Review of the Trade in Endangered Species Act 1989

Discussion Document
September 2019

Department of Conservation
Te Papa Atawbai

New Zealand Government

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Foreword

Around the world around 25% of all plant and animal groups are categorised as threatened. This means that close to 1 million species are facing extinction.

With increases in tourism to New Zealand and New Zealanders travelling overseas, this is an ideal time to review our domestic laws and revitalise the protection of endangered species.

It is vital that the international community works together to protect endangered species. The Government wants to ensure that New Zealand plays its part on the international stage by ensuring our domestic laws implement our international commitments. The Government is therefore reviewing the Trade in Endangered Species Act 1989 (TIES Act).

In New Zealand we value protecting endangered species, both our unique indigenous species and the endangered species around the world. I am aware of public concern about the commercial trade in elephant ivory and the poaching and decline of elephant populations. While New Zealand's domestic ivory market is small, we can do more.

New Zealand currently has no laws against selling elephant ivory on the domestic market. The review of the TIES Act is an opportunity to explore implementing further restrictions on the trade in elephant ivory, both domestically and at New Zealand's border.

Iwi, conservation groups and the wider public all have a strong interest in the protection of endangered species. I am interested in understanding your point of view on the review of the TIES Act and the proposals on further regulating the trade of elephant ivory. I encourage New Zealanders to read the discussion document and make a submission on the proposed changes.

Hon. Eugenie Sage

Minister of Conservation

Introduction

This Discussion Document asks for submissions on potential changes to the Trade in Endangered Species Act 1989 (TIES Act).

The TIES Act implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which New Zealand ratified in 1989. The purpose of the TIES Act is to fulfil New Zealand's obligations under CITES and to promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species.

The TIES Act has not been reviewed since its enactment in 1989 and is not keeping up with new developments and best practice, making it difficult to implement efficiently.

To improve New Zealand's implementation of CITES, DOC proposes amending the TIES Act to make it better able to adapt to modern and changing circumstances; and able to operate efficiently.

This review will also be looking at the trade of elephant ivory. There are currently no restrictions on selling items made from elephant ivory in New Zealand. In 2016, CITES made a decision urging Parties to CITES to ban the domestic trade of elephant ivory where that trade contributes to poaching or illegal trade of elephant ivory. This review proposes options for further regulating elephant ivory domestically and at New Zealand's border.

How to make a submission

The Government welcomes your feedback on this consultation document. There are questions at the end of each section to guide your submission. Questions are also listed at **Appendix 1**. You do not have to answer all the questions.

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

Submissions can be made the following ways:

- Through the online submission template on DOC's website at TIES Act consultation
- Emailing your submission to TIESAct@doc.govt.nz

While we prefer online submissions, you can send your response by post to:

Consultation: Review of the Trade in Endangered Species Act

Department of Conservation

PO Box 10420

Wellington 6143

Submissions close at 5pm, Friday 25 October 2019

Section 1: Why are we reviewing the Trade in Endangered Species Act 1989?

The TIES Act has not been reviewed since it was enacted in 1989. Since then, inconsistencies, technical issues and unclear definitions have been identified. These inconsistencies and technical issues make it difficult for operational staff to implement the TIES Act clearly and efficiently.

The TIES Act is also being reviewed to enable DOC to be responsive to CITES resolutions and decisions made every three years at the CITES Conference of the Parties (CoP). The resolutions and decisions are intended to guide implementation of CITES.

If these issues are not addressed, inconsistencies and unclear provisions will continue to hamper the efficiency with which DOC can implement the purpose of the TIES Act, which is vital to ensuring trade in endangered species across the New Zealand border is properly regulated and legal.

Policy areas being reviewed

DOC will be focusing on the following policy areas when reviewing the TIES Act[1]:

- The trade in elephant ivory
- Movement of taonga across international borders
- Personal and Household Effects (PHE)
- Technical issues with permits
- Cost recovery.

Each of these areas have specific challenges that need to be addressed. The following sections describe each area and provide options and proposals to address these. These options are not always mutually exclusive, and a combination of the options could be implemented.

Objectives and criteria

To ensure that DOC addresses the problems outlined above, the review will seek to meet the following objectives:

- CITES is implemented in New Zealand through clear and effective legislation
- The TIES Act disincentivises illegal trade
- The TIES Act meets Treaty of Waitangi obligations under section 4 of the Conservation Act 1987
- The TIES Act enables operational clarity and efficiency
- DOC has the legislative tools to respond to CITES resolutions and decisions

When assessing the options for each policy area outlined above, DOC will be considering the following criteria:

[1]DOC is also reviewing the TIES Act for any technical drafting errors and any proposed amendments will be consulted on as part of the Select Committee process.

- Does the option promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species (TIES Act purpose)?
- Is the option consistent with CITES and Conference of the Parties resolutions and decisions?
- Is the option easy to implement and minimises costs for regulators?
- Does the option minimise costs and improve clarity and efficiency for the public and legal trades?

Questions on Section 1

- Should DOC be considering any other policy areas for review?
- Is DOC considering the right objectives?
- Should DOC be considering any other criteria when assessing options?

Section 2: What is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

CITES is an international agreement between states that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival in the wild. It achieves this through a permit system to regulate and monitor the international trade (movement between countries) of animal and plant species. CITES serves two main purposes:

- to ensure that no species of wild fauna and flora becomes or remains subject to unsustainable exploitation because of international trade
- to facilitate conservation efforts of wild fauna and flora.

CITES was established in 1975 in response to international concerns about the rate at which the world's wild animals and plants were threatened by unregulated international trade, particularly unsustainable poaching of zebra for hides and elephants for ivory. It was acknowledged that as trade in animals and plants crosses borders between countries, the effort to regulate it would require international cooperation to safeguard certain species from over-exploitation. From its beginnings in 1975 with 80 signatories, CITES has grown to become one of the oldest and largest international conventions with 183 member Parties in 2019. New Zealand became the 100th Party to join CITES in 1989.

How does CITES work?

CITES works by subjecting international trade in specimens of selected species of animals and plants to certain controls. All import, export, re-export and introduction from the Sea[2] of species are subject to permitting requirements. Each state or regional economic integration organisation that has signed up to CITES (a Party to CITES) must designate one or more Management Authorities that is in charge of administering their permitting system. They must also designate one or more Scientific Authorities to advise them on the effects of international trade on the status of the species.

Management Authorities administer the permitting system for importing and exporting CITES-listed species, regulate international trade, are responsible for compliance and enforcement issues, and manage the relationship with the CITES Secretariat and the other parties.

Management Authorities also ensure the use of standardised permit forms, enabling inspection officials at the border to quickly verify that CITES specimens are properly documented. They also facilitate the collection of species-specific trade data, which is required for annual reporting purposes. This data is used to determine trends in trade and ensure that trade in wildlife is sustainable.

This framework for managing trade is implemented by Parties to CITES through their own domestic legislation.

Parties to CITES meeting every three years

A core process of CITES is the meeting of the Conference of the Parties (CoP) which takes place every three years. This is a meeting of the Parties to CITES. The Parties attending the CoP make decisions

[2]Introduced from the Sea means import into a State of any specimens of CITES species which were taken in the marine environment not under the jurisdiction of any State i.e. outside exclusive economic zone (EEZ), internal or territorial waters.

on CITES-listed species and review and make recommendations on implementing CITES. As a member, New Zealand participates in these meetings.

The most recent Conference of the Parties was held in Geneva from 16 August to 28 August 2019 Shortly after the Conference, any Decisions and Resolutions will be published on the CITES website at cites.org.

CITES uses appendices to categorise endangered species

Approximately 5,800 species of animals and 30,000 species of plants are subject to CITES. These animal and plant species are listed in Appendix I, II or III of CITES, according to the degree of protection they need. The requirements for permits and certificates needed to trade a specimen differ, depending on which Appendix the species is listed on.

The function of each Appendix is outlined below:

- Appendix I lists species that are threatened with extinction;
- Appendix II lists species not threatened with extinction, but which could become so if international trade is not sustainably managed; and
- Appendix III lists species where Parties need the cooperation of other countries to prevent unsustainable or illegal exploitation of a species.

Species may be split-listed, with populations on different Appendices. For example, the African elephant populations in South Africa, Botswana, Namibia and Zimbabwe are listed on Appendix II, while all other populations are listed on Appendix I.

The Trade in Endangered Species Act 1989 implements CITES in New Zealand

CITES is implemented in New Zealand through the Trade in Endangered Species Act 1989 (TIES Act). The TIES Act is administered by the Department of Conservation (DOC), and the Director-General is designated as the Management Authority.

New Zealand's Scientific Authority consists of a committee with representatives from DOC, other government agencies, research and tertiary institutions. Their primary function is to advise and monitor the effects of trade on species and determine whether trade may be detrimental to the survival of any species.

The species listed in the Appendices to CITES are mirrored in three Schedules in the TIES Act. Similar to CITES, the TIES Act works by subjecting certain species to permit requirements depending on which Schedule they are listed in and the circumstances of the trade. The TIES Act also provides exemptions from requiring a permit under certain circumstances. For further information on the TIES Act and CITES please see the DOC website: www.doc.govt.nz/cites.

