FISH 672: Law and Fisheries (2 credits)

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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: \( \geq 90 = A; \geq 80 \text{ but } <90 = B; \geq 70 \text{ but } <80 = C; \geq 60 \text{ but } <70 = D; \text{ and } < 60 = F. \)

**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: uonline.alaska.edu.
COURSE OUTLINE & READING ASSIGNMENTS:

I. US Legal Framework for Fisheries Management
   a. Overview of U.S. Legal System, Common Law and Public Trust Doctrine
      week 1
      Jan S. Stevens, “The Public Trust: A Sovereign’s Ancient Prerogative Becomes the People’s Environmental
   b. Introduction to U.S. Fishery Policy and Magnuson-Stevens Fishery Conservation and Management Act
      (“MSFCMA”) week 2
      Marian Macpherson, “Integrating Ecosystem Management Approaches into Federal Fishery Management
      through the Magnuson-Stevens Fishery Conservation and Management Act,” 6 Ocean & Coastal Law Journal 1
   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)
      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
      D. Essential Fish Habitat (EFH): identifying and protecting EFH.
   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.
      C. Bycatch
   e. Regulatory Flexibility Act, Executive Order 12866, Executive Order 12899 week 5
      NMFS (2000) Guidelines for economic analysis of fishery management actions
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).
Fisherman’s Finest, Inc. v. Locke (9th Cir. 2010).
Becky Mansfield, Rules of Privatization: Contradictions in Neoliberal Regulation of North Pacific Fisheries
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?
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)
   Spiller v. White, 352F.3d 235 (5th Cir. 2004).
4. Is the EIS Adequate?
5. Supplementing the EIS
h. ESA week 8
A. Overview
1. Introduction to the ESA
2. Sections 4 and 7 of the ESA – Listing of Species, Designation of Critical Habitat, and the Duty to Consult
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,
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)


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

   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).


b. Alaska statutes and regulations relating to fisheries management

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


3. International Fisheries Law

a. International Treaties and Conventions

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

   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

   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

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

   Coast guard fisheries enforcement strategic plan Ocean Guardian

   NOAA OLE

   NOAA OLE Alaska Division

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