

LEGAL ISSUES WITH COMMUNITY PROGRAMS

National Standard 8

Conservation and management measures shall, consistent with conservation requirements of this Act, take into account the importance of fishery resources to fishing communities in order to (A) provide for sustained participation of such communities, and (B) to the extent practicable, minimize adverse impacts on such communities.

Community Programs in Alaska

Present Programs

Community Development Program

Community Quota Program

Potential Future Programs

Halibut Charter IFQ

GOA Rationalization Program

Legal Authority

The Secretary of Commerce is vested with *rulemaking* authority and *administrative implementation* authority by the Magnuson-Stevens Fishery Conservation and Management Act. There are limits on how much of that authority can be delegated.

General Rule on Delegation

Authority that has been specifically vested in an agency by Congress cannot be shifted. “Administrative officers and bodies cannot alienate, surrender, or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only them.”

73 C.J.S., Public Administrative Law and Procedure [section] 56 a. (1983).

Bottom Line

Community Programs that allow the reallocation of IFQ derived from initially issued quota shares need to have clearly defined set of rules and must be subject to agency review and Secretarial approval (unless expressly authorized otherwise by Congress). This preserves the right to appeal agency actions and to obtain judicial review of final agency actions.