

SUBSISTENCE FILE G. BALAZS

1980s - 1990s

DRAFT

Proposed use of Turtles for Cultural Purposes

Statement by Benigno Sablan

Presented by Richard Semens

Our leaders among the Carolinian people in the Commonwealth of the Northern Marianas have asked me to humbly repeat their request that the National Marine Fisheries Service consider their cultural right to take a very limited harvest of Green sea turtles to be used for cultural and ceremonial purposes. Our leaders in the Carolinian Affairs Office in our government asked you Council members at the 1994 meeting in Saipan if there could be a waiver for a cultural Harvest during the San Isidro and San Remedio Fiesta. The NMFS turned down this request based on their consultants report done for the whole Trust Territory of the Pacific Islands in 1984 and by saying there was no new information showing the need for continuing a or allowing a subsistence harvest.

This report did recognize the subsistence and cultural/ceremonial importance of green turtles for the Carolinian People in the Carolines Islands, those low outer islands of Yap District but the report said very little about our Marianas Carolinian people from the same culture. These are the people who brought their culture with them when they migrated to our island of Saipan in the Marianas. What it did say was that the Carolinians come closer to a subsistence style of life than the other groups in the Marianas. We do not believe that the

NMFS report paid enough attention to the native rights of our Carolinian people or did them the justice of examining their cultural practices in detail.

The NMFS report was not based on any interviews with our people or on any real research on the culture. It was like a library research but there many things and cultural practices in both our Chamoru and Carolinian cultures that are not written down in libraries. These are the things we Pacific people know because we practice them, we are told about them by our elders, and sometimes because we are told that we can no longer practice them.

When the Green and Hawksbill turtles were first listed under the United States Endangered Species Act our Carolinian People were covered by an exemption for a subsistence harvest of the threatened green turtles because we were still part of of the Trust Territory and because the NMFS did recognize the importance of turtles to the Carolinians in Yap District as well as to other peoples in other parts of the Trust Territory. I am sure that some of our Carolinian people will tell you if they are asked in a right and fair way that they did take and eat some green turtles during this time. Our Carolinian People should have been able to keep their exemption after the Trust Territory Government ended but NMFS did not allow them to do so and insisted that the exemption end with the Trusteeship.

When the people of the Northern Marianas negotiated the Covenant to be come a Commonwealth of the United States they did not negotiate away any of their native rights to harvest, use and

manage the marine resources in their waters. Ever since the Commonwealth has been selfgoverning we have had a very hard time getting The NMFS to recognize our right to manage our own marine resources. Now we ask the Council and MAPAC to encourage NMFS to consider this request on behalf of our Carolinian people. We understand the meaning of an exemption to allow a subsistence harvest for certain groups of people who depend on the use of green turtles or other threatened species for their very survival. We understand that the turtles need to survive too. That is why we are requesting a review and consideration of this special request. A subsistence harvest exemption would support our peoples nutritional needs but also might take as many turtles as can be caught. A cultural or ceremonial harvest would be very important to the survival of our Carolinian People's culture and cultural practices. It would be a harvest limited to a very small number of turtles, no more than 3-5 per ceremony , perhaps 10 to 15 per year and we would be willing and proud to have NMFS observers watch or participate. NMFS could send consultants or its own staff to learn about our cultural practices with turtles. NMFS or the Council should sponsor real research with our Carolinian people before assumming that their cultural practices have been lost or are unimportant.

Such a cultural and ceremonial use would only happen in preparation for two or three of our most important festivals. These are the San Remedio Festival that happens every year and celebrates---
The San Isidro festival that celebrates--

and the ceremonies for Chief Aghurubw. Chief Aghurubw is celebrated because he is the master navigator who led his Carolinian people to Saipan and settled there in the early 1800's after the Spanish colonizers had reduced our Chamoru population and forceably moved all the Chamoru to Guam. Our Carolinian People have been trading and living with us since before Spanish times and have maintained contact with their relatives in the Carolines. It is unfair that Carolinians in the FSM can continue to celebrate the taking of a carefully limited number of turtles while our Carolinian people cannot. Thank you for this opportunity to address you all on this important issue. We look forward to hearing your response.



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APPENDIX A

May 15, 1984

TO: F/SWR - E. Charles Fullerton
THRU: GCSW - Martin B. Hochman *Martin B. Hochman*
FROM: GCSW - Robert W.K. Farrell *M B Hochman for*
SUBJECT: A Review of the Uses of "Subsistence" Exceptions in
Various Statutes and Regulations Relevant to Reviewing
the Provisions for Subsistence Takings of Sea Turtles

I.

INTRODUCTION

"Subsistence" is an important concept in an exception to the prohibitions of the Endangered Species Act of 1973 (hereafter "ESA" or "Act"). The taking of threatened or endangered species by Alaskan natives is permissible if the taking is primarily for subsistence purposes and is not accomplished in a wasteful manner. 16 U.S.C. § 1539(e)(1) and (2). In addition to this statutory exemption for Alaskan natives, a subsistence exception exists in regulations implementing the ESA for the taking of green sea turtles by residents of the Trust Territory of the Pacific Islands. 50 C.F.R. § 17.42(b)(1)(vi), 50 C.F.R. § 227.72(f).

Despite the presence of a subsistence exception in the statute the term "subsistence" is not defined in the ESA. The U.S. Fish and Wildlife Service (FWS) has defined the term in regulations implementing the ESA for threatened and endangered species under the jurisdiction of that agency. 50 C.F.R. § 17.3. However, there is no comparable definition in the regulations implementing the ESA for endangered and threatened species under the jurisdiction of the Department of Commerce/National Marine Fisheries Service (NMFS). 50 C.F.R. § 222-227.

The purpose of this memorandum is to consider the meaning of "subsistence" as it applies in the ESA threatened sea turtle regulations. Because of a lack of complete information about the intent and purpose of the sea turtle subsistence exception, the meaning of the term under the statutory Alaskan native exception will be considered. This discussion will include an



examination of a comparable subsistence exception for Alaskan natives in the Marine Mammal Protection Act of 1972. The two Alaskan native exceptions provide a general understanding of the concepts implicit in the term "subsistence" and the legislative intent behind the creation of those exemptions. The memo will also discuss the subsistence concepts utilized by the International Whaling Commission (IWC) to regulate the hunting of bowhead whales by Alaskan natives as well as the implications of the American Indian Religious Freedom Act on claims of native rights to take sea turtles.

Using the framework developed in the Alaskan native area, the specifics of the sea turtle exception will then be examined. A comparison of the Alaskan native and sea turtle subsistence exceptions will be made and a list of general criteria underlying the creation of a subsistence exception will be identified and discussed. Finally, some particular problems associated with the sea turtle exception will be examined.

II.

ALASKAN NATIVE SUBSISTENCE EXCEPTION

The subsistence exception for Alaskan natives under the ESA provides in part:

§ 1539. (e)(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by --

(A) any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection --

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native-villages or towns;

Remaining portions of the exception define "authentic native articles of handicrafts and clothing" (16 U.S.C. § 1539(e)(3)(ii)) and provide for the restriction of native subsistence taking upon a determination that an endangered or threatened species is being materially and negatively affected by the activity. (16 U.S.C. § 1539(e)(4)).

The legislative history of this section indicates that it was made a part of the ESA because of the special role that certain threatened and endangered species play in the traditional culture, livelihood and social structure of Alaskan native groups;

It has become apparent to the Committee in hearings that the case of the Alaskan native Indians, Aleuts, and Eskimos required special attention. Certain native inhabitants depend on traditional hunting practices not only for subsistence but as a means for preserving social unity. Further, it was shown that their "take" was not the principal threat to the animals involved. Accordingly, S. 1983 does not apply with respect to the taking of any endangered or threatened species by such natives, provided that the action is for the purpose of consumption or use in a native community or for creation and sale of native articles of handicrafts and clothing, and is not accomplished in a wasteful manner.

S. Rep. No. 307, 93rd Cong., 1st Sess. 7 (1973) reprinted in COMM. ON ENVIRONMENT & PUBLIC WORKS, 97th CONG. 2d Sess., LEGISLATIVE HISTORY OF THE ENDANGERED SPECIES ACT OF 1973 AS AMENDED, at 304 (1982).

The legislative history also reveals that the Alaskan native exception was based upon a similar exception contained in the MMPA and was drafted to avoid some of the problems encountered in implementing the MMPA exception.

There is also a specific exception for Alaska Natives. This was written utilizing the Marine Mammal Protection Act of 1972 (86 Stat. 1027) as a guide and was reviewed in detail with my staff and is entirely agreeable to me. I believe it provides the protection necessary for Alaskan Natives. Many of the technical changes were made as

a result of certain problems we have found in the implementation of the marine mammal bill and certain questions that have subsequently been raised by those agencies in enforcing that Act. Hopefully this will eliminate many of these ambiguities and will also, I intend, clarify our original interpretation of the Marine Mammal Protection Act.

CONG. REC. (1973) (remarks of Sen. Stevens) reprinted in COMM. ON ENVIRONMENT & PUBLIC WORKS, 97th CONG., 2d SESS., LEGISLATIVE HISTORY OF THE ENDANGERED SPECIES ACT OF 1973 AS AMENDED, at 370 (1982).

In order to understand the meaning of "subsistence" as it is used in the ESA statutory exception, the constituent elements of the section must be examined. As the ESA Alaskan native exception is based largely upon the comparable MMPA exception, the following discussion will make references to the MMPA where appropriate.

A. WHO IS INCLUDED IN THE EXEMPTION

The ESA provision is very specific in describing to whom the exception applies. Only Indians, Aleuts or Eskimos who are Alaskan natives and who reside in Alaska or non-native permanent residents of an Alaskan native village come within the exception. 16 U.S.C. § 1539(e)(1)(A) and (B).

1) Alaskan Natives: The term "Alaskan native" is not defined in either the ESA or the MMPA. However, "Alaskan native" is defined in the NMFS regulations implementing the MMPA at 50 C.F.R. § 216.3. According to this definition, an "Alaskan native" is a) a U.S. citizen who is at least one quarter Alaskan Indian, Eskimo or Aleut or combination thereof, including individuals with one quarter native blood with non-native adoptive parents, or b) any U.S. citizen who is regarded as an Alaskan native by the native village or group of which he claims to be a member and whose father or mother is or was regarded as native by any native village or group. In addition, any citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act (ANCSA) is conclusively presumed to be an Alaskan native. This same definition was adopted by the FWS in regulations implementing the ESA for species under the jurisdiction of that agency. 50 C.F.R. § 17.3.

Under section 1539(e)(1)(A) of the ESA, any Indian, Aleut or Eskimo who is an Alaskan native and who resides in Alaska is eligible for the exemption. The comparable provision in the MMPA limits the exemption to "... any Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean ..." 16 U.S.C. § 1371(b). This version was added to the MMPA by amendment in 1981.

Problems had arisen under the original MMPA provision in defining the geographical scope of the North Pacific Ocean and in determining whether Indians residing on the coast of the North Pacific in areas other than Alaska were included in the exception. See NOAA Legal Memoranda: "Participation in Joint Ventures for the Taking of Marine Mammals", Carol Teather, May 19, 1975 and "... MMPA Sensitive Cases: Application of Native Exception to Non-Alaska Natives", David Fitch, January 3, 1980. The phrase "who resides in Alaska" was added to the MMPA provision in 1981 to clarify that only Indians residing in Alaska are eligible for the exemption. The ESA provision was drafted to avoid this type of problem by specifying that only Alaskan natives residing in Alaska come within the exemption.

2) Non-Native Residents of an Alaskan Village:

The ESA exception also applies to non-native permanent residents of an Alaskan native village. The legislative history of the ESA exception indicates that this language was originally part of a separate "hardship" exception intended to include certain individuals who were permanent residents of Alaskan native communities and who relied upon subsistence hunting for survival but who did not otherwise qualify as Alaskan natives. This exception was intended to apply to no more than a dozen individuals. _____ CONG. REC. _____ (1973) (remarks of Senator Stevens), reprinted in COMM. ON ENVIRONMENT & PUBLIC WORKS, 97th CONG., 2d SESS., LEGISLATIVE HISTORY OF THE ENDANGERED SPECIES ACT OF 1973 AS AMENDED, at 378-379 (1982). In the final version of the ESA, this exemption emerged as part of the overall Alaskan native exception.

The MMPA exception adopted a more restrictive approach, not permitting a subsistence or handicraft take by non-native Alaskans. 16 U.S.C. § 1371(b). When provisions of the MMPA and ESA conflict, the ESA provides that the more restrictive provisions of the MMPA will take precedence. 16 U.S.C. § 1543. For this reason, it is arguable that the MMPA exception would control a situation where non-native Alaskans were taking threatened or endangered marine mammals.

B. PURPOSES FOR WHICH THE ANIMAL MAY BE TAKEN

The ESA Alaskan native exception is applicable only if the taking is "primarily for subsistence purposes." The exemption also provides that the non-edible by-products of an animal taken primarily for subsistence purposes may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing. 16 U.S.C. § 1539(e)(1). This differs from the MMPA exception where it is permissible to take a marine mammal if the taking is 1) for subsistence purposes or 2) for the purpose of creating and selling authentic articles of native handicraft and clothing. 16 U.S.C. § 1371(b). Under either exemption, the taking cannot be accomplished in a wasteful manner. 16 U.S.C. § 1371(b), 16 U.S.C. § 1539(e).

The second part of the MMPA exception was included to permit the continuation of the native "cottage industries" in the production of handicrafts and clothing out of the parts of marine mammals. H.R. & S. CONF. REP. NO. 1488, 92nd Cong., 2d Sess., 2, reprinted in (1972) U.S. CODE CONG. & ADMIN. NEWS 4187, 4188. The ESA exception also recognizes the native cottage industries, but requires that the initial taking be primarily for subsistence purposes -- only then can the inedible by-products of the animal be transformed into native handicrafts for sale in interstate commerce. This is consistent with the policy of the ESA not to permit commercial exploitation of threatened or endangered species, while acknowledging the important role of the cottage industries in the subsistence economy of Alaskan natives.

Although the ESA exception permits limited commercial activity in native handicrafts, neither the Act nor its regulations control the manner in which the trading will occur. The MMPA, however, does regulate the sale and transfer of native handicrafts by Alaskan natives. 50 C.F.R. § 216.23(b). Again, the ESA's statutory deference to more restrictive provisions of the MMPA suggests that commercial activity in native handicrafts manufactured from the parts of threatened or endangered marine mammals will be governed by the MMPA procedure at 50 C.F.R. § 216.23.

C. PERMISSIBLE USES

As explained at the outset, the term "subsistence" is not defined in the ESA exception or elsewhere in the Act. However, definitions of "subsistence" can be found in regulations under the MMPA and in the FWS regulations implementing the ESA.

"Subsistence" is defined in the regulations implementing the MMPA for species under the jurisdiction of NMFS as:

... the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

50 C.F.R. § 216.3

The FWS uses the same definition in the regulations implementing the MMPA for species under its jurisdiction at 50 C.F.R. § 18.3

The FWS also has a definition of "subsistence" in its regulations implementing the ESA;

'Subsistence' means the use of endangered or threatened wildlife for food, clothing,

shelter, heating, transportation and other uses necessary to maintain the life of the taker of the wildlife, or those who depend upon the taker to provide them with such subsistence, and includes selling any edible portions of such wildlife in native villages and towns in Alaska for native consumption within native villages and towns;

50 C.F.R. § 17.3.

The most recent and comprehensive definition of "subsistence" is that contained in a section of the MMPA that was added by amendment in 1981. The section concerns the transfer of management authority for species of marine mammals to state agencies.

Under 16 U.S.C. § 1379(f)(1), management authority over marine mammals cannot be transferred to the State of Alaska unless the State management plan meets certain criteria relating to subsistence and consumptive uses of the species. Section 1379(f)(2) defines the meaning of "subsistence" and related concepts:

(2) For purposes of paragraph (1), the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph --

(A) The term "family" means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term "barter" means the exchange of marine mammals or their parts, taken for subsistence uses --

(i) for other wildlife or fish or their parts, or

(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

16 U.S.C. § 1379(f)(2).

The legislative history of § 1379(f) indicates that this definition of "subsistence" was derived from a similar definition in the Alaska National Interests Land Conservation Act (ANILCA). H.R. REP. No. 228, 97th Cong., 1st Sess., 28, reprinted in (1981) U.S. CODE CONG. & ADMIN. NEWS 1458, 1478. The specificity of

the ANILCA definition reflects the fact that it was drafted with both the ESA and MMPA subsistence exceptions in mind. S. REP. NO. 413, 96th Cong., 1st Sess., 233 reprinted in (1980) U.S. CODE CONG. & ADMIN. NEWS 5070, 5177. Because the definition incorporates the concepts of both the ESA and MMPA exceptions, the ANILCA definition is the most recent and useful version of "subsistence." However, the definition is not binding upon either the ESA or MMPA Alaskan native exceptions. The ANILCA definition and its counterpart in MMPA Section 1379(f)(2) are not incorporated into the ESA, and Section 1379(f)(2) of the MMPA, by its terms, does not apply to the MMPA as a whole. For this reason the ANILCA definition is only a useful guide to the meaning of subsistence, not the definitive statement.

Based upon the foregoing definitions and the provisions of the ESA exception, it is possible to describe the permissible uses for which an Alaskan native may take a threatened or endangered marine mammal. Under all of the definitions, the animal may be taken for any purpose clearly involving a subsistence use; personal or family use for food, clothing, shelter, fuel, tools or transportation. In addition, under the FWS definition at 50 C.F.R. § 17.3, edible portions of the animal may be sold in native villages and towns for native consumption within such villages and towns. Inedible portions remaining after subsistence usage may be transformed into native handicrafts and sold in interstate commerce. Finally, under the ANILCA definition, marine mammal parts may be exchanged for other foodstuffs or for non-edible items other than money if the exchange is of a limited, non-commercial nature. Although the ESA exception and its implementing regulations do not specifically endorse the concept of "barter," it is arguable that such trading between Alaska natives could come within the meaning of the phrase "other uses necessary to maintain the life of the taker" as used in the FWS definition.

D. RESTRICTIONS UPON SUBSISTENCE TAKING

Under § 1539(e)(4) of the ESA Alaskan native exception, the Secretary may halt or limit native subsistence hunting in appropriate circumstances. If the Secretary determines that 1) a threatened or endangered species is the subject of subsistence taking by Alaskan natives and 2) the taking is materially and negatively affecting the species population, subsistence taking may be restricted by geographical area, season or in some other manner.

E. GENERAL CONCEPTS OF SUBSISTENCE

Several general concepts implicit in the term "subsistence" emerge when the various definitions are considered;

1) The taking must be "customary" and "traditional" in the native culture. Although not directly mentioned in the definitions found in the implementing regulations of the ESA, it is clear from the legislative history of the Act that the

traditional nature of subsistence hunting among Alaskan natives was an overriding factor in the decision to permit an exception to the Act. Sen. Rep. No. 307, supra, at 5. The ANILCA definition explicitly refers to "customary and traditional use" by Alaskan natives.

2) Several types of "subsistence" use are permissible. Under the definitions, personal or family use of an animal for food, clothing, shelter, fuel, tools or transportation are clearly legitimate subsistence uses.

3) The taking must be for the personal use of the taker or those who depend on the taker to provide the necessities of life. The ANILCA definition refers to this as "... direct personal or family consumption." The implementing definitions refer to it as "... uses necessary to maintain the life of the taker ... or those who depend upon the taker to provide them with such subsistence." Essentially, this is a requirement that the taking be for personal or family use and not for commercial purposes.

4) Although the taking must be for personal or family consumption, certain other uses of the animal are permissible;

- edible portions of an animal may be sold in native villages and towns for native consumption within villages and towns. This is provided in the ESA exception.

- as long as the taking is primarily for a subsistence purpose (ie., for personal or family use as food, clothing, shelter, fuel, tools or transportation) the inedible by-products of the animal can be made into native handicrafts and sold in interstate commerce. This is also provided in the ESA statutory exception.

- it may be permissible to trade or barter marine mammal products as long as the taking is of a limited, non-commercial nature. As mentioned in the discussion of subsistence uses on pages 9-12, barter is explicitly recognized in the ANILCA definition but not in the ESA or its implementing regulations. However, the definition of "subsistence" used by FWS under the ESA statutory exception approves of "other uses necessary to maintain the life of the taker." Since a broad range of subsistence uses are sanctioned under the various Alaskan native definitions, a limited barter system between Alaska natives may be permissible as an "other use necessary to maintain the life of the taker."

III.

SUBSISTENCE CONCEPTS UTILIZED BY THE INTERNATIONAL WHALING COMMISSION (IWC)

The IWC was created under the Convention for the Regulation of Whaling, 49 Stat. 3079, September 24, 1931, a multinational

agreement to establish a system of international regulation of whale fisheries to ensure the conservation and development of whale stocks. Part of the function of the IWC is to periodically review and update the regulatory measures contained in the Convention Schedule.

In the late 1970's, the IWC began work on the development of a management plan for subsistence whaling by Alaskan natives. The development of this plan was necessitated by the fact that the population of the bowhead whale, the principal target of the native subsistence hunt, was severely depleted and an orderly method was needed to limit the native take.

Several definitions of "subsistence" and related terms were utilized by the IWC in considering the management options available. In the Report of the Panel to Consider Cultural Aspects of Aboriginal Whaling in North Alaska, February, 1979, "subsistence use of whale products" was defined as:

- 1) The personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest.
- 2) The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties. A generalized currency is involved in this barter and trade, but the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested form within the local community.
- 3) The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.

In the IWC Technical Committee Working Group on Development of Management Principles and Guidelines for Subsistence Catches by Aboriginal Peoples (U.S. Report, 1981) the following definitions were developed:

Indigenous peoples means aboriginal or native people who are permanent residents of native villages, who have conducted subsistence whaling operations for as long as their history is known. The terms indigenous, aboriginal, and native are used interchangeably in this report.

Subsistence catches are whales hunted and used for personal consumption by aboriginal people, for food, clothing, shelter, handicrafts, tools, transportation and other personal uses, including the sale of parts of whales as traditional native handicrafts. They do not include whales whose parts are sold in any other manner or for any other purpose.

Local consumption is subsistence use of catches by aboriginal peoples.

The Report of the Ad Hoc Technical Committee Working Group on Development of Management Principles and Guidelines for Subsistence Catches of Whales by Indigenous (Aboriginal) Peoples, 1981, drafted these subsistence definitions:

Aboriginal Subsistence Whaling means whaling, for purposes of local aboriginal consumption, carried out by or on behalf of aboriginal, indigenous or native peoples who share strong community, familial, social and cultural ties relating to a continuing traditional dependence on whaling and the use of whales. The term includes trade in items which are by-products of subsistence catches.

Local Aboriginal Consumption means the traditional use of whale products by local aboriginal, indigenous or native communities in meeting their nutritional, subsistence and cultural requirements.

Subsistence Catches are catches of whales by aboriginal subsistence whaling operations.

These IWC definitions share the same general subsistence concepts as those developed under the MMPA and ESA definitions. Under the IWC definitions, the taking must be customary and traditional in the native culture and the taking must primarily be for personal or family consumption. A broad range of subsistence uses (food, clothing, shelter, tools and transportation) are permitted. Finally, some non-subsistence uses (barter, sale as native handicrafts) are permissible as long as the animal was taken primarily for a subsistence purpose. The take of bowhead whales by Alaska natives is limited to the use of traditional harvesting methods and weapons under the terms of the NOAA-Alaska Eskimo Whaling Commission Cooperative Agreement.

It was also evident from the IWC review of the various options available that the IWC had to balance the subsistence

needs of the native community with the need to protect the resource, just as U.S. legislators did in drafting the MMPA and ESA exceptions. As in the legislative debate over the ESA exception, the IWC was presented with evidence detailing the crucial role of the bowhead whale hunt in the culture and social structure of the affected natives.

Probably the single most important aspect of the bowhead whale hunt has been the development, integration, and maintenance of the native community and, indeed, a whole native culture. The whale hunt is an important element throughout the culture, including the role of the bowhead whale and the hunt in bowhead whale ceremonies and festivals; the spiritual relationship of the bowhead whale to the daily life of the Eskimo; the activity of the hunt and its preparation; the sharing and cooperative and competitive social structure; the distribution of the meat among villages; the leadership role played by whaling captains; and the daily consumption of whale meat throughout the year. These components link the Eskimo community, giving it a clear identity and purpose.

IWC Technical Committee Report (1981), supra p.15, at p.4

Other studies reviewed by the IWC suggested that the bowhead whale was not an essential source of nutrition in the native diet and that alternative food sources were available. However these studies reiterated that the bowhead is more than just a source of food in the native culture;

It is equally important to understand that such alternative resources would not replace bowhead whales. Whales are much more than food for the north Alaskan Eskimos. From this perspective, nothing can compensate for the absence of bowhead whale meat, muktuk, and other whale products, and certainly no activity can replace whaling as a focal subsistence tradition among these Eskimos ... Because whales provide more than food, we conclude that whaling activities themselves cannot be replaced. A simple discussion of whales as food would miss the fundamental fact that whaling is a pivotal element in north Alaskan Eskimo culture ..."

Report of the Panel to Consider Cultural Aspects of Aboriginal Whaling in North Alaska, 1979, p.23-24.

Because of the similar balancing process faced by the IWC and the drafters of the ESA exception, it is not surprising that the same general subsistence concepts emerged in both situations. Again, however, it is debatable whether the bartering of whale parts sanctioned in the IWC definitions of subsistence would be permissible under the ESA exception.

IV.

IMPACT OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Another Federal statute which has some bearing on the subsistence issue is the American Indian Religious Freedom Act (AIRFA). The statute provides:

On or after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

It should be noted that a native group must demonstrate that the taking has both past and present religious significance to come within AIRFA. The language of AIRFA and the legislative history of the Act both indicate that the law was designed to protect the ongoing religious practices of Native American religions. H.R. Rep. No. 1308, 95th Congress, 1-5, reprinted in (1978) U.S. CODE CONG. & ADMIN. NEWS, p. 1262-1266.

If a native group covered by AIRFA is able to establish that the taking of a threatened species has special significance to the group as an ongoing religious practice, the group may have a valid claim for an allowable take under threatened species regulations. However, the assertion of rights under AIRFA, standing alone, is not sufficient to exclude a native group from the prohibitions of the ESA. As in the Alaskan native situation, some legitimate subsistence needs will probably have to be documented in addition to religious and cultural significance to justify the taking of threatened or endangered marine mammals.

V.

SEA TURTLE SUBSISTENCE EXCEPTION UNDER REGULATIONS IMPLEMENTING THE ESA

Green, loggerhead and Pacific Ridley sea turtles were listed as "threatened" species under the ESA in regulations promulgated by the Department of Commerce and the Department of

Interior on July 28, 1978. (43 Fed. Reg. 32800), 50 C.F.R. §§ 17.11, 17.42, 227.71, 227.72. These regulations also listed certain breeding populations of the Green and Pacific Ridley sea turtles as "endangered" under the Act. 50 C.F.R. § 17.11.

In the same regulations, a subsistence exception was created for residents of the Trust Territory of the Pacific Islands which permits a limited take of green sea turtles. 50 C.F.R. § 227.72(f). How and why such a subsistence exception became a part of the ESA sea turtle regulations will be examined in the following section.

A. PROPOSED SEA TURTLE REGULATIONS

The proposed regulations creating a "threatened" status for the above-mentioned species of sea turtles were published on May 20, 1975. 40 Fed. Reg. 21982 (1975). In the proposed regulations, no exception for subsistence taking was contemplated. As the following excerpt indicates, the drafters of the proposed sea turtle regulations were not convinced that the need for a subsistence exception outweighed the need to protect the threatened and endangered sea turtle populations;

While we recognize that there is some subsistence taking of these species for food purposes by persons subject to the jurisdiction of the United States, these regulations do not allow for such taking. It is believed that in no case should taking for food purposes be allowed on or near nesting beaches. Although there may be a limited subsistence taking in other areas for food purposes, we do not believe it to be a dominant factor in maintaining life, as there are alternative food sources from species other than those that are believed to be threatened with extinction.

40 Fed. Reg. 21982, 21984.

After the proposed regulations were published, NMFS and FWS reached an agreement on the jurisdictional responsibilities of each agency under the ESA sea turtle regulations. Under this agreement, NMFS assumed jurisdiction over sea turtles and activities impacting sea turtles while the turtles were in the marine environment. "Marine environment" was defined as "... the oceans and seas, the bays and estuaries, and brackish water areas." FWS assumed jurisdiction over sea turtles while on the land. (Memorandum of Understanding Defining the Roles of F.W.S. and N.M.F.S. In Joint Administration of the ESA of 1973 As To Marine Turtles, July 18, 1977).

B. FINAL REGULATIONS

NMFS and FWS jointly published final regulations listing and protecting certain species of sea turtle as threatened under the ESA on July 28, 1978. 43 Fed. Reg. 32800. These regulations did contain a limited subsistence exception for residents of the Trust Territory of the Pacific Islands. The exception provides:

(f) Subsistence. The prohibition in §227.71(b) shall not apply with respect to the taking of any member of the species of green sea turtle (Chelonia mydas) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

During the comment period following publication of the proposed sea turtle regulations and the draft Environmental Impact Statement, NMFS and FWS received several responses supporting a subsistence exception. Generally these comments were from Territorial governors and State agencies in the areas where subsistence taking was occurring. In the preamble to the final regulations and in the final Environmental Impact Statement, NMFS and FWS discussed why a subsistence exception was or was not granted to each of the principal regions seeking inclusion in the exemption.

The Caribbean - NMFS and FWS gave several reasons for not permitting a subsistence take in the Caribbean region. Initially, agencies found that there was no traditional, cultural reliance among natives in the Caribbean area upon a subsistence take of sea turtles. The agencies found no documentation supporting the contention that sea turtles were relied upon as a source of food by natives in the region. In addition, the agencies were concerned about enforcement aspects of a subsistence exception in the area. Because of the volume of inter-island commerce, a subsistence exception would make it very difficult to determine which takings were for legitimate subsistence purposes.

