

16 USC 1856: State jurisdiction

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From Title 16-CONSERVATION

CHAPTER 38-FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV-NATIONAL FISHERY MANAGEMENT PROGRAM

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§1856. State jurisdiction

(a) In general

(1) Except as provided in subsection (b), nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this chapter, except as provided in subsection (b), the jurisdiction and authority of a State shall extend-

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are-

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this chapter is approved and implemented for such fishery.

(b) Exception

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, that-

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).

(c) Exception regarding foreign fish processing in internal waters

(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if-

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C) or has received a permit under section 1824(d) of this title;

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed; and

(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)-

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after-

(i) consulting with the appropriate Council and Marine Fisheries Commission, and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection-

(A) The term "fish processing" includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase "internal waters of a State" means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 1821(b) of this title during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

(Pub. L. 94–265, [title III, §306, Apr. 13, 1976](#), 90 Stat. 355 ; Pub. L. 97–191, [§1, June 1, 1982](#), 96 Stat. 107 ; Pub. L. 97–453, [§9, Jan. 12, 1983](#), 96 Stat. 2491 ; Pub. L. 98–623, [title IV, §404\(4\), Nov. 8, 1984](#), 98 Stat. 3408 ; Pub. L. 99–659, [title I, §101\(c\)\(2\), Nov. 14, 1986](#), 100 Stat. 3707 ; Pub. L. 101–627, [title I, §112, Nov. 28, 1990](#), 104 Stat. 4453 ; Pub. L. 104–297, [title I, §112\(a\)–\(c\), Oct. 11, 1996](#), 110 Stat. 3595 , 3596.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (3)(C) and (b)(1)(A), was in the original "this Act", meaning Pub. L. 94–265, [Apr. 13, 1976](#), 90 Stat. 331 , known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1996-Subsec. (a)(3). Pub. L. 104–297, §112(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State."

Subsec. (b)(3). Pub. L. 104–297, §112(b), added par. (3).

Subsec. (c)(1)(A). Pub. L. 104–297, §112(c)(1), substituted "(4)(C) or has received a permit under section 1824(d) of this title;" for "(4)(C); and".

Subsec. (c)(1)(C). Pub. L. 104–297, §112(c)(2), (3), added subpar. (C).

1990-Subsec. (c)(1)(B). Pub. L. 101–627, §112(1), inserted before period at end "and the application specifies the species to be processed".

Subsec. (c)(2). Pub. L. 101–627, §112(2), added par. (2) and struck out former par. (2) which read as follows: "The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State."

1986-Subsec. (b)(1)(A). Pub. L. 99–659 substituted "exclusive economic zone" for "fishery conservation zone".

1984-Subsec. (a). Pub. L. 98–623 designated existing provisions as pars. (1) to (3), in par. (2), as so designated, redesignated cls. (1) and (2) as subpars. (A) and (B), respectively, and added subpar. (C), and in par. (3), as so designated, inserted exception relating to par. (2).

1983-Subsec. (a). Pub. L. 97–453 inserted provision delineating the jurisdiction and authority of a State over waters adjacent to the State and over Nantucket Sound.

1982-Subsec. (c). Pub. L. 97–191 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–191, [§3, June 1, 1982](#), 96 Stat. 108 , provided that: "This Act [amending this section and section 1857 of this title] shall take effect on June 1, 1982."

AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY

Pub. L. 105–384, [title II, §203, Nov. 13, 1998](#), 112 Stat. 3453 , as amended by Pub. L. 107–77, [title VI, §624, Nov. 28, 2001](#), 115 Stat. 803 ; Pub. L. 109–479, [title III, §302\(e\), Jan. 12, 2007](#), 120 Stat. 3624 ; Pub. L. 115–49, [§1, Aug. 18, 2017](#), 131 Stat. 1000 , provided that:

"(a) IN GENERAL.-Subject to the provisions of this section and notwithstanding section 306(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1856(a)), each of the States of Washington, Oregon, and California may adopt and enforce State laws and regulations governing fishing and processing in the exclusive economic zone adjacent to that State in any Dungeness crab (Cancer magister) fishery for which there is no fishery management plan in effect under that Act [16 U.S.C. 1801 et seq.].

