



**NOAA
FISHERIES**

Proposed Rule to Designate Critical Habitat for Rice's Whale

Public Hearings

September 28, 2023 from 3:00pm to 5:00pm (Eastern Daylight Savings Time)

WHAT TO EXPECT

Agenda:

- 3:00 - 3:30 pm: Presentation
- 3:30 - 3:45 pm: Clarifying Questions on Tonight's Presentation
- 3:45 - 5:00 pm: Public Comment

Ground Rules:


- You may get in line to ask a clarifying question or give comment at any time.
- Be respectful and direct clarifying questions and comments at the presenters.
- When you are called on, we will un-mute you, and then you will need to un-mute yourself.
- You will have 3 minutes to make your comment, at the end of the time you will be muted.
- Today's event is being recorded (including anything typed into the questions box).



PRESENTATION OUTLINE

- **Background Information**
 - Revised Name
 - Distribution
 - Best Available Science and Peer Review
- **Critical Habitat Designation**
 - What is Critical Habitat
 - Timeline
 - Proposed Essential Feature
 - Proposed Critical Habitat Area
 - Critical Habitat Implications
 - Next Steps

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

- 2019 - Gulf of Mexico subspecies of the Bryde's whale listed as endangered under the Endangered Species Act (ESA) (84 FR 15446).
- 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).



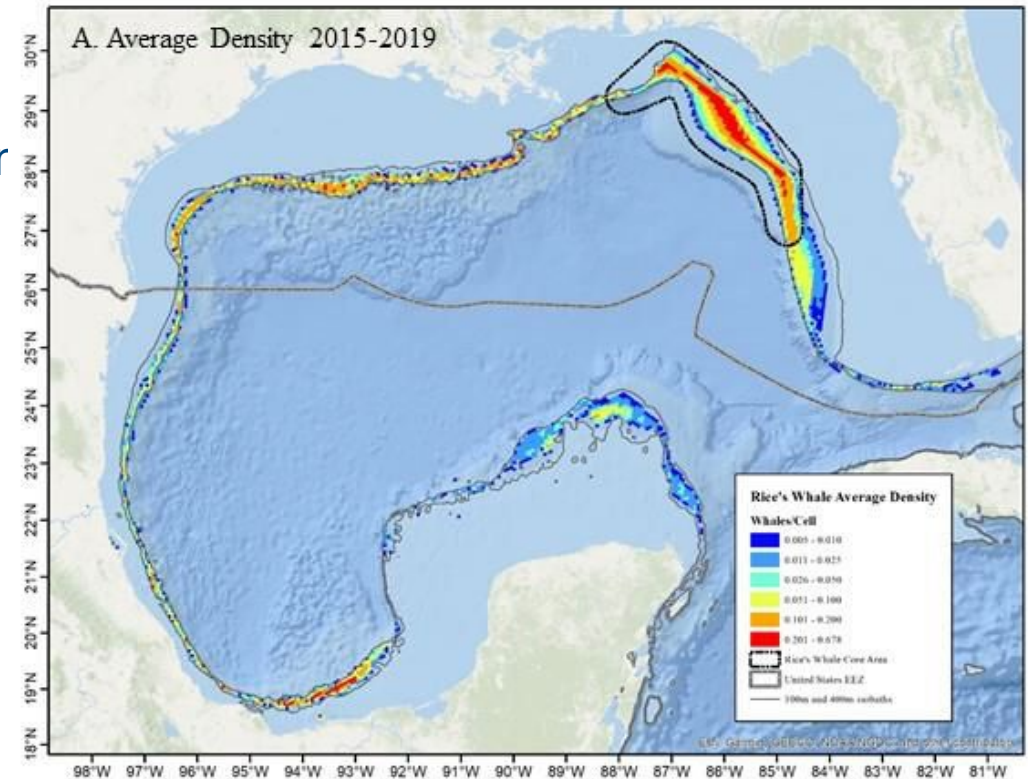
P. Rosel (SEFSC) documenting morphological differences of the type specimen at the Smithsonian

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

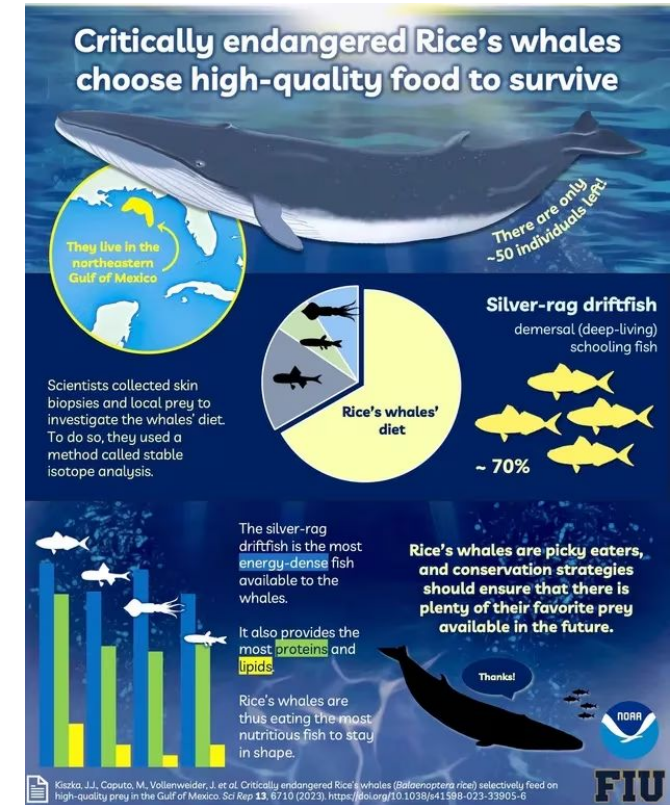


Garrison (2023). Trophic interactions and habitat requirements of Gulf of Mexico Rice's whales. NOAA RESTORE Science Program Project Final Report, NMFS Southeast Fisheries Science Center. 48 pages.