43 Fed. Reg. 32800, 32806.

Hawaii - Hawaii argued that an existing State regulation limiting the taking of green sea turtles for home consumption to those at least 36 inches in carapace length would adequately protect the sea turtle populations. The regulation, however, did not limit the purposes for which a sea turtle could be

taken to those related to the subsistence needs of the taker. Sport hunting and recreational takings were permissible as long as the turtle was 36 inches or greater in carapace length.

NMFS and FWS decided against permitting a subsistence exception for the Hawaiian Islands. The agencies were concerned that despite the State regulation, there had been an increase in the taking of sea turtles and in the sale of turtle parts as tourist items in Hawaii. In addition, the agencies felt that alternative food sources were available in Hawaii to replace sea turtles in the diet of the native Hawaiians. 43 Fed. Reg. 32800, 32806. (July 28, 1978)

Western Pacific Region - NMFS and FWS granted a subsistence exception for the taking of green sea turtles by residents of the Trust Territory of the Pacific Islands. Three main reasons were advanced for this decision. First, the agencies found that turtle meat and eggs were a traditional, customary source of food in the region and that the taking of green sea turtles was an important part of the culture of certain inhabitants of the area, citing the Yap Island residents in particular. The agencies were also persuaded that green sea turtle meat provided a major source of food for many island residents. Finally, the agencies concluded that a subsistence harvest conducted in the traditional manner would not have a major impact upon the existing population of green sea turtles in the region. 43 Fed. Reg. 32800, 32806.

The discussion of the western Pacific in the preamble to the final regulation concerned the population of the threatened and endangered sea turtles in the western Pacific other than Hawaii. 43 Fed. Reg. 32806. However, the subsistence exception which emerged was limited to residents of the Trust Territory of the Pacific Islands. Thus, certain areas of the western Pacific subject to U.S. jurisdiction which are outside of the Trust Territory itself (Guam, American Samoa, Wake Island) were excluded from the exception. There was no explanation of why these areas were not included in the exemption. Apparently the agencies found the conditions listed above only applied to the Trust Territory itself, not outlying areas.

VI.

SCOPE OF THE ESA SEA TURTLE SUBSISTENCE EXCEPTION

The subsistence exception for green sea turtles in the ESA regulations is considerably narrower than the statutory subsistence exception for Alaskan natives in Section 1539(e) of the Act. An examination of the scope of the sea turtle subsistence exception reveals its limitations.

A. WHO IS INCLUDED IN THE EXCEPTION

Only residents of the Trust Territory of the Pacific Islands may take green sea turtles for subsistence purposes. The term "residents of the Trust Territory of the Pacific Islands" is not defined in the regulations or elsewhere. There is no requirement that the "resident" of the Trust Territory be a native or possess an identifiable relationship with a native group or culture, as in the Alaskan native situation. Thus the exemption would appear to apply to all residents of the geographical area of the Trust Territory, regardless of their cultural background. This broad definition of who is included in the exception is, however, restricted by language stating that residents can only take sea turtles "... if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family." This appears to be an effort to limit the exception to resident native groups without actually defining such groups.

The exception also provides that a green sea turtle may be taken for personal consumption by the taker and his "immediate family." Although the term "immediate family" is not defined, a close definitional analogy can be found in the ANILCA Alaskan native exception and the MMPA version of the ANILCA subsistence exception at 16 U.S.C. § 1379(f). As defined therein, "family" means "all persons related by blood, marriage or adoption, or any person living within a household on a permanent basis."

B. PURPOSES FOR WHICH SEA TURTLES MAY BE TAKEN

Only a limited range of subsistence usage is permitted by the exemption at 50 C.F.R. § 227.72(f). Under that provision, a taking must be for the "personal consumption" of the taker and his immediate family and the taking must be necessary for the "sustenance of those individuals." Again, these terms were not defined in the regulations. It is apparent from the preamble to the proposed and final regulations, however, that NMFS and FWS considered "personal consumption" to mean consumption for nutritional purposes. See 40 Fed. Reg. 21982, 21984, and 43 Fed. Reg. 32800, 32806. There was no indication in these comments that NMFS and FWS contemplated an exception for native handicrafts, as in the statutory Alaskan native exception. However, it is arguable that some other subsistence uses may come within the limited definition provided in § 227.72(f). The preamble to the final regulations explicitly cited the traditional, cultural usage of sea turtles by Yap Islanders as one reason why a subsistence exception for the Trust Territory was allowed. 43 Fed. Reg. 32800, 32806. For this reason, it is conceivable that some traditional, non-food uses, such as use of the turtle for clothing, tools, or other implements, may be permissible. Such uses fit the § 227.72(f) criteria, as they are a form of personal consumption, they are traditional, cultural uses and they fit within the dictionary definition of the term "sustenance." Establishing that such uses are

"necessary" to the sustenance of the taker and his immediate family is the only apparent barrier to including such subsistence uses in the § 227.72(f) definition.

C. PERMISSIBLE USES

In addition to limiting the purposes for which a green sea turtle may be taken, the exception imposes restrictions upon the use of a turtle once it is taken. Even if the turtle was legitimately taken for personal consumption, the taker cannot sell the turtle or its parts and cannot transfer the turtle or its parts to a non-resident. This language does not preclude a transfer of subsistence taken turtles among residents, however, so some type of barter system among residents may be permissible.

D. RESTRICTIONS UPON SUBSISTENCE TAKING

Three additional restrictions upon subsistence taking should be noted. The exception does not permit residents of the Trust Territory to take any species of sea turtle other than the green sea turtle (Chelonia mydas). This effectively bans the taking of the hawksbill turtle, which has been identified as another species of sea turtle that has been subject to a traditional harvest by native groups in the Pacific region. NMFS Memorandum, "A Review of Information on the Subsistence Use of Green and Hawksbill Sea Turtles on Islands Under U.S. Jurisdiction in the Pacific Ocean," R. S. Johannes, January, 1984. The hawksbill turtle is listed as "endangered" under the ESA, and thus a subsistence exception is precluded by §9(a) of the Act. 16 U.S.C. § 1538(a).

The exception also attempts to protect the stocks of the green sea turtle by permitting them to be taken only while in the water ("...waters seaward of mean low tide"). This restriction was designed to protect nesting beaches and the female turtles and eggs located upon these beaches.

Finally, NMFS and FWS have an obligation to obtain data on the extent of subsistence harvesting and the effect of such harvesting upon the green sea turtle population. The agencies are to base future decisions about the level of subsistence taking upon this data. 43 Fed. Reg. 32800, at 32806. This provision is similar to that in the ESA statutory exception for Alaskan natives, which permits the Secretary to restrict subsistence taking if such taking is materially and negatively affecting the subject species. 16 U.S.C. § 1539(e)(4).

VII.

COMPARISON OF ESA STATUTORY AND REGULATORY SUBSISTENCE EXCEPTIONS

It is apparent that the ESA regulatory subsistence exception for the taking of green sea turtles is different in many respects

than the ESA statutory exception for Alaskan Natives. Among the principal differences between the exceptions:

- Only one species of threatened sea turtle, the green sea turtle, may be taken under the exception at 50 C.F.R. § 227.72(f). The Alaskan native exception permits a subsistence taking of any species as long as the other requirements of the section are met.

- 50 C.F.R. § 227.72(f) permits subsistence taking to occur only when the green sea turtles are in the water. There is no comparable restriction on where a taking can occur under the Alaskan native exception, other than that the taking must not be accomplished in a wasteful manner.

- The only purpose for which a green sea turtle can be taken under 50 C.F.R. § 227.72(f) is for the personal consumption of the taker and his immediate family. The taking must also be necessary for the sustenance of the taker and his immediate family. As discussed in the preceding section, there is no indication that NMFS and FWS intended to sanction a broad range of subsistence uses in drafting the exception. The use of green sea turtles for food and nourishment was the only apparent subsistence use contemplated by the drafters.

The subsistence uses permitted under the Alaskan native exception are much broader. Although the taking must be for personal or family consumption under both exceptions, "personal consumption" under the Alaskan native exception includes using the animal for clothing, transportation, fuel, shelter or tools. 50 C.F.R. 17.3.

- The sea turtle subsistence exception does not permit turtles to be taken for the purpose of creating items of native handicraft or art. The Alaskan native exception provides that inedible by-products of an animal taken primarily for subsistence purposes can be transformed in authentic native handicrafts and sold in interstate commerce.

- The sea turtle subsistence exception prohibits any sale of a taken green sea turtle or its parts. The Alaskan native exception permits edible portions of an animal taken primarily for subsistence purposes to be sold to other Alaskan natives within native village and towns. In addition, inedible portions of such an animal may be transformed into authentic native handicrafts and sold in interstate commerce.

In other areas, the two exceptions share certain similarities;

- Both subsistence exceptions are based upon determinations that the taking of certain endangered or threatened species is a traditional part of the culture and social unity of particular native groups. In the sea turtle exemptions, there is an express requirement that the taking be customary

and traditional. In the Alaskan native exception, the importance of the traditional and cultural aspects of subsistence hunting to the affected Alaskan natives is evident from the legislative history of the section.

- Although not explicitly approved, it appears that a limited barter system among residents/Alaskan natives is permissible under both exemptions. The sea turtle subsistence exception provides that a legitimately taken green sea turtle "... cannot be transferred to a non-resident or sold." 50 C.F.R. § 227.72(f). The clear implication of this language is that while the sale of a legitimately taken turtle is prohibited, transfer between residents is permissible. In such a barter system, the subsistence taker could probably exchange a turtle or its parts with another resident for goods other than food if such goods were necessary for the sustenance of the taker and his immediate family, a requirement under the regulation. Given the limited subsistence usage permitted by the exception, however, it will probably be incumbent upon the ultimate transferee to use the turtle in a legitimate manner - i.e., for personal or family consumption as food.

A similar barter system is permissible under the ESA Alaskan native subsistence exception. Although the statutory exception does not directly address an exchange system among Alaskan natives, the exception does provide for the sale of authentic native articles of handicrafts and clothing, 16 U.S.C. § 1539(e)(1)(13), and thus a barter system would clearly seem permissible. In addition, the definition of "subsistence" in the regulations implementing the statutory exception includes "...other uses necessary to maintain the life of the taker of the wildlife, or those who depend upon the taker for subsistence." 50 C.F.R. § 17.3. Since the statutory exception permits a broad range of subsistence uses and sale, a limited, non-commercial system of exchange between Alaskan natives to further legitimate subsistence purposes will not violate the ESA statutory exception.

- Both exceptions have methods by which the subsistence take can be curtailed or halted if it is determined that the harvested species are being detrimentally affected by the activity. In the Alaskan native exception, the Secretary can prescribe regulations upon a determination that the native subsistence taking is materially and negatively affecting the species. According to the preamble to the final sea turtle regulations, NMFS and USFWS will obtain data on the extent of the subsistence take and its impact upon the sea turtle populations and base future regulations upon this data.

VIII.

PURPOSES UNDERLYING SUBSISTENCE EXCEPTIONS

From the foregoing analysis of the ESA statutory and regulatory subsistence exceptions, it is possible to elicit

some general concepts guiding the creation of such exceptions. Following is a list of certain criteria which reflect the theoretical and practical aspects of subsistence that were considered by Congress and the executive agencies in drafting the statutory and regulatory exceptions.

A. THE CUSTOMARY, TRADITIONAL NATURE OF SUBSISTENCE TAKING

This is unquestionably the most important factor underlying a subsistence exception. The entire notion of a subsistence exception is that a particular cultural group has traditionally relied upon taking certain species of wildlife to provide the necessities of life. To ban the taking of such species is essentially to deny that cultural group the right to continue their traditional way of life. The disruptive effect of such an action on the native group's ability to survive in an environment with limited resources provides the justification for an exception to the prohibitions of the Act.

Although a traditional, cultural reliance upon the taking of a certain species may be viewed as a prerequisite for a subsistence exception, the mere presence of a cultural tradition does not assure that an exception will be granted. The other criteria identified in this section may, in a given situation, dictate against inclusion of an otherwise qualified native group.

B. THE EFFECT OF SUBSISTENCE TAKING ON THE POPULATION OF THE SUBJECT SPECIES

Another important factor in determining whether or not to allow a subsistence exception is the impact which the subsistence hunting or fishing has on the population of the affected species. A showing that the subsistence take is not threatening existing populations or that existing populations are viable enough to support a traditional subsistence harvest is strong support for an exception. A lack of evidence indicating that subsistence hunting was adversely affecting the green sea turtle population was one of the principal reasons why NMFS and FWS permitted a subsistence take of the turtles in the Trust Territory.

The available information on the Western Pacific green turtle population is, at best, incomplete. Reports indicate increased harvesting of eggs and adults have occurred in some areas due to improved native transportation to remote islands. These activities may be instrumental in causing the population declines reported in some areas. However, information submitted showed certain nesting colonies were healthy. There was no strong evidence to support a seriously declining green

turtle population which could not support historical harvest levels conducted in a traditional manner.

(43 Fed. Reg. 32800, 32806)

Conversely, a showing that subsistence taking is having an adverse impact upon the population of a threatened or endangered species will hinder efforts to obtain a subsistence exception. If all other considerations support granting an exception but there is evidence that the subsistence take is depleting the population stock of the subject species, it is likely that an exemption will be denied or drafted in a manner restricting the allowable subsistence harvest.

C. USE OF THE ANIMAL FOR PERSONAL OR FAMILY CONSUMPTION

A key element in any definition of subsistence is that the taking is necessary for the sustenance of the taker and his immediate family. This is not an unyielding rule, however, as some commercial usage is permitted under the ESA Alaskan native exception. But, even under the statutory exception, the animal must be taken primarily for a personal or family subsistence purpose before a commercial use may be made of it. Without some documentation that commercial usage is part of the customary, traditional subsistence take of a group, such as with Alaskan natives, it is unlikely that any commercial use will be sanctioned in a regulatory subsistence exception.

D. AVAILABILITY OF OTHER FOOD SOURCES

Even if all of the factors listed above support an exemption, a subsistence exception may be denied if there is a finding that alternative food sources are available to replace the loss of the target species in the diet of the native group. This is particularly true when the sole or primary subsistence use of the species is as food. The availability of alternate sources of food was a principal reason why NMFS and FWS denied a subsistence exception for the taking of sea turtles to natives of the Hawaiian Islands and the Caribbean area. 43 Fed. Reg. 32806, 32800. The availability of replacement food-stuffs is less important when the species is being used for a variety of subsistence purposes, as in the Alaskan native situation. Since it is permissible under the statutory exception for Alaskan natives to take threatened or endangered species for use as clothing, shelter, handicrafts, tools and transportation as well as for food, it makes less sense to condition that exemption upon the availability of replacement foods. In any event, the presence of alternative food sources will inevitably weaken the claim by a particular native group that taking a threatened or endangered species is necessary for the survival of the group.

E. ENFORCEMENT CONSIDERATIONS

A final factor influencing the allowance of a subsistence exception is the enforcement problems that may be encountered. These concerns can take several forms. In any subsistence exception there will be the problem of assuring that the animal was taken for a permissible purpose. This may be of considerable concern when there are several subsistence purposes recognized by the exception and/or some commercial use of the animal is permitted. In this situation the subjective intent of the taker may be crucial; i.e., was the animal taken for a legitimate subsistence/commercial use or for some other purpose. Determining this intent will often be a difficult, if not impossible task.

A related problem exists in assuring that the animal is taken in a permissible manner under the terms of the exemption. For example, the sea turtle exception specifies that the green sea turtle may only be taken "in waters seaward of mean low tide." 50 C.F.R. § 227.72(f). Essentially this requires an enforcement agent or willing witness to observe the actual taking as there is no other reliable way to determine after-the-fact if a turtle was taken on land or in the water.

Another enforcement problem lies in regulating illegal trade in endangered or threatened species parts once a subsistence exception has been created. An exception to the prohibitions of the ESA for subsistence taking creates the opportunity to circumvent the law if an initial taking not for subsistence purposes can be disguised as a subsistence take. This was one of the concerns that led NMFS and FWS to deny a sea turtle exception to the Caribbean area -- once a subsistence take is approved for a certain island, the flow of turtle parts throughout the entire region becomes difficult to stop. It was also a principal reason why no sea turtle exception was granted to the Hawaiian Islands. Even with an existing State regulation restricting the take of sea turtles, NMFS and FWS found an increase in takings and in the production of turtle parts for sale to tourists. 43 Fed. Reg. 32800, 32806.

Finally, there may be enforcement problems in simply policing the areas where subsistence taking is permitted. Alaska and the Trust Territory are broad, expansive areas to regulate. It is not realistic to expect a handful of enforcement agents to adequately assure that the provisions of a subsistence exception are being followed in such areas. Without an effective enforcement program, the entire purpose of the exception is thwarted. Lack of enforcement may promote wholesale disregard of the exception by both the persons subject to it and those not otherwise eligible to participate. This in turn may lead to a decision not to extend a subsistence exception to areas where there will be foreseeable enforcement problems due to a lack of manpower, or to curtail an existing exception for the same reason. This was one of the concerns that led to the decision not to create an exception for the Trust Territory in

the proposed regulations. 40 Fed. Reg. 21982, 21984. Despite the fact that an exception was made a part of the final regulations, enforcement problems remain in the Trust Territory.

IX.

CONCLUSION:

As stated at the outset, each of the factors discussed above reflect criteria that influenced the Congressional decision to create subsistence exceptions to the ESA and MMPA for Alaskan natives and the NMFS/FWS decision to provide residents of the Trust Territory of the Pacific Islands with a subsistence take under the threatened sea turtle regulations. The importance of some factors varied according to the particular circumstances involved. For example, NMFS and FWS had no need to be concerned about a NMFS/FWS decision to provide residents of the Trust Territory broad range of subsistence uses in shaping the sea turtle exception, as a limited exception for food purposes was all that was ever contemplated. This lessened the importance of certain enforcement aspects of the exception, such as regulating the permissible non-food and commercial uses of the species. On the other hand, the limited subsistence usage allowed by the regulation heightened the importance of another factor, the availability of alternative food sources.

Despite the shifting nature of some of the factors, some fundamental concerns remain constant. Any erosion of the traditional, cultural basis for the subsistence take will seriously undermine the need for such an exception. This appears to be an increasing problem in some areas of the Trust Territory, where a growing cash economy is lessening the need of residents to take green sea turtles for food. NMFS Memoranda, "A Review of Information on the Subsistence Uses of Green and Hawksbill Sea Turtles on Islands Under U.S. Jurisdiction in the Pacific Ocean," *supra* p. 26. Likewise, a finding that subsistence taking is causing serious deterioration of the population of a threatened or endangered species will likely lead to restriction or termination of the subsistence exception.

By way of summary, the five principal concepts and/or considerations underlying the subsistence exception for the taking of green sea turtles are outlined below. All of these categories should be carefully considered in any decision to limit or expand the current sea turtle subsistence exception.

A. CUSTOMARY, TRADITIONAL NATURE OF THE TAKING

As stated throughout this memo, the traditional cultural nature of the subsistence hunt is the overriding consideration behind any subsistence exception. A finding that the customary reliance upon the taking of green sea turtles for food has diminished among residents of the Trust Territory would raise a serious question as to the continued viability of the exception. Similarly, evidence or a lack of evidence of traditional,

cultural subsistence usage among native groups in areas such as Guam, American Samoa, and the Hawaiian Islands should be very influential in any decision to expand the exemption.

B. PERSONAL OR FAMILY CONSUMPTION

Another important subsistence concept is that the taking must be for the personal consumption of the taker and his immediate family and not for commercial usage. This is clearly the case under the sea turtle subsistence exception, which states that the turtle must be taken for personal or family consumption and which prohibits the sale or transfer of the turtle to non-residents. Evidence of commercial exploitation of sea turtles in the Trust Territory or other areas desiring to come within the exception should weigh against continuation and/or extension of the exemption.

C. PRESENCE OF ALTERNATIVE FOOD SOURCES

This is a particularly important factor with reference to the sea turtle subsistence exception, as the exception only permits a subsistence take for food purposes. Evidence indicating that alternate food sources are available to native groups in a particular region would be very damaging to that region's efforts to come within the exception. Again, this is a primary reason why no exception was granted in 1978 to the Caribbean and Hawaiian Island regions. Should similar evidence indicate that residents of the Trust Territory are no longer dependent upon the sea turtle as a source of food, their claim to a continued exemption would be substantially weakened.

D. EFFECT UPON THE SPECIES POPULATION

While this is certainly an important factor, it apparently is not an overriding concern under the sea turtle exception as there has not been a showing that subsistence taking has had an adverse impact upon the green sea turtle population in the Trust Territory. As previously stated, however, such a finding would probably require a more restrictive exception to further limit subsistence taking. It would seem that if Guam, American Samoa, the Hawaiian Islands or some other area desire to come within the sea turtle exception, a prerequisite should be a showing that the population stocks in the area are sufficient to support a subsistence take and that such a take will not adversely affect the size of the stock.

E. ENFORCEMENT ASPECTS

Finally, enforcement aspects of the exception are a very important consideration. The sheer size of the Trust Territory precludes effective enforcement of the existing exception.

Given this situation, it is debatable if an outright prohibition on the taking of all sea turtles would have any significant impact upon the residents of the Trust Territory. It may be more beneficial to recognize the practical limitations upon enforcing the exception and leave it intact in the hope that over the course of time it will effect a change in the residents' attitude toward the sea turtles. These same concerns should be considered in any decision to expand the exception to additional areas such as the Hawaiian Islands, Guam or American Samoa, although with different factual settings the conclusions drawn may, of course, be different.

Enclosures

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Sea Turtle Subsistence Exception

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Letter to Doyle Gates, NMFS, regarding problems encountered by Hawaiian natives because of the prohibition against subsistence hunting of sea turtles. November 27, 1981.

Memorandum, "American Indian Religious Freedom Act of 1978" GCF, Mary Beth West August 8, 1979.

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APPENDIX B

National Marine Fisheries Service Response to Public Comments on Subsistence Uses of Green Sea Turtles in the Central and Western Pacific Islands.

On April 20, 1983, the National Marine Fisheries Service (NMFS) published a Federal Register notice (Vol.48, No.77, pp.16925-16926) announcing its intention to review the regulations governing the taking of green sea turtles for subsistence purposes in the central and western Pacific. The notice set forth a schedule for public hearings in Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa and opened a comment period for submission of written comments which closed June 21, 1983. The purpose of the public comment period was to collect information on all aspects of the use of sea turtles for subsistence purposes.

Apparently most of those submitting comments perceived the request for information as a proposed change in the regulations. Many of the comments received discussed the status of the green sea turtle populations and either opposed or supported changing the regulation to authorize subsistence taking of green sea turtles in areas other than the Trust Territory of the Pacific Islands (TTPI). Only a few of the comments received provided information on subsistence uses of green sea turtles or rationale for liberalizing the existing exception for subsistence use of green sea turtles in Hawaii, Guam, and American Samoa.

A summary of the comments received and the NMFS response follows:

1. Comment: Twenty-eight commentators stated that the Hawaiian population of green turtles has been reduced and could not sustain a harvest.

Response: Monitoring of the Hawaiian green sea turtle population began in 1973. No significant increase has been demonstrated to date, although the data suggest an upward trend. The NMFS has concluded that the current annual rate of recruitment is too small to support a harvest.

2. Comment: Fifteen comments were received indicating that the economic situation in Hawaii does not meet the prerequisite for the subsistence take of green turtles where a modern cash economy prevails.

Response: Johannes (1984) concluded that Hawaii, Guam, the CNMI, and American Samoa had departed on traditional dependence from the sea and westernization had provided alternatives to a subsistence lifestyle.

3. Comment: Three commentators stated that in order to preserve green turtles as part of a cultural heritage in Hawaii, protection of the depleted stock of turtles would be necessary.

Response: None.

4. Comment: Four commentators stated that subsistence fishing for green turtles should not be permitted in Hawaii because of the difficulty in enforcing any restrictions and the probable harvest of the breeding population of turtles if it were allowed.

Response: The NMFS agrees that enforcement of subsistence taking regulations would be difficult. This was one reason the NMFS and the FWS did not authorize a take of green sea turtles in Hawaii, Guam, and American Samoa in the regulations published when the green sea turtle was listed in 1978.

5. Comment: Two commented that the greatest impact to the Hawaiian population of green turtles has come from commercial operations.

Response: Turtle harvests were uncontrolled in Hawaii from the mid-1800's when the traditional Hawaiian "Kapu" system was abolished until 1974 when the State of Hawaii prohibited commercial exploitation of sea turtles and regulated the taking of green sea turtles for home use. Commercial utilization was likely the major contributing factor to the decline of the Hawaiian green sea turtle population.

6. Comment: A single commentator stated that the biological evidence points to strengthening the restrictive regulations, not liberalizing them.

Response: None.

7. Comment: One commentator noted that the restriction on subsistence take in Hawaii is necessary to prevent commercial trade in meat and jewelry.

Response: Current regulations that authorize subsistence taking prohibit the commercial utilization of turtle products. However, the NMFS recognizes enforcement problems that are likely to be associated with any exception to the prohibitions on the taking of turtles.

8. Comment: Two commentators suggested continuing the prohibitions on taking until the stocks have recovered.

Response: The NMFS agrees that once the stocks are recovered, sound principles of resource management can be applied and a regulated take could occur.

9. Comment: More and better information concerning the status of green turtles in Hawaii is required prior to permitting any subsistence take in Hawaii.

Response: None.

10. Comment: Two commentators indicated that the petitions requesting a review of the subsistence exemption in 50 CFR § 227.27(f) provided no justification for including Hawaii or Guam in such an exemption.

Response: The NMFS determined that there was sufficient evidence of unresolved issues regarding subsistence take of green turtles to justify initiating a review of the regulations.

11. Comment: There are four comments asserting that the Hawaiian population of green turtles are healthy and could withstand a harvest for home consumption.

Response: No significant increase in the Hawaiian green sea turtle population has been detected since 1973 when monitoring began. The NMFS has concluded that the current rate of recruitment is too small to sustain a harvest. Based on comparisons with recovered sea turtle populations in other parts of the world the Hawaiian population is likely to require a decade or more of complete protection before a significant increase may be demonstrated. Anecdotal accounts that turtles are more abundant on foraging grounds are an indication that recovery is underway.

12. Comment: Two comments were received indicating a desire to take green turtles for sport/recreational purposes in Hawaii because it was done in the past.

Response: A sport harvest could be authorized only when the green sea turtle has been removed from the threatened species list.

13. Comment: One commentator stated that green turtles needed to be controlled around the island of Kauai so that they do not deplete the algae that other desirable herbivorous fish utilize.

Response: Changes in abundance of fish species are more likely the result of fishing pressure rather than competition with green sea turtles for a food resource.

14. Comment: Four comments were received regarding the role of turtles in traditional Pacific island religion and mythology. Turtles are an important part of Polynesian mythology, ancient stories of creation, and in many instances are considered the family totem or "aumakua."

Response: The practice of traditional native religions involving turtles would not necessarily be precluded by the continued protection of the green turtle. If the subject of the religious practice in question were to be destroyed the viability of that practice may be diminished.

15. Comment: Four commentators stated that the term "subsistence" needed to be defined more clearly.

Response: The NMFS has obtained a legal review of the term "subsistence" from NOAA General Counsel. This opinion formed the basis of the definition in the review of the sea turtle regulations.

16. Comment: Five comments were received regarding the traditional native medicinal uses of green turtles. Turtle oil was apparently used to treat various skin problems such as burns and rashes. Warm, green turtle blood was used to treat asthma. Turtle oil was also apparently used during post-western contact ranching activities in Hawaii to treat saddle burns on horses. Of these five comments three requested that a take of green turtles be allowed in Hawaii for traditional medical purposes.

Response: None of the commentators indicated that they lived a traditional native Hawaiian lifestyle or that they depended on sea turtles for medicinal purposes. Alternative treatments to the ailments described are available.

17. Comment: Three commentators stated that habitat degradation was the primary cause in the decline of green turtles in Hawaii. Pollution (i.e. runoff and siltation from sugar and pineapple plantations and the ocean dumping of bagasse) was implicated as a major cause of the loss of feeding habitat around the island of Hawaii. Shoreline development was identified as a factor in the loss of nesting habitat in the main Hawaiian islands.

Response: Habitat degradation has contributed to the decline in the Hawaiian population of green turtles. Siltation eliminates foraging grounds and contributes to compacting beach soil so that nests cannot be dug. This may be a factor prohibiting recolonization of beaches on Lanai. The recovery team should consider methods of mitigating the effects of environmental degradation.

18. Comment: Four comments were received asserting that the taking of turtles was part of the "Hawaiian lifestyle" and is a right of the native Hawaiians.

Response: Authorization for a subsistence harvest is dependent on the identification of a culture that is dependent on the taking of sea turtles for its continued existence, evidence that the sea turtle population could sustain the harvest, and documentation that the taking is necessary for the sustenance of the members of the cultural or ethnic group in question. The NMFS found these criteria are only satisfied by a few groups inhabiting the low islands in the Trust Territory.

19. Comment: Two commentators refuted earlier statements and references to the exclusive nature of green turtle use in pre-contact Hawaii asserting that there was no distinction between the ali (nobility) and the commoners as to who could and could not eat turtle.

Response: The dispute over who was allowed to eat turtles in Hawaii is an indication of the quality of the documentation of the native Hawaiian culture. Regardless of the outcome of this dispute the criteria discussed in the previous response must be satisfied before a subsistence harvest could be authorized.

20. Comment: Three comments were received concerning the various traditional methods used to capture turtles in Hawaii. Floating turtle nets made from bark fibers (olona), harpoons, lassos, hooks and line for snagging and simply grabbing the turtles by hand were identified as traditional methods.

Response: All of these methods have been previously identified in the literature. Some of these techniques are still in use today in some areas of the TTPI.

21. Comment: One comment was received indicating that some traditional Hawaiian implements had been made of green turtle bone and are still in use today.

Response: There is an abundance of materials available to fashion implements. Fabrication of these implements does not necessarily depend on the availability of green turtle parts.

