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The Demise of the *Chevron* Doctrine Implications for the Aquaculture Industry

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The Era of *Chevron* Deference

What was *Chevron* Deference?

Court-Made Rule from 1984

Agencies fill interpretive gaps in the statutes they administer.

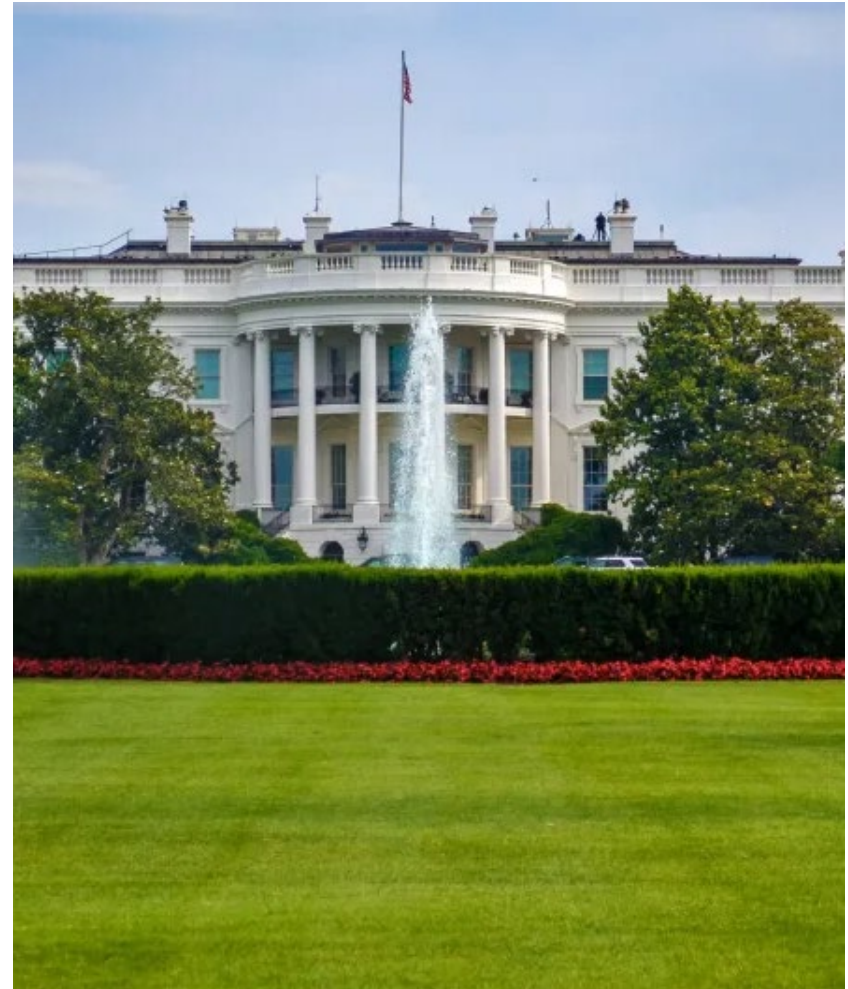
Chevron Two-Step Test:

- (1) Applying traditional tools of statutory construction, does the statute answer the question at hand?
- (2) If the statute *permits* more than one meaning, give *controlling* weight to the agency's reasonable formal interpretation.

