FLORIDA PORTS COUNCIL

2023 Annual Meeting

August 3, 2023

Hilton – Ft. Lauderdale Marina

2023 Annual Board Meeting
ITINERARY
August 2 - 3, 2023
Hilton Fort Lauderdale Marina

Tuesday, August 1, 2023

3:00 pm	Guests Arrive	*Hilton Fort Lauderdale Marina*

Wednesday, August 2, 2023

7:45 am – 8:45 am	Breakfast	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom B*
9:00 am – 12:00 pm	SEMC Meeting	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom A*
9:00 am – 12:00 pm	FSTED Security Meeting	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom C*
12:00 pm – 1:00 pm	Luncheon	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom B*
1:30 pm – 5:30 pm	FSTED Meeting	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom A*
6:00 pm – 7:30 pm	FPC Reception *Dress is resort casual*	*Hilton Fort Lauderdale Marina* *Room: Atlantic Ballroom*
7:30 pm – 9:30 pm	Dinner *(Private)*	*The Boatyard* *Transportation Provided*

Breakfast Sponsor

Luncheon Sponsor

Thursday, August 3, 2023

8:00 am – 9:00 am	Port Directors' Breakfast (Port Directors Only)	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom C*
8:00 am – 9:00am	Breakfast (all others)	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom B*
9:00 am – 1:00 pm	FPC Board Meeting	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom A*
1:00 pm – 1:45 pm	Lunch	*Hilton Fort Lauderdale Marina* *Room: Intracoastal Ballroom B*

Dress for all meetings & events is business casual

For more information contact: Christy Gandy at (850) 222-8028 or christy.gandy@flaports.org

Tab 1

Call to Order

Chairman's Welcome

2023 ANNUAL BOARD MEETING

Thursday, August 3rd – 9:00 a.m.
Hilton Ft. Lauderdale Marina

AGENDA

1. **Call to Order and Chairman's Welcome**
2. **Roll Call**
3. **Board of Directors Nominations/Election**
4. **Port Director Opening Comments**
5. **Presentation on Employer's Support of the Guard and Reserve**
6. **Governance and Membership**
7. **Administration**
    A. Approval of the Minutes: March 21, 2023, Spring Board Meeting
    B. Budget Report and Recommendations -- FY 22/23 Financial Statements and FY 23/24 Budget Recommendations
    C. President's Comments
    D. Program Administration
        i. FSTED
        ii. FPFC
        iii. SEMC
        iv. Security Committee
    E. Other Issues
        i. TPM Reception: Long Beach, March 3-6, 2024
        ii. Other Global Initiatives/Functions
        iii. FPC Spring Board Meeting & Legislative Forum Meeting: Tallahassee, January 30 – February 1, 2024
        iv. Seaports Day at the Capitol
        v. FPC Annual Board Meeting: Pensacola, Dates TBD
8. **U.S. Army Corps Update**
9. **U.S. Customs and Border Protection Update**
10. **Communications/Marketing Discussion**

11. Legislative

A. State

i. 2024 Legislative Session

ii. Freight/Capacity Building – Statutory and Appropriation Related Issues

iii. Miscellaneous

B. Federal

i. Initiatives

a. Congressional LD Tour

b. FPC Washington DC Fly-In

ii. Issues:

a. Right and Rice's Whales
b. Infrastructure Legislation/Funding
c. WRDA/HMTF/Port Investment
d. CBP
e. Miscellaneous

12. Partner Updates

American Association of Port Authorities (AAPA)
Associated Industries of Florida (AIF)
Coalition for Americas Gateways & Trade Corridors (CAGTC)
Florida Delegation SEUS/Japan
Florida Chamber of Commerce (FCC)
Florida Department of Economic Opportunity (DEO)
Florida Department of Environmental Protection (DEP)
Florida Department of Transportation (DOT)
Florida Ocean Alliance (FOA)

13. Other Issues

A. New Business

B. Board Member Closing Comments

14. Adjournment

Tab 2

Roll Call

FLORIDA PORTS COUNCIL

ROLL CALL

MEMBER:	DESIGNEE:
JOHN MURRAY, CANAVERAL	
JONATHAN DANIELS, EVERGLADES	
DAVID KAUFMAN, FERNANDINA	
JOSHUA REVORD, FT. PIERCE	
ERIC GREEN, JACKSONVILLE	
STEVEN MCALEARNEY, KEY WEST	
CARLOS BUQUERAS, MANATEE	
SAM SULLIVAN, PUTNAM	
HYDI WEBB, MIAMI	
MICHAEL MEEKINS, PALM BEACH	
ALEX KING, PANAMA CITY	
CLARK MERRITT, PENSACOLA	
GUERRY MAGIDSON, PORT ST. JOE	
DAVID WIRTH, ST. PETERSBURG	
PAUL ANDERSON, TAMPA	

08/03/23

Tab 3

Board of Directors Nominations/Election

FLORIDA PORTS COUNCIL

JAXPORT

Port Canaveral

Port Everglades

Port of Fernandina

Port of Fort Pierce

Port of Key West

PortMiami

Port of Palm Beach

Port of Panama City

Port of Pensacola

Port of Port St. Joe

Port Putnam

Port St. Pete

Port Tampa Bay

SeaPort Manatee

FLORIDA PORTS COUNCIL

ELECTION OF OFFICERS

Current FPC Officers 2022/2023

CURRENT OFFICERS	2023/2024 OFFICERS
CHAIRMAN: Jonathan Daniels, Everglades	_____
VICE CHAIRMAN: Carlos Buqueras, Manatee	_____
SECRETARY/ TREASURER: David Wirth, St. Petersburg	_____

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Tab 4

Port Director Opening Comments

Tab 5

Employer's Support of the Guard and Reserve

Mission and End State

NOMINATE YOUR EMPLOYER
STATE PAGES
VOLUNTEER
REQUEST ASSISTANCE
YEAR IN REVIEW

RELATED LINKS

- Leadership
- Who is ESGR
- Statement of Support

Mission Statement

Employer Support of the Guard and Reserve (ESGR) is a Department of Defense office that develops and promotes supportive work environments for Service members in the Reserve Components through outreach, recognition, and educational opportunities that increase awareness of applicable laws. It also provides assistance in resolving conflicts between the Service members and their employers.

End State

All employers support and value the employment of members of the National Guard and Reserve in the United States and Territories, thereby increasing the readiness of the Reserve Components.

Customers

All employers

All uniformed Service members

Families of affected Service members

Stakeholders

Congress

State and Territory governors

Department of Defense

Department of Homeland Security

Department of Labor

Department of Veterans Affairs

Uniformed Services

Employees

ESGR volunteers and staff

Specified Goals

Goal 1 Increase the number of Employers engaged

Goal 2 Increase the number of Selective Reserve engaged

Goal 3 Effectively Support answering Uniformed Services Employment and Reemployment Rights Act (USERRA) inquiries and cases

Goal 4 Effectively Maintain Committee Strength and skills

Tab 6

Governance and Membership

Tab 7

Administration

Tab 7A

Approval of the Minutes

March 21, 2023 Spring Meeting

2023 Spring Legislative Florida Ports Council Board Meeting
Tuesday, March 21, 2023, at 1:30 p.m. EST
Tallahassee, Florida

MEETING MINUTES

1. **Call to Order and Chairman's Welcome**: Florida Ports Council Vice Chairman and Port Director of SeaPort Manatee, Carlos Buqueras, called the meeting to order at 1:35 p.m. EST., as Chairman Jonathan Daniels was still in meeting at the Capitol.

2. **Roll Call:** Vice Chairman Buqueras recognized Mike Rubin, President & CEO of the Florida Ports Council, to call roll. The members present were as follows and a quorum was confirmed:

   Captain John Murray, Port Canaveral
   Jonathan Daniels, Port Everglades (late)
   David Kaufman, Port of Fernandina
   Stan Payne, Port of Ft. Pierce
   Justin Ryan on behalf of Eric Green, JAXPORT
   Carlos Buqueras, SeaPort Manatee
   Fred Wong on behalf of Hydi Webb, PortMiami
   Michael Meekins, Port of Palm Beach
   Alex King, Port Panama City
   Clark Merritt, Port of Pensacola
   Sam Sullivan, Port Putnam
   Paul Anderson, Port Tampa Bay

3. **Port Director Opening Comments:** Individual ports provided their specific port updates.

   Port Canaveral – Port Director, Captain John Murray, provided the comments for Port Canaveral. Captain Murray stated that Port Canaveral has had a strong year; running at about 110% cargo capacity (lumber imports are phenomenal), but only short coming is that buyers aren't that eager to get lumber off the dock, so he detailed that is has become a challenge to get terminal operators to move the lumber out. Aside from that, Captain Murray detailed that everything else has been very strong including, SpaceX doing upwards of 90 launches this year, and cruise is better than ever. Port Canaveral is becoming the largest cruise port in the state.

   Port Fernandina – Port Director, David Kaufman, provided comments for the Port of Fernandina. Kaufman mentioned their board is scheduled to discuss and approve their Master Plan in their upcoming Commission meeting in April 2023. Kaufman said their new terminal operators are coming in and getting acquainted. Also, there may be some opportunity for new growth for Port Fernandina due to Savannah going through changing their old terminals.

   Port of Fort Pierce – Port Director, Stan Payne, provided comments for the Port of Fort Pierce. Payne said that their mega yacht facility's underground utility will have more electricity capacity than their regional hospital. Payne stated that they are developing their 20-acre Harbor Point. Additionally, their Foreign Trade Zone, which has been dormant for 25 years, is about to be extended.

JAXPORT – Port Manager of FTZ & Grant Administration, Justin Ryan, provided comments for JAXPORT. Ryan detailed that JAXPORT is accomplishing modernizing their facilities across their footprint through multiyear construction projects, building on their existing partnerships to secure investments, and near zero cargo handling equipment technologies, as they move forward that focus on reducing emissions that are efficient to lead them as a candidate for the future.

SeaPort Manatee – Port Director, Carlos Buqueras, provided the comments for SeaPort Manatee. Buqueras mentioned that it has been another record year for SeaPort Manatee, including record containers. Also, Seaport Manatee has an owner of World Direct Shipping purchasing 400 acres across the street from the port to develop distribution centers. Buqueras described the only thing slowing them down is the cost of construction, but that will not stop them from expanding at the port.

PortMiami – Deputy Port Director, Fred Wong, provided comments for PortMiami. Wong began with saying that PortMiami is also having a record year for the cruise industry, recently pushing 59,000 passengers through in only one day. As for containers, Wong detailed that they brought in 1.2 million TEUS last year and are likely to duplicate that this year, as well. One vessel brought in was the CMA CGM OSIRIS, with a whopping 15,536 TEUs. Wong also mentioned they are aggressive in their capital programs this year, including shore power which will be done by expanding their substation. In 2025, PortMiami will be pushing their bulkhead rehabilitation proposal through, which will push their cruise docks from 43 to 55 feet out to the channel.

Port of Palm Beach – Port Director, Michael Meekins, provided comments for the Port of Palm Beach. Meekins said that the port is 80% exports to the Caribbean, and they are finally back to pre-COVID numbers. Meekins said cruise is doing very well, as in line with other ports. Also, they hope to have their Master Plan finished in the next few months. Meekins advised that they are still working to purchase 18 acres of land next door to expand.

Port Panama City – Port Director, Alex King, provided comments for Port Panama City. King said they just added 27 acres to their East Terminal. Their updated Master Plan is well underway with the help of HNTB. Port Panama City just completed a big site improvement project at their MO distribution center to add distribution capacity.

Port Pensacola – Port Director, Clark Merritt, provided comments for the Port of Pensacola. Merritt detailed that Pensacola's cargo remains stable this year including their Q1 numbers to be 70% higher than their Q4 numbers. Port Pensacola is still wrapping up Hurricane Sally challenges, but they are making their way. Merritt said that the American Magic sailing team that has been posted at the port for three years, will be wrapping up their winter training and going to Barcelona, Spain for 2024, but hope to come back and build their High-Performance Training Center which will encompass the boatbuilding side of things as well as Olympic training. Additionally, the port is in discussions with major terminal operators for significant capital investment.

Port Putnam –Port Director, Sam Sullivan, provided the comments for Port Putnam. Sullivan said they are working on managing and developing their facility online and with the U.S. Army Corps of Engineers to gain access to potentially dredge the St. Johns River. Sullivan said they have local community interest in using the port, including working with CSX to adjust their railroad.

Port Tampa Bay – Port Director, Paul Anderson, provided comments for Port Tampa Bay. Anderson said the port continues to see growth across multiple lines and commodities. Their container volumes were up 18% in the past quarter and maintaining a year-after-year growth of 30-20% growth. Anderson mentioned they have three Gantry cranes on the way to the port and they also will be expanding their container operations area by 100 acres across various projects. Port Tampa Bay is also seeing positive cruise growth.

Port Everglades – Florida Ports Council Chairman and Port Director, Jonathan Daniels, provided the comments for Port Everglades. Chairman Daniels said that Everglades continues to see significant growth of petroleum at their Port – and have three new additional tanks that will begin construction fairly soon. Cruise is also growing at Port Everglades. The port will be getting three CPMC cranes in September so their cargo operations can continue to move nicely. Also, the Convention Center Complex will be up by 2025, as one of the nation's largest facilities, but there are growing pains with the traffic on port, but the parking garage for the convention center will hold 4,6000 cars on port property.

4. **Governance and Membership:** Chairman Daniels turned the meeting's focus to governance and membership updates. Mike Rubin, President and CEO of the Florida Ports Council gave the update. Rubin gave an update for two absent ports: Port of Port St. Joe and Port of Key West. The Port of Port St. Joe is currently in the works on their master plan and the Port of Key West may have a reallocation request at the August Board Meeting.

5. **Administration**
   - A. **Approval of the Minutes: September 1, 2022, Spring Board Meeting:** Chairman Daniels requested a motion for the approval of the September 1, 2022, Florida Ports Council meeting minutes. A motion was made by Carlos Buqueras, seconded by Paul Anderson, and passed unanimously.
   - B. **Budget Report – FY 22/23 Financial Statements and FY 21/22 Annual Audit:** Chairman Daniels opened the floor to discuss the 22/2 budget. Fred Wong from PortMiami, Paul Anderson from Port Tampa Bay, and Carlos Buqueras from SeaPort Manatee discussed the benefit of the TPM Conference and importance of continuing to host a reception there in the future. After discussions, Chairman Daniels then requested a motion for the approval of the 2022/2023 Florida Ports Council budget. A motion was made by Paul Anderson, seconded by Carlos Buqueras, and passed unanimously.
   - C. **President's Comments:** Chairman Daniels recognized Mike Rubin to provide his comments. Rubin thanked his staff/team members for their hard work on this year's port events and active engagement in the 2023 legislative session.
   - D. **Program Administration:** Chairman Daniels recognized Emily Fisher, Vice President of Programming and Planning with the Florida Ports Council to provide any additional comments from the morning's FSTED meeting, and the Florida Ports Financing Commission, and Seaport Environment Committee Meeting (SEMC). Fisher referenced the meetings, then turned to Mike Rubin for comments on the recent FSTED audit with FDOT. Rubin advised that the audit was completed and there was no longer anything outstanding needed from the Council.
   - E. **Other Issues:**
     - i. **FPC Board Virtual Summer Meeting May/June 2023:** Mike Rubin discussed the upcoming Fly-In to Washington D.C. on May 16 &17 to meet with our Congressional Members, and after discussion with the board the decision was to not have an additional virtual meeting in the summer, rather a small huddle during their time in D.C.
     - ii. **FPC/FSTED Annual Meeting August 2/3, 2023, Ft. Lauderdale:** Chairman Daniels recognized Christy Gandy, Vice President of Operations for the Florida Ports Council to give an update on upcoming events. Gandy mentioned the upcoming Florida Ports Council Annual Meeting dates of August 2-3, 2023 at the Hilton Marina Hotel in Fort Lauderdale.

6. **Communications/Marketing Update:** Edie Ousley, President & Founder of Yellow Finch Strategies, and marketing consultant to the Florida Ports Council, provided an overview of the 2023 marketing campaign. Ousley started by discussing the new campaign theme as *Reliable, Resilient, and Ready*. Ousley created a small marketing committee inclusive of marketing and communications professionals

across the Florida ports' staff to provide feedback, drive the vision, and collaborate about this campaign. Ousley reported on all the recent marketing data across all platforms and ad strategies.

7. **Legislative:** Chairman Daniels called upon Mike Rubin to discuss current legislative issues in Florida and nationwide.

   A. **State – 2023 Legislative Session:** Rubin detailed that Governor DeSantis' staff, including FDOT Secretary Perdue, provided formal budget presentations to Senate and House appropriation committees and the recommended **FDOT Work Program Budget** includes $150.5 million for seaport projects and debt reserve payments. There are four individual member projects related to seaports submitted in the Senate and House, that include a crane replacement for JAXPORT, and three projects for the Port of Palm Beach: Neighborhood Impact Mitigation/Beautification, Cruise Ship Shore Power Connection, and Land Acquisition for Cargo Capacity. Other bills to note are: **SB 796,** legislation to increase Chapter 311 FSTED statutory minimum from $25 million to $50 million and Strategic Port Investment Initiative statutory minimum from $35 million to $70 million. As discussed with the board, Speaker Paul Renner has made clear that the Florida Ports Council needs to wait until next session to move forward with this ask or any additional funding. **SB 908** and **HB 645**, legislation was designated by the FPC Board as a priority legislation for all seaports, and along with other seaport representatives to broaden the definition of a "critical infrastructure facility" in the Unmanned Aircraft Systems Act to include areas such as seaports, airports, water facilities and airports. The definition of seaports was clarified to include "a deepwater port listed in s. 311.09(1), F.S., and to specify that such seaport "need not be completely enclosed by a fence or other physical barrier and need not be marked with a sign or signs indicating that entry is forbidden." **SB 1072 by and HB 979,** Deepwater Port Dredging legislation would require local government to provide written notice of its intent to conduct a habitat equivalency analysis to adjacent local governments that "may be impacted by the dredging activity," but staff and port directors have spoken with Representative Gossett-Seidman to revise and/or stop this bill.

   B. **Federal – Initiatives & Issues:** Rubin mentioned that there is a desire from the Congressional staff members to have another LD Port Tour in Miami and/or Everglades in the late summer/early fall. After discussion, the board agreed that this would be a good idea and to continue coordinating discussions. Rubin reminded the board about the May 15-16th D.C. Fly-In and the idea of having a small ports meeting during the morning of May 16. Next, the board discussed the issue of harbor pilot rate increases and the issue of Chinese crane purchases.

8. **Partner Updates:** Rubin detailed that all partner updates and upcoming events were included in the meeting materials.

9. **Other Issues:** Chairman Daniels opened the floor to discuss other issues.

   A. **New Business:** No new business was discussed.

   B. **Board Member Closing Comments:** No closing comments were made.

10. **Adjournment:** Chairman Daniels adjourned the meeting at 4:52 p.m. EST.

Tab 7B

Budget Report and Recommendations

FY 22/23 Financial Statements and FY 23/24 Budget Recommendations

Florida Seaports Council, Inc
Balance Sheet
As of July 26, 2023

	Jul 26, 23	
ASSETS		
Current Assets		
Checking/Savings		
Hancock Bank CD		510,994.17
HANCOCK BANK MONEY MARKET ACCT		101,404.34
HANCOCK BANK OPERATING ACCT		72,470.40
SYNOVUS MONEY MARKET ACCT#2		200,724.93
110 · PETTY CASH ACCT		101.31
Total Checking/Savings		885,695.15
Accounts Receivable		
200 · Administrative Fees Receivable		142,706.74
Total Accounts Receivable		142,706.74
Other Current Assets		
226 · Miscellaneous Receivable		-23.87
220 · Prepaid Expenses		9,180.02
Total Other Current Assets		9,156.15
Total Current Assets		1,037,558.04
Fixed Assets		
250 · Equipment & Furnishings		47,723.34
251 · Building		
252 · Building Improvements	159,211.87	
251 · Building - Other	287,641.83	
Total 251 · Building		446,853.70
253 · Land		
253.1 · Land Improvements	9,480.00	
253 · Land - Other	200,000.00	
Total 253 · Land		209,480.00
255 · Accumulated Depreciation		-244,226.00
Total Fixed Assets		459,831.04
Other Assets		
260 · Deposits		250.00
265 · Prepaid IRS Interest Payments		-0.44
Total Other Assets		249.56
TOTAL ASSETS		**1,497,638.64**

Florida Seaports Council, Inc
Balance Sheet
As of July 26, 2023

	Jul 26, 23
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
300 · Accounts Payable	3,114.74
Total Accounts Payable	3,114.74
Credit Cards	
First Bankcard	-14,470.22
Total Credit Cards	-14,470.22
Other Current Liabilities	
315 · Accrued Leave	14,734.00
301 · PAYROLL LIABILITIES	
301.2 · Direct Deposit Liabilities	0.02
301.3 · 401K Payable	-10,696.20
301 · PAYROLL LIABILITIES - Other	2,509.60
Total 301 · PAYROLL LIABILITIES	-8,186.58
Total Other Current Liabilities	6,547.42
Total Current Liabilities	-4,808.06
Total Liabilities	-4,808.06
Equity	
3900 · Unrestricted Net Assets	1,107,426.87
Net Income	395,019.83
Total Equity	1,502,446.70
TOTAL LIABILITIES & EQUITY	**1,497,638.64**

Florida Seaports Council, Inc
Profit & Loss Budget vs. Actual
October 2022 through September 2023

	Oct '22 - Sep 23	Budget	$ Over Budget	% of Budget
Income				
601 · FPC Dues	652,425.78	637,000.00	15,425.78	102.4%
602 · FSTED Prog. Admin/Chapter 311	457,560.44	430,686.00	26,874.44	106.2%
605 · FSTED Security Admin Fees	14,442.18	17,500.00	-3,057.82	82.5%
610 · INTEREST INCOME	12,454.32	500.00	11,954.32	2,490.9%
615 · SPONSORSHIP REVENUES	12,500.00	15,000.00	-2,500.00	83.3%
640 · MISC NON DUES REVENUE	8,250.00	12,000.00	-3,750.00	68.8%
Total Income	1,158,632.72	1,112,686.00	45,946.72	104.1%
Expense				
6560 · PAYROLL EXPENSES	25,039.33	41,000.00	-15,960.67	61.1%
701 · PRESIDENT				
701.1 · Health Insurance	19,241.28	28,500.00	-9,258.72	67.5%
701.3 · Salary	176,458.37	192,500.00	-16,041.63	91.7%
Total 701 · PRESIDENT	206,287.15	221,000.00	-14,712.85	93.3%
704 · VICE PRESIDENT OF OPERATIONS				
704.1 · Health Insurance	9,979.36	15,000.00	-5,020.64	66.5%
704.3 · Salary	68,876.94	81,400.00	-12,523.06	84.6%
Total 704 · VICE PRESIDENT OF OPERATIONS	83,364.94	96,400.00	-13,035.06	86.5%
706 · VP PROGRAMS & PLANNING				
706.1 · Health Insurance	3,786.24	5,800.00	-2,013.76	65.3%
706.3 · Salary	63,376.94	74,900.00	-11,523.06	84.6%
Total 706 · VP PROGRAMS & PLANNING	71,087.76	80,700.00	-9,612.24	88.1%
707 · EMPLOYEE BONUS POOL	10,000.00	10,000.00	0.00	100.0%
710 · CONSULTANTS				
710.1 · Communications/Media Services	45,000.00	60,000.00	-15,000.00	75.0%
710.3 · Environmental & Growth Mgmt	25,000.00	30,000.00	-5,000.00	83.3%
Total 710 · CONSULTANTS	70,000.00	90,000.00	-20,000.00	77.8%
715 · INSURANCE				
715.1 · Worker's Compensation	957.00	2,000.00	-1,043.00	47.9%
715.2 · Directors' E&O	0.00	1,100.00	-1,100.00	0.0%
Total 715 · INSURANCE	1,495.32	3,100.00	-1,604.68	48.2%
720 · ACCOUNTING				
720.1 · Annual Audit & Financial Svcs	26,032.25	11,455.00	14,577.25	227.3%
720.2 · Management of 401K	1,125.00	1,545.00	-420.00	72.8%
Total 720 · ACCOUNTING	27,157.25	13,000.00	14,157.25	208.9%

Florida Seaports Council, Inc
Profit & Loss Budget vs. Actual
October 2022 through September 2023

	Oct '22 - Sep 23	Budget	$ Over Budget	% of Budget
730 · BANK CHARGES/INTEREST	113.00	100.00	13.00	113.0%
732 · COMMUNICATIONS				
732.1 · Telephone/Fax/Internet/Cable	4,252.92	4,500.00	-247.08	94.5%
732.2 · Cell Phones	2,213.12	4,000.00	-1,786.88	55.3%
732.3 · Printing	1,969.57	1,500.00	469.57	131.3%
732.4 · Postage, Overnight Delivery	266.87	1,000.00	-733.13	26.7%
732.7 · Magazine Subscriptions	0.00	200.00	-200.00	0.0%
732.8 · Miscellaneous/Administrative	3,233.21	1,200.00	2,033.21	269.4%
Total 732 · COMMUNICATIONS	11,935.69	12,400.00	-464.31	96.3%
733 · OUTREACH				
733.1 · Marketing/Branding	68,286.71	80,000.00	-11,713.29	85.4%
733.2 · Memberships	14,050.00	10,000.00	4,050.00	140.5%
733.3 · Sponsorships	5,500.00	12,500.00	-7,000.00	44.0%
733.4 · Lobbying	4,450.00	5,000.00	-550.00	89.0%
Total 733 · OUTREACH	92,286.71	107,500.00	-15,213.29	85.8%
750 · EQUIPMENT/SUPPLIES				
750.1 · Office Equipment	2,855.72	4,500.00	-1,644.28	63.5%
750.2 · Computer, Hardware & Software	2,055.72	5,000.00	-2,944.28	41.1%
750.3 · IT Services	8,166.49	8,000.00	166.49	102.1%
750.4 · Office Supplies	2,165.59	4,500.00	-2,334.41	48.1%
750.6 · Miscellaneous	61.40	300.00	-238.60	20.5%
Total 750 · EQUIPMENT/SUPPLIES	15,304.92	22,300.00	-6,995.08	68.6%
755 · FSTED & FFPC Court Reporter	504.00	4,000.00	-3,496.00	12.6%
777 · BUILDING EXPENSES				
777.2 · Maintenance/Repairs	9,058.20	6,000.00	3,058.20	151.0%
777.3 · Pest/Security/Lawn/Housekeeping	6,814.36	6,000.00	814.36	113.6%
777.4 · Insurance & Taxes	9,140.12	10,300.00	-1,159.88	88.7%
777.5 · Utilities	4,073.03	4,500.00	-426.97	90.5%
777.6 · Miscellaneous	3,869.11	6,000.00	-2,130.89	64.5%
Total 777 · BUILDING EXPENSES	33,302.32	32,800.00	502.32	101.5%
791 · TRAVEL - CONFERENCES				
791.1 · Conferences - Meals	1,393.41	1,000.00	393.41	139.3%
791.2 · Conferences - Hotel	4,441.37	2,000.00	2,441.37	222.1%
791.3 · Conferences - Airfare	1,830.45	1,000.00	830.45	183.0%
791.4 · Conferences - Rental Car/Gas	1,945.97	1,100.00	845.97	176.9%
791.5 · Conferences - Fees	1,470.00	1,500.00	-30.00	98.0%
791.6 · Conferences - Miscellaneous	159.00	100.00	59.00	159.0%
Total 791 · TRAVEL - CONFERENCES	11,240.20	6,700.00	4,540.20	167.8%

Florida Seaports Council, Inc
Profit & Loss Budget vs. Actual
October 2022 through September 2023

	Oct '22 - Sep 23	Budget	$ Over Budget	% of Budget
792 · TRAVEL - GENERAL				
792.1 · Travel - Meals & Entertainment	12,725.40	8,000.00	4,725.40	159.1%
792.2 · Travel - Hotel	392.17	8,000.00	-7,607.83	4.9%
792.3 · Travel - Airfare	979.93	5,000.00	-4,020.07	19.6%
792.4 · Travel - Rental Car/Gas/Parking	2,120.69	4,000.00	-1,879.31	53.0%
792.5 · Travel - Speaking Engagements	0.00	750.00	-750.00	0.0%
792.6 · Travel - Miscellaneous	0.00	250.00	-250.00	0.0%
Total 792 · TRAVEL - GENERAL	16,218.19	26,000.00	-9,781.81	62.4%
793 · MEETING EXPENSES				
793.1 · Meeting Expenses - MEALS	60,181.48	20,000.00	40,181.48	300.9%
793.2 · Meeting Expenses - ROOM RENTAL	0.00	4,000.00	-4,000.00	0.0%
793.3 · Meeting Expenses - AUDIO/VISUAL	149.90	350.00	-200.10	42.8%
793.4 · Meeting Expenses - PRINTING	95.61	250.00	-154.39	38.2%
793.6 · Meeting Expenses - MISC	50,401.50	70,000.00	-19,598.50	72.0%
793.7 · Meeting Expenses - NOTICES(FAW)	189.98	500.00	-310.02	38.0%
Total 793 · MEETING EXPENSES	111,018.47	95,100.00	15,918.47	116.7%
806 · PROFESSIONAL DEVELOPMENT	425.00	2,000.00	-1,575.00	21.3%
930 · WEBSITE DEVELOPMENT	26.39	1,000.00	-973.61	2.6%
Total Expense	788,681.64	865,100.00	-76,418.36	91.2%
Net Income	**369,951.08**	**247,586.00**	**122,365.08**	**149.4%**

Florida Seaports Council, Inc.
FY 2023 - 2024 Proposed Budget

	FY '21/'22	FY '22/23	FY '23/24	Comments
Income				
601 · FPC Dues	460,875.00	637,000.00	637,000.00	
602 · FSTED Program Administration/Chapter 311	430,686.00	430,686.00	434,000.00	Contingent on approps
603 · FPFC Bond Program	0.00	0.00	0.00	
604 · FSTED Security Committee Administration	17,500.00	17,500.00	17,500.00	
606 · MISCELLANEOUS INCOME (Sponsorships)	15,000.00	15,000.00	15,000.00	
610 · INTEREST INCOME	500.00	500.00	5,000.00	
640 - MISC NON DUES REVENUE	0.00	0.00	13,000.00	
Total Income	$924,561.00	$1,100,686.00	$1,121,500.00	
Expense				
6560 · PAYROLL EXPENSES	41,000.00	41,000.00	32,000.00	
701 - PRESIDENT - Salary	175,000.00	192,500.00	192,500.00	Salary contingent upon Board review
701.1 Health Insurance	26,500.00	28,500.00	30,500.00	
704 - VICE PRESIDENT OF OPERATIONS	74,000.00	81,400.00	85,470.00	5% increase (COLA/Performance)
704.1 Health Insurance	13,700.00	15,000.00	15,600.00	
706 · VICE PRESIDENT PROGRAMS & PLANNING	70,000.00	74,900.00	78,645.00	5% increase (COLA/Performance)
706.1 Health Insurance	5,500.00	5,800.00	6,100.00	
707 · EMPLOYEE BONUS POOL	10,000.00	10,000.00	10,000.00	
Total PAYROLL EXPENSES	415,700.00	449,100.00	450,815.00	
710 · CONSULTANTS				
710.2 Legal Counsel	0.00	0.00	0.00	
710.3 Environmental/Growth Management	30,000.00	30,000.00	30,000.00	
710.4 Communication/Media Services	60,000.00	60,000.00	60,000.00	
Total 710 · CONSULTANTS	90,000.00	90,000.00	90,000.00	
715 · INSURANCE	3,100.00	3,100.00	3,100.00	
720 · ACCOUNTING SERVICES	13,000.00	13,000.00	13,000.00	
721 - MANAGEMENT OF 401k	1,545.00	1,545.00	1,545.00	
730 · BANK CHARGES / INTEREST	100.00	100.00	100.00	
732 · COMMUNICATIONS				
732.1 · Telephone/Fax/Internet/Cable	4,500.00	4,500.00	4,500.00	
732.2 · Cell Phones	4,200.00	4,000.00	4,000.00	
732.3 · Printing	1,000.00	1,500.00	1,500.00	

Florida Seaports Council, Inc.
FY 2023 - 2024 Proposed Budget

	FY '21/'22	FY '22/23	FY '23/24	Comments
732.4 · Postage, Overnight Delivery	1,000.00	1,000.00	1,000.00	
732.7 · Community Service	200.00	200.00	3,500.00	Was Mag Subscrip/Now Comm Serv
732.8 · Miscellaneous	1,200.00	1,200.00	1,200.00	
Total 732 · COMMUNICATIONS	12,100.00	12,400.00	15,700.00	
733 · MARKETING & OUTREACH				
733.1 · Marketing/Branding	47,500.00	80,000.00	80,000.00	
733.2 · Memberships	15,000.00	10,000.00	14,500.00	
733.3 · Sponsorships	12,500.00	12,500.00	12,500.00	
733.4 · Lobbying	5,000.00	5,000.00	5,000.00	
Total 733 · MARKETING & OUTREACH	80,000.00	107,500.00	112,000.00	
750 · EQUIPMENT/SUPPLIES				
750.1 · Office Equipment	4,500.00	4,500.00	3,500.00	
750.2 · Computer, Hardware & Software	5,000.00	5,000.00	4,000.00	
750.3 · IT Services	7,000.00	8,000.00	10,000.00	
750.4 · Office Supplies	4,500.00	4,500.00	4,500.00	
750.6 · Miscellaneous	200.00	300.00	300.00	
Total 750 · EQUIPMENT/SUPPLIES	21,200.00	22,300.00	22,300.00	
755 · FSTED & FFPC COURT REPORTER	4,000.00	4,000.00	4,000.00	
777 · BUILDING EXPENSES				
777.1 · Mortgage	0.00	0.00	0.00	
777.2 · Maintenance/Repairs	5,000.00	6,000.00	6,000.00	
777.3 · Pest/Security/Lawn/Housekeeping	6,000.00	6,000.00	6,000.00	
777.4 · Insurance & Taxes	10,300.00	10,300.00	10,300.00	
777.5 · Utilities	4,000.00	4,500.00	4,500.00	
777.6 · Miscellaneous	6,000.00	6,000.00	6,000.00	
Total 777 · BUILDING EXPENSES	31,300.00	32,800.00	32,800.00	
791 · TRAVEL: CONFERENCES				
791.1 · Meals & Entertainment	1,000.00	1,000.00	3,000.00	Addl Confs and Costs
791.2 · Hotel	2,000.00	2,000.00	4,000.00	
791.3 · Airfare	1,000.00	1,000.00	2,500.00	
791.4 · Rental Car/Gas/Parking	1,100.00	1,100.00	2,100.00	
791.5 · Fees	1,500.00	1,500.00	3,000.00	
791.6 · Miscellaneous	100.00	100.00	400.00	
Total 791 · TRAVEL: CONFERENCES	6,700.00	6,700.00	15,000.00	

Florida Seaports Council, Inc.
FY 2023 - 2024 Proposed Budget

	FY '21/'22	FY '22/23	FY '23/24	Comments
792 · TRAVEL : GENERAL				
792.1 · Meals & Entertainment	6,500.00	8,000.00	6,000.00	No Cong Staff tours
792.2 · Hotel	5,000.00	8,000.00	6,000.00	
792.3 · Airfare	4,500.00	5,000.00	3,000.00	
792.4 · Rental Car/Gas/Parking	3,000.00	4,000.00	3,000.00	
792.5 · Speaking Engagements	750.00	750.00	750.00	
792.6 · Miscellaneous	250.00	250.00	250.00	
Total 792 · TRAVEL: GENERAL	20,000.00	26,000.00	19,000.00	
793 · MEETING EXPENSES				
793.1 · Meals	19,000.00	20,000.00	40,000.00	
793.2 · Room Rental	4,000.00	4,000.00	1,000.00	
793.3 · Audio/Visual	350.00	350.00	1,000.00	
793.4 · Printing	250.00	250.00	250.00	
793.5 · Conference Calls	100.00	100.00	0.00	
793.6 · Miscellaneous	1,000.00	70,000.00	70,000.00	TPM
793.7 · Notices(FAW)	500.00	500.00	500.00	
Total 793 · MEETING EXPENSES	25,200.00	95,200.00	112,750.00	
806 · PROFESSIONAL DEVELOPMENT	2,000.00	2,000.00	2,000.00	
930 · WEBSITE: Maintenance & Development	1,000.00	1,000.00	1,000.00	
Total Expense	766,400.00	865,200.00	893,565.00	

Tab 7C

President's Comments

Tab 7D

Program Administration

FSTED

Florida Seaport Transportation and
Economic Development Council

AGENDA

Hilton Marina Fort Lauderdale
Wednesday, August 2, 2023
1:30 p.m. – 5:30 p.m.

1. Call to Order, Chairman's Welcome and Opening Comments

2. Roll Call

3. Administrative Issues
   a. Approval of the April 20, 2023, Virtual Meeting Summary
   b. Report on Seaport Environmental Management Committee (SEMC) Meeting
   c. Report on FSTED Security Committee

4. FSTED Officer Nominations/Election

5. Reports and Studies
   a. 2023/2024 Seaport Mission Plan
   b. Economic Impact Analysis
   c. PIERS Data Contract

6. Legislative Report

7. Agency Reports
   a. FloridaCommerce
   b. Department of Transportation

<u>Time Certain</u>: 2:30 p.m. Strategic Port Investment Initiative (SPII) – Lauren Rand, Interim Chief of Modal Development and Manager of the Seaport Office at the Florida Department of Transportation (FDOT)

8. Program Funding
   a. Discussion and Review of Seaport Funding Spend Downs
   b. Approval of FSTED Program Fund Reallocations
   c. Agency Reports on Consistency Review of FY 24/25 FSTED Project Applications
   d. Recommendations and Approval of FY 24/25 FSTED Program Allocations
   e. Recommendations and Approval of FY 23/24 FSTED Security Grant Allocations
   f. Federal Funding Opportunities
   g. State Funding Opportunities

9. New Business

10. Adjournment

FSTED

Florida Seaport Transportation and
Economic Development Council

Seaport Environmental Management Committee
AGENDA

Wednesday, August 2, 2023
9:00 a.m. – 12:00 p.m.
Hilton Fort Lauderdale Marina

1. Call to Order, Welcome
2. Roll Call
3. Approval of the March 3, 2023, SEMC Annual Meeting Minutes
4. Florida Ports Council Update
5. Agency Updates
6. Partner Updates
7. Legislative Update
8. Open Discussion
    a. Rice's Whale and Right Whale Speed Rule Update
    b. FDEP Clean Waterways Act Stormwater Rulemaking
    c. Federal Updates (WOTUS, NEPA, etc.)
    d. Other Issues
9. Adjourn

F S T E D

Florida Seaport Transportation and
Economic Development Council

Seaport Security Advisory Committee Meeting

Wednesday, August 2, 2023
Hilton, Ft. Lauderdale Marina

AGENDA

9:00 am – 12:00 pm

1. Call to Order
2. Discussion of New Drone Regulations and State Law
3. Discussion of LNG Training on Mariner credentials as a Coast Guard requirement
4. Discussion of other State and Federal Issues
5. Discussion of Past FSTED Security Grant Spenddowns
6. Review and Recommendations Concerning FSTED Program Seaport Grants
7. Other Issues
8. Adjournment

Tab 7E

Other Issues

Tab 8

U.S. Army Corps Update

Tab 9

U.S. Customs and Border Protection Update

Tab 10

Communications/Marketing Discussion

MARKETING UPDATE

TO: **Florida Ports Council Board of Directors**

CC: **Mike Rubin, President & CEO, Florida Ports Council**

FROM: **Edie Ousley, President**

DATE: **July 25, 2023**

RE: **Marketing and Communications Update**

Thank you for the opportunity to continue providing the Florida Ports Council (FPC) with strategic marketing and communications services.

This memo is intended to provide a high-level overview of the FY 2022-23 marketing campaign, and provide insight into what to expect for the FY 2023-34 marketing campaign. More detailed information will be provided during the August 3, 2023 Board of Directors meeting.

FY 2022-23 Marketing Campaign Overview:

You'll likely recall that the FY 2022-23 marketing campaign investment was designed to answer the call from our partners at FDOT and the executive branch to strengthen awareness of Florida seaports, build strength around our brand and secure additional throughput with added vessels calling on Florida seaports.

Thanks to input from the FPC's Communications and Marketing Committee, we were able to cohesively develop a campaign theme, secure high-quality Florida seaport photos and videos to incorporate into the FPC's marketing campaign.

Using a "Reliable, Resilient & Ready" theme, creative artwork for digital and print ads, professionally produced videos which incorporated our member port videos, and professionally produced audio spots for digital streaming programs, we launched the FPCs campaign during the lead up to the 2023 Legislative Session, with a heavy deployment of ads during the 60-day session. Organic social media complemented the professional ad and marketing efforts.

