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October 6, 2023

Grant Baysinger
50 CFR Parts 224 and 226
Docket No. 230711-0164
RIN 0648-BL86
Attn: NOAA-NMFS-2023-0028
(<https://www.regulations.gov>)

RE: Proposed Designation of Critical Habitat for Rice's Whale (*Balaenoptera ricei*)

Dear Mr. Baysinger,

Florida Fish and Wildlife Conservation Commission staff have reviewed the information provided in the Federal Register and attended two public hearings held by the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regarding the proposed critical habitat designation as it applies to Florida waters.

Project Description

Rice's whales were officially listed under Section 4 of the Endangered Species Act (ESA) on August 23, 2021. As part of the listing process, Critical Habitat is designated by the listing agency. Critical Habitat is defined 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
 - (a) essential to the conservation of the species; and
 - (b) 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 that such areas are essential for the conservation of the species.

The critical habitat designation does not create new regulations on private activities and will not directly affect recreational activities or limit access to the critical habitat area. After critical habitat is designated, the ESA requires Federal agencies to consult on actions they authorize, fund, or conduct to ensure they will not likely destroy or adversely modify this habitat.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service is soliciting comments for the designation of Rice's whale critical habitat on the appropriateness and description of the essential features, attributes of the features, benefits and impacts stemming from the designation, projects and activities affected or delayed by the designation, identified geographic area occupied by the species and potential benefits from designation or alternative designations, additional information that would assist characterizing environmental parameters for Rice's whales, additional information about additional sightings or areas that may support Rice's whales and information about historical records of Bryde's-like whales in the Gulf of Mexico or Atlantic Ocean.

Potentially Affected Resources

FWC staff recognize the population concerns for Rice's whale. The Rice's whale is a federally listed, endangered species that exclusively inhabits the Gulf of Mexico and has an estimated population size of 51 individuals, with a confidence interval of 20 to 130 whales (Garrison et al.,

2020). Rice's whales are typically observed alone or in small numbers. The limited information currently available suggests that the whales spend daylight hours diving near the seafloor and during the evening hours are often within 50 feet of the surface. Recent research suggests that Rice's whales are primarily feeding on schooling fish along the continental shelf (Kiszka et al., 2023). It is believed that life span and reproduction are similar to the closely related Bryde's whales with adults reaching sexual maturity at 9 years of age. Mating is year-round and pregnancies last 10 to 12 months and calves nurse up to 12 months (NOAA Fisheries, 2023).

NMFS has identified attributes that are impacting the Rice's whale population which include vessel collisions, ocean debris, and oil spills. Additionally, the Rice's whale population may be threatened by its small size; limited distribution; energy exploration, development, and production; fishing gear entanglements; and anthropogenic noise.

Proposed Critical Habitat

NMFS has identified attributes within the proposed critical habitat that support the Rice's whale's ability to forage, develop, communicate, reproduce, rear calves, and migrate. These attributes include sufficient access to preferred prey species, waters with elevated productivity, and sufficiently quiet conditions.

The proposed critical habitat for the Rice's whale includes waters from the 100-meter isobath to the 400-meter isobath in the Gulf of Mexico. The total area incorporated in the critical habitat designation is approximately 28,270 square miles of continental shelf and slope associated waters within the Gulf of Mexico. The proposed critical habitat would be bounded by the border of the US Exclusive Economic Zone in the western Gulf of Mexico adjacent to the southern tip of Texas and by the boundary separating the South Atlantic and Gulf of Mexico Fishery Management Councils in the eastern Gulf of Mexico southwest of the Dry Tortugas National Park. The proposed critical habitat designation does not include Florida state waters.

