**Fact Sheet on S. 2986**

Greenlighting vessel strikes of America’s most endangered whale

****The *Warding off Hostile Administrative Lease Efforts Act* (S. 2986), a cynically titled bill introduced by Sen. Cassidy (R-LA), would prevent the National Oceanic and Atmospheric Administration (NOAA) from considering action to protect one of America’s most endangered whales.

 The magnificent Rice’s whale, with fewer than 100 individuals left, is one of America’s most endangered marine mammals. It is acutely vulnerable to vessel strike, as it spends the majority of its time near the ocean surface. In a 2020 Biological Opinion, NOAA found that mortalities from vessel strikes are likely to exceed—by more than ten times —what the species can sustain. And the oil and gas industry is a major contributor to the problem, with frequent transits representing at least one-third of the total strike risk.

A fatally struck Rice’s whale in the Port of Tampa, brought to shore by volunteers.

In recent House testimony, Dr. Barbara Taylor, one of our country’s leading marine mammal biologists, compared Rice’s whale to an emergency room patient and described ship-strike reduction as the most important immediate action we could take to conserve the species.

Yet S. 2986 would prohibit NOAA from even proposing a speed-reduction rule—a proven measure that has been implemented both domestically and internationally without significant adverse effects on commerce—until the agency has developed a near-real-time monitoring system. Such a system does not currently exist, would likely take years to develop, and is highly unlikely to be an effective substitute for required vessel speed reductions. To make matters worse, this bill also bars the Bureau of Ocean Energy Management (BOEM) from complying with its obligations under section 7(a)(2) of the Endangered Species Act to not jeopardize the whale’s survival. With fewer than 100 whales left, the species cannot wait years for meaningful action.

**By prohibiting NOAA rulemaking before it has even begun—and by circumventing the Endangered Species Act, Marine Mammal Protection Act, and other relevant statutes—the bill jeopardizes the survival of the Gulf of Mexico whale as well as the laws that protect our nation’s most treasured species. *We oppose S. 2986.***

*What would S. 2986 and similar bills do?*

* **Undermine our nation’s bedrock wildlife protection laws and science.** Contrary to some statements that have been made, NOAA has not reached the proposed rule stage of agency action; the agency has only begun to seek stakeholder input about what effective action would look like. But S. 2986 would brazenly intervene in the regulatory process, undermining NOAA’s ability even to propose regulations, under the Endangered Species Act and Marine Mammal Protection Act, to protect one of our most endangered whales from extinction. Not only does this bill preemptively strike any potential rulemaking, but it also effectively prohibits BOEM from complying with its ESA 7(a)(2) obligations to avoid jeopardy and include reasonable and prudent measures to avoid, minimize, or mitigate the impacts of any anticipated incidental take. The bill is yet another example in a worrying trend of Congress using legislation to restrict the executive branch from exercising its proper authority and simultaneously weaken wildlife protection laws.
* **Threaten the existence of the highly endangered Rice's whale.** Vessel strikes, along with oil and gas development, pose an existential threat to the Gulf whale, with estimated mortalities from large ships and oil and gas industry vessels (according to NOAA) far exceeding the species’ ability to sustain them. Last year, more than 100 marine scientists, including some of the country’s leading experts on marine mammal conservation, called for slow-downs of vessels transiting through the whales’ habitat. “Unless significant conservation actions are taken,” they stated, “the United States is likely to cause the first anthropogenic extinction of a great whale species.” S. 2986 would prevent such actions from being taken, for many years if not indefinitely.
* **Mislead Congress and the public on the status of technological solutions to mitigate vessel strike risks.** S. 2986 ties its prohibition on speed-restriction measures to the availability of effective alternatives, based on near-real-time monitoring—but this is nothing more than a delay tactic. Effective monitoring systems are not currently available for Rice’s whale and are unlikely to be developed and verified for years, if at all. The species is extremely difficult to detect reliably since it doesn’t always vocalize; furthermore, even if effective detection were possible, achieving the same reduction in strike risk provided by a 10-knot speed restriction would require constant near-real-time monitoring across the whale’s habitat, which would be extremely costly. S. 2986 offers years of delay—years that the Gulf whales simply do not have.

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