

In Confidence

Office of the Minister of Conservation

Chair, Cabinet Environment, Energy and Climate Committee

## **DISCUSSION DOCUMENT: PROPOSED REGULATIONS TO CONTROL TRADE IN EXTINCT SPECIES**

### **Proposal**

1. This paper seeks agreement to release the attached public discussion document on proposed regulations to control trade in extinct species.

### **Executive summary**

2. A problem has been identified that some people are taking bones and other remains of moa and other recently extinct wildlife from protected sites throughout the country in order to sell them for commercial gain. Such activities harm Māori cultural values and destroy potential scientific information as archaeological and other sites are damaged to gain access to the material. However, once removed from their original site, it is seldom possible to prove that bones and other remains were obtained unlawfully.
3. I propose that existing provisions in the Wildlife Act be used to regulate the commercial sale of the bones, eggs and feathers of moa and other extinct wildlife species. I believe removal of the commercial incentive for gathering moa bone and other remains – by prohibiting their purchase and sale, with some exemptions – will reduce and possibly eliminate the harmful impacts that are being observed.
4. I therefore propose consultation with Māori with the release of the attached discussion document to inform and help facilitate that consultation, together with targeted public consultation. Comments and information gathered through feedback and submissions will help inform the development of potential new regulations.
5. If appropriate, I will then provide Cabinet with a proposal for the making of new regulations to govern the sale of the remains of moa and other extinct wildlife.
6. I seek Cabinet's agreement to the release of the attached discussion document for public comment.

### **Background**

#### **Value of moa and other extinct species**

7. Bones and other remains of moa and other New Zealand native species that have become extinct in the last 1000 years can be found in caves, swamps, sand dunes, and archaeological sites. These remains are a valuable part of our historic and natural heritage.

8. Māori have longstanding historical, whakapapa, and traditional customary associations with recently extinct species. For example, encounters with moa are embedded within the waiata, proverbs and sayings, and whakapapa of many Māori.
9. Careful scientific examination of natural and archaeological sites adds to knowledge about early Māori life and culture, and indigenous plants and animals of Aotearoa. Study of the causes and consequences of extinctions can also help inform current and future conservation and Treaty partnership efforts to preserve our remaining flora and fauna.
10. When bones are removed from this context, with their provenance (origin) falsified or stated as unknown, then all this information, knowledge of early Māori history, and links to ongoing whakapapa, waiata, and other cultural and customary traditions is lost.

### **Problems arising from commercial sale**

11. Since the emergence of online trading websites approximately 20 years ago there has been a proliferation in the trade of moa bone (in particular) and other remains of extinct species. This trade has been of increasing concern to researchers nationwide. To date, museum experts have documented more than 350 occasions when moa bones and eggshells have been offered for sale since 2010.
12. The key problems are that many sellers are obtaining this material freshly from the ground or from caves, and this material is often obtained unlawfully from places where they are legally protected. Sellers frequently post images that show damp bones with fresh mud adhering to them, and yet claim that the items have been in their or their family's possession for decades.
13. Bones and eggshell located on public conservation land cannot be lawfully removed without special authorisation from the Department of Conservation (DOC) under conservation legislation. Bones and other remains in archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014 and cannot be disturbed in any way without specific authorisation from Heritage New Zealand Pouhere Taonga. This protection applies to all pre-1900 archaeological sites, whether recorded or not.
14. However, once bones and other remains have been removed from their original site there is seldom any way of proving where they have come from. So, even though experts may be confident that illegal activity has occurred, there is seldom enough evidence to enable a prosecution.
15. The lawful removal of bones and other material from natural sites on private land by unskilled people, and unlawful removal of material from protected sites on public and private land, both result in the loss of scientific information and harm to cultural values.

### **A proposed solution**

#### **Prohibition on sale**

16. Section 72(2)(1) of the Wildlife Act provides for the making of regulations to prohibit or regulate the purchase and sale of moa bones and eggshells, and the remains of other extinct species.
17. I consider the easiest way to control trade would be to make regulations under the Wildlife Act 1953 that prohibited the sale or purchase of moa bone, and the remains of other extinct species, with certain exemptions. This would mean that if people have moa bone or eggshell in their possession – or the remains of other extinct species – then the item(s) could be given away to other people (or to a museum) but could not be sold.

18. I believe that removing the financial incentive to disturb natural and archaeological sites to obtain bones and other remains of extinct species would lead to an immediate and substantial decrease in the level of removal from these sites. This would help protect archaeological and Māori cultural values, and conservation and scientific values, on all types of land.

#### **Situations where sale would be allowed**

19. In the case of species which became extinct in the last hundred and thirty or so years, there are many taxidermied specimens (whole mounts and study skins), in existence. Mounts and study skins comprise the preserved skin and feathers or fur of a bird or mammal, plus some of the bones (the skull and outer limb bones).
20. The buying and selling of study skins and mounts of extinct species does not create any current problems, as the specimens have been in private ownership for more than a century, and their trade does not impact natural or archaeological bone deposition sites. For this reason, it is proposed that trade in such study skins and mounts continue to be permitted and not subject to control.
21. The sale of ancient Māori artefacts (ngā taonga tūturu) covered by the Protected Objects Act 1975 would remain covered by that Act rather than by these proposals under the Wildlife Act. (Amendment of the Wildlife Act or Protected Objects Act is outside the scope of these proposals and is not being considered.)
22. Trade in modern jewellery items made from extinct species would be prohibited to avoid a risk of people turning moa bone or other remains into jewellery or other craftwork in the future in order to get around the prohibition on sale. The use of moa bone and other remains for carving or other purposes would continue to be allowed, but the resulting items could not be sold or purchased.
23. I am interested in receiving submissions on whether there should be an exemption to allow the sale of antique jewellery containing extinct species (such as huia beak ear pendants) made before 1920.