Implementation of the TIES Act at the New Zealand border

DOC works in partnership with the Ministry of Primary Industries (MPI) and the New Zealand Customs Service to enforce the TIES Act at the New Zealand border. Border officials working for those organisations are Endangered Species Officers. At the border, specimens are checked by Endangered Species Officers to ensure they have been traded with the correct documentation.

A typical week across New Zealand's international airports will see 150-250 passengers surrender CITES specimens being carried without the required permit or certificate. Once specimens are seized or surrendered, they are forfeited to the Crown and are generally either destroyed, retained for educational or scientific purposes, repatriated, or gifted to institutions approved by the Management Authority as outlined in the TIES Act. DOC also communicates with importers and overseas Management Authorities about international trade, and provides advice on New Zealand's permit requirements for import and export.

A snapshot of seizures at the New Zealand border

During 2013-2017, there were 316 different CITES species seized and surrendered at New Zealand's border. This included products and specimens of lion, sturgeon, bear, wolf, primates, coral, elephant, pangolin, lizards, turtle and tortoise, giant clam, various bird species (including eagles, parrots and Birds of Paradise), insects (including swallowtail butterflies) and plants species such as orchids, cacti and rosewood.

Three species make up the majority of seizures at the NZ border: hard corals; shells including clams; and crocodylia products often sourced from commercial crocodile farms. Table 1 below shows the percentage of overall seizures/surrenders and instances of seizures/surrenders of these species.

Table 1: Percentage and instances of seizures/surrenders of hard corals, shells and crocodylia at the New Zealand border 2017

Species	Percentage of seizures/surrenders in 2017	Instances of seizure/surrender	Weight (kg)
Hard corals	45.6%	2,088	1,975
Shells (including clams)	17.9%	1,417	1,014
Crocodylia products	13.6%	1,185	N/A
Other species	22.9%	2,002*	N/A

***1587 of these were plants or animals for medicinal use (traditional Asian medicines)**

Species are imported in a range of finished products, and in raw, unmanufactured form, including: taxidermied bodies, trophies, leather products such as wallets and handbags, live plant cuttings, cured meat, skulls, bone, teeth, furniture, medicines, jewellery, cosmetics and tanned skins.

The number of surrenders and seizures of CITES specimens without permits, increased from 2,593 in 2013, to 6,165 in 2017. This count includes specimens held by visitors travelling to New Zealand, New Zealanders returning from overseas travel, household moves and commercial importations. In 2017, 5,902 of the total 6,165 recorded were seized or surrendered from airport and cruise ship (port) passengers. The increases in surrenders and seizures reflects the stricter application of the TIES Act, as well as the increases in tourism to New Zealand and New Zealanders travelling overseas.

Questions on Section 2

- Are there any other factors that should be considered?

Section 3: The trade in elephant ivory

The CoP has explored the issue of regulating the domestic trade in elephant ivory and in 2016 adopted Decision 10.10, which recommended that countries in:

> *"whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency".*

This decision reflects growing recognition of the role that domestic commercial trade in elephant ivory plays in the poaching and decline of elephant populations. In October 2018, over 30 conservation non-profit organisations and prominent New Zealanders wrote an open letter urging the Government to ban the domestic trade in elephant ivory.

The majority of ivory items legally entering New Zealand are classified as a Personal Household Effect (PHE) and are pre-Convention, which means the ivory was acquired, taken from the wild or born in captivity prior to the species being listed as protected under the Convention in 1975/76[3]. Common examples of these items are pianos, bagpipes, chess sets, Mah-jong sets and small carvings. Under CITES, pre-Convention items require a pre-Convention certificate, rather than a permit, which is reflected in the TIES Act.

Problem – New Zealand legislation is silent on the regulation of elephant ivory sales on the domestic market

New Zealand's legislation does not currently regulate the sale of non-native endangered species within New Zealand. Information on the size of the New Zealand domestic market for ivory is therefore limited. DOC manages the New Zealand CITES database which records data on all seized and surrendered CITES specimens, including elephant ivory, at the border. Data from this, as well as anecdotal evidence suggests the domestic market is small.

Between 2008 and 2017, there were 215 permits issued to import elephant ivory into New Zealand. The vast majority of items imported were pre-Convention and for personal use. The number of ivory imports permitted over the last decade is broken down by year in Table 2 below.

Table 2-Trend in number of CITES permits for ivory being imported over the last decade

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	**Total**
Permits	13	5	23	5	3	18	38	17	23	70	**215**
Number of items	45	10	50	5	4	19	76	17	60	118	**404**

Over the same 10-year time period, 124 ivory items were seized and surrendered at the border for not having a permit or a pre-Convention certificate. In the majority of these cases, importers were reportedly unaware of New Zealand's permit and pre-Convention certificate requirements.

[3]African elephants were protected under the Convention in 1975 and Asian elephants were protected under the Convention in 1976.

While increasing, the number of ivory items being imported into New Zealand is still small compared to other countries. Given the low volume, DOC considers New Zealand to be more removed from the illegal ivory trade which contributes to elephant poaching.

A 2016 report by the International Fund for Animal Welfare (IFAW) investigated of the nature of the auction house trade in elephant ivory and rhinoceros horn in Australia and New Zealand. The report found over a nine month period, 363 elephant ivory items for sale across 22 auction houses.[4]

A ban would emphasise that New Zealand considers the sale of ivory to be morally wrong. In 2018, the UK implemented a strict regime on both domestic sale and banning the import and export of elephant ivory. The UK has a large market for elephant ivory, particularly antique elephant ivory. In a survey in 2004, the UK had the greatest number of outlets openly selling elephant ivory products in the world and ranked 9th in terms of items available.[5] One of the main reasons the UK cited for the ban was to be a world leader in conservation. Other countries that have banned domestic markets in elephant ivory include China, the USA, Taiwan and France.

In September 2018, a Parliamentary Inquiry by the Australian Government recommended that Australia ban the domestic trade in elephant ivory and rhino horn. The Inquiry recommended a ban with exemptions largely based on the UK legislation. The recommendations noted that Australia could be facilitating the illegal trade in ivory through their domestic market. Australia is currently considering its response to the recommendations.

Options

Five options have been identified that could be implemented if further regulation of elephant ivory were to be considered:

- Option 1 – Ban the domestic sale of elephant ivory in New Zealand
- Option 2 – Ban the domestic sale of elephant ivory in New Zealand with exemptions
- Option 3 – Regulate the domestic market for ivory by requiring registration of elephant ivory sellers and tracking of all elephant ivory items that are sold
- Option 4 – Ban the import of all post-Convention ivory
- Option 5 – Ban the import of all ivory, with exemptions

Option 2 and Option 5 are similar to the ban that has been implemented in the UK. The UK has banned the domestic sale and import and export of elephant ivory with the same list of exemptions.

These options could be implemented together or separately. All options are assessed against the criteria listed on page 3.

Option 1 – Ban the domestic sale of elephant ivory in New Zealand

Option 1 would ban all sales of elephant ivory in New Zealand. It is hard to estimate what the impact of a ban would be, as there is no monitoring of the domestic ivory market.

Option 1 is assessed below against the criteria set out in Section 1.

[4] International Fund for Animal Welfare (IFAW), *Under the Hammer* (2016), p. 2
[5] Traffic, *A rapid survey of UK markets* (2016), p.3

Promotion of the TIES Act purpose
Option 1 would align with the purpose of the TIES Act, as it promotes the management and conservation of elephants, which are an endangered species.

It is unknown whether banning New Zealand's domestic ivory trade would have a measurable effect on elephant poaching or illegal trade in elephant ivory due to the small size of the market, with the vast majority of products being acquired prior to 1975/76 (pre-CITES). However, it will show that New Zealand is prepared to follow the lead of other countries like the UK and take a moral stand.

Consistency with CITES and CoP resolutions and decisions
Option 1 would align the TIES Act with CITES Decision 10.10, even though New Zealand's domestic trade in elephant ivory is considered to be more distant from the illegal ivory trade.

Ease of implementation and minimises costs for regulators
As there is no current monitoring of the sale of elephant ivory, a new monitoring and compliance regime would need to be set up to implement a ban. This would involve initial set up costs and ongoing operational costs.

Operationalising a ban on the domestic sale could be resource intensive and difficult, as elephant ivory is sold through various means, including auction houses, second hand and antique shops, markets and through private sales.

As the sale of all elephant ivory would be banned, any elephant ivory that is being sold would be illegal. This would therefore stop occurrences of illegally acquired elephant ivory being passed off as legally acquired ivory and being sold.

Minimising costs and improve clarity and efficiency for the public and legal trades
Anecdotal information indicates that most auction houses have ivory items on sale. It would also affect the musical instrument industry. Many instruments, including bagpipes, violins and pianos contain ivory. Most of these instruments were produced before CITES was put in place. The ban would mean these instruments could no longer be bought and sold.

