

Discussion Document

Proposed Extinct Species Trade Regulations

Department of Conservation

July 2020



Department of
Conservation
Te Papa Atawhai

Cover photo: *Moa skull and bones, Euryapteryx curtus, LB725.* © *Auckland War Memorial Museum Tāmaki Paenga Hira CC BY.*

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1. Foreword

We have lost too many of our indigenous birds and animals. More than 38% of the bird species unique to New Zealand (57 of 148 species) have become extinct since the first humans arrived in this country, along with at least six species of lizards, frogs and bats.

These lost species, particularly moa, are nonetheless an integral part of New Zealand culture, especially for Māori whose traditions and whakapapa include moa and other extinct birds.

Places with remains of extinct species record an important part of our early Māori history, and offer irreplaceable information for scientists studying our past ecology and environment and the birds and animals no longer with us.

Sadly, the high value New Zealanders place on moa and other extinct species has led to some people seeking to obtain bones by digging into archaeological sites or removing remains from conservation land in order to sell them for personal profit. These actions are destroying the record of our early history, are very distressing for Māori, and prevent scientists from learning about our ancient past and now extinct species.

New Zealand currently has no restrictions against selling moa bone and other extinct species remains. This review is an opportunity to explore implementing some possible controls on trading in extinct species, both domestically and at New Zealand's border.

Whānau, hapū, iwi, conservation groups, and the wider public all have a strong interest in the protection of taonga in archaeological sites and conservation areas. I am interested in understanding all points of view on these proposals for regulating the trade of moa and other extinct species remains. I encourage New Zealanders to read the discussion document and make a submission on the proposed changes.

Hon. Eugenie Sage
Minister of Conservation

2. Overview

A problem has been identified that some people are taking bones and other remains of moa and other extinct wildlife from 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.

The Department of Conservation (DOC) proposes that existing provisions in the Wildlife Act be utilised to regulate the commercial sale of the bones, eggs and feathers of moa and other species of wildlife that have become extinct in the last 1000 years. We 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.

Engagement with whānau, hapū, and iwi, and targeted public consultation, is being undertaken to help develop recommendations for the making of new regulations to govern the sale of the remains of moa and other extinct wildlife.

You can make a submission up until Monday 28 September 2020. Comments and information gathered through submissions will inform advice to DOC on potential new regulations.



Moa bones. Euryapteryx curtus, LB725.

Photo: © Auckland War Memorial Museum Tāmaki Paenga Hira CC BY.

3. The value of extinct species

Māori have longstanding historical, whakapapa, and traditional customary associations with recently extinct species. For example, encounters with moa are embedded within the waiata, proverbs, colloquial sayings, and whakapapa of many iwi.

Bones and other remains of moa and other extinct New Zealand native species can be found in caves, swamps, sand dunes, and archaeological sites. These remains are a valuable part of our natural heritage.

The largest and most well-known objects are bones of the nine species of moa. However, moa eggshell, tracheal rings, and feathers, plus remains of at least 45 other extinct bird species, and bones of an extinct bat, three extinct frogs, and at least one extinct lizard can also be found.

When found exposed in caves, dunes, and other depositional sites, the bones of extinct species provide important tangible, visual evidence of birds and animals that are no longer with us, and inspire wonder and enjoyment to successive generations of visitors to such places.

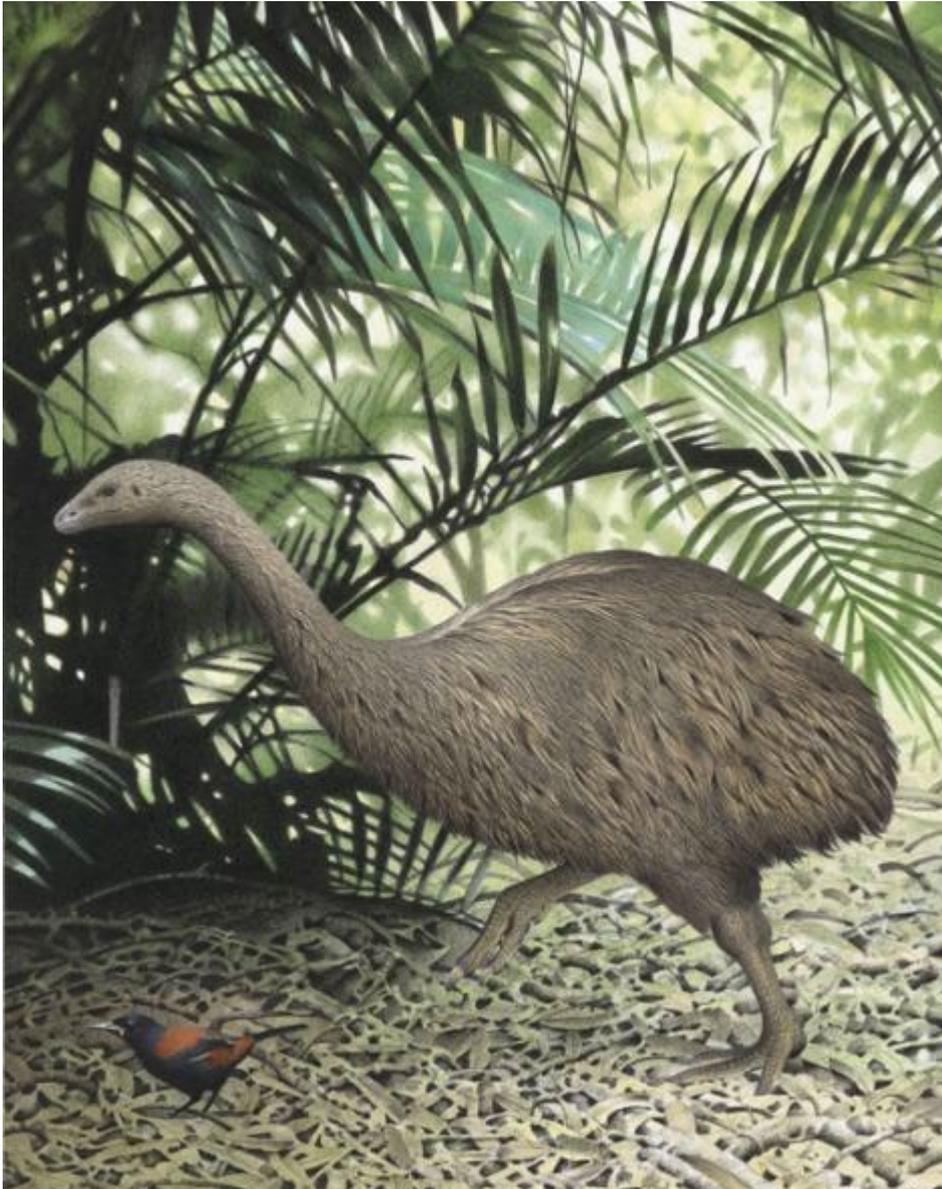
Archaeological sites can also contain the remains of extinct species. When such places are carefully excavated by scientists, in accordance with scientific and Māori protocols¹, important information can be gained about past animals and plants, and early Māori interactions with them.