22. Comment: Three comments were received concerning the use of green turtles for maintenance of traditional Hawaiian fishponds. One commentator asserted that green turtles were used to control algal blooms and stimulate diatom production for fish food in these ponds. Two commentators were in favor of allowing a take for "traditional" fishpond maintenance.

Response: A review of the literature and investigations by workers in the field (Johannes, Balazs, Kay) produced no evidence of the use of green turtles for fishpond maintenance in pre-contact Hawaii. Turtles were kept in fishponds, but only to be held for later consumption.

23. Comment: One commentator indicated that more information on the status and biology of green turtles around Guam was needed before considering any change in the subsistence exemption.

Response: The NMFS agrees that before a harvest of green turtles is authorized the population must be recovered and enough information available for the application of sound principles of resource management.

24. Comment: Three comments were received asserting the population of green turtles around Guam could not withstand a harvest because of their depleted status.

Response: Although there is no baseline data, loss of nesting habitat to development and disturbance, unregulated take prior to 1978 and illegal taking since 1978 may have contributed to a decline in the green turtle stocks around Guam and the Northern Mariana Islands. There is no new evidence to support the view that the stock(s) are large enough to sustain a harvest, and anecdotal information indicates that the stock(s) are depressed and require protection.

25. Comment: Comments from six individuals asserted that the economic situation in Guam (modern cash economy) does not meet the prerequisite for subsistence taking of green turtles.

Response: Johannes (1984) concluded that Guam had departed substantially from a traditional dependence on the sea.

26. Comment: Four comments were received in favor of permitting an allowance for home consumption of green turtles in Guam. It was argued that because of the apparent continuity of the turtle stock between Guam and the Northern Marianas and the shared cultural heritage of these areas, Guam should be included in the exemption for subsistence take as is the

CNMI. It was further stated that the present regulations discriminate against the residents of Guam and that if turtles require protection, they should be protected throughout their range, not limited to a solitary island amidst many where taking is permitted.

Response: In reviewing the cultural dependence of the CNMI on sea turtles, the NMFS concluded there was not sufficient justification for a subsistence take in the CNMI. When the Trust governing the TTPI dissolves, the CNMI will lose its exception from the prohibitions on the taking of sea turtles. If the Trust is not dissolved by the time the NMFS and the FWS have completed a recovery plan for Pacific turtles, the NMFS will initiate rulemaking to exclude the CNMI from the subsistence taking exception.

27. Comment: One commentator requested an allowance for a sport/recreational take of green turtles in Guam because it had been conducted in the past.

Response: An historical precedent does not justify authorizing a harvest. A sport/recreational take can be authorized only after the population has recovered and is eligible for management.

28. Comment: One comment was received stating that the exemption allowing a subsistence take of green turtles in the CNMI should remain in effect until and unless information is developed indicating that the green turtle stocks around the CNMI are threatened or endangered.

Response: The green sea turtle stock in the CNMI are currently listed as threatened. There is no evidence that the sea turtles in the CNMI are more abundant now than they were in 1978. Anecdotal information indicates the stock is depressed and requires protection.

29. Comments: Three comments were received regarding the subsistence issue in American Samoa. One indicated the need for more biological information regarding the status of the green turtle stocks in American Samoa before any changes to the present regulations are initiated. Another commentator stated that the green turtle population around American Samoa could not withstand a harvest because of its low numbers. The third commentator asserted that green turtles were not needed for subsistence uses in American Samoa.

Response: It is unlikely that any significant new information regarding green turtle stocks around American Samoa will be developed in the near future. Based on available information the green turtle stocks around American Samoa would not likely be able to sustain a subsistence take. No information was presented during the review or in the Johannes paper supporting the need for a subsistence authorization in American Samoa.

30. Comment: One commentator called for a review of the exemption for subsistence take of green turtles in the TTPI due to a marked change in economic status of these island entities.

Response: The dependence on green turtles as a source of protein has diminished in the former district centers and current state or national capitols where cash economies are replacing traditional subsistence

economies. The outer islands still depend a great deal on the availability of green turtles for subsistence purposes because of the lack of protein sources. The taking of sea turtles in these outer islands is a significant factor in maintenance of the Micronesian culture. Once the Trust dissolves, the various Governments will be responsible for management of their marine resources.

31. Comment: One comment was received supporting continued subsistence taking in the Caroline Islands based on biological and not sociological parameters.

Response: Little biological information is available for the area. However, the NMFS agrees as taboos and traditional restrictions on the taking of sea turtles disappear, cultural needs of outer island inhabitants will have to be weighed against biological needs of the turtle stocks in the development of management strategies.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

LLOYD 500 BUILDING, SUITE 1692
500 N.E. MULTNOMAH STREET
PORTLAND, OREGON 97232

March 24, 1982

In reply refer to:
AFA-SE

Mr. Alan W. Ford
Regional Director
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, California 90731

Dear Mr. Ford:

This is in response to your letter requesting coordination with the Fish and Wildlife Service in reviewing endangered species regulations which limit the subsistence take of green sea turtles to the Trust Territory of the Pacific Islands. We concur with your plan to undertake the 5-year review for the sea turtles and are eager to cooperate with you on it.

Our lead contact on the review will be Mr. Dale Coggleshall, Pacific Islands Administrator, U. S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 5302, P.O. Box 50167, Honolulu, Hawaii 96850, telephone number (808) 546-7530.

Thank you for the opportunity to work with you on this matter.

Sincerely yours,

s/ Joseph R. Blum

Acting Regional Director

CC: PACIFIC ISLANDS ADMINISTRATOR, HONOLULU, HI

KAHANAHOU HAWAIIAN FOUNDATION
A NON-PROFIT HAWAIIAN CULTURAL CORPORATION
KEALAKEKUA, HAWAII 96750
TELEPHONE (808) 322-3801

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gms / com
8/1

15 October 1982

Mr. Alan W. Ford, Regional Director
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
300 South Ferry Street
Terminal Island, CA 90731

Aloha Mr. Ford!

This is a letter of support for the urgent, and oft-repeated, pleas of Mr. Alike Cooper of Alike Cooper & Sons, Inc., 163 Keiulani Street, Hilo, Hawaii—that your agency immediately act to remove the exceedingly unfair prohibition NMFS has imposed upon our native Hawaiian people, enjoining us against the taking of green sea turtles (Honu Mams'o) for subsistence, and for ritual use.

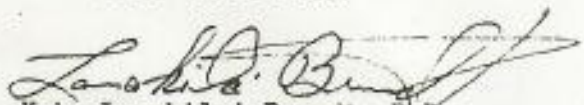
I wholeheartedly and authoritatively endorse Mr. Cooper's assertion that the green sea turtle is one of our people's traditional staples. And also his contention that, due to the depressed financial circumstances in which the majority of native Hawaiians have labored ever since the abrogation of our land and konohiki rights by the United States Government—the real need of our (basically) fisher people to take the green sea turtle for subsistence is urgent!

Also, as prelate of the statewide Hawaiian Rite Church, Hale o Lono, and cultural director of Kahanahou Hawaiian Foundation, with units on three islands, I must also lend support to Mr. Cooper's assertion that 'many islanders do indeed employ the Honu Mams'o in certain aspects of our ancient worship. And, of course, these traditional usages are guaranteed us under provision of Public Law 95-341, 95th Congress, 11 August 1978.

Further, Mr. Ford—although I see absolutely no reason why we Hawaiians should be compelled to present any sort of rationalization for our historic claims, yet, on December 22, 1981, Mr. Kenji Ego, Director (Ret), Division of Aquatic Resources, State of Hawaii, did supply such substantive evidence of the testimony of Governor George Ariyoshi supporting the lifting of restrictions, as relating to native Hawaiians.

Lastly, sir, that which is fair for natives of the Trust Territory, Guam, and the Northern Marianas, is equally fair for native Hawaiians. We urge you to have your agency lift the stricture, and grant our people their legal rights, immediately.

Most sincerely,


Kahu Lanekile' Brandt, D.D.
KAHANAHOU HAWAIIAN FOUNDATION (and)
Hale o Lono

LB/kl

ccs
Mr. Sus Ono, Director, DLNR,
Division of Aquatic Resources
Mr. Alike Cooper, Alike Cooper & Sons
Mr. Doyle Gates, Director, NMFS, Honolulu
Office of Hawaiian Affairs
Governor George Ariyoshi

KAHANAHOU HAWAIIAN FOUNDATION
A NON-PROFIT HAWAIIAN CULTURAL CORPORATION
KEALAKEKUA, HAWAII 96750
TELEPHONE (808) 322-3901

15 October 1982

Mr. Alan W. Ford, Regional Director
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
300 South Ferry Street
Terminal Island, CA 90731

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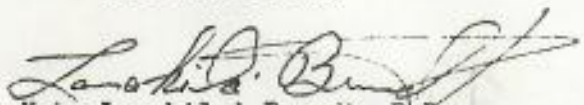
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Most sincerely,


Kahu Lanakila Brandt, D.D.
KAHANAHOU HAWAIIAN FOUNDATION (and)
Hale o Lono

LB/kl

ccs
Mr. Sus Ono, Director, DLNR,
Division of Aquatic Resources
Mr. Alike Cooper, Alike Cooper & Sons
Mr. Doyle Gates, Director, NMFS, Honolulu
Office of Hawaiian Affairs
Governor George Ariyoshi

5 May 1982

Mr. Henry Sakuda, Director
Division of Aquatic Resources
1151 Punchbowl Street
Honolulu, HI 96813

Dear Henry:

Many thanks for your recent note. I was glad to hear that you and your staff found my Tokelau report to be of interest. It was an enjoyable, productive, but very short study visit. I hope to return at some point in the future to do follow-up work on my recommendations to the village councils.

I thought that I should send you a copy of the enclosed "review comments" which I distributed at a small meeting yesterday morning at the NMFS lab. I welcome any questions you may have, or corrections you feel should be made to the information presented in this write-up. Since much of my research in past years has been partly supported with State funds, I feel that it is only right to keep you and others informed about such matter.

Best regards,

George H. Balazs

HIMB
PO Box 1346
Kaneohe 96744

or

NMFS
PO Box 3830
Honolulu 96812

ably in 4 to 6 years. The nesting turtles observed on Sarawak and on the Great Barrier Reef appeared to have carapaces measuring between 35 and 43 inches in length. The weights of turtles between 35 and 40 inches in length were from 200 to 250 pounds.

External parasites noted on turtles included mosquitoes, which were observed biting nesting turtles on the relatively soft skin of the upper eyelid. The encrusting barnacle *Chelonibia testudinaria* occurred commonly on about one-third of the turtles studied. These appeared to cause little inconvenience to the turtles as a rule, although the rare burrowing barnacle *Stephanolepas muricata* erodes "tumorous" cavities through the carapace, in which it has been found imbedded.

Because of the high rate of decimation of *Chelonia* during various stages of development, the addition of man to its list of predators may easily jeopardize the survival of turtle populations in a particular region. In many parts of the world governing authorities have regulated or restricted the taking of turtles. In the Pacific atolls and islands during the past, native taboos have restricted the eating of turtle by the common people or by women and have restricted this delicacy to chiefs or priests. These measures were a form of conservation for the privileged few. In Sarawak and Malaya Muslim custom includes an apparent prejudice against the eating of turtle flesh, but there seems to be no aversion to the eating of turtle eggs, which are much sought after here. In most other parts of the *Chelonia mydas* areas the meat is sought after avidly, and both practices if pursued too far may reduce the turtle population to below maintenance level.

Hendrickson analyzed the differences in the supply of food obtained from the slaughter of the mature female turtle and that from gathering its eggs and concluded that in three breeding seasons the average female would produce food in the form of eggs equal to the weight of food obtained from slaughtering the turtle. He believed, however, that the average adult female had more than three breeding seasons in a lifetime and thus that the weight of high-protein food which could be gathered from eggs would be greater than the weight of flesh and fat of the turtle if eaten. He had no doubt that the exploitation for wild green turtle eggs is more profitable in terms of quality and quantity of nutrition than is the exploitation for flesh and fat.

In view of the high rate of decimation of newly hatched turtles, it seems apparent that artificial hatching, providing protection from predators for the initial few days or weeks of growth, alone would aid in greatly increasing turtle supply on coral atolls. Aiding the released young turtles get distributed in deep water after their initial period of a week or more of growth would result in a large saving of turtles from predators. In considering the situation of a breeding beach in Sarawak, Hendrickson wrote:

If the beach concerned here produced a total of one million eggs per year, the annual release in deep water of 17,000 week-old baby turtles in good condition (1.7 per cent) would be inadequate [sic; probably should be adequate] replenishment for maintenance of a stable population. If hatchlings were not kept for a week, but were dumped into the sea on the same day they hatched, 140,000 individuals (14 per cent) would have to be produced annually; by merely scattering the day's production of hatchlings widely at sea in deep water after dark, this number could be cut to 70,000 (7 per cent), etc.

Experimental hatching from transplanted nests indicated that an average of about 47 per cent of the eggs produced hatchlings, a much higher percentage than natural production. Eggs moved on the morning after laying seemed to suffer little from relatively rough handling. However, when the embryonic disk and overlying albumen had become adherent to the shell, concussion and rotation of the developing eggs were uniformly damaging. "Hatchlings may be kept in tanks of clean sea water for about a week before they exhaust the yolk supply which is incorporated from the egg; there is no indication at present that any feeding is necessary during the first week in a nursery tank" (Hendrickson, 1958, p. 527).

The harvesting of eggs rather than the slaughter of grown turtles represents "exploitation at that stage of the life cycle where the species is adapted to sustain high losses in the natural course of events. A very large portion of the eggs collected represent, not new losses to the population, but diversion of losses which would have occurred even if there had been no intervention by man." In the slaughter of the mature female turtle, however, there "is a direct threat to the dynamic equilibrium of the population, and it would appear that the species is ill-adapted to sustain such losses" (Hendrickson, 1958, p. 525).

Hendrickson (1958, p. 528) concluded that "In a properly managed industry, up to 96 per cent or more of the average turtle's productivity may be utilized for human consumption, without removal of the producing units from the population and with the possible expectation of bonus productivity during all breeding seasons after the first three. In exploitation for flesh and fat, 100 per cent of the turtle's productivity is utilized once and for all, and that particular unit ceases to confer any benefits."

In view of the poor condition of green turtle populations on Pacific atolls compared with what they once were and compared with their potential if properly conserved, it seems imperative that the administrations concerned institute measures to control exploitation and, equally important, educate the atoll peoples to the advantages to them of conservation practices and of artificial breeding for local dispersal of young turtles.

from -
Atoll
Environment
&
Ecology
by H. Wiens



AGARD, "Buzzy" Louis (Kāne)

ORGANIZATIONS:

- Kamehameha Alumni Asso. 1942
- Hawaiian Civic Clubs 1943
- Friends of Kamehameha 1964
- Hawaii Fishing Asso. 1965
- ALOHA 1973
- Council of Hawn. Org. 1975
- Ad hoc committee to OHA for reparations 1980 82

APPOINTMENTS:

- Liliuokalani Trust Advisory
- Pacific Tuna Foundation Adv.
- U.S. Dept. of Commerce
- Dept. of Transportation (State of Hawaii)

Dear Friend:

An election of Hawaiians by Hawaiians for Hawaiians is unprecedented and offers exciting new horizons and opportunities. At last, Hawaiians will be able to determine their own priorities regarding education, cultural enrichment, utilization of resources, and social mobility. It is a responsibility that can not be taken lightly.

A vote for Louis "Buzzy" Agard will be a vote for fair representation of the diverse interests and concerns of Hawaiians. It will also be a vote to make the Office of Hawaiian Affairs something that every Hawaiian can be proud of and benefit from.

Please vote Agard for OHA.

Mahalo,

Louis K. Agard

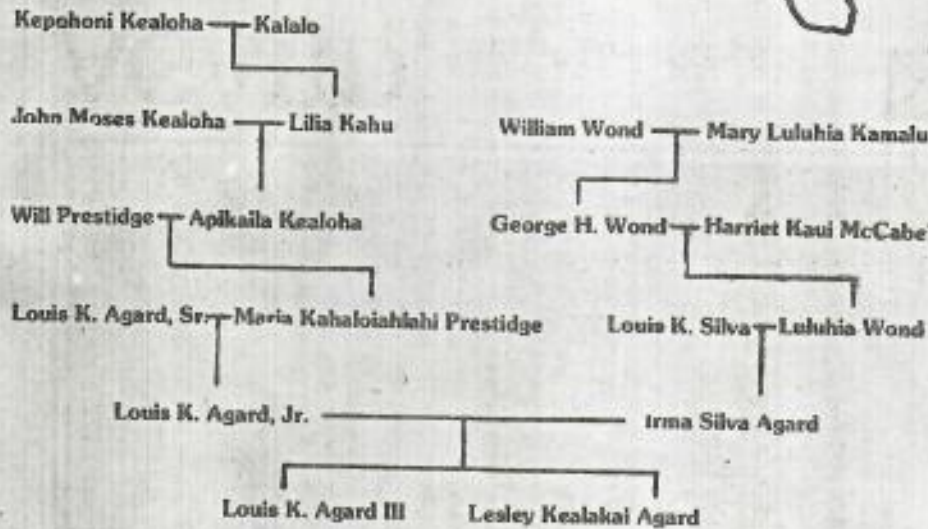
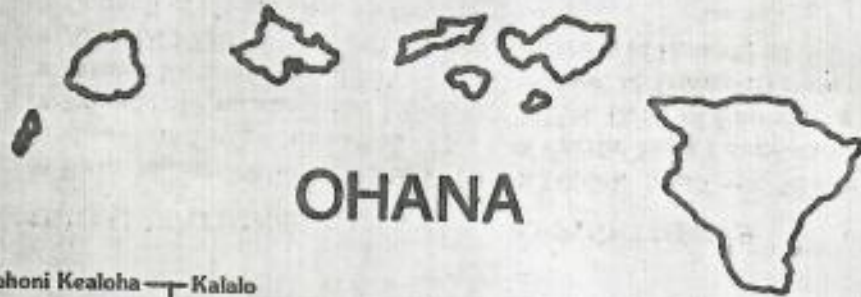


Education:
 Kapaa Elementary
 Kamehameha Schools
 University of Redlands

Career Experience:
 President, LELO Enterprises
 Advisor/Consultant to Pacific Islands Fishery
 Authorities
 Member, Advisory Commission on management of
 Marine Resources
 Consultant, Marine management and Conservation
 Owner/Pilot, small aircraft



AGARD, "Buzzy" Louis (Kāne) ☒





UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Washington, D.C. 20235

OCT 29 1982

Fx5:JMcC

TO: Office, Regional, and Center Directors, NMFS
 FROM: F - *Steve* William G. Gordon
 SUBJECT: Summary of Directors' Meeting in Leesburg, Virginia
 (October 13-14, 1982)

Attached is a summary of the Leesburg Directors' meeting. Copies of materials that were handed out at the meeting are available on request from Fx5. The summary is based primarily on the discussion at the meeting and is not meant to reproduce everything in your visuals and other handouts. I understand that most of you have already seen and commented on draft summaries of your regional presentations.

I appreciate the effort you and your staffs put into this meeting. John Byrne was interested in your regional reports and felt that he learned a great deal about fisheries. He reported to me that he was very impressed by the cooperation we have achieved with other NOAA elements.

As a reminder, our next Directors' meeting is tentatively scheduled for the third week in February.

Attachment

HONOLULU LABORATORY

NOV 1 0 14 1982

NAT'L MARINE FISHERIES SERVICE

Department of Commerce
 National Marine Fisheries Service

 NOV 1 1982
 Southeast Fisheries Center
 La Jolla, California



10TH ANNIVERSARY 1970-1980
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Minutes - Directors' Meeting
October 13-14, 1982
Xerox Training Center
Leesburg, Virginia

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7. Northwest and Alaska Reports--Aron, Larkins, McVey

a. Status of resources and fisheries

o Bering Sea

- Groundfish: condition good to excellent except sablefish and Pacific Ocean perch which have been at low but stable levels of abundance; Pacific cod and yellowfin sole are at record high levels.
- King and Tanner crabs: substantial reductions in catch mitigated somewhat by high prices; no turnaround in king crab foreseen soon, turn-up probably will be slow.

o Gulf of Alaska

- Groundfish: condition good to excellent except sablefish and Pacific Ocean perch; pollock at record high.
- Joint venture fisheries on pollock have developed rapidly in Shelikof Straits.

o West Coast Groundfish

- Widow rockfish and sablefish stocks now at or near estimated MSY, potential problem.

o Foreign Fisheries

- Observer coverage up to about 25% in Bering Sea and 27% in Gulf of Alaska.
- Statistics show reduction in take of prohibited species.

o Joint ventures

- Expected catch up 90% over 1981; continued expansion expected in 1983.

b. Center accomplishments in FY 1982

o Goal A

- Perfecting the electrophoretic identification of stocks of salmonids; can identify stock of origin among fish caught at sea.
- Significant changes in the program of the Auke Bay Laboratory.

o Goal B

- Supported the canning industry and others with botulism problems.
- o Goal C
 - Working with Japanese to reduce mortality of Dall's porpoise; population not in jeopardy.
- o Goal D
 - Identified areas of Puget Sound that are highly polluted (Everett, Duwamish, Commencement Bays); fish from these areas are not really safe for regular consumption; these areas are not commercially fished, but are used by sport and subsistence fishermen.
- c. Key issues and trends in FY 1983
 - o Goal A
 - Need to provide a predictive capacity to fleets for use in devising fishing strategy to focus on stocks with potential and avoid others.
 - Need to increase observer coverage.
 - Salmon management is a total coastal problem of high public interest.
 - Management picture for pollock is uncertain: lay-off or fish down to increase size; larger fish may have greater parasite problem; pollock abundance may be a factor in reduced crab abundance.
 - There are indications that Sebastes spp. (POP, short-belly rockfish) and sablefish are longer-lived than previously thought (80-90 years) which may explain the failure of these species to rebuild.
 - o Goal B
 - Need to restore public confidence in thermally processed fishery products.
 - Need to deal with implications of salt labelling for fishery products.
 - o Goal C
 - Now have strong bowhead data base; revised population estimated at about 3800 animals, up substantially from previous, conservative estimates.

- o Will work towards solution of incidental sea lion catch in Shelikof Straits pollock fishery.
- o Expect to accompany 90% of Coast Guard ship patrols; increased coverage will occur because Coast Guard is cutting back on such patrols.
- o Oil companies will begin offshore oil production using gravel islands and pipelines.
- o Will seek ways to increase efficiency of bowhead whale hunt.
- o Will reinstitute ESA Section 7 consultation with Park Service on Glacier Bay humpback whales.

8. Southwest Report--Ford, Barrett

a. Status of fisheries

- o Recreational fisheries
 - No up-to-date statistics available.
- o Tuna
 - Sharp drop in raw tuna supplies; biggest in fresh imports, mitigated by domestic landings. Inventory of case goods said to be high.
 - In Eastern Tropical Pacific, yellowfin and skipjack catches are down 6 and 20% respectively; CPUE is down; one third of fleet fishing in Western Pacific successfully.
 - Two canneries closed, one permanently and one indefinitely, others idle for a time; many vessels used to store product.
 - Prices are down about 20%.
- o Albacore
 - Serious availability problem (catch down 70%), also a marketing problem. Only two processors (one plant in San Pedro and one in Honolulu) buying albacore.
 - Price down (30% exvessel; overall value of catch down 78%).
- o Salmon
 - A record year; not expected, nor an effect of management: a fluke.
 - Catch up 32%, exvessel price up 2% and total value of catch up 30%.

- o Groundfish
 - Up in volume and value, in good shape.
 - o Coastal pelagics
 - Catch and value down, especially for anchovy. Mackerel catch fairly high but price down.
 - Weak markets for meal or oil.
 - o Dungeness crab
 - Down in volume, up in value.
 - o Hawaiian spiny lobster
 - Catch down 93% from 1980 high.
 - FMP approved after collapse; delay caused by controversy over carapace length, consistency, and protection of monk seals.
- b. Southwest Region accomplishments in FY 1982
- o Conservation and Management
 - Federal consistency problems with spiny lobster and precious corals plans resolved; plans approved.
 - Enforcement problems with salmon lessened under pressure of publicity.
 - Completed annual evaluation of research and management priorities among the Region, Center and California Department of Fish and Game.
 - Resolved confidentiality issues with respect to coastwide and Western Pacific fishery data.
 - o Marine Mammals and Endangered Species
 - Completed a sea lion/fishery interaction study with CDF&G; fishermen seem to overstate the problem.
 - Planning begun for 1985 tuna/porpoise rulemaking.
 - Completed Agency review of draft Hawaiian monk seal recovery plan.
 - Monitored grey whale migration relative to OCS activities; no negative effects found.

- Completed assessments of two species with Center and State for return of management.
- Humpback sanctuary in Hawaii said by Hawaiians to be adversely affected by use of Navy gunnery range.
- o Habitat Conservation
 - Analysis of State water referendum expanded public awareness of critical anadromous habitat requirements.
- o Utilization and Development
 - Initiated annual status of fisheries report reflecting economic analysis of condition and trends; such analysis institutionalized in a new Fishery Analysis Branch.
 - Initiated study of Southern California wetfish industry to find alternative markets for anchovy, mackerel, squid, albacore, etc.
 - Increased industry participation in S-K review process.
 - Eliminated one Market News position through automation.
- c. Key issues in FY 1983
 - o U.S. policy with respect to an exclusive economic zone
 - o Tuna
 - Abundance in ETP
 - Relations with Mexico
 - Albacore management
 - Access in Western Pacific
 - o National policy on limited entry
 - o Fish product quality
 - o Changing status of the Trust Territories of the Pacific Islands
 - o Coastwide salmon management
 - o Turtle conservation in the Pacific
 - Listing up for renewal next year
 - Regulations among islands inconsistent
 - Little data available to make appropriate changes

- o Continuing problems with growing marine mammal populations, especially in recreational fisheries.
- d. Status of resources, Center accomplishments and emphasis
 - o West Coast groundfish
 - Certain species fully or over-utilized (widow rockfish, sablefish); others remain underdeveloped (short-belly rockfish).
 - Held groundfish workshop involving the Southwest Center, NWAFC, the States, universities and Canadians.
 - Emphasizing improvements in California port sampling.
 - o Southern California pelagic resources
 - Found 300 square miles of sardine spawning area.
 - Replaced larval census method with egg production method to estimate anchovy biomass.
 - Reviewed CalCOFI program.
 - Problem: obtaining research vessel permits from Mexico; need to renegotiate 5-year bilateral when new government is installed.
 - Moving to emphasize use of juvenile stages as the key to prediction.
 - o Striped bass
 - Abundance at extremely low levels, possibly due to hydrocarbon effects.
 - Hydrocarbon studies funded by OMPA require annual competitive proposal process; time consuming and wasteful of program resources.
 - Because of funding uncertainties, emphasis will be on writing up results in FY 1983.
 - o Tuna/porpoise
 - No new stock assessments.
 - Stopped mortality reduction, behavior, physiology and tagging research.
 - Using new technology to determine position of porpoise schools with respect to the survey vessel.

- FY 1983 will emphasize the planning, coordination and analyses for 1985 hearings on rulemaking.
- o Hawaiian Monk seals
 - Stock consists of about 1500 animals, no change.
 - With one-time money, trained and deployed 16 people in the Northwest Hawaiian Islands for summer studies.
 - Recovery plan developed.
 - Conducting pup weaning program on headstart model.
 - Because of funding uncertainties, emphasis will be on writing up results in FY 1983.
- o Tropical tunas
 - ETP yellowfin resource is probably overfished.
 - SWFC maintains large worldwide tuna data base.
 - Need data on U.S. fishery in Western Pacific.
- o Temperate tunas
 - South Atlantic albacore are below MSY; North Pacific albacore CPUE declining.
 - Completed Pacific albacore model framework; to be further developed in FY 1983.
- o Island fisheries
 - Completed first phase of Guam and Northern Mariana Islands survey; new fishing grounds discovered (small shrimp, mackerel scad).
 - Need to consider development program for local fisheries in Guam and Northern Marianas.
- o Data in general
 - California Groundfish landings data available within 40-45 days as opposed to 2-year lag in past.
 - Hardware supporting FIN system installed in CDF&G local offices and Western Pacific FIN offices.

- Research began in 1977 and continues to accomplish results.
 - Research could have future pay-off of \$1.6 million increase in annual economic activity.
- o Enteric viruses
- Research focuses on improved techniques to test for presence of harmful viruses.
 - Extraction/assay procedures developed; studies to field test procedures completed, information on analytical techniques disseminated.
 - Improved monitoring tools could prevent 4-10% of current 20% sales loss in shellfish industry due to enteric viruses.
 - Future pay-off of this research is \$5-13 million annually.
- o Ciguatera
- SEFC has research coordination role to develop field-practical, sensitive test to detect Ciguatoxin.
 - CIEP lab method adapted to distinguish toxic from non-toxic fish; this method being refined/adapted for marketplace test
 - Future pay-off of this research is \$6 million annually in the Caribbean
- o Turtle excluder device
- Virtually eliminated turtle captures (97%).
 - Leads to no shrimp loss (potential 7% catch increase).
 - Involves relatively inexpensive gear modification.
 - Domestic use of TED increasing; 181 TEDs manufactured and distributed.
 - Audio-visual aids, workshops, and demonstrations used and conducted.
 - Increasing international interest (Indonesia, Guyana).
 - Fishery will benefit from protection from ESA, and increased shrimp catch and vessel efficiency.
- o Sea Turtle population estimates
- Aerial pelagic surveys, aerial beach surveys (monthly), nesting beach ground truth surveys (monthly), and trawl surveys (quarterly) conducted.

