

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1253 Importation of Queen Conch

SPONSOR(S): Diaz and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee	14 Y, 0 N	Rosenthal	Camechis

SUMMARY ANALYSIS

The queen conch, a protected species of concern, cannot be harvested in Florida or adjacent Federal waters. Conch is a popular menu item in south Florida, where it is imported from other countries that have not imposed a harvesting ban. The National Marine Fisheries Service is considering listing queen conchs as threatened or endangered, which would ban importation into the United States. This decision must be made solely on the basis of the best available scientific and commercial information, not possible economic impacts of the listing.

This memorial urges Congress to direct the National Marine Fisheries Service to withdraw its consideration of listing the queen conch as a threatened or endangered species. This memorial notes the economic impact such a listing might have on south Florida and refers to current protective measures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Queen Conch: *Strombus gigas*

The queen conch is a large marine mollusk with a spiral-shaped shell with a pink or orange interior. They generally live 20-30 years, but can survive for up to 40 years. By age 5, they grow to full size of about 12 inches in length and weigh about 5 pounds. These conchs live in sand, seagrass beds, and coral reef habitats in warm, shallow waters of the Caribbean Sea and Gulf of Mexico from Bermuda to Brazil. Prized for its edible meat and attractive shell, queen conchs are overfished and poached throughout their range.

Florida Conch Supply and Prohibitions

Harvesting queen conch is prohibited in Florida and adjacent Federal waters. All conch meat legally served in the United States must be imported from the Caribbean and South America.

Queen conch once constituted significant commercial and recreational fisheries in Florida. In 1975, the commercial fishery was closed due to overfishing.¹ In 1985, this ban was extended to the recreational fishery in state waters² and 1986 in contiguous federal waters for those aboard vessels registered in Florida.³ Possession of live queen conch at any time in Florida is prohibited. It is not unlawful to possess the shells if they do not contain any living queen conch at the time of collection, and if a living queen conch is not killed, mutilated, or removed from its shell prior to collection. Possession of conch meat or a queen conch shell having an off-center hole larger than 1/16 inch in diameter through its spire is prohibited.⁴

Conservation Efforts

In 1990, the Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) included queen conch in Annex II of its Protocol Concerning Specially Protected Areas and Wildlife (SPA Protocol) as a species that may be used on a rational and sustainable basis and that requires protective measures. Because of this recognition, the United States proposed queen conch for listing in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1992. Appendix II lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled.⁵ This proposal was adopted, and queen conch became the first large-scale fisheries product to be regulated by CITES.⁶

Since 1995, CITES has been reviewing the biological and trade status of queen conch under its Significant Trade Review process, which is undertaken when there is concern about levels of trade in an Appendix II species. The Queen Conch Significant Trade Review is available from CITES.⁷ Based on this review, CITES recommended that all countries prohibit the importation of queen conch from Honduras, Haiti, and the Dominican Republic.⁸ Queen conch continues to be available from many other

¹ See Queen Conch Stock Restoration by Robert Glazer of the Fish and Wildlife Research Institute, available at http://myfwc.com/media/201241/conch_report_sept2001_3352.pdf.

² Chapter 68b-16.003, F.A.C., available at <http://fac.dos.state.fl.us/>.

³ Chapter 68b-16.005, F.A.C., available at <http://fac.dos.state.fl.us/>.

⁴ See Recreational Shell Collecting: Prohibited Species, available at <http://myfwc.com/fishing/saltwater/recreational/sea-shells/>.

⁵ See <http://www.cites.org/eng/app/>.

⁶ See http://www.nmfs.noaa.gov/ia/agreements/global_agreements/cites_page/cites.html.

⁷ See <http://www.cites.org/eng/com/ac/19/E19-08-3.pdf>.

⁸ See Standing Committee Recommendations from CITES, available at <http://www.cites.org/eng/notif/2003/057.shtml>.

Caribbean countries, including Jamaica and the Turks and Caicos Islands (British West Indies), which have well-managed queen conch fisheries.

In 1996, the first meeting of the International Queen Conch Initiative⁹ was convened in San Juan, Puerto Rico, supported by the Caribbean Fishery Management Council, U.S. Department of Commerce, the Government of the Commonwealth of Puerto Rico, and the Food and Agriculture Organization of the United Nations. At that meeting, the Declaration of San Juan was adopted, meaning countries in the region pledged to work together to strengthen bilateral, sub-regional, and regional mechanisms to establish common management regimes for the sustainable use of queen conch.

Possible Listing Under Endangered Species Act

The queen conch is currently a candidate for listing under the Endangered Species Act of 1973 (ESA).¹⁰ The ESA protects plants and animals that are listed by the federal government as “endangered” or “threatened.”¹¹ Any interested person may submit a written petition requesting the listing of a species as “endangered” or “threatened” under the ESA.¹² An “endangered species” is “any species that is in danger of extinction throughout all or a significant portion of its range.”¹³ A “threatened species” is defined as “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”¹⁴

The ESA provides listing factors under which a species can qualify for protection, only one of which need to be met in order to qualify for federal listing.¹⁵ These include:

1. The present or threatened destruction, modification, or curtailment of habitat or range.
2. Overutilization for commercial, recreational, scientific, or educational purposes.
3. Disease or predation.
4. The inadequacy of existing regulatory mechanisms.
5. Other natural or manmade factors affecting its continued existence.

