

118TH CONGRESS
1ST SESSION

H. R. 6008

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

OCTOBER 20, 2023

Mr. GRAVES of Louisiana (for himself, Mr. EZELL, Mr. CARL, and Mr. HUNT)
introduced the following bill

OCTOBER 25, 2023

Referred to the Committee on Natural Resources

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Requiring Integrity
5 in Conservation Efforts Act” or as the “R.I.C.E.’s Whale
6 Act”.

1 **SEC. 2. PROHIBITION ON IMPLEMENTATION OF CERTAIN**
2 **DOCUMENTS UNTIL ISSUANCE OF DOCU-**
3 **MENTS RELATING TO RICE'S WHALE.**

4 (a) IN GENERAL.—

5 (1) COMPLIANCE WITH BIOLOGICAL OPINION.—

6 Notwithstanding any other provision of law, with re-
7 spect to current and future federally regulated oil
8 and gas program activities in the Gulf of Mexico,
9 compliance with the Biological Opinion shall serve to
10 fully satisfy the requirements of applicable Federal
11 environmental laws, including the Endangered Spe-
12 cies Act (16 U.S.C. 1531 et seq.) and the Marine
13 Mammal Protection Act (16 U.S.C. 1371 et seq.).

14 (2) STIPULATED AGREEMENT.—The Assistant
15 Administrator and the Director may not implement,
16 administer, or enforce the Stipulated Agreement or
17 the Notice to Lessees, respectively, until the Assis-
18 tant Administrator issues a revised Biological Opin-
19 ion as a result of reinitiated consultation with the
20 Director under section 7 of the Endangered Species
21 Act of 1973 (16 U.S.C. 1536) and in accordance
22 with this section.

23 (b) REINITIATED CONSULTATION ON BIOLOGICAL
24 OPINION.—

25 (1) IN GENERAL.—The Assistant Administrator
26 and the Director may not request, commence, carry

1 out, or complete reinitiated consultation on the Bio-
2 logical Opinion under this section until—

3 (A) the Assistant Administrator issues a
4 final rule designating critical habitat for the
5 Rice’s whale (*Balaenoptera ricei*) that is con-
6 sistent with—

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

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

14 (iii) the requirement to conduct an
15 economic impact analysis pursuant to Ex-
16 ecutive Order 12866 (5 U.S.C. 601 note;
17 relating to regulatory planning and re-
18 view);

19 (iv) section 307 of the Coastal Zone
20 Management Act of 1972 (16 U.S.C.
21 1456);

22 (v) the Paperwork Reduction Act of
23 1995 (44 U.S.C. 3501 et seq.); and

1 (vi) chapter 6 of title 5, United States
2 Code (commonly known as the “Regulatory
3 Flexibility Act”); and

4 (B) the Assistant Administrator revises
5 and finalizes the proposed rule titled “Taking
6 and Importing Marine Mammals; Taking Ma-
7 rine Mammals Incidental to Geophysical Sur-
8 veys in the Gulf of Mexico” (88 Fed. Reg. 916;
9 January 5, 2023) to include a correction of the
10 erroneous estimates of incidental take of marine
11 mammals anticipated from the activities ana-
12 lyzed in the final rule titled “Taking and Im-
13 porting Marine Mammals; Taking Marine Mam-
14 mals Incidental to Geophysical Surveys Related
15 to Oil and Gas Activities in the Gulf of Mexico”
16 (86 Fed. Reg. 5322; January 19, 2021).

17 (2) COOPERATION WITH STATES.—In carrying
18 out this section, the Assistant Administrator and the
19 Director shall cooperate with each State to resolve
20 issues that threaten to impair the exploration, devel-
21 opment, production, transportation, servicing, or
22 processing of offshore energy resources and related
23 activities.