Option 1 would also affect private owners who would like to sell items made from elephant ivory that they may have inherited or owned for a long time.

Option 1 would however remove the value from elephant ivory as a commodity in New Zealand.

Option 2 – Ban the domestic sale of elephant ivory in New Zealand with exemptions

Option 2 would ban the sale of elephant ivory with exemptions for certain items, for example antiques or musical instruments. The UK's ban on the sale of elephant ivory includes a range of exemptions, which could be considered emerging international best practice. If New Zealand were to ban the sale of elephant ivory with exemptions, we could base our exemptions on those of the UK. The UK Ivory Act 2018 has five categories of exemptions:

1. A *de minimis* exemption, which exempts items with a volume of less than 10% ivory which were made prior to 1947.
2. Musical instruments with any ivory content less than 20% which were made prior to 1975. It is argued that this will cover the majority of commonly used and traded instruments and accessories, such as pianos and violin bows.
3. Portrait miniatures produced prior to 1918. These items are in a distinct category, which the British Government considers will not fuel, directly or indirectly, the continued poaching of elephants.

4. The rarest and most important items of their type will be exempt. Items have to be made prior to 1918 and would be assessed by an independent advisory institution to confirm the item is eligible for the exemption. As such items are valued for the artistic, cultural or historical value rather than its ivory content, the British Government considers it will not fuel poaching of elephants.

5. Sales of ivory items between accredited museums.

The benefit of exemptions is that they would allow the continued sale of items that are valued for attributes other than their ivory content. This would include items such as musical instruments, ornaments and furniture with ivory inlays. If New Zealand were to apply the same exemptions as the UK, it would still mean that items, no matter how old they are, that are completely made of elephant ivory could not be sold. The impact on the elephant ivory market in New Zealand would be smaller than under Option 1, as elephant ivory could still be sold if it meets certain criteria.

New Zealand may not wish to apply all the exemptions applied in the UK Ivory Act 2018. For example, exemption four may not be appropriate for New Zealand as it is unlikely that the type of item described would be traded in New Zealand. It could also be difficult to define what 'rarest and most important' would mean.

Option 2 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 2 would align with the purpose of the TIES Act, as it promotes the management and conservation of elephants, which are an endangered species.

Consistency with CITES and CoP resolutions and decisions
Option 2 would align the TIES Act with CITES Decision 10.10[6].

Ease of implementation and minimises costs for regulators
As there is currently no monitoring of the sale of elephant ivory, a new monitoring and compliance regime would need to be set up to implement a ban. This would involve initial set up costs and ongoing operational costs.

Operationalising a ban on the domestic sale could be resource intensive and difficult, as elephant ivory is sold through various means, including auction houses, second hand and antique shops, markets and through private sales.

Allowing for exemptions would increase the complexity of the compliance regime. The monitoring system would need to be more sophisticated and assessing whether something falls within an exemption could take some time to consider.

Minimising costs and improve clarity and efficiency for the public and legal trades
Option 2 would still allow elephant ivory to be sold if the item meets one of the exemptions. As it is likely that elephant ivory that was acquired from an elephant after it was listed on CITES (1975/76) will not be allowed to be sold under Option 2, items considered antiques and family heirlooms will likely continued to be traded. Option 2 would therefore not completely ban the sale of elephant ivory, but enforce restrictions on what type of elephant ivory items can be sold.

Option 2 would mostly impact auction houses, as this is where the majority of elephant ivory is sold in New Zealand. Small second hand and antique stores would also be affected - however, the size of

[6]CITES Decision 10.10: In "*whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency".*

the impact is unknown as there is no information on how much elephant ivory is being sold through these means.

Option 3 – Regulate the domestic market for elephant ivory through registration

Option 3 would continue to allow the sale of elephant ivory in New Zealand but would implement strict conditions for elephant ivory sellers.

It would enable sellers to be audited and the origin of elephant ivory items to be checked by introducing powers for Endangered Species Officers to request proof of provenance (proof of origin) for ivory specimens.

Option 3 would require all elephant ivory sellers to be registered. All sales of elephant ivory would need to be tracked, by sellers. Registered sellers would be audited to ensure all sales are tracked and items sourced legitimately.

Option 3 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 3 would align with the purpose of the TIES Act, as it promotes the management and conservation of elephants, which are an endangered species.

Consistency with CITES and CoP resolutions and decisions
Option 3 would not align with the recommendations of Decision 10.10, but would enable tracking of the elephant ivory market, and would introduce new tools to ensure ivory being sold was acquired legitimately.

Ease of implementation and minimises costs for regulators
As there is currently no monitoring of the sale of elephant ivory, a new system would need to be set up to manage registered sellers.

A database and registration system would need to be set up so elephant ivory sellers could be registered and monitored. There would be a cost to setting up the database. Once the system is set up it should be relatively straightforward to operate.

The ongoing costs of running the system would need to be covered by the regulator. Some of these costs could be offset by an annual fee for all registered elephant ivory sellers. It is likely that there would be some cost attached to registering as an elephant ivory seller.

While it is possible that introducing a cost for registration could lead to non-compliance, such as private sellers failing to register, the cost could also incentivise private sellers to stop selling ivory.

Minimising costs and improve clarity and efficiency for the public and legal trades
This would impact the elephant ivory market as those who would like to sell elephant ivory would be required to register at a cost. Sellers would also be subject to audits as well as a requirement of proofing where they sourced their ivory from. This would therefore increase the costs of selling elephant ivory, and the cost of purchasing it. This could lead to a reduction in the number of outlets selling elephant ivory.

Option 4 – Ban import of all post-Convention ivory

Option 4 would ban importing post-Convention elephant ivory; i.e. all ivory harvested from an elephant since 1975[7]. Most of the elephant ivory being imported to New Zealand is pre-Convention, so would not be covered by this ban. Items made from or containing elephant ivory mostly enters New Zealand as personal or household effects. As the TIES Act currently requires that PHE items made from species listed on Appendix I and Appendix II of CITES require permits (if acquired outside of New Zealand), any elephant ivory being imported as PHE would require a permit, regardless of age.

Banning the import of post-Convention ivory would have the effect of shrinking the domestic market for newer ivory, as no items harvested after 1975 could enter. There is a risk that this could inflate prices and encourage illegal trading, assuming there is demand for ivory (such as hunting trophies) harvested after 1975. Hunting trophies are primarily imported from South Africa, Namibia, Botswana and Zimbabwe, where it is legal to hunt elephants and the elephants are listed on Appendix II of CITES. Across the last 34 years, since 1985, there have been 73 instances of hunting trophies being legally imported into New Zealand.

Option 4 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 4 would align with the purpose of the TIES Act, as it promotes the management and conservation of elephants, which are an endangered species.

Consistency with CITES and CoP resolutions and decisions
CITES allows the importation of certain elephant ivory where it meets specified conditions and permit requirements.

Ease of implementation and minimises costs for regulators
There is already a system in place at the New Zealand border to assess imports of endangered species, therefore this option would be easier and less costly to implement.

It can be challenging to tell the difference between pre and post-Convention ivory. This could lead to complicating assessment processes at the border. It would also mean items made entirely from ivory could be imported, with a permit, if the importer shows that it is pre-Convention.

There would be initial additional costs to the status quo, namely outreach and communication costs, and costs to update staff training and guidance.

Minimising costs and improve clarity and efficiency for the public and legal trades
Option 4 would mainly affect the import of hunting trophies, or souvenirs made from elephant ivory. Across the last 34 years, since 1985, there have been 73 instances of hunting trophies being legally imported into New Zealand.

Issues around importing and exporting items for museum exhibitions would need to be considered, as well as importing elephant ivory for forensic or enforcement purposes. For example, GNS Science provides radioisotope services to overseas Management Authorities to determine the age of elephant ivory. Option 4 could also affect people who are relocating to and from New Zealand who have PHE made of or containing newer ivory.

[7]Post-convention means the date that the species was listed on CITES appendices. For elephant ivory, it was 1975 for African elephants and 1976 for Asian elephants. For simplicity DOC would suggest that the date of 1975 would apply to both populations.

Option 5 – Ban the import of all ivory, with exemptions

Option 5 would ban the import of ivory with exemptions, most likely similar to the exemptions implemented by the UK. The UK's Ivory Act 2018 bans the import and export of elephant ivory with the same exemptions as the ban on domestic trade.

Option 5 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 5 would align with the purpose of the TIES Act, as it promotes the management and conservation of elephants, which are an endangered species.

Consistency with CITES and CoP resolutions and decisions
CITES allows the importation of certain elephant ivory where it meets specified conditions and permit requirements.

Ease of implementation and minimises costs for regulators
There is already a system in place at the New Zealand border to assess imports of endangered species, therefore Option 5 would be easier to implement. Having exemptions would complicate the regulatory regime and could increase time spent assessing specimens at the border.

There would be additional costs to the status quo, as it is likely that many more items would be seized and need to be disposed of than at present. Option 5 would have considerable outreach and importer communication costs. There would be some initial costs to update border staff training and guidance.

