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The Rice's Whale: Conservation Efforts, Implications for Ocean Sectors, and Considerations for Congress

The Rice's whale (*Balaenoptera ricei*; **Figure 1**) is a recently described species of baleen whale (i.e., whales that contain baleen plates in their mouths for sieving plankton) and one of the rarest whale species in the world. This medium-sized whale is sighted year-round in the northern Gulf of Mexico (GoM), with most sightings concentrated in 100-400 meter (m) depths of the northeastern U.S. GoM region (primarily near the De Soto Canyon area; i.e., off the Florida-Alabama border). Less frequent sightings and acoustic detections attributed to Rice's whales have been documented at similar depths in western portions of the GoM. The Rice's whale is the only resident baleen whale in the GoM, according to the National Oceanic and Atmospheric Administration (NOAA). Stakeholders and some Members of Congress are concerned about the status of the species and the potential effects that Rice's whale conservation actions may have on ocean sectors (e.g., marine transportation, offshore energy) and military training activities.

Figure 1. Rice's Whale



Source: CRS, modified from Nagelkirk, NOAA Southeast Fisheries Science Center.

Rice's Whale Population Status, Threats, and Protections

Previously identified as a distinct GoM lineage of Bryde's whale (*B. edeni*), the Rice's whale was formally described as a separate species in 2021. In a 2022 stock assessment (the most current for the species), NOAA's National Marine Fisheries Service (NMFS) estimated that 51 individuals exist based on 2017-2018 survey data, of which approximately half may be mature individuals. Additional survey sightings from 2023-2024 are being used to update the population estimate. Some stakeholders and scientists note that information on the species and its population status is limited.

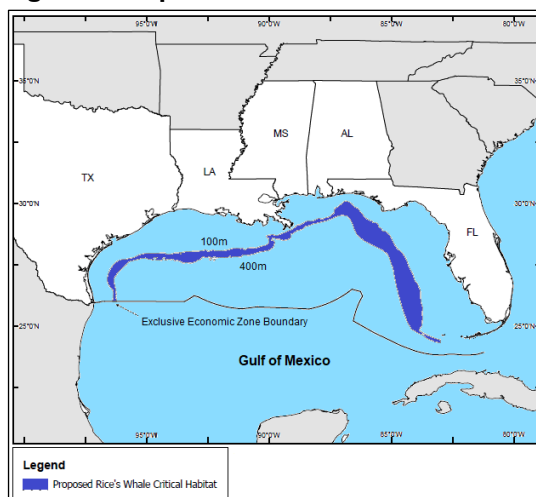
In addition to their low population size, some threats to the long-term viability of Rice's whales include mortalities and serious injuries from vessel strikes and effects on their feeding and social behavior from man-made ocean noise. NMFS also has identified three *longline/hook-and-line*

commercial fisheries that may overlap and interact with Rice's whales. The degree of Rice's whale mortality from commercial fisheries and vessel strikes remains largely unknown. NMFS and some scientists also attribute some Rice's whale mortality to pollution effects from the 2010 *Deepwater Horizon* oil spill and the ingestion of microplastics. These factors contribute to a known minimum human-caused mortality and serious injury rate of 0.5 whales/year, or one whale every two years. Based on this information, NMFS estimates that less than one whale every 10 years (i.e., 0.07 whales per year) may be removed from the population for it to remain viable, meaning one whale death per year could threaten the population.

Rice's whales are listed as endangered under the Endangered Species Act (ESA; 16 U.S.C. §§1531-1544) and are protected by the Marine Mammal Protection Act (MMPA; 16 U.S.C. §§1361-1423h). Both laws prohibit the *take* (i.e., harassment, hunting, capture, killing, or the attempt of these activities) of Rice's whales with certain authorized exceptions for *incidental* (i.e., non-intentional) take. Under the MMPA, NMFS can implement measures to prevent mortality and serious injury to Rice's whales.

In 2019, NMFS listed the GoM Bryde's whale as an endangered *subspecies* under the ESA. Following its identification as a distinct species, NMFS revised the listed entity to Rice's whale in 2021. Given its endangered status, the Rice's whale also is identified as *depleted* under the MMPA. In accordance with the ESA, NMFS proposed a *critical habitat* designation for Rice's whales on July 24, 2023 (**Figure 2**).

Figure 2. Proposed Rice's Whale Critical Habitat



Sources: CRS, modified from NOAA, NMFS, "Proposed Rice's Whale Critical Habitat"; NOAA, NMFS, "Endangered and Threatened

Species; Designation of Critical Habitat for the Rice's Whale," 88 *Federal Register* 47453-47472, September 12, 2023.

Note: The map depicts proposed critical habitat throughout 100–400 m depths of the U.S. GoM *Exclusive Economic Zone*.

