

SUBMISSION

To

***The Department of Conservation on:
Domestic Trade in Whale Bone from Whales Stranded in NZ
and
a Framework for the role of Maori in the Management of Whale
Strandings***

From



MĀORI FISHERIES TRUST

March 2008

Executive Summary

Statutory Acknowledgement for Iwi/hapu

Te Ohu Kaimoana agrees with the need to provide the option of statutory acknowledgement for iwi/hapu to recognise their special relationship with whales and the role of Maori in management of whale strandings. We consider there is a need to operate a more consistent and principled approach towards the Treaty Partnership roles and responsibilities, and the Principles of the Treaty of Waitangi. In particular we would like to see statutory acknowledgement available to those Iwi who would like to take up the opportunity and this acknowledgement would provide:

- Iwi (and their hapu) with greater certainty concerning access to resources from whales stranded in their rohe.
- Similar certainty concerning newly found bone (if found within their rohe either washed up or unearthed).
- Iwi (and their hapu) maintain control of resources in a manner consistent with tikanga - i.e. compliance associated with tracking and distribution of bone is optional not compulsory or regulated.
- Iwi have greater clarity and certainty concerning science and conservation requirements prior to stranding occurring so as to reduce conflict on the beach between DoC staff, the science community and Iwi/hapu.
- Whale specimens that are requested for public display purposes are returned to the Iwi when displays are finished (or arrangements based on the principle of repatriation are considered and discussed with Iwi).

Domestic Trade

Te Ohu Kaimoana agrees that there is a need to improve the regulatory system for domestic trade and related issues. Linked to the matter of statutory acknowledgement (above) we consider that the Treaty Partnership is integral to the development of a system to regulate trade and should be considered at every step along the way. Specifically we would like to see the paperwork kept to a minimum and in this regard we agree that:

- All dead stranded whales are DNA tested (as currently happens) to be used as the definitive compliance check where there are reasons to believe that:
 - bone has entered the country illegally, or
 - bone has been stolen from dead stranded whales prior to the Iwi securing resources (i.e. bone may be from NZ source but not legitimately obtained).
- Iwi are provided with options to implement compliance and distribution systems that are consistent with their own tikanga and not imposed upon by government regulation.
- All carvers who wish to carve whale bone for sale should be registered with an appropriate authority so that they can be clearly identified for compliance purposes and that any bone that is to be sold can only come from a carver who is on the register.
- Registered carvers will need to learn the protocols for gaining access to bone from Iwi as some effort is needed on their part.

Introduction

Te Ohu Kai Moana trust was established under s.31 of the Maori Fisheries Act 2004. The purpose of Te Ohu Kai Moana Trust is to advance the interests of Iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to-

- ultimately benefit the members of Iwi and Maori generally
- further the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
- contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement

Te Ohu Kaimoana has a long history in developing Whale/Marine Mammal policy in conjunction with Iwi. As a result Te Ohu was given a mandate on behalf of Iwi to maintain a watching brief on both national and international developments concerning whales and keep Iwi informed of options for development of indigenous interests (nationally and internationally).

This submission and an earlier draft submission that was sent to all 57 recognised or mandated Iwi forms part of our continued commitment to keeping Iwi informed of such developments.

In developing this submission we are aware that some Iwi have also made submissions directly to you on this consultation document. We wish to endorse their efforts noting the considerable effort that some of these Iwi have put into developing their submission in consultation with other Iwi and their hapu. Of special mention and in no particular order we support the submissions of:

- Ngatiwai (and others) through the submission prepared by the Ngatiwai Trust Board.
- Tainui (and others) through the submission prepared by the Waikato Raupatu Trustee Company Ltd.
- Ngati Ruanui through the submission prepared by Te Runanga o Ngati Ruanui.
- Te Atiawa through the submission prepared by Te Atiawa ki te Upoko o te Ika a Maui Potiki Trust.
- Ngai Tahu through the submission prepared by Te Runanga o Ngai Tahu.

In keeping with the principle of Kaitiakitanga (roughly translated as guardianship) we acknowledge these and other Iwi and hapu as the guardians of the relationship with taonga tuku iho (gifts handed down). Kaitiakitanga is a broad concept that encompasses a range of roles and responsibilities such as conservation and sustainable utilisation. It also involves the custodianship of artefacts such as whale bone and teeth. Hence the relationship that Iwi/hapu maintain with whales includes trade¹ and stranding management both of which are the topics of this discussion document.

In general we support the intent of the proposals to provide:

- Statutory acknowledgement of the role of Iwi/hapu in the management of whale stranding (should they wish to take up the opportunity), and

¹ Trade is defined as sales, gift and exchange.

- An improved regulatory system for domestic trade in whale bone².

This submission is presented in four parts including:

1. Our comments on the need to provide better recognition for the role of Maori in Whale Stranding Management.
2. Our comments on the need for an improved system for regulating domestic trade.
3. Our analysis of the benefits and constraints of system proposed by DoC for domestic traded improvements.
4. Our analysis of the benefits and constraints of our alternative proposed system for domestic trade improvements.

² Including teeth, baleen and other resources that have been traditionally used and managed by Iwi and hapu.

