

OFFSHORE ENERGY:

Rice's Whale Litigation and Impacts on GOM Oil and Gas Operations

In July 2023, the Biden administration entered into a voluntary settlement agreement with activist groups. This agreement results in the removal of about 11 million highly prospective acres from the upcoming September 2023 offshore lease sale in the Gulf of Mexico and implemented new restrictions targeting the offshore oil and gas industry. The move bypasses the requirements of the Inflation Reduction Act and circumvents the established regulatory process governing the issues addressed in the litigation.

The settlement has significant implications for offshore oil and gas development. The Gulf of Mexico has some of the lowest carbon intensity barrels in the world. Constrained production in this basin would displace domestic energy production in favor of higher carbon intensity barrels from elsewhere in the world and permanently outsource investments, jobs, and energy security and affordability. To be clear, the Rice's Whale is currently afforded protections under both the Endangered Species Act and the Marine Mammal Protection Act, specifically in the area of its core habitat where the data demonstrates the species actually exists.

Key Settlement Insights

The Stipulated Stay Agreement, filed with the U.S. District Court for the District of Maryland, outlines the expansion of Rice's Whale protections applicable to the Gulf of Mexico oil and gas industry. These expansions carry far-reaching implications for future offshore oil and gas activities. The settlement includes two significant documents that impact Gulf of Mexico operations:

- 1. Notice to Lessees (NTL) and Operators of Federal Oil and Gas Leases:** This outlines expanded Rice's Whale protection efforts during reinitiated consultation with NMFS.
- 2. Lease Stipulation:** This will be added to the Department of the Interior's offshore oil and gas leases offered in Gulf of Mexico Lease Sale 261 and subsequent sales during ongoing reinitiated consultation.

Effects on Gulf of Mexico Lease Sale 261

The settlement and its associated lease sale stipulations will remove the "Rice's Whale Expanded Area" from the upcoming Gulf of Mexico Lease Sale 261, scheduled for September 27, 2023, and future lease sales during the reinitiated consultation. This expanded critical habitat area traverses active regions along the Central and Western Gulf of Mexico. Altogether, about 11 million acres of promising potential lease blocks will be taken off the table.

Mitigation Measures

BOEM will introduce stipulations to Lease Sale 261 intended to limit activities within an extensive region of the Gulf of Mexico. **As of now, these mitigation measures exclusively target the offshore oil and gas industry**, and include:

- 10-knot Vessel Speed Restrictions
- Limitations on Night Travel
- Vessel Strike Avoidance Protocols
- Multi-Year Record Keeping Requirements
- Mandatory Minimum Separation Distances from Rice's Whales

Notice to Lessees - August 18, 2023

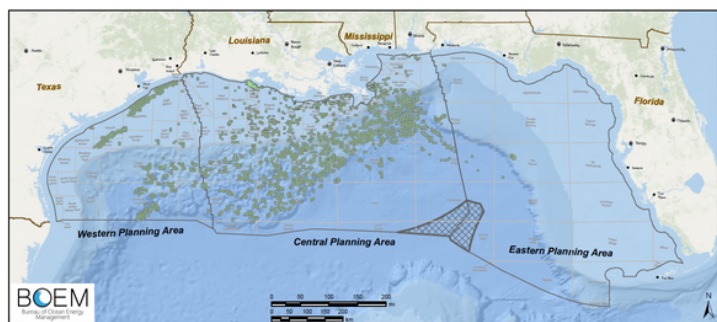
In conjunction with its inclusion in the Final Notice of Sale for Lease Sale 261, BOEM will release a Notice to Lessees (NTL) with recommended restrictions on ongoing industry activities within the expanded Rice's Whale habitat area. The NTL is anticipated to be published by August 18, 2023. The NTL recommends several restrictions on vessels while they are in the Expanded Rice's Whale Area, including:

1. Having trained visual observers to monitor the vessel strike avoidance zone to watch for whales. Such observers may be either third-party observers or crew members but crew members responsible for these duties should be provided with sufficient training to distinguish aquatic protected species to broad taxonomic groups.
2. 10-knot Vessel Speed Restrictions for all vessels, regardless of size. If the vessel does not require automatic identification system (AIS), it is strongly encouraged that the operator document and retain records of the transit, including trackline (e.g., time and speed) data and visual marine mammal sightings.
3. Maintain a minimum separation distance of 500 meters from Rice's whales. If a whale is observed but cannot be confirmed as a species other than a Rice's whale, the vessel operator should assume that the whale is a Rice's whale and take appropriate action.
4. Use of AIS for vessels 65 feet or greater; and
5. To the maximum extent practicable, avoid transit through the Expanded Rice's Whale Area after dusk and before dawn, and "during other times of low visibility."

The NTL also directs companies to include these mitigation manners in future plans for offshore operations in the region.

Impact on American Energy

This settlement imposes unwarranted restrictions on operations in the U.S. Gulf of Mexico. These limitations significantly hinder America's capacity to produce energy in a region responsible for hundreds of thousands of high-paying jobs and production of some of the world's least carbon-intensive barrels. Despite lacking ample scientific evidence to support such extensive bans on operations, the agreement targets the domestic offshore oil and gas industry. The Stipulated Stay agreement ignores the best science, contravenes Congress' explicit directives in enacting the Inflation Reduction Act, and threatens America's energy independence. **The government is also moving forward to expand these protections to other ocean users, greatly expanding the adverse impacts to ripple throughout our entire economy.**



The expanded critical habitat area bisects the length of the Central and Western Gulf of Mexico, putting an active and prolific producing area off-limits or under mitigation measures outside the currently established core area of the species. The area excluded from Lease Sale 261 is between the 100 meter and 400 meter isobaths in the northern Gulf of Mexico. There is no direct path from Gulf Coast shore bases or ports to deepwater that avoids traversing the Expanded Rice's Whale Area. **The government is now on a pathway to impose restrictions on virtually all vessels and ocean users.**

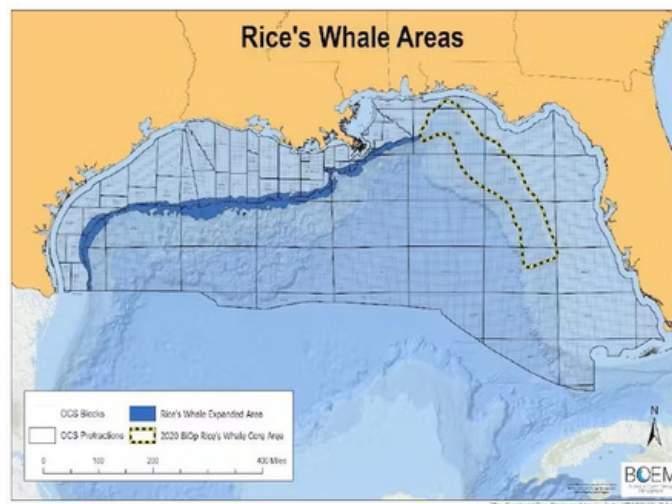


Figure 1: Expanded Rice's Whale Area.

FOR MORE INFORMATION

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