UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MEXICAN GULF FISHING COMPANY, LLC., ET. AL, Plaintiffs, v. U.S. DEPARTMENT OF COMMERCE, ET. AL, Federal Defendants.	Civil Action No. 2:20-cv-2312 Section "E" (1) District Judge Suzie Morgan Magistrate Judge Janis Van Meerveld

Federal Defendants' Opposition to Plaintiffs' Motion for Administrative Stay of Regulation

INTRODUCTION

The National Marine Fisheries Service (NMFS) promulgated the Gulf For-Hire Reporting Rule under the Magnuson-Stevens Fishery Conservation and Management Act (MSA or Magnuson Act), 16 U.S.C. §§ 1801 *et seq*. Plaintiffs concede that the MSA's judicial review provision makes clear that preliminary injunctive relief is unavailable. While Plaintiffs attempt to sidestep this bar by calling their motion a request for an administrative stay, there is no question that they seek a preliminary injunction to enjoin a duly promulgated regulation from going into effect. Despite Plaintiffs' creative naming conventions, Congress has plainly prohibited the type of relief Plaintiffs are seeking. The Court should decline Plaintiffs' invitation to ignore the statutory text of the MSA, and deny this motion in full.

BACKGROUND

The MSA establishes a national program for conservation and management of fishery resources with federal jurisdiction over such resources within the exclusive economic zone (EEZ). *Id*. §§ 1801(a)(6), 1811(a), 1802(11). The MSA recognizes that "[t]he collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States." *Id.* § 1801(a)(8). In furtherance of these objectives, the Gulf of Mexico Fishery Management Council (Gulf Council) prepared the Gulf For-Hire Electronic Reporting Amendment, which modifies reporting requirements for vessels issued Gulf of Mexico charter vessel/headboat permits. In July 2020, NMFS issued a final rule which requires owners or operators of federally permitted charter vessels and headboats to submit electronic fishing reports and notify NMFS before departing for a trip to declare whether the vessel will be operating as a charter vessel or headboat, or taking another type of trip. Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico

Fisheries, 85 Fed. Reg. 44,005, 44,005 (July 21, 2020) (hereinafter referred to as "Final Rule"). In addition, each permitted vessel must be equipped with NMFS-approved hardware and software with a minimum capability of archiving GPS locations (i.e., satellite vessel monitoring system (VMS) or cellular VMS). The VMS must be operational 24 hours a day, every day of the year unless the owner or operator of the vessel obtains a power-down exemption. *Id.* at 44,006-07. Vessels that take customers to fish only for non-federally managed species do not require a permit, and thus need not comply with the requirements of the Final Rule.

The MSA requires parties seeking to challenge such regulations to file a petition within a strict 30-day time limit and for NMFS to respond to the petition within 45-days (as opposed to the 60-days usually afforded the United States to answer under the Federal Rules of Civil Procedure). 16 U.S.C. §§ 1855(f), (f)(3)(A). On August 20, 2020 Plaintiffs filed the original complaint in this case challenging the Final Rule. ECF No. 1. In addition to setting a strict timeframe by which parties must seek to challenge regulations promulgated by NMFS, the MSA further provides that the Court's review shall be governed by the Administrative Procedure Act (APA), Sections 701 through 706 except with one key express qualification: APA section 705, which ordinarily provides courts with authority to postpone the effective date of regulations pending judicial review, expressly "is not applicable" in any challenge to the specified types of regulations. 16 U.S.C. § 1855(f)(1). Instead, the MSA's review provisions provide that "[u]pon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way." 16 U.S.C. § 1855(f)(4).