Undisturbed bone deposits, whether natural or archaeological, can provide a great deal of information to scientists. This can include determining the date the material was deposited, other species present at the site at the time, how the bones accumulated at the site, and whether the bones are part of a partial or complete skeleton. Information can also be gathered from the surrounding soil, sand, peat, or other material, including identifiable plant remains and microscopic pollen, to help explain the environment that extinct birds and other animals lived in, and causes of their decline and extinction.

Careful scientific examination of 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 New Zealand's remaining flora and fauna.

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.

¹ Including mātauranga, kawa, and tikanga Māori.



Little bush moa. Painting by Paul Martinson. ©Te Papa.

3.1. Existing protection of sites

The remains of recently extinct species are often located in places where they are legally protected.

Bones and eggshell located on public conservation land cannot be lawfully removed without special authorisation from the Department of Conservation under conservation legislation. (In critical areas, locked gates are used to secure caves on public conservation land known to containing moa bones.)

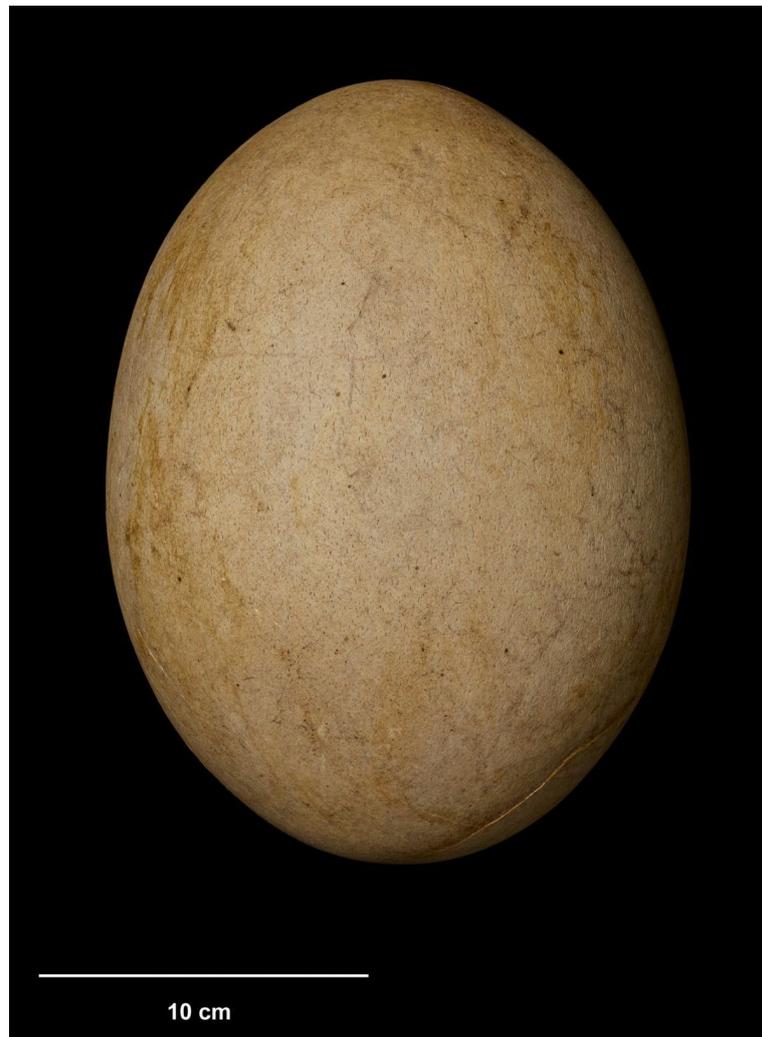
Bones and other remains in archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014 and cannot be disturbed in any way

without specific authorisation from Heritage New Zealand Pouhere Taonga. This protection applies to all pre-1900 archaeological sites, whether recorded or not.

These legal protections are aimed at preserving our cultural, scientific, and historic heritage.

Where bones and other remains are not associated with an archaeological site and not on public conservation land, there is no legal protection.

Question 1: What are your views on the importance of extinct species? Are there other values not mentioned here?



South Island giant moa egg. Photo: Te Papa.

4. Extinct species held by collectors

There are some significant collections of specimens of wildlife that have become extinct in the last 1000 years held by private collectors, and many individual items are held in private ownership.