Minimising costs and improve clarity and efficiency for the public and legal trades
Option 5 will impact more imports than Option 4, as the ban would also apply to older ivory items that are pre-Convention. If exemptions similar to those of the UK are implemented, it is likely that hunting trophies could not be imported, and items made entirely of elephant ivory would be banned, as the UK exemptions include a 'de-minimis' criteria (that is an item cannot have more than a certain percentage of ivory to qualify for the exemption).

Comparison of options

Option 1, 2 and 3 would address the domestic sale of elephant ivory:

- Option 1 would ban all domestic sale of elephant ivory, but allow its import with a permit.
- Option 2 would exemption the domestic sale of certain items, which would mean there would still be a domestic market for elephant ivory in New Zealand, but it would be heavily regulated.
- Option 3 would rely on registration and auditing, focusing on ensuring elephant ivory sellers are registered and sellers can prove the ivory was sourced legally.

Options 4 and 5 address the import of elephant ivory:

- Option 4 would only ban newer post-Convention ivory, principally hunting trophies and souvenirs.
- Option 5 would apply to pre-Convention and post-Convention elephant ivory, with exemptions. It will likely affect more imports than Option 4.

Option 5 would enable importing items for museums or exhibitions that are made from post-Convention elephant ivory. This may not be possible under Option 4.

Questions on Section 3

- Has the problem been correctly identified?
- Has the size of the domestic elephant ivory market been correctly described?
- Should New Zealand consider a ban on the domestic trade of any other species in possible regulation? If so, why?
- Do you agree with the impact analysis for these options? If not, why not?
- Should New Zealand ban the sale of elephant ivory on the domestic market?
- If it is banned, should there be any exemptions, for example like the UK exemptions?
- Should any additional exemptions be specific to New Zealand?
- Should importing elephant ivory be banned? If so, should there be exemptions?

Section 4: Giving effect to Treaty Principles

Section 4 of the Conservation Act 1987 states that the Act will be interpreted and administered to give effect to the Principles of the Treaty of Waitangi. This applies to all legislation administered by DOC, including the TIES Act.

The discussions DOC has had with iwi to date on the TIES Act have mainly related to the issue of taonga made from protected species getting seized at other countries' borders due to not having a permit. These discussions have mainly been with Māori taonga art practitioners, who work with whale bone and Toi Māori Aotearoa. There has also been discussion about whether taonga species should be subject to DOC's permitting regime for domestic use under other legislation that DOC administers.

Movement of taonga across international borders

Some taonga species are listed in the CITES Appendices; for example, whales. Most whales are listed on Appendix I of CITES, which affords them the highest level of protection in terms of limits on international trade. Under CITES, they cannot be commercially traded across international borders, unless they were acquired before the species was first listed on CITES. Whale species that are listed on Appendix II have less strict permitting requirements.

Taonga seized at other countries' borders

Items made from taonga, for example carvings made from whale bone, are often worn or carried by New Zealanders travelling overseas. Concerns have been raised by Māori taonga art practitioners, about taonga made from protected species carried by New Zealanders being seized at international borders for not having a permit, and the potential for these items to not be returned to New Zealand. There have been a few occasions where DOC has been contacted by other Management Authorities about taonga made from protected species that have been seized, although this does not happen often. On those occasions DOC has worked with the Management Authority to have the item returned.

In most circumstances no permits are required to import or export Appendix I taonga for personal use into or out of New Zealand, if the taonga was acquired in New Zealand, and is not traded for commercial purposes.

Supporting New Zealanders when travelling with taonga

There is limited legislative action DOC can take to address this issue. Any changes to the permitting system for taonga under the TIES Act would not prevent taonga made from protected species getting seized at other international borders, as it would not affect the rules at other countries' borders. New Zealanders travelling with taonga made from protected species will continue to require CITES permits to enable the item to enter another country.

As each country has its own permitting requirements for importing Appendix I species, it is important that DOC supports New Zealanders by providing information to mitigate the risk of taonga made from protected species being seized at other international borders. To support this, DOC is working on providing clear guidance for when permits are required and for what items. DOC has published a brochure for travellers to outline when permits are required, called *Travelling with taonga.*

Questions on Section 4

- In what other ways can DOC support New Zealanders and in particular Māori, to minimise the risk of having taonga made from protected species seized at international borders when travelling?
- What changes to New Zealand's permitting system would make it easier to move taonga across international borders?
- How could the TIES Act give effect to the principles of the Treaty of Waitangi?

Section 5: Personal and Household Effects

What is the Personal and Household Effect exemption?

CITES and the TIES Act allow for some exemptions from permitting requirements. One of these exemptions is called a Personal and Household Effect exemption (PHE exemption). The PHE exemption is outlined in Article VII of CITES. Article VII states that articles that qualify as PHE will not be subject to permitting requirements if the specimens are PHE. This exemption does not apply if:

- the specimen is included in Appendix I and was acquired outside of their usual state of resident, and is being imported into that state; or
- the specimen is included in Appendix II and was acquired outside their usual state of residence and in a State where removal from the wild occurred and are being imported into the owner's state of usual residence.

CITES Resolution 13.7 provides guidance for implementing the exemption. If a specimen is defined as PHE, it can be exempt from requiring a permit to move the specimen across borders in certain circumstances. PHE usually includes items such as jewellery, furniture or musical instruments that contain or are made of endangered species. This exemption exists because it is generally considered that people travelling with their personal items, or moving to a new country, do not contribute to unsustainable international trade. This exemption is not meant to enable the trade of specimens for commercial sale.

Under the TIES Act, the PHE exemption works in the following way:

- Items defined as a PHE can be exported from New Zealand, and no documentation is required by New Zealand border officials.
- Items defined as PHE being imported into New Zealand do not require documentation unless:
    - it is listed in Schedule 1 or Schedule 2 of the TIES Act, and was acquired outside New Zealand, or
    - it is in any of the Schedules and is being imported for primarily commercial reasons.
- If the item being imported requires a permit due to one of the reasons above, a pre-Convention certificate or certificate of acquisition can be presented in lieu of a permit. Otherwise, all permitting requirements will apply.

Note that the above only relates to New Zealand's documentation requirements. Other countries have their own rules and may require permits before CITES specimens can be exported from and imported into their country.

There are two problems with the PHE exemption:

A) the definition of PHE is not capturing the appropriate items, and

B) large quantities of some species are being seized in circumstances where it may not be appropriate.

The options relating to these two problems are outlined below.

Problem A – The definition of personal and household effects

The TIES Act defines PHE as "any article of household or personal use or ornament." If an item meets this definition then it may qualify for the PHE exemption, and not require a permit. Items that do not meet this definition or do not meet the criteria in the exemption are subject to normal permitting requirements.

This definition does not exclude items traded for commercial reasons or consider the means of carriage. The way this definition interacts with the wording of the exemption allows some specimens to be exported from New Zealand for commercial purposes without a permit. This contradicts the rationale behind the PHE exemption, which was based on enabling people to move their personal belongings across borders without requiring permits. It is not meant to enable commercial trade in endangered species.

Changing the definition would primarily impact those exporting items that could be considered personal effects (such as ornaments or jewellery), for commercial purposes. Such trade would no longer be subject to the exemption and would be subject to normal permitting requirements. For example, under the current definition, a New Zealand-based art dealer can sell a piece of art that contains CITES listed species, like feathers, to an overseas buyer without requiring an export permit.

Options

DOC has identified two options for amending the definition of the TIES Act:

- Option 1 – Change the definition of PHE in the TIES Act to exclude items traded commercially
- Option 2 – Change the definition of PHE to the definition in CITES Resolution 13.7.

DOC is exploring these two options separately because they would require different levels of enquiry by border officials, and separating the options clearly demonstrates the varying levels of restriction that could be imposed. While both options include "non-commercial purposes", Option 2 is an extension that requires a higher level of enquiry at the border, including whether an item was legally acquired and how the items is being imported e.g. in personal luggage or on someone's person. Option 1 is a minimum standard, input is sought on how restrictive any PHE exemption should become. Increasing restriction means increasing complexity for frontline staff.

Option 1 - Change the definition of PHE effects in the TIES Act to exclude items traded commercially

Option 1 would change the definition in the TIES Act to confirm that to qualify as a PHE, the specimen must be being traded for non-commercial use. Under this option, specimens traded for commercial purposes would not qualify as a personal or household effect, and the exemption would not apply. Commercially traded specimens would be subject to normal permitting requirements.

Option 1 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
This would align with the purpose of the TIES Act as it ensures that an exemption designed for moving personal items between countries is not used for other purposes.

Consistency with CITES and CoP resolutions and decisions
By requiring permits for commercial trading of CITES-listed species, the CITES Secretariat and DOC can better track numbers of specimens being traded for commercial purposes. It is also consistent

with the purpose of CITES because, as above, it ensures that an exemption designed for moving personal items between countries is not used for other purposes.

