In Confidence

Office of the Minister of Conservation

Chair, Cabinet Economic Development Committee

PROPOSED AMENDMENTS TO THE TRADE IN ENDANGERED SPECIES ACT 1989

Proposal

1. I propose amending the Trade in Endangered Species Act 1989 (TIES Act) to regulate the domestic sale in elephant ivory with exemptions and place further restrictions at the border on importing and exporting elephant ivory. Following public consultation on a discussion document, I also propose amendments to the TIES Act to:

   - amend the definition of personal and household effects;
   - include a regulation-making power enabling species-specific exemptions from permitting for personal and household effects;
   - enable a process to return seized[1] items to individuals where there are irregularities in permitting processes by overseas Management Authorities in defined circumstances; and
   - allow cost recovery for services provided to commercial traders.

2. This paper also seeks agreement to re-write the TIES Act to address technical and structural issues according to modern drafting practice.

Relation to Government priorities

3. This work relates to the Government's priority to create an international reputation we can be proud of [CAB-18-MIN-0111 refers]. The TIES Act implements New Zealand's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival in the wild.

4. The proposals in this paper improves the way CITES is implemented and aligns New Zealand with other countries that are regulating the domestic sale of elephant ivory, maintaining and strengthening our international reputation as a leader in conservation.

[1] This paper will take 'seizure' to refer to both seizures and surrenders. An item is 'seized' when it is imported in contravention of the TIES Act through any port, aerodrome, transitional facility, or Customs controlled area. An item is 'surrendered' when a person arriving from overseas is importing an item in contravention of the TIES Act.

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5. Cabinet approval is required for technical amendments to the TIES Act to ensure the regulatory systems function more efficiently.

Executive Summary

6. I am proposing a suite of changes to the TIES Act. This will improve the implementation and functioning of the system regulating the international trade of endangered species, thereby better fulfilling New Zealand's role in protecting wild populations of endangered, threatened, and exploited species.

7. The TIES Act implements CITES, which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival in the wild. To achieve this, CITES sets up a permit system to regulate international trade of endangered species.

8. A public discussion document released in September 2019 received 119 submissions. Most submitters supported a domestic ban on the sale of elephant ivory. Only a few submitters commented on other areas of the discussion document and were mostly supportive.

9. I propose placing further restrictions on the international trade of elephant ivory and banning the domestic sale of elephant ivory with exemptions. Banning the domestic sale in elephant ivory will address growing international calls for countries to close domestic markets.

10. Elephant ivory items acquired pre-Convention[2] will be exempt from the domestic sale ban as it is considered lower risk from being poached or traded illegally. Only narrow exemptions from importing and exporting elephant ivory will be allowed, to limit the risk of illegally acquired elephant ivory entering New Zealand.

11. I propose to provide further support and outreach to address concerns raised by Māori art practitioners about taonga carried by New Zealanders being seized at international borders for not having the correct permit. As New Zealand does not have jurisdiction over other countries' borders, officials will continue to partner with Māori, iwi and hapū to share guidance for those travelling with taonga.

12. Proposed changes to the personal and household effects (PHE) exemption in the TIES Act will amend the definition to align with CITES guidance, ensuring the exemption is used as intended, while still maintaining New Zealand's stricter approach to the trade in personal and household effects. I also propose to include a regulation-making power to enable species-specific exemptions from permitting for PHE items. This will allow targeted exemptions for items that make up the majority of seizures at our border, including crocodile products from Australia, hard corals and clam shells.

13. I propose enabling a process to return seized items to individuals where there are irregularities in permitting process by overseas Management Authorities in defined circumstances. Currently there are no clear mechanisms in the TIES Act to enable

[2]Items that are pre-Convention were removed from the wild or bred in a captive breeding facility, or the known date of acquisition is before the species was listed on CITES appendices.

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officials to consider errors in permitting processes, including where errors have arisen due to circumstances outside of the importers' control.

14. This will allow officials to consider cases where errors on permits or in the permitting process are outside of the importers' control. It will provide certainty on when importers can have their property returned and enable consistent application across different cases.

15. DOC cannot currently cost recover for services provided to commercial traders. I propose amending the regulation-making power in the TIES Act to enable DOC to cost recover for services that provide private benefit to commercial traders.

16. There are also a number of technical and structural issues that complicate implementing the TIES Act. I propose re-writing the TIES Act to ensure these issues are addressed and the Act is re-written in clear, modern language.

17. I consider the proposals to be mostly low risk. As New Zealand's domestic elephant ivory market is considered to be small, there is some risk in setting up a regulatory system for the domestic elephant ivory market with limited conservation outcomes. This risk will be mitigated by placing the regulatory burden of dating and tracking items on traders and by providing for exemptions.

18. Costs related to banning the international and domestic trade in elephant ivory will not be able to be covered by current baseline funding. Implementation costs in year one are estimated to be $2 million, with projected costs of $7.5 million for the first five years.

19. If Cabinet agrees, drafting instructions will be issued to Parliamentary Counsel Office (PCO) to draft an amendment Bill.

Background

20. The TIES Act implements CITES. New Zealand became a party to CITES in 1989. Approximately 5,800 species of animals and 30,000 species of plants are subject to CITES, which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival in the wild. To achieve this, CITES sets up a permit system to regulate international trade of endangered species. Species are listed on one of three appendices:

- Appendix I – lists species that are threatened with extinction (Schedule 1 in the TIES Act).
- Appendix II – lists species not threatened with extinction, but which could become so if international trade is not sustainably managed (Schedule 2 in the TIES Act).
- Appendix III – lists species where Parties need the cooperation of other countries to prevent unsustainable or illegal exploitation of a species (Schedule 3 in the TIES Act).

Report back on public consultation

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21. Cabinet approved the release of a public discussion document to support the review of the TIES Act and invited me to report back to Cabinet Economic Development Committee following public consultation [DEV-19-MIN-0232 refers].

22. The public discussion document was released on 24 September 2019 and consultation closed on 25 October 2019. The public discussion document asked for feedback on five policy areas:

    22.1. Regulating trade in elephant ivory

    22.2. Movement of taonga across international borders

    22.3. Personal and household effects

    22.4. Technical issues with permits

    22.5. Cost recovery

23. DOC received 119 submissions on the TIES Act discussion document, with 92 by individuals. The majority of submissions from individuals were submissions from the Jane Goodall Foundation and New Zealanders for Endangered Species. There was strong international interest in the discussion document, with 86 submitters identifying themselves as overseas individuals or organisations.

24. New Zealand organisations that submitted include the Jane Goodall Foundation, Forest and Bird, Cordy's Auction House and Dunbar Sloane. 14 international conservation organisations also submitted on the document.

25. No written submissions were received from the Māori arts sector, but officials met with key stakeholders as detailed below.

26. Submitters were generally supportive of the review and the proposals. Most submitters only commented on the elephant ivory sections, with 105 supporting a ban on the domestic sale of elephant ivory.

Meeting with Māori art practitioners and carvers

27. Officials met with Māori art practitioners and carvers (Toi Māori Aotearoa, Te Matatini and specific Māori arts practitioners) to discuss proposals around taonga. Further detail on these discussions are outlined in paragraphs 144 to 156.

Stakeholder meetings

28. Officials also met with Te Papa and the Jane Goodall Foundation to discuss the proposals for regulating the domestic sale in elephant ivory. Te Papa were comfortable with the proposal to provide an exemption from trade restrictions for museums.

29. The Jane Goodall Foundation was supportive of a total ban on domestic sales, as well as for imports and exports of elephant ivory.

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30. Two auction houses, Cordy's and Dunbar Sloane, were not supportive of regulating the domestic market as they noted almost all the elephant ivory they sell are pre-Convention (i.e. obtained from the wild pre-1975), and they do not consider that the trade of these elephant ivory items contributes to the illegal trade and poaching of elephants.

Amending the TIES Act will help New Zealand further meet its obligations under CITES

31. The TIES Act has been reviewed to ensure New Zealand is meeting its obligations under CITES through clear and effective legislation that disincentivises illegal trade, enables operational clarity and efficiency, and provides the legislative tools to respond to CITES guidance.

32. The proposed changes to the TIES Act will improve the implementation and functioning of the system regulating the international trade of endangered species, thereby better fulfilling New Zealand's role in protecting wild populations of endangered, threatened, and exploited species.

33. By regulating the domestic sale in elephant ivory, New Zealand will be aligned with countries such as the UK and Australia in joining the international effort to stop the poaching and illegal trade of elephant ivory. The proposed increase in border restrictions for importing and exporting elephant ivory are stricter than those proposed in the UK. Australia has not yet finalised their proposals.

34. I seek approval for amending the TIES Act to implement proposed policy changes based on the options outlined in the discussion document.

35. I also seek approval to re-write the TIES Act in modern language, and to address technical and structural issues that have been identified as part of the review process.

36. Amendments to the TIES Act are proposed for the following policy areas:

    36.1. Regulating trade in elephant ivory (paragraphs 38 to 60)

    36.2. Personal and household effects (paragraphs 61 to 77)

    36.3. Addressing errors in permitting processes (paragraphs 78 to 91)

    36.4. Cost recovery (paragraphs 92 to 96)

    36.5. Technical amendments (paragraphs 103 to 144)

37. I am proposing a non-legislative approach to support the movement of taonga across international borders. This approach is outlined in paragraphs 144 to 156.

Increase regulation of elephant ivory domestically and at the border

38. I propose to ban the domestic sale and import and export of elephant ivory with exemptions. Regulating the domestic sale of elephant ivory was included in the review of the TIES Act as there is growing international concern that legal domestic

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markets for elephant ivory contributes to poaching and illegal trade, threatening the survival of elephant populations in the wild.

39. In 2016, the CITES Conference of the Parties agreed to a decision that urged Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, to 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, whilst recognising that narrow exemptions to this closure for some items may be warranted[3].

40. Banning the domestic sale in elephant ivory will therefore address growing international calls for countries to close domestic markets. Allowing for exemptions from the ban on domestic sale enables the continued sale of older items that are considered not to contribute to the poaching and illegal trade of elephant ivory. This would include elephant ivory handles, chess sets, musical instruments such as pianos and bagpipes, billiard sets and carvings, that are pre-Convention[4].

41. Banning the import of elephant ivory, with narrow exemptions, will aim to stop elephant ivory at higher risk of being illegally acquired to enter New Zealand. Allowing exemptions for importing elephant ivory will enable the continued international trade of items like musical instruments and museum items that are considered not to contribute to the illegal trade or poaching.

42. Banning the export of elephant ivory from New Zealand, with narrow exemptions, will aim to stop the export of elephant ivory to other jurisdictions where the sale of elephant ivory is unregulated. If the export is not banned, people can continue to export and sell elephant ivory elsewhere, which is not in line with the global commitment under CITES to regulate the sale of elephant ivory.

43. Banning the export of elephant ivory was not an option included in the public discussion document, but has been included as part of the proposal to regulate elephant ivory. Even though it was not included in the discussion document, 84 submitters noted they supported banning the export of elephant ivory as well.

Proposed exemptions for international trade in elephant ivory

44. I propose the following exemptions from the ban on importing and exporting elephant ivory:

- Musical instruments acquired before 1975 (pre-Convention)
- Items traded between museums
- Items traded for forensic testing by *bona fide* forensic laboratories

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[3] Conf 10.10, Rev COP18 https://www.cites.org/sites/default/files/document/E-Res-10-10-R18.pdf

[4] Pre-Convention items were removed from the wild, bred in captivity, or acquired before the species was listed on CITES appendices. For African elephants this date is 1975, and 1976 for Asian elephants. For ease of implementation I am proposing 1975 as the pre-Convention date for all elephant ivory products being traded domestically and being imported and exported.

- Scientific specimens traded by CITES registered institutions.

45. This proposal may lead to a small decrease in the number of elephant ivory items being imported into New Zealand, as only items that meet one of the narrow exemptions can be imported. Elephant ivory makes up a small proportion of imports. In 2018, 21 out of 2,144 permits for importing CITES specimens into New Zealand was for elephant ivory.

46. The strict regime proposed at the border for importing elephant ivory will aim to stop any additional elephant ivory items entering New Zealand, keeping the New Zealand market at its current size.

47. Fewer exemptions are proposed at the border than for domestic sale as there is greater risk from items being imported being linked to elephant poaching and illegal trade than elephant ivory items already in New Zealand.

Proposed exemptions from the ban on domestic sale of elephant ivory

48. I propose exempting the sale of items acquired before 1975 (pre-Convention), including musical instruments, from the ban on the domestic sale in elephant ivory.

49. Museums and scientific institutions usually lend items to each other (for example for forensic testing), rather than sell items. These organisations will still be able to lend elephant ivory items without restriction for scientific, educational or exhibition purposes.

50. These exemptions will allow for the continued sale of items such as cutlery with elephant ivory handles, chess sets, bagpipes, pianos, billiard sets and carvings, provided they were acquired from the wild pre-Convention. These items are considered to be low risk and unlikely to be contributing to the illegal trade of elephant ivory.

Regulating the domestic sale and import and export in elephant ivory will support international efforts to reduce elephant poaching and illegal trade

51. There is pressure from international and domestic NGOs for New Zealand to follow the lead of countries such as the UK and Australia and regulate the domestic trade of elephant ivory. If New Zealand does not regulate its domestic market, elephant ivory will still be able to be sold without restriction, as opposed other countries with increased restrictions.

52. Since the UK passed its Ivory Act 2018 (Ivory Act), it has been confirmed that the ban on importing and re-exporting elephant ivory will only apply to items being traded for commercial purposes, unless the trade meets one of the five exemptions listed in the Ivory Act. The proposal in paragraph 42 will mean that New Zealand's trade restrictions on elephant ivory will be stricter than those being implemented by the UK, as the proposed ban on the import and export of elephant ivory across New Zealand's border also applies to trade for personal use.

The direct conservation impact on elephants is likely to be small

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53. The domestic trade in elephant ivory in New Zealand is considered to be small and is unlikely to be contributing to poaching or illegal trade elsewhere. This is based on anecdotal data, information from submissions, and international trade numbers.

54. Most elephant ivory imports are pre-Convention items (85% between 2008 and 2018). Between 2008 and 2017, only 215 CITES permits to import elephant ivory were presented at New Zealand's border. 124 elephant ivory items were seized over the same period, the majority from shipments of household moves.

55. Banning the domestic sale in elephant ivory is therefore unlikely to have a measurable impact on illegal poaching of elephants or illegal trade in ivory.

56. The benefits of regulation will be to uphold New Zealand's international reputation as a supporter of protecting endangered species and providing reassurance to New Zealanders that the elephant ivory sold in New Zealand is not a result of illegal poaching.

Regulatory system and compliance

57. I propose adding a regulation-making power in the TIES Act to enable regulating the domestic sale in CITES listed species, which can be used to implement a ban on the domestic sale of elephant ivory with exemptions. Adding a regulation-making power in the TIES Act will enable the Government to respond to any significant changes in the market or in CITES guidance on the domestic regulation of any CITES-listed species.

58. As there is currently no system regulating the domestic sale of elephant ivory, additional offences and powers will need to be created to implement and enforce the ban. Regulations will include offences, inspection and search powers in addition to other operational matters identified in the next phase of work to develop regulations. This will include how sellers will prove items they are selling are pre-Convention, which will likely be through providing provenance documentation.

59. The term 'sale' will be defined as selling items for valuable consideration and does not include lending between institutions, gifting, or inheriting elephant ivory items.

60. The ban on importing and exporting elephant ivory with exemptions will be implemented through the current regulatory regime at New Zealand's border. The offence provisions in the TIES Act will therefore apply to the ban on import and export of elephant ivory. Permits will still be required to import and export elephant ivory items that meet exemptions.

Personal and Household Effects exemption

61. I propose amending the personal and household effects (PHE) exemption in the TIES Act, including its definition and exemptions from permitting for specific species. The PHE exemption in the TIES Act allows individuals to carry personal and household items made from endangered species listed on CITES across New Zealand's border without a permit if the items were acquired in New Zealand.

Aligning the PHE definition with CITES guidance

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62. I propose to align the definition of PHE in the TIES Act with the definition outlined in CITES guidance. The current PHE definition is “any article of household or personal use or ornament.” This definition of PHE does not exclude items traded for commercial reasons or consider how an item is carried.

63. The definition of PHE in CITES Resolution 13.7, which provides guidance on the PHE exemption, is:

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

64. Adopting this definition will exclude items that are being traded for commercial purposes. The way the current definition interacts with the wording of the exemption allows some specimens to be exported from New Zealand for commercial purposes without a permit. The updated definition will stop this from occurring. It is also consistent with the purpose of CITES as it ensures an exemption designed for moving personal items between countries is not used for other purposes.

65. Including the requirement of being ‘legally acquired’ will enable border officials to question traders if they suspect the item was not legally acquired.

66. Changing the definition would have a relatively minor impact on current practice. As the PHE exemption in the TIES Act only applies to items acquired in New Zealand, all non-New Zealand acquired PHE items that are listed on Appendix I or Appendix II would continue to require a permit to enter New Zealand. This change will therefore not result in any change in approach to items that are not acquired in New Zealand.

67. The proposal would primarily impact those exporting items that qualify as PHE for commercial purposes, as permitting requirements do not currently apply to items being exported. It will also have the additional impact of restricting how PHE items can be traded across New Zealand’s border in that permits would be required for items being sent by post that would previously have met the definition of PHE.

Allow exemptions for species from permitting if they are PHE items

68. I propose to include a regulation-making power in the TIES Act to enable species-specific exemptions from permitting for Appendix II PHE items. New Zealand’s PHE exemption only allows New Zealand acquired items to be imported without a permit. This means that high volumes of personal items that are not acquired in New Zealand are seized at the border. A regulation-making power will allow for targeted exemptions for items made from species that make up most seizures.

69. The PHE exemption in the TIES Act requires permits under more circumstances than required under CITES. As countries can have stricter measures than required by CITES, New Zealand is meeting its obligations under CITES.

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70. By allowing a regulation-making power to exempt certain PHE items on Appendix II from permitting we will be aligning the TIES Act with CITES Resolution 13.7, which provides additional guidance on the PHE exemption. This includes setting up quantitative limits for imports of certain species, which have been identified as being more susceptible to unsustainable trade.

71. Over half of all seizures at New Zealand's border are made up of three species: hard corals, giant clam shells and crocodile products. These three groups of specimens accounted for approximately 5000 out of 9436 seizures/surrenders in 2018. As the specimens are mostly acquired overseas, they do not qualify for the PHE exemption which requires items to be acquired in New Zealand.