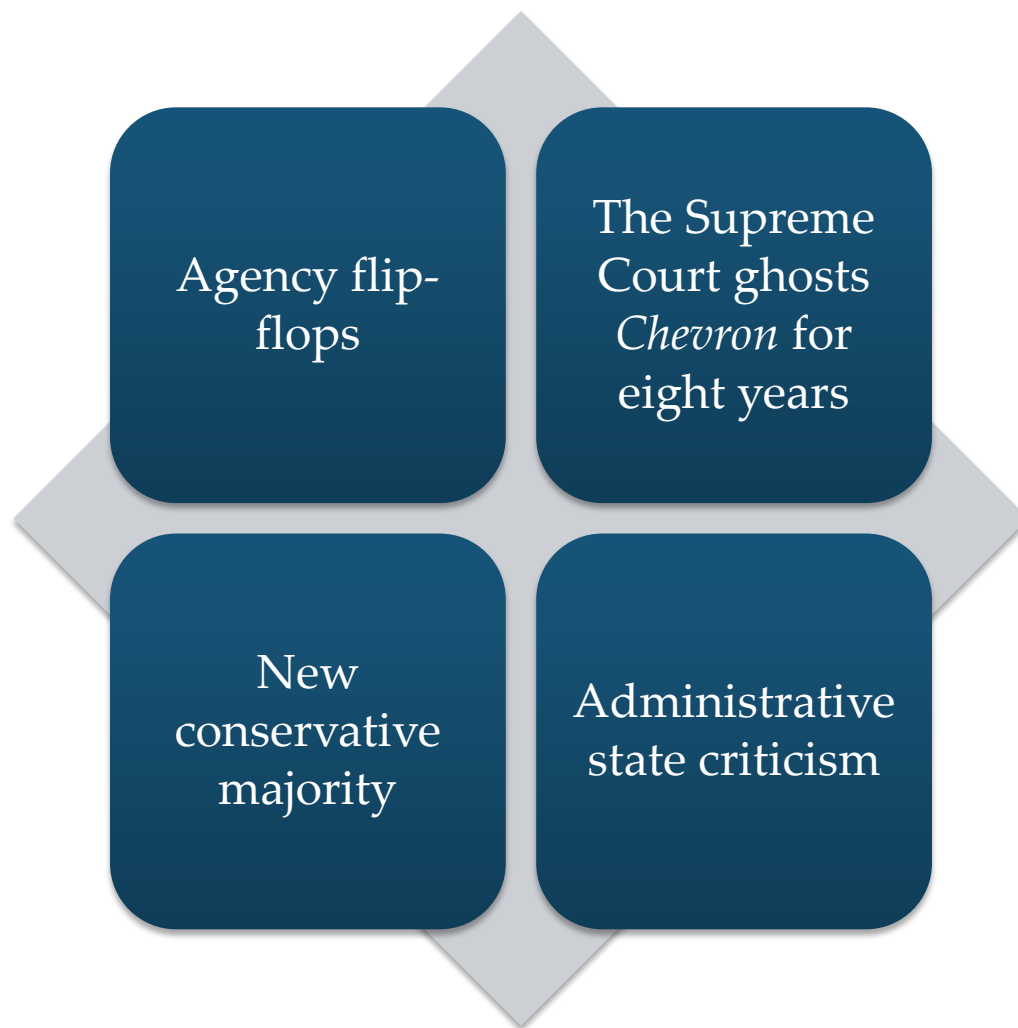


40 Years of Deference to Agencies

- *Chevron* has broad applicability to all agencies.
 - NOAA, NMFS, EPA, FDA
- The most cited administrative law case in history – 18,000 federal court decisions.
- Influence on agency rule drafters.



Chevron Loses Support



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Loper Bright v. Raimondo

The *Loper Bright* Case

- Interpretation of Magnuson-Stevens Act
- NMFS promulgates a rule requiring Atlantic herring fisheries to pay to have observers aboard their vessels to collect data related to conservation.
- Statute was silent about who pays for observers.
 - Can agency **fill in gaps** in the statute with a reasonable rule?
 - **No!** Court must decide what Congress meant.



Loper Bright Enterprises v. Raimondo

Loper Bright Overrules *Chevron*

- Courts must exercise **independent judgment** in deciding if agencies have acted within their statutory authority.
- When a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation so long as agencies act within it.
- There's only one "best" meaning of every statute.



The image features a central white horizontal band containing the text. Above and below this band are decorative blue abstract patterns consisting of overlapping, semi-transparent geometric shapes in various shades of blue, creating a sense of depth and movement.

