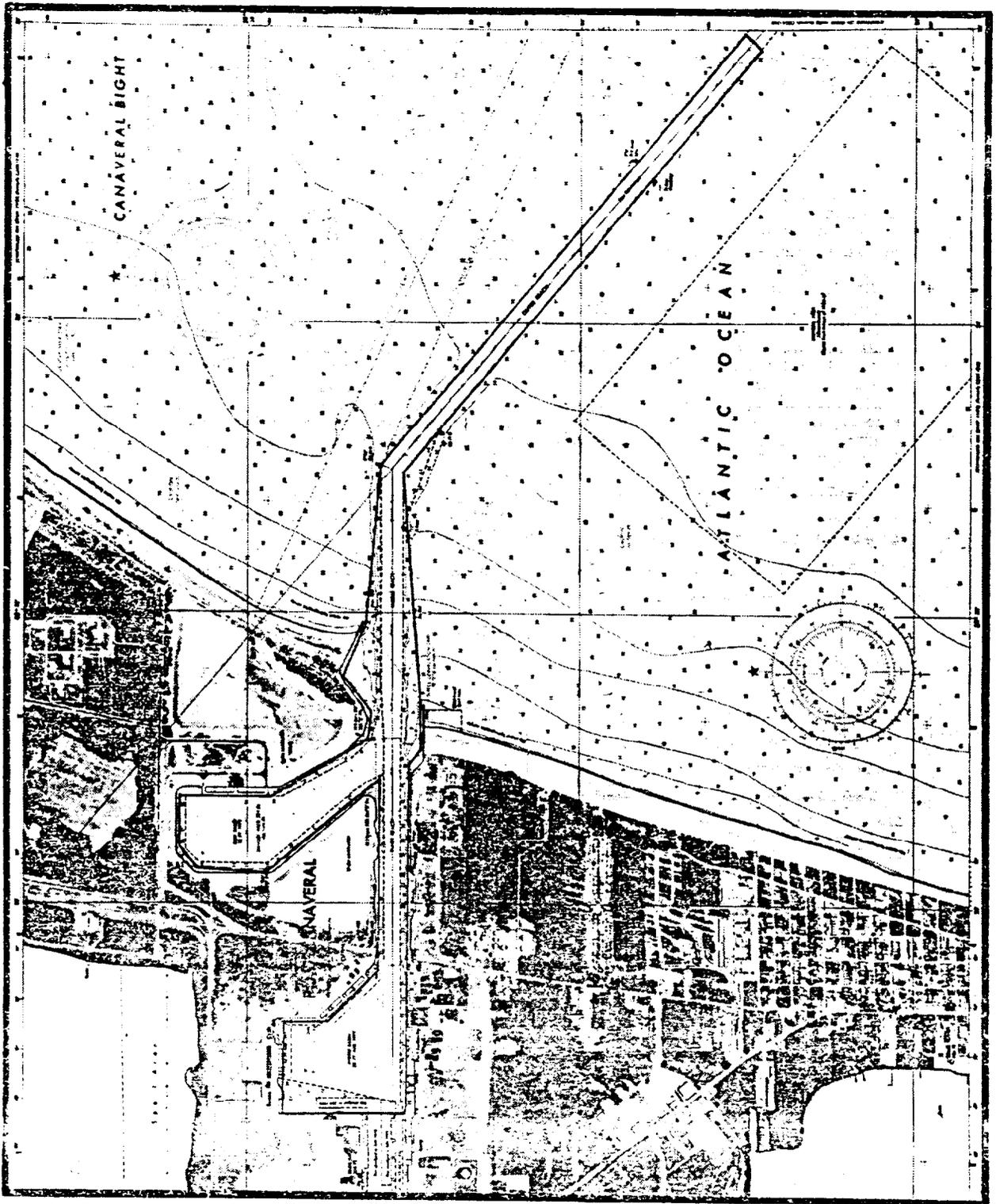
Subpart C—Critical Habitat for Marine Fish

§§ 226.31-226.70 [Reserved]

Subpart D—Critical Habitat for Marine Reptiles

§ 226.71 Port Canaveral Navigation Channel, Cape Canaveral, Florida.

Kemp's Ridley (*Lepidochelys kempii*) and Loggerhead (*Caretta caretta*) Sea Turtles.



Proposed Critical Habitat for the Kemp's ridley and Loggerhead sea turtles

§§ 226.72-226.99 [Reserved]

NOTE.—The NMFS has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: September 28, 1978.

JACK W. GEHRINGER,
Acting Assistant Administrator
for Fisheries, NMFS.

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