

MARINE TURTLES- Regulations, etc.  
areas other than Hawaii

GH BALAZS

February 9, 1974

Assemblyman Edwin L. Z'berg  
Chairman  
Assembly Committee on Natural Resources  
and Conservation  
State Capital  
Sacramento, California 95814

Dear Assemblyman Z'berg:

It has recently been brought to my attention that your committee is considering a measure (draft bill no. 1502) that would allow for the sale of "farmed" green sea turtle in California. As a portion of my research deals with the life history of the green turtle in the Hawaiian Archipelago, I am greatly concerned about the ultimate effects of such a measure on conservation efforts throughout the world. By prohibiting the sale of all sea turtle products, California has set an example for the rest of the nation on how best to protect a group of animals that have been subject to overexploitation for commerce. Turtle farming may one day present a rational method for halting the decline of wild populations, however, basic biological problems must first be resolved. The "farmed" turtle as we know it today is nothing more than eggs, hatchlings or potentially gravid adult females that have been removed from their natural environment and utilized for market purposes. I sincerely hope that you will proceed with all due caution when evaluating this proposed bill as the effects may be far reaching and of an adverse nature. I would greatly appreciate receiving a formal copy of the measure and any up to date status information that you can provide.

Sincerely,

George H. Balazs  
Jr. Marine Biologist

GHB:nd

LEGISLATIVE ADDRESS  
STATE CAPITOL  
SACRAMENTO 95814  
TEL.: 445-8368

DISTRICT OFFICE  
2413 15TH STREET  
SACRAMENTO, CA 95818  
TEL.: 443-6728

# Assembly California Legislature

COMMITTEES  
CHAIRMAN, NATURAL  
RESOURCES AND  
CONSERVATION  
EMPLOYMENT AND PUBLIC  
EMPLOYERS  
JUDICIARY  
MEMBER  
CALIFORNIA COMMISSION ON  
UNIFORM STATE LAWS  
SELECT COMMITTEE ON  
COASTAL ZONE RESOURCES

EDWIN L. Z'BERG  
MEMBER OF ASSEMBLY, NINTH DISTRICT  
CHAIRMAN  
NATURAL RESOURCES AND CONSERVATION

February 20, 1974

Mr. George H. Balazs  
Jr. Marine Biologist  
University of Hawaii at Manoa  
P.O. Box 1346, Coconut Island  
Kaneohe, Hawaii 96744

Dear Mr. Balazs:

This will acknowledge your letter of February 9, relating to AB 1502. I totally agree with you that any change in the present law would have to be done with great caution and evaluated so that there would be no eggs taken from the wild that would otherwise be hatched. There of course are some situations where eggs having been laid below high tide or because of uncertain kinds of soil composition would not normally hatch, etc. There is no bill presently before the Legislature.

The measure that was introduced has been placed on the inactive file as it is my understanding the federal government has added the green sea turtle to the endangered list and therefore even though California did want to proceed we would not be able to do so. If that should be changed or if that is not the situation and there is any proceeding then the only condition under which I would be in favor of such a purpose would have to be one strictly regulated and controlled under very stringent conditions.

Very truly yours,

*Edwin L. Z'berg*  
EDWIN L. Z'BERG

ELZ:pm



STATE CAPITOL  
SACRAMENTO, CALIF. 95814  
TELEPHONE: (916) 442-4843

DISTRICT OFFICE  
STUDIO 123, EL PASO  
SANTA BARBARA, CALIF. 93101  
TELEPHONE: (805) 963-1788

# Assembly California Legislature

COMMITTEES  
LABOR RELATIONS  
TRANSPORTATION  
URBAN DEVELOPMENT AND  
HOUSING, VICE CHAIRMAN  
CALIFORNIA ADVISORY  
COMMISSION ON MARINE  
AND COASTAL RESOURCES

W. DON MACGILLIVRAY  
ASSEMBLYMAN, THIRTY-SIXTH DISTRICT

February 14, 1974

Mr. George H. Balazs  
Jr. Marine Biologist  
University of Hawaii at Manoa  
P. O. Box 1346, Coconut Island  
Kaneohe, Hawaii 96744

Dear Mr. Balazs:

Enclosed is a copy of AB 1502, relating to turtles, together with an analysis of the bill as of August 29, 1973. You will note that the bill has been amended since that date.

AB 1502 failed to get out of committee by January 30, 1974, which was the deadline for bills introduced in 1973, so it is "dead."

Sincerely,

*W Don MacGillivray*  
W. DON MacGILLIVRAY

WDM/el  
Enclosures

DISTRICT OFFICE  
3972 NORTH WATERMAN AVENUE  
SUITE 104  
SAN BERNARDINO, CALIF. 92404  
TELEPHONE: (714) 898-9201

SACRAMENTO ADDRESS  
STATE CAPITOL  
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COMMITTEES  
EDUCATION  
CONSTITUTIONAL AMENDMENTS  
PLANNING AND LAND USE  
RETIREMENT

# Assembly California Legislature

JERRY LEWIS  
ASSEMBLYMAN, SEVENTY-THIRD DISTRICT

May 6, 1974

Mr. George Balazs, Jr.  
P. O. Box 403  
Yucca Valley, CA 92284

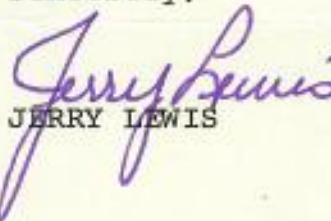
Dear Mr. Balazs:

Thank you for your recent letter commenting on Assembly Bill 1502.

You will be interested to know that this measure died in the Assembly Natural Resources and Conservation Committee and cannot be revived during the 1974 Session. I have enclosed a copy of the legislation as you requested.

I appreciate your taking the time to inform me of your views.

Sincerely,

  
JERRY LEWIS

JL:ss

Encls.



AMENDED IN ASSEMBLY JANUARY 8, 1974  
AMENDED IN ASSEMBLY SEPTEMBER 11, 1973  
AMENDED IN ASSEMBLY AUGUST 20, 1973  
AMENDED IN ASSEMBLY JUNE 28, 1973  
AMENDED IN ASSEMBLY JUNE 21, 1973  
AMENDED IN ASSEMBLY JUNE 7, 1973

CALIFORNIA LEGISLATURE—1973-74 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1502**

Introduced by Assemblyman MacGillivray

April 24, 1973

REFERRED TO COMMITTEE ON GOVERNMENT ADMINISTRATION

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*An act to add and repeal Sections 2372 and 2373 to ARTICLE 4 (COMMENCING WITH SECTION 2450) TO CHAPTER 4 OF DIVISION 3 OF the Fish and Game Code, relating to turtles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1502, as amended, MacGillivray (Gov. Adm.). Importation of turtle products.

Permits turtle meat, notwithstanding Penal Code provisions prohibiting importation for commercial purposes, to be imported into the state under such regulations as the Fish and Game Commission deems necessary. Permits products derived from green sea turtles raised in captivity in a governmentally approved mariculture program in the British West Indies, notwithstanding such Penal Code provisions prohibiting importation for commercial purposes, to be imported into



from any state or foreign county in which he conducts business and all states and foreign countries where he obtains any turtle eggs in the wild as provided in Section 2452 or 2453.

2452. The department shall issue permits pursuant to this article for products derived from green sea turtles which are either:

- (a) Raised domestically from eggs laid on property of the permittee; or
- (b) Raised domestically from all or part of eggs obtained from the wild if the eggs are, or are reasonably expected to be, ruined by the chemical or physical composition of the sands where they are laid, or if the eggs are, or are reasonably expected to be, ruined by being washed over by high seas or are from nests laid below the high tide line or are original eggs laid on beaches so heavily nested upon that the greatest part of the original nests are dug up or disturbed by other eggs laid in the same nesting season.

The permit shall specify whether or not any eggs are to be taken from the wild as provided in subdivision (b). 2453. An application for a permit under this article to import products derived from green sea turtles shall be accompanied by a filing fee in the sum of fifty dollars (\$50) which is not refundable.

