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Brian W. Vahey  
Vice President – Atlantic Region

July 6, 2023

Richard W. Spinrad, Ph.D.  
Under Secretary of Commerce for Oceans and Atmosphere  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue NW  
Washington, D.C., 20230

Re: Endangered and Threatened  
Species; Petition to Establish a  
Vessel Speed Restriction and  
Other Vessel-Related Measures To  
Protect Rice's Whales  
(Docket No. 2023-06978)

Dear Dr. Spinrad:

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 Petition to Establish a Vessel Speed Restriction and Other Vessel-Related Measures to Protect 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 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, and our commitment to sustainability includes support for the marine life with which we share our waters. It is important to protect Rice's whale populations, but these efforts must be informed by solid data, implemented in a way that does not disrupt the safe and efficient flow of commerce, and prioritize technological innovation to assist vessel operators in making safe decisions in real time.

The petition submitted by the Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, and the New England Aquarium would, if codified by NOAA into regulation, have a significant navigation safety and economic impact on towing vessels operating in the Gulf of Mexico. The petitioners are proposing a series of severe restrictions on vessel operators, from a prohibition on nighttime transits to extensive reporting requirements, that could disrupt the flow of cargo from Gulf ports to Mobile, Pensacola, Tampa, and Crystal River. AWO members move a variety of energy cargoes from Mobile and points west to Tampa and from New Orleans to Crystal River. These are important routes for maritime commerce, and it is imperative that NOAA refrain from taking action that would jeopardize the safety and efficiency of vessels operating on these important transit routes.

AWO understands the importance of protecting a critically endangered species, but it is unclear from the data what risks, if any, towing vessel operations pose to Rice's whales. NOAA cites just one example, from 2009, in which a Rice's whale was determined to have been killed by a collision with a vessel. What kind of vessel and how fast it had been going is not clear. A study done by the Marine Mammal Commission in 2015 states that in general, for most stranded animals, responders are "unable to determine whether signs of human interactions were present, either because the animals were too decomposed or the markings were unidentifiable."

We urge NOAA to set up a stakeholder working group to develop a more thoughtful, collaborative approach to protecting Rice's whales. The petitioners have requested a series of restrictions that would significantly impair vessel operations. Most concerning of these is the proposal to prohibit maritime commerce in the impacted area during nighttime hours. Towing vessel transportation is a 24/7 operation. This proposal would not only make the efficient movement of cargo impossible, it would bring with it safety and environmental implications as well. With less transit hours available to operators, customers might have to seek contracts with additional transportation units (which may or may not be available) to keep up with critical energy transportation needs. Operators might elect to transit around the restricted area, requiring them to burn more fuel to cover the added distance. Solutions that do not balance protection for marine wildlife with the very real transportation needs of the country place both operators and the environment at risk. The lack of concrete data connecting Rice's whale fatalities to towing vessel strikes make such drastic mitigation measures even more misguided. A working group of knowledgeable stakeholders could work with NOAA to develop and implement the necessary protections in a more pragmatic way. AWO urges NOAA to create such a working group before further action is taken on this petition.

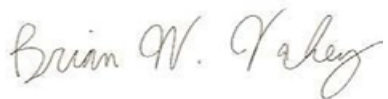
If the data demonstrates that urgent action is required to protect Rice's whales from vessels, rather than develop a new regulatory scheme that would disrupt the supply chain and impose on operators a confusing and potentially ineffective array of restrictions and reporting requirements, we urge NOAA to consider possible technology solutions to protect Rice's whales. The use of acoustic, electro-optical equipment mounted on buoys, for instance, would help detect the movements of whales and provide accurate and real-time monitoring to prevent vessel collisions. Maritime developers are already using surveillance technology to detect the

presence of animals in sea floor construction areas and in heavily trafficked egress points for vessels servicing offshore wind sites. NOAA should support the expansion of these technologies in the approaches to all major ports as an effective long-term solution to protecting whales in the Gulf of Mexico. It would also allow vessel traffic and other Gulf maritime activities to proceed with improved situational awareness of whale movements. For instance, when pods of whales are detected close to high-trafficked coastal areas, instructions for course changes, speed reductions, and other collision avoidance measures can be sent to captains as needed and in a timely manner.

Rather than implementing an over-broad regulatory measure that may not even be effective in protecting Rice's whales, we urge NOAA to work with other agencies and stakeholders to develop a science- and risk-based approach and support emerging technologies that can provide vessel operators with enhanced, timely information to protect marine wildlife.

AWO members stand ready to work with NOAA 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 dark and the signature is fluid and legible.

Brian Vahey  
Vice President – Atlantic Region