

NATIONAL MARINE FISHERIES SERVICE  
HONOLULU LABORATORY  
P. O. BOX 3830  
HONOLULU, HAWAII 96812

May 27,,1983

F/SWC2:GHB

TO: Richard S. Showers, Director, Honolulu Laboratory  
FROM: George H. Balazs, Fishery Biologist  
SUBJECT: Statements made by Mr. Alike Cooper at the NWHI Symposium

As a professional biologist, I strive to carry out careful and complete research. Public statements made by Mr. Cooper during the Symposium pointedly questioned the accuracy of my work, particularly in regards to my historical documentation of the commercial taking of turtles at French Frigate Shoals as recently as 1959. The attached copied correspondence provides the basis for my research in this matter. I don't know to what extent Mr. Gordon and Mr. Barrett may have focused on Mr. Cooper's charges of falsehood, but I do want to make these facts available to your office.

Attachments



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 Southwest Region  
 300 South Ferry Street  
 Terminal Island, California 90731

September 7, 1982

9/13/82

WPFMC
SEC
F/SWR:AWF
SLA
MCS
G/H

Mr. Alika Cooper  
 163 Kaiulani  
 Hilo, Hawaii 96720

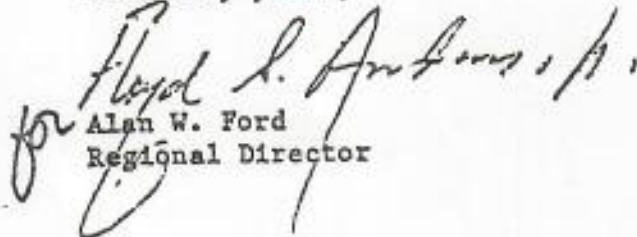
Dear Alika,

At the recent meeting of the Western Pacific Fishery Management Council (WPFMC) in Kona-Kailua, I responded orally to most of the points raised in your letter of August 15 addressed to the WPFMC. I will not repeat what I said then, but I do wish to comment on one statement that I did not address at the Council meeting.

In your letter, you state that "we have about five turtles in the fishponds (they have been there for years). . ." In the context of all our discussions (including the one at the recent Kona Council meeting), I must assume that the turtles referred to are listed as threatened or endangered under the Endangered Species Act. Under the terms of that Act, it is illegal to take or import such turtles after the date on which they were listed as threatened or endangered. It is also illegal to possess turtles taken or imported in violation of the Act.

If the "about five" turtles in your possession were taken before the time of listing, then it would be appropriate for you to document that fact in order to avoid any future law enforcement problems. Accordingly I would appreciate it if you would inform us of the number and species of the turtles, the dates and places of taking, where they have been since they were taken, and where they are currently maintained.

Sincerely yours,

*for*   
 Alan W. Ford  
 Regional Director

cc:  
 F/SWR1, D. Gates



United States Senate

September 2, 1982

Mr. Alika Cooper  
Vice President  
Alika Cooper & Sons,  
Incorporated  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika:

Thank you for your letter of 19 August 1982 to Senator Inouye, received 1 September 1982, expressing appreciation for his interest in your meeting of the Western Pacific Fishery Management Council in Kailua.

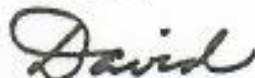
Thank you also for providing to Senator Inouye a copy of your file on turtles and their importance to your subsistence.

It is noted from the National Marine Fisheries Service letter of 21 January 1982 that Mr. Alan W. Ford, its Regional Director, is proposing to the U.S. Fish and Wildlife Service (USFWS) that the record on turtles be reopened to consider the issue of subsistence taking of sea turtles in Hawaii, Guam, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Senator Inouye, who is presently away from this office, will inquire of the Regional Director regarding his response from USFWS and his progress in forming a working group regarding appropriate action to take on this aboriginal rights issue.

You will be informed as soon as a response is received.

Aloha,



DAVID M. PETERS  
Executive Assistant  
Honolulu Office

DMP:cko

United States Senate

September 21, 1982

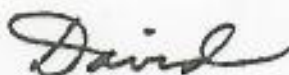
Mr. Alika Cooper  
Vice President  
Alika Cooper and Sons, Incorporated  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika:

According to the letter of 15 September 1982 from Mr. Alan W. Ford, Regional Director, National Marine Fisheries Service, copy attached, progress is being made by both his agency and the Fish and Wildlife Service in reviewing the issue of taking sea turtles for subsistence in Hawaii and Guam.

Senator Inouye, who is presently in Washington, D.C., will continue to keep you informed regarding this important matter.

Aloha,



DAVID M. PETERS  
Executive Assistant  
Honolulu Office

DMP:cko  
Enc.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE

Southwest Region  
300 South Ferry Street  
Terminal Island, California 90731

SEP 20 REC'D

September 15, 1982

F/SWR31:RM  
1514-07.1r

Mr. David M. Peters  
Executive Assistant  
Honolulu Office  
United States Senate  
Prince Kuhio Federal Building  
Room 6104  
300 Ala Moana Boulevard  
Room 6104  
Honolulu, Hawaii, 96850

Dear Mr. Peters:

This responds to your inquiry of September 2, 1982, concerning our progress in reviewing the issue of taking sea turtles for subsistence in Hawaii.

The National Marine Fisheries Service (NMFS) contacted the Fish and Wildlife Service (FWS) regarding the potential for a joint review of this issue and the status of sea turtle populations. The FWS has been considering our suggestion and we expect their response within the next two or three weeks. Since the NMFS and FWS share responsibility for sea turtles under the Endangered Species Act, a coordinated review is the most effective approach to pursue.

Concurrent with the status review, we already have initiated an analysis of the legal issues surrounding subsistence taking of sea turtles under the Act in response to requests from Hawaii and Guam.

I will be pleased to keep you apprised of the progress in these various reviews.

Sincerely yours,

Alan W. Ford  
Regional Director

cc:  
F. W. Gordon



September 24, 1973

CONFIDENTIAL

Mr. Michio Takata  
Hawaii State Fish and Game Division  
1170 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Mr. Takata:

At your request, I have reviewed the testimony relating to proposed Regulation 36 which was submitted by Mr. Alike Cooper on September 16, 1973. Although most of the points he has mentioned were discussed and clarified during the public hearing, it may still be beneficial for me to comment on each of his major topics.

- 1). Page 1: There is no reason to believe that green turtles are absent from our waters between March and October. Monthly catch reports reveal that turtles are taken throughout the year. It is very likely that approximately 1/3 of the breeding population migrates to French Frigate Shoals each year starting during April and May and returning during August and September. Green turtles are known to have a 2 to 4 year breeding cycle.
- 2). Page 2: Turtles are not hatched out by the "millions" at French Frigate Shoals. Perhaps when Mr. Cooper last visited this area in the 1940's or 1950's large numbers of this magnitude were produced. During the 1973 breeding season I estimated that fewer than 100,000 hatchling were produced before predation started.
- 3). Page 3: Mr. Cooper's observations reconfirm our findings that there are no longer any nesting sites on the major Islands. Habitats have been destroyed and distribution has been reduced.
- 4). Page 3 and 4: The proposal to transplant millions of young turtles from French Frigate Shoals to our major Islands for rearing to one year before release is not based upon scientific knowledge and, in fact, could possibly destroy what is left of our colony. Several programs of this nature were tried over the

Mr. Michio Takata  
September 24, 1973  
Page 2

past 20 years in other areas of the world. No real evidence was ever obtained showing that such practices were beneficial. Because the green turtle has a migratory life history, it is completely unknown what effects rearing in captivity and trans-planting will have on the animal's behavior and ability to reach sexual maturity and successfully reproduce. As Dr. Archie Carr has stated, "Releasing pen-reared sea turtles may possibly be just a laborious (and expensive) way to kill them. To go into any massive program of this sort before careful tests have been made seems irresponsible". At present the best method of natural stocking is to provide protection for nesting females, eggs and hatchlings on the beaches. Of course one first has to ensure that there are turtles for reproduction. Hopefully Regulation 36 will aid us in this respect.

- 5). Page 5: Growths on sea turtles have already been described and studied in several areas of the world.
- 6). Page 6: The literature reveals that overexploitation by man is by far the major cause for the destruction of sea turtle colonies.
- 7). Page 6 and 7: Regulation 36 is not "based on inadequate research and little or no facts about the cause of turtle decimation". To the contrary, all available information strongly indicates that our turtles are underprotected, overexploited and declining at a significant rate.
- 8). Page 7: The question is asked "why 36 inches?" As described in testimony, this proposed restriction is based on the fact that by the time a green turtle has reached this size the opportunity has been afforded to reproduce at least once. Twenty four inches is suggested as an alternative; on what basis?
- 9). Page 7: Although Mr. Cooper's type of net may not drown turtles, it is apparent that all nets used are not constructed or set by his method.

In summary, it might be said that many parts of Mr. Cooper's testimony support the enactment of Regulation 36 since he is in agreement with the belief that turtle numbers have been and are continuing to be reduced in Hawaiian waters. If I can be of further assistance, please contact me at 247-6631.

Sincerely,

George H. Balazs  
Jr. Marine Biologist

GHB:ah

GBalazs

George;

I would'nt worry much about Alika Cooper. Both Gordon and Iz Barrett are aware of Alika's behavior and the fact that ~~his facts are very often~~ his facts are very often not facts. Gordon has ~~h~~ encountered Alika at previous meetings, e.g. Council meetings. I've discussed Alika's behavior with Gordon also.

RSS 1Jun83



SPARK M. MATSUNAGA  
SENATOR

LEGISLATIVE STAFF  
1200 DOWNEY BUILDING  
WASHINGTON, D.C. 20540  
OFFICE PHONE  
1-202-455-5000  
HOMELAND PHONE 202

United States Senate  
WASHINGTON, D.C. 20540

CHIEF DEPUTY  
DEMOCRATIC WHIP

COMMITTEE ON ENERGY AND  
NATURAL RESOURCES  
COMMITTEE ON FINANCE  
COMMITTEE ON VETERANS' AFFAIRS

September 10, 1982

Mr. Alike C. Cooper  
Alike Cooper & Sons, Incorporated  
163 Kaulani Street  
Hilo, Hawaii 96720

Dear Mr. Cooper:

Re: BIL 421A

This is just to acknowledge receipt  
of your recent communication addressed to  
Senator Spark Matsunaga.

Please be assured that the Senator  
will be responsive to you at the earliest  
possible moment.

Yours truly,



Spark Matsunaga  
Senator  
1200 DOWNEY BUILDING  
WASHINGTON, D.C. 20540



EXECUTIVE CHAMBERS

HONOLULU

GEORGE R. ARIYOSHI  
GOVERNOR

September 22, 1982

Mr. Alika Cooper  
Alika Cooper & Sons, Incorporated  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alikas:

Thank you for your letter of August 19, 1982, regarding your request to the Federal National Marine Fisheries Service to take sea turtles for subsistence purposes.

I am well aware of your request and share with you a sense of disappointment in the delay of the federal response.

We had hoped that a working group, as suggested by Mr. Alan Ford (Regional Director, Southwest Region) in his January 21, 1982 letter to you, would have been established and functional by this time to resolve this problem. However, such a group has yet to be formed. As you know, the state has indicated a willingness to participate in a working group to review the issue of subsistence taking of honu in Hawaiian waters.

Your suggestion of presenting this problem to the Hawaii Fisheries Coordinating Council is appropriate, as it may be able to provide the necessary assistance in finding a solution to this problem.

I appreciate your keeping me informed on this matter. We agree with you that controlled subsistence taking of honu should be allowed, and this traditional activity is compatible with the protection and management of a valuable Hawaiian marine resource.

With warm personal regards, I remain,

Yours very truly,

A handwritten signature in cursive script, appearing to read "George R. Ariyoshi".  
George R. Ariyoshi

DANIEL K. AKAKA  
SECOND DISTRICT, HAWAII

COMMITTEE  
APPROPRIATIONS  
SUBCOMMITTEES  
AGRICULTURE,  
RURAL DEVELOPMENT,  
AND RELATED AGENCIES  
TREASURY,  
POSTAL SERVICE,  
GENERAL GOVERNMENT  
TOURISM CAUCUS

Congress of the United States  
House of Representatives  
Washington, D.C. 20515

September 27, 1982

WASHINGTON OFFICE  
1810 LONGWORTH HOUSE OFFICE  
BUILDING  
WASHINGTON, D.C. 20515  
TELEPHONE: (202) 225-4900

DISTRICT OFFICE  
8104 PRINCE JONAH KING  
KALANANOLE FEDERAL BUILDING  
P.O. Box 50144  
HONOLULU, HAWAII 96850  
TELEPHONE: (808) 546-8952

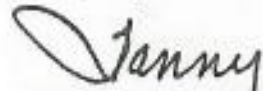
Mr. Alika Cooper  
163 Kaiulani Street  
Hilo, HI 96720

Dear Alika:

After returning to Washington, D.C., I found your letter waiting for me. Thank you for including copies of the correspondence you have exchanged with various officials on the green turtle status as an endangered species. I can understand why you are so frustrated with the process.

I am enclosing a copy of my letter to Mr. Alan Ford for your information. As soon as I receive a response, I will be in touch with you. In the interim, if I may be of further assistance, please let me know.

Aloha pumehana,



DANIEL K. AKAKA  
Member of Congress

Enclosure

DANIEL K. AKAKA  
SECOND DISTRICT, HAWAII

COMMITTEE:  
APPROPRIATIONS  
SUBCOMMITTEES:  
AGRICULTURE,  
RURAL DEVELOPMENT,  
AND RELATED AGENCIES  
TREASURY,  
POSTAL SERVICE,  
GENERAL GOVERNMENT  
TOURISM CAUCUS

# Congress of the United States

House of Representatives

Washington, D.C. 20515

September 27, 1982

WASHINGTON OFFICE:  
1010 LONGWORTH HOUSE OFFICE  
BUILDING  
WASHINGTON, D.C. 20515  
TELEPHONE: (202) 225-4000

DISTRICT OFFICE:  
5104 PRINCE JOHN KUNA  
KALANANALAE FEDERAL BUILDING  
P.O. Box 50144  
HONOLULU, HAWAII 96850  
TELEPHONE: (808) 546-8963

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

Dear Mr. Ford:

This is in reference to the request of Mr. Alika Cooper to review the status of the sea turtle. I have copies of the correspondence between yourself and Mr. Cooper regarding his request.

The last letter you wrote to Mr. Cooper was dated January 21, 1982. Fully recognizing the rather lengthy process for consideration of a listing as an endangered species, I believe that NMFS has had sufficient time to at least begin a review. I would be interested in knowing the status of your investigation.

Thank you for your assistance. Please do not hesitate to call upon me if I may be of any assistance.

Aloha pumehana,

DANIEL K. AKAKA  
Member of Congress

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

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 Kaiulani 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 Mama'o) for subsistence, and for ritual use.

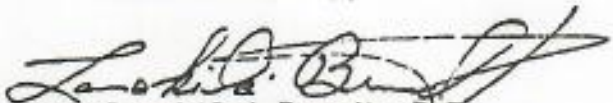
I wholeheartedly and authoritatively endorse Mr. Cooper's assertion that the green sea turtle is one of our people's traditional staples. And also his contention that, due to the depressed financial circumstances in which the majority of native Hawaiians have labored ever since the abrogation of our 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 Mama'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 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

DANIEL K. AKAKA  
SECOND DISTRICT, HAWAII

COMMITTEE:  
APPROPRIATIONS  
SUBCOMMITTEES:  
AGRICULTURE,  
RURAL DEVELOPMENT,  
AND RELATED AGENCIES  
TREASURY,  
POSTAL SERVICE,  
GENERAL GOVERNMENT  
TOURISM CAUCUS

Congress of the United States  
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WASHINGTON OFFICE:  
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TELEPHONE: (202) 225-4900  
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KALANIAN'OLE FEDERAL BUILDING  
P.O. Box 50144  
HONOLULU, HAWAII 96850  
TELEPHONE: (808) 545-8952

October 21, 1982

Mr. Alika Cooper  
163 Kaiulani Street  
Hilo, Hawaii 96720

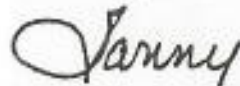
Dear Alika:

I recently received a response from Mr. Alan W. Ford to my inquiry on your behalf regarding the catching of green sea turtles. Enclosed is a copy of the letter.

While the letter is not particularly encouraging, the fact that there will be a joint agency decision on the listing of the sea turtle is a good sign. As soon as I have received more information on the matter, I will be in touch with you.

Please do not hesitate to contact me again when I may be of assistance to you.

Aloha pumehana,



DANIEL K. AKAKA  
Member of Congress

Enclosure



UNITED STATES DEPARTMENT OF THE INTERIOR  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
300 South Ferry Street  
Terminal Island, California 90745

October 8, 1982

OCT 12 11 16 AM '82

Honorable Daniel K. Akaka  
House of Representatives  
Washington, DC 20515

Dear Mr. Akaka:

This responds to your letter of September 27, 1982, concerning our progress in conducting a status review of the green sea turtle population in the central and western Pacific.

The National Marine Fisheries Service (NMFS) contacted the Fish and Wildlife Service (FWS) regarding their participation in the status review, and a review of the regulation which restricts subsistence taking of green sea turtles to the Trust Territory of the Pacific Islands. The FWS has been considering our request and we expect their response in the next week or two. Since the FWS and NMFS share responsibility for management of sea turtles, we believe a coordinated approach is the most effective approach to pursue.

Pending a response from the FWS, we have initiated an analysis of the legal issues surrounding subsistence taking of sea turtles and a review of the administrative record for listing the central and western Pacific population of green sea turtles as threatened.

Mr. Cooper and I (and members of my staff) have had several discussions about turtles since last January, most recently during the August 1982, meeting of the Western Pacific Management Council.

I will be pleased to keep you apprised of our progress in these reviews.

Sincerely yours,

Alan W. Ford  
Regional Director



# Native Hawaiian Legal Corporation

1164 BISHOP STREET, SUITE 1102, HONOLULU, HAWAII 96813 TELEPHONE (808) 521-2302

September 16, 1982

Alika Cooper & Sons, Inc.  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika:

I have reviewed the correspondence you sent me. It appears from examination of said correspondence that the Federal Government in enacting the prohibition of taking sea turtles for any purpose did so without examining all of the information available to determine the true merits of the case. There are 3 areas of use of the sea turtles which must be examined individually:

1. Use of live sea turtles to help aquaculture in commercial fish ponds.
2. Subsistence taking of sea turtles for use in individual Hawaiian diet.
3. Taking of sea turtles for commercial re-sale.

Let us examine each of the 3 areas in sequence.

Area 1: Native Hawaiian Legal Corporation has not had time to investigate the merits of your claim that use of live sea turtles would in fact help aquaculture for the various reasons that you stated. We also have not had time to determine whether or not this was the use which was employed by ancient Hawaiian societies. However, we can definitely say that if your assertions prove to be true, then we will support any efforts on your part to attempt to employ live sea turtles for aquaculture purposes.

Area 2: It is clear that sea turtles were in fact captured and eaten as part of the ancient Hawaiian diet. However, in order to establish a position on whether or not Native Hawaiians should be allowed to take sea turtles for their individual diet supplement, NHLC needs additional data. It needs information to substantiate the proposition that if Hawaiian divers and fishermen start taking sea turtles for subsistence use, it will not endanger the existing



Alika Cooper  
Page Two  
September 16, 1982

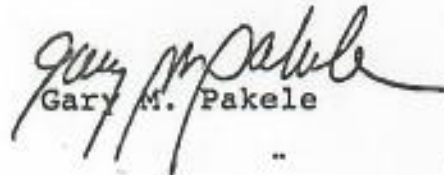
sea turtle population in the Hawaiian archipelago. It is necessary that we receive information with respect to this point. Assuming that there is a plentiful population of sea turtles large enough to support a subsistence use for native Hawaiian diets, it still must be established that there are regulatory administrative procedures available that will be able to protect the sea turtle population from an abusive taking by the general population.

Area 3: This area concerns the taking of sea turtles for commercial re-sale. NHLC does not support this type of use of sea turtles for profit. We will support the type of ancient Hawaiian uses of the sea. We do not support the expanding of that type of use for commercial profit.

Therefore, the only area which needs to be explored in depth is Area No. 2 whether or not NHLC will support a subsistence taking of sea turtles for use in the native Hawaiian diet.

If you have any questions concerning the contents of this letter please feel free to call me at my office. I remain,

Me ka'ouia'i'o

  
Gary M. Pakele

GMP/sm

July 1978  
FEIS

[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 shrimpig 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 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.

