

# Marine Turtle Fisheries in the UK Overseas Territories of the Caribbean: Domestic Legislation and the Requirements of Multilateral Agreements

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## 1. INTRODUCTION

Historically, marine turtle populations have been an important natural resource for people in the Caribbean region and have been subject to various levels of harvest for millennia.<sup>4</sup> Turtle meat and eggs have been harvested, traded and consumed, and the shells (carapaces), particularly those of green and hawksbill turtles, have been processed and traded as ornaments and jewellery.<sup>5</sup>

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<sup>4</sup> J. Frazier, *Prehistoric and Ancient Interactions between Humans and Marine Turtles*, in 2 THE BIOLOGY OF SEA TURTLES 1-38 (P.L. Lutz & J. Musick, eds., 2003).

<sup>5</sup> *Id.*, L.M. Campbell, *Contemporary Culture, Use, and Conservation of Sea Turtles*, *id.* at 307-338, and E. Fleming, *Swimming against the tide. Recent Surveys of Exploitation, Trade and Management of Marine Turtles in the Northern Caribbean* (TRAFFIC North America, 2001).

Towards the end of the twentieth century, growing concern about the effects of this utilization on the conservation status of the world's marine turtle species resulted in many states protecting marine turtles in their domestic legislation.<sup>6</sup> Internationally, the World Conservation Union (IUCN) now lists all but one species as either endangered or critically endangered with extinction,<sup>7</sup> although these listings have been the subject of considerable controversy.<sup>8</sup> In addition, marine turtles have been listed on the most protective annexes of certain multilateral environmental agreements (MEAs), most notably: the Convention on International Trade of Endangered Species of Fauna and Flora (CITES); the Convention on Migratory Species (CMS or Bonn Convention); the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC), and the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention).<sup>9</sup>

The general objective of these agreements to protect and conserve natural resources through national and multilateral measures, and their potential to contribute to various elements of marine turtle conservation at national and regional levels, has been described at length elsewhere.<sup>10</sup> IUCN defines conservation as "the management of human use of organisms and ecosystems to ensure such use is sustainable"<sup>11</sup> and the economic and cultural value of natural resource use is also acknowledged in the preamble texts of the other international agreements.<sup>12</sup>

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<sup>6</sup> D. Navid, *Conservation and Management of Sea Turtles: A Legal Overview*, in 1979 WORLD CONF. ON SEA TURTLE CONSERVATION PROC. (with contributions on recent advances in sea turtle biology and conservation) 523-536 (K.A. Bjorndal ed., 1995).

<sup>7</sup> IUCN, 2004 IUCN Red List of Threatened Species, <http://www.iucnredlist.org/> (accessed 7 September 2005).

<sup>8</sup> N. Mrosovsky, *Predicting Extinction: Fundamental Flaws in IUCN's Red List System, Exemplified by the Case of Sea Turtles*, <http://members.seaturtle.org/mrosovsky/> (2003); Broderick AC, Frauenstein R, George T, Glen F, Hays GC, Jackson AD, Ruxton GR, Godley BJ (2006) *Are green turtles globally endangered? 15 Global Ecology and Biogeography* 21-26.

<sup>9</sup> D. Hykle, *The Convention on Migratory Species and Other International Instruments Relevant to Marine Turtle Conservation*, 5 J. INT'L WILDLIFE L. & POL'Y 105-120 (2002); C. Wold, *The Status of Sea Turtles under International Environmental Law and International Environmental Agreements*, 5 J. INT'L WILDLIFE L. & POL'Y 11-48 (2002).

<sup>10</sup> *Id.*, see also L.M. Campbell, M. Godfrey and O. Drif, *Community-based Conservation via Global Legislation? Limitations of the Inter-American Convention for the Conservation of Sea Turtles*, 5 J. INT'L WILDLIFE L. & POL'Y 121-143 (2002).

<sup>11</sup> IUCN, THE WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT (1980).

<sup>12</sup> For example, contracting states (Parties) to CITES are "conscious of the ever-growing value of wild fauna . . . from cultural, recreational and economic points of view" and Parties to CMS are aware that where natural resources are utilised they should be "used wisely." Parties to SPAW are "conscious of the overwhelming economic . . . cultural, nutritional and recreational value of . . . native flora and fauna to the Wider Caribbean Region," while Parties to the IAC are "Inspired by the principles contained in the 1992 Rio Declaration on Environment and Development," a declaration which emphasises the role of natural resource use in sustainable development.

Commitment to these MEAs usually requires signatory states to enact domestic legislation to facilitate implementation. The accession to MEAs by Overseas Territories of plenipotentiary states such as the United Kingdom (UK) is of particular interest here. The UK retains some governmental responsibility for several territories in the Wider Caribbean Region,<sup>13</sup> namely Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands. These Territories are self-governed by Executive Councils and elected legislatures that have governmental responsibility for internal affairs, including the enactment of domestic legislation pertaining to biodiversity conservation and natural resource management. However, the UK government retains responsibility for defence, security, and all external affairs of the Overseas Territories, including the UK's commitments to the MEAs it has ratified on their behalf.<sup>14</sup> Therefore, while it is the UK government's responsibility to ratify and sign MEAs on behalf of the Overseas Territories, it is the responsibility of the Territory governments to ensure that appropriate domestic legislation is in place.

The UK has ratified CITES and the CMS, has signed but not ratified the SPAW Protocol, and has neither signed nor ratified the IAC. When the government of an Overseas Territory decides that it would like to accede to an MEA ratified by the UK, the Territory government must request the UK government make the necessary arrangements with the MEA secretariat in order for that MEA to be extended to the Territory. For this reason, not all the MEAs ratified by the UK extend to all the UK Overseas Territories in the Caribbean. Table 1 summarises the status of CITES, CMS, SPAW and the IAC with respect to these Territories.

Four species of marine turtle regularly frequent the waters of the UK Overseas Territories in the Caribbean, including green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), and loggerhead (*Caretta caretta*) turtles.<sup>15</sup> A recent assessment of the status and exploitation of these species and of the relevant domestic legislation concluded that although sizeable foraging aggregations were present, historical marine turtle exploitation has led to significant declines in turtle nesting populations, which appear to be critically low in all the Territories. It also made a number of Territory-specific recommendations regarding marine turtle conservation and management. These recommendations included suggested amendments to the Territories' current legislation regulating marine turtle harvest (see Table 2).<sup>16</sup>

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<sup>13</sup> The region is defined in the Cartagena Convention text as "the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto."

<sup>14</sup> United Kingdom, Foreign and Commonwealth Office, Partnership for Progress and Prosperity: Britain and the Overseas Territories (White Paper, March 1999).

<sup>15</sup> D. Proctor & L.V. Fleming, BIODIVERSITY IN THE OVERSEAS TERRITORIES (1999).

<sup>16</sup> B.J. Godley *et al.*, An Assessment of the Status and Exploitation of Marine Turtles in the UK Overseas Territories in the Wider Caribbean (Final Project Report to the Department of Environment, Food, and Rural Affairs and the Foreign and Commonwealth Office, 2004).

