

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SIERRA CLUB, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
NATIONAL MARINE FISHERIES	*	
SERVICE, et al.,	*	
	*	No. 8:20-cv-03060-DLB
Defendants,	*	
	*	
and	*	
	*	
AMERICAN PETROLEUM INSTITUTE,	*	
et al.,	*	
	*	
Intervenor-Defendants.	*	

STIPULATED AGREEMENT TO STAY PROCEEDINGS

Plaintiffs Sierra Club, Center for Biological Diversity, Friends of the Earth, and Turtle Island Restoration Network; and Defendants National Marine Fisheries Service (“NMFS”) and Janet Coit in her official capacity as Assistant Administrator for National Oceanic and Atmospheric Administration Fisheries (collectively, “the Signatory Parties”) hereby agree and stipulate as follows:¹

WHEREAS, in 2020, the Bureau of Ocean Energy Management (“BOEM”), the Bureau of Safety and Environmental Enforcement (“BSEE”) (together, “the Bureaus”), the

¹ Intervenor-Defendants have procedural and substantive concerns with the Stipulated Agreement to Stay Proceedings and Proposed Order, and, therefore, oppose it and intend to file a response within 14 days of filing as provided in Local Rule 105(2)(a). As for the remainder of the briefing schedule, Intervenor-Defendants propose that Plaintiffs and Defendants have 14 days, or until August 18, to respond, and that Intervenor-Defendants have 7 days, or until August 25, to file a reply in support of their opposition.

Defendants are amenable to Intervenor-Defendants’ proposed schedule. Plaintiffs, for their part, do not object to Intervenor-Defendants’ proposed schedule for filing an opposition to the Agreement, and for Defendants’ and Plaintiffs’ responses in support. Plaintiffs, however, do not agree that further briefing is warranted at this time.

Environmental Protection Agency (“EPA”), and NMFS’s Office of Protected Resources, Permits, and Conservation Division, in coordination with NMFS, completed consultation on the effects to marine and anadromous species listed under the Endangered Species Act (“ESA”), as to all federally regulated oil and gas program activities expected over the next 50 years in the Gulf of Mexico. Based on its species-by-species analysis, including its evaluation of measures to mitigate or avoid effects to species, NMFS concluded that the proposed action was not likely to jeopardize the continued existence of sperm whale, Northwest Atlantic loggerhead sea turtle, Kemp’s ridley sea turtle, North Atlantic distinct population segment (“DPS”) and South Atlantic DPS green sea turtle, leatherback sea turtle, hawksbill sea turtle, Gulf sturgeon, giant manta ray, and oceanic whitetip shark; was not likely to destroy or adversely modify loggerhead or Gulf sturgeon designated critical habitat; and was likely to jeopardize the continued existence of the Gulf of Mexico Rice’s whale. Further, as to the Rice’s whale, NMFS proposed a “reasonable and prudent alternative” to avoid the likelihood of jeopardizing its continued existence, which the Bureaus subsequently adopted and implemented.

WHEREAS, on October 21, 2020, Plaintiffs filed a Complaint alleging, in relevant part: (i) the agencies’ determinations in the 2020 consultation culminating in a programmatic biological opinion included analyses that are arbitrary and capricious and contrary to the best available science in violation of the ESA and Administrative Procedure Act (“APA”); (ii) the proposed reasonable and prudent alternative is arbitrary and capricious in violation of the ESA and APA; and (iii) NMFS’s incidental take statement issued alongside the biological opinion is arbitrary and capricious in violation of the ESA and APA. *See* ECF 1.²

WHEREAS, on October 25, 2022, the Bureaus sent a letter to NMFS requesting to formally reinstate consultation on federally regulated offshore oil and gas activities in the Gulf of Mexico.

WHEREAS, in their October 25, 2022 letter, the Bureaus acknowledged the need to readdress certain analyses contained in the 2020 biological opinion during the reinstated

² Plaintiffs moved for leave to supplement their complaint on June 25, 2021, ECF No. 65, which the Court granted, ECF No. 72.

consultation. The Bureaus intend, for example, to update the oil spill risk analysis from the 2020 biological assessment, which would include BOEM's preparation of a new oil spill risk analysis for proposed Outer Continental Shelf oil and gas leasing in the Gulf of Mexico that will consider updated information on oil production, oil transport, and spill rates.³ The Bureau's letter also acknowledged that "additional concerns have been raised with respect to the 2020 biological opinion, and acknowledge that this reinitiation of consultation will provide the opportunity for the agencies to reexamine and address those issues, as appropriate." In addition, the letter noted that "if NMFS issues a proposed critical habitat designation for the Rice's whale prior to, or soon after, submittal of the biological assessment, the Bureaus may seek to incorporate its assessment of the effects of the programmatic action on that critical habitat into the September 1, 2023 biological assessment or into a supplement to that assessment, as appropriate, given the timing of any such proposal."