- Radio tracking conducted.
- Data and reports analyzed, reviewed, and submitted.
- 33 countries participating in 1983 international symposium.
- SEFC contributed to surveys in 22 countries.
- o Fisheries production/habitat relationship
 - Factors affecting fisheries production evaluated in estuarine and nearshore habitats (menhaden directly utilize marsh grass and detritus; larvae of estuarine-dependent fishes feed selectively on small portion of zooplankton community)
 - Contaminant impact on food web dynamics evaluated
 - Applied habitat research
 - Good sampling device developed for estuarine shrimp in vegetated areas to estimate shrimp productivity better.
 - NMFS model indicates primary productivity of estuaries is three times that of the North Sea.
- o EEO
 - Substantial progress was made in each of 4 target areas.
- g. FY 1983 Major Southeast Center Issues
 - o How to accomodate any reduction in sea days. Reduction would threaten credibility in State/Federal cooperative efforts, SEAMAP.
 - o How the new administration in Mexico will affect the Gulf survey.
 - o How to accomodate industry's increasing desire for gear technology and surveys, when money is not available.
 - o How to accomodate industry desires for input into Center activities and priorities.
 - o How active to be in OCS leasing between the U.S. and the Bahamas (many possible affects of doing nothing).
 - o OMPA funding
- h. FY 1983 Southeast Center program emphasis/objectives
 - o Fishery independent assessments
 - SEAMAP

- Prepare status of stocks reports for ICCAT.
- Continue to participate in WECAFC shrimp tagging program.
- Execute cooperative scientific programs with Mexico.
- o Fisheries utilization: harvesting
 - Conduct resource assessment surveys.
 - Report on fuel efficiency of shrimp trawls/trawling tactics.
 - Complete plan for developing shrimp separator trawl system.
 - Complete plan for assessing herring stocks.
- o Fisheries utilization: processing
 - Report on factors impacting wholesomeness/quality.
 - Continue research on minced menhaden and mixed bottomfish species.
 - Report on training/testing of sensory evaluation methodology in support of national nomenclature project.
- o Safety: Inorganic and organic contaminants
 - Issue reports on cadmium toxicity, mercury/selenium bioavailability, and risk from lead and PCBs.
 - Issue reports on baseline levels of petroleum hydrocarbons, and ciguatera research
 - Seek FDA concurrence on procedures for assessing viral contamination of shellfish.
- o Protected species: population estimates and habitat/life stage.
 - Estimate sea turtle abundance.
 - Continue life history research, and headstart project.
 - Complete report on TED technology transfer.
- o Habitat: mensuration and impact assessments
 - Conduct research on trace metals affecting marine food webs.
 - Initiate research on applicability of remote sensing technology to measure/monitor coastal habitat changes.
- o Habitat: information synthesis

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Akimseu, E. Maile 4,087
Blake, Hartwell K. 6,638
*Burgess, Rod Kealitiqahiai 14,792
*Freitas, Rockne 20,580
Hatchie, J. Kalani 1,167
Hookano, Geo 8,182
Hoomanawanui, Mel 4,958
Huihui, Valentine Sr. 1,913
Kalwi, Ed 1,681
*Kealoha, Gard 8,748
Kekipi, Velma P. 2,701
Kepo'o, Arthur 2,590
Kupau, Ellamae 4,214
Lui-Kwan Tim 3,758
Prejean, Kawaipunsonakoa . 1,681
Punikaia, Bernard K. 3,010
Tiki, Varoa 2,219
Trask, Arthur Kaukaohu ... 5,813
Williams, Ilima Kauka 6,643
Zablan, Liwela Naukana ... 2,007

MAUI (1)

*Kealoha, Joe 24,180
Leialoha, Benn 8,052

OAHU (1)

*Burgess, Hayden F. 13,945
Kealoha, Abe Lincoln P. Jr. 11,377
Kinney, Richard Pomalkal .. 9,115

AT LARGE (1)

(Two-year term)

Agard, Buzzy Louis 3,141
Ahuna-Hines, Nickie 4,264
Hughes-Ho, Claire K. 2,889
Kanui-Gill, Rita 1,905
*Kaulukukui, Thomas K. .. 12,966
Lee, Tuck Wah Kalei 5,841
Loa, Maui 1,281
Park, Alvina Kailihou 1,800
Stagner, Ishmael W. 2,437

HAWAII (1)

(Two-year term)

Chun-Seymour, Kaliko 4,300
*Desha, Piilani C. 12,689
Kinney, Everett K. 9,086
Papalimu, Joseph K. 7,971

Having thus briefly sketched the outlines of the prominent political events of the islands, the ancient religion of the Hawaiians will next be referred to; and as the *tabu* was no less a religious than a secular prerogative, it may properly be considered in connection with the priesthood. A knowledge of the power, scope and sanctity of the *tabu* is essential to a proper understanding of the relations existing in the past between the people and their political and religious rulers, and this great governing force will now claim our attention.

THE TABU.

Strictly speaking, the ancient *tabu*, or *kapu*, was a prerogative adhering exclusively to political and ecclesiastical rank. It was a command either to do or not to do, and the meaning of it was, "Obey or die." It was common to the Polynesian tribes, and was a protection to the lives, property and dignity of the priesthood and nobility.

The religious *tabus* were well understood by the people, as were also the personal or perpetual *tabus* of the ruling families; but the incidental *tabus* were oppressive, irksome and dangerous to the masses, as they were liable to be thoughtlessly violated, and death was the usual penalty.

Everything pertaining to the priesthood and temples was sacred, or *tabu*, and pigs designed for sacrifice, and running at large with the temple mark upon them, could not be molested. It was a violation of perpetual *tabu* to cross the shadow of the king, to stand in his presence without permission, or to approach him except upon the knees. This did not apply to the higher grades of chiefs, who themselves possessed *tabu* rights.

Favorite paths, springs, streams and bathing-places were at intervals *tabued* to the exclusive use of the kings and temples, and squid, turtle, and two or three species of birds could be eaten only by the priests and *tabu* nobility.

Yellow was the *tabu* color of royalty, and red of the priesthood, and mantles of the feathers of the *oo* and *manu* could be worn only by kings and princes. Feather capes of mingled red and yellow distinguished the lesser nobility.



THE PULOULOU, OR TABU MARK.

Women were *tabued* from eating plantains, bananas, and coconuts; also the flesh of swine and certain fish, among them the *kumu*, *manu*, *ulua*, *honu*, *ea*, *hahaiua* and *nata*; and men and women were allowed under no circumstances to partake of food together. Hence, when Libohiho, in 1819, openly violated this fundamental *tabu* by eating with his queen, he defied the gods of his fathers and struck at the very foundation of the religious faith of his people.

The general *tabus* declared by the supreme chief or king were proclaimed by heralds, while the *puloulo'u*—a staff surmounted by a crown of white or black *kapu*—placed at the entrance of temples, royal residences and the mansions of *tabu* chiefs, or beside springs, groves, paths, or bathing-places, was a standing notification against trespass. General *tabus* were declared either to propitiate the gods or in celebration of important events. They were either common or strict, and frequently embraced an entire district and continued from one to ten days.

During the continuance of a common *tabu* the masses were merely required to abstain from their usual occupations and attend the services at the *Akaias*, or temples; but during a strict *tabu* every fire and every light was extinguished, no canoe was allowed from the shore, no bathing was permitted, the pigs and fowls were muzzled or placed under calabashes that they might utter no noise, the people conversed in whispers, and the priests and their assistants were alone allowed to be seen without their places of abode. It was a season of deathly silence, and was thought to be especially grateful to the gods.

Some of the royal *tabus*, centuries back in the past, were frivolous and despotic, such as regulating the wearing of beards and compelling all sails to be lowered on passing certain coast points; but, however capricious or oppressive, the *tabu* was seldom violated, and its maintenance was deemed a necessary protection to the governing classes.

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LEGENDS AND MYTHS

OF

HAWAII.

THE FABLES AND FOLK-LORE

OF A

STRANGE PEOPLE

BY

HIS HAWAIIAN MAJESTY KALAKAUA.

EDITED AND WITH AN INTRODUCTION

BY

HON. R. M. DAGGETT,

First United States Minister to the Hawaiian Islands.

New York:
CHARLES L. WEBSTER & COMPANY.
1888.

FISHING

Baiting the bottom line

Only the ups and downs are predictable in commercial fishing.

THOSE WHO have any tendency at all toward motion sickness should stay out of the commercial fishing business. Never mind the fact that the seas are often rough. It's the radically up-and-down motion of the bottom line that's enough to make a shore-bound businessman sick.

For example, take Alika Cooper & Sons, a commercial fishing and fish processing enterprise in Hilo. Last year was the best year Hawaii's fishermen had seen since 1975, says Cooper, with his company alone processing close to 1½ million pounds of fish. But this year is the worst in years. What are his end-of-the-year projections? "Projections?" he spits out. "Ha!"

Unpredictable factors. The fact is, it's impossible to make realistic projections in the fishing business. There are far too many changeable factors involved. First and foremost is whether or not the fish are biting, and that factor is what's making this such a down year. "The fish just aren't coming back," says Cooper, noting that, whereas the fishing season usually starts in May, by September they were still "just dribbling in."

Auction price is another unpredictable factor—one that depends on time of year, demand versus supply and the condition of the fish. At a recent auction, says Cooper, the price for a pound of ahi ranged from \$1.13 to \$2.77, depending on the quality of the fish. And because of supply and demand, Cooper recently saw ahi drop from an average of \$3.50 per pound to \$1.50 per pound within two weeks.

The appeal of commercial fishing is the potential profit. Cooper says that a fisherman can gross up to \$1,500 at auction for one night's work. Yet out of that comes around \$200 for fuel, bait and ice, plus payments to the processor, shipper and auctioneer. And, Cooper notes, "he may not have caught anything at all the night before."

Those big margins also don't account for the cost and repair of equipment. While repair costs, for instance, are difficult to forecast, Cooper says he can count on spending around \$5,500 per engine each year for overhaul work. But there's just no way to know whether a transmission is going to fail, or a rudder is going to break, or the radar equipment



Alika (center) and his two sons, Kaohu and Mahi, have built up a family business which handles every step of commercial fishing from selling the bait to getting the catch to auction.

is going to give out, or traps are going to be swept away by storms, or long lines are going to be cut by a passing freighter—the possibilities are endless.

There's one other cost that Cooper can count on each year, and it's "the thing that practically kills you," he says. That cost is insurance. Cooper spends at least \$40,000 a year in coverage for the company's boats, trucks, property, temporary disability insurance for his six employees and health insurance for the fishermen.

Why bother? So if the business is that unpredictable, why be in it at all? Because admits Cooper, although when it's bad, it's horrid—when it's good, it's very, very good. Last year, for example, Cooper & Sons handled around \$1.3 million worth of fish. And for Alika Cooper, there's also the fact that fishing is a family tradition. Cooper got into commercial fishing in 1946, then took a 10-year leave from the industry in 1955 when he married,

moved to Volcano and tried farming for awhile.

But in 1965 Cooper moved his family to Hilo, and he got back into long line commercial fishing using a 65-foot sampan. Shortly after, he bought a couple of skiffs and started net fishing. Then, in 1975, he formed Alika Cooper & Sons with his wife and three children. Alika, Jr. has since left the company to run a nursery; Kaohu is in charge of the company's captains and fleet and Mahi handles mechanics and repairs.

Over the last seven years, the family members have built the business up bit by bit. They started with two boats purchased with six percent Small Business Administration loans. Now the company has seven boats (plus one under construction), six of them 27-footers worth around \$30,000 each and one 36-footer worth about \$100,000. The company also has two cold storage lockers, each with 26,000-pound capacity, 40 shipping containers, an ice block plant and three ice

machines, each of which can churn out up to 7,000 pounds of ice a day.

Cooper & Sons contracts out its boats to a captain and his crew member. The company also services around 20 other fishermen on a daily basis, providing them with bait and ice, and processing, packaging and air-shipping their catch to Honolulu for auction. After the auctioneer and the air shipper are paid, Cooper takes 10 percent from the independent fishermen for processing and shipping services. For its own boats'



This ahi may sell for \$1.13 to \$3 a pound, depending on supply, demand and quality.

catches, the company takes 44 percent, with 24 percent going to the crew member and 32 percent going to the captain.

Other than a few small local sales, Cooper usually sends all the fish his company handles to United Fishing Agency in Honolulu for auction. Within a matter of days, Cooper & Sons is sent a check for each fisherman plus a computer print-out which details which fish sold for how much, to what bidder and miscellaneous comments on its condition. At times, when the price is particularly good, the company will send fish to Japan, says Cooper. But payment can often be delayed for as much as three weeks when dealing with the Japanese market.

Even in the good years, Cooper says, he may make money on paper but it rarely goes in his pocket. "Practically every cent we make goes into expanding the business," Cooper says with a note of pride.

Some of that money is now starting to trickle into farming. "Fishing is good," says Cooper, "but you can't fish for too long. It takes a young man's endurance." Cooper now has three small lots, two in state agricultural parks, where he is growing fruit trees and flowers. "That," Cooper muses, "is what happens to old fishermen." ■



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IN REPLY REFER TO:

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POST OFFICE BOX 1306
ALBUQUERQUE, NEW MEXICO 87103

April 1, 1982

Dr. George H. Balazs
National Marine Fisheries Service
Honolulu Laboratory
P.O. Box 3830
Honolulu, Hawaii 96812

George,

Received your letter, information, publications, etc. -- thanks much. I only wish a number of our contractors/cooperators were as prompt and informative as you are, for we do appreciate it.

Reading the information on the turtle and possible listing problem, I could not help but wonder why some of the questions and/or resolution of the many facets of the problem were not considered for solving under the "special regulations" opportunities in 50 CFR (see Subpart 17.40-17.48) for species listed as "threatened." The opportunity exists to be as stringent or as lenient as necessary, depending on the species and associated problems. It is not a question or argument of whether it should or should not be listed, but rather a way to cover certain legitimate needs or opportunities. An example from our area is the threatened Arizona trout. We wrote special regulations which, in effect, turn the management and protection of the species over to the State of Arizona. The fish is legally taken by fishermen in designated waters with open and closed seasons, bag limits, etc. A violation of State law becomes a violation of Federal law under ESA, so we (the Feds) can step in and back up the State when and where necessary. Controlled taking is not the threat but rather habitat loss and hybridization. This is an easy one and only an example. The problems you have are understandably much greater, but until an attempt is made to find an acceptable resolution to the problems with the State, legitimate subsistence use by "native people," etc., through the use of the "special regulations" opportunities, then all avenues have not been explored. I would think that, at the least, it could help mollify the State of Hawaii while still maintaining the overview of the Feds and the ESA.

Amendments to the ESA now require that recovery plans be prepared for each species listed. This could be done through a recovery team, by contract, or an in-house individual. I haven't heard of anything getting started for sea turtles out your way. The SE sea turtle recovery plan (agency draft) should be out any day now, according to Sally Hopkins, the team leader.

I have received Steve Cornelius' 1981 report on the Costa Rican work and will have copies made -- I'll send you one as soon as they come off the press. There's a lot of information, which will take some time to digest -- will appreciate any thoughts, comments, challenges, etc., that you may have.

We are still having problems with official Mexico -- their bureaucracy is absolutely impossible to fathom, at least in the fisheries department. We and the WWF have been supporting Cliffton's green turtle project on the west coast, but because of lack of cooperation and permits, we are going to pull out. We may have a private and influential Mexican conservation group to "assume control" of this project. I will be meeting with WWF and Mexican representatives of this group (PRONATURA) in Washington toward the end of April to explore the possibilities. Didn't know you had a WWF grant -- haven't had a chance to read your project report, but look forward to it when things calm down a little. I'm working quite closely with WWF on a number of projects, and the relationship has been good for both sides.

Keep in touch.

Best regards,

Jack B. Woody
Acting Assistant Regional Director
Federal Assistance and Fisheries



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

F6/RBR

October 2, 1978

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

Dear George:

Thank you for your letter of August 22, 1978, regarding sea turtles. I apologize for the tardy response, however, the Cayman Turtle Farm, Ltd., has requested us to reconsider the decision to not exempt their products from importation. Both agencies (FWS and NMFS) agreed to do so, therefore not holding up implementation of the listing regulations on September 6, 1978. Presently those regulations are in effect except for the restriction against importation of turtles or turtle products from Cayman Farm. I would expect a decision on this matter within the next two or three weeks.

I read with interest your comments on allowing Hawaii to conduct a subsistence fishery for sea turtles. In earlier correspondence on the subject, you were not in favor of such action and, of course, we had to use the "record" in making our decision. I am interested in Hawaii's comments on the matter but to date they have not made any statements to NMFS. Perhaps we should reconsider the whole subsistence issue for the future in light of new information such as you have submitted. We do appreciate your comments.

I really have not taken the time to thank you for participating in the plan exercise. Please accept my deepest gratitude for helping us to lay out our sea turtle program. My thanks also for sending me the publications on Hawaiian seals and turtles. I really enjoyed reading through them. Many thanks.

Sincerely,

Richard B. Roe, Acting Director
Office of Marine Mammals and Endangered Species



15 January 1982

Mr. Don Heacock
Division of Aquatic Resources
Kauai

Dear Don:

Here is the dossier that I promised to send you. After reading through it, I would appreciate hearing your thoughts and opinions on the taking and use of turtles by native Hawaiians, as described by Alika Cooper.

It seems to me that Kenji Ego is somewhat confused, in that he has not distinguished between 1) subsistence use by native Hawaiians and 2) taking for reasons of food preference or sport/recreation by all people that live in Hawaii. The letters that were written by the State to the Federal government in 1975-76 tried to make a case for No. 2. Alika Cooper is now trying to make a case for No. 1. Of course neither are taking into accurate account the status of the resource, or the heavy commercial exploitation directed at the population for many years up until May of 1974.

I should also mention that Part 227 of the Rules and Regulations pertaining to the US Endangered Species Act defines "subsistence taking" as being for personal consumption and "customary, traditional and necessary for the sustenance of such resident and his immediate family". A subsistence taking exemption for green turtles was made for natives of the Trust Territory on the basis of the traditional native life styles that are still followed on many of the remote islands. Such an exemption was not given to American Samoa, simply because one was not requested. There may be some native American Samoans living in the Manua Group and at Swains Island that would qualify for "subsistence taking", but the green and hawksbill turtle resources are believed to be in pretty shabby condition.

Best regards for the New Year.

Sincerely,

George Balazs

You can write to me at either: Hawaii Institute of Marine Biology, Box 1346, Kaneohe 96744
or
NMFS, Box 3830, Honolulu 96812

March 27, 1973

Dear Mr. Balazs,

Through the grape-vine, I've heard of your research into the turtle population of Hawaii. For your benefit, I would like to relate a personal incident where I was witness to the killing of eight sea turtles for the sole purpose of obtaining its shell. During the year 1970-71, while diving with friends off Portlock Point, the southeast coast of Oahu, numerous sea turtles were discovered sleeping on the ocean floor in approximately ten feet of water. Each turtle was speared through the neck and raised to the surface. When I questioned my friend as to his reasons for killing these turtles, he simply answered that he wanted the shells. The eight turtles ranged in weight from approximately 35 lb to approximately 120 lb.

I have related my story to you in hopes that you can possibly do something about the slaughter of these sea turtles. Although guilty of killing turtles myself, I have never been able to rid myself of the guilt surrounding this killing.

Sincerely,

Nathan H. K. Pang

TRANSCRIPT OF AN UNSIGNED LETTER RECEIVED FROM KAUAI ON FEBRUARY 13, 1974

February 11, 1974

Illegal methods of catching green sea turtles— There is reliable information as to an explosive device called powerhead being used by a few fishermen on Kauai—names not mentioned—but they know who they are. Turtles killed by this method are butchered at sea and the meat portions are brought back on the boats. The reason for this is that the said turtles were taken illegally and contrary to the Hawaiian Statute Laws which prohibit taking any fish or turtles with the use of firearms—and the powerhead is considered a firearm. Would be impossible for these few fishermen to go out and kill approximately 15 to 20 turtles in one day without employing the use of powerhead. They have been seen to come in with just the meat portion.

In a recent public hearing on Kauai in the presence of a large number of people several fishermen boasted how many turtles they had caught last year (one said 200 another 100) which clearly revealed that they were falsifying their fish catch reports which were sent in to the Honolulu Fish and Game office for compiling. These reports came to a total of only 200 lbs. This was done to evade taxes and is also done with fish taken and sold by them. If the turtles were taken legally by non-firearm methods there would be no reason for conservation measures. By using legal methods it would be impossible to catch 15 turtles in one day. If the meat were examined on being brought to shore it would be discovered that there are puncture marks on the turtle meat.

The turtle population on Kauai has been depleted to a point where something has to be done to curb the greed of these few fishermen who fish by using only illegal methods.

2 FEB - early march 83 ?

Debate on whale sanctuary continues

MAUI NEWS

by DAVE DELEON
Staff Writer

HONOLULU — As far as the federal government is concerned, the whale sanctuary in Hawaiian waters is still under active consideration. And the state's fishing industry is still opposing it.

Exactly where the sanctuary will be and under what rules, however, remains an open question, according to the information presented at the 21st meeting of the federal Marine Mammal Commission held in Honolulu last week.

The sanctuary concept seems to be moving ahead within the government despite the continual opposition of the state's fishing industry.

The fishermen again expressed their fears that the sanctuary will engulf their industry in a net of unnecessary rules and regulations. This has been their continuous response to the sanctuary concept since it was first suggested in 1977.

"Once you get one federal regulation, you will get other regulations coming on," said West Pacific Fishing Council representative Wadsworth Lee, who noted: "Fisherman and whales get along very friendly without anymore bureaucracy."

The Humpback whales that winter in Hawaiian waters are an endangered species that have received federal protection since 1977. It is estimated that a herd of 850 of the ocean-going giants come to Hawaii annually. A University of Hawaii research team has actually counted 770 individuals.

The scientists attempting to develop better knowledge of the Humpback have been pushing for the development of a whale sanctuary in the state, primarily focused on the waters between Maui County's four islands: Molokai, Lanai, Kahoolawe, and Maui.

They are not looking for more restricted use of the water so much as a better atmosphere to their work in and better means to educating the public about the magnificent mammals, the scientists said.

The latest map of the proposed sanctuary, as drawn by the National Oceanic and Atmospheric Administration, is strictly within the county's waters. That map drew flack from the researchers at last week's conference for not including the Penguin Banks, southwest of Molokai. The area is also known to be an active whale area.

The fishermen are having a difficult time understanding why "sanctuary" is needed if the purpose is research and educational, according to fishermen at the meeting.

"Why spend the money?" asked fisherman Glenn Nishihara.

Shoji Kato, a Coastal Zone Management planner for the state Department of Planning and Economic Development, told the commission that the main opposition to the "sanctuary" comes from the word itself rather than the concept it represents.

The fishermen do not see how you can have a "sanctuary" without having further restrictions on their use of the sea, he said.

It was continually repeated at the conference, however, that the sanctuary was just meant as an area set aside for special attention. It would not mean more rules over sea-going activities.

Or, as Kato put it, "at least not initially" mandatory.

In an ironic twist, some of the researchers expressed the need for the sanctuary to get the federal government off their backs.

Doyle Gates, the local chief of the National Marine Fisheries Service, expressed concern about the possible "abuse" of research permits by the different research teams operating in the area.

Without naming any one research outfit, Gates accused some of the research operations of "getting into the area of commercial activity . . . self aggrandizement."

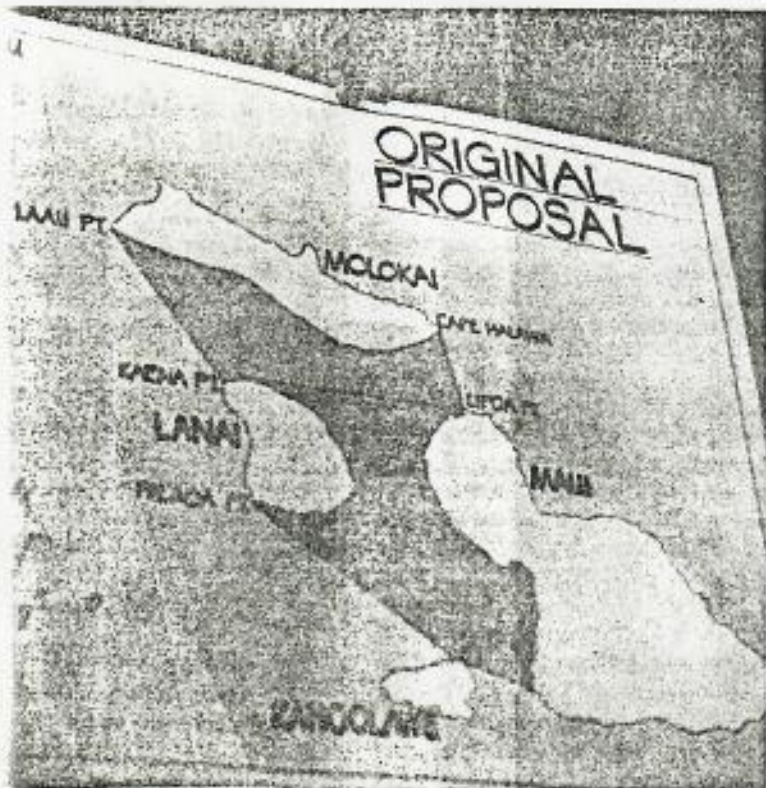
There is a need for educational and publicity activities, he said, "but some of it is getting out of control."

Some of the teams were allowing too many names on their permits and agents. Some have as many as 40 persons signed on, he said.

Gates advised the research outfits to police their own activities or be prepared to have the federal government do it for them.

Gates' comments were an "eloquent argument for a sanctuary" by themselves, said Dr. Lou Herman, director of the University Hawaii Kewalo Basin Marine Mammal Lab.

Herman said unnecessary "edicts" from the Marine Fisheries Service



SANCTUARY BOUNDARIES — This map shows the original proposal for a Humpback whale sanctuary. The most recently proposed boundaries are roughly the same. The latest version could include the waters along Kahoolawe's north and west shores.



WHALE RESEARCHERS — University of Hawaii whale researcher Dr. Lou Herman (right) and Pacific Whale Foundation leader Greg Kaufman (left) listen to speakers during the conference. Herman wants the sanctuary to limit federal restrictions on research.

See WHALE, page A

Maui News photos by Dave DeLeon

Notes on Alike Copper case:

- 1.) Was he one of permit holders under Reg 36?
- 2.) Note his former commercial involvement - using nets.
His presence at FBS - took turtles?
Note ARB.
BRING up with OHA. office - what Frank Karabely would they want?
- 3.) H.S. Comm. - Would this weaken their case?
- 4.) Also take Whales/porpoise?
- 5.) ^{Cayman} Copper can buy a turtle from Maui Company
- 6.) NIHAU Residents
- 7.) Without listing, it is endangered.
- 8.) "Aborig. method" - take on the beach
- 9.) "If its part of the ^{TT} culture, and they're disappearing, that would make it even more important to protect them"
- 10.) "Tribe", as for American Indians
- 11.) Taken on high seas when small (i.e. squid gillnets)
- 12.) Copper represents commercial interests - but is asking for subintere take. irony.
- 13.) WCSTC - Unique status
IUCN policy
- 14.) Consider - other Pacific areas
- Traditional constraints
- 15.) Status of resources
- 16.) Turtles sold to Navy (Flannigan)
- 17.) RIDGEWAY

18.) If subsistence use by aborigines fishing might one to be considered, than it should be for all, not just turtle fishery.

19.) Reducing habitat from erosion at FBS + Swish of tank from Cashe Terns

20.) TUMORS

21.) If important to culture it should be extra

Reduced nesting habitat at FFS

! Sākuda - Get information from his Hawaiian employees

Use or abuse ?

I have evidence to support...

DRAFT MEMO OUTLINE

In past couple years - several reports of more turtles being seen in certain areas - Very likely the case

Possible EXPLANATIONS: (Likely all apply, to some extent)

- ① Turtles bolder now - not being chased, speared, blood in water - ∴
MAKING THEMSELVES MORE VISIBLE
- ② Some people are looking harder now
- ③ Reduced "taking" of turtles is resulting in (a) build-up of resident foraging aggregation and/or (b) repopulation of foraging areas that were eliminated by "take" or scared off by heavy turtle fishing

DRAFT MEMO

OUTLINE

1
Warm/Calm period following stormy weather can cause many turtles to venture close to shore in a bolder fashion in search of food.

2
Spend more time at the surface

3
Reduced "taking" of turtles as a result of aggregation of turtles in "hot" areas of foraging "areas" that were eliminated by "take" or fishing pressure.

POSSIBLE EXPLANATION WHY THIS
APPARENT INCREASE IS NOT BEING
SEEN (REFLECTED) IN THE NUMBERS
AT THE FRENCH FRIGATE SHOALS BREEDING
COLONY -

1.) SLOWNESS OF KNOWN GROWTH RATES

2.) JUST APPARENT - NOT REALLY REAL

3.) THEY ARE SMALL, NEWLY RECRUITED
TURTLES - SLOW GROWTH +
HIGH PREDATION \therefore NOT
ENOUGH TIME HAS PASSED TO
"SEE" IT IN THE BREEDING COLONY

GET 19 JULY
22 SEPT. 82 NMMS

IN REPLY REFER TO:



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

SE

POST OFFICE BOX 1306
ALBUQUERQUE, NEW MEXICO 87103

APR 21 1983

Memorandum

To: Regional Director, Region 1 (SE)
From: ^{Acting} Regional Director, Region 2 (SE)
Subject: Pacific Sea Turtle Recovery Team

Considering the amount of correspondence exchanged among the Washington Office, Region 1, and Region 2 since my original memorandum of July 19, 1982, I think it safe to assume that all three offices have thoroughly considered the question of forming a Pacific Sea Turtle Recovery Team (PSTRT). Toward that end, we make the following observations:

1. Funding for sea turtle related recovery actions would be more in line with Service policy if recovery plans existed for all species of sea turtles for which the Service has or shares responsibility.
2. Region 2 agrees wholeheartedly with the point in the Director's memorandum of September 22, 1982, which states that Region 1 should logically "take the lead" for the FWS in recovery planning for Pacific sea turtles nesting on beaches under U.S. jurisdiction; our point is that we are ready and willing to assist Region 1 in organizing a sea turtle recovery team and in writing a plan or plans.
3. We question the premise that the National Marine Fisheries Service (NMFS) should "take the lead" on development of any sea turtle recovery plan. No sea turtle species is threatened or endangered as a result of actions that occurred or are occurring at sea, and no species of sea turtle will be recovered solely as a result of actions taken at sea. Granted, the turtle excluder panel (TED) developed by NMFS is a superb example of concerted R&D and will undoubtedly promote sea turtle recovery (if universally adopted by trawlers). Realistically, however, recovery will occur and only can be measured on the nesting beaches and, to a lesser extent, in estuaries and other tidal zones where all size classes of sea turtles

occur, especially juveniles. From a biological perspective, these areas should be as much or more the responsibility of FWS as of NMFS.

