

SLP

Subject: Re: Sea Life Park Issues

Date: Thu, 17 May 2001 08:14:53 -0400

From: Sandy_MacPherson@fws.gov

To: Linda_Belluomini@rl.fws.gov

CC: Elizabeth_Sharpe@rl.fws.gov, George.Balazs@noaa.gov, Barbara.Schroeder@noaa.gov, Earl_Possardt@fws.gov, Marilet_Zablan@rl.fws.gov, William_Zimmerman@rl.fws.gov

Hi Linda,

Thanks for passing along the information from Gene Hester (see message and attachment below). I'm not sure where this leaves us, but this has definitely been a learning experience. George Balazs, NMFS Honolulu, believes FWS could help the situation by sending a letter to Sea Life Park firmly stating our stance and legal jurisdiction over what's happening re the disease outbreak at SLP. In fact, in one of his e-mails he stated "At our March 8th meeting, SLP asked FWS for clarification on this issue" re "the legalities of the captive progeny of SLP's Pre-Act turtles."

Would it be possible for Region 1 to send a letter to the Park with this type of information (with a cc to the State of Hawaii)? If so, I'd recommend running a draft by George Balazs first (if he's willing) to make sure we haven't missed something. Elizabeth Sharpe may have a better idea than me of what points need to be covered, but based on the massive volley of e-mails I've been receiving on this issue, the following seem to be the key points:

1. The legalities pertaining to Pre-Act wildlife and the progeny of Pre-Act wildlife. Per Gene Hester's e-mail response to my questions, "The U.S. Fish and Wildlife Service maintains that the progeny of the Pre-Act turtles are subject to the Endangered Species Act of 1973 as amended (See 50 CFR 10.12 - definition of Fish or Wildlife). From the U.S. Fish & Wildlife Service interpretation our jurisdiction extends to any of the prohibited acts (see 50 CFR 17.21, 17.31 and 17.42(b)(1)). (See also 50 CFR 17.32 concerning permits)." Perhaps this could be rewritten in plain English first though and the letter could spell out what 50 CFR states about Pre-Act wildlife and their progeny, as well as prohibited acts, rather than just cite the CFR.
2. Specifics on prohibited acts (e.g., euthanasia of Pre-Act progeny including eggs, transfer of progeny to other facilities).
3. The steps SLP would need to take to get a FWS permit to euthanize progeny.
4. Information detailing that a facility wanting to receive progeny from SLP would need to first obtain a Letter of Authorization or permit (depending on whether the transfer is deemed to involve commerce or not) from FWS (I can handle any requests for LOA's for non-commerce transfers if you'd like, but not permits).
5. FWS concern about the risks associated with, as well as the legalities pertaining to, the release of any SLP Pre-Act progeny from captivity to the wild and potentially infecting the wild stock. According to Gene Hester's e-mail, the release to the wild of Pre-Act turtles and their progeny is prescribed by 50 CFR 16.15b "... no such live reptiles or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency."

Please let me know what you think about getting a letter out to SLP. I'll help in any way I can.



Sea Life Park

HAWAII

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To: GEORGE BALAZS Fax: 983-2902

From: PAKA NISHIMURA Date: 5/31/01 ←

Re: _____ Including cover pages: 3

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Urgent For Review Please Comment Please Reply

As you requested via your e-mail dated 5/19/01, here is the letter from Karen Willson to you (2/8/90).



U.S. FISH AND WILDLIFE SERVICE
OFFICE OF MANAGEMENT AUTHORITY
P.O. Box 3507
Arlington, VA 22203-3507

Phone: (703) 358-2104

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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