Ease of implementation and minimises costs for regulators
Option 1 would be relatively straight forward to implement. Additional training for border staff and those advising on permits on how to apply the new definition for PHE would be required. There would be some up-front costs to train staff to apply the new definition. Ongoing costs will be similar to the status quo.

Minimising costs and improve clarity and efficiency for the public and legal trades
The clarified definition of PHE would provide clear guidance to importers/exporters on when trade requires a permit or qualifies for a PHE exemption. Option 1 would mean that any specimen of endangered species that is being imported or exported for commercial reasons would require a permit.

Option 2 - Change the definition of PHE to the definition in CITES Resolution 13.7

Option 2 would change the definition of PHE to the definition outlined in CITES Resolution 13.7, which is a specimen that is:

1. *personally-owned or possessed for non-commercial purposes;*
2. *legally-acquired; and*
3. *at the time of import, export or re-export either:*
    a. *worn or carried or included in personal baggage; or*
    b. *part of a household move.*

Option 2 is different to Option 1 as it would also require the item being traded to be worn or carried or included in personal baggage, or as part of a household move. This would mean, for example, an Appendix III specimen sent by post that is traded for non-commercial purposes and is legally acquired, would not quality for a PHE exemption and would require a permit. The current exemption under the TIES Act makes no distinction between how items are carried.

Like Option 1, Option 2 would primarily impact those exporting items that could be considered personal effects (such as ornaments or jewellery), for commercial purposes. Such trade would no longer be subject to the PHE exemption and will be subject to normal permitting requirements. It would have the additional impact of restricting how PHE items can enter New Zealand, and would require permits when an item is sent across border in the post.

Option 2 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
This option would be aligned with the purpose of the TIES Act as it would ensure that the PHE exemption is only used for moving personal items across borders rather than for other purposes, such as commercial gain. Therefore, it would promote the management and conservation of endangered species by better aligning with the rationale for the exemption which was that such trade does not contribute to the decline of the species.

Consistency with CITES and CoP resolutions and decisions
This definition would be consistent with CITES Resolution 13.7, which is outlined above.

Ease of implementation and minimises costs for regulators
Assessments about whether a specimen qualifies for a PHE exemption would be made under the current regulatory system. Additional staff training would be required to apply the new definition.

Ongoing costs would depend on how difficult it is to prove the definition, but would be higher than Option 1 due to increased permit processing, seizures and mail interceptions.

Defining what 'non-commercial purposes' are would be important to ensure that the definition targets the right type of trade. Tracking commercial trade is an important way to monitor how much of an endangered species is being sold internationally and assess whether too much trade is occurring.

This definition would provide clear guidance on when a specimen qualifies for a PHE exemption, increasing clarity for operational staff and people importing specimens into New Zealand. There would need to be clear guidance on the definition of non-commercial and legally acquired to ensure the option can be implemented efficiently and that importers/exporters are aware of the documentation requirements if they want to trade endangered species for commercial gain.

Minimising costs and improve clarity and efficiency for the public and legal trades
The clarified definition of PHE would provide clear guidance to importers/exporters on when trade requires a permit or qualifies for a PHE exemption. It is likely that importers/exporters would require more documentation to prove if an item was legally required.

Comparison of options

Option 1 is easier to understand and implement at the border, as it simply requires border officials to ask why the importer/exporter is moving the specimen. If it is for a reason that is anything other than personal, a permit is required.

Option 2 includes the same requirement that items are not traded for commercial benefit and provides clarity about the need for the specimens to be hand carried or part of a household move, but also requires that a specimen be legally acquired. This could be difficult and time consuming for border staff to identify as they may not be aware of restrictions on species imposed by the exporting country. For instance, a tourist may inadvertently pick up a piece of coral in a marine reserve overseas, meaning it has not been legally acquired.

Questions on Section 5 Problem A

- Should the definition of personal or household effects change to mean a trade cannot qualify for a PHE exemption if it is for commercial purposes, and/or is not part of personal or household effects?
- Are there any other options we should be considering? If so, what and why?

Problem B – Large quantities of some species are being seized in circumstances where it may not be appropriate

CITES Resolution 13.7 provides guidance on implementing the PHE exemption. Part of Resolution 13.7 urges Parties to implement limits on the number or amounts (quantitative limits) for certain Appendix II species to enable people to import a limited quantity of certain species which are PHE acquired when overseas without permits. The quantitative limits have been agreed by the CITES CoP as meeting the purpose of CITES and the objectives of Appendix II, and will not impact the survival of the species in the wild. The quantities of PHE Appendix II species from which permitting is exempt are:

- caviar of sturgeon species (ACIPENSERIFORMES spp.) – up to a maximum of 125 grams per person whereby the container has to be labelled in accordance with Resolution Conf. 12.7 (Rev. CoP17); *Resolution Conf. 13.7 (Rev. CoP17) – 3*
- rainsticks made from cactus. – up to three specimens per person;
- specimens of crocodilian species – up to four specimens per person;
- Queen conch (*Strombus gigas*) shells – up to three specimens per person;
- seahorses (*Hippocampus* spp.) – up to four specimens per person;
- giant clam (Tridacnidae spp.) shells – up to three specimens, each of which may be one intact shell or two matching halves, not exceeding 3 kg per person; and
- specimens of agarwood – up to 1 kg of woodchips, 24 ml of oil and two sets of beads or prayer beads (or two necklaces or bracelets) per person.

The TIES Act also does not provide for the quantitative limits listed in Resolution 13.7 and requires a permit to import any of those species to New Zealand.

Table 3 below outlines how the PHE exemption is currently applied to importing Appendix II species acquired outside of New Zealand.

Table 3 PHE exemption application under CITES and the TIES Act

Appendix II Species	CITES	TIES Act
Hard corals	No permit required for coral that meets the requirement of PHE.	Permit required to import all coral, except most fossilised coral.
Resolution 13.7 species	No permit required when importing under the quantitative limit for PHE. Permit required if importing above the limit.	Permit required to import any number or amount of these species.
Other Appendix II species	No permit required for all other Appendix II species that meet the requirement of PHE.	Permit required to import all Appendix II species

Our border control seizes a considerable amount of CITES specimens

The way the TIES Act implements the PHE exemption leads to specimens of the species listed in Resolution 13.7, such as giant clams and crocodylia, being seized at New Zealand's border if not accompanied by a permit. This takes up operational resources in circumstances where the CoP has recommended that permits should be required for certain specimens only if the quantity exceeds specified limits.

At the New Zealand border, the majority of the specimens seized are hard corals, giant clams and crocodylian (alligators, crocodiles, gharials, caimans) species. Table 1 in Section 2 outlines seizure/surrender number of these species and shows that these three species make up 77.1% of all seizures/surrenders at the border.

Seizures/surrenders of crocodylian species included: crocodile and alligator cured meat, wallets, handbags, key rings, taxidermied bodies and heads, skulls, teeth and tanned skin. Crocodylian specimens from Australia are usually imported as packaged jerky, or personal items like handbags, made from farmed crocodiles. DOC considers that importing farmed crocodylian specimens does not harm endangered populations. However, when being inspected at the border, it is difficult to tell the difference between products like handbags and shoes made from farmed crocodiles or crocodiles caught from the wild.

DOC considers that seizing these specimens, including coral, does little to further the purpose of the TIES Act and CITES. It has also been agreed by CITES that importing limited amounts of these species (excluding coral) will have minimal effects on their populations. Under CITES only corals are not subject to a quantity limits under Resolution 13.7. The current level of seizures has high resource implications for border staff.

DOC could allow some types and/or amount of coral to be imported into New Zealand as PHE.

Under the TIES Act hard coral is not allowed to be imported into New Zealand as PHE without a permit. Allowing some types and/or amount of coral to be imported into New Zealand as PHE without requiring a permit would be consistent with CITES, as CITES does not require a permit for hard coral that meets the requirement of a PHE as it is listed on Appendix II of CITES.

As the TIES Act is more restrictive than CITES, many seizures of dead beach-washed coral are made each year at the New Zealand border. DOC is considering exempting a limited number or amount of coral fragments and/or worn, eroded, beach washed coral from permitting requirements. It is important that any exemption does not facilitate the harvest of coral from coral reefs. A clear definition of which type, number and amount of coral would need to be explored and established.

DOC has also developed a Coral Demand Reduction campaign, supported by MFAT's Pacific Security Fund for Autumn/Winter 2019. The campaign is primarily aimed at New Zealanders travelling to the Pacific Islands. The campaign advises what CITES permits are required if people collect coral and wish to return home with it.

Outreach has included a public poster campaign in Auckland, Wellington and Christchurch, distribution of awareness pamphlets on board cruise ships, video messaging at international departure lounges and posters advising travellers of New Zealand's permitting requirements in a selection of Pacific Island countries departure points.

