



**National Marine Fisheries Service (NMFS)
Alaska Region and
NOAA Office of Law Enforcement**



**Joint Guidance Regarding the Collection of
Humpback Whale, Gray Whale, Steller Sea
Lion, Bearded Seal, and Ringed Seal Parts
(Bones, Teeth, or Ivory) in Alaska**

October 20, 2020

Background

Under the Marine Mammal Protection Act (MMPA) and its implementing regulations at 50 CFR 216.26, any bones, teeth, or ivory of any dead marine mammal may be collected from a beach or from land within $\frac{1}{4}$ of a mile of the ocean, including bays and estuaries. This is known as the MMPA "beach-comber exception." Such bones, teeth, or ivory must be registered and identified by the NOAA Office of Law Enforcement (OLE), and may then be transferred or otherwise possessed, but may not be purchased, sold, or traded for a commercial purpose, except as otherwise allowed (e.g., under the native handicraft exemption at 16 USC 1371(b)).

Any bones, teeth, or ivory from marine mammals that are listed as endangered under the Endangered Species Act (ESA) may not be collected, with certain exceptions (such as collection by Alaska Natives for the production of authentic native articles of handicrafts). These protections may also apply to some species listed as threatened under the ESA.

Humpback whales, gray whales, and Steller sea lions in Alaska include animals from ESA-listed and non-ESA-listed Distinct Population Segments (DPSs). All bearded seals and ringed seals in Alaska are ESA-listed. Questions have arisen as to whether bones or teeth from these species can be collected lawfully.

This guidance explains how NOAA will treat the collection of bones, teeth, or ivory, as applicable, from these four species in Alaska.

Humpback Whales

The humpback whale was listed as endangered under the Endangered Species Conservation Act (ESCA) on December 2, 1970 (35 FR 18319). Congress replaced the ESCA with the ESA in 1973, and humpback whales continued to be listed as endangered. NMFS conducted a global status review and changed the status of humpback whales under the ESA in 2016. The Western North Pacific DPS (which includes a small proportion of humpback whales found in the Gulf of Alaska, Aleutian Islands, Bering Sea, Chukchi Sea, and Beaufort Sea) is listed as endangered, the Mexico DPS (which includes a small proportion of humpback whales found

throughout Alaska) is listed as threatened, and the Hawaii DPS (which includes most humpback whales found in Alaska) is not listed (81 FR 62260; September 8, 2016).

The vast majority of humpback whales in Alaska are from the non-listed Hawaii DPS: 93.9% in Southeast Alaska; 89% in the Gulf of Alaska; and 86.5% in the Aleutian Islands, Bering Sea, Chukchi Sea, and Beaufort Sea (Wade et al. 2016). Because of this, and because bones from individual animals are not easily identified to DPS, **NOAA's policy is to treat beach-collected humpback whale bones in Alaska as derived from the non-ESA-listed Hawaii DPS, unless there is clear evidence to the contrary (e.g., if a bone was collected from a whale carcass that is positively identified as belonging to an ESA-listed DPS). As with other bones collected** under the beach-comber exception (50 CFR 216.26), **collectors must register the bones with the NOAA OLE** and the bones may not be purchased, sold, or traded for a commercial purpose, except as otherwise allowed.

Gray Whales

The gray whale was listed as endangered under the Endangered Species Conservation Act (ESCA) on December 2, 1970 (35 FR 18319,). Congress replaced the ESCA with the ESA in 1973, and gray whales continued to be listed as endangered. The eastern population was successfully recovered and was delisted in 1994 (59 FR 31094). The Western North Pacific DPS population remains very low in number, and continues to be listed as endangered under the ESA and depleted under the MMPA.

