

Domestic Trade in Whale Bone from Whales Stranded in NZ and a Framework for the role of Māori in the Management of Whale Strandings

Public Discussion Paper



Department of Conservation
Te Papa Atawhai

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FOREWORD



Minister of Conservation
Hon Chris Carter

Whales hold a special place in the hearts of New Zealanders. They are an important part of our natural and cultural heritage. Long before European colonisation Māori people had benign contact with whales during coastal and ocean-going travel. I understand that whales, especially sperm whales, were regarded as chiefly figures. As is told in the story of “Whale Rider”, some iwi acknowledge their descent from ancestor whales.

Although we have a whaling heritage, over forty years ago we realised the plight of these animals. We changed from hunters to protectors. New Zealand has since played an important leadership role in international conservation efforts, and I am committed to continuing this proud record.

So strandings of these magnificent animals on our beaches distresses us. Many members of the public have made extraordinary efforts to try to save stranded whales. Sadly not all these attempts are successful, and for the larger whales it is just not possible.

The legacy of whales lives not just in our memories, but also in the bone they leave. This bone is treasured, and may be crafted into taonga and works of art. Domestic trade of this whale bone is also a part of our heritage, heritage that should be preserved.

The Marine Mammals Protection Act contains cumbersome and unworkable provisions to manage this trade. I believe that we can protect both our cultural heritage and living whales by simplifying and improving the way we control domestic trade in whale bone. I am convinced that such trade in whale bone from whales that have stranded on our beaches has not, and will not, jeopardise our conservation efforts.

I also believe that there is a profound relationship between Māori and whales and that this deserves to be better recognised.

This discussion paper puts forward proposals to introduce an improved regulatory regime to manage domestic trade in whale bone, and to recognise the role that Māori play in managing whale strandings. I encourage you to consider these proposals and to give your comments.

A handwritten signature in black ink, which appears to read "Chris Carter". The signature is written in a cursive, flowing style. Below the signature, there is a vertical line that extends downwards, possibly indicating where the signature was placed on a document.

Chris Carter
29 OCTOBER 2007

EXECUTIVE SUMMARY

When whales die as a result of stranding, the bone is often collected. That bone is often traded, gifted or exchanged. The provisions of the Marine Mammals Protection Act that govern these activities are difficult to use and enforce and so are, by and large, not complied with. This means that most current domestic trade¹ in whale bone is illegal.

A well-designed and simple regulatory regime to control domestic trade in whale bone could be developed to allow appropriate changes in the ownership of whalebone, without reducing the protection for whales, and whilst maintaining New Zealand's international obligations and upholding our reputation as a country concerned about the protection of whales.

Tangata whenua are actively involved in whale strandings and the removal and preparation of bone. It has been suggested that a framework for the involvement of iwi/hapu in the management of whale stranding events be included in the Marine Mammals Protection Act, reflecting the best practice that has developed over recent years.

This paper seeks comment on two proposals:

- a. An improved regulatory regime that would enable the domestic trade in whale bone to be managed simply and efficiently, without compromising the protected status of whales.
- b. Statutory recognition in the Marine Mammals Protection Act of the role of tangata whenua in the management of whale stranding events.

The closing date for submissions is 1 March 2008.

Please **post** your submission to:

Whale Bone Review
Department of Conservation
PO Box 10420
The Terrace
WELLINGTON 6143

or **email** to: whalebone@doc.govt.nz

or make an **on-line** submission www.doc.govt.nz/whalebone

Any enquiries may be directed to the above email address, or to Christine Jacobson (telephone) 04-471 3118. This document is available in pdf format on the DOC web site: www.doc.govt.nz/whalebone

Submissions on this discussion paper may be posted on DOC's website and are subject to disclosure under the Official Information Act 1982. Persons making submissions that include commercially or otherwise sensitive material that they wish DOC to withhold under the Official Information Act should clearly identify the relevant information and the applicable grounds under which the Department could withhold the information.

The contact details of respondents will not be made public. They will, however, be recorded and may be used for clarification of comments if required.

¹ In this paper domestic trade includes commercial trade, gifting and exchange.

1. Domestic trade in whale bone from NZ strandings

1.1 WHAT IS THE PROBLEM?

The Marine Mammals Protection Act 1978 does not prohibit trade in whale bone, but usually requires that those who hold whale bone have a permit issued under the Act. With some limited exceptions, any person (carvers, retailers, purchasers and recipients) in possession of whale bone needs a permit (People who find naturally-separated whale bone on a beach do not need a permit but must notify the Department of Conservation.)

