



**Ministry of Marine Resources**  
GOVERNMENT OF THE COOK ISLANDS

**Policy Paper:**

**For the**

**Cook Islands Whale Sanctuary**

**Legislation**

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## Rationale

*“In the Cook Islands we don’t go to the whales, the whales come to us”*

The Cook Islands is committed to building a global reputation for the ecologically sustainable use of its ocean resources. In making this commitment, the Cook Islands is establishing ‘Marae Moana’ which will be an integrated system of management for the Cook Islands’ ocean space. Marae Moana will seek to harmonise the conservation of marine biodiversity, protection of the marine environment, and the promotion the sustainable use of living and non-living marine resources. Integral to this philosophy is the establishment of oceanic and coastal marine protected areas to protect representative, unique and important marine biodiversity and geophysical areas.

The Cook Islands Whale Sanctuary which was declared in 2001 will therefore form an important component of Marae Moana. This Policy Paper will support the development of the Whale Sanctuary regulations under the Marine Resources Act of 2005 (“MRA”) as an interim measure. This will then be followed by the development of a proposed Cook Islands Whale Sanctuary Act that will legislate the *Cook Islands Whale Sanctuary*. The law will support concrete, enforceable protections for whales residing in or migrating through the Cook Islands’ waters, which includes the internal waters, territorial sea and exclusive economic zone of the Cook Islands (“Cook Islands’ waters”).

The ***Cook Islands Declaration on the Establishment of a Whale Sanctuary September 2001*** (“Whale Sanctuary” or “Declaration”) attached as Appendix “A”) decreed that the “creation of a whale sanctuary in the Cook Islands is a proactive management measure” which would support activities including the “identification of future threats to whales and appropriate action to counter those threats.” The Whale Sanctuary and the legislation will incorporate current science and best practice, applying it to the unique geographic, cultural and biological circumstances of the Cook Islands, to ensure that Cook Islanders and tourists will have whales to enjoy in the future.

## Background

### Declaration of Whale Sanctuary

In September 2001, the Cook Islands Government declared the Cook Islands’ exclusive economic zone a “sanctuary for all whales.” Other countries across Oceania, including French Polynesia, New Caledonia, Niue, Fiji, Vanuatu, Tonga, American Samoa, Samoa, and Papua New Guinea, soon followed suit.

Since the establishment of the Whale Sanctuary, civil society and government collaborated to establish Whale Watching Guidelines that were self-enforced

through consent and mutual cooperation. In the past, tourist-based operators and researchers have generally worked cooperatively and positively in this manner. However more recently, incidents and complaints of whale harassment have increased such that it is considered formal regulation through law now be introduced to support the values that were declared in 2001. It is through this legislation that human activities around whales will be controlled.

### **Whale Species**

There are 26 known species of whales in the Cook Islands waters, and that number is increasing as we discover more species present.

There are two types of whales, otherwise known as cetaceans, incorporated into this proposed legislation: toothed whales (including dolphins, porpoises, killer, beaked and sperm whales) and baleen whales (including humpbacks, minke and blue whales). The term whale as used in the legislation will include all whales – both toothed and baleen whales.

### **The Humpback Whale Population**

The most widely recognized whales in the Cook Islands are the humpback whales (*Megaptera novaeangliae*) that arrive to breed and calve during the winter (approximately July through October).

The whales visiting the Cook Islands are part of the Oceania sub-population that was listed as Endangered by International Union for Conservation of Nature (IUCN) in 2008. The Oceania sub-population is recovering more slowly than others which means it is important to give them the best protection throughout Melanesia and Polynesia, including the Cook Islands.

The humpback whales use the Cook Islands as a migratory corridor, indicating that the whales pass through the waters of the Cook Islands, spending little time – sometimes only days – resting or breeding. However, the Cook Islands are not a true breeding ground, which is defined as a location where humpback whales stay and breed for long periods of time and the same humpbacks return, every few or more years.

A seventeen-year period of research has revealed close to zero site fidelity (with only two returning whales observed). This is considered unusual since humpbacks tend to return to the same area repeatedly during their lifetime. Importantly, this makes the protection of the humpback whale population even more critical, because we see the risk that the humpback whales might stop using the waters near inhabited islands within the Cook Islands if they are harassed and disturbed while they are migrating through.

## Purpose

The purpose is to protect the whales within the Whale Sanctuary and the migratory corridors throughout the Cook Islands waters. These protections are proposed with a view to ensure that the whales are free to engage in their normal, natural behaviours, and that such protections may encourage whales to return to Oceania every year. Protection, therefore, encompasses not only prohibiting the direct harm to or disturbing of whales, but also regulating acts or activities that may indirectly affect, disturb or harass the whales or their habitat, both today and in the future. This purpose is reflected in the broad scope of the Sanctuary Declaration, which states that the Whale Sanctuary is intended “to contribute towards the protection of whales by prohibiting the deliberate take of whales.”

The word “take” is a well-established term incorporated into marine mammal protection and whale sanctuary legislation around the world since the 1970s. “Take” encompasses a wide range of activities and acts directly and indirectly affecting whales and their habitat. For example, the New Zealand Marine Mammal Protection Act 1978, defines “take” as including “(a) to take, catch, kill, injure, attract, poison, tranquillise, herd, harass, disturb, or possess: (b) to brand, tag, mark, or do any similar thing: (c) to flense, render down, or separate any part from a carcass: (d) to attempt to do any act specified in paragraph (a) or paragraph (b) or paragraph (c).

The Sanctuary Declaration contemplated only two activities that may “take” whales: non-lethal scientific research with a permit, and unintentional takes during fishing operations. The legislation will make provision for unintentional takes during other activities, such as, normal shipping and boating activities, and seabed mining.