72. A regulation-making power enabling exempting species will allow high volumes of certain species being imported to be exempt from permitting requirements on a case by case basis. From the three species that make up the most seizures at the border (crocodile products, giant clams, and hard corals), I propose using this regulation-making power to immediately implement an exemption from permitting requirements for farmed crocodile products from Australia[5].

73. I propose the exemption of a limited quantity of farmed crocodile products from Australia as their export market is highly regulated with the registration of authorised captive breeding establishments or closed cycle farms required under Australian legislation. I am therefore confident that progressing regulations to exempt four farmed crocodile products per person from permitting will not have a negative effect on wild crocodile populations in Australia.

74. Exempting crocodile products from Australia will decrease the number of seizures at New Zealand's border while remaining consistent with the purposes of the TIES Act. This will mean fewer specimens needing to be processed, stored and disposed of, with likely cost savings over time. Those importing up to four crocodile products as PHE will no longer require a permit.

75. I also propose allowing coral fragments and sand to be imported without permits, as CITES Parties have agreed that coral sand and fragments do not qualify as specimens and therefore do not require the regulation of trade through the CITES permitting system.

Further information is required before exempting giant clams and hard corals from permitting

76. I do not propose progressing regulations for exempting giant clam shells and hard corals from permitting requirements at this time as there is currently insufficient information available on the impact on wild populations. Officials will be consulting countries where giant clam shells and hard corals specimens are sourced to establish whether a permitting exemption would have a negative impact on wild populations and whether their own domestic legislation requires issuing permits for export.

[5]Exemption would be for up to four specimens per person of ranched or farmed Appendix II *Crocodylus porosus* from Australia.

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77. Once consultation with source countries is complete an exemption from permitting for giant clam shells and hard corals can be considered through a regulation-making process.

Addressing errors in permitting processes by overseas Management Authorities

78. I am proposing a package of options to enable a process for assessing cases where there are errors on permits or in the permitting process by overseas Management Authorities, or in limited circumstances, where no permit has been presented at the time of import, to enable the return of items.

79. Currently there are no clear mechanisms in the TIES Act to enable officials to consider errors on permits, including where errors have arisen due to circumstances outside of the importers' control. Permits with any errors cannot be accepted under the current provisions and therefore specimens traded under these circumstances are seized and forfeited to the Crown and disposed of. Importers who have gone through the correct process can therefore be penalised, which does not contribute to the managed trade of CITES species.

80. There are also cases where, due to circumstances outside of the importers' control, a permit has been lost, cancelled, stolen, or destroyed in error, or a permit was never obtained. In such cases, items are seized and disposed of.

81. To enable such cases to be considered, I propose to:

- Enable seized items to be returned to the importer if permits have an error outside of the importers' control, for example the issuing authority did not provide an original permit, the permit expired due to shipment delays (port strike, weather event) or the exporter was unable to have the permit validated.

- Enable replacement permits from overseas Management Authorities to be accepted where the original has been cancelled, lost, stolen, destroyed in error or where the issuing authority has made an administrative error.

- Enable retrospective permits from overseas Management Authorities to be accepted in exceptional circumstances.

82. These amendments to the TIES Act aim to reduce the likelihood of items being destroyed when there are appropriate reasons for them to be returned to the importer due to circumstances outside of their control.

There have been cases where seized items have been returned under section 42

83. Section 42 of the TIES Act currently requires all items that are seized to be forfeit to the Crown and provides the Director-General with discretion to dispose of those items. Seized items are generally disposed of through secure destruction. Section 42 does allow for items to be repatriated by negotiation with the CITES Management Authority of the country of origin.

84. The discretion in section 42 has been used in the past to return items to individuals in some cases, for example where a replacement for a lost permit has been

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obtained. Decisions on whether to return items under this section has been based on whether release would be consistent with the purpose of the TIES Act and our obligations under CITES. As this approach is not clearly outlined in the TIES Act, it risks uncertainty and inconsistency, and makes such decisions susceptible to challenge.

Proposed options will provide clear guidance on when seized items can be returned

85. The proposed package of options will allow officials to consider cases where legitimate errors on permits or in the permitting process have occurred and are outside of the importers' control. It will provide certainty on when property can be returned to importers and enable consistent application across different cases. This will increase public confidence in the administration of the TIES Act, as the current strict approach could be considered unreasonable by the public.

86. Many other countries also provide avenues to question seizures or provide processes for applying to have items returned. For example, in the UK a replacement permit can be applied for if a permit has been lost, cancelled, stolen or accidentally destroyed.

Criteria will need to be met before seized items are returned

87. Specific criteria will need to be met if seized items are to be returned to the importer to ensure the regulatory system maintains its integrity and the new process is not used to illegally import CITES specimens.

88. If a permit is presented with an error, or no permit is presented due to the original permit being lost, stolen, cancelled, or destroyed in error, the following criteria must be met to be considered for immediate return or obtaining a replacement permit:

- aligns with purpose of the TIES Act
- does not undermine the administration of the TIES Act
- the error was outside of the importers' control.

89. If no permit was previously obtained, the following criteria must be met to be considered for a retrospective permit:

- aligns with purpose of the TIES Act
- does not undermine the administration of the TIES Act
- the error was outside of the importers' control
- the specimen is not included on Schedule 1 of the TIES Act
- the trade was not for commercial purpose
- circumstances must be exceptional.

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90. Where there is an error on a permit and criteria outlined above are met, decisions on whether to return the seized item or whether to seek a replacement or retrospective permit would be at the discretion of the Director-General/Management Authority (which can be delegated to DOC CITES officers). Seized items that do not meet the criteria to be returned to importers will be disposed of.

The seizure, surrender and disposal provisions will need to be amended

91. To implement the proposed process, the seizure, surrender and disposal provisions will need to be amended. As the proposed process will provide clear guidance on when seized items can be returned, the residual discretion to return items in section 42 will no longer be required. The term 'disposal' in section 42 will mean to destroy items, gift to museums or scientific institutions, or use for educational or identification purposes. This will improve transparency, consistency and administrative certainty.

Cost Recovery

92. I propose amending the cost recovery regulation-making power in the TIES Act to enable DOC to cost recover for services provided for commercial consignments.

93. The TIES Act does not enable DOC to cost recover for time spent reviewing and inspecting commercial consignment and these activities are currently being funded from DOC's baseline funding. These activities include:

- 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.

94. Screening high risk commercial consignments require the Department's CITES Officers to spend between two and eight hours a week on risk screening commercial consignments, costing approximately $20,000-$35,000 (GST inclusive) per annum.

95. Recovering costs for these activities will enable DOC to resource them 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.

96. Cost recovery will be implemented through existing systems within DOC.

Technical amendments required to effectively implement the intent of the TIES Act

97. I propose re-writing the TIES Act to address a range of technical and structural issues, as well as out of date definitions that have been identified through the review process.

98. A re-write will allow the TIES Act to effectively achieve its regulatory intent and will address structural issues and remove the risk of contradicting existing sections of the TIES Act. The language of the TIES Act would also be updated to reflect modern legal drafting practices and improve its general readability.

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99. Most of the proposed technical changes would not change the management on the ground, it would simply ensure that officials can effectively implement the regulatory regime through improved clarity in the TIES Act.

100. Some amendments will lead to changes in how the TIES Act is implemented and are intended to give better effect to the current regime, but will have minimal impacts.

101. As further technical issues may be identified during the drafting process, I propose allowing delegated decision-making by the Minister of Conservation to incorporate further technical changes to the amendment Bill as they arise through the drafting process.

102. My proposed amendments for your agreement are outlined below.

Review and align penalties in the TIES Act with the Conservation Act

103. I propose reviewing the penalties in the TIES to align them with those in the Conservation Act 1987. The penalties in the TIES Act have not been amended since it was enacted. The maximum penalties are therefore low compared to the Conservation Act.

104. This will include penalties in sections 44 to 49, and section 54(f) which prescribes fines for any offences in contravention of, or non-compliance with, regulations made under the TIES Act.

105. DOC officials will work with the Ministry of Justice on the review of offences and penalties to ensure they are appropriate and proportionate.

Pre-Convention date application in the TIES Act does not align with CITES guidance

106. I propose aligning the pre-Convention date in the TIES Act with the date a species was listed on relevant CITES Appendix as per Resolution 13.6.

107. Section 29(1) and 29(2) of the TIES Act notes that a Certificate of Acquisition (which will be renamed pre-Convention certificate) relates to the date that the TIES Act applies to a specimen of an endangered, threatened or exploited species. As many species were listed on CITES appendices before the enactment of the TIES Act, pre-Convention certificates issued by other overseas management authorities will have different pre-Convention dates listed. Aligning the pre-Convention date in the TIES Act with CITES guidance will align New Zealand with other Management Authorities.

108. Cabinet approved this change in 2008 [CAB Min (08) 39/1 refers]. The amendments were not progressed as PCO advised that existing ambiguities in section 29 made the amendments problematic, without making changes to other parts of the TIES Act, requiring consultation and further policy decisions.

109. An amendment is also required to make the date on which a specimen is acquired the date the specimen was known to be either:

- removed from the wild; or
- born in captivity or artificially propagated in a controlled environment; or

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- if such a date is unknown or cannot be proved, any subsequent and provable date on which it was first possessed by a person.

Holding items at the border for visitors to collect when they leave New Zealand

110. Section 28(2) of the TIES Act allows visitors to New Zealand to apply to the Director-General for an item to be held at the border if no permit or certificate is produced. The visitor can then collect the item when leaving New Zealand.

111. The section currently allows any 'visitor' to apply for their item to be held at the border. This creates a substantial burden on border staff who have to process the application and store the item. CITES does not provide guidance on this issue. I propose amending this section so an item may be temporarily held at the discretion of the Management Authority, i.e. DOC, pending the person's departure from New Zealand.

112. This option will be used for cases that meet specific criteria (e.g. culturally valuable items where the person is staying in New Zealand for a short period) which would lessen the operational burden at the border but still provide an option other than destruction for such items.

Further amendments that will lead to operational changes

113. The TIES Act sets up a Scientific Authority to make decisions in accordance with various CITES resolutions, and to provide technical advice to the Management Authority, which in New Zealand's case is the Director-General of Conservation. There are no terms of appointment for members for the Scientific Authority. I recommend including a renewable term of appointment of six years for members of the Scientific Authority. A term of six years will enable members to serve for a period covering two Conferences of the Parties as these are held every three years. Members of the Scientific Authority are appointed by the Minister of Conservation.

114. Section 11(3) of the TIES Act requires the Management Authority (Director-General of Conservation) to allow permit applicants to submit on conditions included on a permit. Conditions on permits are essential to meet the intent of the legislation and it is not current practice for DOC to allow applicants to submit on conditions. I propose removing the option to submit on conditions from section 11(3), which aligns with current practice. The section will still allow applicants to submit on a decision if the Director-General considers the application should be declined, before a final decision is taken.

115. Under section 27, if a person declares they have a CITES specimen and they do not have the required original permits, they cannot be prosecuted as the import is deemed to have not taken place. The proposal is to amend section 27 so enforcement action can be taken against importers who declare items that are being imported without permits. This will enable enforcement action to be taken against importers if they are suspected of trying to deceive border staff.

116. Section 39 creates a process where if a specimen is seized and is shown to be an endangered, threatened or exploited species, the item has to be released back unless the person is prosecuted. This section should allow for the item to be

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disposed of without having to prosecute in every case, but the option to prosecute should remain. The section should also enable the return of an item if it is found that the specimen was not an endangered, threatened or exploited species.

Definitions to be added or amended

117. I propose adding a definition of what a valid permit or certificate is in the TIES Act. This will help address disputes on what constitutes a valid permit or certificate. The definition will be based on guidance released by CITES and will include enabling New Zealand to accept and issue electronic permits.

118. The current definition of 'Management Authority' does not clearly set out the role of the Management Authority. I propose adding a section to the TIES Act that outlines the role of the Management Authority, based on guidance in Resolution 18.6 released by CITES after the Conference of the Parties in August 2019.

119. I propose amending the definition of specimen to ensure the term 'readily recognisable part or derivative' includes any specimen that is listed on packaging, a mark or label in accordance with CITES guidance in Resolution 11.10. The Resolution also notes that coral sand and fragments (as defined in Resolution 11.10) are not considered readily recognisable and therefore are not subject to CITES. The Resolution also states that urine, faeces and ambergris are waste products and therefore are not subject to CITES. The definition of specimen should also clarify that these products are not specimens, and therefore not subject to the TIES Act.

120. Section 32 provides for scientific transfers of CITES specimens between registered institutions. Forensic institutions, which are registered institutions under CITES, is not currently listed in section 32 and should be added.

121. Section 50G(2) provides that once a border infringement notice has been issued, any employee of DOC may serve the notice. This currently excludes officials from MPI and NZCS, who play a large role in implementing the TIES Act at the border, from being able to serve the notice. I propose that MPI and NZCS border officials are also empowered to serve infringement notices.

Enabling captive breeding and artificially propagated facilities to be registered with CITES

122. I propose enabling New Zealand captive breeding and artificially propagated facilities to be registered with the CITES Secretariat. There is currently no provision in the TIES Act for registering these facilities for CITES Appendix I listed species. New Zealanders breeding Appendix I species therefore cannot register their facilities with CITES, which means they cannot export the specimens for commercial purposes (exception for Appendix I plants).

123. Guidance for setting up captive breeding and artificially propagated processes are outlined in Resolutions 12.10 and 9.19. New provisions will be required to define the registration process, the granting of registration, inspection of facilities and the ability to revoke the registration if certain conditions are not met. Consequent amendments to section 31 to enable export permits to be issued for specimens bred in captivity or artificially propagated and the definition of endangered species to require facilities to be registered with CITES will be required.

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Sections to be addressed by the re-write

124. Some sections in the TIES Act are not clear or should be moved to different parts in the TIES Act. Re-writing the TIES Act will enable these issues to be addressed and these are outlined below.

125. The Management Authority is defined as the Director-General in the TIES Act. The TIES Act refers to the Director-General throughout the Act rather than the Management Authority. I propose changing 'Director-General' to 'Management Authority' throughout the TIES Act where appropriate. As the CITES text uses the term Management Authority, it will make it easier to understand.

126. The current wording of sections 9, 27, 29(3), 31(3), and 44 suggests that the requirements of the TIES Act do not apply to permits and certificates issued by overseas management authorities. The requirements of the TIES Act must also apply to permits and certificates issues by overseas management authorities.

127. Section 7 of the TIES Act currently lists the Ministry of Agriculture and Forestry and the Ministry of Fisheries. This should be amended to list the Ministry for Primary Industries.

128. Section 10(2), which sets out when to apply for a permit, mentions 'type of trade'. This is not defined and is too broad. I propose changing the wording to align with the wording used in CITES guidance on permits, which requires the purpose of a trade rather than the type of trade to be listed on permits.

129. Section 11(6) enables the Management Authority to either revoke or vary conditions on a permit at any time. In redrafting, these processes should be split into two sections, so the power to revoke and vary permits or certificates are dealt with separately to improve clarity.

130. Section 10(1) of the TIES Act obligates an individual to apply for a permit if they 'propose to trade'. There should be no obligation to apply for permits or certificates, rather the ability to apply for a permit or certificate.

131. Section 11(5) states 'Every such permit or certificate shall be in the form issued by the Department'. 'The Department' should be listed as 'Management Authority' as the Department is not referenced anywhere else in the TIES Act.

132. Section 11 and sections 13 to 17, 19 to 21, and 23 and 24 grant powers to the Management Authority/Director-General to grant permits. This means the power to grant permits is repeated in seven different sections. I propose having one section providing the power to grant permits, with subsequent sections setting out the matters that need to be considered before granting a permit, for example that it was legally acquired.

133. Section 27(2)(ii) refers to 'voluntarily disclosed' where the presence of a CITES specimen is noted to an officer. I propose changes this to 'declare' to align with the language used by other border agencies.

134. Section 28(1) refers to 'New Zealand citizen, person resident in New Zealand, or person intending to reside in New Zealand'. The section is meant to refer to any

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person intending to reside in New Zealand long-term, not only to citizens or residents. I propose clarifying this section to ensure it refers to all people intending to reside in New Zealand on a long-term basis.

135. The title of section 29 is 'Certificate of acquisition'. The section refers to pre-Convention certificates in practice and should be renamed with all subsequent references to be changed to pre-Convention certificate.

136. Section 29 is currently under Part 2, Exemptions. As a certificate is required to trade in pre-Convention specimens of CITES listed species it is not strictly an exemption and should be moved to Part 1 of the TIES Act.

137. Section 29(1) notes that a person 'shall apply' for a certificate. This should be amended to 'may' apply as there may be circumstances where the item qualifies for an exemption from requiring a certificate e.g. a PHE exemption.

138. Section 31, which outlines requirements for certificates for specimens bred in captivity or artificially propagated, is currently in Part 2. This means requirements of Part 1 does not apply to it. I propose moving to Part 1 (or equivalent once redrafted) so those requirements apply.

139. Section 26 prescribes when a permit or certificate must be produced. Requirements for imports and exports are currently covered in the same section which can be confusing. The requirement to produce a permit is also provided for in section 27(1). I propose re-writing these sections to provide clarity on when permits need to be produced when importing and exporting items, which must be before or at the time of import to enable the permitting system to function.

140. Section 18 and 22 repeats parts of section 26 by also prescribing when permits and certificates need to be produced. The requirements for when permits and certificates are produced should be covered in one section.

141. The way the PHE exemption is set up in section 30 is unclear and not easily understood. I propose this section is re-written in plain language to make the section easily understood by the public.

142. Section 34, which provides for certificates of capture, should be removed from the TIES Act as certificates of capture are not a requirement under CITES and the section serves no purpose.

143. Section 46 creates an offence for not complying with conditions set out in Part 1. This does not currently apply to certificates issued under Part 2. Offences should apply to all permits and certificates issued under the TIES Act.

144. Section 45 makes it an offence to be in possession of a CITES specimen that was traded in contravention of the TIES Act. This means that where museums or galleries have been gifted a seized item by the Management Authority/DOC, the institution is committing an offence. This is common practice and is allowed under section 42 of the TIES Act. I propose that it is not an offence to be in possessions of a CITES specimen traded in contravention of the TIES Act, if gifted or loaned by the Management Authority.

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Outreach and support for those travelling with taonga overseas

145. I propose to provide further support and outreach to address concerns raised by Māori art practitioners about taonga carried by New Zealanders being seized at international borders for not having a CITES permit.