D. Comments Received, Discussion, Response Concerning Subsistence Taking of Threatened Sea Turtles

The proposed regulations did not provide an exception for subsistence taking of sea turtles. Some comments were received on this alternative contained in the DEIS.

1. Commentators and Remarks

Honorable George R. Ariyoshi  
Governor of Hawaii  
Honolulu, Hawaii

Supports allowing (subsistence) taking of the Hawaiian green sea turtle population, states Hawaii's regulations already protect this species.

## 2. Comments and Discussion

Of these, seven were in support of allowing subsistence taking, the majority being from State and Territorial governments. Comments from supporters of subsistence taking dealt mainly with 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 inhabitants of the Pacific Islands. 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. Additional 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.

One opponent of subsistence taking stated that there were alternative sources of food available to replace sea turtles.

## 3. 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 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 for sporting reasons rather than nutritional purposes.] 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

Not  
Good  
To Ken

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.

November 9, 1982

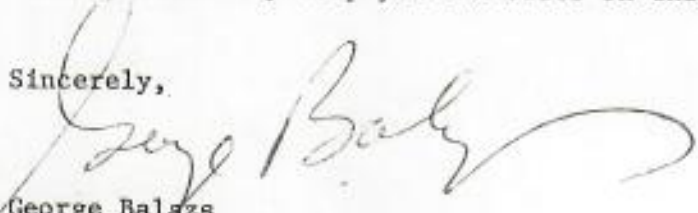
Dr. Abraham Piianaia  
Hawaiian Studies Program

Dear Dr. Piianaia:

I am writing to ask for clarification on the statement attributed to you that appeared in the Star-Bulletin newspaper about sea turtles. In a report I wrote several years ago, I quoted King Kalakaua (1888) where it was stated that turtles were only eaten by priests and nobility in Hawaii. Is this book in error? If so, I would greatly appreciate learning of other reference sources on the subject.

Thank you for any help you can offer on this interesting matter.

Sincerely,



George Balazs

National Marine Fisheries Service  
PO Box 3830  
Honolulu 96812

*Several related articles have also  
been enclosed*



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Southwest Fisheries Center  
Honolulu Laboratory  
P. O. Box 3830  
Honolulu, Hawaii 96812

October 28, 1982

F/SWC2:GHB

TO: William G. Gilmartin, Leader, Marine Mammal and Endangered Species Investigation

FROM: George H. Balazs

SUBJECT: Some comments on the October 15, 1982 letter to Mr. Ford from K. L. Brandt

1. There is no evidence that the green turtle was ever one of the "people's tradition staples" among the native Hawaiians. In the old culture of Hawaii, green turtles were reserved exclusively for the ruling class--alii and chiefs. This fact has been clearly documented in the literature by historians of Hawaiian ancestry.
2. The prohibition on taking green turtles in Hawaii was not imposed specifically on the "native Hawaiian people." The prohibition obviously applies equally to all people of the state.
3. There is no mention in the literature of a "ritual use" of green turtles in the culture of old Hawaii. In contrast, a ritual use in preparing turtles as food for chiefs is known to have existed in the Tuamotu Archipelago, Northern Cook Islands, and several other Pacific island locations.
4. It would be useful to see the documentation supporting the statement that "many islanders do indeed employ the Honu Mama'o in certain aspects of our ancient worship." The only mention in the literature of an ancient worship of sea turtles relates to the personal gods or aumakua of certain families. In these cases, the people involved would never eat, or in any other way harm, a sea turtle. The turtles were worshipped as being part human.
5. There is no mention in the Hawaiian literature of the name "Honu Mama'o" being applied to Chelonia mydas (green turtle), or any other species of sea turtle. Chelonia mydas in the Hawaiian language is known simply as "honu." The name "green turtle" is of European origin, and was not used in the culture of old Hawaii. It is therefore interesting to note that the dictionary definition of "mama'o" is "green" or "greenish."
6. Based on my knowledge to date, there is no "real" or "urgent" need for people in Hawaii (native Hawaiians or otherwise) to specifically take green turtles for subsistence. Alternate protein food sources are available from the ocean and elsewhere.
7. Governor Ariyoshi did not support in testimony the lifting of restrictions on green turtles "as relating to native Hawaiians." Governor Ariyoshi's testimony in 1975 and 1976 (on listing the green turtle under the ESA) stated that he was in favor of noncommercial use by all the people of Hawaii, not just native Hawaiians.

8. "...that which is fair for natives of the Trust Territory" is not necessarily "equally fair for native Hawaiians." There are substantial differences between the people and places involved.

9. I am not familiar with the Kahanahou Hawaiian Foundation, or the Hawaiian Rite Church-Hale o Lono. It would be informative to know how many people are being represented by this organization and faith, and the addresses of the units mentioned that exist on other islands.

10. The issue at hand here appears to involve far more than just green turtles. Rather the proposition is being set forth that laws now covering the protection and controlled usage of wildlife and fish should not apply to native Hawaiian people, if it can be demonstrated that some form of usage occurred in the culture of old Hawaii. This viewpoint could logically also include Hawaiian seabirds, forest birds, various marine mammals (including monk seals), hawksbill turtles, and even dogs, all of which are protected species at the present time. A separate set of rules covering size restrictions and gear usage in fishing practices would also seem reasonable under this point of view. In any event, the establishment of any "separate community" policy of this nature, if found to be warranted, should in my view originate first within the Hawaii State Government, and not at the federal level.



Commercial Fishing  
Wholesale, Retail  
Oceanographic Research  
Aquaculture  
Import & Export

ALIKA COOPER & SONS, INCORPORATED  
163 Kaiulani Street  
Hilo, Hawaii 96720  
November 1, 1982

Telephone: (808) 935-887

Alan W. Ford, Regional Director  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, CA 90731

Dear Alan:

I'm sending you copies of some responses I have received from others who are getting involved in the turtle issue. It is unfortunate that your people here in Hawaii are not knowledgeable in our culture, heritage and rights as aboriginal native Americans, or this matter would have never surfaced. Now, I hope we can settle this once and for all without going through the Courts. But if we have to, we will.

During the Hawaii State Fisheries Council Meeting, of which I am a voting member, the Council took up the turtle issue and will pursue it further. At the meeting, Sus Ono, Director of D.L.N.R., gave me your letter dated September 7, 1982, which I am replying to. It is really a mystery to me that two of your letters you sent to me I never received, but D.L.N.R. gave me copies.

The five or more turtles in the Kalahuipuaa fishpond complex are managed, maintained, and cared for by Alika Cooper & Sons, Inc., a Hawaiian Corporation, owned totally by Hawaiians. The complex has four main fishponds with two pua ponds (baby mullet stocking ponds), and three lakes which we stock with mullet and awa. These are ancient fishponds, two bordering the ocean.

Ever since I can remember, these ponds have had turtles, from before World War II, to now. They are used to control the Limu (seaweed) that the ducks have brought in from some other place. Several varieties are very hard and hardy (seaweed) which the fish can not control, but the turtles control it nicely.

In our 200 plus acres of fishponds in Pearl Harbor, prior to being condemned by the navy at the beginning of World War II, we also had turtles in our ocean fishponds for control of seaweed, grass, etc.

Alan W. Ford, Regional Director  
November 1, 1982  
Page 2

Alan, traditionally our people, the Hawaiians, used turtles in our fishponds to graze the coarse vegetation which fish can't eat. If this limu is not controlled, the limu will take over the entire pond, as it has done at Kiholo and Anaehoomalu fishponds, just a few miles from our ponds. The fecal wastes from the turtle helps in fertilizing the fishpond, stirring of the pond increases the diatom production which the mullet eat. A working Hawaiian fishpond must have several types of fish in proper percentages, shfimp and turtles to balance the pond. If a pond is not balanced properly, production will be limited and much additional maintenance is required.

In my lifetime, I have known and spoken to many fishpond caretakers, all of them dead now, all having basically the same theory of fishpond culture, and turtles in the ocean fishponds being an intricate part in the fishponds, this is a well known fact.

We have been experiencing several good blooms in the Kalahuipuaa fishpond complex, so are moving the turtles from pond to pond.

Alika Cooper & Sons, Inc. took over managing the Kalahuipuaa fishpond complex in early 1981. Although we thought we saw turtles in the pond, we did not really know how many were in the complex until we dragged the ponds. We have caught five turtles in the complex, there might be more, and moved them to our target areas to control the seaweed growth.

The turtles have been in the ponds for years and years, I'm sure prior to your Act of 1978.

Also, at rough sea times, turtles can come in over the walls. I notice at extra high tides some turtles move from pond to pond, and I assume they can come in from the ocean and leave at these high tides and during stormy weather, which prevails in the winter months. Turtles are very slow growers in captivity and in fishponds.

I think this basically answers the questions you have asked.

Alan W. Ford, Regional Director  
November 1, 1982  
Page 3

When a working group is put together, the Governor, George Ariyoshi, Sus Ono, D.L.N.R., Hawaii Fishing Council, Office of Hawaiian affairs, United Fishing Agency, W.P.F.M.C., Alika Cooper & Sons, Inc. and Native Hawaiian Legal Corporation should be notified for we would like to be represented as a functional body to help resolve this issue at the earliest time possible.

See you at our next W.P.F.M.C. meeting.

ALOHA A NUI LOA KAKOU,

*Alika*

ALIKA COOPER



EXECUTIVE CHAMBERS  
HONOLULU

GEORGE R. ARIYOSHI  
GOVERNOR

September 22, 1982

Mr. Alika Cooper  
Alika Cooper & Sons, Incorporated  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika:

Thank you for your letter of August 19, 1982, regarding your request to the Federal National Marine Fisheries Service to take sea turtles for subsistence purposes.

I am well aware of your request and share with you a sense of disappointment in the delay of the federal response.

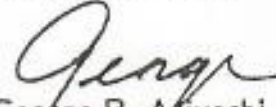
We had hoped that a working group, as suggested by Mr. Alan Ford (Regional Director, Southwest Region) in his January 21, 1982 letter to you, would have been established and functional by this time to resolve this problem. However, such a group has yet to be formed. As you know, the state has indicated a willingness to participate in a working group to review the issue of subsistence taking of honu in Hawaiian waters.

Your suggestion of presenting this problem to the Hawaii Fisheries Coordinating Council is appropriate, as it may be able to provide the necessary assistance in finding a solution to this problem.

I appreciate your keeping me informed on this matter. We agree with you that controlled subsistence taking of honu should be allowed, and this traditional activity is compatible with the protection and management of a valuable Hawaiian marine resource.

With warm personal regards, I remain,

Yours very truly,

  
George R. Ariyoshi

# Native Hawaiian Legal Corporation

1164 BISHOP STREET, SUITE 1102, HONOLULU, HAWAII 96813 TELEPHONE (808) 521-2302

September 16, 1982

Alika Cooper & Sons, Inc.  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika:

I have reviewed the correspondence you sent me. It appears from examination of said correspondence that the Federal Government in enacting the prohibition of taking sea turtles for any purpose did so without examining all of the information available to determine the true merits of the case. There are 3 areas of use of the sea turtles which must be examined individually:

1. Use of live sea turtles to help aquaculture in commercial fish ponds.
2. Subsistence taking of sea turtles for use in individual Hawaiian diet.
3. Taking of sea turtles for commercial re-sale.

Let us examine each of the 3 areas in sequence.

Area 1: Native Hawaiian Legal Corporation has not had time to investigate the merits of your claim that use of live sea turtles would in fact help aquaculture for the various reasons that you stated. We also have not had time to determine whether or not this was the use which was employed by ancient Hawaiian societies. However, we can definitely say that if your assertions prove to be true, then we will support any efforts on your part to attempt to employ live sea turtles for aquaculture purposes.

Area 2: It is clear that sea turtles were in fact captured and eaten as part of the ancient Hawaiian diet. However, in order to establish a position on whether or not Native Hawaiians should be allowed to take sea turtles for their individual diet supplement, NHLC needs additional data. It needs information to substantiate the proposition that if Hawaiian divers and fishermen start taking sea turtles for subsistence use, it will not endanger the existing

Alika Cooper  
Page Two  
September 16, 1982

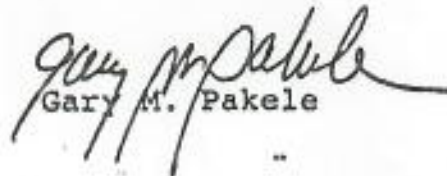
sea turtle population in the Hawaiian archipelago. It is necessary that we receive information with respect to this point. Assuming that there is a plentiful population of sea turtles large enough to support a subsistence use for native Hawaiian diets, it still must be established that there are regulatory administrative procedures available that will be able to protect the sea turtle population from an abusive taking by the general population.

Area 3: This area concerns the taking of sea turtles for commercial re-sale. NHLC does not support this type of use of sea turtles for profit. We will support the type of ancient Hawaiian uses of the sea. We do not support the expanding of that type of use for commercial profit.

Therefore, the only area which needs to be explored in depth is Area No. 2 whether or not NHLC will support a subsistence taking of sea turtles for use in the native Hawaiian diet.

If you have any questions concerning the contents of this letter please feel free to call me at my office. I remain,

Me ka'oi'a'i'o

  
Gary M. Pakele

GMP/sm

GEORGE N. ARIYOSHI  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES

1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

December 22, 1981

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

Mr. Alan W. Ford  
Regional Director  
U.S. Dept. of Commerce  
N. O. A. A.  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, California 90731

12/24

WFO	
DR	
JJN	✓
ETN	✓
PAM	✓
HEW	✓
WCS	✓
SLA	✓
MCS	
GKH	

Dear Mr. Ford:

We received the copy of your recent response to Mr. Alike Cooper (dated December 8, 1981) concerning the final federal rule listing the green sea turtle as threatened under the Endangered Species Act. In your letter, you mentioned that residents of the Trust Territory of the Pacific Islands were permitted to take green sea turtles for ceremonial and subsistence purposes after presenting information that substantiated the need for subsistence take and that subsistence taking would not have jeopardized the recovery of the green sea turtle population. You also stated that "no such information was submitted by the State of Hawaii..." to support an exception from the prohibition of taking green sea turtles in Hawaiian waters. I take very strong exception to your statement; they are not only misleading but constitute falsehood.

For your information, the State of Hawaii through Governor George R. Ariyoshi did submit detailed comments on three separate occasions (copies enclosed) to the following three federal officials:

- Mr. Lynn A. Greenwalt, Director, Fish and Wildlife Service; letter dated July 17, 1975
- Mr. Harvey M. Hutchings, Acting Associate Director for Resource Management, N.O.A.A.; letter dated December 10, 1975
- Mr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Office of Environmental Affairs; letter dated April 1, 1976

You will note that in response to Mr. Galler's request for comments on the Draft Environmental Impact Statement, our Governor strongly endorsed "Alternative 7 - Allow Subsistence Fishing in Areas of Traditional Sea Turtle Fisheries". The basis for this position was that we were already actively managing the turtle resource through a State regulation which provided adequate and effective protection to a discrete and geographically distinct population of green sea turtles. Our regulation (copy enclosed), which was then effective, allowed the limited and controlled non-commercial harvest for traditional subsistence use and required the collection of harvest data through a permit system.

To further substantiate to you our claim that we indeed did transmit our objections relating to the proposed listing of green sea turtle as "threatened" with attendant preemption of State authority, we refer you to the enclosed copies of selected pages from the Federal Register, Vol. 43, No. 146, Friday, July 28, 1979. You will note that on page 32801 our Governor supported an exemption for subsistence fishing. Further, we note on page 32806 that the exemption was not granted to Hawaii's residents for the following reasons: "NMFS and FWS have concern over increased takings and sale of turtle shell and other products to tourists in Hawaii" and "...because there are alternative food sources available in Hawaii." This rationale apparently overlooked the fact that, since May of 1974, Hawaii's Division of Fish and Game Regulation 36 had prohibited commercial taking from State waters of green sea turtles for sale or offer for sale in whole or part or products thereof. The State Regulation had also established a permit system whereby all turtle products that were on hand prior to the effective date could be sold after inventory lists (with affidavits) had been verified. With respect to the mentioned alternative food sources, no one, including residents of the Trust Territory of the Pacific Islands can claim absolutely to lack available food sources that are alternatives to the green sea turtle. We were thus left with the distasteful feeling of having received unfair treatment from the federal bureaucracy.

We recognize that our case for retaining appropriate management of the Hawaiian green sea turtle population at the local level became moot with establishment of the final federal rules and regulations that designated the green sea turtles as "threatened" species. Nevertheless, we view your remarks to Mr. Cooper as implying that we were irresponsible, unconcerned, and nonchalant about this entire issue. Nothing can be further from the truth.

While on Molokai, on the night of December 1, 1981, when you, Mr. Cooper and I met to discuss green sea turtles, I distinctly recall you promising Mr. Cooper that you will look into the possibility of his utilizing green sea turtles to enhance his aquacultural activities. I recall Mr. Cooper mentioning that traditionally the Hawaiians utilized turtles in their fish ponds for the grazing of the courser vegetation which are not utilized by fin-fishes and which, if not controlled, can choke out open water, that the fecal wastes from the turtles promote fertilization of the pond and that the stirring of the pond bottom by turtles aid in maintaining the pond depth and also increases diatom production needed for mullet culture. Are we to assume that your letter of December 8, 1981 constitutes the final response to Mr. Cooper's inquiry relating to turtles and aquaculture? If, in the affirmative, I can readily understand Mr. Cooper's past expressions of bitterness, mistrust and charge of lack of credibility.

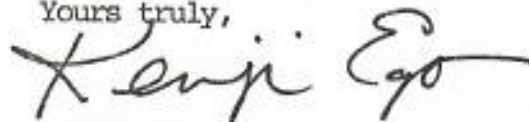


Mr. Ford  
Page Three  
December 22, 1981

Furthermore, in reading the last paragraph of your December 8, 1981 letter, I get the uneasy feeling that our Hawaiian people and the State of Hawaii would be required to scramble around to build "a case" for purposes of changing the regulation while those in the federal government sit back with arms folded awaiting to evaluate "information" only at the Washington, D. C. level. Are you forgetting that it was the federal government that listed the green sea turtle as "threatened" and promulgated the regulation over the strenuous objections of the State of Hawaii? Should not the perpetrator resolve the problem, if, redress is required? Would not doing so constitute "arrogance of government"?

Since, at my level, I despair of ever resolving the problem, I am passing it along as indicated below.

Yours truly,



KENJI EGO, Director  
Division of Aquatic Resources

KE:fc

cc: Governor George R. Ariyoshi  
Senator Daniel Inouye  
Senator Spark Matsunaga  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftel  
Alika Cooper  
Susumu Ono  
William Gordon  
Doyle Gates  
Dale Coggeshall

encls.

Commercial Fishing  
Wholesale, Retail  
Oceanographic Research  
Aquaculture  
Import & Export

ALIKA COOPER & SONS, INCORPORATED

163 Kaiulani Street  
Hilo, Hawaii 96720

January 5, 1981

Telephone: (808) 935-8871

D

Mr. Alan Ford  
Regional Director  
U.S. Dept. of Commerce N.O.A.A.  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, CA 90731

Dear Alan:

Kenji Ego sent me a copy of your December 8, 1981 letter. For some reason, I never received your original letter, but now I will reply.

The question in my letter to Dole Gates and to you on Molokai, December 1, 1981, was two fold. One for securing more turtles to take care of a limu problem in Mauna Lani fishponds, which Alika Cooper & Sons, Inc., a Hawaiian Corporation, owned by Hawaiians, manages, maintains, stocks and controls. The second was to open turtle catching in traditional Hawaiian manners as our ancestors have always done for subsistence, survival, medicine, etc.

Again, I feel I'm getting the run around, for it is not my job or the Hawaiians to document or construct that there has been a historical dependence on turtles for subsistence and medical purposes by Hawaiians. This is a fact and most Hawaiians know this. The problem is that N.M.F.S. and Fish and Wild Life have always been headed by mainland transit whites who have not done their homework, have very little credibility with the Hawaiians and the Hawaiian populace. When these public hearings came up, the N.M.F.S., Fish & Game, National Park, etc. knew we were fisherman, Hawaiians and yet we were never contacted to testify. Traditionally, this always happens. When the Freedom of Religion Act of 1978 was passed, and these groups had only one public hearing in Honolulu, which no practicing Hawaiian religious people were contacted. Few Hawaiian organizations and few knowledgeable Hawaiians were contacted. Enclosed is my written comments.

I'm in full agreement with Kenji Ego's reply to you dated December 22, 1981. I believe you must carry the ball now, not the Hawaiians, the State or myself.

My aboriginal rights include catching turtles in a traditional manner, using them for limu control in our fishponds, eating turtle for subsistence and medicine, etc.

