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Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Listing and Protecting Loggerhead Sea Turtles as "Threatened Species" and Populations of Green and Olive Ridley Sea Turtles as Threatened Species or "Endangered Species"

CROSS REFERENCE: For a regulation on the above entitled matter, issued jointly by the Department of Commerce/National Oceanic and Atmospheric Administration/National Marine Fisheries Service and the Department of the Interior/Fish and Wildlife Service, see FR Doc. 78-21047 in the rules and regulations section of this issue of the FEDERAL REGISTER.

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CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Listing and Protecting Loggerhead Sea Turtles as "Threatened Species" and Populations of Green and Olive Ridley Sea Turtles as Threatened Species or "Endangered Species"

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, and U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), Department of the Interior, determine the loggerhead sea turtle (*Caretta caretta*) to be a threatened species under the Endangered Species Act of 1973 (the Act). In addition, the green sea turtle (*Chelonia mydas*, which includes the subspecies *C. mydas agassizii*, and *C. mydas carrinegra*) and the olive (Pacific) ridley sea turtle (*Lepidochelys olivacea*) (hereinafter referred to as the Pacific ridley) are determined to be threatened species under the Act except that the Florida and Mexican Pacific coast breeding populations of green sea turtles and the Mexican Pacific coast breeding population of Pacific ridley sea turtles are determined to be endangered species. This rulemaking also contains protective regulations for threatened species of sea turtles. The primary differences as a result of listing these populations as endangered instead of threatened are that incidental catch by commercial fishermen is prohibited and there are no exceptions for zoological exhibition or educational purposes, taking of injured, dead, or stranded specimens, taking of species under State-Federal Cooperative Agreements for research or conservation, or subsistence taking of green turtles in the water by residents of certain U.S. territories in the Pacific.

DATES: This rule becomes effective 30 days after publication in the FEDERAL REGISTER by Environmental Protection Agency of availability of the final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT:

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Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 28, 1973, FWS published a proposal to list green and loggerhead sea turtles as endangered species under the Endangered Species Conservation Act of 1969. On that same day the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) was enacted into law and superseded the Endangered Species Conservation Act of 1969. The 1973 act provides legal authority for this action.

On April 23, 1974, F. Wayne King, Director of Conservation and Environmental Education for the New York Zoological Society, submitted a formal petition under the new law to list the green sea turtle as an endangered species and the loggerhead and Pacific ridley sea turtles as threatened species. Following a NMFS preliminary status review of these three species, NMFS and FWS sent letters on August 8, 1974, to the Governors of the States, Territories, Possessions, and the Commonwealth of Puerto Rico, where green, loggerhead, and Pacific ridley sea turtles are resident, announcing a NMFS/FWS status review of these species and requesting views and data relevant to the status of these species. On August 9, 1974, Wayne King petitioned the Secretary of Interior to have the green sea turtle listed under the "similarity of appearance" provision of the act. Mariculture, Ltd. (now known as Cayman Turtle Farm, Ltd. and hereinafter referred to as Cayman Farm), Grand Cayman Island, British West Indies, a business involved in the raising and marketing of captive green sea turtles, submitted a formal petition on August 15, 1974, to list the green sea turtle as a threatened species, but to exempt turtles bred or raised in captivity from this classification. A formal review by NMFS/FWS of the status of green, loggerhead, and Pacific ridley sea turtles was announced on August 16, 1974, in the FEDERAL REGISTER (39 FR 29605; 39 FR 29607).

On May 20, 1975, the NMFS/FWS determination to propose listing green, loggerhead, and Pacific ridley sea turtles as threatened species was published in the FEDERAL REGISTER (40 FR 21982, 40 FR 21974) (corrected 40 FR 26043 and 40 FR 25217). That proposal summarized the factors thought to be contributing to the likelihood that these sea turtles could become endangered within the foreseeable future, specified the regulations which would be applicable to conserve these species if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. In July 1975, NMFS and FWS sent a telegram to all diplomatic and consular posts soliciting comments on the proposed action and information on sea turtles found in their jurisdiction. On July 17, 1975, Robert Nordstrom, Director of the Fisheries Divisions, National Canners Association, requested that NMFS hold a public hearing on the proposed regulations regarding sea turtles. On August 20, 1975, notice was published in the FEDERAL REGISTER of the NMFS decision to prepare an environmental impact statement and to hold a public hearing on the proposal to list green, loggerhead, and Pacific ridley sea turtles as threatened, the proposed protective regulations for these species, and the draft environmental impact statement (DEIS) (40 FR 36401). On November 14, 1975, notice was published in the FEDERAL REGISTER postponing the NMFS public hearing from December 3, 1975, to February 25, 1976 (40 FR 53051). The National Marine Fisheries Service submitted its DEIS on January 30, 1976, to the Council on Environmental Quality (CEQ). On February 6, 1976, CEQ announced in the FEDERAL REGISTER the availability of the DEIS and opening of the 45 day comment period on the DEIS (41 FR 5426). Also on February 6, 1976, notice by NMFS was published in the FEDERAL REGISTER extending the comment period on the proposed listing and protective regulations, DEIS, and public hearing from March 8, 1976 to March 22, 1976 (41 FR 5413). On February 25-26, 1976, an informal, fact-finding public hearing was held in Washington, D.C., on the proposed listing of the three species of sea turtles and the DEIS. Scientists, conservationists, businessmen, shrimpers, and representatives from State and foreign governments participated in this hearing. On March 19, 1976, CEQ published notice in the FEDERAL REGISTER extending the public comment period on the DEIS until April 5, 1976 (42 FR 11602).

On June 16, 1976, NMFS/FWS proposed regulations to list green, loggerhead, and Pacific ridley sea turtles as threatened species under the "similarity of appearance" provisions were published in the FEDERAL REGISTER (41 FR 24378). Once these final listing regulations (on the proposal of May 20, 1975) are effective, the proposed "similarity of appearance" regulations will be withdrawn as indicated in the June 16, 1976 proposal. Cayman Farm requested on July 22, 1976, that a public hearing be held on the proposed regulations treating these three species of sea turtles as threatened under the "similarity of appearance" provisions. On October 15, 1976, denial of the hearing requested by Cayman Farm was published by the Department of the Interior in the FEDERAL REGISTER (41 FR 45573).

On July 18, 1977, a Memorandum of Understanding (MOU) concerning the jurisdiction of sea turtles between NMFS and FWS was signed. This MOU established sole agency jurisdiction with NMFS while the turtles are in the water and with FWS while they are on land.

The Environmental Defense Fund submitted a request on February 28, 1978, to reopen the public comment period in light of the long time that had elapsed since publication of proposed regulations and to submit newly acquired evidence and related data. On March 27, 1978, NMFS and FWS announced in the FEDERAL REGISTER that the public comment period was reopened until April 17, 1978 (43 FR 12735; corrected 43 FR 13906). Suggestions by a number of parties to extend this comment period were denied because of the need to expedite the listing.

