United States Senate
WASHINGTON, DC 20510

May 17, 2022

The Honorable Gina Raimondo
Secretary
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Raimondo:

We write to express our concern with the National Marine Fisheries Service (NMFS) delay in issuing permits required to bring additional production online from *existing* federal oil and gas leases, and we urge you to stop the delay by immediately taking the steps outlined below.

While the Biden Administration and Members of Congress fault the domestic oil and gas industry for sitting idle on over 9,000 drilling permits and millions of acres in "inactive leases", NMFS's permitting delays represent one example of the Administration's de facto ban on new drilling – impeding domestic oil and gas investment, exploration, and production.

Specifically, we are aware that NMFS has a backlog of applications for "Letters of Authorization" (LOA), which federal oil and gas lessees need in order to perform the specific geological surveying necessary to develop their leases located on the federal U.S. Gulf of Mexico Outer Continental Shelf (OCS). We understand some pending LOA applications have been with the agency for well over 100 days, whereas NMFS has historically approved LOA applications within 2 to 4 weeks.

This permitting delay is principally due to three administration-made and admitted mistakes: (1) the Bureau of Ocean Energy Management (BOEM) inadvertently double-counted projected exposure estimates for activities on the OCS[1]; (2) NMFS relied upon those miscalculations when developing a 2021 Final Rule to administer LOAs pursuant to the Marine Mammal Protection Act and the Endangered Species Act[2]; and (3) NMFS overestimated the total expected encounters in the Gulf of Mexico of the species that were the subject of the 2021 Final Rule.

Despite acknowledging these mistakes, NMFS has elected to push the consequences back onto consumers and the industry by asking applicants to either: (1) wait for LOA applications to be issued at some still-to-be-determined time, if at all; (2) pursue an alternative permitting process that would still require many more months of delays; or (3)

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[1] "Feb 2022: Update regarding planned GOM rule revision", NOAA Fisheries, 11 February 2022, https://media.fisheries.noaa.gov/2022-02/GOM_RevisedRuleStatement_OPR1_0.pdf

[2] *Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico Final Rule* (86 FR 5322)

simply stop all planned oil and gas development activities that are held up by these applications until NMFS issues new final regulations, which NMFS does not expect to issue until late-2023.

Unfortunately, none of these options are acceptable at this time of record high gasoline prices because they would delay oil and gas production from existing leases.

Instead, with your leadership NMFS could expeditiously correct these errors by putting in place the following tangible short-term solutions to stop any further permitting delays:

- Issue within 45 days an interim final rule that allows NMFS to approve outstanding and future LOA applications consistent with NMFS's permitting activities before it issued the 2021 Final Rule. If the Administration is in-fact concerned with rising global energy prices and recent disruptions to our energy security caused, in part, by Russia's detestable invasion of Ukraine, then NMFS can certainly find sufficient "good cause" in the national interest to issue an interim final rule while the agency pursues the lengthier process of notice and comment rulemaking.

- Use NMFS' discretion to immediately approve those LOA applications that are most likely to bring production online *immediately,* such as LOA applications for seismic projects that have contracts in place and intend to support the drilling of development or production wells. This temporary policy should replace NMFS's current policy of awarding authorizations on a "first come, first served" basis, which ignores the energy crisis.

- Issue a new proposed rule immediately and final rule within a more reasonable timeframe. Because NMFS just issued its current regulation in January 2021, it is unacceptable for any new notice and comment rulemaking to take another 18 or more months to complete while NMFS "analyze[s] the same activities and activity levels of the current rule, extend[s] for the remaining period of effectiveness of the current rule, and utilize[s] the same modeling methodology described in the current rule."

- Shift additional resources to quickly process Incidental Harassment Authorization (IHA) applications and make available to permittees any other alternative permitting processes within NMFS authority (pursuant to this specific item in NOAA's FY 2023 Budget Request).

To accomplish the above, it is also clear NMFS must prioritize and dedicate more attention, resources, and expertise to this issue than it has been over the past year. It is unacceptable that agency miscalculations have restricted access to safe, secure, and reliable domestic oil and gas production through substantial, unnecessary, and arbitrary permitting delays.

We expect and encourage NMFS to exercise all available tools to correct this avoidable mistake. Please respond to this letter not with words, but instead with action pursuant to

the requested remedies outlined above and with an eye towards allowing energy producers to expeditiously develop their leases.

Respectfully,

Ted Cruz
United States Senator

Roger Wicker
United States Senator

John Barrasso, M.D.
United States Senator

Shelly Moore Capito
United States Senator

James M. Inhofe
United States Senator

Richard Shelby
United States Senator

Cynthia M. Lummis
United States Senator

Jerry Moran
United States Senator

John Kennedy
United States Senator

Bill Cassidy, M.D.
United States Senator

Mike Lee
United States Senator

John Thune
United States Senator

Cindy Hyde-Smith
United States Senator

Dan Sullivan
United States Senator

Steve Daines
United States Senator

Roy Blunt
United States Senator

Marsha Blackburn
United States Senator

Tommy Tuberville
United States Senator

James Lankford
United States Senator

John Cornyn
United States Senator