Specifically, the advertising campaign targeted Florida business and political publications, port transportation industry publications, and a digital campaign that targeted lawmakers as well as high-earning and high-propensity conservative voters.

Collectively, the FPCs ads received millions of impressions, meaning they were seen or heard by millions in our targeted audience. Our highest performing ad products were our two videos

and our audio (streaming radio) spot. In fact, our video and audio spots exceeded industry viewing and listening national rate averages.

This overall strategy helped the FPC and its member ports to be seen by our FDOT and executive branch partners, and further strengthened the FPCs brand as the leading advocate for Florida's ports.

As we look to secure additional funding during the 2024 Legislative Session, we now pivot our efforts to more specifically target lawmakers.

FY 2023-24 Marketing Campaign Preview:

Yellow Finch Strategies is recommending that we meet lawmakers where we know they are reading and listening, and that we deploy a message urging them to "Sea's the Opportunities" during the 2024 Legislative Session to further strengthen Florida's ports.

We'll blend in key words, like "resiliency," that we know FDOT and the executive branch want to continue incorporating into messaging, and we'll work to pinpoint exactly how additional investments will be used through mapping graphics that identify individual ports to individual projects.

Now, it will be important that we clearly, and easily, explain how an individual construction or expansion project will help Florida taxpayers. For example, by expanding a birth at Port X, we'll increase the amount of product Y, which will build Z more roads or feed Z more people.

As for reaching our target audience (lawmakers), we recommend the following:

- Florida Trend
- WFLA-FM Tallahassee, The Morning Show with Preston Scott (6a-9a)
- Digital ads targeting lawmakers in their districts and in the Captiol
- Florida Politics, transitioning our existing ads to more of an editorial campaign

In totality, I recommend keeping our marketing campaign budget at the same level as last year -- $80,000. This will allow us to not only place our ads where we know lawmakers are reading and listening, but it will cover the cost of ad design, photography cost for a refresh on seaport images, etc.

Again, this is a high-level overview. Please feel free to ask questions when we're together at next week's board meeting.

Thank you

Tab 11

Legislative

Tab 11A

State

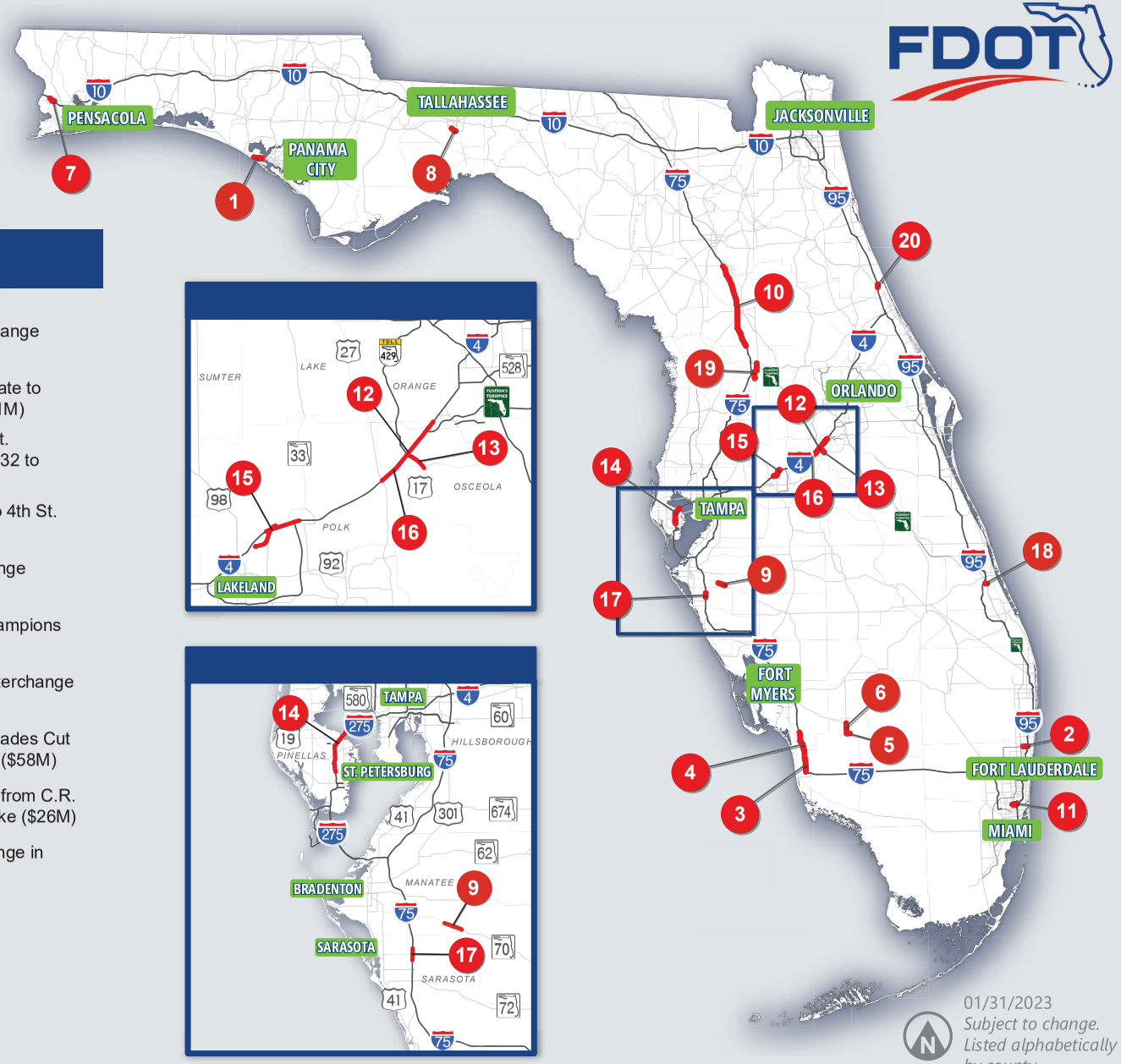
MOVING FLORIDA FORWARD

Infrastructure Initiative

FDOT

CONGESTION RELIEF PROJECTS (FUNDING)

1. U.S. 98 from R. Jackson Blvd. to Hathaway Bridge ($98M)
2. SW 10th St. ($178M)
3. I-75 at Pine Ridge Rd. Interchange ($23M)
4. I-75 from Golden Gate Pkwy. to Corkscrew Rd. ($578M)
5. S.R. 29 from C.R. 846 E to New Market Rd. ($85M)
6. S.R. 29 from New Market Rd. to S.R. 82 ($44M)
7. I-10 from Eastbound weigh station to Nine Mile Rd. ($162M)
8. S.R. 263 from S.R. 61 to C.R. 2203 ($90M)
9. S.R. 70 from Bourdside Blvd. to Waterbury Rd. ($53M)
10. I-75 Auxiliary Lanes from S.R. 44 to S.R. 326 ($479M)
11. Golden Glades Interchange ($150M)
12. I-4 from Champions Gate to Osceola Pkwy. ($1,451M)
13. Poinciana Parkway Ext. Connector from C.R. 532 to S.R. 429 ($1,318M)
14. I-275 from 38th Ave. to 4th St. ($354M)
15. I-4 at S.R. 33 Interchange ($197M)
16. I-4 from U.S. 27 to Champions Gate ($635M)
17. I-75 at Fruitville Rd. Interchange ($192M)
18. W Midway Rd. from Glades Cut Off Rd. to Jenkins Rd. ($58M)
19. U.S. 301 Realignment from C.R. 470 to Florida's Turnpike ($26M)
20. I-95 at U.S. 1 Interchange in Volusia Co. ($340M)



@MyFDOT
@MyFDOT

01/31/2023
Subject to change.
Listed alphabetically by county.

Florida House of Representatives

Office of the Speaker

MEMORANDUM

TO: Members of the Florida House of Representatives
FROM: Paul Renner, Speaker
SUBJECT: Interim Committee Meeting Schedule
DATE: May 10, 2023

To allow for advanced planning, we have worked together to identify weeks for Fall 2023 Interim Committee Meetings. Dates are as follows:

- Week of September 18 – 22, 2023
- Week of October 16 – 20, 2023
- Week of November 6 – 9, 2023 (Veterans Day observed on Friday, November 10)
- Week of November 13 – 17, 2023
- Week of December 4 – 7, 2023 (Chanukah begins on Thursday, December 7)
- Week of December 11 – 15, 2023

The 2024 Regular Session will convene on Tuesday, January 9, 2024.

THE FLORIDA SENATE
SENATOR KATHLEEN PASSIDOMO
President

MEMORANDUM

TO: All Senators
FROM: Kathleen Passidomo
SUBJECT: Interim Committee Meeting Schedule
DATE: May 10, 2023

To allow for advanced planning, dates for Fall 2023 Interim Committee Meetings are as follows:

- Week of October 9 – 13, 2023
- Week of October 16 – 20, 2023
- Week of November 6 – 9, 2023 (Veterans Day observed on Friday, November 10)
- Week of November 13 – 17, 2023
- Week of December 4 – 7, 2023 (Chanukah begins on Thursday, December 7)
- Week of December 11 – 15, 2023

The 2024 Regular Session will convene on Tuesday, January 9, 2024.

MEMORANDUM

DATE: May 5, 2023

TO: Florida Port Directors

FROM: Michael Rubin, President/CEO

SUBJECT: **LEGISLATIVE REPORT – END OF SESSION REPORT**

The Florida Legislature formally completed Regular Session 2023 early on Friday, May 5. The Session was marked by several high-profile pieces of legislation that were passed and signed by the Governor during the first few weeks of Regular Session 2023, including tort reform, abortion and several social and K-12 related issues. There also were a couple of transportation related bills that passed dealing with several administrative and contractual issues at FDOT.

The Florida Legislature fully funded the FDOT Fiscal Year 2023/2024 Work Program, included our seaport budget items in the Work Program. We provide the following report on seaport-related issues that either passed or failed to pass during Regular Session 2023:

Legislation Passed by the Florida Legislature

1. **Fiscal Year 2023/2024 Budget (SB 2500 Conference Report by Senate Appropriations House Appropriations)**. The Senate and House completed negotiations early this year and finished the conference report on May 2nd. The final budget came in at a record $117 billion, bolstered by unspent federal COVID relief funds. The Budget fully funds the FDOT Fiscal Year 2023/2024 Work Program at a record $13.6 billion. This includes over $150.5 million for seaport projects and programs in the following specific line items:

   A. **Line Item 1996 -- $15 million for debt reserve payments** (FPFC 1996 Bond Refinance).
   B. **Line Item 1997 -- $10 million for debt reserve payments** (FPFC 1999 Bond Refinance).
   C. **Line Item 1998 -- $114,327,403 for the FSTED Program, SIS, GM, SPII and other FDOT allocations** in FDOT 5-Year Work Program.
   D. **Line Item 1999 -- $10,000,000 for the Seaport Investment Program/Bond debt reserve payments.**
   E. **Line Item 2001 -- $43,465,731 for the FDOT Intermodal Development/Grants Program.** This may or may not include some seaport projects.

   There were two individual member projects related to seaports included in the final Budget. The funds for these projects came from non-recurring General Revenue funds:

A. **JAXPORT Crane Replacement** -- $30 million for JAXPORT crane replacement. Request formally submitted by Senator Yarborough (R-Jacksonville) and Representative Daniels (D-Jacksonville).
B. **Port of Palm Beach Land Acquisition for Cargo Capacity** -- $500,000 for land acquisition for cargo capacity. Request formally submitted by Senator Harrell (R-Stuart) and Representative Waldron (D-Wellington).

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2. **Unmanned Aircraft Systems Act (CS/CS/SB 908 by Senator Rodriguez and CS/CS/HB 645 by Representative Brackett)**. This legislation adds seaports to the list of "critical infrastructure facility" in the Unmanned Aircraft Systems Act. The legislation passed unanimously out of the Legislature on May 1st. This legislation was designated by the FPC Board as a priority legislation for all seaports, and along with other seaport representatives FPC staff registered their support during the committee process. The definition of seaports was clarified to include "a deepwater port listed in s. 311.09(1), F.S., and to specify that such seaport "need not be completely enclosed by a fence or other physical barrier and need not be marked with a sign or signs indicating that entry is forbidden."

3. **Transportation (CS/CS/CS/SB 64 by Senator Hooper and CS/CS/CS/HB 425 by Representatives Andrade/Esposito)**. This legislation contains a variety of transportation issues and programs. The language includes a requirement that FDOT "make up to $20 million available each year for fiscal years 2023-2024 through 2027-2028, from existing work program revenues, to fund projects that meet the public purpose of providing increased capacity and enhanced capabilities to move and store construction aggregate." Eligible applicants for project funding "are seaports listed in s. 311.09 and rail lines and rail facilities.

4. **Economic Programs (CS/CS/HB 5 by Representative Esposito)**. This proposed legislation will eliminate, and repeal provisions of law related to Enterprise Florida. The legislation will recreate the Department of Commerce in Florida and transfer programs like Florida's international offices over to the Department of Economic Opportunity. The legislation requires the Department of Commerce to create a "direct-support organization" to assist with the coordination of international trade efforts. The Secretary of the Department of Commerce is required to create a seven (7) member board of directors of the nonprofit organization to oversee efforts such as international trade missions and marketing.

Legislation NOT Passed by the Florida Legislature

1. **Deepwater Port Dredging (SB 1072 by Senator Rodriguez and HB 979 by Representative Gossett-Seidman)**. This legislation was filed by Representative Gossett-Seidman as a result of some information on improper conduct provided to her by dredging companies operating in South Florida. As originally drafted, the legislation would have required an "habitat equivalency analysis" for maintenance dredging permits obtained pursuant to section 403.816, Florida Statutes. The legislation also would have required local government to provide written notice of its intent to conduct a habitat equivalency analysis to adjacent local governments that "may be impacted by the dredging activity."

   The Senate bill was amended to specifically state the legislation "does not apply to any deepwater port maintenance dredging."

The Senate bill died in the Senate Rules Committee and the House bill died in the House Infrastructure Strategies Committee.

2. **Marine Encroachment on Spaceflight and Military Operations (SB 1666 by Senator Wright and HB 1491 by Representative Altman)**. This legislation would have amended section 327.462, Florida Statutes, relating to temporary protection zones for spaceflight launches and recovery of spaceflight assets. The legislation would have required a "port authority" to direct a licensed harbor pilot to "board each cruise or civilian vessel escorted into or out of the applicable port and hand deliver to the operator of such vessel a written notice of the establishment of the protection zone and the penalties for violation provided in subsection (6). The operator must sign the notice as an indication that he or she acknowledges the information provided in the notice and must return the signed notice to the pilot before the pilot disembarks the vessel.

   The Senate bill died in the Senate Military and Affairs, Space, and Domestic Security Committee. The House bill was not heard in any committee in the House.

3. **Seaport (SB 796 by Senator Wright and unfiled bill by Representative Gonzalez Pittman)**. This legislation would have increased Chapter 311 FSTED statutory minimum from $25 million to $50 million and Strategic Port Investment Initiative statutory minimum from $35 million to $70 million. Senator Tom Wright (R-Brevard) formally filed the bill in the Florida Senate. Speaker Renner requested that Representative Karen Gonzalez Pittman (R-Tampa) delay filing the bill until next year in the House. In their discussions, the Speaker stated that there were several leadership and Governor's priorities being discussed this year – including the $7 billion "Moving Florida Forward" congestion relief proposal. The Speaker stated that he wanted to create a legacy type proposal for seaports next year and would ask Representative Gonzalez Pittman to file the legislation and become a member of the House Transportation and Modals Subcommittee next year to promote next year's legislation.

   The legislation was not heard in any committee in the Senate or House.

Please call or email us if you have any questions.

Follow the Florida Ports Council to get the latest news on seaport issues:

Tab 11B

Federal

Vessel Strike Reduction Actions.—The Committee notes that NMFS issued a proposed rule to amend the NARW vessel strike reduction rule in August 2022 (87 FR 46921) and is seeking to establish vessel speed measures to protect the Rice's whale in the Gulf of Mexico. The Committee supports the goal of reducing vessel strikes of endangered whales but is concerned that as part of the development of the proposed rule, NMFS did not engage with the recreational boating and fishing community, ports, nor other stakeholders that would likely be affected by the rule. Before NOAA issues interim or final rules to protect endangered whales, the agency shall engage with affected stakeholders and incorporate relevant comments. Further, the Committee has heard from other Member offices regarding difficulties receiving fulsome and timely responses to congressional inquiries regarding the proposed rule. As a result, NOAA is directed to provide timely, substantive responses to congressional requests for information.

In addition, the Committee believes that the recovery of endangered large whales, including the NARW, will require the ability to deliver real-time monitoring of individual whales to mariners and other vessel operators to avoid ship strikes. NOAA is encouraged to use previously appropriated funds to support a near real-time monitoring and mitigation pilot program for NARWs as authorized under section 11303 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263). NOAA is further encouraged to work with other Federal agencies, including the Office of Naval Research, the United States Coast Guard, and the Bureau of Ocean Energy Management, as well as industry and academia, to support technology development, test and evaluation of whale monitoring technologies through the National Oceanographic Partnership Program. The Committee expects NOAA to include funding for a pilot program and a research and development initiative as part of the fiscal year 2025 budget request.

West Coast Whale Strikes.—The Committee is concerned by recent whale strikes off the West Coast and encourages NOAA and the U.S. Coast Guard to consider changes to reduce preventable whale strikes, especially by cargo vessels.

Further, the Committee provides $200,000 for a pilot program to establish a cetacean desk within the Puget Sound Vessel Traffic Service as authorized under section 11304 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263).

Co-management of Marine Mammals.—The Committee notes the importance of marine mammal co-management under section 119 of MMPA. Co-management promotes full and equal participation in decisions affecting the conservation and management of marine mammals used for subsistence, to the maximum extent allowed by law. NMFS has entered into co-management agreements to monitor, study, and manage harvested marine mammal stocks. The Committee encourages NMFS to work with co-management entities, including the Indigenous Peoples Council for Marine Mammals, to develop a cooperative framework to promote co-management-related research, outreach, and youth engagement, while addressing basic capacity needs to meet those objectives. This cooperative framework should also include the consideration of new co-

struction project having a total multi-year program cost of more than $5,000,000, and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such project for each of the 5 subsequent fiscal years.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration (NOAA), including maintenance, operation, and hire of aircraft and vessels; pilot programs for State-led fisheries management, notwithstanding any other provision of law; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities, $3,726,628,000, to remain available until September 30, 2025, of which, $5,000,000 is for necessary expenses of designing and deploying the near real-time monitoring and mitigation program for threatened or endangered cetaceans authorized by section 11303 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (16 U.S.C. 1391): *Provided,* That the Administrator of the National Oceanic and Atmospheric Administration

may not amend or withdraw the North Atlantic right whale vessel strike reduction rule contained in section 224.105 of title 50, Code of Federal Regulations, in effect in Fiscal Year 2022 until such Administrator has fulfilled the requirements of section 11303(e) of that Act (16 U.S.C. 1391(e)): *Provided further,* That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, United States Code: *Provided further,* That in addition, $355,081,000 shall be derived by transfer from the fund entitled ''Promote and Develop Fishery Products and Research Pertaining to American Fisheries'', which shall only be used for fishery activities related to the Saltonstall-Kennedy Grant Program; Fisheries Data Collections, Surveys, and Assessments; Observers and Training; Fisheries Management Programs and Services; and Interjurisdictional Fisheries Grants: *Provided further,* That not to exceed $50,000,000 shall be for payment to the ''Department of Commerce Working Capital Fund'': *Provided further,* That of the $4,104,709,000 provided for in direct obligations under this heading, $3,726,628,000 is appropriated from the general fund, $355,081,000 is provided by transfer, and $23,000,000 is derived from re-

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June 5,2023

Dr. Richard W. Spinard
Under Secretary of Commerce for Oceans and Atmosphere
National Oceanic and Atmospheric Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW,
Washington, DC 20230

RE: Proposed Petition To Establish a Vessel Speed Restriction and Other Vessel-Related Measures To Protect Rice's Whales

The purpose of this letter is to express our concerns and opposition to the "Vessel Slowdown Zone" rule proposed by NOAA in Federal Register Vol. 88, No. 67. This "Zone" would implement a year-round no night-time vessel transit rule and a 10-knot vessel speed restriction within waters between 100 meters and 400 meters deep from approximately Pensacola, FL, to Tampa, FL. (plus an additional 10 kilometers around that area).

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. 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 into and out of Florida and link our state to vital international markets.

The proposed rule, along with the petition materials submitted to support the proposal provide a paucity of rationale for such an overreaching rule on Florida's navigable commercial waters. The proposal to limit vessel operations in just Florida waters also calls into question whether this proposal is based on something other than scientific data.

Implicit in the proposal and petition materials is a declaration that Florida seaports on the Gulf Coast have limited operations and shutting down or limiting operations at those seaports will not impact either supply chain issues in Florida or the U.S. Nothing could be further from the truth. These seaports are responsible for the delivery of over 40 percent of fuel to Floridians and visitors to the state – they provide fuel to some of the busiest airports in the U.S. – Orlando International Airport and Tampa International Airport. We wonder what the impact of this overreaching rule would have been during the recent fuel crisis at Port Everglades because of a weather incident when fuel terminals

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in Port Tampa and Port Manatee helped supply South Florida with fuel. Imagine what the impact will be if a Hurricane hits somewhere in Florida and NOAA has instituted a rule that essentially limits or even shuts down fuel vessel transits to Florida Gulf Coast ports.

In addition to the impacts on fuel deliveries to Florida, this rule runs counter to efforts by other federal agencies and the State of Florida to increase the cargo capacity of Florida seaports to ensure an effective and efficient supply chain system for U.S. businesses and citizens. We have seen an increase in other cargo shipments into Florida Gulf Coast seaports because of these efforts to respond to supply chain crisis and Covid impacts.

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 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. Any insinuation that these seaports are not “busy” is not only inaccurate but an insult to the over 100,000 men and women whose jobs are dependent on vessel and cargo activity at these seaports.

Florida’s seaports have been tireless advocates and stewards on protecting the environment and marine life that surrounds our state. This includes many of our seaports serving on ocean and marine advocacy groups like the Marine Resources Council, Green Marine, and the Florida Ocean Alliance. Florida seaports are committed to protecting whales on both the Atlantic and Gulf Coasts. We continue to work with local federal officials on near real time monitoring equipment to prevent whale strikes. Florida pilots and other vessel operators monitor their operations and movements in real time. We are dismayed by the lack of communication and interaction with NOAA officials in D.C. in the drafting of these overreaching regulations. Administrative procedures that call for just the submission (and what often appears to be a disregard) of hundreds of comments does

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nothing to help justify the regulatory activity of NOAA or the impacts of these regulations on vital cargo supply chain operations around the U.S.

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.

Sincerely,

Michael Rubin
President & CEO
Florida Ports Council

CC: Florida Congressional Delegation

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FLORIDA PORTS COUNCIL

ANALYSIS PAPER

DATE: June 27, 2023

TO: Interested Parties

FROM: Michael Rubin, President/CEO

SUBJECT: **A REVIEW OF RICE'S WHALE DECLARATIONS BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Executive Summary

The studies and analyses used by the National Oceanic and Atmospheric Administration (NOAA) for their proposed rule – "To Establish a Vessel Speed Restriction and Other Vessel-Related Measures To Protect Rice's Whales' – are flawed and biased toward a conclusion that the Rice's Whale is "one of the most endangered whales in the world." This hyperbolic declaration is then used to justify what is oddly a regulation only centered on one specific commercial vessel area – Florida waters from Pensacola to Tampa Bay.

NOAA does recognize that the reports, studies, and findings used for their regulatory actions are "suggestive," "limited," "sparse," and in the case of noise levels used to support a Biological Impact Area (BIA) only off Florida waters "surprising." However, contrary evidence or reasoning on species identification, limited population, feeding activity, and designation of a BIA are discounted by NOAA as having "limited support," or simply ignored as analysis that "needs to be addressed" at some other time. NOAA did not even bother with an independent review prior to declaring this new Gulf of Mexico whale species endangered – rather the same NOAA scientist that conducted the initial review finding a new species only in the Gulf of Mexico also is the primary author for the endangered species review.

The use of this biased data deficient analysis to enact a regulation that will have a detrimental economic dislocation impact on blue water commercial activities associated with cargo, cruise, fishing, and military operations in just Florida is excessive and borders on bureaucratic negligence with respect to jobs and revenue that will be lost. The Biden Administration and Congress must require NOAA to withdraw this regulatory proposal until proper analysis has been conducted and input from other maritime professionals is obtained.

This paper reviews the analysis and determinations made by NOAA in the following areas:

1. Determination that the Rice's Whale is a new species of whale.
2. Determination that there is only a limited population of the Rice's Whale and its only habitat is a small BIA from Pensacola to Tampa.

3. Determination that this endangered subspecies spends 88% of its day in 15 meters of water at nighttime.
4. Determination of threats to the Rice's Whales.
5. Recommendation of regulations to protect the Rice's Whale.

1. Determination that the Rice's Whale is a new endangered species of whale

The declaration by NOAA scientists that they have discovered a new species of whale that only lives in U.S. waters in Northwest Gulf of Mexico is based on data deficient information, and frankly appears to reflect the bias of the individuals conducting the review. NOAA scientists have been conducting more intensive searches in North Gulf of Mexico since the Deepwater Horizon oil spill in 2010 to determine the impact on sea life in the Gulf for impacts related to the oil spill, and amazingly found a new species of whale during their reviews in 2014. The article by the NOAA scientists declaring this new species was accepted in November 2020 and published in 2021 – five years after a formal determination by NOAA that this species was "one of the most endangered whales in the world." It is questionable whether NOAA has pressured an acceptance of a new species in U.S. waters to justify their endangered species declaration in 2016.

Bryde's-like whales are a complex of medium sized baleen whales that occur in tropical waters of all three major ocean basins. As noted in the article published in 2021, the designation of this new species of Gulf of Mexico Whale is not without conflict, other reviewers and scientists recognize a single species of Bryde's-like whales and consider whales similar to the one found in the Gulf of Mexico a subspecies of the Bryde's or Baleen whales. (See, Rosel & Wilcox 2021 article, page 578). This conflict is simply disregarded by NOAA scientists that appear to have reached the substantive presumption that they have found a new species of whale only located in Northwest Gulf of Mexico.

The initial basis for the declaration of endangered species status by NOAA and determination of a new Gulf of Mexico whale species was a 2014 analysis led by Dr. Patricia Rosel, a NOAA fisheries scientist and Chair of the Taxonomy Committee of the International Society of Marine Mammalogy. In 2014, Dr. Rosel, along with NOAA fisheries scientist Lynsey Wilcox conducted the first mitochondrial DNA (mtDNA) study on 18 Bryde's-like whales – 14 collected in NE Gulf of Mexico, 2 from whales stranded off Louisiana. The two NOAA scientists concluded in that study that the "level of divergence **suggests** a unique evolutionary trajectory" for this Bryde's-like whale found only in the Gulf of Mexico. Although the sample collected could share biology with sei whales, the NOAA endangered species review states that these findings were "uninformative across this group of species. Future taxonomic research is warranted using a broader set of informative nuclear markers." (See, NOAA Endangered Species Review, page 4).

Rather than wait for future research or even allow for independent review of this 2014 study, the same NOAA scientist that conducted this review also is the primary authority of the NOAA status review conducted in 2016 under the Endangered Species Act. Not surprisingly, this data deficient analysis leads to a formal declaration by NOAA that the Gulf of Mexico Bryde's-like whale is "one of the most endangered whales in the world."

Six years after the initial 2014 mtDNA analysis and two years after the endangered species review, Dr. Rosel and Wilcox conducted a study of a Bryde's like whale that was found stranded off Florida Bay in the Everglades. The cause of death of the whale was determined to be due to ingestion of plastic. Dr. Rosel conducted a morphological examination of the skull of the whale. Based on this review and additional mtDNA samples taken on Gulf of Mexico whales (now up to 36 whales), Dr. Rosel and contributors submitted an article to Journal of Marine Mammal Science that was accepted and published in 2021. This is a Journal published by the

International Society of Marine Mammalogy – the society that Dr. Rosel sits on as Chair of the Taxonomy Committee.

In this 2021 article, Dr. Rosel and others determined that these Bryde's-like whales found in the Gulf of Mexico "are a previously unnamed species," and the "only year-round resident baleen whale species" in the Gulf of Mexico. There was no independent review, and any submission to other organizations where Dr. Rosel is not in a leadership position could not be found. This does lead to a question of whether NOAA's declaratory actions in 2016 and subsequent determinations on this new endangered Gulf of Mexico species reflect a bias of the individual that found a new whale species in the Gulf of Mexico.

Discussions on determinations of whether a variety of different Bryde's-like species exist around the world, or genetic similarities between this new Gulf of Mexico species and sei whales are discussed but merely noted including the statement cited above that "future taxonomic research is warranted using a broader set of informative nuclear markers." (See NOAA Endangered Species Review, page 4).

The most telling statements of bias in the 2016 NOAA Endangered Species Review and the 2021 Journal of Marine Mammal Science article concern the findings of a limited habitat location in Northwest Gulf of Mexico. Reviews of sightings of this new Gulf of Mexico whale outside of the Gulf of Mexico are discounted as having "limited support" or "difficult to interpret." (See NOAA Endangered Species Review, pages 11 and 15). Similarly, strandings of this new Gulf of Mexico whale outside of the Gulf of Mexico are discounted as due to a "Loop Current" or winds that move these moving carcasses away from the Gulf of Mexico. (See NOAA Endangered Species Review, page 11, and 2021 Journal of Marine Mammal Science article, page 584).

Perhaps the most interesting comparison analysis of similar whale studies by international scientists is a study conducted by Tadasu Yamada, Chief of Division of Mammals and Birds at the National Science Museum in Tokyo. Yamada, (curiously a contributor to the 2021 Article noted above). In 2003 Yamada and others conducted research on a "new discovered species of living baleen whale." This analysis was accepted and published in the British Journal "Nature" on November 20, 2003. The analysis concluded that a morphological review of a stranded whale and mtDNA analysis **implies** that this whale is a "distinct species." (See, Nature, vol 426, page 280). This newly found whale was subsequently named Omura's Whale. Independent review by other scientists have described information on the Omura's Whale as "data deficient" and declined to identify the whale as a distinct species. The Whale and Dolphin Conservation (WDC), states that "although they are seldom seen, Omura's Whales are still being discovered in new places and it is possible that in the coming years, further discoveries will demonstrate that they live in tropical and warm-temperate seas all over the world." (See, WDC website page on Omura's Whale). While the 2016 NOAA endangered species review notes this finding, it curiously doesn't use similar analysis on the Omura's Whale that might call into question the declaration of a seldom seen new endangered Gulf of Mexico whale species. Additional discussions on biological habit characteristics of the Omura's Whale are also illuminating and discussed below.

The statement by Dr. Rosel and others in the 2021 Journal of Marine Mammal Science should be the most troubling for a federal agency that has the power to enact a regulation that impacts millions of U.S. citizens. On page 600 of that article, Dr. Rosel and others note – "we recognize the lingering unfinished, but ongoing, taxonomic work in this group, i.e., genetically verifying the holotype of *B. edeni* and the need to identify and designate a neotype specimen and its associated genetic signature for *B. brydei.* Some may not yet support species rank for these lineages, but might rather support continued recognition of subspecies status until these

underlying taxonomic details are worked out." This acknowledgement had no impact on either the declaration by NOAA of endangered species or the resulting push for oppressive regulatory prohibitions.

It is understandable that NOAA fisheries scientists would be excited about the potential for finding a new species of whales. Such scientists might be compelled to ignore or reject contrary or more conservative evidence that would conflict with their bias. At a minimum it is problematic for a federal agency to take declaratory actions based on data deficient evidence that will negatively impact thousands of jobs and millions in commercial activity. NOAA regulatory actions based on this data deficient evidence should be seen as arbitrary and capricious.

2. Determination that there is only a limited population of the Rice's Whale and its only habitat is a small BIA from Pensacola to Tampa

The declaration by NOAA scientists that there is a limited population of Rice's Whale and its only habitat is a small BIA from Pensacola to Tampa is based on data deficient information, and again appears to reflect the bias of individuals conducting the review. The oddity of a formal declaration that the Rice's Whale is in a small BIA from Pensacola to Tampa is very troubling for a whale that has been found all over the Gulf of Mexico and declared as one of the most endangered whales in the world. Are there non-scientific reasons for a finding and resulting regulation that has a primary impact on commercial activity off the Florida coast?

As noted above, NOAA conducted a status review of Bryde's Whales in the Gulf of Mexico under the Endangered Species Act. The population status review begins with a recognition by NOAA that there are "few current estimates of world-wide abundance of Bryde's Whales." (NOAA Endangered Species Review, page 8). They state that outdated techniques used in 1980 provided estimates of 13,854 in the southern Indian Ocean, 16,585 in the western South Pacific, and 23,181 in the South Pacific. (id.). NOAA also uses examples of other Bryde's-like whale populations that occur in relatively confined areas – South African inshore population, the Gulf of California populations, and the Hawaiian Islands stock." There is no statement in the study by NOAA if these whales were tested for genetic similarities to the new species of Bryde's-like whale in the Gulf of Mexico. Although NOAA notes limited analysis and population statistics world-wide on what could be similar Bryde's-like whales they make no assumptions on any of these whales outside of the Gulf of Mexico. The only categorical statement made in the NOAA study is for the new subspecies of Bryde's-like whale at "most likely less than 100 whales. Again, data or sightings outside the Gulf of Mexico are designated as having "limited support," "difficult to interpret," or even inaccurate due to perception or availability bias by the observer. (NOAA Endangered Species Review, pages 11, 15, and 17).

The NOAA study uses several sighting studies from 1989 to 2015 to determine the population of what is now called the Rice's Whale at "most likely less than 100 whales." (NOAA Endangered Species Review, page 19). These include surveys conducted by the National Marine Fisheries Service of NOAA, other cited surveys, and GULFcet surveys conducted under the auspices of the Bureau of Ocean Energy Management "to determine the distribution and abundance of cetaceans (whales and dolphins) in areas potentially affected by future oil and gas activities along the continental slope in the north-central and western Gulf of Mexico." (See, GULFcet website -- https://www.gulfbase.org/project/gulfcet).

The National Marine Fisheries Services of NOAA found approximately 27 sightings of Rice's Whales – only in the Gulf of Mexico. The sightings were conducted between 1989 and 2015 using shipboard and aerial surveys. The

sightings were only conducted in the northern Gulf of Mexico from Texas to Florida and western North Atlantic. The NOAA report notes strandings of Bryde's Whales in the Gulf of Mexico in Louisiana, Mississippi, Alabama, Florida, Puerto Rico, the U.S. Virgin Islands. The study also notes stranding records of Bryde's Whales in the Atlantic from North Carolina down to Florida.

Using the GULFcet surveys and other documented surveys conducted from 1992 to 2014 (NOAA Endangered Species Review, table 2, page 18), there were 252 claimed sightings of Rice's Whales in the Gulf of Mexico and 7 sightings in the Atlantic. Citing an analysis conducted by "Roberts et al." in 2016, NOAA states that "perception and availability bias" may lead to inaccurate identification of sighted whales. The Study notes that the Rice's Whales sighted in Atlantic "could have, in fact, been sei whales." (NOAA Endangered Species Review, page 19).

Like the acknowledgement that data is limited on the determination that the Rice's Whale is a new species, NOAA states that "other methods (e.g., capture-recapture, acoustic monitoring) and surveys dedicated to Bryde's Whales are necessary to monitor trends." NOAA even acknowledges that conclusions are difficult to make for the Southern Gulf of Mexico "where there has not been a similarly high level of cetacean survey." (NOAA Endangered Species Review, page 19). Frankly, there could be a large population of a similar species to the Rice's Whale outside of U.S. waters off the coast of Cuba, but that does not fit the presumption bias of a new endangered species of less than 100 whales only residing in the Gulf of Mexico.

Sightings, both aerial and on water, are made more difficult because of the physical similarities between the Rice's Whale and other Bryde's-like whales that inhabit other waters outside of the Gulf of Mexico. The 2021 Journal of Marine Mammal article by Dr. Rosel and others analyzed the strandings of 31 Bryde's-like whales, and they were only able to verify 9 of those whales as a Rice's Whale. More compelling and demonstrative of the bias by NOAA scientists is the detail that 5 of these verified whales were found in Louisiana, North Carolina and South Carolina – outside of the BIA area designated by NOAA. (See, 2021 Journal of Marine Mammal Science article, pages 591-594). Despite contrary evidence, NOAA concludes the Rice's Whale is a small population of whales only located in Northwestern Gulf of Mexico, and thus is one of the most endangered whales in the world.

Again, contrary habitat evidence is ignored. For example, tagging of four Omura's Whales off Northwest Madagascar determined that those whales remained within a small coastal range of only 230 to 405 km – a similar biology habit. (See, Paper SC/67B/NH/09 presented to the International Whaling Commission Scientific Committee in 2018). Additional sightings of the Omura's Whale have also found that they are in several other areas in the Indian Ocean and Pacific Ocean. Could this be contrary evidence that these Bryde's-like whales demonstrate a biological habit of small groups inhabiting specific areas around the world rather than a presumption that a finding of a single location of Rice's Whale in one area means they only inhabit that area? If those seldom seen whales can have individual pods of whales inhabit smaller locations in a variety of areas, why isn't that evidentiary comparison used with Rice's Whales by NOAA?

NOAA should be troubled by statements that not enough analysis has been conducted. Because of the Deepwater Horizon incident, NOAA has conducted extensive review of the Northern Gulf of Mexico. The same cannot be said for a review of waters in the Western and Southern parts of the Gulf of Mexico, the Caribbean and other southern parts of the Atlantic. Both the NOAA Endangered Species Review (see pages 15-19) and the 2021 Journal of Marine Mammal article by Dr. Rosel and others reveal limited or no analysis in these waters. In their 2021 Journal of Marine Mammal Article, Dr. Rosel and others state that – "future work dedicated to estimating abundance within the know habitat in the northeastern GOMx is needed." (Page 598). Also – "future

research in the western and southern GOMx will greatly aid our understanding of whether these whales utilize these habitats and if so, how often, and also how they are related to the whales that are found in the northeaster GOMx." (Page 597)

Has bias and other pressures led to a premature declaration by NOAA based on data deficient evidence that Rice's Whale is a new species limited to the Gulf of Mexico and potentially one of the most endangered species with less than 100 left in population? NOAA regulatory actions based on this data deficient evidence should be seen as arbitrary and capricious.

3. Determination that the Rice's Whale spends most of its day in 15 meters of water

The most onerous provision of the proposed NOAA regulation is the prohibition of "vessel transits at night." NOAA has not defined "night" in the proposed rule, but if it correlates to the declaration that the Rice's Whale spends a significant portion of its day in 15 meters of water "night" may have a very broad definition. As with other determinations on the Rice's whale, this declaration was made using a limited scope of actual whale activity.

In their 2016 Endangered Species Review, NOAA makes an initial declaration on the behavior of the Rice's Whale – "there is very little information on the behavior of the GOMx Bryde's Whale." However, this does not stop them from declaring a "stereotypic" pattern for the entire Rice's Whale species based on an analysis of the feeding activity of **one** Rice's Whale. (NOAA Endangered Species Review, page 19). NOAA once again uses unpublished data to support their declaration in the 2016 Endangered Species Review. That analysis was not accepted and published until seven years after the declaration of "stereotypic" in the Endangered Species review.

The analysis on the "foraging behavior in Rice's whales of the Gulf of Mexico" was written by Annebelle Kok and others and was accepted and published in Scientific Reports in 2023. The report provided an analysis of two Rice's Whales that were tagged with suction cup tags in 2015 and 2018. (See, Kinematics and energetics of foraging behavior in Rice's Whales of the Gulf of Mexico, scientific reports 2023). The NOAA Endangered Species Review cites the "nearly 3-day" foraging behavior of the whale tagged in 2015 as proof that Rice's Whales spend "47% and 88% of (their) its time within 15 m of the surface during daylight and nighttime hours, respectively." NOAA then declares that "this behavior of remaining near the surface at night could place the whales at risk of ship strike in areas where their distribution overlaps with shipping traffic." (See, NOAA Endangered Species Review, page 20). Setting a stage for a formal regulatory prohibition on vessel movements based on the recommendations in their 2016 review.

Thus, based on one tagging sample of activity by a single Rice's Whale in the Gulf of Mexico, NOAA has recommended a rule that prohibits vessel transits at night. The absurdity and hubris of using a single test to prohibit vessel traffic in an entire zone of navigable waters off the coast of Florida is staggering. This speculative determination by NOAA to then recommend regulatory action after review of a single whale may be the definition of arbitrary and capricious.