Comments were received from Governors Ricardo Bordallo of Guam, Ella Grasso of Connecticut, Sherman Tribbitt of Delaware, Marvin Mandel of Maryland, George Wallace of Alabama, George Ariyoshi of Hawaii, and Jonn Haydon of American Samoa. Governor Bordallo supported listing the loggerhead and Pacific ridley as threatened, but recommended limited harvesting of green sea turtles be allowed. Governors Grasso and Tribbitt supported listing all three species as threatened. Governors Mandel and Wallace supported listing the green and loggerhead as threatened. Governor Wallace also supported an exception for incidental catch believing that incidental catch is not a major cause of decline in turtle stocks in the Alabama area. Governor Ariyoshi opposed prohibiting incidental catch in "areas of substantial breeding and feeding" unless "substantial" was clarified since the waters of the entire Hawaiian Archipelgo are feeding areas for the green sea turtle. Governor Ariyoshi also supported an exemption for subsistence fishing of the Hawaiian green sea turtle population. Governor Haydon supported the listing of the loggerhead and Pacific ridley, but expressed concern about listing the green since it would deprive many people of a means of living and food. In addition, representatives or agencies from New Jersey, California, Texas, South Carolina, North Caroli-

na, Georgia, Mississippi, Florida, New York, Puerto Rico, and the Trust Territory of the Pacific expressed their views.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the act requires that a summary of comments and recommendations relating to a proposed listing be published in the FEDERAL REGISTER prior to adding the species to the endangered or threatened list. A press release on the proposal was issued by the Department of Commerce on May 30, 1975. Public comment periods were open from May 20, 1975 to July 18, 1975; from February 6, 1976 to April 5, 1976; and from March 27, 1978 to April 17, 1978. Due to the great number of comments received during these periods, only those offering substantive comments have been summarized and enumerated here. However, all public comments were considered in the preparation of final regulations.

All comments are available for review between 9 a.m. and 5 p.m. at the Marine Mammal and Endangered Species Division, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

The majority of comments concerned the following issues, and are summarized below by category: (1) whether or not to list these three species of sea turtles, or populations thereof, as threatened or endangered; (2) whether or not to allow an exception for mariculture; (3) whether or not to allow an exception for the incidental catch of sea turtles by commercial fishermen; and (4) whether or not to allow the subsistence taking of threatened sea turtles.

(1) The majority of comments received concerned the appropriate listing categories for these species. All three species were proposed to be listed as threatened. Hundreds of cards and letters were received supporting the listing of the sea turtles, most of which favored an endangered classification. However, many supported a threatened listing and many others favored listing, but made no recommendations as to the appropriate category. As indicated above, those comments which offered no rationale or other information have not been enumerated. Substantive comments were received from 73 parties: 24 supported a threatened listing for all three species; 12 favored an endangered listing for all species; 17 supported a population approach to the listing; and various comments were received from 20 others (4 to list the green as endangered and the loggerhead and Pacific ridley as threatened; 4 to list the green and loggerhead as threatened; 1 to list the green and loggerhead as endangered; 1 to list the loggerhead as threatened; 2 to list the green as endangered; 4 to list the green as threatened; 2 not to list the green; and 2 not to list the loggerhead).

Of those 24 comments supporting a threatened classification for the 3 sea turtles under consideration, 10 were received from the States and territories (New Jersey, California, Texas, Connecticut, South Carolina, New York, Delaware, Guam, and Puerto Rico), 5 from researchers/biologists, 2 from the environmental community, 2 from industry, 2 from the Federal Government (regional offices of the Army Corps of Engineers), and 3 from other interested parties. These parties expressed a belief there was a serious decline in sea turtle stocks, but the stocks were not in present danger of extinction. Commentors felt that protective regulations would be adequate for the conservation of these species. Some believed an endangered classification would be unduly restrictive. One biologist believed the existing data to be too fragmentary to warrant an endangered listing. State comments expressed views that the proposed regulations would strengthen existing State regulations protecting sea turtles.

Those 12 who supported an endangered classification for these species included 8 from the environmental community, 1 researcher/biologist, and 3 other interested parties. They expressed the belief that current data indicated that all three species of sea turtles are in danger of extinction throughout all or a significant portion of their ranges, and further that they are extinct in parts of their former ranges. Commentors provided additional data to support this viewpoint. In addition, an environmental group argued that since certain geographic populations are endangered and since they are indistinguishable from other populations, the species as a whole must be listed as endangered to insure adequate protection.

Those 17 favoring a population approach to listing (i.e., evaluating each population and, based on the best available information, determining whether they are endangered or threatened or neither) included 7 from the environmental community, 3 from researchers/biologists, 3 from industries, 1 from the Federal Government (CEQ), 1 from Nicaragua, 1 from the Trust Territory of the Pacific, and 1 other interested individual. The act defines "species" to include "any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature." Some commentors pointed out that sea turtles aggregage into intraspecific populations which are spatially and functionally independent of other populations within the same species. Therefore, they argued that based on existing evidence, certain populations are endangered and should be so listed. These commentors also indicated that data for the remaining populations are insufficient to support an endangered listing and therefore these populations should be listed as threatened.

Recommendations for listing populations of green sea turtles as endangered included the Gulf of Thailand, Sri Lanka, Indonesia, Philippines, certain of the Western Indian Ocean, Sarawak, Caroline Islands, Hawaii, Costa Rica, Mexico, Bermuda, Florida, and Caribbean populations. The following populations of Pacific ridleys were recommended as endangered: The Gulf of Thailand, Sri Lanka, Mexico, certain of the Western Indian Ocean, and Surinam populations. The Mexican population of loggerhead turtles was also recommended for endangered listing.

RESPONSE

In determining how to list these sea turtles, NMFS and FWS scientists analyzed the status of individual populations. This task was complicated by two factors. First: Although our listing was based on the best available scientific and commercial data and there are obvious and in many cases significant declines in the populations of these species, the data base for many populations is poor. Statistically valid data are available only for a few populations and much of the available information for all three species is qualitative rather than quantitative.

The status of sea turtle populations is poorly known though generally thought to be declining worldwide (with some exceptions). Because sea turtles spend only a small fraction of their life on the land, little information has been obtained on their populations. Most population estimates are based on beach counts of nesting females (the males do not generally return to land after entering the sea as hatchlings), from which extrapolations are made of total population size based on sex ratios of 1:1. Population declines are suggested by repetitive, decreasing counts of nesting females on known accessible beaches.

Sea turtles inhabit much of the tropical and subtropical seas of the world. The species addressed in this rulemaking have circumglobal distributions. Nesting sites for each of these species are numerous, scattered, and have not been counted accurately. Generally, wherever suitable nesting beaches occur there has been evidence of sea turtle utilization. Although studies have been made on some geo-

graphical areas, the extent of sea turtle habitation in many areas is virtually unknown. The difficulty in determining the status of many turtle populations is complicated by interbreeding, sharing of feeding grounds, and other conditions that cloud the identification of discrete populations.