The vast majority of gray whales in Alaska are from the non-listed Eastern North Pacific DPS. Because of this, and because bones from individual animals are not easily identified to DPS, **NOAA's policy is to treat beach-collected gray whale bones in Alaska as derived from the non-ESA-listed Eastern North Pacific DPS, unless there is clear evidence to the contrary (e.g., if a bone was collected from a whale carcass that is positively identified as belonging to an ESA-listed DPS). As with other bones collected** under the MMPA beach-comber exception (50 CFR 216.26), **collectors must register the gray whale bones with the NOAA OLE** within 30 days and the bones may not be purchased, sold, or traded for a commercial purpose, except as otherwise allowed.

Steller Sea Lions

The Steller sea lion was listed as a threatened species under the ESA on November 26, 1990 (55 FR 49204). In 1997, NOAA reclassified Steller sea lions into two DPSs based on genetic studies and other information (62 FR 24345); at that time the eastern DPS was listed as threatened and the western DPS was listed as endangered. On November 4, 2013, the eastern DPS was removed from the threatened list (78 FR 66139).

Western DPS animals primarily occur west of 144°W longitude. They also commonly occur to the east of 144°W longitude and north of Sumner Strait, but they comprise a small proportion of the Steller sea lions found in that area, which is dominated by animals from the eastern DPS. Because of this, and because bones or teeth from individual animals are not easily identified to DPS, **NOAA's policy is to treat Steller sea lion bones or teeth collected in Alaska from beaches east of 144°W longitude as deriving from the non-ESA-listed eastern DPS, unless there is clear evidence to the contrary (e.g., if the bones or teeth were collected from a sea lion carcass that is positively identified as belonging to the ESA-listed western DPS).** As with other bones or teeth collected under the beach-comber exception (50 CFR 216.26), **collectors must register the bones or teeth with the NOAA OLE** and the bones or teeth may not be purchased, sold or traded for a commercial purpose, except as otherwise allowed.

NOAA will treat any Steller sea lion bones or teeth collected in Alaska from beaches west of 144°W longitude as deriving from the ESA-listed western DPS. Such bones or teeth may not be collected for any purpose, unless a valid ESA exception applies (such as collection by Alaska Natives for the production of authentic native articles of handicrafts).

Bearded Seals

The Beringia DPS bearded seal was listed as a threatened species under the ESA on December 28, 2012 (77 FR 76740). The listing was vacated in July 2014 due to litigation, and was reinstated in May 2017. All bearded seals in Alaska are part of the threatened Beringia DPS. Because NOAA has not issued a regulation under section 4(d) of the ESA to prohibit "take" of this threatened species, **bearded seal bones or teeth may be collected from beaches in Alaska. As with other bones or teeth collected under the beach-comber exception (50 CFR 216.26), collectors must register the bones or teeth with the NOAA OLE** and the bones or teeth may not be purchased, sold, or traded for a commercial purpose, except as otherwise allowed.

Ringed Seals

The Arctic subspecies of ringed seal was listed as a threatened species under the ESA on December 28, 2012 (77 FR 76706). The listing was vacated in March 2016 due to litigation, and was reinstated in May 2018. All ringed seals in Alaska are part of the threatened Arctic subspecies. Because NOAA has not issued a regulation under section 4(d) of the ESA to prohibit "take" of this threatened species, **ringed seal bones or teeth may be collected from beaches in Alaska. As with other bones or teeth collected under the beach-comber exception (50 CFR 216.26), collectors must register the bones or teeth with the NOAA OLE** and the bones or teeth may not be purchased, sold, or traded for a commercial purpose except as otherwise allowed.

Bottom Line

Under the beach-comber exception, collection of bones, teeth, or ivory from the

species listed above IS ALLOWED if they are: found within $\frac{1}{4}$ mile of the ocean, registered with NOAA OLE, and not sold or traded for a commercial purpose. .

Collection of baleen, pelts, and any soft part or tissue from these species IS NOT ALLOWED, except pursuant to a specific exemption (e.g., under the Alaska Native exemption, with an authorized NOAA stranding agreement, or with a NOAA permit for scientific use).