Privately owned items include taxidermied mounts and study skins of recently-extinct species such as huia, laughing owl (whēkau or hakoke), South Island piopio, and New Zealand quail (koreke). Mounted specimens and study skins of South Island kokako (which are probably but not definitely extinct) are also held in private collections.

The feathers of huia, and ornamental broaches and ear pendants made from the beaks of huia, were highly desirable early last century and many are still held and occasionally traded. Huia feathers are found in Māori cloaks.

Complete and partial skeletons of moa, and skulls, feet, and other parts of moa and other species (for example, claws of Haast's eagle (pouakai or hokioi)) are also privately owned.

Moa eggshells were used as water containers by Māori, and eggshells and eggshell fragments (from large pieces to small shards) are held by collectors.

Besides these, there are many thousands of large individual moa bones, and even greater numbers of smaller bones, held by many people. In all there are perhaps tens of thousands of moa bones privately owned by several thousand people.

Māori artefacts made from moa bone or bone of other extinct species, including needles, awls, fishhooks, cloak pins, decorative pendants, and necklaces are held in private collections. There are also examples of worked bone (items made of bone that were never completed), and bones with butchery marks on them.

The more common items often appear at public auctions and on internet trading sites but rarer items (for example, a female huia skull with beak) might only appear for sale only once every couple of years.

Some modern bone carvers work with moa bone and sell their carvings commercially.

Many collectors derive significant pleasure from their collections.

Question 2: Is this a complete summary of extinct New Zealand wildlife species held by collectors? Are there other species (excluding marine mammals) that should be mentioned here?

5. The problem

The advent of online trading websites approximately 20 years ago has supported a proliferation in the trade of moa bone (in particular) and other remains of recently extinct species. This trade has been of increasing concern to researchers nationwide, and experts from museums, universities and crown research institutes have been working together to record trading activity. To date they have documented more than 350 occasions when moa bones and eggshells have been offered for sale since 2010.

The key problem is that many sellers are obtaining this material freshly from the ground or from caves, and are often taking the material illegally from protected sites. There are numerous examples of moa bones being stolen from natural and archaeological sites in Northland, King Country, Taranaki, Golden Bay, and the West Coast, and it is likely that most of those bones have subsequently been sold.

Sellers frequently post images that show damp bones with fresh mud adhering to them, despite the seller claiming that the items have been in their or their family's possession for decades. 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 are confident that illegal activity has occurred, there is seldom enough evidence to enable a prosecution.

Unskilled excavation and removal of material impacts on the scientific and cultural values of the sites, greatly reducing their value for *bona fide* scientific researchers, and the flow-on benefits that this research can provide to New Zealand society. In most cases, people excavating or gathering bones for sale collect less than half of the parts of a moa skeleton.

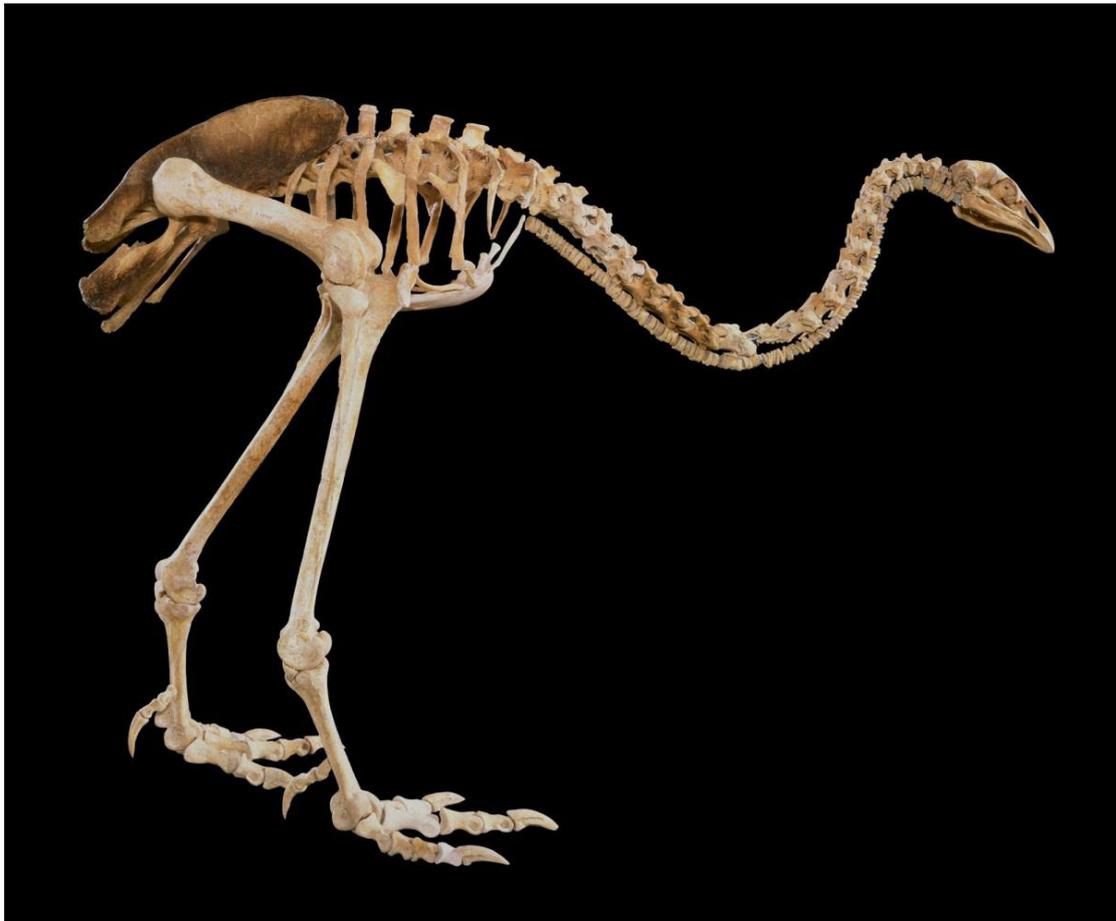
Moa bones and other remains of extinct species can be found naturally deposited in swamps and other situations on private land. Such remains are not protected and gathering them is lawful, with landowner consent. Nevertheless, the unskilled extraction of material in such circumstances – perhaps with the intention of sale – will result in the loss of valuable scientific information.

