

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.