Mr. Alan Ford  
January 5, 1982  
Page 2

If this matter isn't worked out on your end soon, I'll be forced to catch enough turtles in the traditional Hawaiian manner for use in our fishponds and for subsistence as we have always done. I can't find any substitute taste for turtle.

At present, many people have asked if they can participate in catching the turtles for the fishpond and subsistence, for this matter must be settled once and for all. Some of these interested Hawaiians include Hawaii Senators, medical doctors, attorneys, ex-members of the W.P.F.M.C., members from the Governor's Fisheries Council, many old time fisherman, subsistant fisherman, activist, the press and U.P.I., etc. I'm sure that this will make national press coverage.

A precedence has already been set by the Alaskan Indians, Aleuts, Alaskans, the American Indians, Western Pacific, etc. Since it is impossible to separate religion with the daily activities in the past, the Freedom of Religion Act of 1978 will be used, for these are our aboriginal rights.

Do to another bad decision by N.M.F.S. and Fish & Wild Life, ignoring Governor George Ariyoshi and the State of Hawaii's request and depriving us of our aboriginal rights to catch turtles which is a traditonal practice, we have no alternative but to pursue this issue.

We have done well in the courts fighting for our aboriginal rights, we haven't lost a case yet. The longest and biggest trial we had was against Laurance Rockafellow, Olohana Corp., Mana Kea Beach Hotel (for use of Hawaiian trails traditionally used for fishing, etc.). This trial took eight years and we ended up with parking, restroom facilities and everyone could use these trails now, completely maintained by the land owners.

Alan, because the precedence has been set by other aboriginal Native Americans and traditionally this was our aboriginal rights, for we have used turtles for hundreds of years in fishponds, for subsistence, for medicine, etc., and your people did not do their homework properly, we would win this case very easily in the Federal Court. We would also request Judge George Bolt from Washington to Preside.

Mr. Alan Ford  
January 5, 1982  
Page 3

I appreciate if this matter can be resolved prior to going to court, please keep me informed, for the turtle issue is in your hands. See you in Saipan.

Aloha A Nui Loa Kakou,

*Alika*

ALIKA COOPER, Vice-President

cc: Governor George R. Ariyoshi  
Senator Spark Matsunaga  
Senator Daniel Inouye  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftell  
Susumo Ono, Chairman, Dept. of Land & Natural Resources  
Frank Goto, United Fishing Agency  
Dr. Emmett Aluli  
Dr. Scott Miles  
Senator Daunty Carpenter  
Lewis Agard, W.P.F.M.C.  
Wads Yee, Chairman, W.P.F.M.C. ✓  
Doyle Gates, N.M.F.S.  
Dale Coggeshall, U.S. Fish & Wild Life Service  
William Gordon N.M.F.S.,  
Asst. Adm. for Fisheries  
Frenchie DeSoto, O.H.A.  
Walter Ritty, O.H.A.  
Genesis LeeLoy  
Bill Yalop



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 Southwest Region  
 300 South Ferry Street  
 Terminal Island, California 90731

January 21, 1982

F/SWR31:JHL  
 1514-07.1r

2/3/82

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JIN	<input checked="" type="checkbox"/>
ETN	<input checked="" type="checkbox"/>
PAM	<input checked="" type="checkbox"/>
HEW	<input checked="" type="checkbox"/>
WCS	<input checked="" type="checkbox"/>
SLA	<input checked="" type="checkbox"/>
MCS	<input type="checkbox"/>
GKH	<input type="checkbox"/>

Mr. Henry Sakuda  
 Acting Director  
 Division of Aquatic Resources  
 Department of Land and Natural Resources  
 1151 Punchbowl Street  
 Honolulu, HI 96813

Dear Mr. Sakuda:

This is in response to the December 22, 1981 letter sent to me by Kenji Ego just prior to his retirement. Mr. Ego's letter was a reaction to a letter I wrote to Alika Cooper (dated December 8, 1981) regarding aboriginal rights to take green sea turtles.

At the December, 1981, meeting of the Western Pacific Fisheries Management Council, Mr. Cooper, Mr. Ego, and I met informally to discuss native Hawaiian rights and aboriginal use of green sea turtles. The discussion was focussed on the absence of any provision for an aboriginal subsistence or ceremonial harvest in the regulation listing the Hawaiian population of green sea turtles under the Endangered Species Act. Mr. Cooper insisted that, as a native Hawaiian, he has certain aboriginal rights which should allow him to catch and possess green sea turtles. I promised Mr. Cooper that I would look into mechanisms for resolving the problem and get back to him.

My December 8, 1981, letter to Mr. Cooper was the response I promised. It presented, based on a review of the administrative record, a brief description of why no aboriginal subsistence or ceremonial take was authorized for native Hawaiians and an outline of the administrative mechanism for bringing about a change in the regulations prohibiting such a harvest.

The subsistence take Mr. Ego refers to in his letter is defined in terms of the State of Hawaii, Department of Land and Natural Resources' Regulation 36 which authorized the taking of green sea turtles for home consumption. In reading this regulation, it appears to authorize home consumption (recreational take) without reference to any subsistence take reserved for aboriginal rights of native Hawaiians.

I am aware that the State of Hawaii objected to the inclusion of the Hawaiian population of green sea turtles in the list of populations brought under the purview of the Endangered Species Act. The administrative record

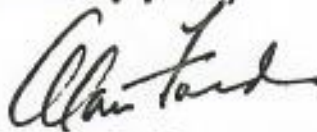


and the comments enclosed with Mr. Ego's letter indicate this objection was based on the State's belief that although the population had declined the sea turtle population was receiving adequate protection under Regulation 36. We were unable to find any specific reference in the administrative record supporting a request to establish and preserve native Hawaiian rights to a subsistence and/or ceremonial take of green sea turtles.

To avoid any further misunderstanding of our position on this matter, I am taking the liberty of sending copies of this letter to those individuals Mr. Ego copied in his letter to me.

Finally, we realize a legitimate problem may exist and, we are seeking a resolution in the manner described in the enclosed letter to Mr. Cooper.

Sincerely yours,



Alan W. Ford  
Regional Director

Enclosure

cc: (w/o encl)

Governor George R. Ariyoshi  
Senator Daniel Inouye  
Senator Spark Matsunaga  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftel  
Alika Cooper  
Susumu Ono  
Dale Coggeshall  
F/SWR1, D. Gates  
F. W. Gordon

Commercial Fishing  
Wholesale, Retail  
Oceanographic Research  
Aquaculture  
Import & Export

ALIKA COOPER & SONS, INCORPORATED  
163 Kaiulani Street  
Hilo, Hawaii 96720  
November 12, 1981

Telephone: (808) 935-8871

11/17/81

WPPO	
DEG	✓
JJN	✓
ETN	✓
PA/A	✓
HEW	✓
WCS	✓
SLA	SLA
MCS	
GKH	

Mr. Doyle Gates  
National Marine Fisheries Service  
P. O. Box 3830  
Honolulu, HI 96812

Dear Doyle:

We are having a problem in one of our fishponds at Kalahuipuaa, Puako, Hawaii. The fishponds are owned by Maunalani Resort and Alika Cooper & Sons, Inc., Manages, stocks and cares for the entire fishpond complex. The problem is, a limu (seaweed) that the duck brought in.

Traditionally, we kept turtles in our fishponds for several reasons. One is to control limu and grass growth, secondly to stir up the shallower area and thirdly to fertilize the ponds. This is a traditional practice that has always been done.

I am asking that I can catch a few turtles to put in the pond to solve this problem.

You realize Doyle, that all the aboriginal populace of the Western Pacific can catch turtles to eat. I can't understand why the aborigine people of Hawaii cannot catch and eat turtle, this has always been done and I feel is part of our aboriginal rights. Turtle is one of the best eating reptiles, for there is no fat in the flesh. We have always had turtle in our fishponds, and used turtles for our survival.

There are a lot of turtles in the Hawaiian archipelago. They breed throughout our island chain and lay their eggs in the Leeward Islands. Turtles are plentiful here on Hawaii.

This turtle matter has been brought to your attention years ago and you (N.M.F.S.) has done nothing about it. I brought it up several times at the W.P.R.F.M.C. Your own lawyer from N.M.F.S. said probably a letter to Washington is all that is needed since the green sea turtle is not endangered in the Hawaiian archipelago.

I hope you are going to get on this matter soon. If you don't, as I told you before, a group of us, including an ex-W.P.R.F.M.C. member will catch some turtles and you can have us arrested. I can guarantee you that it will never get

Cap for  
Hachman  
Fred  
11/2/81

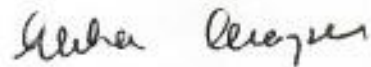
status?

Mr. Doyle Gates  
November 12, 1981  
Page 2

to court and the N.M.F.S. will have egg all over their faces again.

I'll give you 30 days to respond positively to this letter. If I don't hear from you in 30 days, I'll catch the turtles needed for the traditional fishpond problem and also a few to eat.

Aloha A Nui Loa Kakou,



Alike Cooper

cc: Mr. Susumo Ono  
Mauna Lani Resort, Inc.



November 24, 1981

F/SWR1:DEG

Mr. Alika Cooper  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika,

This is in response to your letter of November 12, 1981 regarding a problem you are having in one of your fish ponds at Kalahuipuaa, Puako, Hawaii, and your desire to obtain turtles, protected under the Endangered Species Act of 1973, to resolve the problem. It is my hope that this response will provide you proper guidance to resolve the issue in a legal manner. I have taken the liberty of forwarding your letter and my response to Mr. Alan Ford, Director, Southwest Region, NMFS; Mr. Martin Hochman, Office of General Counsel, Terminal Island, California; Mr. Richard Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D. C., and Mr. Dale Coggeshall, U.S. Fish and Wildlife Service, Honolulu, Hawaii.

I am most sorry to inform you that current regulations regarding threatened and endangered species prohibit the actions you propose. The penalties imposed for criminal violations of these regulations are severe (up to \$20,000 fine, one year imprisonment or both and possible forfeiture of equipment, vessels, vehicles, etc., used to aid in the taking). Please note the marked sections of the Endangered Species Act and the accompanying regulations.

As you know, only Congress can change the terms and conditions contained in the Act. The regulations are subject to change by authorities of the Secretaries of Interior and Commerce. You, as a private citizen may petition the Secretary of Commerce and the Secretary of Interior to change the regulations and if you believe you have a good case you should do so. Such a petition for rulemaking may be addressed to Mr. William Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D. C. 20235 and Mr. Robert Jantzen, Director, U.S. Fish and Wildlife Service, Dept. of Interior, 18th and C Streets, NW, Washington, D. C. 20240. Changes in the regulation require good cause, complete documentation and may require many months to accomplish.

It may be possible for you to resolve your problem without attempting to change the regulations by obtaining, through legal means, pre-Act animals (i.e. green turtles legally obtained prior to their listing as threatened species in 1978). A number of public and private institutions in Hawaii, such as Sea Life Park, Kahala Hilton Hotel and possibly the Hawaii Institute of Marine Biology at Coconut Island, may have surplus pre-Act animals available.

I encourage you strongly to investigate these possibilities as a potential solution. You might also consider investigating several of the grazing fish species such as the surgeon fishes (manini, pualu, kole, kala) or mullet, which may resolve the problem without the use of turtles, as you propose.

Alika, I do hope this information is helpful to you and, as I have indicated to you publicly and privately, that whatever you do I sincerely hope you will do it in a legal and lawful manner and that we are not faced with any sort of enforcement action, problem, or confrontation. Please feel free to contact me if you need additional information or clarification of the existing regulation.

Aloha A Nui Loa Kakou.

Sincerely yours,

Doyle E. Gates  
Administrator

Enclosures

cc: Alan Ford, F/SWR  
Martin Hochman, GCSW  
Richard Roe, F/MM  
Dale Coggeshall, FWS  
Susumu Ono, DLNR

\*Commercial Fishing  
\*Wholesale, Retail  
\*Oceanographic Research  
\*Aquaculture  
\*Import & Export

ALINA COOPER & SONS, INCORPORATED  
163 Kaiulani Street  
Alo, Hawaii 96720  
August 15, 1982

Telephone: (808) 933 8.

W. P. F. M. C.  
Kailua, Hawaii

Aloha:

This is in response to the letter by Alan Ford, Regional Director, dated January 21, 1982, regarding turtles, who "asked me to be patient and work within the system to resolve the issue you have raised."

Since our meeting in Saipan, January 24, 1982, seven and a half months ago, I have never heard a word from Ford or his staff. This is called avoiding the issue, sliding, ignoring the problem, etc. This is a typical bureaucratic approach and I don't think we can tolerate this evasive action any longer.

Many of us who have been raised on turtle and have raised our families on turtle, feels something must be done now, this is an unjust to the Hawaiian People.

I ask this council to take this issue up and follow up on it at your earliest convenience. This matter is very important to our subsistence, for the cost of living in Hawaii is the highest in the United States.

I brought this up over a year ago, for in the Kalahuipuaa ponds that I manage, we have a limu problem. Traditionally, turtles were used to control the limu. We always had turtles in our fishponds. Although we have about five turtles in the fishponds ( they have been there for years), I asked N. M. F. S. if we could get a permit to catch more turtles to resolve the limu problem. As of this day, I have had no contact in any way <sup>with</sup> the N. M. F. S.

True??

How long should I "be patient and work within the system," till I die, till all the generations pass, till the Hawaiians don't know who they are?

How much do we charge the Dept of Commerce and Interior for denying us our aboriginal rights, one dollar, a million, or more? What about the Freedom of Religion Act of 1978, does this not pertain to Hawaii?

Again, I'm asking the W. P. F.M.C. to take a stand on this turtle issue, for it is our aboriginal rights, and we need help.

ALOHA A NUI LOA KAKOU,

*Alina*

November 29, 1981

Western Pacific Regional Fishery Management  
Council  
33rd Council Meeting  
Molokai, Hawaii

Aloha Chairman Wads and Council:

I am very concerned with the draft entitled  
Hawaiian Monk Seal Recovery Plan, dated November 5, 1981.

The Leeward Islands belong to the State of Hawaii,  
not National Marine Fishery Service or Fish & Game Service  
or the United States of America. The problem with this pro-  
posal is, it is unrealistic, contains little facts, many ifs,  
maybes, etc. Just more rules and regulations set on the  
fishermen and Hawaii's populace.

1. If we go by the 20 fathom mark and boundarys  
that the N.M.F.S. has come up with, this will eliminate all  
fishing within French Frigate Shoals and all islands up to  
20 fathoms, which is ridiculous. The seals are dying of  
cigra & miata poisoning, plus harrassment and killing from  
Coast Guard and military people, etc.

2. French Frigate Shoals could have a good fishing  
fleet of about 5 to 8 small boats to fish akule, ulua, papio,  
weki, moi, aholehole, u'u, reef fish, kona crabs, lobsters,  
deep sea fish, etc. The good grounds for hooking ulua are  
within the 20 fathom mark. The fish could be flown to  
Honolulu twice a week. It could be a nice clean operation  
and would not harm the seals or turtles. The potential for  
aku bait is good and six baits are available, iao being the  
most prominent. Shark fishing is a coming industry and French  
Frigate Shoals would be an ideal place.

It is obvious the Fish and Wild Life Service are  
tagging, weighing, shaking live seals for their stomach  
contents, being on the land is nothing but harrassment.  
The helicopter they use scares the living shit out of the birds,  
seals and turtles often killing many birds, this is illegal  
and uncalled for.

3. I don't believe the W.P.R.F.M.C. should make  
a decision on this matter at this time or any other time for  
this is the State of Hawaii's jurisdiction, not the W.P.R.F.M.C.

This is not just three miles off shore.

4. As a member of the billfish committee and a commercial fisherman who represents over 20 vessels, I'm asking you not to make a decision on this matter until the industry takes a stand.

5. This will just add to more unrealistic regulations, that the Feds are placing on us.

These are the same transit Federal types who are trying to control the W.P.R.F.M.C.'s lobster, billfish and coral plans. I don't believe these N.M.F.S. people can continue to place their standards on the council, for the act is what we must go by, not the N.M.F.S. bureaucrats thinking. A typical example is when the N.M.F.S. got rid of the only two fisherman from Hawaii on the council and replaced them with a bureaucrat, but no knowledgeable fisherman. The W.P.R.F.M.C. is governing our destiny, and yet no local fisherman are involved, isn't this strange.

6. If the W.P.R.F.M.C. approves this Hawaii Monk Seal Recovery plan as is, which is not in your jurisdiction, I will be forced to send in my resignation on the billfish committee, and will have nothing to do with W.P.R.F.M.C. again.

The N.M.F.S. and the Wild Life Service has made turtles illegal to catch in Hawaii. We have a large population of turtles in our archipelago, the green sea turtle is not endangered, but our Hawaiian people are becoming endangered for you are trying to change our lifestyle and survival. My family and my ancestors have eaten turtles and used them in our fishponds for hundreds of years, and yet because these two transit federal agencies say turtles are endangered without sufficient information, we can't catch or eat turtles for our survival, this is our aboriginal rights, our working rights, our cultural rights, and our religious rights. Always remember, America overthrew our Hawaiian Nation in 1893, and we have never been compensated. Never forget this fact.

The Alakans, who are also aboriginal like ourselves, can catch and eat these animals, also the W.P. Islands can catch for survival, but we in Hawaii can't. I believe the precedent has been set. We also were never notified about these public hearings.

W.P.R.F.M.C.  
November 29, 1981  
Page 3

Enclosed is my April 20, 1980 testimony of critical habitat for the Hawaiian Monk Seal in the N.W. Hawaiian Islands. For some background information I'm also enclosing a letter to Doyle Gates (N.M.F.S.) on my reasonable turtle request and his typical N.M.F.S. bureaucratic reply.

Aloha A Nui Loa Kakou,

*Alika Cooper*

ALIKA COOPER & SONS, INC.  
Alika Cooper, Vice President



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE

Southwest Region  
300 South Ferry Street  
Terminal Island, California 90731

DIVISION OF AQUATIC RESOURCES

DIRECTOR	<input checked="" type="checkbox"/>	Replied Date
FISH CHIEF	<input checked="" type="checkbox"/>	Suspense Date
MARINE SEC.	<input checked="" type="checkbox"/>	JHL
F.W. SEC.	<input type="checkbox"/>	Reply Direct
AFRC	<input type="checkbox"/>	Comments
SWERDLOFF	<input type="checkbox"/>	Information
	<input type="checkbox"/>	Comp. Act & File
	<input type="checkbox"/>	Return To:
SECRETARY	<input type="checkbox"/>	Copies To:
OFF. SERV.	<input type="checkbox"/>	Remarks:
FED. AID	<input type="checkbox"/>	

December 8, 1981

RECEIVED

DEC 14 1981

Division of  
AQUATIC RESOURCES

Mr. Alike Cooper  
163 Kaulani Street  
Hilo, HI 96720

Dear Alike:

I am writing to respond to the questions raised about green sea turtles in our recent conversation on Molokai. As you know, the final rule listing central and western Pacific populations of green sea turtles as threatened pursuant to the Endangered Species Act permits the taking of green sea turtles by residents of the Trust Territory of the Pacific Islands for ceremonial and subsistence purposes. This exemption to the prohibition of taking green sea turtles was allowed because, during the regulatory review process, the Government of the Trust Territory of the Pacific Islands presented information substantiating the need for a subsistence take and that subsistence taking would not prevent the green sea turtle population from recovering. No such information was submitted by the State of Hawaii or any group or individual representing native Hawaiian's rights.

Responsibility for the management of sea turtles is shared by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service pursuant to a July 18, 1977, Memorandum of Understanding. Therefore, any change in the regulations protecting sea turtles would require agreement by both agencies.

In order to effect a change in the regulations to allow native Hawaiians a ceremonial and subsistence take of green sea turtles, a case would have to be constructed to demonstrate there has been a historical dependence on sea turtles for ceremonial and/or subsistence purposes by native Hawaiians, and that such a take would not disadvantage the affected sea turtle populations. If such information is available, it should be submitted to Mr. William G. Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. The Assistant Administrator, in co-ordination with the Director of the U.S. Fish and Wildlife Service, will review the information and consider the proposed change in the regulations.

Sincerely,

Alan W. Ford  
Regional Director

cc: Kenji Ego, Hawaii Fish and Game  
Doyle Gates, NMFS, Honolulu





**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

November 24, 1981

F/SWR1:DEC

Mr. Alika Cooper  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika,

This is in response to your letter of November 12, 1981 regarding a problem you are having in one of your fish ponds at Kalahuipuaa, Puako, Hawaii, and your desire to obtain turtles, protected under the Endangered Species Act of 1973, to resolve the problem. It is my hope that this response will provide you proper guidance to resolve the issue in a legal manner. I have taken the liberty of forwarding your letter and my response to Mr. Alan Ford, Director, Southwest Region, NMFS; Mr. Martin Hochman, Office of General Counsel, Terminal Island, California; Mr. Richard Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D. C., and Mr. Dale Coggeshall, U.S. Fish and Wildlife Service, Honolulu, Hawaii.