4. Determination of threats to Rice's Whales

The analysis of potential threats to Rice's Whales is broad and includes a determination of a high threat from energy and exploration. Under this analysis and a concern for one of the most endangered whales in the world, why hasn't NOAA recommended broader commercial regulatory actions in the entire Gulf of

Mexico? Is the proposed regulation a biased regulation aimed primarily at Florida for some reason or the beginning of an attempt by NOAA to propose an end to all commercial activity in the Gulf of Mexico?

In their 2016 Endangered Species Review, NOAA conducted an analysis of threats to determine whether the Rice's Whale was an endangered species. NOAA ranked the following threat factors in severity and certainty. (See pages 85-90)

- Present or Threatened Habitat Destruction, Modification or Curtailment of Habitat or Range. Because of "habitat modification and destruction due to both energy exploration, development and production (drilling rigs, platforms, cables, pipelines), and oil spills and oil spill response" this threat was ranked as high in severity with relatively high certainty. (Page 85).
- Overutilization for Commercial, Recreational, Scientific, or Educational Purposes. NOAA considered historical whaling and research biopsy sampling in this category and determined this threat was low in severity and certainty. (Page 85)
- Disease, Predation and Parasites. NOAA considered the specific threat of disease in the Gulf of Mexico an determined this threat was low risk with a relatively low certainty. (Page 85)
- Inadequacy of Existing Regulatory Mechanisms. NOAA states that "regulatory mechanisms were not sufficient to maintain the population" of Rice's Whales "where energy exploration and production started in the 1950s and is now widespread, and where there is a significant amount of shipping traffic." NOAA determined this threat to be high in both areas. The 2016 Endangered Species Review further states – "ship strikes are of concern to the current population, given its extremely small size, and there are no regulatory mechanisms in place in the GOMx to address them. Additionally, future energy exploration in the EPA is a concern." (Page 86)
- Other Natural or Human Factors Affecting Continue Existence of the Population. Finally, NOAA evaluated a "suite of other natural and anthropogenic threats as follows:
    - Vessel collisions scored high as 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. (Page 87)
    - Military activity scored moderate risk and relatively low risk of certainty. These activities were determined "not constant" and less likely to have a negative impact on the population.
    - Commercial fishing gear entanglement scored moderately high in severity with moderately high certainty. NOAA specifically cited the fishing gear used for shark, snapper-grouper, menhaden and shrimp was the recent for a relatively high threat score. (Page 88)
    - Plastics and marine debris, aquaculture, and climate change, all scored as low threats. NOAA did note that a change in aquaculture activities initiated in or near the BIA could change the score. (Page 88). Interestingly the death of the Rice's Whale studied by Dr. Rosel in the 2021 Journal of Marine Mammal article due to ingestion of plastic did not cause NOAA scientists to declare a higher threat level for plastics and marine debris.
    - Demographic stochasticity, genetics and stochastic and catastrophic events were scored as high severity and high certainty. NOAA stated that vessel and other background noise could make hearing mating calls difficult and noted that the Deepwater Horizon oil spill resulted in a death, reproductive failure, and other adverse health effects. (Page 89)
    - Anthropogenic noise, including noise from aircraft and vessels associated with oil and gas activities, oil drilling and production, military training and exercises, shipping traffic and other

> vessels, and seismic surveys were reviewed. Military activities scored the lowest threat. Oil and gas aircraft and vessel noise and oil drilling were considered a moderate risk (with a statement of additional concern if new oil and gas exploration was allowed by the EPA). Noise from shipping traffic also scored moderate. (Page 89)

As previously noted, the 2016 Endangered Species Review that contains these formal findings of threat and potential regulatory action was based on an unpublished and data deficient review written in 2014. Despite concerns raised about additional reviews, studies, and analysis the Review states that these "threats pose major threats to this population and place it at risk of serious degradation or extinction." (Page 90). Curiously, the high threats annotated with respect oil and gas activity above were not included in either the petition filed by several environmental groups in 2021 or by NOAA in their Federal Register comment request discussed below. Was the difficulty in imposing regulations that would impact the cost and availability of fuel for hundreds of millions of U.S. citizens and businesses a Rubicon too far to cross or was there another reason for the recommended oppressive regulatory action just off the Florida coast?

The statements by NOAA concerning the inadequacy of existing regulatory mechanisms are troubling and reflect an overly zealous agency seeking to impose new and more restrictive regulations around the U.S. NOAA has developed a worst-case scenario where the potential for prohibition on all commercial activity in the Gulf of Mexico may be the ultimate goal of NOAA scientists. Using speculative research and analysis on a limited number of whales, NOAA has begun this prohibition effort off the Florida coast. Any use of speculative threats identified using data deficient information to recommend and create regulatory action should be declared arbitrary and capricious.

5. Recommendation of regulations to protect the Rice's Whale

The proposed rule contained in NOAA's request for comments is overreaching and oppressive. This proposed rule will have a detrimental impact on blue water commercial activities associated with cargo, cruise, fishing, and military operations in just Florida is excessive and borders on bureaucratic negligence with respect to the jobs and revenue that will be lost. Any NOAA regulatory action based on the worst-case scenarios and data deficient analysis identified on the Rice's Whale would be legally deficient and arbitrary and capricious.

On April 7, 2023, NOAA published a "notice of receipt of petition; request for comments" in the Federal Register. (See Federal Register, Vol. 88, No. 67, Dated April 7, 2023). The notice delineated a proposed rule recommended by a petition from several environmental groups. NOAA has requested comments, submitted prior to July 6, 2023, on a rulemaking proposal to establish a year-round 10-knot vessel speed restriction within waters between 100 meters (m) and 400 m deep from approximately Pensacola, FL, to just south of Tampa, FL (i.e., from 87.5° W longitude to 27.5° N latitude) plus an additional 10 kilometers (km) around this "Vessel Slowdown Zone." The proposal also includes the following restrictions within this ''Vessel Slowdown Zone'': (a) no vessel transits at night; (b) vessels transiting through the zone must report their plans to National Marine Fisheries Service (NMFS), utilize visual observers, and maintain a separation distance of 500 m from Rice's Whales; (c) use and operate an Automatic Identification System, or notify NMFS of transits through the zone; and (d) report deviations from these requirements to NMFS.

As of June 21, 2023, almost 30,000 comments have been submitted. Of concern for those blue water economy businesses and jobs dependent upon commercial activities in this area of the Gulf of Mexico is whether NOAA will consider any responses other than their own declarations already posted in 2016.

It is worth reiterating that these proposed regulations are in response to actions involving **three** whales. Two vessel interactions with Rice's Whales -- in 2009, a whale was found stranded in Tampa Bay, Florida, with injuries consistent with blunt force trauma (actual cause of death could have been from other sources); and, in 2019, a free-swimming whale was observed in the northeastern Gulf of Mexico with a severely deformed spine posterior to the dorsal fin that was noted as "consistent with a vessel strike." (See 2021 Petition, page 11). The other whale action used for these proposed regulations was the study of the feeding activity of one whale – declared stereotypical – to determine that Rice's Whales spend 88% of their nighttime activity in 15 meters of water.

The 2021 petition filed by the several environmental groups relies upon the same data deficient analysis conducted by Dr. Rosel and others in the initial 2014 mtDNA analysis, the 2016 NOAA Endangered Species Review, and the 2021 Journal of Marine Mammal Science article. This type of reasoning is a prime example of circular logic – the only reason to accept the declarations made on the Rice's Whale is if you already believe the conclusion. NOAA compounds the potential regulatory problems contained in the petition by once again failing to seek independent analysis or input from either fellow federal agencies involved in the regulation of vessel movements in U.S. waters or any maritime entities actually involved in the logistical requirements for the movement of cargo and passengers.

This potential federal regulatory action seems to follow a recent and historical pattern of aggressive regulatory actions by NOAA based on assumptions and limited data. Just recently, the U.S. Court of Appeals for the District of Columbia rejected regulatory actions taken by NOAA to protect Right Whales. (See, *Maine Lobstermen's Association v. National Marine Fisheries Service*, No. 22-5238). In finding for the Maine Lobstermen, Senior Circuit Judge Ginsburg chastised NOAA for its use of insufficient data and worst-case scenarios. Judge Ginsburg specifically states that "it is not the province of a scientific consultant to pick whales over people. [NOAA] must strive to resolve or characterize the uncertainty through accepted scientific techniques, not jump to a substantive presumption that distorts the analysis of effects and creates false positives. When [NOAA] applies a substantive presumption to distort the analysis, the public can have no confidence that "economic dislocation" is needed to protect a species and is not the result of "speculation or surmise" by overly zealous agency officials. *Spear*, 520 U.S. at 176-77." (See, Maine Lobstermen's v. National Marine Fisheries Service, No. 22-5238 at 29.). Judge Ginsburg's comments reflect the concerns we have with current actions being taken by NOAA.

Unfortunately, it appears that actions by federal courts will once again be necessary with respect to the presumptions made by overly zealous agency officials on Rice's Whales. We have requested congressional intervention to require NOAA to withdraw this regulatory proposal until proper analysis has been conducted and input from other maritime professionals is obtained. We are prepared to seek legal action to prevent the oppressive "economic dislocation" that will result if these rules are enacted.

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a right-of-way permit must reimburse the Service for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities as determined by the Regional Director.

(2) Payments received by the Service to reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities will be deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

(f) *Public hearing.* The Regional Director will give notice to Federal, State, and local government agencies and the public of the opportunity to comment on right-of-way applications under this section. A notice will be published in the **Federal Register**, and a public hearing may be held where appropriate.

(g) *Bonding.* Where appropriate, the Regional Director will require the holder of a right-of-way permit to furnish a bond or other satisfactory financial assurance to secure all or any of the obligations imposed by the terms and conditions of the right-of-way permit or by any rule or regulation, not to exceed the period of construction plus 1 year or a longer period if necessary for the pipeline to stabilize or for any reclamation or restoration requirements to be met.

(h) *Suspension of right-of-way.* If the project manager determines that an immediate temporary suspension of activities within a right-of-way permit area is necessary to protect public health and safety or the environment, the project manager may issue an emergency suspension order to abate such activities prior to an administrative proceeding. The Regional Director must make a determination and notify the permit holder in writing within 15 days from the date of suspension as to whether the suspension should continue and list actions needed to terminate the suspension. The suspension will remain in effect for only so long as an emergency condition continues.

(i) *Joint use of rights-of-way.* Each right-of-way permit will reserve to the Regional Director the right to issue additional rights-of-way permits for compatible uses on or adjacent to permitted rights-of-way areas after giving notice to the permit holder and an opportunity to comment.

(j) *Common carriers.* Pipelines and related facilities used for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product made from these substances will be constructed, operated, and maintained as common carriers.

(1) The owners or operators of pipelines subject to this subpart will accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(2) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipelines, the Secretary may, after a full hearing following due notice to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(3) The common carrier provisions of this section will not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. ch. 15B sec. 717 *et seq.*) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(4) The owners or operators of pipelines will purchase, without discrimination, any natural gas produced in the vicinity of the pipeline that is offered for sale unless that natural gas is subject to State regulatory or conservation laws governing its purchase by owners or operators of pipelines.

(k) *Required information.* The Regional Director will require, prior to issuing or renewing a right-of-way permit, that the applicant submit and disclose all plans, contracts, agreements, or other information or material that the Regional Director deems necessary to determine whether to issue or renew the right-of-way permit or the terms and conditions that should be included in the permit. That information may include, but is not limited to:

(1) Conditions for and agreements among owners or operators regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

(l) *State standards.* The Regional Director will take into consideration, and to the extent practical comply with, applicable State standards for right-of-way construction, operation, and maintenance, taking into account any additional standards necessary to protect refuge resources.

(m) *Congressional notification.* The Secretary will promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for pipeline 24 inches or more in diameter, and no right-of-way permit for such a pipeline will be issued until a notice of intention to permit the right-of-way, together with the Secretary's detailed findings as to the terms and conditions the Secretary proposes to impose, has been submitted to those committees.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 230711–0164]

RIN 0648–BL86

Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whale

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

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

SUMMARY: We, NMFS, propose to designate critical habitat for the Rice's whale (*Balaenoptera ricei*) by designating waters from the 100 meter (m) isobath to the 400 m isobath in the Gulf of Mexico (GOMx), pursuant to section 4 of the Endangered Species Act (ESA). We have considered economic, national security, and other relevant impacts of the proposed designation. We are not excluding any particular area from the critical habitat designation. We seek comments on all aspects of the proposed critical habitat designation and will consider information received before issuing a final designation.

DATES:

Comments due: Written comments and information must be received by September 22, 2023.

Public hearings: Virtual public hearings will be held on August 24, 2023, and August 30, 2023. Requests for additional public hearings must be made in writing by September 7, 2023.

ADDRESSES: You may submit data, information, or comments on this document, identified by NOAA–NMFS–2023–0028, as well as the supporting documents, by the following methods:

• *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0028. Click on the ''Comment'' icon and complete the required fields. Enter or attach your comments.

• *Mail:* Submit written comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document format (PDF) formats only.

Details on the virtual public hearings will be made available on our website at: *https://www.fisheries.noaa.gov/species/rices-whale#conservation-management.* The Endangered Species Act Critical Habitat Report, GIS data, and maps that were prepared to support the development of this proposed rule are available on our website at: *https://www.fisheries.noaa.gov/species/rices-whale#conservation-management.* Previous rulemaking documents related to the listing of the species can also be obtained electronically on our website at: *https://www.fisheries.noaa.gov/species/rices-whale#conservation-management.*

FOR FURTHER INFORMATION CONTACT: Grant Baysinger, NMFS Southeast Region, (727) 551–5790; or Lisa Manning, NMFS Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, we are responsible for determining whether certain species are threatened or endangered, and, to the maximum extent prudent and determinable, designating critical habitat for endangered and threatened species at the time of listing (16 U.S.C. 1533(a)(3)(A)(i)). On August 23, 2021, we published a final rule that revised the listing of Rice's whales under the ESA to reflect the change in the scientifically accepted taxonomy and nomenclature of this species (86 FR 47022). Prior to this revision, the Rice's whale had been listed in 2019 under the ESA as an endangered subspecies of the Bryde's whale, *Balaenoptera edeni* (Gulf of Mexico subspecies). The 2019 listing rule indicated that, with a total abundance of approximately 100 individuals, small population size and restricted range are the most serious threats to this species (84 FR 15446, April 15, 2019). However, other threats such as energy exploration, development, and production; oil spills and oil spill responses; vessel collision; fishing gear entanglement; and anthropogenic noise were also identified as threats that contribute to the risk of extinction.

In the final listing rule, we stated that critical habitat was not determinable at the time of the listing, because sufficient information was not currently available on the geographical area occupied by the species (84 FR 15446, April 15, 2019). Under section 4 of the ESA, if critical habitat is not determinable at the time of listing, a final critical habitat designation must be published 1 year after listing (16 U.S.C. 1533(b)(6)(C)(ii)). The Natural Resources Defense Council and Healthy Gulf filed a complaint in July 2020 with the U.S. District Court for the District of Columbia seeking an order to compel NMFS to designate critical habitat for the Rice's whale. A settlement agreement was approved on October 14, 2021, and a modified settlement agreement was approved on October 26, 2022 (*Natural Resources Defense Council, Inc. and Healthy Gulf* v. *Raimondo,* 1:20–cv–2047–KBJ (D.D.C.)). The modified settlement agreement stipulates that NMFS will submit a proposed rule to the Office of the Federal Register by July 15, 2023, and the final rule by June 15, 2024. This proposed rule describes the proposed critical habitat designation, including supporting information on Rice's whale biology, distribution, and habitat use, and the methods used to develop the proposed designation.

Section 3(5)(A) of the ESA defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, 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 at the time it is listed, upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species. (16 U.S.C. 1532(5)(A)). Conservation is defined in section 3(3) of the ESA as 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 (16 U.S.C. 1532(3)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

Section 4(a)(3)(B) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD) or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation. Our regulations also provide that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction (50 CFR 424.12(g)).

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened or endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section also grants the Secretary discretion to exclude any area from critical habitat if the Secretary determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' However, the Secretary may not exclude areas if such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536 (a)(2)). This

requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to jeopardize the continued existence of ESA-listed species. Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA. See 16 U.S.C. 1536(a)(1). The ESA section 7 consultation requirements do not apply to citizens engaged in actions on private lands that do not involve a Federal agency. However, designating critical habitat can help focus the efforts of other conservation partners (*e.g.,* State and local governments, individuals, and nongovernmental organizations).

This proposed rule describes information on the biology of the Rice's whale, the methods used to develop the proposed designation, and our proposal to designate critical habitat for the Rice's whale. The Endangered Species Act Critical Habitat Report, referenced throughout this proposed rule and available for review (see **ADDRESSES**), provides more detailed discussions of information and analyses that contributed to the conclusions presented in this proposed rule.

The proposed designation was developed in accordance with the current implementing regulations, which include changes made in 2019 to the definition of physical or biological feature and the requirements for designating unoccupied critical habitat (84 FR 45020, August 27, 2019). On July 5, 2022, the United States District Court for the Northern District of California issued an order vacating regulations, promulgated in 2019, that adopted changes to 50 CFR part 424 (84 FR 45020, August 27, 2019) (''2019 regulations''). Among other things, the 2019 regulations made changes to the definition of ''physical or biological features'' (50 CFR 424.02) and the criteria for designating specific areas outside the geographical area occupied by the species as critical habitat (50 CFR 424.12(b)(2)). On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order 2 days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019 regulations here. For the purposes of developing this proposed rule, however, we considered whether the analysis or its conclusion would be any different under the regulations in effect prior to 2019. We have determined that while our analysis in some respects would differ, the conclusions ultimately reached and presented here would not be any different. Additional discussion regarding these analyses is provided in this document where applicable.

As detailed in the sections that follow, the specific occupied areas proposed for designation as critical habitat for the Rice's whale contain approximately 73,220.65 square kilometers (28,270.65 square miles) of continental shelf and slope associated waters within the Gulf of Mexico.

Species Description and Life History

This section summarizes life history and biological characteristics of endangered Rice's whales to provide context for the determination of physical or biological features that are essential for the conservation of the species. Rice's whales were estimated to be the most impacted shelf and oceanic stock of marine mammals exposed to the 2010 *Deepwater Horizon* (DWH) oil spill (*Deepwater Horizon* Natural Resource Damage Assessment Trustees, 2016) and much of what we know about the species has been learned since 2010. Following the DWH event, Rice's whales were estimated to have experienced 17 percent increase in mortality (confidence interval of 7 to 24 percent), 22 percent increase in failed pregnancies (confidence interval of 10 to 31 percent), and an 18 percent higher likelihood of having adverse health effects (confidence interval of 7 to 28 percent) (DWH MMIQT, 2015). An estimated 48 percent of the Rice's whale population was exposed to DWH oil, resulting in an estimated 22 percent maximum decline in population size that will require an estimated 69 years until recovery, meaning the time it would take for the population to return to 95 percent of the baseline trajectory (DWH MMIQT, 2015).

Limited information is available on the life history of Rice's whales. Consequently, we provide specific information for Rice's whales where possible and pertinent information on the closely related Bryde's-like whales in general, highlighting traits that these species likely share. The information below summarizes information contained in the final listing rule (84 FR 15446, April 15, 2019) updated with the best scientific information available.

Like other members of the ''Bryde's whale complex'' or ''Bryde's-like whales'' in the genus *Balaenoptera,* Rice's whales are medium-sized rorqual whales. Rice's whales have a streamlined and sleek body shape, a somewhat pointed, flat rostrum with three prominent ridges (*i.e.,* a large central ridge, and smaller left and right lateral ridges), a large, falcate dorsal fin located about two-thirds of the way back on its body, and counter-shaded coloration that is fairly uniformly dark dorsally and light to pinkish ventrally (Jefferson *et al.,* 2015). The pectoral fins are uniformly dark, slender and pointed. The head of a Rice's whale makes up about one quarter of its entire body length. Its fluke, or tail, is broad. These whales exhibit no external asymmetrical pigmentation on the lower jaws, differentiating them from fin and Omura's whales. Limited data (from eight whales) indicate total length measurements for Rice's whales ranged from 470 centimeters (cm) (15.4 ft) to 1,265 cm (41.5 ft). The largest verified Rice's whale observed in the GOMx was a lactating female measuring 1,265 cm (41.5 ft) in length and the largest male was 1,126 cm (36.9 ft) (Rosel *et al.,* 2021). Based on bristle coarseness, a stranded animal initially identified as a juvenile sei whale (*B. borealis*) was reclassified as a Bryde's whale (Mead, 1977). While baleen from across the Bryde's whale complex has not been comprehensively analyzed, Mead (1977) and Kato and Perrin (2018) indicate that the baleen bristles from members of the Bryde's whale complex are coarser than those of sei whales. Similarly, Rosel *et al.* (2021) found that the baleen bristles of three Rice's whales from the GOMx were coarser than that of a sei whale that stranded in the GOMx in 1994.

Similar to other marine mammals, the Rice's whale is considered to be a k-selected species (large body size, long life expectancy, slow growth rate, late maturity, and with few offspring). Taylor *et al.* (2007) estimate that Bryde's whales worldwide may reproduce every 2 to 3 years and reach sexual maturity at age 9. Given the basic biology of baleen whales, it is likely that under normal conditions, female Rice's whales produce a calf every 2 to 3 years. The sex ratio determined for 32 individual whales stranded or biopsied from the northern GOMx was 18 females and 14 males, which is not significantly different from a 50:50 ratio (Rosel *et al.,* 2021).

Identification of several smaller Rice's whales in the GOMx stranding records (Edds *et al.,* 1993) and observations of smaller individuals during NMFS Southeast Fisheries Science Center (SEFSC) large-vessel surveys in the GOMx provide evidence of breeding. In October of 2009, a dead, lactating female

whale was found in Tampa Bay, with internal injuries consistent with blunt force trauma likely caused by a vessel strike. As a long-lived marine mammal with low reproduction rates and a very small population size, the loss of a single individual could drive the species towards extinction (Franklin, 1980; Rosenfeld, 2014).

As with its life history, little information exists on the behavior of the Rice's whale. Maze-Foley and Mullin (2006) found Rice's whales to have a mean group size of 2 (range 1–5, n = 14), similar to group sizes of the Eden's and Bryde's whales (Wade and Gerrodette, 1993). The Rice's whale is known to be periodically ''curious'' around ships and has been documented approaching ships in the GOMx (Rosel *et al.,* 2016), as has also been observed in Bryde's whales worldwide (Leatherwood *et al.,* 1976; Cummings, 1985). Two Rice's whales have shown evidence for vessel strike. This includes the dead adult, lactating female mentioned above that was discovered in Tampa Bay in 2009 with injuries, including separated vertebrae, lung damage, and subdermal contusions, consistent with impact caused by a large object, and a free-swimming Bryde's-like whale that was observed in 2019 in the northeastern GOMx with a severely deformed spine posterior to the dorsal fin consistent with a vessel strike. In September 2015, a female Rice's whale was tagged with an acoustic and kinematic data-logging tag in the De Soto Canyon (Soldevilla *et al.,* 2017). Over the nearly 3-day tagging period, the whale spent 47 percent of its time within 15 m of the surface during the day and 88 percent of its time within 15 m of the surface during the night (Soldevilla *et al.,* 2017). Curiosity around vessels, documented injuries consistent with vessel strikes, and documented behavior near the surface for a considerable amount of time illustrate the anthropogenic threat that vessels pose to Rice's whales. Bryde's whales are the third most commonly reported whale species to be struck by vessels in the southern hemisphere (vanWaerbeck and Leaper, 2008).

Taylor *et al.* (2007) estimated generation length for cetaceans using the following parameters: oldest age (or an estimate based on length), calf survival, adult survival, age at maturity, gestation length, and interbirth interval. For all Bryde's whales, the estimated generation length is 18.4 years using the following estimated parameters: maximum age of 58 years based on length (Best, 1977), age at first reproduction of 9 years based on gestation length (Lockyer, 1984) and age of sexual maturity (IWC, 1997), an interbirth interval of 2.5 years (Lockyer, 1984), calf survival rate of 0.840, and non-calf survival rate of 0.925 (IWC, 1997). According to Rosel *et al.* (2016), the majority of the samples used to estimate these parameters came from Japanese whaling data from the 'typical' or pelagic form of Bryde's whale in the North Pacific and from South Africa, and are probably the *B. e. brydei* subspecies.

Vocalizations and Sound

Sound production associated with behaviors including mating, rearing, social interaction, group cohesion, and feeding have been documented in marine mammal species (Erbe *et al.,* 2016). Baleen whale species produce a variety of highly stereotyped, low-frequency tonal and broadband calls for communication purposes that are thought to function in a reproductive or territorial context, provide individual identification, and communicate the presence of danger or food (Richardson *et al.,* 1995). Marine mammal species with and without specialized biosonar capabilities may rely on biological sounds to find prey, avoid predators, and likely use environmental sounds to support spatial orientation and navigation in three-dimensional marine habitats (Erbe *et al.,* 2016; Cure *et al.,* 2013; Deecke *et al.,* 2002; Gannon *et al.,* 2005). Generally, balaenopterids produce a variety of low-frequency tonal and broadband calls, with durations ranging from 1 to 60 seconds (s), fundamental frequencies between 10–1,000 Hertz (Hz), and high source levels from around 145 to over 190 decibels referenced to 1 micropascal (re 1 µPa) at 1 m (Richardson *et al.,* 1995; Miller *et al.,* 2021). Most balaenopterids produce some call types that are distinctive, stereotyped, and unique at the species or population level, including Rice's whales, which can be detected with autonomous passive acoustic monitoring surveys. Bryde's whales worldwide produce a variety of calls that are distinctive among geographic regions, and these calls may be useful for delineating subspecies or populations (Oleson *et al.,* 2003; Širović *et al.,* 2014). In the GOMx, Širović *et al.* (2014) reported 'Bryde's' whale call types composed of downsweeps (frequency modulated signals with decreasing frequency over time) and downsweep sequences and localized these calls (*i.e.,* researchers recorded the calls on multiple instruments that allowed them to triangulate the location of the calls and then confirmed the location with visual sightings). Rice *et al.* (2014) detected these sequences, as well as two stereotyped tonal call types that originated from 'Bryde's' whales in the GOMx.

Soldevilla *et al.* (2022a) used sonobuoys and passive acoustic tagging from three marine mammal surveys with focused effort in the Rice's whale core distribution area between 2015 and 2018 to validate potential call type sources and to characterize Rice's whale calls. Validation includes manually reviewing each automated detection and scoring each as a true or false detection. During concurrent visual and acoustic surveys, acoustic-directed approaches were conducted to obtain visual verifications of sources of localized sounds. The call repertoire that was validated to Rice's whales includes downsweep sequences (including downswept pulse pairs), long-moan calls, and tonal-sequence calls. Širović *et al.* (2014) proposed a fourth Rice's whale call type, the high-frequency downsweep call, which was not detected during the Soldevilla *et al.* (2022a) study and therefore the source remains unvalidated.

Soldevilla *et al.* (2022b) detected novel stereotyped tonal calls at three locations in the northwestern GOMx. The calls are similar to the Rice's whale long-moan calls detected in the northeastern GOMx, but with distinct differences from the northeastern calls and with at least six stereotyped variations. The cause and occurrence of these call features require further study.

Distribution, Movement, and Habitat Use

The Rice's whale is the only species of large whale endemic to the United States and the only year-round resident baleen whale species in the Gulf of Mexico (Rosel *et al.,* 2021).

Members of the Bryde's whale complex are tropical and subtropical in distribution, generally non-migratory, and found in all major ocean basins (Rosel *et al.,* 2021). Bryde's-like whales do not migrate long distances to feed in polar or temperate regions (Constantine *et al.,* 2018), nor do they have specific or separate feeding or breeding grounds (Penry *et al.,* 2011).

Based on a compilation of 181 sightings from NMFS marine mammal vessel and aerial survey sightings, the primary Rice's whale core habitat is considered to be in the northeastern GOMx, centered over the De Soto Canyon in waters between 150 m and 410 m depth (Rosel *et al.,* 2021). This area, referred to by NMFS as the Rice's whale ''core distribution area,'' is characterized by seasonal advection of low salinity, high productivity surface waters (*i.e.,* waters with high production of organic matter by planktonic plants),

leading to persistent upwelling driven by both winds and interactions with the loop current (Farmer *et al.,* 2022). In 2017, there was a genetically confirmed sighting of a Rice's whale in the western GOMx off the central Texas coast in 225 m depth (NMFS, 2018a; Rosel *et al.,* 2021).

Passive acoustic monitoring recordings from the western GOMx along the shelf break south of the Flower Garden Banks National Marine Sanctuary (FGBNMS) confirm the presence of Rice's whales in the same area as two balaenopterid sightings made by NMFS in the early 1990s (Soldevilla *et al.,* 2022b). A predictive density model highlights the importance of the 200 m isobath as an area Rice's whales may occupy along the northwestern GOMx shelf break (Roberts *et al.,* 2016). Soldevilla *et al.* (2022b) detected baleen whale calls from passive acoustic moorings deployed from June 2016 to August 2017 in areas of predicted Rice's whale habitat in several locations in the northern GOMx. Passive acoustic recorder site selection was based on the median water depth of 221 m for Rice's whale sightings in the core distribution area and locations of unidentified baleen whale sightings, as well as dispersed sampling sites along the north-central to northwestern GOMx shelf break (Soldevilla *et al.,* 2022b). A combined 1,285 days of acoustic data were collected at four western sites, and a total of 304 days of acoustic data were recorded at the concurrently deployed site in the core distribution area. Variants of Rice's whale long-moan calls were detected at three sites in the northwestern GOMx. At the westernmost FGBNMS site, 1,939 calls were detected on 47 days over 10 months of data collection (16 percent of days with data collected). The eastern FGBNMS site detected 429 calls on 18 days over 10 months (6 percent of days with data collected), and the Eugene Isles South site detected 22 calls on 3 days over 10 months (1 percent of days with data collected). No calls were detected at a site off Grand Isle, Louisiana. The recorder at the site in the core distribution area detected 66,583 long-moan Rice's whale calls over 11 months of data collection. On several occasions overlapping calls were detected and in some instances the overlapping calls were of different call subtypes indicating at least two individuals were calling during that encounter. Overlapping calls were recorded at both of the FGBNMS sites and at the site in the core distribution area. Long-moan call detections occurred in sporadic clusters throughout the year, with no evidence of seasonality at the western sites. At the western sites, at least one call was detected in every month of the year, which suggests year-round use of the western habitat area. Further research is needed to understand how many animals are using the northwestern sites and whether animals are moving between the northwestern and northeastern sites, or whether the calls at these sites represent different groups of animals.

Comparing numbers of acoustic call detections among sites is difficult. Local sound propagation conditions and ambient sound levels influence the ability to detect Rice's whale calls and the area over which whales can be detected. Higher numbers of acoustic call detections at a site may reflect higher call production rates, or it may reflect larger detection areas instead of higher animal presence. Soldevilla *et al.* (2022b) expected detection ranges at the western FGBNMS site to be approximately 25–50 percent of the detection range at the site in the core distribution area. Ambient noise levels at Rice's whale call frequencies are 6–13 decibels higher at the western FGBNMS site than the site in the core distribution area. Baleen whale calls in the 100–150 Hz frequency range generally can be detected on scales of tens of kilometers in pelagic environments (*e.g.,* McDonald, 2004). Rice's whale long-moan calls were commonly detected on scales of 20–75 km, suggesting a Rice's whale call could be detected over as much as 25 percent of the core distribution area in some conditions (Soldevilla *et al.,* 2022a). In the western GOMx, which has 6–13 decibel higher mean ambient noise levels, resulting in smaller detection distances, the same long-moan calls were detected on two sensors 40 km apart, which suggests the Rice's whale call could be detected out to distances of at least 20 km (Soldevilla *et al.,* 2022b). In the core distribution area, Rice *et al.* (2014) documented an occurrence of the same call on three sensors with a maximum of 150 km spacing, suggesting the calls could be detected out to distances of at least 75 km at times. Anthropogenic noise sources, including seismic survey airgun pulses and shipping traffic noise, appear to be the main contributors to the increased noise levels that lead to reduced detection ranges in the western GOMx. Studies in baleen whales, including Bryde's whales, have shown a decrease in communication range as a result of masking, which occurs when biologically irrelevant sounds prevent an animal from hearing biologically important sounds (Clark *et al.,* 2009; Cholewiak *et al.,* 2018; Gabriele *et al.,* 2018; Putland *et al.,* 2018). The three westernmost sites used by Soldevilla *et al.* (2022b) were not far from a major shipping fairway and vessel traffic noise was common in the recordings at those sites. The effects of low-frequency noise from shipping traffic and airguns on researchers' ability to detect calls were apparent in the detectable features of Rice's whale calls in the western GOMx. For example, many of the manually detected calls at the western sites consisted of only the 150 Hz tone due to increased noise levels below 125 Hz, and these were often of low signal-to-noise ratio likely due to a combination of sound propagation losses with distance and higher levels of shipping or seismic survey noise at the lower frequencies.

While contemporary sightings are primarily confined to the core distribution area in the northeastern GOMx, Rice's whales historically may have had a broader distribution in the northern and southern GOMx. Reeves *et al.* (2011) reviewed whaling logbooks from the GOMx and identified records of ''finback'' whales from the north-central GOMx south of the Mississippi River delta and in the southern GOMx on the Campeche Banks. Because fin whales are not part of the GOMx ecosystem, these records were likely Rice's whales misidentified as fin whales (Reeves *et al.,* 2011), suggesting the distribution of the Rice's whale was likely broader than we see currently. In the north-central GOMx, whether Rice's whales stay in this area or their use of this area is restricted to travel between the northwest and northeast through areas of high shipping traffic near the Mississippi River delta is unknown. Soldevilla *et al.* (2022b) did not record Rice's whale calls at a site offshore of Grand Isle, Louisiana or during 2 months at a site in the north-central GOMx. The absence of Rice's whale call detections at these sites could indicate an absence of Rice's whales, an absence of calling Rice's whales, or an inability to detect whales in these areas due to higher ambient noise conditions and sound propagation conditions within the Mississippi Canyon. However, Rice's whale western long-moan call variants were detected both at the western-most sites and a site in the core distribution area, which suggests movement between the areas. Rice's whale western long-moan calls were detected on 6.4 percent of days at the site in the core distribution area. Rice's

whale western long-moan call variants were detected on the same or consecutive days in the western-most and eastern-most GOMx sites, which were separated by a distance that is too far for one whale to travel in a single day (740 km), indicating that different Rice's whales produced the calls.

Based on the best available data, we conclude that the normal distribution of Rice's whales is limited to the Gulf of Mexico. No NMFS marine mammal vessel or aerial surveys from 1992 through 2019 have recorded a confirmed sighting of Rice's whales or any type of Bryde's whale along the U.S. eastern seaboard (Rosel *et al.,* 2021). While Roberts *et al.* (2016) predicted a mean monthly abundance of seven Bryde's whales along the entire U.S. eastern seaboard based on four ambiguous ''sei or Bryde's whale'' sightings documented during surveys conducted between 1992 and 2014, Roberts *et al.* (2023) later concluded that these four sightings were most likely sei whales, and that given the lack of more recent evidence of Bryde's whales and the expert opinions of Rosel *et al.,* 2021, Bryde's whales are effectively absent from the U.S. east coast. Acoustic studies off Jacksonville, Florida (Frasier *et al.,* 2016), North Carolina (Debich *et al.,* 2014), and Norfolk Canyon (Rafter *et al.,* 2018) during 2011 through 2017 have not detected any types of Bryde's whales or similar species. This evidence suggests that Bryde's whales and similar species, including Rice's whales, are extremely rare along the U.S. east coast (Rosel *et al.,* 2021). Rosel *et al.* (2021) compiled and scrutinized stranding reports from the U.S. Atlantic coast dating back to 1954 and confirmed six records of whales from the Bryde's whale complex. Of these, only two could be genetically confirmed as Rice's whales. All six whales were characterized as small. Mead (1977) suggested Bryde's whale strandings along the U.S. Atlantic were likely extralimital strays from the GOMx.

Northern Gulf of Mexico continental shelf habitat is characterized by sediment transported by the Mississippi River with soft-bottom sediment being the dominant substrate type (Balsam and Beeson, 2003; Love *et al.,* 2013; Rezak *et al.,* 1985). Froeschke and Dale (2012) attribute 96 percent of the GOMx floor to soft-bottom and 4 percent to hard substrate. This hard substrate provides Essential Fish Habitat (EFH) in the U.S. Exclusive Economic Zone of the GOMx. These substrate types support a wide variety of marine life, with some species' distributions that tend to change with depth, among other environmental factors (Etnoyer, 2009; Gallaway *et al.,* 2001). There are no absolute biological or physical barriers or boundaries separating individual benthic habitats and communities that extend from the depths up across the continental shelf to the shoreline, but there appear to be transition zones with some biota moving between habitats. The continental shelf (10–200 meter depth) is heavily influenced by light, the shoreline, and surface currents, with sand and hardground habitats supporting reef forming corals and non-reef forming corals (Sulak and Dixon, 2015). The continental slope (>200–800 meter depth) is characterized by relatively rapid changes in depth over short horizontal distances with occasional canyons and hardground dominated by seeps or corals (Gallaway *et al.,* 2001).

Garrison *et al.* (2022) developed a density surface model to predict Rice's whale distribution in the GOMx based on bathymetric and oceanographic features. Visual line transect survey data collected throughout the northern GOMx between 2003 and 2019 were analyzed, including broad-scale surveys of oceanic waters and directed studies within the Rice's whale core distribution area. Depth, sea surface temperature, surface and bottom salinity, sea surface height, surface geostrophic velocity, chlorophyll-a, and bottom temperature were among the variables considered. The model identified water depth, surface chlorophyll-a concentration, bottom temperature, and bottom salinity as the key parameters that characterize Rice's whale habitat. The model predicted additional suitable Rice's whale habitat outside the core distribution area in the northeastern GOMx, generally throughout the GOMx within 100 and 400 meters depth. Concentration of Rice's whales in the core distribution area appeared to be explained by higher summer chlorophyll-a concentrations, an indicator of phytoplankton abundance and biomass in coastal and estuarine waters, in the northeast region of the GOMx as compared to other regions in the GOMx with suitable bottom temperatures, but less surface productivity.

The Garrison *et al.* (2022) results build on earlier spatial density modeling efforts for Rice's whales based on sightings data that identified a relatively high density area ranging from shelf-edge Alabama to southwest Florida, with further suitable habitat in a narrower strip of shelf-edge extending to central Texas to the west and the Florida Keys to the east (Roberts *et al.,* 2016). Garrison *et al.* (2022) stated that the model results are consistent with cold, high salinity water upwelling along the continental shelf break and seasonal inputs of high productivity surface water derived from coastal sources. The presence of eddies that have separated from the warm water loop current and the dominant circulation patterns in the GOMx lead to increased productivity and are likely a factor in maintaining the high density of forage species needed to support Rice's whales. The model also suggests additional habitat outside of U.S. waters in the southern GOMx may be suitable for Rice's whales, however these areas were not further considered, as areas outside U.S. jurisdiction cannot be designated as critical habitat.

Diet and Foraging

Understanding predator-prey interactions is difficult for highly mobile and elusive species, such as marine mammals, that forage at depth (Sekiguchi *et al.,* 1992; Pauly *et al.,* 1998; Pierce and Boyle, 1991; Trites and Spitz, 2018). Cetaceans rely on predictable prey resources, and changes in prey availability and quality can potentially have population-level consequences, including decreased survival and reproduction rates leading to subsequent population declines (Bearzi *et al.,* 2006; Piroddi *et al.,* 2011; Ford *et al.,* 2010). While information on the feeding ecology and drivers of prey selection are lacking for many cetacean species, foraging specialization has been documented among and within species and populations. Predators with high levels of specialization or higher energetic requirements are more susceptible to risks associated with the decline of their prey (Kiszka *et al.,* in press).

Worldwide, members of the Bryde's whale complex exhibit a variety of foraging tactics and prey preferences, often with observations of surface feeding. Overall, pelagic schooling fishes in the order Clupiformes (sardines, herring, menhaden, anchovies) are the most commonly recorded prey, along with similar schooling species, such as members of the family Carangidae (Best, 2001; Konishi *et al.,* 2009; Murase *et al.,* 2007; Siciliano *et al.,* 2004; Tershy, 1992; Watanabe *et al.,* 2012). Populations examined further offshore also target krill (Best, 2001; Konishi *et al.,* 2009), while the *B. e. brydei* population of the Hauraki Gulf in New Zealand appears to prey on copepods and krill along with ray-finned fishes and salps (Carroll *et al.,* 2019).

