June 21, 2023

Ms. Janet Coit
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Spring, MD 20910

Re: Petition to Establish a Vessel Speed Restriction and Other Vessel-Related Measures to Protect Rice's Whales (NOAA–NMFS–2023–0027)

Dear Administrator Coit:

The undersigned representatives of the recreational fishing and boating community understand the importance of conserving Rice's whale (hereafter RW), a species that is critically endangered because of genetic constraints and anthropogenic mortality. We understand RW has been classified as a distinct species for less than two years and was previously described as a Gulf of Mexico subspecies of Bryde's whale. We also understand that NOAA Fisheries is legally obligated under the Marine Mammal Protection Act and the Endangered Species Act (ESA) to protect RWs, and we stand ready to work together to ensure our community is appropriately mitigating our industry's risk to RWs recovery. In lieu of this petition, we ask NOAA Fisheries to work with all stakeholders in the Gulf of Mexico on a comprehensive solution to recover RWs. This letter provides our response to NOAA Fisheries' request for comments on the Rice's whale petition for rulemaking in the Gulf of Mexico.

As America's original conservationists, the recreational fishing and boating community is highly engaged in the management processes that impact our sport. Our industry has consistently and frequently offered constructive input that was ultimately used to develop management solutions that meet conservation goals and allow for the continued social and economic contributions our industry provides to the nation. The importance of this collaboration ensures the greatest benefit to our nation with recreational boating generating $230 billion in annual economic impact, and over 50 million American anglers fishing each year.

While regulatory actions like vessel speed restrictions may have a role in the overall strategy to minimize anthropogenic mortality to endangered marine mammals such as RW, they cannot be the singular approach taken. Large temporal and spatial vessel speed restrictions can have severe impacts on many aspects of the economy, national defense and Americans' social well-being. As we have seen with North Atlantic right whale vessel speed restrictions, they are also difficult to enforce, leading to low compliance. Ultimately NOAA

Fisheries needs to closely collaborate with industry and affected stakeholders to prioritize technological solutions that allow for more adaptive management. However, insufficient resources have been dedicated to these efforts. That needs to change, and we offer our comments on the petition with that in focus.

Enclosed, please find our formal comments on the six topics NOAA Fisheries is requesting input related to the petition. To reiterate, the recreational fishing and boating industry does not support establishing regulations based on this petition, but instead requests NOAA Fisheries work with all impacted stakeholders on RW's recovery plan.

Topic 1: Advisability of and need for regulations to establish a "Vessel Slowdown Zone"

1.1 Need to Prioritize Addressing Threats to the Species

The petition is not focused on the greatest risks to RWs because it proposes no action to address the highest sources of mortality to the species, which are ranked in the ESA status review completed by Rosel et al.[1] The top-ranked severe threats are oil spills and response; energy exploration and development, and several threats associated with small populations (demographic stochasticity, genetics, and stochastic and catastrophic events). Oil spills and spill responses, as well as several concerns related to the population size of RWs, are all significant threats to the species, yet the petition solely focuses on vessel speed.

For example, the highest *anthropogenic* risks of direct mortality and habitat destruction are associated with oil and gas activity. Oil spills occur at a much greater rate in the Gulf of Mexico than vessel strikes to RW. Between 2011 and 2013 alone, there were 46 spills that released the equivalent of one thousand barrels or more of oil into the Gulf.[2] A 2015 study assessed the damage inflicted from the Deepwater Horizon oil spill to RWs and found that the oil covered 48% of their core habitat range and reduced their population by 22%: 17% of Rice's whales were killed, 22% of females suffered reproductive failure, and 18% of whales suffered adverse health effects.[3] Furthermore, exposure to the Deepwater Horizon oil spill was determined to be the primary underlying cause of the elevated stranding number of RWs in the Gulf of Mexico following the spill.[4]

In contrast, there have been just two suspected vessel strikes to RWs (one lethal strike) in documented history (affecting 2-4% of the population using the most recent lowest and highest population estimates of 51 to <100 whales[5], respectively).