As of November 2024, final action by NMFS on the proposed critical habitat designation is pending. Under the ESA, NMFS also is developing a *recovery plan* for the protection and recovery of the Rice's whale. In September 2020, NMFS developed a recovery outline to direct ongoing recovery efforts until a full recovery plan is completed. The outline includes available information regarding the species' life history, primary threats, status, and plans for an interim recovery program for its protection. Additional threats to Rice's whales identified in the recovery outline and final rule for its ESA listing include energy exploration, development, and production; oil spills and response; and climate change and its effects on prey.

Conservation Trade-Offs with Ocean Sectors

Some experts and stakeholders have raised concerns regarding potential interactions energy development, shipping, and other ocean activities may have with Rice's whales, including in and around their core habitat. For example, NOAA received a petition from several organizations in 2021 requesting that the agency use its ESA and MMPA authorities to establish a "vessel slowdown zone" to protect Rice's whales from vessel strikes and noise pollution. Among its contents, the petition proposed a year-round 10-knot vessel speed restriction in waters 100–400 m deep along northwestern Florida, plus a 10 kilometer spatial buffer surrounding that area. In the slowdown zone, vessel transits would have been prohibited at night, when Rice's whales have been observed more frequently in surface waters, and vessels would have been required to report their transit plans to NMFS. NMFS denied the petition in October 2023 after receiving public comments, including from environmentalists and marine transportation, energy, and fishery stakeholders. NMFS stated it would not proceed with rulemaking at that time and concluded that other actions (e.g., finalizing critical habitat, drafting a recovery plan, conducting a vessel risk assessment) were necessary before considering vessel regulations.

Some stakeholders have expressed concerns about the vulnerability of Rice's whales to offshore energy activities. For example, a 2020 lawsuit filed by several environmental organizations argued that NMFS did not adequately evaluate the potential for future GoM oil spills, and did not require sufficient safeguards for ESA-listed species from offshore drilling operations, when issuing a March 2020 *biological opinion* (BiOp) for federally regulated GoM oil and gas activities. In August 2024, a U.S. District Court in Maryland vacated NMFS's 2020 BiOp, effective December 20, 2024. The ruling raised concerns among some stakeholders about whether NMFS would be able to complete a revised BiOp prior to the vacatur date. Oil and gas industry groups have stated that a gap between the vacatur and completion of a revised BiOp would slow or halt "nearly all offshore oil operations in the Gulf," as thousands of offshore permits would then require individual ESA consultations for approval. In October 2024, the court delayed its order vacating the BiOp until May 2025.

Prior to the court ruling, the district court had approved an August 2023 stipulated agreement to stay the litigation, which would have required the Bureau of Ocean Energy Management (BOEM) to exclude Rice's whale habitat totaling 6 million acres from offshore oil and gas lease sales during a specified period. It also would have required leases to stipulate that oil-and-gas-related vessels must transit at no more than 10 knots through the whale's habitat, among other actions. Industry groups claimed these measures would eliminate any direct shore-to-deepwater transit in the GoM and would "significantly hinder" GoM energy production. BOEM initially included the Rice's whale protection measures in its terms for offshore Lease Sale 261 in fall 2023, but in response to a legal challenge from the State of Louisiana and oil and gas companies, the U.S. Court of Appeals for the Fifth Circuit ruled the lease sale could not include the protection measures.

Considerations for Congress

Some Members of Congress and other stakeholders continue to be interested in the trade-offs between measures to conserve Rice's whales and these measures' implications for marine industries. Some stakeholders assert that proactive protections are needed to conserve Rice's whales; others question the availability or quality of information used to justify protections that may economically affect certain marine sectors. Congress may continue to address Rice's whale protections and potential impacts to offshore activities. Actions proposed in 118th Congress legislation may remain of interest. For example, Congress could direct additional studies of Rice's whale occurrence and range prior to critical habitat designation, as proposed in H.R. 6008. H.R. 6008 also would provide that the 2020 BiOp would satisfy ESA and MMPA requirements for GoM oil and gas activities. Congress could consider whether to allow national security exceptions from the ESA and MMPA for certain military activities that may result in incidental take of Rice's whale, as proposed in H.R. 8070, which would exempt activities at the Florida Eglin Gulf Test and Training Range. Congress also could require agencies to develop mitigation protocols that reduce risks to Rice's whales and account for ocean uses, such as in H.R. 5239, which specifies that such protocols must not prohibit night transit or create a "static" vessel slowdown zone, among other provisions.

Other considerations could include whether scientific knowledge and current resources and technologies are sufficient to assess, monitor, and conserve Rice's whales and their habitats, including with respect to the potential economic impacts of conservation actions. Congress also may consider whether provisions primarily related to large whale conservation (e.g., near real-time monitoring and mitigation program; conservation and mitigation assistance) could be applied to Rice's whales. Further, Congress could consider whether to direct NMFS to account for any impacts to specific ocean sectors when implementing future Rice's whale regulations.

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