A second problem arose from the difficulty in determining discrete populations. Some areas which were once populated by large numbers of sea turtles are now barren or have greatly reduced stocks. It is uncertain whether these populations are extinct or have relocated to a new area. Factors such as interbreeding and sharing of feeding grounds make population identification difficult.

Some species of sea turtles have individuals which utilize several different beaches during a nesting season. Green sea turtle populations are identified by scientists by their nesting beach origin. There is a strong nesting site fixation of the Caribbean green sea turtles, whose females are believed to return voluntarily only to particular sections of a nesting beach. However, loggerhead sea turtles seem to have a less developed sense of nest site fixation.

Green turtles are herbivorous, gregarious, herding animals which are highly migratory and susceptible to exploitation. Consequently the number of turtles within a population is of greater significance in evaluating the status of green turtles than in other species. For example, the loggerhead is a solitary, carnivorous species with localized distribution. The species tends to live in proximity to the nesting grounds.

Whether a species over its entire range or individual populations should be listed as endangered or threatened under the terms of the act was difficult to determine. The point at which any species becomes in danger of extinction is not clear from the act. Since the definition of "threatened" refers to the foreseeable future and of "endangered" refers to the present, it is apparent that an endangered species is one that is in more immediate danger of extinction than a threatened species. The National Marine Fisheries Service and U.S. Fish and Wildlife Service determined that the data base for any of the three species or individual populations was not sufficient to determine any identifiable populations are in imminent danger of extinction with the exception of the Florida and Pacific Mexican breeding populations of green turtles and the Pacific Mexican breeding population of Pacific ridleys.

Although evidence on individual populations is fragmentary, we know that these three species of sea turtles have suffered drastic reductions in abundance from historical levels throughout most of their ranges. The major reasons for these declines are overexploitation, loss of habitat, and predation. In certain areas population decreases are caused by the loss of turtles in commercial fishing operations. It is highly probable that, if the factors causing declines in some species of sea turtles remain unchanged, these sea turtles will be facing extinction throughout significant portions of their ranges in the foreseeable future.

After a thorough review and consideration of all the scientific and commercial data available, NMFS and FWS have determined that the green, loggerhead, and Pacific ridley sea turtles are at least threatened throughout all or a significant portion of their ranges, as herein specified, due to one or more of the five factors described in section 4(a) of the act.

(a) *Factor: The present or threatened destruction, modification, or curtailment of habitat or range of the species.* Human population expansion has been instrumental in reducing available nesting habitat for green and loggerhead sea turtles. Land reclamation, road and seawall construction, beach development, and recreational utilization, have seriously affected beach habitat. In many areas, the encroachment of human habitation with its attendant rise in beach traffic and artificial light seriously discourages turtles seeking suitable nesting sites and disorients hatchlings. For example, green turtle rookeries in Bermuda, the Bahamas, and beaches along the Greater Antilles have all been lost. A small nesting population of green turtles (less than 50 female individuals) still is active along the Florida coast, a remnant of a once-abundant population. Development of beaches into seaside resorts has also reduced the loggerhead nesting population. This factor is not known to be significant in the decline of Pacific ridleys.

(b) *Factor: Overutilization for commercial, sporting, scientific, or educational purposes.* Sea turtles (eggs and adults) are utilized worldwide as a food item and are particularly desired in some nations as a source of protein. Harvesting for subsistence and commercial trade is widespread because of the desirability and high value of sea turtles and their products. The green turtle is prized as a food item (stew, soups, steaks, and other meat products) and commercial fisheries harvesting for sea turtles occurs in Costa Rica, Mexico, Nicaragua, and other Central American countries. The Pacific ridley is utilized primarily for leather and to a lesser extent for food. The loggerhead is used for food in some areas such as the Indian Ocean. These turtles are also taken for shell products and curios.

Little sport fishing seems to occur for sea turtles though there is evidence some turtles have been taken or harassed by skindivers and sport fishermen in Florida waters and elsewhere. The use of hatchlings for bait by sport fishermen has also been reported.

(c) *Factor: Disease or predation.* The incidence of parasitism and disease in wild sea turtles is unknown. No data are available to support such agents as being a major contributing factor to the decline in sea turtle abundance.

Predation is a major cause of mortality at all stages in the life cycle of sea turtles. Both human and wild carnivores (raccoons, coyotes, weasels, etc.) prey heavily on turtle nests. Hatchlings are consumed on the beach by birds and in the water by fish. Subadults and adults are taken by man and large fish. In some coastal areas of the United States and other countries, the available habitat for many turtle predators has become constricted due to human habitation. Because many turtle nesting beaches share this constricted space, the incidence of animal predation has increased.

(d) *Factor: The inadequacy of existing regulatory mechanisms.* Most mainland coastal States within the United States where these turtles occur have legislation protecting sea turtles from commercial exploitation. While nesting females, eggs, and young are often protected, there is a lack of uniformity in State and local controls.

Hawaii allows the capture of green sea turtles for home consumption if the carapace length equals or exceeds 36 inches. The U.S. Pacific Trust Territory loosely controls the take of sea turtles as does American Samoa. Subsistence fisheries exist throughout these areas for sea turtles. Puerto Rico and the Virgin Islands prohibit the taking of turtles on the beach but not in the water.

The United States and other parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora control international trade in green, loggerhead, and Pacific ridley sea turtles, and their parts and products. Generally, international trade for commercial purposes is prohibited as is importing sea turtles harvested outside the U.S. territorial sea (3 miles). However, not all countries trading in turtles are parties to the convention. Various foreign countries have national laws protecting sea turtles but protection is not uniform.

(e) *Factor: Other natural or man-made factors affecting the continued existence of the species.* Sea turtles are taken incidentally in many commercial fisheries such as the shrimp and industrial fish trawl, purse seine, and gill net fisheries in various parts of the

world. In the United States, this problem is most serious in the trawl fisheries of the South Atlantic and Gulf of Mexico regions. Incidental capture occurs in the shrimp trawl fisheries off Mexico, Central America, and the northeastern coast of South America but this is undocumented. In some areas and at certain times of the year the incidental take may be a significant contribution to subadult and adult sea turtle mortality. There is evidence that sea turtles are taken occasionally in the Pacific tuna purse seine fishery.

The Florida breeding population of green sea turtles is recognized as a discrete breeding group. In the 19th century, this population was abundant and reportedly nested in large numbers on Florida beaches. Due to commercial exploitation and loss of habitat, the population was decimated. No nests were known in the twentieth century until recently when a small amount of nesting activity was discovered along the southeast coast of Florida. National Marine Fisheries Service scientists believe that this population currently contains less than 100 mature adults. Because of the size of this stock, the status of the population is fragile and any adverse activity such as commercial or uncontrolled scientific exploitation, incidental take or loss of habitat could result in the immediate extinction of this stock. Therefore, the Florida green turtle population is listed as endangered.