24 (3) PUBLICATION AND REVIEW.—In carrying
25 out any consultation or reinitiated consultation on

1 the Biological Opinion under this section, the Assist-
2 ant Administrator and the Director shall take steps
3 to ensure—

4 (A) that any scientific evidence considered
5 and relied upon as a part of the consultation or
6 reinitiation of consultation is—

7 (i) made publicly available; and

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

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

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

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

23 (iii) receive a copy of any proposed ac-
24 tion and have the opportunity to review
25 that document and provide comment to the

1 action agency (which shall be afforded due
2 consideration during development);

3 (iv) be informed by the consulting
4 agencies, the Bureau of Ocean Energy
5 Management, or the National Marine Fish-
6 eries Service, of the schedule for prepara-
7 tion of the biological opinion when the bio-
8 logical assessment is submitted to the con-
9 sulting agency by the action agency;

10 (v) receive a copy of any draft biologi-
11 cal opinion and have the opportunity to re-
12 view that document and provide comment
13 to the action agency (which shall be af-
14 farded due consideration during develop-
15 ment);

16 (vi) have the opportunity to confer
17 with the action agency regarding reason-
18 able and prudent alternatives prior to the
19 action agency identifying 1 or more reason-
20 able and prudent alternatives for consider-
21 ation by the consulting agency; and

22 (vii) where the action agency proposes
23 a proposed action or a consulting agency
24 suggests a reasonable and prudent alter-
25 native, be informed of—

1 (I) how each component of such
2 proposed action or alternative will
3 contribute to avoiding jeopardy or ad-
4 verse modification of critical habitat
5 and the scientific data or information
6 that supports each component of the
7 proposed action or alternative; and

8 (II) why other proposed alter-
9 native actions that would have fewer
10 impairments to the supply of offshore
11 energy and economic impacts are in-
12 adequate to avoid jeopardy or adverse
13 modification of critical habitat.

14 (4) MEETINGS.—

15 (A) IN GENERAL.—During any consulta-
16 tion or reinitiated consultation on the Biological
17 Opinion carried out under this section, the As-
18 sistant Administrator and the Director shall, on
19 a quarterly basis, hold stakeholder meetings to
20 provide updates on the development of a new or
21 revised biological assessment or biological opin-
22 ion.

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

1 (i) be open to stakeholders identified
2 by the Assistant Administrator and the Di-
3 rector; and

4 (ii) include stakeholders that—

5 (I) represent a broad range of in-
6 terests, including environmental, rec-
7 reational and commercial fishing, con-
8 ventional and renewable energy, ports,
9 and other regional interests; and

10 (II) are not State or local agen-
11 cies.

12 (5) CLARIFICATION.—The Assistant Adminis-
13 trator and the Director may not use stakeholder
14 meetings held under paragraph (3) to fulfill the re-
15 quirements of paragraph (2).

16 (c) RICE'S WHALE STUDY.—The Assistant Adminis-
17 trator shall enter into an agreement with the National
18 Academies of Science, Engineering, and Medicine to con-
19 duct a study to determine the occurrence and range of
20 the Rice's whale (*Balaenoptera ricei*) in the Central, East-
21 ern, and Western Gulf of Mexico Planning Areas.

22 (d) LEASING ACTIVITIES.—The Secretary of the In-
23 terior may not rely on the Stipulated Agreement or the
24 Notice to Lessees in carrying out offshore oil and gas leas-

1 ing activities under the Outer Continental Shelf Lands Act
2 (43 U.S.C. 1331 et seq.).

3 (e) DEFINITIONS.—In this section:

4 (1) ASSISTANT ADMINISTRATOR.—The term
5 “Assistant Administrator” means the Assistant Ad-
6 ministrator for Fisheries of the National Marine
7 Fisheries Service.

8 (2) BIOLOGICAL OPINION.—The term “Biologi-
9 cal Opinion” means the document titled “Biological
10 Opinion on the Federally Regulated Oil and Gas
11 Program Activities in the Gulf of Mexico” (OPR-
12 2017–00002; March 13, 2020).

13 (3) DIRECTOR.—The term “Director” means
14 the Director of the Bureau of Ocean Energy Man-
15 agement.

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

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

4 (6) STIPULATED AGREEMENT.—The term
5 “Stipulated Agreement” means the document titled
6 “Stipulated Agreement to Stay Proceedings” (July
7 21, 2023; Docket No. 8:20–cv–03060–DLB) and en-
8 tered into by the Sierra Club, Center for Biological
9 Diversity, Friends of the Earth, and Turtle Island
10 Restoration Network and the National Marine Fish-
11 eries Service and the Assistant Administrator.

○