

The following information has been prepared to help provide some clarity to help our Cape Cod Antiques Dealer Association (CCADA) members understand, interpret and make decisions to conform with regulations currently in place in Massachusetts for the buying, selling and collecting of antique artifacts containing – in all or part - marine mammal ivory and bone.

This document is limited in scope by outlining current regulations that apply only to help protect marine mammals including cetaceans (whales, dolphins, and porpoises), pinnipeds (seals and sea lions), sirenians (manatees and dugongs), sea otters, and polar bears, at the Federal and Commonwealth of Massachusetts level.

**It is important to note that some States outside of MA (i.e. California, New Jersey, New York, etc.) have their own, additional statewide restrictions that in some cases expand upon Federal control. This document focuses only on the here and now in Massachusetts.** But because the Commonwealth has, in effect, decided to concurrently utilize the standing MMPA regulations to protect marine mammals, this document recites those main precepts and recites the “letter of the law” from the Federal perspective.

Functionally, there have not been any changes made at the Federal or Commonwealth of Massachusetts (state) level in how properly identified marine mammal artifacts can be bought, sold and/or collected since the Federal Marine Mammal Protection Act (MMPA) was ratified December 1, 1972.

Information achieved in this research with the US Fish and Wildlife/Law Enforcement Division (USFW) suggests that genuine antique Scrimshaw and related articles containing properly identified and exempted marine mammal ivory and bone are not under any closer scrutiny now than they have been since 1972. USFW informed CCADA that it seeks cooperation vs. confrontation, and is not currently seeking out scrimshaw collectors/collections/dealers; rather they typically only follow up on possible investigations if a complaint is filed citing a potential infraction, forcing them to take some investigative action. This position is, again, of course Federally based. But as the MMPA is the document that provides specificity also to Massachusetts, some parallel assumptions can be made.

### **Background:**

Cape Cod and surrounding areas are rich with maritime history, much of which are imperative to a full understanding of our region’s, indeed our larger, American maritime heritage. From Colonial times, through the early 20<sup>th</sup> century, local ports were home to fleets of whaling ships. The whaling industry, however controversial from a 21<sup>st</sup> century perspective, was a key to the growth of America. Ships from Nantucket, other ports on Cape Cod and the Islands, nearby New Bedford and adjacent areas hunted whales to help provide for many of what were then necessities of life and industry.

A byproduct of these 18<sup>th</sup>, 19<sup>th</sup> and even early 20<sup>th</sup> century activities was the birth of a uniquely American art form – the practice of carving and scrimshawing the ivory and bone of marine mammals

(i.e. whale, walrus) for keepsakes from long and distant shipboard voyages and for use in other functional, artistic or decorative purposes.

Many important collections of related artifacts, now in the possession of local/regional individuals and museums make the Cape Cod area a focal point in scholarship for this part of American history. As such, the Cape Cod Antiques Dealers Association (CCADA) and its dealer members have an important role to play in interpreting and educating the public in this part of the American story.

At the same time, our Association also seeks to play a leadership role in helping with the enforcement of regulations put into place to protect today's marine – and other mammals – from illegal poaching and other unlawful activities. We feel these regulations are just and proper, and we support full subscription to these restrictions on all levels.

CCADA and the public has been sensitized and outraged at the plight of endangered animals such as elephants and rhinoceros that are currently being exploited and poached by those who unscrupulously seek financial gain. CCADA abhors and virulently opposes such activities. However, in the process of protecting endangered species, some gray areas of confusion have arisen between the indefensible, and what is central, right and proper to interpreting our unique maritime heritage.

**Definition:**

The **Marine Mammal Protection Act** (MMPA) was enacted on October 21, 1972. All [marine mammals](#) including cetaceans (whales, dolphins, and porpoises), pinnipeds (seals and sea lions), sirenians (manatees and dugongs), sea otters, and polar bears are protected under the MMPA. The MMPA prohibits, with certain exceptions, the "[taking](#)" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and/or the importation of marine mammals and marine mammal products into the U.S.

Jurisdiction for MMPA is shared by [U.S. Fish and Wildlife Service](#) (Service) and the [National Marine Fisheries Service](#) (NMFS). The Service's Branch of Permits is responsible for issuing take permits when exceptions are made to MMPA.