Evidence submitted during the last comment period documents the loss of green sea turtle nesting populations along the Pacific coast of Mexico and the overharvest of green sea turtles in the Baja California area which led to the conclusion that this population would be in danger of extinction within 3 years. For these reasons, NMFS and FWS determined that population to be endangered.

Evidence was also supplied on the Pacific ridley on the Pacific coast of Mexico indicating that the annual take of this species since the early 1960's to the present is estimated to be 500,000 to 1,000,000 turtles. Specifically, in Oaxaca State in 1977, 70,000 female Pacific ridleys were reportedly taken from a nesting population estimated to number 150,000. This Pacific ridley stock is beginning to show the same signs of stress that existed with the Atlantic ridley, an endangered species, in the 1950's. Scientists have estimated that this stock may be beyond recovery in 8 years.

While the available data clearly indicated drastic reductions in certain populations of green, loggerhead, and Pacific ridley sea turtles, there were no data available to show that these species as a whole are endangered throughout a significant portion of their ranges. Estimates of populations indicate that statuses of the species as a whole are not so fragile in contrast to the Florida green sea turtle that a reasonable expectation of the loss of habitat, and/or commercial exploitation or incidental take will result in extinction of the species throughout a significant portion of their ranges. Moreover, the species as a whole are not believed to be subject to the type of pressure being exerted on the Mexican breeding populations of green and Pacific ridley sea turtles. Thus, the evidence does not indicate that these species as a whole should be listed as endangered nor that additional populations shoud be presently listed as endangered.

(2) Another issue for which considerable comments were received was the proposed exception for commercial mariculture operations. The proposed regulations provided an exception for importation, exportation, taking, and transporting of sea turtles (and their parts and products) derived from mariculture operations, with the provision that after 2 years the exception would apply only to turtles derived from captive-bred parents. Comments were received from 44 parties concerning this issue.

Approximately 24 of these were opposed to this exception. These included 12 from the environmental community, 6 from researchers/biologists, 2 from State agencies of New York, 3 from industries, and 1 from another interested party. Opponents argued that little progress has been made in achieving "self-sufficiency," and questioned the possibility of ever achieving a completely closed-cycle operation. It was argued that mariculture is accompanied by ecological and pathological problems due to holding turtles in tanks on land. Also argued was that mariculture is heavily dependent on wild stocks for eggs and brood stock, and that such removal from the wild would further jeopardize the condition of wild sea turtle stocks. Some asserted that the high price of turtle products negates their value as a significant contribution to the world supply of protein. Further, they contended that mariculture will stimulate the exploitation of wild turtles by creating an increased demand for turtle products which could not be supplied by captive-bred stocks. During the recent comment period, it was argued that 3 years have elapsed since the proposed regulations, and therefore, mariculture operations have had more than the 2 years originally proposed and still have not become self-sufficient. Opponents also argued that to allow trade in products from turtles which were not truly "bred in captivity" would be inconsistent with the meaning of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the convention). The convention prohibits trade in appendix I species (which includes all sea turtles except the flatback and Australian population of green) except in the case of animals which were "bred in captivity."

About 20 comments were received in support of an exception for mariculture. These included four from a commerical mariculture operation, one from the Cayman Island Government, two from State agencies (California and Texas), two from industry, two from biologists/researchers, one from the British Embassy, one from the Federal Government (Environmental Protection Agency), and seven from other interested parties. Advocates of mariculture contended that the research conducted on the culture, diseases, food habits, and rearing of sea turtles benefits the care of maintenance of other captive stocks (e.g., commercial seaquariums and research pools) and would benefit headstart operations (i.e., rearing turtles from transplanted eggs to subadults for release to the wild to avoid the vulnerable period of hatchling mortality). In addition, they argued that mariculture can help to conserve wild stocks by providing superior but cheaper turtle products from captive animals and thus reduce pressure on wild populations. Further, they asserted that mariculture can provide a dependable source of protein for human consumption. They claimed that cultured turtles could be used to restore depleted wild stocks. A mariculture operation purports to buy green turtle eggs from Surinam which are considered "doomed" because the eggs are taken from eroding beaches and, if left in the nest, would be destroyed. In addition, this operation anticipates a final taking of eggs in 1979, and indicated it would become a closed-cycle operation by 1980. It also provided evidence of increasing success of eggs being laid by turtles which mated in captivity.

RESPONSE

After much consideration, NMFS and FWS decided not to provide an exception for mariculture. The primary reasons for this decision were a belief that little or no scientific benefit would be received, that the mariculture operations could not be monitored adequately, and that increased worldwide demand for sea turtles and sea turtle products would be encouraged. This condition could lead to increased exploitation of wild stocks including the stimulation of poaching which would be inconsistent with our mandate under the act to adopt regulatory measures to bring threatened species to the point where they no longer need to be listed under the act.

No evidence has been received that Cayman Farm, or any other mariculture operation has made significant research contributions in the 3 years since the proposed regulations were published (May 1975). Cayman Farm is the only known mariculture operation of significant size in the world. Evidence provided for the 1976 NMFS hearing by Cayman Farm, indicated three turtles which were born in captivity had successfully nested in captivity. No information has been received since then on additional captive-bred nesting success. However, Cayman Farm did provide evidence of increasing success with eggs being laid by turtles which mated in captivity. Many scientists knowledgeable in sea turtles, take the view that this operation will not provide much useful information for conserving sea turtles.

Monitoring Cayman Farm would require observers to be stationed at the facility on a regular basis. Otherwise, NMFS and FWS would have to require periodic reports from Cayman Farm which would be difficult to verify.

Cayman Farm had 3 years to demonstrate their ability to raise sea turtles under a closed-cycle system. In that we do not have sufficient evidence to indicate progress has been made, it is questionable that they will reach the goal of 1980 indicated in a April 17, 1978, letter received from Cayman Farm. Sea turtle mariculture may indeed stimulate additional commercial interest in sea turtles and the small prospect of research benefits is insufficient to merit an exception in light of the current status of sea turtle stocks.

(3) The proposed exception for the incidental catch of sea turtles received a total of 46 comments. The proposed regulations contained an exception for incidental catch if: (a) the sea turtle was caught by fishing gear incidental to fishing effort or research not directed toward these sea turtles; (b) the person responsible was not fishing in an area of substantial breeding or feeding of these sea turtles; and (c) any captured sea turtle was immediately returned to the water, whether dead or alive, and with due care to minimize injuries to live sea turtles.

Of those, 13 comments opposed an exception, of which 9 were from the environmental community and 4 were from biologists/researchers. Some commentators felt that the incidental capture of sea turtles is a major factor in their decline, and should be prohibited. Others felt that although in itself incidental catch may not have contributed directly to the current status of sea turtles, due to the serious status of stocks incidental catch was further jeopardizing these species.

