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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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.

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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.

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. PROHIBITION ON IMPLEMENTATION OF CER-**  
4 **TAIN DOCUMENTS UNTIL ISSUANCE OF DOC-**  
5 **UMENTS RELATING TO RICE'S WHALE.**

6 (a) IN GENERAL.—

1 (1) COMPLIANCE WITH BIOLOGICAL OPINION.—

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

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

19 (b) REINITIATED CONSULTATION ON BIOLOGICAL  
20 OPINION.—

21 (1) IN GENERAL.—The Assistant Administrator  
22 and the Director may not request, commence, carry  
23 out, or complete reinitiated consultation on the Bio-  
24 logical Opinion under this section until—

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

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

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

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

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

20 (v) the Paperwork Reduction Act of  
21 1995 (44 U.S.C. 3501 et seq.); and

22 (vi) chapter 6 of title 5, United States  
23 Code (commonly known as the “Regulatory  
24 Flexibility Act”); and

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

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

21 (3) PUBLICATION AND REVIEW.—In carrying  
22 out any consultation or reinitiated consultation on  
23 the Biological Opinion under this section, the Assist-  
24 ant Administrator and the Director shall take steps  
25 to ensure—

1 (A) that any scientific evidence considered  
2 and relied upon as a part of the consultation or  
3 reinitiation of consultation is—

4 (i) made publicly available; and

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

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

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

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

20 (iii) receive a copy of any proposed ac-  
21 tion and have the opportunity to review  
22 that document and provide comment to the  
23 action agency (which shall be afforded due  
24 consideration during development);

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

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

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

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

24 (I) how each component of such  
25 proposed action or alternative will

1 contribute to avoiding jeopardy or ad-  
2 verse modification of critical habitat  
3 and the scientific data or information  
4 that supports each component of the  
5 proposed action or alternative; and

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

12 (4) MEETINGS.—

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

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

23 (i) be open to stakeholders identified  
24 by the Assistant Administrator and the Di-  
25 rector; and

- 1 (ii) include stakeholders that—  
2 (I) represent a broad range of in-  
3 terests, including environmental, rec-  
4 reational and commercial fishing, con-  
5 ventional and renewable energy, ports,  
6 and other regional interests; and  
7 (II) are not State or local agen-  
8 cies.

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

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

19 (d) LEASING ACTIVITIES.—The Secretary of the In-  
20 terior may not rely on the Stipulated Agreement or the  
21 Notice to Lessees in carrying out offshore oil and gas leas-  
22 ing activities under the Outer Continental Shelf Lands Act  
23 (43 U.S.C. 1331 et seq.).

24 (e) DEFINITIONS.—In this section:



1           (1) ASSISTANT ADMINISTRATOR.—The term  
2           “Assistant Administrator” means the Assistant Ad-  
3           ministrators for Fisheries of the National Marine  
4           Fisheries Service.

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

10          (3) DIRECTOR.—The term “Director” means  
11          the Director of the Bureau of Ocean Energy Man-  
12          agement.

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

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

24          (6) STIPULATED AGREEMENT.—The term  
25          “Stipulated Agreement” means the document titled

1       “Stipulated Agreement to Stay Proceedings” (July  
2       21, 2023; Docket No. 8:20–cv–03060–DLB) and en-  
3       tered into by the Sierra Club, Center for Biological  
4       Diversity, Friends of the Earth, and Turtle Island  
5       Restoration Network and the National Marine Fish-  
6       eries Service and the Assistant Administrator.