Comments and Recommendations

FWC believes the size and location of the proposed critical habitat for the Rice's whale is not supported by the geographical areas occupied by the species as represented by actual sightings or other evidence, including acoustic monitoring. Evidence-based critical habitat serves as the foundation for determining the location and purpose of subsequent conservation measures implemented to promote recovery while balancing human safety concerns and economic risk. The State of Florida is concerned that the proposed Rice's whale critical habitat is larger than evidence warrants, which may lead to the implementation of unnecessarily costly and burdensome measures on maritime industries in the future, such as vessel speed restrictions, that may provide very little conservation benefit beyond the limited geographical range of known occupied habitat.

Data collected via aerial and vessel surveys, passive acoustic monitoring, and telemetry indicate that Rice's whales are most abundant in a core distribution area near the De Soto Canyon (Soldevilla et al., 2017; Rosel et al., 2021; Rosel and Garrison, 2022; Soldevilla et al., 2022). The core distribution extends to waters 410m deep, beyond what NMFS has proposed for critical habitat. Given the high abundance of Rice's whale in this region relative to other regions in the Gulf of Mexico, NMFS should consider the full 410-meter depth in the core distribution area as identified in the best available scientific information.

Sightings of Rice's whales from aerial and vessel surveys and opportunistic sources are sparser west of the core distribution area (Rosel et al., 2021). However, passive acoustic monitoring has

detected Rice's whale calls within the proposed critical habitat in the western Gulf of Mexico in every month that was sampled (Soldevilla et al., 2022). Additionally, Rice's whale calls characteristic of the western Gulf of Mexico have been detected in the core distribution area, which may indicate Rice's whales are moving between the core distribution area and the western Gulf of Mexico. Modeling of the Rice's whale distribution also indicates that Rice's whales are present in the proposed critical habitat in the western Gulf of Mexico (Roberts et al, 2016). Therefore, it is important to recognize that existing sightings, passive acoustic, and telemetry data are insufficient to identify Rice's whale's travel corridors between the western Gulf of Mexico and the core distribution area. As additional information becomes available from ongoing and future research, NMFS should consider modifications to the designated critical habitat to refine this area consistent with critical habitat requirements.

There have been no sightings of Rice's whales in the proposed critical habitat southeast of the core distribution area despite NOAA Fisheries expending aerial and vessel survey effort in the region (Rosel et al., 2021). Additionally, FWC staff are not aware of any passive acoustic monitoring efforts to detect Rice's whales in this region. However, distribution modeling indicates that environmental conditions in the proposed critical habitat southeast of the core distribution may support Rice's whale presence (Roberts et al., 2016). Given the lack of evidence that Rice's whales inhabit the proposed critical habitat southeast of the core distribution, NMFS should consider additional studies, e.g., passive acoustic monitoring, in the region to provide more certainty regarding Rice's whales presence or absence before designating critical habitat here.

Rice's whale habitat may also occur in the Gulf of Mexico outside of United States waters and future information from these areas should be evaluated and considered in future population estimates and conservation efforts. If future data indicates that the population utilizes waters beyond the United States, FWC staff recommend coordinating with international partners to evaluate conservation measures throughout the Rice's whale's known range.

Based on the evidence outlined above, FWC recommends NOAA reduce the size of the critical habitat off Florida's coast. FWC staff also reiterate comments provided in the previous letter dated July 6, 2023, regarding proposed rules for protection of the Rice's whale. Should NMFS determine that additional regulations are needed, FWC staff encourage NMFS to work closely with the State of Florida and impacted stakeholders to determine the effect (e.g., biologically, economically, socially, etc.) of any proposed rule. Further, FWC staff believes that if regulations are needed, they should be targeted, achievable, and enforceable such that they provide the necessary protection to Rice's whale while balancing impacts to Florida's fishing communities.

FWC staff appreciate the opportunity to provide comments and recommendations regarding the proposed critical habitat for the Rice's whale. FWC's partnership with NMFS has contributed greatly toward the conservation of multiple marine species. For questions or technical assistance regarding the content of this letter, please contact Ron Mezich at 850-922-4330 or by email at Ron.Mezich@MyFWC.com.

Sincerely,



Rodney Barreto
Chairman

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