Support for an exception for incidental catch was included in eight comments from the States of North Carolina, Mississippi, Georgia, Alabama, Texas, and South Carolina, four from industries, one from a fishery commission, one U.S. Senator, one researcher/biologist, and four other individuals. They expressed the belief that incidental catch is not a major cause of the decline in sea turtle stocks or, at worst, no more of a detriment than predation on eggs and hatchlings or man-induced destruction of nesting habitats. Some felt that if incidental catch were prohibited, it would destroy the domestic shrimp industry. Some expressed views that measures, other than prohibiting incidental catch, would better serve to conserve sea turtles. Some of the measures suggested included predator control, nest protection, and strengthening enforcement activities.

Many comments were received objecting to the language "areas of substantial breeding and feeding" in the proposed regulations. Some felt the phrase was too general and could not be enforced. Others feared that a strict interpretation could put many shrimpers out of business. Many were opposed to the immediate return of comatose turtles to the water without attempting to revive them prior to release.

Others, although not opposed to an exception, believed that incidental catch should be controlled and substantially reduced. Suggestions made included developing a net to exclude turtles, designating critical habitat, eliminating fishing in breeding areas, setting limits on incidental captures, and having a permit system for incidental catch.

RESPONSE

The act prohibits taking of any endangered species incidental to commercial fishing operations. Therefore, the incidental catch of the Florida and Mexican Pacific coast green sea turtle populations and the Mexican Pacific coast Pacific ridley population will be prohibited because of this endangered status.

Conservation measures for threatened species however, may be promulgated which will allow an incidental catch. Most incidentally taken sea turtles are caught inadvertently by shrimp trawls. Presently, there is no way to avoid accidental capture of turtles in shrimp trawls, however, NMFS has been developing an "excluder panel" to be fitted across the mouth of standard shrimp trawls that would prevent, or substantially reduce, the incidental capture of sea turtles. Although preliminary designs have been tested, these need to be comparatively tested with conventional trawls under commercial shrimping conditions. The National Marine Fisheries Service has accelerated its 1978 gear program and is testing the excluder panels on shrimp grounds this year with the aid of the shrimp industry. The objective of this program is, in part, to obtain as much experimental gear, research, and habitat data as possible so that acceptable net design can be achieved by the end of the 1978 shrimping season. Our goal is to promulgate regulations requiring the use of the panel to prevent, or substantially reduce, incidental catch of sea turtles without significantly reducing shrimp production. Sea turtles are occasionally caught inadvertently in other fisheries (e.g., pet food fishery, menhaden fishery, tuna fishery). The incidental catch and mortality of sea turtles in these fisheries is believed to be much smaller than in the shrimp fishery. The excluder panel under development is not adoptable to non-trawl fisheries.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service are considering candidate areas where turtles are concentrated for designation as Restricted Fishing Areas and/or Critical Habitat. A Restricted Fishing Area is an area where incidental catch is prohibited or otherwise controlled. Controls may include proper gear usage, fishing methods or procedures, or other regulatory controls to reduce or eliminate incidental catch of sea turtles. Prior to the designation of any Restricted Fishing Area within State waters, the Assistant Administrator shall consult, as he deems appropriate, with the Governor(s) and the Marine Conservation Department(s) of the affected State(s). The Assistant Administrator shall also consult with the appropriate Regional fishery Management Councils and with affected fishing industries with regard to these designations. The National Marine Fisheries Service discovered in the winter of 1977-78 hibernating loggerhead and Atlantic ridley sea turtles in the Cape Canaveral ship channel. This area will be proposed in August 1978 as Critical Habitat and will be proposed as a Restricted Fishing Area at a later date.

The proposed regulations would have prohibited incidental catch in areas of substantial breeding or feeding. The National Marine Fisheries Service agreed with commentators who believed that "areas of substantial breeding or feeding" was too vague, unenforceable, and under strict interpretation, could unnecessarily put shrimpers out of business. Hence, those terms were deleted and a provision was added for designating Restricted Fishing Areas. Our accelerated gear program and anticipated designation of Restricted Fishing Areas are believed adequate to protect sea turtles and, at the same time, not close fisheries. The recommendation

for a prohibition of all incidental catch was rejected because the data to indicate shrimping was detrimental to sea turtles throughout the geographical range of the fishery were not available.

Setting limits on incidental captures and establishing a permit system for incidental catch were rejected as difficult to enforce and administer. Catch limits may be imposed in selected areas designated as Restricted Fishing Areas.

We agreed with commentators who were opposed to the immediate return of comatose turtles to the water. The regulations provide that resuscitation be attempted before a comatose turtle is returned to the water.

(4) A limited number of comments were received on whether or not to allow subsistence taking of threatened sea turtles. The proposed regulations did not provide an exception for subsistance. Comments from 10 parties were received addressing this issue.

Of these, nine were in support of allowing subsistence taking, the majority of these being from State and Territorial governors or State agencies where subsistence fishing occurs. These included Hawaii, Guam, American Samoa, and the Trust Territory of the Pacific. Their comments were mainly restricted to the green sea turtle and stressed the need to consider social and economic factors. They related the importance of the green sea turtle as a source of food for many of the island's inhabitants. Evidence was provided indicating the importance of turtles in the cultural way of life in some areas. It was also argued that enforcement would be nearly impossible. Hawaii expressed the opinion that existing State regulations provided adequate protection and that Federal regulations should not be more restrictive. Comment was received in support of subsistence taking provided it is adequately researched and enforced, only allowed where stocks are plentiful, and not allowed on nesting beaches. Two individuals believed it should be allowed by natives in the Pacific Trust Territory for local consumption. One biologist supported subsistence fishing in the Trust Territory if it were carefully monitored, and in Hawaii only after comprehensive investigations indicate that subsistence taking would not be detrimental to that population.

One comment was received from the environmental community, and was endorsed by others, specifically addressing support of a prohibition on subsistence taking on the basis that alternative sources of food are available. It should also be noted that comments were received in general support of the proposed regulations which contained no exception for subsistence.

RESPONSE

Subsistence fisheries for sea turtles exist within U.S. territorial waters. Most are opportunistic in nature, though there are directed fisheries for eggs and adults in the Trust Territory. Some turtles, primarily green, are taken in Puerto Rican and U.S. Virgin Island waters by local fishermen. Hawaii permits the take of green turtles in excess of 36 inches for home use. A limited opportunistic take of turtles (probably green turtles) occurs near Guam. In the Trust Territory, turtle eggs and meat are a traditional food source.