Each time a piece of whale bone changes hands a new permit is needed. This requires the person acquiring the whale bone to apply for a permit, and that application is subject to a statutory notification and submission processes.

In most cases the application for a permit needs to be publicly notified in the NZ Gazette for a period of 28 days. It is possible that by the time a carved whale bone taonga has gone from the beach to a person receiving it as a gift, up to four public notification and submission processes should have been completed.

Whale bone is also traded, gifted or exchanged² amongst iwi and hapu according to customary practice. This trade is also subject to this permitting process.

This framework is recognised to be unnecessarily cumbersome and costly, and not adequate for dealing with the complexities of trade. Because of the inherent problems with the regime, few holders of whalebone attempt to gain the necessary permits, and the Department has not been enforcing the legislative regime. In short, it is completely unworkable as a tool to regulate domestic trade.

1.2 BETTER MANAGING TRADE IN WHALE BONE

While the current regime is not being implemented, an effective regulatory regime is still necessary.

There is an established tradition of trade in whale bone, and the Marine Mammals Protection Act does not prohibit this. Whilst consideration might be given to banning all trade, this would make a long standing and existing activity illegal. This has the potential to create a black market with little, if any, ability for government to regulate, monitor and police trade. A ban would also make illegal the passage of bone and bone artefacts between iwi. Banning the trade in bone would not increase protection of living whales.

Removing all controls on the trade in whalebone would also be undesirable. It is important to ensure that inappropriate collection of whalebone does not occur. Removal of any controls would give the impression internationally that New Zealand is not dedicated to the protection of whales, and make it difficult for people moving bone artefacts out of the country (temporarily or permanently) to show that the bone was collected legally.

² In this document 'trade' means trade, gifting and exchange

It is therefore proposed that a new regime be established to provide more efficient regulation of trade within New Zealand so that sources of bone can be shown to be legitimate and there is no conservation risk to living whales. The new proposed regime will considerably simplify the requirements of everyone who participates in trading, exchanging or gifting whale bone within New Zealand. It will not affect anyone who is holding whalebone and does not intend to trade, gift or exchange it.

A new regime, such as that proposed here, will make it easier for people to obtain the export certificates that are required by the Convention on Trade in Endangered Species (CITES) before whale bone can be taken out of New Zealand as the origin of the bone will be more readily known³. People travelling with whale bone will still need to obtain import permits from the countries they are travelling to.

If a new regime is agreed to by the Government, after consideration of submissions on this proposal, it would ideally be implemented by regulation which will allow minor changes to the regime to be made as necessary in light of experience. Minor amendments to the Marine Mammals Protection Act will be required to enable those regulations to be made. The amendments would also need to remove the need for a person to obtain a permit to trade whalebone, if the trade is covered by the regulations. The amendments would not, in themselves, remove or change the current regime - no change would occur until regulations were promulgated. Given that, if an opportunity arises to make amendments to the legislation as part of a larger Bill, the changes will be made in advance of decisions on whether to implement any change in the regime.

DOC has facilitated, for many years, the recovery of whale bone for the iwi/hapu of the stranding site, either directly, or through training and agreements. The role of Māori in the management of whale strandings is discussed in Part 2 of this paper.

1.3 A POSSIBLE REGULATORY SYSTEM FOR MANAGING DOMESTIC TRADE IN WHALE BONE

The regulatory system proposed to manage trade in legitimate whale bone is based on the ability to link any piece of bone back to a particular stranding event. After the death of a whale, a unique identification number would be assigned to each whale. Any recording system that iwi or hapu wished to use, such as a name, can be cross-referenced to the identification number. DOC would retain a sample from each individual to be used to verify the legitimacy of the bone if necessary.

Thereafter, any bone⁴, or piece of bone, would be required to be accompanied by that unique identification number and the whale's name where appropriate. Carvers would be required to provide a certificate of authenticity that includes this identification number (and the name of the whale if appropriate). Retailers, purchasers and recipients would all be required to keep this certificate with the bone item.

³ International trade in whale bone is controlled by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). Imports and exports of whalebone into and from New Zealand are strictly controlled in accordance with CITES. Whale bone worn as personal adornment is generally exempt from permit requirements.

⁴ Bone includes teeth and baleen.

Stranding:

A whale dies or is euthanased.