Diet is poorly characterized for Rice's whales. Stomach contents, which traditionally provide most information

on the diets and feeding ecology of baleen whales, are unavailable for Rice's whales. In 2019, an adult male Rice's whale stranded and died near Flamingo, Florida Bay, on the southwestern coast of Florida in the GOMx (field number FMMSN1908). The whale was collected and a necropsy was performed. However, stomach contents were unavailable due to a sharp piece of intragastric plastic in the second stomach chamber that caused hemorrhaging and acute gastric necrosis leading to the stranding and subsequent mortality of the whale. No direct information on the foraging ecology of Rice's whales exists. Surface feeding has never been observed, and, as a result, fish scales and tissue remains collected from Rice's whale feeding activity are not available. Fecal sampling has not been conducted for Rice's whales. In 2015, Soldevilla *et al.* (2017) placed an Acousonde suction-cup tag on a Rice's whale in the northeastern GOMx. The tag remained attached for nearly 3 days (63.85 hours) and revealed a diel diving pattern. The whale remained within 15 m the surface of the water 88 percent of the time during the night. Daytime dive behavior was characterized by repeated dives to depths >200 m, likely at or near the seafloor. Some of these deep dives included lunges near the seafloor associated with foraging (Soldevilla *et al.,* 2017). Similar deep foraging dives throughout daylight hours were observed during 25 hours of tag deployment on a Rice's whale in the summer of 2018 (Soldevilla *et al.,* 2022a). This type of bottom feeding is unusual for members of the Bryde's whale complex. What they may have been feeding on at those depths remains unknown.

Although direct evidence of Rice's whale prey species is lacking, analysis of stable isotopes of Rice's whale tissues collected by at-sea biopsies has provided data to better understand the feeding relationships among Rice's whales and other species within the ecosystem, *i.e.,* the food web, also known as the trophic relationships. Stable carbon and nitrogen isotope ratios (noted $\delta^{13}C$ and $\delta^{15}N$, respectively) within tissues of a predator reflect those of its prey and provide a useful method for assessing trophic relationships and can help identify foraging habitats. The use of stable isotope analysis of multiple elements (nitrogen, carbon, and sulfur) from biopsy samples collected on free-ranging whales to assess the trophic relationships and feeding ecology of cetaceans has recently increased (*e.g.,* Hooker *et al.,* 2001; Ryan *et al.,* 2013; Caputo *et al.,* 2021).

Kiszka *et al.* (in press) are the first to attempt to describe the feeding ecology of Rice's whales and the first to examine the potential drivers affecting prey selection by Rice's whales in relation to prey availability and energy density. They used a combination of data from whale skin biopsy samples, fish trawl collections, and analysis of proximate composition in potential prey samples collected during research cruises conducted by the NMFS SEFSC in 2019. To account for the changes in isotopes through the food web, stable isotope mixing models incorporate uncertainty for each parameter and employ trophic enrichment factors (TEF). No TEF is available specifically for Rice's whales and therefore TEFs from the skin of fin whales were used.

Potential Rice's whale prey items were collected in 21 mid-water trawl hauls, conducted during daylight hours in the Rice's whale core distribution area from July 4–28, 2019. Trawls were operated close to the seafloor, consistent with the near-bottom foraging depths of individual Rice's whales observed by Soldevilla *et al.* (2017, 2022a). The trawls collected 35,598 organisms with an overall biomass of 158.21 kg. A total of 25 species/species groups were identified with 8 of those in less than 10 percent of the trawls. *Maurolicus weitzmani,* the Atlantic pearlside, was by far the most abundant species by number at 88.05 percent of the total catch (confidence interval of 86 to 90 percent). It also represented 19.67 percent of the total biomass (confidence interval of 17.4 to 22 percent). A different species dominated in biomass: *Ariomma bondi,* the silver-rag driftfish, made up 26.7 percent of the biomass (confidence interval of 23.9 to 29.5 percent), while making up only 1.21 percent of the total catch by number (confidence interval of 0.6 to 1.9) (Kiszka *et al.* in press).

Kiszka *et al.* (in press) selected four species for the stable isotope mixing model due to their prevalence in the samples and potential significance as a prey source in the community: *Doryteuthis pealeii* (longfin inshore squid), *Diaphus dumerilii* (Dumeril's lanternfish), *Maurolicus weitzmani,* and *Ariomma bondi.* All Rice's whale tissue samples fell within the mixing polygon, which suggests that the TEF and prey included in the analysis were appropriate. Mixing models of dietary contributions identified *Ariomma bondi* as the main prey (66.8 percent relative contribution), followed by *Diaphus dumerilii* (17.8 percent relative contribution), while other prey had minor relative contributions to the diet of Rice's whales (*Doryteuthis pealeii,* 6.4 percent; and *Maurolicus weitzmani,* 9.1 percent). While stable isotope mixing models are a useful tool to understand trophic relationships within food webs, stomach content analysis is still the most reliable method to comprehensively investigate the diets of cetaceans. As explained above, stomach content analysis is not available for Rice's whales. Therefore, other prey species may be consumed that were not examined in the Kiszka *et al.* (in press) study.

The availability and quality of prey play important roles in the selection of prey in large predators, such as Rice's whales. Rice's whales forage during the day close to the seafloor. Because these deep dives require significant expenditures of energy, Rice's whales likely need high quality prey to meet their energetic requirements. Energy density data suggest that the high energy content of *Ariomma bondi,* relative to other available prey species, may be the primary driver of prey selection for Rice's whales. Kiszka *et al.* (in press) found that *Ariomma bondi* had significantly greater energy density (kilojoules/gram wet), lipids, and protein compared to the three other species selected for the model. *Ariomma bondi* were also significantly enriched in energy density (kilojoules/gram dry) compared to *Diaphus dumerilii* and *Maruolicus weitzmani* (Kiszka *et al.* (in press)). Moreover, Kiszka *et al.* (in press) found active prey selection was positive for *Ariomma bondi, Doryteuthis pealeii,* and *Diaphus dumerilii,* and that despite the fact *Maurolicus weitzmani* were the most abundant species in the trawl samples, *Maurolicus weitzmani* were relatively unimportant in the diets of Rice's whales. This suggests that prey abundance is likely not a primary driver of prey selection for Rice's whales. Overall, the results from Kiszka *et al.* (in press) suggest that Rice's whales are selective predators, preferentially targeting schooling demersal and vertically migrating prey with the highest energy content.

Abundance

Estimates of abundance for Rice's whales in the northern GOMx are less than 100 individuals, with mean estimates of <50 individuals remaining (Rosel *et al.,* 2021). Broad-scale aerial and ship-based line transect surveys to estimate cetacean abundance have been conducted in the northern GOMx as far back as 1991. Eleven abundance estimates were made between 1991 and 2012 and ranged between 0 and 44 individuals (see Rosel *et al.,* 2016 for

summary of surveys). Surveys with the lowest estimates covered waters primarily off the western GOMx, which is consistent with the species' preference for the northeastern GOMx, particularly the core distribution area. It should be noted, however, none of these surveys were focused on estimating abundance of a rare species and precision of all estimates is poor. The best and most recent population estimate available for Rice's whales is 51 individuals (confidence interval of 20 to 130 whales, Garrison *et al.,* 2020).

Critical Habitat Identification

In the following sections, we describe the relevant definitions and requirements in the ESA and implementing regulations at 50 CFR part 424 and the key information and criteria used to prepare this proposed critical habitat designation. In accordance with section 4(b)(2) of the ESA, this proposed critical habitat designation is based on the best scientific data available and takes into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Scientific data used to identify potential critical habitat includes the information contained in the status review for the species (Rosel *et al.,* 2016), proposed and final rules to list the Rice's whale under the ESA (81 FR 88639, December 8, 2016; 84 FR 15446, April 15, 2019), articles in peer-reviewed journals, other scientific reports and fishery management plans, and relevant Geographic Information System (GIS) data (*e.g.,* U.S. maritime limits and boundaries data) for geographic area calculations and mapping. To identify specific areas that may qualify as critical habitat for Rice's whale, in accordance with 50 CFR 424.12(b), we undertook the following steps: Identifying the geographical area occupied by the species at the time of listing; identifying physical or biological features essential to the conservation of the species; identifying the specific areas within the geographical area occupied by the species that contain one or more of the physical or biological features essential to the conservation of the species; determining whether these essential features may require special management considerations or protection; and considered whether any specific areas outside the geographical area occupied by the species are essential for the species' conservation. Our evaluation and conclusions are described in detail in the following sections.

Geographical Area Occupied by the Species

One of the first steps in the critical habitat designation process is to define the geographical area occupied by the species at the time of listing. NMFS is also required to designate critical habitat based on the best available scientific data. The phrase ''geographical areas occupied by the species,'' which appears in the statutory definition of critical habitat (16 U.S.C. 1532(5)(A)(i)), is defined by regulation as ''an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (50 CFR 424.02).

At the time of listing (84 FR 15446, April 15, 2019), Rice's whales were considered to be limited to the northeastern Gulf of Mexico, in the vicinity of the De Soto Canyon, although historical whaling records and unconfirmed sightings suggested their occurrence in the southern and northwestern GOMx (Rosel *et al.,* 2016). Subsequent publications confirming that Rice's whales are continuing to use the northwestern GOMx include a sighting in the western GOMx off the central Texas coast in 2017 that was genetically confirmed as a Rice's whale (Rosel *et al.,* 2021) and Rice's whale calls that were detected acoustically along the shelf break in the western and northern Gulf of Mexico from July 2016 to August 2017 (Soldevilla *et al.,* 2022b). Soldevilla *et al.* (2022b) concluded that Rice's whales persistently occur over a broader distribution in the GOMx than was previously understood, which is documented to include both the northeastern and northwestern GOMx.

Rosel *et al.* (2021) reviewed Bryde's-like whale records in the Caribbean and greater Atlantic. They compiled sighting and stranding data from the U.S. eastern seaboard; reviewed acoustic studies off Cherry Point, North Carolina, in Norfolk Canyon, and off Jacksonville, Florida; and reviewed the published literature for the entire Atlantic Ocean to evaluate the distribution of Bryde's whale taxa in these areas. The investigators found that there are no confirmed sightings of Bryde's whales along the U.S. eastern seaboard and no acoustic detections in the specified study areas. Only six Bryde's whale strandings could be verified in the U.S. Atlantic coast, and of those, two were genetically determined to be Rice's whales. Bryde's whale strandings along the U.S. Atlantic are likely extralimital strays from the Gulf of Mexico (Mead, 1977) or their carcasses may have been transported via currents and winds from their normal distribution (Rosel *et al.,* 2021). Therefore, the Atlantic Ocean is not considered part of the geographical area occupied by Rice's whales.

Because we cannot designate critical habitat areas outside of U.S. jurisdiction (50 CFR 424.12(g)) the geographical area under consideration for this designation is limited to areas under the jurisdiction of the United States that Rice's whale occupied at the time of listing. Based on the information above, we have determined that at the time of listing Rice's whales occupied the Gulf of Mexico.

Physical or Biological Features Essential for Conservation

The statutory definition of critical habitat refers to ''physical or biological features essential to the conservation of the species,'' (16 U.S.C. 1532(3)), but the ESA does not specifically define or further describe these features. ESA implementing regulations, however, define such features as those that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. The ESA regulations further provide that a feature may be a single habitat characteristic, or a more complex combination of habitat characteristics and may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02).

To assess habitat features that may qualify as ''essential to the conservation'' of Rice's whales, we evaluated physical and biological features that are essential to support the life history needs and support the conservation of Rice's whales within the areas they occupy within U.S. waters. Section 3 of the ESA defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''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'' 16 U.S.C. 1532(3).

In the final listing rule, we determined that the Rice's whale is endangered under the ESA throughout all of its range due to its small population size and restricted range, and the threats of energy exploration, development and production, oil spills and oil spill response, vessel collision, fishing gear entanglement, and anthropogenic noise (84 FR 15446, April 15, 2019). Because Rice's whales rely entirely on the GOMx continental shelf and slope waters between the 100 and 400 m isobaths to support all of their life history stages, we have identified physical and biological features that support all of the Rice's whale life-history stages within its restricted range.

Based on the best scientific information available we have identified the following feature as being essential to the conservation of the Rice's whale: GOMx continental shelf and slope associated waters between the 100 and 400 m isobaths that support individual growth, reproduction, and development, social behavior, and overall population growth. The following attributes of this feature support Rice's whales' ability to forage, develop, communicate, reproduce, rear calves, and migrate throughout the GOMx continental shelf and slope waters and influence the value of the feature to the conservation of the species:

1. Sufficient density, quality, abundance, and accessibility of small demersal and vertically migrating prey species, including scombriformes, stomiiformes, myctophiformes, and myopsida;

2. Marine water with (i) elevated productivity, (ii) bottom temperatures of 10–19 degrees Celsius, and (iii) levels of pollutants that do not preclude or inhibit any demographic function; and

3. Sufficiently quiet conditions for normal use and occupancy, including intraspecific communication, navigation, and detection of prey, predators, and other threats.

Identification of ''physical and biological features essential to the conservation of the species'' must be done at an appropriate level of specificity, and that level of specificity is in turn determined by the best scientific data available (50 CFR 424.12(b)(1)(ii)). The description of these attributes reflects an appropriate level of specificity based on the best scientific data available.

With respect to the first attribute related to prey, we have identified four orders of prey that are important components of the Rice's whale diet, but we are not able to identify a quantitative threshold for a critical habitat prey feature. Even without such a threshold for critical habitat, however, we conclude the scientific information available supports evaluation of prey availability as an attribute of the essential feature. Emerging scientific information supporting Rice's whale prey preferences suggest that Rice's whales feed primarily on a schooling fish, *Ariomma bondi.* However, data are limited (small sample size from limited area and seasons) and still emerging as research continues. Therefore, we have not specified prey at the species level in the description of the prey attribute at this time, and we will continue to use the best available information on prey species in the diet of the whales and incorporate new information on prey in consultations on Rice's whale critical habitat as our understanding evolves.

With respect to the second attribute related to marine water quality, the term ''elevated productivity'' refers to waters with higher than normal production of organic matter by planktonic plants when compared to typical Gulf of Mexico oceanic levels, which are influenced by a complex variety of factors, including seasonal inputs of surface water originating from coastal sources and the offshore presence of loop current eddies.

Finally, with respect to the third attribute related to sufficiently quiet conditions for normal use and occupancy, Rice's whales rely on their ability to produce and receive sound within their environment to navigate, communicate, and detect prey and predators. Rice's whales have a foraging strategy that is adapted to the waters near the continental shelf and slope of the Gulf of Mexico, and limited data from two tagged Rice's whales showed each whale made repeated dives to depths of 200 m or greater throughout daytime hours, followed by foraging lunges at or just above the seafloor. Little or no light reaches the seafloor at those depths, even during daylight hours, suggesting that these animals may use acoustic cues to locate and target schools of prey fish.

Scientific information on the effects of anthropogenic noise on the behavior and distribution of baleen whales, including Bryde's whales, demonstrates that the presence of anthropogenic noise can adversely affect the value of marine habitat to Bryde's whales (for more discussion see the Anthropogenic Noise section of the final listing rule, 84 FR 15446, April 15, 2019). Of particular concern are anthropogenic noise sources that are long-lasting, chronic, and/or persistent, and cumulatively inhibit and/or mask the animals' ability to receive and interpret sound (*e.g.,* opportunities to forage or reproduce). Rice's whales vocalize at frequencies between 60 and 160 Hz, and elevation of ambient noise in low frequencies (between 10 and 1,000 Hz) are the most likely to adversely affect Rice's whales' acoustic soundscape and use of their habitat.

How human activities introduce noise in the marine environment, and how those noises alter the animals' use of habitat, is complex. Determining the biological significance of such alterations is equally complex and involves considering site specific variables, including: the acoustic characteristics of the introduced sound (frequency (*i.e.,* pitch), duration, and intensity); the physical characteristics of the habitat; the baseline soundscape; interactions with other sound sources; and the animals' use of that habitat. All of these factors will influence the pervasiveness and dominance of anthropogenic sound sources across the habitat. NMFS will continue to use the best scientific information available to analyze chronic or persistent noise sources and determine whether they degrade listening conditions within Rice's whale habitat.

Noises that would impair sufficiently quiet conditions for normal use and occupancy are those that inhibit Rice's whales' ability to receive and interpret sound for the purposes of navigation, communication, and detection or prey, predators, and other threats. As already noted, anthropogenic noises that are likely to impact the whales' habitat would be long-lasting, chronic, and/or persistent in the marine environment and, either alone or combined with other ambient noises, significantly raise sound levels over a significant portion of an area (in terms of size and use by the whale) on a prolonged basis (*e.g.,* annual or multiannual).

Need for Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain essential features that ''may require special management considerations or protection'' (16 U.S.C. 1532 (5)(A)(i)(II)). Special management considerations or protection are any ''methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species'' (50 CFR 424.02).

The essential feature is particularly susceptible to impacts from human activity because of the moderate water depth range where this feature occurs as well as its proximity to the coast. We identified broad categories of actions, or threats, as having the potential to

negatively impact the essential feature, or its attributes, and the ability to support the conservation of listed Rice's whales, including, but not limited to, in-water construction, energy development, commercial shipping, aquaculture, military activities, and fisheries. Each of these threats could independently or in combination result in the need for special management or protections of the essential feature. For example, direct harvest of the prey by fisheries has the potential to negatively impact the essential feature and the ability of feeding areas to support the conservation of Rice's whales. Energy development could inhibit safe, unrestricted passage between important habitat areas to find prey and fulfill other life history requirements. Thus, the ''may require'' standard is met or exceeded with respect to management of the essential feature. Although we do not speculate as to what specific conservation measures might be required in the future through section 7 consultations on particular proposed Federal actions, the impacts from categories of actions described above, combined with those from natural factors may affect the habitat, including the attributes described for its essential feature. We therefore conclude that the essential feature identified herein may require special management considerations or protection because threats to this feature exist throughout the species' range.

Specific Areas Within the Geographic Area Occupied by the Species Containing the Essential Feature

To determine what areas qualify as critical habitat within the geographical area occupied by the species, we are required to identify ''specific areas'' within the geographical area occupied by the species that contain the physical or biological features essential to the conservation of the species (50 CFR 424.12(b)(1)(iii)). Delineation of the specific areas is done ''at a scale determined by the Secretary [of Commerce] to be appropriate'' (50 CFR 424.12(b)(1)). Regulations at 50 CFR 424.12(c) also require that each critical habitat area be shown on a map. Because the ESA implementing regulations allow for discretion in determining the appropriate scale at which specific areas are drawn (50 CFR 424.12(b)(1)), we are not required to, nor do we have the ability to, determine that each square inch, acre, or even square mile independently meets the definition of ''critical habitat.'' A main goal in determining and mapping the boundaries of the specific areas is to provide a clear description and documentation of the areas containing the identified essential feature. This is ultimately crucial to ensuring that Federal action agencies are able to determine whether their particular actions may affect the critical habitat.

To map the specific area, we reviewed available species occurrence and bathymetric data. We used the highest resolution bathymetric data available. We used contours created from NOAA Office for Coastal Management, 2022 Bathymetric Contours, which provides data and maps at *https://www.fisheries.noaa.gov/inport/item/54364.* These bathymetric data (*i.e.,* isobaths) were used, with other geographic or management boundaries, to draw the boundary on the map of the specific areas identified as meeting the definition of occupied critical habitat. Sighting reports, species presence or absence, scientific papers and other research, the biology and ecology of Rice's whales, and information indicating the presence of one or more of the identified essential features within certain areas of their range were also used to inform the decision making. Expert opinion was important to identifying areas that contain the feature. These experts included a NMFS regional GIS lead, a NMFS Large Whale Recovery Coordinator, and other Rice's whale researchers from the SEFSC.

Ultimately, based on a review of the best available data, we identified one specific area in the Gulf of Mexico that meets the definition of critical habitat for the Rice's whale. To be eligible for designation as critical habitat under the ESA's definition of occupied areas, each specific area must contain at least one essential feature that may require special management considerations or protection. This area meets the definition of ''critical habitat'' because the best available scientific data indicate that the essential feature is present, as evidenced by Rice's whale sightings data, the presence of Rice's whale prey, and habitat use patterns. Due to the unique ecology of the continental shelf and slope associated waters, use by Rice's whales is largely driven by depth. Therefore, the feature essential to the species' conservation is found in those depths that allow the whales to travel throughout a majority of their range seeking food and opportunities to socialize and reproduce. The area identified as including the essential feature for Rice's whales ranges from the 100 m isobath to the 400 m isobath in the Gulf of Mexico. As noted above, Rice's whale sightings occurred predominantly between the 100 m isobath to the 400 m isobath within the northeastern GOMx centered along the 200 m isobath with one sighting during the summer of 2017 in a water depth of 263 m off the coast of Texas (Garrison *et al.,* 2022).

One hundred eighty-one sightings ranged in water depths from 117 m to 408 m, with only two sightings falling outside the range of 151–352 m (Rosel *et al.,* 2021). One Rice's whale was satellite-tagged for 33 days in the core distribution area in 2010 and remained between the 100 m isobath and the 400 m isobath for the duration of tracking (Soldevilla *et al.,* 2017). Additionally, *Ariomma bondi* is a small schooling fish that occupies demersal habitat over muddy bottoms, typically between 50 m and 500 m, but particularly near the continental shelf break throughout the north-central and northwestern GOMx (Kiszka *et al.,* in press). Moreover, moored passive acoustic monitoring units placed seaward of the continental shelf break in the western and central GOMx regularly detected Rice's whale vocalizations with no apparent seasonality (Soldevilla *et al.,* 2022b).

The 100 m isobath was selected to delineate the inshore extent of the area that would include the essential feature for Rice's whales due to consistent habitat use at depths greater than 100 m and because no sightings have been made in areas where the water is shallower than 117 m. The 400 m isobath was selected to delineate the offshore extent of the area that would include the essential feature for Rice's whales due to consistent habitat use at depths less than 400 m and because no sightings have been made in areas where the water is deeper than 408 m. This full range of depths, from the 100 m isobath to the 400 m isobath, incorporates nearly all of the recorded locations of Rice's whales and includes those continental shelf and slope waters and feature essential to Rice's whales.

Areas Outside of the Geographical Areas Occupied by the Species at the Time of Listing That Are Essential for Conservation

ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied by the species at the time of listing if the areas are determined by the Secretary to be essential for the conservation of the species. An area must logically be ''habitat'' in order for that area to meet the narrower category of ''critical habitat'' as defined in the ESA. *Weyerhaeuser Co.* v. *U.S. FWS,* 139 S. Ct. 361, 368 (2018) (explaining that an area cannot be designated as critical habitat unless it is also habitat for the species). Our regulations at 50 CFR 424.12(b)(2) further explain that the

Secretary will identify, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species that are essential for its conservation. The regulations also state that the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species. Under the previous implementing regulations (*i.e.* those in effect prior to 2019), the Secretary's determination of specific areas outside the geographic area occupied by the species that are essential for its conservation considered the life history, status, and conservation needs of the species based on the best available scientific data.

The final rule that listed Rice's whales under the ESA identified energy exploration, development and production, oil spills and oil spill response, vessel collision, fishing gear entanglement, and anthropogenic noise as the most serious threats to Rice's whales (84 FR 15446, April 15, 2019). The presence of these threats within habitats used by Rice's whales likely influences the species' distribution, abundance, and survival. For example, noise levels within the 100 m to 400 m isobaths portion of the northern GOMx may be impacting the environment such that, in locations where noise levels are chronically the highest, Rice's whales may be periodically avoiding habitat they would otherwise inhabit. Should they be designated as critical habitat, the occupied areas identified and discussed above would help conserve areas that support individual growth, reproduction, and development; social behavior; and overall population growth of the species within U.S. jurisdiction. Based on our current understanding of the species' life history, status, and conservation needs, we are not able to identify any specific areas outside the geographical area occupied by the species that are essential for its conservation under either the current implementing regulations in 50 CFR 424.12(b)(2) or those in effect prior to 2019. Protecting the specific occupied area identified as critical habitat from destruction and adverse modification stemming from Federal actions would help support the species' habitat-based conservation needs.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary [of Commerce] determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation. Our regulations at 50 CFR 424.12(h) provide that, in determining whether an applicable benefit is provided, we will consider:

(1) The extent of the area and features present;

(2) The type and frequency of use of the area by the species;

(3) The relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and

(4) The degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

There are no geographical areas owned or controlled by the DOD or designated for its use that are subject to an INRMP that coincide with any of the areas under consideration for Rice's whale critical habitat.

Analysis of Impacts Under ESA Section 4(b)(2)

Section 4(b)(2) of the ESA requires that we consider the economic impact, the impact on national security, and any other relevant impact, of designating any particular area as critical habitat.

Additionally, the Secretary has the discretion to exclude any area from critical habitat if the Secretary determines the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation. The Secretary may not exclude an area from designation if the Secretary determines, based upon the best scientific and commercial data available, exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area.

The ESA provides the Secretary broad discretion in how to consider impacts. (See H.R. Rep. No. 95–1625, at 17, reprinted in 1978 U.S.C.C.A.N. 9453, 9467 (1978)). Regulations at 50 CFR 424.19(b) specify that the Secretary will consider the probable impacts of the designation at a scale that the Secretary determines to be appropriate, and that such impacts may be qualitatively or quantitatively described. The Secretary is also required to compare impacts with and without the designation (50 CFR 424.19(b)). In other words, we are required to assess the incremental impacts attributable to the critical habitat designation relative to a baseline that reflects existing regulatory impacts in the absence of the critical habitat. The consideration and weight given to any particular impact is determined by the Secretary. Courts have noted the ESA does not contain requirements for any particular methods or approaches. See, *e.g., Bldg. Indus. Ass'n of the Bay Area et al.* v. *U.S. Dept. of Commerce et al.,* 792 F.3d 1027 (9th Cir. 2015) (upholding district court's ruling that the ESA does not require the agency to follow a specific methodology when designating critical habitat under section 4(b)(2)). NMFS and the U.S. Fish and Wildlife Service have adopted a joint policy setting out non-binding guidance explaining generally how we exercise our discretion under 4(b)(2). See Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (''4(b)(2) Policy,'' 81 FR 7226, February 11, 2016). For this proposed rule, we followed the same basic approach to describing and evaluating impacts as we have for several recent critical habitat rulemakings, as informed by our 4(b)(2) Policy.

The following discussion of impacts is summarized from our Endangered Species Act Critical Habitat Report, which identifies the economic, national security, and other relevant impacts that we project would result from including the specified area in the proposed critical habitat designation. We considered these impacts when deciding whether to exercise our discretion to propose excluding particular areas from the designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where more appropriate to particular impacts. The primary impacts of a critical habitat designation result from the ESA section 7(a)(2)

requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat, and that they consult with NMFS in fulfilling this requirement. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. The incremental impact of critical habitat designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications the agencies would make because of listing and the requirement to avoid jeopardy to the Rice's whale. When the same modification would be required due to impacts to both the species and critical habitat, there would be no additional or incremental impact attributable to the critical habitat designation beyond the administrative impact associated with conducting the critical habitat analysis.

Relevant existing regulatory protections are referred to as the ''baseline'' for this analysis and are discussed in the Endangered Species Act Critical Habitat Report. In this case, notable baseline protections include the ESA listing of the species (84 FR 15446, April 15, 2019); other species listings and critical habitat designations, such as critical habitat for the Northwest Atlantic Ocean loggerhead sea turtle distinct population segment (79 FR 39855, August 11, 2014); and protections afforded the whales under the Marine Mammal Protection Act.

The Endangered Species Act Critical Habitat Report describes the projected future Federal activities that would trigger ESA section 7 consultation requirements if they are implemented in the future because the activities may affect the essential feature. These activities and the ESA consultation consequently may result in economic costs or negative impacts. The report also identifies the potential national security and other relevant impacts that may arise due to the proposed critical habitat designation, such as positive impacts that may arise from conservation of the species and its habitat, state and local protections that may be triggered as a result of designation, and educating the public about the importance of an area for species conservation.

Economic Impacts

Economic impacts of critical habitat designations primarily occur through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. The economic impacts of consultation may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits resulting from designation are described later.

To identify the types and geographic distribution of activities that may trigger section 7 consultation on Rice's whale critical habitat, we first reviewed the section 7 consultation histories from 2010 through 2021 for both the NMFS Southeast Region and its Office of Protected Resources for:

- Activities consulted on in the areas being proposed as critical habitat for the Rice's whale; and
- Activities that take place outside of the areas proposed critical habitat but whose effects extend into the critical habitat and are therefore subject to consultation.

We also considered section 7 consultations conducted in 2022 to the extent those consultations support modifying our projections of future consultations based on the 2010–2021 consultation history alone.

In addition, we convened discussions with NMFS personnel to identify future activities that may affect Rice's whale critical habitat that may not have been captured by relying on the section 7 consultation history. We reviewed the U.S. Army Corps of Engineers (USACE) permit application database for the South Atlantic Division and Southwestern Division to identify all USACE permit applications for projects located within the proposed critical habitat area. Review of USACE permit application data is useful because the database encompasses USACE-permitted activities that may not have been consulted on in the past if they were outside of previously designated critical habitats or areas containing species protected under the ESA. We compared the USACE permit application data to the NMFS section 7 consultation history and confirmed the latter's completeness, thereby validating use of the NMFS section 7 consultation database to project future informal consultations on USACE-permitted projects. We also will review more recent consultation information prior to the publication of any final rule. We determined that all categories of the activities identified have potential routes of effects to both the endangered Rice's whale and the proposed Rice's whale critical habitat, or to other species or designated critical habitat. We did not identify and we do not anticipate Federal actions that have the potential to affect only the Rice's whale critical habitat.

We identified the following eleven categories of activities implemented by seven different Federal entities as having the potential to affect the essential feature of the Rice's whale critical habitat:

- Oil and gas exploration and development
- Commercial fishery management
- Military activities
- Water quality management
- Scientific research and monitoring
- Space vehicle launch and reentry
- In-water construction
- Aquaculture
- Vessel traffic
- Renewable energy development
- Activities that lead to or address greenhouse gas emissions or global climate change

Future consultations were projected based on the frequency and distribution of section 7 consultations conducted from 2010 through 2021 as well as some consultations conducted in 2022 that revealed a need to modify our projections of future consultations that was not captured in the 2010–2021 consultation history alone, review of USACE permit applications between 2010 and 2021, and discussions with NMFS personnel familiar with the scope of future activities that may affect the potential critical habitat. With certain exceptions, we consider it reasonable to assume that the breakdown of past consultations by type (into informal, formal, and programmatic consultations) and activity category (*e.g.,* scientific research and monitoring, water quality management, etc.) between the years 2010 and 2021 will generally reflect the breakdown of future consultations. Accordingly, we assume for most potentially impacted activity categories that the number and type of activities occurring within or affecting Rice's whale critical habitat would not change in the future. Activity categories to which we do not apply this assumption include space vehicle launches and reentry, wind energy development, oil and gas exploration and development, and military activities. For oil and gas and military activities, we anticipate that current programmatic and formal consultations on activities that could affect the proposed critical habitat would require two reinitiations each over the next 10 years and that each of these consultations would consider effects to Rice's whale critical habitat. As of January 2022, NMFS consults with the Federal Aviation Administration, U.S. Space Force, and National Aeronautics

and Space Administration on space vehicle launches and reentries on a programmatic basis. Despite an expected increase in the frequency of space vehicle launches and reentries that could affect the proposed critical habitat, we project only one section 7 consultation over the next 10 years because these types of operations will be covered by a single programmatic consultation, and because we consider it unlikely that designation of critical habitat for the Rice's whale would change the outcome of the programmatic consultation. While there is considerable uncertainty regarding the scope of future renewable (*i.e.,* wind) energy development activities that would require Section 7 consultation on effects to Rice's whale critical habitat, our projections reflect the assumed reinitiation of the current programmatic consultation on site characterization and assessment activities. Our projections also assume formal consultation on the construction and operation of two wind energy projects over the next 10 years. While it is unlikely that such projects would be located seaward of the 100-meter isobath, it is possible that activities related to the construction and/or operation of the projects would affect the proposed critical habitat.

As discussed in more detail in our Endangered Species Act Critical Habitat Report, all categories of activities identified as having the potential to affect the proposed essential feature also have the potential to affect the endangered Rice's whales or other listed species or critical habitat. To estimate the economic impacts of critical habitat designation, our analysis compares the state of the world with and without the designation of critical habitat. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already afforded the proposed critical habitat as a result of listing the Rice's whale as endangered and as a result of other Federal, state, and local regulations or protections, including other species listings and critical habitat designations. The ''with critical habitat'' scenario describes the state of the world with the critical habitat designation. The incremental impacts that will be associated specifically with the critical habitat designation, if finalized as proposed, are the difference between the two scenarios. As it stands, baseline protections exist in large areas proposed for designation as critical habitat for Rice's whale. In particular, areas proposed for Rice's whale critical habitat designation overlap to varying degrees with the presence of the threatened or endangered sei whale, sperm whale, North Atlantic green sea turtle distinct population segment, Northwest Atlantic Ocean loggerhead sea turtle distinct population segment, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle; and critical habitat designated for the Northwest Atlantic Ocean loggerhead sea turtle distinct population segment. These areas already receive significant protections related to these listings and critical habitat designation. These protections may also protect the essential feature of the proposed Rice's whale critical habitat. Importantly, we do not expect designation of critical habitat for the Rice's whale to result in project modification for any of the activities that may affect the critical habitat because actions that are likely to adversely affect designated critical habitat may proceed so long as such actions do not result in the destruction or adverse modification of critical habitat. Unlike actions that are likely to adversely affect listed species, NMFS cannot specify reasonable and prudent measures that are necessary or appropriate to minimize impacts to critical habitat. In circumstances where NMFS determines an action is likely to result in destruction or adverse modification of critical habitat, NMFS must propose reasonable and prudent alternatives that avoid the destruction and adverse modification of the critical habitat.

Administrative Section 7 Costs

The effort required to address adverse effects to the proposed critical habitat is assumed to be the same, on average, across categories of activities. Informal consultations are expected to require comparatively low levels of administrative effort, while formal and programmatic consultations are expected to require comparatively higher levels of administrative effort. For all formal and informal consultations, we anticipate that incremental administrative costs will be incurred by NMFS, the consulting Federal action agencies, and potentially, third parties. For programmatic consultations, we anticipate that costs will be incurred by NMFS and the consulting Federal action agencies. Incremental administrative costs per consultation that would occur absent designation of critical habitat for the Rice's whale and that would consider effects to Rice's whale critical habitat, are expected on average to be $12,000 for programmatic, $6,300 for formal consultations, and $3,000 for informal consultations (in 2022 dollars). These costs are assumed to double, on a per consultation basis, for consultations that are reinitiated to consider effects to Rice's whale critical habitat (NMFS, 2022).

We estimate the incremental administrative costs of section 7 consultation by applying these per consultation costs to the forecasted number of consultations. We anticipate that there will be approximately 8 programmatic consultations, 12 formal consultations, and 29 informal consultations that will require incremental administrative effort. Incremental costs are expected to total approximately $240,000 over the next 10 years (discounted at 7 percent), at an annualized cost of $37,000 (in 2022 dollars). We conservatively assume that there will be approximately 10 re-initiations of existing consultations to specifically address effects to Rice's whale critical habitat. We anticipate that the reinitiated consultations will be for Federal actions related to oil and gas activities, fishery management, military activities, water quality management, renewable energy development, and space vehicle launch and reentry operations. Table 1 shows the projected incremental costs of designation of critical habitat for the Rice's whale, by activity category.

TABLE 1—PROJECTED INCREMENTAL COSTS OF RICE'S WHALE CRITICAL HABITAT DESIGNATION BY ACTIVITY TYPE, 2023–2032

[2022 Dollars]

Activity	Total cost (7 percent discount rate)	Annualized cost
Oil and Gas Activities	$53,000	$8,100
Renewable Energy	24,000	3,700
Fishery Management	52,000	7,900
Military	36,000	5,500

TABLE 1—PROJECTED INCREMENTAL COSTS OF RICE'S WHALE CRITICAL HABITAT DESIGNATION BY ACTIVITY TYPE, 2023–2032—Continued

[2022 Dollars]

Activity	Total cost (7 percent discount rate)	Annualized cost
Water Quality	41,000	6,200
Scientific Research and Monitoring	18,000	2,800
Space Vehicle Launch and Reentry	16,000	2,400
Construction	1,700	250
Total	240,000	37,000

Note: The estimates may not sum to the totals reported due to rounding.

In summary, significant baseline protections exist in areas proposed for Rice's whale critical habitat. Incremental impacts of the proposed designation are projected to reflect the incremental administrative effort required for section 7 consultations to consider effects to the critical habitat. Taking into consideration several assumptions and uncertainties, total projected incremental costs are approximately $240,000 over the next 10 years (discounted at 7 percent), or $37,000 in annualized costs (in 2022 dollars). Notwithstanding the uncertainty underlying the projection of incremental costs, the results provide an indication of the potential activities that may be affected and a reasonable projection of future costs.

National Security Impacts

Impacts to national security could occur if a designation triggers future ESA section 7 consultations because a proposed military activity ''may affect'' the feature essential to the listed species' conservation. Interference with mission-essential training or testing or unit readiness could result from the additional commitment of resources by the DOD or United States Coast Guard (USCG) to modify the action to prevent adverse modification of critical habitat or implement Reasonable and Prudent Alternatives. Whether national security impacts result from the designation also depends on whether future consultations and associated project modifications and/or implementation of reasonable and prudent alternatives, reasonable and prudent measures and terms and conditions would be required due to potential effects to Rice's whale or other ESA-listed species or designated critical habitat, regardless of the Rice's whale critical habitat designation, and whether the Rice's whale designation would add costs beyond those related to the consultation on effects to Rice's whale or other species or critical habitat.

As described previously, we identified DOD military operations as a category of activity that has the potential to affect the essential feature of the proposed Rice's whale critical habitat. However, for the actions that may affect Rice's whale critical habitat, designating critical habitat for Rice's whale is not expected to result in incremental impacts beyond administrative costs because the consultations would otherwise be required to address effects to either the Rice's whale or other listed species. National security impacts could result from the designation of critical habitat for the Rice's whale if it is determined through section 7 consultation that modifications to DOD activities are required to mitigate adverse effects to the critical habitat alone. We anticipate two reinitiations each over the next 10 years of existing consultations that would address effects to Rice's whale critical habitat. These include a programmatic consultation on U.S. Navy Atlantic Fleet Testing and Training operations and a formal consultation on U.S Air Force training and testing operations based out of Eglin Air Force Base. While these reinitiated consultations represent an incremental administrative impact of the proposed rule, which is considered in the economic analysis, the reinitiated consultations would not impact national security. We did not identify any other areas managed by DOD branches that are of potential concern.

Other Relevant Impacts

We identified three broad categories of other relevant impacts related to this proposed critical habitat designation: Conservation benefits, both to the species and to the ecosystem; impacts on governmental or private entities that are implementing existing management plans that provide benefits to the listed species; and educational and awareness benefits. Our economic analysis provided in the Endangered Species Act Critical Habitat Report discusses conservation benefits of designating the proposed area and the benefits to society of conserving the species.

Conservation Benefits

The primary benefit of critical habitat designation is the contribution to conservation and recovery of the Rice's whale. That is, in protecting the feature essential to the conservation of the species, critical habitat directly contributes to the conservation and recovery of the species. This analysis contemplates two broad categories of conservation benefits of critical habitat designation: (1) Increased probability of conservation and recovery of the species, and (2) Ecosystem service benefits.

The most direct benefits of the critical habitat designations stem from the enhanced probability of conservation and recovery of the species. From an economic perspective, the appropriate measure of the value of this benefit is people's ''willingness-to-pay'' for the incremental change. While the existing economics literature is insufficient to provide a quantitative estimate of the extent to which people value incremental changes in recovery potential, the literature does provide evidence that people have a positive preference for listed species conservation, even beyond any direct (*e.g.,* recreation, such as viewing the species while whale watching) or indirect use for the species (*e.g.,* fishing that is supported by the presence of healthy ecosystems).

In addition, designating critical habitat can benefit the ecosystem. Overall, the GOMx continental shelf and slope associated waters, including those comprising Rice's whale proposed critical habitat, provide important ecosystem services of value to individuals, communities, and economies. These include recreational opportunities (and associated tourism spending in the regional economy), habitat for recreationally and commercially valuable fish species, and

climate stabilization via carbon sequestration. Critical habitat most directly influences the recovery potential of the species and protects ecosystem services through its implementation under section 7 of the ESA. Our analysis finds that the proposed rule is not anticipated to result in incremental project modifications. However, the protections afforded to the GOMx continental shelf and slope associated waters proposed as Rice's whale critical habitat could increase awareness of the importance of these habitat areas, which in turn could lead to additional conservation efforts.