On October 1, 2021, after both parties had filed their opening summary judgment briefs, Plaintiffs filed a motion to expedite the case. ECF No. 83. Federal Defendants did not oppose

this motion to expedite. Concurrently with this motion, Plaintiffs also petitioned NMFS to delay implementation of the vessel monitoring system component of the Final Rule until March 14, 2022. Declaration of Andrew J. Strelcheck (Strelcheck Decl.) ¶ 2. In response to Plaintiffs' petition, NMFS published a final rule on November 2, 2021, delaying the effective date of the VMS requirements until March 1, 2022. Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries, 86 Fed. Reg. 60374 (Nov. 2, 2021) (Delay Rule). Among other reasons, NMFS decided it was appropriate to delay the effective date until March 1, 2022, to allow time for NMFS to finish testing a third cellular VMS unit which would provide more options to permit holders to comply with the requirement. Strelcheck Decl. ¶ 3. NMFS found it important to delay the Final Rule no later than March 1, 2022 to ensure that vessels would be equipped with VMS units before the start of the 2022 spring break season. *Id.* ¶ 5. Gulf for-hire trips generally increase by more than double during the spring break season and increase even more during the summer months. *Id*. Because the VMS requirement is critical to validating the trips reported through the logbook requirement, which is already in effect, implementing the VMS requirement by March 1, 2022 is necessary to furthering the public interest of conserving and managing Gulf fishery resources. *Id.* ¶¶ 5, 7.

ARGUMENT

Plaintiffs' motion is a thinly-veiled attempt to obtain preliminary injunctive relief that is clearly barred by the MSA. This motion should be denied in full for the reasons set forth below.

I. Preliminary Injunctive Relief is Unavailable for Challenges to Rules Promulgated under the MSA

The MSA precludes the preliminary injunctive relief that Plaintiffs seek. It clearly states that the APA provision authorizing a court to grant preliminary injunctive relief, 5 U.S.C. § 705, is "not applicable." 16 U.S.C. § 1855(f)(1)(A); *see also* S. Rep. 94-711, at *54 (1976), *as*

reprinted in 1976 U.S.C.C.A.N. 660, 678 (regulations are subject to review "except that the reviewing court is without authority to enjoin the implementation of those regulations pending the judicial review. . . ."). Neither Plaintiffs' levying of Constitutional challenges nor the labeling of their motion as one for an "administrative stay" disturbs the conclusion that there can be no preliminary injunctive relief under the MSA.

A. Plaintiffs' Constitutional Claims do not Disturb the Conclusion that the MSA Bars Preliminary Injunctive Relief

The judicial review provision of the MSA applies even if a party does not use "the magic words, 'the Magnuson Act,'" as "the decisive question is whether the *regulations* are being attacked, not whether the complaint specifically asserts a violation of the Magnuson Act." *Turtle Island Restoration Network v. U.S. Dep't of Com.*, 438 F.3d 937, 944, 945 (9th Cir. 2006) (emphasis added). There is no question that the MSA's judicial review provision is applicable in this case, where NMFS promulgated the Final Rule under the MSA and Plaintiffs themselves allege "violation[s] of the . . . [MSA]," and that jurisdiction upon this Court is conferred "pursuant to the MSA."[1] ECF No. 54 ¶¶ 1-2. In *Turtle Island Restoration Network*, the U.S.

[1] Whether viewed as a stay of the Final Rule or the Delay Rule, Plaintiffs' motion fails. Any challenge to the Delay Rule's effective date is also time-barred under Section 305(f) of the MSA, 16 U.S.C. §1855(f). This provision requires that challenges to regulations promulgated by the Secretary and actions taken by the Secretary under regulations that implement a fishery management plan be filed within 30 days "after the date . . . the regulations are promulgated or the action is published in the Federal Register." 16 U.S.C. § 1855(f)(1). Challenges brought after the 30-day period are time-barred as a matter of law and must be dismissed for lack of subject-matter jurisdiction. *Connecticut v. Daley*, 53 F. Supp. 2d 147, 162 (D. Conn. 1999) ("Therefore, Connecticut's appeal to this court for review of the summer flounder quota system contained in the [fishery management plan] is time-barred by the thirty-day statute of limitations set forth in 16 U.S.C. § 1855(f)."), *aff'd sub nom., Connecticut v. U.S. Dep't of Com.,* 204 F.3d 413 (2d Cir. 2000); *Kramer v. Mosbacher*, 878 F.2d 134, 137 (4th Cir. 1989) (holding that district court lacked jurisdiction over challenge to closure of South Atlantic king mackerel fisheries for failure to file complaint within 30 days after the date on which the regulations were promulgated). Regardless of whether the Delay Rule is characterized as a regulation or an action taken under regulations, any challenge would have had to have been brought within the MSA's