2454. A person holding a permit under this article may take a specified percentage of eggs saved as the result of such person having placed on the beaches sufficient patrols with government approval to protect against the poaching of turtles. Such percentage of eggs to be taken shall relate directly to the amount of eggs saved by the stopping of such poaching and the allowing of a normal laying of eggs. Such percentage shall be negotiated with the proper local government authority. Such percentage shall be reasonable and shall be negotiated in good faith by the person or firm holding the permit. Such percentage shall be approved by the department.

2455. A person taking eggs pursuant to Section 2453 shall be required by the department to hatch out and

the state under such regulations as the commission deems necessary: a permit issued by the Department of Fish and Game. Specifies terms and conditions of such permits, and requires payment of \$50 filing fee. Requires the department inspect the operations of the permittee, as specified, and requires permittee to pay the costs of such inspections, and establish a program of inspection and surveillance to reasonably assure that such mariculture program restricts the taking of eggs from wild nests, as specified, and that the operators are conducting specified activities. Requires the department to annually report to the Legislature on such inspection and surveillance program. Authorizes commission to establish fees sufficient to pay the costs incurred by the department. Defines legislative intent that the commission review and report to the Legislature prior to January 1, 1978, on specified matters. Requires the department to report to the Legislature in the operation of the permit program by January 1, 1979. Effective only until January 1, 1979 1980.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 4. Section 2372 is added to the Fish and Game Code, to read: SECTION 1. Article 4 (commencing with Section 2450) is added to Chapter 4 of Division 3 of the Fish and Game Code, to read:

Article 4. Turtles

2450. Notwithstanding the provisions of Section 6530 of the Penal Code, products derived from green sea turtles, including meats, oils, hides, calipees, shells, and other derivatives, may be imported into this state under a permit issued in accordance with the provisions of this article.

2451. No permit shall be issued to any person pursuant to this article unless such person has obtained written permission for the exportation of turtle products



1 release locally in the area where the eggs are taken a  
 2 proportion which shall be agreed upon with the proper  
 3 local government authority of the number of eggs so  
 4 taken, for the purpose of increasing the total turtle  
 5 population in the area. Such proportion shall be  
 6 reasonable, and the person shall act in good faith in  
 7 negotiating the proportion with the proper local  
 8 government authority. The department shall approve  
 9 such proportion.  
 10 2456. Upon a finding that the permittee shall approve

11 any of the provisions of this article or has not acted in  
 12 good faith in the taking of turtle eggs from the wild, the  
 13 department shall revoke the permit.  
 14 2457. The department shall inspect the operations of  
 15 the permittee from time to time each year to determine  
 16 if the permittee is in compliance with the provisions of  
 17 this article. Such inspection may be unannounced and  
 18 permittee shall cooperate with any reasonable and lawful  
 19 request of the department for an opportunity to inspect  
 20 and for the permittee to provide any written material  
 21 requested, including proof of permits from other  
 22 jurisdictions, and actions in conformity with the  
 23 requirements contained in this article.

24 2458. Costs incurred for any inspection pursuant to  
 25 Section 2457 shall be borne by the permittee, and a note  
 26 issued by an international banking firm shall guarantee  
 27 the deposit of sufficient funds by the permittee to cover  
 28 costs incurred by the department to inspect the complete  
 29 operations, up to four times a year. The funds deposited  
 30 shall cover transportation costs, salaries, and living  
 31 expenses for the trip. An amount equal to 15 percent of  
 32 Preservation Fund be paid to the Fish and Game  
 33 administrative costs.  
 34 2459. A person holding a permit under this article  
 35 shall annually submit to the department a statement of  
 36 the conservation efforts of the permittee in regard to  
 37 green sea turtles.  
 38 2460. The department shall review the operation of  
 39 the permit program authorized under this article and

1 shall report thereon to the Legislature by January 1, 1979.  
 2 2461. This article shall remain in effect only until  
 3 January 1, 1980, and as of such date is repealed, unless a  
 4 later enacted statute, which is chaptered before January  
 5 1, 1980, deletes or extends such date.  
 6 Game Code, to read:

7 2372. Notwithstanding the provisions of Section 6530  
 8 of the Penal Code, turtle meat from outside the state may  
 9 be imported into the state under such regulations as the  
 10 commission deems necessary. Nothing in this section or  
 11 Section 2373 shall be construed to permit the importation  
 12 into this state of turtles, or meat or parts thereof,  
 13 protected under the Endangered Species Conservation  
 14 Act of 1969 (Public Law 135, 91st Congress).

15 This section shall remain in effect only until January 1,  
 16 1979, and on such date is repealed.

17 Sec: 2. Section 2373 is added to the Fish and Game  
 18 Code, to read:

19 2373. Notwithstanding the provisions of Section 6530  
 20 of the Penal Code, products derived from green sea  
 21 turtles (Chelonea Mydas) raised in captivity in a  
 22 governmentally approved mariculture program in the  
 23 British West Indies, including meats, oils, hides, carapaces,  
 24 shells, and other derivatives, may be imported into this  
 25 state under such regulations as the commission deems  
 26 necessary. The department shall establish a program of  
 27 inspection and surveillance to reasonably insure that any  
 28 such products derived from green sea turtles were  
 29 obtained from an operation which restricted the taking of  
 30 eggs from wild nests to those eggs which cannot be  
 31 expected to produce young turtles under the prevailing  
 32 conditions and therefore have no natural potential for  
 33 contributing to the wild population, and that the  
 34 operators are conducting continued research and other  
 35 activities to demonstrate the conservation of marine  
 36 turtles. The department shall make an annual report to  
 37 the Legislature on such inspection and surveillance  
 38 program.

39 The commission may establish fees for permits for the  
 40 importation of products pursuant to this section which



1 are sufficient to pay costs incurred by the department  
2 pursuant to this section.

3 It is the intent of the Legislature that the commission  
4 review and report to the Legislature by January 1, 1978,  
5 on the progress made by the mariculture program from  
6 which products derived from green sea turtles are  
7 imported into this state pursuant to this section toward a  
8 goal of total self/sufficiency in egg production from  
9 domestic stocks which would make the program  
10 independent of the need for collecting eggs from the wild  
11 except for token quantities required for crossbreeding  
12 and scientific purposes.

13 This section shall remain in effect only until January 1,  
14 1979, and on such date is repealed.

O



South Carolina -

code 28-905

unlawful for any person to kill or offer  
for sale any sea turtle or eggs - - - -

California -

Chapter 1283 Penal Code 653 - unlawful to import into  
this state for commercial purposes, to possess with  
intent to sell, or to sell within the state, the dead  
body or any part or product thereof of any . . . . sea turtle.