146. The TIES Act does not require permits to export or import personal items that were acquired in New Zealand, including taonga, through its personal household effects definition and exemption (which allows people to move personal items and household effects acquired in New Zealand across the New Zealand border without permits). Individuals can be asked to prove that an item was acquired in New Zealand.

The Crown is obligated to protect taonga under the Treaty of Waitangi

147. The Crown is obligated to protect taonga under the Treaty of Waitangi. This obligation is outlined in Section 4 of the Conservation Act, which states DOC must give effect to the Treaty principles[6]. Treaty principles provide that Māori have control of the things that have value to them. This includes taonga species and how these are used.

148. The proposals in this paper are mostly related to regulating the trade of species not from New Zealand. CITES requirements at other countries' borders, however, are of interest to Māori as those travelling with taonga listed on Appendix I and Appendix II of CITES may need permits.

149. CITES does not contemplate indigenous use of endangered species specimens and CITES permitting requirements apply to culturally significant items as to other items. Therefore, other countries often have CITES permitting requirements that mean that taonga can get seized when travelling overseas if a traveller has not obtained the necessary documentation required by the other countries prior to departure.

150. Officials will continue to work with Māori to support travel with taonga and will continue to allow taonga that meets the personal household effect definition to be exported and imported to New Zealand without permits.

151. Officials will also continue to talk to other CITES parties about how indigenous use can be included in CITES.

Outreach and support will help those travelling with taonga to know when to obtain permits

152. As New Zealand has no jurisdiction over other countries, changes to the TIES Act will not address the problem of taonga getting seized at other international borders. Officials are working with Māori arts practitioners and organisations including Toi Māori Aotearoa and Te Matatini to support those travelling with taonga to ensure they have the correct permits to meet the requirements of the countries to which they are travelling.

153. A brochure which provides advice and guidance to New Zealanders travelling with taonga has been actively distributed along with web content, providing information on

[6] Section 4 of the Conservation Act is applicable to the TIES Act.

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what permits are required when travelling with taonga overseas. Officials are working on outreach products in collaboration with Māori arts practitioners, that will provide information on travelling with taonga to disseminate via social media.

Consultation

154. Officials met with Te Matatini and Māori arts practitioners to discuss the proposed approach. It was understood that New Zealand does not have any authority over the rules of other countries where they may seize taonga without required CITES documentation.

155. The approach to continue personal household effects that were acquired in New Zealand to be imported and exported without a permit was also supported. This allows iwi, hapū and whānau to move items made from endangered species across New Zealand's border without permits.

156. There was acknowledgement that by New Zealand not requiring permits for exit and entry, that this sometimes resulted in those travelling with taonga not having CITES permits which would often be required by the importing country.

157. It was agreed that more engagement with Māori who are travelling overseas is required. Officials are already improving engagement. New Zealand is sending a delegation to the Festival Pacific Arts in 2021 in Hawai'i. DOC is supporting the delegation to ensure any items that include parts of endangered species have the correct permits as required by the USA to ensure they are not seized at their border.

Risks

158. Regulating the domestic elephant ivory trade risks setting up an expensive system with limited conservation outcomes. This is being mitigated by setting up a risk-based regulatory system, with stricter provisions for importing elephant ivory, where there is greater risk of illegally sourced or poached elephant ivory being imported into New Zealand, as opposed to domestic regulation that will allow the continued sale of pre-Convention elephant ivory which is lower risk. Regulatory consultation on the details of implementation and compliance will also take place.

159. If the domestic elephant ivory market is not regulated, New Zealand could be exposed to international criticism for not supporting international efforts to protect elephants.

160. There is continued risk that taonga carried by New Zealanders across international borders will be seized. The Department is working with Māori arts groups to support and disseminate information to travellers to ensure they understand the permitting requirements for the countries they are visiting.

161. I consider the other proposals to be low risk. There is some risk that traders do not understand how the new proposals will function. This will be mitigated through clear outreach and communications plans to ensure the public understand the new requirements.

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Consultation

162. The Department has consulted the Ministry for Primary Industries, Te Arawhiti, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, New Zealand Customs Service, Ministry of Culture and Heritage, Ministry of Business, Innovation and Employment, Ministry of Justice and the Treasury. The Department of Prime Minister and Cabinet has been informed.

163. Ministry for Primary Industries and New Zealand Customs Service officials have been consulted to discuss implementation of the proposals at the border.

Financial Implications

164. I expect there to be additional costs in implementing the ban on domestic sale and import and export of elephant ivory. Additional costs will be the subject of a budget bid in order to give effect to these changes once legislation is passed.

165. As the ban on the domestic sale of elephant ivory will be implemented through regulations by adding a regulation-making power to the TIES Act, the costs will only apply when the regulations are made. The regulations will only be made once the amendments to the TIES Act have passed through Parliament. By that time, the current economic demands from COVID 19 should not be as critical.

166. Implementing the ban on import and export of elephant ivory will require additional training at the border, as well as seizure and disposal costs for additional items being intercepted. The indicative implementation cost in year one is approximately $0.67 million, and approximately $2 million for the first five years of implementation.

167. As the domestic market in elephant ivory is not currently regulated, a new regulatory system will need to be put in place. The indicative implementation cost in year one is approximately $1.3 million, and approximately $5.5 million over the first five years of implementation.

168. These costs include: staffing costs; communications and outreach; staff training; and infringement and prosecution costs.

169. The other proposals in this paper may lead to cost savings over time from improved operational efficiency.

Legislative Implications

170. The TIES Act is on the legislative programme as Category 4 (referred to Select Committee within the year). I intended to take an amendment Bill to the Cabinet Legislative Committee in July 2020. Due to the impact of COVID-19 on policy priorities, this work has been delayed and an amendment Bill is unlikely to be drafted and referred to Select Committee this year.

171. Regulations to implement the new ban on the domestic trade in elephant ivory will be progressed on a longer timeframe.

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Impact Analysis

Regulatory Impact Statement

172. The impact analysis requirements apply. A Regulatory Impact Assessment (RIA) has been prepared and is attached at **Appendix 1**.

173. The Department of Conservation and Ministry for Primary Industries Regulatory Impact Analysis Panel has reviewed the RIA "Amendments to the Trade in Endangered Species Act 1989" and accompanying Cost Recovery Impact Statement produced by the Department of Conservation. The review team considers that it partially meets the Quality Assurance criteria.

174. The Panel considers that the RIA generally sets out an evidence base for intervention that has accumulated over the preceding years and draws on public consultation to make the case for the intervention proposed. In addition to the preferred option, a range of alternative options have been given serious consideration and a case is made for the preferred package.

175. The Panel notes that it is not clear that the benefits outweigh the costs for the proposal to set up a new regulatory system for the ivory trade. The main benefit cited is upholding New Zealand's international reputation as a conservation leader and its willingness to work together with other countries on these issues, however there is no further explanation of the potential positive and negative impacts on New Zealand's international reputation

Climate Implications of Policy Assessment

176. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human Rights

177. The proposals are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Population implications

178. The proposals will have the same impacts across populations groups. Impacts related to Māori, iwi and hapū are outlined in paragraphs 140 to 152.

Communications

179. I will publicise the approval of the proposed amendments to the TIES Act through a press release.

Proactive Release

180. I intend to proactively release this paper, submissions received on the discussion document, and the submissions summary within 30 days of Cabinet making a final decision.

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Recommendations

The Minister for Conservation recommends that the Committee:

1. **Note** the Trade in Endangered Species Act 1989 (TIES Act) implements New Zealand's obligations as a signatory of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

2. **Note** Cabinet approved the release of a public discussion document to support the review of the TIES Act and invited me to report back to Cabinet Economic Development Committee following public consultation [DEV-19-MIN-0232 refers].

3. **Note** a public discussion document was released in September 2019 and consulted on options in the following policy areas:

    3.1. Trade in elephant ivory

    3.2. Travelling with taonga

    3.3. Personal and household effects

    3.4. Technical errors on permits

    3.5. Cost recovery

4. **Note** the proposed changes will enable the efficient and effective implementation of the TIES Act and enable New Zealand to better meet its obligations under CITES.

5. **Note** there has been increasing international recognition of the role domestic markets in elephant ivory play in the illegal trade and poaching of elephants.

6. **Agree** to ban the domestic sale of elephant ivory with an exemption for items acquired before 1975 (pre-Convention), including musical instruments.

7. **Agree** to ban the import and export of elephant ivory with the following exemptions:

    7.1. Musical instruments acquired before 1975 (pre-Convention)

    7.2. Items traded between museums

    7.3. Items traded for forensic testing

    7.4. Scientific specimens by CITES registered institutions.

8. **Agree** to implement the ban on the domestic sale of elephant ivory with exemptions through regulations.

9. **Note** the exemptions that apply at the border are stricter than domestic exemptions as there is greater risk from items being imported being linked to elephant poaching and illegal trade than elephant ivory items already in New Zealand.

10. **Note** that additional funding will be required to implement the ban on the domestic sale and import and export of elephant ivory.

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11. **Agree** to a one-year transitional period from when an amendment Bill is enacted before the elephant ivory ban is implemented.

12. **Note** that outreach programmes are being enhanced to support those travelling with taonga to have the correct documentation when moving items across international borders.

13. **Agree** to amend the definition of personal and household effects to align it with CITES guidance to ensure all personal and household items are traded for non-commercial purposes and are legally acquired i.e.:

    13.1. personally owned or possessed for non-commercial purposes;

    13.2. legally acquired; and

    13.3. at the time of import, export or re-export either:

        13.3.1. worn or carried or included in personal baggage; or

        13.3.2. part of a household move.

14. **Agree** to add a regulation-making power to the TIES Act enabling species-specific exemptions with quantity limits for items that are personal or household effects and do not endangered the survival of populations in the wild.

15. **Note** that the three species that make up the majority of seizures at New Zealand's border are crocodile products, hard corals and giant clam shells.

16. **Agree**, subject to amendments to the TIES Act being enacted, to implement an exemption for up to four farmed crocodile products from Australia that are personal or household effects.

17. **Note** that further information is required to consider implementing species-specific exemptions for hard corals and giant clam shells.

18. **Agree** to setting up a process in the TIES Act to return items to individuals where there are errors on permits outside of the importers' control, or where no permit is presented due to permits being lost, stolen, cancelled or destroyed, or where no permit was previously issued.

19. **Agree** to the following criteria to be met before an item can be returned or a replacement or retrospective permit can be accepted:

    19.1. aligns with purpose of the TIES Act

    19.2. does not undermine the administration of the TIES Act

    19.3. the error was outside of the importers' control

    19.4. the specimen is not included on Schedule 1 of the TIES Act (retrospective permits only)

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19.5. trade was not for commercial purpose (retrospective permit only)

19.6. circumstances must be exceptional (retrospective permit only).

20. **Agree** to amend the regulation-making power for cost recovery in the TIES Act to enable the Department of Conservation to cost recover for services provided to commercial traders.

21. **Agree** that the TIES Act is re-written due to the extent of the proposed policy changes, technical and structural amendments required to ensure it effectively implements the intent of the regulatory regime, and in accordance with modern drafting practices.

22. **Agree** to allowing delegated decision-making by the Minister of Conservation to incorporate further technical changes to the amendment Bill as they arise through the drafting process.

23. **Agree** to the proposed technical amendments outlined in paragraphs 103 to 144 that will improve the implementation and effectiveness of the TIES Act.

24. **Invite** the Minister of Conservation to provide drafting instructions to Parliamentary Counsel Office for the Bill.

25. **Note** that the TIES Act is on the legislative programme as Category 4 (to be referred to Select Committee with in the year), however, due to the impacts of COVID-19 it is unlikely that an amendment Bill will be referred to Select Committee this year.

Authorised for lodgement

Hon Eugenie Sage

Minister for Conservation

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Coversheet: Amendments to the Trade in Endangered Species Act 1989

Advising agencies	*Department of Conservation*
Decision sought	Agreement to amend the Trade in Endangered Species Act 1989 (TIES Act) to enable: • Banning the domestic sale of elephant ivory with exemptions • Banning the import and export of elephant ivory with exemptions • Updating the definition of personal and household effects (PHE) • Including a regulation-making power in the TIES Act to exempt farmed Australian crocodile PHE items and coral sands and fragments from permitting • Setting up a process to return seized items when there has been an error on an oversees-issued permit, including accepting replacement and retrospective permits • Recovering costs for services provided to commercial providers (Cost Recovery Impact Statement (CRIS) attached at Appendix 1)
Proposing Ministers	*Minister of Conservation*

Summary: Problem and Proposed Approach

Problem Definition **What problem or opportunity does this proposal seek to address? Why is Government intervention required?**
New Zealand does not currently regulate the domestic sale of elephant ivory products. The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), of which New Zealand is a party, urges parties to ban the domestic sale in elephant ivory where their domestic markets contribute to poaching or illegal trade. New Zealand does not currently implement this guidance. CITES is implemented in New Zealand through the Trade in Endangered Species Act 1989 (TIES Act). At the 2019 Conference of the Parties, CITES Parties also agreed that every party who has not closed their domestic elephant ivory market are requested to report on an annual basis on what regulatory steps they are taking to ensure their domestic markets are not contributing to illegal trade or poaching of elephants. In addition to the CITES guidance, there has also been international recognition of the role domestic elephant ivory markets play in illegal trade and poaching of elephants. Countries including the UK and Australia will be giving effect to the CITES resolution and banning the domestic sale of elephant ivory, with exemptions.

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If the status quo remains, New Zealand's reputation as an international leader in conservation and as a party to CITES could be damaged if we are not able to report that we have taken steps to regulate our domestic market. New Zealand may also become a target for increased elephant ivory sales as other markets close, such as Australia and the UK that have committed to regulating their domestic markets. There are also no assurances that elephant ivory that has been illegally imported into New Zealand is not being sold on the domestic market.

There are also problems with the TIES Act that have relatively small regulatory impact, but amending the TIES Act provides the opportunity to improve our regulatory stewardship. Problems include how personal household effects (PHE) are managed, including the definition of PHE and how the PHE exemption is implemented for species like crocodiles, hard corals and giant clam shells, how to address irregularities in overseas-issued permits and permitting processes, and an inability to cost recover. These problems make implementing the TIES Act consistently and efficiently difficult for operational staff, and leads to items being seized unnecessarily.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

By amending the TIES Act to regulate the domestic sale in elephant ivory, New Zealand will be implementing CITES Resolution 10.10 that urges Parties to ban their domestic markets for elephant ivory if their domestic markets is contributing to poaching or illegal trade. New Zealand would also be joining the international effort to protect elephant populations in the wild. This is Policy area A: Regulating elephant ivory**.**

New Zealand has a role in protecting wild populations of endangered, threatened, and exploited species. Amendments to the following areas in the TIES Act will help New Zealand better fulfil this role and will improve the implementation and functioning of the system regulating the international trade of endangered species:

- Policy area B: PHE definition
- Policy area C: Large quantities of PHE are getting seized without clear conservation benefit
- Policy area D: Addressing technical issues dealing with errors on overseas-issued permits and processes
- Policy area E: Cost recovery (CRIS attached at Appendix 1)

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Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Technical amendments

Amending the TIES Act to improve efficiency and implementation will have benefits for the regulator, the Department of Conservation (DOC). Benefits will include:

- Simpler implementation which will enable DOC to perform its regulatory functions to stop the illegal trade of CITES listed species more effectively, and could lead to some cost savings in the long term

- Allow PHE items made from farmed Appendix II crocodiles, hard corals and giant clam shells to be imported without permits (with a limit on quantity) which would lead to fewer seizures at the border, saving processing time and reducing storage and destruction costs
- Providing more avenues to address technical issues in permitting processes and overseas-issued permits that are outside of the control of importers.
- Recovering costs for services currently provided to commercial traders at a cost to the regulator (DOC).

The proposed changes to the TIES Act will also have benefits for the public and commercial traders, including:

- Providing clarity on when permits are required for PHE
- Not requiring permits for PHE made from farmed Australian Appendix II crocodiles, hard corals or giant clam shells
- Providing processes to address technical issues in the permitting process for overseas-issued permits that are outside of importers' control and can lead them to lose items when it is unnecessary.

Regulating elephant ivory

The main benefit of regulating the domestic sale in elephant ivory will be to enhance New Zealand's international reputation as a leader in conservation. It will enable New Zealand to report to CITES that domestic regulation of elephant ivory is being introduced to implement CITES Resolution 10.10. New Zealand would also be aligning
New Zealand with countries like the UK and Australia who have or will be banning the domestic sale with exemptions, who have also stated their aims for banning the domestic trade in elephant ivory is to be world leading in conservation. It would also mean that New Zealand would no longer be an unregulated market and would be less likely to be target for elephant ivory sales.

Where do the costs fall?

Costs will mainly fall on the regulator, DOC, however costs will be kept down by taking a risk-based approach. Costs will include:

- Implementing a domestic regulatory framework for the sale of elephant ivory.
- Training border staff to implement proposed changes to the TIES Act
- Raising awareness and communicating with the public, airlines, airports and travel agents on how the changes will affect them

Regulating elephant ivory

The implementation costs for further restrictions on importing and exporting elephant ivory in year one is estimated to be $0.67 million, and an estimated $2 million for the first five years of implementation. As the import and export of elephant ivory is already regulated, this will be placing further regulations on importing and exporting elephant ivory, which will require setting up additional processes to manage.

The implementation cost for regulating the domestic market in year one is estimated to be $1.3 million, and an estimated $5.5 million for the first five years of implementation. As the domestic market for elephant ivory is not currently regulated, this will be a new role for the

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regulator, which is why costs are higher than implementing further restrictions at the border.

The estimated costs include:

- Staffing costs
- IT costs
- Communications costs including national and international awareness campaigns
- Training for border agency staff
- Infringement and prosecution costs

There would also be some revenue loss for businesses that currently sell elephant ivory products that do not fit into the proposed exemptions. However, due to the small size of the market proposed exemptions, and elephant ivory products making up a small proportion of products sold by these businesses, we do not expect this loss to be significant.

Cost recovery

There will be a cost to regulated parties under the proposed cost recovery options for checking commercial consignments and risk assessments. The regulator is expecting to cost recover approximately $20,000 – $35,000 per annum. Commercial consignments can contain millions of dollars of products. Any fee for inspections or risk assessment would be a very small proportion of the value of the consignments, as costs mainly include staff time. Costs are outlined in the CRIS at Appendix 1.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

There is a risk that people and exporting CITES-listed specimens will not be aware of or understand the changes to the TIES Act, and therefore inadvertently will not follow the new requirements and risk enforcement action. DOC would mitigate this risk by raising awareness through public campaigns and communications.