I am most sorry to inform you that current regulations regarding threatened and endangered species prohibit the actions you propose. The penalties imposed for criminal violations of these regulations are severe (up to \$20,000 fine, one year imprisonment or both and possible forfeiture of equipment, vessels, vehicles, etc., used to aid in the taking). Please note the marked sections of the Endangered Species Act and the accompanying regulations.

As you know, only Congress can change the terms and conditions contained in the Act. The regulations are subject to change by authorities of the Secretaries of Interior and Commerce. You, as a private citizen may petition the Secretary of Commerce and the Secretary of Interior to change the regulations and if you believe you have a good case you should do so. Such a petition for rulemaking may be addressed to Mr. William Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D. C. 20235 and Mr. Robert Jantzen, Director, U.S. Fish and Wildlife Service, Dept. of Interior, 18th and C Streets, NW, Washington, D. C. 20240. Changes in the regulation require good cause, complete documentation and may require many months to accomplish.

It may be possible for you to resolve your problem without attempting to change the regulations by obtaining, through legal means, pre-Act animals (i.e. green turtles legally obtained prior to their listing as threatened species in 1978). A number of public and private institutions in Hawaii, such as Sea Life Park, Kahala Hilton Hotel and possibly the Hawaii Institute of Marine Biology at Coconut Island, may have surplus pre-Act animals available.



I encourage you strongly to investigate these possibilities as a potential solution. You might also consider investigating several of the grazing fish species such as the surgeon fishes (manini, pualu, kole, kala) or mullet, which may resolve the problem without the use of turtles, as you propose.

Alika, I do hope this information is helpful to you and, as I have indicated to you publicly and privately, that whatever you do I sincerely hope you will do it in a legal and lawful manner and that we are not faced with any sort of enforcement action, problem, or confrontation. Please feel free to contact me if you need additional information or clarification of the existing regulation.

Aloha A Nui Loa Kakou.

Sincerely yours, .



Doyle E. Gates  
Administrator

Enclosures

cc: Alan Ford, F/SWR, w/o enclosure  
Martin Hochman, GCSW, w/o enclosure  
Richard Roe, F/MM, w/o enclosure  
Dale Coggeshall, FWS, w/o enclosure  
Susumu Ono, DLNR, w/o enclosure



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

SUSUMU ONO, CHAIRMAN  
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU  
DEPUTY TO THE CHAIRMAN

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LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

MEMORANDUM

TO: Honorable George R. Ariyoshi  
Governor, State of Hawaii

FROM: Susumu Ono, Chairman and Member  
Board of Land and Natural Resources

SUBJECT: Green Sea Turtle

Enclosed are copies of Alan Ford's letter addressed to Alike Cooper and Kenji Ego's response to Ford. Also enclosed are other pertinent materials including three letters you had written to various federal officials on the subject matter.

At the time that the federal government was pushing to list the green sea turtle as "threatened", staff of our Department predicted that serious problems will arise with preemption by the federal government of State's authority to manage the turtle resource. Now that the matter is coming to a "boil", you will notice that Ford is attempting to fault the State by wrongly claiming that we did not react during the process of rule making.

We also object strenuously to Ford's attempt to shunt the burden of rectifying the problem, should redress be necessary, unto Hawaii's people and the State when, in actuality, they should be taking the lead.

I do realize that Kenji did use some strong words in his response to Ford but in view of the frustrations and strong feelings generated on the matter, I can empathize with him.

---

SUSUMU ONO, Chairman and Member  
Board of Land and Natural Resources

Attachments

Commercial Fishing  
Wholesale, Retail  
Oceanographic Research  
Aquaculture  
Import & Export

ALIKA COOPER & SONS, INCORPORATED

163 Kaiulani Street  
Hilo, Hawaii 96720

January 5, 1981

Mr. Alan Ford  
Regional Director  
U.S. Dept. of Commerce N.O.A.A.  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, CA 90731

Dear Alan:

Kenji Ego sent me a copy of your December 8, 1981 letter. For some reason, I never received your original letter, but now I will reply.

The question in my letter to Dole Gates and to you on Molokai, December 1, 1981, was two fold. One for securing more turtles to take care of a limu problem in Mauna Lani fishponds, which Alika Cooper & Sons, Inc., a Hawaiian Corporation, owned by Hawaiians, manages, maintains, stocks and controls. The second was to open turtle catching in traditional Hawaiian manners as our ancestors have always done for subsistence, survival, medicine, etc.

Again, I feel I'm getting the run around, for it is not my job or the Hawaiians to document or construct that there has been a historical dependence on turtles for subsistence and medical purposes by Hawaiians. This is a fact and most Hawaiians know this. The problem is that N.M.F.S. and Fish and Wild Life have always been headed by mainland transit whites who have not done their homework, have very little credibility with the Hawaiians and the Hawaiian populace. When these public hearings came up, the N.M.F.S., Fish & Game, National Park, etc. knew we were fisherman, Hawaiians and yet we were never contacted to testify. Traditionally, this always happens. When the Freedom of Religion Act of 1978 was passed, and these groups had only one public hearing in Honolulu, which no practicing Hawaiian religious people were contacted. Few Hawaiian organizations and few knowledgeable Hawaiians were contacted. Enclosed is my written comments.

I'm in full agreement with Kenji Ego's reply to you dated December 22, 1981. I believe you must carry the ball now, not the Hawaiians, the State or myself.

My aboriginal rights include catching turtles in a traditional manner, using them for limu control in our fishponds, eating turtle for subsistence and medicine, etc.

Mr. Alan Ford  
January 5, 1982  
Page 2

If this matter isn't worked out on your end soon, I'll be forced to catch enough turtles in the traditional Hawaiian manner for use in our fishponds and for subsistence as we have always done. I can't find any substitute taste for turtle.

At present, many people have asked if they can participate in catching the turtles for the fishpond and subsistence, for this matter must be settled once and for all. Some of these interested Hawaiians include Hawaii Senators, medical doctors, attorneys, ex-members of the W.P.F.M.C., members from the Governor's Fisheries Council, many old time fisherman, subsistant fisherman, activist, the press and U.P.I., etc. I'm sure that this will make national press coverage.

A precedence has already been set by the Alaskan Indians, Aleuts, Alaskans, the American Indians, Western Pacific, etc. Since it is impossible to separate religion with the daily activities in the past, the Freedom of Religion Act of 1978 will be used, for these are our aboriginal rights.

Do to another bad decision by N.M.F.S. and Fish & Wild Life, ignoring Governor George Ariyoshi and the State of Hawaii's request and depriving us of our aboriginal rights to catch turtles which is a traditonal practice, we have no alternative but to pursue this issue.

We have done well in the courts fighting for our aboriginal rights, we haven't lost a case yet. The longest and biggest trial we had was against Laurance Rockafellow, Olohana Corp., Mana Kea Beach Hotel (for use of Hawaiian trails traditionally used for fishing, etc.). This trial took eight years and we ended up with parking, restroom facilities and everyone could use these trails now, completely maintained by the land owners.

Alan, because the precedence has been set by other aboriginal Native Americans and traditionally this was our aboriginal rights, for we have used turtles for hundreds of years in fishponds, for subsistence, for medicine, etc., and your people did not do their homework properly, we would win this case very easily in the Federal Court. We would also request Judge George Bolt from Washington to Preside.

Mr. Alan Ford  
January 5, 1982  
Page 3

I appreciate if this matter can be resolved prior to going to court, please keep me informed, for the turtle issue is in your hands. See you in Saipan.

Aloha A Nui Loa Kakou,

*Alika*

ALIKA COOPER, Vice-President

cc: Governor George R. Ariyoshi  
Senator Spark Matsunaga  
Senator Daniel Inouye  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftell  
Susumo Ono, Chairman, Dept. of Land & Natural Resources  
Frank Goto, United Fishing Agency  
Dr. Emmett Aluli  
Dr. Scott Miles  
Senator Daunty Carpenter  
Lewis Agard, W.P.F.M.C.  
Wads Yee, Chairman, W.P.F.M.C.  
Doyle Gates, N.M.F.S.  
Dale Coggeshall, U.S. Fish & Wild Life Service  
William Gordon N.M.F.S.,  
Asst. Adm. for Fisheries  
Frenchie DeSoto, O.H.A.  
Walter Ritty, O.H.A.  
Genesis LeeLoy  
Bill Yalop

GEORGE R. ARIYOSHI  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

December 22, 1981

BUSUMU 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

Mr. Alan W. Ford  
Regional Director  
U.S. Dept. of Commerce  
N. O. A. A.  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, California 90731

Dear Mr. Ford:

We received the copy of your recent response to Mr. Alike Cooper (dated December 8, 1981) concerning the final federal rule listing the green sea turtle as threatened under the Endangered Species Act. In your letter, you mentioned that residents of the Trust Territory of the Pacific Islands were permitted to take green sea turtles for ceremonial and subsistence purposes after presenting information that substantiated the need for subsistence take and that subsistence taking would not have jeopardized the recovery of the green sea turtle population. You also stated that "no such information was submitted by the State of Hawaii..." to support an exception from the prohibition of taking green sea turtles in Hawaiian waters. I take very strong exception to your statement; they are not only misleading but constitute falsehood.

For your information, the State of Hawaii through Governor George R. Ariyoshi did submit detailed comments on three separate occasions (copies enclosed) to the following three federal officials:

- a. Mr. Lynn A. Greenwalt, Director, Fish and Wildlife Service; letter dated July 17, 1975
- b. Mr. Harvey M. Hutchings, Acting Associate Director for Resource Management, N.O.A.A.; letter dated December 10, 1975
- c. Mr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Office of Environmental Affairs; letter dated April 1, 1976.

Mr. Ford  
Page Two  
December 22, 1981

You will note that in response to Mr. Galler's request for comments on the Draft Environmental Impact Statement, our Governor strongly endorsed "Alternative 7 - Allow Subsistence Fishing in Areas of Traditional Sea Turtle Fisheries". The basis for this position was that we were already actively managing the turtle resource through a State regulation which provided adequate and effective protection to a discrete and geographically distinct population of green sea turtles. Our regulation (copy enclosed), which was then effective, allowed the limited and controlled non-commercial harvest for traditional subsistence use and required the collection of harvest data through a permit system.

To further substantiate to you our claim that we indeed did transmit our objections relating to the proposed listing of green sea turtle as "threatened" with attendant preemption of State authority, we refer you to the enclosed copies of selected pages from the Federal Register, Vol. 43, No. 146, Friday, July 28, 1979. You will note that on page 32801 our Governor supported an exemption for subsistence fishing. Further, we note on page 32806 that the exemption was not granted to Hawaii's residents for the following reasons: "NMFS and FWS have concern over increased takings and sale of turtle shell and other products to tourists in Hawaii" and "...because there are alternative food sources available in Hawaii." This rationale apparently overlooked the fact that, since May of 1974, Hawaii's Division of Fish and Game Regulation 36 had prohibited commercial taking from State waters of green sea turtles for sale or offer for sale in whole or part or products thereof. The State Regulation had also established a permit system whereby all turtle products that were on hand prior to the effective date could be sold after inventory lists (with affidavits) had been verified. With respect to the mentioned alternative food sources, no one, including residents of the Trust Territory of the Pacific Islands can claim absolutely to lack available food sources that are alternatives to the green sea turtle. We were thus left with the distasteful feeling of having received unfair treatment from the federal bureaucracy.

We recognize that our case for retaining appropriate management of the Hawaiian green sea turtle population at the local level became moot with establishment of the final federal rules and regulations that designated the green sea turtles as "threatened" species. Nevertheless, we view your remarks to Mr. Cooper as implying that we were irresponsible, unconcerned, and nonchalant about this entire issue. Nothing can be further from the truth.

While on Molokai, on the night of December 1, 1981, when you, Mr. Cooper and I met to discuss green sea turtles, I distinctly recall you promising Mr. Cooper that you will look into the possibility of his utilizing green sea turtles to enhance his aquacultural activities. I recall Mr. Cooper mentioning that traditionally the Hawaiians utilized turtles in their fish ponds for the grazing of the courser vegetation which are not utilized by fin-fishes and which, if not controlled, can choke out open water, that the fecal wastes from the turtles promote fertilization of the pond and that the stirring of the pond bottom by turtles aid in maintaining the pond depth and also increases diatom production needed for mullet culture. Are we to assume that your letter of December 8, 1981 constitutes the final response to Mr. Cooper's inquiry relating to turtles and aquaculture? If, in the affirmative, I can readily understand Mr. Cooper's past expressions of bitterness, mistrust and charge of lack of credibility.

Mr. Ford  
Page Three  
December 22, 1981

Furthermore, in reading the last paragraph of your December 8, 1981 letter, I get the uneasy feeling that our Hawaiian people and the State of Hawaii would be required to scramble around to build "a case" for purposes of changing the regulation while those in the federal government sit back with arms folded awaiting to evaluate "information" only at the Washington, D. C. level. Are you forgetting that it was the federal government that listed the green sea turtle as "threatened" and promulgated the regulation over the strenuous objections of the State of Hawaii? Should not the perpetrator resolve the problem, if, redress is required? Would not doing so constitute "arrogance of government"?

Since, at my level, I despair of ever resolving the problem, I am passing it along as indicated below.

Yours truly,



KENJI EGO, Director  
Division of Aquatic Resources

KE:fc

cc: Governor George R. Ariyoshi  
Senator Daniel Inouye  
Senator Spark Matsunaga  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftel  
Alika Cooper  
Susumu Ono  
William Gordon  
Doyle Gates  
Dale Coggeshall

encls.



## 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 23, 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, F. 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

21932, 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 Norstrom, Director of the Fisheries Divisions, National Cannery 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 13, 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 23, 1976, 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 13905). 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 Hayden 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 Hayden 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-

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 shells 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 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. Subsistence taking will be allowed in other areas. Turtles may be taken 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 regulating subsistence fishing will be based on these 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 essentially the same as prohibited activities for endangered species, except interstate commerce prohibition would 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 the proposed regulations. There are, however, changes in the exceptions. Other than allowing more exceptions these regulations governing the endangered species are the same as would be promulgated for an endangered list 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)

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JUL 22 1975

Division of Fish & Game

July 17, 1975

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

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

DIVISION OF FISH & GAME	
DIRECTOR	<input type="checkbox"/> [unclear]
FISH. CHIEF	<input checked="" type="checkbox"/> [unclear]
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OFF. SERV.	<input type="checkbox"/> [unclear]
SECRETARY	<input type="checkbox"/> [unclear]
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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,

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

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DEC 17 1975

DEPT. OF LAND & NATURAL RESOURCES

December 10, 1975

DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

Mr. Harvey M. Hutchings  
Acting Associate Director  
for Resource Management  
U.S. Department of Commerce  
National Oceanic & Atmospheric  
Administration  
Washington, D.C. 20235

DIVISION OF FISH & GAME	
DIRECTOR	Referral Date:
Asst. CHIEF	Response Date:
W.G. CHIEF	Draft Reply
VE CHIEF	Reply Direct
SA- BR	Comments
W.D. BR	Information
SA- BR	Comp. Act. & File
SA- SERV	Return To:
SA- SERV	Remarks:
SA- SERV	

Dear Mr. Hutchings:

Thank you for your letter of November 19, 1975, extending an invitation to the public hearing re-scheduled for February 25, 1976, concerning the proposed inclusion of the green sea turtle (Chelonia Mydas) and two other species of marine turtles within the "threatened species" list. Since our State Legislature will be in session at that time, I must regretfully decline the invitation.

Previous comments which I submitted on the proposed rulemaking still remain applicable; therefore, I would like to take this opportunity to summarize Hawaii's position on the matter.

Studies on green sea turtles conducted cooperatively between the State of Hawaii and the U. S. Fish and Wildlife Service have indicated that Hawaii has a discrete and viable nesting population of green sea turtles which is probably the largest in the United States. Aware of the seeming declining trend of our Hawaiian marine turtle population, the State of Hawaii through the Department of Land and Natural Resources promulgated a regulation in May, 1974 which has totally protected the Leatherback (Dermochelys sp.) and Hawksbill (Eretmochelys sp.) turtles 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 thirteen turtles have been reportedly taken for home use to date since the regulation became effective. Yet, retention of the historical and traditional privilege to harvest turtles in Hawaii has made this regulation far more acceptable to our people than would be the case if a complete closure had been imposed.

It is my understanding that inclusion within the threatened species list could, among other things, completely prohibit the taking of green sea turtles for home use thereby conflicting with and overriding our State regulation that has been functioning very effectively in conserving our turtle resource. Thus,

Handwritten initials and signature in the bottom right corner.

Mr. Harvey M. Hutchings

Page 2

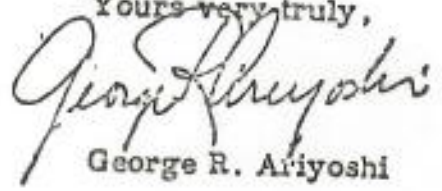
December 10, 1975

in view of this possible conflict with our present regulation, our unique geographical location, the historical usage and a population of green sea turtle apparently discrete to Hawaii, we recommend that Federal measures not be adopted that will interfere with or preempt the State of Hawaii's right and responsibility of managing our green sea turtle resource. We have confidence in our present regulatory provisions imposed to conserve our green sea turtle and sincerely believe that these measures will continue to provide adequate and effective protection for the species.

Your time and effort in extending us this opportunity to comment on the above is very much appreciated.

With warm personal regards, I remain,

Yours very truly,

  
George R. Ariyoshi

bcc: ✓ Hon. Christopher Cobb

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\*Wholesale, Retail  
\*Oceanographic Research  
\*Aquaculture  
\*Import & Export

ALINA COOPER & SONS, INCORPORATED  
163 Kaiulani Street  
Hilo, Hawaii 96720  
August 15, 1982

Telephone: (808) 935 8

W. P. F. M. C.  
Kailua, Hawaii

Aloha:

This is in response to the letter by Alan Ford, Regional Director, dated January 21, 1982, regarding turtles, who "asked me to be patient and work within the system to resolve the issue you have raised."

Since our meeting in Saipan, January 24, 1982, seven and a half months ago, I have never heard a word from Ford or his staff. This is called avoiding the issue, sliding, ignoring the problem, etc. This is a typical bureaucratic approach and I don't think we can tolerate this evasive action any longer.

Many of us who have been raised on turtle and have raised our families on turtle, feels something must be done now, this is an unjust to the Hawaiian People.

I ask this council to take this issue up and follow up on it at your earliest convenience. This matter is very important to our subsistence, for the cost of living in Hawaii is the highest in the United States.

I brought this up over a year ago, for in the Kalahuipuaa ponds that I manage, we have a limu problem. Traditionally, turtles were used to control the limu. We always had turtles in our fishponds. Although we have about five turtles in the fishponds ( they have been there for years), I asked N. M. F. S. if we could get a permit to catch more turtles to resolve the limu problem. As of this day, I have had no contact in any way <sup>with</sup> the N. M. F. S.

True??

How long should I "be patient and work within the system," till I die, till all the generations pass, till the Hawaiians don't know who they are?

How much do we charge the Dept of Commerce and Interior for denying us our aboriginal rights, one dollar, a million, or more? What about the Freedom of Religion Act of 1978, does this not pertain to Hawaii?

Again, I'm asking the W. P. F.M.C. to take a stand on this turtle issue, for it is our aboriginal rights, and we need help.

ALOHA A NUI LOA KAKOU,

*Alina*

# Endangered Species Act Reauthorization

## BULLETIN

socio-economic impacts to protect certain species of endangered wildlife."

### Major Reauthorization Issues Discussed at the Hearings

The testimony at the hearings covered a wide range of issues. Much of the discussion addressed the cooperating organizations' eleven reauthorization objectives. While almost all of those who testified supported reauthorization of the ESA, several suggested amending the law in ways that gravely weaken protection for endangered and threatened species. Although representatives of the Departments of the Interior, Justice, and Commerce testified, they refrained from making specific recommendations because the Administration has not yet formulated its position on the ESA. Following are discussions on some of the major issues raised at the hearings and in written testimony.

Kinds of Species to be Protected by the ESA - Currently, any species or subspecies of animals or a population of a vertebrate animal that is threatened with extinction can be protected by the ESA. One of the issues that has emerged concerning the Act's reauthorization is whether protection should be restricted to full species of vertebrate animals. If such an amendment is adopted by Congress, it would eliminate the ESA's protection for populations of the California sea otter, and of the bald eagle and the grizzly bear in the lower 48 states. Many invertebrates and plants, such as the Antioch Dunes evening primrose which may be of enormous pharmaceutical importance, would be thrust to the brink of extinction.