New York

Sec 187 NO 11-0535

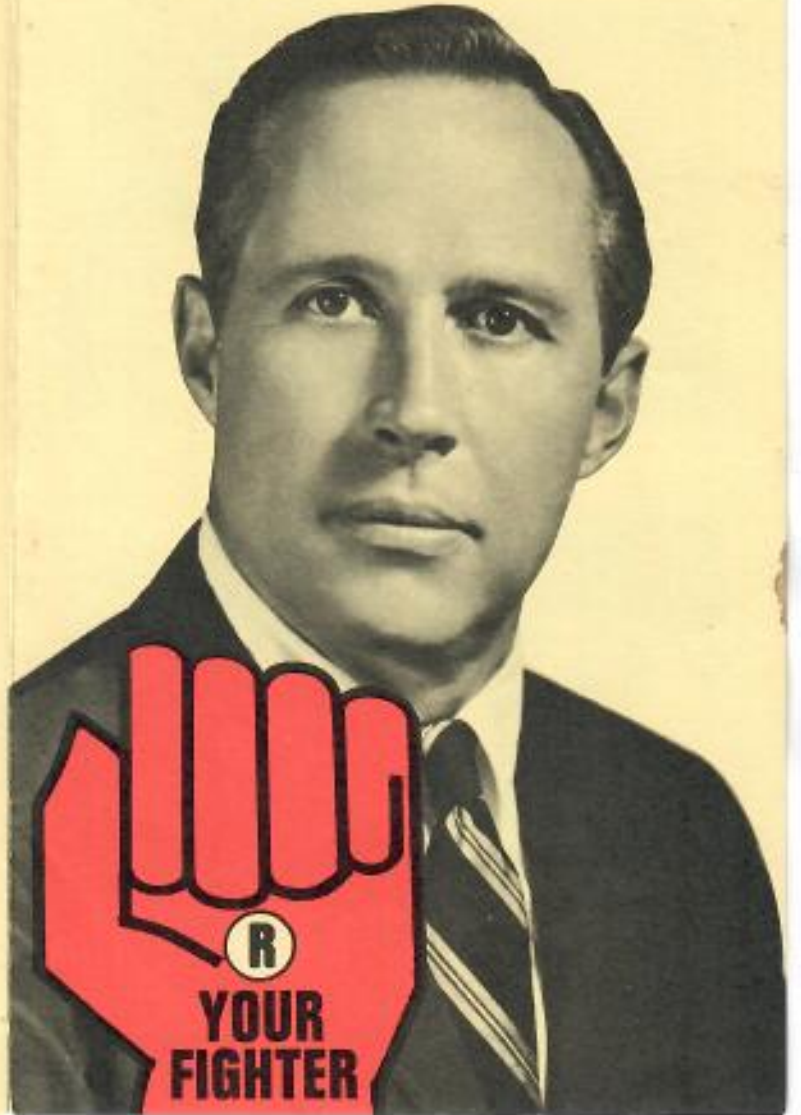
Hawksbill, Leatherback and ridley  
may not be imported, transported, possessed  
or sold in New York, live or dead, without  
a permit from this Department.

LIBRARY OF  
GEORGE H. BALAZS



**REPRESENTATIVE**  
**JOHN S.**  
**CARROLL**

**RE-ELECT YOUR FIGHTER**  
**STATE HOUSE OF REPRESENTATIVES**  
**11th DISTRICT: WAIKIKI—ALA MOANA**



**REPRESENTATIVE**  
**JOHN S.**  
**CARROLL**

Paid for by Citizens for Carroll,  
906 Financial Plaza,  
Jeanette Koga, Chairman,  
Dan Yonemori, Honorary Chairman





Active in Community Affairs



Experienced. Intelligent. Vigorous. Representative John Carroll is a man aware of the needs of our times. He is alert and understanding, compassionate yet reasonable.

He represents all the citizens. He is not beholden to any powerful business or union. John Carroll's record proves it. He will continue to work for a better life for all of us.

Member of key Legislative committees: Judiciary; Higher Education; Consumer Protection; and Environmental Protection.

Active in Community Affairs: Central YMCA; Legal Advisor, Waikiki Residents Association; Hawaii Economic Study Club; Hawaii Bar Association; Hawaii Wildlife Federation; Hawaii Air National Guard.

**BACK A FIGHTER!  
VOTE FOR CARROLL!**

**STATE HOUSE OF REPRESENTATIVES  
11th DISTRICT: WAIKIKI — ALA MOANA**



Fighter Pilot & Commercial Aviator



Intense interest in Protecting Our Environment  
On Kure Island



On Mauna Kea





# CARROLL

## LEADS THE FIGHT FOR A BETTER LIFE

### HE INTRODUCED OR FOUGHT FOR LEGISLATION TO:

- Reduce noise levels in Waikiki
- Preserve Hawaii's shorelines and protect surfing sites
- Reduce the unfair assessment of Waikiki residents
- Eliminate the Waikiki By-Pass
- Increase recreational facilities, provide mini-parks for Waikiki
- Impose a building moratorium in Waikiki
- Provide Bikeways for the 11th District and all of Oahu
- Bring the World Surfing Championships to Hawaii
- Provide fee simple ownership for condominium and co-op owners
- Protect marine life, especially whales and green sea turtles
- Help the Hawaii School for the Deaf and Blind on Oahu
- Obtain funds for mass transit and other alternatives to automobiles
- Require Open Government (a viable "Sunshine" Bill)
- Give you the right to sue to prevent pollution
- Amend the Taft-Hartley Act to apply to regional emergencies and **stop** shipping strikes
- Exempt Hawaii from the Jones Act during shipping emergencies
- Empower a state to override interstate commerce provisions in a transportation emergency
- Give the Legislature power to declare an emergency in a shipping strike
- Provide for recall or removal of **all** elected officials and their appointees
- Increase diversified agriculture in Hawaii



More Bikeways for 11th District



January 2, 1974

The Honorable Anson Chong  
House of Representatives  
Suite 305  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Dear Anson:

Dr. Archie Carr has recently sent me copies of his correspondence relating to mariculture of the green turtle. I am forwarding copies to you because of your continuing interest in and concern for this unique animal.

As you may be aware, I have tried to emphasize some of the very same points that are mentioned by Dr. Carr concerning the premature implementation of commercial turtle farms before basic biological and economic problems are solved. The "cart before the horse" approach to turtle culture will do nothing but further hasten the extermination of the species. Individuals and corporations advocating and financing such an approach will surely be subjected to increasing criticism by conservation-minded biologists in coming months. Only non-profit research oriented projects can help solve the problems of reproduction, nutrition and disease without creating new markets for turtle products and increasing the pressures on natural populations.

Best wishes for the New Year.

Sincerely,

George H. Balazs  
Jr. Marine Biologist

mk



HOUSE OF REPRESENTATIVES  
STATE CAPITOL  
HONOLULU, HAWAII 96813

ANSON CHONG

January 4, 1974

Vice-Chairman:  
Water/Land Use & Development  
Public Employment

Members:  
Finance  
Labor  
Tourism  
Agriculture

George H. Balazs  
HIMB  
P. O. Box 1345, Coconut Island  
Kaneohe, Hawaii, 96744

Dear George,

Thank you for your note of January 2nd with Archie Carr correspondence. I appreciate your concern about "premature implementation of commercial turtle farms before basic biological and economic problems are solved."

There is a philosophical issue here: Whether killing any kind of animal or wildlife for food or commercial purposes is "good" (I've had the good fortune to have talked at length with persons, for instance, who feel that fishing should be outlawed because of the inhumane suffering hooks cause, and so on) ... or whether it is okay if the species is in no danger of extinction.

I'd like to suggest a third approach to your "cart before the horse" argument. Isn't it possible that a. non-profit research oriented projects looking into nutrition, reproduction, disease etc. and b. commercial exploitation of turtles, if done carefully, are not incompatible?

If you can come up with solid scientific arguments against any kind of commercial exploitation, it would be very helpful to me because I have the uneasy feeling that the guys that tried to pull the eel thing may be eyeing turtles, and I'd like to be on firm ground when I try to block anything in that direction. Very best wishes for the New Years!



# Memorandum

TO : Project Leaders, RBS, RF, LE, FS, WS, FA      DATE: March 28, 1974

FROM : Regional Director, BSWF, Portland, Oregon

SUBJECT: Endangered Species Act of 1973

As you are aware the President on December 28 signed Public Law 93-205, "The Endangered Species Act of 1973" (87 Stat. 884). An excellent summation of aspects of this new law was published in the January 1974 issue of the International Association of Game, Fish and Conservation Commissioners "Newsletter." Copies of the law, the IAGF&CC summation, and a Departmental letter sent to all governors relative to the new Endangered Species Act are attached for your information.

*R. Kell Martenson*

Attachments

FEB 26 1974

In Reply Refer To:  
FSF/SE

Dear Governor Bumpers:

I am writing to advise that on December 28 the President signed Public Law 93-205, "The Endangered Species Act of 1973" (87 Stat. 884). An excellent summation of most aspects of this new law was published in the January 1974 issue of the International Association of Game, Fish and Conservation Commissioners (IAGF&CC) "Newsletter." Copies of the law and the summation are enclosed.