Regulating the domestic sale in elephant ivory could have the unintended impact of driving sellers to sell in illegal markets or markets that are hard to regulate, such as private sales. This would make it harder for DOC to monitor the sector. DOC is proposing exemptions as this will still allow the sale of elephant ivory considered low risk and not contributing to poaching i.e. elephant ivory that was acquired before elephants were listed on CITES (1975-76), allowing current sellers to continue to sell some of their items in a legal market.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

Proposed options under the following areas are compatible with the Government's "Expectations for the design of regulatory systems":

- Policy area B: Definition of PHE
- Policy area C: Large quantities of PHE are getting seized without clear conservation benefit
- Policy area D: Addressing technical issues with permitting processes and overseas-issued permits
- Policy area E: Cost recovery

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Banning the domestic sale of elephant ivory has some incompatibility with the guidance on the design of regulatory systems. The guidance notes regulatory systems should deliver, over time, a stream of benefits or positive outcomes in excess of its costs or negative outcomes. New regulatory systems should not be introduced unless it will deliver net benefits for New Zealanders.

As the New Zealand market is considered to be small, and that the majority of ivory sold and imported is pre-Convention, it is unlikely that banning the sale of elephant ivory in New Zealand would reduce the poaching of elephants. A domestic regulatory system would therefore have no direct benefits for New Zealanders in terms of material gains. Benefits would mostly be upholding New Zealand's international reputation as a conservation leader, and its willingness to work together with other countries in ensuring the continued survival of endangered species in the wild, which we consider outweighs the costs and aligns with Government guidance on regulatory systems. It will also provide the power make further regulations if a market emerges.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

DOC is confident in the evidence base for options relating to the following policy areas:

- Policy area A: Regulating elephant ivory – data related to further controls on the import and export of elephant ivory
- Policy area B: Definition of PHE
- Policy area C: Large quantities of PHE are getting seized without clear conservation benefit – data related to crocodile specimens
- Policy area D: Addressing technical issues with permitting processes and overseas-issued permits
- Policy area E: Cost recovery

As part of the reporting system to CITES, DOC gathers data on all imports, exports, and re-exports of CITES listed items. We therefore have strong data on the number of items of each species being traded across New Zealand's border, as well as what type of item it is, for example if it is traded as a personal item or for commercial purposes. This includes import and export numbers of elephant ivory items.

New Zealand also provides an annual report to CITES on the illegal trade of CITES listed species. Screening at airports, ports, mail centres and transitional facilities identifies CITES-listed items that are being traded without the correct permits. These items are seized and recorded in a database. In 2018, 9,436 instances of illegal trade was recorded.

DOC is notified of errors on overseas-issued permits or with the permitting process by border officials. We have clear examples of what types of errors occur, and how often they occur.

DOC is also aware of the possibility of items made from CITES-listed species being brought into New Zealand without the knowledge of border staff, with items transported in people's private luggage, mail, sea freight or through house moves. Due to screening

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processes at the border, we consider this number to be quite low. For example, there have only been two convictions in New Zealand courts for two traders who tried to sell elephant ivory that was imported into New Zealand without CITES permits.

The evidence base for the domestic elephant ivory market is mainly anecdotal
The evidence related to regulating the domestic market for elephant ivory is not as strong as the other policy areas mentioned above. DOC does not hold any official data on how big the market for elephant ivory is in New Zealand. DOC is not mandated to monitor the sale of specimens from endangered species from other countries under any legislation or conservation management plans.

Anecdotal evidence of the size of the domestic elephant ivory market was provided by sellers of elephant ivory through the public consultation process. The information only covered the sale of items from two auction houses and numbers were estimated rather than exact figures.

Evidence on effect on ecosystems of exempting hard corals and clams not strong
As part of Policy area C, an exemption for hard corals and giant clam shells that qualify as PHE from permitting is considered. Although we have strong data on how many of these items are imported with permits and those imported illegally, we do not have strong evidence on what the impact would be on ecosystems in source countries if these species were to be exempt from permitting.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Department of Conservation and Ministry of Primary Industries
Quality Assurance Assessment:
Partially meets
Reviewer Comments and Recommendations:
The Department of Conservation and Ministry for Primary Industries Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment "*Amendments to the Trade in Endangered Species Act 1989*" and accompanying Cost Recovery Impact Statement produced by the Department of Conservation. The review team considers that it **partially meets** the Quality Assurance criteria. The Panel considers that the RIA generally sets out an evidence base for intervention that has accumulated over the preceding years, and draws on public consultation to make the case for the intervention proposed. In addition to the preferred option, a range of alternative options have been given serious consideration and a case is made for the preferred package. The Panel notes that it is not clear that the benefits outweigh the costs for the proposal to set up a new regulatory system for the ivory trade. The main benefit cited is upholding New Zealand's international reputation as a conservation leader and its willingness to work together with other countries on these issues, however there is no further explanation of the potential positive and negative impacts on NZ's international reputation.

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Impact Statement: Review of the Trade in Endangered Species Act 1989

Section 1: General information

Purpose
The Department of Conservation (DOC) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet and to draft an amendment or replacement Bill.
Key Limitations or Constraints on Analysis
The TIES Act was approved to be on the legislative programme for 2019. This provided an opportunity to review the whole Act. The scoping of problems was broadly based on DOC's operational experience of implementing the TIES Act, with DOC staff experienced in implementing the TIES Act developing policy areas for consideration. The purpose of the TIES Act was not in scope as this aligns with the purpose of CITES, which the TIES Act implements. There are some key constraints on the analysis: • *Relationship between CITES and the TIES Act* – As the TIES Act is the domestic legislation implementing CITES, an international convention, the review is constrained by the CITES text and the regulatory framework it establishes. This includes guidance published by CITES on how to implement the text, in the form of Decisions and Resolutions. Therefore, all the options considered by DOC must be guided by this framework (noting that New Zealand can choose to be stricter than CITES). • *Lack of data on the domestic market for elephant ivory* – There is limited data available on the exact size and scope of the New Zealand domestic market for elephant ivory. No government agency collects official data on the domestic market. Based on anecdotal evidence, trade numbers and information from submissions, DOC considers the domestic market to be small. • *Lack of data on impact of exempting hard corals and giant clam shells for permitting if PHE* – We do not have data on how an exemption for PHE items made from corals or giant clam shells will impact on the ecosystems of source countries. *Further technical issues* A range of technical issues and structural inconsistencies were also identified through the review as complicating the implementation and operation of the TIES Act. These have no regulatory impact, but will improve operational efficiency and readability if amended. These proposed changes are outlined in **Appendix 2**.
Responsible Manager (signature and date):

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Disee Anorpong

Policy Unit

Policy and Visitor Group

Department of Conservation

9(2)(a) [redacted]

20/07/2020

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Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

New Zealand implements CITES through the TIES Act. CITES focuses on regulating the international trade of endangered species of wild fauna and flora to ensure wild populations are not subjected to unsustainable trade. Trade is regulated through permitting regimes at international borders. If the correct permit is not produced for a CITES specimen, the item is seized and disposed of. The term 'trade' in this context refers to any item being moved across the border for a range of reasons. For example, if someone is entering New Zealand for a holiday and they are wearing a piece of jewellery made from elephant ivory, they are 'importing' that item. Similarly, if a commercial trader is moving a shipment of crocodile skin handbags into New Zealand, they are also 'importing' those items.

Regulating elephant ivory

The trade in elephant specimens is subject to trade controls through CITES. Permits are required for trading items made from elephant ivory across borders, and commercial trade across international borders is not permitted if it is post-Convention. There are currently no restrictions on the sale of elephant ivory domestically, which means New Zealand does not have a clear picture of the size of the domestic elephant ivory market. We are also not aligned with those countries that have banned their domestic markets or the guidance on domestic markets provided by CITES.

In recognition that some elephant populations are threatened with extinction, the African Elephant (except for certain populations) and the Asian Elephant are listed on CITES Appendix I, which affords a species the highest level of protection under CITES. This means that permits are required to trade specimens internationally.

Between 2008 and 2017, there were 215 permits issued to import ivory into New Zealand, as shown in the table below. This equates to 404 individual ivory items, as permits can be for more than one item. The majority of elephant ivory imports are pre-Convention items (85% between 2008 and 2018).

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 issued	13	5	23	5	3	18	38	17	23	70	**215**
Number of items covered by permits	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 New Zealand border for not having a permit or a pre-Convention certificate.

Personal and Household Effects exemption

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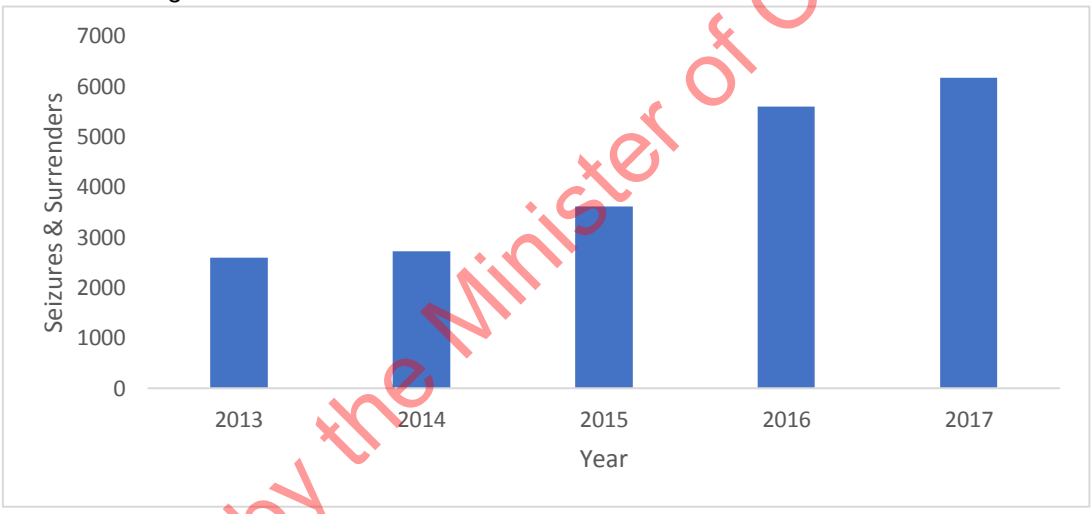
The personal household effects (PHE) exemption is outlined in the TIES Act section 30. The PHE exemption exempts people from needing to get a CITES permit when they are travelling with certain personal items. These personal items must be listed on the TIES Act Schedules and must be acquired in New Zealand. For example, a whale bone carving acquired in New Zealand does not require a permit to export or import the item to and/or from New Zealand. This includes people who are leaving New Zealand temporarily.

The TIES Act requires permits for PHE items that are acquired outside of New Zealand. For example, a piece of coral acquired as a tourist souvenir in the Pacific Islands requires a permit to be imported into New Zealand. The requirement for permits for PHE items drives a large proportion of the surrenders and seizures at the New Zealand border.

The number of surrenders and seizures of CITES specimens without permits has been increasing, from 2,593 in 2013, to 6,165 in 2017 as shown in Figure 1 below. This increase in surrenders and seizures reflects the requirement for permits for PHE items, as well as increases in tourism to New Zealand and New Zealanders travelling overseas.

Figure 1. Number of individual persons and companies who had CITES specimens seized or surrendered during 2013-2017 at the New Zealand border



Section 42 sets out the process for how to manage items that have been seized or surrendered at New Zealand's border. It notes that any items seized or surrendered are forfeited to the Crown and shall be disposed of in a way directed by the Director-General of DOC, in consultation with the Scientific Authority. In practice, this section is implemented by seized or surrendered items being disposed of by secure destruction. This section is also used to gift seized or surrendered items to museums or scientific institutions, or to keep items for educational purposes.

This section does not provide clear guidance on how to manage cases where there are errors on overseas-issued permits outside of an importers' control, for example where the issuing Management Authority made a mistake on a permit like including the wrong expiry date or not validating the permit. This section has been used by DOC to return items to importers in some specific cases where there have been errors in the permitting process, and where it has been considered to be in line with the purpose of the TIES Act to return the item.

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DOC also provides services to commercial providers free of charge. This includes checking lists of imports and advising traders whether permits are required, as well as doing risk assessments of commercial consignments at the border. DOC determines which commercial consignments are high risk and should be inspected.

How will the situation develop if no action is taken?

If no action is taken to amend the TIES Act, people will continue to have their personal property seized in circumstances where it is not necessary, for example where there is an error in the overseas permitting process outside of the importers' control. Large numbers of PHE items will also continue to be seized where there is no clear conservation benefit.

The domestic sale of elephant ivory will remain unregulated, enabling the continued sale of elephant ivory items without any oversight from Government. As other jurisdictions close their markets, there is a low risk that an unregulated New Zealand market could be targeted to sell elephant ivory.

TIES Act review objectives and criteria

The proposals 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

The following criteria are considered when assessing the proposed options:

- Does the option promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species in the wild (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

2.2 What regulatory system, or systems, are already in place?

CITES Regulatory Framework

CITES regulates the international trade of wild animals and plants to ensure that trade does not threaten their survival in the wild. It achieves this through a permitting system to regulate and monitor the international trade (movement between countries) of certain animal and plant species. All import, export, re-export and introduction from the sea[1] of species are subject to permitting requirements.

[1] Introduction from the sea is where specimens taken from a marine environment that is not under the jurisdiction of any state are imported into a state

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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 which enables 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 CITES reporting purposes. This trade data is used to determine trends in trade and to ensure that trade in wildlife is sustainable.

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, as shown in the table below. The requirements for permits and certificates needed to trade a specimen differ, depending on which Appendix the species is listed on.

Interaction between CITES Appendices and TIES Act Schedules.

CITES Appendices	**Species Classification**	**TIES Act Schedules**
CITES Appendix I	species that are threatened with extinction International commercial trade is generally prohibited e.g. tiger, pangolin, most elephant populations, rhino, marine turtles, most whales, kakapo and tuatara	TIES Act Schedule 1
CITES Appendix II	species not threatened with extinction, but may become so unless trade is regulated, and species whose specimens in trade look like those of species listed for conservation reasons International commercial trade is allowed but controlled e.g. giant clams, hard coral, orchids, seahorses, some NZ geckos (also listed on App III) and crocodylia (some also listed on Appendix I)	TIES Act Schedule 2
CITES Appendix III	species subject to regulation within the jurisdiction of a Party and for which the cooperation of other Parties is needed to control international trade International commercial trade is allowed but regulated by some Parties e.g. red coral, peacock, walrus and freshwater stingray	TIES Act Schedule 3

The TIES Act Regulatory Framework

The TIES Act is administered by 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. The primary function of the Scientific Authority is to advise and monitor the effects of trade on New Zealand's indigenous species and determine whether trade may be detrimental to the survival of our species. The Scientific Authority is currently located within DOC and are consulted on particular matters related to the implementation of CITES in New Zealand .

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The species listed in the Appendices to CITES are mirrored in three Schedules in the TIES Act, as shown in Table 2 above. Similar to CITES, the TIES Act works by subjecting certain species to permitting 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.

The role of DOC and other agencies

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. New Zealand border officials working for these organisations are appointed under the TIES Act as Endangered Species Officers, as per TIES Act section 35. Endangered Species Officers at the border undertake permitting checks to ensure items have been traded with the correct documentation. They also carry out the seizure and surrender responsibilities prescribed under the TIES Act.

DOC communicates with importers and overseas Management Authorities about international trade and provides advice on New Zealand's permit requirements for import and export.

2.3 What is the policy problem or opportunity?

Regulating elephant ivory

There are currently no restrictions on the sale of elephant ivory products in New Zealand. This is not aligned with guidance from CITES, Resolution 10.10, which urges countries to ban domestic markets in elephant ivory where they contribute to poaching or illegal trade. There has also been international recognition of the role domestic elephant ivory markets play in the illegal trade and poaching of elephants.

CITES adopted Resolution 10.10, *Trade in Elephant specimens,* in 2016, which recommended that countries:

> *"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 was made in response to the increasing levels of poaching of elephants in Africa to harvest ivory to then sell to overseas markets. It also reflects the growing recognition of the role that domestic markets for elephant ivory plays in the poaching and decline of elephant populations. This Resolution only relates to domestic markets, not to banning the import or export or elephant ivory i.e. international trade.

As decided at the Conference of the Parties in August 2019, every party who has not closed their domestic market, are requested to report on an annual basis on what measures they are taking to ensure their domestic market are not contributing to poaching or illegal trade.

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Countries that have banned domestic markets in elephant ivory include UK, China, the USA, Taiwan and France. The UK has passed legislation but is yet to implement the ban. Australia has announced that it will be banning the domestic sale of elephant ivory but are yet to pass legislation. These countries have or are considering bans with exemptions.

If the status quo remains, New Zealand's reputation as an international leader in conservation and as a party to CITES could be damaged if we are not able to report that we have taken steps to regulate our domestic market.

New Zealand may also become a target for increased elephant ivory sales as other markets close. There are also no assurances that elephant ivory that has been illegally imported into New Zealand is not being sold on the domestic market.

Aligning the personal and household effects exemption with CITES

The definition of PHE does not exclude items traded for commercial purposes

The PHE definition allows some items to be exported from New Zealand for commercial purposes without a permit, as the definition does not exclude trade for commercial purposes. This contradicts the rationale behind the PHE exemption, which is to enable people to move their personal belongings across borders without requiring permits. This exemption was not meant to enable commercial trade in endangered species.

Items that are imported or exported for commercial reasons i.e. specifically to sell for commercial gain, are required to have a permit according to CITES. Items that are imported or exported as personal items can be exempt from permitting under CITES through the PHE exemption. For example, a whale bone necklace worn by someone that was acquired in their usual state of residence.

Guidance on how to implement the PHE exemption is outlined in CITES Resolution 13.7. This includes a recommended definition for PHE:

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.

It also outlines exemptions from permitting for PHE items made of specific species, as well as when permits are required for PHE items.

Large quantities of items are getting seized without clear conservation benefit

New Zealand's PHE exemption only allows CITES-listed items that have been acquired in New Zealand (including bought, inherited, gifted), or those listed on Appendix II (Schedule 3 of the TIES Act) to be imported without a permit. Permits are required for any CITES - listed items that are PHE and not acquired in New Zealand. Many people importing PHE items are not aware of this requirement and do not have the correct permits. These items are then seized and destroyed.