Several individuals who gave testimony at the hearings, including William S. Huey, International Association of Fish and Wildlife Agencies, supported the continued protection of all kinds of animals and plants. Michael Bean argued: "As the testimony of the scientists demonstrates, the opportunities for material advances in medicine, agriculture, industry, and science are as likely to be secured, if not more likely, through the preservation of the less familiar life forms as through the preservation of the better known. Indeed, not even aesthetic considerations dictate the sorts of distinctions suggested, as those familiar with the beauty of seashells, butterflies, and wildflowers well know. Accordingly, we urge that the Act continue to be potentially available for all plants and animals."

Process for Determining Which Species Will be Protected by the ESA - Robert Jantzen, Director of the U.S. Fish and Wildlife Service, testified that listing threatened and endangered plants and animals is the "cornerstone" of protection and recovery of endangered species. Yet, the Reagan Administration has not determined any species to be endangered or threatened since it took office. The Interior Department has justified the curtailment of listing as a shift to recovery efforts for listed species, i.e. a shift to conservation programs designed to improve the status of listed species to the point where they no longer need the Act's protection. While increased attention to recovery is laudable, the impending extinction of many species can be prevented merely by listing them and having them protected by the ESA from harvest and other threats. In addition to protecting species threatened with extinction, a more expeditious listing process benefits industry by reducing the period of uncertainty in which the status of a species remains unresolved.

A major issue concerning the listing process is the role of economics in determining whether species are endangered or threatened. The state agencies which have written to the Fish and Wildlife Service on this have opposed introducing economic considerations into the listing process. The ESA already provides for planning, which minimizes economic conflict and provides for exemptions of certain important



GEORGE R. ARIYOSHI  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES

1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

July 23, 1982

BUSUMU 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

Mr. George H. Balazs  
Fishery Biologist  
Honolulu Laboratory  
National Marine Fisheries  
Service  
P. O. Box 3830  
Honolulu, HI 96812

Dear George:

Pursuant to your request for a Scientific Collecting Permit to continue studies related to the Hawaiian sea turtles during fiscal year 1982-83, we enclose two copies of the permit being prepared for you. You and your designated assistant, if any, should read the conditions of the permit and acknowledge understanding and acceptance by signing in the spaces provided before returning both to me for final processing and approval by the Chairman of the Department of Land and Natural Resources. A completed copy will be forwarded to you when finalized.

Should there be any changes to your proposed collecting activities or personnel listed on your permit, please notify this office immediately. Also, we note that your Federal Fish and Wildlife Permit (PRT 2-3593) expires on January 31, 1983. Prior to that date you should request an amendment to your Scientific Collecting Permit to reflect the new Federal Permit number and expiration date. A copy of the new Federal Permit should be attached to the request.

Thank you for your cooperation on this matter.

Yours truly,

*Paul Y. Kawamoto*  
for HENRY M. SAKUDA, Director  
Division of Aquatic Resources

encl.

U.S. DEPARTMENT OF COMMERCE  
NATIONAL MARINE FISHERIES SERVICE  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

June 21, 1982

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

Dear Henry:

An idea has occurred to me that I would like to offer for your consideration. During one of my future trips to French Frigate Shoals to tag turtles, I propose that a biologist from your Division accompany me for the purpose of gaining first-hand experience in this type of research. It seems to me that such an arrangement would be mutually rewarding. I regret that I did not think of this earlier as a possibility for French Frigate Shoals, since someone of your choice could conceivably have spent time with me during the present breeding season. Nevertheless, there will be opportunities in the future.

My Refuge permit from the Fish and Wildlife Service would have to be altered slightly to include one of your biologists, but I do not anticipate any problems along those lines.

I look forward to hearing your thoughts on this suggestion.

Sincerely,

s/G.H.B. (ec)

GEORGE H. BALAZS  
Assistant Marine Biologist  
(I.P.A. contract with NMFS)

GHB:ec

Commercial Fishing  
Dole, Inc. Retail  
Oceanographic Research  
Aquaculture  
\*Import & Export

ALIKA COOPER & SONS, INCORPORATED

163 Kaulani Street  
Hilo, Hawaii 96720

January 5, 1981

Telephone: (808) 935-88

Mr. Alan Ford  
Regional Director  
U.S. Dept. of Commerce N.O.A.A.  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, CA 90731

Dear Alan:

Kenji Ego sent me a copy of your December 8, 1981 letter. For some reason, I never received your original letter, but now I will reply.

The question in my letter to Dole Gates and to you on Molokai, December 1, 1981, was two fold. One for securing more turtles to take care of a limu problem in Mauna Lani fishponds, which Alika Cooper & Sons, Inc., a Hawaiian Corporation, owned by Hawaiians, manages, maintains, stocks and controls. The second was to open turtle catching in traditional Hawaiian manners as our ancestors have always done for subsistence, survival, medicine, etc.

Again, I feel I'm getting the run around, for it is not my job or the Hawaiians to document or construct that there has been a historical dependence on turtles for subsistence and medical purposes by Hawaiians. This is a fact and most Hawaiians know this. The problem is that N.M.F.S. and Fish and Wild Life have always been headed by mainland transit whites who have not done their homework, have very little credibility with the Hawaiians and the Hawaiian populace. When these public hearings came up, the N.M.F.S., Fish & Game, National Park, etc. knew we were fisherman, Hawaiians and yet we were never contacted to testify. Traditionally, this always happens. When the Freedom of Religion Act of 1978 was passed, and these groups had only one public hearing in Honolulu, which no practicing Hawaiian religious people were contacted. Few Hawaiian organizations and few knowledgeable Hawaiians were contacted. Enclosed is my written comments.

I'm in full agreement with Kenji Ego's reply to you dated December 22, 1981. I believe you must carry the ball now, not the Hawaiians, the State or myself.

My aboriginal rights include catching turtles in a traditional manner, using them for limu control in our fishponds, eating turtle for subsistence and medicine, etc.

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If this matter isn't worked out on your end soon, I'll be forced to catch enough turtles in the traditional Hawaiian manner for use in our fishponds and for subsistence as we have always done. I can't find any substitute taste for turtle.

At present, many people have asked if they can participate in catching the turtles for the fishpond and subsistence, for this matter must be settled once and for all. Some of these interested Hawaiians include Hawaii Senators, medical doctors, attorneys, ex-members of the W.P.F.M.C., members from the Governor's Fisheries Council, many old time fisherman, subsistant fisherman, activist, the press and U.P.I., etc. I'm sure that this will make national press coverage.

A precedence has already been set by the Alaskan Indians, Aleuts, Alaskans, the American Indians, Western Pacific, etc. Since it is impossible to separate religion with the daily activities in the past, the Freedom of Religion Act of 1978 will be used, for these are our aboriginal rights.

Do to another bad decision by N.M.F.S. and Fish & Wild Life, ignoring Governor George Ariyoshi and the State of Hawaii's request and depriving us of our aboriginal rights to catch turtles which is a traditonal practice, we have no alternative but to pursue this issue.

We have done well in the courts fighting for our aboriginal rights, we haven't lost a case yet. The longest and biggest trial we had was against Laurance Rockafellow, Olohana Corp., Mana Kea Beach Hotel (for use of Hawaiian trails traditionally used for fishing, etc.). This trial took eight years and we ended up with parking, restroom facilities and everyone could use these trails now, completely maintained by the land owners.

Alan, because the precedence has been set by other aboriginal Native Americans and traditionally this was our aboriginal rights, for we have used turtles for hundreds of years in fishponds, for subsistence, for medicine, etc., and your people did not do their homework properly, we would win this case very easily in the Federal Court. We would also request Judge George Bolt from Washington to Preside.

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I appreciate if this matter can be resolved prior to going to court, please keep me informed, for the turtle issue is in your hands. See you in Saipan.

Aloha A Nui Loa Kakou,

*Alibu*

ALIKA COOPER, Vice-President

cc: Governor George R. Ariyoshi  
Senator Spark Matsunaga  
Senator Daniel Inouye  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftell  
Susumo Ono, Chairman, Dept. of Land & Natural Resources  
Frank Goto, United Fishing Agency  
Dr. Emmett Aluli  
Dr. Scott Miles  
Senator Daunty Carpenter  
Lewis Agard, W.P.F.M.C.  
Wads Yee, Chairman, W.P.F.M.C.  
Doyle Gates, N.M.F.S. ✓  
Dale Coggeshall, U.S. Fish & Wild Life Service  
William Gordon N.M.F.S.,  
Asst. Adm. for Fisheries  
Frenchie DeSoto, O.H.A.  
Walter Ritty, O.H.A.  
Genesis LeeLoy  
Bill Yalop

4/13/83

George:

Just a short note in response to your latest letter (good to hear from you). Thanks for the prognosis on the possible effects of Prosovsky's new book. That's all we need at this time! What a guy he turned out to be. Yes, I understand it is nothing new — especially after the "Newsletter" action taken by the IUCN in November '79. I noticed he acted somewhat differently at the Amer. Zoo. meeting in Tampa the following month. Too bad, I liked Nicholas.

Regarding the 5-year status review. The SEFC (Kumpf) informed me that the Regional Office was taking the lead on the review process. No public hearings are being planned (to my knowledge) and no new studies are being done. I believe those directly involved feel enough documents, recently completed, exist to provide the necessary support and documentation. I'm assuming that we are going for a status quo position — at least here in SE Region.

The documents referred to are: The SE Regional Recovery Plan; the DEIS for Regulating the Shrimp Industry; and possibly the National Reports/WAS reports for WATS. So, no big plans down here — just a simple straight forward review. I'll certainly keep you posted if I hear anything. Don't forget, you can always call Herb Kumpf in Miami or Chuck Oravetz in St. Pete — I'm sure they wouldn't mind talking to you. Especially now that you'll soon be one of us!

Don't let the proposed FY 84 budget scare you (-31 perm. positions / - 5.782 million \$)  
Georg. Congress will restore some, but most cuts will be borne by Pribilof Seal program.

Best ever  
Jamy



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

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

January 13, 1982

Mr. Alan Ford, Regional Director  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, CA 90731

Dear Mr. Ford:

This responds to your request for comments on the completeness and adequacy of the November 5, 1981 Draft Hawaiian Monk Seal Recovery Plan. Where applicable, we have tried to suggest priority areas for investigation within the subject Plan. Further, we are confused at the general lack in use of reported biological and/or behavioral information of seals in other areas with that of the Hawaiian monk seal. We find it difficult to believe that the Hawaiian monk seal is so different from all other seals in the world. Specific comments to the Draft Plan are provided as follows:

1. pg. 1, para. 1 -- The last sentence states "There is no evidence to indicate that the historical range [the eight major haul-out atolls, including Necker and Nihoa Islands] occupied by the monk seal has been significantly different from this, yet pupping has only begun in recent years on Necker and Nihoa Islands." This statement appears to require further explanation to clarify how it is known that Necker and Nihoa Islands were not previously used as pupping sites.
2. pg. 2, para. 1 -- While the first sentence of this page reads "These counts [of seals] do not provide a reliable total population estimate, however, because the proportion of the total included in the count is unknown," we note that the first sentence of the following paragraph states "Although the counts are variable they show clear trends over the last two decades." We question how valid are these "clear trends" without a reliable estimate of the population of monk seals?
3. pg. 3, para. 1 -- The last sentence of this paragraph admits that the "movement information...enables speculation" of some common cause responsible for high loss of monk seals in the 1960's. This statement leads the reader to assume that there is a common cause for the monk seals' reduced numbers, where in fact, it could be argued otherwise; any number of causes including shark predation, ciguatera toxin poisoning, aggressive behavior of adult seals, or other causes unique to Pearl and Hermes Reef,

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*copy for ym. → W 9/9*



Midway, Lisianski or Laysan could also have been responsible for the decline in seal counts.

4. pg. 5, para. 1 & 2 -- The entire discussion in these paragraphs deal with the recovery potential of the monk seal, based on the age/sex distribution of the population. Population "trends" and changes described earlier in this document are said to have occurred during the following time periods:
  - pg. 1 -- 1981; "last few years;" "recent years;" 1976-1978; 1956-1958; "since the late 1950's;"
  - pg. 2 -- "the last two decades;" "[since] the late 1950's;" "by 1975;" "[since] 1975;" "recent...from 1957-1958;" "1976-1979...from late 1950's;" "in recent years...over 20 years ago;"
  - pg. 3 -- 1966-72; "in the 1960's;" "through 1978;"
  - pg. 4 -- "1957-1958...[up to] the last few years;" 1964-1968; 1969-1971; "By 1975...average;" "Since 1978;" and
  - pg. 5 -- "Since 1975."

Further, the first sentence of page 5 reads "Based on this information the trend of the Hawaiian monk seal population in the immediate future seems apparent." We submit that the confusing mish-mash of intervals used for discussion purposes make the counts obtained during the described intervals virtually useless for determining any trend, apparent or otherwise.

5. pg. 6 -- In the third sentence of this page, it is explained that "...a sandy beach with shallow protected water nearshore seems to be preferred for pupping and nursing." It is further stated in the first sentence of the first paragraph that "The inner reef waters adjacent to these beaches are critical to weaned pups learning to feed because the pups appear not to travel far...after weaning." We note however, that "...pupping has only begun in recent years on Necker and Nihoa Islands.." (pg. 1), two areas practically devoid of sand beaches and shallow protected nearshore waters. This leads us to question exactly how "critical" are sandy beaches and shallow protected nearshore waters to monk seals?

The second paragraph of this page discusses two incidences of monk seal copulations observed on a single day in nearshore waters off Laysan Island. From these observations, the paragraph concludes "...therefore the nearshore and probably the offshore habitat as well are important to breeding activity of the monk seal." We submit that to arrive at such a conclusion based on two isolated incidences of monk seal mating behavior leaves much to be desired from a scientific reliability standpoint. In fact, we find this document to be replete with instances where only minimal (and therefore questionable) information are used to support and expound

controversial issues such as establishment of a "Critical Habitat," while other more substantive data such as positive gains in population noted at Nihoa and Necker Islands (pg. 2, last para.) appear to be "played down."

6. pg. 7 -- We note in the discussion of feeding behavior in paragraphs 1 and 2, the assumption that extended absences from land means the monk seals are feeding offshore. Other than feed (or mating), could not this absence from land also be required by the seals for establishing territories or making contact with others within the seal population? Moreover, the diving experiments on the monk seals may merely reflect submergence to mid-water depths at sea that were attained by individual animals for feeding or other purposes and not actual depth of dives to the submerged land bottom topography as implied. Hence, if this is the case a 20-fathom depth limit from the surface of the sea as the seaward extent of critical habitat based on dive recordings may include all the surface of the Pacific Ocean and therefore not truly reflect "Critical Habitat" as intended by the Recovery Team.
7. pg. 8 -- The second paragraph of this page discusses the decline of monk seal populations at Kure and Midway, "attributed to frequent human disturbance of hauled seals." However, no mention is made as to reasons why population increases have occurred at French Frigate Shoals (FFS) while under Coast Guard occupation, and at Nihoa and Necker Islands around which heaviest fishing pressures have been exerted of all the major locations in the NWHI. Accordingly, we remain skeptical of "human disturbance" as the cause for the decline in monk seal numbers.  
  
The discussion that follows regarding the closure of the Coast Guard Station at Tern Island, FFS and the increase in beach count populations noted two years later requires further clarification. It leaves the reader the impression that as a result of the Coast Guard's transfer, the population has increased. Actually, from the late 1950's to 1975 (during the time of Coast Guard occupation), we note that a six-fold increase in beach counts accompanied by an overall population increase have been experienced at FFS (pg. 2).
8. pg. 10 -- The purpose of the monk seal pup "Head Start" project at Kure is explained in the first paragraph as "...to help define the cause(s) of pup loss and increase the likelihood of their survival." We question here, whether the early experience with sharks and/or adult seals are necessary to benefit the pups on a long-term basis.
9. pg. 11 -- The first few sentences of this page lead to an unqualified conclusion that "While the dinoflagellate producing these toxins [ciguatoxin and maitotoxin] is known to be distributed throughout the NWHI, such die-off events [of monk seals] may be rare." If any assumption is to be made in regards to the cause of the decline in monk seals, rather than "human disturbance", we feel that dinoflagellate caused toxins appear to

offer a more reasonable explanation. Accordingly, higher priority should be afforded this area of research in the proposed Recovery Plan.

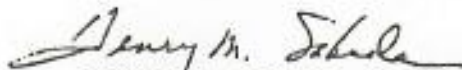
10. pg. 13 -- The last sentence reads "All submerged lands and appurtenant waters to the 3-mile territorial limit fall under the jurisdiction of the State." We suggest the replacement of "3-mile" with the term "archipelagic" to be consistent with Article XI, Section 6 and Article XV, Section 1 of the Constitution of the State of Hawaii.
11. pg. 17-30 -- With the exception of not providing comparable research data on seals in other geographical areas, the study outline presented in these pages is complete. However, under "5.2 Other recommended actions" (pg. 29), we question the recommendation made to designate "Critical Habitat" at "20 fathoms around all of the NWHI including Gardner Pinnacles, Maro Reef, and Nihoa Island" without having fully investigated what is being proposed in the study outline. We maintain that existing federal and State laws are providing adequate protection for the monk seal to the extent practicable. Hence, until the proposed research shows specific need for a critical habitat designation, one should not be established. Moreover, we note that "...20 fathoms around all of the NWHI..." is intended as the seaward limit for critical habitat designation. While it can be assumed that 20 fathoms would mean from the ocean's surface to the submerged land bottom below, there remains a possibility of misinterpreting critical habitat to mean 20 fathoms from the surface of all of the world's oceans.
12. pg. 31 -- Some estimation in numbers of monk seal should be provided to indicate when the monk seal population can be considered "recovered." Unless an estimate is given for the optimum number of males and females suited for monk seals and/or for the carrying capacity of the NWHI the population will never be considered recovered.
13. pg. 37 -- The first sentence of the last paragraph states "Human disturbance has been implicated as a major factor in the reduction in numbers of seals at the west end of the NWHI." We question this statement in light of the following:
  - a. decrease in population noted in recent years at Pearl and Hermes Reef with very little "human disturbance;"
  - b. notable increase in population occurring at French Frigate Shoals despite fairly frequent "human disturbance" including fishing activity; and
  - c. increase in population and pupping noted at Nihoa and Necker Islands despite the heaviest fishing pressure (in the NWHI) being applied around these locations.

Mr. Alan Ford  
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14. pg. 40 -- The first paragraph makes note of the Recovery Team's "majority" statement for establishing a 20-fathom isobath boundary as critical habitat "...around all monk seal haul-out islands in the NWHI, and including Maro Reef." Based on the inadequacy of data on hand (verified through our review of this Plan), we fail to see how the "majority" of Planning Team members could arrive at such a position. It would appear that only the pupping beaches and only during the pupping season would be of importance. We therefore find no compelling reason to have the critical habitat as proposed, established for the monk seal at this time.

Thank you for this opportunity to review the subject document.

Yours truly,



HENRY M. SAKUDA, Acting Director  
Division of Aquatic Resources

HMS:rfm

P. 34

# 50 CFR 17

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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**AUTHORITY:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-189, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, et seq.), unless otherwise noted.

**SOURCE:** 40 FR 44415, Sept. 26, 1975, unless otherwise noted.

### Subpart A—Introduction and General Provisions

#### § 17.1 Purpose of regulations.

(a) The regulations in this part implement the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, except for those provisions in the Act concerning the Convention on International Trade in Endangered Species of Wild Fauna and Flora, for which regulations are provided in Part 23 of this subchapter.

(b) The regulations identify those species of wildlife and plants determined by the Director to be endangered or threatened with extinction under section 4(a) of the Act and also carry over the species and subspecies of wildlife designated as endangered under the Endangered Species Conservation Act of 1969 (83 Stat. 275, 16 U.S.C. 668cc-1 to 6) which are deemed endangered species under section 4(c)(3) of the Act.

(40 FR 44415, Sept. 26, 1975, as amended at 42 FR 10465, Feb. 22, 1977)

#### § 17.2 Scope of regulations.

(a) The regulations of this part apply only to endangered and threatened wildlife and plants.

(b) By agreement between the Service and the National Marine Fisheries Service, the jurisdiction of the Department of Commerce has been specifically defined to include certain species, while jurisdiction is shared in regard to certain other species. Such species are footnoted in Subpart B of this part, and reference is given to special rules of the National Marine Fisheries Service for those species.

(c) The provisions in this part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife.