WHEREAS, during the reinitiated consultation, BOEM will issue two documents to provide information to lessees and operators in the Gulf of Mexico concerning the Rice's whale and reduce or eliminate possible disturbance to the species. The first is a document entitled, "Notice to Lessees and Operators of Federal Oil and Gas, and Sulphur Leases in the Gulf of Mexico Outer Continental Shelf." NMFS understands that BOEM intends to publish this document on its website on or before August 18, 2023. The second document is a lease stipulation that will be added to the Department of the Interior's offshore oil and gas leases offered in Gulf of Mexico Oil and Gas Lease Sale 261 and any subsequent Gulf of Mexico oil and gas sales while the reinitiated consultation is ongoing. These documents are attached as Exhibits 1-2.

WHEREAS, subject to the Secretary of the Interior's discretion and obligations under the provisions of 43 U.S.C. §§ 1332, 1334, 1337, 1344, and 1345 of the Outer Continental Shelf Lands Act ("OCSLA") and the implementing regulations at 30 CFR part 556, and §§ 50264 and

³ The Bureaus also intend to include a request to address the development of conditions of approval with NMFS related to impact pile driving and potential transit through the Rice's Whale Core Area (as defined in the 2020 Biological Opinion).

50265 of the Inflation Reduction Act (“IRA”), Pub. L. No. 117-169 (Aug. 16, 2022), as well as any other applicable provisions of OCSLA and the IRA, BOEM will exclude the area between the 100 meter and 400 meter isobaths in the northern Gulf of Mexico (as reflected in Figure 1 in Exhibit 1) from Gulf of Mexico oil and gas lease sales (beginning with Lease Sale 261 and continuing while the reinitiated consultation is ongoing).

NOW, THEREFORE, THE SIGNATORY PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. The Signatory Parties agree to a stay of this litigation for the duration of the reinitiated consultation, as described in the following paragraphs.
2. The Bureaus anticipate providing their consultation package to NMFS by September 1, 2023.
3. If the Bureaus require additional time to provide their consultation package to NMFS, the Signatory Parties will meet and confer as to any extension. If Plaintiffs do not agree that additional time is warranted, Plaintiffs’ sole remedy is to move the Court to lift the stay and recommence the litigation.
4. NMFS agrees to conclude the consultation within one year of receiving a complete consultation package from the Bureaus, culminating in the publication of a new biological opinion. NMFS has the exclusive authority to determine whether the consultation package is complete.
5. NMFS is aware of the issues Plaintiffs have raised in their original and supplemental complaints, ECF Nos. 1 & 65, as well as in their motion for summary judgment, ECF No. 93, and it will consider and address each of those issues as part of the reinitiated consultation, as appropriate.⁴
6. If NMFS requires additional time to conclude the consultation, the Signatory Parties will meet and confer as to any such extension. If Plaintiffs do not agree that additional time is

⁴ NMFS does not and cannot make any commitment as to the merits of how any particular issue will be addressed or resolved.

warranted, Plaintiffs' sole remedy is to move the Court to lift the stay and recommence the litigation.

7. The Signatory Parties may modify the deadlines in Paragraphs 2 and 4 of this Agreement by mutual agreement, as described in Paragraphs 3 and 6.
8. If any Signatory Party believes that there is good cause to lift the stay, they may so move the Court after first meeting and conferring with the other Signatory Parties to this Agreement.
9. Once NMFS concludes the consultation in accordance with this Agreement, the Signatory Parties will submit a status report the Court within 60 days of the completion of the consultation and advise the Court how they wish to proceed.
10. By entering into this Agreement, Plaintiffs do not agree that the terms and measures of the Agreement are sufficient to comply with any agency's obligations to comply with the ESA or any other law.
11. This Agreement represents the entirety of the Signatory Parties' commitments with regard to the matters addressed herein.