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CITES allows for PHE items made from species listed on Appendix II to be imported without permits if certain conditions are met, as CITES deems these to have a lower risk to the survival of populations in the wild. CITES Parties decide what Appendix a species should be listed on by considering a range of biological and trade criteria. Species on Appendix II are deemed to not be at immediate risk of extinction, but may become so if not closely controlled. Managed trade is therefore allowed as well as permit exemptions for PHE items.

New Zealand requires permits for PHE items listed on Appendix II under more circumstances than required for under CITES. PHE items are therefore destroyed which may have been deemed by CITES to be able to be traded without permits.

Over half of all seizures and surrenders at New Zealand's border are made up of three species: hard corals, giant clam shells and crocodylia (mostly listed on Appendix II of CITES/Schedule 2 of the TIES Act). These three groups of species accounted for approximately 5000 out of 9436 occurrences of seizures/surrenders in 2018. As the items are mostly acquired overseas, they do not qualify for the PHE exemption which requires items to be acquired in New Zealand.

The table below outlines the most commonly seized specimens by person.

Top 5 most commonly seized/surrendered specimens

COR = Corals, SHE = Shells, MEA = Meat, with 93% being crocodile meat, ROO = Roots, MED = Medicines

Addressing errors in the permitting process and on overseas-issued permits

Currently there are no mechanisms in the TIES Act to enable DOC to consider errors on overseas-issued permits or permitting processes where circumstances are outside of the importers' control. Overseas-issued permits with errors cannot be accepted under the current provisions and therefore many specimens traded under these circumstances are seized and forfeited to the Crown and disposed of.

Items have been returned using the current provisions in the TIES Act where there have been errors on overseas-issued permits or in the permitting process, but exceptional circumstances were deemed to warrant the return. As the mechanism in the TIES Act to

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return items is not clear, item have been returned to importers in an inconsistent manner. There is an opportunity to create a clear mechanism in the TIES to consider errors on overseas-issued permits and permitting processes presented at New Zealand's border and return items in a consistent and fair manner.

Examples of errors with overseas-issued permits or permitting processes include:

- The issuing Management Authority has made a mistake on a permit
- The permit has expired due to unforeseen circumstances e.g. the ship being delayed at international ports or flights being cancelled

CITES guidance also provides for situations where permits have been lost, stolen, cancelled or destroyed. This can happen where items shipped in containers and permits are lost or destroyed in transit.

Importers who have gone through the correct process can therefore sometimes be penalised unnecessarily. This does not contribute to the managed trade of CITES species and may not be furthering the purpose of the TIES Act.

DOC receives approximately 30 to 40 enquiries per year about seized items and some of these are about legitimate errors on overseas-issued permits or permitting processes. As there is no clear system in the TIES Act to consider errors in permitting processes, these cases take up considerable operational resources as DOC staff seeks to determine whether enquiries can be addressed. The types of items range from large commercial shipments of luxury goods made from endangered species, to personal items such as tabua necklaces (sperm whale tooth).

2.4 Are there any constraints on the scope for decision making?

Constraints on scope

The Minister of Conservation has instructed DOC to consider options to regulate the domestic trade of elephant ivory.

As the TIES Act implements an international convention, options are constrained by the regulatory framework set up by CITES. Parties are permitted under CITES to have stricter provisions than CITES outlined in their domestic legislation. However, signatories cannot have provisions that do not meet the minimum regulatory requirements outlined by CITES.

We did not consider this a first principles review. The purpose of the TIES Act currently aligns with the purpose of CITES. We therefore consider the current underlying principles and purpose of the TIES Act is appropriate as it aligns with the expectations of New Zealand as a party to CITES.

The discussion document considered issues around taonga being seized at other countries' borders for not having the correct CITES permits. As we do not have jurisdiction over other countries' borders, a non-legislative approach will be taken to address taonga being seized at other borders. DOC is implementing an outreach and education programme to support those travelling with taonga to understand the CITES requirements.

2.5 What do stakeholders think?

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Public and stakeholder consultation

A public discussion document was out for public consultation from 24 September to 25 October 2020. DOC received 119 submissions on the TIES Act discussion document. Organisations that submitted include the Jane Goodall Foundation, Forest and Bird, Cordy's Auction House and Dunbar Sloane. 14 international conservation organisations also submitted on the document. 92 submissions were by individuals, with 86 of those submitters from overseas. No written submissions were received from the Māori arts sector. However, DOC met with Māori arts practitioners as well as Te Matatini to discuss issues raised related to travelling with taonga species.

Te Matatini were supportive of the approach to continue exempting personal household effects that were acquired in New Zealand from import and export permitting requirements. This allows iwi, hapu and whanau to move items made from endangered species across New Zealand's border without permits.

There was acknowledgement that by New Zealand not requiring permits for exit and entry, that this sometimes resulted in those travelling with taonga not having CITES permits which would often be required by the importing country. If the correct permits are not presented, items are seized by the importing country. Those we met with agreed that more engagement with Māori who are travelling overseas is required.

DOC also conducted targeted consultation with the Jane Goodall Foundation on the proposals for further regulating elephant ivory in New Zealand. The Jane Goodall Foundation supported a full ban on the domestic market for elephant ivory as it considers the trade in elephant ivory morally wrong and that domestic markets enable illegal poaching and drives demand for elephant ivory products.

98 submitters also noted that the sale of rhino horn should also be banned in New Zealand. Banning rhino horn has not been included in this review as this was not within scope of the review. There is also very little evidence of rhino horn being on sale in New Zealand.

Through the public submissions process DOC also received information on the potential size and value of the elephant ivory market. One of the Auction Houses gave an estimate of the number and pricing of ivory pieces. Dunbar Sloane estimate they see between 400 to 600 pieces total per year (not including musical instruments). The average price for one of these items would be around $200 to $300, meaning a total market value of $80,000 to $180,000. This supports DOC's view that the domestic market for elephant ivory in New Zealand is small, and that the cost of regulating the market would far outweigh the value of the market. Auction houses did not support banning the domestic market for elephant ivory as they consider that the market is small and not contributing to the illegal trade and poaching of elephants.

Consultation with Government agencies

DOC consulted MPI and NZCS on the proposals as these two agencies support implementation of the TIES Act at New Zealand's border. Both agencies were broadly supportive of the PHE proposals as they will aim to decrease the number of seizures of PHE items at the border, which would decrease processing times for MPI and NZCS.

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The proposals were developed with the support of the Scientific Authority, which provided scientific advice throughout the policy development process.

Section 3: Options identification

3.1 What options are available to address the problem?

Options have been identified for each policy area. These are described and analysed below.

Policy area A: Regulating elephant ivory

Five options were identified to regulate elephant ivory:

- Option A1 – Ban the domestic sale of elephant ivory in New Zealand
- Option A2 – Ban the domestic sale of elephant ivory in New Zealand with exemptions
- Option A3 – Regulate the domestic market for ivory by requiring registration of elephant ivory sellers and tracking of all elephant ivory items that are sold
- Option A4 – Ban the import of all post-Convention ivory
- Option A5 – Ban the import of all ivory, with exemptions

These options are not mutually exclusive and multiple options can be implemented, for example, different combinations of a domestic ban and a ban at the border can be implemented.

Of the 114 public submitters that commented on the regulation of elephant ivory, the vast majority supported a ban on the domestic sale of elephant ivory. Submitters preferences against the questions asked in the discussion document are outlined below:

Submitters Opinion	Ban domestic sale	Ban domestic sale with exemptions	Sellers should be registered	Ban the importation of ivory	Ban the exportation of ivory
Support	105	20	10	92	84
Oppose	5	7	3	4	1

Those who supported a ban on the domestic sale of elephant ivory noted that a ban would contribute to global efforts to cut the supply and demand of elephant ivory, that any trade at all results in ongoing elephant poaching, and that ivory should not be viewed as socially acceptable. Those that opposed the ban on the domestic sale of elephant ivory, mostly elephant ivory sellers, noted that the ban would create a black market, there would be high costs to regulating the market, and that there is no evidence to suggest a ban would have any effect on elephant poaching.

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Option A1 – Ban the domestic sale of elephant ivory in New Zealand

Option A1 would ban all sales of elephant ivory in New Zealand. This means that it would be illegal to sell any item that is made from or has parts made from elephant ivory. Option A1 would include a transitional period of one year to allow those who own elephant ivory items to sell those items before the ban comes into effect.

Any person or business found trading elephant ivory would receive either an infringement fine or be prosecuted. This would depend on the amount of elephant ivory on sale.

The ban will not affect museums and scientific institutions, that often lend items to each other for educational or research purposes.

This option addresses the problem

Banning the domestic sale of elephant ivory will mean New Zealand is implementing CITES Resolution 10.10. It will also uphold New Zealand's reputation internationally for being a leader in conservation and we would be able to report to CITES that New Zealand is implementing a ban.

Banning the domestic sale would make it less likely that New Zealand would be a more attractive market to sell elephant ivory.

This option meets some of the objectives of the review:

Objective	Does Option A1 meet the objective?
CITES is implemented in NZ through clear and effective legislation	It would implement CITES Resolution 10.10 that urges Parties who have a legal domestic market for elephant ivory that is contributing to poaching or illegal trade, to close their domestic markets.
TIES Act disincentivises illegal trade	If the sale of all elephant ivory is banned, this could drive some of the existing market underground. As noted, DOC only has anecdotal evidence of the size of the domestic market so it is hard to estimate the true size of the market and what proportion would go underground. Two submitters from the auction house sector noted that of the items sold at auction elephant ivory items make up a small proportion.
TIES Act meets Treaty of Waitangi obligations	As elephant ivory is imported into New Zealand and is not an indigenous species, there are no Treaty of Waitangi implications.
TIES Act enables operational clarity and efficiency	Banning the sale of all elephant ivory would be the most efficient and clear way to impose a ban, as including exemptions would increase complexity and implementation. A blanket ban would be the easiest to implement, as any elephant ivory item for sale would be illegal. It would however involve high costs to set up a new system. DOC does not have the resources to set up a new regulatory regime, and new funding would need to be sought to set up and run the system.

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Option A2 – Ban the domestic sale of elephant ivory in New Zealand with exemptions

Option A2 would ban the sale of elephant ivory with exemptions for items acquired before 1975. We are proposing the date 1975 as that is the year African elephants were listed on CITES. Asian elephants were listed in 1976, for ease of implementation 1975 will be used for both species.

The ban will not affect museums and scientific institutions, that often lend items to each other for educational or research purposes.

These exemptions will allow for the continued sale of items such as cutlery with elephant ivory handles, chess sets, billiard sets and carvings. These items are considered to be low risk and are unlikely to be contributing to the illegal trade of elephant ivory, provided the items were acquired pre-Convention.

Commercial traders will be required to provide provenance documentation, which will be defined, to prove items for sale are pre-Convention. This documentation will ensure no new elephant ivory items are being traded. If provenance documentation cannot be produced, either an infringement fine will be issued or the seller will be prosecuted, depending on the circumstances. The additional requirement of providing proof of the age of items may force some items out of the market if their provenance documentation is not available.

Options for regulating the domestic elephant ivory market in New Zealand were influenced by exemptions in the UK Ivory Act 2018 as it is seen as best practice internationally. The UK has banned their domestic trade in elephant ivory with exemptions through their Ivory Act 2018. This ban has not yet come into effect due to complexities with establishing the criteria for exemptions.

Submitters noted that the vast majority of elephant ivory items sold in New Zealand are pre-Convention. Therefore, the impact on sellers would likely not be significant, as the majority of items that are currently being sold would fall within the exemptions.

This option addresses the problem

Similar to Option A1, banning the sale of elephant ivory with exemptions will align New Zealand with CITES Resolution 10.10. It will also uphold New Zealand's reputation internationally for being a leader in conservation, and we would be able to report to CITES that New Zealand is implementing a ban.

As items acquired before 1975 will still be sold, there is still a risk that New Zealand will be an attractive market to sell ivory. The risk of illegally imported items being sold in New Zealand will be mitigated by traders having to provide provenance documentation to prove how they acquired the ivory. Where documentation cannot be provided, the cost of carbon date testing to prove the age of the item may be required by the trader.

This option meets some of the objectives of the review:

Objective	Does Option A2 meet objective?

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CITES is implemented in NZ through clear and effective legislation	It would implement Decisions 10.10. Including exemptions within the system would be aligned with other jurisdictions that have implemented bans, which mostly include exemptions.
TIES Act disincentivises illegal trade	There is still a risk that sellers may try and falsely claim elephant ivory items meet the exemptions. The ability to still be able to sell certain elephant ivory items should however have less risk of driving the market underground than Option 1.
TIES Act meets Treaty of Waitangi obligations	As elephant ivory is imported into New Zealand and is not an indigenous species, there are no Treaty of Waitangi implications.
TIES Act enables operational clarity and efficiency	A new regulatory system would need to be set up to implement this option. Including exemptions would complicate the system and increase the ongoing costs as additional training and compliance will be needed to determine whether an elephant ivory item falls within the exemption or not.

Option A3 – Regulate the domestic market for ivory by requiring registration of elephant ivory sellers and tracking of all elephant ivory items that are sold

This option would require all elephant ivory sellers to register with DOC. Sellers would be required to track sales of elephant ivory and would be audited to ensure items are tracked and sourced legitimately. This option would also include introducing powers for Endangered Species Officers to request proof of provenance (proof of origin) for elephant ivory items. The regulation-making power to require provenance documentation already exists in the TIES Act. It would place no restrictions on the sale of elephant ivory.

As this option will require elephant ivory sellers to register at a cost, it could incentivise private sellers to exit market. This could therefore shrink the market over the long term. There is a risk that some sellers will continue to sell elephant ivory without registering. Sellers who do not register would be subject to infringement fines or prosecution.

Registration would also enable DOC to track the sales of elephant ivory and gather data on the size of New Zealand's elephant ivory market.

The option partly addresses the problem

Option A3 partly addresses the problem. It will impose regulation on the elephant ivory market where currently none exists. It stops short of banning the domestic trade, but could partly be considered to address Resolution 10.10.

This option would increase the costs for those selling elephant ivory. Depending on registration costs, some sellers might decide it is too expensive to register and exit the market voluntarily.

Similar to Option A1 and Option A2, a new regulatory system would need to be set up to implement this option. This would have significant ongoing costs. Some of these costs however could be recovered through registration fees.

This option meets some of the objectives of the review:

Released by the Minister of Conservation

Objective	Does Option A3 meet objective?
CITES is implemented in NZ through clear and effective legislation	This option could be considered as implementing part of CITES Resolution 10.10, as the domestic sale of elephant ivory would be regulated, but it would not be banned.
TIES Act disincentivises illegal trade	This option would continue allowing the sale of elephant ivory. DOC assumes that this option would not drive the market underground so would not incentivise illegal trade.
TIES Act meets Treaty of Waitangi obligations	As elephant ivory is imported into New Zealand and is not an indigenous species, there are no Treaty of Waitangi implications.
TIES Act enables operational clarity and efficiency	The option would require a new regulatory system to be set up, but once in place this system should operate efficiently. Some costs would be covered through the registration fee. Registered sellers will be required to keep records of sales and provenance documentation. They would be required to provide this information if requested.

Option A4 – Ban the import of all post-Convention elephant ivory

Option A4 would ban importing post-Convention elephant ivory i.e. all ivory harvested from an elephant since 1975[2]. Most of the elephant ivory being imported to New Zealand is pre-Convention, so would not be covered by this ban.

This option would mainly affect the import of hunting trophies made from elephant ivory. Any hunting trophies acquired after 1975 would be banned from being imported. Since 1985 there have been 73 instances of hunting trophies being legally imported into New Zealand. The impact of this option would therefore not be significant, due to the small number of elephant ivory hunting trophies being imported into New Zealand.

This option does not address the domestic market.

The option partly addresses the problem

Placing further restrictions on importing elephant ivory does not directly address the problem of implementing Resolution 10.10. It would, however, aim to stop post-Convention ivory entering New Zealand. This would directly link to the policy of stopping the killing of elephants and shrinking the market for new elephant ivory.

Banning the import of elephant ivory would also have an impact on the supply of post-Convention elephant ivory into New Zealand. DOC would ensure that the elephant ivory entering the country is legitimately sourced. This would aim to decrease the size of the domestic market.

[2]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.

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Further restricting the import of elephant ivory is going beyond what is recommended in Resolution 10.10. There are international examples of trade restrictions beyond what CITES requires, for example Australia does not allow importing post-Convention elephant ivory. New Zealand would therefore not be the first country to place stricter measures at the border for elephant ivory than CITES.

This option meets some of the objectives of the review:

Objective	Does Option A4 meet objective?
CITES is implemented in NZ through clear and effective legislation	This option would not implement CITES Decision 10.10 as it does not ban the domestic trade. It would however stop the importation of any elephant ivory obtained from a recently killed elephant. This would therefore have a direct link to conserving elephants.
TIES Act disincentivises illegal trade	As this option still allows the importing of post-Convention ivory, it should not incentivise the illegal trade above current levels.
TIES Act meets Treaty of Waitangi obligations	As elephant ivory is imported into New Zealand and is not an indigenous species, there are no Treaty of Waitangi implications.
TIES Act enables operational clarity and efficiency	This option would be straightforward to implement. Having the clear cut off date of 1975 makes it clear what elephant ivory is allowed into New Zealand for those implementing the policy, as well as for importers.

Option A5 – Ban the import of all elephant ivory, with exemptions

Option A5 would ban the import of ivory with exemptions. The proposed exemptions are:

- Musical instruments acquired before 1975 (pre-Convention)
- Items traded between museums
- Items traded for forensic testing
- Scientific specimens by CITES registered institutions

Permits would still be required to import musical instruments made prior to 1975 and items as part of a sale between accredited museums.

The option partly addresses the problem

Similar to Option A4, Option A5 does not directly address the problem by implementing Resolution 10.10. By only allowing imports of elephant ivory items that meet the exemptions, DOC would ensure that the elephant ivory entering the country is legitimately sourced. This would aim to decrease the size of the domestic market.

As mentioned under Option A4, Option A5 would go beyond what Resolution 10.10 recommends, but New Zealand would not be the first country to do so.

