



September 6, 2023

Transmitted via email and regulations.gov

Mr. David Bernhart
Assistant Regional Administrator
Protected Resources Division
NMFS Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

RE: Second Request for Extension of Comment Deadline: Proposed Rule, Designation of Critical Habitat for the Rice's Whale. Docket No. NOAA-NMFS-2023-0028:

Dear Mr. Bernhart:

The Offshore Operators Committee (OOC) respectfully requests that the National Marine Fisheries Service (NMFS) provide the Garrison et al. (2022) study as referenced in the preamble and to extend the comment period on the proposed Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whale (Docket No. NOAA-NMFS-2023-0028) for 30 days after the requested documentation discussed below is made available.

An extension to the public comment period is warranted because the proposed critical habitat designation relies on information that has not been made available to the public for review. The preamble of the proposed critical habitat designation refers to a study, Garrison et al. (2022), that is not yet publicly available. At the first public hearing on August 24, 2023, NMFS was asked about the study and stated that it is currently under peer review and, while there is no timeline for publication, that it was anticipated to be published later this year. General notice-and-comment principles, including those applied in Endangered Species Act cases, require an agency to make such documents available for public review and comment. The public has been deprived of an opportunity to make a formal request for the version of the study upon which NMFS is relying when NMFS cancelled the second public hearing scheduled for August 30, 2023.

OOC hereby formally requests that NMFS make the Garrison et al. (2022) study available in whatever form relied upon by NMFS, including any updates or revisions considered by the Service. OOC further requests that NMFS extend the public comment period on the proposed designation by 30 days from the date when NMFS makes the requested information available to the public. The extension is appropriate to allow the public sufficient time to analyze the connection between the information that is publicly available and "attributes" – a concept announced with little explanation for the first time in the proposed designation – as relevant to the physical or biological features essential to the conservation of the species.

Our original request was denied on the premise that there was not time to extend the comment period in order for NMFS to meet statutory requirements and legally required timelines. We believe that this extension request does not impede these deadlines and requirements and will still provide NMFS adequate time to meet any obligations required. Without the ability for the public to have adequate time to review the information and provide commentary, the intent of public participation in rulemaking in accordance with section 5 USC 553(c) of the Administrative Procedure Act has not been satisfied.

Offshore Operators Committee
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OOO and our member companies who represent approximately 90% of the oil and gas production in the Gulf of Mexico OCS are committed to protecting the environment. As constructive participants in ensuring the health and safety of offshore operations in the Gulf of Mexico, we are making this request to have the full information guiding this proposed rule and to have the appropriate amount of time review it.

We appreciate your consideration of our request. If you have any questions or if additional information is needed, please contact me at (832) 303-9926 or at stephanie@theooc.org.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie L. Kusinski".

Stephanie Kusinski
Manager
Offshore Operators Committee

cc: Grant Baysinger, ERT Contractor, National Marine Fisheries Service, Southeast Region