



Federal Fisheries Management, the National Standards & the Courts

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1976: Fishery Conservation & Management Act Passed

Now: Magnuson-Stevens Fishery Conservation & Management Act

Foreign Fishing & the Exclusive Fishing Zone

Regional Fishery Management Councils

Fishery Management Plans

Figure 19.2 U.S. Fisheries Are Managed at the Regional Level

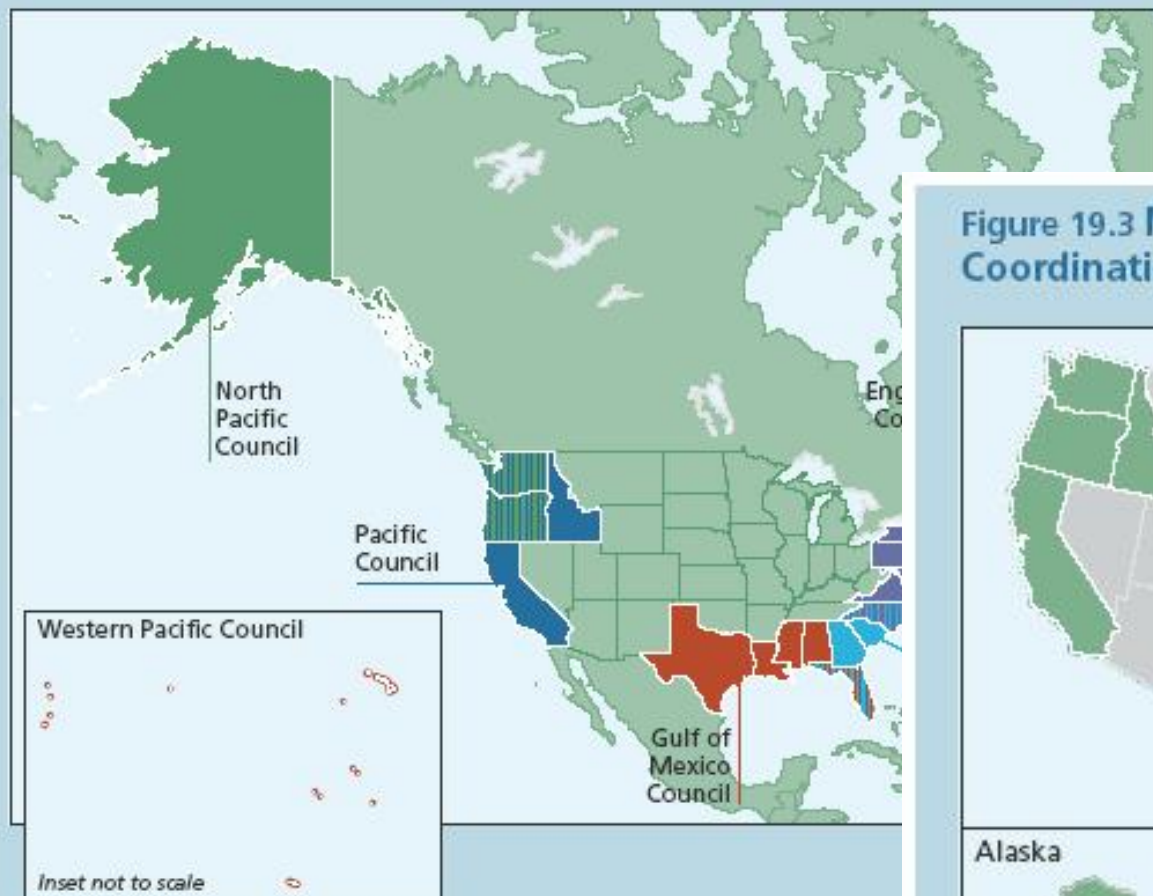
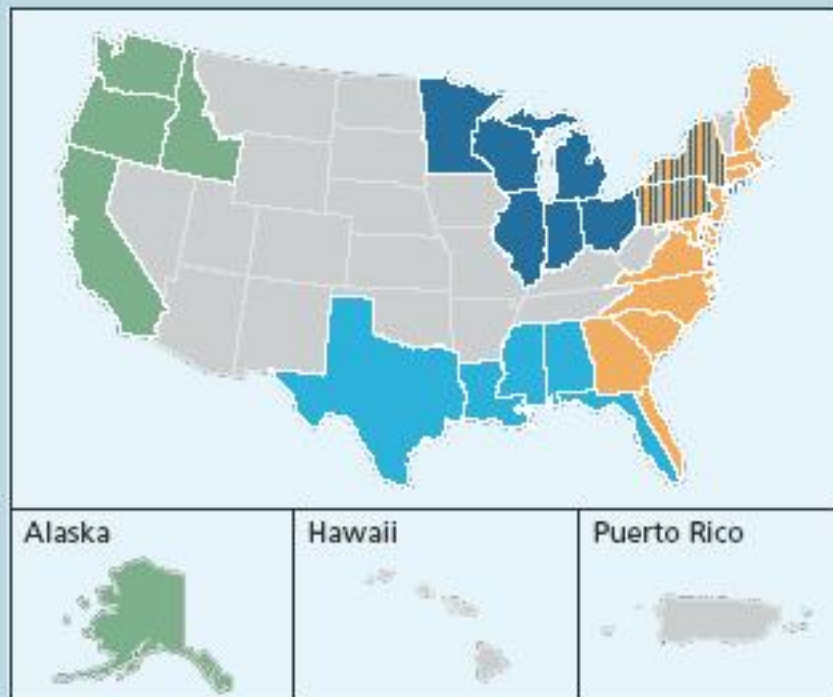


Figure 19.3 Migratory Fish Require Coordination Across Multiple Jurisdictions



- Pacific States Marine Fisheries Commission
- Gulf States Marine Fisheries Commission
- Atlantic States Marine Fisheries Commission
- Great Lakes Fishery Commission (also includes Canada)



Fishery Management Plans Must Include:

Conservation & Management Measures

Description of the Fishery

Optimum Yield

Criteria to Determine Overfished Status

Allocation between Users

Essential Fish Habitat

Fishery Impact Statement

Other Discretionary Elements: permits, zone, limited access



Essential Fish Habitat

Defined as: “Waters and Substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”

Councils were responsible for:

- 1. Describing & Identifying EFH.**
- 2. Minimizing adverse effects caused by fishing.**
- 3. Identifying other actions to conserve and enhance habitat.**

Councils MAY comment on other activities affecting habitat.

Councils MUST comment if it involves anadromous species.

Councils MUST reduce damage by fishing activities.



**And, FMPs must comply with the
Ten National Standards.**

National Standards

- 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. ... based upon the best scientific information available.**
- 3. ... to the extent practicable, minimize adverse impacts on [fishing] communities.**
- 4. ... to the extent practicable, minimize bycatch & ... minimize the mortality of such bycatch.**
- 5. ... to the extent practicable, promote the safety of human life at sea.**
- 6. ... to the extent practicable, minimize adverse impacts on [fishing] communities.**
- 7. ... to the extent practicable, minimize bycatch & ... minimize the mortality of such bycatch.**
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- 10. ... to the extent practicable, promote the safety of human life at sea.**



NRDC v. Daley, 209 F.3d 747 (DC Cir. 2000).

Summer Flounder FMP: Lower Court found inherent conflict between Standards 1 and 8.

Holding:

***No inherent conflict between National Standard 1 & National Standard 8.**

***FMP must have at least a 50% chance of reaching its target.**

Chevron Deference:

1. Is statute silent or Ambiguous?

If yes, then,

2. Defer to Agency if interpretation is reasonable.