Auction houses are known to sell boxes of moa bones (which may be of any age and provenance) as single lots, and individual bones are sometimes then on-sold by purchasers via the internet. When skeletons are offered for sale, they are often broken up into multiple lots to maximise profit. Individual bones and eggshell fragments offered for sale with no information about where they have come from retain little scientific value.

In contrast, properly undertaken excavation and collection of bones and other remains ensure the gathering of all parts of the extinct bird or other animal, allowing the morphology (shape and size) of the individual and species to be



Haast's eagle skull. Photo: Te Papa.



Upland moa mounted skeleton. Photo: Te Papa.

better understood. It also allows the gathering of information about the setting in which the species lived, what other animals and plants lived in the same area at the same time, and the date that the bird or other animal lived.



Moa bone excavation as part of scientific research. Photo: DOC.

Carefully collected and catalogued specimens held in public research institutions have provided source material for hundreds of scientific research papers. In recent years, major scientific advances have been made through the application of new techniques on museum specimens, such as radiocarbon dating, DNA analysis, and CT scanning, which were not foreseen when much of the material in museums was collected. In the future, techniques not yet invented are expected to provide even more information on extinct species from remains yet to be gathered from their original sites.

Sites where moa bone and other remains of extinct species are preserved include ancient archaeological sites that contain a wide range of taonga. Proper examination by archaeologists can reveal important information on early Māori life, technology, and culture. Disturbance of such sites by people seeking moa bone destroys the archaeological record of Māori history and their association with moa and other species. Theft from these sites also impacts on the cultural significance that whānau, hapū and iwi have at these sites, their whakapapa connections to the places and species, and their responsibilities as kaitiaki.

Research on the biology and the demise of moa and other extinct New Zealand birds, and the early Māori cultural and customary association around moa, has and will continue to aid conservation efforts for our remaining unique fauna and flora. These opportunities are lost if scavenging – motivated by on-selling – of extinct bird and animal remains from protected and unprotected sites continues.



*Dug-over Māori midden – key scientific information lost.
Photo: Heritage New Zealand Pouhere Taonga.*

5.1. Consultation to date

The problems described in this document were first identified by staff from museums around the country, who have subsequently assisted the Department of Conservation in preparing this discussion document. Further input was provided by Heritage New Zealand Pouhere Taonga and the Ministry of Culture and Heritage. Officials have also obtained advice from people with knowledge of Māori values and concerns, and the interests of collectors and recreational cavers, and incorporated that information in this document. However, no detailed consultation has yet been undertaken with the Treaty partner, or with stakeholders other than museum researchers.

Question 3: Do you think the problem has been fully described?

You may also like to consider:

- Are there other problems you know of that are not included?
- Are the problems serious enough to make action necessary?

6. Objective, criteria, and options considered

6.1. Objective

DOC's objective is to protect Māori cultural values and scientific values by reducing the taking of bones and other extinct species remains from archaeological and natural sites on public and private land, except for cultural or scientific reasons.

6.2. Criteria for solutions

Any solution intended to meet the Objective needs to meet all the following criteria:

1. reduce the incentive for removing the remains of extinct species from all types of land, except for cultural reasons or scientific research;
2. be workable for Māori, scientists, and other people adversely affected by the removal of remains;
3. have minimal impact on people undertaking lawful activities that do not harm cultural, historic, or scientific values;
4. be enforceable; and
5. be affordable.

6.3. Options considered

Four options aimed at meeting the Objective have been considered and evaluated against the above criteria.

6.3.1. Status quo.

The status quo option (continuing with the current situation) would meet criteria 3 and 5, but not criteria 1, 2, and 4, and would therefore fail to meet the Objective.

6.3.2. Increased security of protected natural and archaeological sites.

The option of providing greater physical security to all places potentially containing extinct species would be able to meet criteria 2 and 3, but would not fully meet criterion 1 (not all natural sites on private land would be covered), and would fail to meet criterion 5. This option would be unaffordable and impractical given the hundreds of sites on public conservation land involved, and many thousands of archaeological sites spread throughout the country, together with the remoteness of most of these places. This option is therefore considered not viable.

6.3.3. Voluntary moratorium on sale of extinct species

Another option would be a voluntary moratorium on the sale of moa bone (and other remains of extinct species) by holders of bone and by auction houses and operators of internet and trading platforms. This option was investigated in the

past, but operators of trading platforms were unwilling to cease providing a service for a completely lawful activity. This option therefore meets criteria 3 and 5, but fails to meet criteria 1, 2, and 4, and therefore does not meet the Objective.

6.3.4. *Regulatory control of trade.*

The option of controlling trade in extinct species by making regulations, as proposed in this discussion document, is considered to meet all of criteria 1-5, and the Objective. This option is therefore the one presented in this discussion document. (Change to primary legislation, such as amending the Wildlife Act, is outside the scope of this review and is not being considered.)

What should I do if I find moa bone?

People who find moa bone or other extinct species remains on their land are encouraged to avoid further disturbance of the site and notify their regional museum or Heritage New Zealand Pouhere Taonga.