In light of the above Agreement, the Signatory Parties respectfully request that the Court stay this case and enter their Proposed Order.

Dated: July 21, 2023

Respectfully submitted,

/s/ Christopher D. Eaton
Christopher D. Eaton (D. Md. Bar 21544)
Grace Bauer (*pro hac vice*)
Stephen D. Mashuda (*pro hac vice*)
EARTHJUSTICE
810 Third Ave., Suite 610
Seattle, WA 98104
206-343-7340 Telephone
415-217-2040 Fax
ceaton@earthjustice.org
gbauer@earthjustice.org
smashuda@earthjustice.org

TODD KIM
Assistant Attorney General
SETH M. BARSKY
Deputy Assistant Attorney General
S. JAY GOVINDAN
Section Chief
H. HUBERT YANG
(D. Md. Bar No. 814652)
Senior Trial Attorney

Susan Stevens Miller (D. Md. Bar 6100)

/s/ Davis A. Backer
DAVIS A. BACKER
Trial Attorney, CO Bar No. 53502
United States Department of Justice

EARTHJUSTICE
1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
202-667-4500 Telephone
202-667-2356 Fax
smiller@earthjustice.org

Attorneys for Plaintiffs

Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 305-0209 (Yang)
Tel: (202) 514-5243 (Backer)
Fax: (202) 305-0275
E-mail: hubert.yang@usdoj.gov
E-mail: davis.backer@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Davis A. Backer

DAVIS A. BACKER

Trial Attorney

United States Department of Justice

Environment & Natural Resources Division

Wildlife & Marine Resources Section

Ben Franklin Station

P.O. Box 7611

Washington, DC 20044-7611

Tel: (202) 514-5243

Fax: (202) 305-0275

E-mail: davis.backer@usdoj.gov

Attorney for Defendants

Exhibit 1

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT
GULF OF MEXICO REGIONAL OFFICE**

BOEM NTL No. 2023-G01

Date: _____, 2023

**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**

I. Introduction

This Notice to Lessees and Operators (NTL) was developed to provide recommendations and guidance for lessees and operators regarding suggested measures to expand protections for the Rice's whale,¹ during the period when the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) are engaged in reinitiated consultation with the National Marine Fisheries Service (NMFS) on the 2020 Biological Opinion, as amended (2020 BiOp). This guidance applies to the area comprising the entire northern Gulf of Mexico Outer Continental Shelf (OCS) between the 100- and 400-m isobaths (Expanded Rice's Whale Area; Figure 1). This delineation is based on one recent study² that Rice's whale occur in portions of this area. Therefore, the possibility of incidental take of Rice's whale in the Expanded Rice's Whale Area cannot be dismissed at this time.³ The Expanded Rice's Whale Area extends between those isobaths across the entire Gulf of Mexico OCS, extending eastward from the Mexican border with Texas and westward of the Rice's Whale Core Area identified in the 2020 BiOp. *See* Figure 1: Expanded Rice's Whale Area.

¹ At the time of the 2020 BiOp, the Rice's whale was formally known as the Gulf of Mexico Bryde's whale. However, on August 23, 2021, NMFS in a direct final rule revised the taxonomy and species name of the Bryde's Whale Gulf of Mexico subspecies. 86 Fed. Reg. 47022 (Aug. 23, 2021). NMFS therefore revised the common name to Rice's whale and the scientific name to *Balaenoptera ricei*. While the 2020 BiOp, as amended, refers to the Bryde's whale, BOEM is using Rice's whale in this NTL to reflect the current name and species designation. All references in the 2020 BiOp to the Bryde's whale should be considered to refer to the Rice's whale.

² Soldevilla, M. S., Debich, A. J., Garrison, L. P., Hildebrand, J. A., & Wiggins, S. M. (2022). Rice's whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat. *Endangered Species Research*, 48, 155-174.

³ This is not meant to be construed as a blanket determination as to whether BOEM, at present, has determined that there is a "reason to believe" that incidental take may occur, within the meaning of the ESA, the consultation regulations, or BOEM's regulations. Those decisions will be made on a case-by-case basis in accordance with BOEM regulations referenced below.