TABLE 1. The Status of CITES, CMS, SPAW, and IAC Extension to the UK Overseas Territories in the Caribbean

MEA extension	UK Overseas Territory				
	Anguilla	British Virgin Islands	Cayman Islands	Montserrat	Turks & Caicos Islands
CITES	NO	YES	YES	YES	NO
CMS	NO	YES	YES	YES	YES
IAC	UK has neither signed nor ratified the IAC and therefore the provisions of the IAC do not apply to any UK Overseas Territory				
SPAW	UK has signed but not ratified the SPAW Protocol and therefore the provisions of this treaty do not apply to any UK Overseas Territory				

The utilisation of marine turtles in the Overseas Territories has direct relevance to the UK's obligations under CITES and CMS, and could in future affect obligations under SPAW and the IAC. The following analysis addresses all four agreements. The various necessary legislative requirements of each MEA with respect to turtle harvest and trade are identified. We also outline the additional legislative requirements and other desirable practices needed to facilitate sustainable turtle harvests, as recently recommended.<sup>17</sup> We ask whether domestic legislation in the Territories meets MEA requirements and practices. Based on this analysis, we discuss the potential role of the MEAs in facilitating sustainable marine turtle fisheries in these Territories.

## 2. CITES, CMS, SPAW AND THE IAC WITH RESPECT TO MARINE TURTLE HARVEST

### 2.1 Convention on International Trade in Endangered Species of Wild Fauna and Flora

CITES was adopted in 1973 and entered into force in 1975.<sup>18</sup> The Convention regulates international trade in endangered species or those species that could become endangered if trade is not regulated and controlled. CITES has no national remit and the Convention's requirements do not impact, therefore, on domestic use of marine turtles. Signatory States (parties) must enact national legislation to transpose the requirements of CITES to domestic law. The treaty has broad international support, and as of September 2005, 169 states were contracting Parties. The UK government ratified CITES in August 1975 and

<sup>17</sup> *Id.*

<sup>18</sup> For the text of the Convention, see 993 U.N.T.S. 243, 27 U.S.T. 1087 (1973). <http://www.cites.org/>

TABLE 2. A Summary of Current Marine Turtle Harvest and Wildlife Import/Export Legislation in the UK Overseas Territories in the Caribbean

Legislation	Anguilla	British Virgin Islands	Cayman Islands	Montserrat	Turks & Caicos Islands
Harvest legislation	Fisheries Protection Act, 2000 Fisheries Protection Regulation 2000	Virgin Islands Fisheries Act, 1997 (no.4 of 1997) Fisheries Regulations, 2003	The Marine Conservation (Turtle Protection) Regulations 1996	Turtles Ordinance Cap. 112:1951	Fisheries Protection Ordinance & Fisheries Protection Regulations (1998)
Harvest restrictions	Moratorium on harvest of 'any turtles' and 'turtle eggs' up to 15.12.05	Capture of leatherback and loggerhead turtles is prohibited indefinitely.  Nests, eggs, and nesting turtles are protected Green turtles >24 inches (61 cm) carapace length and hawksbill turtles > 15 inches (38.1 cm) carapace length can be taken between December and March inclusive.	Harvest of eggs and turtles within fringing reef (i.e. nesting turtles) is prohibited.  Green turtles > 120 lbs (54.4 kg), and hawksbill and loggerhead turtles >80 lbs (36.4 kg) can be caught between November and April inclusive	Any turtle >20 lbs (9.07 kg) can be caught between October and May inclusive.	Harvest of nesting females and harvest, possession, sale and purchase of 'laid' turtle eggs is prohibited.  Hawksbill and green turtles >20 inches (50.8 cm) from the 'neck scales to the tailpiece' or >20 lbs (9.07 kg), or any other turtle >20 lbs (9.07 kg) can be caught at any time of year.
Quotas	N/A	None	Maximum of 6 turtles per licensee per season	None	None
Social restrictions	N/A	License required for commercial fishing, and pleasure fishing 'to fish for personal consumption up to a maximum of 30lbs per boat.'	Licenses granted to 'fishermen who have traditionally taken turtles within the Cayman Fisheries Zone by traditional methods to take turtles within such Zone by such traditional methods for consumption within the Islands.'	License required for fishing for commercial purposes.	'Belongers' allowed to take 'reasonable quantities' for personal consumption without license. License required for commercial fishing, available to 'Belongers' only.
Fishery management/monitoring	N/A	None (Godley et al., 2004)	Licenses required to tag and present captured turtles to authorities for inspection.	Some limited monitoring of catch.	None (Godley et al., 2004)
Import/export legislation	Legislation in draft	<i>Endangered Animals and Plants Act, 1987 (Cap. 89)</i>	<i>Endangered Species (Trade and Transport) Law, 2004</i>	<i>Endangered Animals and Plants Ordinance 1976</i>	Legislation in draft
Restricted turtle products	N/A	Live or dead specimens of all marine turtle species, but not 'Cheloniidae' turtle shell 'if cut to shape.'	Live or dead specimens of all marine turtle species and any parts thereof.	Live or dead specimens of all marine turtle species, but not 'Cheloniidae' turtle shell 'if cut to shape.'	Fisheries Protection Regulations (1998): Any person can export no more than 10lbs (4.5 kgs) of any turtle product except 'laid' turtle eggs.

requires that its Overseas Territories have appropriate legislation in place to implement the requirements of CITES before they extend the Convention.

CITES lists species in three separate Appendices I, II, and III, with different trade restrictions applying to each appendix, and institutes a system of obligatory import and export permits and regular reporting to the Secretariat. All species of marine turtle are currently listed in CITES Appendix I. Article II of the Convention (Fundamental Principles) states that international trade in specimens of species in Appendix I (i.e. marine turtles) “must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.”

Throughout the Convention, the term “specimen of species” is used, and Article 1 defines specimen as follows:

Specimen means:

- (i) any animal or plant, whether alive or dead;
- (ii) in the case of an animal; for species in Appendix I and II, any readily recognisable part or derivative thereof . . .

Article 3 describes the system of permits required for the export and import of specimens of species in Appendix I. Parties are required to ensure that movement of these specimens between parties is not detrimental to the survival of the species, is in accordance with national laws, and is not for primarily commercial purposes.

Unlike the other MEAs discussed here, CITES Convention text provides an enforcement mechanism in Article VIII that allows the Parties to collectively decide on appropriate measures (e.g., wildlife trade sanctions) to be taken against individual Parties that fail to implement the Convention. Parties may enter reservations on CITES Appendix I listed species, allowing them to be exempt from the Convention’s trade restrictions for the reserved species. Parties with reservations on species are formally treated as non-parties with respect to trade in the species concerned, but are encouraged to treat their Appendix I reserved species as if they were in Appendix II, and therefore monitor and report any trade. In the Caribbean region, Cuba currently has reservations on green and hawksbill turtles, St. Vincent and the Grenadines have a reservation on green turtles, and Suriname has reservations on green and leatherback turtles. The UK does not currently have reservations on any marine turtle species.

## **2.2 Convention on Migratory Species**

CMS was adopted in 1979, came into force in 1985,<sup>19</sup> the year that the UK ratified it, and had 91 contracting parties as of July 2005. CMS aims

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<sup>19</sup> For the text of the Convention, see 19 I.L.M 15 (1980). <http://www.cms.int/>.

to facilitate multilateral conservation action for migratory species and their habitats by: requiring strict protection for endangered migratory species; concluding multilateral conservation and management plans; and undertaking co-operative research programs between contracting parties.

The Convention's Article 2 (Fundamental Principles) requires that "The Parties acknowledge the importance of migratory species being conserved" and clause 2 of this Article requires that parties "acknowledge the need to take action to avoid any migratory species becoming endangered." Clause 3 also states that the parties "should promote, co-operate in and support research relating to migratory species," but the text of the article does not specify the detail of such research.

