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NCLA Asks D.C. Circuit to Scrub NOAA's at-Sea Monitor Rule After Toppling *Chevron* Deference

Loper Bright Enterprises, et al. v. Gina Raimondo, in her official capacity as Secretary of Commerce, et al.

Washington, DC (September 5, 2024) – On behalf of its clients Relentless Inc., Huntress Inc. and SeaFreeze Fleet LLC, the New Civil Liberties Alliance has filed an *amicus curiae* brief with the U.S. Court of Appeals for the D.C. Circuit in *Loper Bright Enterprises v. Raimondo*. Alongside NCLA's *Relentless Inc. v. Dept. of Commerce* lawsuit, this historic case defeated the *Chevron* doctrine. Now, NCLA urges the Court to overturn the National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service (NMFS) rule requiring North Atlantic fishing companies like NCLA's *Relentless* clients to pay the salaries of at-sea government monitors who track their herring catch. With *Chevron* deference rightfully erased, this statutorily unauthorized rule must meet the same fate.

NMFS implemented the at-sea monitor rule without any statutory language supporting it. A divided panel of the D.C. Circuit ruled in *Loper Bright* that Congress silently empowered NMFS to promulgate this regulation. The D.C. Circuit applied *Chevron* deference, ruling that statutory ambiguity justified deferring to the agencies. The Supreme Court corrected this error by overturning *Chevron* deference in June, making fishermen-funded federal monitoring a legally unsustainable policy. The *Relentless* lawsuit against NMFS's rule continues in the U.S. District Court for the District of Rhode Island.

The rule is unlawful under any sensible reading of the Magnuson-Stevens Act (MSA). The MSA directs fishermen to pay for monitoring in only three specific cases, and not in the New England herring fishery. Despite past claims by the government, there is no general rule that regulated industries pay for the general government functions of their regulators. This can only mean one thing: the government itself must pay, as it did for 20 years before the agencies invented the at-sea monitor rule.

NCLA released the following statement:
"The D.C. Circuit already found that the Magnuson-Stevens Act does not expressly provide the agencies with the power to force the fishing industry to pay for a government function performed by government agents for 20 years. Without such Congressional direction it should send this regulation to Davy Jones' locker."
— **John Vecchione, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* 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.