

Treaty Deadlock: Why an International Treaty with Central and South America Creates a Barrier for Cultural Harvest of Honu in Hawai'i

"As a matter of policy..." That was the phrase repeated by the U.S. Department of State representative at the December 2021 Western Pacific Fishery Management Council meeting, as the Council grappled over the question of whether cultural take of honu (Hawaiian green sea turtle) could be allowed. Last year, the Council revisited this long-standing issue, recognizing that multiple generations have passed since the last legal take and there is an urgency to pass on the cultural and traditional ecological knowledge before it disappears. At the September 2021 Council meeting, NOAA Pacific Islands Regional Office Regional Administrator Michael Tosatto indicated that NOAA was committed to exploring whether cultural take may be possible, and what avenue and process may be followed.

The short answer to the Council question, as conveyed by David Hogan of the U.S. Department of State, was that there does not appear to be an avenue under existing domestic law or international treaty. The domestic law is the Endangered Species Act (ESA), under which honu are listed as a threatened species and take is prohibited. The international treaty is the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC), under which intentional capture, retention or killing of sea turtles is also prohibited, with a very narrow "economic subsistence" exception.

The United States initiated the Convention negotiations that occurred in 1994-1996. The treaty opened for signatures in December 1996 and the United States ratified the treaty in February 2001. The IAC entered into force in May 2001 and has 16 contracting Parties in North and South America and the Caribbean (see map). Hawai'i, as part of the U.S., is included in the Convention Area, although its honu population is not a shared stock with Central and South America. In addition to promoting the protection of sea turtles throughout the Americas, the United States pursued the IAC as a means to export U.S. bycatch reduction policies. In particular, the United States at the time was focused on advancing the requirements to use sea turtle excluders in shrimp trawl fisheries across the Americas, as the nation had domestically prohibited shrimp trawling unless fishers could demonstrate that they could exclude sea turtles from trawl nets. The United States agreed to an exception for "economic subsistence" with the intention that such exception would apply narrowly to coastal communities in Central America that have no economic alternatives for subsistence.

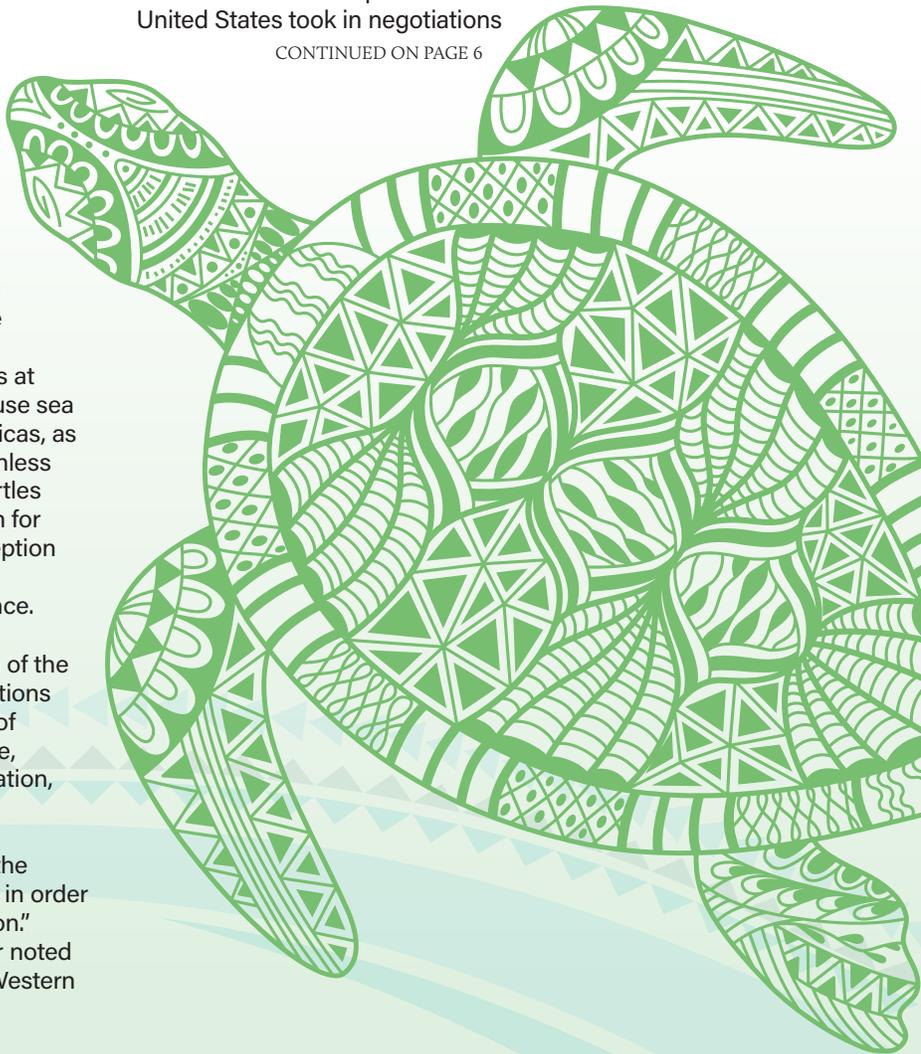
In the Congressional Record leading up to the ratification of the IAC, a member of the Senate Committee on Foreign Relations asked the Department of State if proper implementation of the Convention would require new legislation. In response, the assistant secretary of state wrote, "No. Existing legislation, including the [ESA], and the Magnuson-Stevens Fishery Conservation and Management Act...provide sufficient legislative authority to implement U.S. obligations under the Convention. Accordingly, no new legislation is necessary in order for the United States to ratify or implement the Convention." The Senate's Resolution of Ratification for the IAC further noted that "Because all species of sea turtles occurring in the Western