Court of Appeals for the Ninth Circuit rejected a similar attempt to avoid the MSA's strict jurisdictional limits through artful pleading. The Ninth Circuit held that claims challenging regulations concerning the Hawaii-based longline fishery under the Migratory Bird Treaty Act and other statutes were governed by the 30-day limitations period of the MSA, rather than the six-year statute of limitations generally applicable to challenges under the APA. *Turtle Island Restoration Network*, 438 F. 3d at 942, 949. The court reasoned that "to allow parties to avoid this limitation through manipulation of form—avoiding mention of the Magnuson Act in the complaint—while in substance challenging the regulations, would permit parties 'through careful pleading . . . [to] avoid the strict jurisdictional limits imposed by Congress.'" *Id.* at 945 (quoting *Cal. Save Our Streams Council, Inc. v. Yeutter*, 887 F.2d 908, 911 (9th Cir. 1989)). Accordingly, Plaintiffs' claims are subject to the MSA's judicial review provision, including the bar on preliminary injunctive relief.

That Plaintiffs have levied Constitutional claims against the Final Rule does not disturb the conclusion that they may not avail themselves of preliminary injunctive relief. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 214–15 (1994) (the existence of constitutional claims did not exempt petitioner from judicial review procedure mandated by statute); *Goethel v. U.S. Department of Com.*, 854 F.3d 106, 114 (1st Cir. 2017) (rejecting argument that MSA's statutory review limits did not apply because petitioner sought pre-enforcement review of regulations based in part on constitutional claims). The sole authority for the Final Rule and the Delay Rule is the MSA. And the specific terms of the MSA's judicial review provision leave no doubt that it encompasses all claims and is not limited to allegations of MSA violations. Under subsection

30-day statute of limitations, or by December 2, 2021. Plaintiffs failed to make such a challenge and thus the Court lacks jurisdiction to consider any request to stay the Delay Rule's effective date.

1855(f)(1)(B), "the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D)." 16 U.S.C. § 1855(f)(1)(B). Looking to those provisions, the possible grounds for setting aside a regulation include grounds that go well beyond inconsistency with the MSA itself. For instance, a regulation may be set aside if it is "not in accordance with law," 5 U.S.C. § 706(2)(A), a proposition that is not limited to any specific statute. A regulation may also be set aside if it is "contrary to *constitutional* right, power, privilege, or immunity," 5 U.S.C. § 706(2)(B) (emphasis added), again, plainly not limited to the MSA, or "without observance of procedure required by law," 5 U.S.C. § 706(2)(D), which would encompass procedural claims under other statutes.

Indeed, the APA provides Plaintiffs with a substantial, meaningful statutory remedy for any alleged constitutional violation.[2] Where the agency action for which review is sought is a regulation promulgated under the MSA, the MSA—which imports some, but not all, of the judicial review provisions of the APA—supplants inconsistent provisions of the APA and provides the exclusive avenue for judicial review. *See* 16 U.S.C. § 1855(f)(1); *see also City of Rochester v. Bond*, 603 F.2d 927, 931 (D.C. Cir. 1979). ("If . . . there exists a special statutory review procedure, it is ordinarily supposed that Congress intended that procedure to be the exclusive means of obtaining judicial review in those cases to which it applies."); *Nat'l Parks and Conservation Ass'n v. Fed. Aviation Admin.*, 998 F.2d 1523, 1527-28 (10th Cir. 1993) (holding that the petitioners' claims under National Environmental Protection Act and other

[2] Plaintiffs do not appear to allege any cause of action directly under the Constitution, as opposed to seeking APA review of alleged constitutional violations. However, assuming for sake of argument that Plaintiffs intended to invoke such claims, they would be precluded based on the availability of an adequate statutory remedy under the APA. Where, as here, Congress has provided an APA remedy for alleged constitutional violations, the Courts do not infer a right of action directly under the Constitution. *Carlson v. Green*, 446 U.S. 14, 18-19 (1980).

statutes could only be reviewed under Federal Aviation Administration Act Section 1006(a), which vests exclusive jurisdiction over judicial review of Federal Aviation Agency orders in the courts of appeals). Where, as in this case, the relief sought is an order declaring unlawful and setting aside MSA regulations, nothing in section 1855(f) states or implies that application of its bar on injunctive relief depends on the nature of the judicial review requested. Indeed, section 1855(f) makes clear that no such limitation was intended.