In general, exceptions for artifacts may be granted for:

1. Pre-MMPA specimens taken before December 21, 1972
2. International Agreements entered into by the United States before December 21, 1972
3. Alaska natives
4. Scientific research, public display, enhancing the survival or recovery of a species, and incidental take in commercial fisheries
5. Waivers granted by the U.S. Government

**Interpretation:**

1. All **marine mammal bone and ivory items** (except those cited below) that can be demonstrated to have been imported into the US on or before December 21, 1972 are entitled to receive an exemption. Collectors and dealers are free to buy and sell products that include these forms of ivory, without restrictions. No additional federal legislation on marine mammal ivory/bone products have been considered or passed since the MMPA (December 21, 1972) was enacted.
2. However, in contrast, in Summer, 2016, the USFW passed an additional order restricting the importing of any and all African Elephant ivory into the United States. This order came in to force January 1, 2017. International pressure has resulted in the recent announcement that China will conform to similar bans by the end of 2017.
3. Bills were introduced in the Massachusetts House and Senate in 2015 that attempted to ban the trade of any and all forms of ivory and bone, including marine mammals – of any age. Both of these bills failed in committee in 2016, with judgements citing the sufficiency of the MMPA in the protection of marine mammal ivory and bone. By nature, then this decision defers the legal baseline to the specifics of the federal legislation (MMPA).

AS SUCH, NOTHING HAS CHANGED IN THE INTERPRETATION OF STATE REGULATIONS REGARDING MARINE MAMMAL ANTIQUES SINCE THE FAILURE OF THE 2015-16 LEGISLATIVE ACTS. The Commonwealth has judged that ongoing restrictions on marine mammal related antiques are sufficient to protect these species from exploitation. Another pending bill, with widespread support is now pending in both houses of the Massachusetts legislature, has reintroduced some additional restrictions and bans that apply only specifically to non-marine mammals, including elephant and rhinoceros ivory.

4. Per #1 above, to achieve an exemption from the restrictions imposed by the MMPA the marine mammal ivory/bone in question must be verifiable as being pre 12/21/72, in its current state, by at least one of the following forms of documentation:
  - a. A bill of sale dated December 20, 1972 or earlier that shows the item in question was indeed purchased prior to the MMPA,
  - b. A verifiable “chain of custody” that clearly illustrates ownership of the object predating the MMPA, or,
  - c. The professional appraisal of an expert (who must conform to the defined specifications of the USFW standards (as found on their website).

According to current regulations, an appraisal submitted as documentary evidence of an article’s eligibility under the ESA antique exception must meet the following criteria:

- The person executing the appraisal either has earned an appraisal designation from a recognized professional appraiser organization for demonstrated competency in appraising the type of property being appraised or can demonstrate verifiable education and experience in assessing the type of property being appraised.
- The person executing the appraisal is not the importer, exporter, buyer, recipient or seller of the article; does not benefit from the results of the appraisal (other than for the cost of the appraisal); is not a party to any of the transactions associated with

the article (including any person acting as an agent for the transaction); is not an employee of any business that is a party to the transaction; and is not related to the person claiming the exception.

- Facts that may be examined in determining the reliability of the appraisal are:
    - A description of the article in sufficient detail for a person who is not generally familiar with the type of article to determine that the appraisal is about the article in question.
    - The name and address of the qualified appraiser; or if the appraiser is a partner, an employee, or an independent contractor engaged by a person other than the person claiming the exception, the name and address of the partnership or the person who employs or engages the appraiser.
    - The qualifications of the appraiser who signs the appraisal, including the background, experience, education and any membership in professional appraiser associations.
    - The date on which the article was appraised.
    - The scientific method in detail used to determine the age or species.
    - Descriptive information on the article including but not limited to: the size of the article; the medium; the artist or culture; approximate date the article was created; and a professional quality image of the article.
    - A detailed history of the article including proof of authenticity.
    - The facts on which the appraisal was based including analyses of similar works by the artist on or around the creation date.
5. Without an exemption, interstate trade of marine mammal ivory/bone is not allowed for any product containing marine mammal bone that has not been vetted by at least one of the three forms of verification in #3 above.
  6. Any marine mammal bone that is verified as being pre-12/21/1972, but which has been later altered (i.e. post 12/21/1972 scrimshawing), loses its exemption, and is thereby restricted in the same manner as any other piece of restricted post 12/21/1972 and later ivory/bone. It is not illegal to own undocumented modified older bone, but it is restricted from interstate buying and selling. If there is any question about both the bone and/or scrimshaw both being pre-12/21/1972, it is strongly suggested that it be at least restricted from interstate trade.
  7. Please also again keep in mind that each State will have laws which also regulate activity. In certain circumstances, these State laws are enforceable federally via [The Lacey Act](#).
  8. The burden is on the owner/dealer to be able to demonstrate (as outlined above) show that any particular item enjoys an exemption or exception to a prohibition. The penalties for unlawful activity can range from seizure to fines, and in some cases; incarceration.

In providing this information, the Association is making a good faith effort to help mitigate confusion, misunderstandings or confrontations in the future. We cannot enforce statutes that are not ours to enforce, but we can impart knowledge, expect members to follow the rule of the law, and to take appropriate actions to protect the animals, themselves and the integrity of the Association by doing the “right thing.”