(d) The examples used in this part are provided solely for the convenience of the public, and to explain the intent and meaning of the regulation to which they refer. They have no legal significance.

## Subpart C—Endangered Wildlife

### § 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, 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, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036,

within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take those endangered species which are covered by an approved cooperative agreement for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in: (i) The death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

*Example.* A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has

been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this section.

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; import or export; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided the following conditions are met:

(i) The wildlife is a species having a natural geographic distribution not including any part of the United States, or the wildlife is a species that the Director has determined to be eligible in accordance with paragraph (5) of this paragraph (g);

(ii) The purpose of such activity is to enhance the propagation or survival of the affected species;

(iii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iv) Each specimen of wildlife to be imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export from the United States, and

(v) Any person subject to the jurisdiction of the United States who engages in any of the activities authorized by this paragraph does so in accordance with paragraphs (2), (3) and (4) of this paragraph (g).

(2) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by this paragraph must first register with the Service (Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240). Requests for registration must be submitted on an official application form (Form 3-200) provided by the Service, and must include the following information:

(i) The types of wildlife sought to be covered by the registration, identified by common and scientific name to the taxonomic level of family, genus or species;

(ii) A description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, or in conducting research directly related to maintaining and propagating such wildlife;

(iii) A description, if appropriate, of the means by which the applicant intends to educate the public about the

ecological role and conservation needs of the affected species;

(iv) Photograph(s) or other evidence clearly depicting the facilities where such wildlife will be maintained; and

(v) A copy of the applicant's license or registration, if any, under the animal welfare regulations of the U.S. Department of Agriculture (9 CFR Part 2).

(3) Upon receiving a complete application, the Director will decide whether or not the registration will be approved. In making his decision, the Director will consider, in addition to the general criteria in § 13.2(b) of this subchapter, whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Each person so registered must maintain accurate written records of activities conducted under the registration and must submit to the Director a written annual report of such activities.

(4) Any person subject to the jurisdiction of the United States seeking to export or conduct foreign commerce in captive-bred endangered wildlife which will not remain under the care of that person must first obtain approval by providing written evidence to satisfy the Director that the proposed recipient of the wildlife has expertise, facilities or other resources adequate to enhance the propagation or survival of such wildlife and that the proposed recipient will use such wildlife for purposes of enhancing the propagation or survival of the affected species.

(5)(i) The Director shall use the following criteria to determine if wildlife of any species having a natural geographic distribution that includes any part of the United States is eligible for the provisions of this paragraph: (A) Whether there is a low demand for taking of the species from wild populations, either because of the success of captive breeding or because of other reasons, and (B) whether the wild populations of the species are effectively protected from unauthorized taking as a result of the inaccessibility of their habitat to man or as a result of the effectiveness of law enforcement.

(ii) The Director shall follow the procedures set forth in section 4(b) and section 4(f)(2)(A) of the Act and in the regulations promulgated thereunder with respect to petitions and notification of the public and governors of affected States when determining the eligibility of species for purposes of this paragraph.

(iii) In accordance with the criteria in paragraph (g)(5)(i) of this section, the Director has determined the following species to be eligible for the

provisions of this paragraph:

Laysan teal (*Anas laysanensis*).

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 44 FR 31580, May 31, 1979; 44 FR 54007, Sept. 17, 1979]

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.) The Director shall publish notice in the Federal Register of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the Federal Register within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.21. Each application must be submitted on an official application (Form 3-200) provided by the Service and must include as an attachment, all of the following information:

(i) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in

the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used,

displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those person who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1013-0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

process resulting in the listing and the subsistence exception, the information provided by the TTPI for specific areas in the TTPI was inappropriately assigned to the whole of the TTPI. This created an inequitable situation in the Mariana Archipelago with the Commonwealth of the Northern Mariana Islands (CNMI) being allowed a subsistence take and Guam not. The NMFS determined that there is no justification for a subsistence exception in the Mariana Archipelago and proposes to resolve the current inequity by allowing the subsistence exception to dissolve with the pending dissolution of the Trust under which the TTPI is administered.

The purpose of this notice is to announce the NMFS's determination to retain the existing sea turtle regulations without modification and to announce the availability of the document on which that determination is based.

**ADDRESSES:** For copies of the review document (Titled: A Review of Subsistence Uses of Sea Turtles in the Central and Western Pacific with Respect to Federal Regulations Authorizing a Subsistence Take of Green Sea Turtles in the Trust Territory of the Pacific Islands) contact: James H. Lecky, Protected Species Program Coordinator, National Marine Fisheries Service/Southwest Region, 300 S. Ferry Street, Room 2001, Terminal Island, CA 90731 (telephone (213) 548-2518).

**FOR FURTHER INFORMATION CONTACT:** James H. Lecky, (213) 548-2518.

**SUPPLEMENTARY INFORMATION:**

#### Background

Currently sea turtle regulations (50 CFR 227.72(f)) authorize a subsistence take of green sea turtles in the TTPI. In late 1981, the State of Hawaii requested the NMFS to consider authorizing a take of green sea turtles for home consumption. Also, an individual Hawaiian, speaking on behalf of native Hawaiians, has requested the NMFS to recognize native Hawaiians' aboriginal rights to take turtles. In 1982, Guam voiced its opinion that NMFS's regulations were inconsistent and inequitable in the Mariana Archipelago. Guam and the CNMI comprise the Mariana Archipelago. The CNMI is allowed to participate in the subsistence exception because they are a part of the TTPI. Guam is excluded from the subsistence exception because it is not part of the TTPI and during the listing process it did not provide sufficient information to substantiate the need for a subsistence exception.

In response to these requests, the NMFS initiated a review of its

regulations. During the review, the NMFS examined the criteria that must be satisfied in order to authorize a subsistence take, the traditional uses of sea turtles in the central and western Pacific, and the status of the green sea turtle stocks. The NMFS determined that a subsistence authorization could be allowed only if an existing culture was dependent on the taking of sea turtles for its continued existence and that the turtle stock involved would not be jeopardized by the subsistence take.

As part of this review, the NMFS conducted public hearings in Guam, the CNMI, American Samoa, and the Hawaiian Islands to collect comments and information on the need for subsistence exceptions in those areas. The NMFS issued a contract for the review of cultural dependence on sea turtles throughout the central and western Pacific and requested the NOAA Office of General Counsel Southwest to review the various subsistence exceptions and provide guidance on what criteria must be considered in authorizing a subsistence take. Concurrent with the review on subsistence taking, the NMFS conducted a review of the status of the listed sea turtle stocks. The results of the status review of green sea turtle stocks were incorporated in the review of the subsistence issue.

The review of cultural practices outside the TTPI revealed that no extant native cultures are dependent on the taking of sea turtles. The requests from the State of Hawaii and the Territory of Guam were not made on behalf of any particular cultural group, so they could not be considered under a subsistence exception at this time.

A home use exception that is available to everyone does not distinguish a native subsistence take from a recreational take and is not consistent with the Endangered Species Act. Home use and commercial use can be authorized only after green sea turtle stocks have recovered and are delisted.

Guam's complaint that the existing regulation for a subsistence exception is inequitable in the Mariana Archipelago is justified. However, the information considered in this review does not substantiate the need for subsistence take in Guam. The administrative record for the listing of sea turtles shows that the CNMI received its subsistence exception because of its political status as part of the TTPI and not because of a need or cultural dependence. This inequity will be resolved when the TTPI dissolves. At the time the Covenant of the CNMI becomes effective, the CNMI

## 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), NOAA, Commerce.

**ACTION:** Notice of final determination and availability of review document.

**SUMMARY:** On April 20, 1983 (48 FR 16925), the NMFS announced its intention to review Special Rule 50 CFR Part 227 Subpart D to determine whether the subsistence regulations for the Trust Territory of the Pacific Islands (TTPI) 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. During that review, the NMFS considered public comments on the need for subsistence exceptions in the central and western Pacific, the criteria that must be satisfied before a subsistence take could be authorized, information concerning the dependence of cultural groups in the central and western Pacific on the taking of sea turtles, and the status of sea turtle stocks. The NMFS determined that there are no native cultures outside of the TTPI that are dependent on the taking of sea turtles and that there is no justification for authorizing a subsistence take elsewhere in the Pacific. The NMFS determined that during the rule-making



will be subjected to the same regulations as Guam.

Therefore, the NMFS plans to retain the existing subsistence exception without modification and to establish a joint Pacific sea turtle recovery team with the U.S. Fish and Wildlife Service and the State and Territorial governments. The recovery team will be assigned the task of developing criteria for determining when sea turtle populations within U.S. jurisdiction in the central and western Pacific can be delisted and recommending management measures to promote the recovery of the stocks.

**List of Subjects in 50 CFR Part 227**

Endangered and threatened wildlife, Exports, Fish, Fisheries, Imports.

Dated: December 20, 1984.

William G. Gordon,

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 85-18 Filed 1-2-85; 8:45 am]

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(301) 113-0318



**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

From: George Balazs:Honolulu:NMFS

To: Phil Williams:NMFS:NOAA

Subj: Review comments on draft status reports for sea turtles (8/3/91)

1991

For the green turtle:

1) The recommendation to upgrade *Chelonia mydas* to the endangered category does not appear to be supported (recommended) in the draft recovery plan for this species in the southeastern U.S.A. If the recovery team had deemed an upgrade to be biologically warranted, such a recommendation would likely have been included in the draft recovery plan. Nevertheless, for the southeastern U.S., including the Gulf of Mexico, it is my judgement that green turtles in U.S. coastal waters, as well as ones nesting ashore, should all be designated as endangered, and not just those occurring in Florida.

2) The Hawaiian population of *Chelonia mydas*, in my opinion, continues to be properly listed as threatened. There have been some encouraging signs of recovery, both at the breeding grounds of French Frigate Shoals as well as at numerous nearshore resident foraging areas throughout the southeastern segment of the Hawaiian chain. However, the situation does indeed require very close attention due to the increasing incidence of the fibropapilloma disease severely affecting certain elements of the population. The Hawaiian Sea Turtle Recovery Team did not recommend an upgraded listing in the draft recovery plan that it produced. If the situation does change to the point of warranting an endangered designation (ie, in danger of extinction), action should and will be taken at that immediate time, without having to wait for a 5-year status review period.

3) The draft status report refers to *Chelonia agassizii*. However, the July 28, 1978 Federal Register Notice (Listing and Protecting Sea Turtles) makes no legal or biological reference to a full species, *C. agassizii*. The official listing only contains *Chelonia mydas*, which includes the subspecies *C. mydas agassizii* and *C. mydas carrinegra*.

For the black turtle:

1) Same comment as #3 above.

2) I agree that the subspecies *C. mydas agassizii* or *C. mydas carrinegra* occurring in the eastern Pacific should be designated as endangered throughout its range, wherever it can be readily distinguished as a recognizable form (ie dark pigment in plastron in subadults and adults; adults with heavy black dorsal pigment; adults with constricted carapace above the hind flippers; and a small size at sexual maturity). Note: To my knowledge, hatchlings of *C. mydas*, *C. m. agassizii*, and *C. m. carrinegra* cannot be distinguished by any uniform external (or internal) appearance.



For the hawksbill:

- 1) Page 16. As one of the 50 states, Hawaii is in fact a part of the "United States." The sentence here appears to suggest otherwise.

For the loggerhead:

- 1) The following paper should be mentioned in the text and included in the Literature Cited: Bjorndal and Bolten. 1988. Growth rates of juvenile loggerheads, *Caretta caretta*, in the Southern Bahamas. *Journal of Herpetology*, Vol. 22, No. 4, pp. 480-482. [Phil- I'll send you a copy of this one in the event that you don't already have it].

General Comments:

- 1) Certainly a number of positive actions on behalf of U.S. (and international) sea turtle populations have been undertaken by NMFS, FWS and NGO's since the last status review in 1985. I think it would be nice to see more of these mentioned, along with the negatives.
- 2) The designation of both marine and terrestrial Critical Habitat for sea turtles is clearly in my view a positive action under the ESA. The status reports should assert that more such habitat should be so designated. FWS and NMFS have barely scratched the surface in this area.
- 3) The status reviews should recommend that recovery plans now being prepared and finalized for each species (or subspecies) should spell out criteria for any perceived need to upgrade (threatened to endangered) or downgrade (endangered to threatened) a listing. At present, draft recovery plans for sea turtles dealing with species (or subspecies) listed as endangered only provide criteria for complete delisting. However, the biological recovery of a species will be a gradual stepdown process, whereby an endangered species will at some point qualify as threatened prior to becoming recovered (delisted). This fact needs to be adequately addressed.

I trust that these few comments will be helpful to you in finalizing the 5-year status reviews for each species.



# United States Department of the Interior

ADDRESS ONLY THE DIRECTOR,  
FISH AND WILDLIFE SERVICE

FISH AND WILDLIFE SERVICE  
WASHINGTON, D.C. 20240

In Reply Refer To:  
FWS/WFO PRT 2-6842

JUL 29 1980

Dr. Richard S. Shomura  
Director, Honolulu Laboratory  
National Marine Fisheries Service  
Southwest Fisheries Center  
Honolulu Laboratory  
P.O. Box 3830  
Honolulu, Hawaii 96812

Dear Dr. Shomura:

This letter is in reply to your July 16 request for a threatened species permit to work with green sea turtles (Chelonia mydas).

50 CFR 17.31(b), enclosed, provides that any employee or agent of the National Marine Fisheries Service (NMFS) who is designated by his agency may, when acting in the course of his official duties, take threatened wildlife to carry out conservation programs. It appears from your application that the proposed sea turtle identification project falls into this category. No permit is required but anyone working on the project should be so designated in writing by NMFS.

Since you do not need a permit to conduct the activities you propose, your application for a permit is denied. As provided in 50 CFR 13.21(d) enclosed, you may submit additional information or justification why your permit should not be denied. Such further submission shall not be considered a new application, but should be received in this office within 30 days of the date of this letter.

Please contact Bob Batky of this office (703/235-1903) if you have any questions.

Sincerely yours,

Donald G. Donahoo  
Chief, Permit Branch  
Federal Wildlife Permit Office

Enclosures

## PART 13—GENERAL PERMIT PROCEDURES

## Subpart A—Introduction

- Sec.  
13.1 General.  
13.2 Purpose of regulations.  
13.3 Scope of regulations.  
13.4 Emergency variation from requirements.

## Subpart B—Application for Permits

- 13.11 Procedure for obtaining a permit.  
13.13 Information requirements on permit applications.  
13.13 Abandoned application.  
13.14 Insufficient fee.

## Subpart C—Permit Administration

- 13.21 Issuance of permits.  
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13.23 Amendment of applications or permits.  
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13.25 Permits not transferable; agents.  
13.26 Right of succession by certain persons.  
13.27 Change of mailing address.  
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## Subpart D—Conditions

- 13.41 Recall and amendment of permit during its term.  
13.42 Permits are specific.  
13.43 Alteration of permits.  
13.44 Display of permit.  
13.45 Filing of reports.  
13.46 Maintenance of records.  
13.47 Inspection requirement.

## Subpart E—Violations of the Permit

- 13.51 Penalties for violation of a permit; notices; demonstration of compliance.

**AUTHORITY—**Lacey Act, 52 Stat. 687, as amended, 53 Stat. 89, 74 Stat. 753, and 83 Stat. 281 (16 U.S.C. 43-44); Black Bear Act, sec. 3, 44 Stat. 578, as amended, 45 Stat. 946 (16 U.S.C. 843c); Migratory Bird Treaty Act, sec. 3, 40 Stat. 756 (16 U.S.C. 704); Bald Eagle Protection Act, sec. 3, 54 Stat. 351 (16 U.S.C. 805a); Tariff Classification Act of 1962, 19 U.S.C. 1202, "Schedule 1, Part 18D, Headnote 8(d), Tariff Schedules of the United States," 84 Stat. 251; Endangered Species Conservation Act of 1969, sec. 6(e), 83 Stat. 978 (16 U.S.C. 805cc-4); Fish and Wildlife Act of 1956, sec. 13(d), 80 Stat. 905 amending 86 Stat. 480 (16 U.S.C. 742-1); Marine Mammal Protection Act of 1972, sec. 113(a), 86 Stat. 1043 (16 U.S.C. 1362); Act of August 21, 1961, Ch. 576, Title 5, section 501, 85 Stat. 290 (51 U.S.C. 432a).

## § 13.1 General.

Each person intending to engage in an activity for which a permit is required by this Subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this Subchapter B must make application for such permit in accordance with the requirements of this Part 13 and the other regulations in this Subchapter B which set forth the

additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one Part of this Subchapter B, the requirements of each Part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

## § 13.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, revocation, and general administration of permits issuable pursuant to this Subchapter B.

## § 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter B and apply to all permits issued thereunder, including "Import and Marking" (Part 14), "Feather Imports" (Part 15), "Injurious Wildlife" (Part 16), "Endangered Wildlife" (Part 17), "Marine Mammals" (Part 18), "Migratory Birds" (Part 21), and "Eagles" (Part 22).

## § 13.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this Subchapter B, and will not be unlawful.

## Subpart B—Application for Permits

## § 13.11 Procedure for obtaining a permit.

The following general procedures apply to applications for permits:

(a) **Forms.**—Applications must be submitted on an appropriate Bureau application form, except for those applications for which the regulations provide that a letter application which contains all necessary information, attachments, certification, and signature is acceptable. In no case will oral or telephoned applications be accepted.

(b) **Forwarding instructions.**—Applications must be submitted to the Special Agent in Charge of the Law Enforcement District in which the applicant resides, unless otherwise required in the section which applies to the specific permit desired. Persons not residing in the United States must submit applications to the Director. The address of such officials are listed in §§ 10.21 and 10.22 of this subchapter.

(c) **Time requirement.**—Applications must be received by the appropriate official of the Bureau at least 30 calendar days prior to the date on which the applicant desires to have the permit made effective. The Bureau will, in all cases, attempt to process applications in the shortest possible time, and most complete

and properly addressed applications will be acted on within 30 days. The Bureau does not, however, guarantee 30 day issuance and some permits cannot be issued within that time period.

(d) **Permit fees.**—Applications must be accompanied by a permit fee in the form of a check or money order, made payable to "Bureau of Sport Fisheries and Wildlife" for those permits for which a fee is shown on the following schedule. Such permit fees shall not be refunded if that application is denied.

Type of permit:	Fee
Feather import quota (part 15 of this subchapter):	
Importation or entry.....	\$10
Marine mammals permits (part 18 of this subchapter):	
Scientific research.....	Individual basis
Public display.....	Individual basis

## § 13.12 Information requirements on permit applications.

(a) **General information required for all permit applications.**—All applications for permits must contain the following information:

- (1) Applicant's name, mailing address, and phone number;
- (2) Where the applicant is an individual, his date of birth, height, weight, color of hair, color of eyes, and sex; and business or institutional affiliation, if any, having to do with the wildlife to be covered by the permit;
- (3) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of the president or principal officer;

(4) Location where the permitted activity is to be conducted;

(5) Part and section of this subchapter B under which the permit is requested and such additional information and justification, including supporting documents from appropriate authorities, as required by that section (Paragraph (b) of this section contains a list of sections of this subchapter B where the additional information needed on applications for various permits may be found.)

(6) Where the permitted activity involves an importation from any foreign country which restricts the taking, possession, transportation, exportation or sale of wildlife, the appropriate documentation, as indicated in § 14.42 of this subchapter;

(7) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my

knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.

(8) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(9) Date;

(10) Signature of the applicant; and

(11) Such other information as the Director determines relevant to the processing of the application.

(b) Additional information required on permit applications.—As stated in paragraph (a) (8) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

Type or permit:	Section
Importation at nondesignated ports:	
Scientific.....	14.31
Deterioration prevention.....	14.32
Economic hardship.....	14.33
Marking of package or container:	
Symbol marking.....	14.33
Feather import quota:	
Importation or entry.....	14.31
Injurious wildlife:	
Importation or shipment.....	16.32
Endangered wildlife permits:	
Economic hardship.....	17.32
Ecological, educational, scientific or propagation.....	17.32
Marine mammals permits:	
Scientific research.....	18.31
Public display.....	18.31
Migratory bird permits:	
Import or export.....	21.21
Banding or marking.....	21.22
Scientific collecting.....	21.23
Taxidermist.....	21.24
Waterfowl sale and disposal.....	21.25
Special aviculturist.....	21.26
Special purpose.....	21.27
Falconry.....	21.28
Depredation control.....	21.41
Eagle permits:	
Scientific or exhibition.....	22.21
Indian religious use.....	22.22
Depredation control.....	22.23
Falconry purposes.....	22.24

#### § 13.13 Abandoned application.

Upon receipt of an incomplete or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned and the permit fee shall not be returned.