The CMS has two appendices. Appendix I lists migratory species "which are endangered" and Appendix II lists other migratory species that either require or would benefit from international agreements under the Convention. All the species of marine turtle found in the Wider Caribbean Region are listed on Appendix I, where they receive the highest level of protection under CMS. Article III, clause 5 requires parties to "prohibit the taking of animals" that are Appendix I species, but exceptions are allowed under the following criteria:

- a) the taking is for scientific purposes;
- b) the taking is for the purpose of enhancing the propagation or survival of the affected species;
- c) the taking is to accommodate the needs of traditional subsistence users of such species; or
- d) extraordinary circumstances so require; provided that such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.

The term traditional subsistence user is undefined in the Convention text and has not been defined elsewhere by the CMS Secretariat.

### **2.3 Protocol Concerning Specially Protected Areas and Wildlife (SPA) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention)**

The Cartagena Convention is the only multilateral environmental agreement that specifically aims to facilitate national and regional management of coastal and marine resources in the Wider Caribbean Region. The Convention was adopted in 1983,<sup>20</sup> along with the Protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region Concerning Co-operation in Combating Oil Spills in the Wider Caribbean

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<sup>20</sup> For the text of the Convention, see 22 I.L.M. 221 (1983). <http://www.cep.unep.org/>.

Region (Oil Spills Protocol),<sup>21</sup> and these entered into force in 1986 after having been ratified by the required nine parties.

The parties adopted the SPAW protocol in 1990, but it only came into force in 2000, and only 12 Parties had ratified SPAW by the end of 2005.<sup>22</sup> SPAW aims to facilitate the protection of threatened species and their habitats through national and regional co-operative actions. In Article 3 (General Obligations) the Protocol requires that each party:

in accordance with its laws and regulations and the terms of the Protocol, take the necessary measures to protect, preserve and manage in a sustainable way . . . a) areas that require protection to safeguard their special value; and b) threatened or endangered species of flora and fauna.

Articles 10 and 11 describe national and cooperative measures respectively, for the *protection* of threatened and endangered species. Article 10 requires that parties identify endangered or threatened species within their jurisdiction and give these species protected status under national laws and regulations. Article 11 refers to the Protocol's Annexes I, II, and III, under which threatened or endangered species are listed, and for which the parties must "adopt co-operative measures to ensure [their] protection and recovery." The four marine turtle species found in the UK Overseas Territories in the Wider Caribbean Region are all included in Annex II, "List of Species of Marine and Coastal Fauna Protected Under Article 11 (1)(b)."

Under Article 11, clause 1b, parties are required to "ensure total protection and recovery" of marine turtle species, and this protection must, where appropriate, prohibit:

- (a) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species or their parts or products; and
- (b) to the extent possible, the disturbance of wild fauna, particularly during the period of breeding, incubation, estivation or migration, as well other periods of biological stress.

However, Article 14 (Exemptions for Traditional Activities) requires that parties "take into account and provide exemptions, as necessary, to meet traditional subsistence and cultural needs of its local populations" when formulating "management and protective measures" such as national legislation. As with the CMS, traditional subsistence and cultural needs are not defined in the Convention text and have not been described elsewhere by the Convention Secretariat. Clause 1 (b) of this article imposes certain

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<sup>21</sup> For the text of the Protocol, see 22 I.L.M. 240 (1983). Also accessible at <http://www.cep.unep.org/>.

<sup>22</sup> For an online copy of the text of the Protocol, see [http://www.intfish.net/treaties/cart\\_s paw.htm](http://www.intfish.net/treaties/cart_s paw.htm).

parameters on any interpretation by requiring that by meeting these needs, “to the fullest extent possible” harvest should not result in “the extinction of, or a substantial risk to, or a substantial reduction in numbers of” the species in question.

Unlike CMS, the text of SPAW requires that parties develop research on protected species, with more emphasis on management. Article 17, clause 1 states that “Each Party shall encourage and develop scientific, technical and management-oriented research . . . on threatened or endangered species of fauna and flora and their habitats.”

The UK ratified the Cartagena Convention and the Oil Spills Protocol on behalf of the Cayman Islands and Turks and Caicos Islands in 1986, and the British Virgin Islands in 1987. The UK has not yet ratified the SPAW Protocol, and therefore none of its provisions currently apply to any of the Overseas Territories. However, the UK is committed to supporting SPAW, but requires that the UK Overseas Territories have the necessary domestic legislation in place before the UK ratifies the Protocol.<sup>23</sup>

#### **2.4 Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC)**

The IAC is the only international treaty dedicated exclusively to sea turtles and covers 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.” The Convention entered into force in 2001 and has been ratified by 11 countries in the region.<sup>24</sup>

The treaty’s objective is to “promote the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend, based on the best available scientific evidence, taking into account the environmental, socio-economic and cultural characteristics of the Parties” (Article II). To meet this objective, the IAC requires Parties to protect and conserve marine turtle populations and habitats; to reduce the incidental capture, injury and mortality of marine turtles due to commercial fisheries; prohibit the intentional harvest, international and domestic trade in turtles and turtle products; and encourage international cooperation in research and management programs.

The IAC text is resolute with respect to the prohibition of turtle harvest and trade, and the list of prohibited activities in this regard is the most comprehensive of the MEAs considered here. Under Article IV, clause 2a, Parties are required to prohibit “the intentional capture, retention or killing of, and domestic trade in, sea turtles, their eggs, parts or products.” The IAC is the only treaty considered here that acknowledges overlap with

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<sup>23</sup> D. Dudgeon, Foreign and Commonwealth Office, pers. comm. 2004.

<sup>24</sup> For the text of the Convention, see <http://www.iacseaturtle/English/texto.asp>.

another MEA in its text. Article IV, clause 2b requires Parties to comply with “obligations established under the Convention on International Trade in Endangered Species of Wild Fauna and Flora relating to sea turtles, their eggs, parts or products.”

Clause 3a of Article IV allows parties domestic harvest and consumption of marine turtles and their products so long as it satisfies the “economic subsistence needs of traditional communities.” These terms are not defined, however, either in the text or by the Secretariat.<sup>25</sup> Article IV also requires parties in clause 2e to promote “scientific research relating to sea turtles and their habitats” that will contribute to the implementation of other measures described in the Article. However, none of the provisions of the IAC currently extend to any of the UK Overseas Territories as the UK has not signed the treaty.

## 2.5 Implications of MEAs for Domestic Legislation

Table 3 represents our evaluation of necessary and desired marine turtle harvest legislation and practice based on the requirements of the MEA texts, the overall MEA conservation objectives, and recommendations that support the conservation objectives of the MEAs.<sup>26</sup> These Territory-specific recommendations focus on the introduction of legislative amendments and management practice to avoid over exploitation of stocks, whilst strictly protecting reproductive adults and eggs, as well as larger size classes, in line with current understanding of marine turtle population biology.<sup>27</sup>

Table 3 categorizes the legislative and management requirements as follows: (i) necessary legislative requirements,<sup>28</sup> i.e. those requirements that are specified by the MEA text, (ii) desirable legislative requirements to

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<sup>25</sup> Under Article IV, clause 3a, parties that allow take must also take into account advice from the IAC Consultative Committee, consisting of party appointees and selected experts from the private sector, the scientific community, and a representative non-governmental organization. When providing recommendations and advice to parties allowing domestic use of marine turtles, the Committee is required to take into account “the views of any Party regarding such populations, impacts on such populations on a regional level, and methods used to take the eggs or turtles to cover such needs.” However, the extent to which parties requesting exemptions are bound to follow such advice is not made clear in the IAC text. See Campbell, Godfrey & Drif, *supra* note 10. Parties that allow take are required to “establish a management program that includes limits on levels of intentional taking” and report to the Secretariat regarding their management program under Article IV, clause 3b.