1. Role of Maori in Whale Stranding Management

Te Ohu supports the proposal to provide statutory recognition of Iwi/hapu that choose to take up this opportunity. It should allow Iwi/hapu to play a substantive role in whale stranding management where they so choose. We consider this would best achieve the Government's duty to actively protect the Treaty rights of Maori and meet the Government's responsibilities to give effect to the principles of the Treaty of Waitangi as is required by Section 4 of the Conservation Act.

We would oppose any formulation or system of administration that would diminish or detract from the Section 4 requirements when undertaking whale stranding or other associated tasks involving whales. The principles of the Treaty of Waitangi give acknowledgement of the special relationship between Iwi/Maori and their culture and traditions. This relationship must be recognised and provided for in a consistent and principled fashion. Of particular significance is the traditional or customary relationship that Iwi have with whales.

The role of Iwi/Maori in relation to whales is not for the government to define or constrain. The relationship that Iwi/Maori have with taonga tuku iho (gifts handed down) is based in tikanga and in particular on kaitiakitanga.

Kaitiakitanga is a broad concept that includes Iwi/Maori having an active role in the management of stranded whales and in the custodianship of whale bone artefacts after these resources have been extracted from the carcass and fashioned into taonga.

Decisions concerning access to whale resources (including bone, teeth, baleen etc) have traditionally been the domain of the Iwi/hapu in whose rohe the whale strands. Similarly decisions concerning the distribution of these resources (including trade, gifting and exchange) are also the sole domain of the Iwi/hapu in whose rohe the stranding occurs. It is in this light that found bone should be treated on the same principled basis as whales "found" stranded within the Iwi rohe.

We are concerned that there is a lack of clarity concerning the DoC stranding focus priorities (after attempts to rescue) outlined in the document on page 9 are as follows:

1. Animal welfare
2. species conservation
3. Maori culture
4. Science and education

While we accept that animal welfare might receive the highest priority it is not clear what "species conservation" entails should the whale die as a result of a stranding event. Section 2.4 of the document entitled Science at strandings states:

"...When considering permit application for scientific research, DoC gives 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 the 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. Bone is sometimes kept for teaching purposes and 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.”

While we accept that information important to the conservation of whales can be determined from whole or parts of dead stranded whales there is a lack of clarity concerning the consequences of the priorities outlined in the consultation document. Indeed experience had shown that this has been a major point of contention concerning the relationship between DoC, Iwi/hapu and the scientific community on the beach. We recommend that there is a need to more clearly identify and agree on what criteria will be used to determine species conservation scientific research so as to remove any doubt when a whale strands and dies on the beach. This work needs to take place in advance of whales stranding so that all parties are clear about what is needed for which species so that uncertainty is removed as much as possible.

An issue that has been raised with us of particular concern is the use of Whale specimens for public display purposes. Iwi are bewildered as to the whereabouts and states of these taonga and anticipate some discussion regarding the eventual returned of the whale bone to the Iwi when displays are finished. Te Ohu Kaimoana considers it appropriate that institutions such as Te Papa or other public display facilities treat the bones of whales the same as that of koiwi (or human remains). Repatriation protocols based on similar principles to that developed for the repatriation of such human bones need to be considered and discussed with the Iwi in whose rohe the whales were stranded.

Once again the relationship between the Crown and its Treaty partner is at issue in relation to these repatriation matters. Therefore, we consider that the statutory acknowledgement proposal would address this and other Treaty related matters on a more consistent and principled basis.

2. A possible regulatory system for managing domestic trade in whale bone from NZ Strandings

Te Ohu Kaimoana is aware that the current system for managing the domestic trade of whalebone is unworkable. Te Ohu Kaimoana supports the development of a more workable and simplified regulatory system. The system advanced should be robust and administratively simple for Iwi as well as other participants.

We have considered where further refinements can be made to the system that is proposed by DOC to reduce costs to Iwi without affecting its effectiveness. As a result of that we have provided an alternative proposal together with an analysis of the benefits and constraints associated with the DoC proposal and our alternative (see below). In developing our alternative proposal we also consider it more appropriate for Iwi to have the options to supplement the compliance regime with processes that are consistent with tikanga including for distribution and compliance. Should Iwi not take up the opportunity then the existing DNA sampling system can act as a default.

We agree that the system need not include domestic trade or export of taonga tuturu as described in section 1.3.1 of the discussion document. And that it need not involve the regulation on the gifting of whale bone and other resources. Only bone that is to be used for sale and the carvers who wish to sell bone need be regulated.

In the case of “found bone/teeth” we propose that such bone should be provided to the Iwi in whose rohe it was found for keeping and or distribution. This will reduce the compliance risk as outlined in the discussion document and it is more consistent with the Principles of the Treaty of Waitangi and the active partnership between the Crown and its Iwi partner.

3. Department of Conservation Proposal

Strandings:

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 name and 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:

6. All bone recovered from each carcass must be labelled with its unique number, and name, if given, at the stranding incident site.
7. 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).
8. Iwi/hapu must provide DOC with the record of bone recovered from each carcass and distribution details.

