

22-451 LOPER BRIGHT ENTERPRISES V. RAIMONDO

DECISION BELOW: 45 F.4th 359

LOWER COURT CASE NUMBER: 21-5166

QUESTION PRESENTED:

The Magnuson-Stevens Act (MSA) governs fishery management in federal waters and provides that the National Marine Fisheries Service (NMFS) may require vessels to "carry" federal observers onboard to enforce the agency's myriad regulations. Given that space onboard a fishing vessel is limited and valuable, that alone is an extraordinary imposition. But in three narrow circumstances not applicable here, the MSA goes further and requires vessels to pay the salaries of the federal observers who oversee their operations—although, with the exception of foreign vessels that enjoy the privilege of fishing in our waters, the MSA caps the costs of those salaries at 2-3% of the value of the vessel's haul. The statutory question underlying this petition is whether the agency can also force a wide variety of domestic vessels to foot the bill for the salaries of the monitors they must carry to the tune of 20% of their revenues. Under well-established principles of statutory construction, the answer would appear to be no, as the express grant of such a controversial power in limited circumstances forecloses a broad implied grant that would render the express grant superfluous. But a divided panel of the D.C. Circuit answered yes under *Chevron* on the theory that statutory silence produced an ambiguity that justified deferring to the agency.

The questions presented are:

1. Whether, under a proper application of *Chevron*, the MSA implicitly grants NMFS the power to force domestic vessels to pay the salaries of the monitors they must carry.
2. Whether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.

THE PETITION FOR A WRIT OF CERTIORARI IS GRANTED LIMITED TO QUESTION 2 PRESENTED BY THE PETITION.

JUSTICE JACKSON TOOK NO PART IN THE CONSIDERATION OR DECISION OF THIS PETITION AND THESE MOTIONS.

CERT. GRANTED 5/1/2023