Regarding which agency should deal directly with Mexico, the FWS is the lead agency in recovery actions related to the Kemp's ridley, and Region 2 deals with the Mexican Government most directly, not NMFS as suggested in the WO's memorandum of September 22, 1982. The Service in general and Region 2 specifically also deal with several other Latin American government agencies in addition to Mexico.

4. Sea turtle biology doesn't change much from one geographic area to the next and, except (possibly) for the Mexican black turtle and Hawaiian green, sea turtles do not know what their nationality is and certainly do not confine their movements to the limits of political boundaries. For example, ridleys tagged on nesting beaches in Costa Rica have been recovered in waters of Ecuador, Colombia, Panama, Nicaragua, El Salvador, Guatemala, Mexico, and up to 2,000 kms at sea west of Costa Rica. Besides that, and more importantly, whether you have one team or ten, essentially the same people should comprise the team membership(s) and consultants. We believe trying to arbitrarily divide Pacific sea turtles and their habitats and the experts who deal with them would prove unrealistic, inefficient, and not cost effective. The function of PSTRT is discussed further on the next page.
5. Recently, NMFS published a notice of their intent to review the status of sea turtles. This review would be more meaningful if done in the context of recovery actions undertaken by FWS and NMFS and designated in a recovery plan(s).

Therefore, we suggest the following compromise: Region 1 "take the lead" by informing NMFS that the FWS intends to form a PSTRT and invite NMFS "to share the lead." Then, charge the team with writing either one overall Pacific Ocean plan or a plan for each sea turtle species in the Pacific, whichever Region 1 believes appropriate. Region 2 will assist Region 1 by coordinating the Pacific Latin America portion of the plan(s) and by whatever other role Region 1 requests.

As a first step, we suggest the following individuals for consideration as PSTRT members or consultants (no order of priority). You are undoubtedly aware of other qualified individuals.

Sr. Rene Marquez Millan, Instituto Nacional de la Pesca, Mexico
Dr. George Balazs, University of Hawaii

Dr. Douglas C. Robinson, University of Costa Rica
Mr. Stephen Cornelius, Costa Rica Olive Ridley Sea Turtle Project
Dr. John Hendrickson, University of Arizona
Dr. Thomas Fritts, Region 8, FWS
Mr. David Bowman, Region 2, FWS
Dr. Ken Dodd, FWS (OES)
Sr. Mario Hurtado, Ecuador

We further suggest that the PSTRT could function in either of two ways:
a) as a review group that oversees, coordinates, and polishes individual recovery plans that deal with a species or localized population and that is produced under contract to the most knowledgeable individual(s), or b) as the team that actually writes and reviews each recovery plan.

In summary, we believe that recovery plans for sea turtles are necessary to guide and to expedite recovery of these listed species. Further, we believe the best approach to developing recovery plans is by bringing together those individuals with the most knowledge of and interest in the species. We await your decision.

/s/ JAMES A. YOUNG

cc: Director, FWS, Washington, D.C. (AFA)
Director, FWS, Washington, D.C. (OES)

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96812

May 5, 1983

SUSUMU ONO, CHAIRMAN
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU
DEPUTY TO THE CHAIRMAN

DIVISIONS:
AQUATIC RESOURCES
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

Handwritten notes:
S/S
A
4/25/83
EP
EP
KAR

MEMORANDUM

TO: Hawaii Fisheries Coordinating Council Members

FROM: Henry M. Sakuda, Director
Division of Aquatic Resources

SUBJECT: Review of Federal Regulations Governing the Green Sea Turtles in Hawaii.

This is to inform you that the National Marine Fisheries Service will be conducting statewide public meetings between May 10 and May 19, 1983 to review its regulations concerning the taking of Hawaiian green sea turtles from the marine environment for subsistence purposes. The meeting schedule and background information are attached for your use.

Review comments may be presented at the public meetings or in writing. Written comments must be submitted to the National Marine Fisheries Service by June 20, 1983.

Your participation in this Federal review of regulations governing the taking and use of green sea turtles in Hawaii will be appreciated.

Henry M. Sakuda
HENRY M. SAKUDA

Attachments: Public Meeting Announcement and Schedule
Pre-copy of Federal Register Review Notice
Final Rule on green sea turtle, loggerhead sea turtle, olive
ridley sea turtle (Federal Register Vol. 43, No. 146, 1978)
Governor Ariyoshi's 1975 letter to Director of U.S. Fish and
Wildlife Service

RECEIVED

APR 29 1983

AQUATIC RESOURCES



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE
Southwest Region
Western Pacific Program Office
P. O. Box 3830
Honolulu, Hawaii 96812

April 28, 1983

DIVISION OF AQUATIC RESOURCES	
DIRECTOR	Referral Date <input checked="" type="checkbox"/>
FISH CHIEF	Suspense Date <input checked="" type="checkbox"/>
MARINE SEC.	Draft Reply <input type="checkbox"/>
F.W. SEC.	Reply Direct <input type="checkbox"/>
AFRC	Comments <input checked="" type="checkbox"/>
FISH DEV	Information <input type="checkbox"/>
F/SWR/STIN	Comp. Act & File <input type="checkbox"/>
	Return To:
SECRETARY	Copies To:
OFF SERV.	Remarks:
FED. AID	

FOR IMMEDIATE RELEASE

PUBLIC MEETING ANNOUNCEMENT

NATIONAL MARINE FISHERIES SERVICE TO REVIEW SEA TURTLE REGULATIONS

The National Marine Fisheries Service will be reviewing its regulations regarding the green turtle in Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Palau, the Federated States of Micronesia and the Marshall Islands in response to several requests from the public. The purpose of this review is to examine the possibility of allowing an exemption for subsistence taking of green turtles in Hawaii, Guam and American Samoa as it now applies to the Trust Territory of the Pacific Islands (TTPI), and reviewing the current exemption.

Except for research, propagation and enhancement, zoological exhibition or educational purposes under Federal permit, the taking of green turtles

(more)

NATIONAL MARINE FISHERIES SERVICE TO REVIEW SEA TURTLE REGULATIONS

2nd add

has been prohibited since 1978 when it was listed as threatened in the Pacific area under the Endangered Species Act of 1973, as amended.

The only other exception is the allowance for a subsistence take of green turtles by residents of the TTPI.

Any information concerning cultural, historical, and subsistence needs as well as biological information on green turtles will be considered.

In order that the information obtained for the review is as complete as possible comments are being solicited either in writing or at the public meetings scheduled below. Written comments are due by June 20, 1983 and should be sent to:

Regional Director
Southwest Region
National Marine Fisheries Service
300 S. Ferry Street, Room 2016
Terminal Island, CA 90731

(more)

NATIONAL MARINE FISHERIES SERVICE TO REVIEW SEA TURTLE REGULATIONS

3rd add

Public meetings will be held as follows:

- | | |
|--------------|---|
| May 10, 1983 | Hilo, Hawaii
County Council Room, 2nd Floor
25 Aupuni Street
7:00 - 9:00 p.m. |
| May 11, 1983 | Kailua-Kona, Hawaii
Kona Hilton, Resolution Room
7:00 p.m. - 9:00 p.m. |
| May 12, 1983 | Wailuku, Maui
Baldwin High School
Multipurpose Bldg. Lecture Hall
Kaahumanu Highway
7:00 p.m. - 9:00 p.m. |
| May 16, 1983 | Lanai City, Lanai
ILWU Hall, 840 Ilima Avenue
7:00 a.m. - 9:00 p.m. |
| May 17, 1983 | Kaunakakai, Molokai
Kaunakakai Elementary School Cafeteria
Kamehameha V Highway
7:00 p.m. - 9:00 p.m. |

(more)

May 18, 1983

Honolulu, Oahu
Prince Jonah Kuhio Federal Building
5th Floor Cafeteria
300 Ala Moana Blvd.
7:00 p.m. - 9:00 p.m.

May 19, 1983

Lihue, Kauai
Kauai Regional Library
4434 Hardy Street
7:00 p.m. - 9:00 p.m.

June 6, 1983

Agana, Guam
Guam Reef Hotel
7:00 p.m. - 9:00 p.m.

June 7, 1983

Saipan, Northern Mariana Islands
Saipan Grand Hotel
7:00 p.m. - 9:00 p.m.

June 8, 1983

Pago Pago, American Samoa
Rainmaker Hotel, Convention Center
5:30 p.m. - 7:30 p.m.

For further information please contact Mr. Doyle Gates, Administrator,

Western Pacific Program Office, National Marine Fisheries Service,

P. O. Box 3830, Honolulu, Hawaii, 96812. Telephone 808/955-8831.

April 28, 1983

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Review of Regulations Concerning the Taking of
Sea Turtles for Subsistence Purposes

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Review of regulations concerning the taking of sea turtles for subsistence purposes.

SUMMARY: The Service has been requested by residents and the Governments of Guam and Hawaii to review the regulations prohibiting taking of sea turtles for subsistence purposes, except for the taking of the green sea turtles (Chelonia mydas) by residents of the Trust Territory of the Pacific Islands. In response to those requests the Service announces its intent to review Special Rule 50 CFR 227 Subpart D to determine whether the subsistence regulations for the Trust Territory of the Pacific Islands should be modified and whether the taking of sea turtles

for subsistence purposes should be allowed in other areas of the Central and Western Pacific Ocean. To ensure that this review is comprehensive the Service is soliciting comments and information on all aspects of the use of sea turtles for subsistence purposes and will conduct several public meetings as specified below. The Service will determine if it is appropriate to modify existing regulations based upon the following: comments, information, and testimony received; review of the administrative record compiled prior to promulgation of the existing regulations; and a legal analysis of the subsistence issue being prepared by the National Oceanic and Atmospheric Administration's Office of General Counsel.

DATES: Comments and information must be received by June 20, 1983. Public meetings will be held as follows:

- May 10, 1983 - Hilo, Hawaii
County Council Room, 2nd Floor, 25 Aupuni St.
7:00 p.m. - 9:00 p.m.
- May 11, 1983 - Kailua-Kona, Hawaii
Kona Hilton, Resolution Room
7:00 p.m. - 9:00 p.m.
- May 12, 1983 - Wailuku, Maui
Baldwin High School, Multipurpose Bldg.,
Lecture Hall
Kahumamau Highway
7:00 p.m. - 9:00 p.m.
- May 16, 1983 - Lanai City, Lanai
IJMU Hall, 840 Ilima Avenue
7:00 p.m. - 9:00 p.m.

Hand the motion of these steps

to the committee

County of Hawaii, Hawaii

John J. ...

...

- May 17, 1983 - Kaunakakai, Molokai
Kaunakakai Elementary School Cafeteria
Kanehameha V Highway
7:00 p.m. - 9:00 p.m.
- May 18, 1983 - Honolulu, Oahu
Prince Jonah Kuhio Federal Building
5th Floor Cafeteria
300 Ala Moana Blvd.
7:00 p.m. - 9:00 p.m.
- May 19, 1983 - Lihue, Hawaii
Maui Regional Library
4344 Hardy Street
7:00 p.m. - 9:00 p.m.
- June 6, 1983 - Agana, Guam
Guam Reef Hotel
7:00 p.m. - 9:00 p.m.
- June 7, 1983 - Saipan, Northern Mariana Islands
Saipan Grand Hotel
7:00 p.m. - 9:00 p.m.
- June 8, 1983 - Pago Pago, American Samoa
Rainmaker Hotel, Convention Center
5:30 p.m. - 7:30 p.m.

Public meetings may be held in the Trust Territory of the Pacific Islands in June 1983. The dates and locations of those public meetings will be published in the FEDERAL REGISTER as an addendum to this notice at least 30 days prior to the first meeting.

ADDRESS: Please address correspondence to Mr. Alan W. Ford, Regional Director, Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Alan W. Ford, Regional Director, Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, telephone (213) 548-2575 or FTS-796-2575; or Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, P.O. Box 3030, Honolulu, Hawaii 96812, telephone (808) 955-2831.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (ESA) of 1973, as amended, is administered jointly by the Departments of the Interior (Fish and Wildlife Service) and Commerce (NMFS). In general, the Department of Commerce is responsible for listed marine species and the Department of the Interior for terrestrial and aquatic species. The two Departments share jurisdiction of sea turtles with Interior having responsibility for sea turtles in the terrestrial environment and Commerce having responsibility for sea turtles in the marine environment. On July 28, 1978, pursuant to the authority of section 4 of the ESA, NMFS and the Fish and Wildlife Service published a Final Rule in the FEDERAL REGISTER listing and protecting loggerhead sea turtles (Caretta caretta), as threatened species and populations of green (Chelonia mydas) and olive ridley (Leidochelys olivacea) sea turtles as threatened or endangered species. Breeding

populations of green sea turtles in Florida and on the Pacific Coast of Mexico and of olive ridley sea turtles on the Pacific Coast of Mexico are listed as endangered species; the remaining populations of both species are listed as threatened species.

The Final Rule also amended 50 CFR by adding a new Part 227, which, with few exceptions, prohibits commercial trade in and the taking of threatened species of sea turtles. Among the exceptions to the prohibition on takings is the taking of "any member of the species of the green sea turtle (Chelonia mydas) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional, and necessary for the subsistence of such resident and his immediate family." The existing regulations do not allow any other taking of sea turtles for subsistence purposes. The exception was founded on information submitted by the Government of the Trust Territory of the Pacific Islands which documented the traditional use of green sea turtles by natives of the Trust Territory. This exception was not extended to other areas of the Central and Western Pacific because NMFS thought a complete prohibition was necessary in the other areas to control commercial trade in turtle shells, meat, and other products. Also, evidence was presented indicating that the green sea turtle population in Hawaii had declined, and NMFS concluded that a subsistence take in Hawaii might contribute to a further decline of that population.

Purpose of Review

The Service received requests from residents and the Governments of Guam and Hawaii to review existing regulations that prohibit the taking of sea turtles for subsistence purposes in Guam and Hawaii. The requests indicate that the regulations may discriminate against residents of Guam and native Hawaiians. The Service is responding to those requests by reviewing the existing regulations to determine whether the subsistence regulations for the Trust Territory of the Pacific Islands should be modified and whether the taking of sea turtles for subsistence purposes should be allowed in other areas of the Central and Western Pacific Ocean.

Scope of Review

Because of the shared jurisdiction of sea turtles under the Endangered Species Act, during this review the Service will consider only the subsistence take of green sea turtles in the marine environment (seaward of mean low tide). Subsistence taking of green sea turtles or eggs on beaches is under the jurisdiction of the Department of the Interior and will not be considered. The Service will coordinate this review with the Department of the Interior.

Information Sought

To ensure that the review is complete and based upon the best available information, the Service is soliciting information

concerning all aspects of subsistence use(s) of green sea turtles including, but not limited to, the need for subsistence taking for nutritional reasons, the historical use(s) of green sea turtles in the areas in question, and the impact(s) of subsistence taking on the affected populations and their recovery. The Service requests that comments and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. All correspondence should include the author's name, address, and any association, institution or business affiliation being represented. This request pertains only to information that was not considered during the rulemaking process leading to the Final Rule published in the FEDERAL REGISTER on July 28, 1978 (pp 32900-32911).

LIST OF SUBJECTS: In 50 CFR Part 227

Endangered and Threatened Wildlife: Fisheries

/s/ Richard B. Roe

APR 14 1983

Richard B. Roe
 Acting Director, Office of Protected
 Species and Habitat Conservation

Date

Billing Code: 3510-22

cc: F/M, F/M4, F/M41, F/M412(5)
 NOAA:NMP3:F/M412:CKarnella:634-7471:BLM:4-11-83 (DH 111/cfr227)

Carrier frequency (MHz)	Conditions of use	
	Section	Limitations
156.360	83.104, 83.359	34, 40, 44, 78.
156.375	83.359	40, 49, 78.
156.400	83.359	40, 49, 78.
156.425	83.359	40, 41, 58, 54, 78.
156.450	83.359	40, 41, 49, 50, 78.
156.525	83.359, 83.381	40, 50, 52, 78.
156.625	83.359	40, 50, 52, 78.
156.800	83.108, 83.213, 83.359	40, 41, 43, 78.
156.900	83.359	40, 41, 49, 78.

(b) * * *

(76) These frequencies may be used by aircraft subject to the limitations on such usage set forth in section 83.359 of this part.

2. Section 83.359 is amended as follows:

§ 83.359 Frequencies in the band 156-162 MHz available for assignment.

(a) The frequencies in the following table are available for assignment to stations as indicated.

(b) In addition to the limitations contained in § 83.351 (b)(34) and (b)(55), aircraft may use certain of these frequencies under the following circumstances and subject to the following limitations:

(1) The altitude of aircraft stations shall not exceed 1,000 feet, except for reconnaissance aircraft participating in icebreaking operations where an altitude of 1,500 feet is allowed;

(2) The mean power of aircraft station transmitters shall not exceed five watts; however, a power of one watt or less shall be used to the maximum extent possible;

(3) Aircraft stations shall use inter-ship frequencies only;

(4) Communications of an aircraft station shall be brief and limited to operations in which stations of the maritime mobile service are primarily involved and where direct communica-

tions between the aircraft and the ship or coast station is required;

(5) The frequency 156.3 MHz may be used by aircraft stations for safety purposes only and the frequency 156.8 MHz may be used for distress, safety and calling purposes only.

[FR Doc. 78-20833 Filed 7-27-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Listing and Protecting Loggerhead Sea Turtles as "Threatened Species" and Populations of Green and Olive Ridley Sea Turtles as Threatened Species or "Endangered Species"

CROSS REFERENCE: For a regulation on the above entitled matter, issued jointly by the Department of Commerce/National Oceanic and Atmospheric Administration/National Marine Fisheries Service and the Department of the Interior/Fish and Wildlife Service, see FR Doc. 78-21047 in the rules and regulations section of this issue of the FEDERAL REGISTER.

[3510-22]

[4310-55]

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Listing and Protecting Loggerhead Sea Turtles as "Threatened Species" and Populations of Green and Olive Ridley Sea Turtles as Threatened Species or "Endangered Species"

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, and U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), Department of the Interior, determine the loggerhead sea turtle (*Caretta caretta*) to be a threatened species under the Endangered Species Act of 1973 (the Act). In addition, the green sea turtle (*Chelonia mydas*, which includes the subspecies *C. mydas agassizii*, and *C. mydas carolinensis*) and the olive (Pacific) ridley sea turtle (*Lepidochelys olivacea*) (hereinafter referred to as the Pacific ridley) are determined to be threatened species under the Act except that the Florida and Mexican Pacific coast breeding populations of green sea turtles and the Mexican Pacific coast breeding population of Pacific ridley sea turtles are determined to be endangered species. This rulemaking also contains protective regulations for threatened species of sea turtles. The primary differences as a result of listing these populations as endangered instead of threatened are that incidental catch by commercial fishermen is prohibited and there are no exceptions for zoological exhibition or educational purposes, taking of injured, dead, or stranded specimens, taking of species under State-Federal Cooperative Agreements for research or conservation, or subsistence taking of green turtles in the water by residents of certain U.S. territories in the Pacific. DATES: This rule becomes effective 30 days after publication in the FEDERAL REGISTER by Environmental Protection Agency of availability of the final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT

Mr. Richard B. Roe, Acting Chief, Division of Marine Mammal and Endangered Species, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, 202-634-7287.

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 28, 1973, FWS published a proposal to list green and loggerhead sea turtles as endangered species under the Endangered Species Conservation Act of 1969. On that same day the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) was enacted into law and superseded the Endangered Species Conservation Act of 1969. The 1973 act provides legal authority for this action.

On April 23, 1974, P. Wayne King, Director of Conservation and Environmental Education for the New York Zoological Society, submitted a formal petition under the new law to list the green sea turtle as an endangered species and the loggerhead and Pacific ridley sea turtles as threatened species. Following a NMFS preliminary status review of these three species, NMFS and FWS sent letters on August 8, 1974, to the Governors of the States, Territories, Possessions, and the Commonwealth of Puerto Rico, where green, loggerhead, and Pacific ridley sea turtles are resident, announcing a NMFS/FWS status review of these species and requesting views and data relevant to the status of these species. On August 9, 1974, Wayne King petitioned the Secretary of Interior to have the green sea turtle listed under the "similarity of appearance" provision of the act. Mariculture, Ltd. (now known as Cayman Turtle Farm, Ltd. and hereinafter referred to as Cayman Farm), Grand Cayman Island, British West Indies, a business involved in the raising and marketing of captive green sea turtles, submitted a formal petition on August 15, 1974, to list the green sea turtle as a threatened species, but to exempt turtles bred or raised in captivity from this classification. A formal review by NMFS/FWS of the status of green, loggerhead, and Pacific ridley sea turtles was announced on August 16, 1974, in the FEDERAL REGISTER (39 FR 29605; 39 FR 29607).

On May 20, 1975, the NMFS/FWS determination to propose listing green, loggerhead, and Pacific ridley sea turtles as threatened species was published in the FEDERAL REGISTER (40 FR

21982, 40 FR 21974) (corrected 40 FR 26043 and 40 FR 25217). That proposal summarized the factors thought to be contributing to the likelihood that these sea turtles could become endangered within the foreseeable future, specified the regulations which would be applicable to conserve these species if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. In July 1975, NMFS and FWS sent a telegram to all diplomatic and consular posts soliciting comments on the proposed action and information on sea turtles found in their jurisdiction. On July 17, 1975, Robert Nordstrom, Director of the Fisheries Divisions, National Canners Association, requested that NMFS hold a public hearing on the proposed regulations regarding sea turtles. On August 20, 1975, notice was published in the FEDERAL REGISTER of the NMFS decision to prepare an environmental impact statement and to hold a public hearing on the proposal to list green, loggerhead, and Pacific ridley sea turtles as threatened, the proposed protective regulations for these species, and the draft environmental impact statement (DEIS) (40 FR 36401). On November 14, 1975, notice was published in the FEDERAL REGISTER postponing the NMFS public hearing from December 3, 1975, to February 25, 1976 (40 FR 53051). The National Marine Fisheries Service submitted its DEIS on January 30, 1976, to the Council on Environmental Quality (CEQ). On February 6, 1976, CEQ announced in the FEDERAL REGISTER the availability of the DEIS and opening of the 45 day comment period on the DEIS (41 FR 5426). Also on February 6, 1976, notice by NMFS was published in the FEDERAL REGISTER extending the comment period on the proposed listing and protective regulations, DEIS, and public hearing from March 8, 1976 to March 22, 1976 (41 FR 5413). On February 25-26, 1976, an informal, fact-finding public hearing was held in Washington, D.C., on the proposed listing of the three species of sea turtles and the DEIS. Scientists, conservationists, businessmen, shrimpers, and representatives from State and foreign governments participated in this hearing. On March 19, 1976, CEQ published notice in the FEDERAL REGISTER extending the public comment period on the DEIS until April 5, 1976 (42 FR 11602).

On June 16, 1976, NMFS/FWS proposed regulations to list green, loggerhead, and Pacific ridley sea turtles as threatened species under the "similarity of appearance" provisions were published in the FEDERAL REGISTER (41 FR 24378). Once these final listing regulations (on the proposal of May 20, 1975) are effective, the proposed "similarity of appearance" regulations

will be withdrawn as indicated in the June 16, 1976 proposal. Cayman Farm requested on July 22, 1976, that a public hearing be held on the proposed regulations treating these three species of sea turtles as threatened under the "similarity of appearance" provisions. On October 15, 1976, denial of the hearing requested by Cayman Farm was published by the Department of the Interior in the FEDERAL REGISTER (41 FR 45573).

On July 18, 1977, a Memorandum of Understanding (MOU) concerning the jurisdiction of sea turtles between NMFS and FWS was signed. This MOU established sole agency jurisdiction with NMFS while the turtles are in the water and with FWS while they are on land.

The Environmental Defense Fund submitted a request on February 28, 1978, to reopen the public comment period in light of the long time that had elapsed since publication of proposed regulations and to submit newly acquired evidence and related data. On March 27, 1978, NMFS and FWS announced in the FEDERAL REGISTER that the public comment period was reopened until April 17, 1978 (43 FR 12735; corrected 43 FR 13906). Suggestions by a number of parties to extend this comment period were denied because of the need to expedite the listing.

Comments were received from Governors Ricardo Bordallo of Guam, Ella Grasso of Connecticut, Sherman Tribbitt of Delaware, Marvin Mandel of Maryland, George Wallace of Alabama, George Ariyoshi of Hawaii, and Jonn Haydon of American Samoa. Governor Bordallo supported listing the loggerhead and Pacific ridley as threatened, but recommended limited harvesting of green sea turtles be allowed. Governors Grasso and Tribbitt supported listing all three species as threatened. Governors Mandel and Wallace supported listing the green and loggerhead as threatened. Governor Wallace also supported an exception for incidental catch believing that incidental catch is not a major cause of decline in turtle stocks in the Alabama area. Governor Ariyoshi opposed prohibiting incidental catch in "areas of substantial breeding and feeding" unless "substantial" was clarified since the waters of the entire Hawaiian Archipelago are feeding areas for the green sea turtle. Governor Ariyoshi also supported an exemption for subsistence fishing of the Hawaiian green sea turtle population. Governor Haydon supported the listing of the loggerhead and Pacific ridley, but expressed concern about listing the green since it would deprive many people of a means of living and food. In addition, representatives or agencies from New Jersey, California, Texas, South Carolina, North Caroli-

na. Georgia, Mississippi, Florida, New York, Puerto Rico, and the Trust Territory of the Pacific expressed their views.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the act requires that a summary of comments and recommendations relating to a proposed listing be published in the FEDERAL REGISTER prior to adding the species to the endangered or threatened list. A press release on the proposal was issued by the Department of Commerce on May 30, 1975. Public comment periods were open from May 20, 1975 to July 18, 1975; from February 6, 1976 to April 5, 1976; and from March 27, 1978 to April 17, 1978. Due to the great number of comments received during these periods, only those offering substantive comments have been summarized and enumerated here. However, all public comments were considered in the preparation of final regulations.

All comments are available for review between 9 a.m. and 5 p.m. at the Marine Mammal and Endangered Species Division, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

The majority of comments concerned the following issues, and are summarized below by category: (1) whether or not to list these three species of sea turtles, or populations thereof, as threatened or endangered; (2) whether or not to allow an exception for mariculture; (3) whether or not to allow an exception for the incidental catch of sea turtles by commercial fishermen; and (4) whether or not to allow the subsistence taking of threatened sea turtles.

(1) The majority of comments received concerned the appropriate listing categories for these species. All three species were proposed to be listed as threatened. Hundreds of cards and letters were received supporting the listing of the sea turtles, most of which favored an endangered classification. However, many supported a threatened listing and many others favored listing, but made no recommendations as to the appropriate category. As indicated above, those comments which offered no rationale or other information have not been enumerated. Substantive comments were received from 73 parties: 24 supported a threatened listing for all three species; 12 favored an endangered listing for all species; 17 supported a population approach to the listing; and various comments were received from 20 others (4 to list the green as endangered and the loggerhead and Pacific ridley as threatened; 4 to list the green and loggerhead as threatened; 1 to list the green and log-

gerhead as endangered; 1 to list the loggerhead as threatened; 2 to list the green as endangered; 4 to list the green as threatened; 2 not to list the green; and 2 not to list the loggerhead).

Of those 24 comments supporting a threatened classification for the 3 sea turtles under consideration, 10 were received from the States and territories (New Jersey, California, Texas, Connecticut, South Carolina, New York, Delaware, Guam, and Puerto Rico), 5 from researchers/biologists, 2 from the environmental community, 2 from industry, 2 from the Federal Government (regional offices of the Army Corps of Engineers), and 3 from other interested parties. These parties expressed a belief there was a serious decline in sea turtle stocks, but the stocks were not in present danger of extinction. Commentors felt that protective regulations would be adequate for the conservation of these species. Some believed an endangered classification would be unduly restrictive. One biologist believed the existing data to be too fragmentary to warrant an endangered listing. State comments expressed views that the proposed regulations would strengthen existing State regulations protecting sea turtles.

Those 12 who supported an endangered classification for these species included 8 from the environmental community, 1 researcher/biologist, and 3 other interested parties. They expressed the belief that current data indicated that all three species of sea turtles are in danger of extinction throughout all or a significant portion of their ranges, and further that they are extinct in parts of their former ranges. Commentors provided additional data to support this viewpoint. In addition, an environmental group argued that since certain geographic populations are endangered and since they are indistinguishable from other populations, the species as a whole must be listed as endangered to insure adequate protection.

Those 17 favoring a population approach to listing (i.e., evaluating each population and, based on the best available information, determining whether they are endangered or threatened or neither) included 7 from the environmental community, 3 from researchers/biologists, 3 from industries, 1 from the Federal Government (CEQ), 1 from Nicaragua, 1 from the Trust Territory of the Pacific, and 1 other interested individual. The act defines "species" to include "any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature." Some commentors pointed out that sea turtles

aggregate into intraspecific populations which are spatially and functionally independent of other populations within the same species. Therefore, they argued that based on existing evidence, certain populations are endangered and should be so listed. These commentors also indicated that data for the remaining populations are insufficient to support an endangered listing and therefore these populations should be listed as threatened.