<sup>26</sup> The conservation recommendations are those in Godley *et al.*, *supra* note 16.

<sup>27</sup> S.S. Heppell *et al.*, *Sea Turtle Population Ecology*, in Lutz & Musick eds., *supra* note 4, at 275-306.

<sup>28</sup> MEA legislative requirements are deemed necessary where the text uses appropriate language, for example where words such as ‘shall’ are used, as in CMS Article 3, clause 5 “Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species.” Where the text uses more flexible language, such as ‘should’ or ‘may,’ as in CMS Article 3, clause 5 “Exceptions may be made to this prohibition,” we deem these legislative requirements as desirable rather than necessary. The legislative requirements of CITES pertinent to this discussion are contained within Article 3, which requires parties to legislate for an obligatory licensing scheme for the import and export of all specimens of species listed on CITES Appendix I (i.e. all marine turtle species)

TABLE 3. Evaluation of Necessary and Desired Legislation and Management Practice Regarding Marine Turtle Harvest and Trade Based on the Texts of CMS, the SPAW Protocol and the IAC, the Conservation Objectives of these MEAs, and the Recommendations in Godley et al. (2004)

i. Necessary legislative requirements	ii. Desirable legislative requirements	iii. Other desirable practice
<p><b>CMS Article III, clause 5:</b> Legislation should prohibit turtle harvest unless exemptions are made under this article. <i>NB: CMS Article 14 allows Parties to enter reservations on marine turtle species. The UK has not entered any such reservation.</i></p>	<p><b>CMS Article III, clause 5c:</b> Legislation should define <i>the needs of traditional subsistence users</i> within local context and limit the fishery to provide for these needs.</p>	
<p><b>SPAW Articles 10, 11, &amp; 14:</b> Legislation should prohibit turtle harvest and trade unless exemptions are made under article 14. If exemptions are made, legislation should define <i>traditional subsistence and cultural needs of its local populations</i> within local context and limit the fishery to provide for these needs.</p>	<p><b>IAC Article IV, clause 3a:</b> Legislation should identify <i>economic subsistence needs of traditional communities</i> within local context and limit the fishery to provide for these needs.</p>	
<p><b>SPAW Article 17, clause 1:</b> Legislation should require relevant authorities to ‘develop scientific, technical and management-oriented research’ e.g. scientific turtle fishery monitoring. <i>NB: SPAW Article 11 allows Parties to enter reservations on marine turtle species but the UK has not yet ratified the SPAW Protocol.</i></p>	<p><b>CMS Article II, clause 2 &amp; SPAW Article 14, clause 1b</b> Legislation should limit the number of turtles taken, protect nesting females and eggs and specify size limits and closed seasons as recommended by Godley et al. (2004).</p>	<p><b>CMS Article II clause 3 &amp; IAC Article IV clause 2e:</b> Relevant authorities should carry out marine turtle stock monitoring and research to determine effects of harvest on local turtle aggregations as recommended by Godley et al. (2004).</p>
<p><b>IAC Article IV:</b> Legislation should prohibit harvest of and trade in turtles, their eggs and products unless exemptions are made under clause 3a. <b>IAC Article IV, 2b:</b> Legislation should provide for an obligatory licensing scheme for the import and export of all turtle products. <b>IAC Article IV, clause 3b:</b> If harvest is allowed, legislation should require a fishery management program that limits the number of turtles taken. <i>NB: IAC Article XXIII does not allow any reservations from this treaty on any marine turtle species</i></p>	<p><b>CMS Article II clause 2</b> Legislation should require authorities to monitor turtle harvest and introduce reactive measures (e.g. fishery closure) when harvest indicates endangerment as recommended by Godley et al. (2004).</p>	

facilitate a sustainable turtle harvest, i.e. requirements that we deem desirable for legislation based on MEA texts, MEA conservation objectives, and recent conservation recommendations,<sup>29</sup> and (iii) other desirable practices to facilitate a sustainable turtle harvest, i.e. desirable practices relating to marine turtle harvest based on MEA texts, MEA conservation objectives, and the conservation recommendations.<sup>30</sup>

### **3. MARINE TURTLE FISHERY LEGISLATION IN THE UK OVERSEAS TERRITORIES IN THE WIDER CARIBBEAN REGION**

The diversity of legislation regulating the marine turtle fisheries of the UK Overseas Territories in the Caribbean is summarized in Table 2. In this section we review the legislation currently in place for each Territory and highlight key issues in the context of compliance with CITES and CMS, as well as potential compliance requirements if the UK ratifies SPAW and the IAC.

#### **3.1 Anguilla**

Until 1995, Anguilla's turtle fishery supplied a domestic demand for meat, including a market for resale through local restaurants, while turtle meat and shells were also exported to neighboring Caribbean states such as St. Martin, Puerto Rico, and the US Virgin Islands.<sup>31</sup> In the early 1980s, turtle harvest in Anguilla had reached unprecedented high levels, in particular to meet the overseas demand for hawksbill shell, which led to local concerns for the conservation status of the turtle populations in Anguilla's waters.<sup>32</sup>

Eventually, in response to these concerns, the Fisheries Protection (Amendment) Regulations, 1995, introduced a five-year moratorium on turtle harvest. The moratorium was extended for a further five years under the Fisheries Protection Regulations, Chapter F40-1, gazetted on 15 December 2000, to expire in December 2005.<sup>33</sup> Under section 17 (Prohibition on taking turtles) anyone who "takes, attempts to take, or causes to be taken any turtle; slaughters or buys, sells, exposes for sale or has in his possession the whole or a portion of the meat of a turtle; or takes or attempts to take, buys, sells or has in his possession any turtle egg" is guilty of an offence.

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and are not treated in Table 3. While Article 23 of CITES allows parties to enter reservations on marine turtle species, the UK has not entered any such reservations and so this article is not pertinent to the use of turtles in the UK Overseas Territories.

<sup>29</sup> Godley *et al.*, *supra* note 16.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> A.B. Meylan, *Marine Turtles of the Leeward Islands, Lesser Antilles*. 278 SMITHSONIAN INST. ATOLL RES. BULL. 1-43 (1983).

<sup>33</sup> In January 2006 the Government of Anguilla extended the moratorium for a further 15 years, but this Executive Council decision had not been transposed to domestic legislation at the time of writing (J. Gumbs, Department of Fisheries and Marine Resources, pers. comm., 2006).

Curiously, these regulations do not specifically mention turtle shell, the trade of which was responsible for increased levels of exploitation that led to initial concerns regarding the conservation status of Anguilla's turtle populations.<sup>34</sup> As the term meat is not defined in the Regulations, trade in marine turtle shell in Anguilla may not be prohibited, so long as the sale was not the cause for any turtle to be taken. CITES does not yet extend to Anguilla, although the government has drafted legislation in preparation for accession to the treaty.<sup>35</sup> Furthermore, the Regulations only apply to "Anguilla and the fishery limits," and the unlicensed import and sale of green and hawksbill turtle shell is, therefore, not prohibited. Neither is the unlicensed export of turtle shell to non-signatory states and parties to CITES with reservations on green or hawksbill turtles prohibited, so long as such action did not cause the turtle to be taken in Anguilla's waters after 1995 when the moratorium was originally enacted.<sup>36</sup>

CMS does not currently extend to Anguilla, although the government has drafted domestic legislation in preparation for accession to this treaty.<sup>37</sup> It remains unclear if the Government of Anguilla will reopen a turtle fishery in coming years after the moratorium expires. However, since there are no other provisions for turtle harvest in the current legislation, an amendment to the Fisheries Regulations 2000 will be needed if the fishery is reopened. In preparation for accession to CITES and CMS, the requirements of these treaties will have to be taken into account when preparing such amendments.