This guidance will remain in effect until revoked by BOEM. This guidance is intended to be used during BOEM's ongoing reinitiated consultation with NMFS (as described below) and will not supersede any conditions of approval (COAs), BiOp Protocols/Appendices, best management practices (BMPs), or other NTLs and guidance that may arise from a new or amended BiOp for oil and gas activities in the Gulf of Mexico OCS as a result of the reinitiated consultation.

II. Authority and Background

The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 *et seq.*, charges the Department of the Interior (DOI) with administering leasing and oil and gas exploration and development activities on the OCS. Under the delegated authority of the Secretary of the Interior, BOEM requires that entities engaging in oil and gas activities on the OCS avoid or minimize harm to threatened and endangered species listed under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.*, if there is reason to believe that incidental take of such species may occur. As one of the agencies tasked with implementing and overseeing the ESA consultation requirements, NMFS consults with action agencies whose actions or decisions may affect ESA-listed species and, if the effects are adverse, may issue a biological opinion to ensure that the proposed project or action will not jeopardize the continued existence of the species or result in adverse modification of designated critical habitat.

On March 13, 2020, NMFS issued a programmatic biological opinion entitled, Biological Opinion for Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico (2020 BiOp). The 2020 BiOp contained a Reasonable and Prudent Alternative (RPA) that would be applied in an area comprising the 100- to 400- meter isobaths from 87.5° W to 27.5° N (as described in the species' status review), plus an additional 10 km around that area, to avoid the likelihood of jeopardizing the continued existence of the Gulf of Mexico Rice's whale. On April 21, 2021, NMFS amended the BiOp to revise the Incidental Take Statement and to revise several Appendices to the BiOp, but did not modify the RPA or the area to which it applied.

On October 25, 2022, BOEM, along with BSEE, formally requested reinitiation of consultation on the 2020 BiOp, pursuant to Section 7 of the ESA. The reasons for the consultation included reevaluating the oil spill risk analysis in the BiOp and coordinating development of conditions of approval with NMFS that are related to OCS oil and gas impact pile driving and potential transit of OCS oil and gas activity vessels through the Rice's Whale Area identified in the 2020 BiOp RPA. As of the date of this NTL, the reinitiated consultation is ongoing.

Prior to and during the reinitiated consultation process, new information became available about the occurrence of Rice's whales in the Gulf of Mexico. In particular, a peer-reviewed study provided evidence that Rice's whales occur in the Expanded Rice's Whale Area. Given this information, the small number of Rice's whale present in the Gulf of Mexico, and the ongoing reinitiated consultation, BOEM is recommending that lessees and operators in the Gulf of Mexico implement certain avoidance and mitigation measures in the Expanded Rice's Whale Area, until such time as a new or amended BiOp is issued by NMFS and any measures identified by NMFS can be implemented.

This NTL explains the recommended procedures that OCS oil and gas lessees and operators should implement when transiting or performing operations in and near the Expanded Rice's Whale Area.

III. Recommended Measures to Protect the Rice's Whale

BOEM recommends to lessees and operators that all oil and gas activity within the Expanded Rice's Whale Area should be conducted in accordance with the following measures:

- a. Use trained visual observers to monitor the vessel strike avoidance zone (500 m). 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.
- b. If transiting within the Expanded Rice's Whale Area (as described in this NTL), document and retain records for three years on details of transit, including what port is used for mobilization and demobilization.
- c. Observe on all vessels, regardless of size, at all times a 10-knot or less, year-round speed restriction in the Expanded Rice's Whale Area (as described in this NTL and Figure 1). This recommendation would not apply when compliance would place the safety of the vessel or crew, or the safety of life at sea, in doubt. To the maximum extent practicable, lessees and operators should avoid transit through the Expanded Rice's Whale Area after dusk and before dawn, and during other times of low visibility to further reduce the risk of vessel strike of Rice's whales.
- d. Maintain on all vessels a minimum separation distance of 500 m 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.
- e. Include a functioning Automatic Identification System (AIS) onboard all vessels 65 feet or greater associated with oil and gas activity (e.g., source vessels, chase vessels, supply vessels) that is operating at all times, as required by the U.S. Coast Guard. If the vessel does not require 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.

As noted above, BOEM recommends that operators and lessees document their implementation of these measures during transit or activities across the Expanded Rice's Whale Area, including the impracticability of avoiding any activities or transit during nighttime hours or low visibility as provided in paragraph (c).

