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A lawsuit against the U.S. National Marine Fisheries

In January three New Jersey Commercial Fishermen who own and operate vessels in the herring fishery had a hearing before the U.S. Supreme Court. Their lawsuit against the National Marine Fisheries service challenges a 2020 federal rule requiring commercial fishing boat captains to pay for monitors to observe catches.

The lawsuit, filed by plaintiff Loper Bright Enterprises of New Jersey and Cape May fishermen Bill Bright, Wayne Reichle and Stefan Axelsson, argue the new rules will force Atlantic herring fishery fishermen to pay more than \$700 per day to contractors, or about 20% of their pay. But the case goes way beyond the overregulation of one industry into how the federal government implements laws.

A ruling in the case could force the high court to overturn the so-called "Chevron deference," an administrative law principle that stems from the Supreme Court's 1984 ruling in *Chevron v. National Resources Defense Council*, in which the justices said courts should defer to an agency in "ambiguous situations" as long as its interpretation of a law is "reasonable."

The harvest of Atlantic herring, which is typically used as food and bait, is a fishery on the East Coast, with 11 million pounds of landings in New England, New York and New Jersey valued at \$6.6 million last year. But

NOAA cites data showing the species is overfished and has set tight catch quotas in recent years that fishermen say have considerably shrunk the yearly haul.

Commercial fishing groups from several states, including Rhode Island, filed legal briefs in support of the lawsuit. The legal fight has also drawn interest from groups including the Cato Institute, New England Legal Foundation and Pacific Legal Foundation, which have also filed briefs in support of fishermen.

“We never filed this challenge to change “Chevron”, all we wanted to do was to be able to afford to go fish and leave something behind so my kids and the next generation could too,” said Bill Bright fisherman.

Scot Mackey
Executive Director
Garden State Seafood Association