Scientists would value the opportunity of examining the undisturbed ground the remains are embedded in as the scientists extract the bones. This would enable them to gain valuable rare insights into the past wildlife and environment of Aotearoa and the relationship of early Māori populations to their environment.

Exposed undisturbed bones that are discovered are also best left as and where they are until examined by a scientist, if the scientist is to obtain maximum information from them.



Moa bones in situ. Photo: Alan Tennyson.

7. Proposed solution – control of sale and purchase

DOC is proposing to prohibit – with some exceptions – the sale and purchase of the bones, eggshells, feathers, and other parts of moa and other recently extinct wildlife species. This prohibition would apply regardless of whether the bones or other remains were originally found on public conservation land, private land, or Māori land.

We 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.

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.

Furthermore, the extinct species remains could not be swapped for something else or exchanged in return for some favour – such as in payment for work someone had done for you. Such a swap or exchange would be considered to be selling.

In the absence of any way to make money from gathering moa bone to sell, there would no longer be an incentive for people to try to obtain material. This should eliminate much of the harmful removal of material and damage to natural and archaeological sites.

7.1. *Exemption for study skins, whole mounts, and huia feathers*

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). In the case of whole mounts, these are placed over an internal manikin to create a body form or lifelike pose.



Study skin of huia. Photo: Te Papa.



Study mount of huia pair. Photo: Te Papa.

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.

This exemption would include specimens of extinct birds or animals that were collected live and that include chemically-preserved skin prepared by a taxidermist.

Trade in naturally mummified specimens that include skin, and trade in the bones and eggshell of mummified remains, would be prohibited.

The huia has been extinct for more than 100 years. Huia tail feathers were a symbol of Māori leadership and mana and are still a desirable collectible item.



Upland moa naturally mummified head. Photo: Te Papa.

Many huia tail feathers remain in private ownership, and their trade is not considered to cause any problems. An additional exemption allowing the continued sale of huia feathers is therefore also proposed.

7.2. Exemption for ancient Māori artefacts

The sale and purchase of Māori artefacts – ngā taonga tūturu – is administered under the Protected Objects Act 1975. These include² any object that—

- (a) relates to Māori culture, history, or society; and
- (b) was or appears to have been—
 - (i) manufactured or modified in New Zealand by Māori; or
 - (ii) brought into New Zealand by Māori; or
 - (iii) used by Māori; and
- (c) is more than 50 years old.

Such Māori artefacts can be bought and sold only by registered collectors, and licensed auctioneers and secondhand dealers, authorised under the Protected Objects Act. Individuals who already own taonga tūturu can also sell them, provided the purchaser is a registered collector or licensed secondhand dealer.

DOC proposes that ngā taonga tūturu containing the remains of extinct species be exempt from the proposed prohibition on trade in extinct species. This would mean they could continue to be bought and sold subject to the requirements and restrictions of the Protected Objects Act.

The Protected Objects Act requires that anyone making a replica of any taonga tūturu for the purposes of sale must clearly and permanently mark it as such. Failing to meet this requirement is an offence under that Act.

The sale of replicas of ancient Māori artefacts (ngā taonga tūturu) made using moa bone or other remains of extinct species would be prohibited under the controls on trade in extinct species proposed in this document.

7.3. No exemption for modern jewellery

DOC considers that jewellery items made from extinct species should be covered by the prohibition on trade in extinct species. This is 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. This would create a demand for more bones of moa or other extinct species and could lead to people seeking such material from natural and archaeological sites to supply that demand.

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.

² See definition of taonga tūturu in section 2(1) of the Protected Objects Act 1975.

A possible exemption for antique jewellery (such as huia beak ear pendants) could be that an item might be authorised for sale if the intending seller could prove to the Director-General's satisfaction that the item was made prior to 1920 – a date a few years after the huia became extinct. Dating the time of manufacture of items made from bone can be difficult, hence the proposal for 1920 as the cut-off date. The onus of proof would be on the seller.



Huia beak brooch. Photo: Te Papa.

Submissions are invited on the merits of this exemption for antique jewellery.

7.4. *No exemption for worked bone*

DOC considers that bone from extinct species that has been worked by ancient Māori (but not made into a recognisable item), needs to be covered by the prohibition on trade in extinct species.

Worked bone is often found in archaeological sites but is not covered by the taonga tūturu provisions of the Protected Objects Act. Hence, to avoid providing an incentive for the illegal disturbance of archaeological sites to obtain worked bone to sell, the sale of worked bone would be prohibited.

Moa bone is sometimes used by carvers today, and the work offered for sale. Such sales would be prohibited to avoid providing a way to sell moa bone and provide an ongoing incentive to illegally obtain new bone to sell.

7.5. *Situations where sale might be authorised*

Experience in other areas of government demonstrates that, on rare occasions, situations 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 practices or heritage or scientific research, DOC proposes that the Director-General of Conservation be able to authorise the sale of moa bone in exceptional circumstances.

This power to authorise the sale of extinct species would only be used where gifting and other non-trade methods of transferring ownership could not be used. In the absence of such provisions in the proposed regulations, it might not always be possible to enable the transfer of ownership of extinct species remains in the

few situations where it is desirable or necessary to preserve scientific values or Māori cultural values or practices.

It is proposed that, in such situations, a sale could not be approved if the sale could create an incentive for the removal of extinct species remains from natural depositional sites, or from archaeological sites, for the purpose of sale.

7.5.1. *Treaty partner input to authorisation decisions*

Moa and other extinct species are culturally significant for all whānau, hapū, and iwi. To recognise this importance for Māori, and ensure that traditional rights over their taonga are not compromised, it is further proposed that, before consenting to any exception (sale), the Director-General would be required to consult with the iwi, hapū, or whānau that exercise manawhenua over that ground from which the remains were obtained. This 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.