Options

DOC has identified two options to address the problem:

- Option 1 – Implement some or all of the quantitative limits listed in Resolution 13.7 for caviar of sturgeon, rainsticks of Cactaceae, crocodylia, Queen conch shells, seahorses, giant clam shells and agarwood
- Option 2 – Allow some types and/or amount of coral to be imported into New Zealand under the PHE exemption:
    - Option 2a – Allow coral fragments to be imported into New Zealand with a PHE exemption, or
    - Option 2b – Allow worn, eroded, beach washed hard coral, including fragments (number or amount limit) to be imported into New Zealand with a PHE exemption.

These two options are described and analysed below. They are not mutually exclusive, and a combination of options could be implemented.

Option 1 - Implement quantitative exemptions as listed in Resolution 13.7 (Rev. CoP17)

Option 1 would implement some or all of the quantitative exemptions listed in Resolution 13.7, as revised at CoP17. These are:

- caviar of sturgeon species (Acipenseriformes spp.) – up to a maximum of 125 grams per person whereby the container has to be labelled in accordance with Resolution Conf. 12.7 (Rev. CoP17)
- rainsticks made from cactus. – up to three specimens per person
- specimens of crocodilian species – up to four specimens per person
- Queen conch (*Strombus gigas*) shells – up to three specimens per person
- seahorses (*Hippocampus* spp.) – up to four specimens per person
- giant clam (Tridacnidae spp.) shells – up to three specimens, each of which may be one intact shell or two matching halves, not exceeding 3 kg per person
- specimens of agarwood – up to 1 kg of woodchips, 24 ml of oil and two sets of beads or prayer beads (or two necklaces or bracelets) per person.

There are very few cases of labelled caviar, rainsticks, Queen conch, seashorses and agarwood being seized at the border. For example, fewer than 10 rainsticks have been seized at the New Zealand border in the last three years.

Option 1 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose

Option 1 aligns with the purpose of the TIES Act as it will promote the managed trade of species to ensure the conservation of their populations in the wild. Whilst this option allows more items to be imported without a permit, DOC considers the risk of this contributing to unsustainable trade is low.

Even though permits will not be required for species listed in Resolution 13.7 under Option 1, limits on the amount able to be imported without a permit will aim to protect the species from

exploitation. Requiring a permit for larger quantities of specimens will enable DOC and CITES to still track significant trade and monitor the effects on populations.

Consistency with CITES and CoP resolutions and decisions
Option 1 would align with the recommendations in CITES Resolution 13.7.

Ease of implementation and minimises costs for regulators
Option 1 would be implemented through the existing regulatory system at the New Zealand border. Additional staff training would be required to ensure border staff understand and can implement the quantitative exemptions. Staff would need to be trained to tell the difference between a handbag or other item made from crocodile skin that appears to be sourced from wild rather than farmed crocodiles.

The number of specimens seized or surrendered at the New Zealand border could decrease to some extent under this option, as it affects two of the species that are imported at very high rates: crocodylia and giant clam shells. Border staff would still have to seize quantities above those prescribed. Fewer specimens would need to be processed, stored and disposed of by DOC. There would be initial increased costs for staff training, updating border staff guidance and public outreach.

Minimising costs and improve clarity and efficiency for the public and legal trades
Importers would not have to get permits for the quantities of specimens exempt. It would also mean fewer specimens would be seized from people importing small quantities of specimens listed in Resolution 13.7. Importers would still require permits for hard corals, and these make up a large proportion of specimens seized/surrendered at New Zealand's border. DOC would need to scale up its existing outreach and awareness work on trade in coral.

Option 2- Allow some types and/or amount of coral to be imported into New Zealand under a PHE exemption

Option 2 would require under a definition of coral under a PHE exemption in order to determine which specimens qualify.

Two options are available:

- Option 2a – Allow coral fragments to be imported into New Zealand under a PHE exemption, or
- Option 2b – Allow worn, eroded, beach washed hard coral[8], including fragments (number or amount limit) to be imported into New Zealand under a PHE exemption.

Option 2a would allow coral fragments[9] to qualify for a PHE exemption. The definition used in CITES Resolution 11.10 for coral fragments (including gravel and rubble), i.e. "unconsolidated fragments of broken finger-like dead coral and other material between 2 and 30 mm measured in any direction, which is not identifiable to the level of genus" could be used.

Option 2b would allow worn, eroded, beached washed hard corals, including fragments (number or amount limit) to qualify for a PHE exemption. It is usually easy to tell the difference between beach washed coral and coral physically broken off a reef (fresh coral). Beach washed coral is usually distinguishable from fresh coral in that the later has a rough texture, it may be water saturated, and

[8] This includes SCLERACTINIA spp, ANTIPATHARIA SPP, Helioporidae spp, Tubiporidae spp, Milleporidae spp, Stylasteridae spp.

has a distinctive 'marine' odour. A quantity limit would be determined for this definition which needs to be implementable by border officers. Any quantity in excess of this would be subject to normal permitting requirements.

DOC has started analysis into determining what quantitative limit could be used for this definition. A snapshot survey over two weeks at Auckland International Airport found that 80% of coral seizures weighed less than 500g and usually consisted of 2-3 pieces of coral. Approximately two tonnes of hard coral were surrendered by passengers in 2017. Discussion with Pacific countries would be required, particularly in Pacific islands where the removal of coral has an environmental impact.

The rationale behind this further extension is to facilitate small personal use of coral. For example, this would allow tourists to bring into New Zealand a small quantity of hard beach washed coral as a memento of a family holiday.

Option 2 is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 2 aligns with the purpose of the TIES Act as it promotes the managed trade of species to ensure the conservation of their populations in the wild. Whilst Option 2 allows coral to be imported without a permit, DOC considers the risk of this contributing to unsustainable trade is low.

Consistency with CITES and CoP resolutions and decisions
Hard corals are not currently listed as a quantitative exemption in Resolution 13.7, but are listed on Appendix II of CITES, which does allow for managed trade as the species is not threatened with extinction. This change would only allow coral fragments and/or small amounts of worn, eroded, beach washed coral to qualify for a PHE exemption. Restricting the exemption to corals which have already naturally detached from the reef and have begun to erode onshore, will also protect coral populations.

It is also noted that under CITES, any type and/or amount of PHE can move between countries without any documentation if the item qualifies for a PHE exemption.

Ease of implementation and minimises costs for regulators
Option 2 would be implemented through the existing regulatory system at the New Zealand border. Option 2 would reduce operational resources as certain quantities of coral would no longer have to be seized. Additional staff training would be required to ensure border staff understand and can implement the quantitative exemptions. Border staff would have to be aware of a wider list of exemptions than are currently implemented at the border.

Staff would need to be trained to tell the difference between hard corals that have been washed up on the beach and coral that has been broken off the reef to ensure the continued protection of coral reefs.

The number of specimens seized or surrendered at the New Zealand border could decrease substantially under Option 2, as coral would be exempt from permitting requirements. Fewer seizures would lead to decreased costs to DOC as fewer specimens would need to be processed, stored and disposed of.

Minimising costs and improve clarity and efficiency for the public and legal trades
Importers will not have to obtain permits for specimens that meet the requirements of a PHE exemption. It would also mean fewer specimens will be seized from people importing small quantities of coral.

Requiring a permit for hard corals above a certain quantity will aim to ensure hard corals are not being over collected. It also aims to disincentivise people breaking coral off reefs which can be harmful.

Questions on Section 5 Problem B

- Do you agree with the description of the problem? If not, why not?
- Do you consider that allowing a limited number or amount of worn, eroded, beached washed hard corals to qualify for a PHE exemption would facilitate the taking of coral from coral reefs? If not, why not?
- Should there be quantitative exemptions from permitting for importing giant clam shells and farmed crocodylia into New Zealand as PHE? If not, why not?
- Should personal and household exemptions be considered for the other species listed in by resolution 13.7?
- Should coral that are personal or household effects be exempt from permitting (with limits)? Should this exemption include coral fragments; worn, eroded, beach washed hard coral, or both?
- What is a reasonable weight limit for worn, eroded, beach washed hard coral?
- Are there any other options, not discussed here, that should be considered?

Case study – The treatment of tabua at the New Zealand border

A tabua is an important Fijian cultural item which is made from the polished tooth of a sperm whale (an Appendix I/ Schedule 1 species). These items are considered 'kavakaturanga' or a 'chiefly thing' and are presented at important ceremonies, including weddings, births and funerals. As tabua is listed on Schedule I under the TIES Act, you need a permit to import it into New Zealand. If there is no permit, the tabua will be seized or surrendered. Since the early 1990s, after a request from Fiji authorities, all tabua that is seized or surrendered due to not having a CITES permit is securely stored by DOC. In 2017, after discussions with the Fiji Department of Environment, DOC repatriated 146 tabua to Fiji.

Section 6: Technical issues with permits

The TIES Act does not contemplate the possibility of minor technical issues with permits. Permits with small errors, or permits not presented at the right time due to unforeseen circumstances, are invalid under the TIES Act. These specimens are seized or surrendered, forfeited, and subject to the same disposal discretion as all other illegally traded specimens.