Although the record provides no evidence of subsistence turtle fishing in the Caribbean, NMFS believes increased "subsistence" taking of green turtles has substantially contributed to the decline in Western Caribbean nesting groups. The absence of indigenous natives in Puerto Rico and the Virgin Islands precludes the establishment of long "cultural" ties to the taking of sea turtles for subsistence purposes such as is found in the Pacific Islands. Localized "subsistence" fishing for sea turtles does occur but the motivating factor is esthetic rather than nutritional. The green turtle does not contribute significantly to the food needs of Puerto Rican or Virgin Island residents and prohibiting taking would not have a major nutritional impact. Lastly, because of the close proximity of other breeding groups and the high volume of Caribbean inter-island commerce, it would be impossible to control the flow of turtle products through the Puerto Rican and Virgin Islands nesting area. It would be difficult to effectively stop the illegal trade of sea turtles consumed in Puerto Rico or the Virgin Islands as "subsistence taken." Because of the increase in human impact on Caribbean sea turtles and the absence of a documented subsistence food need for turtle meat, NMFS and FWS decided that no subsistence taking for green turtles or other species of sea turtles should be allowed in Puerto Rico or the Virgin Islands.

Hawaii referenced State regulations that permit the taking of green turtles only in excess of 36-inch carapace length for home consumption. In the State's opinion, such protection was adequately protecting the population. However, NMFS and FWS have concern over increased takings and sale of turtle shell and other products to tourists in Hawaii. For these reasons and because there are alternative food sources available in Hawaii, no exception is allowed for taking green sea turtles in that area.

Sea turtles reportedly provide a major food source for many Pacific island inhabitants, and in areas such as the Yap Islands, play a major role in traditional culture.

The available information on the Western Pacific green turtle population is, at best, incomplete. Reports indicate increased harvesting of eggs and adults have occurred in some areas due to improved native transportation to remote islands. These activities may be instrumental in causing the population declines reported in some areas. However, information submitted showed certain nesting colonies were healthy. There was no strong evidence to support a seriously declining green turtle population which could not support historical harvest levels conducted in a traditional manner.

Because of the condition of the western Pacific population (other than Hawaii), allowing a subsistence take at historical levels is believed consistent with our obligation to conserve threatened species. Therefore, NMFS and FWS decided to allow a traditional subsistence taking of green turtles by residents of the Trust Territory. No subsistence taking will be allowed in other areas. Turtles may be taken only in the water and must be necessary for the sustenance of the individual or immediate family of the individual taking the turtle.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will proceed to obtain data on the extent of subsistence fishing and the status of the populations affected by that activity. Further decisions on regulating subsistence fishing will be based on those data.

SUMMARY OF FINAL REGULATIONS

Generally, the proposed regulations would have prohibited (with some exceptions) take, importation, exportation, and interstate and foreign commerce of green, loggerhead, and Pacific ridley turtles. These activities are essentially the same as prohibited activities for endangered species, except interstate commerce prohibition does not take effect for 1 year and the proposed regulations included more exceptions than allowed for endangered species. These final regulations contain the same prohibitions, as were in the proposed regulations. There are however, changes in the exceptions. Other than allowing more exceptions, these regulations governing threatened species are the same as would be promulgated for an endangered listing for all three species.

An exception for scientific, propagation, or survival purposes was authorized under permit in the proposed regulations. The final regulations provide this exception but include a more detailed description of the procedures for the submission and approval of applications for permits. A transition period (in which to obtain permits) for

ongoing sea turtle activities falling in this category is also provided.

The proposed regulations did not except public display, zoological exhibition, or educational purposes from taking prohibitions. The final rulemaking authorizes exception under permit for zoological exhibition or educational purposes.

An exception for taking of injured, dead, or stranded specimens was contained in the proposed regulations for certain Federal and State agency employees. This exception is repeated in the final regulations. An exception for research or conservation program takings under Cooperative Agreement was contained in the proposed regulations. This exception is also repeated in the final regulations.

The proposed regulations contained an exception for incidental catch provided that: (a) The specimen was caught by fishing gear incidental to fishing effort or research not directed toward these sea turtles; (b) the person responsible was not fishing in an area of substantial breeding or feeding of these sea turtles; and (c) any captured sea turtle is immediately returned to the water, whether dead or alive, and with due care to minimize injuries to live turtles. The final regulations provide an exception for incidental taking, subject to any future controls on gear and Restricted Fishing Areas, provided that: (a) The taking was by fishing gear during fishing or research activities conducted at sea and not directed toward sea turtles; (b) any sea turtle so taken must be handled with due care to prevent injury to live sea turtles and must be returned to the water immediately whether it is dead or alive; if it is alive and unconscious, before returning it to the water, resuscitation must be attempted by turning the turtle on its back and pumping its plastron by hand or foot; and (c) any sea turtle so taken must not be consumed, landed, offloaded, transshipped, or kept below deck.

The proposed regulations contained a 2-year exception for mariculture operations dependent on taking from the wild. Thereafter, the exception was limited to mariculture operations independent of taking from the wild. The exception was to be under permit conditioned on, among other things, a marking or other identification system for mariculture products, Government certification that collection of wild eggs would not be detrimental to survival of the species in the wild, and during the first 2 years demonstrating progress toward becoming self-sufficient. No exception for any mariculture is provided by the final regulations.

The proposed regulations contained an exception (grandfather clause) for turtles held in captivity or in a controlled environment on the date of publication of final regulations and not held in the course of a commercial activity on such date. This exception has been deleted from the final regulations because the long period during which the proposal was pending should have been sufficient notice to the public that controls on sea turtles, and their parts and products were forthcoming. Also, the grandfather clause in the act is available to cover items such as jewelery or antiques which were held for non-commercial purposes on December 28, 1973 (the effective date of the act).

The proposed regulations did not contain an exception for subsistence taking. The final regulations provide an exception to take turtles in the water for home consumption only by residents of the Trust Territory of the Pacific Islands. Taking of nesting females and eggs is prohibited.

The proposed regulations contained a 1-year exemption to minimize undue economic hardship tied to a prior contract commitment. No exception for economic hardship is provided in the final regulations since more than 1 year has transpired since the turtles were formally proposed for listing.

Lastly, the final regulations provide procedures for processing permit applications based on the MOU between NMFS and FWS on sea turtle jurisdiction.

Effect of the Rulemaking

Section 7 of the act provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant ot section 4 of this act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of section 7 of the act. These guidelines were superseded by final regulations governing Interagency Cooperation published by NMFS and FWS and January 4, 1978, in the Federal Register (43 FR 870) to assist Federal agencies in complying with section 7.

The National Marine Fisheries Service will propose in, August 1978, the Cape Canaveral ship channel as Critical Habitat for loggerhead and Atlantic ridley sea turtles. Other areas may be considered as a result of the gear research program currently in progress.

Sections 9 and 10 of the act and endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. The regulations which pertain to the threatened sea turtles are now contained in parts 220 and 227 of title 50 and are set forth below.