The above measures are distinct from the RPA, terms and conditions, and reasonable and prudent measures of the 2020 BiOp, as amended, that lessees and operators must comply with as stipulations in their leases or any COAs on plans, permits or other authorizations from BOEM or

BSEE. BOEM also recommends that lessees and operators, where appropriate, include the above mitigation measures in any Exploration Plans (EPs), Development and Production Plans (DPPs), and Development Operations Coordination Documents (DOCDs) that are submitted for approval while the reinitiated consultation is ongoing and until a new or amended BiOp is issued and implemented.

Lessees and operators are reminded that activities in their EPs, DPPs, or DOCDs must also be in compliance with 30 C.F.R. §§ 550.223(b) and 550.254(b) (regarding mitigations to be included in EPs, DPPs, and DOCDs where there is a reason to believe protected species may be incidentally taken by the proposed activities). For example, if there is a reason to believe that a Rice's whale may be incidentally taken in the Expanded Rice's Whale Area by the activities lessees and operators propose in a plan, BOEM will coordinate with NMFS regarding the sufficiency of the mitigations to be included in the EPs, DPPs, or DOCDs to reduce or eliminate the risk of take, including but not limited to the measures provided in this NTL. In the event such measures cannot eliminate the risk of incidental take of Rice's whales, lessees or operators may also need to apply for and receive an incidental take authorization under the Marine Mammal Protection Act, 16 U.S.C. §§ 1361 *et seq.*

