

 **New Civil Liberties Alliance**

October 4, 2021

VIA FIRST CLASS MAIL

Gina Raimondo
Secretary of Commerce
United States Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Janet Coit
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
14th Floor
Silver Spring, MD 20910

Dr. Richard W. Spinrad
NOAA Administrator
National Oceanic and Atmospheric
Administration
1401 Constitution Avenue NW
Room 5128
Washington, DC 20230

Re: Petition to Amend the Effective Date of Amendments to §§ 622.26(b)(5) and 622.374(b)(5)(ii) through (v), published July 21, 2020 (85 FR 44005)

Dear Secretary Raimondo, Administrator Spinrad, and Director Coit,

Pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e), Captain Billy Wells and Mexican Gulf Shipping Company (“Mexican Gulf”), Captain Allen Walburn and A&B Charters, Inc. (“A&B”), Captain Kraig Dafcik, Captain Joseph Dobin and Captain Joey D. Charters (“Joey D. Charters”), Captain Frank Ventimiglia and Ventimiglia Charters, and Captain Jim Rinckey and Fishing Charters of Naples (“Fishing Charters”) on their own behalf and on behalf of the class they represent hereby petition the United States Department of Commerce (“Commerce”), the National Oceanic and Atmospheric Administration (“NOAA”), and the National Marine Fisheries Service (“NMFS”) to amend and delay the effective date of amendments to §§ 622.26(b)(5) and 622.374(b)(5)(ii) through (v), published July 21, 2020 (85 Fed. Reg. 44005) for 90 days, from December 13, 2021, until March 14, 2022.

The July 21, 2020 Final Rule requires that federally permitted charter vessels in Gulf of Mexico Fisheries purchase, install, and operate NMFS-approved vessel monitoring system (“VMS”).

Petitioners are either Captains of charter boats or the Companies that own the boats that take customers into the Gulf of Mexico to fish, and they are class representatives in an action pending in the U.S. District Court for the Eastern District of Louisiana. *See Mexican Gulf Fishing Co. v. U.S. Dep't of Commerce*, Civil Action No. 2:20-cv-2312 (filed Aug. 20, 2020). As stated in their First Amended Complaint:

Under the Final Rule, each of the [Petitioners'] movements will be tracked by the government by a VMS device each of them will be forced to buy, which is an unconstitutional and unlawful infringement on [their] rights. The Final Rule will confer virtually no benefit upon the Defendants in monitoring fish stocks in the Gulf of Mexico over cheaper and less intrusive methods. In addition, the Final Rule requires [Petitioners] to contact [the agency] whenever they wish to leave the dock, even if not fishing or using their federal permit in any way.

See Mexican Gulf Fishing Co., dkt. 54 at 2. Petitioners are therefore “interested” parties concerning the July 21, 2020 Final Rule. *See* 5 U.S.C. § 553(e).

On August 20, 2020, the Petitioners timely filed suit challenging the constitutional and statutory validity of the Final Rule. While the July 21, 2020 Final Rule delayed indefinitely the effectiveness of vessel location tracking requirements, it also stated that “that NMFS would announce the effective date for those provisions in a subsequent document published in the Federal Register.” *See* 86 Fed. Reg. 51014, 51015 (Sept. 14, 2021). The Petitioners partially based on their being no date for such purchase of VMS, agreed to a briefing schedule with counsel for defendants on the ultimate issues in the case and that schedule was approved by Order of the Court.

Subsequently, on September 14, 2021, NMFS announced that the effective date for the July 21, 2020 Final Rule would be December 13, 2021. *See* 86 Fed. Reg. 51014, 51015 (Sept. 14, 2021). Such an effective date would require Petitioners and members of the represented class to purchase, install, and operate NMFS-approved VMS units *before* the court has an opportunity to determine the validity of the Final Rule.

The Petitioners and counsel for the agency have agreed to and filed a request for expedited review pursuant to 16 U.S.C. § 1855(f)(4). *See Mexican Gulf Co.*, dkt. 83. They have also condensed the briefing schedule in the matter and submitted this to the Court. *Id.* Petitioners anticipate that briefing will conclude on November 3, 2021. The Court will need time to consider the position of the parties and likely to conduct oral argument.

Given the weighty constitutional interests at stake in the pending case, and to avoid further action before the Court to force the agency to act pursuant to Court order, Petitioners respectfully request that the July 21, 2020 Final Rule be amended and its effective date be delayed for 90 days until March 14, 2022, to permit the court time to determine the validity of the Final Rule before requiring Petitioners and the represented class to purchase, install, and operate what they believe are costly and unconstitutionally-invasive VMS devices.

Respectfully,

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