



August 21, 2023

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The Honorable Deb Haaland  
Secretary, U.S. Department of the Interior  
1849 C Street N.W.  
Washington, D.C. 20240

Re: Safety and Other Adverse Consequences Related to Actions Outlined in  
Proposed Rice's Whale Stipulated Stay Agreement

Dear Secretary Haaland:

As you consider potential implementation of the actions for the Bureau of Ocean Energy Management (BOEM) recited in the July 21, 2023 Stipulated Stay Agreement between environmental litigants and the National Marine Fisheries Service (NMFS), we respectfully request that you and the Administration recognize the likely and significant adverse consequences that could result to offshore safety, emissions, energy security, energy affordability, and national security from the imposition of the proposed leasing restrictions and stipulations and the proposed Notice to Lessees (NTL). We have serious concerns that the department has not adequately – if at all – engaged offshore safety professionals or safety enforcement agencies to assess and manage the potential safety risks.

Therefore, we request that Interior and its bureaus not implement the restrictions as stated in the proposed Stipulated Stay Agreement. Instead, we respectfully request that Interior and its bureaus wait until there is further engagement with the offshore regulated community, interagency coordination, and the completion of work by NMFS related to the biological opinion for oil and gas activities and the proposed designation of critical habitat for the Rice's Whale.

As you are aware, the U.S. Gulf of Mexico is a strategic energy asset that provides nearly 2 million barrels of oil per day, supports more than 350 thousand jobs throughout the country, and provides billions of dollars in funding for important conservation and coastal resiliency programs.<sup>1</sup> The Gulf of Mexico is recognized as providing among the lowest carbon

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<sup>1</sup> <https://www.noia.org/gulfimpact2020/>

intensive barrels relative to worldwide alternative barrels.<sup>2</sup> Our industry has led the way through innovation, best practices, and safety systems over the past ten-plus years to continuously enhance the safety of workers and the environment. While achieving the above, our industry has thousands of personnel working at offshore facilities in the Gulf at any given moment, with many providing support by transporting people and materials to and from shore, and by constructing, installing, and removing offshore infrastructure.

However, implementation of the restrictions stated in the proposed Stipulated Stay Agreement puts activities and personnel at risk with no justified benefit. By immediately establishing a restricted zone that spans the entirety of the Gulf of Mexico, BOEM would unilaterally erect an arbitrary barrier between vessel transit and offshore oil and gas operations.

One of the primary responsibilities of the Bureau of Safety and Environmental Enforcement (BSEE), which your Department oversees, is to promote and improve safety. Safety is a core value for the oil and gas industry and NOIA's members support BSEE's ongoing efforts to ensure and enhance the safety of offshore energy exploration and production. It is primarily through that lens that we question why the Department would adopt the terms in the Stipulated Stay Agreement before thoroughly considering the potential adverse impacts. Those impacts are most appropriately and thoughtfully considered through a notice and comment rulemaking process that allows for stakeholder engagement and scientific analysis.

Among other things, making areas off-limits, imposing speed restrictions, and limiting transit at night and times of low visibility will dramatically impact the ability of the industry to explore, construct, and develop energy projects in the Gulf of Mexico. The development of offshore energy projects depends upon a diverse ecosystem of companies providing support, supplies, and services. This work further relies upon a vast network of vessels for the construction, servicing, and maintenance of projects and facilities. In addition to putting energy projects and production at risk, the restrictions imposed by the lease stipulations and NTL will very likely lead to an increase in the number of vessels required to support offshore projects as operators try to mitigate impacts from this drastic shift in how vessels operate in support of oil and gas activities. Limiting transit at night and in periods of low visibility will idle vessels offshore and increase traffic in daylight and high visibility periods. If vessel traffic does increase as a result of implementation of the NTL, the associated increase in the vessel miles traveled will correspondingly serve to increase the safety risk associated with offshore operations. A basic risk assessment will demonstrate that more

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<sup>2</sup> <https://www.noia.org/noia-report-ghg-emission-intensity-of-crude-oil-and-condensate-production/>

activity carries greater risk than less activity. Moreover, an increase in the number of vessels and the associated increase in vessel miles traveled will also lead to an increase in overall emissions – at a time when the industry has continued to successfully improve safety and decrease emissions through continued enhancements in efficiency and applications of new technology. And this is before accounting for potential emissions from vessels idling outside the restricted zone for hours to wait for daylight or changes in weather conditions. Furthermore, to help maximize logistical efficiency and safety of operations, vessels often transit at night so that support activities can occur during the day. The proposed restrictions would flip this option on its head and potentially eliminate or hamper an efficient approach for safely conducting support operations at offshore facilities.

Importantly, these adverse consequences are likely to accrue without any appreciable benefit to the conservation of the Rice's Whale, which is already afforded protections under the Endangered Species Act and the Marine Mammal Protection Act – specifically in the core habitat area where there is evidence that the species inhabits the area. While environmental preservation is a shared goal, BOEM's voluntary involvement in this "sue and settle" arrangement, particularly when it was not even a party to this case, circumvents normal order and the required legal process for public notice and comment, sidestepping vital input from experts and stakeholders. There is no justification to expanding the Rice's Whale habitat only for one industry. Including areas where there is negligible or no presence of the Rice's Whale will dilute federal resources that should be committed to protecting the well-documented core habitat area. As the National Marine Fisheries Service has noted, only a single Rice's Whale has been observed in the western Gulf of Mexico off the coast of Texas.<sup>3</sup> One acoustic recording study and one sighting are not enough evidence to warrant an immediate and massive expansion of habitat area, again only for one industry, without the chance for experts, the local Gulf Coast maritime sector, and other stakeholders to offer input.

Given the vast and negative consequences that are expected to occur from implementation of BOEM's actions recited in the Stipulated Stay Agreement, we respectfully urge the department to refrain from implementing any of the actions prescribed for BOEM to undertake.

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<sup>3</sup> <https://www.fisheries.noaa.gov/species/rices-whale>

The National Marine Fisheries Service is already moving forward with the proposed designation of critical habitat – which will apply to all ocean users – and it can also proceed with the reinitiated consultation under the Endangered Species Act and a potential update to the biological opinion. Those are the appropriate processes for a deliberative approach – as opposed to regulation through litigation.

Very respectfully,



Erik Milito  
President, National Ocean Industries Association (NOIA)



Joe Leimkuhler  
Chief Operating Officer, Beacon Offshore Energy  
Chair, NOIA Health, Safety, Security, and Environment Committee

CC:

Tommy Beaudreau, Deputy Secretary, U.S. Department of the Interior  
Laura Daniel-Davis, Principal Deputy Assistant Secretary, Land and Minerals  
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Kathryn Kovacs, Deputy Assistant Secretary, Land and Minerals Management  
Elizabeth Klein, Director, Bureau of Ocean Energy Management  
Kevin Sligh, Director, Bureau of Safety and Environmental Enforcement  
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