Impacts to Governmental and Private Entities With Existing Management Plans Benefitting the Listed Species

Among other relevant impacts of critical habitat designations that we consider under section 4(b)(2) of the ESA are impacts on the efforts of private and public entities involved in management or conservation efforts benefiting listed species. In cases where there is a Federal nexus (*e.g.,* a Federal grant or permit), critical habitat designation could necessitate consultation with NMFS to incrementally address the effects of the management or conservation activities on critical habitat. In such cases, these entities may have to allocate resources to fulfill their section 7 consultation obligations as third parties to the consultation—including the administrative effort of consultation and, potentially, modification of projects or conservation measures to avoid adverse modification to the critical habitat—that, absent critical habitat designation, would be applied to management or conservation efforts benefiting listed species. As we anticipate the proposed designation would result in no project modifications beyond those that would already occur absent designation, the potential for reallocation of these private and public entities' resources would be limited to the incremental administrative costs of section 7 consultations that would occur absent Rice's whale critical habitat. Therefore, we do not expect that designating critical habitat for the Rice's whale would diminish private and public entities' ability to provide for the conservation of the Rice's whale.

Education and Awareness Benefits

The critical habitat designation could potentially have benefits associated with education and awareness. The potential for such benefits stems from three sources: (1) Entities that engage in section 7 consultation, including Federal action agencies and, in some cases, third party applicants; (2) members of the general public interested in conservation; and (3) state and local governments that take action to complement the critical habitat designation. Certain entities, such as applicants for particular permits, may alter their activities to benefit the essential feature of the critical habitat because they were made aware of the critical habitat designation through the section 7 consultation process. Similarly, Federal action agencies that undertake activities that affect the critical habitat may alter their activities to benefit the critical habitat. Members of the public interested in conservation also may adjust their behavior to benefit critical habitat because they learned of the critical habitat designation through outreach materials or the regulatory process. In our experience, designation raises the public's awareness that there are special considerations to be taken within areas identified as critical habitat. Similarly, state and local governments may be prompted to enact laws or rules to complement the critical habitat designations and benefit the listed species. Those laws would likely result in additional impacts of the designations.

However, quantifying the beneficial effects of the awareness gained through, or the impacts from state and local regulations resulting from, the proposed critical habitat designation is not possible.

Exclusions Under Section 4(b)(2)

We are not exercising our discretion to exclude any particular areas from designation based on economic, national security, and other relevant impacts. In summary, there are significant baseline protections that exist in the areas proposed for the Rice's whale critical habitat, and as a result, the incremental impacts of the proposed designation are low and reflect the incremental administrative effort required for section 7 consultations to consider effects specific to critical habitat. Taking into consideration several assumptions and uncertainties, the total projected incremental costs are approximately $240,000 over the next 10 years ($37,000 annualized), applying a discount rate of 7 percent. As the proposed critical habitat comprises a single unit, the analysis does not identify any particular area within the proposed critical habitat unit where these costs would be highly concentrated. Moreover, we anticipate that no particular industry would be disproportionately impacted. Similarly, we are not proposing to exclude any areas on the basis of national security impacts because no national security concerns exist related to the proposed critical habitat designation. We are also not proposing to exclude any particular area based on other relevant impacts. Other relevant impacts include conservation benefits of the designation, both to the species and to the ecosystem. We expect that designation of critical habitat will support conservation and recovery of the species. Future section 7 consultations on some of the activities that may affect Rice's whale will also consider effects to the critical habitat. While we do not expect these consultations to result in additional conservation measures, the additional consideration of effects specific to the critical habitat will increase overall awareness of the importance of Rice's whale and its habitat. For these reasons, we are not proposing to exclude any areas as a result of these other relevant impacts.

Proposed Critical Habitat Designation

Our critical habitat regulations state that we will show critical habitat on a map with more detailed information discussed in the preamble of the critical habitat rulemaking and made available from NMFS (50 CFR 424.12(c)). When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)). The habitat containing the essential feature and that may require special management considerations or protection is continental shelf and slope associated waters in the Gulf of Mexico. The boundaries of the specific area were determined by the presence of the essential feature and Rice's whales, as described earlier within this document. Because the quality of the available GIS data varies based on collection method, resolution, and processing, the proposed critical habitat boundaries are defined by the maps in combination with the textual information included in the proposed regulation. This textual information clarifies and refines the location and boundaries of each specific area.

Occupied Critical Habitat Unit Description

The specific area of occupied critical habitat for the Rice's whale consists of waters from the 100 meter isobath to the 400 meter isobath in the Gulf of Mexico starting at the U.S. Exclusive Economic Zone boundary off of Texas east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of

Florida. The area of the Gulf of Mexico unit is 73,220.65 square kilometers or 28,270.65 square miles. The map and regulatory text in this document provide more detail regarding the location and boundaries of this area.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies are also required to confer with NMFS regarding any actions likely to jeopardize the continued existence of any species proposed for listing under the ESA, or likely to destroy or adversely modify proposed critical habitat, pursuant to section 7(a)(4).

A conference involves informal discussions in which NMFS may recommend conservation measures to minimize or avoid adverse effects (50 CFR 402.02). The discussions and conservation recommendations are documented in a conference report provided to the Federal agency (50 CFR 402.10(e)). If requested by the Federal agency and deemed appropriate by NMFS, the conference may be conducted following the procedures for formal consultation in 50 CFR 402.14, and NMFS may issue an opinion at the conclusion of the conference. This opinion may be adopted as the biological opinion when the species is listed or critical habitat designated if no significant new information or changes to the action alter the content of the opinion (50 CFR 402.10(d)).

When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions that may affect a listed species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our findings in a letter of concurrence or in a biological opinion. If we conclude in the biological opinion that the action would likely result in the destruction or adverse modification of critical habitat, we would also identify any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid the likelihood of destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated that may be affected by the identified action; or (2) New information or changes to the action may result in effects to critical habitat in a manner or to an extent not previously considered. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions that may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities subject to the ESA section 7 consultation process are those activities authorized, funded, or carried out by Federal action agencies, whether on Federal, state, or private lands or waters. ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions that are not federally funded, authorized, or carried out.

Activities That May Be Affected

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate in any proposed or final regulation to designate critical habitat those activities, whether public or private, that may adversely modify such habitat or that may be affected by such designation. As described in our Endangered Species Act Critical Habitat Report, a wide variety of Federal activities may require ESA section 7 consultation because they may affect the essential feature of Rice's whale critical habitat. Specific future activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat, in addition to their potential to affect and jeopardize the continued existence of listed species. For example, activities may adversely modify the continental shelf and slope associated waters by destroying or altering the habitat. These activities, whether public or private, would require ESA section 7 consultation when they are authorized, funded, or carried out by a Federal agency. A private entity may also be affected by proposed critical habitat designations if it is a proponent of a project that requires a Federal permit or receives Federal funding. Categories of activities that may be affected through section 7 consultation by designating Rice's whale critical habitat include oil and exploration and development, renewable energy development, fishery management, military activities, water quality management, scientific research and monitoring, space vehicle launches and reentry, and in-water construction.

Questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat should be directed to us (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Identifying the extent or severity of an impact on the essential feature at which the conservation value of habitat for the listed species may be affected is inherently complex. Consequently, the actual responses of the critical habitat to effects to the essential feature resulting from future Federal actions will be case- and site-specific, and predicting such responses will require case- and site-specific data and analyses.

Public Comments Solicited

We request that interested persons submit comments, information, and data concerning this proposed rule during the comment period (see **DATES**). We are soliciting comments from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning the areas proposed for designation and appropriateness and description of the essential feature. Specifically, we seek public comments concerning the attributes of the proposed essential feature. We also solicit comments regarding specific, probable benefits and impacts stemming from this designation, including any estimates of incremental impacts. We also request comment on any projects or activities that may be affected or delayed by this designation, and the assumption that consultations will not result in project modifications. We also seek comments on the identified geographic area occupied by the species and the potential benefits to the species from this designation or alternative designations. We seek information that would assist in further characterizing environmental parameters important to Rice's whales. We seek information about any additional sightings or areas that may support Rice's whales not addressed in this proposed rule or supporting information. We seek any additional information about strandings or other historical records of Bryde's-like whales in the Gulf of Mexico or Atlantic Ocean.

You may submit your comments and materials concerning this proposal by

any one of several methods (see **ADDRESSES**). We will consider all comments pertaining to these designations received during the comment period in preparing the final rule. Accordingly, the final designation may differ from this proposal.

Information Quality Act and Peer Review

The data and analyses supporting this proposed action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554). On December 16, 2004, OMB issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and all of the requirements were effective by June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific assessments'' prior to public dissemination. ''Influential scientific information'' is defined as information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review of influential scientific information. Stricter standards were established for the peer review of highly influential scientific assessments, defined as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or for which the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.

The information in the Endangered Species Act Critical Habitat Report supporting this proposed critical habitat rule is considered influential scientific information and was thus subjected to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the biological information in the Endangered Species Act Critical Habitat Report and incorporated the peer review comments into the report prior to dissemination of this proposed rulemaking. Comments received from peer reviewers are available on our website at *https://www.noaa.gov/information-technology/endangered-species-act-critical-habitat-report-rices-whale-id452.*

Classification

Takings (Executive Order 12630)

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of private property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. These designations would affect only Federal agency actions (*i.e.,* those actions authorized, funded, or carried out by Federal agencies). Therefore, the critical habitat designation does not affect landowner actions that do not require Federal funding or permits.

Regulatory Planning and Review (Executive Order 12866)

This proposed rule has been determined to be significant for purposes of E.O. 12866 review. A report evaluating the economic impacts of the proposed rule has been prepared and is included in the Endangered Species Act Critical Habitat Report, incorporating the principles of E.O. 12866. Based on the economic impacts evaluation in the Endangered Species Act Critical Habitat Report, total incremental costs resulting from the critical habitat are approximately $240,000 over the next 10 years ($37,000 annualized), applying a discount rate of 7 percent.

Federalism (Executive Order 13132)

Executive Order 13132 requires agencies to ensure state and local officials have the opportunity for meaningful and timely input when developing regulatory policies that have federalism implications. Policies that have federalism implications are those with substantial, direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on local governments are sufficiently substantial, the agency must prepare a Federal assessment. Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. However, in keeping with Department of Commerce policies and consistent with ESA regulations at 50 CFR 424.16(c)(1)(ii), we will request information for this proposed rule from state and territorial resource agencies in Florida, Alabama, Mississippi, Louisiana, and Texas. The proposed designation may have some benefit to state and local resource agencies in that the proposed rule clearly defines the essential feature and the areas in which that feature is found. Clear definitions and information about the critical habitat may help local governments plan for activities that may require ESA section 7 consultation.

Energy Supply, Distribution, and Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule, if finalized, will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have not prepared a Statement of Energy Effects.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)/Initial Regulatory Flexibility Analysis (IRFA)

We prepared an initial regulatory flexibility analysis (IRFA) in accordance with section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*). The IRFA analyzes the impacts to small entities that may be affected by the proposed designations and is included as Appendix B of the Endangered Species Act Critical Habitat Report and is available upon request (see **ADDRESSES** section). We welcome public comment on this IRFA, which is summarized below, as required by section 603 of the RFA.

The IRFA uses the best available information to identify the potential impacts to small entities of designating critical habitat. However, a number of uncertainties complicate quantification of these impacts. These include (1) the fact that the manner in which potential impacts of critical habitat designations will be allocated between large and small entities is generally uncertain; and (2) as discussed in the main body of the economic report, there is uncertainty regarding the potential effects of critical habitat designation, and some categories of potential impacts that cannot be quantified must be described qualitatively.

The IRFA anticipates that the proposed critical habitat will result in negligible impacts to small entities. In-water construction is likely the only activity category for which a portion of incremental costs of the proposed rule would be borne by small entities, and the scope of in-water construction projects potentially undertaken by small entities is limited due to the 100 meter depth of the proposed critical habitat's shoreward boundary. Incremental costs of the proposed rule to activities other than in-water construction would likely be borne entirely by Federal agencies, which, by definition, are not small entities.

As documented in the Endangered Species Act Critical Habitat Report, incremental impacts of the proposed rule are expected to be limited to the administrative costs of addressing Rice's whale critical habitat in future section 7 consultations, as any project modifications to activities that may affect the proposed critical habitat are expected to be required absent designation. The forecast of section 7 consultations that would consider effects specific to Rice's whale critical habitat over the next 10 years includes consultation on approximately one in-water construction project over the 10 years. Based on assumed administrative costs of consultation to third parties, this would result in an average annualized cost of $250 to the third party involved in the project. This average annualized cost represents the maximum potential impact of the proposed rule to small entities, as determined by the IRFA. This is reasonable given (1) as noted above, the nearshore boundary of the proposed critical habitat is the 100-meter isobath and well offshore of coastal areas where most in-water construction activity that involves small entities occurs and (2) the section 7 consultation history for 2010 through 2021 includes only one U.S. Army Corps of Engineers-permitted in-water construction project within the proposed critical habitat area. Based on this analysis, the IRFA concludes that the proposed designation of critical habitat for the Rice's whale would result in negligible impacts to small entities.

The proposed rule will not duplicate or conflict with any other laws or regulations. However, other aspects of the ESA may overlap with the proposed critical habitat designation. For instance, listing of the Rice's whale under the ESA requires Federal agencies to consult with NMFS to ensure against jeopardy to the species. Overlap of the presence of other ESA-listed species, including ESA-listed whales and sea turtles, and critical habitat designated for the Northwest Atlantic Ocean Distinct Population Segment of the loggerhead sea turtle with the areas proposed for critical habitat designation protects the essential feature of the proposed critical habitat to the extent that projects or activities that may adversely affect the proposed critical habitat also pose a threat to the listed species or to loggerhead sea turtle critical habitat.

The RFA requires consideration of significant alternatives that would minimize impacts to small entities. We considered three alternatives when developing the proposed critical habitat rule: (1) a no action alternative that would not designate critical habitat (status quo), (2) our proposed critical habitat designation (the preferred alternative), and (3) a critical habitat designation with different geographic boundaries.

Under the no action alternative (status quo), we considered not designating critical habitat for the Rice's whale. Under this alternative, conservation and recovery of the listed species would depend exclusively upon the protection provided under the ''jeopardy'' provisions of section 7 of the ESA. This alternative would impose no additional economic, national security, or other relevant impacts. However, after compiling and reviewing the biological information for the Rice's whale, we have determined that the physical and biological feature forming the basis for our critical habitat designation is essential to the Rice's whale's conservation, and conservation of the species will not succeed without this feature being available. Thus, the lack of protection of the critical habitat feature from adverse modification could result in continued declines in abundance of Rice's whale, and loss of associated economic and other biodiversity values the whale provides. Thus, the no action alternative is not necessarily a ''no cost'' alternative for small entities. Moreover, this option would not be legally viable under section 4 of the ESA, which specifically requires that we designate critical habitat to the maximum extent prudent and determinable based on consideration of the best available scientific information.

Under the preferred alternative, we would designate the area ranging from the 100 m isobath to the 400 m isobath in GOMx waters from the Texas-Mexico border east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of Florida. This area contains the physical and biological feature essential to the conservation of Rice's whales. The preferred alternative was selected because it implements the critical habitat provisions of the ESA by including the feature we believe is essential to the conservation of the species based on the best available scientific information on the Rice's whale and offers greater conservation benefits relative to either of the other alternatives.

Under the third alternative that would have delineated different geographic boundaries, we would propose to designate a smaller area within the GOMx as critical habitat. Under section 4(b)(2) of the ESA, NMFS has the discretion to exclude a particular area from designation as critical habitat even though it meets the definition of ''critical habitat'' if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the Rice's whale if an area were designated), as long as exclusion of the area will not result in extinction of the species. However, following our consideration of probable national security, economic, and other relevant impacts of designating all the specific areas, we rejected this alternative. We determined that the benefits of excluding any particular areas ranging from the 100 m isobath to the 400 m isobath in GOMx waters from the Texas-Mexico border east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of Florida did not outweigh the conservation benefits of designating those areas. Thus, this alternative was rejected in favor of the preferred alternative.

Coastal Zone Management Act

We have determined that this action will have no reasonably foreseeable effects on coastal uses or resources under the CZMA in Florida, Alabama, Mississippi, Louisiana, and Texas. Upon publication of this proposed rule, these determinations will be submitted to responsible State agencies for review under section 307 of the Coastal Zone Management Act.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new or revised collection of information requirements. This rule, if adopted, would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or

organizations. Therefore, the Paperwork Reduction Act does not apply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This proposed rule will not produce a Federal mandate. The designation of critical habitat does not impose a legally-binding duty on non-Federal government entities or private parties. The only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7 of the ESA. Non-Federal entities that receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, but the Federal agency has the legally binding duty to avoid destruction or adverse modification of critical habitat. We do not anticipate that this rule, if finalized, will significantly or uniquely affect small governments. Therefore, a Small Government Action Plan is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government.

This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Tribal Nations and with respect to tribal lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Tribal Nations or have been set aside for tribal use. These lands are managed by Tribal Nations in accordance with tribal goals and objectives within the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests.

In developing this proposed rule, we reviewed maps and did not identify any areas under consideration for critical habitat that overlap with tribal lands. Based on this, we preliminarily found the proposed critical habitat does not have tribal implications.

References Cited

A complete list of all references cited in this rulemaking can be found on our website *at https://www.fisheries.noaa.gov/species/rices-whale#conservation-management* and is available upon request from NMFS (see **ADDRESSES**).

List of Subjects

50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 226

Endangered and threatened species.

Dated: July 13, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 224 and 226 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101 amend paragraph (h) by revising the entry for ''Whale, Rice's'' to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
*	*	*	*	*	*
Whale, Rice's	*Balaenoptera ricei*	Entire species	84 FR 15446, April 15, 2019	226.230	NA.
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Add § 226.230 to read as follows:

§ 226.230 Critical habitat for the Rice's whale (*Balaenoptera ricei*).

Critical habitat is designated for the Rice's whale as described in this section. The maps, clarified by the textual descriptions in this section, are the definitive source for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat for the Rice's whale includes all marine waters from a nearshore boundary corresponding to the 100-meter isobath to an offshore boundary corresponding to the 400-meter isobath in the Gulf of Mexico and between the U.S. Exclusive Economic Zone boundary off of Texas east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of Florida.

(b) *Essential feature.* The feature essential to the conservation of the Rice's whale is the Gulf of Mexico continental shelf and slope associated waters between the 100 and 400-meter isobaths that support individual growth, reproduction, and development, social behavior, and overall population growth. The following attributes of this feature support Rice's whales' ability to forage, develop, communicate, reproduce, rear calves, and migrate throughout the Gulf of Mexico continental shelf and slope waters and influence the value of the feature to the conservation of the species:

(1) Sufficient density, quality, abundance, and accessibility of small

demersal and vertically migrating prey species, including scombriformes, stomiiformes, myctophiformes, and myopsida;

(2) Marine water with elevated productivity, bottom temperatures of 10–19 degrees Celsius, and levels of pollutants that do not preclude or inhibit any demographic function; and

(3) Sufficiently quiet conditions for normal use and occupancy, including intraspecific communication, navigation, and detection of prey, predators, and other threats.

(c) *Map.* Critical habitat map—an overview map of the proposed critical habitat follows. Key points are identified and depth information provided.

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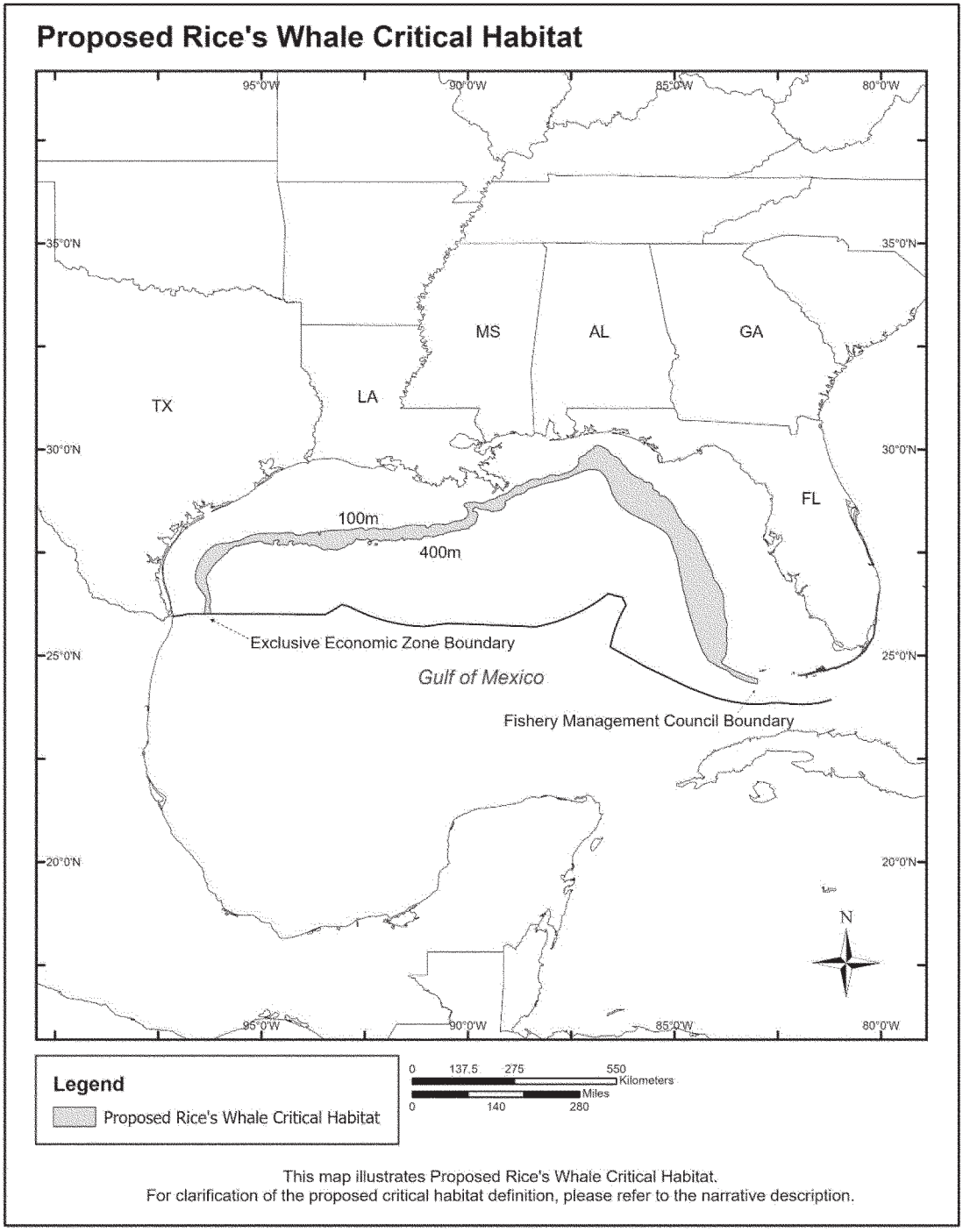
Figure 1 to paragraph (c)



[FR Doc. 2023–15187 Filed 7–21–23; 8:45 am]

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economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. Given that this species occurs entirely outside of U.S. waters, there will be no federalism impacts because listing the species will not affect any state programs.

List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: April 3, 2023.

Kelly Denit,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, in the table in paragraph (h), add the entry, ''Dolphin, Atlantic humpback'', in alphabetical order by common name under ''Marine Mammals'' to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
Marine mammals:					
*	*	*	*	*	*
Dolphin, Atlantic humpback.	*Sousa teuszii*	Entire species	*[Insert* **FEDERAL REGISTER** *page where the document begins], [date of publication when published as a final rule].*	NA	NA.
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722; February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612; November 20, 1991).

[FR Doc. 2023–07286 Filed 4–6–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC760]

50 CFR Part 224

Endangered and Threatened Species; Petition To Establish a Vessel Speed Restriction and Other Vessel-Related Measures To Protect Rice's Whales

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

ACTION: Notice of receipt of petition; request for comments.

SUMMARY: The Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, and New England Aquarium submitted a petition to the National Marine Fisheries Service (NMFS) for rulemaking to establish a year-round 10-knot (kn) (5.1 meters/second) vessel speed limit and other vessel-related mitigation measures in the Rice's whale ''core'' habitat area. NMFS is requesting comments on the petition and will consider all comments and available information when determining whether to accept the petition and proceed with the suggested rulemaking.

DATES: Submit written comments on or before July 6, 2023.

ADDRESSES: You may submit data, information, or comments on this document, identified by NOAA–NMFS–2023–0027, and the petition by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0027. Click on the ''Comment'' icon and complete the required fields. Enter or attach your comments.
- *Mail:* Submit written comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable electronic file (PDF) formats only. The petition can be obtained electronically on our website at: *https://www.fisheries.noaa.gov/species/rices-whale#conservation-management.*

FOR FURTHER INFORMATION CONTACT: Laura Engleby, NMFS Southeast Region, *laura.engleby@noaa.gov,* 727–824–5312.

SUPPLEMENTARY INFORMATION: On May 11, 2021, NMFS received a petition pursuant to the Administrative Procedure Act from the Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity,

Defenders of Wildlife, Earthjustice, and New England Aquarium requesting that we utilize our authorities under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) to establish a ''Vessel Slowdown Zone'' to protect Rice's whales from collisions with vessels and noise pollution. The petition proposes a year-round 10-knot vessel speed restriction within waters between 100 meters (m) and 400 m deep from approximately Pensacola, FL, to just south of Tampa, FL (*i.e.,* from 87.5° W longitude to 27.5° N latitude) plus an additional 10 kilometers (km) around that area (referred to in the petition as the ''Vessel Slowdown Zone''). The petition proposes the following additional restrictions within this ''Vessel Slowdown Zone'': (a) no vessel transits at night; (b) vessels transiting through the zone must report their plans to NMFS, utilize visual observers, and maintain a separation distance of 500 m from Rice's whales; (c) use and operate an Automatic Identification System, or notify NMFS of transits through the zone; and (d) report deviations from these requirements to NMFS. The petitioners discuss the vulnerability of the species, identify vessel strikes and vessel noise as risks to the whales, and describe NMFS' authority under the ESA and MMPA to establish a ''Vessel Slowdown Zone'' with regulations. The petition describes the features of a ''Vessel Slowdown Zone'' and asserts that the petitioned vessel-related mitigation measures are necessary for the conservation and recovery of Rice's whales.

We are soliciting information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the petitioned action. In particular, we request information and comments on: (1) the advisability of and need for regulations to establish a ''Vessel Slowdown Zone;'' (2) the geographic scope of any such regulations; (3) alternative management options for regulating vessel interactions with Rice's whales, including but not limited to the options in the petition; (4) scientific and commercial information regarding the effects of vessels on Rice's whales, or other similar species, and their habitat; (5) information regarding potential economic effects of regulating vessel interactions; and (6) any additional, relevant information that NMFS should consider. The petition is available at: *https://www.fisheries.noaa.gov/species/rices-whale#conservation-management.*

You may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

If NMFS decides to initiate rulemaking, we will notify the petitioners and publish a notice of our decision in the **Federal Register**. If NMFS decides not to proceed with the petitioned action, we will notify the petitioners and provide a brief statement of the grounds for the decision.

Dated: March 29, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–06978 Filed 4–6–23; 8:45 am]

BILLING CODE 3510–22–P

FLORIDA PORTS COUNCIL

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SeaPort Manatee

PUBLIC COMMENT SUBMITTED BY
Florida Ports Council
October 21, 2022

RE: Proposed Amendments to the
North Atlantic Right Whale Vessel Strike Reduction Rule
DOCKET NO. 220722-0162 RIN 0648-B188

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. 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 into and out of Florida, and link our state to vital international markets.

We are submitting this public comment to express a statewide concern with the Notice of Proposed Rulemaking "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule" issued by the National Oceanic and Atmospheric Administration (NOAA). The proposed amendments present significant life and safety risks for all commercial, recreational, and military mariners who rely upon Florida's seaports. The proposed changes will create severe hazards to safe navigation to and from Florida, and the resulting delays for transiting vessels engaged in maritime commerce will have severe economic impact on the state.

Florida's seaports have been tireless advocates and stewards on protecting the environment and marine life that surrounds our state. This includes many of our seaports serving on ocean and marine advocacy groups like the Marine Resources Council, Green Marine, and the Florida Ocean Alliance. Florida seaports are committed to protecting the North Atlantic Right Whale.

If the proposed speed restrictions are enacted for a longer period and applied to the proposed larger areas of Florida's coastal waters, it will impose severe hazards to the safe navigation of several Florida navigational harbors. In addition, this speed restriction will have a profound and negative impact on passenger and cargo vessel operations by slowing vessel transits to dangerous levels, thus impeding vessel maneuverability. Finally, the proposed changes present additional challenges to a supply chain already strained by global pandemic and natural disasters. This proposed rule could cause further delays and cost increases on goods and fuel for U.S. consumers impacted by natural disasters and inflation.

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The thousands of cruise and cargo vessels that transit Florida seaports annually deliver vital goods and services to Florida and U.S. citizens in Puerto Rico and beyond. Vessels navigating from the open ocean to narrower channels and sea lanes is challenging and dangerous – particularly in challenging navigational conditions after a hurricane or other significant storm. The size of entrance channels on the Atlantic Ocean often requires vessels to increase speed when entering such channel to ensure all transiting vessels maintain safe maneuverability.

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 change would have on ports and port communities.

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support MA benefit design and care delivery innovations to achieve higher quality, equitable, and more person-centered care? Are there specific innovations CMMI should consider testing to address the medical and non-medical needs of enrollees with serious illness through the full spectrum of the care continuum?

10. Are there additional eligibility criteria or benefit design flexibilities that CMS could test through the MA VBID Model that would test how to address social determinants of health and advance health equity?

11. What additional innovations could be included to further support care delivery and quality of care in the Hospice Benefit Component of the MA VBID Model? What are the advantages and disadvantages of receiving the hospice capitation payment as a standalone payment rather than as part of the bid for covering Parts A and B benefits?

12. What issues specific to Employer Group Waiver Plans (EGWPs) should CMS consider?

D. Support Affordability and Sustainability

We are committed to ensuring that Medicare beneficiaries have access to affordable, high value options. We request feedback on how we can improve the MA market and support effective competition.

1. What policies could CMS explore to ensure MA payment optimally promotes high quality care for enrollees?

2. What methodologies should CMS consider to ensure risk adjustment is accurate and sustainable? What role could risk adjustment play in driving health equity and addressing SDOH?

3. As MA enrollment approaches half of the Medicare beneficiary population, how does that impact MA and Medicare writ large and where should CMS direct its focus?

4. Are there additional considerations specific to payments to MA plans in Puerto Rico or other localities that CMS should consider?

5. What are notable barriers to entry or other obstacles to competition within the MA market generally, in specific regions, or in relation to specific MA program policies? What policies might advantage or disadvantage MA plans of a certain plan type, size, or geography? To what extent does plan consolidation in the MA market affect competition and MA plan choices for beneficiaries? How does it affect care provided to enrollees? What data could CMS analyze or newly collect to better understand vertical integration in health care systems and the effects of such integration in the MA program?

6. Are there potential improvements CMS could consider to the Medical Loss Ratio (MLR) methodology to ensure Medicare dollars are going towards beneficiary care?

7. How could CMS further support MA plans' efforts to sustain and reinforce program integrity in their networks?

8. What new approaches have MA plans employed to combat fraud, waste, and abuse, and how could CMS further assist and augment those efforts?

E. Engage Partners

The goals of Medicare can only be achieved through partnerships and an ongoing dialogue between the program and enrollees and other key stakeholders. We request feedback regarding how we can better engage our valued partners and other stakeholders to continuously improve MA.

1. What information gaps are present within the MA program for beneficiaries, including enrollees, and other stakeholders? What additional data do MA stakeholders need to better understand the MA program and the experience of enrollees and other stakeholders within MA? More generally, what steps could CMS take to increase MA transparency and promote engagement with the MA program?

2. How could CMS promote collaboration amongst MA stakeholders, including MA enrollees, MA plans, providers, advocacy groups, trade and professional associations, community leaders, academics, employers and unions, and researchers?

3. What steps could CMS take to enhance the voice of MA enrollees to inform policy development?

4. What additional steps could CMS take to ensure that the MA program and MA plans are responsive to each of the communities the program serves?

III. Collection of Information Requirements

Please note, this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. In addition, this RFI does not commit the Government to any policy decision and CMS will follow established methods for proposing future policy changes, including the MA Advance Notice and Rate Announcement process. We note that not responding to this RFI does not preclude participation in any future procurement or rulemaking, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this RFI.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 26, 2022.

Dated: July 27, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–16463 Filed 7–28–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 220722–0162]

RIN 0648–BI88

Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

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

ACTION: Proposed rule.

SUMMARY: NMFS is proposing changes to the North Atlantic right whale (*Eubalaena glacialis*) vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event. The proposed rule would: (1) modify the spatial and temporal boundaries of current speed restriction areas referred to as Seasonal Management Areas (SMAs), (2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the size class subject to speed restriction, (3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and (4) update the speed rule's safety deviation provision. Changes to the speed regulations are proposed to reduce vessel strike risk based on a coast-wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events. Changes to the existing vessel speed regulation are essential to stabilize the ongoing right whale population decline and prevent the species' extinction.

DATES: Submit comments on or before September 30, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0022, by electronic submission. Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0022 in the Search box. Click the ''Comment'' icon, complete the required fields and enter or attach your comments. You may submit comments on supporting materials via the same electronic submission process, identified by NOAA–NMFS–2022–0022.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). The Draft Environmental Assessment, and the Draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared in support of this proposed rule, are available via the internet at *https://www.regulations.gov/* or obtained via email from the persons listed below.

FOR FURTHER INFORMATION CONTACT: Caroline Good, *caroline.good@noaa.gov,* 301–427–8402.

SUPPLEMENTARY INFORMATION:

Background

The North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. Following two decades of growth between 1990 and 2010, the species has been in decline over the past decade (Pace *et al.* 2017; Pace 2021), with a recent preliminary population estimate of fewer than 350 individuals remaining. North Atlantic right whale abundance began to decline in 2010 due to a combination of increased human-caused mortality and decreased reproductive output (Pace *et al.* 2017). The decline coincided with changes in whale habitat use patterns, characterized by the whales' increasing use of areas with few protections from anthropogenic harm (Davis *et al.* 2017; Meyer-Gutbrod and Greene 2018; Record *et al.* 2019). The species' decline has been exacerbated by an ongoing Unusual Mortality Event (UME) that NMFS declared in 2017, pursuant to section 404 of the Marine Mammal Protection Act (MMPA), and includes an unprecedented 51 known mortalities and serious injuries to date, impeding the species' recovery. NMFS interprets the regulatory definition of serious injury as any injury that is ''more likely than not'' to result in mortality, or any injury that presents a greater than 50 percent chance of death to a marine mammal (NMFS 2014). Thus, lethal strike events are those that have or are likely to result in a mortality.

Entanglement in fishing gear and vessel strikes are the two primary causes of right whale mortality and serious injury. Human-caused mortality to adult females, in particular, is limiting recovery of the species (Moore *et al.* 2005, 2021; Corkeron *et al.* 2018; Hayes *et al.* 2019; Sharp *et al.* 2019). Anthropogenic trauma was the sole source of mortality for right whale adults and juveniles for which a cause of death could be determined between 2003 and 2018 (Sharp *et al.* 2019). North Atlantic right whale calving rates dropped from 2017 to 2020, with zero births recorded during the 2017–2018 season. The 2020–2021 calving season had the first substantial calving increase in five years, with 20 calves born, followed by 15 calves during the 2021–2022 calving season. However, mortalities continue to outpace births, and best estimates indicate fewer than 100 reproductively active females remain in the population.

NMFS has determined that the Potential Biological Removal (PBR) for the species—defined by the MMPA as ''the maximum number of individuals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population''—is 0.7 whales (NMFS 2021). This means that for the species to recover, the population cannot sustain, on average over the course of a year, the death or serious injury of a single individual due to human causes. Observed human caused mortality far exceeds this level and a recent assessment of total right whale mortality estimates range-wide indicates that observed deaths likely captured only about 36 percent of the actual total deaths between 1990 and 2017 (Pace *et al.* 2021). Right whale abundance will continue to decline, imperiling species recovery, unless human caused mortality is substantially reduced in the near term.

North Atlantic right whales inhabit U.S. waters year-round but predominate during late fall through early summer. Within U.S. waters, the whales primarily forage in the greater Gulf of Maine region (Pershing *et al.* 2009; Davies *et al.* 2014). The species' only known winter calving area lies within the South Atlantic Bight between northern Florida and North Carolina (Keller *et al.* 2012; Gowan and Ortega-Ortiz 2014). The Mid-Atlantic region serves both as a migratory habitat for whales moving between calving areas and northern foraging grounds, as well as a foraging habitat. Right whales can be highly mobile, traveling upwards of 40 nautical miles per day, or, when engaged in certain behaviors (*e.g.,* foraging), relatively stationary, remaining within several miles for days (Baumgartner and Mate 2005; Crowe et *al.* 2021). The whales' primary distribution includes seasonal coastal habitats characterized by extensive commercial and recreational vessel traffic.

North Atlantic right whales are vulnerable to vessel strike due to their coastal distribution and frequent occurrence at near-surface depths, and this is particularly true for females with calves. The proportion of known vessel strike events involving females, calves,

and juveniles is higher than their representation in the population (NMFS 2020). Mother/calf pairs are at high risk of vessel strike because they frequently rest and nurse in nearshore habitats at or near the water surface, particularly in the Southeast calving area (Cusano *et al.* 2018; Dombroski *et al.* 2021). Calving females have the longest residence time of any demographic group on the Southeast calving ground, staying on average about three months in the region before traveling with their nursing calves to northern foraging areas (Krzystan *et al.* 2018). Right whales nurse their calves for up to a year. This promotes rapid calf growth (Fortune *et al.* 2012) but also places mother/calf pairs at increased risk of vessel interactions, not only within the Southeast calving ground but also along the Mid-Atlantic and New England coasts, which are important migratory and foraging areas for right whales.

Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart 2007; Conn and Silber 2013; Van der Hoop *et al.* 2014; Martin *et al.* 2015; Crum *et al.* 2019). In 2008, NMFS implemented 10-knot (5.1 meters/second (m/s)) vessel speed restrictions for a five-year period for most vessels greater than or equal to 65 ft (19.8 m) in overall length within designated areas commonly referred to as Seasonal Management Areas (SMAs) along the U.S. East Coast to reduce the risk of mortality and serious injury from vessel strike (73 FR 60173, October 10, 2008 (50 CFR 224.105)). NMFS later removed the five-year ''sunset'' provision from the speed rule (78 FR 73726, December 9, 2013; 79 FR 34245, June 16, 2014), and the rule continues in effect today.

Reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of lethal outcomes from vessel collisions with right whales. Previous investigations indicate that NMFS' speed regulations at 50 CFR 224.105 for most vessels greater than or equal to 65 ft (19.8 m) in length reduced the risk of lethal vessel strikes to right whales (Conn and Silber 2013; Laist *et al.* 2014). In 2021, NMFS released the North Atlantic Right Whale Vessel Speed Rule Assessment (hereafter ''speed rule assessment'') documenting a reduction in observed right whale serious injuries and mortalities resulting from vessel strikes since implementation of the speed rule in 2008 (50 CFR 224.105), but highlighting the need for additional action to more effectively address the risk of vessel strikes to right whales (NMFS 2020).

NMFS is addressing risk from fishing gear entanglement through separate regulatory actions from this proposed rule as informed by the Atlantic Large Whale Take Reduction Team (ALWTRT) and continues to work on additional measures to further reduce lethal entanglements. The MMPA directs NMFS to reduce incidental entanglements in commercial fisheries that cause mortalities and serious injuries of marine mammal stocks above a biological reference point (*i.e.* PBR) through a consensus-based Take Reduction Process. The ALWTRT is a large stakeholder group NMFS has convened numerous times since 1996 to develop recommendations to reduce mortality and serious injury of right whales and other large whales covered under the Atlantic Large Whale Take Reduction Plan. The ALWTRT continues to meet regularly to develop recommendations to further modify the Plan and reduce right whale entanglements in commercial fisheries.

Summary of Current North Atlantic Right Whale Vessel Strike Reduction Measures

NMFS has implemented a combination of regulatory requirements and voluntary programs aimed at modifying mariner behavior and/or increasing mariner awareness of right whale presence to reduce vessel collision risk. Together, these efforts address two aspects of reducing strike risk: (1) reducing the spatial overlap of right whales and vessels, and (2) reducing the speed of vessels in areas and at times when right whales are likely to be present. Below is a summary of vessel strike reduction actions implemented by NMFS and other Federal partners to date.

Statutory Protections

(1) ''Take'' Prohibitions. Both the Endangered Species Act (ESA) and the MMPA generally prohibit the unauthorized ''take'' of North Atlantic right whales. Under the ESA, ''take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' (16 U.S.C. 1532(19)). Under the MMPA, ''take means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.'' (16 U.S.C. 1362(13)).