We now are analyzing the law to determine its precise parameters. Progress in this analysis will be documented in the form of Notices and Proposed Rulemakings published in the Federal Register. We will keep you fully advised and will be pleased to receive your assistance in developing these regulations and successfully implementing this legislation.

Your attention is drawn especially to Section 6 of the law, "Cooperation with the States." Subsection (g) defines what is termed an "establishment period" during which time the Congress expects that States wishing to participate fully in this program will submit to the Secretary a certified copy of ". . .an adequate and active program for the conservation of endangered species and threatened species. . . ."

That establishment period is defined as follows:

. . .(g) TRANSITION.- (1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) The date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment. . . .



Among other things, the existence of a cooperative agreement resulting from a State's submission of an acceptable program for the conservation of endangered and threatened species:

- A. Precludes Federal preemption of the State's authority to regulate the "taking" of resident threatened or endangered fish or wildlife, and
- B. Makes such State eligible to participate in the grant-in-aid provisions of the law.

Although regulations outlining Federal requirements for such cooperative agreements have not yet been published, the general requirements set forth under Section 6.(c) are fairly explicit.

This legislation differs in other significant ways from the Endangered Species Conservation Act of 1969. Those differences should be considered in any proposal submitted by your State. Some are:

- A. The definition of "fish or wildlife" includes all forms of animal life, as well as the parts, products, eggs, or offspring thereof or the dead body or parts thereof. Special consideration is given to insects under the definition of "endangered species"—Section 3.(4).
- B. This legislation also considers all members of the plant kingdom.
- C. It speaks not only to "endangered" species, but also "threatened" species which are 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."
- D. The term "species" is defined to include any subspecies or ". . .any other group of fish or wildlife of the same or smaller taxa in common spatial arrangement that interbreed when mature. . . ." We interpret that language to coincide with what commonly is referred to as a "population."

Since the scope of this Act is considerably broader than that under which most wildlife agencies historically have operated, we suspect one of the greatest stumbling blocks to early and full participation by some States will be their lack of adequate statutory authority. In view of the relatively brief "establishment period" provided in the Act and the importance of such State participation, it is imperative that satisfactory legislation be introduced in such States as soon as possible. To expedite this, personnel of the Bureau of Sport Fisheries and Wildlife now are working with the IAGP&CC and other interested



parties in drafting suggested amendments designed to bring the model State "Nongame and Endangered Species Act," developed by the IACF&CC and the Council on State Governments, into compliance with the requirements of the new Federal law. A copy of this amended, model bill will be forwarded to you as soon as possible.

The "Endangered Species Act of 1973" represents a very significant step in the conservation and rational use of our natural resources. It also is very complex and provides significant, new opportunities for State-Federal cooperation. To help insure rapid assimilation of the Act and to provide an opportunity for full State participation in its implementation, I have requested the Bureau of Sport Fisheries and Wildlife to conduct a series of seminars on this new law. You will be notified as soon as the dates and locations have been decided upon. I hope the chief executive of your wildlife agency will be able to participate.

We are looking forward to working closely with the appropriate agencies and individuals in your State in implementing this important piece of conservation legislation.

Sincerely yours,

*/s/*  
Secretary of the Interior

Enclosures

Honorable Dale Bumpers  
Governor of Arkansas  
Little Rock, Arkansas 72201





# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
BUREAU OF SPORT FISHERIES AND WILDLIFE  
WASHINGTON, D.C. 20240

BUREAU OF SPORT FISHERIES  
AND WILDLIFE

File No. ENF 4

LE-2

Date: MAR 12 1974

## LAW ENFORCEMENT MEMORANDUM

Subject Endangered Species Act of 1973 - Prohibitions

### 1. Introduction.

This Memorandum establishes policies and procedures to be followed in the implementation of Section 9 of the Endangered Species Act of 1973. It will be supplemented by additional memoranda, as new policies and procedures are developed.

The Endangered Species Act of 1973 (hereinafter the Act) is vastly different, in many ways, from the Endangered Species Conservation Act of 1969. An analysis of the law enforcement aspects of the new Act is appended. Every Special Agent should become familiar with the new Act as soon as possible. Special attention should be given to Section 9, on prohibitions, and Section 11, on penalties.

### 2. Endangered Species.

Endangered species, as used herein, means those species of foreign and native species of wildlife listed in 50 CFR 17.11 and 17.12, published January 4, 1974. These lists were in effect on December 27, 1973, and conform to the requirements of § 4(c)(3) of the Act. At a later date these lists will be republished to conform to the classification for endangered or threatened species, as the case may be, provided for in the Act. Such changes will be made in the FEDERAL REGISTER and Special Agents will be notified.

### 3. Import-Export.

Section 9(a)(1)(A): It is unlawful to "import any such [endangered] species into, or export any such [endangered] species from the United States; "



MAR 28 1974

Let's Clean Up America For Our 200th Birthday



The screening of importations should continue as it has been, with emphasis on the detection of suspected violations by Customs Inspectors, for handling by a Bureau Special Agent. Customs Inspectors who detain items should be asked not to offer a Customs Form 4607 to a suspected violator when a Bureau Special Agent is reasonably available. Whenever a Customs Form 4607 (or other "similar form" referred to in 50 CFR 12.15) is given or sent to a suspect by a Customs Officer or Special Agent, the suspect must be informed that he is entitled to contest the existence of a violation in an administrative hearing before he may be compelled to forfeit or abandon the wildlife in question.

Certain information should be obtained and recorded on all endangered species items detained, even if they are subsequently released because they come within the "grandfather" clause (see Section 11 of this Memorandum), or for any other reason. This information will be useful for intelligence, and will provide invaluable statistical data. The information must include (1) name and address of the importer/exporter or consignee; (2) description of the item of wildlife; (3) country of origin and/or country of exportation; (4) date and circumstances of purchase, gift or taking; (5) date of importation or exportation; and (6) action taken by the Bureau.

Special Agents should pay careful attention to the clearance procedures in 50 CFR 14.53(a). The exceptions to the clearance requirement, and to the requirements for filing declarations and for foreign documentation apply to the enforcement of this Act. This does not mean that endangered wildlife, if found, is not in violation. It simply means that the exempted importers are not required to go through all the procedures. Note that game and game trophies and certain furs, hides and skins are not exempted. We construe game trophies to include stuffed hawksbill turtles. If clearance is refused, the agent must then follow one of the four courses of action specified in § 14.53(b). Note especially that foreign documentation may be required only as a condition of obtaining an agent's clearance. It is not a violation to refuse to produce foreign documentation. It simply means that the agent is then entitled (assuming he knows foreign documentation is necessary) to refuse clearance. If clearance is refused, the agent must still choose one of the four courses specified in § 14.53(b) of the revised regulations.



All Special Agents now have specific authority, under § 11(e)(3) of the Act, to "detail for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation." Time delays caused by such detentions should be kept to a minimum. *Once*

The Act contains a definition of "import," in § 3(7) which is very broad. It clearly includes any transit or other shipment temporarily in this country. (See also 50 CFR 10.12.)

*Must explain to Guam, Amer. Samoa, T. territories that as states —*  
Exportation of endangered species is now prohibited. A system for the control of exports will be designed, but until that time, Special Agents should enforce that prohibition by whatever means are available. Experience gained in export control should be reported in narrative fashion on a monthly basis, beginning on March 1, 1974. These reports should be made to the Special Agent in Charge, International Investigations, through the Special Agent in Charge of each District. The reports will provide an invaluable basis for the design of the export control system mentioned above.

4. Resident Wildlife. *States - Guam, T. territory, Amer. Samoa.*

Section 9(a)(1)(B): It is unlawful to "take any such [endangered] species within the United States or the territorial sea of the United States;" *Does this mean Waters, Area First Terr. Guam, Amer. Samoa?*

*Handwritten: July 1, 1974*  
In accordance with § 6(g) these prohibitions are not yet effective and may not be enforced at the present time, in regard to any resident endangered species. This does not apply to endangered species which are specifically covered by any other Federal law or by treaty. Therefore, the "taking" prohibition may be enforced in regard to resident endangered species which are protected by:

- (1) The Migratory Bird Treaty Act,
- (2) The Marine Mammal Protection Act, and
- (3) The Bald Eagle Protection Act.