1.2 Need to Focus on a Realistic Recovery Plan and Implementation Strategy

The RW recovery plan needs to have clear conservation goals and a recovery implementation strategy with a reasonable probability of success. This is a critical step, especially given RWs extremely low population size, lack of genetic diversity, and demographic limitations. The scientific literature contains several references regarding the influence of genetics on population recovery.[6] For some species with very small population

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[1] Rosel, P.E.; Corkeron, P.; Engleby, L.; Epperson, D.; Mullin, K.D.; Soldevilla, M.S.; Taylor, B.L. (2016). Status Review of Bryde's Whales (*Balaenoptera edeni*) in the Gulf of Mexico under the Endangered Species Act (PDF) (Report). NOAA Technical Memorandum NMFS-SEFSC-692.

[2] Rosel, P.E.; Corkeron, P.; Engleby, L.; Epperson, D.; Mullin, K.D.; Soldevilla, M.S.; Taylor, B.L. (2016). Status Review of Bryde's Whales (*Balaenoptera edeni*) in the Gulf of Mexico under the Endangered Species Act (PDF) (Report). NOAA Technical Memorandum NMFS-SEFSC-692.

[3] Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement. Chapter 4: Injury to Natural Resources.

[4] US Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (noaa.gov)

[5] Garrison, L.P.; Ortega-Ortiz, J.; Rappucci, G. (2020). Abundance of marine mammals in the waters of the U.S. Gulf of Mexico during the summers of 2017 and 2018. Ref Doc PRBD-2020-07. Southeast Fisheries Science Center, Miami, FL.

[6] R.R. Reeves, B.D. Smith, and T. Kasuya (eds.). (2000). Biology and Conservation of Freshwater Cetaceans in Asia. IUCN, Gland, Switzerland and Cambridge, UK. viii + 152 pp. Williams NF, McRae L, Freeman R, Capdevila P, Clements CF. Scaling the extinction vortex: Body size as a predictor of population dynamics close to extinction events.

sizes, particularly k-selected species such as marine mammals, extinction may be inevitable even when stringent mitigating measures are put into place. This would be a tragic outcome for RW that we genuinely hope is not the case. However, given the many associated costs (e.g., economic, social, pulling resources from other endangered species recovery), it is important to understand from the outset whether recovery is feasible.

NOAA Technical Memorandum[7] cites research that indicates that the number of individuals in a population size needed to prevent inbreeding over 5 generations in the wild is 100. The same document found that the current population size for RW's is below the risk threshold for decreased population growth due to inbreeding depression and potential loss of adaptive genetic diversity. In addition, the most recent stock assessment for RW states that "*the capacity of Bryde's whales (RWs) to recover from the DWH oil spill is unknown because the population models do not account for stochastic processes and genetic effects to which small populations are highly susceptible*.[8] A critical first step must be for NOAA to determine if the population can be recovered at all.

Given that the best estimate of the RW population is estimated to be 51 individuals,[9] NOAA Fisheries must evaluate whether RWs have passed the threshold to prevent extinction due to inbreeding and a lack of genetic diversity before considering regulations that would impact the recreational fishing and boating community. Stakeholders that may be affected by any subsequent proposed rulemaking must be confident that any future proposed rules or restrictions will provide measurable contributions to recovery of this species.

1.3 Need to Engage All Gulf of Mexico Stakeholders

The recovery outline for Rice's whale[10] identifies the need to engage key stakeholders in the RWs recovery planning process including fishermen, shipping interests and conservation organizations. We agree that stakeholder engagement should be a priority in developing the recovery plan and subsequent recovery implementation strategy. Unfortunately, recreational fishing and boating interests were not invited to participate in recovery planning workshops[11] held in 2021, despite NOAA Fisheries being in receipt of this petition and the petitioner's insistence to apply vessel speed restrictions to all vessels. We ask that NOAA Fisheries allow the recreational fishing and boating community to participate in the RW's recovery planning process and discussions on any potential future rulemaking.

1.4 Recreational Vessels and Commercial Ships Have Different Risk Profiles

The petition presents a flawed argument for a Vessel Slowdown Zone that includes all vessels. For example, the petitioners rely on references and vessel collision data on large ships, not recreational vessels, yet interchangeably use the terms vessel and ship. The term "vessel" generally includes all self-propelled watercraft regardless of size, but a ship is defined as a vessel that exceeds 500 tons (1,000,000 pounds). Vessels that are used by recreational anglers and for-hire operators do not fall under the definition of ship. Rosel et al. 2016,[12] which is the primary reference in the petition, describes ships as having an average draft of 8.5 meters to 14 meters. In reviewing spec sheets from major manufacturers of recreational craft, we could

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Ecol Evol. 2021;11:7069– 7079. https://doi.org/10.1002/ece3.7555. Nabutanyi P, Wittmann MJ. Models for Eco-Evolutionary Extinction Vortices under Balancing Selection. Am Nat. 2021 Mar;197(3):336-350. doi: 10.1086/712805. Epub 2021 Jan 15. PMID: 33625964.

