



**Western
Pacific
Regional
Fishery
Management
Council**

June 8, 2022

The President
The White House
1600 Pennsylvania Ave NW
Washington D.C. 20006

Dear Mr. President:

The Western Pacific Regional Fishery Management Council requests your assistance in pursuing an avenue to resume the sustainable harvest of green sea turtles, a traditional and indigenous cultural practice of the Native Hawaiian and U.S. Pacific Island communities. The primary impediment to resuming this cultural practice is the current U.S. policy approach to meeting its obligations under the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). We believe that addressing this issue is a matter of environmental justice, as well as an opportunity for the United States to become a leader in a conservation approach that integrates indigenous rights and represents the rich cultural heritage and diversity of this nation.

The United States played an integral role in negotiating the IAC in 1994-1996 to promote the protection of sea turtles throughout Central and South America, as well as to export U.S. fishery bycatch reduction policies (primarily the use of sea turtle excluder devices in shrimp trawl fisheries). In ratifying the IAC in 2001, the Endangered Species Act (ESA) was used as the authority for implementing U.S. obligations under the IAC, which includes prohibitions on take with only a narrow exception for economic subsistence. Due to the history of negotiations and ratification, and the subsequent approach to the IAC, the Department of State and NOAA currently maintain the position that the U.S. is not in a policy position to pursuing a take exemption under the IAC for the purpose of allowing the traditional cultural harvest in Hawaii or U.S. Pacific Islands.

However, to our knowledge, there were no consultations with the traditional communities or the governors of Hawaii, Guam, CNMI or American Samoa in the process of the United States negotiating and ratifying the IAC to explain the permanence of the take prohibition under the IAC and its implications on the potential resumption of the traditional practices. There was also no consideration of the importance of the traditional cultural practices that had been temporarily halted under the ESA. The Council believes that there are opportunities to provide for resumption of traditional cultural practices while maintaining the U.S. objectives for the IAC, considering that the green sea turtle populations of Hawaii and the U.S. Pacific Islands are distinct stocks not shared with Central and South American countries (see enclosure). Hawaii's green sea turtle population in particular has rebounded significantly over the recent decades, and scientific information has shown that the population can sustain some level of harvest.

The IAC will be meeting in Panama City on June 15-17, 2022. We urge the U.S. delegation to take the opportunity to begin exploring ways to provide an avenue for allowing traditional cultural practices of U.S. communities, and we look forward to meeting with your Administration to make progress on this issue.

Sincerely,

Archie Soliai
Chair

Kitty M. Simonds
Executive Director

Enclosure

Cc: Honorable Secretaries of State, Commerce and the Interior
Monica Medina, Assistant Secretary for Oceans and International Environmental and Scientific Affairs, U.S. Department of State
Maxine Burkett, Deputy Assistant Secretary for Oceans, Fisheries and Polar Affairs, U.S. Department of State
David Hogan, Office of Marine Conservation, U.S. Department of State, U.S. Department of State
Samuel Rauch, Deputy Assistant Administrator for Regulatory Programs, NOAA
Earl Possardt, Division of International Conservation, US Fish and Wildlife Service
Godfrey Akaka Jr., President, Native Hawaiian Gathering Rights Association



Potential Pathways for Resuming Traditional Cultural Harvest of Hawaii Green Sea Turtle (*Honu*) under the IAC Treaty

Take Prohibitions under the ESA and IAC

The Hawaiian green turtle, or *honu*, is listed under the Endangered Species Act (ESA) as a threatened species. Harvest of *honu*, whether for subsistence, traditional, or cultural purpose, has been prohibited under ESA regulations since the green turtles were listed worldwide as a threatened species in 1978. ESA under Section 4(d) provides for a mechanism to tailor take prohibitions for threatened species, which has been used to authorize managed fisheries for ESA-listed salmon populations. Take prohibitions under the ESA would also be removed when a species is delisted and management returned to the states and territories. However, these domestic avenues for resuming *honu* harvest are currently not available due to the U.S. obligations under the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC).

The US is also a signatory to IAC, and parties must take appropriate measures to prohibit the “intentional capture, retention or killing of, and domestic trade in, sea turtles, their eggs, parts or products”.¹ The National Marine Fisheries Service (NMFS) and U.S. Department of State representatives have indicated that, as a policy matter, they are unlikely to pursue an avenue under the IAC that would open up the pathway for *honu* harvest in Hawaii. Specifically, they have pointed out that:

- Prohibitions on take in the IAC Treaty are consistent with the ESA and, while independent, the ESA and the IAC Treaty reinforce each other. The consideration of ratification of the IAC Treaty also relied on the ESA rules prohibiting take of the species covered by the Treaty.
- Pursuing renegotiation of the IAC Treaty to provide for a cultural take exception would be inconsistent with U.S. policy and domestic and international measures that the State Department has negotiated in other fora and contexts or have any expectation of success given the purposes for which the IAC Treaty was negotiated and the conservation progress that is being made.
- The exception for traditional economic subsistence under the IAC Treaty is a very high bar that the United States is unlikely to meet.