#### § 13.14 Insufficient fee.

Upon receipt of an application filed with an insufficient fee, or without fee where one is required, the application and any fee submitted will be returned to the applicant.

### Subpart C—Permit Administration

#### § 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United

States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless—

(1) The applicant has been assessed a civil penalty as convicted of any civil or criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction, evidences a lack of responsibility;

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any permit request, and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application. The final action by the Director shall be considered the final administrative decision of the Department.

#### § 13.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in this subchapter B, for the period stated on the permit, unless sooner terminated.

#### § 13.23 Amendment of applications or permits.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 13.21.

#### § 13.24 Renewal of permit.

Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise notified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his

original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon.

#### § 13.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

#### § 13.26 Right of succession by certain persons.

(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

#### § 13.27 Change of mailing address.

During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained in accordance with § 13.23.

#### § 13.28 Change in name.

A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree: *Provided*, That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

**§ 13.39 Official endorsement of changes required.**

Any change in a permit must be made by endorsement of the Director or issuing officer. Any modification or change in an issued permit, other than those specifically provided for in this subpart, may be granted or denied in the discretion of the Director.

**§ 13.30 Certain continuance of activity.**

A permittee who furnishes his permit to the issuing official for endorsement or correction in compliance with the provisions of this subpart may continue his operations pending its return.

**§ 13.31 Discontinuance of activity.**

When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

**Subpart D—Conditions**

**§ 13.41 Recall and amendment of permit during its term.**

Except for marine mammal permits (See Part 18), all permits are issued subject to the condition that the Bureau reserves the right to recall and amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

**§ 13.42 Permits are specific.**

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

**§ 13.43 Alteration of permits.**

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this Subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

**§ 13.44 Display of permit.**

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

**§ 13.45 Filing of reports.**

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or

any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

**§ 13.46 Maintenance of records.**

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

**§ 13.47 Inspection requirement.**

Any person holding a permit under this subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

**Subpart E—Violations of the Permit**

**§ 13.51 Penalties for violation of a permit, notice; demonstration of compliance.**

(a) Any violation of the applicable provisions of this Subchapter, or of the statute under which the permit was issued, or a condition of the permit, may subject the permittee to the following penalties:

- (1) The penalty provided in the statute under which the permit was issued;
- (2) Temporary suspension of the permit for a specified period; and
- (3) Revocation of the permit. When revoked, permits must be surrendered to the Director on demand.

(b) Except in cases of willfulness or those in which the public health safety or interest requires, and prior to any suspension or revocation of a permit, the permittee shall be given:

- (1) Notice by the Bureau in writing of the facts or conduct which may warrant the suspension or revocation; and
- (2) Opportunity to demonstrate or achieve compliance with all permit requirements.

# DEPARTMENT OF MARINE & WILDLIFE RESOURCES



AMERICAN SAMOA GOVERNMENT  
P.O. BOX 3730  
PAGO PAGO, AMERICAN SAMOA 96799

TEL: (684) 633-4456  
FAX: (684) 633-5944



A. P. LUTALI  
Governor

RAY TULAFONO  
Director

TAUESE P. F. SUNIA  
Lt. Governor

June 23, 1994

PHILIP LANGFORD  
Deputy Director

Kitty Simonds, Executive Director  
Western Pacific Fisheries Management Council  
1164 Bishop St., Suite 1405  
Honolulu, Hawaii

Dear Kitty:

Would you please clarify a question we have regarding the extent to which the US can claim ownership or jurisdiction of a migratory species once it leaves our EEZ. I am not referring to species like tuna which are 'highly migratory', rather species like salmon which spawn in US streams and then migrate outside our EEZ. I vaguely remember, perhaps erroneously, that the US claims ownership of such salmon stocks, even when they are on the high seas of the North Pacific.

By the same token, could the US claim ownership of sea turtle stocks that nest in American Samoa? And, could we claim jurisdiction of them when they migrate into the EEZ of another South Pacific country?

The reason for this line of thinking is that American Samoa's turtle stocks have declined and need protection. Even though our turtles receive some protection under the Endangered Species Act, they migrate beyond our EEZ between nesting years. Tagging data show that they migrate to Fiji where it is legal to harvest them. Some more details about this problem are presented in the attached letter I sent to SPREP.

A major obstacle to turtle conservation throughout the South Pacific is that one country's conservation efforts can be negated by overharvest of the same stock by another country. I would appreciate any comments you might have on this matter.

Sincerely,

Peter Craig  
Chief Biologist

cc. Ray Tulafono DMWR  
Robert Smith USFWS

RECEIVED

'94 JUN 28 A7:28

WESPAC





WESTERN  
PACIFIC  
REGIONAL  
FISHERY  
MANAGEMENT  
COUNCIL

7.F.

14 July 1994

Dr. Peter Craig  
Department of Marine & Wildlife Resources  
American Samoa Government  
P.O. Box 3730  
Pago Pago, AS 96799

Dear Peter:

This responds to your letter of 23 June, asking about US jurisdiction of migratory species in the EEZ of other nations. The source of the information is the US State Department.

Protection of sea turtles within the EEZ of another nation is not possible under US or international law. While the Magnuson Act does allow management of marine resources in international waters, it does <sup>not</sup> apply within other nations' EEZs. Sea turtles are not anadromous species as defined by the Magnuson Act, and even if they were, the USA does not claim jurisdiction (under the Magnuson Act) over anadromous species when such species are within the EEZ of other nations. Thus, the harvest of sea turtles within the Fijian EEZ is not a matter over which the USA has any direct legal jurisdiction.

The Endangered Species Act also affords no relief. While sea turtles are listed under the ESA, the law does not apply extra-territorially. Likewise, the Convention on International Trade of Endangered Species is of no assistance because the turtles killed in Fiji are not traded.

Having said this, the Departments of State, Interior and Commerce, encourage countries with marine turtle resources to adopt measures for their conservation. Such measures might include protection of turtles and eggs on nesting beaches, requiring fishing methods that minimize incidental turtle mortality, and prohibition on the direct consumption of sea turtles. Furthermore, development of an action plan or agreement to protect marine turtles in the region could be pursued under the auspices of SPREP or other suitable organization.

For your information, the Council voted at its last meeting to request the NMFS to review the ESA's provisions for limited take, and to set a limited take quota for the use of green sea turtles by indigenous islanders in the American Flag Pacific Islands for traditional/cultural purposes, and also to ask the NMFS to include consideration of such take in completion of the sea turtle recovery plan.

If you need any further help on this issue, feel free to call.

Sincerely,

*Robert E. Schurda*

~~for~~ Kitty M. Simonds  
Executive Director

c: R. Tulafono, DMWR  
R. Smith, USFWS



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE

Southwest Region  
300 South Ferry Street  
Terminal Island, California

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

December 8, 1981

RECEIVED

DEC 14 1981

Division of  
AQUATIC RESOURCES

Mr. Alika Cooper  
163 Kaulani Street  
Hilo, HI 96720

Dear Alika:

I am writing to respond to the questions raised about green sea turtles in our recent conversation on Molokai. As you know, the final rule listing central and western Pacific populations of green sea turtles as threatened pursuant to the Endangered Species Act permits the taking of green sea turtles by residents of the Trust Territory of the Pacific Islands for ceremonial and subsistence purposes. This exemption to the prohibition of taking green sea turtles was allowed because, during the regulatory review process, the Government of the Trust Territory of the Pacific Islands presented information substantiating the need for a subsistence take and that subsistence taking would not prevent the green sea turtle population from recovering. No such information was submitted by the State of Hawaii or any group or individual representing native Hawaiian's rights.

Responsibility for the management of sea turtles is shared by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service pursuant to a July 18, 1977, Memorandum of Understanding. Therefore, any change in the regulations protecting sea turtles would require agreement by both agencies.

In order to effect a change in the regulations to allow native Hawaiians a ceremonial and subsistence take of green sea turtles, a case would have to be constructed to demonstrate there has been a historical dependence on sea turtles for ceremonial and/or subsistence purposes by native Hawaiians, and that such a take would not disadvantage the affected sea turtle populations. If such information is available, it should be submitted to Mr. William G. Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. The Assistant Administrator, in co-ordination with the Director of the U.S. Fish and Wildlife Service, will review the information and consider the proposed change in the regulations.

Sincerely,

Alan W. Ford  
Regional Director

cc: Kenji Ego, Hawaii Fish and Game  
Doyle Gates, NMFS, Honolulu





**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

November 24, 1981

F/SWR1:DEC

Mr. Alika Cooper  
163 Kaiulani Street  
Hilo, Hawaii 96720

Dear Alika,

This is in response to your letter of November 12, 1981 regarding a problem you are having in one of your fish ponds at Kalahuipuaa, Puako, Hawaii, and your desire to obtain turtles, protected under the Endangered Species Act of 1973, to resolve the problem. It is my hope that this response will provide you proper guidance to resolve the issue in a legal manner. I have taken the liberty of forwarding your letter and my response to Mr. Alan Ford, Director, Southwest Region, NMFS; Mr. Martin Hochman, Office of General Counsel, Terminal Island, California; Mr. Richard Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D. C., and Mr. Dale Coggeshall, U.S. Fish and Wildlife Service, Honolulu, Hawaii.

I am most sorry to inform you that current regulations regarding threatened and endangered species prohibit the actions you propose. The penalties imposed for criminal violations of these regulations are severe (up to \$20,000 fine, one year imprisonment or both and possible forfeiture of equipment, vessels, vehicles, etc., used to aid in the taking). Please note the marked sections of the Endangered Species Act and the accompanying regulations.

As you know, only Congress can change the terms and conditions contained in the Act. The regulations are subject to change by authorities of the Secretaries of Interior and Commerce. You, as a private citizen may petition the Secretary of Commerce and the Secretary of Interior to change the regulations and if you believe you have a good case you should do so. Such a petition for rulemaking may be addressed to Mr. William Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D. C. 20235 and Mr. Robert Jantzen, Director, U.S. Fish and Wildlife Service, Dept. of Interior, 18th and C Streets, NW, Washington, D. C. 20240. Changes in the regulation require good cause, complete documentation and may require many months to accomplish.


It may be possible for you to resolve your problem without attempting to change the regulations by obtaining, through legal means, pre-Act animals (i.e. green turtles legally obtained prior to their listing as threatened species in 1978). A number of public and private institutions in Hawaii, such as Sea Life Park, Kahala Hilton Hotel and possibly the Hawaii Institute of Marine Biology at Coconut Island, may have surplus pre-Act animals available.

I encourage you strongly to investigate these possibilities as a potential solution. You might also consider investigating several of the grazing fish species such as the surgeon fishes (manini, pualu, kole, kala) or mullet, which may resolve the problem without the use of turtles, as you propose.

Alika, I do hope this information is helpful to you and, as I have indicated to you publicly and privately, that whatever you do I sincerely hope you will do it in a legal and lawful manner and that we are not faced with any sort of enforcement action, problem, or confrontation. Please feel free to contact me if you need additional information or clarification of the existing regulation.

Aloha A Nui Loa Kakou.

Sincerely yours, .



Doyle E. Gates  
Administrator

Enclosures

cc: Alan Ford, F/SWR, w/o enclosure  
Martin Hochman, GCSW, w/o enclosure  
Richard Roe, F/MM, w/o enclosure  
Dale Coggeshall, FWS, w/o enclosure  
Susumu Ono, DLNR, w/o enclosure

Commercial Fishing  
Wholesale, Retail  
Oceanographic Research  
Aquaculture  
Import & Export

ALIKA COOPER & SONS, INCORPORATED

163 Kaimulani Street  
Hilo, Hawaii 96720

January 5, 1981

Mr. Alan Ford  
Regional Director  
U.S. Dept. of Commerce N.O.A.A.  
National Marine Fisheries Service  
Southwest Region  
300 South Ferry Street  
Terminal Island, CA 90731

Dear Alan:

Kenji Ego sent me a copy of your December 8, 1981 letter. For some reason, I never received your original letter, but now I will reply.

The question in my letter to Dole Gates and to you on Molokai, December 1, 1981, was two fold. One for securing more turtles to take care of a limu problem in Mauna Lani fishponds, which Alika Cooper & Sons, Inc., a Hawaiian Corporation, owned by Hawaiians, manages, maintains, stocks and controls. The second was to open turtle catching in traditional Hawaiian manners as our ancestors have always done for subsistence, survival, medicine, etc.

Again, I feel I'm getting the run around, for it is not my job or the Hawaiians to document or construct that there has been a historical dependence on turtles for subsistence and medical purposes by Hawaiians. This is a fact and most Hawaiians know this. The problem is that N.M.F.S. and Fish and Wild Life have always been headed by mainland transit whites who have not done their homework, have very little credibility with the Hawaiians and the Hawaiian populace. When these public hearings came up, the N.M.F.S., Fish & Game, National Park, etc. knew we were fisherman, Hawaiians and yet we were never contacted to testify. Traditionally, this always happens. When the Freedom of Religion Act of 1978 was passed, and these groups had only one public hearing in Honolulu, which no practicing Hawaiian religious people were contacted. Few Hawaiian organizations and few knowledgeable Hawaiians were contacted. Enclosed is my written comments.

I'm in full agreement with Kenji Ego's reply to you dated December 22, 1981. I believe you must carry the ball now, not the Hawaiians, the State or myself.

My aboriginal rights include catching turtles in a traditional manner, using them for limu control in our fishponds, eating turtle for subsistence and medicine, etc.

Mr. Alan Ford  
January 5, 1982  
Page 2

If this matter isn't worked out on your end soon, I'll be forced to catch enough turtles in the traditional Hawaiian manner for use in our fishponds and for subsistence as we have always done. I can't find any substitute taste for turtle.

At present, many people have asked if they can participate in catching the turtles for the fishpond and subsistence, for this matter must be settled once and for all. Some of these interested Hawaiians include Hawaii Senators, medical doctors, attorneys, ex-members of the W.P.F.M.C., members from the Governor's Fisheries Council, many old time fisherman, subsistant fisherman, activist, the press and U.P.I., etc. I'm sure that this will make national press coverage.

A precedence has already been set by the Alaskan Indians, Aleuts, Alaskans, the American Indians, Western Pacific, etc. Since it is impossible to separate religion with the daily activities in the past, the Freedom of Religion Act of 1978 will be used, for these are our aboriginal rights.

Do to another bad decision by N.M.F.S. and Fish & Wild Life, ignoring Governor George Ariyoshi and the State of Hawaii's request and depriving us of our aboriginal rights to catch turtles which is a traditonal practice, we have no alternative but to pursue this issue.

We have done well in the courts fighting for our aboriginal rights, we haven't lost a case yet. The longest and biggest trial we had was against Laurance Rockafellow, Olohana Corp., Mana Kea Beach Hotel (for use of Hawaiian trails traditionally used for fishing, etc.). This trial took eight years and we ended up with parking, restroom facilities and everyone could use these trails now, completely maintained by the land owners.

Alan, because the precedence has been set by other aboriginal Native Americans and traditionally this was our aboriginal rights, for we have used turtles for hundreds of years in fishponds, for subsistence, for medicine, etc., and your people did not do their homework properly, we would win this case very easily in the Federal Court. We would also request Judge George Bolt from Washington to Preside.

Mr. Alan Ford  
January 5, 1982  
Page 3

I appreciate if this matter can be resolved prior to going to court, please keep me informed, for the turtle issue is in your hands. See you in Saipan.

Aloha A Nui Loa Kakou,

*Alika*

ALIKA COOPER, Vice-President

cc: Governor George R. Ariyoshi  
Senator Spark Matsunaga  
Senator Daniel Inouye  
U.S. Representative Dan Akaka  
U.S. Representative Cec Heftell  
Susumo Ono, Chairman, Dept. of Land & Natural Resources  
Frank Goto, United Fishing Agency  
Dr. Emmett Aluli  
Dr. Scott Miles  
Senator Daunty Carpenter  
Lewis Agard, W.P.F.M.C.  
Wads Yee, Chairman, W.P.F.M.C.  
Doyle Gates, N.M.F.S.  
Dale Coggeshall, U.S. Fish & Wild Life Service  
William Gordon N.M.F.S.,  
Asst. Adm. for Fisheries  
Frenchie DeSoto, O.H.A.  
Walter Ritty, O.H.A.  
Genesis LeeLoy  
Bill Yalop



November 29, 1981

Western Pacific Regional Fishery Management  
Council  
33rd Council Meeting  
Molokai, Hawaii

Aloha Chairman Wads and Council:

I am very concerned with the draft entitled  
Hawaiian Monk Seal Recovery Plan, dated November 5, 1981.

The Leeward Islands belong to the State of Hawaii,  
not National Marine Fishery Service or Fish & Game Service  
or the United States of America. The problem with this pro-  
posal is, it is unrealistic, contains little facts, many ifs,  
maybes, etc. Just more rules and regulations set on the  
fishermen and Hawaii's populace.

1. If we go by the 20 fathom mark and boundarys  
that the N.M.F.S. has come up with, this will eliminate all  
fishing within French Frigate Shoals and all islands up to  
20 fathoms, which is ridiculous. The seals are dying of  
cigra & miata poisoning, plus harrassment and killing from  
Coast Guard and military people, etc.

2. French Frigate Shoals could have a good fishing  
fleet of about 5 to 8 small boats to fish akule, ulua, papio,  
weki, moi, aholehole, u'u, reef fish, kona crabs, lobsters,  
deep sea fish, etc. The good grounds for hooking ulua are  
within the 20 fathom mark. The fish could be flown to  
Honolulu twice a week. It could be a nice clean operation  
and would not harm the seals or turtles. The potential for  
aku bait is good and six baits are available, iao being the  
most prominent. Shark fishing is a coming industry and French  
Frigate Shoals would be an ideal place.

It is obvious the Fish and Wild Life Service are  
tagging, weighing, shaking live seals for their stomach  
contents, being on the land is nothing but harrassment.  
The helicopter they use scares the living shit out of the birds,  
seals and turtles often killing many birds, this is illegal  
and uncalled for.

3. I don't believe the W.P.R.F.M.C. should make  
a decision on this matter at this time or any other time for  
this is the State of Hawaii's jurisdiction, not the W.P.R.F.M.C.

This is not just three miles off shore.

4. As a member of the billfish committee and a commercial fisherman who represents over 20 vessels, I'm asking you not to make a decision on this matter until the industry takes a stand.

5. This will just add to more unrealistic regulations, that the Feds are placing on us.

These are the same transit Federal types who are trying to control the W.P.R.F.M.C.'s lobster, billfish and coral plans. I don't believe these N.M.F.S. people can continue to place their standards on the council, for the act is what we must go by, not the N.M.F.S. bureaucrats thinking. A typical example is when the N.M.F.S. got rid of the only two fisherman from Hawaii on the council and replaced them with a bureaucrat, but no knowledgeable fisherman. The W.P.R.F.M.C. is governing our destiny, and yet no local fisherman are involved, isn't this strange.

6. If the W.P.R.F.M.C. approves this Hawaii Monk Seal Recovery plan as is, which is not in your jurisdiction, I will be forced to send in my resignation on the billfish committee, and will have nothing to do with W.P.R.F.M.C. again.

The N.M.F.S. and the Wild Life Service has made turtles illegal to catch in Hawaii. We have a large population of turtles in our archipelago, the green sea turtle is not endangered, but our Hawaiian people are becoming endangered for you are trying to change our lifestyle and survival. My family and my ancestors have eaten turtles and used them in our fishponds for hundreds of years, and yet because these two transit federal agencies say turtles are endangered without sufficient information, we can't catch or eat turtles for our survival, this is our aboriginal rights, our working rights, our cultural rights, and our religious rights. Always remember, America overthrew our Hawaiian Nation in 1893, and we have never been compensated. Never forget this fact.

The Alakans, who are also aboriginal like ourselves, can catch and eat these animals, also the W.P. islands can catch for survival, but we in Hawaii can't. I believe the precedent has been set. We also were never notified about these public hearings.

W.P.R.F.M.C.  
November 29, 1981  
Page 3

Enclosed is my April 20, 1980 testimony of critical habitat for the Hawaiian Monk Seal in the N.W. Hawaiian Islands. For some background information I'm also enclosing a letter to Doyle Gates (N.M.F.S.) on my reasonable turtle request and his typical N.M.F.S. bureaucratic reply.

Aloha A Nui Loa Kakou,

*Alika Cooper*

ALIKA COOPER & SONS, INC.  
Alika Cooper, Vice President

Mr. Doyle Gates  
National Marine Fisheries Service  
P. O. Box 3830  
Honolulu, HI 96812

Dear Doyle:

We are having a problem in one of our fishponds at Kalahuipuaa, Puako, Hawaii. The fishponds are owned by Maunalani Resort and Alika Cooper & Sons, Inc., Manages, stocks and cares for the entire fishpond complex. The problem is, a limu (seaweed) that the duck brought in.