For example, CMS Article III would require new legislation to prohibit the take of turtles (Table 3, column i). If the government decided to reinstate a turtle harvest, then the legislation should provide for harvest by traditional subsistence users only, and interpret a definition of traditional subsistence user in the context of the Anguillian fishing community as per Article III, clause 5 (Table 3, column ii). If the UK were to sign SPAW and IAC and extend them to Anguilla, harvest and domestic trade in turtles, their eggs, and products would have to be prohibited by the legislation (Table 3, column i), unless Anguilla allowed exemptions under these treaties. Under SPAW Article 14, the legislation would be obliged to take into account the "traditional

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<sup>34</sup> *Id.*

<sup>35</sup> K. Hodge, Government of Anguilla, pers. comm., 2005.

<sup>36</sup> Godley *et al.*, *supra* note 16, found no evidence of any trade in turtle shell in Anguilla. Indeed, while turtle meat and carapaces were being exported to other Caribbean states in the 1980's, the tourist market for tortoiseshell items appears to have had collapsed in the 1980s, probably as a result of import and export restrictions in the countries of origin of the tourist market. CITES implementation in other countries may therefore have impacted international trade in turtle products from Anguilla long before the government considered accession to the Convention. Anguilla still does not have legislation to implement CITES, but the Caribbean states that used to provide a market for Anguilla's turtle harvest have since acceded to CITES. Therefore, so long as marine turtles remain on CITES Appendix I, even without accession to CITES, it is likely that any future harvest of turtles in Anguilla will not supply an overseas demand and will be restricted to domestic use only.

<sup>37</sup> K. Hodge, Government of Anguilla, pers. comm., 2005.

subsistence and cultural needs” (Table 3, column i) and under the IAC Article IV, clause 3a, would be required to meet the “economic subsistence needs of traditional communities” (Table 3, column ii). The legislation should interpret definitions of these terms in the local context (Table 3, columns i and ii). In order for the legislation to meet the conservation objectives of these treaties, it should also include restrictions on harvest (Table 3, column ii), and under the IAC Article IV clause 3b, should provide for a fishery management program (Table 3, column i).

CMS and IAC encourage parties to support and develop research programs on marine turtles, while SPAW requires the development of management-related research, and, if a marine turtle harvest is reinstated in Anguilla, this would be required under SPAW and desirable under CMS and IAC (Table 3, columns i and iii). However, implementation of such programs may be problematic given the current deficiency in human and financial resources within Anguilla’s Department of Fisheries and Marine Resources (DFMR).<sup>38</sup> The Fisheries Protection Regulations require that “The Chief Fisheries Officer shall prepare and keep under review a plan for the management and development of fisheries.” An ongoing government waiver of the commercial fishermen’s license scheme makes fishery monitoring difficult and impractical in Anguilla, and this, in combination with insufficient human resources within the DFMR, has resulted in there being no management or monitoring of any fishery in Anguilla.<sup>39</sup> Clearly, the extension of these MEAs to Anguilla would present complex legislative amendments and logistical difficulties to the DFMR if Anguilla also reinstates its marine turtle fishery.

### 3.2 British Virgin Islands

The current marine turtle fishery in the British Virgin Islands (BVI) takes mainly green and hawksbill turtles, apparently at much reduced levels compared to historical harvests.<sup>40</sup> The harvest supplies a domestic market, largely for personal consumption, with some meat sold to restaurants for resale. The Virgin Islands Fisheries Act, 1997, and the Fisheries Regulations, 2003, regulate the BVI turtle fishery (see Table 3). There is no monitoring or management of the marine turtle fishery at present.<sup>41</sup>

CITES extends to BVI and is transposed to domestic legislation by the Endangered Animals and Plants Act, 1987 (Cap. 89). All the species of marine turtle found in BVI’s waters are listed on the First Schedule of the Act, and this prohibits import and export of live or dead specimens without a license. In addition, clause 16 of the Third Schedule of the Act prohibits the

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<sup>38</sup> J. Gumbs, A Critical Analysis of the Functioning of the Department of Fisheries and Marine Resources, Anguilla (unpublished report for the Government of Anguilla, 2003).

<sup>39</sup> *Id.*

<sup>40</sup> Godley *et al.*, *supra* note 16.

<sup>41</sup> *Id.*

unlicensed import and export of any shell, scales, and claws of “any animal of the family Cheloniidae.”<sup>42</sup>

CMS extends to BVI. The Fisheries Regulations, 2003, fail to meet the necessary requirements for CMS outlined in column (i) of Table 3 because, while they prohibit the taking of loggerhead and leatherback turtles, they allow the harvest of other species without implementing any of the desired legislative requirements listed in Table 3, column (ii). As BVI’s legislation permits a harvest under Article III of the treaty, the Fisheries Regulations should only allow harvest by “traditional subsistence users.” In contrast, the Regulations provide for any licensed local or foreign fishermen to catch an unlimited number of turtles during the open season, and thereby allow the possibility of over exploitation. Other management measures described in the Regulations, such as the closed season and the protection of turtle eggs and nesting females, meet some of the desired requirements of CMS Article II in Table 3, column (ii), but include inappropriate size limits that facilitate the harvest of the larger size classes and do not include quotas. While the current turtle harvest may be catching relatively fewer turtles when compared to historical levels, it is unclear whether or not BVI’s current fishery is sustainable.<sup>43</sup>

BVI’s turtle harvest legislation would not meet the requirements of SPAW or IAC (columns i, ii, and iii) for similar reasons, and the Regulations do not specifically provide for any fishery monitoring and management plan as is desirable under SPAW and required by IAC (columns i and ii). BVI’s current turtle harvest legislation requires significant amendment to meet specific requirements of CMS, and the requirements of the SPAW Protocol and IAC if they ever extend to BVI.

### 3.3 Cayman Islands

While the Cayman Islands may have once hosted the largest green turtle rookery in the Caribbean, the nesting populations of turtles there have drastically declined over the last few centuries as a result of extensive, commercial over-exploitation.<sup>44</sup> Remnant green and loggerhead populations remain, but the population of nesting hawksbill turtles may have been extirpated in recent

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<sup>42</sup> Curiously, however, this clause allows the unlicensed import and export of such items if the objects are “cut to shape.” This provision of the Act is in direct contravention of CITES, which requires that Parties issue highly conditional permits for the import and export of “any specimen of a species” of marine turtle, and therefore requires amendment to meet full CITES compliance. Only two recent instances of tortoiseshell items for sale in BVI have been reported, one of which was being offered for sale by a vendor who described how “import restrictions in other countries” resulted in limited demand. *Id.* As with Anguilla, CITES implementation in tourist countries of origin may have impacted trade in BVI, despite the inadequacies of the Endangered Animals and Plants Act, 1987.

<sup>43</sup> Godley *et al.*, *supra* note 16.