It has been 44 years since the cultural and traditional practices associated with green sea turtles became illegal when the species was listed as a threatened species under the ESA in 1978 and 21 years since the U.S. ratified the IAC in 2001. We are losing the last generation of people who still know the cultural traditions and can practice it so they can be passed down to the next generation. Harvesting of turtles is only one part of the practice that has been lost over the years. With it, we will also lose the cultural traditions of sharing the turtle and the community connections built around the sharing, the knowledge of various use of the animal so that nothing is wasted, and the traditional knowledge of the turtles and their ecology as well as the knowledge associated with caring for the populations, all of which were established over hundreds of years of sustainably utilizing green sea turtles in Hawaii.

¹ IAC Convention Text: www.iacseaturtle.org/texto-eng.htm

Background on the IAC

- The U.S. was the initiator of the Convention negotiations that occurred in 1994-1996. The treaty opened for signatures in December 1996, the U.S. ratified the treaty in February 2001, and the IAC entered into force in May 2001
- IAC currently has 16 Contracting Parties in North and South America and the Caribbean.
- Hawaii, as part of the U.S., is included in the Convention Area, even though the Hawaiian green turtle population is not a shared stock with Central and South America.
- One of the main objectives of the U.S. in pursuing the IAC was to export US bycatch reduction policies, specifically the use of sea turtle excluders in shrimp trawl fisheries across the Americas (shrimp trawl fisheries do not operate in the range of Hawaiian green turtles).
- In negotiating the IAC, U.S. 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, but not for the U.S. because no communities were permitted to engage in subsistence harvest under the ESA.
- In ratifying the IAC, Congress:
 - Recognized that the ESA would serve as the basic authority for implementing U.S. obligations under the Convention because all sea turtle species occurring in the Western Hemisphere were listed under the ESA.
 - Did not consider the ESA’s goal of recovering species and removing 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.
 - Did not consider the traditional and cultural practices of indigenous communities in Hawaii and the rest of the U.S. Pacific Islands that harvested sea turtles until they were listed under the ESA.

Background on the Hawaii *Honu* Population

- Hawaii’s *honu* population has rebounded significantly over the recent decades, and scientific information has shown that the population could sustain some level of harvest.
- Hawaii’s population is a distinct population segment that does not overlap with green turtle populations along the coast of North and South America.
- Prior to the ESA listing, the State of Hawaii had implemented regulations in 1974 to prohibit commercial harvest while allowing the harvest for traditional home consumption under a permit. All harvest became illegal with the ESA listing in 1978.
- Hawaii, along with Guam and American Samoa, sought to protect the cultural practice of harvest by recommending that subsistence use be allowed in their respective areas, but NMFS and FWS did not provide an exemption on the basis that specific information on cultural or nutritional dependence on green sea turtles was not presented, and alternative food sources were available.^{2,3}

² Lecky, J. & Nitta, G. 1985. A review of subsistence uses of sea turtles in the Central and Western Pacific with respect to Federal regulations authorizing subsistence take of green sea turtles in the Trust Territory of the Pacific Islands. NMFS Administrative Report SWR-85.

³ CNMI was initially provided a subsistence exemption as part of the Trust Territory of the Pacific Islands (TTPI), but NMFS and FWS allowed the exemption to expire with the dissolution of the Trust under which the TTPI was administered, again on the basis that there was no dependence on green sea turtles as a food source.

Pathways

There are several potential avenues that could open up pathways for the perpetuation of cultural and traditional practices of *honu* harvest in Hawaii. In particular, pathways 1-3 could be accomplished without an amendment to the IAC. There may also be other policy alternatives that could provide an avenue for resuming the cultural traditional practices for Native Hawaiian and U.S. Pacific Islanders.

1. Utilize the existing “economic subsistence” provision under the IAC

IAC provides for each party to allow exceptions for satisfying “economic subsistence needs of traditional communities”. This must be done by taking into account the recommendations of the IAC’s Consultative Committee and must not undermine the objectives of the Convention. To date, the exceptions have been considered by the IAC for harvest of olive ridley eggs in Costa Rica, Guatemala, and Panama. However, NMFS and the U.S. Department of State have indicated that harvest of sea turtles in Hawaii is not necessary for subsistence purposes, and thus unlikely to qualify under the existing exemption.

2. Interpret the “Convention Area” definition to exclude sea turtle populations that are not shared with the coastal areas of the Americas

Pursuant to Article IV of the Convention, the measures to protect sea turtle populations (including the prohibition of intentional capture, retention or killing) shall be taken by each Party “its land territory and in maritime areas with respect to which it exercises sovereignty, sovereign rights or jurisdiction included within the Convention Area”

Article III of the Convention describes the area of application as follows: “The area of application of this Convention (the Convention Area) comprises the land territory in the Americas of each of the Parties, as well as the maritime areas of the Atlantic Ocean, the Caribbean Sea and the Pacific Ocean, with respect to which each of the Parties exercises sovereignty, sovereign rights or jurisdiction over living marine resources in accordance with international law, as reflected in the United Nations Convention on the Law of the Sea.” The Convention does not define “Americas” as a region, and could be interpreted as referring to the continental North America, Central and South America, and the Caribbean Sea, in which case the sea turtle populations that do not migrate to those areas could be excluded from the take prohibitions.

