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FISHERIES

Tab E, No. 4(a)

Overview of Proposed Rule to Designate Critical Habitat for Rice's Whale


Gulf of Mexico Fishery Management Council Meeting

August 14, 2023
Grant Baysinger

OUTLINE

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 - Distribution
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Rice's Whale
Balaenoptera ricei



Protected Status

ESA ENDANGERED
Throughout Its Range

MMPA PROTECTED
Throughout Its Range

MMPA DEPLETED
Throughout Its Range

CITES APPENDIX I
Throughout Its Range



BACKGROUND INFORMATION

Revised Name

- 2020 - Scientists determined based on morphological and genetic data that the previously known subspecies “Gulf of Mexico Bryde’s whale” represents a whole new species, the Rice’s whale.
- 2021- The ESA listing was revised to Rice’s whale to reflect the change in the scientifically accepted taxonomy and nomenclature of the species (86 FR 47022).



P. Rosel (SEFSC) documenting morphological differences of the type specimen at the Smithsonian



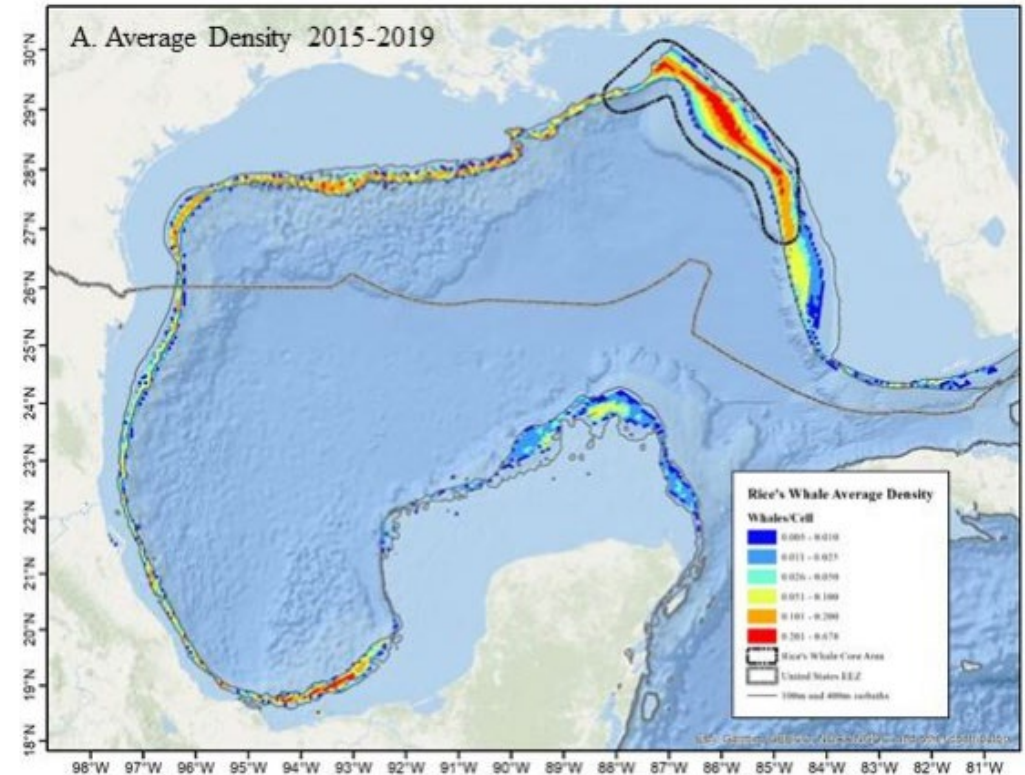
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BACKGROUND INFORMATION

Rice's Whale Distribution

- Endemic to the Gulf of Mexico
- Most sightings and acoustic detections have occurred in “core area” off Florida
- Confirmed and suspected sightings and acoustic detections have also occurred in north-central & northwestern Gulf
- Suitable habitat extends into Mexican waters but occurrence there is unknown
- Rice's whales are difficult to confirm visually because they resemble other species that occur in the Atlantic Ocean