International Effects

All three species of sea turtles are listed on Appendix I of the Convention with the exception of the Australian population of green sea turtles. The Convention prohibits international trade in Appendix I species (with limited exceptions) conducted primarily for commercial purposes. Appendix I species taken on the high seas cannot be landed commercially under the provisions of the Convention. However, the Convention does not apply to the taking of sea turtles within any nation's jurisdiction. Many countries (e.g., Mexico, Japan, and a number of European countries where markets exist) have not ratified the Convention. Mexico has protective legislation of green turtles but adequate enforcement is questionable. Further, because Mexico has signed but not ratified the Convention it can engage in unregulated trade in sea turtles or sea turtle products with other countries not formally implementing the Convention (nonmember or nonratifying members). United States-Mexican trade primarily in these sea turtles for commercial purposes is prohibited.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will continue to encourage international Cooperation in the conservation of these species.

National Environment Policy Act

Both a draft and a final EIS have been prepared by NMFS and are on file in the offices of the Division of Marine Mammal and Endangered Species, NMFS, Washington, D.C.

Because this final rulemaking lists green, loggerhead, and Pacific ridley sea turtles in their own right, the similarity of appearance proposal of June 16, 1976, by NMFS and FWS (41 FR 24378) is withdrawn.

The primary author of this rule is Robert B. Gorrell, Acting Endangered Species Program Manager, Division of Marine Mammal and Endangered Species, NMFS, 202-634-7471.

Regulation Promulgation

Accordingly, 50 CFR § 17.11, 17.42(b) and 50 CFR Chapter II are amended as follows:

1. The list of Endangered and Threatened Wildlife in 50 CFR § 17.11 is amended by adding the green, loggerhead and olive (Pacific) ridley sea turtles to the list, alphabetically, under "Reptiles" as indicated below:

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
Reptiles:							
Turtle, Leatherback sea ***							
Turtle, Green Sea	Chelonia mydas	Wherever found except in those areas where it is listed as endangered as set forth below	Circumglobal in tropical and temperate seas and oceans	Entire	T		50 CFR § 17.42(b) and Parts 220 and 227
Turtle, Green Sea	Chelonia mydas	Breeding colony populations in Florida and on the Pacific coast of Mexico	All State waters of Florida including Hutchinson and Jupiter Islands; and Pacific coast of Mexico including the Gulf of California	Entire	E		
Turtle, Loggerhead Sea	Caretta caretta	N/A	Circumglobal in tropical and temperate seas and oceans	Entire	T		50 CFR § 17.42(b) and Part 220 and 227
Turtle, Olive (Pacific) Ridley Sea	Lepidochelys olivacea	Wherever found except in those areas where it is listed as endangered as set forth below	Circumglobal in tropical and temperate seas and oceans	Entire	T		50 CFR § 17.42(b) and Part 220 and 227
Turtle, Olive (Pacific) Ridley Sea	Lepidochelys olivacea	Breeding colony population in Pacific Coast of Mexico	Pacific coast of Mexico including the Gulf of California	Entire	E		

* * * *

2. A new special rule § 17.42(b) is added to 50 CFR reading as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(b) Green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), olive ridley sea turtle (*Lepidochelys olivacea*) (these do not include the populations listed as endangered in § 17.11).

(1) *Prohibitions.* Subject to the permits allowable under the following paragraph (b)(2) of this section, all of the provisions set forth in § 17.31 (which incorporate portions of § 17.21) shall apply to this wildlife with the following exceptions:

(i) Section 17.21(c)(2) (self-defense) is not applicable.

(ii) In § 17.21(c)(3)(i), the word "orphaned" is replaced by the word "stranded."

(iii) Delete § 17.21(c)(3)(iv) (Wildlife threatening human safety).

(iv) Sections 17.21 (e) and (f) do not apply to any delivery, receipt, carriage, transportation, shipment, sale or offer for sale in interstate commerce which takes place within 1 year after the effective date of this regulation and which involves specimens taken prior to such effective date.

(v) The prohibition against taking shall not apply to incidental catches, as specified in 50 CFR 227.72(e).

(vi) The prohibition against taking within the United States or the territorial sea of the United States shall not apply to subsistence taking, as specified in 50 CFR 227.72(f).

(2) *Permits.* (i) For those activities which come under the jurisdiction of the Service, only permits for scientific purposes, enhancement of propagation or survival, zoological exhibition or educational purposes, are available under § 17.32. Procedures for issuance of permits are found in § 17.32 and, for those activities which come under the jurisdiction of the National Marine Fisheries Service, Subpart E of Part 220. All the provisions of § 17.32 apply to permits issued by the Service.

(ii) Activities which are ongoing on the effective date of this regulation and which are for scientific purposes or for enhancement of propagation or survival may continue without permit for up to 90 days as specified in 50 CFR 227.72(a).

3. 50 CFR Part 220 is amended by adding the following new Subpart E:

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

Sec.
220.50 Purpose.
220.51 Permit applications.
220.52 Issuance of permits.
220.53 Other requirements.

AUTHORITY: Endangered Species Act of 1973, section 11(f), 87 Stat. 884, Pub. L. 93-205; act of August 31, 1951.

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

§ 220.50 Purpose.

This subpart establishes procedures for issuance of permits for scientific purposes or to enhance the propagation or survival of "endangered" or "threatened" sea turtles and zoological exhibition or educational purposes for "threatened" sea turtles.

§ 220.51 Permit applications.

Applications for permits to take, import, export or engage in any other prohibited activity involving any species of sea turtle listed in 50 CFR § 17.11 shall be submitted to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either, 50 CFR § 17.22(a) (Endangered Species) or 50 CFR § 17.32(a) (Threatened Species) as appropriate. Applications involving activities under the jurisdiction of the National Marine Fisheries Service (NMFS) as defined in 50 CFR § 222.23(a) and 50 CFR § 227.4 shall be forwarded by the WPO to NMFS.

§ 220.52 Issuance of permits.

(a) Applications under the jurisdiction of the WPO shall be reviewed and acted upon in accordance with 50 CFR § 17.22 or 50 CFR § 17.32 as appropriate.

(b) NMFS shall make a complete review of applications forwarded to it by the WPO in accordance with § 220.51 and determine the appropriate action to be taken in accordance with 50 CFR § 220.21(b) and § 222.23(c). In instances where the application involves activities solely within NMFS jurisdiction, NMFS shall issue permits or letters of denial and provide WPO with copies of its actions.

(c) Where a permit application involves activities under both NMFS and FWS jurisdiction, each agency will process the application for activities under its jurisdiction. WPO will issue either a permit or a letter of denial.

(d) Where a permit application for activities under NMFS jurisdiction also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249, July 1, 1975) (CITES) (50 CFR Part 23), NMFS will process the application for activities under its jurisdiction. WPO will issue the final document by means of a combination ESA/CITES permit or a letter of denial.

§ 220.53 Other requirements.

Permits issued by NMFS under this Subpart shall be administered and comply with the provisions of 50 CFR § 217-§ 227 as appropriate.

