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## **NCLA Sues the Dept. of Commerce over Its Unlawful New at-Sea Monitor Mandate**

*Relentless Inc. et al. v. U.S. Dept. of Commerce et al.*

**WASHINGTON, DC, March 4, 2020** – The New Civil Liberties Alliance today filed a [lawsuit](#) in the U.S. District Court of Rhode Island against the U.S. Department of Commerce (DOC), the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NOAA Fisheries), as well as the heads of those agencies. The suit challenges the agencies’ unconstitutional and statutorily unauthorized effort to force fishing companies to pay for a new agency enforcement program. NCLA represents *Relentless Inc.*, *Huntress Inc.* and their related company, *Seafreeze Fleet LLC*, in this facial challenge to DOC/NOAA’s newly promulgated rule.

The at-sea monitor [mandate](#) for the nation’s Atlantic herring fleet violates the U.S. Constitution’s Article I, and the agencies have exceeded the bounds of their statutory authority, because Congress never allowed these agencies to create or to require the industry to finance at-sea monitors or an at-sea monitoring program in the Atlantic herring fishery.

The New England Fishery Management Council’s Industry-Funded Monitoring Omnibus Amendment (IFM Amendment) and the February 7, 2020 Final Rule created the requirement to “increase monitoring” in some fishery management plans and “assess the amount and type of catch and more precisely monitor annual catch limits.” But NCLA contends the federal agencies’ attempt to fund their operations through this mandate, outside of Congressional appropriations, violates the U.S. Constitution. In addition, it violates the Magnuson-Stevens Act (MSA)—meant to protect, manage, and grow the U.S. fishery resources.

Relentless and Huntress own fishing vessels (F/V *Relentless* and F/V *Persistence*) equipped with unique at-sea freezing technology, which allows their fleet to stay longer at sea than other ships in the Atlantic herring fishery and provides their vessels flexibility in what catch it harvests during a fishing trip. The MSA does not contemplate or even use the word “at-sea monitor” and does not require any ships to pay for such monitors. But under the IFM Amendment and the Final Rule, *Relentless* and *Persistence* would be forced to carry a herring at-sea monitor employed by a NOAA-approved or certified private company—even on trips that do not land herring. Thus, *Relentless*, *Huntress*, and *Seafreeze* will be subject to disparate treatment including higher costs relative to the rest of the Atlantic herring fleet. The IFM Amendment and the Final Rule would also force these small commercial fishing companies to enter a market for at-sea monitors that they do not wish to enter.

Agencies cannot be allowed to fund themselves without authorization from Congress. Congress appropriated funds for observers, and NOAA has to make do with those funds. Among other problems, NCLA believes that mandating small commercial fishing businesses to pay for the Atlantic herring at-sea monitoring program is arbitrary, capricious, and an abuse of government power.

**NCLA released the following statements:**

“NCLA filed this case on behalf of our clients because the Administrative State’s effort to fund itself, completely outside Congressional appropriations and authorization, must be stopped. These runaway agencies cannot create an “off the books” source of funding when Congress has already decided how much money to give them.”

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

“The livelihoods of America’s herring fishermen and the industry are at stake here. We cannot allow these agencies to assume power that Congress did not grant them. NCLA will continue working to stop agencies from violating people’s civil rights with unlawful mandates that threaten to ruin entire industries. This regulation should be thrown back into the sea.”

– **Kara Rollins, NCLA Litigation Counsel**

**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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