This option meets some of the objectives of the review:

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Objective	Does Option A5 meet objective?
CITES is implemented in NZ through clear and effective legislation	Similar to Option A4, this option does not implement CITES Resolution 10.10, as it does not address the domestic trade in elephant ivory. It does however, place further restrictions on the import of elephant ivory on New Zealand's border.
TIES Act disincentivises illegal trade	It would restrict the types of items that can be imported into New Zealand. As the number of elephant ivory imports are small, it is unlikely it would further incentivise illegal trade.
TIES Act meets Treaty of Waitangi obligations	As elephant ivory is imported into New Zealand and is not an indigenous species, there are no Treaty of Waitangi implications.
TIES Act enables operational clarity and efficiency	Partly meets. As a regulatory regime already exists at the border it would be easily implemented. Exemptions would complicate the regime as more time would need to be taken at the border to determine whether an item meets an exemption.

Policy area B: Personal and household effects (PHE) definition

The following options have been identified to address the problem:

- Option B1 – Change the definition of PHE to exclude items traded commercially
- Option B2 – Change the definition of PHE to the definition in CITES Resolution 13.7

Option B1 – Change the definition of PHE to exclude items traded commercially

Option B1 would change the definition of PHE to confirm that to qualify for a PHE exemption, the specimen must be traded for non-commercial purposes, i.e. they are not imported or exported to sell for monetary gain. PHE items usually include personal items such as jewellery or items that are part of a household such as a rosewood table. Under this option the PHE exemption would not apply to any commercial trades.

This would address the problem as it will ensure that the PHE exemption is designed for moving personal items between countries and is not used for other purposes.

The option meets the objectives of the review:

Objective	Does Option B1 meet objective?
CITES is implemented in NZ through clear and effective legislation	Through including 'non-commercial' in the PHE definition, the TIES Act will make it clear that the PHE exemption is not meant to be used for commercial purposes.
TIES Act disincentivises illegal trade	It will close the current loophole that allows some items that are PHE to be exported for commercial purposes without a permit.
TIES Act meets Treaty of Waitangi obligations	This option would mean Māori arts practitioners would need permits to export for sale any artwork that contains CITES-listed species.

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TIES Act enables operational clarity and efficiency	It will provide clear guidance that the PHE exemption is not meant for commercial purposes.

Fifteen public submitters commented on changing the definition of 'personal household effects' with all submitters supportive of excluding commercial practices in a new definition. Of those that commented, 8 submitters gave a preferred option, with two supporting the definition to exclude commercial purposes, and 6 supporting changing the definition to align with CITES guidance. Submitters (national conservation groups, international conservation groups and general public) preferred Option 2, with reasons cited being consistency with CITES and limiting the scope for abuse. An international conservation organisation (Wildlife Direct) and a hunting group (Safari Club International) preferred Option 1. Neither organisation provided reasoning for this preference.

Option B2 - Change the definition of PHE to the definition in CITES Resolution 13.7

Option B2 would change the definition of PHE to the definition outlined in CITES Resolution 13.7. This is that an item must be:

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.

The difference between this option and Option B1 is that it will specify how items will need to be carried into New Zealand, i.e. either worn or carried in personal luggage or as part of a household move. It will also require that items are legally acquired. Currently there is no requirement under the TIES Act that items are legally acquired. By adding this provision border staff can question importers if they suspect items have been illegally acquired.

Changing the definition would have a relatively minor impact on current practice. It would primarily impact those exporting items that qualify as PHE, as requirements do not currently apply to items being exported. It will also have the additional impact of restricting how PHE items can be traded across New Zealand's border, and would now require permits for PHE items being sent via post. This will require PHE items being sent via post without permits to be seized.

This option meets the objectives:

Objective	Does Option B2 meet objective?
CITES is implemented in NZ through clear and effective legislation	This option clearly identifies when something would qualify as PHE and how PHE are to be carried across New Zealand's border.
TIES Act disincentivises illegal trade	As under Option 1, this option would close a loophole around exporting PHE items for commercial purposes without a permit.

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TIES Act meets Treaty of Waitangi obligations	The option still allows exporting items for sale, but permits would be required if items that are PHE are exported for commercial gain.
TIES Act enables operational clarity and efficiency	Would provide clear guidance for when an item qualifies for a PHE exemption and that the item is not meant to be traded for commercial purposes.

Policy area C: Large quantities of PHE are getting seized without clear conservation benefit

The following options have been identified to address the problem:

- Option C1 – Implement some or all quantitative limits listed in Resolution 13.7
- Option C2 – Allow some types and/or amounts of coral to be imported into New Zealand with a PHE exemption

Option C1 – Implement some or all of the quantitative limits listed in Resolution 13.7

As mentioned earlier, CITES Resolution 13.7 provides guidance on how the PHE exemption should be implemented, including when permits should be required. This guidance was approved by the Conference of the Parties and all parties are expected to implement CITES guidance where appropriate in their domestic setting. This option considers implementing the quantitative limits listed in Resolution 13.7:

- 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 of Cactaceae spp. – 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.

From the list of species in Resolution 13.7, DOC only sees large numbers of crocodile products and giant clam shells. As already noted, crocodylia and giant clam shells make up a large proportion of items seized at the border. We are only considering exempting farmed Appendix II crocodilian specimens from Australia from the list in Resolution 13.7.

The market for farmed crocodile productions is highly regulated with the registration of authorised captive breeding establishments or closed cycle farms required under Australian legislation. We are therefore confident exempting farmed crocodile products from permitting will not have a negative effect on populations in the wild. Farmed crocodile products from Australia will be identified through packaging and questioning by border officials. Reasons for not considering the other species listed in Resolution 13.7 is outlined in Section 3.3 of the RIS.

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Option C1 partially addresses the problem

Option C1 partially addresses the problem, as it will allow the import of Appendix II crocodylia specimens from Australia without permits, as requiring permits has no identifiable conservation benefit. These products make up a large proportion of the seizures and surrenders at New Zealand's border. Exempting these items will decrease the number of seizures/surrenders and consequently the operational burden of destroying the items.

Option C1 meets the objectives of the review:

Objective	Does Option C1 meet objective?
CITES is implemented in NZ through clear and effective legislation	Further aligns TIES Act with Resolution 13.7 and will provide clear guidance of what specimens and what quantity can enter New Zealand without a permit.
TIES Act disincentivises illegal trade	Will allow a limited amount of farmed crocodile products into New Zealand. This should disincentive people from illegally carrying crocodile products into New Zealand.
TIES Act meets Treaty of Waitangi obligations	Not applicable – does not apply to any indigenous New Zealand species.
TIES Act enables operational clarity and efficiency	By reducing the amount of crocodile specimens seized, this will increase efficiency as DOC will have to process far fewer seized/surrendered items. However, it will complicate operations for border staff as they will have to be aware of exemptions for certain specimens.

<u>Option C2 - Allow some types and/or amounts of coral to be imported into New Zealand with a PHE exemption</u>

There are two variations of this options considered:

- C2a – allow coral sand and fragments to imported into New Zealand under the PHE exemption
- C2b – allow coral sand, coral fragments and worn, eroded, beach washed hard coral, into New Zealand under the PHE exemption.

<u>Option C2a</u>

Option C2a would allow coral sand and fragments to be imported into New Zealand without a permit. CITES Resolution 9.6 outlines that coral sands and fragments are not readily recognisable, i.e. the species cannot be determined, therefore it cannot be determined that trade in these specimens are detrimental to ecosystems. Coral sands are defined to be no larger than 2mm in diameter, and fragments between 2mm and 30mm in diameter. As the species of sands and fragments cannot be determined, the requirements of CITES does not apply to these specimens.

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Option C2a would address the problem as it will allow the import of coral fragments without permits in accordance with CITES guidance which notes that coral fragments are not deemed 'specimens', therefore they should not be subject to trade controls under CITES.

Option C2b

This option would allow worn, eroded, beach washed hard corals, including fragments, to by imported into New Zealand under the PHE exemption, i.e. without a permit. There would be a strict limit per person to stop traders using this exemption to import large quantities of stony corals without a permit for commercial purposes. Exempting corals would decrease the number of seizures of hard corals at the border and consequently the operational burden of destroying the items.

Hard corals are listed on Appendix II of CITES and managed trade is allowed. We do not, however, have adequate information on the effects of exempting hard corals from permitting on coral ecosystems in source countries, as the removal of permitting requirements may incentivise trade.

Option 2Ca and 2Cb partially meets the objective of the review:

Objective	Does Option 2 meet objective?
CITES is implemented in NZ through clear and effective legislation	Will clarify the rules on importing corals through clear legislation.
TIES Act disincentivises illegal trade	It will legalise importing a specified quantity of corals without requiring permits, which will decrease seizures/surrenders at the border.
TIES Act meets Treaty of Waitangi obligations	No Treaty of Waitangi implications as relates to species from other countries being imported into New Zealand.
TIES Act enables operational clarity and efficiency	Would decrease the amount of coral being seized/surrendered and thus the amount of items having to be processed and destroyed by DOC. Would introduce some operational complexity for MPI border staff as they would have to assess the amount of coral being imported by a trader and whether it is a fragment or sand. CITES guidance defines coral fragments/sands as 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.

Public submitters seem unsure of the proposals for exempting some species from permitting, with only 11 submitters commenting on this section. Of these submitters, four supported and five opposed an exemption for hard corals from permitting. Two submitters supported and two opposed an exemption for farmed crocodile products. Two opposed implementing the exemptions listed in Resolution 13.7, two supported the current permitting system, and one supported a total ban on importing PHE items. Views expressed on these options were not clear, however those that supported conservation in

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general supported not exempting any species from permitting, and those opposed were from a mixed group of submitters.

Policy area D: Addressing technical issues with permitting processes and overseas-issued permits

A package of options to address errors on overseas-issued permits has been considered:

- D1 - enable seized items to be returned if permits have an error outside of the importers' control;
- D2 - enable replacement permits from overseas management authorities to be accepted; and
- D3 - enable retrospective permits from overseas management authorities to be accepted in exceptional circumstances.

These options are analysed as a package to create a process for border staff to assess cases where there are errors on overseas-issued permits or where no permit has been presented at the time of import.

This package of options will allow officials to consider legitimate cases where errors on overseas-issued permits or in the permitting process are genuinely outside of the importers' control. It will also introduce more options for importers trying to retrieve their personal property. This will increase public confidence in the administration of the TIES Act, as the current strict approach is often seen as unreasonable by the public as noted in letters to the Minister of Conservation and in articles in the media related to specific cases.

If a permit issued by an overseas Management Authority is presented with an error, or no permit is presented due to the original permit being lost, stolen, cancelled, or destroyed, the following criteria must be met to be considered for immediate return or obtaining a replacement permit:

- aligns with purpose of the TIES Act
- does not undermine the administration of the TIES Act
- the error was outside of the importers' control.

If no permit was previously obtained, the following criteria must be met for a retrospective permit:

- aligns with purpose of the TIES Act
- does not undermine the administration of the TIES Act
- the error was outside of the importers' control
- specimen is not included on Schedule 1 of the TIES Act
- the trade is not for commercial purposes
- occurred under exceptional circumstances.

Many other countries also provide avenues to question seizures or to provide a process for applying to have items returned. For example, in the UK you can apply for a replacement permit if it has been lost, cancelled, stolen or accidentally destroyed.

Option D1 to D3 partially meets the objectives:

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Objective	Does the option meet objective?
CITES is implemented in NZ through clear and effective legislation	Yes, would provide clear guidance on when errors on overseas permits could qualify to have an item released.
TIES Act disincentivises illegal trade	No, it could incentivise some to try and qualify to have items returned under this process when there was no intention to go through the proper process to get a permit.
TIES Act meets Treaty of Waitangi obligations	This option mostly relates to specimens of endangered species from other countries being imported into New Zealand. Applying Treaty principles would not lead to a different outcome.
TIES Act enables operational clarity and efficiency	Yes, it would provide an avenue for operational staff to address errors on overseas permits which it currently does not have. Currently operational staff relies on another section of the TIES Act which is not fit for this purpose.

The majority of public submitters approved of accepting minor technical errors on permits issued by overseas Management Authorities. Submitters saw accepting minor errors as an opportunity to create greater trust in the system, to educate people on limits and restrictions, and as a way to align the TIES Act with CITES.

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3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The following criteria are being used to assess the options:

1. 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)?
2. Is the option consistent with CITES and Conference of the Parties resolutions and decisions?
3. Is the option easy to implement and minimises costs to regulators?
4. Does the option minimise costs and improve clarity and efficiency for the public and legal traders?

In some cases, criteria will have to be traded off against each other. For example, an option that meets the purpose of the TIES Act might not be easy to implement or minimise costs to regulators.

3.3 What other options have been ruled out of scope, or not considered, and why?

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A high proportion of submitters supported a ban on the sale of rhino horn New Zealand. This option is not being considered at this time as New Zealand is not required to report on how it is managing its domestic sale of elephant ivory to the CITES Secretariat.

The market for rhino horn in New Zealand is even smaller than that of elephant ivory. Since 2010, there has been 13 seizures of rhino horn specimens, all small amounts in medicine, with the most resent seizure in 2016. In the same time period, there has been 3 rhino specimens imported. There is also very little evidence of rhino horn being sold in New Zealand. We consider that any reputational risks of not banning rhino horn does not outweigh the costs of regulating its trade, as evidence of any trade of rhino horn is very small.

For Policy area C, we did not consider amending the PHE exemption in the TIES Act to allow all Appendix II PHE items to be imported without a permit. There are thousands of species listed on Appendix II but only a few species make up the majority of seizures at New Zealand's border. DOC considered taking a species-specific approach to be more appropriate. This means that we can assess the conservation outcomes for wild populations by providing an exemption on a case by case basis.

Policy area C considers a list of specimens for possible permitting exemptions as outlined in CITES guidance in Resolution 13.7. Of the species listed, we are only considering an exemption from permitting for a limited number of farmed Appendix II crocodilian species per importer from Australia as PHE. There are very few cases of labelled caviar, rainsticks, Queen conch, seahorses and agarwood being seized/imported at New Zealand's border. For example, fewer than 10 rainsticks have been seized at the New Zealand border in the last three years. For these items, enabling trade without permits up to a certain quantitative limit would therefore not have a significant impact on trade and would unnecessarily complicate processes for border officials. Exempting the full list of species in Resolution 13.7 may also have the unintended consequence of encouraging harvest of these species

Giant clam shells are also listed in Resolution 13.7. Giant clam shells are not recommended to be exempt at this time as we do not have the same information available on harvest in source countries of giant clam shells as we do for farmed crocodiles in Australia. We do not know the impact of exempting giant clam shells from permitting on wild populations, therefore we are not including giant clam shells in the proposed approach. Further work on a possible exemption will be done with source countries to determine the effects on wild populations.

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Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

Key:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Policy area A: Regulating elephant ivory

	Status quo	Option A1 – Ban domestic trade	Option A2 – Ban domestic trade with exemptions (preferred)	Option A3 – Register traders and provenance documentation	Option A4 – Ban import of post-Convention ivory	Option A5 – Ban import of ivory with exemptions (preferred)
Criterion 1 – Align with purpose of TIES Act	**0**	++ Would ban sale of ivory where there is currently no regulation	++ Would align with purpose of TIES Act as it promotes management, conservation and protection of endangered species	+ Would register trades and allow for data on the size of market to be collected	++ Would only allow items that are pre-Convention into New Zealand	++ Would only allow ivory into New Zealand that meet targeted exemptions
Criterion 2 – consistency with CITES	**0**	+ Would align New Zealand with CITES guidance to close-down domestic ivory markets	+ Would align New Zealand with CITES guidance to close-down domestic ivory markets	0 Would enable DOC to report on the size of the domestic market	0 Would only allow ivory to be imported if it is pre-Convention. Still consistent with CITES as stricter measures allowed.	0 Would only allow ivory to be imported if it qualifies for an exemption. This is stricter than CITES, which is allowed
Criterion 3 – Ease of implementation and minimise costs	**0**	- - New regulatory system required at high cost	- - New regulatory system required at high cost, added complexity of exemptions	- - New regulatory system required at high cost	- Incorporate into existing regime at border at one-off cost for staff training	- Incorporate into existing regime at border at one-off cost for staff training

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	Status quo	Option A1 – Ban domestic trade	Option A2 – Ban domestic trade with exemptions (preferred)	Option A3 – Register traders and provenance documentation	Option A4 – Ban import of post-Convention ivory	Option A5 – Ban import of ivory with exemptions (preferred)
Criterion 4 – minimise cost and improve efficiency for traders	**0**	- - Traders would no longer be able to sell any elephant ivory	- Elephant ivory can still be sold but has to qualify for exemptions	- Traders need to register at a cost and provide providence documentation	- Traders would not be able to import post-Convention ivory.	- Exemptions will decrease the times elephant ivory can be traded
Overall assessment	0	-	0	- -	0	0

Policy area B: Personal and household effects – definition

	Status quo	Option B1 – Add non-commercial purposes	Option B2 – adopt definition in Resolution 13.7 (preferred)
Criterion 1 – Align with purpose of TIES Act	**0**	++ This option aligns 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.	++ This option aligns 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.
Criterion 2 – consistency with CITES	**0**	+ This option would be partly consistent with the definition in Resolution 13.7	++ This option would align the definition with the CITES definition in Resolution 13.7
Criterion 3 – Ease of implementation and minimise costs	**0**	0 Some additional training to apply new definition of PHE	0 some additional training to apply new definition of PHE
Criterion 4 – minimise cost and improve efficiency for traders	**0**	– Some exports would now require a permit if being exported for commercial purposes.	– Some exports would now require a permit if being exported for commercial purposes and how items are imported or exported are now required.
Overall assessment	0	++	+++

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Policy area C: Exemptions from permitting for PHE items

	Status quo	Option C1 – Exempt a limited quantity per person of farmed crocodile specimens from Australia that are PHE from permitting (preferred)	Option C2a – exempt coral sand and fragments from permitting (preferred)	Option C2b – Exempt hard corals from permitting
Criterion 1 – Align with purpose of TIES Act	**0**	++ Aligns with the purpose of the TIES Act	+ As coral sands and fragments are not considered specimens under CITES, it is appropriate to allow trade in these items without permits.	- There may be some negative consequences for coral populations in the wild if hard corals are exempt as it could incentivise trade, which would be contrary to the TIES Act.
Criterion 2 – consistency with CITES	**0**	+ Would be more aligned with CITES than current practice, but would not fully align with quantitative limits outlined in Resolution 13.7	++ Aligned with CITES Resolution 9.6 that notes coral sands and fragments as not qualifying as specimens as it is not readily recognisable, therefore not subject to CITES.	0 Maintaining the status quo and exempting hard corals would both be aligned with CITES, as CITES allows Parties to be stricter than CITES guidance
Criterion 3 – Ease of implementation and minimise costs	**0**	+ Would be implemented through existing regulatory system at the border. Would decrease number of items seized at border, with fewer specimens needing to be processed, stored and disposed of.	+ Coral sands and fragments make up a small proportion of coral that is seized at the border. It will therefore only apply to a small proportion of coral being imported. Additional staff training will be required to distinguish between coral specimens.	++ Worn, eroded, beach washed hard corals make up the largest proportion of seizures of any species at the border, therefore an exemption would decrease the number of seizures and operational burden at the border.
Criterion 4 – minimise cost and improve efficiency for traders	**0**	+ People importing four specimens or fewer of farmed crocodilian specimens will no longer require import permits.	+ Will allow travellers to import coral sand and fragments into New Zealand without permits.	++ It would allow importing a limited number of worn, eroded, beach washed hard corals without a permit.
Overall assessment	0	+++++	+++++	+++

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Policy area D: Errors on permits

	Status quo	D1-D3: Suite of options to enable the return of seized/surrendered items if criteria are met (preferred)
Criterion 1 – Align with purpose of TIES Act	**0**	+ Errors on permits issued by overseas Management Authorities or where no permit is presented, will not be accepted unless it aligns with the purpose of the TIES Act and CITES
Criterion 2 – consistency with CITES	**0**	0 These options go further than CITES guidance in Resolution 12.3 as minor errors will be accepted. However they will only be accepted if they are not contrary to the purpose of the TIES Act and CITES, or if they are the fault of the importer.
Criterion 3 – Ease of implementation and minimise costs	**0**	+ DOC already manages cases of overseas-issued 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 if there is an error or where no permit is presented. There would be initial staff training costs to ensure permits with errors are being correctly assessed and to implement the new system that will allow for the return of items.
Criterion 4 – minimise cost and improve efficiency for traders	**0**	+ These options will provide processes for when errors on permits issued by overseas Management Authorities would be considered for items being returned, or when replacement or retrospective permits can be sought, which is not currently available to importers under the TIES Act.
Overall assessment	0	+++

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Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

DOC prefers the following combination of options to address the problem:

Policy area A: Regulating elephant ivory

- Option A2: Ban the domestic trade of elephant ivory with exemptions
- Option A5: Ban the import and export of elephant ivory with exemptions.