[7] Rosel, P.E.; Corkeron, P.; Engleby, L.; Epperson, D.; Mullin, K.D.; Soldevilla, M.S.; Taylor, B.L. (2016). Status Review of Bryde's Whales (*Balaenoptera edeni*) in the Gulf of Mexico under the Endangered Species Act (PDF) (Report). NOAA Technical Memorandum NMFS-SEFSC-692.

[8] US Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (noaa.gov)

[9] Garrison, L.P.; Ortega-Ortiz, J.; Rappucci, G. (2020). Abundance of marine mammals in the waters of the U.S. Gulf of Mexico during the summers of 2017 and 2018. Ref Doc PRBD-2020-07. Southeast Fisheries Science Center, Miami, FL.

[10] ESA Recovery Outline: Rice's Whale. NOAA Fisheries Southeast Regional Office.

[11] Rice's Whale Recovery Workshop Summary, Fall 2021. NOAA Fisheries Southeast Regional Office.

[12] Rosel, P.E.; Corkeron, P.; Engleby, L.; Epperson, D.; Mullin, K.D.; Soldevilla, M.S.; Taylor, B.L. (2016). Status Review of Bryde's Whales (*Balaenoptera edeni*) in the Gulf of Mexico under the Endangered Species Act (PDF) (Report). NOAA Technical Memorandum NMFS-SEFSC-692.

not find a boat with a draft that exceeds 8.5 meters. Even a 150 foot superyacht does not exceed a four-meter draft.[13] Moreover, large vessels of 80 meters or greater are more likely to cause serious injury or death to large whales during a vessel strike[14]. It is clear, using this description and the citations by the petitioners, that recreational boats should not be viewed in the same level of risk to RWs as commercial ships.

1.5 Undetected Vessel Strikes are Unlikely on Recreational Vessels

The petition speculates that the majority of vessel strikes on RWs may go undetected and that small-vessel strikes are under-reported and may comprise a greater proportion of strikes. However, the two strikes identified in the petition resulted in injuries/mortality consistent with large ships. As the petition suggests, large ships may collide with large whales and go undetected. This situation appears to have occurred with the lone documented fatal RW ship strike, because the RW was actually carried into the Port of Tampa on the bow of a large ship.

In contrast, when a recreational vessel strikes a whale, it is impossible for that strike to go undetected due to the damage incurred to the boat and the possible injury caused to the passengers. To date, all documented strikes to large marine mammals that have occurred with boats under 65 feet while operating at speed have resulted in either the vessel sinking or significant damage to the vessel requiring assistance back to port.

For example, in 2021 a 54 foot sportfish boat accidentally struck a North Atlantic right whale calf and the vessel sunk. Service records from Viking Yacht Company, the largest producer of sportfish style boats in the world, accounting for 80% of all boats on the water in the category, has never had a boat come in for service in response to a whale strike. This is important to note because damage from a whale strike, particularly the running gear and rudders, would require specific parts that could only be obtained from and repaired by Viking. In the case of RWs, there are no documented vessel strikes caused by recreational vessels and the petition does not demonstrate that recreational boats are the cause of undetected vessel strikes.

1.6 Whale Surface Behavior Data is Under Sampled

The petition uses a cursory review of the scientific literature as justification for establishing a year-round mandatory speed zone for all vessels in the northeast Gulf of Mexico. For example, the petition cites Soldevilla et al. (2017)[15] to justify vessel strikes as a potential threat to RW recovery and uses the authors' analysis of RW movement patterns and dive behavior to justify the petition's regulatory proposal. However, the authors of this paper warn that "*these data are from only one tagged whale over a 3 [day] period and must be interpreted with caution*." They also note, "*Further tagging research is needed to increase the sample size and determine whether the documented dive behavior is representative of the Gulf of Mexico Bryde's whale population*." Establishing regulations based on the behavior of one whale over three days is not justifiable even if the population of RWs is low.