Carvers:

9. Must ensure that each taonga they create is accompanied by the ID number.
10. Must keep a record of the pieces that they create for trade and the ID number.
11. 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:

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

Purchasers/Recipients:

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

Benefits

1. Removes the red tap around the current gazetting requirements
2. Good compliance system providing for quick checks of documentation associated with each piece of bone and for DNA compliance checks as a back up if needed to prove the legitimacy of the bone.
3. Provides for some integration with local Iwi arrangements and agreements or policies

Constraints

1. Provides another layer of red tape that may be just as cumbersome as the one it is trying to replace.
2. Provides Iwi limited opportunity to use their own compliance systems consistent with tikanga for keeping track of whale bone.
3. Iwi offended by having to number bone and the compulsory requirements to keep track of bone in a manner not consistent with tikanga.
4. Carvers, retailers and purchasers are unlikely to keep documentation with items in the long term reducing the viability of the compliance regime.
5. The cost of implementing the system is unknown.
6. Found bone is not considered in the proposed system creating inconsistent standards and expectations.
7. Possibility of forging certificates of authenticity.

4. Te Ohu Kaimoana's alternative proposal

Strandings:

DoC in partnership with Iwi:

1. A whale dies - or is euthanased according to local arrangements or protocols.
2. DoC is responsible for ensuring a DNA sample is taken from each individual whale and the results are lodged at an appropriate facility. Samples may be taken by the Iwi in accordance with local arrangements or protocols. Subsequently 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 there is suspicion concerning the legitimacy of the bone (either from a NZ stranding source or from a stranded whale prior to the Iwi/hapu taking possession of the whale).
3. Science information is collected as necessary, consistent with local arrangements or protocols.
4. Carcass is disposed of according to local arrangements, agreements or policies.
5. DoC treat found bone in the same manner as stranded whales:
 - i. taking a DNA sample and lodging it with an appropriate facility
 - ii. provide access and distribution rights to the Iwi in whose rohe it was found.
6. Similarly DoC should ensure that carvers holding on to existing stocks of bone and Iwi with bone in their pataka check that this bone has already been DNA tested with the results lodged at the appropriate facility. Some lead in time will be needed for this to happen as people with bone learn of the new system.

Iwi optional additions:

7. Iwi/hapu **may** keep a record of the bone that they recover from each carcass and the distribution details for this bone.
8. Iwi/hapu **may** make their protocols for access to bone available to carvers to learn.
9. Iwi/hapu **may** provide the recipients of bone with the whakapapa of the whale including the events surrounding the stranding event and any further details that are consistent with tikanga. This whakapapa may then be used as additional proof of legitimate source of the bone from a *bona-fide* Iwi authority.
10. Iwi/hapu **may** provide DOC with the record of bone recovered from each carcass and distribution details if there is any doubt concerning the origin of particular pieces of bone.
11. Iwi/hapu **may** decide to put found bone into their pataka (along with other whale resources that have been sources from within their rohe) or re-gift it back to the person who found it (after taking note of its state and the site at which it was found).

Carvers:

12. Anyone who wishes to sell bone (carved or not) must register with an appropriate authority and be approved to sell bone. Electronic evidence of this approval will need to be made available to anyone who wants to purchase bone and needs to verify that the person or carver is approved. This will ensure that all sale items can be tracked to the carver who sold them.
13. Carvers will be required to supply proof of registration to the purchaser at the time of initial sale.
14. Carvers **may** request bone from Iwi/hapu in accordance with Iwi protocols.
15. Carves **may** transfer the whakapapa of the bone provided by the Iwi to the recipient as an additional sources of legitimacy.

Retailers:

16. Retailers are required to ensure that the carver is registered with the appropriate authority prior to purchasing any items from them and are prohibited from selling whale bone items that are not sourced from a registered carver.
17. Are obliged to inform the purchaser as to the CITES requirements for taking the item away from New Zealand.

Purchasers/Recipients:

18. Retailers are required to comply with any CITES requirements before taking whale bone away from New Zealand.

Benefits

1. Iwi secure certainty over access to whale resources at strandings and control distribution of bone.
2. Provides Iwi improved opportunity to use their own compliance systems consistent with tikanga for keeping track of whale bone.
3. Provides for better integration with local Iwi arrangements and agreements or policies
4. Robust tracking system in place for compliance purposes.
5. Reduced compulsory red tape with enhanced opportunity for Iwi to proactively participate in compliance associated with distribution and compliance
6. International obligations are met and public awareness of CITES obligations improved.
7. Compliance checks are limited to genuinely suspect bone and Iwi participation provides an additional checking mechanism.
8. Controls are focused on the sale of bone not on gifting of bone items.
9. Carvers including those with existing stocks are identifiable making policing easier.
10. Carver access to bone via Iwi/hapu protocols is provided for via appropriate protocols consistent with tikanga.
11. Found bone is provided for within the same compliance and distribution regimes giving greater consistency and is based on a more principled approach.

Constraints

1. Assumption is that there will be sufficient bone available for carvers to deter illegal bone entering New Zealand.
2. Cost and politics of DoC administering the registration system.
3. Possibility of forging registration documents.