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NCLA Challenges Dept. of Commerce Regulation that Would Track Charter Vessels in the Gulf 24/7

Rivers End Outfitters, et al. v. Department of Commerce, et al.

Washington, DC (August 20, 2020) – The U.S. government is trying to force charter boats and companies that take customers fishing and sightseeing in the Gulf of Mexico to purchase a vessel monitoring system (VMS). Federal agencies will use the VMS tracking devices to monitor boats’ movements and whereabouts on the water, even when they are not using their federal permits to fish. A [class-action lawsuit](#) was filed today by the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, in the U.S. District Court for the Eastern District of Louisiana against the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), and the respective agency heads in their official capacities. It contends that these agencies are mandating an unlawful and unconstitutional 24-hour GPS surveillance regime without a warrant.

The named plaintiffs NCLA represents are for-hire vessel operating companies and captains who are affected by a [final rule](#) enforced by Commerce, NOAA, and NMFS. The case is *Rivers End Outfitters, et al. v. Department of Commerce, et al.* The rule, which goes into effect on January 5, 2021, affirms that owners or operators of charter vessels or for-hire vessels in the Gulf of Mexico must submit an electronic fishing report using NMFS-approved hardware and software with GPS location capabilities that “at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS.” The rule also requires that captains pay for the vessel equivalent of an ankle bracelet. NCLA contends that these agencies cannot issue a regulation that would monitor law-abiding captains more closely than many prisoners on parole.

According to the agencies, the purpose of this final rule is to “increase and improve fisheries information collected from federally permitted for-hire vessels in the Gulf.” But NCLA argues that warrantless access to the GPS information of a person’s locations and movements is blatantly unconstitutional. It amounts to an unreasonable search violating the Fourth Amendment and violates Ninth Amendment rights, including the right to privacy, freedom of movement, free enterprise, freedom from unreasonable governmental interference, and the right to travel. Since plaintiffs are the sole owners of the data produced by their newly purchased devices, the seizure of it without any cause also violates the Due Process Clause of the Fifth Amendment.

In addition to constitutional infringements, the agency’s surveillance program for chartered boats is not authorized by the Magnuson-Stevens Act (MSA)—meant to protect, manage, and grow U.S. fisheries resources. MSA authorizes warrantless access to VMS data by the Coast Guard and other law enforcement agencies only if they have a reasonable belief of wrongdoing. But it does not require a vessel to have such data nor does it command them to buy a 24-hour surveillance device. The VMS mandate does not protect, conserve, grow, or help manage the United States’ fisheries resources. Therefore, it greatly burdens NCLA’s clients without accomplishing any of the MSA’s goals.

Commerce also failed to prepare legally sufficient regulatory flexibility analyses in violation of the Regulatory Flexibility Act (RFA)—meant to require agencies to take into account the impact their rules have on small businesses. NCLA’s clients are precisely the kind of entities the RFA protects.

This is not the first time that Commerce and NOAA have acted in excess of any statutory authority granted by Congress. This past March, NCLA brought the lawsuit *Relentless Inc., et al. v. U.S. Dept. of Commerce, et al.* challenging the agency’s at-sea monitor mandate that unlawfully commands small commercial fishing businesses to pay for the Atlantic herring at-sea monitoring program.

NCLA released the following statements:

“Commerce and NOAA cannot issue a regulation that not only requires a charter boat owner to be tracked whenever he’s on his boat, but also to call the government every time he leaves port—whether to fish or take his wife to dinner. This surveillance is greater than some prisoners on parole get and does nothing to preserve and grow fish stocks in the Gulf of Mexico. It violates Constitutional rights to absolutely no legitimate purpose.”

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

“Being issued a federal permit to conduct regulated fishing is not a license for the government to fully invade the privacy and other constitutional rights of the Gulf’s charter fishermen at all times regardless of whether they are engaged in regulated activities. That’s not a tradeoff contemplated under the Magnuson-Stevens Act nor permitted under the Constitution. This suit aims to stop these agencies’ unlawful use of administrative power.”

— **Kara Rollins, Litigation Counsel, NCLA**

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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