Examples of minor issues with permits include:

- Permit expires before a shipped, posted or air freight item reaches New Zealand
- A permit exists but the item arrives in New Zealand before the permit[10]
- A permit is not validated by the exporting country's border officials
- Different addresses appear on Multiple Consignment Authority permits and the corresponding Specimen Export Record
- Permits are lost
- The management authority in the state of export makes an error on the permit, such as the wrong date.

Penalising importers that have gone through the correct process, but have an error on their permit or are not in possession of their permit (due to circumstances outside of their control), does not contribute to the managed trade of CITES species. This does not apply to circumstances where an importer never had a permit in the first place.

Problem – There is no current mechanism to effectively address minor permit errors

The TIES Act does not currently provide DOC with a mechanism to effectively address minor issues, such as those listed above. The provisions that control how forfeited items are dealt with do not contemplate releasing items back to importers if there are minor errors on a permit. Instead they are subject to the same strict process as items traded with no permit.

Because of this, many specimens traded under these circumstances are seized and forfeited to the Crown, and the trader does not get them back. DOC considers that this strict regime does not always further the purpose of the TIES Act and can unnecessarily penalise first time importers trying to follow the correct process. The status quo takes up considerable operational resources as DOC staff seek to resolve issues on permits in the absence of a clear system in the TIES Act to address such problems.

However, permits are designed to provide assurance that the trade is legitimate and to prevent illegal trade using fraudulent and invalid permits. Only accepting valid permits gives the requisite assurance that the trade is legitimate. This is important as the CITES permitting system is the cornerstone in the implementation of the Convention and how it monitors legal and illegal trade. CITES provides clear direction on the unacceptability of presenting non-original copies, and expired permits.

[10] Under S 26 of the TIES Act a permit must be presented before or at the time of importation

Option

To address this problem, we propose an option to:

- Enable seized items to be returned if permits have a minor error outside of the importers' control
- Enable replacement permits from overseas management authorities

Option 1a Enable seized items to be returned if permits have a minor error outside of the importers' control

This change would amend the TIES Act to enable DOC to accept minor errors on permits if the circumstances under which the error occurred is outside the control of the importer or their agent. This change will include clear criteria on when errors on permits can be accepted.

All items with invalid permits would still be seized at the border and referred to DOC CITES Rangers. CITES Rangers would then assess whether the error on the permit falls within the criteria of being accepted, and the item could then be released back to the importer. If a permit had more than one error, or the same importer had submitted permits with errors in the past, DOC could not release the item. It would also not apply where the imported quantity exceeded that specified on the permit, or if different species or specimen types (not listed on the permit) were imported.

As the TIES Act does not currently have a provision for releasing items back to importers, a provision will need to be added to enable the return of items.

Option 1a is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 1a is less aligned with the purpose of the TIES Act than the status quo, as it will allow permits with errors to be assessed with a view to returning seized items to importers in limited circumstances. Option 1a would still apply a strict permitting regime to manage the trade of endangered species and only minor errors would be accepted.

Consistency with CITES and CoP resolutions and decisions
Option 1a would not align with CITES, as CITES guidance does not allow for invalid permits to be accepted under any circumstances. The Government could be seen to be weakening species protection by accepting permits with errors on them. Even though Option 1a does not align with CITES, DOC considers that it will not contribute to unsustainable trade as it will only apply to those who have a permit.

Ease of implementation and minimises costs for regulators
DOC already manages cases of permits with minor errors, holding items while the permit is being assessed.

Clear provisions would assist DOC in making decisions about when the permit could be accepted even if invalid, avoiding situations where an importer is deliberately or repeatedly not following proper permitting procedures.

There would be initial staff training costs. There would be lower costs over time compared to the status quo, because fewer importers with invalid permits would lose their items.

Minimising costs and improve clarity and efficiency for the public and legal trades
Importers will be able to get their specimens returned to them if there is a minor error on their permits, if the circumstances under which the error occurred was outside the control of the importer and it is a one-off.

This should have no effects on endangered species populations as it only applies to cases where a permit has already been provided, but there is an error on it.

Option 1b - Enable replacement permits from overseas Management Authorities

Option 1b would allow DOC to accept a replacement permit if a permit has been lost, cancelled, destroyed or where there has been an administrative error by the issuing authority.

A seized item would be held by DOC until the trader was able to obtain a valid replacement permit, without the error, from the exporting country. Once received, the item would be released. If the trader could not obtain a replacement permit due to refusal by the exporting country's CITES Management Authority, the item would be forfeit to the Crown and subject to the regular disposal provision.

Option 1b is assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 1b would align with the purpose of the TIES Act, as it would still apply a strict permitting regime to manage the trade of endangered species and only minor errors would justify seeking a replacement.

Consistency with CITES and CoP resolutions and decisions
CITES Resolution 12.3 does allow for permits to be replaced if the permit has been lost, stolen or cancelled. This change is broader than this Resolution, as it considers replacement permits for when there has been an error or other circumstance beyond the control of the importer.

Ease of implementation and minimises costs for regulators
DOC already manages cases of permits with minor errors, holding items while the permit is being assessed. Putting the onus on the importer to provide a replacement permit would limit the administrative burden on DOC, although it would still require considerable liaison with overseas Management Authorities and importers. DOC would have to store the specimens being imported for longer (until a replacement permit can be provided).

Option 1b would allow DOC to accept replacement permits. It will also provide clear guidance on when it is appropriate to accept replacement permits. DOC currently responds to complaints about items getting seized. Clarifying the process in the TIES Act will enable DOC to better respond to complaints.

There would be initial staff training costs. Costs over time will be higher than the status quo because of the time it will take to facilitate replacement permits, and for the provision of storage.

Minimising costs and improve clarity and efficiency for the public and legal trades
Importers will not have specimens forfeited to the Crown and disposed of if a replacement permit can be provided by the relevant Management Authority.

This would also provide assurance that the specimen is being legally traded.

Analysis of combined option

Options 1a and 1b would enable the return of seized/surrendered items to importers if it was decided that an error on a permit was minor, or if a replacement permit could be provided by the relevant management authority. Option 2 would be more costly in staff time than Option 1.

The combined effect of these amendments would allow DOC to address minor errors. It will also simplify the process in circumstances where it is clear a permit was acquired, but due to circumstances outside of an importers' control the permit is not valid.

Questions on Section 6

- Should people with minor errors on their permits or permits not presented at the right time (due to unforeseen circumstances) have their items returned to them? If so, under what circumstances?
- Should there be a way to address permits with minor issues, or should DOC take a strict approach?
- Do you agree with the impact analysis of this option? If not, why not?
- Are there other situations not outlined above where minor errors on permits should be accepted?

Section 7: Cost recovery

There is currently authority for DOC to cost recover for some of its work administering the TIES Act. This authority allows for cost recovery on providing CITES permits for people either importing or exporting CITES listed specimens. Private individuals and businesses have to pay a fee to get a permit to import or export CITES specimens. There is no price differential between business and personal permitting fees.

The TIES Act does not enable DOC to cost recover for time spent undertaking certain activities. DOC is currently undertaking two activities that are being funded from DOC baseline funding:

- Reviewing product inventories of a commercial nature prior to export to New Zealand to provide advice on whether permits are required or not; and
- Inspections of mostly imported commercial consignments of endangered species that are deemed high risk and chosen for inspection.

Problem - DOC resources spent reviewing and inspecting commercial activities could be spent on other activities

Screening high risk commercial consignments require DOC CITES Officers to spend between two and eight hours a week on risk screening commercial consignments, costing approximately $30-$35,000 per annum. These costs are covered from DOC baseline funding. Recovering costs for commercial inspections is undertaken by other government agencies. For example, the Ministry for Primary Industries, recover costs for inspections of commercial importations.

If DOC could cost recover it would enable this function to be resourced effectively. Enabling cost recovery by management authorities has also been cited by CITES as a deterrent for illegal trade, as it incentivises importers to follow proper permitting procedures to ensure they are not charged for additional inspections of consignments.

Option

To address this, we propose an option to:

- Cost recover for reviewing product inventories for private commercial importers
- Cost recover for risk screening consignments at the border.

The two parts of the proposal are not mutually exclusive, and a combination of them could be implemented.

Option 1a - Cost recover for reviewing product inventories for private commercial importers

Option 1a would enable DOC to cost recover for doing product inventories for private commercial importers.

Reviewing product inventories is beneficial for DOC as it means there are fewer issues at the border for commercial imports, however this service is provided for free and comes from DOC baselines. In this case, DOC is providing a service that provides private benefit. According to Treasury's guidelines on cost recovery for government departments, it is appropriate to cost recover if the department is providing a service where private good is being derived from the service.

Options 1.a and 1.b are assessed below against the criteria set out in Section 1.

Promotion of the TIES Act purpose
Option 1a promotes the purpose of the TIES Act as it would enable DOC to cost recover for a service that provides private benefit, and is currently funded from baseline funding.

Consistency with CITES and CoP resolutions and decisions
Option 1a does not directly relate to CITES, as it concerns DOC's funding of the regulatory regime that has been set up to implement CITES.