Recommendations for listing populations of green sea turtles as endangered included the Gulf of Thailand, Sri Lanka, Indonesia, Philippines, certain of the Western Indian Ocean, Sarawak, Caroline Islands, Hawaii, Costa Rica, Mexico, Bermuda, Florida, and Caribbean population. The following populations of Pacific ridleys were recommended as endangered: The Gulf of Thailand, Sri Lanka, Mexico, certain of the Western Indian Ocean, and Surinam populations. The Mexican population of loggerhead turtles was also recommended for endangered listing.

RESPONSE

In determining how to list these sea turtles, NMPS and FWS scientists analyzed the status of individual populations. This task was complicated by two factors. First: Although our listing was based on the best available scientific and commercial data and there are obvious and in many cases significant declines in the populations of these species, the data base for many populations is poor. Statistically valid data are available only for a few populations and much of the available information for all three species is qualitative rather than quantitative.

The status of sea turtle populations is poorly known though generally thought to be declining worldwide (with some exceptions). Because sea turtles spend only a small fraction of their life on the land, little information has been obtained on their populations. Most population estimates are based on beach counts of nesting females (the males do not generally return to land after entering the sea as hatchlings) from which extrapolations are made of total population size based on sex ratios of 1:1. Population declines are suggested by repetitive, decreasing counts of nesting females on known accessible beaches.

Sea turtles inhabit much of the tropical and subtropical seas of the world. The species addressed in this rulemaking have circumglobal distributions. Nesting sites for each of these species are numerous, scattered, and have not been counted accurately. Generally, wherever suitable nesting beaches occur there has been evidence of sea turtle utilization. Although studies have been made on some geo-

graphical areas, the extent of sea turtle habitation in many areas is virtually unknown. The difficulty in determining the status of many turtle populations is complicated by interbreeding, sharing of feeding grounds, and other conditions that cloud the identification of discrete populations.

A second problem arose from the difficulty in determining discrete populations. Some areas which were once populated by large numbers of sea turtles are now barren or have greatly reduced stocks. It is uncertain whether these populations are extinct or have relocated to a new area. Factors such as interbreeding and sharing of feeding grounds make population identification difficult.

Some species of sea turtles have individuals which utilize several different beaches during a nesting season. Green sea turtle populations are identified by scientists by their nesting beach origin. There is a strong nesting site fixation of the Caribbean green sea turtles, whose females are believed to return voluntarily only to particular sections of a nesting beach. However, loggerhead sea turtles seem to have a less developed sense of nest site fixation.

Green turtles are herbivorous, gregarious, herding animals which are highly migratory and susceptible to exploitation. Consequently the number of turtles within a population is of greater significance in evaluating the status of green turtles than in other species. For example, the loggerhead is a solitary, carnivorous species with localized distribution. The species tends to live in proximity to the nesting grounds.

Whether a species over its entire range or individual populations should be listed as endangered or threatened under the terms of the act was difficult to determine. The point at which any species becomes in danger of extinction is not clear from the act. Since the definition of "threatened" refers to the foreseeable future and of "endangered" refers to the present, it is apparent that an endangered species is one that is in more immediate danger of extinction than a threatened species. The National Marine Fisheries Service and U.S. Fish and Wildlife Service determined that the data base for any of the three species or individual populations was not sufficient to determine any identifiable populations are in imminent danger of extinction with the exception of the Florida and Pacific Mexican breeding populations of green turtles and the Pacific Mexican breeding population of Pacific ridleys.

Although evidence on individual populations is fragmentary, we know that these three species of sea turtles have suffered drastic reductions in

abundance from historical levels throughout most of their ranges. The major reasons for these declines are overexploitation, loss of habitat, and predation. In certain areas population decreases are caused by the loss of turtles in commercial fishing operations. It is highly probable that, if the factors causing declines in some species of sea turtles remain unchanged, these sea turtles will be facing extinction throughout significant portions of their ranges in the foreseeable future.

After a thorough review and consideration of all the scientific and commercial data available, NMFS and FWS have determined that the green, loggerhead, and Pacific ridley sea turtles are at least threatened throughout all or a significant portion of their ranges, as herein specified, due to one or more of the five factors described in section 4(a) of the act.

(a) *Factor: The present or threatened destruction, modification, or curtailment of habitat or range of the species.* Human population expansion has been instrumental in reducing available nesting habitat for green and loggerhead sea turtles. Land reclamation, road and seawall construction, beach development, and recreational utilization, have seriously affected beach habitat. In many areas, the encroachment of human habitation with its attendant rise in beach traffic and artificial light seriously discourages turtles seeking suitable nesting sites and disorients hatchlings. For example, green turtle rookeries in Bermuda, the Bahamas, and beaches along the Greater Antilles have all been lost. A small nesting population of green turtles (less than 50 female individuals) still is active along the Florida coast, a remnant of a once-abundant population. Development of beaches into seaside resorts has also reduced the loggerhead nesting population. This factor is not known to be significant in the decline of Pacific ridleys.

(b) *Factor: Overutilization for commercial, sporting, scientific, or educational purposes.* Sea turtles (eggs and adults) are utilized worldwide as a food item and are particularly desired in some nations as a source of protein. Harvesting for subsistence and commercial trade is widespread because of the desirability and high value of sea turtles and their products. The green turtle is prized as a food item (stew, soups, steaks, and other meat products) and commercial fisheries harvesting for sea turtles occurs in Costa Rica, Mexico, Nicaragua, and other Central American countries. The Pacific ridley is utilized primarily for leather and to a lesser extent for food. The loggerhead is used for food in some areas such as the Indian Ocean. These turtles are also taken for shell products and curios.

Little sport fishing seems to occur for sea turtles though there is evidence some turtles have been taken or harassed by skindivers and sport fishermen in Florida waters and elsewhere. The use of hatchlings for bait by sport fishermen has also been reported.

(c) *Factor: Disease or predation.* The incidence of parasitism and disease in wild sea turtles is unknown. No data are available to support such agents as being a major contributing factor to the decline in sea turtle abundance.

Predation is a major cause of mortality at all stages in the life cycle of sea turtles. Both human and wild carnivores (raccoons, coyotes, weasels, etc.) prey heavily on turtle nests. Hatchlings are consumed on the beach by birds and in the water by fish. Subadults and adults are taken by man and large fish. In some coastal areas of the United States and other countries, the available habitat for many turtle predators has become constricted due to human habitation. Because many turtle nesting beaches share this constricted space, the incidence of animal predation has increased.

(d) *Factor: The inadequacy of existing regulatory mechanisms.* Most mainland coastal States within the United States where these turtles occur have legislation protecting sea turtles from commercial exploitation. While nesting females, eggs, and young are often protected, there is a lack of uniformity in State and local controls.

Hawaii allows the capture of green sea turtles for home consumption if the carapace length equals or exceeds 36 inches. The U.S. Pacific Trust Territory loosely controls the take of sea turtles as does American Samoa. Subsistence fisheries exist throughout these areas for sea turtles. Puerto Rico and the Virgin Islands prohibit the taking of turtles on the beach but not in the water.

The United States and other parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora control international trade in green, loggerhead, and Pacific ridley sea turtles, and their parts and products. Generally, international trade for commercial purposes is prohibited as is importing sea turtles harvested outside the U.S. territorial sea (3 miles). However, not all countries trading in turtles are parties to the convention. Various foreign countries have national laws protecting sea turtles but protection is not uniform.

(e) *Factor: Other natural or man-made factors affecting the continued existence of the species.* Sea turtles are taken incidentally in many commercial fisheries such as the shrimp and industrial fish trawl, purse seine, and gill net fisheries in various parts of the

world. In the United States, this problem is most serious in the trawl fisheries of the South Atlantic and Gulf of Mexico regions. Incidental capture occurs in the shrimp trawl fisheries off Mexico, Central America, and the northeastern coast of South America but this is undocumented. In some areas and at certain times of the year the incidental take may be a significant contribution to subadult and adult sea turtle mortality. There is evidence that sea turtles are taken occasionally in the Pacific tuna purse seine fishery.

The Florida breeding population of green sea turtles is recognized as a discrete breeding group. In the 19th century, this population was abundant and reportedly nested in large numbers on Florida beaches. Due to commercial exploitation and loss of habitat, the population was decimated. No nests were known in the twentieth century until recently when a small amount of nesting activity was discovered along the southeast coast of Florida. National Marine Fisheries Service scientists believe that this population currently contains less than 100 mature adults. Because of the size of this stock, the status of the population is fragile and any adverse activity such as commercial or uncontrolled scientific exploitation, incidental take or loss of habitat could result in the immediate extinction of this stock. Therefore, the Florida green turtle population is listed as endangered.

Evidence submitted during the last comment period documents the loss of green sea turtle nesting populations along the Pacific coast of Mexico and the overharvest of green sea turtles in the Baja California area which led to the conclusion that this population would be in danger of extinction within 3 years. For these reasons, NMFS and FWS determined that population to be endangered.

Evidence was also supplied on the Pacific ridley on the Pacific coast of Mexico indicating that the annual take of this species since the early 1950's to the present is estimated to be 500,000 to 1,000,000 turtles. Specifically, in Oaxaca State in 1977, 70,000 female Pacific ridleys were reportedly taken from a nesting population estimated to number 150,000. This Pacific ridley stock is beginning to show the same signs of stress that existed with the Atlantic ridley, an endangered species, in the 1950's. Scientists have estimated that this stock may be beyond recovery in 8 years.

While the available data clearly indicated drastic reductions in certain populations of green, loggerhead, and Pacific ridley sea turtles, there were no data available to show that these species as a whole are endangered throughout a significant portion of

their ranges. Estimates of populations indicate that statuses of the species as a whole are not so fragile in contrast to the Florida green sea turtle that a reasonable expectation of the loss of habitat, and/or commercial exploitation or incidental take will result in extinction of the species throughout a significant portion of their ranges. Moreover, the species as a whole are not believed to be subject to the type of pressure being exerted on the Mexican breeding populations of green and Pacific ridley sea turtles. Thus, the evidence does not indicate that these species as a whole should be listed as endangered nor that additional populations should be presently listed as endangered.

(2) Another issue for which considerable comments were received was the proposed exception for commercial mariculture operations. The proposed regulations provided an exception for importation, exportation, taking, and transporting of sea turtles (and their parts and products) derived from mariculture operations, with the provision that after 2 years the exception would apply only to turtles derived from captive-bred parents. Comments were received from 44 parties concerning this issue.

Approximately 24 of these were opposed to this exception. These included 12 from the environmental community, 6 from researchers/biologists, 2 from State agencies of New York, 3 from industries, and 1 from another interested party. Opponents argued that little progress has been made in achieving "self-sufficiency," and questioned the possibility of ever achieving a completely closed-cycle operation. It was argued that mariculture is accompanied by ecological and pathological problems due to holding turtles in tanks on land. Also argued was that mariculture is heavily dependent on wild stocks for eggs and brood stock, and that such removal from the wild would further jeopardize the condition of wild sea turtle stocks. Some asserted that the high price of turtle products negates their value as a significant contribution to the world supply of protein. Further, they contended that mariculture will stimulate the exploitation of wild turtles by creating an increased demand for turtle products which could not be supplied by captive-bred stocks. During the recent comment period, it was argued that 3 years have elapsed since the proposed regulations, and therefore, mariculture operations have had more than the 2 years originally proposed and still have not become self-sufficient. Opponents also argued that to allow trade in products from turtles which were not truly "bred in captivity" would be inconsistent with the meaning of the Convention on International

Trade in Endangered Species of Wild Fauna and Flora (the convention). The convention prohibits trade in appendix I species (which includes all sea turtles except the flatback and Australian population of green) except in the case of animals which were "bred in captivity."

About 20 comments were received in support of an exception for mariculture. These included four from a commercial mariculture operation, one from the Cayman Island Government, two from State agencies (California and Texas), two from industry, two from biologists/researchers, one from the British Embassy, one from the Federal Government (Environmental Protection Agency), and seven from other interested parties. Advocates of mariculture contended that the research conducted on the culture, diseases, food habits, and rearing of sea turtles benefits the care of maintenance of other captive stocks (e.g., commercial seaquariums and research pools) and would benefit headstart operations (i.e., rearing turtles from transplanted eggs to subadults for release to the wild to avoid the vulnerable period of hatching mortality). In addition, they argued that mariculture can help to conserve wild stocks by providing superior but cheaper turtle products from captive animals and thus reduce pressure on wild populations. Further, they asserted that mariculture can provide a dependable source of protein for human consumption. They claimed that cultured turtles could be used to restore depleted wild stocks. A mariculture operation purports to buy green turtle eggs from Surinam which are considered "doomed" because the eggs are taken from eroding beaches and, if left in the nest, would be destroyed. In addition, this operation anticipates a final taking of eggs in 1979, and indicated it would become a closed-cycle operation by 1980. It also provided evidence of increasing success of eggs being laid by turtles which mated in captivity.

RESPONSE

After much consideration, NMFS and FWS decided not to provide an exception for mariculture. The primary reasons for this decision were a belief that little or no scientific benefit would be received, that the mariculture operations could not be monitored adequately, and that increased worldwide demand for sea turtles and sea turtle products would be encouraged. This condition could lead to increased exploitation of wild stocks including the stimulation of poaching which would be inconsistent with our mandate under the act to adopt regulatory measures to bring threatened species to the point where they no longer need to be listed under the act.

RULES AND REGULATIONS

No evidence has been received that Cayman Farm, or any other mariculture operation has made significant research contributions in the 3 years since the proposed regulations were published (May 1975). Cayman Farm is the only known mariculture operation of significant size in the world. Evidence provided for the 1978 NMFS hearing by Cayman Farm, indicated three turtles which were born in captivity had successfully nested in captivity. No information has been received since then on additional captive-bred nesting success. However, Cayman Farm did provide evidence of increasing success with eggs being laid by turtles which mated in captivity. Many scientists knowledgeable in sea turtles, take the view that this operation will not provide much useful information for conserving sea turtles.

Monitoring Cayman Farm would require observers to be stationed at the facility on a regular basis. Otherwise, NMFS and FWS would have to require periodic reports from Cayman Farm which would be difficult to verify.

Cayman Farm had 3 years to demonstrate their ability to raise sea turtles under a closed-cycle system. In that we do not have sufficient evidence to indicate progress has been made, it is questionable that they will reach the goal of 1980 indicated in a April 17, 1978, letter received from Cayman Farm. Sea turtle mariculture may indeed stimulate additional commercial interest in sea turtles and the small prospect of research benefits is insufficient to merit an exception in light of the current status of sea turtle stocks.

(3) The proposed exception for the incidental catch of sea turtles received a total of 46 comments. The proposed regulations contained an exception for incidental catch if: (a) the sea turtle was caught by fishing gear incidental to fishing effort or research not directed toward these sea turtles; (b) the person responsible was not fishing in an area of substantial breeding or feeding of these sea turtles; and (c) any captured sea turtle was immediately returned to the water, whether dead or alive, and with due care to minimize injuries to live sea turtles.

Of those, 13 comments opposed an exception, of which 9 were from the environmental community and 4 were from biologists/researchers. Some commentators felt that the incidental capture of sea turtles is a major factor in their decline, and should be prohibited. Others felt that although in itself incidental catch may not have contributed directly to the current status of sea turtles, due to the serious status of stocks incidental catch was further jeopardizing these species.

Support for an exception for incidental catch was included in eight

comments from the States of North Carolina, Mississippi, Georgia, Alabama, Texas, and South Carolina, four from industries, one from a fishery commission, one U.S. Senator, one researcher/biologist, and four other individuals. They expressed the belief that incidental catch is not a major cause of the decline in sea turtle stocks or, at worst, no more of a detriment than predation on eggs and hatchlings or man-induced destruction of nesting habitats. Some felt that if incidental catch were prohibited, it would destroy the domestic shrimp industry. Some expressed views that measures, other than prohibiting incidental catch, would better serve to conserve sea turtles. Some of the measures suggested included predator control, nest protection, and strengthening enforcement activities.

Many comments were received objecting to the language "areas of substantial breeding and feeding" in the proposed regulations. Some felt the phrase was too general and could not be enforced. Others feared that a strict interpretation could put many shrimpers out of business. Many were opposed to the immediate return of comatose turtles to the water without attempting to revive them prior to release.

Others, although not opposed to an exception, believed that incidental catch should be controlled and substantially reduced. Suggestions made included developing a net to exclude turtles, designating critical habitat, eliminating fishing in breeding areas, setting limits on incidental captures, and having a permit system for incidental catch.

RESPONSE

The act prohibits taking of any endangered species incidental to commercial fishing operations. Therefore, the incidental catch of the Florida and Mexican Pacific coast green sea turtle populations and the Mexican Pacific coast Pacific ridley population will be prohibited because of this endangered status.

Conservation measures for threatened species however, may be promulgated which will allow an incidental catch. Most incidentally taken sea turtles are caught inadvertently by shrimp trawls. Presently, there is no way to avoid accidental capture of turtles in shrimp trawls, however, NMFS has been developing an "excluder panel" to be fitted across the mouth of standard shrimp trawls that would prevent, or substantially reduce, the incidental capture of sea turtles. Although preliminary designs have been tested, these need to be comparatively tested with conventional trawls under commercial shrimping conditions. The National Marine Fisheries Service has

accelerated its 1973 gear program and is testing the excluder panels on shrimp grounds this year with the aid of the shrimp industry. The objective of this program is, in part, to obtain as much experimental gear, research, and habitat data as possible so that acceptable net design can be achieved by the end of the 1978 shrimping season. Our goal is to promulgate regulations requiring the use of the panel to prevent, or substantially reduce, incidental catch of sea turtles without significantly reducing shrimp production. Sea turtles are occasionally caught inadvertently in other fisheries (e.g., pet food fishery, menhaden fishery, tuna fishery). The incidental catch and mortality of sea turtles in these fisheries is believed to be much smaller than in the shrimp fishery. The excluder panel under development is not adoptable to non-trawl fisheries.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service are considering candidate areas where turtles are concentrated for designation as Restricted Fishing Areas and/or Critical Habitat. A Restricted Fishing Area is an area where incidental catch is prohibited or otherwise controlled. Controls may include proper gear usage, fishing methods or procedures, or other regulatory controls to reduce or eliminate incidental catch of sea turtles. Prior to the designation of any Restricted Fishing Area within State waters, the Assistant Administrator shall consult, as he deems appropriate, with the Governor(s) and the Marine Conservation Department(s) of the affected State(s). The Assistant Administrator shall also consult with the appropriate Regional fishery Management Councils and with affected fishing industries with regard to these designations. The National Marine Fisheries Service discovered in the winter of 1977-78 hibernating loggerhead and Atlantic ridley sea turtles in the Cape Canaveral ship channel. This area will be proposed in August 1978 as Critical Habitat and will be proposed as a Restricted Fishing Area at a later date.

The proposed regulations would have prohibited incidental catch in areas of substantial breeding or feeding. The National Marine Fisheries Service agreed with commentators who believed that "areas of substantial breeding or feeding" was too vague, unenforceable, and under strict interpretation, could unnecessarily put shrimpers out of business. Hence, those terms were deleted and a provision was added for designating Restricted Fishing Areas. Our accelerated gear program and anticipated designation of Restricted Fishing Areas are believed adequate to protect sea turtles and, at the same time, not close fisheries. The recommendation

for a prohibition of all incidental catch was rejected because the data to indicate shrimping was detrimental to sea turtles throughout the geographical range of the fishery were not available.

Setting limits on incidental captures and establishing a permit system for incidental catch were rejected as difficult to enforce and administer. Catch limits may be imposed in selected areas designated as Restricted Fishing Areas.

We agreed with commentators who were opposed to the immediate return of comatose turtles to the water. The regulations provide that resuscitation be attempted before a comatose turtle is returned to the water.

(4) A limited number of comments were received on whether or not to allow subsistence taking of threatened sea turtles. The proposed regulations did not provide an exception for subsistence. Comments from 10 parties were received addressing this issue.

Of these, nine were in support of allowing subsistence taking, the majority of these being from State and Territorial governors or State agencies where subsistence fishing occurs. These included Hawaii, Guam, American Samoa, and the Trust Territory of the Pacific. Their comments were mainly restricted to the green sea turtle and stressed the need to consider social and economic factors. They related the importance of the green sea turtle as a source of food for many of the island's inhabitants. Evidence was provided indicating the importance of turtles in the cultural way of life in some areas. It was also argued that enforcement would be nearly impossible. Hawaii expressed the opinion that existing State regulations provided adequate protection and that Federal regulations should not be more restrictive. Comment was received in support of subsistence taking provided it is adequately researched and enforced, only allowed where stocks are plentiful, and not allowed on nesting beaches. Two individuals believed it should be allowed by natives in the Pacific Trust Territory for local consumption. One biologist supported subsistence fishing in the Trust Territory if it were carefully monitored, and in Hawaii only after comprehensive investigations indicate that subsistence taking would not be detrimental to that population.

One comment was received from the environmental community, and was endorsed by others, specifically addressing support of a prohibition on subsistence taking on the basis that alternative sources of food are available. It should also be noted that comments were received in general support of the proposed regulations which contained no exception for subsistence.

RESPONSE --

Subsistence fisheries for sea turtles exist within U.S. territorial waters. Most are opportunistic in nature, though there are directed fisheries for eggs and adults in the Trust Territory. Some turtles, primarily green, are taken in Puerto Rican and U.S. Virgin Island waters by local fishermen. Hawaii permits the take of green turtles in excess of 36 inches for home use. A limited opportunistic take of turtles (probably green turtles) occurs near Guam. In the Trust Territory, turtle eggs and meat are a traditional food source.

Although the record provides no evidence of subsistence turtle fishing in the Caribbean, NMFS believes increased "subsistence" taking of green turtles has substantially contributed to the decline in Western Caribbean nesting groups. The absence of indigenous natives in Puerto Rico and the Virgin Islands precludes the establishment of long "cultural" ties to the taking of sea turtles for subsistence purposes such as is found in the Pacific Islands. Localized "subsistence" fishing for sea turtles does occur but the motivating factor is esthetic rather than nutritional. The green turtle does not contribute significantly to the food needs of Puerto Rican or Virgin Island residents and prohibiting taking would not have a major nutritional impact. Lastly, because of the close proximity of other breeding groups and the high volume of Caribbean inter-island commerce, it would be impossible to control the flow of turtle products through the Puerto Rican and Virgin Islands nesting area. It would be difficult to effectively stop the illegal trade of sea turtles consumed in Puerto Rico or the Virgin Islands as "subsistence taken." Because of the increase in human impact on Caribbean sea turtles and the absence of a documented subsistence food need for turtle meat, NMFS and FWS decided that no subsistence taking for green turtles or other species of sea turtles should be allowed in Puerto Rico or the Virgin Islands.

Hawaii referenced State regulations that permit the taking of green turtles only in excess of 36-inch carapace length for home consumption. In the State's opinion, such protection was adequately protecting the population. However, NMFS and FWS have concern over increased takings and sale of turtle shell and other products to tourists in Hawaii. For these reasons and because there are alternative food sources available in Hawaii, no exception is allowed for taking green sea turtles in that area.

Sea turtles reportedly provide a major food source for many Pacific Island inhabitants, and in areas such

as the Yap Islands, play a major role in traditional culture.

The available information on the Western Pacific green turtle population is, at best, incomplete. Reports indicate increased harvesting of eggs and adults have occurred in some areas due to improved native transportation to remote islands. These activities may be instrumental in causing the population declines reported in some areas. However, information submitted showed certain nesting colonies were healthy. There was no strong evidence to support a seriously declining green turtle population which could not support historical harvest levels conducted in a traditional manner.

Because of the condition of the western Pacific population (other than Hawaii), allowing a subsistence take at historical levels is believed consistent with our obligation to conserve threatened species. Therefore, NMFS and FWS decided to allow a traditional subsistence taking of green turtles by residents of the Trust Territory. No subsistence taking will be allowed in other areas. Turtles may be taken only in the water and must be necessary for the sustenance of the individual or immediate family of the individual taking the turtle.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will proceed to obtain data on the extent of subsistence fishing and the status of the populations affected by that activity. Further decisions on regulating subsistence fishing will be based on those data.

SUMMARY OF FINAL REGULATIONS

Generally, the proposed regulations would have prohibited (with some exceptions) take, importation, exportation, and interstate and foreign commerce of green, loggerhead, and Pacific ridley turtles. These activities are essentially the same as prohibited activities for endangered species, except interstate commerce prohibition does not take effect for 1 year and the proposed regulations included more exceptions than allowed for endangered species. These final regulations contain the same prohibitions, as were in the proposed regulations. There are however, changes in the exceptions. Other than allowing more exceptions, these regulations governing threatened species are the same as would be promulgated for an endangered listing for all three species.

An exception for scientific, propagation, or survival purposes was authorized under permit in the proposed regulations. The final regulations provide this exception but include a more detailed description of the procedure for the submission and approval of applications for permits. A transition period (in which to obtain permits) fo

ongoing sea turtle activities falling in this category is also provided.

The proposed regulations did not except public display, zoological exhibition, or educational purposes from taking prohibitions. The final rulemaking authorizes exception under permit for zoological exhibition or educational purposes.

An exception for taking of injured, dead, or stranded specimens was contained in the proposed regulations for certain Federal and State agency employees. This exception is repeated in the final regulations. An exception for research or conservation program takings under Cooperative Agreement was contained in the proposed regulations. This exception is also repeated in the final regulations.

The proposed regulations contained an exception for incidental catch provided that: (a) The specimen was caught by fishing gear incidental to fishing effort or research not directed toward these sea turtles; (b) the person responsible was not fishing in an area of substantial breeding or feeding of these sea turtles; and (c) any captured sea turtle is immediately returned to the water, whether dead or alive, and with due care to minimize injuries to live turtles. The final regulations provide an exception for incidental taking, subject to any future controls on gear and Restricted Fishing Areas, provided that: (a) The taking was by fishing gear during fishing or research activities conducted at sea and not directed toward sea turtles; (b) any sea turtle so taken must be handled with due care to prevent injury to live sea turtles and must be returned to the water immediately whether it is dead or alive; if it is alive and unconscious, before returning it to the water, resuscitation must be attempted by turning the turtle on its back and pumping its plastron by hand or foot; and (c) any sea turtle so taken must not be consumed, landed, offloaded, transhipped, or kept below deck.

The proposed regulations contained a 2-year exception for mariculture operations dependent on taking from the wild. Thereafter, the exception was limited to mariculture operations independent of taking from the wild. The exception was to be under permit conditioned on, among other things, a marking or other identification system for mariculture products, Government certification that collection of wild eggs would not be detrimental to survival of the species in the wild, and during the first 2 years demonstrating progress toward becoming self-sufficient. No exception for any mariculture is provided by the final regulations.

The proposed regulations contained an exception (grandfather clause) for turtles held in captivity or in a con-

trolled environment on the date of publication of final regulations and not held in the course of a commercial activity on such date. This exception has been deleted from the final regulations because the long period during which the proposal was pending should have been sufficient notice to the public that controls on sea turtles, and their parts and products were forthcoming. Also, the grandfather clause in the act is available to cover items such as jewelry or antiques which were held for non-commercial purposes on December 28, 1973 (the effective date of the act).

The proposed regulations did not contain an exception for subsistence taking. The final regulations provide an exception to take turtles in the water for home consumption only by residents of the Trust Territory of the Pacific Islands. Taking of nesting females and eggs is prohibited.

The proposed regulations contained a 1-year exemption to minimize undue economic hardship tied to a prior contract commitment. No exception for economic hardship is provided in the final regulations since more than 1 year has transpired since the turtles were formally proposed for listing.

Lastly, the final regulations provide procedures for processing permit applications based on the MOU between NMFS and FWS on sea turtle jurisdiction.

EFFECT OF THE RULEMAKING

Section 7 of the act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of section 7 of the act. These guidelines were superseded by final regulations governing Interagency Cooperation published by NMFS and FWS and January 4, 1978, in the FEDERAL REGISTER (43 FR 870) to assist Federal agencies in complying with section 7.

The National Marine Fisheries Service will propose in August 1978, the Cape Canaveral ship channel as Criti-

cal Habitat for loggerhead and Atlantic ridley sea turtles. Other areas may be considered as a result of the gear research program currently in progress.

Sections 9 and 10 of the act and endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. The regulations which pertain to the threatened sea turtles are now contained in parts 220 and 227 of title 50 and are set forth below.

INTERNATIONAL EFFECTS

All three species of sea turtles are listed on Appendix I of the Convention with the exception of the Australian population of green sea turtles. The Convention prohibits international trade in Appendix I species (with limited exceptions) conducted primarily for commercial purposes. Appendix I species taken on the high seas cannot be landed commercially under the provisions of the Convention. However, the Convention does not apply to the taking of sea turtles within any nation's jurisdiction. Many countries (e.g., Mexico, Japan, and a number of European countries where markets exist) have not ratified the Convention. Mexico has protective legislation of green turtles but adequate enforcement is questionable. Further, because Mexico has signed but not ratified the Convention it can engage in unregulated trade in sea turtles or sea turtle products with other countries not formally implementing the Convention (nonmember or nonratifying members). United States-Mexican trade primarily in these sea turtles for commercial purposes is prohibited.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will continue to encourage international cooperation in the conservation of these species.

NATIONAL ENVIRONMENT POLICY ACT

Both a draft and a final EIS have been prepared by NMFS and are on file in the offices of the Division of Marine Mammal and Endangered Species, NMFS, Washington, D.C.

Because this final rulemaking lists green, loggerhead, and Pacific ridley sea turtles in their own right, the similarity of appearance proposal of June 16, 1976, by NMFS and FWS (41 FR 24378) is withdrawn.

The primary author of this rule is Robert B. Gorrell, Acting Endangered Species Program Manager, Division of Marine Mammal and Endangered Species, NMFS, 202-634-7471.