Predicted Average Rice's Whale Density, 2015-2019

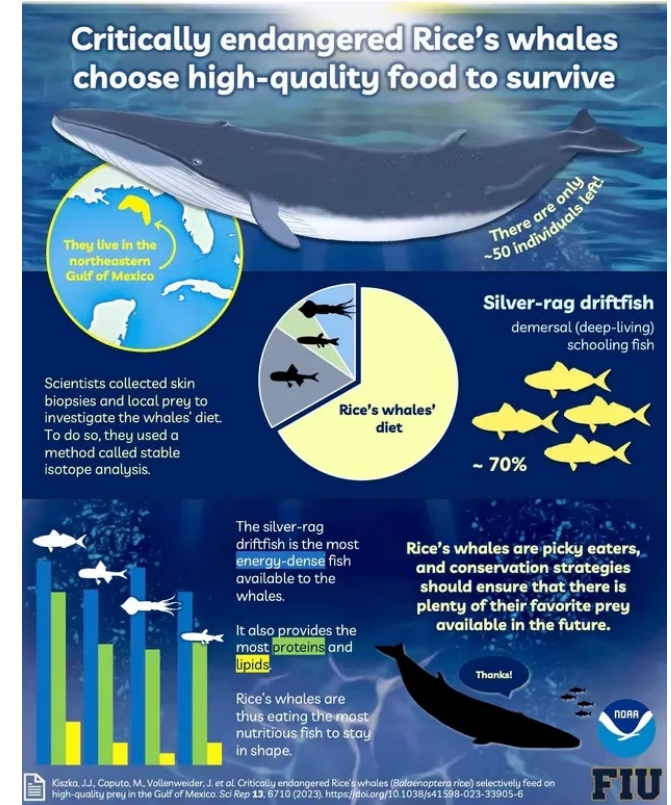


Garrison (2023). Trophic interactions and habitat requirements of Gulf of Mexico Rice's whales. NOAA RESTORE Science Program Project Final Report, NMFS Southeast Fisheries Science Center. 48 pages.

BACKGROUND INFORMATION

Best Available Science and Peer Review

- Publications since the 2019 listing
 - A new species of baleen whale from the Gulf of Mexico (Rosel et al. 2021)
 - Characterization of call types (Soldevilla et al. 2022)
 - Rice's whales in the northwestern Gulf of Mexico (Soldevilla et al. 2022)
 - Characterization of preferred prey (Kiszka et al. 2023)
 - Habitat modeling (publication pending)
- These key publications and the Critical Habitat Report associated with the proposed rule underwent independent peer review

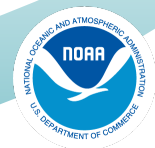


Credit: NOAA Fisheries (Permit # NMFS MMPA/ESA 14450 and 21938) and under approved NOAA Fisheries IACUC protocols.

CRITICAL HABITAT DESIGNATION

What is Critical Habitat and Why is NOAA Fisheries Proposing to Designate Critical Habitat for the Rice's Whale?

- Critical habitat is defined in part as:
 - Specific areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection
- We are required to designate critical habitat based on the best available scientific data. We must also consider the economic, national security, and other relevant impacts of specifying a particular area as critical habitat.
- The ESA requires that we designate critical habitat, to the maximum extent prudent and determinable, when a species is listed under the ESA.



CRITICAL HABITAT DESIGNATION

Timeline

- 2019 - NOAA Fisheries listed “Gulf of Mexico Bryde’s whales” as endangered under the Endangered Species Act (84 FR 15446). Critical habitat was not determinable at the time of listing.
- 2020 - a complaint was filed seeking an order to compel NOAA Fisheries to designate critical habitat for the whale, which is subject to statutory timelines under the ESA.
- 2022 - the U.S. District Court for the District of Columbia approved a modified settlement agreement which stipulates that NMFS will submit to the Federal Register a determination and, if critical habitat is proposed:
 - a proposed rule by July 15, 2023; and
 - a final rule by June 15, 2024
- 2023 - NOAA Fisheries published a proposed rule to designate critical habitat for Rice's whale. Comments are due by September 22, 2023.



CRITICAL HABITAT DESIGNATION

Proposed Essential Feature

Gulf of Mexico 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 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 fish 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.