#### **Situations where sale might be authorised**

24. Experience in other areas of government has shown that situations sometimes arise where a complete prohibition on doing something prevents a highly desirable action from being carried out. To avoid being unable to do something that would benefit Māori cultural heritage or scientific research, I propose that the Director-General of Conservation be able to authorise the sale of moa bone in specified situations and subject to specified criteria.
25. To recognise the importance of moa and other extinct species for Māori, before consenting to any sale, the Director-General would be required to consult with – and have regard to the views of – those Māori that exercise manawhenua over the ground from which the remains were obtained.<sup>1</sup> This Māori consultation requirement would apply whenever the original location of the bone, eggshell, or other remains was known. It would not apply where the original location was not known.

#### **Risks**

26. There are some significant collections of moa bone and other recently extinct species specimens held by private collectors, and many individual items are held in private ownership.

<sup>1</sup> This proposed level of consultation is similar to that set out in section 47(1) of the Marine and Coastal Area (Takutai Moana) Act 2011, noting that the consultation in that Act is for purposes unrelated to extinct species.

27. To minimise impacts on people who already hold extinct species, the proposal seeks to exclude from the proposed prohibition on sale, trade in items that do not create impacts on archaeological and natural sites caused by people seeking items to sell (for example, taxidermied specimens of huia). Ancient Māori artefacts (ngā taonga tūturu) already managed under the Protected Objects Act 1975 are also excluded from coverage under the proposals.
28. The proposals can nonetheless be expected to result in a small number of objections from members of the public who have invested in moa bone (or other extinct species remains) and would be unable to sell their items if the proposals are implemented. However, I consider that this will be offset by the numbers of people and interests (including Māori) concerned about the impacts of people disturbing archaeological and natural sites in order to gain items for commercial sale.
29. To remove any ambiguity on which species are included in the prohibition, it is proposed that the regulations would list the extinct species covered by the regulations.

### Consultation

30. The problems described in the discussion document were first identified by staff from museums around the country, who have subsequently assisted DOC in preparing the document. Further input was provided by Heritage New Zealand Pouhere Taonga, the Ministry of Culture and Heritage, and people with knowledge of the interests of collectors and recreational cavers.
31. Consultation with Māori, and targeted public consultation, for a minimum of 6 weeks, is now proposed to help develop recommendations for the making of new regulations, if appropriate, to govern the sale of the remains of moa and other extinct wildlife.
32. DOC is not aware of this issue being raised with the Crown by Māori, and those Māori with whom it has been discussed so far have been unaware of the issue until they hear of the concerns reported by museum staff – and then share those concerns. While the proposed fix involves minor changes in legal rules and our assessment is that the solution will have only minor impacts on Māori, consultation will determine whether this preliminary assessment of effects on Māori is correct.
33. DOC considered a range of possible approaches to consult with Māori, and noted that hosting hui in an engagement saturated environment may potentially not be effective or efficient given the minor nature of the changes. Since DOC is in active relationship with over 400 whānau, hapū, iwi, PSGEs, rūnanga and other Māori organisations, DOC concluded that the most effective way to seek feedback is to engage with all of these entities in accordance with the specific relationship arrangements and protocols in place with each iwi or other group. This will include writing to relevant bodies and raising the matter in regular relationship meetings. In each case, Māori will be invited to have input to the proposals to address extinct species trade, and to meet with officials if they wish, including through hui if there is sufficient demand.
34. The Ministry for Culture and Heritage (MCH), Te Puni Kōkiri, Te Arawhiti, and the Treasury have been consulted on this Cabinet paper. DPMC has been informed. MCH supports this proposal to regulate the trade in the remains of extinct species.

### **Financial implications**

35. There are no immediate financial implications as a result of this paper. There may be financial implications in the future for some community sectors if new regulations prohibiting trade in extinct species are made.

### **Human rights**

36. The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Gender Implications and Disability Perspective**

37. There are no gender or disability implications arising from this paper.

### **Legislative implications**

38. There are no legislative implications as a result of this paper. I will report back to Cabinet in regard to any proposed new regulations under the Wildlife Act following public consultation.

### **Regulatory impact analysis**

39. The discussion document substitutes for a Regulatory Impact Assessment. The Department of Conservation has reviewed the discussion document and has confirmed that it is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to support subsequent decisions. After consultation, the RIA will need to provide more detail on the proposed monitoring and evaluation for the preferred option.
40. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### **Publicity**

41. I propose to have the discussion document published on the Department of Conservation's website, make a media announcement, and provide copies to targeted interest groups seeking their feedback. Officials will write to and contact Māori groups and organisations directly, in accordance with existing relationship arrangements with them, inviting them to present their views and to meet if requested.

### **Proactive release**

42. I intend to proactively release this paper within 30 days of Cabinet making a final decision.

## Recommendations

43. The Minister of Conservation recommends that the Committee:

1. **note** that people are taking remains of moa and other extinct wildlife from protected and other sites in order to sell them for commercial gain, thereby harming Māori cultural values and destroying potential scientific information;
2. **note** that the Minister of Conservation intends to release the attached draft discussion document to facilitate consultation with Māori, plus targeted public consultation, on proposed regulations to control the trade of extinct New Zealand species;
3. **agree** to the release of the attached discussion document;
4. **agree** that minor edits and design changes can be made to the draft document prior to publication;
5. **note** that the Minister of Conservation will report back to Cabinet in regard to any proposed new regulations following Māori and public consultation.

Authorised for lodgement

Hon Eugenie Sage  
**Minister of Conservation**

Released by the Minister of Conservation