The Bureau may, either at the request of a State or by following certain emergency procedures, apply the "taking" prohibition against selected resident endangered species. You will be notified specifically if and when any such species are to be protected.

The definition of "take," in § 3(14) is very broad. It includes "collection," which means picking up the dead bodies or parts of fish and wildlife as well as live collection, and "harassment" and "harm."

*how can procedure to apply to Guam, T. territories?*



5. High Seas.

Section 9(a)(1)(C): It is unlawful to "take any such [endangered] species upon the high seas;"

This provision is effective and would usually be used where investigation indicated such a violation. High seas patrols, per se, would not generally be contemplated. *Trust Territory Ocean, Anderson.*

6. Violations After Illegal Taking.

Section 9(a)(1)(D): It is unlawful to "possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such [endangered] species taken in violation of subparagraphs (B) and (C);"

This prohibition applies only to endangered species "taken" in violation of subparagraphs 9(a)(1)(B) and 9(a)(1)(C) of the Act. It does not apply to endangered species imported or exported in violation of subparagraph 9(a)(1)(A) of the Act. Note that this prohibition does not rely on any movement in interstate or foreign commerce.

Special Agents should enforce this prohibition only in relation to those species for which the "taking" prohibitions in subparagraph 9(a)(1)(B) of the Act may be enforced.

6. Commercial Transportation, etc., In Interstate or Foreign Commerce.

Section 9(a)(1)(E): It is unlawful to "deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such [endangered] species;"

Special Agents should enforce this prohibition at this time. Note that it requires a connection with interstate or foreign commerce, and it requires that the violation occur "in the course of a commercial activity."

The term "foreign commerce" is defined very broadly in § 3(6) of the Act. Also, the term "commercial activity" is broadly defined, in § 3(1) of the Act. However, you should not construe these sections to mean, for instance, that an individual who buys a fur coat overseas has committed a violation. A "commercial activity" includes trades and exchanges of animals or products from those animals wherever those trades or exchanges are undertaken in the pursuit of any gain or profit.



8. Sale In Interstate or Foreign Commerce.

Section 9(a)(1)(F): It is unlawful to "sell or offer for sale in interstate or foreign commerce any such [endangered] species; "

This prohibition may also be enforced at this time. Note again the requirement of a connection with interstate or foreign commerce.

9. Violation of Regulation.

Section 9(a)(1)(G): It is unlawful to "violate any regulation pertaining to such [endangered] species or to any threatened species of fish or wildlife listed pursuant to § 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act."

This provision prohibits the violation of any regulation relating to endangered species. This includes all of the following revised regulations in Subchapter B, Chapter I, of 50 CFR:

(a) Part 13, Subpart D, insofar as the permits relate to endangered species;

(b) Section 14.11, insofar as the entry relates to an endangered species; § 9(f) of the Act contains the prohibition relating to the entry of all other fish and wildlife at a non-designated port;

(c) Section 14.61;

(d) Section 17.21.

While this provision also prohibits the violation of any regulation pertaining to threatened species, there are no such regulations at the present time.

10. Plants.

Section 9(a)(2) applies certain prohibitions to plants. The "taking" prohibition does not apply to plants. The authority for enforcement of this provision is in the Secretary of Agriculture. At this time, no authority has been given to Special Agents of this Bureau to enforce this provision.



11. "Grandfather" Clause.

Section 9(b) sets forth certain exceptions to the otherwise prohibited acts.

The legislative history of the Act clearly indicates that this provision includes parts and products of fish and wildlife, as well as live specimens. The term "held in captivity or in a controlled environment" refers to holding or reduction to possession by any person, whether or not that person is involved in the potential violation. Thus, for example, the importation of a leopard killed by a sport hunter on December 28, 1973, and imported into the United States on January 10, 1974, by a fellow hunter, is not a violation.

However, the exception does not apply in the case of any fish or wildlife held on December 28, 1973, "in the course of a commercial activity." Thus, the importation of a leopard coat or a stuffed hawksbill turtle which was held by a retailer on December 28, 1973, and purchased on December 29, 1973, with a subsequent importation into the United States is a violation. It does not matter if the leopards used to make the coat or the hawksbill turtle were taken 10 years ago, for instance, since they were held in the course of a commercial activity on the cut-off date, December 28, 1973.

The term "commercial activity" is broadly defined in § 3(1), as: "all activities of industry and trade, including, but not limited to, the buying and selling of commodities and activities conducted for the purpose of facilitating such buying and selling." The legislative history adds that trades and exchanges of animals or their products are included wherever the trade or exchange was undertaken for profit or gain. The following three examples will illustrate the meaning of the phrase "commercial activity":

Example 1: A U.S. citizen is touring in Denmark. On December 27, 1973 (or earlier), he buys a leopard skin coat for his wife. On January 5, he imports it into the U.S. He has not committed an act to which the law applies, since on December 28, 1973, he was the owner of the coat, for personal purposes, and the chain of commerce had ended with the sale on the 27th. Even if he did not finish paying for the coat for another year, as long as he had possession of it, and he was not going to resell it, but was using it for personal purposes, the law does not apply to him.



Example 2: A U.S. citizen goes to Kenya in December 1973, on safari. On or before December 28, 1973, he kills a leopard. He has the leopard mounted and imports it into the U.S. in March 1974. The importation is not subject to the law. The hunter was not engaged in a commercial activity, even though he bought the services of a guide, outfitters, and a taxidermist to help him take, preserve, and import the leopard. This applies even if the trophy was in the possession of the taxidermist on December 28, 1973. The taxidermist was performing a service on an item owned by another.

Example 3: A U.S. zoo exports an endangered species on January 5, 1974, without a permit, in exchange for a different animal. The endangered animal had been held by the zoo as of December 28, 1973, but the agreement for the trade had been entered into on November 30, 1973. We construe any agreement where a trade of animals occurs (which is a barter) or where an animal is sold for cash, or where an animal is sold for "credit" through an animal broker, to be a commercial transaction. In this case, then, the zoo was holding the animal primarily for the purpose of completing a commercial transaction, and a violation has been committed. If the agreement for trade or sale had been entered into after December 28, 1973, so that the animal was being held for exhibition on December 28, 1973, then we must consider the nature of the zoo. If the zoo is commercial, that is, is operated for profit, then all of its animals are held "in the course of a commercial activity." Therefore, there is no exemption, regardless of when the agreement for trade or sale is entered into. However, if the zoo is a public (city, county, State, national) institution, or is not operated for profit, then its animals are not normally held "in the course of a commercial activity." Therefore, as to any animal held by a public (or non-commercial) zoo, the law does not apply, unless the zoo had entered into an agreement prior to December 28, 1973, for a commercial transaction with the animal.

## 12. Enforcement Policy.

Director Greenwalt's faxform dated January 2, 1974, regarding the Act is hereby modified by deleting the second paragraph which described enforcement policy for implementation of the Act. The following policy replaces that January 2nd policy effective immediately.

a. The general prohibitions contained in § 9(a) of the Act are to be enforced consistent with the guidelines in this memorandum. Special attention must be given to the "grandfather" exception of § 9(b) as explained herein.



b. Sections 9(c) Violation of Convention and 9(d) Imports and Exports are not to be enforced at this time. Procedures are being developed for the licensing of importers and exporters under § 9(d) and a notice to that effect will be published in the FEDERAL REGISTER in the near future.