<sup>44</sup> J.J. Aiken *et al.*, *Two Hundred Years after a Commercial Marine Turtle Fishery: The Current Status of Marine Turtles Nesting in the Cayman Islands*, 35 *ORYX* 145-152 (2001).

years.<sup>45</sup> The current turtle fishery in the Cayman Islands is now strictly managed and involves very low levels of take, and the continuing demand for turtle meat is largely met by the Cayman Turtle Farm.<sup>46</sup>

CITES extends to the Cayman Islands and the recently gazetted Endangered Species (Trade and Transport) Law (2004 revision) fully transposes CITES to domestic law. Import, export, and re-export of all turtle products must be accompanied by permits issued by the relevant authorities in the Cayman Islands and destination/source countries. The Cayman Island Department of Environment (CIDoE) has indicated that while all marine turtle species remain on CITES Appendix I, they will not issue permits for the commercial trade of marine turtle products from the islands.<sup>47</sup> This Law effectively prohibits, therefore, international trade in specimens of all turtle species and restricts any such trade to a domestic level.

The Cayman Islands' turtle harvest is regulated by the Marine Conservation (Turtle Protection) Regulations, 1996, which is arguably the most comprehensive turtle harvest legislation in the UK Overseas Territories. CMS extends to the Cayman Islands and, while turtle harvest is not prohibited, the Regulations meet several of the requirements as outlined in columns i, ii, and iii of Table 3. These are the only regulations in the UK Overseas Territories that restrict the fishery to a defined social group, namely "fishermen who have traditionally taken turtles within the Cayman Fisheries Zone by traditional methods . . . for consumption within the Islands." The government's Marine Conservation Board issues non-transferable licenses to 20 identified individuals, who are further limited by a quota system. Each captured turtle must be presented to the CIDoE before it is butchered, thus satisfying to some extent the desirable fishery monitoring requirement under CMS Article II (Table 3, column ii). Only 14 licenses have been issued and only eight of the licensed fishermen continue to take turtles,<sup>48</sup> thus, the legal harvest is strictly controlled and operates at low levels. In addition, CIDoE monitors nesting activity on the islands, as well as the foraging turtle aggregations, and therefore meets the relevant desirable requirements for CMS Article II (Table 3, column iii).

However, while the legislation protects nesting females and their eggs, and incorporates a closed season, these measures may not be sufficient to support the conservation objectives of the MEAs. The current closed season may not adequately protect reproductively active adult turtles entering Cayman waters prior to the nesting season.<sup>49</sup> Furthermore, the specified size

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<sup>45</sup> Godley *et al.*, *supra* note 16.

<sup>46</sup> *Id.* See also Cayman Turtle Farm, Application to Register a Captive Breeding Operation involving *Chelonia mydas* on Grand Cayman, Cayman Islands (unpublished document submitted by the CITES Management Authority of the United Kingdom, 2000).

<sup>47</sup> G. Ebanks-Petrie, CIDoE, pers. comm. 2004.

<sup>48</sup> Godley *et al.*, *supra* note 16.

<sup>49</sup> *Id.*

limits for green, hawksbill, and loggerhead turtles encourage the capture of subadults and adults only, while protecting smaller and younger age classes. These size limits do not facilitate a sustainable harvest of turtles. Indeed, it has been observed that the current fishery holds the potential to severely impact the remnant breeding populations of turtles and hinder their recovery, and thus the conservation objectives of the MEAs.<sup>50</sup>

The Marine Conservation (Turtle Protection) Regulations, 1996, also meet the necessary requirements of SPAW Article 14 (Table 3, column i) and IAC Article IV that limit use (Table 3, columns i and ii), and the CIDoE monitoring meets the requirements of IAC Article IV (Table 3, column i) and the desirable practice for SPAW (column iii). But as described above with CMS, they fail to adequately meet key desirable legislative requirements for SPAW listed in column (ii) of Table 3. Despite these deficiencies, the Regulations provide perhaps the best interpretation of the requirements of the MEAs and, with amendment to the legislation's size limits and closed season, these Regulations may facilitate sustainable turtle harvest.<sup>51</sup>

### 3.4 Montserrat

Montserrat's turtle harvest is regulated by the Turtles Ordinance of 1951, although the Fisheries Department has drafted more contemporary legislation.<sup>52</sup> Montserrat's fishermen are also required to comply with the Fisheries Act 2000 with regard to licensing, boat registration, and general fishery requirements.

CITES extends to Montserrat, and all marine turtle species are listed in Schedule 1 of the Endangered Animals and Plants Ordinance, 1976. This Ordinance prohibits the import and export of live and dead specimens of all marine turtle species without a government-issued licence. However, as with BVI's Endangered Animals and Plants Act, 1987, there is a curious exception in Schedule 3, which uses identical text to BVI's legislation and similarly, seems to allow the unlicensed import and export of the shell, scales, and claws of Cheloniidae turtle species if they are "cut to shape" (e.g. tortoiseshell jewellery). A former trade in turtle shell products seems to have disappeared, probably because of a decline in demand and the volcanic crisis of the

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<sup>50</sup> C.D. Bell and T. Austin, *The Continued Assessment of the Reproductive Status of the Marine Turtle Rookery in the Cayman Islands*, Proc. Twenty-Second Annual Symposium on Sea Turtle Biology and Conservation [NOAA Technical Memorandum NMFS-SEFSC-503] (J.A. Seminoff compiler, 2003). In November 2005 the CIDoE submitted a proposal to completely ban the wild turtle fishery to the Cabinet of the Government of the Cayman Islands. The Cabinet had not made a decision on this matter at the time of writing, G. Ebanks-Petrie, pers. comm. 2005.

<sup>51</sup> It has been observed, however, that Marine Conservation Board will not issue new licenses once the current eligible licensees have expired. So, this is an interesting case where the fishery, even if subject to appropriately amended legislation regarding the closed season and size limits, may not be sustained because the fishermen could expire before the resource they target. Godley *et al.*, *supra* note 16.

<sup>52</sup> M. O'Garro, Montserrat Department of Fisheries, pers. comm. 2005.

mid-1990s.<sup>53</sup> Again, despite flaws in domestic legislation, international trade in turtles and their products appears to have declined due to factors other than the legislation itself.

The CMS extends to Montserrat, and the Turtles Ordinance fails to adequately meet most, if not all, of the legislative requirements for this treaty as well as SPAW and the IAC (Table 3, columns i and ii). For example, the Ordinance is the only turtle harvest legislation in the UK Overseas Territories that allows the take of nesting females and their eggs during an open season, although all turtle and egg harvest in Montserrat occurs at very low levels.<sup>54</sup> The size limits described in the Ordinance are inappropriate, and the current closed season does not adequately protect reproductively active adults in Montserrat's waters.<sup>55</sup>

Similarly, the Ordinance would not meet the necessary or desirable management and monitoring requirements of any of the treaties (Table 3, columns i, ii, and iii) because it does not provide for a management plan for the turtle fishery. The Department of Fisheries has made some effort to monitor the catch of turtles, but it has only four staff and no access to a marine vessel.<sup>56</sup> Under these conditions, the desirable MEA requirements for marine turtle fishery management and monitoring as listed in Table 3 would present significant logistical difficulties to the Department of Fisheries.