Policy area B: Personal and household effects (PHE) definition

- Option B1: Change the definition of PHE in the TIES Act to:
  - personally-owned or possessed for non-commercial purposes;
  - legally acquired; and
  - 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.

Policy are C: Large quantities of PHE are getting seized without clear conservation benefit

- Option C1: Implement some or all quantitative limits listed in Resolution 13.7 (only farmed crocodile specimens)
- Option C2a: exempt coral sand and fragments from permitting.

Policy area D: Addressing technical issues with permitting processes and overseas-issued permits

- Option D1 to D3: Enable a process to return seized items to individuals where there are issues with permits or permitting processes by overseas Management Authorities outside of their control.

Policy area E: Cost recovery (CRIS attached at Appendix 1)

- Recovering costs for services provided to commercial traders.

These options will address the problem by improving the implementation and functionality of the system regulating the international trade of endangered species. DOC will thereby better fulfil New Zealand's role in protecting wild populations of endangered, threatened, and exploited species by better regulating the trade of CITES-listed species.

Trade in elephant ivory

Banning the domestic trade in elephant ivory will align New Zealand with Resolution 10.10. It will also enhance New Zealand's reputation as an international leader in conservation and show New Zealand is a responsive Party to CITES. This option strongly aligns with the criteria one and two, aligning with the purpose of the TIES Act and being consistent with CITES. This option does score negatively against the criteria for ease of implementation and costs, as to regulate the domestic trade in elephant ivory will require a new regulatory system to be set up. It will also impose restrictions on those who trade in CITES listed species, e.g. auction houses and individuals, as they will only be able to sell elephant ivory items that fit in with the exemptions outlined earlier. Due to the cost involved with this option it does not score highly against the criteria, but we consider that the gains

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in aligning with CITES guidance and the purpose of the TIES Act, and ensuring New Zealand's international reputation as a leader in conservation is protected, outweighs cost considerations.

Placing further restrictions on the import and export of elephant ivory means that the size of the market should remain the same or shrink as no new elephant ivory can enter New Zealand for commercial sale. Although further restrictions on the border are not required by Resolution 10.10, this will stop traders being able to import elephant ivory items into New Zealand to sell as pre-Convention sales will still be permitted. This options scores highly on aligning with the purpose of the TIES Act, but the overall assessment against the criteria shows an outcome similar to the status quo. We still consider, however that restricting further imports will support the ban on the domestic sale of elephant ivory by ensuring more ivory does not enter New Zealand. The combination of these options therefore will meet the objective of implementing CITES in New Zealand through clear and effective legislation.

Personal and household effects exemption

Updating the definition of PHE will align it more closely with guidance from CITES Resolution 13.7 and ensure all items that are PHE are only traded for personal and not commercial use. In assessing this option against the criteria, there are clear benefits to updating the definition as opposed to the status quo.

Allowing for permitting exemptions for farmed crocodile items that are PHE will decrease the number of seizures at the border while still protecting wild populations of crocodiles. This options only relates to personal items being imported that are not intended to be sold for commercial gain, e.g. a packet of crocodile jerky bought at the airport. Commercial imports will still require permits, e.g. large shipments of crocodile skin bags for sale in stores.

Allowing the import of coral fragments and sands without permits is accordance with CITES guidance which notes that coral fragments are not deemed 'specimens', therefore they should not be subject to trade controls under CITES.

Clear mechanisms to deal with errors on overseas-issued permits and permitting process

The proposed package of options will allow officials to consider legitimate cases where errors on permits or in the permitting process issued by overseas Management Authorities are genuinely outside of the importers' control. It will provide certainty on when importers can have their personal property returned and enable consistent application across different cases. This will increase public confidence in the administration of the TIES Act. The current strict approach is often seen as unreasonable by the public and the current use of the discretion under section 42 is susceptible to uncertainty and inconsistency.

Assessment against the criteria shows clear benefits to implementing this option as opposed to the status quo, as it better aligns with the purpose of the TIES Act. It will bring benefits to both the regulator and traders by providing a clear process returning items where appropriate if there are errors on permits or in the permitting process by overseas Management Authorities presented at the border, with possible cost savings over time for the regulator.

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Cost recovery

Recovering costs for these activities will enable DOC to resource them effectively. Enabling cost recovery by management authorities has also been cited by CITES as a deterrent for illegal trade. Cost recovery incentivises importers to follow proper permitting procedures to ensure they are not charged for additional inspections of consignments.

Assessment against the criteria shows a strong benefit to recovering costs, as it will help implementing the purpose of the TIES Act and aligns with guidance from CITES of the role the recovering costs play in improving compliance from traders. By covering the costs for checking commercial consignments and risk assessments, some resources will be freed up for other CITES related regulatory work.

5.2 Summary table of costs and benefits of the preferred approach

Elephant ivory:

Affected parties *(identify)*	**Comment**: *nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks*	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach, compared to taking no action			
Elephant ivory sellers	Sellers will not be able to sell elephant ivory pieces that do not fit exemptions and therefore forego income from selling those items.	Low, as elephant ivory market in New Zealand considered to be small and pre-Convention elephant ivory will still be able to be sold. One submitter estimated the annual value of the domestic market in New Zealand to be between $80,000 and $180,000 per annum.	Medium
Importers and exporters of elephant ivory	Traders will no longer be able to move elephant ivory items across New Zealand's border to sell in New Zealand, foregoing income that would have been made from the sale. Traders will also not be able move personal items they own across the border, e.g. if	Low, as imports and exports of elephant ivory are small	High

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	someone is immigrating to New Zealand they will not be able to bring any personal items made from elephant ivory with them.		
Regulators	Cost of setting up regulatory system and implementing additional regulation at the border. Ongoing costs of regulation and monitoring of system	Approximately $2 million in the first year, and $7.5 million for the first five years of operation	High
Wider government	Some costs to law enforcement agencies as additional offences will be required for banning the domestic market in elephant ivory. There will be ongoing costs to apply new offences. Additional inspection by MPI and Customs officers at the border	Low, due to the small size of the market we do not anticipate many prosecutions and predict a small amount of ivory would be imported into New Zealand	Low
Other parties	N/A	N/A	N/A
Total Monetised Cost	*$2 million in year 1, $7.5 million over first five years*	*High*	Medium
Non-monetised costs		*Low*	High

Expected benefits of proposed approach, compared to taking no action			
Elephant ivory sellers	Sellers will only be able to sell elephant ivory items that meet exemptions. Some benefit as sellers can tell customers that the elephant ivory they are purchasing does not contribute to poaching.	Low, as anecdotal evidence shows majority of elephant ivory currently being sold will fall within the exemption.	Medium
Importers and exporters of elephant ivory	No benefits, as narrow exemptions will not allow for any elephant ivory to be imported or exported for commercial or personal use.	Medium, as elephant ivory will no longer be able to be importer or exported for personal use	High
Regulators	Enable monitoring of the domestic market for elephant ivory. Ensure elephant ivory that qualify for an exemption has been obtained legally through requirement of provenance documentation.	Medium	Medium
		Medium	Medium

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Wider government and the public	New Zealand maintains its reputation for being a world leader in conservation. General public (NZ citizens and consumers of NZ goods) assured that any elephant ivory that is purchased has been legally sourced.	Medium	Medium
Total Monetised Benefit	None	Low	Medium
Non-monetised benefits		*Medium*	Medium

Definition of personal and household effects

Affected parties *(identify)*	**Comment**: *nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks*	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach, compared to taking no action			
Importers and exporters of PHE items	Will need to have permits if importing or exporting PHE items for commercial reasons. The majority of PHE being imported are items that are owned by individuals e.g. a crocodile skin belt. If PHE are being traded for commercial reasons it is usually a small number of items, therefore getting permits would not be particularly onerous.	Low	High
Regulators	Only material impact will be that PHE will need a permit to be sent via post which will require some additional monitoring by border staff. As border staff already check incoming international mail, this should not require high levels of additional monitoring	Low, as majority of personal items are carried on a trader's person or in household moves	High
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Cost	*None*	Low	High

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Non-monetised costs	*Low*	*Low*	High

Expected benefits of proposed approach, compared to taking no action			
Importers and exporters of PHE items	None	Low	High
Regulators	Will ensure PHE items cannot be traded for commercial purposes and give regulator ability to question whether an item has been legally acquired	Low	High
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Benefit	None	Low	High
Non-monetised benefits	Low	*Low*	High

Large quantities of items are getting seized

Affected parties *(identify)*	**Comment***: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks*	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*

Additional costs of proposed approach, compared to taking no action			
Importers and exporters of PHE items	None	Low	High
Regulators	Costs related to additional training of staff to implement proposed approach	Low	High
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Cost	*Some costs related to additional implementation training*	Low	High
Non-monetised costs	*None*	*Low*	High

Expected benefits of proposed approach, compared to taking no action

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Importers of PHE items	Will be able to import PHE items without requiring permits, which will mean items without permits will no longer be seized, and reduced cost and time of getting a permit for those items when overseas.	Medium	High
Regulators	Decreased seizures will reduce costs over the longer term due to fewer administrative and destruction costs. Easier to implement	Medium	Medium
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Benefit	Some benefits to importers who will not have to pay for permits	Medium	Medium
Non-monetised benefits	None	*Low*	High

Clear mechanisms to deal with errors in permitting processes by overseas MAs

Affected parties *(identify)*	**Comment**: *nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks*	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach, compared to taking no action			
Importers of PHE items	None	Low	High
Regulators	Training to implement new requirements for staff and then will form part of BAU training materials, approximately $2000-$3000	Low	High
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Cost	*Approximately $2000-$3000*	Low	High
Non-monetised costs	*None*	*Low*	High
Expected benefits of proposed approach, compared to taking no action			

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Importers of PHE items	Clear process for having personal property returned if there are errors in overseas Management Authority processes outside of importers' control which means items can be returned.	Medium	Medium
Regulators	Clear guidance on how to deal with cases where there are errors with overseas processes which will less time spent on addressing enquiries with some cost savings over time	Medium	Medium
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Benefit		Medium	High
Non-monetised benefits	*Less time spent on dealing with difficult cases as clear guidance on when to return items is available*	*Medium*	High

Cost recovery

Affected parties *(identify)*	**Comment**: *nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks*	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach, compared to taking no action			
Regulated parties	Commercial traders will have to pay for services that are currently provided free of charge	$20,000 - $35,000 per annum across all operators	High
Regulators	Will be implemented through existing cost recovery systems. Some set up costs and approximately one additional staff member to administer system.	Low	High
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Cost	$20,000 - $35,000	Medium	High

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Non-monetised costs	*Set up costs and approximately one additional staff member to support administering the system*	*Low*	High

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	DOC will be able to provide a higher number of inspections and risk assessments of commercial consignments due to increased capacity from recovering costs.	Medium	High
Regulators	Capacity to provide higher numbers of inspections and risk assessments as costs will be recovered. Cost savings can then be used on other regulatory work at the border e.g. better screening at mail centres	Approximately $20,000 - $35,000 per annum	High
Wider government	None	Low	High
Other parties	None	Low	High
Total Monetised Benefit	Approximately $20,000 - $35,000	Medium	High
Non-monetised benefits	Better services provided to commercial traders by the regulator when inspecting commercial consignments	*Medium*	Medium

5.3 What other impacts is this approach likely to have?

As New Zealand's domestic elephant ivory market is considered to be small, any regulation of the domestic market is unlikely to affect the poaching and illegal trade of elephant ivory internationally.

There is a risk that exempting farmed crocodiles specific species (using the PHE exemption) from permitting requirements will incentivise individuals to try and declare items as PHE when they are being imported for commercial purposes. As these individuals would then avoid permitting requirements. This is a small risk as border staff are usually able to determine whether items are for commercial purposes through questioning and by the volume of items being imported or exported. This risk will also be mitigated through putting a limit on the number of items that can be imported per person at a time.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

Banning the domestic trade of elephant ivory has some incompatibility with the guidance on the design of regulatory systems. The guidance notes regulatory systems should deliver, over time, a stream of benefits or positive outcomes in excess of its costs or

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negative outcomes. New regulatory systems should not be introduced unless they will deliver net benefits for New Zealanders.

Considering the size of New Zealand's market, and that the majority of ivory sold and imported is pre-Convention, it is unlikely a domestic trade ban in New Zealand will have an effect on illegal poaching of elephants.

The benefits of regulation will more likely be to uphold New Zealand's reputation internationally of supporting the protection of endangered species, which we consider outweighs the costs. It will also provide reassurance to New Zealanders that elephant ivory sold in New Zealand is not a result of illegal poaching. The benefits would mostly be reputational.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Implementation of the preferred options related to personal and household effects and errors on overseas-issued permits will be implemented through the existing regulatory framework in place. These options will require amendments to the TIES Act. The options will be included in the ongoing regulation and implementation of the TIES Act at New Zealand's border.

A public awareness campaign will accompany the implementation of the preferred options, to ensure traders are aware of the changes. Staff training will also be conducted to ensure effective implementation of the changes. This will include training for MPI and Customs officials who implement the TIES Act at the border, with the support of DOC officials. Training will be completed before the changes take effect.

The ban on importing and exporting elephant ivory with exemptions will be incorporated into the current regulatory regime at New Zealand's border. The offence provisions in the TIES Act will therefore apply to the ban on import and export of elephant ivory. Permits will still be required to import and export elephant ivory items that meet exemptions.

As there is currently no system regulating the domestic trade of elephant ivory, additional offences and powers will need to be created to implement and enforce the ban. This includes offences, and inspection and search powers. Sellers will also be required to provide provenance documentation for any elephant ivory being sold to prove it was acquired before 1975. If these cannot be presented, carbon dating could be required at the cost of the seller.

A transitional period of one year from when legislation is passed to when the elephant ivory proposals come into effect is recommended. This will ensure the sector is prepared and the changes have been communicated to the public.

6.2 What are the implementation risks?

There is a risk that implementation is not consistent across all border locations. This will be mitigated by ensuring all border officials implementing the proposed changes attend training and have support from DOC.

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There is also a risk that there will be some confusion from the public on what the changes mean to them and how to follow the new rules. Public awareness campaigns will aim to mitigate this risk.

As we do not know the size of the domestic elephant ivory market, there is a risk that current projections for the requirements to implement the ban are not adequate. This will be tracked and monitored by DOC as the system is embedded.

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Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The system as a whole is currently monitored through gathering data on how many legal imports, exports and re-exports occur, and how many items are seized/surrendered. This data is reported to CITES on an annual basis. DOC will analyse the annual trade data to evaluate whether the objectives of the proposed changes are being met. We would expect to see fewer seizures of CITES listed specimens over time as PHE exemptions are put in place, and clearer legislation leading to better implementation and managing illegal trade.

We expect the main impact of these changes to be more efficient implementation of the TIES Act. One of the main ways this will be evaluated is the time it takes to resolve enquiries about seized items, as clear guidance in the TIES Act on how to deal with errors in overseas permitting processes should enable DOC to resolve enquiries in shorter timeframes than under the status quo.

Currently we know approximately how many complaints are received per annum. To better monitor effects of the proposed changes, DOC will track complaints and the time it takes to be resolved.

The ban on import and export of elephant ivory will be monitored through the current regulatory system at the border. As all elephant ivory imports must be declared, border staff will be able to assess if items meet any of the exemptions. The current border measures will be used for identifying elephant ivory that is being illegally imported.

Monitoring of the domestic ban on elephant ivory will be run on a risk-basis, i.e. compliance officers will focus on outlets that are known to sell elephant ivory such as auction houses and antique markets. Monitoring will include asking for provenance documentation to be produced by sellers, or possibly carbon dating.

The ban on the domestic sale will be evaluated after one year of operation. We do not expect this ban to reduce the number of elephant ivory sales, as the majority of current elephant ivory sales fall within the pre-Convention exemption.

We expect the ban to support our international reputation as a leader in conservation, as we will no longer have to report on why we are not regulating our domestic market in elephant ivory. This will be monitored through DOC's International team that liaises with and attends the triennial CITES Conference of the Parties.

7.2 When and how will the new arrangements be reviewed?

As banning the domestic sale of elephant ivory will be implemented through a new regulatory system, its operation will be reviewed after one year to identify any implementation difficulties and review concerns raised by stakeholders.

The other proposed changes will be reviewed on an ongoing basis as part of the review structure already in place.

