

Brief Overview of Legal Authorities of the  
International Pacific Halibut Commission and the  
North Pacific Fishery Management Council

International Pacific Halibut Commission

The Commission was established in 1923 by treaty between Canada and the United States. The treaty has been revised several times to extend the Commission's authority and meet changing conditions in the fishery. The current treaty is the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa, March 2, 1953. The Convention was amended in 1979 by "protocol" and was implemented in the United States by enabling legislation titled the Northern Pacific Halibut Act of 1982.

The Convention applies in "Convention waters" - the waters off the west coasts of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which either Party exercises exclusive fisheries jurisdiction. For purposes of the Convention, the "maritime area" in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of that Party. Convention, Article I, Section 3.

Nationals and fishing vessels of, and fishing vessels licensed by, Canada or the United States may fish for halibut in Convention waters only in accordance with the Convention and as provided by the Commission's regulations promulgated pursuant to Article III of the Convention and designed to develop the stocks of halibut in the Convention waters to those levels which will permit the optimum yield from the fishery and to maintain the stocks at those levels. Convention, Article I, Section 2.

The Convention is focused on halibut stocks and fisheries in Convention waters. A significant objective of the Commission is to develop the stocks of halibut in Convention waters to those levels which will permit the optimum yield from the fishery and to maintain the stocks at those levels. Convention, Article I, Section 2, Article III, Section 3.

The Commission develops regulations governing fishing for halibut in Convention waters pursuant to Article III, Section 3, of the Convention. The U.S. Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations adopted by the Commission. Commission regulations become effective in Convention waters subject to the jurisdiction of the United States only upon acceptance by the Secretary of State with the concurrence of the Secretary of Commerce. Northern Pacific Halibut Act, 16 U.S.C. 773b and 773c.

### North Pacific Fishery Management Council

The Council 's fishery conservation and management authority derives mainly from two statutes – the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982.

#### Northern Pacific Halibut Act of 1982

The Northern Pacific Halibut Act authorizes the Council to develop halibut fishery regulations governing the United States portion of Convention waters in and off Alaska applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations are implemented only with the approval of the U.S. Secretary of Commerce. Halibut Act, 16 U.S.C. 773c(c).

Halibut fishery regulations developed by the Council must be consistent with the limited entry criteria set forth in section 1853(b) (6) of the Magnuson-Stevens Act. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges. Halibut Act, 16 U.S.C. 773c(c).

In 1987, NOAA determined that "as a policy matter, the better way to address the issues that relate primarily to domestic allocation is through the mechanism established in the North[ern] Pacific Halibut Act. Therefore, future domestic allocation issues will be submitted to the appropriate Regional Fishery Management Council for a recommendation to the Secretary, rather than be handled by the IPHC." Letter from Anthony J. Calio, NOAA Administrator, to the Honorable John Miller . This letter was followed by a letter indicating the same change in authority from Bill Evans, NOAA Assistant Administrator for Fisheries, to Dr. Donald A. McCaughran, IPHC Executive Director, on May 21, 1987. These letters are appended to IPHC Technical Report No. 26 (1992), which is available on the IPHC's website at <http://www.iphc.washington.edu/publications/techrep/tech0026.pdf> .

When developing halibut fishery regulations pursuant to the Northern Pacific Halibut Act, the Council generally is responsible for analyzing the environmental, economic, and other impacts under a range of federal statutes and executive orders including Executive Order 12866 (economic impacts), the Regulatory Flexibility Act (economic impact on small businesses and identification of alternatives that could reduce those impacts consistent with regulatory objectives), the Paperwork Reduction Act (reporting burdens), the Endangered Species Act (impacts to threatened and endangered species and their designated critical habitat), and the National Environmental Policy Act (range of alternatives and comparison of their environmental impacts) to name a few.

#### Magnuson Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Act is the primary law governing federal marine fisheries management, including the federal management of fisheries in waters adjacent to Alaska. 16 U.S.C. 1801-1891d. Congress enacted the Magnuson-Stevens Act in 1976 "to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and found that "[a] national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, [and] to facilitate long-term protection of essential fish habitats . . ." 16 U.S.C. 1801(a)(6), (b)(1). The federal government has "exclusive fishery management authority over all fishery resources in the exclusive economic zone" ("EEZ"), which extends 200 miles from shore; the area 3 miles from shore remains under state control.

The Magnuson-Stevens Act delegated management and conservation authority within the EEZ to the Secretary of Commerce (“the Secretary”) and NMFS. These duties are carried out through eight regional management councils. Under the Magnuson-Stevens Act, the Council is charged with preparing and amending Fishery Management Plans (“FMPs”) to conserve and manage Alaska’s fisheries. The Council prepares an FMP “for each fishery under its authority that requires conservation and management.” 16 U.S.C. 1852(h)(1). The Council has prepared, and the Secretary of Commerce has approved and implemented six FMPs - Bering Sea and Aleutian Islands groundfish, Gulf of Alaska groundfish, Bering Sea and Aleutian Islands crab, scallops, salmon, and the Arctic. The Council transmits FMPs and amendments to FMPs along with implementing regulations to the Secretary of Commerce for review, approval, and implementation.

The Council’s FMPs and amendments and implementing regulations must contain conservation and management measures deemed by the Council to be necessary and appropriate for the conservation and management of the fishery, and must be consistent with the ten “national standards” described in the Magnuson-Stevens Act. 16 U.S.C. 1851(a) <sup>1</sup> The ten national standards frequently require balancing of contending objectives – for example, the Council’s conservation and management measures must “prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery” and also must “to the extent practicable, minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” This balancing requires identification and analysis of contending objectives and impacts of alternatives to accomplish those objectives. As with its halibut fishery regulations implementing the Northern Pacific Halibut Act, the Council generally is responsible for analyzing the environmental, economic, and other impacts of its recommended actions under a range of federal statutes and executive orders (*e.g.*, Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Endangered Species Act, and the National Environmental Policy Act).

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<sup>1</sup> Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
- (2) Conservation and management measures shall be based upon the best scientific information available.
- (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
- (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
- (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
- (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
- (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.
- (8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.
- (9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.
- (10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.