### 3.5 Turks and Caicos Islands

Turtle harvest in the Turks and Caicos Islands (TCI) is regulated under the Fisheries Protection Ordinance (1998) and may be one of the largest regulated turtle fisheries in the Caribbean. While most fishermen who catch turtles catch a small number of turtles per year on an opportunistic basis, total annual harvest is estimated at between 400 and 2000 turtles per year, mostly green and hawksbill turtles.<sup>57</sup> Meat is sold to private consumers and to a number of restaurants for resale.

CITES does not extend to the Turks and Caicos Islands and there is, therefore, no domestic legislation regulating the import or export of marine turtles. A new Wildlife and Endangered Species (Trade, Collection, Removal, and Transport) Bill has been drafted and will transpose CITES to domestic legislation in preparation for accession to this treaty.<sup>58</sup> In the absence of this domestic legislation, the Fisheries Protection Ordinance includes some provision for the export of marine products. It currently allows any person,

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<sup>53</sup> Godley *et al.*, *supra* note 16.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*; J. Jeffers, Department of Fisheries, Montserrat, pers. comm. 2005.

<sup>57</sup> Godley *et al.*, *supra* note 16.

<sup>58</sup> M. Fulford Gardiner, Department of Environment and Coastal Resources, Turks and Caicos Islands, pers. comm. 2005.

upon payment of an appropriate export duty, to export 10lbs (4.5 kgs) of “any species of marine product” each time they leave the Turks and Caicos Islands.

There appears to be limited export of turtle meat from the Turks and Caicos Islands,<sup>59</sup> and there have been reports that fishermen were exporting raw hawksbill turtle scutes to the Dominican Republic, which is a party to CITES and has a thriving illegal trade in tortoiseshell artefacts.<sup>60</sup> As in Anguilla and the BVI, trade in turtle shell products to the tourism-based market has declined in recent years in TCI, probably as a result of tourist awareness of CITES implementation.<sup>61</sup> Nevertheless, the new Wildlife and Endangered Species (Trade, Collection, Removal, and Transport) Bill is required to include provisions to prohibit unlicensed import and export of any specimens of marine turtles so long as they remain on CITES Appendix I. Similarly, the Fisheries Protection Ordinance (1998) will require amendment to fully comply with the treaty and IAC Article IV, clause 2b (Table 3, column i) if this treaty were to extend to TCI.

CMS extends to TCI. While the Ordinance does not prohibit the take of turtles as required under CMS Article III (Table 3, column i) or define “traditional subsistence users” (Table 3, column ii), it limits commercial fisheries to *Belongers* (native Turks and Caicos Islanders as defined by the TCI Immigration Ordinance), while non-licensed *Belongers* are allowed to catch “reasonable quantities” of turtles for personal consumption. It could be argued that, in practice, this provision limits the fishery to *traditional* fishermen. However, the TCI’s turtle fishery is the largest of the UK Overseas Territories, and the turtle meat is resold through restaurants and often purchased by visitors to the islands.<sup>62</sup> It is questionable whether or not the restaurants and their customers comfortably sit within the definition of “traditional subsistence users.” Similarly, it could be argued that the Ordinance presents an interpretation of Article 14 of SPAW (Table 3, column i) and Article IV of the IAC (Table 3, column ii), but with questionable efficacy.

As with the legislation in the other Territories, the Ordinance sets inappropriate size limits, but prohibits the take, possession, purchase, and sale of “laid” turtle eggs. So, by inference, there are no restrictions on eggs retrieved from the carcasses of captured breeding females, although the Ordinance also prohibits the take of nesting females (see Table 2). However, there is no closed season, and breeding adult turtles can be caught as soon as

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<sup>59</sup> Godley *et al.*, *supra* note 16. Since the publication of Godley *et al.* (2004), P. Richardson witnessed a live and bound adult female hawksbill turtle aboard a Haitian trade vessel moored at South Caicos and bound for Haiti in September 2005.

<sup>60</sup> Fleming, *supra* note 5; A.C. Marte *et al.*, *Preliminary Study of the Tortoiseshell Trade in the Dominican Republic*, Proc. Twenty-Second Annual Symposium on Sea Turtle Biology and Conservation [NOAA Technical Memorandum NMFS-SEFSC-503] (J.A. Seminoff compiler, 2003).

<sup>61</sup> Godley *et al.*, *supra* note 16.

<sup>62</sup> Godley *et al.*, *supra* note 16.

they enter the water below “the low water mark” at any time of year. While these provisions are unlikely to facilitate action that prevents turtles from “becoming endangered,” as required by CMS Article II (Table 3, column ii), the Ordinance does require that each fishery is identified and that the “present state of its exploitation” be assessed as part of a fishery plan, as required by SPAW Article 17 and IAC Article IV (Table 3, column i). Despite this provision in the legislation, monitoring of the turtle fishery in TCI is limited and has not been assessed as part of a government fishery plan, and it is therefore unclear whether or not the current fishery is sustainable. Given the absence of a fishery management plan, it is also questionable whether or not the current capacity of the Department of Environment and Coastal Resources (DECR), the agency responsible for enforcing the Ordinance, will allow effective management of the turtle fishery as required by SPAW and IAC (Table 3, columns i) and as is desirable under CMS (Table 3, column ii).

#### 4. DISCUSSION

The UK Overseas Territories have a rich history and culture of marine turtle utilisation, and the need for conservation of this resource was expressed, in some cases, in domestic legislation long before the formulation of the MEAs.<sup>63</sup> Early turtle harvest legislation was written without the benefit of contemporary biological knowledge, however, and in all the Territories the legacy of these inadequate measures can still be seen in contemporary legislation. Weaknesses in the legislation, as well as insufficient enforcement and implementation, have probably made a significant contribution to continued declines in the populations of turtles nesting in the UK Overseas Territories.<sup>64</sup>

Under these conditions, CITES has had a remarkable impact on use of turtles in the UK Overseas Territories. Although the treaty does not yet extend to Anguilla and the Turks and Caicos Islands, and the relevant legislation in BVI and Montserrat does not fully comply with CITES, international trade of turtle products within the tourism-based market has declined. This is probably due to the extensive international support for the Convention, especially in the countries from which tourists to the Caribbean originate, and the threat

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.* A review of the legal implications of SPAW implementation prior to the treaty coming into force concluded that much of the relevant legislation of the Caribbean states did not provide adequate institutional support for implementation. A. Vanzella-Khouri, *Implementation of the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) in the Wider Caribbean Region*, 30 U. MIAMI INTER-AM. L. REV. 53-83 (1998). Much of the legislation regulating the harvest and use of marine turtles in the UK Overseas Territories is similarly deficient, not only with respect to supporting the general conservation objectives and potential implementation of the SPAW Protocol, but also with respect to supporting other MEAs, such as CITES and CMS, that already extend to some of the Territories.

of enforcement measures clearly provided for in the CITES text. With the possible exception of the Turks and Caicos Islands, the consumption of turtles and their products in the Territories is now largely restricted to domestic use.

CMS, SPAW, and IAC have clear conservation objectives that could contribute to the recovery of the turtle nesting populations in the Territories. They allow exemptions for parties that want to allow turtle fisheries, and they impose criteria so that those fisheries do not undermine the conservation objectives. The Territories that commit to these MEAs are obliged, therefore, to incorporate provisions in their domestic legislation that interpret the requirements of the MEAs. How each country interprets and enforces these requirements, thus, determines whether or not the agreements can facilitate marine turtle harvests that support their conservation objectives.