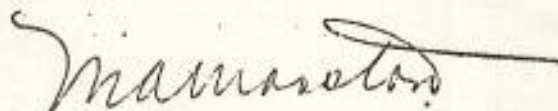
c. Section 9(e) is the statutory requirement for the Form 3-177 as also required by 50 CFR 14.61 and should be enforced in accordance with the revised regulations.

d. Section 9(f) is the statutory requirement concerning ports of entry as also required by 50 CFR 14.11 and should be enforced in accordance with the revised regulations.

e. Section 9(g) is self-explanatory and can be enforced where appropriate.

f. Special attention must be given to the penalty sections in § 11(a) and (b). The standards of culpability have changed from the 1969 Act. A full analysis of this section will be forwarded shortly.

g. Notice of significant seizures and apprehensions under this Act, as well as emergency questions, should be directed to the Special Agent in Charge, International Investigations or the Special Agent in Charge, Domestic Investigations, Division of Law Enforcement, Washington Office, by telephone (202-343-9242). Routine questions or guidance should be routed through the mail or faxform on 202-343-9317.



Associate Director-Fish and  
Wildlife Management

Attachment



U.S. DEPARTMENT OF THE INTERIOR  
Fish and Wildlife Service  
Division of Law Enforcement

Analysis of Law Enforcement Aspects of the  
Endangered Species Act of 1973

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STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06115



Law Enforcement Unit

November 20, 1972

Mr. George H. Balazs  
Jr. Marine Biologist  
Coconut Island, P.O. Box 1067  
Kaneohe, Hawaii 96744

Dear Mr. Balazs:

Enclosed is a copy of the only law we have in  
Connecticut that affords protection to the sea turtles.

Very truly yours,

*Frederick J. Pogmore*  
Frederick J. Pogmore  
Staff Conservation Officer

FJP:ob

Enc.



Connecticut - Dept. of Environmental Protection

~~Sec. 26-40b~~  
PUBLIC ACT NO. 107

AN ACT PROHIBITING THE SALE OF CERTAIN WILD ANIMALS AND WILD ANIMAL PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

26-40b Section 1. Neither any part of the skin or body, whether raw or manufactured, of the following species of wild animals nor the animal itself may be sold or offered for sale by any individual, firm, corporation, association or partnership within the state of Connecticut after the effective date of this act: Leopard (*Panthera pardus*), Snow Leopard (*Uncia uncia*), Clouded Leopard (*Neofelis nebulosa*), Tiger (*Panthera tigris*), Cheetah (*Acinonyx jubatus*), Alligator, Gavial, Caiman or Crocodile of the Order Crocodylia, Vicuna (*Vicugna vicugna*), Red Wolf (*Canis niger*), Polar Bear (*Thalarctos maritimus*), Atlantic Hawkbill Turtle (*Eretmochelys imbricata*), Mountain Lion, sometimes called Cougar (*Felis concolor*), Jaguar (*Panthera onca*), Ocelot (*Felis pardalis*), or Margay (*Felis wiedii*).

Sec. 2. Any person who violates section 1 of this act shall be fined not more than one thousand dollars for each day of violation.

26-40c Sec. 3. Any officer or agent authorized by the state board of fisheries and game or any state police officer or any police officer of any town shall have authority to execute any warrant to search for and seize any goods, merchandise or wild animal sold or offered for sale in violation of section 1 of this act or any property or item used in connection with a violation of said section. Such goods, merchandise, wild animal or property shall be held pending proceedings in any court of proper jurisdiction. Upon the conviction of any person charged with a violation of section 1 of this act the goods, merchandise or wild animal seized in connection therewith under the provisions of this section shall be forfeited and either offered to a recognized institution for scientific or educational purposes, or destroyed.

26-40d Sec. 4. The commissioner of agriculture and natural resources may permit, under such regulations as he may promulgate pursuant to sections 4-41 to 4-50, inclusive, of the general statutes, the transfer, sale, offering for sale, or delivery of any species or subspecies of wild animal listed in section 1 of this act for zoological, educational and scientific purposes, and for the propagation of such wild animal in captivity for preservation purposes, unless such transfer, sale, offering for sale or delivery is prohibited by any federal law or regulation.

Approved May 5, 1971

AMENDED IN SENATE AUGUST 20, 1974  
AMENDED IN ASSEMBLY AUGUST 14, 1974

CALIFORNIA LEGISLATURE—1973-74 REGULAR SESSION

ASSEMBLY BILL

No. 3536

Introduced by Assemblyman Keysor

March 27, 1974

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND CONSERVATION

*An act to add and repeal Article 4 (commencing with Section 2450) to Chapter 4 of Division 3 of the Fish and Game Code, relating to turtles, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3536, as amended, Keysor (N.R. & Con.). Importation of turtle products.

Permits products derived from green sea turtles, notwithstanding Penal Code provisions prohibiting importation for commercial purposes, to be imported into the state under an annual permit issued by the Department of Fish and Game and authorizes sale of products so imported. Requires permits to be either class I permits or class II permits, as specified. Specifies terms and conditions of such permits, and requires payment of \$50 filing fee. Requires the department to inspect the operations of the a class I permittee, as specified, and requires such permittee to pay the costs of such inspections, as specified. Requires the department to report to the Legislature on the operation of the permit program by January 1, 1976.

Effective only until January 1, 1977.

Vote: majority. Appropriation: yes. Fiscal committee: yes.



State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 4 (commencing with Section  
2 2450) is added to Chapter 4 of Division 3 of the Fish and  
3 Game Code, to read:

4  
5 Article 4. Turtles  
6

7 2450. Products derived from green sea turtles  
8 (*Chelonia mydas*), including meats, oils, hides, calipees,  
9 shells, and other derivatives, may be imported into this  
10 state under a permit issued by the department,  
11 notwithstanding the provisions of Section ~~6530~~ 6530 of the  
12 Penal Code *and any person may possess for commercial*  
13 *purposes, sell, or possess with the intent to sell, any such*  
14 *product which can be demonstrated to have been*  
15 *imported into this state under a permit issued pursuant*  
16 *to this article.*

17 *Permits issued pursuant to this article shall be either a*  
18 *class I permit or a class II permit. Class I permits may be*  
19 *issued to persons who raise green sea turtles and export*  
20 *their products. Class II permits may be issued to persons*  
21 *who import green sea turtles products and who shall be*  
22 *required to demonstrate that all turtle products which*  
23 *they import into the state are obtained from a class I*  
24 *permittee.*

25 2451. No class I permit shall be issued to any person  
26 pursuant to this article unless such person has obtained  
27 written permission for the exportation of turtle products  
28 from any state or foreign country in which such person  
29 conducts business, including all states and foreign  
30 countries where he obtains any turtle eggs in the wild.

31 2452. An application for a class I or class II permit  
32 under this article to import or export products derived  
33 from green sea turtles shall be accompanied by a filing  
34 fee in the sum of fifty dollars (\$50), which fee shall not  
35 be refundable.

36 2453. Any class I or class II permit issued pursuant to

1 *this article shall be valid for one year from the date of its*  
2 *issuance or repeal of this article, whichever first occurs.*  
3 *Any class I or class II permit in existence on the date that*  
4 *the department makes the finding pursuant to*  
5 *subdivision (a), or is advised of adverse affect pursuant to*  
6 *subdivision (b) of Section 2454, shall be valid until the*  
7 *anniversary date of the permit or the repeal of this*  
8 *article, whichever first occurs.*

9 *2454. No class I permit shall be issued pursuant to this*  
10 *article, if either of the following occurs:*

11 *(a) The department finds the issuance of a permit will*  
12 *adversely affect wild populations of green sea turtles. In*  
13 *making such finding the department shall confer with*  
14 *the International Union for the Conservation of Nature*  
15 *and Natural Resources, shall request their*  
16 *recommendations, and shall be guided by such*  
17 *recommendations.*

18 *(b) The International Union for the Conservation of*  
19 *Nature and Natural Resources, advises the department*  
20 *that such a permit will be adverse to the green sea turtle*  
21 *resource.*

22 *2455. The department may issue class I permits*  
23 *pursuant to this article for products derived from green*  
24 *sea turtles which are one or both of the following:*

25 *(a) Raised domestically from eggs laid on the property*  
26 *of the permittee .*

27 *(b) Raised domestically from all or part of eggs*  
28 *obtained from the wild if the eggs are, or are reasonably*  
29 *expected to be, ruined by the chemical or physical*  
30 *composition of the sands where they are laid, or if the*  
31 *eggs are, or are reasonably expected to be, ruined by*  
32 *being washed over by high seas or are from nests laid*  
33 *below the high tide line or are original eggs laid on*  
34 *beaches so heavily nested upon that the greatest part of*  
35 *the original nests are dug up or disturbed by other eggs*  
36 *laid in the same nesting season.*

37 *The class I permit shall specify whether or not any eggs*  
38 *are to be taken from the wild.*

39 *Any permit issued pursuant to this article shall be valid*  
40 *for one year from the date of its issuance or repeal of this*



1 article, whichever first occurs. Any permit in existence on  
2 the date that the department makes the finding pursuant  
3 to subdivision (a), or is advised of adverse affect pursuant  
4 to subdivision (b) of Section ~~2454.5~~, shall be valid until the  
5 anniversary date of the permit or the repeal of this  
6 article, whichever first occurs.