REGULATION PROMULGATION

Accordingly, 50 CFR § 17.11, 17.42(b) and 50 CFR Chapter II are amended as follows:

1. The list of Endangered and Threatened Wildlife in 50 CFR § 17.11 is amended by adding the green, loggerhead and olive (Pacific) ridley sea turtles to the list, alphabetically, under "Reptiles" as indicated below:

SPECIES		RANGE		Status	When Listed	Special Rules
Common Name	Scientific Name	Population	Known Distribution			
Reptiles:						
Turtle, Leatherback sea	<u><i>Chelonia mydas</i></u>	Whoever found except in those areas where it is listed as endangered as set forth below	Circumglobal in tropical and temperate seas and oceans	Entire		50 CFR § 17.42(b) and Parts 220 and 227
Turtle, Green Sea	<u><i>Chelonia mydas</i></u>	Breeding colony in Florida and on the Pacific coast of Mexico	All seas waters of Florida including Hutchinson and Jupiter Islands; and Pacific coast of Mexico including the Gulf of California	Entire		
Turtle, Loggerhead Sea	<u><i>Caretta caretta</i></u>	N/A	Circumglobal in tropical and temperate seas and oceans	Entire		50 CFR § 17.42(b) and Part 220 and 227
Turtle, Olive (Pacific) Ridley Sea	<u><i>Lepidochelys olivacea</i></u>	Whoever found except in those areas where it is listed as endangered as set forth below	Circumglobal in tropical and temperate seas and oceans	Entire		50 CFR § 17.42(b) and Part 220 and 227
Turtle, Olive (Pacific) Ridley Sea	<u><i>Lepidochelys olivacea</i></u>	Breeding colony population in Pacific Coast of Mexico	Pacific coast of Mexico including the Gulf of California	Entire		

A new special rule § 17.42(b) is added to 50 CFR reading as follows:

§ 17.42 - Special rules—reptiles,

Green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), olive ridley sea turtle (*Lepidochelys olivacea*) (these do not include the populations listed as endangered in § 17.11).

(1) Prohibitions. Subject to the permits allowable under the following paragraph (b)(2) of this section, all of the provisions set forth in § 17.31 (which incorporate portions of § 17.21) shall apply to this wildlife with the following exceptions:

(i) Section 17.21(c)(2) (self-defense) is not applicable.

(ii) In § 17.21(c)(3)(i), the word "orphaned" is replaced by the word "stranded."

(iii) Delete § 17.21(c)(3)(iv) (Wildlife threatening human safety).

(iv) Sections 17.21 (e) and (f) do not apply to any delivery, receipt, carriage, transportation, shipment, sale or offer for sale in interstate commerce which takes place within 1 year after the effective date of this regulation and which involves specimens taken prior to such effective date.

(v) The prohibition against taking shall not apply to incidental catches, as specified in 50 CFR 227.72(e).

(vi) The prohibition against taking within the United States or the territorial sea of the United States shall not apply to subsistence taking, as specified in 50 CFR 227.72(f).

(2) Permits. (i) For those activities which come under the jurisdiction of the Service, only permits for scientific purposes, enhancement of propagation or survival, zoological exhibition or educational purposes, are available under § 17.32. Procedures for issuance of permits are found in § 17.32 and, for those activities which come under the jurisdiction of the National Marine Fisheries Service, Subpart E of Part 220. All the provisions of § 17.32 apply to permits issued by the Service.

(ii) Activities which are ongoing on the effective date of this regulation and which are for scientific purposes or for enhancement of propagation or survival may continue without permit for up to 90 days as specified in 50 CFR 227.72(a).

3. 50 CFR Part 220 is amended by adding the following new Subpart E:

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

Sec.	
220.50	Purpose.
220.51	Permit applications.
220.52	Issuance of permits.
220.53	Other requirements.

AUTHORITY: Endangered Species Act of 1973, section 11(f), 87 Stat. 884, Pub. L. 93-205; act of August 31, 1951.

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

§ 220.50 Purpose.

This subpart establishes procedures for issuance of permits for scientific purposes or to enhance the propagation or survival of "endangered" or "threatened" sea turtles and zoological exhibition or educational purposes for "threatened" sea turtles.

§ 220.51 Permit applications.

Applications for permits to take, import, export or engage in any other prohibited activity involving any species of sea turtle listed in 50 CFR § 17.11 shall be submitted to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either, 50 CFR § 17.22(a) (Endangered Species) or 50 CFR § 17.32(a) (Threatened Species) as appropriate. Applications involving activities under the jurisdiction of the National Marine Fisheries Service (NMFS) as defined in 50 CFR § 222.23(a) and 50 CFR § 227.4 shall be forwarded by the WPO to NMFS.

§ 220.52 Issuance of permits.

(a) Applications under the jurisdiction of the WPO shall be reviewed and acted upon in accordance with 50 CFR § 17.22 or 50 CFR § 17.32 as appropriate.

(b) NMFS shall make a complete review of applications forwarded to it by the WPO in accordance with § 220.51 and determine the appropriate action to be taken in accordance with 50 CFR § 220.21(b) and § 222.23(c). In instances where the application involves activities solely within NMFS jurisdiction, NMFS shall issue permits or letters of denial and provide WPO with copies of its actions.

(c) Where a permit application involves activities under both NMFS and FWS jurisdiction, each agency will process the application for activities under its jurisdiction. WPO will issue either a permit or a letter of denial.

(d) Where a permit application for activities under NMFS jurisdiction also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249, July 1, 1975) (CITES) (50 CFR Part 23), NMFS will process the application for activities under its jurisdiction. WPO will issue the final document by means of a combination ESA/CITES permit or a letter of denial.

§ 220.53 Other requirements.

Permits issued by NMFS under this Subpart shall be administered and

comply with the provisions of 50 CFR § 217-§ 227 as appropriate.

§ 222.23 [Amended].

4. 50 CFR § 222.23(a) is amended by deleting the period after the words, "Atlantic ridley sea turtle (*Lepidochelys kempii*)" and inserting the following: Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico, and the olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico."

5. Sections 222.23(a), 222.23(b), and 222.23(c)(13) of 50 CFR Chapter II are amended by deleting the following language set off by quotation marks—

(a) " * * * "Of these, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service presently share endangered species jurisdictional responsibility for sea turtles." * * *

(b) " * * * "A copy of each application for a permit involving sea turtle(s) will be forwarded by the National Marine Fisheries Service to the U.S. Fish and Wildlife Service." * * *

(c) " * * *

(13) "If the permit application involves a sea turtle(s), both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service must concur prior to issuance since these two agencies presently share jurisdiction on sea turtles."

Substitute the following language for that deleted above in section 222.23(a), and amend paragraph (b) by adding the material set forth below to the end of the first full sentence:

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) " * * * Of these, the National Marine Fisheries Service has sole agency jurisdiction for sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction for sea turtles while the turtles are on land.

(b) " * * * except for permits involving sea turtles in which case the applicant shall follow the procedures set out in 50 CFR Part 220 Subpart E. * * *

6. 50 CFR Chapter II is amended by adding a new Part 227, as follows:

PART 227—THREATENED FISH AND WILDLIFE

Subpart A—General Provisions

Sec.	
227.1	Purpose.
227.2	Scope.
227.3	Definitions.
227.4	Enumeration of threatened species.
227.5-227.10	[Reserved]

Subpart B—Threatened Marine Mammals

227.11-227.30 [Reserved]

Subpart C—Threatened Marine Fish

227.31-227.70 [Reserved]

Subpart D—Threatened Marine Reptiles

227.71 Prohibitions.

227.72 Exceptions to prohibitions.

AUTHORITY: Endangered Species Act of 1973 (as amended), Pub. L. 93-203, 16 U.S.C. 1531 et seq.

Subpart A—General Provisions

§ 227.1 Purpose.

The regulations contained in this part identify the species, subspecies, or any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature, under the jurisdiction of the Secretary of Commerce which have been determined to be threatened species under the Endangered Species Act of 1973 and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

§ 227.2 Scope.

(a) The regulations contained in this part apply only to the threatened species enumerated in § 227.4.

(b) The provision of this part are in addition to, and not in lieu of other regulations of Parts 217-222 and Part 225 of this Chapter II which prescribe additional restrictions or conditions governing threatened species.

(c) Certain of the threatened fish or wildlife listed in 50 CFR 17.11 and enumerated in 50 CFR 227.4 are included in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation, and reexportation of such species are subject to additional regulations provided in Part 23, Chapter I (Title 50).

§ 227.3 Definitions.

In addition to the definitions contained in the Act, and in Parts 217 and 225 of this Chapter, and unless the context otherwise requires, in this Part 227:

(a) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531-1547;

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized delegate. The Assistant Administrator for Fisheries is in charge of the National Marine Fisheries Service;

(c) "Ongoing project(s)" means an activity for scientific purposes or to enhance the propagation or survival of

such species which are not conducted in the course of a commercial activity initiated before the listing of the effected species;

(d) "Plastron" means the ventral part of the shell of a sea turtle consisting typically of nine symmetrically placed bones overlaid by horny plates; and

(e) "Sea Turtle(s)" means those sea turtle species enumerated in § 227.4 and any part(s), product(s), egg(s) or offspring thereof, or the dead body or part(s) thereof.

§ 227.4 Enumeration of Threatened Species.

The species listed as threatened under the act which are under the jurisdiction of the Secretary of Commerce are:

(a) Green sea turtle (*Chelonia mydas*) except for those populations listed under 50 CFR § 222.23(a).¹

(b) Loggerhead sea turtle (*Caretta caretta*).¹

(c) Pacific ridley sea turtle (*Lepidochelys olivacea*) except for those populations listed under 50 CFR 222.23(a).¹

§§ 227.5-227.10 [Reserved]

Subpart B—Threatened Marine Mammals

§§ 227.11-227.30 [Reserved]

Subpart C—Threatened Marine Fish

§§ 227.31-227.70 [Reserved]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

Except as provided in § 227.72 it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed in any of the following acts with respect to any species enumerated in § 227.4:

(a) import any such species into, or export any such species from, the United States;

(b) take any such species within the United States or the territorial sea of the United States;

(c) take any such species upon the high seas;

(d) possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of the prohibitions in paragraphs (b) and (c) of this section;

(e) deliver, receive, carry, transport, or ship in foreign commerce by any means whatsoever, and in the course of a commercial activity, any such species;

¹Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, jurisdiction for sea turtles is limited to turtles while in the water.

(f) sell, or offer for sale, in foreign commerce any such species;

(g) deliver, receive, carry, transport, or ship in interstate commerce, by any means whatsoever, and in the course of commercial activity; provided that this paragraph (g) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing; or

(h) sell, or offer for sale, in interstate commerce any such species; provided that this paragraph (h) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing.

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that the application is complete and sufficient for processing within the 90-day period. Projects not receiving a permit or letter indicating sufficiency by the 90th day must cease. Within 30 days of receipt of an application, the Assistant Administrator will determine the completeness and sufficiency of the application for processing. If an application is deemed complete and sufficient for processing, a permit will be issued or denied within the next 90 days beginning with the date of the letter informing the applicant that the application is sufficient. Approved projects shall continue in accordance with the conditions of the permit.

(b) *Permits for Zoological Exhibition or Educational Purposes.* The Assistant Administrator may issue permits authorizing activities which would be otherwise prohibited under § 227.71 for zoological exhibition or educational purposes. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(c) *Exceptions for injured, dead, or stranded specimens.* If any member of any threatened species listed in § 227.4 is found injured, dead, or stranded,

any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a State agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Wherever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235, and shall contain the following information:

- (1) Name and position of the official or employee involved;
- (2) Description of the specimen(s) involved;
- (3) Date and location of disposal;
- (4) Circumstances requiring the action;
- (5) Method of disposal;
- (6) Disposition of the specimen(s), including, where the specimen(s) has

been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(d) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a State fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with Section 8(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at his discretion.

(e) *Exception for incidental taking—*

(1) *General.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, the incidental taking of any member of any species listed in § 227.4 during fishing or scientific research activities not directed toward such members of such species is allowed under the following conditions:

(i) any specimen so taken must be handled with due care to prevent injury to live specimens, and must be returned to the water immediately whether it is dead or alive unless it is a sea turtle which is alive and uncon-

scious, in which case before returning it to the water, resuscitation must be attempted by turning the turtle on its back and pumping its plastron by hand or foot; and

(ii) any specimen so taken must not be consumed, sold, landed, offloaded, transhipped, or kept below deck.

(2) *Restricted Fishing Areas.* [Reserved]

(3) *Gear.* [Reserved]

(f) *Subsistence.* The prohibition in § 227.71(b) shall not apply with respect to the taking of any member of the species of green sea turtle (*Chelonia mydas*) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

Note.—The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 25, 1978.

TERRY L. LETZELL,
Assistant Administrator
for Fisheries.

Dated: July 25, 1978.

LYNN A. GREENWALT,
Director, U.S. Fish
and Wildlife Service.

[FR Doc. 78-21047 Filed 7-27-78; 8:45 am]

7-118

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RECEIVED

JUL 22 1975

Division of Fish & Game

July 17, 1975

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

DIVISION OF FISH & GAME	
DIRECTOR	<input type="checkbox"/>
FISH. CHIEF	<input checked="" type="checkbox"/>
WILD. CHIEF	<input checked="" type="checkbox"/>
ENF. CHIEF	<input type="checkbox"/>
FISH. BR.	<input type="checkbox"/>
WILD. CR.	<input checked="" type="checkbox"/>
ENF. BR.	<input type="checkbox"/>
OFF. SERV.	<input type="checkbox"/>
SECRETARY	<input type="checkbox"/>
FED. AID	<input type="checkbox"/>

Mr. Lynn A. Greenwalt, Director
Fish and Wildlife Service
U. S. Department of the Interior
P. O. Box 19183
Washington, D.C. 20036

RECEIVED

JUL 22 1975

Division of Fish & Game

Dear Mr. Greenwalt:

I take this opportunity to present our views concerning the proposed rulemaking that would place the Green Sea Turtle on the threatened species list as defined in the Endangered Species Act of 1973.

Of the marine turtles found in Hawaiian waters, the Green Sea Turtle, due to its significant numbers is the most important species that has historically and traditionally served Hawaii's subsistence, recreational and commercial interests. In view of this, the State of Hawaii and the U. S. Fish and Wildlife Service have been working cooperatively since 1950 toward compiling information on the Green Sea Turtles found within the waters of our main Hawaiian islands as well as around the Hawaiian Islands National Wildlife Refuge of the Northwestern Hawaiian Islands. Essentially, this work has involved the tagging of Green Sea Turtles.

To date, turtles tagged in the Refuge have been recovered from around the main islands but no recovery of turtles tagged in the main islands has been made in the Refuge. Nevertheless, it is the general consensus of turtle authorities here that movements of Green Sea Turtles occur in both directions along the Hawaiian Archipelago and that the Northwestern Hawaiian Islands, principally French Frigate Shoals, are used as nesting sites while the waters surrounding the main islands are used as feeding grounds.

There has been no evidence nor indication of any movement of Green Sea Turtles between the Hawaiian Islands and other islands or island groups within the Pacific. We therefore suspect that we have a discrete Hawaiian colony of Green Sea Turtle. In any event, we do have a viable nesting population, probably the largest in the United States, and a total population,

6.3

Mr. Lynn A. Greenwalt

Page 2

which we believe, can sustain controlled harvest. We, at this time, do not consider the Hawaiian population of Green Sea Turtle threatened to the degree requiring a complete moratorium on its harvest; rather, we feel strongly that the Hawaiian Green Sea Turtle population is one that could be managed judiciously.

For this reason, the State of Hawaii through the Department of Land and Natural Resources promulgated a regulation (copy attached) which became effective in May, 1974. This regulation totally protects the rare Leatherback Turtle (Dermochelys sp.) and the Hawksbill Turtle (Eretmochelys sp.) while permitting the very limited and controlled harvest of the Green Sea Turtle for home use only. Due to the restrictive nature of this regulation, only twelve turtles have been reportedly taken for home use since May of last year to the present. Although the number of turtles taken was indeed very small, the retention of some of the traditional privilege of harvesting turtle has proven to be far more acceptable to our people than would be the case if a complete closure had been imposed.

It is my understanding that should the Green Sea Turtle be placed on the Secretary of the Interior's list of threatened species without any qualification, certain provisions of our existing regulation will be in conflict with the Endangered Species Act of 1973. I, therefore, strongly recommend that the Hawaiian population of Green Sea Turtle be excluded from the proposed list of threatened fish and wildlife on the basis that the State of Hawaii through its best effort is currently managing the population through continuous research and enforcement which provide protection as well as permit controlled harvesting that is so important to the traditional life-style of our people.

Thank you for this opportunity to present our views.

With warm personal regards, I remain,

Yours very truly,



George R. Ariyoshi

Enclosure

✓ bcc: Hon. Christopher Cobb



519
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Washington, D.C. 20235

copy pls →
 3/15
 F/M412:CK

MAY 3 1983

Handwritten notes and initials in a grid-like structure, including "line", "lay", "5/6", and "LDS".

TO: F/SWR - Alan W. Ford -

FROM: *for* F/M - Richard B. Roe

SUBJECT: Applicability of the ESA in the Trust Territories of the Pacific Islands

SENT XEROX TO
 GATES 5/6
 LDS

Additional discussions between my staff and that of the Office of Micronesian Status Negotiations have revealed that the Endangered Species Act will apply only to U.S. activities conducted in the Trust Territories. Palau, Marshall Islands and the Federated States of Micronesia will not be subject to U.S. law when the Compact of Free Association becomes effective (presumably sometime in 1984). The Northern Marianas will remain subject to U.S. law and will not be covered under the Compact. In light of this and other information provided by the Office of Micronesian Status Negotiations, conducting public meetings in the areas to be covered by the compact would not be appropriate. I believe that there is no need for public meetings other than those listed in the Federal Register Notice of Review published on April 20, 1983.

DEPT. OF COMMERCE - NOAA
 RECEIVED
 MAY 6 1983
 SOUTHWEST REGION
 NATL. MARINE FISHERIES SVC.



SINCE NINETEEN HUNDRED



"THE VOICE OF CONSERVATION"

May 3, 1983

Mr. Alan W. Ford
Regional Director
Southwest Office
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, California 90731

Dear Regional Director:

This letter is written in response to the notice in the Federal Register Vo. 48 No. 77, pp. 16925-6, pertaining to the proposed rule change to permit subsistence take of marine turtles in Hawaii and Guam. I am writing on behalf of the Florida Audubon Society, an organization of approximately 30,000 member-conservationists. Among my credentials for expressing an opinion on the present petition, I wish to state that I serve as Co-Leader of the NMFS Sea Turtle Recovery Team, have published extensively in the field of marine turtles, and have conducted surveys of turtles in several Pacific territories and nations, including Micronesia, Guam, New Caledonia, and Papua New Guinea. I am not opposed on principle to subsistence take of sea turtles, and indeed recognize that in areas such as Papua New Guinea and a few parts of Micronesia capture of sea turtles is culturally important and should be permitted.

The Petition presents no justification for capture of sea turtles in Hawaii and Guam, and I know of none. NMFS was correct in its earlier ruling in determining that a complete prohibition is necessary to control commercial trade in turtle shells, meat, and other products. Subsistence use of endangered or threatened species should only be permitted when a) the take is biologically sustainable, and b) when the take is conducted by tribal or village peoples who are essentially excluded from a cash economy, who need to catch turtles to feed themselves and their families, and who belong to communities that have been partially or completely dependent on sea turtles from earliest times.

These criteria do not apply in Hawaii and Guam. In both of these territories, a cash economy prevails and, while all societies may have "drop-outs", no-one is denied participation in that economy. Food stamps are available for the unemployed, and social structures are totally unlike the tribal or village economies that prevail in certain parts of the Trust Territory. Moreover, to consider an exemption for "native Hawaiians" is rank racism - the selection

FLORIDA AUDUBON SOCIETY

1101 Audubon Way • Maitland, Florida 32751 • (305) 647-2615

of a certain group for privileges, not because of a demonstrated special need, but simply on the grounds of racial background. The native Hawaiians today have intermarried extensively with immigrants, and cannot legitimately be compared with people in islands of the Yap District, for example, who may present a genuine cultural dependency upon capture of sea turtles.

Moreover, in both Guam and Hawaii sea turtle populations are small. In the entire Hawaiian chain there appear to be only a few hundred mature female Green Turtles, almost all of which nest on French Frigate Shoal, and although immature turtles are extremely difficult to census the small adult population certainly suggests that the population as a whole should not be exposed to any type of exploitation. Similarly, Green Turtles nest rather sporadically on Guam, and although immature turtles are regularly found in waters around the island, I have seen no data to suggest that this is an exploitable population. Moreover, the Petition apparently asked for permission for 'residents of Guam', not just native Chamorros, to catch sea turtles. It appears that there is not even the pretense of 'native tradition' as a justification for the resumed fishery; rather, permission is sought for everyone on Guam to be able to catch turtles. Since humans outnumber the turtles in Guam by a ratio of hundreds to one, this is clearly a dangerous proposal.

When I was on Guam in 1976 I was informed that a few old fishermen still catch turtles by spear, but that most turtles caught nowadays were taken by non-traditional skin or scuba divers. In the seven years since then, during which time turtle capture has not been legal in Guamanian waters, it is reasonable to assume that the "old-timers" are now very old, and are unlikely to be fit enough to catch turtles by traditional means. I strongly suspect that the Petitioners are aware that the requested resumption of legal capture of sea turtles around Guam has little to do with subsistence, and I ask NMFS to make itself aware of the real consequences of relaxing the ban on the take of turtles in the Territory.

Sincerely yours,

Peter C. H. Pritchard, Ph.D.
Vice President - Science and Research

PCHP/rmp

5-9-83

Dr. Emmett Aluli
P.O. Box H
Kaurakakai, Molokai 96748

Dear Dr. Aluli:

Please consider what I have written in the enclosed article.

As Walter will verify, for over 10 years now I have been working to learn more about Hawaiian sea turtles. When I first started, I was virtually the only one to speak out on behalf of this native resource in an effort to protect it from being exterminated by commercial turtle fishermen. Now, some of these very same fishermen are calling for their "subsistence" rights to take turtles again. The turtle population needs more time to recover from its previous abuse. Enforcement is already a problem as it is.

(over)

Hawaiian sea turtles are a cultural, aesthetic and scientific resource of these Hawaiian Islands. Some day, when the population recovers sufficiently, they will also be a viable nutritional resource for people. But short-sighted resumption of legal hunting at present will turn everyone into losers - both the turtles and the people.

Best regards,

George Balazs
Box 1346
KANEOHE, HAWAII 96744

As of June 1 I will formally be an employee of the National Marine Fisheries Service. Consequently, I will not be able to publicly speak out for Hawaiian sea turtles the way I have done so often over the past decade.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

MAY 3 1983

TO: F/SWR - Alan W. Ford -
FROM: *for* F/M - Richard B. Roe
SUBJECT: Applicability of the ESA in the Trust Territories of the Pacific Islands

Additional discussions between my staff and that of the Office of Micronesian Status Negotiations have revealed that the Endangered Species Act will apply only to U.S. activities conducted in the Trust Territories. Palau, Marshall Islands and the Federated States of Micronesia will not be subject to U.S. law when the Compact of Free Association becomes effective (presumably sometime in 1984). The Northern Marianas will remain subject to U.S. law and will not be covered under the Compact. In light of this and other information provided by the Office of Micronesian Status Negotiations, conducting public meetings in the areas to be covered by the compact would not be appropriate. I believe that there is no need for public meetings other than those listed in the Federal Register Notice of Review published on April 20, 1983.

Honolulu Star-Bulletin Monday May 2, 1983 Neighbor Is. ed. 40in

Panel to Review Taking of Sea Turtles

by Gary Whittier
Star-Bulletin Writer

SINCE 1978, the only permits in the Central and Western Pacific allowed to take the endangered hawksbill, a threatened species, have been issued in the Cook Islands for food.

The turtles, grown by the Hawaiians at home, may not be taken in Hawaiian waters or other areas of Guam regulations suggesting the turtle were in danger because the animals' numbers had been drastically reduced after years of exploitation.

The regulations will be reviewed as a result of requests from the governments and certain residents of Hawaii and Guam the National Marine Fisheries Service has announced. It has scheduled seven public meetings in Hawaii as well as meetings in Guam, Saipan and American Samoa.

This year was a good time for a review anyway because the Endangered Species Act requires a status review of endangered and threatened species every five years.

Under the act, the U.S. Department of Interior and Commerce share jurisdiction for sea turtles,

with the Interior Department's Fish and Wildlife Service having jurisdiction when the turtle is on land and the Commerce Department's National Marine Fisheries Service having jurisdiction when the turtles are at sea. Because of the shared jurisdiction, the review will consider only the substantive take of the turtles in the marine environment seaward or mean low tide.

THE RULE permitting Micronesians to take turtles for food at least to be made for what complaints have been received, because regulations were established before the Commonwealth of the Northern Mariana was formed. Saipan is included in the area where subsistence taking is permitted. The government of Guam is reported to have said it was inconsistent to exclude Guam since that island is one of the Marianas.

It is also reported that some fishermen want the right to take turtles around the main Hawaiian Islands, arguing that if Micronesians are allowed to take their native Hawaiians should have the same privilege. Some Hawaiian residents are reported to have sent letters claiming that turtles

have increased in number sufficiently to permit the limitations to be relaxed.

George Falck, a biologist who has studied sea turtles for years in the Pacific where the habitats lead a true subsistence lifestyle and that in such cases the conservation of the turtles must be weighed against legitimate and compelling human needs. Such a compelling human need doesn't exist in the Hawaiian Islands he says.

As for number of turtles, the concentrations vary from island to island, says William Kramer, deputy project leader, environmental services, with the Fish and Wildlife Service here. "A person may see a large number around one island, think there are large numbers around the other islands when actually there may be hardly any around another island."

HAWAII'S GREEN sea turtles live along the coastlines of the major islands but migrate to French Frigate Shoals to breed and lay their eggs. The hatchlings face for the ocean as soon as they emerge but few survive the rigors of the next few years on

that they can return to the same beach as nesting adults.

"Protection of the breeding stock is our priority," Kramer says.

The National Marine Fisheries Service listed public meetings all at 7 p.m. for:

—May 10, Hilo, County Council Room, 2nd floor, 25 Aupuni St.

—May 11, Kailua-Kona, Kona Hilton, Resolution Room.

—May 12, Waikuku, Maui, Baldwin High School, Multipurpose Building, Leitch's Hall, Kaahumanu Highway.

—May 16, Lanai City, Lanai, ILWU Hall, 60 Hina Ave.

—May 17, Kapaehaiki, Makolei Kapaehaiki Elementary School cafeteria, Kanehama Highway.

—May 18, Honolulu, Kulihi Federal Building, 5th floor cafeteria, 300 Ala Moana Blvd.

—May 19, Lihue, Kaula Kaula Regional Library, 444 Hardisty St.

Comments and information must be received by June 20. Correspondence should be addressed to Alan W. Ford, regional director, Southwest regional office, National Marine Fisheries Service, 300 S. Ferry St., Territorial Island, Calif. 90701.

May 12, 1983
Curator of Reptiles
Honolulu Zoo
151 Kapahulu Avenue
Honolulu HI 96815

Mr. Alan W. Ford
Regional Director
Southwest Office
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, California 90731

Dear Regional Director;

This letter is in response to the notice in the Federal Register, Vol. 48, No. 77, pp. 16925-6 concerning the proposed rule changes to allow subsistence take of marine turtles in the Hawaiian Islands and in Guam. I am writing in behalf of myself and the entire herpetology department at the Honolulu Zoo. I have worked as the reptile curator at the Zoo for the past eight years, and have done extensive field work on all Hawaiian herpetofauna and am the author of Hawaiian Reptiles and Amphibians - the field guide to the herpetofauna of our 50th State.

I would like to confine my comments to sea turtles in the Hawaiian Islands, a geographic region in which I have put in eight years of field work and where I feel my expertise is generally recognized.

First, I would like to say that I am not opposed in principle to the subsistence take of sea turtles in areas such as Papua, New Guinea or in other non-technological cultures where the capture of sea turtles is necessary for subsistence and is culturally important.

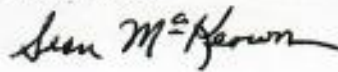
However, the petition presents no reasonable justification for the taking of sea turtles in Hawaii or in Guam, and I know of none. The NMFS was correct in its previous ruling calling for a complete prohibition. Subsistence use of these threatened and endangered species is appropriate only when (a) the take is biologically sustainable and (b) when a non-technological people, excluded from a cash economy, have the need to catch these marine turtles to feed their families in a traditional manner.

Mr. Alan W. Ford, Regional Director, NMFS
May 12, 1983
Page 2 of 2

These criteria apply neither to the Hawaiian Islands nor Guam. Both are cash economies and food stamps are available for the unemployed. Both economies are non-tribal in nature. Native Hawaiians live in a modern culture and have widely intermarried into Hawaii's melting pot. Any special privileges would not only be discriminatory, but blatantly racist.

Marine turtle populations in Hawaii are small with only several hundred mature female Green Sea Turtles nesting in the Northwestern Hawaiian Islands. This population cannot survive if exposed to renewed exploitation by modern man.

Sincerely yours



Sean McKeown

COPY

In Reply Refer To:
FWS/OES

Mr. Alan W. Ford
Regional Director
Southwest Regional Office
National Marine Fisheries Service
300 South Perry Street
Terminal Island, CA. 90731

Dear Mr. Ford:

On April 20, 1983, the National Marine Fisheries Service published a notice in the Federal Register (48 FR 16925-16926) to the effect that a review would be conducted concerning the regulations for subsistence taking of sea turtles in the Pacific. In the notice, it was stated that the National Marine Fisheries Service had been requested to review these regulations by residents and the Governments of Guam and Hawaii. In order to submit comments that adequately address the issue of subsistence take in the Pacific Region, we would like to receive any letters, reports, published papers, or other appropriate information that would assist us in assessing the impact of subsistence take on both the turtle populations and the inhabitants of the area.

Thank you for your assistance^{CE} with this matter.

