To prohibit the implementation of certain documents until the Assistant Administrator for Fisheries of the National Marine Fisheries Service issues documents relating to the Rice’s whale.

IN THE HOUSE OF REPRESENTATIVES

Mr. Graves of Louisiana introduced the following bill; which was referred to the Committee on __________________________________________

A BILL

To prohibit the implementation of certain documents until the Assistant Administrator for Fisheries of the National Marine Fisheries Service issues documents relating to the Rice’s whale.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON IMPLEMENTATION OF CERTAIN DOCUMENTS UNTIL ISSUANCE OF DOCUMENTS RELATING TO RICE’S WHALE.

(a) In General.—
(1) **Compliance with Biological Opinion.**—

Notwithstanding any other provision of law, with respect to current and future federally regulated oil and gas program activities in the Gulf of Mexico, compliance with the Biological Opinion shall serve to fully satisfy the requirements of applicable Federal environmental laws, including the Endangered Species Act (16 U.S.C. 1531 et seq.) and the Marine Mammal Protection Act (16 U.S.C. 1371 et seq.).

(2) **Stipulated Agreement.**—The Assistant Administrator and the Director may not implement, administer, or enforce the Stipulated Agreement or the Notice to Lessees, respectively, until the Assistant Administrator issues a revised Biological Opinion as a result of reinitiated consultation with the Director under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) and in accordance with this section.

(b) **Reinitiated Consultation on Biological Opinion.**—

(1) **In General.**—The Assistant Administrator and the Director may not request, commence, carry out, or complete reinitiated consultation on the Biological Opinion under this section until—
(A) the Assistant Administrator issues a final rule designating critical habitat for the Rice’s whale (*Balaenoptera ricei*) that is consistent with—

(i) the results of the study conducted pursuant to subsection (c);

(ii) the requirements of the rule-making process pursuant to subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”);

(iii) the requirement to conduct an economic impact analysis pursuant to Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review);

(iv) section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456);

(v) the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.); and

(vi) chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act’’); and
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(B) the Assistant Administrator revises and finalizes the proposed rule titled “Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico” (88 Fed. Reg. 916; January 5, 2023) to include a correction of the erroneous estimates of incidental take of marine mammals anticipated from the activities analyzed in the final rule titled “Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico” (86 Fed. Reg. 5322; January 19, 2021).

(2) COOPERATION WITH STATES.—In carrying out this section, the Assistant Administrator and the Director shall cooperate with each State to resolve issues that threaten to impair the exploration, development, production, transportation, servicing, or processing of offshore energy resources and related activities.

(3) PUBLICATION AND REVIEW.—In carrying out any consultation or reinitiated consultation on the Biological Opinion under this section, the Assistant Administrator and the Director shall take steps to ensure—
(A) that any scientific evidence considered
and relied upon as a part of the consultation or
reinitiation of consultation is—

(i) made publicly available; and

(ii) peer reviewed by the National
Academies of Science, Engineering, and
Medicine to ensure scientific rigor and
independence; and

(B) that any party directly impacted by
the Stipulated Agreement or Notice to Lessees
shall—

(i) have routine and continuing oppor-
tunities to discuss and submit information
to the action agency for consideration dur-
ing the development of any biological as-
essment or proposed action;

(ii) be informed by the action agency
of the schedule for preparation of a biologi-
cal assessment or proposed action;

(iii) receive a copy of any proposed ac-
tion and have the opportunity to review
that document and provide comment to the
action agency (which shall be afforded due
consideration during development);
(iv) be informed by the consulting agencies, the Bureau of Ocean Energy Management, or the National Marine Fisheries Service, of the schedule for preparation of the biological opinion when the biological assessment is submitted to the consulting agency by the action agency;

(v) receive a copy of any draft biological opinion and have the opportunity to review that document and provide comment to the action agency (which shall be afforded due consideration during development);

(vi) have the opportunity to confer with the action agency regarding reasonable and prudent alternatives prior to the action agency identifying 1 or more reasonable and prudent alternatives for consideration by the consulting agency; and

(vii) where the action agency proposes a proposed action or a consulting agency suggests a reasonable and prudent alternative, be informed of—

(I) how each component of such proposed action or alternative will
contribute to avoiding jeopardy or adverse modification of critical habitat and the scientific data or information that supports each component of the proposed action or alternative; and

(II) why other proposed alternative actions that would have fewer impairments to the supply of offshore energy and economic impacts are inadequate to avoid jeopardy or adverse modification of critical habitat.

(4) MEETINGS.—

(A) IN GENERAL.—During any consultation or reinitiated consultation on the Biological Opinion carried out under this section, the Assistant Administrator and the Director shall, on a quarterly basis, hold stakeholder meetings to provide updates on the development of a new or revised biological assessment or biological opinion.

(B) PARTICIPANTS.—Each stakeholder meeting held under subparagraph (A) shall—

(i) be open to stakeholders identified by the Assistant Administrator and the Director; and
(ii) include stakeholders that—

(I) represent a broad range of interests, including environmental, recreational and commercial fishing, conventional and renewable energy, ports, and other regional interests; and

(II) are not State or local agencies.

(5) CLARIFICATION.—The Assistant Administrator and the Director may not use stakeholder meetings held under paragraph (3) to fulfill the requirements of paragraph (2).

(c) RICE’S WHALE STUDY.—The Assistant Administrator shall enter into an agreement with the National Academies of Science, Engineering, and Medicine to conduct a study to determine the occurrence and range of the Rice’s whale (Balaenoptera ricei) in the Central, Eastern, and Western Gulf of Mexico Planning Areas.

(d) LEASING ACTIVITIES.—The Secretary of the Interior may not rely on the Stipulated Agreement or the Notice to Lessees in carrying out offshore oil and gas leasing activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(e) DEFINITIONS.—In this section:
(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for Fisheries of the National Marine Fisheries Service.

(2) BIOLOGICAL OPINION.—The term “Biological Opinion” means the document titled “Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico” (OPR–2017–00002; March 13, 2020).

(3) DIRECTOR.—The term “Director” means the Director of the Bureau of Ocean Energy Management.

(4) NOTICE TO LESSEES.—The term “Notice to Lessees” means the document titled “Notice to Lessees and Operators of Federal Oil and Gas, and Sulphur Leases in the Gulf of Mexico Outer Continental Shelf; Expanded Rice’s Whale Protection Efforts During Reinitiated Consultation with NMFS” (BOEM NTL No. 2023–G01; August 17, 2023), or a substantially similar document.

(5) STATE.—The term “State” means each of the States of Alabama, Louisiana, Mississippi, and Texas.

(6) STIPULATED AGREEMENT.—The term “Stipulated Agreement” means the document titled
“Stipulated Agreement to Stay Proceedings” (July 21, 2023; Docket No. 8:20–cv–03060–DLB) and entered into by the Sierra Club, Center for Biological Diversity, Friends of the Earth, and Turtle Island Restoration Network and the National Marine Fisheries Service and the Assistant Administrator.