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Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Files Fifth Circuit Appeal to Stop Unlawful 24/7 Tracking of Gulf of Mexico Charter Boats

Mexican Gulf Fishing Company, et al. v. U.S. Department of Commerce, et al.

Washington, DC (May 3, 2022)—The New Civil Liberties Alliance filed its [opening brief](#) Monday in its appeal to the U.S. Court of Appeals for the Fifth Circuit on behalf of more than 1,300 federally permitted charter boat owners in the class-action lawsuit, *Mexican Gulf Fishing Company, et al. v. Dept. of Commerce, et al.* The appeal challenges a Final Rule issued by the National Marine Fisheries Service (NMFS) pursuant to the Magnuson-Stevens Act. It requires 24-hour GPS tracking of recreational charter boat fishing vessels in the Gulf of Mexico. NCLA argues, among other things, that the district court erred in holding that the Fourth Amendment allows an agency to monitor charter boat operators without a warrant or any suspicion of wrongdoing.

On August 20, 2020, Appellants filed a [class-action suit](#) challenging the Final Rule as unconstitutional and unlawful. Appellants do not challenge the transmission of fish-related information in electronic fishing reports; rather, they challenge the GPS tracking mandate and the requirements to transmit “other information” not specified in the Notice of Proposed Rulemaking, including business data. On February 28, 2022, the district court denied the boat owners’ motion for summary judgment and denied their request for a stay of the regulation. The GPS-tracking requirement came into effect the next day. NCLA immediately appealed.

The Government produced no evidence of routine violations of conservation regulations by charter-fishing federal permit holders in the Gulf of Mexico justifying their surveillance; the agencies and the district court simply assumed it. The amount of the fishing resource harvested by the class of charter boat permit holders is tiny, yet NMFS has based extremely invasive and intrusive searches and data collection on it. Worse, the Final Rule mandates GPS tracking of charter boat operators even when they are not fishing or using the permits in any manner (such as when they are taking a pleasure cruise with their own family). It also forces the class to purchase the monitoring systems and place them on their vessels in violation of the Fifth Amendment’s prohibition on taking property without just compensation. Congress did not grant the Department of Commerce, nor its bureaus or offices, the authority to compel such unwanted purchases and physical attachments to these vessels.

The imposition of permanent 24-hour-a-day electronic tracking of charter boats is a novel and dangerous government intrusion into Americans’ private lives. Constant GPS tracking violates Plaintiffs’ reasonable expectations of privacy and constitutes a warrantless and unconstitutional search. Neither the district court nor the Government denies that the Final Rule empowers an administrative agency to electronically record Americans’ movements, even when they are not engaging in regulated activities, as long as they work in a “closely-regulated industry.” But, even assuming that commercial fishing is a closely-regulated industry—certainly a contestable claim—recreational charter boat fishing is not. So, the district court’s reliance on the closely-regulated-industry exception to the Fourth Amendment was legal error. Furthermore, that exception does not even apply to Fourth Amendment violations that include physical trespass, which the mandated Vessel Monitoring Systems at issue here do. So, the Final Rule’s GPS-tracking requirement violates the Fourth Amendment of the U.S. Constitution, and it should be set aside.

NCLA released the following statement:

“Everyone who engages in recreational fishing should be livid that the Government has asserted a right to monitor your whereabouts at all times because you might be using the fishing resource. There is no reason to think this incredible invasion of our clients’ constitutional rights, if tolerated, will not be extended to any sportsmen who take fish from America’s waters. To give bureaucrats the right to search you at any time on the off chance you are fishing makes our constitutional protections flimsy indeed. We look forward to the Fifth Circuit’s reversing this mistaken decision.”

— **John J. Vecchione, Senior 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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