



U.S. FISH AND WILDLIFE SERVICE
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In Reply Refer To:
FWS/OMA PRT-739350

February 8, 1990 ←

Dr. George H. Balazs
NOAA-NMFS
Southwest Fisheries Center
Honolulu Laboratory
2570 Dole Street
Honolulu, Hawaii 96822-2396

Dear Dr. Balazs:

This, at long last, responds to your November 20, 1989, letter regarding the Southwest Fisheries Center's endangered species permit to conduct certain take (harassment) activities with hawksbill sea turtles (Eretmochelys imbricata), PRT-739350.

You asked that we change Condition 11.F.(b). which reads: "Adult females may not be harassed prior to and during oviposition." You state that this needs to be changed to allow the researcher to tag and measure adult females when it is apparent that the female will return to the sea without laying eggs. If it is apparent to the observer or researcher that a female hawksbill sea turtle will not, in fact, be laying eggs prior to her return to the sea, then the tagging and measuring of such a female does not violate Condition 11.F.(b).. since the researcher would not be harassing the female prior to or during oviposition. Therefore, there is no need to amend the permit to change this condition.

Secondly, you asked for a copy of the "Care and Maintenance Standards for Sea Turtles Held in Captivity." A copy is enclosed. These standards were not attached to the Southwest Fisheries Center's permit at the time of issuance, because that permit does not authorize the holding of sea turtles in captivity.

Thirdly, you asked several questions regarding Pre-Act green sea turtles (Chelonia mydas). The green sea turtles were listed as Threatened wherever found, except the breeding populations in Florida and on the Pacific coast of Mexico where they were listed as Endangered, on July 28, 1978. If a person or institution acquired a sea turtle in a lawful manner (i.e., in accordance with other federal, State and local laws) prior to that date and has not held the sea turtle in the course of a commercial activity since that time, then the turtle qualifies for the Pre-Act exemption (50 CFR 17.4 - enclosed). It is exempt from the prohibitions of the Endangered

Species Act (Act). However, this exemption does not apply to any progeny born after July 28, 1978. Such progeny would fall under all of the prohibitions of the Act. But, keep in mind, possession of lawfully-acquired endangered and threatened species is not a prohibited activity under the Act; therefore, no permits are required for possession. Similarly, permits are not required for persons or institutions to acquire endangered or threatened species on loan or as donations or gifts. Intrastate commerce also is not a prohibited activity. However, interstate and foreign commerce, take, import and export are all prohibited activities for which the prior granting of a permit is required.

You asked whether a person could legally release into the sea, or even kill, a Pre-Act green sea turtle. Unfortunately, both of these activities could be carried out without a permit from this office. In the case of killing, the normally prohibited act of taking an endangered or threatened species does not apply to Pre-Act animals, and, in the case of release back to the sea, no prohibited activity is taking place. Both of these activities would have to be in compliance with all other federal, local and State laws.

I hope this answers the questions posed in your November 20 letter. Once again, I apologise for my tardy reply.

Sincerely,

Karen S. Willson
Karen S. Willson
Biologist

Enclosures

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