(2) ESA Section 7 Consultations. As required by Section 7(a)(2) of the ESA, as amended (ESA; 16 U.S.C. 1531 *et seq.*), all U.S. Federal agencies must consult with NMFS to ensure that any actions they authorize, fund, or carry out that may affect ESA-listed species under NMFS jurisdiction are not likely to jeopardize the continued existence of those species or adversely modify or destroy their designated critical habitat. When Federal agencies authorize vessel activities potentially co-occurring with right whales and engage in consultations with NMFS, they often implement measures governing vessel speed designed to reduce the risk of right whale interactions.

Regulatory Measures

(1) North Atlantic Right Whale Vessel Speed Rule. In 2008, NMFS implemented a rule requiring most vessels equal to or greater than 65 ft (19.8 m) in length to transit at speeds of 10 knots (5.1 m/s) or less in designated SMAs (73 FR 60173, October 10, 2008) pursuant to its authority under the MMPA and ESA. Some vessels are exempt from this requirement including military vessels, vessels owned, operated or contracted by the Federal government, and vessels engaged in enforcement or search and rescue activities (50 CFR 224.105(a)). Although these vessels are exempt from the speed rule, they are not exempt from consultation under section 7 of the ESA. During consultations, mitigation measures, including reduced speeds, may be recommended or specified to reduce the threat of vessels collisions with right whales. Regulatory requirements, such as those proposed here that contain a maximum vessel speed but no minimum, are separate from any requirements specified as part of ESA section 7 consultations and are not expected to result in the need to reinitiate existing consultations (50 CFR 402.16). In addition, subject to specific requirements, vessels may deviate from the speed restriction (*i.e.,* exceed the speed limit), under limited circumstances, to maintain safe maneuvering speeds (50 CFR 224.105(c)). Vessels employing this safety deviation must make a notation in the vessel logbook detailing the event. Ten SMAs were designated along the U.S. East Coast with seasonally active periods reflective of temporal trends in right whale habitat use. The locations of the SMAs were informed by vessel traffic (*i.e.,* port entrances were assumed high traffic areas relative to other areas) and right whale distribution data at the time the rule was established. NMFS selected the 10-knot (5.1 m/s) speed limit based on analyses of large whale vessel strike events where the vessel speed at the time of impact was known. Researchers found the probability of whale mortality increased substantially

with vessel speed, with the greatest increase occurring between speed of 10 to 14 knots (5.1 to 7.2 m/s; Vanderlaan and Taggert 2007). Based on these findings, NMFS determined that the use of speed restrictions was an effective means to reduce the likelihood and severity of vessel collisions.

(2) 500 Yard (457.2 m) Minimum Approach Distance. In 1997, NMFS implemented a minimum approach distance for vessels in the vicinity of North Atlantic right whales in an effort to reduce harassment and risk of injury (62 FR 6729, February 13, 1997). It is illegal for a vessel to approach within 500 yards (457.2 m) of a right whale, and if a vessel finds itself within 500 yards (457.2 m) it ''must steer a course away from the right whale and immediately leave the area at a slow safe speed'' (50 CFR 224.103(c)(1–2)). Exceptions are made if ''compliance would create an imminent or serious threat to a . . . vessel'' (50 CFR 224.103(c)(3)).

Non-Regulatory Measures

(1) Great South Channel Area To Be Avoided (ATBA). An ATBA is an International Maritime Organization (IMO)-established vessel routing measure within a specified area to avoid navigational hazards or environmentally sensitive areas. In June 2009, an ATBA was established in the Great South Channel to the east of Cape Cod, MA after gaining approval from the IMO. All vessels greater than or equal to 300 gross tons are recommended to avoid this area between April 1 and July 31.

(2) Recommended Routes. In 2006, a joint U.S. Coast Guard/NOAA effort established recommended routes for vessels transiting across Cape Cod Bay and into/out of ports in Florida and Georgia. The routes are recommended between January and May in Cape Cod Bay and between November and April off Florida and Georgia. Mariners are recommended to follow the routes to minimize their transit distance through important right whale habitat areas.

(3) Modification to the Boston Traffic Separation Scheme (TSS). In 2007, following a successful application to the IMO led by the Stellwagen Bank National Marine Sanctuary and NMFS, a modified TSS (commonly referred to as a shipping lane) was implemented to the north of Cape Cod, MA for vessel traffic navigating to and from the Port of Boston. The modification narrowed the TSS and shifted its route to the north around Cape Cod to reduce the overlap with large whale foraging grounds.

(4) Dynamic Management Areas (DMAs) and Right Whale Slow Zones. NMFS implemented a voluntary DMA program concurrently with the mandatory speed rule in 2008. A DMA is triggered when a group of three or more right whales are sighted in close proximity. Beginning in 2020, the NMFS Greater Atlantic Region modified the DMA program to include acoustically triggered Slow Zones. Once the trigger is met, NMFS establishes a boundary around the whales for 15 days and encourages vessels either to avoid the area or transit through at speeds less than 10 knots (5.1 m/s). DMAs/Slow Zones may be extended if whales remain in the area. The agency alerts mariners to DMA and Slow Zone declarations through website postings, emails to lists of interested parties, U.S. Coast Guard Local Notices to Mariners, and U.S. Coast Guard Broadcast Notices to Mariners.

Need for Additional Action

In January 2021, NMFS released an assessment evaluating the effectiveness of the North Atlantic right whale speed rule and associated voluntary DMA program (NMFS 2020) and invited the public to submit comments. The review found that the speed rule had made progress in reducing vessel strike risk to right whales but that additional action is warranted to further reduce the threat of vessel collisions. While it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events following implementation of the speed rule, the preponderance of evidence suggests speed reductions, as implemented, have helped. NMFS' data on documented vessel strike events continues to affirm the role of high vessel speeds (≤ 10 knots (5.1 m/s)) in lethal collision events and supports existing studies implicating speed as a factor in lethal strikes events. NMFS has documented five right whale vessel strike cases in U.S. waters that resulted in *non-serious* injuries for which vessel speed is known. Only one of the five vessels involved was transiting in excess of 10 knots (5.1 m/s) at the time of the collision. In contrast, of the nine documented lethal right whale vessel collisions in U.S. waters since 1990 for which vessel speed is known, eight involved vessels transiting in excess of 10 knots (5.1 m/s).

Since the speed rule first went into effect, NMFS has documented 12 right whale mortality and serious injury events involving vessel collisions in U.S. waters, along with an additional five mortality and serious injury events involving unknown whale species, possibly right whales. These figures likely underestimate the total number of lethal right whale vessel strikes in U.S. waters. Strikes occurring farther offshore and/or involving large ocean-going vessels are likely underreported in the data because most large ships are not able to detect interactions with large whales, and whales that die well offshore are less likely to be detected overall. Based on estimates of total right whale deaths, documented mortalities from all sources represent approximately one-third of actual annual right whale mortality range-wide (Pace *et al.* 2021). Thus, in addition to the observed events, NMFS recognizes that additional lethal vessel strike events likely went undetected in U.S. waters.

A detailed examination of documented right whale vessel strike events in the U.S. further reveals the following:

(1) Vessels less than 65 ft (19.8 m) in length accounted for five of the 12 documented lethal strike events in U.S. waters since 2008, demonstrating the significant risk this unregulated vessel size class can present to right whales.

(2) Vessel strikes continue to occur all along the U.S. coast from the Gulf of Maine to the Florida coast. There is no indication that strike events only occur in ''hot spots'' or limited spatial/seasonal areas.

(3) Strikes occur both inside and outside active SMAs, but in many cases, the location of the strike event remains unknown. Four of the five collision events involving vessels less than 65 ft (19.8 m) in length occurred inside active SMAs, although the vessels involved were not subject to mandatory speed restrictions due to their size.

(4) Of the six lethal vessel strike cases documented in U.S. waters and involving right whales since 1999 where vessel speed is known, only one involved a vessel transiting at under 10 knots (5.1 m/s) (~9 knots (4.6 m/s)), although in most cases, we lack vessel speed data associated with collision events.

(5) Females, calves, and juveniles are disproportionately represented in the vessel strike data. This is concerning given the paucity of reproductively active females remaining in the population and their critical role in stabilizing the population decline.

(6) Non-lethal vessel collisions with right whales continue to occur. NMFS' best estimates indicate that vessel strikes (in U.S. waters or first seen in U.S. waters) have resulted in at least 26 non-serious right whale injuries since 2008, although these data do not account for the possibility of blunt force trauma injuries, which are not usually visibly detectable and make accurate

assessments of strike injuries challenging.

Despite NMFS' best efforts, the current speed rule and other vessel strike mitigation efforts are insufficient to reduce the level of lethal right whale vessel strikes to sustainable levels in U.S. waters. NMFS has determined that additional action is needed to address gaps in current management programs and better tailor mitigation efforts. In evaluating potential changes to the current speed rule NMFS considered up-to-date strike risk modeling, data on right whale strike events, species distribution, and vessel traffic characteristics in right whale habitat, and the extensive and informative comments received in response to the 2020 speed rule assessment.

Summary of Proposed Changes

NMFS proposes changes to the existing North Atlantic right whale vessel speed regulations. The proposed measures detailed below seek to reduce the risk of mortality and serious injury from vessel strike events in U.S. waters and include the following:

(1) Changes to the spatial boundaries and timing of mandatory SMAs to better address areas and times where vessel strike risk is high;

(2) Inclusion of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to the speed restriction;

(3) Implementation of a Dynamic Speed Zone (DSZ) framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs; and

(4) Updates to the speed rule's safety deviation provision.

Modification of Seasonal Speed Zones (Currently Referred to as Seasonal Management Areas)

Since implementation of the speed rule in 2008, the distribution of right whales has shifted, resulting in a misalignment between areas of high vessel strike risk and current SMA spatial and temporal bounds. Improved data on vessel traffic and right whale distribution/habitat use further highlight this discrepancy and the need to adjust SMA boundaries to better address the risk of collisions. For example, after 2010, right whales began to frequent the region south of Martha's Vineyard and Nantucket, MA, and are now regularly observed in large aggregations foraging in the area (Leiter *et al.* 2017). Prior to this period, that region, while part of right whale habitat, was not identified as an important foraging area. In 2021 alone, 67 voluntary DMAs and Slow Zones were declared (28 of which were off Martha's Vineyard and Nantucket), demonstrating the ongoing spatial and temporal mismatch between whale aggregations and vessel strike protections.

The goal for vessel speed regulation remains unchanged—to reduce the likelihood of right whale serious injuries and mortalities from vessel collisions. To maximize the reduction of vessel strike risk, NMFS developed proposed modifications to the SMAs using a coast-wide vessel strike mortality risk model, North Atlantic right whale visual sighting (NARWC 2021) and acoustic detection (NEFSC 2022) data, recent vessel traffic Automatic Identification System (AIS) data, and information on other relevant planned ocean activities, including offshore wind development.

Additional factors were considered when developing proposed SMA spatial boundaries and timing to optimize effective right whale protection, including minimizing impacts on the regulated community:

(1) NMFS sought to provide robust protection for right whales over a 10 to 15 year time horizon, and design built-in adaptivity to climate change and other factors to ensure that the speed rule remains resilient to shifts in right whale distribution and habitat use over time. This timeframe also provides a stable and predictable long-term regulatory structure for the maritime community.

(2) NMFS aimed to identify the smallest spatial and temporal footprint possible for speed restricted areas to minimize the extent of regulatory action while achieving necessary conservation goals. This assumes a framework will be in place to implement mandatory speed restrictions dynamically to address right whales outside the proposed SMAs (see Mandatory Dynamic Speed Zones).

(3) Changes to speed regulation areas/boundaries focused on reducing vessel traffic operating at speeds in excess of 10 knots (5.1 m/s), since high transit speed is implicated in strike events, and we have the ability to modify this aspect of vessel operation in right whale habitats.

Description of the Vessel Strike Mortality Risk Model

NMFS evaluated the risk of right whales being struck and killed by vessels in U.S. waters along the East Coast using an encounter risk model (Garrison *et al.* 2022). This model simulates the likelihood of a fatal vessel strike based on six sources of information: (1) the spatial distribution and density of right whales; (2) the spatial distribution and amount of vessel traffic; (3) the likelihood that a whale and a particular vessel will be in close proximity; (4) the likelihood that a whale will be near the surface during the interaction; (5) the likelihood that a whale will successfully move to avoid the interaction; and (6) the likelihood of mortality if a collision occurs. A similar approach was previously applied to large whales on the U.S. West Coast (Rockwood *et al.* 2017, 2020) and right whales occurring off the coast of Florida (Crum *et al.* 2019).

NMFS modeled the spatial distribution of right whales using a compilation of aerial survey data collected by the agency and many different external research groups. The model and approaches are similar to those described in Roberts *et al.* (2016) and Gowan and Ortega-Ortiz (2014) and reflect the distribution of right whales since 2010 (Roberts *et al.* 2021). Environmental variables were used to predict the monthly changes in right whale distribution between Florida and the Nova Scotian shelf.

NMFS characterized vessel traffic using data collected via satellite and terrestrial based AIS that transmits information on vessel movements, speed, and characteristics for those vessels that carry AIS units. For each spatial cell in the right whale distribution model, NMFS summarized the length of transit, time of transit, and average speed of each vessel from the available AIS data. These data were summarized monthly for 2017–2019. Generally, most vessels greater than or equal to 65 ft (19.8 m) in length are required to carry AIS transceivers. While many vessels less than 65 ft (19.8 m) in length also carry AIS, they are likely to be under-represented in these data, and therefore, the risk of interactions with right whales is under-represented in the model.

NMFS modeled the likelihood of a whale-vessel encounter using the approach described in Martin *et al.* (2015), where the probability of close encounter between a whale and a vessel within a given spatial cell is a function of vessel size, whale swimming speed, and vessel speed. Given a close encounter, the probability that a whale will be near the surface (in the upper 10 m (32.8 ft) of the water column) where it would be susceptible to a vessel strike was estimated based on available data on dive-surface behavior from animal-borne tags from different regions where whales occur (Baumgartner and Mate 2003; McGregor and Elizabeth 2010; Parks *et al.* 2011; Baumgartner *et al.* 2017; Dombroski *et al.* 2021).

It remains unclear how right whales respond to close approaches by vessels (<1509 ft (460 m)) and the extent to which this allows them to avoid being struck. Rockwood *et al.* (2017) and Crum *et al.* (2019) examined different ways of accounting for avoidance behaviors within encounter risk models. Conn and Silber (2013) indicated that encounter rates were higher with fast-moving vessels than expected, which may be consistent with successful avoidance of slower vessels by whales. NMFS' model included a potential avoidance behavior accounting for random effects of the distance at which a whale reacts, the speed the whale swims to escape, and the direction the whale chooses to swim. This approach accounts for the increased likelihood that a whale will escape a slower moving vessel and includes the large amount of uncertainty in whale behavioral response to approaching vessels.

In this framework, if a collision between a whale and a vessel occurs, the likelihood that the collision will be fatal is a function of vessel speed. NMFS applied the model of Conn and Silber (2013) to evaluate this probability. It should be noted that the data in this model are primarily from larger vessels, so it may be less appropriate for some of the small vessels included in the current analysis.

Application of the Vessel Strike Mortality Risk Model

We used the mortality risk model (Garrison *et al.* 2022) to evaluate areas and times with the highest risk of vessel strike mortalities for right whales. Areas of highest risk are primarily associated with places where there is both a high density of vessel traffic and high density of right whales. In U.S. waters, these areas correspond generally to the Atlantic East Coast region, particularly between late fall and early spring (November through April). The highest risk areas occurred in the Mid-Atlantic between Cape Hatteras, North Carolina, and New York, and in relatively shallow waters over the continental shelf. High-density vessel traffic areas in approaches to major commercial ports pose the greatest risk of vessel strike mortalities. While vessels less than 65 ft (19.8 m) in length are under-represented in the AIS data, the spatial distribution of the risk of interactions with these vessels were also examined. In general, the risk of interactions with vessels less than 65 ft (19.8 m) in length was higher close to shore. NMFS examined the monthly spatial distribution of vessel strike risk to identify regions and times where slowing vessel traffic to speeds less than 10 knots (5.1 m/s) would have the greatest impact on reducing the overall risk of vessel strike mortalities for right whales.

Once these spatio-temporal areas were identified, NMFS compared them with additional opportunistic and survey-based right whale sightings information, including demographics, acoustic detections of right whale presence, and additional information, where available, on possible future activities that might impact vessel traffic, including proposed and leased wind energy sites and U.S. Coast Guard proposed vessel safety fairways (85 FR 37034, June 19, 2020). It is important to note that the risk model is not informed by right whale sightings prior to 2010, opportunistic sightings, or acoustic detections. Additionally, as discussed above, vessel traffic from boats less than 65 ft (19.8 m) in length are under-represented in the model. Comparing these additional data with areas identified by the risk model informed optimal revised SMA boundaries based on the totality of information available.

NMFS then used the risk model to simulate the maximum overall reduction in risk of lethal right whale strikes that could be achieved with the revised SMA boundaries. The revised boundaries were identified based on evaluation of those areas and times with the greatest chance of reducing lethal strikes to right whales. For the simulation, we artificially set the speed of transits within the revised SMA time-space boundary that had an average speed greater than 10 knots (5.1 m/s) to the 10-knot (5.1 m/s) speed that would be required. We then re-calculated the total risk of vessel strike mortality for this simulated dataset and compared to the status quo, thereby providing an estimate of the lethal strike risk reduction, in time and space, should the SMA boundaries be revised to be the expanded SSZs.

Based on this analysis of the proposed SMA boundaries and the additional risk reduction expected to accrue from the use of mandatory DSZs (see Mandatory Dynamic Speed Zones), NMFS anticipates the proposed revisions would address over 90% percent of the risk reduction that can be achieved by reducing vessel speeds to 10 knots (5.1 m/s), relative to the status quo. While the risk model underestimates the strike risk associated with traffic from vessels greater than 35 ft (10.7 m) to less than 65 ft (19.8 m) in length, given the expected coastal distribution of this traffic based on available data, we anticipate this component of strike risk will be sufficiently accounted for by the revised SMA boundaries/timing.

Proposed Boundaries and Effective Periods for Seasonal Speed Zones

NMFS proposes changes to the current boundaries and effective periods of the areas seasonally subject to the 10-knot (5.1 m/s) speed restriction along the U.S. East Coast to better address the ongoing risk of right whale mortality and serious injury from vessel collisions (Figure 1). To more accurately describe them, we will refer to the areas as Seasonal Speed Zones (SSZs) (rather than Seasonal Management Areas or SMAs). The new SSZs include substantial spatial and temporal changes in the Northeast and Mid-Atlantic regions, and more modest changes in the Southeast region. The proposed SSZs with effective dates each year are summarized as follows with geographic coordinates provided in the proposed regulatory text:

(1) Atlantic Zone (November 1–May 30)
(2) Great South Channel Zone (April 1–June 30)
(3) North Carolina Zone (November 1–April 30)
(4) South Carolina Zone (November 1–April 15)
(5) Southeast Zone (November 15–April 15)

NMFS proposes no active SSZs between July and October, and only the Great South Channel Zone would be active during the month of June. This is consistent with data showing fewer right whales present in U.S. waters during this time period. Proposed SSZs were developed with the understanding that DSZs would be used to implement mandatory speed restrictions when appropriate outside of active SSZs. NMFS anticipates that the combination of SSZs and DSZs will provide the spatial and temporal coverage necessary to significantly reduce the risk of lethal strike events attributable to vessel traffic transiting in excess of 10 knots (5.1 m/s).

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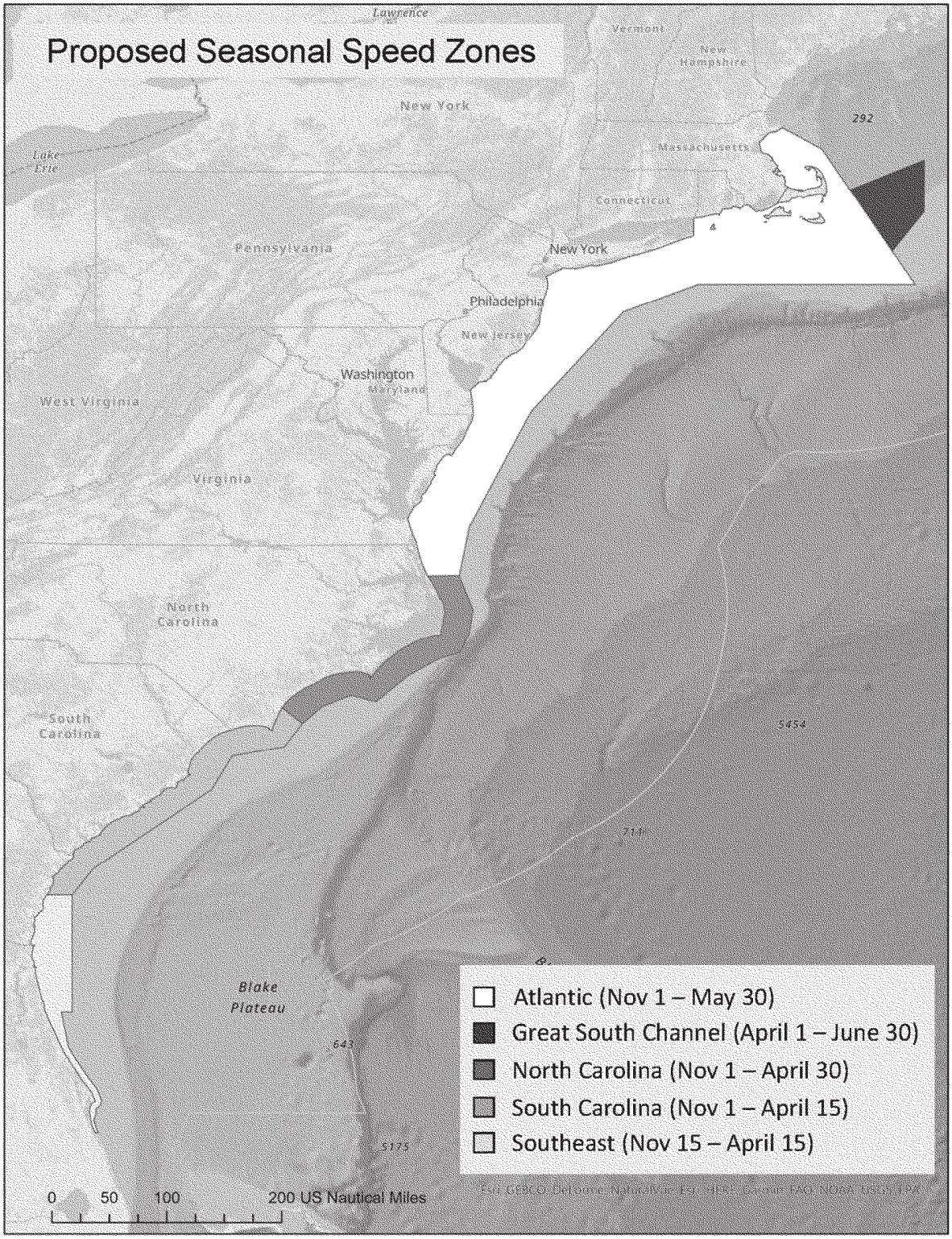

Figure 1: Proposed Seasonal Speed Zones and Effective Dates Each Year

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Regulation of Most Vessels Greater Than or Equal to 35 ft (10.7 m) in Length

The existing North Atlantic right whale vessel speed rule (50 CFR 224.105) does not address the threat of mortalities and serious injuries from strike events involving vessels less than 65 ft (19.8 m) in length. Recent vessel strike events have highlighted the lethality of collisions involving vessel

sizes not subject to the existing speed rule. Since 2020 alone, four right whale vessel strikes in U.S. waters resulted in mortalities and serious injuries: (1) a calf was seriously injured off Florida/Georgia in January 2020; (2) a calf was killed off New Jersey in June 2020; (3) a calf was killed off Florida in February 2021; and (4) its mother was seriously injured by the same vessel. For three of the four events, the vessels involved in the collisions were known to be between 35 (10.7 m) and 65 ft (19.8 m) in length and traveling in excess of 20 knots (10.3 m/s) at the time.

Since 2005, operators of vessels less than 65 ft (19.8 m) in length have reported eight right whale vessel strikes in U.S. waters. Six resulted in right whale serious injuries or mortalities. The reporting vessels ranged in length from 17–54 ft (5.2–16.5 m), with vessels involved in mortality and serious injury events ranging in size from 42–54 ft (12.8–16.5 m) in overall length. The vessel speeds at the time of the strike events ranged from less than 5 knots (2.6 m/s) to approximately 28 knots (14.4 m/s) (Henry *et al.* 2011, 2021; Wiley *et al.* 2016). Of the eight strike events involving vessels less than 65 ft (19.8 m) since 2005, five (including the recent strikes involving a mother/calf pair) occurred within active SMAs where most vessels 65 ft (19.8 m) and over are required to travel at 10 knots (5.1 m/s) or less.

In seven of the eight events involving vessels less than 65 ft (19.8 m) in length, mariners reported no sighting of the whales prior to impact with the vessel. Vessel strikes can occur even when circumstances are seemingly optimal for avoidance as illustrated by two right whale vessel strikes involving research vessels less than 65 ft (19.8 m) in length with trained observers aboard that occurred in Cape Cod Bay during daylight hours (Wiley *et al.* 2016). These events demonstrate that mariner experience and vigilance alone can be insufficient to protect against vessel collisions.

Furthermore, since 2009, operators of vessels less than 65 ft (19.8 m) in length have reported an additional six vessel collisions (including five serious injuries) with undetermined large whale species in U.S. waters that may have involved right whales based on the location and timing of the events (Henry *et al.* 2017). Documented vessel strike deaths of Southern right whales (*Eubalaena australis*) off Australia and South Africa involving a 34-ft (10.4-m) vessel and 44-ft (13.4-m) vessel respectively, further demonstrate the lethal risk vessels less than 65 ft (19.8 m) in length can pose to right whale species more broadly (Peel *et al.* 2016; Vermeulen *et al.* 2021).

Other jurisdictions have instituted speed restrictions for vessels less than 65 ft (19.8 m) in length to mitigate vessel strike risk for North Atlantic right whales. Following a series of right whale vessel strike events, Canada expanded the length of vessels covered by dynamic mandatory 10-knot (5.1 m/s) speed restrictions in the Gulf of St. Lawrence in 2019 to include vessels 13 m (42.7 ft) or greater in length. Also in 2019, the state of Massachusetts introduced regulations restricting the speed of most vessels less than 65 ft (19.8 m) in length to 10 knots (5.1 m/s) or less when transiting through waters within, and to the north of, Cape Cod Bay during the months of March and April each year to provide protection for foraging right whales following vessel strike events in the Bay (322 CMR 12.05). Massachusetts has received no reports of strikes involving vessels less than 65 ft (19.8 m) in length, nor reports of safety concerns from mariners in this area since implementation of the regulation. The State has extended these vessel speed restrictions into the month of May during years when right whales remained in the Bay.

Collisions with vessels less than 65 ft (19.8 m) in length pose a danger to both the whale and vessel occupants. There are numerous cases from around the world of vessels sustaining significant damage, and even sinking, following collisions with whales (Ritter 2012; Peel *et al.* 2018). For example, two vessel-whale collisions that occurred in March 2009 and February 2021 resulted in vessel damage significant enough to require passenger rescue by the U.S. Coast Guard. Sailing vessels can be at particular risk of substantial damage due to their deliberately light construction (Ritter 2012) even though most transit at speeds at or under 10 knots (5.1 m/s). Moreover, collisions with vessels less than 65 ft (19.8 m) in length with whales have resulted in injuries to vessel occupants (NMFS unpublished data).

For the reasons detailed above, NMFS proposes to expand the size class of vessels currently subject to speed restrictions to include most vessels greater than or equal to 35 ft (10.7 m) to less than 65 ft (19.8 m) in overall length. Most vessels within this size class are not subject to U.S. Coast Guard AIS carriage requirements, but based on limited available AIS data and U.S. Coast Guard vessel registration data (USCG 2021), this change may affect up to 8,500–10,000 vessels (albeit to varying degrees). Best estimates indicate that approximately 80 percent of these vessels are larger recreational boats, with commercial fishing (7 percent) and passenger vessels (6 percent) the next most common types. The remaining vessel types include work boats, pilot boats, tug and tow vessels, and other commercial vessels. The total number of affected vessels is likely substantially overestimated, particularly for recreational boats, since available data lack detail about where, when, and how frequently a boat operates within areas subject to speed regulation.

Mandatory Dynamic Speed Zones

Though NMFS' 2006 proposed speed rule included the concept of mandatory DMA speed restrictions that fall outside active SMAs (71 FR 36299, June 26, 2006), the 2008 final speed rule did not. Instead, the agency announced it would implement a voluntary DMA program creating short-term ''dynamic'' areas within which NMFS sought voluntary compliance with restricted speeds based on sightings of right whale aggregations. In 2020, NMFS modified the DMA program to include acoustically triggered Right Whale Slow Zones in the NMFS Greater Atlantic Region (Maine to Virginia), given the increasing availability of near-real time acoustic detectors able to accurately identify right whale presence. If followed, dynamic speed reduction areas provide vessel strike risk reduction to aggregations of right whales or areas with persistent right whale presence outside active SMAs in near-real time. The program was intended to provide protection for right whales in areas/times not covered by SMAs. As discussed above, shifts in right whale distribution and habitat use since the current SMAs were established in 2008 have resulted in a substantial number of DMA and Slow Zone declarations.

NMFS 2008 speed rule stated the agency would ''monitor voluntary compliance'' and if cooperation was not satisfactory would ''consider making them mandatory, through a subsequent rulemaking'' (73 FR 60173, October 10, 2008). Despite NMFS' best efforts to reach out to vessel operators about dynamic speed reduction areas and educate the maritime community about the need for right whale vessel strike mitigation, NMFS' speed rule assessment determined that vessel cooperation levels are low, and therefore, the reduction in risk provided by the voluntary DMAs is minimal (NMFS 2020).

As discussed above, the proposed SSZs boundaries/timing are designed to address most vessel strike risk attributable to vessels transiting in excess of 10 knots (5.1 m/s). Based on

an evaluation of recent voluntary DMAs and acoustically triggered Slow Zones, 54 of the 67 DMAs/Slow Zones triggered during 2021 (80.6 percent) would fall within the proposed SSZs. In other words, only 13 (19.4 percent) of 2021 DMAs/Slow Zones would have been triggered if the proposed SSZ boundaries were in effect. This indicates that the existing misalignment between the current SMA boundaries and elevated risk areas is substantially, but not wholly, captured by the proposed SSZs. Thus, even after adjusting the geographic boundaries and timing of the static SSZs to more accurately reflect the best available data on right whales and vessel strike risk, there is still a role for dynamic speed restrictions to protect other areas where right whales occur less predictably.

In examining the totality of information available to inform changes to the location and timing of SSZ boundaries, it became clear that for some areas and seasons, static speed management may not be sufficient as a sole strategy to reduce vessel strike risk. This is primarily the case in areas where right whale presence is less predictable or more ephemeral and/or where elevated strike risk is more moderate.

Static speed restrictions best serve areas with reliable right whale presence and elevated strike risk. For example, right whales reliably occur within the South Atlantic Bight calving ground each and every season (November through April). The total number of individuals present will vary from year to year (Krzystan *et al.* 2018), but this calving, and likely mating, habitat is an essential area for right whale reproduction and is designated (81 FR 4837, January 27, 2016) as critical habitat under the ESA. The consistency of right whale presence (especially vulnerable mothers/calf pairs) combined with high levels of vessel traffic along the Southeast coast are the primary reasons vessel strike risk in this region is best managed via a static SSZ.

In other times/areas, however, right whale presence may be less predictable and/or elevated vessel strike risk more moderate. For example, during late fall and winter, right whales have been documented over many years in the central Gulf of Maine, frequently engaged in foraging. Right whales have been visually or acoustically detected in this area during most, but not every fall/winter season, and vessel strike risk is lower in this area, relative to other parts of the U.S. East Coast, due to lower levels of vessel traffic transiting at high speeds. Vessel strike risk modeling indicates a benefit to right whales from vessel speed restriction in this area but to a lesser degree than other places/times. With adequate seasonal monitoring for right whale presence, a dynamic area speed restriction is ideally positioned to provide vessel strike protection in this area when and where it will be most beneficial to right whale conservation.

To address elevated vessel strike risk in areas outside SSZs, NMFS is proposing to implement a mandatory DSZ framework to replace the current voluntary DMA/Slow Zone program. Under this proposed framework protocol, as described below, a mandatory DSZ would be created for an area outside an active SSZ, within U.S. waters from Maine to Florida, based on (1) a confirmed visual sighting of a right whale aggregation (three or more whales in close proximity) or a confirmed right whale acoustic detection (since it is not possible to quantify the number of individual whales present) and (2) NMFS determination that the area to be designated as a DSZ has a greater than 50 percent likelihood of right whale presence during a minimum effective period of 10 days (periods shorter than this may present practical challenges for implementation).

Existing protocols for the current voluntary DMA/Slow Zone program are proposed as a minimum trigger threshold to inform a new DSZ. Under these protocols, NMFS establishes voluntary 15-day DMAs when three or more right whales are sighted within close proximity. Depending on the size and geographic spread of the right whale aggregation, the spatial extent of the DMA is determined based on a local density method as outlined in Clapham and Pace (2001), with most zones approximately 400 square nautical miles (sq nm; 1,372 sq kilometers (sq km)). NMFS declares voluntary Slow Zones in the NMFS Greater Atlantic Region when a right whale acoustic detection is confirmed. Acoustically triggered Slow Zones extend approximately 20 nm from the detection source and remain effective for 15 days. DMAs/Slow Zones may be extended if additional sightings or acoustic detections meeting the thresholds above are detected within the latter half of the 15 day effective period. Once the initial detection trigger has been met, NMFS would then determine whether the potential DSZ has a greater than 50 percent likelihood that right whales would continue to be present within the zone (not to exceed 2,500 sq nm (8,575 sq km) commensurate with the size of the aggregation for visual detections or 400 sq nm (1,372 sq km) for acoustic detections). As with the current voluntary DMA/Slow Zone program, DSZs may be extended if additional sightings or acoustic detections meeting the minimum thresholds occur within the effective period.

Drawing upon the agency's long-time expertise implementing voluntary dynamic areas over the last 13 years, NMFS' process for determining and implementing DSZs would follow an objective, rigorous and replicable protocol, informed by inputs such as the number of right whales detected, the dispersion of the aggregation, and whale behavior (if known). Furthermore, NMFS would provide details of the DSZ determination when providing public notice of a DSZ designation. Ensuring that DSZs meet a minimum trigger threshold and a greater than 50 percent likelihood of continued right whale presence standard would provide confidence that these zones will effectively achieve the goal of providing targeted protection to right whales (in areas not protected by static zones) from elevated vessel strike risk while avoiding unnecessary regulation of vessel speed.

The boundaries and timing of temporary DSZs for right whales are by their very nature uncertain until the conditions that trigger one are present. Once those conditions are determined to be in place, however, the need for those DSZs to be effective to protect right whales is immediate. Implementing DSZs through publication of **Federal Register** notices does not allow for timely implementation of a DSZ and could result in unnecessary avoidable risk of both vessel strikes of right whales and potentially mariner safety. The time normally required to file and publish a DSZ's boundaries and effective period in the **Federal Register** would delay implementation and diminish the value and effectiveness. Thus, this proposed rule allows NMFS to implement timely DSZs without prior publication in the **Federal Register** as follows.

When NMFS determines that the criteria for establishing a DSZ, or DSZ extension, have been met, NMFS will announce notice of the DSZ or DSZ extension through publication on the agency's website, via U.S. Coast Guard Notices to Mariners, NOAA Weather Radio announcements, and through other practicable appropriate means, as well as by Notice in the **Federal Register** as soon as practicable. NMFS requests public comment on other effective means for notifying the public, including social media, smartphone apps, email notifications and text alerts to which mariners, harbormasters, port officials, pilots, and the public can subscribe. As stated earlier, the proposed SSZs will accrue a net

expansion of vessel strike risk coverage compared to the areas in the current speed regulation, including many areas/times where voluntary DMAs and Slow Zones have been common. NMFS anticipates that under the proposed DSZs framework, the prevalence of these zones will be less frequent, given the more rigorous coverage provided by the proposed SSZ boundaries. Additionally, since 2008, nearly all voluntary DMAs and Slow Zones were triggered on the continental shelf, with 93 percent occurring in the NMFS Greater Atlantic Region (Maine to Virginia). Accordingly, NMFS anticipates that proposed DSZs would continue to be most common north of North Carolina and within coastal and shelf waters.

NMFS requests public comment on the proposed DSZ framework for the proposed mandatory DSZ program. NMFS particularly invites comment on: (1) the geographic areas that should be subject to mandatory DSZs; (2) the appropriate design of trigger thresholds using confirmed right whale acoustic and/or visual detections as well as the appropriate methodology for determining spatial extent as it relates to the greater than 50 percent likelihood standard for presence; and (3) the forms of notice mariners would find most practicable for receiving timely declarations of new DSZs.

The use of dynamic strategies to manage vessel speed for right whale protection is already customary, and employed in U.S. waters. The State of Massachusetts dynamically extends the effective period of its small vessel speed restrictions in Cape Cod Bay if the continued presence of right whales is detected in the Bay, as the State did in 2021 (Massachusetts Division of Marine Fisheries 2021). NMFS' long-time (since 1997) approach regulations also require mariners to modify their vessel operations (including speed and/or direction of travel) in real-time if they encounter right whales while transiting. Mariners must remain 500 yards (457.2 m) away from right whales unless compliance would create a serious threat to vessel safety. This strategy is also used in Canadian waters. Since 2018, Canada has implemented a seasonal system of mandatory dynamic right whale speed restrictions within the Gulf of St Lawrence shipping lanes and during the summer, creates a dynamic Restricted Area to further protect foraging aggregations, as needed, based on right whale detections, and announced through Transport Canada Ship Safety Bulletins (Transport Canada 2021a, 2021b).

Year-round visual and acoustic monitoring of right whale habitat outside proposed active SSZs will be essential to the effectiveness of the proposed mandatory DSZs. NMFS' coast-wide vessel strike mortality risk model indicates where and when elevated strike risk is present, and can serve as a resource for identifying monitoring needs (Garrison *et al.* 2022). In 2019, NMFS convened an expert working group to provide recommendations to enhance right whale monitoring along the U.S. East Coast. The effort culminated in a detailed report that included recommendations for monitoring right whale distribution (Oleson *et al.* 2020). NMFS continues to review recommendations from the monitoring report and is taking monitoring needs for proposed mandatory DSZs into consideration as it works with external partners to optimize right whale monitoring efforts.

Updates to Safety Deviation Provisions

NMFS established a safety deviation provision within the 2008 speed rule (50 CFR 224.105) to accommodate situations where transit at speeds of 10 knots (5.1 m/s) or less during severe conditions would threaten human or navigational safety. Following a review of vessel transit data and compliance information as part of the speed rule assessment (NMFS 2020), NMFS investigated options to better understand the extent of safety impacts from the speed rule and to monitor use of the safety deviation provision. Current regulations lack a mechanism by which the agency can efficiently identify which vessels are employing the safety deviation and when and where use of the safety deviation may be common. Existing information collection protocols lack sufficient detail to determine the circumstances surrounding a deviation and to assess situations where a vessel may lack reasonable grounds to employ the safety deviation. NMFS further recognizes that the current safety deviation language lacks recognition of emergency situations that do not involve a maneuverability issue, when a vessel may have immediate cause to exceed the 10-knot (5.1 m/s) speed restriction due to a medical or other emergency involving the health or life of a vessel passenger.

The proposed inclusion of vessels less than 65 ft (19.8 m) in length within the vessel size class subject to speed regulation presents a new safety issue unique to smaller and lighter boats. During severe weather conditions, vessels less than 65 ft (19.8 m) in length may face maneuverability and associated safety issues. While some vessel operators can easily avoid such conditions, others may need to be out on the water during severe weather events to provide essential maritime services, or as a part of other work obligations.

To address the issues stated above, NMFS proposes to retain the current safety deviation provision with several changes:

(1) Expansion of the safety deviation provision to include emergency situations that present a threat to the health, safety, or life of a person;

(2) Inclusion of a new provision, applicable only to vessels less than 65 ft (19.8 m) in length, which allows such vessels to transit at speeds greater than 10 knots (5.1 m/s) within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (*e.g.,* Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect. No reporting of these speed deviations would be required; and

(3) Modification of the safety deviation reporting protocols to eliminate the vessel logbook entry requirement in favor of a new requirement for vessels to submit an online report to NMFS within 48 hours of employing a safety deviation detailing the circumstances and need for the deviation.