Impact on the Aquaculture Industry

Statutory Interpretation and Litigation

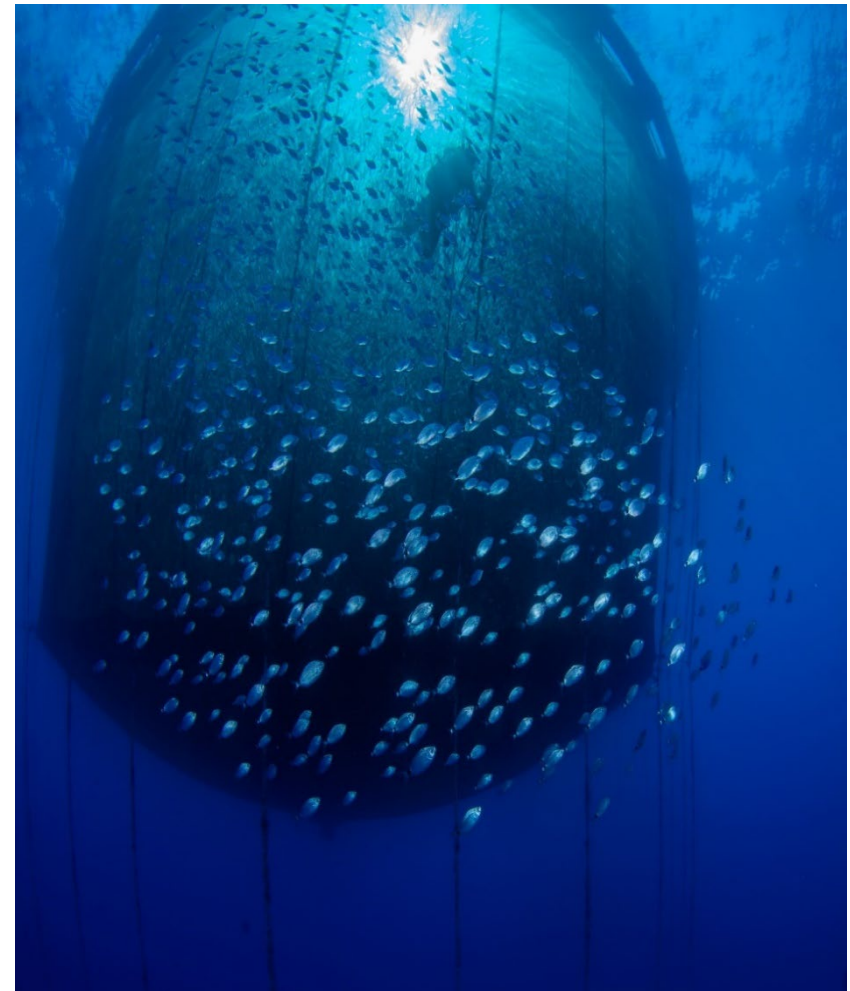
- ❑ *Chevron/Loper* concerned *statutory* interpretation – primary impact will be to challenges to federal statutes (e.g., MSA, ESA)
- ❑ Does not explicitly affect an agency’s interpretation of its own regulations or interpretative rules (*Auer* or *Skidmore* deference)
- ❑ Limited impact on aquaculture
 - ❖ Only a small handful of cases under the MSA relied upon *Chevron* deference to uphold NMFS’s action
 - ❖ However, courts cited *Chevron* more frequently when interpreting Endangered Species Act
- ❑ Short-term uncertainty and more litigation

Environmental and Scientific Analysis

- ❑ Courts generally defer to an agency’s factual and technical judgments. *Loper* does not change that.
- ❑ “Although an agency's interpretation of a statute cannot bind a court, it may be especially informative to the extent it rests on factual premises within the agency's expertise.”
- ❑ *National Treasury Emp. Union v. Trump* (2025) – “*Loper Bright* did not foreclose all reliance on agency expertise.”
- ❑ Agencies still get scientific and policy deference
 - Environmental Analysis Under MSA, ESA, NEPA
 - FDA Rulemaking
 - Technical and Scientific Expertise
 - Informal and Case-by-Case Determinations Outside of Rulemaking Process
 - Generally Evaluated on Arbitrary and Capricious Standard

Policy and Legislation

- ❑ Requires greater attention to how legislation is drafted
 - Broad delegations of authority disfavored
 - Will require precise and direct delegations of agency authority
- ❑ Can delegate authority to agencies to:
 - Define terms
 - Fill in details/gaps/standards
 - Regulate specific conduct (if expressly delegated)



Questions?

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K&L Gates *Chevron* Toolkit:

https://files.klgates.com/webfiles/K_L_Gates_Post-Chevron_Toolkit.pdf

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