The Director-General would then be required to have regard to the views of those who exercise manawhenua when deciding on the proposed sale.

This proposed level of consultation required 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.

These provisions would be part of giving effect to the principles of the Treaty of Waitangi in the management of extinct species.

Question 4: Do you agree that the sale and purchase of extinct species should normally be prohibited? Give reasons for your view.

You may also like to consider:

- Do you see any difficulties with any of the proposed exemptions?
- Are there any other situations where an exemption allowing unrestricted sale and purchase would be appropriate?
- Are there other situations where the Director-General might need to authorise a sale, bearing in mind the need to avoid incentives for illegal activity? If so, what needs changing, and why?
- Is the proposed level of input from iwi where an item's origin is known appropriate? If not, what would be better, and why?

8. Controlling trade through new regulations

We think 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.

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.)

To provide for rare exceptions, the Director-General of Conservation would be able to authorise a sale in specified situations and subject to specified criteria. The Director-General would not be able to approve a sale if that might create an incentive for people to seek out more moa bone to sell.

Section 72(2)(l) of the Wildlife Act specifically 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. Section 72(2)(x) of the Act provides for penalties of up to \$5000 for a breach of any such regulation.

Recent changes to the Wildlife Act through the Conservation (Infringement System) Act 2018 would allow infringement offences for the sale of moa bone or other extinct species to be prescribed under the new section 72(2)(y) if required. Our current view is that prosecution would normally be appropriate for unlawful sale or offering for sale of extinct species, but there would be merit in having a parallel infringement offence to give enforcement officials a wider range of enforcement options.

The Wildlife Act has to be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi (a requirement that arises from section 4 of the Conservation Act). The proposed consultation with the Treaty partner (whānau, hapū and iwi holding manawhenua) by the Director-General when making decisions on any proposed sales (if the origin of material intended for sale is known) would help meet these requirements.

No change to primary legislation would be required to implement the proposed regulations; only a Cabinet decision and an Order in Council would be needed.

8.1. *Export controls already in place*

The export of moa bone, eggshells, and the remains of other recently extinct species already requires written authorisation from the Director-General under section 56(1)(b) of the Wildlife Act. The penalty for breaching this requirement is a fine of up to \$5000 (sections 56(5)(c) and 67F(3) of the Wildlife Act refer). Alternatively, an infringement notice may be issued in regard to unauthorised export of extinct species such as moa (section 70J(1)(c) of Wildlife Act refers), with an infringement fee of \$800 or a fine of up to \$1,600 (regulation 47 of Wildlife

Regulations 1955 refers). However, if a court was satisfied beyond reasonable doubt that unauthorised export of extinct species was undertaken for the purpose of commercial gain or reward, a person convicted may instead be liable to a penalty of up to 5 years imprisonment or a fine of up to \$300,000 or both (section 67I of Wildlife Act refers).

The Protected Objects Act 1975 also regulates the export of extant or extinct native species, both in the case of specimens considered to be scientifically important (under the Act's Natural Science Objects category) and ngā taonga tūturu containing the remains of extinct species.

8.2. *Could other legislation be used to control trade?*

There is legislation that helps manage risks to living species but cannot assist in regard to extinct species.

The Convention on International Trade in Endangered Species (CITES) is implemented in New Zealand through the Trade in Endangered Species Act 1987 (TIES Act). The CITES convention and TIES Act cannot assist in resolving the moa bone issue as they relate only to living species, not extinct ones.

The possession, domestic trade, and international trade of whalebone and whale teeth is regulated under the Marine Mammal Protection Act 1978 (MMPA) and the TIES Act. The MMPA cannot assist in regard to terrestrial extinct species because it relates to marine mammals, but not to birds, amphibians, reptiles, and bats. The problems relating to trade in ivory and whalebone therefore need to be considered separately to trade in extinct species such as moa.

Question 5: Do you agree that trade should be managed through new regulations?

You may also like to consider:

- Can you think of a better way to control trade? If so, what?

Note that amendments to primary legislation (Acts of Parliament) to manage extinct species are not being considered at this time.

9. Indicative content of Extinct Species Trade Regulations

The indicative content of new regulations – aimed at implementing the proposed controls on trade in the remains of recently extinct species described in this document – is set out below. Note that final wording will depend both on the outcome of the public consultation, and on the decisions of Parliamentary Counsel Office (which is responsible for drafting regulations).

9.1. *Application and basis*

The regulations would apply throughout New Zealand and would be made under section 72(2)(1) of the Wildlife Act 1953.

9.2. *Definitions of buy and sell*

The regulations would need to define what is meant by buying and selling.

It is proposed that, in the regulations, buy, sale, and sell would have the following meanings (which are the same as in the Wildlife Act):

- **buy** “includes barter, exchange for consideration, offer to buy, or attempt to buy”
- **sale** “includes barter and exchange for consideration; and also includes offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale; and sell has a corresponding meaning.”

9.3. *Prohibition on sale of extinct species*

The regulations would prohibit trade in moa bone and other remains of extinct species, except in a few rare situations. It is proposed that the regulations would state that:

- A person must not buy or sell the bones, feathers, skin, or any other parts, or the eggs or parts of eggs, of species listed in the Schedule (see below), unless an exemption applies.

This would be the key clause in the regulations.

9.4. *Trade in study skins, whole mounts, and huia feathers allowed*

The regulations would allow continued trade in taxidermied specimens (study skins and whole mounts) of extinct species, and trade in huia feathers. It is proposed that the regulations would state that:

- These regulations do not apply to any study skin or mount made of the skin and feathers or fur of an extinct species, and any bones of that species

that are contained within and are integral to that study skin or mount, provided that—

- the specimen was originally collected live or obtained freshly dead; and
 - the skin has been chemically preserved to prevent decay and has not been naturally mummified.
- These regulations do not apply to any feathers of huia.