3. Amend the List of Sea Turtle Species in Annex I of the IAC to exclude green turtle populations that are not distributed along the coasts of the North or South American continents

Annexes to the Convention may be amended by consensus of the Parties. Annexes include sections on: list of species, protection and conservation of sea turtle habitats, use of TEDs, and annual reporting requirements. IAC Article I defines “Sea turtle” for the purposes of the Convention to be those listed in Annex I. Therefore, an amendment to the List of Sea Turtle Species in Annex I of the IAC could be made to exclude green turtle populations that are not distributed along the coasts of the North or South American continents.

4. *Renegotiate the IAC to create a cultural or traditional use exception that is not tied to subsistence*

IAC currently does not provide for cultural or traditional use exceptions that are not tied to subsistence needs. Creating a new exception will require a renegotiation of the treaty. This could provide for broader opportunity for sea turtle conservation across and the IAC the region, as several nations and territories in the Convention Area that allow sea turtle harvest (e.g., Nicaragua, Columbia, Turks and Caicos Islands) are currently not signatories to the IAC.

Additional Background: Excerpts of Congressional Record on Treaty Ratification

1. Resolution of Ratification: Senate Consideration of Treaty Document 105-48

Advice and consent to ratification by the Senate September 20, 2000

<https://www.congress.gov/treaty-document/105th-congress/48/resolution-text?r=1&s=1>

(3) NEW LEGISLATION.- Existing federal legislation provides sufficient legislative authority to implement United States obligations under the Convention. Accordingly, no new legislation is necessary in order for the United States to implement the Convention. Because all species of sea turtles occurring in the Western Hemisphere are listed as endangered or threatened under the Endangered Species Act of 1973, as amended (Title 16, United States Code, Section 1536 et seq.), said Act will serve as the basic authority for implementation of United States obligations under the Convention.

2. Congressional Informal Public Meeting Report on Ratification of IAC

Senate Committee on Foreign Relations, July 20, 2000 (Appendix of Exec. Rept. 106-16)

<https://www.congress.gov/congressional-report/106th-congress/executive-report/16/1>

Responses to additional questions submitted for the record by Assistant Secretary of State David B. Sandalow (questions submitted by Senator Jesse Helms)

Question 3. Will proper implementation of this Convention require new legislation to supplement existing law—such as the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act?

Answer. No. Existing legislation, including the Endangered Species Act, 16 U.S.C. Section 1531 et seq., and the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. Section 1081 et seq., 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.

Question 5. Are there “traditional communities” in the United States that would qualify for an exemption from the Convention’s restrictions?

Answer. Article IV, paragraph 2(a) of the Convention requires Parties to prohibit the “intentional capture, retention or killing of, and domestic trade in, sea turtles, their eggs, parts or products.” Article IV, paragraph 3 allows each Party to make exceptions to this rule “to satisfy economic subsistence needs of traditional communities . . .”

Under the Endangered Species Act, there is no community (or individual) in the United States that is currently permitted to engage in any activity covered by Article IV, paragraph 2(a) in order to satisfy “economic subsistence needs.” Accordingly, under existing domestic law, the United States would not be able to apply the exception for traditional communities.

Question 6. In terms of enforcement, would the United States be obligated to respect under all circumstances and in all places a determination by another Convention party that all or part of its fishing fleet is entitled to a “traditional communities” exemption?

Answer. As explained in the answer to the previous question, Article IV, paragraph 2(a) of the Convention requires Parties to prohibit the “intentional capture, retention or killing of, and domestic trade in, sea turtles, their eggs, parts or products.” Article IV, paragraph 3 of the Convention allows each Party to make exceptions to this rule “to satisfy economic subsistence needs of traditional communities . . .”

Fishing fleets are not, generally speaking, engaged in the “intentional capture, retention or killing of, and domestic trade in, sea turtles, their eggs, parts or products.” Rather, the activities of fishing fleets that are covered by the Convention are the unintentional (or incidental) capture of sea turtles in the course of fishing for other species. See Article IV, paragraph 2(h).

Hence, the “traditional communities” exception does not apply to the activities of fishing fleets. The activities that would come within the ambit of the exception would involve limited harvesting of sea turtles when they are nesting and of sea turtle eggs.

The Convention does not give each Party an unfettered right to apply the “traditional communities” exception. Under Article IV, paragraph 3, such exceptions must not undermine efforts to achieve the objective of the Convention to protect, conserve and recover sea turtle populations and the habitats on which they depend. *See* Article II. Moreover, a Party considering the application of a “traditional communities” exception must take into account the recommendations of the Consultative Committee established pursuant to Article VII, must establish a management plan that includes limits on levels of intentional taking and must include in its Annual Report, referred to in Article XI, information concerning any such management plan. Under this scheme, the United States would have the right to question the application of the “traditional communities” exception by another Party.