"(b) REQUIREMENTS FOR STATE MANAGEMENT.-Any law or regulation adopted by a State under this section for a Dungeness crab fishery-

"(1) except as provided in paragraph (2), shall apply equally to vessels engaged in the fishery in the exclusive economic zone and vessels engaged in the fishery in the waters of the State, and without regard to the State that issued the permit under which a vessel is operating;

"(2) shall not apply to any fishing by a vessel in exercise of tribal treaty rights except as provided in *United States v. Washington*, D.C.

No. CV–70–09213, *United States District Court for the Western District of Washington*; and

"(3) shall include any provisions necessary to implement tribal treaty rights pursuant to the decision in *United States v. Washington*, D.C. No. CV–70–09213.

"(c) LIMITATION ON ENFORCEMENT OF STATE LIMITED ACCESS SYSTEMS.-Any law of the State of Washington, Oregon, or California that establishes or implements a limited access system for a Dungeness crab fishery may not be enforced against a vessel that is otherwise legally fishing in the exclusive economic zone adjacent to that State and that is not registered under the laws of that State, except a law regulating landings.

"(d) STATE PERMIT OR TREATY RIGHT REQUIRED.-No vessel may harvest or process Dungeness crab in the exclusive economic zone adjacent to the State of Washington, Oregon, or California, except as authorized by a permit issued by any of those States or pursuant to any tribal treaty rights to Dungeness crab pursuant to the decision in *United States v. Washington*, D.C. No. CV–70–09213.

"(e) STATE AUTHORITY OTHERWISE PRESERVED.-Except as expressly provided in this section, nothing in this section reduces the authority of any State under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish processing, or landing of fish.

"(f) TERMINATION OF AUTHORITY.-The authority of the States of Washington, Oregon, and California under this section with respect to a Dungeness crab fishery shall expire on the effective date of a fishery management plan for the fishery under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.].

"(g) REPEAL.-[Repealed section 112(d) of Pub. L. 104–297, see below.]

"(h) DEFINITIONS.-The definitions set forth in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall apply to this section.

"(i) Not later than December 31, 2001, and every 2 years thereafter, the Pacific State Marine Fisheries Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources [now Committee on Natural Resources] of the House of Representatives a report on the status and management of the Dungeness Crab fishery located off the coasts of the States of Washington, Oregon, and California, including-

"(1) stock status and trends throughout its range;

"(2) a description of applicable research and scientific review processes used to determine stock status and trends; and

"(3) measures implemented or planned that are designed to prevent or end overfishing in the fishery."

Pub. L. 104–297, title I, §112(d), Oct. 11, 1996, 110 Stat. 3596 , as amended by Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009 , 3009-41, which provided interim authority to the States of Washington, Oregon, and California to enforce State laws and regulations governing fish harvesting and processing against any vessel operating in the exclusive economic zone off each respective State in a fishery for Dungeness crab (*Cancer magister*) for which there is no fishery management plan implemented under this chapter, was repealed by Pub. L. 105–384, title II, §203(g), Nov. 13, 1998, 112 Stat. 3454 .

FOREIGN FISH PROCESSING IN NORTON SOUND

Pub. L. 99–509, title V, §5004, Oct. 21, 1986, 100 Stat. 1912 , provided that for purposes of processing pink salmon within the internal waters of the State of Alaska, the geographic area bounded on the north by a parallel of latitude of 64 degrees, 23 minutes, on the south by a parallel of latitude of 63 degrees, 51 minutes, on the east by the baseline from which the territorial sea was measured, and on the west by the outer limit of the territorial sea, was to be considered to be internal waters of the State of Alaska for the purposes of subsec. (c)(4)(B) of this section until Sept. 30, 1993.

EXECUTIVE DOCUMENTS

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.