

FISH 672: Law and Fisheries (2 credits)

Instructor: Dr. Keith R. Criddle
Contact Information: kcriddle@sfos.uaf.edu 796-5449 LP 203
Office hours: TR 10-12 or by appointment
Time/Location: Thu 5:20-7:20 pm Juneau (LP 103) and by video conference to Fairbanks and other sites as demand warrants.

Course Description: This course introduces students to the key Federal, State, and International laws that govern fisheries in Alaska state waters and in the US Exclusive Economic Zone off Alaska. In addition, the course introduces students to seminal court rulings that have helped shape those laws. *Prerequisite: ENGL 213; graduate standing or permission of instructor. (2+0)*

Course Goals and Learning Objectives: This is a course on Fisheries Law for non-lawyers. Students who successfully complete this course will have a background in the legal framework that governs and regulates fishery management actions. While this framework is briefly introduced in fishery management courses (e.g., FISH 487, FISH 640), to be successful in federal and state management agencies, fisheries professionals need to have more detailed exposure to federal and state statutes and international agreements that govern access to living marine resources. Specifically, students who successfully complete this course will know:

- The origins and evolution of common law and the public trust doctrine as developed in court cases related to fisheries.
- The rights and obligations of federal and state governments, dependent sovereigns, and individuals as defined in the U.S. constitution and as they have figured in court cases related to fisheries.
- The ten national standards for fisheries management defined in the MSFCMA as they are interpreted and applied in U.S. Fisheries.
- MSFCMA standards and criteria related to the creation and administration of limited access privilege and catch share programs.
- NEPA requirements for environmental assessments and environmental impact statements, U.S. DOC standards for preparation of these documents, and case law that has shaped the preparation of these documents in U.S. fisheries.
- Basic requirements of the ESA, MMPA; CZMA, CWA, and OCSLA as they relate to the management of living marine resources and essential fish habitat.
- U.S. DOC standards for preparation of analyses required under the Regulatory Flexibility Act; EO 12866, and EO 12899, and case law that has shaped the preparation of these documents in U.S. fisheries.
- The role that special purpose congressional action e.g., ANCSA, ANILCA, and the AFA have played in the management of fisheries in Alaska and in federal waters offshore of Alaska.
- The role that the common ownership, sustainable yield, and limited entry sections of the Alaska constitution play in defining the suite of management actions available to the Alaska Board of Fish.
- The organization and authority of the Alaska Board of Fish and the Alaska Department of Fish and Game.
- The development and evolution of UNCLOS, the main provisions related to fisheries, and the role they play in international and domestic fisheries.
- The basic character and provisions of major international treaties and conventions related to North Pacific fisheries.
- The organizational structure and legal authority for enforcement of State, Federal, and International fisheries law.

Course Readings: The principle texts for this course are federal and state statutes and regulations and international agreements related to fisheries and court cases dealing with these laws and agreements. These materials will be posted on the UAF Electronic Blackboard. Alternatively, because these texts are government documents, they are available on government web sites.

Instructional Method: A combination of lectures and facilitated discussions. UAF's Electronic [Blackboard](#) will be used to post links to reference materials and lecture notes. Students will be expected to have studied the assigned readings before each class.

Evaluation: Evaluation will be based on 2 essay-short answer take-home exams (30% each), a 10-20 page (double-spaced Times New Roman 11pt font) individual research paper (30%), and classroom participation (10%). The first exam will cover key concepts in federal law (e.g., deference, standing, MSFCMA national standards, exhaustion of remedies, authority of NMFS outside Council process, deeming, etc.). The second exam will cover state and international law and enforcement of federal, state, and international law. The research paper should explore a fisheries-related legal case that is not covered in class. Your paper

should provide background on the case (who did what and why did it lead to litigation), a summary of the arguments advanced by the plaintiffs and defendants, a summary of the decision and reasoning behind the decision, and a discussion of the immediate effects and broader implications of the decision and what you think can be learned from it. You should plan on at least 10 pages and in no case should your paper exceed 20 pages. Students are expected to attend all class sessions having completed reading assignments and being prepared to engage in discussion. Students will be asked and are expected to be able to answer questions about the content and implications of laws covered in the reading assignments.