The proposed regulations would require a vessel operator to submit, via a NMFS website, the same information currently contained in the logbook entry along with new information relevant to the deviation event, including:

(1) Vessel name, length overall, draft (at the time of the deviation) and where applicable, the vessel IMO number and Maritime Mobile Service Identity (MMSI) number;

(2) Reason for the deviation: (a) maneuverability constraints, or (b) emergency;

(3) Date, time, latitude, and longitude where deviation began;

(4) Date, time, latitude, and longitude where deviation ended;

(5) Speed or average speed at which the vessel transited during the deviation;

(6) Wind speed and direction at the time of the deviation;

(7) Information on water current speed and direction at the time of the deviation, including measurements from the vessel acoustic doppler current profiler (ADCP), if the vessel is equipment with this device;

(8) If the vessel was operating within a restricted/dredged channel, indicate

whether one-way or two-way vessel traffic was present within the channel at the time the deviation was employed;

(9) The vessel master, and, if the vessel was under pilotage, the pilot, must attest to the accuracy of the information contained within the Report. If the vessel was under pilotage, indicate the name of the harbor pilot;

(10) Opportunity to briefly provide additional narrative (300 word limit), if desired, to explain the circumstances of a safety deviation.

NMFS specifically invites comment on the proposed reporting requirements, including comments on whether a web-based reporting mechanism is practicable for mariners, who should be responsible for completing and attesting to reports (for example, whether pilots should be responsible for completing and attesting to reports when a vessel is under pilotage), and on requiring more robust logbook recordkeeping in lieu of the new reporting requirements proposed herein.

NMFS recognizes that under certain conditions, vessel maneuverability and/or navigational safety may be hampered by transiting at reduced speeds, especially within port entrance areas. NMFS' current and proposed speed regulations acknowledge this through the safety deviation provision that is available when vessel maneuverability is compromised by the speed restriction. Given the totality of changes proposed herein, particularly the expanded size class of vessels subject to regulation, most pilot vessels operating within port entrance areas will likely be newly subject to speed regulation. NMFS solicits comments on options for alternative speed reduction programs specifically within port entrance areas that best maintain navigational safety while providing comparable vessel strike protections to right whales. Alternative programs would be conducted and resourced by external partners, include comprehensive monitoring of right whale presence, and provide a level of vessel strike risk reduction equivalent to that achieved through the measures described in this rule.

Additional Enforcement Clarifications

NMFS is also clarifying that the prohibitions set forth in Section 9(g) of the ESA would apply to the speed restrictions and reporting requirements set forth in this rule. Additionally, consistent with Section 10(g) of the ESA, NMFS clarifies that any person claiming the benefit of an exception to this rule has the burden of proving that the exception applies. Sections 9(g) and 10(g) of the ESA would apply irrespective of these changes. However, NMFS believes it is appropriate to provide additional notice to the public of how these provisions would apply under the proposed rule. This clarification would also provide consistency with other rules designed to protect North Atlantic right whales. With limited exception, regulations at 50 CFR 224.103(c) currently provide that it is unlawful ''to commit, attempt to commit, to solicit another to commit, or cause to be committed'' an approach within 500 yard of a North Atlantic right whale. The approach regulation also makes clear that a person claiming the applicability of an exception has the burden of proving that the exception applies.

Vessel Exemptions

The proposed rule includes one change to the exemptions for certain vessels at 50 CFR 224.105(a). Currently the speed regulations exempt vessels that are owned or operated by, or under contract to, the Federal Government, and that exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy. This proposed rule would extend the exemption to foreign sovereign vessels engaging in joint exercises with the U.S. Coast Guard. All other exemptions remain unchanged. As stated earlier, an exemption from the speed regulations does not affect a federal agency's consultation requirement under section 7 of the ESA, and reduced speeds may be recommended or specified as part of a section 7 consultation to reduce the threat of vessels collisions with right whales. Federal action agencies should continue to monitor their actions to determine if reinitiation of a consultation is warranted based on triggers specified at 50 CFR 402.16. This proposed action, however, does not provide a basis for reinitiation.

Stakeholder Considerations

NMFS designed the proposed changes to provide necessary enhanced protection for endangered right whales while minimizing impacts on human use of ocean resources for commerce and recreation. NMFS recognizes that vessels regularly operating at speeds in excess of 10 knots within areas/times designated for speed restriction in this proposed rule will likely experience delayed transit times within these areas, although there will be no restrictions on when or where a vessel may transit.

In addition to considering public comments from stakeholders regarding impacts of the proposed rule, NMFS will continue to work with key federal partners, including the U.S. Coast Guard, Bureau of Ocean Energy Management, U.S. Army Corps of Engineers, and Marine Mammal Commission, to ensure mariner safety and address stakeholder concerns regarding the proposed changes. For example, NMFS is aware of the nascent offshore wind energy industry and the substantial overlap of likely future wind energy development with the proposed Seasonal Speed Zones, possible Dynamic Speed Zones, and right whale habitat generally. The proposed changes would provide a stable regulatory landscape for companies as they plan future vessel-based operations for offshore energy construction and long-term management, while providing necessary protection for right whales throughout the U.S. portions of their habitat.

NMFS anticipates the proposed rule will impact a larger number of recreational boaters and anglers than the current rule, due mostly to the inclusion of vessels equal to or greater than 35 ft in length. Recreational fishing is widely enjoyed and generates billions of dollars in overall economic contribution along the U.S. East Coast (Lovell *et al.* 2020). To better understand the impacts of the proposed rule on recreational angling, NMFS invites public comment on the degree to which the mandatory speed limit (for most vessels equal to or greater than 35 ft in length) may impact recreational angling within the active proposed Seasonal Speed Zones and Dynamic Speed Zones. NMFS anticipates that the seasonal nature of most speed restrictions will minimize the impacts of the proposed rule on recreational activities. In the Southeast and Mid-Atlantic, the proposed restrictions will be in effect during seasons with less recreational angler activity. In the greater New England area, most seasonal speed restrictions occur during periods of colder weather, when recreational activity is low, although this region is most likely to see Dynamic Speed Zones triggered during seasons of higher recreational activity based on right whale distribution data.

Other Considerations

In addition to the proposed vessel speed measures herein, NMFS plans to continue an ongoing review of vessel routing measures to examine the effectiveness of such measures and investigate opportunities to further reduce the spatial and temporal overlap of vessels and right whales through routing measures, if warranted. Effective outreach to the mariner community remains an important means of ensuring speed regulations are understood and

adhered to by the regulated community. NMFS is engaged in ongoing research to identify effective means to communicate with this community.

NMFS also recognizes the role whale avoidance technologies may one day play in preventing vessel collisions, and remains open to the future application of these technologies, if proven safe and effective. The use of onboard marine mammal observers is another strategy employed to reduce vessel strike events. For some activities and vessel types, the addition of marine mammal observers can provide an added mechanism to prevent vessel strikes in conjunction with other conservation measures; however, documented right whale vessel strikes involving vessels with trained observers demonstrate the inconsistency of this tool.

While the proposed rule is designed to address lethal right whale vessel strike risk, NMFS anticipates ancillary benefits, including reduced vessel strike risk, will accrue to other marine species. Endangered and protected cetaceans, pinnipeds, sea turtles, and certain fish species inhabit the regions/seasons covered by the proposed action. Vessel strikes are an ongoing threat to all large whale species and are contributing to two ongoing Unusual Mortality Events involving minke (*Balaenoptera acutorostrata*) and humpback whales (*Megaptera novaeangliae*). Researchers have found that the majority of large whale vessel strike mortalities involve vessels transiting at speeds greater than 10 knots (Laist et *al.* 2001; Jensen and Silber 2004; Vanderlaan and Taggart 2007; Conn and Silber 2013). NMFS expects both the spatial and temporal expansion of SSZs and inclusion of vessels equal to or greater than 35 ft in length will provide additional beneficial vessel strike risk reduction to other large whale species.

Numerous studies have linked reduced vessel transit speeds with a reduction in ocean noise (McKenna *et al.* 2012, 2013; Leaper *et al.* 2014; Gassmann *et al.* 2017; MacGillivray *et al.* 2019; Duarte *et al.* 2021). The proposed rule is expected to reduce radiated underwater ocean noise particularly in areas where substantial numbers of vessels would slow their speeds to 10 knots (5.1 m/s) or less. This change in speed would subsequently reduce noise disturbances, such as sound masking, for marine species occurring in overlapping areas/seasons. Additionally, for certain vessel types, the proposed rule is expected to result in reduced fuel use, and thus emissions, by slowing more vessels over a larger net spatial and temporal area compared to current conditions. NMFS anticipates these reductions would contribute to enhanced air quality, and support lower fossil fuel emissions, a priority for climate change mitigation, benefiting both human health and marine species.

As with the current speed regulation, NMFS recognizes that vessel compliance and effective enforcement is critical to the effectiveness of the proposed rule. Overall vessel compliance with the current speed rule is monitored based on protocols and procedures outlined in the 2020 vessel speed rule assessment (NMFS 2020). NMFS uses the distance weighted average vessel speed to identify sections of transits that exceed 10 knots and considers the total distance at or under 10 knots as the best metric of apparent compliance. NMFS has seen increasing levels of vessel compliance over time since the speed rule first went into effect in 2008.

NOAA has already taken steps to address ongoing enforcement challenges and prepare for new challenges resulting from the inclusion of vessels equal to or greater than 35 ft in length. Specifically, the Office of Law Enforcement has upgraded capabilities for tracking vessel speed at sea, initiated research of new vessel tracking technologies, and started investigating land-based and aerial monitoring options. NMFS has also commenced staff level discussions with the U.S. Coast Guard regarding possible modification of current AIS carriage requirements to include additional vessel types and sizes. Furthermore, as discussed above, NMFS is proposing changes to the speed rule specifically designed to enhance monitoring and enforcement.

The inclusion of vessels equal to or greater than 35 ft in length under the proposed rule will involve some increased enforcement costs since many vessels in this size class are not equipped with AIS and cannot be monitored in the same way as AIS-equipped vessels. Moving forward, NOAA believes a diversified enforcement approach is needed. This would involve expanding at-sea operations in appropriate locations, using additional technologies to monitor vessel speed, providing compliance assistance to the regulated community, including outreach, and bringing enforcement cases in appropriate circumstances.

These enhancements to NOAA's enforcement efforts are not expected to substantially raise costs. NOAA intends to efficiently and effectively enforce the proposed rule building upon ongoing at-sea enforcement efforts, and we anticipate receiving continued assistance from enforcement partners such as the U.S. Coast Guard and State law enforcement agencies. The increase in potentially affected vessels under the proposed rule is not necessarily commensurate with an increase in enforcement costs. While more vessels may be subject to speed regulation under the proposed rule, enforcement will focus on those vessels posing the greatest risk to right whales. Proposed changes to the safety deviation reporting protocols should also streamline enforcement.

NOAA brings civil administrative enforcement cases to achieve both specific and general deterrence. Violations of the current speed rule can result in significant monetary penalties, which serve as a deterrent to other potential violators. Outreach can also be an effective tool to improve compliance. This year, NOAA sent approximately 400 letters to vessels suspected of violating the speed limit to encourage compliance. NOAA is committed to continuing and expanding outreach efforts under the proposed rule.

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Classification

NMFS is proposing this rule pursuant to its rulemaking authority under MMPA section 112(a) (16 U.S.C. 1382(a)), and ESA section 11(f) (16 U.S.C. 1540(f)).

A Draft Environmental Assessment for this proposed action was prepared and is available at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

An informal consultation under ESA section 7 is currently underway for this proposed action. Consultation will be completed before a final rule is issued.

This proposed rule has been determined to be significant under E.O. 12866 and NMFS has prepared a draft Regulatory Impact Review (RIR). NMFS estimates that approximately 15,899 vessels would be affected by the proposed revisions to the current speed rule at an estimated cost of just over $46 million per year. Affected vessels include those that are: (1) subject to speed regulation and (2) documented or estimated to transit in excess of 10 knots (5.1 m/s) within the proposed SSZs and potential DSZs. Of the 15,899 vessels identified, 9,220 (59 percent) are recreational/pleasure boats, 3,575 (22 percent) are ocean-going commercial ships, and 3,124 (19 percent) are commercial, industrial and other vessel types, although the number of affected vessels less than 65 ft (19.8 m) is likely overestimated. The largest proportion of the overall estimated cost of the proposed changes is borne by ocean-going commercial ships (35 percent) followed by passenger vessels (26 percent) and industrial work vessels (18 percent). NMFS invites public comment on potential economic, operational or safety impacts from the proposed changes.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. We anticipate a total of 2,524 small entities (individual vessels) would be affected by the proposed rule with an estimated annual cost, as a percentage of revenue, ranging from 0.06% to 2.09%, depending on the vessel type, with passenger and pilot vessels most impacted. Commercial fishing and passenger vessel entities make up a combined 60% of the total small entities affected by the rule, although as a proportion of revenue the cost of this impact is substantially lower for commercial fishing vessels. A full description of the proposed action, and the legal basis and objectives of the action, are discussed above and are not repeated here.

The proposed action includes no day-to-day reporting requirements. A vessel operator only needs to submit a brief electronic report to NMFS if they use the safety deviation provision due to limited maneuverability affecting vessel safety or an emergency. Since these safety/emergency situations are expected to be rare, the impact on small entities should be minimal. No special professional skills are needed to submit the report other than knowledge of the vessel and the conditions relevant to the safety deviation.

NMFS considered a number of alternatives in its Draft RIR and Draft Environmental Assessment but did not identify any significant alternatives which would accomplish the stated objective of this proposed rule. Alternatives considered included:

(1) Alternative 1 (No Action Alternative) would maintain the status quo. No action would be taken and vessel traffic along the U.S. East Coast would continue as is under 50 CFR 224.105.

(2) Alternative 2 would restrict the speed of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length to 10 knots (5.1 m/s) or less within existing SMAs.

(3) Alternative 3 would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed SSZs. The size class of vessels subject to speed regulation would remain unchanged.

(4) Alternative 4 would restrict the speed of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length to 10 knots (5.1 m/s) or less within existing SMAs, and establish a mandatory DSZ program.

(5) Alternative 5 (Preferred Alternative) would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed SSZs, add vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length to the vessel size class subject to speed regulation, and establish a mandatory DSZ program.

The changes proposed in this action are designed to significantly reduce the risk of lethal vessel strike events involving right whales in support of broader efforts to stabilize the rapid, unsustainable decline in population. Maintaining the status quo (Alternative 1) would not result in any additional reduction in strike risk. Alternative 2 would address strike risk from most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length but fails to fix the spatial and temporal misalignment of current SMAs, leaving right whales vulnerable to vessel collision in many areas. Alternative 4 partially addresses this issue by further extending mandatory protections through the DSZ framework, but given the broad spatial/temporal extent of the areas NMFS has identified as high risk outside the current SMAs, the use of a dynamic framework would be inadequate to mitigate the constant strike risk in certain areas/seasons, and would create a cumbersome and less predictable regulatory environment. Alternative 3 successfully addresses much of the spatial and temporal misalignment of current SMAs but fails to address the risk from vessels less than 65 ft (19.8 m) in length, which account for at least 42% of documented lethal strike events in U.S. waters since the speed rule was implemented in 2008. Only Alternative 5, (the action proposed herein) provides a high likelihood (>90%) of substantial reduction in lethal strike events involving most vessels greater than or equal to 35 ft (10.7 m) transiting at speeds greater than 10 knots (5.1 m/s), assuming full compliance with the proposed rule.

The proposed action is not expected to have a disproportionately high effect on minority populations or low-income populations under E.O. 12898.

The proposed action does not contain policies with federalism implications under E.O. 13132.

This proposed action contains a revision to the existing collection-of-information authorization (OMB Control number 0648–0580) for this rule under the Paperwork Reduction Act (PRA). The appropriate PRA documents will be submitted following publication of the proposed rule.

List of Subjects in 50 CFR 224

Administrative practice and procedure, Boats and boating safety, Endangered and threatened species, Marine mammals, Transportation, Vessels, Whales.

Dated: July 25, 2022,

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. Revise § 224.105 to read as follows:

§ 224.105 Speed restrictions to protect North Atlantic Right Whales.

(a) The following restrictions apply to: All vessels greater than or equal to 35 ft (10.7 m) in overall length and subject to the jurisdiction of the United States (U.S.), and all other vessels greater than or equal to 35 ft (10.7 m) in overall length entering or departing a port or place subject to the jurisdiction of the U.S. These restrictions shall not apply to U.S. vessels owned or operated by, or under contract to, the Federal Government. This exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy or the U.S. Coast Guard. In addition, these restrictions do not apply to law enforcement vessels of a State, or political subdivision thereof, when engaged in law enforcement or search and rescue duties. Vessels subject to the jurisdiction of the U.S. or entering or departing a port or place subject to the jurisdiction of the U.S. shall travel at a speed of 10 knots (5.1 m/s) or less over ground within Seasonal Speed Zones (SSZs) described in paragraphs (a)(1) through (5) of this section and Dynamic Speed Zones (DSZs) established under paragraph (a)(6) of this section:

(1) Atlantic Zone (north of Kill Devil Hills, NC, to north of Gloucester, MA): During the period of November 1 to May 30 each year, includes marine waters beginning at the charted mean high water line within the area bounded by straight lines connecting the following points in the table in the order stated from north to south;

TABLE 1 TO PARAGRAPH (A)(1)

Latitude	Longitude
42°38′23″ N	070°34′21″ W.
42°20′10″ N	069°59′30″ W.
40°21′0″ N	068°38′54″ W.
40°21′0″ N	071°51′21″ W.
39°56′53″ N	072°52′28″ W.
38°30′46″ N	074°12′12″ W.
36°50′21″ N	075°6′15″ W.
36°6′00″ N	075°15′00″ W.
36°6′00″ N	at shoreline.

thence bounded on the west by the shoreline and the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) Demarcation Lines, from 36°6′00″ N north to 40°21′0″ N; thence bounded by the following point 41°04′16″ N, 71°51′21″ W; thence to the shoreline at 71°51′21″ W; thence bounded on the north by the shoreline and the COLREGS Demarcation Lines to 70°39′23″ W, 41°30′54″ N; thence bounded by the shoreline to 70°52′54″ W, 42°18′37″ N; thence bounded by the

following point 70°54′3″W, 42°25′14″N; thence bounded by the shoreline and the COLREGS Demarcation Lines back to the starting point.

(2) Great South Channel Zone (east of Cape Cod, MA): During the period of April 1 to June 30 each year, in all waters bounded by straight lines connecting the following points in Table 2 in the order stated.

TABLE 2 TO PARAGRAPH (A)(2)

Latitude	Longitude
41°44′08″ N	069°34′50″ W.
42°10′00″ N	068°31′00″ W.
41°24′53″ N	068°31′00″ W.
40°50′28″ N	068°58′40″ W.

(3) North Carolina Zone (Wilmington, NC, to north of Kill Devil Hills, NC): During the period of November 1 to April 30 each year, includes marine waters beginning at the charted mean high water line within the area bounded on the west by the shoreline and the COLREGS Demarcation Lines, and on the east by straight lines connecting the following points in Table 3 in the order stated from north to south.

TABLE 3 TO PARAGRAPH (A)(3)

Latitude	Longitude
36°06′00″ N	at shoreline
36°06′00″ N	075°15′00″ W.
35°36′30″ N	075°03′00″ W.
35°15′10″ N	075°06′30″ W.
34°59′10″ N	075°14′40″ W.
34°53′30″ N	075°32′40″ W.
34°39′00″ N	075°59′10″ W.
34°15′50″ N	076°27′30″ W.
34°21′25″ N	076°49′15″ W.
34°11′50″ N	077°13′50″ W.
33°56′40″ N	077°31′30″ W.
34°10′30″ N	at shoreline.

(4) South Carolina Zone (north of Brunswick, GA, to Wilmington, NC): During the period of November 1 to April 15 each year, includes marine waters beginning at the charted mean high water line within the area bounded on the west by the shoreline and the COLREGS Demarcation Lines, and on the east by straight lines connecting the following points in Table 4 in the order stated from north to south.

TABLE 4 TO PARAGRAPH (A)(4)

Latitude	Longitude
34°10′30″ N	at shoreline
33°56′40″ N	077°31′30″ W.
29°45′00″ N	080°51′36″ W.
33°36′30″ N	077°47′06″ W.
33°28′24″ N	078°32′30″ W.
32°59′06″ N	078°50′18″ W.
31°50′00″ N	080°33′12″ W.

TABLE 4 TO PARAGRAPH (A)(4)—Continued

Latitude	Longitude
31°27′00″ N	080°51′36″ W.
31°27′00″ N	at shoreline.

(5) Southeast Zone (south of Cape Canaveral, FL, to north of Brunswick, GA): During the period of November 15 to April 15 each year, includes marine waters beginning at the charted mean high water line within the area bounded on the west by the shoreline and the COLREGS Demarcation Lines, and on the east by straight lines connecting the following points in Table 5 in the order stated from north to south.

TABLE 5 TO PARAGRAPH (A)(5)

Latitude	Longitude
31°27′00″ N	at shoreline.
31°27′00″ N	080°51′36″ W.
29°45′00″ N	080°51′36″ W.
29°45′00″ N	081°01′00″ W.
29°15′00″ N	080°55′00″ W.
29°08′00″ N	080°51′00″ W.
28°50′00″ N	080°39′00″ W.
28°38′00″ N	080°30′00″ W.
28°28′00″ N	080°26′00″ W.
28°24′00″ N	080°27′00″ W.
28°21′00″ N	080°31′00″ W.
28°16′00″ N	080°31′00″ W.
28°11′00″ N	080°33′00″ W.
28°00′00″ N	080°29′00″ W.
28°00′00″ N	At shoreline.

(6) Dynamic Speed Zones (DSZs):

(i) *Designation.* At all times of year and in all waters along the U.S. Atlantic seaboard, including the entire U.S. Exclusive Economic Zone, except SSZs specified in paragraphs (a)(1) through (5) of this section, a DSZ will be designated upon a determination by NMFS that there exists:

(A) At a minimum, a confirmed visual sighting of three or more North Atlantic right whales within close proximity or confirmed acoustic detection of a North Atlantic right whale; and

(B) A greater than 50 percent likelihood that North Atlantic right whales will remain within the designated DSZ while it is in effect.

(C) A DSZ shall have a minimum effective period of 10 days and shall not exceed 2500 sq nm (8575 sq km) in size for visually triggered DSZs and 400 sq nm (1372 sq km) for acoustically triggered DSZs. The DSZ may be extended for additional periods provided that NMFS makes the required determinations for designating a DSZ specified in this paragraph.

(ii) *Notice of DSZ.* Notice of a DSZ or DSZ extension will be posted at *https://www.fisheries.noaa.gov* and disseminated via U.S. Coast Guard Notice to Mariners, NOAA Weather Radio announcements, and through other practicable appropriate means, as well as by Notice in the **Federal Register** as soon as practicable.

(b) A vessel may operate at a speed in excess of 10 knots (5.1 m/s) in an active designated SSZ or DSZ only if:

(1) Justified because an emergency situation presents a threat to the health, safety, or life of a person;

(2) Necessary to maintain safe maneuvering speed and justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the vessel; or

(3) A vessel less than 65 ft (19.8 m) in length is transiting within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (*e.g.,* Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect.

(c) If a deviation from the requirements in paragraph (a) of this section is necessary under paragraph (b)(1) or (2) of this section, the vessel operator must complete and electronically submit an accurate and complete Safety Deviation Report to NMFS at *https://www.fisheries.noaa.gov* within 48 hours of the deviation. The Safety Deviation Report shall describe, in detail, the circumstances surrounding the deviation and need for the deviation on forms provided by NMFS. The vessel operator and, if the vessel is under pilotage at the time of the deviation, the pilot on board shall attest to the accuracy of the information in the Safety Deviation Report before it is submitted.

(d) Except as provided under paragraph (b) of this section, it is unlawful for any person subject to the jurisdiction of the U.S. to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any speed violation with a vessel subject to the restrictions established in paragraph (a) of this section or a reporting violation described in paragraph (c) of this section.

(e) Any person or vessel claiming the applicability of any exception under paragraph (b) of this section has the burden of proving that the exception applies.

[FR Doc. 2022–16211 Filed 7–29–22; 8:45 am]

BILLING CODE 3510–22–P

From: Cecile Entleitner
Subject: CAGTC: House & Senate Committees Approve FY24 THUD Appropriations Bills
Date: Friday, July 21, 2023 10:10:53 AM

Dear CAGTC Members,

Yesterday, the Senate Appropriations Committee unanimously approved its fiscal year 2024 Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations bill. The bill text can be found here and additional markup information here.

Earlier this week, the House Appropriations Committee also held its full committee markup, approving their version of the FY24 THUD bill by a vote of 34-27. The bill text can be found here and a list of amendments considered during the markup here.

There are some significant differences between the House and Senate FY24 THUD bills. Most notably, the Senate bill provides higher levels of total discretionary funding for USDOT, and consequently, higher amounts for several key individual grant programs (including RAISE, PIDP, and CRISI). Lawmakers will now work to resolve these differences and negotiate a final FY24 appropriations bill, which must be passed by October 1 to prevent a government shutdown.

Please find below a brief summary of key appropriations within the FY24 House and Senate proposals:

- **Total FY24 funding for USDOT:**
  - FY23 enacted appropriations law: $28.7 in discretionary funding.
  - FY24 Senate: $28.4 billion in discretionary funding.
  - FY24 House: $21.6 billion in discretionary funding. This reduction in discretionary funds is mostly due to decreasing or eliminating annual appropriations funding for grant programs that already receive advance appropriations from the Bipartisan Infrastructure Law (BIL). While appropriators provided additional funding above BIL levels for grant programs like RAISE, PIDP, and CRISI in FY22 and FY23, the FY24 House bill proposes significant reductions in supplemental funding for these programs.
- **RAISE/BUILD/TIGER grants:**
  - FY23 enacted appropriations law: $800 million in annual appropriations funding in addition to the $1.5 billion provided by the BIL for RAISE grants.
  - FY24 Senate: $800 million in FY24 appropriations in addition to the $1.5 billion provided by the BIL for FY24 RAISE grants. Under the Senate proposal, at least $20 million must be awarded to projects in historically disadvantaged communities or areas of persistent poverty and 5 percent of total funding is reserved for planning projects. While RAISE grants funded by the BIL may not exceed $25 million, the maximum grant size for RAISE funding provided by the Senate bill is $45 million (same as in FY23). As in previous years, funding must be equally divided between projects in rural and urban areas.
  - FY24 House: No additional funding proposed for FY24 – $1.5 billion will be available for FY24 RAISE grants as provided by the advance appropriations in the BIL. The only programmatic change proposed in the FY24 appropriations bill is to increase the

funding set-aside for RAISE projects in historically disadvantaged communities or areas of persistent poverty from 1 percent to 5 percent.

- **CRISI grants:**
  - FY23 enacted appropriations law: $560 million in addition to the $1 billion made available by the BIL for FY23. Of this $560 million, $150 million was reserved for the development of new intercity passenger rail service routes, $25 million for trespassing prevention projects, $30 million for earmarked projects, $5 million for magnetic levitation planning activities, and $5 million for workforce development and training activities.
  - FY24 Senate: $572.8 million in annual appropriations funding in addition to the $1 billion made available by the BIL for FY24. Of the $572.8 million in funding, $72.8 million is reserved for Community Project Funding (earmarks) and at least $5 million must go toward workforce development and training activities.
  - FY24 House: $258 million in annual appropriations funding in addition to the $1 billion made available by the BIL for FY24. Of the $258 million in funding, $28.8 million is reserved for earmarks.
- **PIDP grants:**
  - FY23 enacted appropriations law: $212 million in addition to the $450 million provided by the BIL. Of the amount made available by the appropriations bill, at least $187 million was reserved for coastal seaport or Great Lakes port projects.
  - FY24 Senate: $213 million in appropriations in addition to the $450 provided by the BIL for FY24 PIDP grants. Of the amount made available by the appropriations bill, at least $188 million must go toward coastal seaport or Great Lakes port projects. The minimum grant size is $1 million. The Senate bill does not reserve any PIDP funding for earmarks.
  - FY24 House: $69.7 million in funding for FY24, which is entirely reserved for earmarked projects. The PIDP program would still receive $450 million in advance appropriations from the BIL for FY24 grants.
- **Earmarks:**
  - FY23 enacted appropriations law: approximately $1.86 billion for transportation projects in Community Project Funding
  - FY24 Senate: roughly $1 billion, including $700 million in highway infrastructure program funding and $73 million in CRISI funding. The list of designated projects can be found here.
  - FY24 House: approximately $1.8 billion for transportation projects in Community Project Funding, including roughly $1.2 billion in highway infrastructure program funding, $29 million in CRISI funding, and $70 million in PIDP funding. The list of designated projects can be found here, though some changes were made during the July 18 full committee markup.
- **Office of Multimodal Freight Infrastructure and Policy:**
  - FY23 enacted appropriations law: $2 million for salaries and expenses.
  - FY24 Senate: $2 million for salaries and expenses.
  - FY24 House: $7.3 million for salaries and expenses. Of this amount, the House bill directs $5.3 million for the Freight Logistics Optimization Works (FLOW) program to "launch a nationwide dashboard for shippers and carriers to track real-time supply

07.20.23

BILL SUMMARY: Energy and Water Development Fiscal Year 2024 Appropriations Bill

Bill propels cutting-edge scientific research, protects energy security, keeps waterways flowing to irrigate crops, funds environmental clean-up projects, and more

Washington, D.C. – The Fiscal Year 2024 Energy and Water Development Appropriations Act provides $58.095 billion in total funding for the Department of Energy, Army Corps of Engineers, Bureau of Reclamation, and independent agencies.

"Our energy and water infrastructure need significant investment to meet the needs of Americans throughout the country, particularly in the West," said Senator Dianne Feinstein (D-CA), Chair of the Senate Appropriations Subcommittee on Energy and Water Development. **"This bill will help modernize our water systems to improve and increase dam safety, water storage, water recycling, desalination projects, and more. And as**

we experience new heat records, our bill also makes key investments in expanding clean energy and fighting against climate change. I want to thank Ranking Member Kennedy for being a partner in moving forward this important bipartisan legislation."

"This is a strong bipartisan bill that keeps America's lights on and water flowing to our farms, propels cutting-edge scientific research, ensures nuclear security, and advances key environmental cleanup efforts," said Senator Patty Murray (D-WA), Chair of the Senate Appropriations Committee. "These investments are key to making sure communities have the water resources they need to grow crops, strengthening our competitiveness globally, furthering clean energy research and capacity, and so much else. I'm also glad we are able to provide new resources to maintain our ports and harbors, which are so critical to trade, tourism, and even people's daily commutes."

Key Points & Highlights – Corps of Engineers

Delivers a historic funding level to maintain our ports and harbors and strengthen our competitiveness, invests in keeping communities safe and prepared for extreme weather events, and protects endangered species by supporting ecosystem restoration efforts across the country.

Corps of Engineers: The bill provides $8.934 billion in total funding for the Corps of Engineers.

Ports and Harbors: The bill provides a historic $2.77 billion for the Harbor Maintenance Trust Fund—a longtime priority for Senator Murray—to improve navigation through dredging ports, maintain waterways, and ensure goods and people can get to where they need to be. The bill also includes funding for critical inland waterways navigation projects, which transport important commodities like grain, iron, and petroleum.

Protecting Communities from Extreme Weather: The bill continues investments in critical construction projects to protect communities from extreme weather events and more frequent flooding. This funding supports projects and programs that use natural infrastructure and environmental restoration like using dredge material to rebuild and protect communities. The bill also expands the Water Infrastructure Financing Program to include levees, allowing low-interest loans for communities to make improvements and increase protection from flood events.

Key Points & Highlights – Bureau of Reclamation

CORPS OF ENGINEERS—INVESTIGATIONS—Continued

[In thousands of dollars]

Project title	Budget estimate	Committee recommendation	
KLAMATH BASIN, CA	500	500	
LA POSTA TRIBE STORMWATER, CA	600	.....	†
LOS ANGELES COUNTY DRAINAGE AREA (CHANNELS), CA	300	.....	†
LOWER SAN JOAQUIN (LATHROP & MANTECA), CA	800	800	
MOJAVE RIVER DAM, CA	1,000	.....	‡
REDBANK & FANCHER CREEKS, CA	.....	600	
SACRAMENTO RIVER, YOLO BYPASS, CA	600	600	
SACRAMENTO–SAN JOAQUIN DELTA ISLANDS AND LEVEES, CA	550	.....	‡
SALINAS RESERVOIR (SANTA MARGARITA LAKE), CA	300	.....	†
SANTA CLARA RIVER LEVEE SYSTEM (SCR–1) REHABILITATION, CA	.....	500	
SANTA PAULA CREEK, CA	400	400	
YUROK BLUE CREEK RESTORATION, CA	100	.....	†
COLORADO			
JOHN MARTIN RESERVOIR, CO	1,000	.....	‡
CONNECTICUT			
HARTFORD & EAST HARTFORD, CT	200	200	
STRATFORD, CT	.....	500	
DISTRICT OF COLUMBIA			
WASHINGTON AQUEDUCT BACKUP WATER SUPPLY, DC	.....	500	
FLORIDA			
CENTRAL & SOUTHERN FLORIDA (C&SF) FLOOD RESILIENCY (SECTION 216) STUDY, FL	425	425	
KEY BISCAYNE, FL	600	600	
ST AUGUSTINE BACK BAY, FL	300	300	
HAWAII			
WAIMEA MODIFICATION, KAUAI, HI	.....	500	
IDAHO			
LUCKY PEAK DAM AND LAKE, ID	1,000	.....	‡
ILLINOIS			
CHICAGO AREA WATERWAYS SYSTEM RESTORATION, IL	.....	200	
GREAT LAKES COASTAL RESILIENCY STUDY, IL, IN, MI, MN, NY, OH, PA and WI	3,000	3,000	
ILLINOIS WATERWAY (MVR PORTION), IL and IN	500	.....	‡
INTERBASIN CONTROL OF GREAT LAKES–MISSISSIPPI RIVER AQUATIC NUISANCE SPECIES, IL, IN, OH & WI	200	200	
KANSAS			
SMOKY HILL RIVER, KS	.....	400	
LOUISIANA			
J. BENNETT JOHNSTON WATERWAY, LA	.....	500	
MAINE			
HALF MOON COVE ECOSYSTEM RESTORATION, ME	350	.....	†
MASSACHUSSETTS			
BOSTON METROPOLITAN AREA, MA	1,000	1,000	
CITY OF BOSTON COASTAL STORM RISK MANAGEMENT, MA	600	800	
MICHIGAN			
MENOMINEE RIVER NAVIGATION IMPROVEMENTS, MI & WI	600	600	
PEAVINE CREEK STABILIZATION, POKAGON BAND—POTAWATAMI TRIBE, MI	260	.....	†
RODGERS LAKE HABITAT, POKAGON BAND, MI	45	.....	†
SOUTHEAST MICHIGAN, MI	500	500	
TITTABAWASSEE RIVER, CHIPPEWA RIVER, PINE RIVER AND TOBACCO RIVER, MI	500	500	

CORPS OF ENGINEERS—CONSTRUCTION

[In thousands of dollars]

Project title	Budget estimate	Committee recommendation	
ARIZONA			
WESTERN RURAL WATER—AZ, NV, MT, ID, NM, UT & WY (ARIZONA ENVIRONMENTAL INFRASTRUCTURE—NMIDD TREATED EFFLUENT CONVEYANCE & STORAGE, AZ)		1,500	
WESTERN RURAL WATER—AZ, NV, MT, ID, NM, UT & WY (ARIZONA ENVIRONMENTAL INFRASTRUCTURE—CITY OF WINSLOW, AZ)		2,500	
CALIFORNIA			
ALAMEDA & CONTRA COSTA COUNTIES, CA		2,525	
AMERICAN RIVER COMMON FEATURES, NATOMAS BASIN, CA	13,000	13,000	
CALAVERAS COUNTY, SECTION 219, CA		11,200	
CITY OF INGLEWOOD, SECTION 219, CA		1,000	
DESERT HOT SPRINGS, SECTION 219, CA		2,700	
GILA RIVER INDIAN COMMUNITY, CA	4,000		†
HAMILTON AIRFIELDS WETLANDS RESTORATION, CA		1,800	
PRADO DAM, CA (DAM SAFETY)	655,000	49,500	
SACRAMENTO–SAN JOAQUIN DELTA, CA		150	
SAN JOAQUIN RIVER BASIN, LOWER SAN JOAQUIN, CA	45,030	45,030	
WEST SACRAMENTO, CA	52,758	52,758	
DELAWARE			
NEW CASTLE COUNTY ENVIRONMENTAL INFRASTRUCTURE, LITTLE MILL CREEK, DE		1,000	
SUSSEX COUNTY ENVIRONMENTAL INFRASTRUCTURE, OAK ORCHARD, DE		1,000	
SUSSEX COUNTY ENVIRONMENTAL INFRASTRUCTURE, TOWN OF DEWEY BEACH, DE		1,000	
FLORIDA			
FORT PIERCE BEACH, FL		8,367	‡
NASSAU COUNTY, FL		8,785	‡
SOUTH FLORIDA ECOSYSTEM RESTORATION, FL	415,000	415,000	
GEORGIA			
BRUNSWICK HARBOR MODIFICATIONS, GLYNN COUNTY, GA		11,352	
ILLINOIS			
MCCOOK & THORTON RESERVOIRS, IL		20,000	
UPPER MISSISSIPPI RIVER–ILLINOIS WW SYSTEM, IL, IA, MN, MO, & WI		120,000	
UPPER MISSISSIPPI RIVER RESTORATION, IL, IA, MN, MO and WI	55,000	55,000	
IOWA			
MISSOURI RIVER FISH AND WILDLIFE RECOVERY, IA, KS, MO, MT, NE, ND and SD	17,459	17,459	
KANSAS			
ATCHINSON, KS CSO ENVIRONMENTAL INFRASTRUCTURE		4,500	
LOUISIANA			
CALCASIEU RIVER AND PASS, LA		18,000	‡
LOUISIANA COASTAL AREA ECOSYSTEM RESTORATION, LA	4,875	4,875	
MARYLAND			
ASSATEAGUE ISLAND, MD		900	
CHESAPEAKE BAY OYSTER RECOVERY, MD & VA	6,450	6,450	
C&O CANAL REWATERING, MD		2,451	
POPLAR ISLAND, MD		6,000	‡
MASSACHUSETTS			
CAPE COD BRIDGES, MA	350,000	350,000	
MICHIGAN			
MICHIGAN COMBINED SEWER OVERFLOWS, DETRIOT, MI		3,000	
SAULT STE. MARIE (REPLACEMENT LOCK), MI	235,000	235,000	

CORPS OF ENGINEERS—OPERATION AND MAINTENANCE—Continued

[In thousands of dollars]

Item	Budget estimate	Committee recommendation	
SANTA BARBARA HARBOR, CA		3,040	*
SANTA CRUZ HARBOR, CA		2,160	*
SCHEDULING RESERVOIR OPERATIONS, CA		2,888	†
SUCCESS LAKE, CA	5,200	5,200	
SUISUN BAY CHANNEL, CA		6,559	*
TERMINUS DAM (LAKE KAWEAH), CA	4,967	4,967	
VENTURA HARBOR, CA		8,471	*
YUBA RIVER, CA	215	1,855	*
COLORADO			
BEAR CREEK LAKE, CO	1,563	1,563	
CHATFIELD LAKE, CO	2,517	2,517	
CHERRY CREEK LAKE, CO	1,283	1,283	
INSPECTION OF COMPLETED WORKS, CO		189	†
JOHN MARTIN RESERVOIR, CO	3,837	3,837	
TRINIDAD LAKE, CO	1,873	1,873	
SCHEDULING RESERVOIR OPERATIONS, CO		1,075	†
CONNECTICUT			
BLACK ROCK LAKE, CT	912	912	
BRANFORD HARBOR, CT		300	
CLINTON HARBOR, CT		75	
COLEBROOK RIVER LAKE, CT	1,544	1,544	
CONNECTICUT RIVER, BELOW HARTFORD, CT		800	
GUILFORD HARBOR, GUILFORD, CT		500	
HANCOCK BROOK LAKE, CT	652	652	
HOP BROOK LAKE, CT	1,501	1,501	
INSPECTION OF COMPLETED WORKS, CT		357	†
LITTLE NARRAGANSETT BAY, CT & RI		500	
LONG ISLAND SOUND, DMMP, CT		500	
MANSFIELD HOLLOW LAKE, CT	1,333	1,333	
NEW HAVEN HARBOR, CT		3,700	*
NORTHFIELD BROOK LAKE, CT	585	585	
PROJECT CONDITION SURVEYS, CT		1,250	*
STAMFORD HURRICANE BARRIER, CT	757	757	
STONINGTON HARBOR, CT		500	
THOMASTON DAM, CT	1,812	1,812	
WESTPORT HARBOR & SAGATUCK RIVER, CT		800	*
WEST THOMPSON LAKE, CT	1,210	1,210	
DELAWARE			
CEDAR CREEK, DE		1,110	*
INDIAN RIVER INLET & BAY, DE		40	*
INSPECTION OF COMPLETED WORKS, DE		17	†
INTRACOASTAL WATERWAY, DELAWARE RIVER TO CHESAPEAKE BAY, DE and MD		20,427	*
INTRACOASTAL WATERWAY, REHOBOTH BAY TO DELAWARE BAY, DE		150	*
PROJECT CONDITION SURVEYS, DE		225	*
WILMINGTON HARBOR, DE		15,095	*
DISTRICT OF COLUMBIA			
INSPECTION OF COMPLETED WORKS, DC		28	†
POTOMAC AND ANACOSTIA RIVERS, DC AND MD (DRIFT REMOVAL)		1,777	*
PROJECT CONDITION SURVEYS, DC		30	*
WASHINGTON HARBOR, DC		25	*
FLORIDA			
CANAVERAL HARBOR, FL		9,568	*
CENTRAL & SOUTHERN FLORIDA (C&SF), FL	16,611	18,890	*
CHANNEL FROM NAPLES TO BIG MARCO PASS, FL		3,659	*
INSPECTION OF COMPLETED WORKS, FL		880	†
INTRACOASTAL WATERWAY (IWW)—JACKSONVILLE TO MIAMI, FL	4,054	4,054	
JACKSONVILLE HARBOR, FL		12,900	*

CORPS OF ENGINEERS—OPERATION AND MAINTENANCE—Continued

[In thousands of dollars]

Item	Budget estimate	Committee recommendation	
JIM WOODRUFF LOCK AND DAM, FL, AL and GA	8,080	8,080	
MANATEE HARBOR, FL	.....	240	*
MIAMI HARBOR, FL	.....	100	*
OKEECHOBEE WATERWAY (OWW), FL	1,377	5,291	*
PALM BEACH HARBOR, FL	.....	5,027	*
PANAMA CITY HARBOR, FL	.....	17	*
PENSACOLA HARBOR, FL	.....	1,427	*
PROJECT CONDITION SURVEYS, FL	.....	1,285	*
REMOVAL OF AQUATIC GROWTH, FL	.....	3,656	*
SCHEDULING RESERVOIR OPERATIONS, FL	.....	103	†
SOUTH FLORIDA ECOSYSTEM RESTORATION, FL	12,897	12,897	
TAMPA HARBOR, FL	.....	12,661	*
WATER/ENVIRONMENTAL CERTIFICATION, FL	.....	180	*
GEORGIA			
ALLATOONA LAKE, GA	9,424	9,424	
APALACHICOLA, CHATTAHOOCHEE AND FLINT (ACF) RIVERS, GA, AL and FL	1,509	22,189	
ATLANTIC INTRACOASTAL WATERWAY (AIWW), GA	4,028	4,028	
BRUNSWICK HARBOR, GA	.....	26,613	*
BUFORD DAM AND LAKE SIDNEY LANIER, GA	11,300	11,300	
CARTERS DAM AND LAKE, GA	7,808	7,808	
HARTWELL LAKE, GA and SC	12,025	12,025	
INSPECTION OF COMPLETED WORKS, GA	.....	109	†
J. STROM THURMOND (JST) DAM AND LAKE, GA and SC	12,174	12,174	
PROJECT CONDITION SURVEYS, GA	.....	77	*
RICHARD B. RUSSELL (RBR) DAM AND LAKE, GA and SC	9,803	9,803	
SAVANNAH HARBOR, GA	.....	44,733	*
SAVANNAH RIVER BELOW AUGUSTA, GA	.....	206	*
WEST POINT DAM AND LAKE, GA and AL	8,634	8,634	
HAWAII			
BARBERS POINT DEEP DRAFT HARBOR, OAHU, HI	320	320	
KAHULUI HARBOR, HI	.....	1,038	*
INSPECTION OF COMPLETED WORKS, HI	.....	933	†
MANELE SMALL BOAT HARBOR, HI	.....	4,539	*
PROJECT CONDITION SURVEYS, HI	.....	702	*
IDAHO			
ALBENI FALLS DAM, ID	1,391	1,391	
DWORSHAK DAM AND RESERVOIR, ID	3,293	3,293	
INSPECTION OF COMPLETED WORKS, ID	.....	505	†
LUCKY PEAK DAM AND LAKE, ID	2,913	2,913	
SCHEDULING RESERVOIR OPERATIONS, ID	.....	709	†
ILLINOIS			
CALUMET HARBOR AND RIVER, IL and IN	.....	6,508	*
CARLYLE LAKE, IL	6,623	6,623	
CHICAGO HARBOR, IL	.....	16,656	*
CHICAGO RIVER, IL	674	674	
CHICAGO SANITARY AND SHIP CANAL DISPERSAL BARRIERS, IL	13,746	13,746	
FARM CREEK RESERVOIRS, IL	575	575	
ILLINOIS WATERWAY (MVR PORTION), IL and IN	50,834	51,334	*
ILLINOIS WATERWAY (MVS PORTION), IL and IN	2,445	2,445	
INSPECTION OF COMPLETED WORKS, IL	.....	2,289	†
KASKASKIA RIVER NAVIGATION, IL	7,578	7,578	
LAKE MICHIGAN DIVERSION, IL	.....	1,179	*
LAKE SHELBYVILLE, IL	6,504	6,504	
MISSISSIPPI RIVER BETWEEN MISSOURI RIVER AND MINNEAPOLIS (MVR PORTION), IL	76,732	76,732	
MISSISSIPPI RIVER BETWEEN MISSOURI RIVER AND MINNEAPOLIS (MVS PORTION), IL	29,347	29,347	
PROJECT CONDITION SURVEYS, IL	.....	112	*
REND LAKE, IL	7,205	7,205	
ROCK ISLAND SMALL BOAT HARBOR, IL	.....	1,000	

HOUSE APPROPRIATIONS REPUBLICANS

DETAILED FUNDING SUMMARY

Corps of Engineers—Civil

Provides $9.57 billion for the Army Corps of Engineers, which is $910 million above the FY23 enacted program level.