§ 222.23 [Amended].

4. 50 CFR § 222.23(a) is amended by deleting the period after the words, "Atlantic ridley sea turtle (*Lepidochelys kempii*)" and inserting the following: Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico, and the olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico."

5. Sections 222.23(a), 222.23(b), and 222.23(c)(13) of 50 CFR Chapter II are amended by deleting the following language set off by quotation marks—

(a) * * * "Of these, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service presently share endangered species jurisdictional responsibility for sea turtles." * * *

(b) * * * "A copy of each application for a permit involving sea turtle(s) will be forwarded by the National Marine Fisheries Service to the U.S. Fish and Wildlife Service." * * *

(c) * * *

(13) "If the permit application involves a sea turtle(s), both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service must concur prior to issuance since these two agencies presently share jurisdiction on sea turtles."

Substitute the following language for that deleted above in section 222.23(a), and amend paragraph (b) by adding the material set forth below to the end of the first full sentence:

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) * * * Of these, the National Marine Fisheries Service has sole agency jurisdiction for sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction for sea turtles while the turtles are on land.

* * * * *

(b) * * * except for permits involving sea turtles in which case the applicant shall follow the procedures set out in 50 CFR Part 220 Subpart E. * * *

6. 50 CFR Chapter II is amended by adding a new Part 227, as follows:

PART 227—THREATENED FISH AND WILDLIFE

Subpart A—General Provisions

Sec.
227.1 Purpose.
227.2 Scope.
227.3 Definitions.
227.4 Enumeration of threatened species.
227.5-227.10 [Reserved]

Subpart B—Threatened Marine Mammals

227.11-227.30 [Reserved]

Subpart C—Threatened Marine Fish

227.31-227.70 [Reserved]

Subpart D—Threatened Marine Reptiles

227.71 Prohibitions.
227.72 Exceptions to prohibitions.

AUTHORITY: Endangered Species Act of 1973 (as amended), Pub. L. 93-205, 16 U.S.C. 1531 et seq.

Subpart A—General Provisions

§ 227.1 Purpose.

The regulations contained in this part identify the species, subspecies, or any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature, under the jurisdiction of the Secretary of Commerce which have been determined to be threatened species under the Endangered Species Act of 1973 and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

§ 227.2 Scope.

(a) The regulations contained in this part apply only to the threatened species enumerated in § 227.4.

(b) The provision of this part are in addition to, and not in lieu of other regulations of Parts 217-222 and Part 225 of this Chapter II which prescribe additional restrictions or conditions governing threatened species.

(c) Certain of the threatened fish or wildlife listed in 50 CFR 17.11 and enumerated in 50 CFR 227.4 are included in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation, and reexportation of such species are subject to additional regulations provided in Part 23, Chapter I (Title 50).

§ 227.3 Definitions.

In addition to the definitions contained in the Act, and in Parts 217 and 225 of this Chapter, and unless the context otherwise requires, in this Part 227:

(a) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531-1547;

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized delegate. The Assistant Administrator for Fisheries is in charge of the National Marine Fisheries Service;

(c) "Ongoing project(s)" means an activity for scientific purposes or to enhance the propagation or survival of such species which are not conducted in the course of a commercial activity initiated before the listing of the effected species;

(d) "Plastron" means the ventral part of the shell of a sea turtle consisting typically of nine symmetrically placed bones overlaid by horny plates; and

(e) "Sea Turtle(s)" means those sea turtle species enumerated in § 227.4 and any part(s), product(s), egg(s) or offspring thereof, or the dead body or part(s) thereof.

§ 227.4 Enumeration of Threatened Species.

The species listed as threatened under the act which are under the jurisdiction of the Secretary of Commerce are:

(a) Green sea turtle (*Chelonia mydas*) except for those populations listed under 50 CFR § 222.23(a).[1]

(b) Loggerhead sea turtle (*Caretta caretta*).[1]

(c) Pacific ridley sea turtle (*Lepidochelys olivacea*) except for those populations listed under 50 CFR 222.23(a).[1]

§§ 227.5-227.10 [Reserved]

Subpart B—Threatened Marine Mammals

§§ 227.11-227.30 [Reserved]

Subpart C—Threatened Marine Fish

§§ 227.31-227.70 [Reserved]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

Except as provided in § 227.72 it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed in any of the following acts with respect to any species enumerated in § 227.4:

(a) import any such species into, or export any such species from, the United States;

(b) take any such species within the United States or the territorial sea of the United States;

(c) take any such species upon the high seas;

(d) possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of the prohibitions in paragraphs (b) and (c) of this section;

(e) deliver, receive, carry, transport, or ship in foreign commerce by any means whatsoever, and in the course of a commercial activity, any such species;

(f) sell, or offer for sale, in foreign commerce any such species;

(g) deliver, receive, carry, transport, or ship in interstate commerce, by any means whatsoever, and in the course of commercial activity; provided that this paragraph (g) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing; or

(h) sell, or offer for sale, in interstate commerce any such species; provided that this paragraph (h) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing.

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that the application is complete and sufficient for processing within the 90-day period. Projects not receiving a permit or letter indicating sufficiency by the 90th day must cease. Within 30 days of receipt of an application, the Assistant Administrator will determine the completeness and sufficiency of the application for processing. If an application is deemed complete and sufficient for processing, a permit will be issued or denied within the next 90 days beginning with the date of the letter informing the applicant that the application is sufficient. Approved projects shall continue in accordance with the conditions of the permit.

(b) *Permits for Zoological Exhibition or Educational Purposes.* The Assistant Administrator may issue permits authorizing activities which would be otherwise prohibited under § 227.71 for zoological exhibition or educational purposes. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(c) *Exceptions for injured, dead, or stranded specimens.* If any member of any threatened species listed in § 227.4 is found injured, dead, or stranded,

[1] Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, jurisdiction for sea turtles is limited to turtles while in the water.

any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a State agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Wherever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235, and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(d) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a State fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with Section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at his discretion.

(e) *Exception for incidental taking*—(1) *General.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, the incidental taking of any member of any species listed in § 227.4 during fishing or scientific research activities not directed toward such members of such species is allowed under the following conditions:

(i) any specimen so taken must be handled with due care to prevent injury to live specimens, and must be returned to the water immediately whether it is dead or alive unless it is a sea turtle which is alive and unconscious, in which case before returning it to the water, resuscitation must be attempted by turning the turtle on its back and pumping its plastron by hand or foot; and

(ii) any specimen so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Restricted Fishing Areas.* [Reserved]

(3) *Gear.* [Reserved]

(f) *Subsistence.* The prohibition in § 227.71(b) shall not apply with respect to the taking of any member of the species of green sea turtle (*Chelonia mydas*) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

NOTE.—The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 25, 1978.

TERRY L. LEITZELL,
Assistant Administrator for Fisheries.

Dated: July 25, 1978.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

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