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RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL

October 6, 2023

National Marine Fisheries Service,
National Oceanic and Atmospheric Administration
Attn: Assistant Regional Administrator,
Protected Resources Division,
NMFS Southeast Regional Office
263 13th Avenue South,
St. Petersburg, FL 33701

Docket No. 230906-0211
Submitted electronically through www.regulations.gov

Re: Railroad Commission of Texas' Comments on the National Marine Fisheries Service, National Oceanic and Atmospheric Administration's Proposed Designation of Critical Habitat for the Rice's Whale;
Docket No. NOAA-NMFS-2023-0028; 88 Fed. Reg. 47453 (July 24, 2023)

Dear Administrator Bernhart:

The Railroad Commission of Texas (RRC) provides the following comments on the National Marine Fisheries Service (the "Service") proposal to designate expanded critical habitat for the Rice's whale, under the Endangered Species Act.

Texas is the nation's largest producer of oil and natural gas. According to 2022 numbers from the U.S. Energy Information Association, Texas accounted for 42% of the nation's crude oil production and 27% of marketed natural gas production in the United States. According to the Texas Oil and Gas Association's January 2023 Energy and Economic Impact Report, direct and indirect oil and natural gas employment generated 1.4 million jobs in Texas. Over the years, the oil and gas and energy industry has contributed between 30 and 40 percent of the overall economy in Texas, making it the 9th largest economy in the world. Nationally, the U.S. Department of Energy estimated that: (1) at the start of 2020, the oil and gas industry is responsible for 12.3 million American jobs; (2) between 2012 and 2023, the industry is projected to provide \$1.6 trillion in federal and state tax revenue, supporting the maintenance of schools, hospitals, and public infrastructure across the county; and (3) the U.S. trade deficit in 2020 was \$305 billion lower than it would have been without domestic oil and natural gas production.

The RRC is the state agency with regulatory jurisdiction over the oil and natural gas industry in Texas. The RRC's primary statutory responsibilities in the regulation of Texas oil, gas, and geothermal resources, as well as lignite mining, are to conserve the State's natural resources; prevent the waste of natural resources; protect the correlative rights of mineral interest owners; protect the environment from pollution associated with oil, gas, geothermal, and surface mining activities, and to ensure safety by mitigating hazards inherent to the oil and gas industry. The RRC oversees all oil and gas wells in Texas, as well as those who own or engage in drilling. *See* Tex. Nat. Res. Code § 81.051.

The RRC values environmental conservation and acknowledges the importance of protecting and conserving biodiversity. However, the current proposal raises significant issues that require careful consideration. The RRC is concerned that the Service does not have adequate scientific data on which to base its proposed designation of critical habitat.

The Endangered Species Act mandates that the designation of critical habitat be based on the best scientific data available and upon consideration of economic impacts, impacts to national security, and any other relevant impact. *See* 16 U.S.C.A. § 1533(b)(2). In addition, the Secretary may exclude any area from critical habitat if the benefits of such exclusion outweigh the benefits of specifying an area as critical habitat. *Id.* The current proposal undermines the credibility of such designations and could negatively impact the delicate balance between species protection and responsible economic development. For example, the RRC is concerned that the Service based its proposal, at least in part, on the Garrison et al. study predicting Rice's whale distribution in the Gulf of Mexico. However, the Garrison et al. has yet to undergo peer review and has not been publicly released.

It is clear that there is a lack of comprehensive research on the extent, population, and distribution of the Rice's whale. In addition, the proposed designation covers all marine waters from a nearshore boundary corresponding to the 100-meter isobath to an offshore boundary corresponding to the 400-meter isobath in the Gulf of Mexico and between the U.S. Exclusive Economic Zone boundary off of Texas east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council off of Florida. We believe designating such a vast area as critical habitat may not be justified by the available scientific information. Expanding the critical habitat designation to encompass such a large portion of the Gulf of Mexico coastline could have unprecedented economic, national security, safety, and operational impacts that are not adequately supported by the available data.

While the proposed critical habitat would be located outside of state waters, the consequences of the proposal could nonetheless have adverse economic impacts to the state. Texas is a top state for energy exports, including liquefied natural gas (LNG), natural gas liquids (NGLs), crude oil, as well as petroleum and coal product exports. In 2021, Texas LNG export terminals accounted for half of all U.S. LNG exports. A study by the American Petroleum Institute determined that increased exports of LNG could support between 220,000 and 452,000 additional American jobs and add up to \$73 billion to the U.S. economy by 2040. The proposed critical habitat designation and resulting effects could create bottlenecks in transporting these products which would ultimately negatively affect the state's economy. In addition, the Gulf of Mexico is one of the most important regions for energy resources and infrastructure. According to the

U.S. Energy Information Administration, Gulf of Mexico federal offshore oil production accounts for 15% of total U.S. crude oil production and federal offshore natural gas production in the Gulf accounts for 5% of total U.S. dry production. Restricting energy exploration in the Gulf of Mexico will accordingly impact the supply reliable crude oil, petroleum products, and natural gas. We understand that the Service's goal is to protect the Rice's whale but believe that further research and analysis must be conducted to ensure that any critical habitat designation is based on a solid foundation of scientific evidence. In conclusion, the RRC respectfully urges the Service to complete a more thorough scientific review and to base critical habitat designations on sound, fully peer-reviewed scientific data, and observations.

The RRC appreciates the opportunity to comment. If you have any questions, please contact me at 512.463.6977 or betsy.peticolas@rrc.texas.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Betsy Peticolas", with a stylized flourish at the end.

Betsy Peticolas, Attorney
Office of General Counsel
Railroad Commission of Texas