To find that Plaintiffs can obtain injunctive relief because they bring claims under the Constitution would render the MSA's jurisdictional provision a nullity. This impossibly-strained reading of the MSA would render provisions of the statute void. *See S. D'Antoni, Inc. v. Great Atl. & Pac. Tea Co., Inc.*, 496 F.2d 1378, 1383 (5th Cir. 1974) ("Statutes should be so construed as to give effect to all their parts."). It would also contravene Congress's clear intent to streamline and restrict judicial review of regulations promulgated under the MSA. *Cf. Tutein v. Daley*, 43 F. Supp. 2d 113, 122-24 (D. Mass. 1999) ("comprehensive and time sensitive nature" of Congress's "elaborate and detailed administrative framework" for development and judicial review of fishery plans and regulations evidences Congressional intent to preclude review of advisory guidelines, as opposed to regulations, under 16 U.S.C. § 1855(f)).

Since the MSA's jurisdictional provision specifies broad grounds for granting relief, even for alleged constitutional violations, it is plain that Section 1855(f) was intended to apply to all possible challenges to regulations promulgated under the MSA. At bottom, the MSA precludes preliminary injunctive relief and this matter is an action subject to the MSA's judicial review provisions. The Court should not allow Plaintiffs to circumvent the clear jurisdictional limitations established by Congress in the MSA by granting preliminary injunctive relief that Congress explicitly prohibited.

B. Plaintiffs' Requested Administrative Stay is Preliminary Injunctive Relief that is Unavailable Under the MSA

Plaintiffs style their request as an "administrative stay" in an effort to circumvent the clear bar to preliminary injunctive relief in the MSA. *See* ECF No. 90-1 at 4–5. No matter how styled, Plaintiffs are seeking to enjoin a duly promulgated regulation from taking effect until the Court can decide the merits of the case. This is the sort of preliminary injunctive relief which Congress has expressly stated is unavailable under the judicial review provision of the MSA.

It is long settled that "Congress, acting within its constitutional powers, may prescribe the procedures and conditions under which, and the courts in which judicial review of administrative orders may be had." *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320, 336 (1958); *see also Hoyt v. Lane Constr. Corp.*, 927 F.3d 287, 294 (5th Cir. 2019) ("Congress is vested with the power to prescribe the basic procedural scheme under which claims may be heard in federal courts." quoting *Patsy v. Bd. of Regent of Fla.*, 457 U.S. 496, 501 (1982)). When Congress has specified such procedures and conditions, neither Plaintiffs nor the courts can override these choices. *Massieu v. Reno*, 91 F.3d 416, 419 (3d. Cir. 1996) (Alito, J.). Here, Congress has provided a detailed schedule for review of regulations promulgated under the MSA. Congress could not have been clearer that the courts cannot stay the effective dates of MSA regulations pending the completion of judicial review, whether such motions are brought under APA section 705 or any other guise such as motions for preliminary injunctive relief or administrative stay. The MSA's "thirty-day time limitation, the bar on preliminary injunctive relief, and the provision for expedited review—demonstrate Congress's intent to ensure that regulations promulgated under the Magnuson Act are effectuated without interruption and that challenges are resolved swiftly." *Turtle Island Restoration Network*, 438 F.3d at 948. There is no reason that Congress would provide such a detailed judicial review provision under the MSA, only to have it

"sidestepped" by the much more general doctrine of an administrative stay. *See Id.* at 948 ("The [MSA's] high level of specificity does not evince congressional intent to allow other, more general statutes of limitation to be transplanted or imported, and thus spoil this fine-tuned scheme. It seems unlikely that Congress would have constructed this well-oiled machine, which anticipates compliance with other applicable environmental statutes, and yet intended its path to be so easily sidestepped.").

