

**Congress of the United States**  
**Washington, DC 20515**

July 15, 2020

Dr. Neil Jacobs  
Assistant Secretary of Commerce for Environmental Observation and Prediction  
Acting NOAA Administrator  
1401 Constitution Ave. NW  
Room 5128  
Washington, DC 20230

RE: Gulf of Mexico Whale ESA Listing

Dear Dr. Jacobs:

On March 7, 2019, we wrote urging you to list the Gulf of Mexico whale as endangered under the Endangered Species Act (ESA).<sup>1</sup> We appreciate your timely attention to our letter and for taking action to list the Gulf of Mexico Whale the following month. However, despite listing the species, the National Marine Fisheries Service (NMFS) has missed the ESA deadline to designate critical habitat for the whale. We now write to call on NMFS to fulfill its responsibilities and designate critical habitat for the Gulf of Mexico whale.

The Gulf of Mexico whale is the only baleen whale species resident to the Gulf of Mexico and is a unique part of the Gulf's natural heritage. Yet it is critically endangered, with only an estimated 33 individuals remaining in the wild.<sup>2</sup> The species faces numerous threats to its survival, most notably anthropogenic noise due to oil and gas seismic exploration and development activity as well as oil spills.<sup>3</sup> In fact, the government's Natural Resource Damage Assessment estimated that 17 percent of the population died outright in the *Deepwater Horizon* spill ten years ago.<sup>4</sup>

The ESA, recognizing the essential role that habitat protection plays in species survival and recovery, requires NMFS to designate critical habitat for the species concurrent with its listing.<sup>5</sup> If critical habitat is "not then determinable," NMFS can extend that deadline "by not more than one additional year," at which point it "must publish" a rule, "based on such data as may be

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<sup>1</sup> Congresswoman Kathy Castor & Congressman Vern Buchanan, et al., Letter to Dr. Neil Jacobs, Acting NOAA Administrator, March 7, 2019, available at <https://buchanan.house.gov/sites/buchanan.house.gov/files/GoM%20Whale%20ESA%20Listing.pdf>.

<sup>2</sup> *Endangered status of the Gulf of Mexico Bryde's Whale* ("Listing Decision"), 84 Fed. Reg. 15,446, 15,473 (April 15, 2019).

<sup>3</sup> *Id.* at 15,446.

<sup>4</sup> 81 Fed. Reg. 29232 (June 22, 2018).

<sup>5</sup> 16 U.S.C. § 1533(a)(3)(A)(i).

available at that time, designating, to the maximum extent prudent, such habitat.”<sup>6</sup> No further extensions are permitted. By failing to designate critical habitat for the Gulf of Mexico whale by April 15, 2020, NMFS has missed the statutory deadline to designate critical habitat for the species and is in violation of the ESA.

Designating critical habitat is essential for the survival of the Gulf of Mexico whale. Although the species once ranged through much of the northern Gulf, it is now mostly confined to a small region around the DeSoto Canyon, due in large part to the expansion of industrial activity. Both this core area and additional habitat are necessary for the species’ recovery. Designating critical habitat will provide additional legal protections, reduce the level of threats from industrial activity, and increase the odds that the species will survive and recover. The agency should act urgently to designate critical habitat for the desperately endangered Gulf of Mexico whale, as the law requires.

Sincerely,



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Kathy Castor  
MEMBER OF CONGRESS



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Vern Buchanan  
MEMBER OF CONGRESS

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<sup>6</sup> 16 U.S.C. § 1533(b)(6)(C)(ii).