9.5. *Trade in Māori artefacts and antique jewellery allowed*

The regulations would allow continued trade in ancient Māori artefacts and antique jewellery that contain moa bone and other remains of extinct species.

It is proposed that the regulations would state that:

- These regulations do not apply to ngā taonga tūturu administered under the Protected Objects Act 1975.
- A person may buy or sell jewellery made prior to 1920 from the remains of extinct species. However, if requested, a seller or purchaser must prove to the satisfaction of the Director-General that the item in question was crafted before 1920.

This would allow collectors, auctioneers and secondhand dealers that are registered or licensed under the Protected Objects Act to buy and sell ngā taonga tūturu as they do now (ngā taonga tūturu, collector, auctioneer, and secondhand dealer having the same meanings as they have in the Protected Objects Act).

Antique jewellery items could be bought or sold, but the Director-General would be able to request evidence that the item being offered for sale, or that had just been sold, had been crafted prior to 1920.

9.6. *Authorisations for cultural or scientific purposes*

To ensure that Māori cultural values are not compromised, or scientific values lost, the regulations would allow the Director-General to authorise a sale of extinct species remains in exceptional circumstances to preserve such values.

It is proposed the regulations would provide that:

- The Director-General may authorise the sale of the remains of extinct species if it is necessary or desirable to preserve scientific values or Māori cultural values or practices, and this cannot be achieved by non-trade means.
- The Director-General would not be allowed to approve such a sale unless satisfied that the sale would not create a commercial incentive for the

removal of extinct species remains from natural depositional sites, or from archaeological sites.

- Where the ground (including any midden, cave, dune, swamp, lake, or other site) on or in which the remains were originally found is known, the Director-General must, before granting an authorisation to sell, have regard to the views of the iwi, hapū, or whānau that exercise manawhenua over that ground.

Since the bones of extinct species and the sites they come from are taonga for Māori, a clause like the third bullet point above would help meet the requirements of the Treaty of Waitangi and section 4 of Conservation Act.

9.7. *Describing the species to be covered*

The extinct species to be covered by the regulations need to include all species of native bird, reptile, amphibian, and land mammal that have become extinct over the last 1000 years. It might therefore seem logical simply to describe the species to be covered as “all native New Zealand species of bird, reptile, amphibian, and land mammal that have become extinct since 1000 AD.”

The problem with such an approach would be that each time an attempt was made to prosecute someone for an offence under such regulations, it would be necessary to prove beyond reasonable doubt that the species the bone came from was native to New Zealand. It would also be necessary to prove that the species was living in the wild here in 1000 AD, and that it is now extinct. If any point could not be proved in court, then the prosecution would be unsuccessful.

To avoid these problems, we propose to include in the regulations a list of all the extinct species that the regulations applied to. The list would include all New Zealand native species of bird, reptile, amphibian, and land mammal that have become extinct since humans first arrived in this country about 1000 years ago.

This list will need to be updated from time to time (by amending the regulations) as additional extinct species are identified by scientists, but there is no apparent way to avoid this.

The proposed list is as follows:

Birds—

Chatham Island kaka (*Nestor chathamensis*)

Ducks—

Chatham Island duck (*Anas chathamica*)

Chatham Island merganser (*Mergus millineri*)

Finsch’s duck (*Chenonetta finschi*)

New Zealand blue-billed duck (*Oxyura vantetsi*)

New Zealand merganser (*Mergus australis*)

- New Zealand musk duck (*Biziura delautouri*)
 Scarlett's duck (*Malacorhynchus scarletti*)
 Eyles's harrier (*Circus teauteensis* and *Circus eylesi*)
 Haast's eagle (*Aquila moorei*)
 Imber's petrel (*Pterodroma imberi*)
 Kohatu shag (*Leucocarbo septentrionalis*)
 Laughing owl (*Sceloglaux albifacies*)
 Moa (all species in the Order Dinornithiformes)
 New Zealand geese (all species in the genus *Cnemiornis*)
 New Zealand little bittern (*Ixobrychus novaezealandiae*)
 New Zealand owlet-nightjar (*Aegotheles novaezealandiae*)
 New Zealand quail (*Coturnix novaezealandiae*)
 Penguins—
 Chatham Island crested penguin (*Eudyptes warhami*)
 Waitaha penguin (*Megadyptes waitaha*)
 Richdale's penguin (*Megadyptes antipodes richdalei*)
 Rails—
 Adzebills (all species in the genus *Aptornis*)
 Chatham Island coot (*Fulica chathamensis*)
 Chatham Island rail (*Cabalus modestus*)
 Dieffenbach's rail (*Gallirallus dieffenbachii*)
 Hawkins' rail (*Diaphorapteryx hawkinsi*)
 Hodgens' waterhen (*Gallinula hodgenorum*)
 New Zealand coot (*Fulica prisca*)
 North Island takahe (*Porphyrio mantelli*)
 Snipe-rail (*Capellirallus karamu*)
 Scarlett's shearwater (*Puffinus spelaeus*)
 Snipe—
 North Island snipe (*Coenocorypha barrierensis*)
 South Island snipe (*Coenocorypha iredalei*)
 Forbes' snipe (*Coenocorypha chathamica*)
 Songbirds—
 Bush wren (*Xenicus longipes*)
 Chatham Island bellbird (*Anthornis melanocephala*)
 Chatham Island fernbird (*Bowdleria rufescens*)
 Chatham Island raven (*Corvus moriorum*)
 Huia (*Heteralocha acutirostris*)
 Long-billed wren (*Dendroscansor decurvirostris*)
 Lyll's wren (*Traversia lyalli*)
 New Zealand raven (*Corvus antipodum*)
 Piopio (New Zealand thrush) (all species in the genus
 Turnagra)
 South Island kokako (*Callaeas cinerea*)
 Stout-legged wrens (all species in the genus *Pachyptichas*)