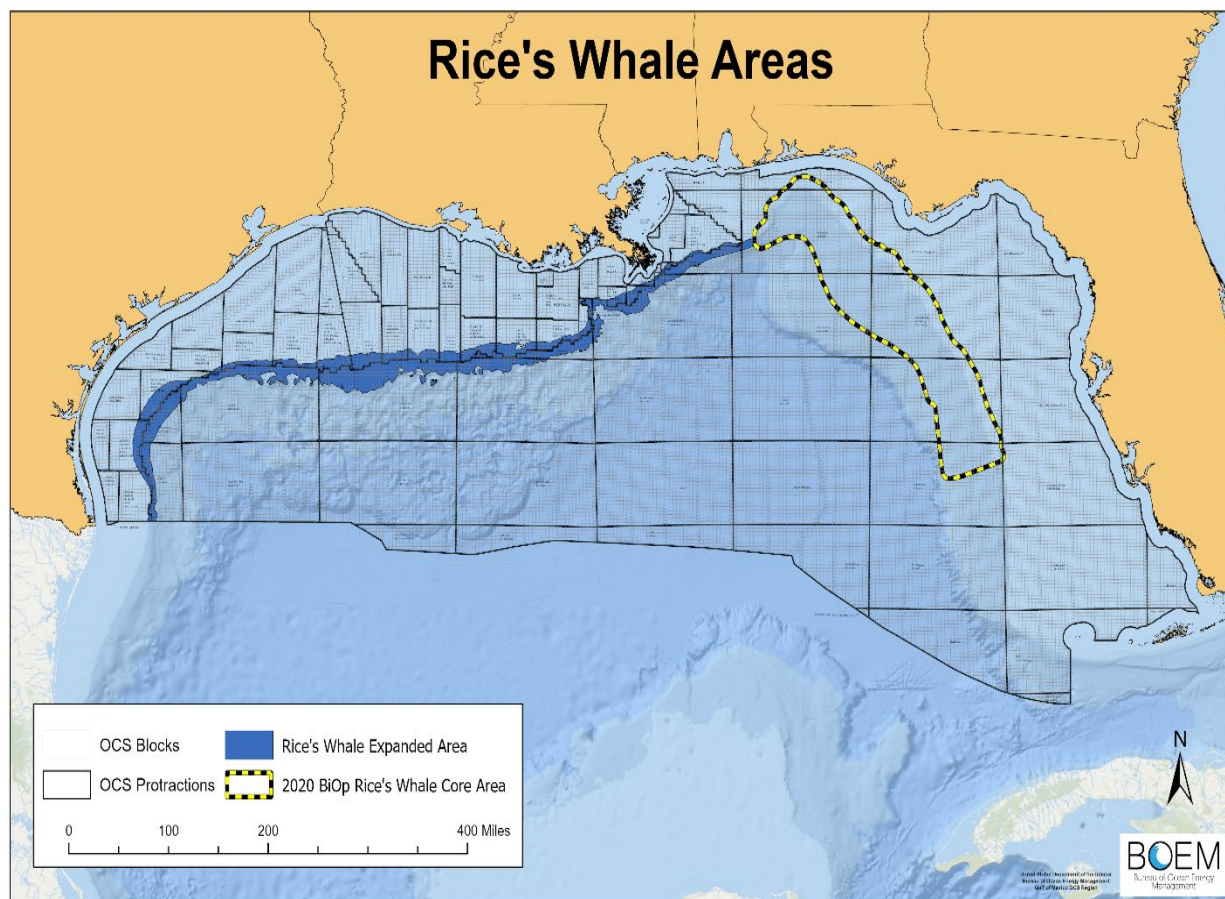


Figure 1: Expanded Rice's Whale Area.

IV. Guidance Document Statement

BOEM issues NTLs as guidance documents in accordance with 30 CFR 550.103 to clarify and provide more detail about certain BOEM regulatory requirements and to outline the recommended information to be provided in various submittals. Except to the extent that provisions of this NTL derive from requirements established by statute, regulation, or by a provision in the lease, they do not have the force and effect of law and are not meant to bind the public in any way. The provisions of this NTL may also be made mandatory in whole or part through terms, stipulations, or conditions of approval from BOEM in leases, plans, permits, or other authorizations.

This NTL is intended only to provide clarity regarding existing requirements under the law and to provide recommendations for ongoing OCS oil- and gas-related activities in the Gulf of Mexico while BOEM continues to engage in consultation with NMFS.

Paperwork Reduction Act of 1995 Statement

The collection of information referred to in this NTL provides BOEM with information necessary to implement the requirements contained primarily in 30 CFR Part 550 Subpart B, and to a lesser extent 30 CFR 550 Subpart A and 30 CFR Part 551. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. The Office of Management and Budget (OMB) has approved the information collection requirements in these regulations under OMB Control Numbers 010-0151, 1010-0048, and 1010-0114. This NTL does not impose additional information collection requirements subject to the Paperwork Reduction Act of 1995.

Contact

Submit questions concerning this NTL to ProtectedSpecies@BOEM.gov. Additionally, please use the phrase “Rice’s Whale NTL” in the subject line of your communication.

Dr. James J. Kendall
Director, Gulf of Mexico Regional Office
Bureau of Ocean Energy Management

Date

Exhibit 2

**Proposed Lease Sale 261 Stipulation Language in
Sierra Club, et. al. v. National Marine Fisheries Service Litigation (8:20-cv-03060-DLB)**

Add new B.4. to Stip 4 Protected Species (available at https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Sale-259-Stipulations_1.pdf) to require additional measures in the Expanded Rice's Whale Area:

4. During the reinitiated consultation with NMFS (requested by BOEM and BSEE on October 25, 2022) and until a new or amended BiOp is issued, implement the following measures for all oil and gas activities occurring between the 100- to 400-m -isobaths across the northern Gulf of Mexico on the OCS, eastward from the Mexican border with Texas and westward of the Rice's Whale Core Area identified in the 2020 BiOp (Expanded Rice's Whale Area, **Figure 1**):

a. Vessel operators and crews must maintain a vigilant watch for Rice's whales and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any Rice's whale. Visual observers monitoring the vessel strike avoidance zone (500 m) may be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish aquatic protected species to broad taxonomic groups. If transiting within the Expanded Rice's Whale Area (as described in this paragraph), operators must document details of the transit (e.g., date time, Automatic Identification System (AIS) data or tracklines, port, vessels) and other information necessary to demonstrate compliance with the provisions of this stipulation. Other specific requirements for documentation are described below in paragraph (f).

b. All vessels, regardless of size, must observe at all times a 10-knot or less, year-round speed restriction in the Expanded Rice's Whale Area. This restriction does not apply when compliance would place the safety of the vessel or crew, or the safety of life at sea, in doubt. To the maximum extent practicable, lessees and operators should avoid transit through the Expanded Rice's Whale Area after dusk and before dawn, and during other times of low visibility to further reduce the risk of vessel strike of Rice's whales.

c. All vessels must maintain a minimum separation distance of 500 m 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 must assume that the whale is a Rice's whale and take appropriate action.