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 either went through or are going through independent peer review



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

CRITICAL HABITAT DESIGNATION

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



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 October 6, 2023.



CRITICAL HABITAT DESIGNATION

Proposed Essential Feature

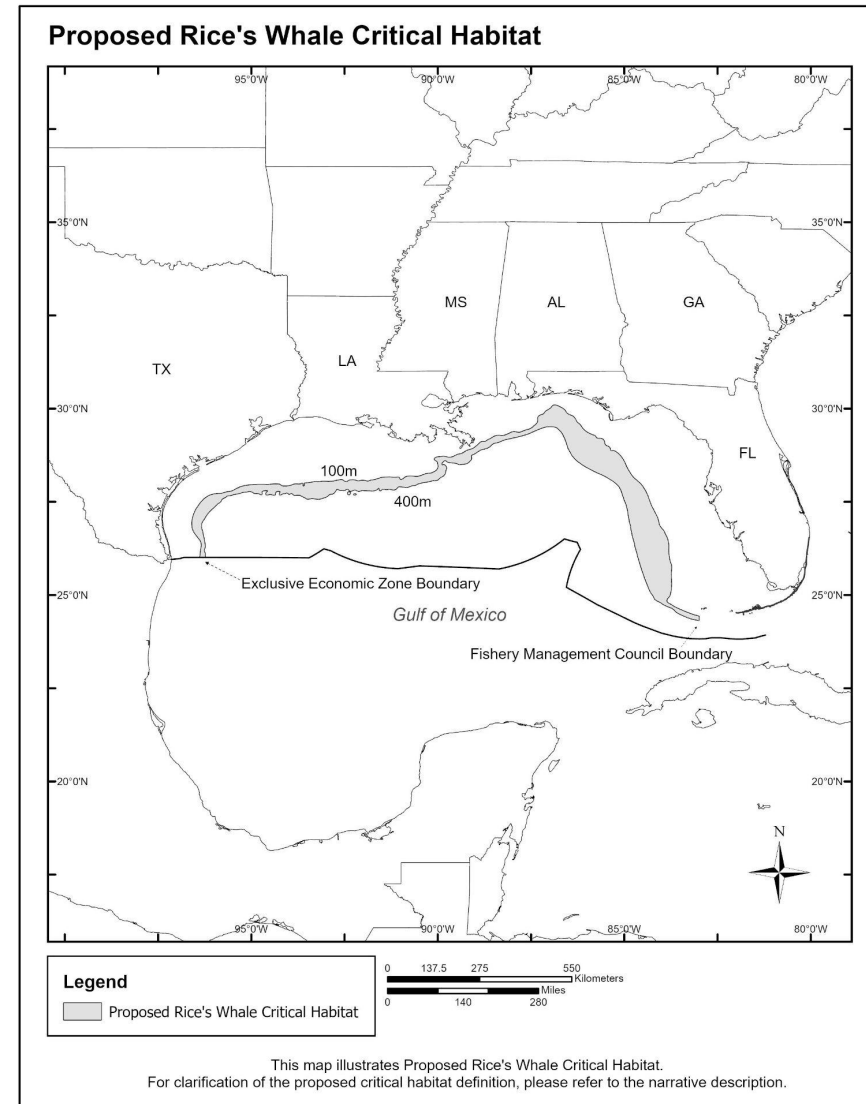
Gulf of Mexico continental shelf and slope associated waters between the 100 and 400 m isobaths that support individual growth, reproduction, and development, social behavior, and overall population growth. The following attributes of this feature support Rice's whales' ability to forage, develop, communicate, 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.

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
- Is located only in Federal waters



CRITICAL HABITAT DESIGNATION

Implications

- The proposed designation does not directly affect citizens engaged in recreational activities, such as recreational boating and fishing, or limit access to the critical habitat area.
- The proposed designation does not create any new regulations or restrictions on private activities. 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.



CRITICAL HABITAT DESIGNATION

Consideration of Impacts

- As required by the ESA, we considered the economic, national security, and other relevant impacts of specifying a particular area as critical habitat. The draft findings can be found in the Critical Habitat Report associated with this proposed rule on our website.
- Our analysis considers that baseline protections for Rice's whales and other marine species exist throughout the proposed Rice's whale critical habitat area.
- Our analysis concludes that project modifications required to address adverse modification of the critical habitat would already be required due to the listing of Rice's whales and other baseline protections.
- Therefore, incremental costs of the proposed rule are limited to the additional administrative effort required for Section 7 consultations to consider impacts to the critical habitat.
- The estimated economic impacts of the proposed critical habitat designation are projected to be approximately \$240,000 over the next ten years (discounted at seven percent), or \$37,000 in annualized costs.

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.



HOW TO SUBMIT WRITTEN PUBLIC COMMENT

More information can be found at:

<https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-rices-whale>

- Comments accepted through midnight on October 6, 2023.
- Electronic Submission: Visit <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.
- 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 <https://www.regulations.gov> without change.