Each exam and the research paper will be scored on a 100pt scale. Letter grades will be based on a sum of scores on the exams and research paper. All writing will be judged for content and exposition. Course grades will be assigned based on a weighted sum of scores on the exercises and exam: $\geq 90 = A$; ≥ 80 but $< 90 = B$; ≥ 70 but $< 80 = C$; ≥ 60 but $< 70 = D$; and $< 60 = F$.

Course policies: Academic dishonesty cannot be excused; at best it represents indolence, at worst it is a willful and unconscionable act of intellectual theft. Students enrolled in this class are expected to conform with the UAF Student Code of Conduct (www.uaf.edu/catalog/current/academics/regs3.html). Plagiarism and cheating are particularly heinous forms of academic dishonesty and will not be tolerated. If you plagiarize on the take-home exams or research paper you will receive an F in this course and you may face additional disciplinary actions initiated by UAF. Plagiarism includes representing another person's work as one's own by paraphrase or direct quotation. It also includes the unacknowledged use of materials prepared by anyone engaged in the selling of term papers or other academic materials. The take-home exams are due at the start of class on the assigned day. Unless prior permission has been granted by the instructor, late assignments will be docked 10 points for each day after the due date. That is, an assignment turned in within 24hrs of the deadline is worth, at most, 90 points; an assignment turned in more than 24 hours late but less than 48 hours late is worth, at most, 80 points; etc. The research paper is due at the end of the scheduled final examination period. Late research papers will not be accepted.

Disabilities Services: The office of Disability Services implements the Americans with Disabilities Act (ADA), and insures that UAF students have equal access to the campus and course materials. I will work with the Office of Disabilities Services (208 WHIT 474-5665) to provide reasonable accommodation to students with disabilities.

Other Support Services: The Writing Center (www.alaska.edu/english/writing-center/) offers tutorial and fax-tutorial assistance with grammar, composition, and style. Students connected to the UAF network (Ethernet or wireless on-campus or through VPN off-campus) have access to UAF Library catalogs, electronic journal holdings, and interlibrary loan resources. Miscellaneous support services (e.g., tutorial services, instruction in mathematics skills, academic advising, mentoring and personal support, cultural and social engagement, use of laptop computers, labs, and other technology resources, and direct financial assistance to qualified low-income participants) are available through UAF Student Support Services (www.uaf.edu/sssp/index.html).

Registration: Registration can be completed at: uaonline.alaska.edu.

COURSE OUTLINE & READING ASSIGNMENTS:

1. **US Legal Framework for Fisheries Management**
 - a. Overview of U.S. Legal System, Common Law and Public Trust Doctrine week 1

Lon Fuller, "The Case of the Speluncean Explorers," 62 Harvard Law Review 616 (1948).

Jan S. Stevens, "The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right," 14 U.C. Davis Law Review 195 (1980).

CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988).
 - b. Introduction to U.S. Fishery Policy and Magnuson-Stevens Fishery Conservation and Management Act ("MSFCMA") week 2

U.S. Commission on Ocean Policy, "An Ocean Blueprint for the 21st Century," (2004): pp. 30-59.

Michael L. Weber, "From Abundance to Scarcity: A History of U.S. Marine Fisheries Policy," (2002), pp. 12-16, 19-36, 46-55, 75-94, 173-193.

Marian Macpheson, "Integrating Ecosystem Management Approaches into Federal Fishery Management through the Magnuson-Stevens Fishery Conservation and Management Act," 6 Ocean & Coastal Law Journal 1 (2001).

