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NCLA Seeks Summary Judgment in Class-Action Lawsuit over NOAA’s Boat Tracking Mandate

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

Washington, DC (August 12, 2021) – The New Civil Liberties Alliance filed a [motion](#) for summary judgment this week, requesting relief on behalf of more than a thousand charter boat captains who are challenging a [Final Rule](#) subjecting charter boats operating in the Gulf of Mexico to 24-hour warrantless surveillance. The motion was filed in the U.S. District Court for the Eastern District of Louisiana, in NCLA’s class-action lawsuit, *Mexican Gulf Fishing Company, et al. v. National Oceanic and Atmospheric Administration, et al.*

The National Marine Fisheries Service (NMFS) published the Final Rule in July 2020, requiring that each charter boat be “equipped with NMFS-approved hardware and software with a minimum capability of archiving GPS locations.” The Vessel Monitoring System (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.” In other words, NOAA and NMFS want to LoJack every charter boat in the Gulf of Mexico—but they don’t own these boats.

Unfortunately for NOAA/NMFS, the Supreme Court struck down long-term location tracking by government agencies as an unconstitutional invasion of privacy months before the issuance of the notice of proposed rulemaking. Thus, NCLA argues the 24-hour GPS tracking of all charter boats in the Gulf of Mexico without any suspicion of wrongdoing violates the Fourth Amendment’s prohibition against unreasonable searches. Moreover, the permanent installation of GPS tracking devices on charter boats effects an uncompensated taking, in violation of the Fifth Amendment. These constitutional violations 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.

Plaintiffs do not challenge the transmission of fish-related information in electronic fishing reports. Rather, they challenge the requirement to transmit “other information” not specified in the regulatory text, including business data. The Final Rule creates a regime of pervasive and constant electronic monitoring. It imposes burdensome technological and reporting requirements on small businesses and confers virtually no benefit over cheaper and less intrusive methods in monitoring fish stocks in the Gulf of Mexico.

Beyond the blatant constitutional violations, NOAA/NMFS’s surveillance program for chartered boats is not authorized by the Magnuson-Stevens Act, which Congress passed to protect, manage, and grow U.S. fisheries resources. Each of these grounds provides enough reason to set aside the Final Rule and declare it unlawful.

NCLA released the following statements:

“Taking people out into the Gulf of Mexico to fish is not a crime, and the Administrative State should not be able to track our clients with marine ‘ankle bracelets’ reporting their every move.”

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

“The Final Rule would subject every single charter boat owner in the Gulf of Mexico to 24-hour GPS tracking, without warrants or even suspicion of wrongdoing. The Supreme Court has said clearly and repeatedly such panoptic surveillance violates the Fourth Amendment. What’s worse, under the Final Rule boat owners must pay for the violation of their own constitutional rights because the rule forces them to purchase, install, and maintain expensive tracking devices themselves for the government’s use.”

— **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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