1. DOC assigns each individual whale a unique two-part identification code that includes:
 - i. a number that relates to a particular stranding event;
 - ii. an individual ID number for each animal.
2. Iwi assign an identifier, such as a name, to each whale, should they wish. This identifier is recorded along with the number.
3. A sample from each individual is collected for lodging at an appropriate facility together with its ID number and name (if given). These samples will be used for compliance and law enforcement purposes if there is ever any question about the origin of bone - i.e., if items are being sold without the appropriate documentation.
4. Science information is collected as necessary, consistent with local arrangements or protocols.
5. Carcass is disposed of according to local arrangements, agreements or policies.

Iwi:

1. All bone recovered from each carcass must be labelled with its unique number, and name, if given, at the stranding incident site.
2. Iwi/hapu must keep a record of the bone that they recover from each carcass and the distribution details for each bone (the ID number, name and who is receiving the bone).
3. Iwi/hapu must provide DOC with the record of bone recovered from each carcass and distribution details.

Carvers:

1. Must ensure that each taonga they create is accompanied by the ID number.
2. Must keep a record of the pieces that they create for trade and the ID number.
3. Must provide a 'certificate of authenticity' that includes the ID number to recipients, retailers or purchasers. The nature of the 'certificate' would be left to the discretion of each carver.

Retailers:

1. Are required to keep the certificate of authenticity with each sale item.
2. Are prohibited from selling whale bone items without the certificate of authenticity.
3. Are required to transfer the certificate of authenticity to the purchaser.
4. Are obliged to inform the purchaser as to the CITES requirements for taking the item away from New Zealand.

Purchasers/Recipients:

1. Are required to keep the certificate of authenticity as proof of legitimate source of the whale bone.
2. Are required to transfer the certificate of authenticity if the item is gifted.
3. Are required to comply with any CITES requirements before taking whale bone away from New Zealand.

1.3.1 Proposed system for dealing with whale bone that predates this system

Retailers and carvers would be required to submit to DOC a schedule of articles they hold for the allocation of unique codes. Unfortunately, there is no way of verifying the legitimate source of this whale bone, but it is important to identify it as being on the market prior to the implementation of the new system. If whale bone is not declared, retailers will run the risk of legal action under the new system.

The department would also approach all iwi/hapu at this point and allocate unique codes to all whale bone that is already held. The public would also be invited to apply to DOC for authentication documentation for any whale bone items they hold.

This regime would not cover domestic trade or export of taonga tuturu - whalebone items more than 50 years old which were carved or used by Māori, or brought to New Zealand by Māori, and relate to Māori history or society. Trade in these items would instead be regulated by the provisions of the Protected Objects Act 1975.

1.3.2 Proposed system for dealing with found whale bone

This will apply to whale bone that has naturally separated from a carcass at sea and washes ashore or whale bone that is found at the site of old whaling stations.

There will be an obligation placed on the finder of the piece of whale bone to notify DOC, which will allocate a unique number. This unique number will need to accompany the whale bone and any items produced from it through the same trail as whale bone that is distributed to iwi from a stranding.

This could result in situations in which some people could be receiving whale bone illegally, yet notify the department that it is found bone thus receiving a number for it and allowing it to legitimately make it onto the commercial market. DOC is seeking suggestions as to how this possible problem could be addressed.

We would like your comments on this proposed regulatory system - could it be improved, or are there other ways we could manage trade, gifting and exchange of whale bone in New Zealand?

Do you have any suggestions about how to manage found bone to ensure that it is not entering the system illegally?

2. Role of Māori in Whale Stranding Management

Stranding events, sightings and other marine mammal incidents are reported regularly throughout New Zealand: during the past five years, there have been 446 stranding events involving 1,515 individual marine mammals (on average 89 strandings and 305 individuals each year). This includes 37 sperm whales, an average of seven sperm whales each year.

2.1 DOC'S ROLE

The Marine Mammals Protection Act 1978 makes DOC responsible for the protection, conservation and management of marine mammals within New Zealand fisheries waters. To carry out this function, DOC requires information on the biology of the marine mammals occurring in New Zealand. For the majority of whale species the only opportunity to collect this information is from dead or stranded animals. DOC is also responsible for ensuring dead marine mammals do not present a hazard to public health.

At a stranding, DOC's first priority is, and will remain, to attempt a rescue. If this is unsuccessful, or impossible, the focus of stranding management becomes (in order of priority) - animal welfare, species conservation, Māori culture, science and education.⁵

2.2 DOC AND TANGATA WHENUA

The Conservation General Policy and DOC's standard operating procedures guide how iwi and hapu can be involved in managing whale strandings. Conservation General Policy 4.4h requires tangata whenua to be immediately notified of strandings, and involved in the management of stranded marine mammals in accordance with agreed protocols. (Some of these arrangements are formally documented, others are more informal.)