Hemisphere are listed as endangered or threatened under the Endangered Species Act of 1973..., said Act will serve as the basic authority for implementation of United States obligations under the Convention."

Similarly in the Congressional Record, the Department of State was asked whether any "traditional communities" in the United States would qualify for an exemption from the IAC's restrictions. The assistant secretary of state responded that under the ESA, no community or individual in the United States is permitted to engage in activities that would qualify as economic subsistence, and that under existing domestic law, the United States would not be able to apply the exception for traditional communities.

It is with that backdrop that Hogan explained to the Council members that, as a matter of policy, the United States would not be able to advance a request for an economic subsistence exception under the IAC if take is prohibited under ESA. But even if take could be allowed under the ESA, Hogan told the Council, that, as a matter of policy, it would be a challenging situation for the United States to advance a petition for an economic subsistence exception in the IAC. This is because it would contradict the position that the United States took in negotiations

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and would also contradict what the Department of State told the Senate at the time of the ratification.

It appears then, that in pursuing sea turtle conservation objectives directed at Central and South America, the United States deadlocked itself into an IAC-ESA no-go zone for allowing any amount of directed take for its own people.

But consider that the United States appears to have ratified the IAC without acknowledging the fact that ESA's ultimate goal is to recover species and remove them from the list of endangered and threatened species, and that management authority for sea turtles would be returned to the states and territories when a species is recovered. Also consider that the United States appears to have ratified the IAC without acknowledging the provisions under ESA Section 4(d), which allows for take prohibitions for threatened species to be tailored to specific activities (commonly referred to as the "4(d) rule"), and has been used to exempt managed fisheries for ESA-listed salmon populations from take prohibitions. And importantly, consider the fact that the United States, in ratifying the treaty, did not address the traditional and indigenous communities of Hawai'i and the rest of the U.S. Pacific Islands who hold long-standing traditions of managing, harvesting and sustainably utilizing green sea turtles as an integral part of their cultural and social fabric.

Would the United States' approach to the IAC be different today if these additional considerations were factored in at the time of the negotiations? We will never know. But in this day and age, when calls for indigenous rights in conservation are growing internationally, and in light of the Biden Administration's emphasis on indigenous peoples and advancing racial equity, there may be no better time for the United States to become a leader in modernizing the conversation around indigenous peoples and their practices as an integral strategy for advancing sea turtle conservation—as a matter of policy, of course. 🐢



Map showing the IAC member countries. Although Hawai'i and U.S. Pacific Island Territories are not shown on the map, they are included in the Convention Area. Source: IAC <http://www.iacseaturtle.org/defaulteng.htm>.

Additional Resources:

IAC Convention Text: www.iacseaturtle.org/texto-eng.htm

U.S. Senate Resolution of Ratification (September 2001): www.congress.gov/treaty-document/105th-congress/48/resolution-text/?r=1&s=1

Congressional Record on Informal Public Meeting on Treaties, including the IAC (July 2000): www.congress.gov/congressional-report/106th-congress/executive-report/16/1