## Scope

The legislation will apply to all whales, also known as cetaceans, within the waters of the Cook Islands and will regulate all human activities which may have an impact on whales.

## Beneficiaries

All Cook Islanders will benefit from the legislation. Whales in the Cook Islands are a valuable resource. Not only do they contribute to a healthy and diverse ecosystem, but they have been a historical part of our culture and traditions.

In addition, a healthy and continuous stock of whales may have positive implications for tourism, particularly as part of an organised and regulated activity.

The legislation will benefit watercraft operators, aircraft operators, fishermen, and others who may come into proximity or contact with whales as they will have a clear understanding of both permissible and prohibited behaviour.

## Objectives

The legislation will include three substantive parts:

1. **Establishment and Management of the Whale Sanctuary:** The Whale Sanctuary will protect all whales and their habitats within the limits of the Cook Islands' waters. The Ministry of Marine Resources has been identified as the lead agency to administer the legislation with support from NES (including, but not limited to, CITES permits and strandings).

### Whale Conservation Committee

The Sanctuary Declaration provides for the “development of mechanisms for the regular evaluation of management programmes in terms of appropriate objectives,” consistent with best practice, in that regard, a Whale Conservation Committee (“WCC”) will be established. The WCC will act as an advisory, research and technical committee. As an authority on issues relating to whales, the WCC will provide valuable insight and input into policy related to whales and other government developments. The WCC will also be responsible for the preparation, implementation and subsequent updating of a National Plan of Action for the Conservation and Management of Whales in the Cook Islands.

2. **Regulated Activities and Permits:** This legislation will regulate practices already in existence and those that might come into existence in the Cook Islands. This will include, among other things:

### Prohibition of Takes

This keystone provision will prohibit the deliberate take<sup>1</sup> of any whale without a permit. In addition, it will be illegal to hold a whale in captivity except for its necessary rescue, rehabilitation, and release.

### Regulation of Whale Watching

The legislation will for the most part formalise historical practice and encourage the development of responsible whale watching. The legislation will also update and formalize the Whale Watching Guidelines that provide instruction on conduct during an encounter with a whale. (Whale Watching Guidelines attached as Appendix C).<sup>2</sup>

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<sup>1</sup> A “take” will be defined similarly to the definition promulgated under New Zealand law.

<sup>2</sup> The Whale Watching Guidelines were prepared in 2001 in cooperation with the Cook Islands Government, Cook Islands Whale Research, Ministry of Marine Resources, World Wildlife Fund, N.Z. Department of Conservation, South Pacific Whale Research Consortium, the Center for Cetacean Research and Conservation, and the Cook Islands Police Department.

In the words of the Cook Islands' Government, "*In the Cook Islands we don't go to the whales, the whales come to us.*" This legislation will support this unique approach in the Cook Islands, allowing businesses in place for other purposes to continue the practice of observing whales, whilst ensuring the avoidance of any form of harassment that would interfere with the migratory pathways of the humpback whales or otherwise interfere with the normal behaviour of whales, and particularly those with calves.

#### **Regulation of Whaling Vessels and Lethal Scientific Research**

The Sanctuary Declaration reaffirmed "the Government of the Cook Islands' long standing position against whaling." The legislation will include a requirement that any commercial whaling or lethal scientific research vessel/s must declare their intentions, point of entry and exit, and mode of tracking, whether by satellite or manual reporting, when entering the waters of the Cook Islands. In addition, it will be considered an offence under this legislation if any whale or part of a whale is found on board a vessel.

#### **Regulation of Fishing Practices**

The Sanctuary Declaration provides that "any accidental capture of or injury to a whale during fishing operations...[must] be reported to the Ministry of Marine Resources." Fishing practices will take into account the best available practices and equipment to avoid the unintentional take of whales during fishing operations. Regulations will assist and provide guidance as to conduct and protocol for handling and release when there is an instance of unintentional by-catch or an entanglement.

Unintentional takes of whales will be recognized and controlled under the fishing licenses issued by MMR as long as the fishing boats comply with the prescribed regulations, procedures and licence conditions. Where there is evidence that such regulations were disregarded, it will be considered an illegal take and therefore constitute an offence under the MRA.

#### **Regulation of other Practices**

The legislation will make provision for unintentional takes during other activities, such as, normal shipping and boating activities, and seabed mining.

#### **Non-lethal Scientific Research**

As explicitly provided for in the Sanctuary Declaration and in support of information exchange, education, awareness, the monitoring of the whales, and identification of future threats to whales, non-lethal scientific research will continue to be supported subject to the issuance of a permit and the ongoing monitoring and assessment of such research activities. All research and data collected in the Cook Islands under such permits will be considered property of the Cook Islands government and people.

### **Stranded Whales**

The Sanctuary Declaration states that “the utilization of stranded whale carcasses in the exclusive economic zone will require to be reported to the Ministry of Marine Resources.” Established conduct and protocol will be incorporated into regulations to provide clarity on the process and procedures for whale strandings, whether alive or dead.

### **Permits**

As contemplated by the Sanctuary Declaration, permits will be granted for non-lethal scientific research, subject to standard regulations around the conduct of any and all research activities which take place within the Cook Islands. Where appropriate, additional conditions shall be attached to any fishing licences and/or deep sea mining licences for the unintentional take of whales during such activities.

- 3. Offences and Regulations:** The legislation will provide for offences and fines. Each whale or part/s of a whale will be considered a separate offence. Similar to the MRA and the Marine Resources (Shark Conservation) Regulations 2012, the legislation will also provide powers of seizure and liability for principals and agents.

The legislation will also provide for the promulgation of regulations for fines for specific acts, procedures to follow during an entanglement of a whale in fishing gear, conduct during the encounter of a whale, and any other regulations that are necessary to give effect to the legislation.