- $2.771 billion for the Harbor Maintenance Trust Fund.
- $456 million for construction projects on the inland waterways system, fully funding ongoing work for FY24.
- Up to $1.54 billion for flood and storm damage reduction activities.

Department of the Interior

Provides $1.863 billion, which is $91 million below the FY23 enacted level.

- $23 million for the Central Utah Project, which is equal to the FY23 enacted level.
- $1.693 billion for the Bureau of Reclamation's Water and Related Resources Account, which is $392.4 million above the President's Budget Request.
    - Prioritizes projects that increase water supply and support drought response instead of superfluous climate change activities and duplicative programs.
- $132.8 million for rural water projects.
- $134 million for water storage projects authorized by the WIIN Act.
- Fully funds Reclamation Safety of Dams Act activities at $210.2 million.

Department of Energy

Provides $48.879 billion for the Department of Energy, which is $133.2 million above the FY23 enacted program level and $3.693 billion below the President's Budget Request.

- $23.959 billion for the National Nuclear Security Administration, which is $1.797 billion above the FY23 enacted level:
    - $19.114 billion for Weapons Activities;
    - $1.946 billion for Naval Reactors;
    - $2.380 billion for Defense Nuclear Nonproliferation;
    - Fully funds all major stockpile modernization activities, including the W-93 warhead; and
    - Provides additional funding for plutonium pit production, the Uranium Processing Facility, and the nuclear Sea-Launched Cruise Missile (SLCM-N) program.

- $2.99 billion for Energy Efficiency and Renewable Energy (EERE), which is $206 million below the FY22 enacted level, $466 million below the FY23 enacted level, and $1.8 billion below the President's Budget Request after accounting for budget structure changes.
    - Focuses EERE on its traditional research and development role and targets reductions and eliminations to Biden Administration programs that expanded EERE's role in local community decisions.
- $200 million for Cybersecurity, Energy Security, and Emergency Response, which is equal to the FY23 enacted level, to ensure the electric grid is resilient in the face of cyberattacks, physical attacks, and other disruptions.
- $315.6 million for Electricity, which is $34 million below the FY23 enacted level and $88 million below the President's Budget Request after accounting for budget structure changes, for research and development activities to advance energy storage technologies; streamline manufacturing of transformers; and integrate new transmission, distribution, and generation technologies into the electric grid.
- $1.783 billion for Nuclear Energy, the same as the FY23 enacted program level, for nuclear energy research, development, and demonstration activities.
    - Continues funding for the Advanced Reactors Demonstration Program and small modular reactor development and includes a significant increase for the Advanced Nuclear Fuel Availability program.
    - Repurposes $3.6 billion from previously-appropriated IIJA funds to domestic production of low-enriched uranium, HALEU availability, and small modular reactors.
- $858 million for Fossil Energy and Carbon Management, which is $32 million below the FY23 enacted level and $47 million below the President's Budget Request, with funding prioritized to support the full suite of production technologies, including separation and extraction, for critical minerals in order to utilize and secure our domestic supply chain and reduce reliance on foreign sources.
- $281 million for the Strategic Petroleum Reserve, which is $73.8 million above the FY23 enacted level, for maintenance and operational improvements to ensure the Reserve fulfills its mission as a national security asset.
- $8.1 billion for the Office of Science, which is equal to the FY23 enacted level, to maintain support for the world's fastest computer and develop the next generation of computing capabilities; advance fusion energy sciences to bring fusion to the electric grid; increase operations for experimental user facilities; and enhance the National Laboratories, the pipeline of foundational research, and America's role as the global leader of scientific discovery.
- $35 million for the Office of Clean Energy Demonstrations, which is $54 million below the FY23 enacted level and $180 million below the President's Budget Request.
    - Includes no funding for new demonstrations.
- $470 million for ARPA-E, which is equal to the FY23 enacted level and $180 million below the President's Budget Request, to transform the energy economy by advancing high-risk, high-reward energy technologies.

- $75 million for Indian Energy Policy and Programs, which is equal to the FY23 enacted level, to promote tribal energy development, enhance and strengthen tribal energy infrastructure, and electrify Indian lands and homes.
- $8.28 billion for the Department's environmental management and cleanup activities, which is equal to the FY23 enacted level.
    - $7.073 billion for Defense Environmental Cleanup to continue remediation of sites contaminated by decades of Cold War-era nuclear weapons production.
- $92 million for the Office of the Inspector General (OIG), which is $6 million above the FY23 enacted level, for oversight of the Department's programs.
    - Makes additional funds from the IIJA and the IRA available to the OIG to oversee programs funded in those bills.

Community Project Funding

Includes $944.5 million in Army Corps of Engineers and Bureau of Reclamation Community Project Funding for 90 projects requested by 79 Members.

- $12.9 million for Corps project studies.
- $794.5 million for Corps project construction.
- $28 million for Corps project construction in the Mississippi River and Tributaries Account.
- $95 million for operation and maintenance of existing Corps projects.
- $14 million for construction of Reclamation projects.

CORPS OF ENGINEERS - INVESTIGATIONS
(AMOUNTS IN THOUSANDS)

	BUDGET REQUEST	HOUSE RECOMMENDED	
FLORIDA			
CENTRAL & SOUTHERN FLORIDA (C&SF) FLOOD RESILIENCY (SECTION 216) STUDY, FL	425	425	
CHARLOTTE COUNTY, FL	---	600	
CHOCTAWHATCHEE BAY AND RIVER BASIN, WALTON COUNTY, FL	---	500	
KEY BISCAYNE, FL	600	600	
ST AUGUSTINE BACK BAY, FL	300	300	
HAWAII			
WAIKIKI BEACH ENVIRONMENTAL RESTORATION AND COASTAL STORM RISK MANAGEMENT, OAHU, HI	---	500	
IDAHO			
LUCKY PEAK DAM AND LAKE, ID	1,000	---	^
ILLINOIS			
GREAT LAKES COASTAL RESILIENCY STUDY, IL, IN, MI, MN, NY, OH, PA and WI	3,000	3,000	
ILLINOIS WATERWAY (MVR PORTION), IL and IN	500	---	^
INTERBASIN CONTROL OF GREAT LAKES-MISSISSIPPI RIVER AQUATIC NUISANCE SPECIES, IL, IN, OH & WI	200	200	
IOWA			
UPPER MISSISSIPPI AND ILLINOIS RIVERS FLOW FREQUENCY DATA COLLECTION, MN, IA, WI, IL, AND MO	---	1,000	
KENTUCKY			
KENTUCKY RIVER, KY	---	500	
LOUISIANA			
BAYOU SORREL LOCK, LA	---	800	
HOUMA NAVIGATION CANAL, LA	---	500	
MAINE			
HALF MOON COVE ECOSYSTEM RESTORATION, ME	350	---	~
MASSACHUSETTS			
BOSTON METROPOLITAN AREA, MA	1,000	1,000	
CITY OF BOSTON COASTAL STORM RISK MANAGEMENT, MA	600	600	

CORPS OF ENGINEERS - CONSTRUCTION
(AMOUNTS IN THOUSANDS)

	BUDGET REQUEST	HOUSE RECOMMENDED
ARIZONA		
WESTERN RURAL WATER, AZ, NV, MT, ID, NM, UT & WY (ARIZONA ENVIRONMENTAL INFRASTRUCTURE, AZ)	---	100
WESTERN RURAL WATER, AZ, NV, MT, ID, NM, UT & WY (ARIZONA ENVIRONMENTAL INFRASTRUCTURE, AZ - CAIDD DROUGHT RESILIENCY WATER AUGMENTATION PROGRAM)	---	1,823
WESTERN RURAL WATER, AZ, NV, MT, ID, NM, UT & WY (ARIZONA ENVIRONMENTAL INFRASTRUCTURE, AZ - CITY OF TEMPE)	---	1,890
ARKANSAS		
MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM, THREE RIVERS, AR	---	103,170
RED RIVER BELOW DENISON DAM, LA, AR & TX	---	6,000
RED RIVER EMERGENCY BANK PROTECTION, AR & LA	---	7,000
CALIFORNIA		
ALAMEDA AND CONTRA COSTA COUNTIES, CA	---	2,525
AMERICAN RIVER COMMON FEATURES, NATOMAS BASIN, CA	13,000	13,000
CITY OF NORWALK, SECTION 219, CA	---	1,260
GILA RIVER INDIAN COMMUNITY, CA	4,000	--- ~
LOMITA, CA	---	200
MURRIETA CREEK, CA	---	39,334
ONTARIO, CA	---	200
PRADO DAM, CA (DAM SAFETY)	655,000	655,000
SACRAMENTO-SAN JOAQUIN DELTA, CA (KNIGHTSEN WETLAND RESTORATION PROJECT)	---	150
SAN JOAQUIN RIVER BASIN, LOWER SAN JOAQUIN, CA	45,030	45,030
STOCKTON METROPOLITAN FLOOD CONTROL REIMBURSEMENT, CA	---	2,750
WEST SACRAMENTO, CA	52,758	52,758
DELAWARE		
NEW CASTLE COUNTY ENVIRONMENTAL INFRASTRUCTURE, LITTLE MILL CREEK STREAM RESTORATION, DE	---	1,000
FLORIDA		
FLORIDA KEYS WATER QUALITY IMPROVEMENT PROJECT, FL	---	6,000
FORT PIERCE BEACH, FL	8,367 #	8,367
MANATEE HARBOR, FL	---	3,000
NASSAU COUNTY, FL	8,785 #	8,785
SOUTH FLORIDA ECOSYSTEM RESTORATION, FL	415,000	425,000
GEORGIA		
BRUNSWICK HARBOR, GLYNN COUNTY, GA	---	11,352
GEORGIA SECTION 219	---	6,000

CORPS OF ENGINEERS - OPERATION AND MAINTENANCE
(AMOUNTS IN THOUSANDS)

	BUDGET REQUEST		HOUSE RECOMMENDED	
DELAWARE				
CEDAR CREEK, DE	1,110	#	1,110	
INDIAN RIVER INLET & BAY, DE	40	#	40	
INSPECTION OF COMPLETED WORKS, DE	---		17	~
INTRACOASTAL WATERWAY, DELAWARE RIVER TO CHESAPEAKE BAY, DE and MD	20,427	#	20,427	
INTRACOASTAL WATERWAY, REHOBOTH BAY TO DELAWARE BAY, DE	150	#	150	
PROJECT CONDITION SURVEYS, DE	---		225	~
WILMINGTON HARBOR, DE	15,095	#	15,095	
DISTRICT OF COLUMBIA				
INSPECTION OF COMPLETED WORKS, DC	---		28	~
POTOMAC AND ANACOSTIA RIVERS, DC AND MD (DRIFT REMOVAL)	1,777	#	1,777	
PROJECT CONDITION SURVEYS, DC	---		30	~
WASHINGTON HARBOR, DC	25	#	25	
FLORIDA				
CANAVERAL HARBOR, FL	9,568	#	9,568	
CENTRAL & SOUTHERN FLORIDA (C&SF), FL	18,890	#	18,890	
CHANNEL FROM NAPLES TO BIG MARCO PASS, FL	3,659	#	3,659	
INSPECTION OF COMPLETED WORKS, FL	---		880	~
INTRACOASTAL WATERWAY (IWW) - JACKSONVILLE TO MIAMI, FL	4,054		4,054	
JACKSONVILLE HARBOR, FL	12,900	#	12,900	
JIM WOODRUFF LOCK AND DAM, FL, AL and GA	8,080		9,160	
LAKE SEMINOLE	---		(1,080)	
MANATEE HARBOR, FL	240	#	240	
MIAMI HARBOR, FL	100	#	100	
OKEECHOBEE WATERWAY (OWW), FL	5,291	#	5,291	
PALM BEACH HARBOR, FL	5,027	#	5,027	
PANAMA CITY HARBOR, FL	17	#	17	
PENSACOLA HARBOR, FL	1,427	#	1,427	
PROJECT CONDITION SURVEYS, FL	---		1,285	~
REMOVAL OF AQUATIC GROWTH, FL	3,656	#	3,656	
SCHEDULING RESERVOIR OPERATIONS, FL	---		103	~
SOUTH FLORIDA ECOSYSTEM RESTORATION, FL	12,897		12,897	
TAMPA HARBOR, FL	12,661	#	12,661	
WATER/ENVIRONMENTAL CERTIFICATION, FL	180	#	180	
GEORGIA				
ALLATOONA LAKE, GA	9,424		9,424	
APALACHICOLA, CHATTAHOOCHEE AND FLINT (ACF) RIVERS, GA, AL and FL	1,509		1,509	
ATLANTIC INTRACOASTAL WATERWAY (AIWW), GA	4,028		4,028	
BRUNSWICK HARBOR, GA	8,297	#	8,297	
BUFORD DAM AND LAKE SIDNEY LANIER, GA	11,300		11,300	
CARTERS DAM AND LAKE, GA	7,808		7,808	
HARTWELL LAKE, GA and SC	12,025		12,025	
INSPECTION OF COMPLETED WORKS, GA	---		109	~

Tab 12 Partner

Updates

AAPA Events

AAPA delivers programs and opportunities that provide outstanding value for all AAPA members, and special forums provide port executives and professionals the opportunity to discuss and collaborate to resolve the challenges most relevant to their ports.

Join us for the 112th Annual Convention & Expo, AAPA's largest event of the year!

AAPA LATIN AMERICAN CONVENTION OF PORTS

December 4-6, 2023, Barranquilla

Come to Barranquilla, Colombia, to participate in the region's premiere industry event!

POWERS SUMMIT & EXPO

January 21-24, 2024, Tampa, FL

The POWERS Summit & Expo at Tampa Marriott Water Street will bring together industry leaders for vital conversations on energy security and climate change.

LEGISLATIVE SUMMIT

March 18-21, 2024, Washington

AAPA's premier Advocacy Forum will take place at the Salamander Washington DC featuring government leaders to discuss critical policy issues and a Capitol Hill Day! Registration opens August 15, 2023.

PORT & TERMINAL OPERATIONS MANAGEMENT TRAINING

April 8-11, 2024, Corpus Christi

Be part of the Port & Terminal Operations Management Training at the Omni Corpus Christi Hotel and learn new skills to move your team forward. Registration opens fall 2023.

PORT ADMINISTRATION MGMT CONFERENCE

June 10-13, 2024, Miami, FL

Join us at the Miami InterContinental Hotel for the latest in trends, legal issues and risk management strategies. Registration opens October 10, 2023.

SMART PORTS SEMINAR & EXPO

July 9-12, 2024, Seattle, WA

At the Grand Hyatt Seattle, learn how smart technology is transforming the way ports do business. Registration opens December 12, 2023.

AAPA ANNUAL CONVENTION & EXPO

October 27-30, 2024, Boston, MA

Join us at the Westin Boston for the 113th Annual Convention & Expo, AAPA's largest event in 2024! Registration is not yet open.

AAPA LATIN AMERICAN CONVENTION OF PORTS

December 2024

The Latin American Convention of Ports will convene again in December 2024. Registration is not yet open.

2023 AIF Annual Conference

Disney's Contemporary Resort, Orlando • August 22-23

TUESDAY, AUGUST 22

General Session & Lunch with Keynote Speaker *Business Casual*
Open to Conference Registrants
Time: 11:00 am – 3:00 pm
Location: Disney's Contemporary Resort, Fantasia G Ballroom

AIF Board of Directors' Meeting *Business Casual*
Directors Only
Time: 3:15 pm – 5:15 pm
Location: Disney's Contemporary Resort, Boardroom

Reception Honoring Florida Legislators *Business Casual*
Open to Conference Registrants and Invited Guests
Time: 6:15 pm
Location: Disney's Contemporary Resort, Fantasia Lobby

The Chairman's Dinner *Business Casual*
Open to Conference Registrants and Invited Guests
Time: 7:00 pm
Location: Disney's Contemporary Resort, Fantasia G Ballroom

Dessert Reception & Disney's Not-So-Spooky Spectacular Fireworks Show
Open to Conference Registrants and Invited Guests
Time: 9:00 pm Dessert Reception hosted by Disney
10:15 pm Disney's Not-So-Spooky Spectacular Fireworks Show
Location: Disney's Contemporary Resort, Conference Porte Cochere

Visit **AIF.com/Conference** for information and to register.

WEDNESDAY, AUGUST 23

Breakfast & General Session *Business Casual*

Open to Conference Registrants

Time: 8:00 am Breakfast Buffet available
9:00 am General Session

Location: Disney's Contemporary Resort, Fantasia G Ballroom

Policy Council Breakout Sessions *Business Casual*

Open to Conference Registrants

Time: 9:45 am Policy Council Meetings

- Florida Energy Council
- Health Care Council
- Manufacturing, Aerospace & Defense Council

10:45 am Policy Council Meetings

- Florida Transportation & Maritime Council
- Taxation Council
- Information Technology Council

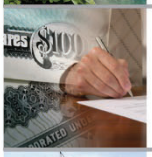
11:45 am Policy Council Meetings

- Environmental Sustainability & Agriculture Council
- Financial Services Council

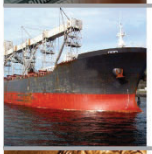
12:30 pm Adjourn

Location: Disney's Contemporary Resort, Fantasia A-C Ballrooms

Environmental Sustainability & Agriculture Council (ESAC)
Addressing recycling, water quality, product stewardship, and other environmental issues important to the business community.



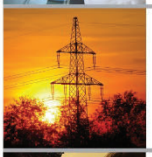
Financial Services Council (FSC)
Insurance and financial industries, working in concert with other interested parties, to secure a stable fiscal climate for Florida.



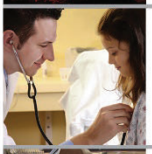
Florida Transportation & Maritime Council (FTMC)
Ensuring their continued economic prowess in a global marketplace for businesses that operate or support operations at any of Florida's 14 deep water ports.

Taxation Council (TC)
State tax revenues are necessary to fund essential state services and programs, but those needs must be balanced against the impact of taxation on Florida's businesses.

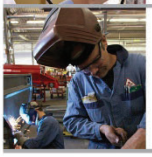
Information Technology Council (ITC)
Promoting Florida's move to the cutting edge of technology to meet the demands of a diverse, fast-growing population, while balancing the needs of the state and private sector.



Florida Energy Council (FEC)
Developing resources to meet Florida's future energy needs—producers, suppliers, storage facilities, marketers, retailers, wholesalers and users.



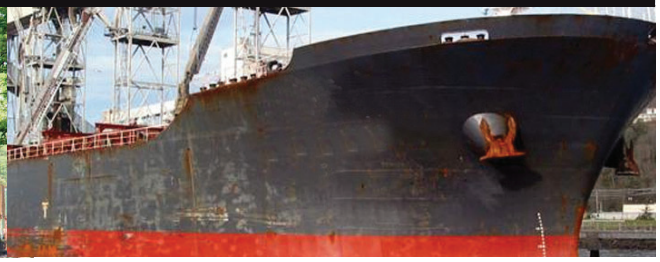
Health Care Council (HCC)
Working to craft a more functional and sustainable health care delivery system for Florida, incorporating the core principles of access, quality and affordability.



Manufacturing, Aerospace & Defense Council (MADC)
Advancing the interests of Florida's manufacturing community to help Florida diversify its economy and provide more high-wage and high value-added jobs in the state.

Visit **AIF.com/Conference** for information and to register.

Florida Transportation & Maritime Council (FTMC)



Meeting Review

This a review of the Transportation and Maritime Council meeting at AIF's inaugural Policy Retreat in St. Pete Beach! We had a broad discussion relating to the 2023 Session and the statutory changes as result of the several transportation-related bills. As we prepare our 2024 Session Priorities, we will take the suggestions you gave us and blend them together with the changes to the different policy issues that were listed in the 2023 priorities. The Transportation and Maritime Council will meet again in August to further discuss these issues. In the meantime, we have provided some notes from our meeting in St. Pete Beach that we will use when we put together the first draft of the 2024 priorities.

MEMBERS PRESENT

Ned Bowman - FPMA
John Browning - The Goodman Company
Subhash Kateel - Alliance for Safety and Justice
Steve Lezman - PepsiCo
Craig Camuso - CSX Transportation
Renee Manna - JEA
Kevin Carr - FloridaMakes
Sally Patrenos - Floridians for Better Transportation
Leslie Dughi - Metz, Husband and Daughton
Ananth Prasad - Florida Transportation Builders Association
Tiffany Esposito - State Representative
Victoria Price - Florida Public Utilities and Chesapeake Utilities Corporation
Thomas Feeney - Tom Feeney P.A.
Ryan Fierst - Port Tampa Bay
Michael Rubin - Florida Ports Council
Matt Floyd - Mosaic
Thomas Self - Canaveral Port Authority
Eric Hamilton - American Petroleum Institute
Stephen Shiver - The Advocacy Group
Rob Henderson - Meenan P.A.
Brad Swanson - Florida Internet & Television
Shay Hill - JEA
Keith Truenow - State Representative
Thomas Hobbs - Port Tampa Bay
Matt Rubin
Danny Alvarez - State Representative
Laura Lenhart - Port Tampa Bay
Chris Coker - Coker Consulting

NOTES

Associated Industries of Florida (AIF) Transportation and Maritime Council met recently at the Tradewinds Resort on St. Petersburg Beach during AIF's June Policy Retreat. A wide array of representatives from member companies were in attendance as well as several state elected officials, including Rep. Keith Truenow (R-Tavares), Rep. Tiffany Esposito (R-Fort Myers), Rep. Kim Berfield (R-Clearwater) and Rep. Danny Alvarez (R-Tampa). The meeting marked the first time that Council Chairman John Browning and the members had met since the 2023 legislative session concluded in early May. Leading into the 2023 legislative session the council had crafted an aggressive legislative agenda intended to sustain Florida's commitment to infrastructure through dedicated funding for current and future projects while advancing policy ideas intended to position Florida as a state committed to transportation innovations and safety around the state's deepwater ports.

Chairman Browning opened the meeting by reviewing the session and walking members through how the Council's legislative priorities fared in 2023. Many of the initiatives that AIF and the Council identified as 2023 legislative priorities prevailed, with record funding for the state's transportation work program, increasing the focus on Florida's roadways and their interoperability with autonomous vehicles, millions for the state's deepwater ports, prohibitions of unmanned aircraft having access to port facilities and $100 million over five years for grants related to critical supply chain projects and initiatives. Several members of the Council spoke on these items and reviewed the work that had been done with the legislature to pass these initiatives. Additionally, Rep. Esposito and Rep. Truenow expanded on the importance of these items and their intent to continue to work with the Council on future priority positions.

Discussion quickly turned to issues for the 2024 legislative session. With the session beginning in January AIF is looking to have the next session's priorities ready for legislators this upcoming Fall. Items that council members previewed were sustained funding in the budget for infrastructure projects and ports. Additionally, council members and Rep. Alvarez expressed frustration at a growing trend among some larger counties that are choosing not to use special local option taxes deemed for infatuation for its intended purpose. In particular, is Hillsborough County where voters approved an additional tax for infrastructure yet almost $500 million is currently going unspent for the purpose. Council members also expressed a desire to have Florida officials work more purposely with the natural gas industry and Florida's ports on capacity issues around the storage and piping of natural gas.

MARK YOUR CALENDAR - NOW!
45th Annual Southeast U.S./Japan Assoc. Joint Meeting: Tokyo, Japan - October 12-14, 2023

Membership in the Southeast U.S./Japan Association is open to residents of Alabama, Florida, Georgia, North Carolina, Mississippi, South Carolina, and Tennessee, and includes both private and public sector members. The Southeast U.S./Japan Association has a counterpart in Tokyo, the Japan-U.S. Southeast Association. The Japanese Association's membership includes the top managers of Japan's leading enterprises as well as high-level government and economic development officials. To fulfill the mission of both Associations, an Annual **Joint Meeting** is held, and alternates between selected sites in Japan and the Southeast. Membership in **Florida Delegation, Southeast U.S./Japan Association, Inc.** is open to individuals, companies, and organizations interested in the promotion of trade and investment. Japan is the host and has selected the Imperial Hotel in Tokyo as the official venue for this year's 45th Joint Meeting.

PROGRAM & ACTIVITIES:

- Overview of Current SEUS & Japan Economies
- Panels on Trade, Investment & Current Trends
- Participation of Top Japanese Business & Government Leaders and SEUS
- Invitational Golf Tournament
- Tours, Receptions, Dinners & Special Entertainment for Excellent Networking
- Florida Delegation Annual Meeting of Members
- Florida-Japan Business Seminar Program

ASK US ABOUT OUR SPECIAL PROMOTIONS FOR FIRST-TIME DELEGATES !

First-time Florida delegates are encouraged to take advantage of our special discount program that includes a limited-time trial membership. Also, SEUS/Japan has negotiated special group hotel rates at the Imperial Hotel for all registered delegates. Reservation instructions will be provided in your registration form. **You may send us the request form below, contact us by email, or visit us online to request a Florida Delegate registration from. Early registration will open soon.**

☐ I am currently a member of Florida Delegation. Please send me a registration form.

☐ YES, I wish to register, and am a first time Florida Delegate. Please send me first-time membership promo offers and registration form.

Name _____ Company/Organization _____

Address _____

City _____ State _____ Zip _____

Phone _____ FAX _____ E-Mail _____

Mail to: Florida Delegation, Southeast U.S./Japan Association, Inc., PO Box 226647, Miami, FL 33222-6647
Tel: (786) 235-8289 Fax: (786) 235-8290
Email: info@fl-seusjapan.org or visit us online at: www.fl-seusjapan.org

Preliminary Announcement:

45th ANNUAL

JOINT MEETING of the

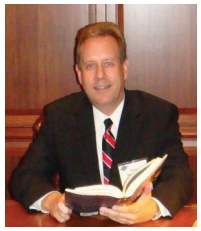
Japan-U.S. Southeast & Southeast U.S./Japan Associations

"Continued Success Through Partnership & Innovation for a Sustainable Future"

OCTOBER 12-14, 2023
TOKYO, JAPAN
IMPERIAL HOTEL

Executive Director's Message

Dear Florida-Japan Business Leader:



Dave Woodward, Executive Director, Florida Delegation, SEUS/Japan Assoc.

I am pleased to invite you to this year's 45th Annual Joint Meeting of the Japan-U.S. Southeast & Southeast U.S./Japan Associations. This prestigious event will be held in Tokyo this coming October 12-14 at the Imperial Hotel. Governor Ron DeSantis has been invited to lead the Florida Delegation.

The relationship between Japan and the Southeast United States has grown steadily since the first meeting took place between the business and government leaders of Japan and our region over 48 years ago. Since that time, more than 1,000 Japanese firms have invested in the Southeast, and in recent years Florida has ranked Japan as its largest FDI country with $10.6 billion invested in our state with some 200 Japanese firms here, employing over 25,000 Floridians. The ties between Japan and the Southeast U.S. are stronger than ever, through over four decades of continued partnership and innovation.

This year's program will include remarks and presentations by top business and government leaders, representing the most significant aspects of the economic relationship as well as topic of interest between Japan and the seven Southeast U.S. member states. Additionally, the respective governors and other senior officials of each of the member states, and senior Japanese business and government leaders and special guest speakers are expected to participate.

The meeting will provide exciting networking opportunities for an estimated 300 participating delegates to renew old friendships and establish new ones, including a golf tournament, sightseeing tours, receptions, meals and entertainment. Conference participation is limited for each state to maximize networking opportunities. This will provide an exclusive opportunity for our delegates to establish business relationships with Japanese business, government and economic development leaders.

The participation of leaders like you will provide significant benefits for our state. I invite you to mark your calendar now and strongly encourage your participation. Please contact me for more details.

I look forward to seeing you in Tokyo this October!

Sincerely,

Dave Woodward
Executive Director
Florida Delegation, SEUS/Japan Association, Inc.

45th Annual Joint Meeting

Japan-U.S. Southeast & Southeast U.S./Japan Associations

"Continued Success Through Partnership & Innovation for a Sustainable Future"

The Imperial Hotel Tokyo, October 12-14, 2023

Program Agenda Overview

(Note: All Joint Meeting functions at venue hotel unless otherwise noted)

Thursday, October 12

10:00 am-6:00 pm	Delegates Arrival & Conference Registration/Check-in
4:00-5:30 pm	Individual State Delegation Receptions & Meetings
5:30-8:30 pm	Welcome Reception & Dinner for all delegates
6:30-9:00 pm	Chairman's Dinner (by invitation only – at *Tokyo Kaikan*).

Friday, October 13

7:30 am-4:00 pm	Conference Registration/Check-in
7:30-8:45 am	Delegates' Joint Networking Breakfast Spouse Tour (Artizon Museum, Tofu Lunch at "Tofuya Ukai", Incense Experience at "Koju" and Shopping at Ginza)
9:00-10:30 am	Opening Ceremony Welcome & Opening Remarks by Chairmen Responding Remarks by respective SEUS State Delegation Leaders (Florida, Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and the Consul General of Japan in Miami)
10:40-11:40 am	Panel Session I "U.S.–Japan Mutual Investment and Future Prospects Under the Current State of Global Affairs"
11:40-12:00 pm	Keynote Remarks: U.S. Ambassador to Japan, Rahm Emanuel (*Invited*)
12:15-1:15 pm	Luncheon: Interview with Takuma Sato, F1 and IndyCar Racing Driver's manager
1:30-1:50 pm	Keynote Remarks: U.S. Senator Bill Hagerty (*Invited*)
1:50-2:50 pm	Panel Session II "Transitioning the Workforce to Support Emerging Technologies & Sustainability Initiatives"
3:05-3:50 pm	Closing Ceremony Closing Remarks: –Consuls General of Japan in Nashville and Atlanta –Eric Silagy (Co-Chair) / Masaaki Tsuya (Conference Chairman) Announcement of 46th Annual Joint Meeting by Chairman-elect from NC Adoption of Joint Statement & Adjournment by Chairman Tsuya Exchange of Gifts
4:00-5:30 pm	Networking
5:30-8:30 pm	Reception & Gala Dinner

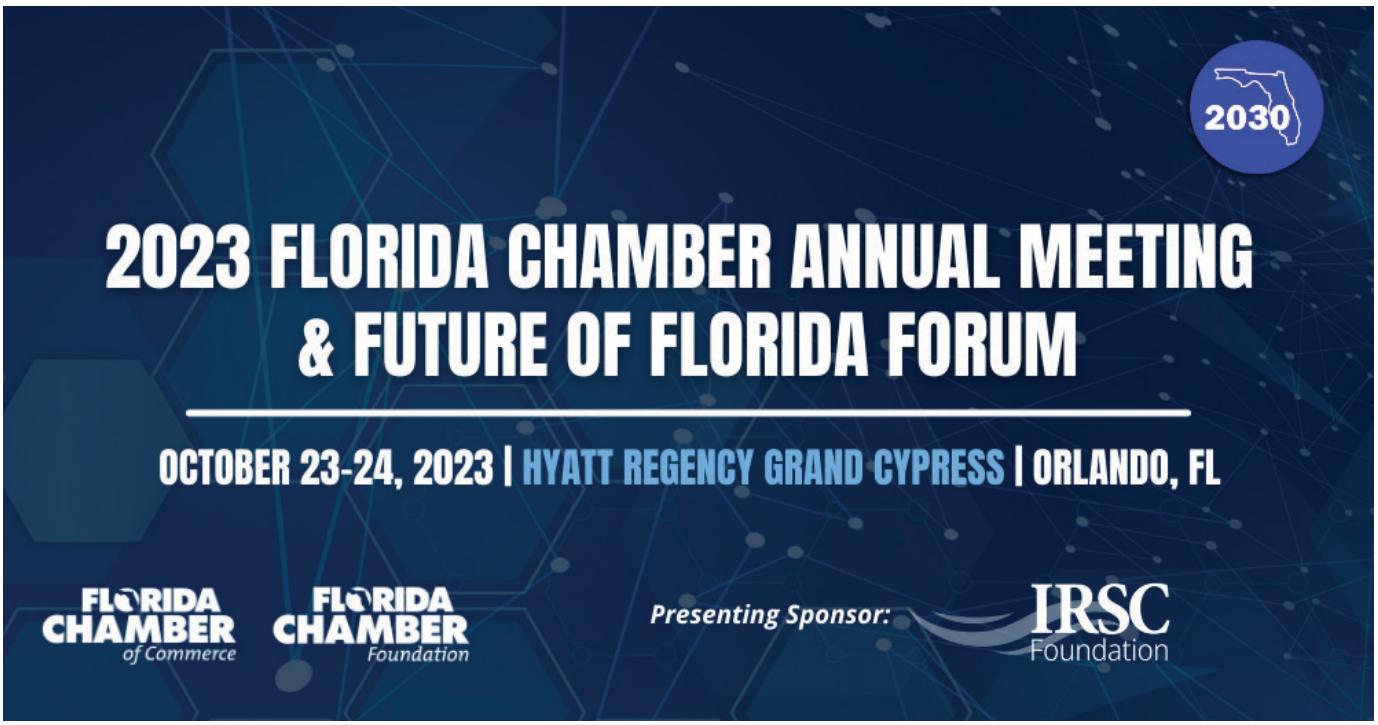
Saturday, October 14

- Invitational Golf Tournament (Details TBA) at Sodegaura Country Club
- Optional sightseeing tours:
  1. Tsurugaoka Hachimangu, Kamakura Daibutsu, Enoshima Island
  2. Hamarikyu Gardens, Asakusa area, Sumida River Cruise, Lunch at Tempura Restaurant Asakusa (Free Time)

For additional information please contact us at:
Phone: (786) 235-8289 Fax: (786) 235-8290
Email: info@fl-seusjapan.org or visit us online at: www.fl-seusjapan.org

2023 Florida Chamber Annual Meeting & Future of Florida Forum

October 23 @ 10:00 am - October 24 @ 2:00 pm EDT



Florida's industry leaders, elected officials, education, workforce and community advocates unite around the *Florida 2030 Blueprint* and its Six Pillars Framework. At this 2-day event, attendees will have the opportunity to explore the solutions that will propel Florida into a top 10 global economy by 2030, while ensuring Florida businesses and residents are set up for success along the way.

Have a vested interest in securing the future of Florida? Register yourself and leadership team today!

REGISTRATION:

In-Person Early Bird Registration – $539.00 (early bird registration closes September 15, 2

In-Person Regular Registration – $565.00 (after September 15, 2023)
Virtual/Livestream Registration: $399.00

If you have questions regarding registration, please contact Stephanie Thomas at 850-521-1280 sthomas@flchamber.com.

Register Now

CANCELLATION POLICY:

*Cancellation requests for registrations received by **September 19, 2023** will be issued a refund, less a $75 per person administrative fee. All cancellations must be made in writing and e-mailed to .*

*Cancellation requests received after **September 19, 2023** will not be issued a refund.*

HOTEL:

Hyatt Regency Grand Cypress
One Grand Cypress Blvd.
Orlando, FL 32836

Book Room

MARKETING & SPONSORSHIP OPPORTUNITIES:

If you have questions regarding marketing/sponsorship opportunities, please contact Travis McGilvary at 850-521-1252 or tmcgilvary@flchamber.com.

Become a Sponsor

Thanks to our sponsors!

Tab 13

Other Issues

Tab 14

Adjournment