Ease of implementation and minimises costs for regulators
To implement Option 1a, DOC would have to be able to receive payment from private commercial importers. DOC already collects payment for permitting services. Payment for reviewing product inventories would be incorporated into this existing system through an application process. Fees would likely be collected through invoicing.

If DOC can cost recover for this service, resources would be made available to improve operational efficiency in other areas.

Option 1a would provide a stream of revenue to cover the costs of a service DOC is already providing.

Minimising costs and improve clarity and efficiency for the public and legal trades
Option 1a would shift the costs from the regulator to the importer. Commercial importers would have to cover the costs of DOC reviewing its product inventories to confirm which permits are required.

Option 1b - Cost recover for risk screening consignments at the border

Option 1b would enable DOC to cost recover for risk screening mostly commercial consignments at the border.

Commercial consignments are chosen to be screened if it is deemed to be high risk. If chosen, a consignment is inspected by a DOC CITES officer. This activity can be considered as a public good, as it identifies consignments that are at risk of importing endangered species specimens without proper permits, or possibly importing endangered species specimens illegally.

According to Treasury's cost recovery guidelines, public goods can be cost recovered for if there is a public benefit. In this case, the output of risk screening consignments ensures that imports of endangered species either have the correct permits or are being stopped from being imported illegally.

Option 1b is assessed below against criteria outlined in Section 1.

Promotion of the TIES Act purpose
Option 1b promotes the purpose of the TIES Act as it would enable DOC to cost recover for a service that is currently funded from baseline funding.

Consistency with CITES and CoP resolutions and decisions
Option 1b does not directly relate to CITES, as it concerns DOC's funding of the regulatory regime that has been set up to implement CITES.

Ease of implementation and minimises costs for regulators
To implement this, DOC would have to be able to receive payment from private commercial importers. DOC already collects payment for permitting services. Payment for reviewing product

inventories would be incorporated into existing systems. As the regulator determines whether a consignment is risk screened rather than the importer, payment would likely occur after the screening has occurred. Fees would likely be collected through invoicing.

If DOC can cost recover for this service, resources would be made available to improve operational efficiency in other areas.

Option 1b would provide a stream of revenue to cover the costs of a service DOC is already providing.

Minimising costs and improve clarity and efficiency for the public and legal trades
Option 1b would shift the costs from the regulator to the importer. Importers would have to cover the costs of DOC screening their commercial consignments if it has deemed to be high risk.

Analysis of combined option

Options 1a and 1b would provide cost recovery for different activities DOC is currently undertaking. Cost recovering would free up resources to improve implementation of the TIES Act.

Questions on Section 7

- Do you agree with this description of the problem? If not, why not?
- Should DOC cost-recover for services provided to commercial users, and commercial consignment inspections?

Section 8: Implementation and monitoring and evaluation

Implementation of proposed changes

All of the proposed options discussed would require amendments to the TIES Act. Any amendments will be included in a draft Bill that would be considered by Parliament and would include a select committee process inviting public submissions.

Implementation costs for the options under the PHE, technical issues with permits, cost recovery and providing for regulation making powers to implement COP decisions and resolutions will be relatively low. Implementation could be delivered by existing teams in DOC. The main costs would be associated with the training of DOC, MPI and New Zealand Customs Service border staff; and public outreach and awareness.

Implementing the options for regulating elephant ivory would be more resource intensive. Implementing Options 1 to 3, which regulates the domestic market, would require setting up entirely new regulatory systems, as DOC does not currently have a system for regulating and monitoring the domestic sale of non-native species. This would require more staff as well as additional IT systems to manage seller registrations and tracking of ivory items. There would also be training and outreach costs. These costs will be considered in the final proposals.

Monitoring and Evaluation

CITES work is done in a dynamic environment, adapting to changes from both CITES and passenger trends. This means that processes and procedures are adaptive, with constant reactionary review. The proposed changes to the TIES Act could help shift the administrative focus of the team to spend more time on items traded without permits, training, analysis and outreach.

DOC also manages the New Zealand CITES database, which records data on all seized and surrendered CITES specimens. This database is used for two main purposes:

- as a record of the trade of CITES specimens to compile the annual report to the CITES Secretariat
- as a compliance tool.

DOC would continue to manage and collect information for this database.

Monitoring seizures and surrenders through the CITES database will be one of the ways that DOC will be able to evaluate any changes made to the TIES Act, as most options will affect levels of seizures/surrenders at the border.

Monitoring and evaluating the proposed options above will also require continued close engagement with MPI and New Zealand Customs Service. Onsite checks after implementation will be considered to monitor and analyse the effectiveness of the review.

Questions on Section 8

- How should the proposals considered in this document best be monitored?

Glossary

Agent: A person or company acting on behalf of an importer.

Border staff: Department of Conservation, Ministry of Primary Industries and/or New Zealand Customs Service officials working at the New Zealand border in their role as Endangered Species Officers.

CoP: The Conference of Parties which takes place every three years to make decisions on CITES-listed species and review and make recommendations on CITES implementation.

Coral: There are several different types of coral seized or surrendered at the New Zealand border, including farmed, beach washed, and coral broken off a reef. Usually beach washed coral look more worn and smoother than coral recently broken off a reef.

Decisions: The decisions adopted by the CoP are more short term in nature. This means that they are to be implemented, often by a specified time, and then become redundant by the next CoP and are deleted.

Management Authority: The Management Authority in charge of administering the CITES permitting system, regulating international trade, compliance and enforcement issues, and managing relationships for a Party.

Party: A state or regional economic integration organisation that has signed up to CITES.

Pre-convention: A specimen was acquired prior to the species being listed as protected under the Convention, for example elephant ivory was listed in 1975/76.

Resolutions: The resolutions provided by the CoP are generally intended to provide long-standing guidance over periods of many years.

Scientific Authority: The Scientific Authority that advises and monitors the effects of trade on the status of species for a Party.

Seize: When an unaccompanied CITES specimen is taken into the custody of DOC (e.g. a specimen imported through the mail or a household move).

Status quo: This refers to the current way CITES and the TIES Act is implemented in New Zealand.

Surrender: When a CITES specimen is taken into the custody of DOC from a person coming into New Zealand at an airport or port

Appendix 1: Consultation questions

Questions on Section 1 – Why are we reviewing the TIES Act?

- Should DOC be considering any other policy areas for review?
- Is DOC considering the right objectives?
- Should DOC be considering any other criteria when assessing options?

Questions on Section 2 – What is CITES?

- Are there any other factors that should be considered?

Questions on Section 3 – Trade in Elephant ivory

- Has the problem been correctly identified?
- Has the size of the domestic elephant ivory market been correctly described?
- Should New Zealand consider a ban on the domestic trade of any other species in possible regulation? If so, why?
- Do you agree with the impact analysis for these options? If not, why not?
- Should New Zealand ban the sale of elephant ivory on the domestic market?
- If it is banned, should there be any exemptions, for example like the UK exemptions?
- Should any additional exemptions be specific to New Zealand?
- Should importing elephant ivory be banned? If so, should there be exemptions?

Questions on Section 4 – DOC as Treaty Partner

- In what other ways can DOC support New Zealanders and in particular Māori, to minimise the risk of having taonga made from protected species seized at international borders when travelling?
- What changes to New Zealand's permitting system would make it easier to move taonga across international borders?
- How could the TIES Act give effect to the principles of the Treaty of Waitangi?

Questions on Section 5 Problem A – Definition of Personal and Household Effects

- Should the definition of PHE change to mean a trade cannot qualify for a PHE exemption if it is for commercial purposes, and/or is not part of personal or household effects?
- Are there any other options we should be considering?

Questions on Section 5 Problem B - Large quantities of some species are being seized in circumstances where it may not be appropriate

- Do you agree with the description of the problem? If not, why not?
- Do you consider that allowing a limited number or amount of worn, eroded, beached washed hard corals to qualify for a PHE exemption would facilitate the taking of coral from coral reefs? If not, why not?
- Should there be quantitative exemptions from permitting for importing giant clam shells and farmed crocodylia into New Zealand as PHE? If not, why not?

- Should personal and household exemptions be considered for the other species listed in by resolution 13.7?
- Should coral that are personal or household effects be exempt from permitting (with limits)? Should this exemption include coral fragments; worn, eroded, beach washed hard coral, or both?
- What is a reasonable weight limit for worn, eroded, beach washed hard coral?
- Are there any other options, not discussed here, that should be considered?

Questions on Section 6 – Technical issues with permits

- Should people with minor errors on their permits or permits not presented at the right time (due to unforeseen circumstances) have their items returned to them? If so, under what circumstances?
- Should there be a way to address permits with minor issues, or should DOC take a strict approach?
- Do you agree with the impact analysis of this option? If not, why not?
- Are there other situations not outlined above where minor errors on permits should be accepted?

Questions on Section 7 – Cost Recovery

- Do you agree with this description of the problem? If not, why not?
- Should DOC cost-recover for services provided to commercial users, and commercial consignment inspections?

Questions on Section 8 – Implementation and monitoring and evaluation

- How should the proposals considered in this document be monitored?