Topic 2: The geographic scope of any such regulations

The petition proposes a "Vessel Slowdown Zone" within waters between 100- and 400-meters depth 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-kilometer buffer around that area). The Vessel Slowdown Zone proposed in the petition is similar to the core habitat area identified by NOAA Fisheries for RWs.[16] While we can appreciate that scientific information indicates RWs are present in this area, we question whether spatial regulations for RWs should be proposed when critical habitat and seasonal movements for RWs have yet to be designated by

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[13] https://www.sunseeker.com/yachts-and-boats/superyacht/131-yach

[14] National Marine Fisheries Service. (2020). Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico. National Marine Fisheries Service Endangered Species Act Section 7 Biological Opinion. Office of Protected Resources, National Marine Fisheries Service, NOAA. FPR-2017-9234. DOI: 10.25923/hyeh-mb74

[15] https://www.int-res.com/articles/esr2017/32/n032p533.pdf

[16] https://www.fisheries.noaa.gov/resource/map/rices-whale-core-distribution-area-map-gis-data

NOAA Fisheries and new scientific information clearly indicates RWs are present in other areas of the Gulf of Mexico.[17]

Although recreational vessel traffic in the parts of the "Vessel Slowdown Zone" that have a significant distance from shore (especially southeast of Apalachicola), recreational vessels regularly transit and fish in the portion of the area off the western Panhandle where it nears Florida state waters and have done so without ever striking RWs. The proposed 10-knot speed restriction and prohibition on transit at night in such a large, offshore area present considerable safety concerns for recreational vessels that transit this area. These safety concerns are similar to those described in our comments on NOAA Fisheries' proposed vessel speed regulations to protect North Atlantic Right Whales.[18] In summary, speed is a significant safety feature for most recreational boats due to their hull design. Recreational boats that are forced to transit at or below 10 knots in this large area would likely be forced to operate in weather and sea conditions that would compromise safety of the passengers and could reduce the ability of vessel operators to spot and avoid RWs and other hazards in the water.

Topic 3: Alternative management options for regulating vessel interactions with Rice's whales, including but not limited to the options in the petition

3.1 Technology as a Sustainable Solution

Leading by example, the recreational fishing and boating industry is directing resources to bring together independent subject matter experts in marine mammal monitoring and detection, spatial risk analysis, marine electronics, and telemetry to form the Whale and Vessel Safety Taskforce (WAVS).[19] The mission of WAVS is to identify, develop, and implement technology and monitoring tools in the marine industry and boating community with the goal of mitigating the risk of vessel strikes to all marine mammals.

We recommend advancing technology that can deliver real-time monitoring of individual RWs as a long-term solution. From direct observations, aerial surveillance, acoustic detection, heat signature technology, satellite monitoring and environmental DNA signatures found in water samples, it is feasible to gather real-time location information, especially if RW core habitat is limited to the northeast Gulf of Mexico. Fewer than 100 individual RWs remain, which makes tagging or other high-value monitoring techniques possible. The Deepwater Horizon Oil Spill Damage Assessment and Restoration Plan and Programmatic Environmental Impact Assessment[20] also speaks to this approach for RWs and other marine mammals: "*Use of passive acoustic data, predictive modeling, and tagging data could inform recommendations and approaches to benefit the conservation and protection of marine mammals. The techniques described above are reasonable and effective ways to address marine mammal injury and mortality from vessel strikes.*" Even if monitoring of all RWs is not possible, we can expect any real-time monitoring to provide ancillary protection to non-monitored RWs that associate in groups with monitored RWs. Outreach could also be conducted with the recreational fishing and boating community on ways they can provide direct observations of RWs to NOAA.

3.2 Need for Extensive Communication and Outreach

Disseminating information on RW locations to mariners and other vessel operators is a necessary strategy for preventing vessel strikes. Our industry welcomes the opportunity to develop ways to provide real-time positioning on navigational hazards, including RWs, to vessel operators via marine electronics. We also support this approach because it applies empirically based, targeted precautions instead of excessively severe

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[17] Soldevilla et al. 2022. Rice's whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat.

