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NCLA Successfully Petitions NOAA to Delay Warrantless 24/7 Surveillance of Charter Boats in the Gulf

Mexican Gulf Fishing Company, et al. v. National Oceanic and Atmospheric Administration, et al.

Washington, DC (November 2, 2021) – A rule requiring for-hire charter boat captains off the Gulf of Mexico to install vessel monitoring systems (VMS), a kind of GPS tracking device, on their boats to supply 24/7 location information to the U.S. Government has been [put on hold](#). The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, previously filed a [petition](#) with the National Oceanic and Atmospheric Administration (NOAA) to amend the effective date of the [Final Rule](#) by 90 days until March 14, 2022. However, NOAA has only approved a delay until March 1, 2022.

NCLA represents over 1,300 federally permitted charter boat owners operating off the coasts of Alabama, Florida, Louisiana, Mississippi, and Texas, who are seeking relief against the Final Rule in the class-action lawsuit, *Mexican Gulf Fishing Company, et al. v. NOAA, et al.*

NCLA argued in the petition to NOAA that the agency should permit the U.S. District Court for the Eastern District of Louisiana time to determine the validity of the Rule before requiring petitioners and their respective class members—Gulf charter boat captains and companies—to purchase, install, and operate costly and unconstitutionally invasive tracking devices. The constitutional violations in the Rule are even more stark, given that many owners of charter boats also use them for personal non-fishing activities but are still monitored and tracked on such excursions.

On July 21, 2020, the National Marine Fisheries Service (NMFS) published the Final Rule, *Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries*. The Rule requires that each charter boat must be “equipped with NMFS-approved hardware and software with a minimum capability of archiving GPS locations.” The VMS must be “permanently affixed” to the vessel and “archive[] the vessel’s accurate position at least once per hour, 24 hours a day, every day of the year.”

This 24-hour GPS surveillance is not only unnecessary and unduly burdensome, but the Supreme Court struck down long-term location tracking as an unconstitutional invasion of privacy months before the issuance of the notice of proposed rulemaking. NMFS and NOAA plunged ahead anyway.

The Petitioners and counsel for NOAA agreed to and filed a request to shorten the briefing schedule and for expedited review. Petitioners anticipate that briefing will conclude in November. While NOAA did not credit NCLA, this successful petition means the Court will now have time to consider the positions of the parties.

NCLA released the following statements:

“The agencies appeared determined to force our clients and the class they represent to purchase monitoring devices that cost thousands of dollars per charter vessel and be tracked twenty-four hours a day, before a court could rule on our motion to set aside the regulation because it violates constitutional and statutory rights. This

wise action of NOAA and the regulators gives the Court more time to consider the law in this matter and grants the many hundreds of charter boat captains in the Gulf of Mexico a reprieve until next year at least.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“While we appreciate the federal regulators’ decision to delay this rule, they still have not explained how 24-hour tracking of charter boats—which account for a minuscule amount of Gulf fishing—promotes conservation, especially since boat captains already report the number and types of fish caught in real time.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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