Sincerely yours,

Director

cc:Directorate REading File

DD Chron

OES

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COPY

In Reply Refer To:
FWS/OES

Memorandum

To: Regional Director, Region 1 (ARD/PA)
From: Chief, Office of Endangered Species
Subject: NMFS Sea Turtle Notice of Review

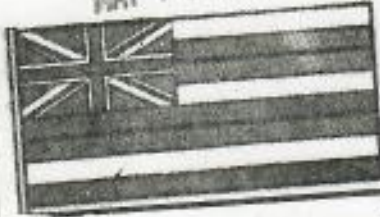
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cc:AFA Reading File
John Spinks File
OES
FWS/OES:KDODD:elamin 235-1975 5/2/83 disk 5 job u

HAWAII CLIPPING SERVICE
P.O. Box 10242-Honolulu, Hawaii
PHONE: 734-8124
Victoria Custer Elaine Stroup

GARDEN ISLE

MAY 10 1983



Hawai'i file

Weddings break record

Preliminary vital statistics show that 1982 was a record year for marriages in Hawai'i.

The Department of Planning and Economic Development reports a record 13,480 marriages were recorded in the state last year, compared with 12,218 for 1981.

The department says the 1982 marriage rate of 13.6 per 1,000 population was the highest recorded for the state since World War II. The marriage rate was 12.5 per 1,000 population in 1981.

Divorce hovers at 4.3

Hawai'i's divorce rate has changed little during the last two years — with 4253 divorces recorded for 1981, and 4234 recorded for 1982. The divorce rate per 1,000 population was 4.3 for both years.

Fish for green turtle?

The national marine fisheries service begins a series of public hearings tomorrow on a proposal to allow limited fishing for the threatened green sea turtle in Hawai'i, Guam and American Samoa. The turtle has been off-limits to fishermen since it was placed on the federal list of threatened species in 1978. Limited "subsistence" fishing has been allowed for people in parts of Micronesia. Hearings on the matter begin tomorrow in Hilo, and continue Wednesday in Kona, Thursday on Maui, and next week on Lanai, Moloka'i, Kaua'i and in Honolulu.

Farmers Home Administration moving

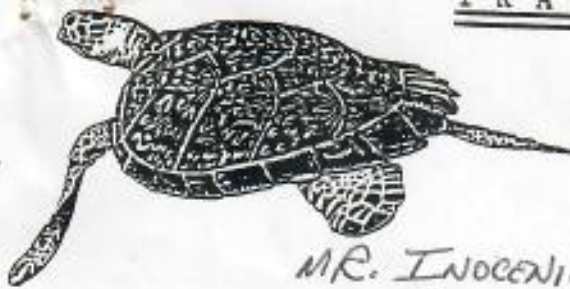
Federal officials say they are moving the state office of the Farmers Home Administration from Hilo to Honolulu as a cost-saving measure.

Robert Choy, state director of the agency, made the announcement in a statement issued yesterday. He said rural farmers will be better served by relocating the office to Honolulu since that is where other federal agencies are located, such as the U.S. Department of Agriculture office.

Choy said the relocation will save the farmers home administration \$78,000 per year.

Prisoners set fire

Two men being held in the Honolulu Cell Block were arrested after a blanket was set afire in a cell just after 6 a.m. yesterday. No one was reported injured by the smoke that filled the cell area although some prisoners complained of dizziness and nausea. One of the suspects was being held for failing to obey a policeman's order Saturday night and the other was being held for investigation of second-degree robbery.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Fisheries Center Honolulu Laboratory
2570 Dole St. • Honolulu, Hawaii 96822-2396

Commercial: (808) 943-1221
Telefax: (808) 943-1290

Resending
24 APRIL

MR. INNOCENIO ILO

TELEFAX FOR: MR. JOSEPH RUAK

DATE: 22 APRIL 96

FAXED
424/138
5PM/13KM

DIVISION OF FISH AND WILDLIFE, CNMI

FROM: GEORGE BALAZS

(808)
TELEPHONE EXT: 943-1240

NUMBER OF SHEETS TRANSMITTED (including this page) 5 including this page

MESSAGE: GENTLEMEN: I HOPE THAT THE REST OF YOUR TRIP HOME WAS SAFE AND WITHOUT DELAY.

5 pages - second copy 96/4/4

I GREATLY APPRECIATED MEETING BOTH OF YOU AND WORKING TOGETHER AT THE RMTCP MEETING. I BELIEVE WE ALL MADE MANY ACCOMPLISHMENTS IN BETTER UNDERSTANDING ONE ANOTHER'S VIEWPOINTS FROM AROUND THE PACIFIC.

I HAVE LOCATED THE LETTERS YOU HAD ASKED ABOUT. I HAD THOUGHT THAT THE RESPONSE HAD BEEN WRITTEN DIRECTLY TO CNMI. IT HAD NOT BEEN. THE RESPONSE FROM OUR AGENCY WAS SENT TO MS. KITTY SIMONDS (WP RFMC), SINCE SHE WAS THE PERSON MAKING THE FORMAL INQUIRY. IF YOU DISAGREE WITH DR. FOX'S CONCLUSION, THEN YOU SHOULD WRITE TO HIM IF THERE IS ANY NEW INFORMATION AVAILABLE.

BEST REGARDS,
George Balazs





Carolinian Affairs Office
Commonwealth of the Northern Mariana Islands
Office of the Governor

Saipan, Mariana Islands 96950
 Tel. No. 224-9385 • Fax No. 225-5088

RECEIVED

'94 OCT 14 AM 37

WESPAC

October 7, 1994

Ms. Kitty M. Simonds
 Executive Director
 Western Pacific Regional Fishery
 Management Council
 1164 Bishop Street, Suite 1405
 Honolulu, Hawaii 96813

TO
 J. RUAK

Dear Kitty:

In May of this year when you had the council meeting, I proposed to the council members a special waiver for a cultural harvest of the green turtle during San Isidro and San Remedio Fiesta. The council made a resolution to the endangered species office and up to now I haven't heard any development on it. Would you update me on this matter?

I will be looking forward to hearing from you. Our Carolinian people are still asking me whether there is a waiver for the green turtle. I promise them to write and inquire about it.

Sincerely,

Jesus M. Elameto
 Jesus M. Elameto
 Deputy Executive Assistant
 for Carolinian Affairs Office

Concurred by: *Abel R. Olopal*
 Abel R. Olopal
 Executive Assistant for Carolinian Affairs Office



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

29 August 1994

Dr. William W. Fox, Jr.
Director
NMFS Office of Protected Resources
Room 9334
1335 East-West Hwy.
Silver Spring, MD 20910-3225

RECEIVED
9/2/94

TO
J. RUAK

Subject: Directed take of green sea turtles

Dear Bill:

At its 83rd meeting, the Council voted to request your office to review the ESA's provisions for a limited take of green turtles by indigenous islanders in the American Flag Pacific Islands for traditional and cultural purposes. Turtles were important items in the diet and in traditional ceremonies of Pacific Islanders inhabiting our region. We envision that a limited take of a few turtles once a year for each island area would probably satisfy the needs of these people to maintain continuity of their traditions.

If permissible under the ESA, the Council wishes to set a limited take quota of green turtle for these purposes. We would also like NMFS to include consideration of such take in the Pacific sea turtle recovery plan.

We look forward to your response, and thank you for your continuing support.

Sincerely,



Kitty M. Simonds
Executive Director

(fox894/bb)

c: Council Members
Martin Hochman



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

NOV 2 1994

To
J. RUAK

Ms. Kitty Simonds
Executive Director
Western Pacific Regional Fishery
Management Council
1164 Bishop Street
Honolulu, Hawaii 96813

Dear Ms. Simonds:

Thank you for your letter requesting that the Office of Protected Resources review the regulations concerning taking of sea turtles for subsistence purposes. Beginning in 1983, the National Marine Fisheries Service (NMFS) conducted a comprehensive review of the issue of subsistence take in the Trust Territories of the Pacific Islands (TTPI). The findings of this review, outlined in a Decision Memorandum and published as a Final Notice in the Federal Register (January 3, 1985) clearly concluded that exceptions to the subsistence regulations were not warranted at that time. The recommendations further concluded that the take exception for the Northern Mariana Islands should be allowed to expire with the dissolution of the TTPI.

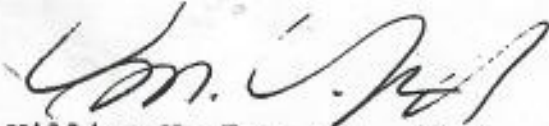
Subsequent to your letter of inquiry, NMFS reviewed the 1983-1985 record, including a contracted report entitled "A Review of Information on the Subsistence Use of Green and Hawksbill Sea Turtles on Islands Under United States Jurisdiction in the Western Pacific Ocean". NMFS is aware of no new information to suggest that the conclusions of these reviews, relative to the necessity for subsistence take in the Northern Mariana Islands, are no longer valid.

NMFS has also consulted the draft recovery plan for the U.S. Pacific Population of the Green Turtle which contains the most current biological information relative to the population status of this species in the U.S. Pacific. Overall, the survival status of the green turtle throughout the insular Pacific region has likely continued to decline due to directed harvest (legal and illegal) and habitat degradation. Further concern is warranted due to the increasing scope and magnitude of the debilitating and often fatal fibropapilloma disease and the incidental capture of green turtles in longline fisheries of the Pacific region. These cumulative threats, combined with the absence of new information regarding the necessity for subsistence take, indicate that an exception to the regulations, as requested, is not currently warranted.



* If you have further questions, or if you are aware of any new, relevant information, please do not hesitate to contact me.

Sincerely,



William W. Fox, Jr., Ph.D.
Director
Office of Protected Resources

TO
J. RUAK

CHM

(P. 10) 205 8370

[17] From: Barbara Schroeder at -NMFS-4 10/21/94 8:25AM (5618 bytes: 37 ln, 1 fl)

To: George Balazs at -NMFS-HONO

Subject: Carolinians living in Guam and N. Mariana

----- Message Contents -----

Text item 1:

Hi George, You are a wealth of info!! I feel lucky that I now know something about the geography of the area in question!!! I've attached the DRAFT letter for Fox's signature, it's undergoing review, let me know if you have comments. Thanks again for your help...Barbara

Barbara- It's the end of the day here and I'm starting to feel stressed because my packing for the Rose Atoll trip is way behind (I leave Sunday afternoon). But the hike up Diamond Head (Leahi Crater, in Hawaiian) was pretty good. 27 years in Hawaii and that was my first trip up there! Do it when you visit with your boyfriend. The view is spectacular, and the 0.7 mile trail is quite safe. Was built during WWII, with bunker installations, etc.

I writing this short note now to fill you in on something I learned. When the Trust Territory broke up and independence granted, one of the things FSM (Federated States of Micronesia, consisting of Yap, Chuuk, Ponape) and Republic of Marshall Islands negotiated successfully with the U.S. is something along the lines of "enhanced citizenship". While these people are not US citizens, they do have free access to the US (including of course Guam and N. Mariana Is.). They can, I'm told on good authority, come and go as they please, work here, have benefits (welfare, medicare, etc). It's like something BETTER than a green card. That's the status of many if not most of the "Carolinians" now living in Guam, N. Mariana. And more are coming every day. And here's a good piece of info. The Office for Carolinian Affairs (second letter stationary) is all or in part funded by the US government. The purpose of the office is to assist Carolinian people (FSM citizens) to the services "entitled" to them in the U.S. This is all a fascination (and astonishing) to me. Does this mean that, since federal funds were involved in the writing of that letter from their office, that a Section 7 should have been done before it was mail? (just kidding, I think)

When appropriate (signed off) please send me a copy of Bill's letter to Kitty or the Carolinian office.
geo.

[30] From: Barbara Schroeder at -NMFS-4 11/29/94 10:36AM (1258 bytes: 14 ln)
To: William Fox at -NMFS-1, Pat Montanio at -NMFS-5, Russell Bellmer at -NMFS-1
cc: Eugene Nitta at -NMFS-HONO, George Balazs at -NMFS-HONO, Jim Lecky at
-NMFS-LB

Subject: Northern Mariana Islands "Cultural" Take Request

----- Message Contents -----

FYI, F/PR received yesterday a copy of a letter from Kitty Simonds to Jesus Elameto (Deputy Executive Assistant, Carolinian Affairs Office, CNMI) dated 9/18/94. The letter to Mr. Elameto passed along the letter to Kitty Simonds from Dr. Fox containing our response to the original request for take. Ms. Simonds also sent copies of the earlier decision memorandum and the Johannes report to Mr. Elameto. Ms. Simonds indicates her letter that NMFS appears to be concerned with subsistence take, which she indicates is different from cultural take. She suggests that Mr. Elameto write directly to Dr. Fox describing the festival and take, and the difference between subsistence and cultural. To date, I have not seen a follow-up letter. I will keep you informed.



Commonwealth of the Northern Mariana Islands

Division of Fish & Wildlife
 Department of Lands and Natural Resources
 Lower Base, P.O. Box 10007
 Saipan, Mariana Islands 96950



Cable Address:
 Gov. NMJ Saipan
 Telephone: 322-9627/9628
 Fax: 322-9629

FAX TRANSMITTAL SHEET

DATE: 4-25-96

NO. PAGE(S) INCLUDING THIS PAGE: 1

SEND TO
 NAME : GEORGE BALAZS
 ROUTING: NMFS
 FAX : (808) 943-1290 TELEPHONE: (808) 943-1240

SEND FROM
 NAME : J.K. RUAK
 ROUTING: _____
 FAX : 670-322-9629 TELEPHONE: 670-322-9627/9628

MESSAGE(S): MR. BALAZS,

WE RECEIVED YOUR FAX OF 22 APRIL 1996. THANK YOU.
 CLARIFICATION REQUESTED: YOU INDICATED "5" AS THE
 NUMBER OF SHEETS BEING SENT, PLEASE RE-SENT OR
 LET US KNOW IF THERE ARE NO 4 OTHER PAGES.
 WE HOPE TO SEE YOU SOON — IT WAS GREAT
 MEETING YOU!

Jw

[19] From: George Balazs at -NMFS-HONO 10/19/94 9:03AM (2960 bytes: 42 ln)
To: Barbara Schroeder at -NMFS-4
cc: George Balazs
Subject: "subsistence" take request, or whatever it is

----- Message Contents -----

Sorry, Barbara, your request came at a bad time. I was on Kauai all day yesterday for one last try at boosting the number of dna samples from that location. As of yesterday, the collection phase of the study with Connie is over. It's all in her laboratory lap now!

This is an old issue with virtually no new twist to it. Ironically, it comes just before 1995, Year of the Sea Turtle in the Pacific-- a South Pacific Regional Environmental Programme campaign aimed at hiliting the declining and endangered status of sea turtles in the Pacific AND (by formal resolution, asking Pacific islanders to voluntarily REDUCE the number of turtles taken for all purposes. So to me it makes the council's request look foolish.

What areas is this request for? Answer: N. Mariana, Guam, and Am. Samoa. Note also that Am. Samoa has no (or virtually none) native interests in eating turtles. Under Peter Craig's hard work, they are striving to protect what remaining few turtles they have.

The source of this letter is (I'll bet my shirt) Mr. Rufo Lujan, current vice-chair of the council, and past president. He is also chief of Aquatic Resources in Guam. Has been for years. He and his department for over a decade have had a running battle/grudge with nmfs over sea turtles. Also, with the US Pacific recovery team effort (God, as Scott or Phil if you want an earfull about this!).

I'm trying to keep this short. Did Jim Lecky tell you about the comprehensive subsistence review conducted in 1984 over this same issue/request? Only back then it included Hawaii, and the former TT islands. He should have. He also should have offered to send you the "Decision Document", thick and comprehensive, on this issue from back then. Also, the final notice in the federal register (1985, Jan. I believe) covering this case. All of this should provide sufficient ammo to compose a tactfully for firm letter-- Thank you but no thank you. Sea turtles are in decline all over the Pacific, or face new, cummulative, and significant theats (fibropapillomas, hooking, etc.), and if there is no absolutely essential human nutritional need to eat turtles, then they shouldn't be. Also, they are protected under ESA, and special lengthy regulatory procedures would have to be pursued. Bottom line: Why don't they join in on conservation activities of year of the sea turtle, instead of requesting opposite? Also, note that Guam sent a representative to the last SPREP meeting Aug 94 in W. Samoa (SPREP headquarters). He eagerly joined in to plan for activities for the campaign next year! No word was mentioned about Guam having a need (or desire) to eat turtle.

[19] From: Barbara Schroeder at ~NMFS-4 10/20/94 8:58AM (2514 bytes: 37 ln)
To: Eugene Nitta at ~NMFS-HONO
bcc: George Balazs at ~NMFS-HONO
Subject: Re[3]: Subsistence Take of Green Turtles

----- Message Contents -----

Hi, welcome aboard. As far as I know the letter was not forwarded to the Region for a response. I believe a copy of the report Gene and I wrote on the subsistence issue was sent to Bill Fox by Rod McInnis (Chief, Fisheries Management Division) recently. Just in case you can't locate that one, I have dropped another copy in the mail. It is a bit dated August 1984, but I don't think much has changed since then. Feel free to contact Gene for an update of the situation. He may be reached at (808) 973-2937.

Hi Gene, Thanks for you input, I've put together a summary background paper to the files and will be drafting a letter for Fox's signature today. I've attached the background file memo for you to look at. We seemed to have a very complete file on all of this, which I found after my initial e-mail to Svein/Jim. I've reviewed it completely (it included the Johannes report). Also, I thought the same thing when I read the letter, that the Council can't set take quotas/levels anyway, and checked with legal to make sure I was right. Thanks for clarifying that also. I'll copy you on the response letter and if I have time will try to get you a draft for quick review. -
Barbara

Barbara - I just received a copy of Kitty's letter to Fox. Jim's correct. Not much has changed either status-wise for turtles or politically (Section 902 negotiations) since we did the report (the CNMI is now a commonwealth and Palau is a compact state not bound by the ESA per se). There is also a review by Bob Johanes which we contracted for to support our findings which I will put in the mail to you. Just for clarification, the Council doesn't set quotas for subsistence take of listed turtles even if we permitted it. Let me know what happens with the response. Thanks. Gene

TO: Subsistence Take Files (Pacific Region)

FROM: Barbara A. Schroeder

SUBJECT: "Cultural" Take Waiver Request by Northern Mariana Islands

Background of Request: In May 1994, the Commonwealth of the Northern Mariana Islands proposed to the Western Pacific Regional Fishery Management Council (WPRFMC) a special waiver for a cultural harvest of the green turtle during the San Isidro and San Remedio Fiesta. In response, the Director of the WPRFMC (Kitty Simonds) sent a letter dated 29 August to F/PR (Bill Fox) requesting a review of the ESA's provisions regarding "traditional and cultural" take of green turtles by indigenous islanders in the American Flag Pacific Islands. The Council's letter stated that they envisioned that a "limited take of a few turtles once a year for each island area would probably satisfy the needs of the people to maintain the continuity of their traditions". Further, the Council expressed their interest in setting a limited take quota of green turtles for these purposes and recommended that NMFS include consideration of such take in the Pacific Sea Turtle Recovery Plan for the green turtle.

DISCUSSION

Current Regulations: Current sea turtle regulations (50 CFR 227.71(b)) provide for an exception to the prohibition on taking of green turtles in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Further, sea turtles so taken cannot be transferred to non-residents or sold. The exception was founded on information submitted by the Government of the Trust Territory of the Pacific Islands which documented traditional use of green turtles by indigenous peoples.

Historical Perspective: In April 1983, in response to requests by residents and the Governments of Guam and Hawaii, NMFS initiated a review of regulations concerning the taking for sea turtle for subsistence purposes. Specifically, NMFS conducted a review of the current regulation (listed above) to determine whether the subsistence regulations for the Trust Territory of the Pacific islands should be modified and whether the taking of sea turtles for subsistence purposes should be allowed in other areas of the Central and Western Pacific Ocean. This comprehensive review included public hearings, written comments, solicitation of new information (post 1978 listing) on subsistence take and the biological (population) implications, review of the administrative record compiled prior to the promulgation of the existing regulations, and a legal analysis of the subsistence issue.

NOTE: At the time of the 1978 listing and subsistence exceptions,

the Trust Territory of the Pacific Islands (TTPI) included the Federated States of Micronesia, Republic of the Marshall Islands, Commonwealth of Northern Mariana Islands, and the Republic of Palau. During the mid-1980's the TTPI was partly dissolved by the formation of the independent nations of the Republic of the Marshall Islands and the Federated States of Micronesia, and the U.S. integrated entity of the Commonwealth of the Northern Mariana Islands. Consequently, the subsistence exception applied only to Palau, the last member of the TTPI.

In January 1985, NMFS published its notice of final determination relative to the subsistence take issue. In summary, NMFS determined that there are no native cultures outside of the Trust Territory of the Pacific Islands (TTPI) that are dependent on the taking of sea turtles and that there was no justification for authorizing a subsistence take elsewhere in the Pacific. NMFS further determined that during the rulemaking resulting in the 1978 listing and subsistence exception, the information provided by the TTPI for specific areas in the TTPI was inappropriately assigned to the whole of the TTPI. NMFS determined that there was no justification for a subsistence exception in the Mariana Archipelago (Northern Marianas and Guam) and proposed to allow the subsistence take exception for the Northern Mariana Islands to dissolve with the pending dissolution of the Trust under which the TTPI was administered (see NOTE above).

The legal analysis of the subsistence exceptions revealed two factors critical to the authorization of subsistence take: 1) a recognition that the survival of a culture depends upon its ability to continue to exploit species of wildlife that have traditionally provided the necessities of life, and 2) proof that the wildlife populations could sustain traditional levels of harvest. A contract report entitled "A Review of Information on the Subsistence Use of Green and Hawksbill Sea Turtles on Islands Under United States Jurisdiction in the Western Pacific Ocean" was prepared in 1984. This document (Johannes 1986), along with comments and testimony received during the review process, concluded that subsistence take of turtles in the central and western Pacific continued to be essential cultural elements **only** in the low islands of Micronesia. A further conclusion stated that other areas of the Pacific, including Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands had departed from traditional values and that little evidence existed relative to a significant dependence on turtles. This review of the cultural history and the status of the green turtle population in the Mariana Archipelago indicated that an exception was not warranted for the Commonwealth of the Northern Mariana Islands.

Current Status:

The draft Recovery Plan for the U.S. Pacific population of the green turtle concludes that overall, the survival status of the green turtle throughout the insular Pacific region has likely continued to decline due to directed harvest (legal and illegal),

and habitat degradation. Further concern is warranted due to the increasing scope and magnitude of the fibropapilloma disease.

The record appears quite comprehensive relative to this issue and there appears to be no biological justification to expand the subsistence take exception beyond the TTPI, as currently defined. Further, it appears highly unlikely that the two legal criteria defined above regarding subsistence take could be met under the request received from the Council on behalf of the Northern Marianas.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

NOV 2 1994

Ms. Kitty Simonds
Executive Director
Western Pacific Regional Fishery
Management Council
1164 Bishop Street
Honolulu, Hawaii 96813

Dear Ms. Simonds:

Thank you for your letter requesting that the Office of Protected Resources review the regulations concerning taking of sea turtles for subsistence purposes. Beginning in 1983, the National Marine Fisheries Service (NMFS) conducted a comprehensive review of the issue of subsistence take in the Trust Territories of the Pacific Islands (TTPI). The findings of this review, outlined in a Decision Memorandum and published as a Final Notice in the Federal Register (January 3, 1985) clearly concluded that exceptions to the subsistence regulations were not warranted at that time. The recommendations further concluded that the take exception for the Northern Mariana Islands should be allowed to expire with the dissolution of the TTPI.

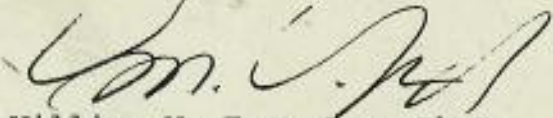
Subsequent to your letter of inquiry, NMFS reviewed the 1983-1985 record, including a contracted report entitled "A Review of Information on the Subsistence Use of Green and Hawksbill Sea Turtles on Islands Under United States Jurisdiction in the Western Pacific Ocean". NMFS is aware of no new information to suggest that the conclusions of these reviews, relative to the necessity for subsistence take in the Northern Mariana Islands, are no longer valid.

NMFS has also consulted the draft recovery plan for the U.S. Pacific Population of the Green Turtle which contains the most current biological information relative to the population status of this species in the U.S. Pacific. Overall, the survival status of the green turtle throughout the insular Pacific region has likely continued to decline due to directed harvest (legal and illegal) and habitat degradation. Further concern is warranted due to the increasing scope and magnitude of the debilitating and often fatal fibropapilloma disease and the incidental capture of green turtles in longline fisheries of the Pacific region. These cumulative threats, combined with the absence of new information regarding the necessity for subsistence take, indicate that an exception to the regulations, as requested, is not currently warranted.



* If you have further questions, or if you are aware of any new, relevant information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm. W. Fox, Jr.", written in dark ink.

William W. Fox, Jr., Ph.D.
Director
Office of Protected Resources



Carolinian Affairs Office
Commonwealth of the Northern Mariana Islands
Office of the Governor

Saipan, Mariana Islands 96950
 Tel. No. 234-9185 • Fax No. 235-5088

RECEIVED

'94 OCT 14 08:37

WESPAC

October 7, 1994

Ms. Kitty M. Simonds
 Executive Director
 Western Pacific Regional Fishery
 Management Council
 1164 Bishop Street, Suite 1405
 Honolulu, Hawaii 96813

Dear Kitty:

In May of this year when you had the council meeting, I proposed to the council members a special waiver for a cultural harvest of the green turtle during San Isidro and San Remedio Fiesta. The council made a resolution to the endangered species office and up to now I haven't heard any development on it. Would you update me on this matter?

I will be looking forward to hearing from you. Our Carolinian people are still asking me whether there is a waiver for the green turtle. I promise them to write and inquire about it.

Sincerely,

Jesus M. Elameto
 Jesus M. Elameto
 Deputy Executive Assistant
 for Carolinian Affairs Office

Concurred by: *Abel R. Olopal*
 Abel R. Olopal
 Executive Assistant for Carolinian Affairs Office

[17] From: Barbara Schroeder at -NMFS-4 10/19/94 9:00AM (8410 bytes: 18 ln, 1 fl)
To: Jason M. Patlis at Banyan, George Balazs at -NMFS-HONO
Receipt Requested
Subject: Subsistence Take Request, Northern Marianas
----- Message Contents -----

Text item 1:

Attached is a memo to the files summarizing information relative to this issue. I need to draft a letter to the Council for Fox's signature no later than Thursday PM. Please review the attached and let me know what you think.

Jason - could the Council set a take level or authorize take anyway? isn't this something only we can do through regulation?

George - any additional biological information to strengthen the denial/discouragement of the request?

I have asked Bob Harman to provide more information on exactly what this "fiesta" is and when it is. He said he would try to get that to me today (Wednesday). George - perhaps you know?

Thanks for your help!!! - Barbara :)

Senators listen to horror stories about Rota island

Forced prostitution, rapes, worker abuse detailed by official

Advertiser News Services

WASHINGTON — Appalled by incidents of rape and abuse of foreign workers on a tiny U.S. island in the Pacific, senators and Clinton administration officials yesterday threatened a federal crackdown unless island officials clean the place up.

Federal overseers of Rota, an island belonging to the U.S.-affiliated Commonwealth of the Northern Marianas Islands, are in an uproar over reports by the Washington Post and a Guam newspaper of waitresses forced into prostitution and nude dancing, housemaids who were beaten, raped and locked in rooms, and farm laborers treated as slaves.

Froilan Tenorio, governor of the island commonwealth who was elected last November pledging to clean up the immigration and alien labor problems, told a Senate oversight subcommittee that the "horror stories" of human rights abuses on Rota and the other islands

try to be helpful, and they told Tenorio he should stay on his current course.

They also said the federal justice and immigration authorities already working in the commonwealth can do a better job.

"It ought to be this administration that gets the black eye, not you" said Idaho Republican Larry Craig.

"I firmly believe that the NMI government is in the best position to respond," said Sen. Daniel Akaka, D-Hawaii.

Sen. Bennett Johnston, D-La., warned island officials that "you will be inviting us to intervene" unless Tenorio and the island Legislature clean up the immigration and labor abuses. Allen Staymay, an Interior Department official, said conditions were "unacceptable and cannot continue."

Federal authorities are considering stripping the commonwealth of its exclusive authority over immigration laws, forcing the islands to increase their minimum wage and imposing restrictions on immigration.

"are generally accurate."

"Workers have been cheated, paid less than the minimum wage, forced to live in subhuman conditions, locked in during non-work hours, and even beaten and raped," Tenorio said. "There cannot be a meaningful discussion of our labor situation without first acknowledging these problems."

Tenorio said his administration has indicted five officials for corruption since January, and investigated reports by the Pacific Daily News, published on nearby Guam, that Rota's resident director of commerce and labor was part of the problem.

"I wanted to fire him outright, but the mayor preempted the situation by using his authority to appoint him to a different position," Tenorio said, adding that nonetheless he is seeking criminal charges.

Tenorio said further efforts will include a plan to increase the minimum wage to the U.S. level, beefed up security to control immigration and redoubled efforts to crack down on illegal abuse and corruption.

Federal legislation that would deny permanent resident status to the 300 or more children of contract workers born each year in the islands also would be helpful, he said.

The senators said they will

Congress has tentatively appropriated \$7 million for the islands to purchase identification and tracking systems to monitor nonresident workers and for training investigators and police.

The commonwealth is a chain of formerly Japanese-ruled islands captured by the United States during World War II. Under a unique 1976 "covenant" with the United States, the commonwealth controls its immigration, rebates federal taxes and sets its minimum wage.

The islands' economy, dominated by tourism and garment manufacturing, is dependent upon an unlimited supply of cheap labor. While the islands' minimum wage of \$2.45 an hour is low by U.S. standards, it is high enough to attract workers from the Philippines, where jobs are scarce and the lure of earning dollars is strong.

Island officials and businessmen fear that if the federal government intervenes, forcing increases in the wages and restrictions on immigration, the economy might collapse. Tenorio has sought assistance from the Labor Department and the Immigration and Naturalization Service, but warned that "a federal takeover of our immigration can't help and might make things worse."

(Sources: Washington Post, Gannett News Service)