7 ~~2454.5~~. No permit shall be issued pursuant to this  
8 article, if either of the following occurs:

9 (a) The department finds the issuance of a permit will  
10 adversely affect wild populations of green sea turtles.

11 (b) The International Union for the Conservation of  
12 Nature and Natural Resources headquartered in Morges,  
13 Switzerland advises the department that such a permit  
14 will be adverse to the green sea turtle resource.

15 ~~2454~~ 2456. A person holding a *class I* permit under  
16 this article may take a specified percentage of eggs saved  
17 as the result of such person having placed on the beaches  
18 sufficient patrols with the approval of the proper  
19 governmental officials to protect against the poaching of  
20 turtles. Such percentage of eggs to be taken shall relate  
21 directly to the amount of eggs saved by the stopping of  
22 such poaching and the allowing of a normal laying of  
23 eggs. Such percentage shall be negotiated with the  
24 proper local governmental authority. Such percentage  
25 shall be reasonable and shall be negotiated in good faith  
26 by the person or firm holding the permit. Such  
27 percentage shall be approved by the department.

28 ~~2455~~ 2457. A person taking eggs pursuant to Section  
29 ~~2454~~ 2456 shall be required by the department to hatch  
30 out and release locally in the area where the eggs are  
31 taken a proportion which shall be agreed upon with the  
32 proper local government authority of the number of eggs  
33 so taken, for the purpose of increasing the total turtle  
34 population in the area. Such proportion shall be  
35 reasonable, and the person shall act in good faith in  
36 negotiating the proportion with the proper local  
37 governmental authority. The department shall approve  
38 such proportion.

39 ~~2456~~ 2458. A person holding a *class I* permit under  
40 this article shall annually submit to the department a



1 report on the conservation efforts of the permittee in  
2 regard to green sea turtles.

3 ~~2457~~ 2459. The department shall inspect the  
4 operations of ~~the~~ a *class I* permittee from time to time  
5 each year to determine if the permittee is in compliance  
6 with the provisions of this article. Such inspection may be  
7 unannounced and ~~the~~ permittee shall cooperate with any  
8 reasonable or lawful request of the department for an  
9 opportunity to inspect and for the permittee to provide  
10 any written material requested, including proof of  
11 permits from other jurisdictions, and actions in  
12 conformity with the requirements contained in this  
13 article.

14 ~~2458~~ 2460. Costs incurred for any inspection  
15 pursuant to Section ~~2457~~ 2459 shall be borne by the *class*  
16 *I* permittee, and a note issued by an international  
17 banking firm shall guarantee the deposit of sufficient  
18 funds by the *class I* permittee to cover costs incurred by  
19 the department to inspect the complete operations, up to  
20 four times a year. The funds deposited shall cover  
21 transportation costs, salaries, and living expenses for the  
22 trip. An amount equal to 15 percent of such funds shall be  
23 paid to the Fish and Game Preservation Fund to  
24 reimburse the department for administrative costs.

25 ~~2459~~ 2461. Upon a finding by the department that  
26 the *class I* permittee has violated any of the provisions of  
27 this article or has not acted in good faith in the taking of  
28 turtle eggs from the wild, the department shall revoke  
29 the permit.

30 ~~2460~~ 2462. The department shall review the  
31 operation of the permit program authorized under this  
32 article and shall report thereon to the Legislature by  
33 January 1, 1976.

34 ~~2461~~ 2463. This article shall remain in effect only  
35 until January 1, 1977, and as of such date is repealed,  
36 unless a later enacted statute, which is chaptered before  
37 January 1, 1977, deletes or extends such date.

O





Public Law 93-502  
93rd Congress, H. R. 12471  
November 21, 1974

From The Office of  
REPRESENTATIVE PATSY T. MINY  
U. S. Congress

## An Act

To amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the fourth sentence of section 552(a) (2) of title 5, United States Code, is amended to read as follows: "Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication."

(b) (1) Section 552(a) (3) of title 5, United States Code, is amended to read as follows:

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

(2) Section 552(a) of title 5, United States Code, is amended by redesignating paragraph (4), and all references thereto, as paragraph (5) and by inserting immediately after paragraph (3) the following new paragraph:

"(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

"(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter do novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action."

"(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown."

Public information.  
Indexes, publication and distribution.

Publication in Federal Register.

Records, availability to public.

Document search and duplication fees, regulations.

88 STAT. 1561  
88 STAT. 1562

Withheld agency records, court examination.

Complaints, response by defendant.



"(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

"(5) a copy of every rule made by such agency regarding this section;

"(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

"(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Sec. 4. The amendments made by this Act shall take effect on the ninetieth day beginning after the date of enactment of this Act.

Annual report.

Arts, p. 1561.

Agency,"  
5 USC 551.

Effective  
date.  
5 USC 552  
note.

I certify that this Act originated in the House of Representatives.

W. PAT JENNINGS

Clerk.

By W. Raymond Colley

IN THE SENATE OF THE UNITED STATES,

November 21, 1974.

The Senate having proceeded to reconsider the bill (H. R. 12471) entitled "An Act to amend section 552 of title 5, United States Code, known as the Freedom of Information Act", returned by the President of the United States with his objections to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

FRANCIS R. VALEO

Secretary.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-876 (Comm. on Government Operations) and No. 93-1380 (Comm. of Conference).

SENATE REPORTS: No. 93-854 accompanying S. 2543 (Comm. on the Judiciary) and No. 93-1200 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 120 (1974):

Mar. 14, considered and passed House.

May 30, considered and passed Senate, amended in lieu of

S. 2543.

Oct. 1, Senate agreed to conference report.

Oct. 7, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 42:

Oct. 17, vetoed; Presidential message.

CONGRESSIONAL RECORD, Vol. 120 (1974):

Nov. 20, House overrode veto.

Nov. 21, Senate overrode veto.

"(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

"(5) a copy of every rule made by such agency regarding this section;

"(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

"(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Sec. 4. The amendments made by this Act shall take effect on the ninetieth day beginning after the date of enactment of this Act.

CARL ALBERT

Speaker of the House of Representatives.

JAMES O. EASTLAND

President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U.S.,

November 20, 1974.

The House of Representatives having proceeded to reconsider the bill (H. R. 12471) entitled "An Act to amend section 552 of title 5, United States Code, known as the Freedom of Information Act", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

W. PAT JENNINGS

Clerk.

By W. Raymond Colley



We are pleased to  
forward you the  
enclosed material

CALIFORNIA LEGISLATURE  
SENATE COMMITTEE ON  
NATURAL RESOURCES  
AND WILDLIFE



SENATOR JOHN A. NEJEDLY, CHAIRMAN  
SEVENTH DISTRICT

ROBERT D. TESTA  
CONSULTANT

SENATE, STATE CAPITOL  
SACRAMENTO, CALIFORNIA 95814

1470-100 1-77 2M 08P



Introduced by Senator Nejedly

December 16, 1976

An act to ~~repeal~~ *amend* Section 2463 of , and to add Section 2464 to, the Fish and Game Code, relating to fish and game, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as amended, Nejedly. Fish and game: turtles.

