

JAXPORT

September 28, 2023

Port Canaveral

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National Marine Fisheries Service

Port Everglades

National Oceanic and Atmospheric Administration
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Port of Fernandina

RE: Proposed Rule to Designate a Critical Habitat for Rice's Whales

Port of Fort Pierce

The purpose of this letter is to express our concerns and opposition to the "Critical Habitat Designation" rule proposed by the National Marine Fisheries Service (NMFS) in Federal Register Vol. 88, No. 140. This "Critical Habitat Designation" would be one of the largest designations by NMFS -- 28,270.65 square miles of continental shelf and slope associated waters within the Gulf of Mexico. In essence, the NMFS is seeking to impose federal regulations and limitations on all economic activity in the entirety of U.S. waters in the Gulf of Mexico.

Port of Key West

PortMiami

The Florida Ports Council (FPC) serves as the professional association for Florida's 16 deep-water public seaports and their management. Seaports are one of Florida's greatest economic assets, positively affecting every region and every resident of the state. Whether moving 100-plus million tons of cargo annually, or millions of cruise passengers, Florida's seaports generate and support a vast array of commerce. These seaports are the gateway for shipment of goods, including fuel, into and out of Florida and link our state to vital international markets.

Port of Palm Beach

Port of Panama City

Port of Pensacola

While we appreciate that the proposed rule would designate a broader geographical area than the original Florida waters habitat proposed in Federal Register Vol. 88, No. 67, dated April 7, 2023, this proposed rule constitutes a gross overreach of agency regulatory power.

Port of Port St. Joe

Port St. Pete

As stated in our earlier comment on the petition to establish a vessel speed restriction and other vessel-related measures to protect Rice's Whales – **these proposals are based on a paucity of flawed scientific evidence and are biased toward a conclusion that the Rice's Whale is "one of the most endangered whales in the world."**

Port Tampa Bay

The current proposed rule continues to use unsubstantiated data and unconfirmed sightings to make speculative statements. On page 18 of the basis report published by NMFS in July 2023, the report even conflates the total number of Bryde's-like whale

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sightings over a thirty (30) year period (1989-2019) as evidence of confirmed Rice's Whale sightings in the Gulf of Mexico. The only assertion that should be clear to any reader of the millions of dollars of studies conducted by NOAA scientists over the past nine (9) years is that the Bryde's-like Rice's Whales (as well as any similar Bryde's-like whales in the Gulf of Mexico) are seldom seen and hard to quantify. Frankly, the basis for all the rules and regulations published by NOAA is a single whale (that may or may not be a new species of whale) stranded in 2019 in Tampa Bay, with injuries consistent with impact caused by a large object.

Given all of the critical activity scenarios espoused in the myriad of studies funded by NOAA over the past nine (9) years – Rice's Whales are curious about vessels, spend 88 percent of their time within 15 meters of the surface during nighttime hours, and the determination by NMFS that vessel collisions are a threat with high certainty due to the locations of commercial shipping lanes in the Gulf of Mexico, the difficulty of sighting a whale at night, and the low ability of large ships to change course quickly – logic would dictate that more vessel strikes should have occurred and been identified by NMFS between 2010 and 2023.

In addition, the information basis and impact consideration report provide no consideration or information on potential economic impacts to vessel traffic in the Gulf of Mexico. As required under Endangered Species Act (ESA) Section 4(b)(2), the Secretary of Commerce is required to consider the economic impact of actions under the ESA.

Vessel traffic has been a consistent discussion in previous documents issued by NMFS on the Rice's Whale, going as far as the identification as a high-risk impact in the original ESA report, and the publication of a petition that would significantly limit vessel movements in Florida Gulf Coast waters. However, there is no inclusion of any economic information related to vessel traffic in the information basis report on the designation of a critical habitat area. This exclusion seems disingenuous given the petition published in the Federal Register in April 2023.

As we have stated previously, the potential economic impacts on just Florida's Gulf Coast ports are significant. Because of federal, state, and local efforts, Florida seaports have seen record growth in cargo movements. On the Gulf Coast, SeaPort Manatee saw a 35 percent increase in containerized cargo tonnage last year – this includes record increases in construction materials and perishable food for Floridians. SeaPort Manatee maritime cargo activity generates over \$5 billion in economic impact and supports over 37,000 jobs. Port Panama City saw a record high of 2.03 million tons of cargo tonnage last year – this includes increases in construction and wire materials that also helped the

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area respond to the devastating impacts of Hurricane Michael. Port Panama City maritime cargo activity generates over \$1.6 billion in economic impact and supports over 10,700 jobs. Port of Pensacola saw a record 55 percent increase in cargo tonnage last year to 425,277 tons. The value of cargo moving through Port of Pensacola also has increased 419 percent to over \$300 million in cargo now transiting the port. Port Tampa Bay is the largest bulk cargo seaport in Florida and saw a record increase to over 34 million tons of cargo tonnage last year – this includes steel and lumber increases for construction in Florida. Port Tampa Bay generates over \$17 billion in economic impact and supports over 85,000 jobs. The economic analysis required by the Endangered Species Act would show that over 100,000 men and women are dependent on vessel and cargo activity at these seaports for their employment.

Finally, unbiased reviews and feedback appear non-existent on all the studies conducted on Rice's Whales. This includes a lack of review of any habitats outside of U.S. waters. Given the habitat activity of similar Bryde's-like whales, this lack of review should at least require cooperation with other countries in the Caribbean to determine if similar whales are located in warm feeding areas in other Gulf of Mexico or Caribbean waters.

The Florida Ports Council requests NOAA rescind its proposed rule and take action to work closely with affected ports, maritime industry stakeholders, and others to accurately determine the effect any proposed rule would have on ports and port communities. This should include an unbiased review of the initial finding on endangered species status and whether additional habitats exist outside of U.S. waters.

Sincerely,



Michael Rubin
President & CEO
Florida Ports Council

CC: Florida Congressional Delegation