



Erik G. Milito  
President

**NATIONAL  
OCEAN  
INDUSTRIES  
ASSOCIATION**

1120 G Street, NW  
Suite 900  
Washington, DC 20005  
Tel 202-347-6900  
Fax 202-347-8650  
[www.noia.org](http://www.noia.org)

September 6, 2023

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

*Submitted electronically to [david.bernhart@noaa.gov](mailto:david.bernhart@noaa.gov) and via  
<https://www.regulations.gov/commenton/NOAA-NMFS-2023-0028-0001>*

**RE:** Second Request for Extension of Comment Deadline, Proposed Rule, Designation of Critical Habitat for the Rice's Whale.

Dear Mr. Bernhart:

The National Ocean Industries Association (NOIA) respectfully requests that the National Marine Fisheries Service (NMFS) reconsider its decision to not extend the comment period for the proposed rule concerning Designation of Critical Habitat for Rice's whale ([NOAA-NMFS-2023-0028-0001](https://www.regulations.gov/commenton/NOAA-NMFS-2023-0028-0001)). NOIA represents the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore minerals, offshore carbon sequestration, and other emerging technologies. NOIA member companies are operational throughout the U.S. Gulf of Mexico and its coastal communities, and as such are heavily impacted by changes to federal regulations and policies concerning the protection of marine mammals and related mitigation measures.

On August 8, 2023, NOIA requested an extension on the basis that the current deadline of the comment period, September 22, 2023, would not provide sufficient time to analyze the proposed rulemaking and to adequately respond. NOAA responded to NOIA's request less than 48 hours later denying the extension request, citing the need to follow "statutory requirements" and "legally required timelines" for issuing a final rule. Notwithstanding this denied request for extension, NOIA now believes an extension is additionally warranted given the proposed critical habitat designation relies on information that has not been made available to the public for review.

In the preamble of NMFS' proposed critical habitat designation, a peer-reviewed study by Garrison et al. (2022) is referenced four times and noted for its significant contribution to NMFS' understanding of the scientific evidence informing the proposed designation. As an example, NMFS notes that Garrison et al. (2022) "developed a density surface model to predict Rice's whale distribution in the GOMx". As the preamble goes on to detail, this density model appears significantly formative in terms of NMFS' stated understanding of the frequency of Rice's whale across various isobaths of the Gulf of Mexico.



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. As of September 5, 2023, this study has not been made publicly available by NMFS or its authors. Additionally, at the first public hearing on the proposed designation on August 24, 2023, the public inquired about this study and its availability, with NMFS stating the study is still being revised and may be available this year. The public was then 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.

NOIA hereby formally requests that NMFS make the Garrison et al. (2022) study available in whichever form relied upon by NMFS, including any updates or revisions considered by the Service. NOIA 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 also appropriate to allow the public sufficient time to analyze the connection between the information that is publicly available and “attributes”, a novel concept announced in the proposed designation with little exposition, as relevant to the physical or biological features essential to the conservation of Rice’s whale.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Erik Milito".

Erik Milito  
President  
National Ocean Industries Association