Under existing law, there are comprehensive provisions which permit the Department of Fish and Game to license the importation and sale of green sea turtles, or products thereof, in California. These comprehensive provisions would be repealed July 1, 1977.

The bill would ~~delete~~ *extend* the termination provision to, and, thus, extend the duration of these provisions ~~for an indefinite period of time:~~ *until, January 1, 1981.*

*The bill would also provide that the activities authorized by such provisions may be conducted only if they are in conformity with federal law or regulations.*

This bill would take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2463 of the Fish and Game Code
- 2 is ~~repealed:~~ *amended to read:*
- 3 2463. This article shall remain in effect only until ~~July~~
- 4 ~~1, 1977;~~ *January 1, 1981*, and as of such date is repealed,



1 unless a later enacted statute, which is chaptered before  
2 ~~July 1, 1977, January 1, 1981~~, deletes or extends such date.

3 SEC. 2. *Section 2464 is added to the Fish and Game*  
4 *Code, to read:*

5 *2464. The activities authorized by this article may be*  
6 *conducted only if they are in conformity with federal law*  
7 *or regulations.*

8 SEC. 3. This act is an urgency statute necessary for the  
9 immediate preservation of the public peace, health, or  
10 safety within the meaning of Article IV of the  
11 Constitution and shall go into immediate effect. The facts  
12 constituting such necessity are:

13 The comprehensive provisions which permit the  
14 licensure of the importation and sale of green sea turtles,  
15 or products thereof, in California would be repealed and  
16 thus deprive the state of necessary business revenues.  
17 Therefore it is essential that this act take effect  
18 immediately.

O

Introduced by Senator Nejedly

December 16, 1976

An act to repeal Section 2463 of the Fish and Game Code, relating to fish and game, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as introduced, Nejedly. Fish and game: turtles.

Under existing law, there are comprehensive provisions which permit the Department of Fish and Game to license the importation and sale of green sea turtles, or products thereof, in California. These comprehensive provisions would be repealed July 1, 1977.

The bill would delete the termination provision and, thus, extend the duration of these provisions for an indefinite period of time.

This bill would take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2463 of the Fish and Game Code  
2 is repealed.

3 ~~2463. This article shall remain in effect only until July~~  
4 ~~1, 1977, and as of such date is repealed, unless a later~~  
5 ~~enacted statute, which is chaptered before July 1, 1977,~~  
6 ~~deletes or extends such date.~~

7 SEC. 2. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or  
9 safety within the meaning of Article IV of the



1 Constitution and shall go into immediate effect. The facts  
2 constituting such necessity are:  
3 The comprehensive provisions which permit the  
4 licensure of the importation and sale of green sea turtles,  
5 or products thereof, in California would be repealed and  
6 thus deprive the state of necessary business revenues.  
7 Therefore it is essential that this act take effect  
8 immediately.

O

FURTHER AMENDED 2/8/77

AMENDED IN SENATE FEBRUARY 2, 1977

SENATE BILL

No. 49

Introduced by Senator Nejedly

December 16, 1976

An act to ~~repeal~~ amend Section 2463 of , and to add Section 2464 to, the Fish and Game Code, relating to fish and game, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as amended, Nejedly. Fish and game: turtles.

Under existing law, there are comprehensive provisions which permit the Department of Fish and Game to license the importation and sale of green sea turtles, or products thereof, in California. These comprehensive provisions would be repealed July 1, 1977.

The bill would ~~delete~~ extend the termination provision to, and, thus, extend the duration of these provisions for an indefinite period of time: until, January 1, 1981. 1980.

The bill would also provide that the activities authorized by such provisions may be conducted only if they are in conformity with federal law or regulations.

This bill would take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2463 of the Fish and Game Code
- 2 is ~~repealed~~ amended to read:
- 3 2463. This article shall remain in effect only until July
- 4 ~~1, 1977~~, January 1, ~~1981~~, and as of such date is repealed,

1980

0 0 0 0



1 unless a later enacted statute, which is chaptered before  
2 *1980* July 1, 1977, January 1, 1981, deletes or extends such date.

3 SEC. 2. Section 2464 is added to the Fish and Game  
4 Code, to read:

5 2464. The activities authorized by this article may be  
6 conducted only if they are in conformity with federal law  
7 or regulations.

8 SEC. 3. This act is an urgency statute necessary for the  
9 immediate preservation of the public peace, health, or  
10 safety within the meaning of Article IV of the  
11 Constitution and shall go into immediate effect. The facts  
12 constituting such necessity are:

13 The comprehensive provisions which permit the  
14 licensure of the importation and sale of green sea turtles,  
15 or products thereof, in California would be repealed and  
16 thus deprive the state of necessary business revenues.  
17 Therefore it is essential that this act take effect  
18 immediately.

O

SENATE COMMITTEE ON NATURAL RESOURCES AND WILDLIFE  
SB 49 (Nejedly)  
as amended in the Senate  
February 2, 1977

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RE: FISH AND GAME: TURTLES

BACKGROUND:

Existing law (enacted in 1974) permits the importation of products derived from green sea turtles under a revokable permit issued by the Department of Fish and Game. Importation is permitted provided that the turtles are domestically hatched and reared and that the companies licensed to conduct such operations comply with regulations designed to protect and rehabilitate wild populations. Without such a permit, the importation of sea turtles or any part or product thereof for commercial purposes is prohibited (Penal Code Section 6530).

The 1974 legislation was subject to an automatic repeal at the end of 1976. Legislation enacted last year extended the termination date to 7/1/77.

The law prohibits the Department from issuing an importation permit if either

1. The Department finds the issuance will adversely affect wild populations of green sea turtles, or
2. The International Union for the Conservation of Nature and Natural Resources (a private organization based in Switzerland) advises the Department that such a permit will be adverse to the green sea turtle resource.

Import permittees are inspected annually by the Department, at the cost of the permittee, and permittees are required to submit an annual report to the Department. At present, the Cayman Turtle Farm on Grand Cayman Island in the British West Indies is the only firm licensed to import turtle products into California.

Turtle eggs to sustain the farm are obtained from stock and from wild populations. In 1976, the turtle farm obtained about 15,000 eggs from its own stock of 29 females and purchased 40,000 eggs from the Surinam (South America) government. The Surinam government

MORE



permits the taking of 300,000 - 500,000 green turtle eggs annually from one nesting beach. Those not sold to the Cayman Turtle Farm are utilized for human consumption. Three other turtle species enjoy full protection along the entire Surinam coast. One hundred and fifty (150) turtles were released from the turtle farm to the wild in 1976. The turtle farm estimates self-sufficiency will be reached by 1980.

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Proposed federal regulations (published as proposed rules in the Federal Register on May 20, 1975, but not yet adopted) would classify the green sea turtle as a "threatened species" but permit mariculture operations under specified conditions. Such conditions would require the operator to demonstrate significant progress towards raising the turtles from a completely self-sustaining stock during the first two years, and would require a completely self-sustaining operation after this period.

ANALYSIS:

This bill would extend the provisions of existing law until 1/1/81 and condition the continuation of California's permit program on conformance with federal law or regulations.

Much of the opposition to the concept of turtle farming appears to center around the argument that populations of green sea turtles are decreasing and the most effective way to enhance the future of the species is to depopularize and ultimately prohibit the sale and use of green sea turtle products of any kind.

The bill is an urgency measure and would be effective immediately.

SUMMARY OF WRITTEN COMMUNICATION OF SUPPORT/OPPOSITION:

Support: California Seafood Institute  
Vista Management Company, Inc.

Opposition: Bay Area Turtle & Tortoise Society  
Chelonia Magazine  
Fund for Animals  
Humane Society of the United States  
Sierra Club  
Letters from 21 individuals

2/3/77

\* \* \* \* \*