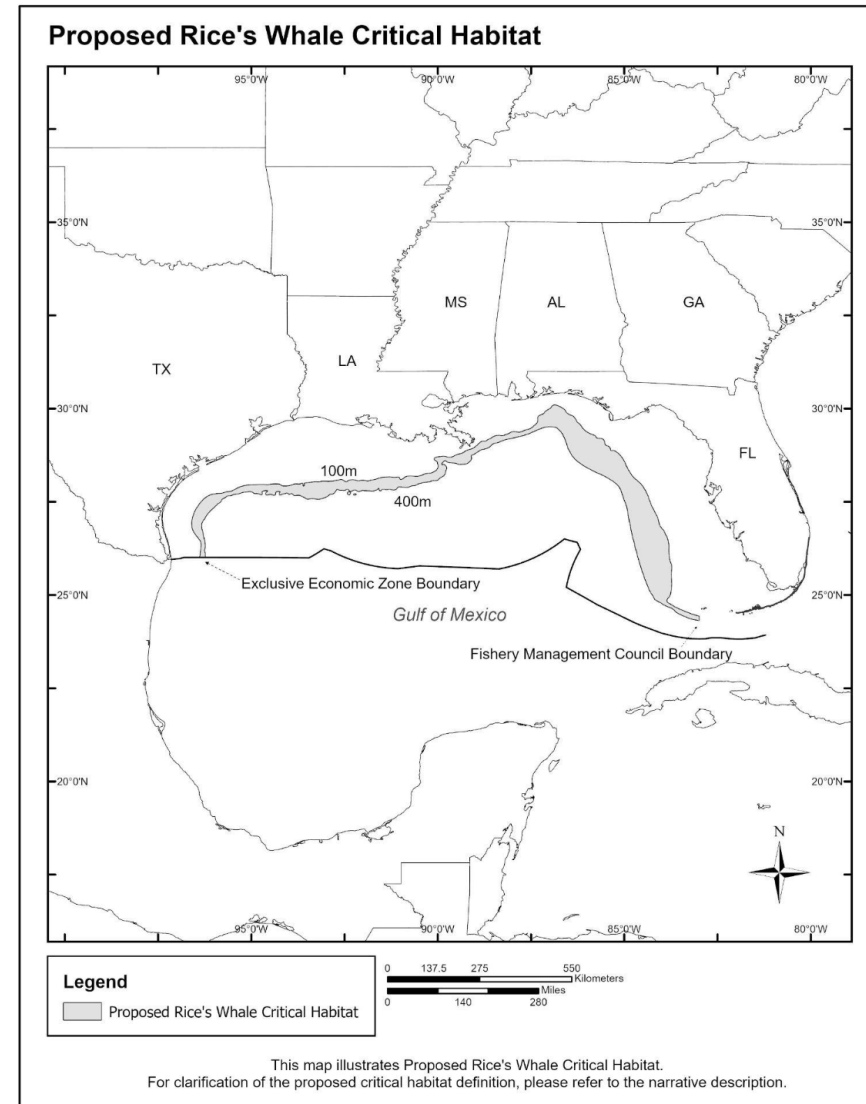


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CRITICAL HABITAT DESIGNATION

Proposed Critical Habitat Area

- Includes approximately 73,220.65 square kilometers (28,270.65 square miles)
- Gulf of Mexico continental shelf and slope associated waters between the 100 and 400 meter isobaths
- Between the U.S. Exclusive Economic Zone boundary off of Texas to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council off of Florida



CRITICAL HABITAT DESIGNATION

What Does it Mean for Fisheries?

- The proposed designation does not directly affect citizens engaged in recreational activities, such as recreational boating and fishing, or limit their access to the critical habitat area.
- The proposed designation does not create any new regulations or restrictions on fisheries. Only federal agencies are directly affected by a critical habitat designation; non-federal entities may be affected if their activities involve federal funding, permitting, or authorization.
- Federal agencies already consult with NOAA Fisheries on actions that may affect Rice's whales because the species is listed under the ESA.
- Consultation on designated critical habitat would evaluate whether a proposed federal action would adversely affect the designated continental shelf and slope associated waters and any of the habitat attributes influencing its value.
 - For example, an action that harms or removes Rice's whale prey species would have the potential to negatively impact the essential feature and the ability of feeding areas to support the conservation of Rice's whales.



CRITICAL HABITAT DESIGNATION

Next Steps

- Two virtual public hearings
 - August 24, 2023 from 7:00pm to 9:00pm (Eastern Daylight Savings Time)
 - August 30, 2023 from 3:00pm to 5:00pm (Eastern Daylight Savings Time)
- For more information, visit:
<https://www.fisheries.noaa.gov/species/rices-whale#conservation-management>
- Submit public comments by September 22, 2023.
- We will review and incorporate public comments before submitting a final rule to the Federal Register by June 15, 2024.



Credit: NOAA Fisheries (Permit # NMFS MMPA/ESA #14450-05 and 21938)



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CRITICAL HABITAT DESIGNATION

We are soliciting comments from the public, other concerned governments and agencies, or any other interested party concerning:

- the areas proposed for designation and appropriateness and description of the essential feature,
- the attributes of the proposed essential feature,
- specific, probable benefits and impacts stemming from this designation, including any estimates of incremental impacts,
- projects or activities that may be affected or delayed by this designation, and the assumption that consultations will not result in project modifications,
- the identified geographic area occupied by the species and the potential benefits to the species from this designation or alternative designations,
- information that would assist in further characterizing environmental parameters important to Rice's whales,
- information about any additional sightings or areas that may support Rice's whales not addressed in this proposed rule or supporting information, and
- information about strandings or other historical records of Bryde's-like whales in the Gulf of Mexico or Atlantic Ocean.



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Questions and Comments



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UPDATE ON THE VESSEL PETITION

Petition from NGOs Requesting NOAA Fisheries Establish Vessel Speed Restrictions & Other Vessel-Related Measures

- 90 day public comment period closed July 6, 2023
 - Received over 75,000 public comments
- Next Steps:
 - Review comments and determine whether to **reject the petition** or **proceed with rulemaking**
 - If NOAA Fisheries decides not to proceed with the petitioned action, we will notify the petitioners and provide a brief statement explaining that decision
 - If NOAA Fisheries decides to initiate rulemaking:
 - we will notify the petitioners and publish a notice of our decision in the Federal Register
 - all procedural requirements for rulemaking, including public notice and the opportunity to comment on a proposed rule, would apply



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