

The Honorable John Bel Edwards, Governor of Louisiana (Chair)
The Honorable Tate Reeves, Governor of Mississippi (Vice Chair)
The Honorable Kay Ivey, Governor of Alabama
The Honorable Mike Dunleavy, Governor of Alaska
The Honorable Greg Abbott, Governor of Texas



Mr. Andy Strelcheck
Assistant Regional Administrator
Protected Resources Division, NMFS
Southeast Regional Office
263 13th Ave. South
St. Petersburg, FL 33701

Re: NOAA-NMFS-2023-0028

Dear Mr. Strelcheck:

The undersigned members of the Outer Continental Shelf Governor's Coalition (OCSGC) write to express our disapproval of the National Marine Fisheries Service (NMFS) Proposed Critical Habitat Designation for Rice's whale. The proposal would cover a large portion of the Gulf of Mexico (GOM) from the panhandle of Florida in the northeastern Gulf south to the Texas and Mexico border in the western Gulf and designate it as endangered habitat for Rice's whale.

The OCSGC was created by governors from coastal states in May 2011 to promote a constructive dialogue on OCS energy-resource planning and development between coastal state governors and federal policymakers. The bipartisan group of governors supports policies that encourage a safe, responsible expansion of offshore oil, natural gas, and renewable energy development to the benefit of the nation, our states, and our citizens. As state executives, our principal role in the OCSGC is to consider the opportunities and challenges of offshore energy development and coastal management in order to appropriately balance the health and safety of our citizens and coastal resources with economic prospects.

The proposed expanded critical habitat designation for Rice's whale would impose stringent and harmful restrictions that affect offshore energy development, all commerce traversing the GOM, and fishing and boating sectors. The cumulative effects of these restrictions would have severe effects on the economies of our coastal communities, our states, and the entire U.S. with the volume of trade that transits through the Gulf.

We are concerned that this expanded designation is based on insufficient scientific evidence and data. Just last year, the Bureau of Ocean Energy Management (BOEM) concluded that the Rice's whale habitat did not expand into areas beyond the northeastern GOM, where its critical habitat

designation currently exists.¹ The foundation of critical habitat designations should be based upon rigorous research and the ecological needs of the endangered species. NMFS's rationale in this case does not meet this standard. NMFS's rationale not only undermines the credibility of the agency's critical habitat designation process, but also jeopardizes the balance between species protection and responsible economic development and recreational use.

This designation would result in operational restrictions, vessel traffic implications, and other limitations. Any federal agency issuing permits for offshore commercial activity would need to consult with NMFS to develop mitigation plans restricting movement and timelines for vessels. This would likely mean increased shipping bottlenecks, longer delivery timelines, nighttime movement restrictions, cargo delays, cost increases across every supply chain, delays in offloading/onloading at U.S. ports, and a myriad of safety impacts. These additional barriers to normal operations will have a meaningful and chilling impact on cargo vessels, cruise lines, commercial fisheries, barge and equipment vessels, ships carrying commercial goods, medicines, automobiles, and all ports in the GOM. The economic ripple effect will be felt across the entire U.S. economy – starting with the Gulf Coast – hurting families and businesses already struggling with inflation. Additionally, it is unclear if these restrictions would meaningfully improve the viability of the Rice's whale species.

NMFS' consideration of this expanded critical habitat has already resulted in consequences. Based on the NMFS proposal, BOEM has already imposed prohibitions for the offshore energy industry on nighttime and low visibility transit, along with other restrictions and requirements on vessels supporting offshore energy development in connection with the upcoming Lease Sale 261 in the GOM. These prohibitions were passed despite the joint BOEM and NMFS Biological Opinion concluding that vessel strikes on Rice's whales were unlikely given the already slow vessel transiting and surveying speeds, and additional mitigation measures already imposed on these vessels in the GOM.² The OCSGC therefore wonders whether this expanded habitat designation is necessary, given this agency's previous conclusions that run contradictory to its proposed action.

The OCSGC also questions whether NMFS adequately weighed the economic impacts of such a designation as required by law.³ Under the Endangered Species Act, once NMFS concludes in its Biological Opinion that an agency action "is likely to jeopardize the continued existence" of the species, NMFS "shall" suggest "reasonable and prudent alternatives" that are "economically and technologically feasible."⁴ However, we are of the opinion that NMFS has failed to consider the economic impacts such a regulation will have on our respective Gulf states.

¹ Gulf of Mexico OCS Oil and Gas Lease Sales 259 and 261, Final Supplemental Environmental Impact Statement (Jan. 2023), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/GOM_LS259-261_SEIS_FINAL.pdf.

² Nat'l Marine Fisheries Serv., *Biological Opinion* 597 (Mar. 2020), <https://repository.library.noaa.gov/view/noaa/23738>.

³ 16 U.S.C. §1533(b)(2).

⁴ 16 U.S.C. §1533(b)(3)(A); 50 C.F.R. §402.02.

The Honorable Andy Strelcheck

October 5, 2023

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Vessel traffic arriving at our ports contributes hundreds of billions of dollars to the national economy. Louisiana is home to five of the nation's 15 largest ports by shipping volume, and its commercial fishing landings are the largest in the continental United States, second only to Alaska.⁵ The total tons of cargo that move through Texas's ports rank it first in U.S. maritime commerce.⁶ In Alabama, the Port of Mobile is the fastest-growing container terminal in the United States,⁷ and in Mississippi the strategic location of the Port of Gulfport allows customers to distribute products to 75 percent of the U.S. market within 24 hours.⁸ We hope that NMFS can understand why the governors of these states and their vital ports are concerned about any proposed regulation that jeopardizes our critical industries.

Considering the very limited scientific justification and the high risk of economic and national security harm, the OCSGC urges NMFS not to designate an expanded critical habitat area for Rice's whale until more thorough and complete scientific data is developed and widely reviewed.

The Outer Continental Shelf Governors Coalition appreciates the opportunity to weigh in on this critical issue.

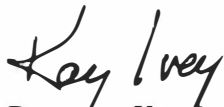
Sincerely,



Governor John Bel Edwards
State of Louisiana
Chair, OCS Governors Coalition



Governor Tate Reeves
State of Mississippi
Vice Chair, OCS Governors Coalition



Governor Kay Ivey
State of Alabama



Governor Greg Abbott
State of Texas

⁵ NOAA. *Landings by Year/State*. National Ocean Service website, <https://www.fisheries.noaa.gov/foss/f?p=215:200:8372340757681>, accessed on 9/19/2023.

⁶ Waterborne Commerce Statistics Center. *The U.S. Coastal and Inland Navigation System - 2019 Transportation Facts & Information*. <https://publibrary.planusace.us/#/series/Fact%20Cards>.

⁷ Alabama Port Authority – Port of Mobile. *2021 Economic Impact Study Report* (Oct. 2022). https://www.alports.com/wp-content/uploads/2022/10/Alabama-Port-Authority_2021-Economic-Impact_FullReport.pdf.

⁸ Mississippi State Authority at Gulfport. *A 5-Year Strategic Plan* (Fiscal Years 2022-2026). <https://www.lbo.ms.gov/misc/strategic/FY22/936-00-plan.pdf>.