d. All vessels 65 feet or greater associated with oil and gas activity (e.g., source vessels, chase vessels, supply vessels) must have a functioning AIS onboard and operating at all times as required by the U.S. Coast Guard. If the vessel does not require AIS, BOEM strongly encourages lessees and operators to obtain and use AIS and, at minimum, the lessee or operator must document relevant information, including trackline (e.g., time and speed) data and visual marine mammal sightings, during every crossing between the 100- to 400-m -isobaths across the northern Gulf of Mexico on the OCS. Lessees and operators must document vessel names and call signs.

e. If an operator or lessee is in violation of these conditions/protocols, the operator or lessee must generate a record of said noncompliance and present the report, within 24 hours the noncompliance, to BSEE by emailing protectedspecies@bsee.gov. The title of the email should include “Transit through Expanded Rice’s Whale Area.”

f. Lessees and operators must maintain records necessary to document their compliance with the measures required under paragraph (4), including any reasons why it is impracticable for the lessees or operators to avoid transit after dusk and before dawn, or during other periods of low visibility. Lessees and operators must retain the records necessary to document compliance, for at least 3 years from the date of the activity or activities subject to paragraph (4). The records must be made available to BOEM and BSEE for inspection, upon request.

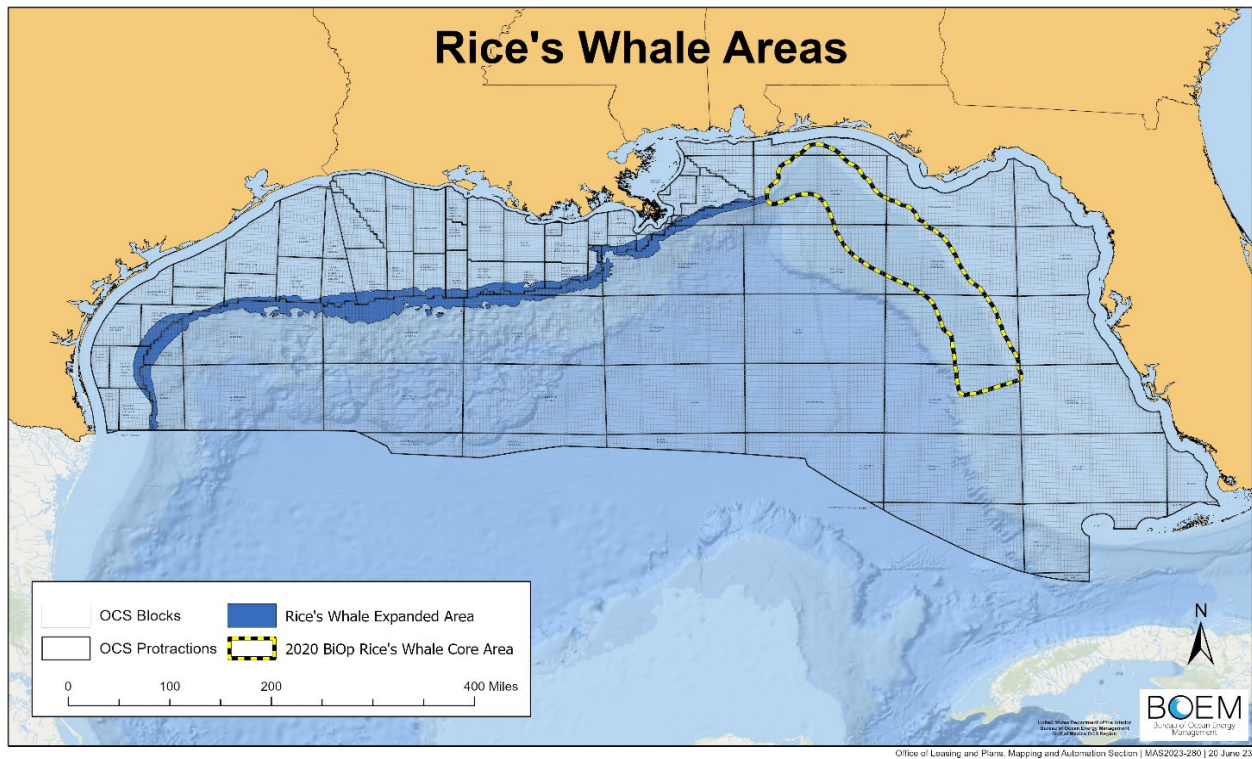


Figure 1. Expanded Rice’s Whale Area