Certainly, the Court has inherent authority to control its own docket or to stay a lower court order. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *In re Abbott*, 800 F. App'x. 296, 298 (5th Cir. 2020) (per curiam) (entry of a temporary administrative stay to allow for expedited briefing on legality of district court's temporary restraining order). But the same authority does not expand the power of the Court to stay a duly promulgated regulation for an indefinite amount of time pending a decision on the merits when Congress has plainly prohibited this type of relief under the circumstances here.

It is clear that Plaintiffs seek to enjoin a duly promulgated regulation from going into effect until the Court issues its final decision on the merits. This is not the same type of relief addressed in the cases cited by Plaintiffs, *see* ECF No. 90-1 at 4–5, where courts have granted short, temporary administrative stays to provide it time to resolve a pending emergency motion, such as *S.L.V. v. Rosen*, No. SA-21-CV 0017-JKP, 2021 WL 243442, at *8 (W.D. Tex. Jan. 25, 2021) (Administrative stay issued for "the very limited purpose to determine [court's] own jurisdiction" as court considered plaintiffs' application for a temporary restraining order in an immigration removal proceeding). Saliently, in these cases courts were resolving emergency motions that the MSA plainly prohibits—indeed, none of the cases that Plaintiffs cite involve a specific statutory review provision like the one in the MSA which bars preliminary injunctive

relief. Plaintiffs' requested relief also distinguishes *Martin on Behalf of Cal-Tex Protective Coatings v. Frail*, No. SA-09-CA-695-OG, 2011 WL 13175089, at *7, n. 91 (W.D. Tex. July 5, 2011) where the magistrate judge issued an administrative stay "until certain motions and objections could be ruled upon by the District Court" and made clear that the administrative stay "expressly provides that the stay is entered 'for administrative purposes only, regarding the status of the case with the District Clerk, but not to affect any substantive or procedural right of any party.'"

Plaintiffs call their request an administrative stay, but at bottom the relief they seek is to postpone the effective date of a duly promulgated rule pending the conclusion of judicial review proceedings. Staying the effective date of the Final Rule pending this Court's final resolution of the merits is very plainly a preliminary injunction. This Court should apply the judicial review provisions of the MSA to deny Plaintiffs' motion for an administrative stay.

II. The Court Lacks Jurisdiction Under the All-Writs Act to Order Preliminary Injunctive Relief

Plaintiffs' last ditch invocation of the All Writs Act fares no better. "While the All Writs Act authorizes employment of extraordinary writs, it confines the authority to the issuance of process 'in aid of' the issuing court's jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999). The All Writs Act does not allow a Court to enlarge its existing jurisdiction. *Id.* But this is precisely what Plaintiffs seek. There is no threat here to the Court's jurisdiction or its ability to award the relief Congress has provided for under the MSA should the Final Rule take effect before the Court rules on summary judgment. Just as in any administrative review case, the Court will be able to continue its review of the Final Rule and, if it finds error, may set it aside. What Plaintiffs seek is not to preserve the Court's authority to undertake effective judicial review, but instead to provide relief beyond—and in contradiction to—what Congress has authorized.

As the Supreme Court has made clear, this is not how the All Writs Act operates:

> The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling. Although that Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate.

Pa. Bureau of Corr. v. U.S. Marshals Serv., 474 U.S. 34, 43 (1985). Here, the MSA "specifically addresses the particular issue at hand." Congress has set forth the scope of the Court's jurisdiction for reviewing regulations issued under the MSA. Plaintiffs' belief that Congress' choice in this regard is "less appropriate" cannot support invocation of the All Writs Act for the relief they seek. *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32-33 (2002) (holding that petitioners could not avoid statutory requirements by resorting to the All Writs Act); *see also Clinton*, 526 U.S. at 539-40 (refusing to grant relief requested under the All Writs Act where plaintiff could have challenged agency action under the APA); *Carlisle v. United States*, 517 U.S. 416, 429 (1996) (All Writs Act is a "residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling.").

Plaintiffs' invocation of the All Writs Act does not confer jurisdiction upon this Court to grant Plaintiffs relief on this motion.