Traditionally, we kept turtles in our fishponds for several reasons. One is to control limu and grass growth, secondly to stir up the shallower area and thirdly to fertilize the ponds. This is a traditional practice that has always been done.

I am asking that I can catch a few turtles to put in the pond to solve this problem.

You realize Doyle, that all the aboriginal populace of the Western Pacific can catch turtles to eat. I can't understand why the aborigine people of Hawaii cannot catch and eat turtle, this has always been done and I feel is part of our aboriginal rights. Turtle is one of the best eating reptiles, for there is no fat in the flesh. We have always had turtle in our fishponds, and used turtles for our survival.

There are a lot of turtles in the Hawaiian archipelago. They breed throughout our island chain and lay their eggs in the Leeward Islands. Turtles are plentiful here on Hawaii.

This turtle matter has been brought to your attention years ago and you (N.M.F.S.) has done nothing about it. I brought it up several times at the W.P.R.F.M.C. Your own lawyer from N.M.F.S. said probably a letter to Washington is all that is needed since the green sea turtle is not endangered in the Hawaiian archipelago.

I hope you are going to get on this matter soon. If you don't, as I told you before, a group of us, including an ex-W.P.R.F.M.C. member will catch some turtles and you can have us arrested. I can guarantee you that it will never get

Mr. Doyle Gates  
November 12, 1981  
Page 2

to court and the N.M.F.S. will have egg all over their faces again.

I'll give you 30 days to respond positively to this letter. If I don't hear from you in 30 days, I'll catch the turtles needed for the traditional fishpond problem and also a few to eat.

Aloha A Nui Loa Kakou,

*Alika Cooper*

Alika Cooper

cc: Mr. Susumo Ono  
Mauna Lani Resort, Inc.



**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

May 25, 1982

F/SWRI:ETN

Mr. Dale Coggeshall  
Pacific Islands Administrator  
U.S. Fish & Wildlife Service  
P. O. Box 50167  
Honolulu, HI 96850

Dear Dale,

This is to confirm the results of our meeting of May 4, 1982 at the National Marine Fisheries Service, Honolulu Laboratory. Those attending were: Dale Coggeshall, Rob Shallenberger and Lucian Kramer from U.S. Fish & Wildlife Service, (FWS) and Doyle Gates, John Naughton, Gene Nitta, Bill Gilmartin and George Balazs from National Marine Fisheries Service (NMFS).

In response to correspondence between our respective Regional Offices and between NMFS and the Government of Guam, State of Hawaii and other interested parties this meeting was held to discuss and plan our (NMFS & FWS) response to the issues of the five year status review for listed sea turtles in the Pacific and a review of subsistence take of green turtles in the same areas.

After some discussion among the group it was generally agreed that if a five year status review and re-evaluation of subsistence take were to be addressed the following steps should be considered:

1. Review of the original listing package used for the status determination (DEIS, FEIS, and Administrative Record).
2. Compilation and review of any new information (published and unpublished) since listing.
3. Legal analysis of the existing definition for subsistence take and a legal review of the Compact with Commonwealth of the Northern Marianas (i.e. do laws such as the ESA which are applicable to Guam apply to the CNMI?)
4. Legal status of the Endangered Species Act of 1973 (ESA) as it applies to the Trust Territory of the Pacific Islands.
5. Legal analysis of the Religious Freedom Act of 1976 and its application to uses of turtles in Hawaii.
6. Determine if other management practices for green turtles may be initiated in lieu of the ESA.
7. Determine the need for a Recovery Plan.

8. Develop a system to obtain more information on sea turtles (e.g. quantification of stocks, management needs, etc.).

9. Education and enforcement agreements with State and Territorial Governments should be examined.

10. Determine the need for designating Critical Habitat.

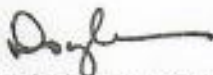
11. Quantify existing levels of subsistence takes of green turtles.

12. Quantify existing stocks of turtles in the TTPI.

Gene Nitta (NMFS) and Lucian Kramer (FWS) have been assigned to complete task number one by September 30, 1982. The appropriate individuals at Honolulu Laboratory with assistance from other agency components will be contacted to fulfill the second requirement. At some point public notices and Federal Register publication will be in order and we would expect that to be sometime during the compilation of information.

I believe that this is the gist of what was covered during the meeting. If I have omitted anything please let me know so that we can keep the record straight.

Sincerely yours,



Doyle E. Gates  
Administrator

cc: A. Ford, F/SWR  
I. Barrett, F/SWC  
R. Shomura, F/SWC2  
R. Myshak, FWS

28 November 80

John-

During our discussions the other day, you mentioned that some of the Filipino people living on Lanai feed some subsistence-level nutritional dependence on sea turtles. Can you provide me with the names of any of these individuals, or your informant, for this information? Are they recent immigrants, or long-time residents of Lanai.

I was somewhat surprised to hear you say this, in that my friends Peter Conroy and Ron McOrber have never mentioned this to me. My wife and I used to spend about two months of every year on Lanai (1968-71). Everyone we came in contact with was very well fed using their salaries from Dole for subsidiaries. Lots of turtles were indeed being taken from Lanai waters but this was by the professional



"butchers" from Maui that were  
selling to the restaurant trade.

Did you ever sit around the Laiana  
boat harbor watching them unload  
live turtles and cart them off by  
the pick-up truck full?

Mahe for whatever additional information  
you can give me.  
Baldy



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 Southwest Fisheries Center  
 P.O. Box 271  
 La Jolla, California 92038

June 14, 1982

F/SWC:IB

TO: F/SWR - Alan Ford  
 FROM: F/SWC - Izadora Barrett  
 SUBJECT: Sea Turtle Status Review

*Handwritten notes:*  
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 10  
 WOG  
 20  
 1/1  
 20

Doyle's letter of May 25 to Dale Coggeshall, concerning a review of the status of listed sea turtles suggests 12 steps that might be undertaken in the process. He notes that Gene Nitta and Lucian Kramer will undertake the completion of task 1.

The Center would be pleased to take on responsibility for task 2, with your concurrence. The work would be done by George Balazs, who is on an IPA with the Honolulu Laboratory. However, because of the press of field work and other planned duties, Balazs won't be able to start on this until the first days of January 1983. Please let me know your wishes in this matter.

cc: F/SWR1 - Doyle Gates  
 → F/SWC2 - Richard Shomura

*Handwritten signature:* George Balazs

NATIONAL MARINE FISHERIES SERVICE  
 JUN 18 10 36 AM '82  
 HONOLULU LABORATORY



12 July 1982

Doyle -

I am writing to ask WPPD for an opinion on the attached. As you know, Hawaii State Admin. Rule 13-124-4 (relating, in part, to sea turtles) just became effective about 2 months ago. Prior to that time, the State had no laws or rules covering green turtles for about a 10-month period.

My question to WPPD is - do I need a State permit to tag green turtles during the course of my research activities working as a biologist for NMFS Honolulu Lab? I have been under the impression that one would not be needed for "Threatened" species.

Please advise.

MAHALO - George Balazs

12 July

Richard -

For your information and comment.  
I don't know what Henry means  
by "blanket commitment," since I  
made no such request.

It is my understanding that  
Henry is now interested in  
obtaining a "cooperative agreement"  
from the Federal Government to  
have management authority over  
sea turtles in the Hawaiian  
Islands. Florida has had such an  
agreement for the past couple years.  
However, Florida DNR has  
personnel that are knowledgeable sea  
turtle biologists and researchers.  
A "cooperative agreement" could have  
went, if NMFS is unable (or unwilling)  
to give future support to your program.  
George



# University of Hawaii at Manoa

Hawaii Institute of Marine Biology  
P.O.Box 1346 • Coconut Island • Kaneohe, Hawaii 96744  
Cable Address: UNIHAW

May 28, 1982

Mr. Dale Coggeshall  
Pacific Islands Administrator  
Fish and Wildlife Service  
P. O. Box 50167  
Honolulu, Hawaii 96850

Dear Mr. Coggeshall:

This letter is in response to the request you sent to me here at the Hawaii Institute of Marine Biology on 22 April 1982 asking for comments on the draft Fish and Wildlife Service Pacific Islands Strategy Plan. The following review deals mostly with sea turtles, since this wildlife component has been the focus of my research over the past 10 years. In making these suggestions and remarks, I have assumed that the July 1977 "Memorandum of Understanding" between your agency and the National Marine Fisheries Service is still in effect. That is, that the Fish and Wildlife Service has primary responsibility for sea turtles while they are on land (nesting-basking), and the National Marine Fisheries Service has primary responsibility when they are in the ocean. While it would be unrealistic to adhere to such a strict partition under all circumstances, the jurisdictional assignment nevertheless gives your agency a defined segment of life history and habitat where emphasis should be placed.

p. 2, lines 10-11: "reptiles" should be included in "FWS responsibilities for management of resident fishes, mammals, and non-migratory birds . . ."

lines 31-32: The resource category "Endangered Species" would be more appropriately titled "Endangered and Threatened Species."

p. 23, lines 22-24: "environmental contaminants" are a clear and recognized threat to the "fragile island ecosystems and the Pacific Basin." The use of the word "perceived" (threat) seems inappropriate and unnecessary.

lines 32-37: If "Direct mortality and repetitive harrassment of nesting birds result from bombing activities" at Farallon de Medinilla Island (N. Mariana Islands), then the Strategy Plan should identify the specific steps FWS must take to mitigate the problem. Paragraph 5.3.2.1 on p. 33 is vague and does not fulfill the above.

p. 25, lines 19-20: I suggest that this sentence be modified to state - "The significance of this harvest on localized seabird populations, along with its modern-day cultural importance to the islanders, remains to be determined."

p. 32, 5.1.3.4: Farallon de Medinilla Island should be added to this paragraph.

p. 33, 5.3.2.1: Kaneohe MCAS should be added to this paragraph. (However, please note my above comment for p. 23, lines 32-37).

p. 34, 5.3.3.2: The Polynesian rats at Kure are a native species. Why is eradication being considered?

"Endangered Species, I. Overview,

A. Status and Distribution" p. 37-50: The organization and content of this section does not fully reflect the title headings. Also, please note that the Table of Contents does not list the various sub-headings, as a reader would expect. A distinct category entitled "Endangered and Threatened Sea Turtles" is clearly needed in this section so that consistency will exist with the other categories present (e.g. "Endangered Hawaiian Plants", "Endangered Hawaiian Seabirds"). As it is now written, sea turtles appear only in a secondary manner within the categories "Northwestern Hawaiian Islands Species", "Mariana Islands Species" and "Caroline Island Species". This fails to give proper emphasis to the species as an Endangered/Threatened group. At the same time, it also prevents the undertaking of the adequate discussion called for by the headings "I. Overview" and "A. Status and Distribution". For example there is no mention, or focus of attention, on nesting by hawksbills at certain sites in the main Hawaiian Islands, the nesting of green turtles (and probably hawksbills) at Rose Atoll, Guam (Tarague Beach), Howland, Jarvis, Bikar (and several other sites in the Marshalls), plus the specific known nesting sites of the Caroline Islands (see Pritchard 1977 & McCoy 1974). In addition, mention should be given to the unique land basking behavior of green turtles in the Northwestern Hawaiian Islands. It would seem important to note that the World Conference on Sea Turtle Conservation (sponsored in part by FWS and NMFS) designated French Frigate Shoals as a green turtle breeding area worthy of special attention and high priority by reason of its isolation and unique ecology (basking behavior).

p. 48, lines 22-23: Hawksbills are not found in the vicinity of the Northwestern Hawaiian Islands. While leatherbacks have been documented in the waters of the Northwestern Hawaiian Islands, there are no records of nesting. The mention of leatherbacks in this paragraph may serve to confuse the reader, since the Fish and Wildlife Service's primary responsibility for sea turtles covers nesting and nesting habitat.

p. 51-53: The placement of green turtles and hawksbills in "Priority 3", the lowest priority ranking afforded by your office for the Endangered/Threatened species under your jurisdiction, is unjustified and potentially

very harmful to the recovery of these species here in the Pacific. Since the Fish and Wildlife Service's primary responsibility for sea turtles covers the critically important nesting and basking phases, it seems to me that the species warrant Priority 1 emphasis. If this change in designation is not made in the final draft, I recommend that the reasons for the low priority designation be spelled out in the text.

- "II. Area Objectives", p. 53 - No specific mention is made of an area objective that focuses on nesting sea turtles and their habitat.
- "III. Problems affecting objective attainment", p. 54-56 - No specific mention is made of nesting sea turtles and their habitat (please note my above comments for p. 37-50).
- "IV. Strategies", p. 56 - It is stated that ". . . strategies available to the FWS (contained in the ESA) will provide sufficient authority for attempting to prevent extinction of endangered species, preventing threatened ones from becoming endangered, and others from becoming endangered or threatened." Two of the major strategies shown to be available (listed on p. 56) include "development and implementation of Recovery Plan Section 4(g)" and Critical Habitat declaration Section 4(a)". It is therefore appropriate for this reviewer to point out that neither of these major strategies have been undertaken for nesting sea turtles and habitat here in the Pacific. This would apply to the hawksbill and the green turtle. The hawksbill was listed as Endangered under the ESA over 11 years ago, and the green turtle as Threatened 3 1/2 years ago.

"Fishery Resources", p. 67 - The inclusion of "Turtles" as a full category under "Fishery Resources" does not seem appropriate or warranted in view of the Fish and Wildlife Service's primary responsibilities being nesting turtles and habitat. A full category (and complete discussion) for sea turtles should appear in the "Endangered and Threatened Species" section (p. 37-50), as previously suggested. I should also point out that the capture of turtles in the TTPI for "subsistence" purposes (as defined by ESA regulations) is only allowed for green turtles when they are in the water. Nesting turtles may not be legally taken. These important facts are not included on page 67.

p. 69, lines 28-33 - "sea turtles" should be included in this sentence.

p. 74, 2.1.1 - A definition for the word "subsistence" should be provided so the reader has a clear understanding of the term as it is being used in this section. "Subsistence" also appears in five subsequent places in Table 2.

Mr. Dale Coggeshall  
May 28, 1982  
Page 4

I hope that these comments and suggestions will be helpful to your agency.

Sincerely,

GEORGE H. BALAZS  
Assistant Marine Biologist

GHB:ec

cc  
UH Environmental Center  
William Gilmartin-NMFS  
P. Helfrich-Director HIMB





# University of Hawaii at Manoa

Hawaii Institute of Marine Biology  
P.O.Box 1346 • Coconut Island • Kaneohe, Hawaii 96744  
Cable Address: UNIHAW

March 22, 1982

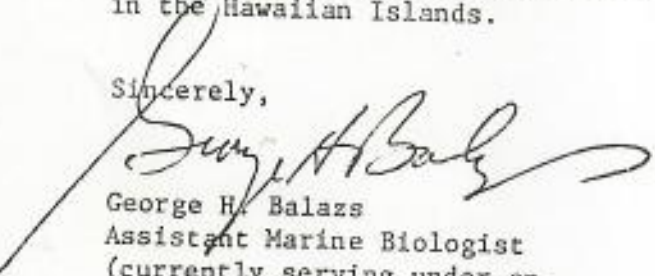
Mr. Harold B. Allen  
Acting Regional Director  
National Marine Fisheries Service  
9450 Koger Boulevard  
St. Petersburg, FL 33702

Dear Mr. Allen:

I am sorry to have taken so long to respond to your letter of 16 February 1982, but other pressing research activities here in the Pacific have demanded my attention. I have now had the opportunity to study and review the petition you sent me requesting a "trade exemption for maricultured green sea turtle products." Briefly stated, I am unable to find any new biological or economic data in the petition that would support or justify granting the request. Basically the same arguments have been set forth that were previously rejected by the National Marine Fisheries Service, the Fish and Wildlife Service, the Courts, and even earlier by the State of California. The evidence and arguments set forth over the years to support the ban on maricultured products were, and still are, in my view, more than ample to show that protection of wild sea turtle populations would very likely be enhanced. Furthermore, if maricultured products are exempted, it is my view that the threat to wild turtles will increase by both the new additional "farms" that will surely come about, and by increased illegal poaching.

In closing, I might add that I am convinced that the ban on maricultured products has served to decrease the illegal taking of green turtles here in the Hawaiian Islands.

Sincerely,



George H. Balazs  
Assistant Marine Biologist  
(currently serving under an  
IPA contract with NMFS)

1. Mittag's want to get out of the turtle farming business due to financial losses - tired of the rearing problems and Mr. Mittag is getting old. They are willing to sell the Cayman farm to a conservation organization for \$4 million, \$2 million of which they will donate back to the organization. It is believed that the facility would be well-suited for research; the gift shop and tourist entrance fee might financially sustain such an operation.
2. The U. S. A. has a "stranglehold" on the Cayman farm because of the trans-shipment prohibition. Transit sites other than Miami are too expensive. A shipment of turtle products was recently seized in Miami while on its way from Germany to Haiti.
3. The Cayman farm can now produce 50-60,000 hatchlings per year with a survival rate of 60% at one year of age. For the past three years the survival rate has only been approximately 5%, but it was recently discovered that raising the water temperature 5 - 10° greatly increases survival.
4. An alternative to selling the farm currently under consideration is the dissemination of captive produced hatchlings to various "turtle ranches" located around the world.
5. The Cayman farm now has 100 head-started Kemp's ridleys that were sent from Galveston to Mexico and on to Cayman Island. Mexico sent 1,000 Kemp's hatchlings directly to Cayman, but many of these died from sun exposure and other causes before reaching the farm.
6. "We" have now persuaded Antonio Suarez to get entirely out of the commercial sea turtle business; similar progress is being made with the Mittags.
7. A contract has been granted from Fred Berry's office to produce a sea turtle conservation manual for widespread distribution, including the Pacific region. Peter Bacon would like the text to be absolute, with no choices or decisions left up to the reader. Ross Witham would like the text to be in favor of headstarting, while Archie Carr wanted to turn it into an anti-farming brochure.
8. A recent visit to Cuba to look at sea turtles was financially supported by Robert Truland of Chelonia Institute. A Mr. Grooms of a Washington based conservation organization is a likely source of funds for tagging projects, such as in New Caledonia. Donations can be solicited by mailings sent to numerous sympathetic individuals throughout the U. S. A.



## University of Hawaii at Manoa

Hawaii Institute of Marine Biology  
P.O.Box 1346 • Coconut Island • Kaneohe, Hawaii 96744  
Cable Address: UNIHAW

September 27, 1982

Congressman John Brueaux  
Subcommittee on Fish and Wildlife  
House Committee on Merchant Marine  
and Fisheries  
United States Congress  
Washington, D. C. 20515

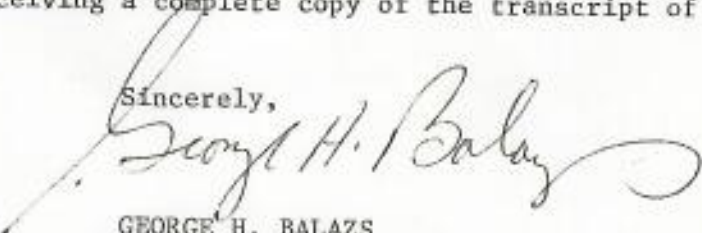
Dear Congressman Brueaux:

It is my understanding that the Subcommittee on Fish and Wildlife will be holding a hearing during early October on the question of foreign commercial sea turtle farms possibly being exempted from our Endangered Species Act and allowed to import and market their products in the United States. As a researcher of Pacific sea turtles for the past 11 years, and the current Deputy Chairman of the I.U.C.N. Marine Turtle Specialist Group, I am deeply interested in this subject and concerned about possible changes in the law that could adversely impact the conservation of wild sea turtles.

I do not know the circumstances leading up to the decision to hold a hearing, however, perhaps I can be of help to your efforts to gather together all of the current information on this complex subject. Earlier this year, a lengthy petition was submitted to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by an organization known as the Pacific Legal Foundation. The petition asked that a trade exemption be granted for farmed sea turtle products, the very same topic you are planning to review in the forthcoming hearing. For several months now, the petition has been evaluated by some of the most qualified biologists and administrators within the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. Their findings and recommendations on this matter should be completed at the present time. Consequently, to insure that your subcommittee has the most comprehensive information available, I recommend that you immediately contact these two government agencies and request copies of their entire review and results.

I will be in Samoa for most of October, however, when I return to Honolulu I would greatly appreciate receiving a complete copy of the transcript of your hearing.

Sincerely,

  
GEORGE H. BALAZS  
Assistant Marine Biologist

GHB:ec