

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



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

1181 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

December 22, 1981

SUSUMU ONO, CHAIRMAN
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU
DEPUTY TO THE CHAIRMAN

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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.

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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.

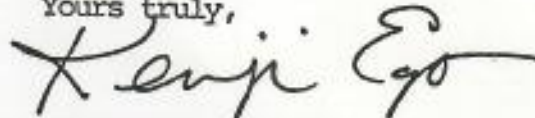
While on Molokai, on the night of December 1, 1981, when you, Mr. Cooper and I met to discuss green sea turtles, I distinctly recall you promising Mr. Cooper that you will look into the possibility of his utilizing green sea turtles to enhance his aquacultural activities. I recall Mr. Cooper mentioning 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.

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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.



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

OK
 2/3/82

January 21, 1982

F/SWR31:JHL
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EIN	<input checked="" type="checkbox"/>
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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

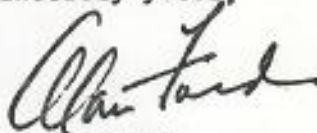


and the comments enclosed with Mr. Ego's letter indicate this objection was based on the State's belief that although the population had declined the sea turtle population was receiving adequate protection under Regulation 36. We were unable to find any specific reference in the administrative record 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/SWRI, D. Gates
F. W. Gordon