



June 1977 Agenda Item 8
U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF GENERAL COUNSEL
P.O. Box 1668, Juneau, Alaska 99802

June 22, 1977

Mr. Jim H. Branson, Executive Director
North Pacific Fishery Management Council
P.O. Box 3136DT
Anchorage, Alaska 99510

Dear Jim:

This letter is in response to the Council's request for an opinion regarding possible use of the Endangered Species Act of 1973 (the Act) to restrict the importation of undersized halibut.

This Act allows for classifying certain plants and animals as either: 1) endangered ("...in danger of extinction throughout all or a significant portion of its range..."); or 2) threatened ("...likely to become an endangered species within the foreseeable future...").

1. Endangered Species - The Act provides that for species listed as endangered, it is unlawful for any person subject to the jurisdiction of the United States to:

1. import into or export from the U.S.;
2. take, within the territorial sea or on the high seas;
3. process, sell, or transport;
4. ship in interstate or foreign commerce.

Therefore, it would be inappropriate to attempt to list halibut as endangered in order to restrict importation, since such action would also result in a prohibition against taking halibut by U.S. fishermen.

2. Threatened Species - The above prohibitions do not automatically apply to a species that is listed as threatened. In regard to regulating threatened species, the Act states:

"Whenever any species is listed as a threatened species...the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited...with respect to endangered species..." (section 4(d)). (Emphasis added)

While this section suggests that the Secretary could restrict the importation of certain halibut without restricting U.S. take, the Act's definition of "conservation", when considered in the context of this section, indicates otherwise. Section 3(2) of the Act states that "conservation" means:

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"...to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking."

The emphasized portion of the above language indicates that taking of a threatened species by anyone subject to U.S. jurisdiction could only be allowed in very limited circumstances, which generally would not be applicable to halibut.

It is concluded that the Endangered Species Act would not be an appropriate mechanism for restricting the importation of undersized halibut. However, I will examine other Federal statutes that might be applicable to this problem, and report to you at a future date whether any other current law could be used to restrict the importation of halibut.

Sincerely,



James K. White
Alaska Regional Counsel

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