The decision to list, reclassify, or delist a species must be made “*solely* on the basis of the best available scientific and commercial information regarding a species’ status, without reference to possible economic or other impacts of such determination.”¹⁶

Once a species is listed pursuant to Section 4 of the ESA, it receives a number of protections under Section 7 (which applies only to federal agencies) and Section 9 of the Act.¹⁷ Section 9 applies to all “persons,” a term the statute defines broadly as applying to agencies, private citizens, corporations, etc.¹⁸ The most important protection afforded to listed species is Section 9(a)(1)(B), which states that with regard to endangered species, no person shall “take any such species within the United States or the territorial seas of the United States.”¹⁹ The statute goes on to define a “taking” as “to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect, or to attempt to engage in any such conduct.”²⁰ The Secretary of the Interior and USFWS have further defined the term “harm” to encompass “any act

⁹ See http://www.strombusgigas.com/about_strombus_gigas_page.htm.

¹⁰ See petition submitted by WildEarth Guardians to the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service, available at http://www.nmfs.noaa.gov/pr/pdfs/petitions/queenconch_petition2012.pdf. See also Notice subsequently issued by the National Marine Fisheries Service, available at <https://www.federalregister.gov/articles/2012/08/27/2012-21090/endangered-and-threatened-wildlife-90-day-finding-on-a-petition-to-list-the-queen-conch-as>.

¹¹ 16 U.S.C. § 1531 et seq.

¹² 50 C.F.R. § 424.14(a)

¹³ 16 U.S.C. § 1532(6)

¹⁴ 16 U.S.C. § 1532(20)

¹⁵ 16 U.S.C. § 1533(a)(1)

¹⁶ 50 C.F.R. § 424.11(b), emphasis in original.

¹⁷ 16 U.S.C. 1531 § 9.

¹⁸ *Id.* § 3.

¹⁹ *Id.* § 9(a)(1)(B).

²⁰ *Id.* § 3(19)

which actually kills or injures wildlife.”²¹ The scope of liability for those who “take” a listed species is therefore quite broad, although there are a couple of significant limitations. Section 11 of the ESA establishes that to incur civil and/or criminal liability under the ESA, one must act in *knowing* violation of its provisions.²²

Section 10 of the ESA provides the means by which one may apply for and receive an exemption from Section 9’s prohibition on takings.²³ Under Section 10, the federal government (via USFWS or NOAA) is authorized to issue permits allowing for the limited taking of listed species according to certain prescribed conditions.²⁴ The most common of these permits is the incidental take permit (ITP), which is required whenever a non-federal entity wishes to engage in any act that will result in the take of a listed species.²⁵

Effect of Proposed Changes

This memorial urges the Congress of the United States to direct the National Marine Fisheries Service to withdraw its consideration of listing the queen conch as a threatened or endangered species.

B. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²¹ 50 C.F.R. § 17.3(c).

²² 16 U.S.C. 1532 § 11.

²³ *Id.* § 10.

²⁴ *Id.* § 10(a).

²⁵ *Id.* Permits for ITPs must include a conservation plan addressing: the impact that will likely result from the taking; steps the applicant will take to minimize and mitigate such impacts; alternatives to the taking the applicant considered and why they were not ultimately utilized; and “such other measures that the Secretary might require.” *Id.* § 10(2)(a).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to staff of the Local and Federal Affairs Committee:

Proponents for Listing

According to supporters of the proposed listing, the queen conch is threatened by four factors identified in the ESA:

1. Their habitat is affected by a range of threats, including water pollution, degradation of seagrass beds, and destruction of essential nursery habitat.
2. The species is over-utilized for commercial purposes, primarily the harvest of conch meat for growing local and international markets.
3. Existing regulatory mechanisms are inadequate to manage the unsustainable harvest or to eliminate the widespread practice of illegal fishing.
4. Conchs are particularly biologically vulnerable to human exploitation and the resulting low adult densities limits population recovery.

Proponents for listing the queen conch argue that its habitat and behavioral characteristics make it particularly vulnerable to exploitation because it is slow moving, easily identifiable, and often gathers in large aggregations in shallow water. Furthermore, they point out that loss of the species could negatively affect seagrass communities and other ecologically valuable species. Listing the queen conch under the ESA would protect this species by limiting or restricting U.S. take and import and provide protection of critical habitat important for queen conch recovery.

Opponents to Listing

Coastal restaurant owners serving conch oppose the proposed listing of queen conch as an endangered species. Located mostly in South Florida and the Florida Keys, these restaurateurs argue that their conch dishes – such as conch fritters and conch chowder – attract tourists to their establishments. Even though listing would prohibit their competitors from serving conch as well, they are concerned about losing business and having to change their menus. These business owners also claim that conch is healthy as it is high in protein and low in fat.

Opponents also argue that conch populations can be grown in aquaculture programs. However, researchers point out that while this method might be successful in a limited program, it cannot support a commercial food level.²⁶

Listing the conch would result in banning the importation of conch, which opponents claim would have a detrimental impact on tourism in southern Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

²⁶ See Queen Conch Restoration by Robert Glazer of the Fish and Wildlife Research Institute, available at http://myfwc.com/media/201241/conch_report_sept2001_3352.pdf. More information regarding his research is available at <http://www.gulfbase.org/project/view.php?pid=qcr>.