III. Even if the Court has the Authority to Grant Preliminary Injunctive Relief, Plaintiffs have not met their Burden to show that a Preliminary Injunction is Warranted

As explained above, Congress has expressly precluded the relief Plaintiffs seek in their present motion. However, even if the Court were to entertain Plaintiffs' Motion, which it should not, a preliminary injunction is not warranted. In order to obtain the "extraordinary remedy" of a preliminary injunction, Plaintiffs must show that they have "clearly carried the burden of

persuasion" on the following four elements: "(1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) that his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) that granting the preliminary injunction will not disserve the public interest." *Def. Distributed v. U.S. Dep't of State*, 838 F.3d 451, 456–57 (5th Cir. 2016) (citation omitted). Plaintiffs fail to meet this burden.

First, as demonstrated by Defendants' summary judgment briefs, Plaintiffs are unlikely to prevail on the merits. *See*, ECF Nos. 79-1, 87. Plaintiffs also fail to establish that they will suffer irreparable harm. Indeed, Plaintiffs' sole argument that they would be irreparably harmed rests on their purported constitutional harms. ECF No. 90-1 at 6. But, as explained in Defendants' prior briefs, the Final Rule is not unconstitutional. *See* ECF No. 79-1 at 23-25; ECF No. 87 at 7-20. Accordingly, Plaintiffs will not suffer any injury to their constitutional rights when the Final Rule goes into effect.[3]

Second, even if Plaintiffs could prove that they would suffer irreparable harm, they fail to demonstrate that the public interest considerations or the balance of harms tips sharply in their favor. Although the "public interest is a uniquely important consideration in evaluating a request for" interim injunctive relief, *Nat'l Ass'n of Farmworkers Orgs. v. Marshall*, 628 F.2d 604, 616 (D.C. Cir. 1980), Plaintiffs devote little effort to demonstrating that this factor justifies the relief they request. The public interest standard is a separate consideration in determining whether to grant equitable relief, *see Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987), and a

[3] To the extent Plaintiffs argue that they would suffer irreparable harm from having to purchase a VMS unit, *see* ECF No. 90-1 at 4, the costs of the units are reimbursable. 85 Fed. Reg. at 44, 013; *see also* Vessel Monitoring System Reimbursement Program (VMS), Pac. States Marine Fisheries Comm'n, http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms (last visited Feb. 8, 2022); Strelcheck Decl. ¶ 4.

court may withhold injunctive relief, even if doing so burdens or causes irreparable injury. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-313 (1982); *Yakus v. United States*, 321 U.S. 414, 440 (1944); *Def. Distributed*, 838 F.3d at 458–59 (finding that the government, and the public's interest in national security may outweigh plaintiffs' assertion of a public interest in protecting constitutional rights).

Moreover, "a court sitting in equity cannot 'ignore the judgment of Congress, deliberately expressed in legislation.'" *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) (citation omitted). The MSA was enacted to "conserve and manage the fishery resources found off the coasts of the United States." 16 U.S.C. § 1801(b)(1). The VMS requirement exists to validate the logbook entries—which is critical to the new reporting program—which will increase the accuracy and reliability of the data about catch, fishing effort, and discards. This data is necessary to constrain harvest to specified catch limits and to conduct stock assessments and other analyses required under the MSA. Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries, 83 Fed. Reg. 54069, 54070 (Oct. 26, 2018). Thus, the VMS requirement lies squarely within the public interest. In addition, NMFS and the public interest would be irreparably harmed by a further delay of the VMS requirement in the Final Rule as it would prevent NMFS from being able to timely proceed with certification of the program and a transition plan to allow the data from the program to be available for management decisions. Strelcheck Decl. ¶ 8. And finally, the March 1, 2022 effective date allows vessels to be equipped with VMS units before the start of the 2022 spring break season, when "Gulf for-hire trips generally increase by more than double" and, indeed, "increase even more during the summer months." *Id.* ¶ 5. In sum, even if such relief was available, Plaintiffs fail to meet their burden to prove that a preliminary injunction is warranted.

CONCLUSION

Plaintiffs' motion for stay asks this Court to grant preliminary injunctive relief that is clearly barred by the MSA. The MSA's jurisdictional provision encompasses claims brought under other statutes and the Constitution, and does not permit the type of end-runs that Plaintiffs' motion attempts. The motion should be denied in full.

Dated: February 8, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

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