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Brian W. Vahey
Vice President – Atlantic Region

October 6, 2023

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

RE: Endangered and Threatened
Species; Designation of Critical
Habitat for the Rice's Whales
(NOAA–NMFS–2023–0028)

Dear Mr. Bernhart,

The American Waterways Operators (AWO) is the tugboat, towboat and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. Our industry is the largest segment of the nation's 40,000-vessel domestic maritime fleet and moves 665 million tons of cargo each year safely and efficiently. On behalf of AWO's more than 300 member companies, we appreciate the opportunity to comment on the Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whales.

AWO members lead the maritime industry in safety, security, and environmental stewardship. We are committed to working with federal and state agencies to advance these shared objectives. AWO member companies from across the industry are working to build on the natural advantages of marine transportation by investing in technological innovation to further reduce our environmental impact. Protecting the Rice's whale populations is important, and any critical habitat designation and associated restrictions need to be informed by the best scientific data available and implemented in a way that does not disrupt the safe and efficient flow of commerce on which our nation's economy depends.

The Endangered Species Act's Rice's Whale Critical Habitat Report (Report) provides a comprehensive overview of the physical, biological, and geographical needs of the species. AWO does not oppose the National Marine Fisheries Service's (NMFS) proposal to establish a critical habitat for Rice's whales. However, we do have serious concerns about the economic

and safety impacts that potential protection measures, facilitated by this critical habitat designation, could have on maritime operations. In July, AWO submitted comments to NOAA on a petition for rulemaking by the Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, and the New England Aquarium. The petitioners proposed a series of severe restrictions on vessel operations, from prohibiting nighttime transits to extensive reporting requirements. NMFS's proposed critical habitat cuts directly in front of some of the busiest ports and marine highways in the country. We noted in our July comment letter that if these restrictions were imposed, they could significantly disrupt the flow of cargo from ports along the Gulf Coast to Mobile, Pensacola, Tampa, and Crystal River. We do not believe that the Report has properly accounted for this economic impact, and so would like to expand on our previous recommendations.

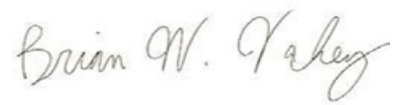
Our most urgent concern is that creating a critical habitat for Rice's whales will open the door for a future rulemaking that would establish restrictions on nighttime transits. Commercial marine transportation is a 24/7 operation. With fewer hours available for vessels to transit, industry customers might have to seek contracts for additional vessels (which may or may not be available) to meet their transportation needs. More vessels working during daytime hours could lead to port or waterway congestion and increase the risk of collisions. In some instances, vessel operators might elect to transit around the restricted area, this would increase greenhouse gas emissions because they would be required to burn more fuel to cover the added distance. However, there are safety impacts as well. The flexibility of a 24/7 operation allows companies to adjust transit times as needed for operational and mariner safety. Vessel operators can avoid subjecting their crews to certain types of work during the extreme heat of daytime hours, or they can adjust their transits to avoid bad weather or periods of low visibility. Eliminating viable operating hours from the schedule increases external pressures for vessels to get underway when they can regardless of other important considerations. In short, proposed solutions that do not balance protection for marine wildlife with the need to keep critical marine transportation moving safely and efficiently place both vessel operators and the environment at risk.

AWO members are deeply committed to environmental stewardship and take care to ensure that vessel operations do not place marine animals at risk. Indeed, it is unclear from the data what risks, if any, barge and towing vessel operations pose to Rice's whales. NOAA has previously cited just one example, from 2009, in which a Rice's whale was determined to have been killed by a collision with a vessel, but what kind of vessel and how fast it was going is not clear. Another study conducted by the Marine Mammal Commission in 2015 found that in general, for most stranded animals, responders are "unable to determine whether signs of human interactions were present."

Again, AWO does not oppose the NMFS's proposal to establish a critical habitat to protect Rice's whales, but it is important to ensure that future regulations impacting vessel transits through this habitat are crafted carefully to avoid problematic impacts on the efficiency of maritime commerce and the safety of vessels and mariners. We urge NMFS to work with other agencies and stakeholders throughout this process to develop a data- and risk-based approach to protecting marine wildlife.

AWO members stand ready to work with NMFS on this important effort and thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Brian W. Vahey". The ink is a light grey or blue color.

Brian Vahey
Vice President – Atlantic Region