In the UK Overseas Territories in the Caribbean, CMS appears to have been less effective than CITES in meeting its conservation objectives with respect to marine turtles. CMS extends to all of the territories except Anguilla, which ironically is the only Territory that has prohibited the take of marine turtles as required by CMS Article III. Indeed, Anguilla's moratorium on turtle harvest may present the least complicated approach to interpretation of this Article, although it is not without cost and there are calls from Anguilla's fishing community to resume the turtle fishery.<sup>65</sup> The governments of BVI and Montserrat continue to allow a turtle harvest, but their legislation completely fails to interpret CMS Article III, clause 5c. The legislation in TCI may provide an interpretation of this clause, by limiting the fishery to local fishermen, but this local fishery is the largest in the UK Overseas Territories. It is neither managed nor monitored sufficiently to determine sustainability, and probably does not support the conservation objectives of CMS. In contrast, the interpretation of CMS Article III in the Cayman Islands' legislation is strict, but the government's policy will not sustain the fishery in the long-term, since the pool of fishers will decline until the fishery ceases.

CMS has more limited international participation than CITES, particularly in the Caribbean region,<sup>66</sup> but this should not affect the domestic implications of the treaty in the UK Overseas Territories. The difficulty in facilitating sustainable turtle harvests is more accurately attributable to the interpretation of CMS requirements and their translation into domestic legislation. The same can be said of the requirements of SPAW and IAC. Taken together, these agreements require harvests of marine turtles to (i) "accommodate the needs of traditional subsistence users" (CMS), (ii) "meet traditional subsistence and cultural needs of its local populations" (SPAW Protocol), and (iii) "satisfy economic subsistence needs of traditional communities" (IAC). The texts incorporate common language, including the terms traditional, subsistence,

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<sup>65</sup> Godley *et al.*, *supra* note 16.

<sup>66</sup> Hykle, *supra* note 9.

and needs, and refer to people either as users, local populations, or traditional communities, while SPAW mentions cultural needs, but the definition of the terms used in these criteria is notoriously problematic.<sup>67</sup> Among wildlife experts, the professionals normally called upon to advise MEA secretariats and governments alike, interpretation of terms such as traditional, subsistence, and cultural needs are diverse and contentious.<sup>68</sup> Neither the text nor the secretariats of CMS, SPAW, or the IAC have defined the meanings of these terms, and Overseas Territory governments that allow harvest really have no option but to make their own interpretations of these problematic terms in their legislation and policy.

It could be argued that accession to MEAs with requirements open to wide interpretation may be more attractive to signatory states. If definitions within the CMS text, for example, required the Territories to limit fishery participants even further than the current legislation, governments would be required to introduce unpopular provisions that affect the livelihoods and lifestyle of a significant number of fishermen, vendors, and consumers. The narrow interpretation of CMS requirements in the Cayman Islands may have been made more palatable by the commercial production of turtle meat at the Cayman Turtle Farm, which largely meets public demand for turtle meat. But there is no turtle farm to supply demand in TCI, where a narrower interpretation of CMS Article III in domestic legislation could meet strong opposition from fishermen, vendors, and consumers whose demand for turtle meat is stimulating a legal harvest that may be undermining the conservation objectives of the treaty. In these circumstances, legislation that facilitates a more sustainable turtle harvest will not be adopted except through an extraordinary exertion of political will.

While CMS Article III allows exemptions for turtle fisheries, there is no guidance in the text about the nature of these fisheries. Thus legislation in all of the Territories features conservation measures that are inadequate, in terms of supporting a sustainable fishery and in avoiding endangerment of turtle populations as required by CMS Article II. Treaties such as CMS and SPAW, which list a diversity of mammal, birds, reptiles, fish, and insects in their Appendices, cannot reasonably be expected to also include text detailing specific conservation measures with respect to the harvest of a particular group of animals. Specific conservation management measures, such as closed seasons and size limits in turtle harvest legislation, will always be determined by national governments and should ideally be based on the nature of local resources. These local measures also have to respond, however, to the requirements of any MEAs governments have ratified.

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<sup>67</sup> Campbell, *supra* note 5.

<sup>68</sup> L.M. Campbell, *Human Need in Rural Developing Areas: Perceptions of Wildlife Conservation Experts*, 44 CANADIAN GEOGRAPHER 167-181 (2000).

This introduces additional complications and costs for decision makers. The introduction of a closed season in the Turks and Caicos Islands, for example, may prove unpopular with fishermen, vendors, and consumers, and it may prove difficult to enforce, given the current capacity of the DECR. Again, Territory governments are obligated nonetheless to take such bold and potentially unpopular decisions if they are going to live up to their agreements.

In the case of SPAW and the IAC, neither of which currently apply to the UK Overseas Territories, requirements for the management of turtle fisheries are more specific than those in CMS. If they are going to accede to these treaties, Overseas Territory governments will have to consider the costs of compliance, especially in those Territories that are under-resourced and find difficulty implementing the requirements of their current legislation. The turtle harvest in the Turks and Caicos Islands, for example, has not been assessed in the context of a fishery plan in the seven years since the Fisheries Protection Ordinance (1998) came into force. Likewise, the fishery management plan required by law in Anguilla has not been implemented. It seems unlikely, then, that the authorities in these Territories have the resources and capacity to implement the management measures required by SPAW and the IAC. In Montserrat, the establishment of management measures will also pose serious problems for the Department of Fisheries, unless extra resources are made available.

Most UK Overseas Territories in the Caribbean have already acceded to CMS and the government of Anguilla is preparing for accession. In addition, the UK government has signed SPAW with a view toward ratifying the Protocol when the Territories have appropriate legislation in place. Drafting and enacting domestic legislation involves considerable costs, as does eventual compliance with MEA requirements, especially where the Overseas Territory governments continue to allow turtle harvests, as described above. In this context, where there is considerable overlap between the requirements of CMS, SPAW, and IAC with respect to turtle harvest, Territory governments thinking about acceding to the IAC, which is specific to marine turtles, could see it as re-inventing the wheel.<sup>69</sup> Certainly, compliance with IAC requirements means additional burdens to governments allowing turtle harvest, not only in terms of monitoring and reporting, but also through the intrusion into domestic affairs of IAC bodies, such as the Consultative Committee, whose role has already been called into question.<sup>70</sup> The Territories may very well conclude that, in the context of facilitating sustainable turtle harvests, the IAC is unnecessary.

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<sup>69</sup> Hykle, *supra* note 9.

<sup>70</sup> Campbell *et al.*, *supra* note 10.

## 5. CONCLUSION

So, can MEAs facilitate sustainable marine turtle fisheries in the UK Overseas Territories in the Caribbean? The answer to this question depends largely on how Territory governments interpret the requirements of these agreements. CITES requires relatively simple interpretation in relation to marine turtle use and appears to have effectively restricted such utilisation in the Territories largely to domestic markets. But CITES cannot have any additional influence on domestic use, and current domestic legislation and policy regarding turtle use in the Territories is generally deficient in that it does not adequately reflect or incorporate contemporary conservation biology theory.

In principle CMS, SPAW, and IAC could facilitate sustainable turtle harvests, but as a practical matter this can only happen through appropriate and detailed interpretation of their often vague requirements in new domestic legislation and enhanced management practices. Facilitating sustainable harvest through these interpretations would not be without cost to Territory governments, and it is the capacity of relevant government agencies to meet these costs, as well as the political will of government decision-makers, that will eventually determine the sustainability of the fisheries. These factors may also determine whether or not the Territory governments choose to invest resources into species-specific MEAs such as the IAC when broader MEAs have the same conservation objectives.