When a whale strands, one of the first actions DOC takes is to notify tangata whenua of the event. From that point, tangata whenua, if they wish, are involved in many different aspects of managing a stranding.

For example, in the Bay of Plenty, DOC has developed informal protocols with coastal hapu and iwi covering key areas where strandings are common. Typically, kaumatua say karakia for dead whales before discussions are held between hapu or iwi and DOC to resolve issues such as bone extraction for cultural purposes and specimens for scientific research.

Ngati Wai and DOC have a formal agreement that sets out the procedures that should be followed at whale strandings. This includes specific guidelines for data collection and the provision of scientific samples by Ngati Wai, and a detailed health and safety plan for when Ngati Wai leads the recovery of cultural materials. In the last ten years, Ngati Wai has carried out resource recovery of more than one hundred and thirty whales.

For a number of years DOC has worked, either directly or through training and agreements, with other iwi or hapu of stranding sites to recover (flense and clean) whale bone.

⁵ Department of Conservation Marine Mammal Action Plan for 2005-2010.

2.3 TREATY SETTLEMENTS

Conservation Protocols that are issued by the Minister of Conservation in Treaty Settlements generally include a specific section on marine mammals, including whale strandings. The protocols are negotiated and agreed between the Crown and the claimant group. They provide for iwi interests and also facilitate the gathering of scientific information to assist with the conservation of marine mammals.

Protocols guide the management of strandings in the Protocol Area, and the recovery by tangata whenua of bone for cultural purposes from dead marine mammals. They generally include references to the management of the scientific research interests in marine mammal strandings.

2.4 SCIENCE AT STRANDINGS

DOC seeks a collaborative approach with iwi and scientists to determine access to dead marine mammals. When considering permit applications for scientific research, DOC gives a higher priority to research that will provide information that will help the protection and management of whales. DOC also requires the applications to be discussed with hapu or iwi.

Dead whales can provide useful scientific information, such as species identification, or to assist in gaining a better understanding of the life history of whales. Bones are sometimes kept for teaching purposes and the display of skeletons.

Some of the scientific study of strandings aims to identify obvious signs of injury (including marks and changes in bones) to determine cause of death. This is of interest in relation to strandings and the potential impacts of incidents such as seismic exploration and ship strike.

2.5 A STATUTORY FRAMEWORK

It has been suggested that the role of iwi/hapu in the management of whale strandings be acknowledged in the Marine Mammals Protection Act.

A statutory framework needs to preserve the flexibility of the current non-statutory framework by allowing for enabling processes that enable tangata whenua and DOC offices to work out the best arrangements for each rohe, and to readily adapt or modify these as circumstances change.

The Marine Mammals Protection Act could be amended so that:

- the Minister of Conservation or DOC would be required to consult with and have particular regard to views of iwi or hapu who are tangata whenua when preparing any local level statutory or non-statutory plans or documents in respect of whale strandings;

and

- the Minister of Conservation could issue agreements with iwi regarding the management of whale strandings. The Act would state that the Crown must comply with the agreement when exercising its functions and powers.

Do you have any comment on this proposal? Can you suggest any better ways to provide for the relationship between Māori and whales at strandings?

SUBMISSION

Please indicate if your submission is made <input type="checkbox"/> As an individual <input type="checkbox"/> On behalf of an organisation (please state)
Contact Details
Name
Postal address
E-mail address

Part 1 Domestic Trade

Which of the following best reflects your interest in domestic trade in whale bone? <input type="checkbox"/> Iwi authority <input type="checkbox"/> Other Māori organisation <input type="checkbox"/> Carver <input type="checkbox"/> Retailer <input type="checkbox"/> Conservation <input type="checkbox"/> Purchaser/recipient <input type="checkbox"/> Science <input type="checkbox"/> Other (please state)
Questions
1.1 Do you have any suggestions for how the proposed regime could be improved?
1.2 Are there better ways we could manage trade, gifting and exchange of whale bone in New Zealand?
1.3 Do you think that the proposed regime is robust enough to prevent illegally sourced bone entering NZ? If not, do you have any suggestions as to how it could be strengthened?

Attach additional pages as necessary.

Part 2 Management of Whale Strandings

Which of the following best reflects your interest in whale strandings?

- Iwi authority Other Māori organisation Science Conservation
 Other (please state)

Questions

1.1 Do you have any comment on the proposal to create a legislative framework for the role of Māori in managing whale strandings?

1.2 Can you suggest any better ways to provide for the relationship between Māori and whales at strandings?