Natural Resources Defense Council v. Daley, 209 F.3d 747 (D.C. Cir. 2000).
 - c. MSFCMA(continued) week 3
 - A. Statutory Provisions

MSFCMA section (§) 302

NMFS's National Standard Guidelines, pp. 3-26

NMFS's regulation on "Contents of Fishery Management Plans," 50 C.F.R. section (§) 600.815

MSFCMA sections (§§) 301, 303, 304(a)-(c) & (e), 305(a)-(d)

Joseph J. Kalo, et al., (eds.), Coastal and Ocean Law – excerpt.
 - B. Relationship between the Councils and National Marine Fisheries Service

Fishing Company of Alaska, Inc. v. Gutierrez, 510 F.3d 328 (D.C. Cir. 2007)
 - C. Overfishing (revisited): the requirement to rebuild overfished stocks

Natural Resources Defense Council v. National Marine Fisheries Service, 421 F.3d 872 (9th Cir. 2005).
 - D. Essential Fish Habitat (EFH): identifying and protecting EFH.

American Oceans Campaign v. Daley, 183 F.Supp.2d 1 (D.D.C. 2000)

Natural Resources Defense Council v. Evans, 254 F.Supp.2d 434 (S.D.N.Y. 2003)

Natural Resources Defense Council v. Daley, 209 F.3d 747 (D.C. Cir. 2000).
 - d. MSFCMA(continued) week 4
 - A. Statutory Provisions and Related Material

NMFS's regulation on "Contents of Fishery Management Plans," 50 C.F.R. section (§) 600.815

NMFS's National Standard Guidelines, pp. 43-45

MSFCMA sections (§§) 2(c), 3(2) and (10), 301, 303(a)(7) and (11), 305(b)

Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Dec. 2009), read pp. 1-17
 - B. Essential Fish Habitat (EFH): identifying and protecting EFH.

American Oceans Campaign v. Daley, 183 F.Supp.2d 1 (D.D.C. 2000)

Natural Resources Defense Council v. Evans, 254 F.Supp.2d 434 (S.D.N.Y. 2003)
 - C. Bycatch

The Ocean Conservancy v. Gutierrez, 394 F.Supp.2d 147 (D.D.C. 2005)

National Coalition for Marine Conservation v. Evans, 231 F.Supp.2d 119 (D.D.C. 2002)
 - e. Regulatory Flexibility Act, Executive Order 12866, Executive Order 12899 week 5

