

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
40 West 20th Street
New York, NY 10011

HEALTHY GULF
1010 Common Street, #902
New Orleans, LA 70112

Plaintiffs,

v.

WILBUR ROSS, in his official capacity
as Secretary of Commerce,
United States Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

CHRIS OLIVER, in his official capacity as
Assistant Administrator for Fisheries,
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, MD 20910

TIMOTHY GALLAUDET, in his official capacity as Assistant
Secretary of Commerce for Oceans and Atmosphere and as
Deputy Administrator, National Oceanic and Atmospheric
Administration
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
1401 Constitution Ave., NW, Room 5128
Washington, DC 20230

Defendants.

Case No. 1:20-cv-2047
ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Gulf of Mexico whale, a subspecies of Bryde's whale, *Balaenoptera edeni* ("Gulf of Mexico whale" or "the species"), is the only baleen whale resident in the Gulf of Mexico and one of the most endangered whales on the planet.

2. Although historically the species ranged across the entire Gulf, its population has been restricted to a limited area, with recent sightings confined to the area near De Soto Canyon in the northeastern Gulf. By the government's estimate only 33 individuals remain in the wild.

3. In 2014, the Natural Resources Defense Council (NRDC) filed an Endangered Species Act petition with the National Marine Fisheries Service (NMFS) to list the Gulf of Mexico whale as endangered.

4. Congress passed the Endangered Species Act (ESA) in 1973 to protect wildlife like the Gulf of Mexico whale that is in danger of extinction, because such species were recognized to be "of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." 16 U.S.C. § 1531(a)(3). To achieve its purpose, the ESA contains a series of nondiscretionary deadlines. For the Gulf of Mexico whale, NMFS failed on two prior occasions to meet the statute's deadlines—which NRDC had to bring suit to enforce—leading to several years of delay before the species was formally listed as endangered.

5. On April 15, 2019, nearly five years after NRDC's petition was filed, NMFS published a final rule listing the Gulf of Mexico whale as endangered throughout all of its range. 84 Fed. Reg. 15,446 (April 15, 2019) (the "Listing Decision"). NMFS stated that the species was endangered "due to its small population size and restricted range, and the threats of energy exploration, development and production, oil spills and oil spill response, vessel collision,

fishing gear entanglement, and anthropogenic noise.” *Id.* at 15,446.

6. NMFS has now missed a third mandatory deadline.

7. The ESA states the NMFS shall designate critical habitat for an endangered species concurrently with its determination to list the species. 16 U.S.C. § 1533(a)(3)(A)(i), (b)(6)(C). That deadline may be extended by one year, in certain circumstances, but only one extension is allowed. *Id.* § 1533(b)(6)(C)(ii). The Act thus required NMFS to designate critical habitat for the Gulf of Mexico whale within one year of the date of publication of its listing decision. *Id.* That deadline is nondiscretionary and cannot be extended further. To date, however, NMFS has not designated critical habitat for the species.

8. NMFS’s delayed protection and designation of critical habitat for these whales, harms the species and reduces its odds of survival, and harms Plaintiffs’ interests in the species. This Court should order Defendants to comply with the ESA and designate critical habitat for the Gulf of Mexico whale.

JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c) and (g) (ESA citizen suit provision), 5 U.S.C. §§ 701-706 (judicial review of agency action), and 28 U.S.C. § 1331 (federal question jurisdiction).

10. The relief requested may be granted under 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief), 16 U.S.C. § 1540(g) (ESA citizen suit provision), and 5 U.S.C. § 706(1) (Administrative Procedure Act).

11. Pursuant to 16 U.S.C. § 1540(g)(2)(C), Plaintiffs provided the Secretary of Commerce and all Defendants with written notice of Plaintiffs’ intent to file this suit. That notice

was provided more than sixty days prior to the commencement of this action. A copy of Plaintiffs' notice letter is attached as **Exhibit A** and incorporated herein by reference.

12. Defendants have not corrected their violations of the law in response to Plaintiffs' notice.

13. Venue is proper in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(e), 16 U.S.C. § 1540(g)(3)(A), and 5 U.S.C. § 703, because two Defendants reside in this judicial district and a substantial part of the events or omissions giving rise to the claims occurred in the District of Columbia. Plaintiff NRDC also has an office in Washington, D.C.

PARTIES

Plaintiffs

14. Plaintiff Natural Resources Defense Council, Inc. (NRDC) is a nationwide non-profit environmental organization. NRDC has over 300,000 members nationwide, including members in the Gulf states of Louisiana, Mississippi, Alabama, and Florida. NRDC's mission is to "safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends." NRDC has worked for decades to implement and enforce the Endangered Species Act, and to protect endangered species.

15. Through its Marine Mammal Protection Project, NRDC has worked for more than twenty years to protect marine mammals in the United States and abroad using various tools including litigation, advocacy, policy development, and participation in Marine Mammal Protection Act-mandated take reduction teams. NRDC and its members have advocated and litigated to protect the Gulf of Mexico whale, by working to get it listed as endangered and to

curb threats that impact the whale, like ocean noise, offshore oil and gas exploration, and commercial fishing.

16. NRDC members reside throughout the United States and along the coast of the Gulf of Mexico. NRDC members derive recreational, conservation, aesthetic, and other benefits from the Gulf of Mexico whale in the wild.

17. For example, in the course of her routine activities, NRDC member and Healthy Gulf member Bonny Schumaker regularly visits the northeastern Gulf of Mexico and enjoys seeing or seeking marine wildlife, including the Gulf of Mexico whale. Ms. Schumaker has specific plans to continue the activities that bring her to the northeastern Gulf of Mexico and to the habitat of the Gulf of Mexico whale, and to look for and attempt to see the Gulf of Mexico whale.

18. Plaintiff Healthy Gulf (formerly Gulf Restoration Network) is a nonprofit network of community, conservation, environmental and fishing groups and individuals committed to protection and restoration of the natural resources of the Gulf of Mexico. Healthy Gulf's purpose is to collaborate with and serve communities who love the Gulf of Mexico by providing research, communications and coalition-building tools needed to reverse the long-pattern of over exploitation of the Gulf's natural resources. Healthy Gulf is headquartered in New Orleans, Louisiana, with offices in Pensacola, Florida, and Madison, Mississippi. Healthy Gulf members live in the five Gulf states of Texas, Louisiana, Mississippi, Alabama, and Florida, and nationwide.

19. Healthy Gulf members and constituents regularly use, enjoy, and benefit from the marine environment of the Gulf of Mexico. Healthy Gulf members benefit from the presence of the Gulf of Mexico whale and its marine environment for recreational, aesthetic, commercial,

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