Reptiles—

Kawekaweau (Delcourt's giant gecko) (*Hoplodactylus delcourti*)
Northland skink (*Oligosoma northlandi*)

Amphibians—

Aurora frog (*Leiopelma auroraensis*)
Markham's frog (*Leiopelma markhami*)
Waitomo frog (*Leiopelma waitomoensis*)

Mammals—

Greater short-tailed bat (*Mystacina robusta*)

9.8. Offences

Any person who committed an offence against the regulations would be liable on conviction to a fine of up to \$5,000. This is the maximum fine that can be imposed under regulations made under the Wildlife Act. Amending the Act is outside the scope of this proposal.



Haast's eagle claw. Photo: Te Papa.

Question 6: Do you think the proposed regulations would cover everything they need to and in the right way?

You may also like to consider:

- Do you think the general prohibition on sale is focused correctly? If not, what needs changing and why?
- Do you think the criteria for exemptions are focused correctly? If not, what needs changing and why?
- Noting the reason described above for listing all the species to be covered by the regulations, is there a better way to describe them?
- Do you think the right species have been covered?
- Do you have any other feedback on the proposals in this document?

10. Implementation, monitoring, and review

The Department of Conservation currently enforces a prohibition on the sale and purchase of absolutely protected wildlife. Any future prohibition on trade in extinct species would simply involve a slight widening of the scope of this existing work. The Department also currently receives and considers applications for a variety of activities under the Wildlife Act. Consideration and processing of occasional applications to sell or purchase moa bone (or other recently extinct species remains) to ensure the preservation of Māori cultural values or scientific values would be a minor addition to this work.

If implemented, the success of the new regulations in achieving their objectives would be indicated by a reduction in the frequency of moa bones (in particular) being taken from natural and archaeological sites around the country.

DOC can identify no major risks to effective implementation and enforcement of the proposed Extinct Species Trade Regulations.

11. Consultation process

DOC welcomes your feedback on this discussion document. The questions asked within this document are a guide only, and all comments are welcome. You do not have to cover all the topics or questions included in this document.

To ensure others clearly understand your point of view, you should explain the reasons for your views and provide supporting evidence where appropriate.

You can make a submission in two ways:

- Download a copy of the submission form to complete and return to us. This is available at www.doc.govt.nz/extinct-species-trade-regulations-consultation, under the heading **How to make a submission**. If you do not have Internet access, we can post a copy of the submission form to you.
- Write your own submission.

Include in your submission:

- title of the consultation (Extinct Species Trade Regulations Consultation)
- your name or the name of your organisation
- your postal address
- your telephone number
- your email address.

Send your submission to:

Email: estrc@doc.govt.nz
as a PDF or Microsoft Word document (2003 or later version).

Post: Extinct Species Trade Regulations Consultation
Department of Conservation
PO Box 10420
Wellington 6143

The last day for receiving submissions is Monday 28 September 2020.

11.1. Questions?

Please direct any questions to:

Email: estrc@doc.govt.nz with the word **Question** in the subject heading.

Telephone: 04 471 0726 during office hours, asking about the **Extinct Species Trade Regulations Consultation**.

Post: Extinct Species Trade Regulations Consultation
Department of Conservation
PO Box 10420
Wellington 6143

11.2. *Publication of submissions, Official Information Act, and Privacy Act*

The Department of Conservation is required to carry out its functions with transparency. Part of DOC's purpose in collecting submissions is so that we can share the points of view that we receive. DOC may publish some of the submissions and information that you provide to DOC, or we may provide that information to other parties.

11.3. *Confidentiality*

If you are providing us with information which you wish to remain confidential please notify us of this. In particular, identify which part(s) of your submission you consider should remain confidential, and explain the reasons) for that.

Please note that DOC is bound by the Official Information Act 1982. That Act will apply to any information that you provide to DOC and we may be required to release the information that you provide notwithstanding your notification and identification of confidentiality.

11.4. *Personal information*

DOC is bound by the Privacy Act 1993. Any personal information, including your name and address(es), which you supply to us in the course of making a submission or providing a point of view, will be used by DOC only in conjunction with the purpose of collecting and publishing the submissions.

When you make your submission, you consent to your personal information being published, **unless you tell us otherwise**. If you do not want your personal information published, please tell us when you make your submission.

11.5. *Disclaimer*

The opinions and proposals contained in this document are currently under consideration; no final decision has been made in relation to the opinions and proposals and they do not reflect any decided or approved government policy.

DOC does not accept any responsibility or liability whatsoever whether in contract, tort (including negligence), equity or otherwise for any action taken as a result of reading, or reliance placed on DOC because of having read any part, or all, of the information in this discussion document, or for any error, inadequacy, deficiency, flaw in, or omission from, this discussion document.

12. Future steps

Once received, all comments will be analysed, and recommendations prepared for the Minister of Conservation on the best way to address the problems arising from trade in extinct species. The recommendations might include changes to the current proposals, or even suggest a completely different approach for responding to this issue.

If the Minister decides to proceed with the proposal set out in this document (including any changes or refinements), Cabinet approval will be required before new regulations can be drafted. Cabinet will then need to consider and agree to the final regulations before they take effect.

The timing of when any new regulations might take effect cannot be known at present. The details of any new regime will be publicised through relationship meetings with iwi, media releases and the Department of Conservation's website. Known stakeholders will be advised directly.



North Island adzebill. Painting by Paul Martinson. ©Te Papa.