NMFS (2000) Guidelines for economic analysis of fishery management actions

NMFS 2007) Guidance for Social Impact Assessment

- OMB (2003) Circular A-4
 McDeavitt, M.J. 2001. Impact of the Regulatory Flexibility Act on the implementation and judicial review provisions of the MSFCMA
 E.O. 12866, E.O. 12291, E.O. 12898, E.O. 13175
- f. MSFCMA(continued) week 6
- A. Quota Programs
- Alliance Against IFQs v. Brown*, 84 F.3d 343 (9th Cir. 1996).
Fisberman's Finest, Inc. v. Locke (9th Cir. 2010).
 Becky Mansfield, *Rules of Privatization: Contradictions in Neoliberal Regulation of North Pacific Fisheries*
 Peter Schikler, Has Congress Made It Harder to Save the Fish? An Analysis of the Limited Access Privilege Program (LAPP) Provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, New York University *Environmental Law Journal* (2008).
 Daniel W. Bromley, Rights-Based Fishing: The Wrong Concept and the Wrong Solution for the Wrong Problem, in *Pew Oceans Commission, Managing Marine Fisheries in the United States* (2003) at pp. 35-39.
[\[http://www.pewtrusts.org/our_work_report_detail.aspx?id=30045\]](http://www.pewtrusts.org/our_work_report_detail.aspx?id=30045)
- B. Review MSA provisions and case law and be prepared to discuss hypothetical examples in class.
- g. NEPA week 7
- A. Overview
- Ronald E. Bass, et al., *The NEPA Book*, Chapter 1.
 The *National Environmental Policy Act*, Sections 101-103 only (pay close attention to section 102(C))
 The *Council on Environmental Quality's Regulations*: 40 CFR parts 1500-1518
- B. The Requirement to Prepare Environmental Impact Statement (EIS)
1. Is It a Major Federal Action?
Kleppe v. Sierra Club, 427 U.S. 390 (1976)
 2. Does It Significantly Affect the Quality of the Human Environment?
Grand Canyon Trust v. Federal Aviation Administration, 290 F.3d 339 (D.C. Cir. 2002)
 3. Mitigating to a Finding of No Significant Impact.
Spiller v. White, 352F.3d 235 (5th Cir. 2004).
 4. Is the EIS Adequate?
Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989)
 5. Supplementing the EIS
Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989)
- h. ESA week 8
- A. Overview
1. Introduction to the ESA
Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)
 2. Sections 4 and 7 of the ESA – Listing of Species, Designation of Critical Habitat, and the Duty to Consult
 Donald C. Bauer and Wm. Robert Irvin, eds., *Endangered Species Act: Law, Policy and Perspectives* (2nd ed.), pp. 1-6, 17-21, 105-116, 22-35, 41-62, 117-121
- B. ESA Listing Decisions
1. Listing Decision: Determining Whether the Species Is Threatened or Endangered in a Significant Portion of Its Range,
Defenders of Wildlife v. Norton, 258 F.3d 1136 (9th Cir. 2001)
 2. Listing/De-Listing Decisions: Listing Less Than the Entire Species,
Defenders of Wildlife v. Salazar, 2010 WL 3084194 (D. Mont. 2010)
- i. Problems in Federal Fisheries Management week 9
- A. The Endangered Stellar Sea Lion and the Bering Sea Fisheries
Greenpeace v. NMFS, 55 F.Supp.2d 1248 (W.D. Wash. 1999)

B. Navy Sonar

Section 101 of the *Marine Mammal Protection Act* (MMPA)

Natural Resources Defense Council v. Evans, 279 F.Supp.2d 1129 (N.D. Cal. 2003)

Exam 1 will be given out at the end of week 9 and due at the beginning of week 10.

2. **Alaska State Fisheries Law**

- a. The Alaska Constitution and fisheries management week 10

[Article VIII](#) of the Alaska Constitution. Compare Article VIII (paying particular attention to §3) to [Title VIII](#) of the Alaska National Interest Lands Conservation Act (ANILCA).

[State v. Ostrosky](#), 667 P.2d 1184 (1983).

[CFEC v. Apokedak](#), 606 P.2d 1255 (1980).

[State of Alaska v. Grunert](#), 109 P. 3d 924 (2005).

- b. Alaska statutes and regulations relating to fisheries management week 11

The “Nuts and Bolts of Testifying Before the Board of Fisheries,” Sue Aspelund.

The 1883 Organic Act – An Act Providing a Civil Government for Alaska.

3. **International Fisheries Law**

- a. International Treaties and Conventions week 12

FAO Circular No. 1054, The Role of International Fishery Organizations and Other Bodies in the Conservation and Management of Living Aquatic Resources

(<http://www.fao.org/docrep/012/i1493e/i1493e.pdf>)

Cerne, M. 1996. Enforcement aspects of the agreement for the implementation of the provisions of the United Nations convention on the law of the sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

- b. UN Convention on the Law of the Sea weeks 13 & 14

UNCLOS has been in force since 1994. Although the US is not a signatory, the US has parallel domestic legislation for key provisions related to extended jurisdiction, pollution, transportation, and fisheries.

4. **Enforcement**

- a. Structure and function of enforcement in State, Federal, and International fisheries week 15

FAO International plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing

(<http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>)

Coast guard fisheries enforcement strategic plan Ocean Guardian

(<http://www.uscg.mil/hq/cg5/cg531/lmr.asp>)

NOAA OLE (http://www.nmfs.noaa.gov/ole/ole_about.html)

NOAA OLE Alaska Division (http://www.nmfs.noaa.gov/ole/ak_alaska.html).

Exam 2 will be given out at the end of week 15 and due at end of the scheduled final exam period.