[18] https://www.sportfishingpolicy.com/wp-content/uploads/2022/10/Right-Whale-Rec-Fishing-and-Boating-Comment-Letter-10.3.22.pdf

[19] https://www.wavstaskforce.com/

[20] Deepwater Horizon Oil Spill Damage Assessment and Restoration Plan and Programmatic Environmental Impact Assessment. Chapter 5: Restoring Natural Resources.

measures that do not accurately reflect actual risk nor can be adequately enforced. Developing ways to distribute this information to vessel operators will only occur through direct engagement with industry and fishing and boating organizations.

Topic 4: Scientific and commercial information regarding the effects of vessels on Rice's whales, or other similar species, and their habitat

Data and life history information on Rice's whale is incredibly sparse. For example, critical habitat has not yet been designated and a recovery plan for the species has not yet been finalized. NOAA Fisheries' recovery outline lists 12 significant uncertainties with respect to setting recovery objectives and actions. One of these uncertainties is "human-caused mortality rates (e.g., bycatch, vessel strikes, marine debris)." Again, there is zero evidence that any recreational vessel strikes with RWs have occurred, and it is extremely unlikely that recreational vessel strikes have occurred without being detected. We encourage NOAA Fisheries to work with partners to address significant knowledge gaps on this rarely observed species to inform future recovery planning and strategies.

Topic 5: Information regarding potential economic effects of regulating vessel interactions; and (6) any additional, relevant information that NMFS should consider

Recreational fishing and boating are major economic drivers in Florida and Alabama, which are the states most impacted by this petition. In Florida alone, recreational boating has a $31.3 billion annual economic impact and supports 109,912 jobs.[21] In Alabama, recreational boating has a $2.8 billion annual economic impact and supports 13,179 jobs.

The regulations requested in this petition would cause economic harm to coastal communities and businesses serving these anglers and boaters. Recreational fishing for reef fish, highly migratory species, coastal migratory pelagics, dolphin, wahoo, and other species occurs year-round within the proposed "Vessel Slowdown Zone". At a minimum, we expect recreational anglers and boaters that use the proposed "Vessel Slowdown Zone" to cancel trips due to the increased time at sea that would be required for transit during the day, prohibition on transportation at night, and added expense and/or unrealistic burden of monitoring (i.e., AIS and mandatory observers). It is reasonable to assume that offshore tournaments based in Alabama and Florida Panhandle communities adjacent to the "Vessel Slowdown Zone" would be cancelled or reduced in size, particularly those that focus on highly migratory species (i.e., billfish and tunas). All of these choices could have significant and transformative economic ramifications for anglers, boaters, the marine industry, and coastal communities.

Conclusion

In summary, we recommend that NOAA does not initiate any rulemaking action based on the petition for the following reasons.

- The petitioners fail to put forward any evidence that recreational vessels pose a risk to RWs that would justify the significant rules proposed in the petition.
- The petition fails to propose action to address the greatest sources of mortality to the Rice's Whale.
- NOAA Fisheries has failed to engage with the recreational fishing and boating industry on RW recovery planning or to better understand how their vessels may interact with RWs.
- NOAA Fisheries needs to fully investigate and report on the likelihood of recovering RWs given documented concerns about its population size.

Instead of moving forward with the petition for rulemaking, NOAA should instead:

- Work with partners to address knowledge gaps on this rarely observed species to inform future recovery planning and strategies.
- Allow the recreational fishing and boating industry to meaningfully contribute to RW recovery plan.
- Develop a Recovery Implementation Strategy with input from all Gulf of Mexico stakeholders.

[21] NMMA 2023 Economic Impact Study.

Thank you for your consideration, and we look forward to working with you to ensure our community is doing everything within reason to avoid conflicts with Rice's Whales.

Sincerely,

Glenn Hughes, President
American Sportfishing Association

Chris Edmonston, VP Government Affairs
Boat Owners Association of the United States

Jim McDuffie, President
Bonefish and Tarpon Trust

Jeff Angers, President
Center for Sportfishing Policy

Patrick Murray, President
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Matt Gruhn, President
Marine Retailers Association of the Americas

Frank Hugelmeyer, President
National Marine Manufacturers Association

Whit Fosburgh, President and CEO
Theodore Roosevelt Conservation Partnership