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Stakeholders will be able to contact the CITES implementation team at DOC at any time. There will also be another opportunity for the public to comment on the proposed changes during the Select Committee process.

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Stage 1 Cost Recovery Impact Statement

Trade in Endangered Species Act 1989 (TIES Act) – Recovering costs for services to commercial traders.

Status quo

DOC currently recovers costs for issuing import, export and re-export permits. Any private individual or businesses pays a fee for a permit if they want to import, export or re-export a CITES-listed species, as per the permitting requirements outlined in the TIES Act.

The TIES Act does not enable DOC to recover costs for time spent reviewing and inspecting commercial consignments. These activities are currently being funded from DOC's baseline funding. These activities include:

- Reviewing commercial product inventories 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.

Commercial consignments are chosen to be screened if they are deemed to be high risk for not meeting the requirements under the TIES Act. Consignments could be deemed high risk due to issues with permits, for example the number of items being imported do not match the number listed on the permit, or related to the conditions of live animal imports. If deemed high risk, a DOC CITES officer inspects the consignment.

These activities aid commercial traders by assisting them to comply with the law. These resources could be spent on activities that provide greater public benefit. These inspections are required to implement CITES, as they identify possible instances of illegal imports of CITES-listed species by checking consignments match the information in the permit.

Screening commercial consignments that are deemed high risk by DOC requires officers to spend between two and eight hours per week risk screening commercial consignments. This costs approximately $20,000 - $35,000 per annum and are covered from DOC baseline funding. Recovering costs for commercial inspections is undertaken by other government agencies for similar activities. For example, MPI recover costs for inspections of commercial imports.

The TIES Act does not currently provide the authority to charge for services to commercial consignments, therefore it is proposed to amend the TIES Act to create the authority to recover costs. This is a new fee, as this service has not previously been charged for.

Policy Rationale: Why a user charge? And what type is most appropriate?

DOC has the authority to cost recover as it already cost recovers for other services to ensure the effective implementation of the TIES Act, i.e. permits. A user charge will enable DOC to cost recover for services provided for commercial consignments by amending the cost-recovery regulation-making power in the TIES Act. Recovering costs is related to two specific activities:

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- 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 commercial consignments of endangered species that are deemed high risk and chosen for inspection.

Inspections for commercial consignments are a private good, as people can be excluded from its benefits at a low cost, as an inspection only applies to a specific commercial consignment. The inspection is also easily excludable as an inspection of one commercial consignment cannot be used by another commercial importer for their consignment. It is also a private good as the commercial importer gets benefit from selling items made from species listed on CITES as endangered, threatened or exploited.

Only consignments that are deemed high risk are inspected and therefore charged a cost recovery fee. This creates an incentive for commercial importers to follow proper procedures and ensure permits are correct, in order to avoid being deemed high risk and therefore inspected and charged.

Recovering costs for inspecting high-risk commercial consignments is consistent with the following criteria in the Treasury's guidance[3] on cost recovery:

- Equity - As private commercial sellers and importers receive commercial gains from importing items made from CITES-listed species which generate the risks that require commercial consignment checks, it is more equitable for those getting private benefit to fund the regulatory costs rather than the taxpayer.
- Efficiency - Recovering costs for these activities would provide smoother transitions through border security, which would benefit both New Zealand border staff and commercial traders and increase efficiency at the border.
- Effectiveness - Recovering costs would also make available resources to improve operational effectiveness in other areas, making the regulatory system as a whole more effective. Examples include better outreach to traders to ensure they understand permitting requirements, more training for staff and improving processes at the border and thereby more effectively implementing our obligations under CITES.

An hourly charge is being proposed, as the volume of each consignment and subsequent time spent inspecting the consignment can vary considerably. One hour minimum will be the starting point for all consignments, as the vast majority of inspections take longer than one hour to complete.

This charge will only be applied to businesses who are importing items made from endangered species that are listed on CITES appendices, and therefore subject to regulation under the TIES Act. Businesses that import such items range from New Zealand-wide wholesalers, overseas companies, small retail shops and online businesses.

Recovering costs meets the objectives set out of the review of the TIES Act:

Objective	Does the option meet objective?
CITES is implemented in NZ through clear and effective legislation	Yes, providing clear guidelines on when costs can be recovered will improve the effectiveness of the regulatory system.

[3] https://treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf

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TIES Act disincentivises illegal trade	Yes, CITES guidance notes that recovering costs can be an effective deterrent against illegal trade. Only consignments deemed to be high risk are inspected, therefore there is an incentive for importers to follow proper procedures, , as if they are not deemed high risk they will not be inspected and therefore not incur the costs.
TIES Act meets Treaty of Waitangi obligations	There are no Treaty of Waitangi implications as this only related to items made from endangered species from other countries being imported into New Zealand, not exports
TIES Act enables operational clarity and efficiency	Yes, recovering for costs for services to commercial traders will allow resources currently used for these services to be used to improve implementation in other areas of the regulatory system.

Recovering costs also meets the criteria set out for the TIES Act review:

	Status quo	**Recover costs for services provided to commercial traders**
Criterion 1 – Align with purpose of TIES Act	**0**	+ Recovering costs for commercial services will enable DOC to carry out more risk assessments helping ensure that commercial traders have the correct permits for trading in CITES listed specimens
Criterion 2 – consistency with CITES	**0**	+ Recovering costs has been cited by CITES as a deterrent to illegal trade, as it incentivises importers to follow proper permitting procedures to ensure they are not charged for additional inspections.
Criterion 3 – Ease of implementation and minimise costs	**0**	+ Recovering costs will mean DOC no longer covers the costs for risk-based inspections for commercial consignments from baselines, but can recover these costs which can then be spent on improving other parts of the system.
Criterion 4 – minimise cost and improve efficiency for traders	**0**	- Traders will now have to pay for services that were previously provided free of charge. As the charge out rate will be $115 plus GST, travel costs and disbursements per hour, the cost will be low compared to the value of consignments, which can be worth upward of $1 million.
Overall assessment	0	++- Overall benefit of the option is better than the status quo, as it will incentivise commercial traders to follow proper procedures, so their consignments are not inspected, and allow DOC to recover costs currently covered from baselines. It will also support better implementation of CITES as resources currently spent on risk assessments can be used to improve other areas of the regulatory system.

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High level cost recovery model (the level of the proposed fee and its cost components)

The high-level cost recovery model will be an hourly charge-out rate. There will be a one-hour minimum charge, and thereafter in hourly increments. The per-hour user charge will include:

- Staff time charged at the Tier 5 staff level of $115 per hour plus GST. The hourly rate is based on DOC's Standard Operating Procedures (SOP), which outlines the charge out rates for each staff tier. Staff time will be charged at Tier 5 level, as it is Tier 5 staff that carry out the inspection.
- Travel time
- Additional vehicle expenses:
    - 4WD Petrol $1.06 + GST per kilometre
    - 4WD Diesel $1.06 + GST per kilometre
    - 2WD vehicles $0.72c + GST per kilometre
- Disbursements – actual and reasonable which can include food and accommodation.

DOC's charge out rates outlined in its SOP was calculated through benchmarking rates against other regulatory agencies. When the SOP was developed, DOC considered the hourly charge out rates from 21 entities that processes consents, including regional councils, territorial authorities, central government agencies and private sector providers. The charge out rate for Tier 5 staff at DOC was set at just under the median hourly rate for processing consents across the 21 entities, to address concerns that our charge out rates are not comparable to other agencies.

Estimates of revenue and expenses:

There are an estimated 150 inspections per annum. Based on a 1-hour minimum charge out rate for each inspection, the estimated revenue per annum is $17,250 + GST (excluding vehicle expenses and disbursements).

The estimated revenue aligns with the current estimated cost to DOC for providing these services, i.e. approximately $20,000 - $35,000 per annum. This range accounts for the occurrence of large inspections that may take multiple hours to inspect.

Underlying assumptions affecting financial estimates

The following assumptions have been made:

- The same rates apply to pre-import checks and post-import checks of commercial consignments as the same staff tier checks pre and post-import checks.
- A 'consignment' is a shipment of goods and may consist of multiple items or large pallets that take upwards of 20 hours to check which would cost approximately $2,300 plus GST.
- It is hard to estimate the average cost of inspections, as there are many variables that impact on an inspection. This includes the type of item being inspected, for example medicines, cosmetics, clothing items or live animals, and how many items in the consignment.

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- Any future amendment to DOC's charge out rates may increase or decrease financial estimates.
- There may be external factors affecting trade (import) levels e.g. COVID-19.

Consultation

There were 9 public submitters that commented on the cost recovery section, eight of them approved of the need to cost recover for services provided to commercial users and commercial consignment inspections. Those that supported cost recovery were NGOs and the general public. The one submitter that did not agree with cost recovery was from the general public and noted that MPI already recovers costs. MPI's cost recovery processes serve a separate purpose to DOC's.

Further consultation on cost recovery settings will take place when the proposals for the regulations are developed, pending the amendment of the TIES Act. This will include targeted consultation with sector groups, mostly businesses that import CITES-listed species into New Zealand for commercial gain.

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Appendix 2

Technical issues in the TIES Act to be addressed through the review

The following amendments are proposed to align with CITES where appropriate and to improve the readability of the TIES Act. It is not considered that there will be any regulatory impact from these proposals.

Review and align penalties in the TIES Act with the Conservation Act

- The penalties in the TIES Act have not been amended since it was enacted. The maximum penalties are therefore low compared to the Conservation Act, and it is proposed to align the penalties in the TIES Act with the penalties in the Conservation Act. This will include penalties in sections 44 to 49, and section 54(f) which prescribes fines for any offences in contravention of, or non-compliance with, regulations made under the TIES Act.
- DOC will work with the Ministry of Justice on the review of offences and penalties to ensure they are appropriate and proportionate.

Pre-Convention date application in the TIES Act does not align with CITES guidance

- The pre-Convention date in the TIES Act is not aligned with CITES guidance. Section 29 (1) and 29(2) of the TIES Act notes that a Certificate of Acquisition (which is being renamed pre-Convention certificate) relates to the date that the TIES Act applies to a specimen of an endangered, threatened or exploited species. As many species were listed on CITES appendices before the enactment of the TIES Act, pre-Convention certificates issued by other overseas management authorities will have different pre-Convention dates listed. Aligning the pre-Convention date in the TIES Act with CITES guidance will align New Zealand with other management authorities.

- An amendment is also required make the date on which a specimen is acquired the date the specimen was known to be either:

    - removed from the wild; or
    - born in captivity or artificially propagated in a controlled environment; or
    - if such a date is unknown or cannot be proved, any subsequent and provable date on which it was first possessed by a person.

Holding items at the border for visitors to collect when they leave New Zealand

- Section 28(2) of the TIES Act allows visitors to New Zealand to apply to the Director-General for an item to be held at the border if no permit or certificate is produced. The visitor can then collect the item when leaving New Zealand.

- The section currently allows any ‘visitor’ to apply for their item to be held at the border. This creates a substantial burden on border staff who have to process the application and store the item. CITES does not provide guidance on this issue. We propose amending this section so an item may be temporarily held at the discretion of the Management Authority, i.e. DOC, pending the person’s departure from New Zealand.

- This option be used for cases that met specific criteria (e.g. culturally valuable items where the person is staying in New Zealand for a short period) which would lessen the operational burden at the border but still provide an option for cases involving seizure of culturally valuable items.

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Further amendments that will lead to operational changes

- The TIES Act sets up a Scientific Authority to make decisions in accordance with various CITES resolutions, and to provide technical advice to the Management Authority, which in New Zealand's case is the Director-General of DOC. There are no terms of appointment for members for the Scientific Authority. The recommendation is to include a renewable term of appointment of six years for members of the Scientific Authority. A term of six years will enable members to serve for a period covering two Conferences of the Parties as these are held every three years. Members of the Scientific Authority are appointed by the Minister of Conservation.

- Section 11(3) of the TIES Act requires the Management Authority (Director-General of Conservation) to allow permit applicants to submit on conditions included on a permit. Conditions on permits are essential to meet the intent of the legislation and is not current practice to allow applicants to submit on conditions, therefore we propose removing the option to submit on conditions from section 11(3), which aligns with current practice. The section will still allow applicants to submit on a decision if the Director-General considers the application should be declined, before a final decision is taken.

- Under section 27, if a person declares they have a CITES specimen and they do not have the required original permits, they cannot be prosecuted as the import is deemed to have not taken place. The proposal is to amend section 27 so enforcement action can be taken against importers who declare items that are being imported without permits. This will enable enforcement action to be taken against importers if they are suspected of trying to deceive border staff.

- Section 39 creates a process where if a specimen is seized and is shown to be an endangered, threatened or exploited species, the item has to be released back unless the person is prosecuted. This section should allow for the item to be disposed of without having to prosecute in every case, but the options to prosecute should remain. The section should also enable the return of an item if it is found that the specimen was not an endangered, threatened or exploited species.

Definitions to be added or amended

- Adding a definition of what a valid permit or certificate is in the TIES Act will help address disputes on what constitutes a valid permit or certificate. The definition will be based on guidance released by CITES and will include enabling New Zealand to accept and issue electronic permits.

- The current definition of 'Management Authority' does not clearly set out the role of the Management Authority. We propose adding a section to the TIES Act that outlines the role of the Management Authority, as per the new guidance in Resolution 18.6 released by CITES after the Conference of the Parties in August 2019.

- Amending the definition of specimen to ensure the term 'readily recognisable part or derivative' includes any specimen that is listed on packaging, a mark or label will align the TIES Act with CITES guidance in Resolution 11.10. The Resolution also notes that coral sand and fragments (as defined in Resolution 11.10) are not considered readily recognisable and therefore is not subject to CITES. The Resolutions also states that urine, faeces and ambergris are waste products and therefore are not subject to CITES. The definition of specimen should also clarify that these products are not specimens, and therefore not subject to the TIES Act.

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- Section 32 provides for scientific transfers of CITES specimens between registered institutions. Forensic institutions, which are registered institutions under CITES, is not currently listed in section 32 and should be added.

- Section 50G(2) provides that once a border infringement notice has been issued, any employee of DOC may serve the notice. This currently excludes officials from MPI and NZCS from being able to serve the notice, who play a large role in implementing the TIES Act at the border. It is proposed that MPI and NZCS border officials are also empowered to serve infringement notices.

Enabling captive breeding or artificially facilities to be registered with CITES

- There is currently no provision in the TIES Act for registering captive breeding or artificially propagated facilities for CITES Appendix I listed species. New Zealanders breeding Appendix I species therefore cannot register their facilities with CITES, which means they cannot export the specimens for commercial purposes (animals only). Enabling New Zealand captive breeding facilities will enable New Zealander captive breeding facilities to be registered with the CITES Secretariat.

- Guidance for setting up captive breeding and artificially propagated processes are outlined in Resolution 12.10. New provisions will be required to define the registration process, the granting of registration, inspection of facilities and the ability to revoke the registration if certain conditions are not met. Consequent amendments to section 31 to enable export permits to be issued for specimens bred in captivity or artificially propagated and the definition of endangered species to require breeding facilities to be registered with CITES will be required.

Sections to be addressed by a re-write

- The Management Authority is defined as the Director-General in the TIES Act. The TIES Act refers to the Director-General throughout the Act rather than the Management Authority. We propose changing 'Director-General' to 'Management Authority' throughout the TIES Act where appropriate. As the CITES text uses the term Management Authority, it will make it easier to understand.

- The current wording of sections 9, 27, 29(3), 31(3), and 44 suggests that the requirements of the TIES Act do not apply to permits and certificates issued by overseas management authorities. The requirements of the TIES should also apply to permits and certificates issues by overseas management authorities.

- Section 7 of the TIES Act currently lists the Ministry of Agriculture and Forestry and the Ministry of Fisheries. This should be amended to list the Ministry for Primary Industries.

- Section 10(2), which sets out when to apply for a permit, mentions 'type of trade'. This is not defined and is too broad. We propose changing the wording to align with the wording used in CITES guidance on permits, which requires the purpose of a trade rather than the type of trade to be listed on permits.

- Section 11(6) enables the Management Authority to either revoke or vary conditions on a permit at any time. In redrafting, these processes should be split into two sections, so the power to revoke and vary permits or certificates are dealt with separately to improve clarity.

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- Section 10(1) of the TIES Act obligates an individual to apply for a permit if they 'propose to trade'. There should be no obligation to apply for permits or certificates, rather the ability to apply for a permit or certificate.

- Section 11(5) states 'Every such permit or certificate shall be in the form issued by the Department'. 'The Department' should be listed as 'Management Authority' as the Department is not referenced anywhere else in the TIES Act.

- Section 11 and sections 13 to 17, 19 to 21, and 23 and 24 grant powers to the Management Authority/Director-General to grant permits. This means the power to grant permits is repeated in seven different sections. We propose having one section providing the power to grant permits, with subsequent sections setting out the matters that need to be considered before granting a permit.

- Section 27(2)(ii) refers to 'voluntarily disclosed' where the presence of a CITES specimen is noted to an officer. We propose changes this to 'declare' to align with the language used by other border agencies.

- Section 28(1) refers to 'New Zealand citizen, person resident in New Zealand, or person intending to reside in New Zealand'. The section is meant to refer to any person intending to reside in New Zealand long-term, not only to citizens or residents. We propose clarifying this section to ensure it refers to all people intending to reside in New Zealand on a long-term basis.

- The title of section 29 is 'Certificate of acquisition'. The section refers to pre-Convention certificates in practice and should be renamed with all subsequent references to be changed to pre-Convention certificate.

- Section 29 is currently under Part 2, Exemptions. As a certificate is required to trade in pre-Convention specimens of CITES listed species it is not strictly an exemption and should be moved to Part 1 of the TIES Act.

- Section 29(1) notes that a person 'shall apply' for a certificate. This should be amended to 'may' apply as there may be circumstances where the item qualifies for an exemption from requiring a certificate e.g. a PHE exemption.

- Section 31, which outlines requirements for certificates for specimens bred in captivity or artificially propagated, is currently in Part 2. This means requirements of Part 1 does not apply to it. We propose moving to Part 1 (or equivalent once drafted) so those requirements apply.

- Section 26 prescribes when a permit or certificate must be produced. Requirements for imports and exports are currently covered in the same section which can be confusing. The requirement to produce a permit is also provided for in section 27(1). I propose re-writing these sections to provide clarity on when permits need to be produced when importing and exporting items, which must be before or at the time of import to enable the permitting system to function.

- Section 18 and 22 repeats parts of section 26 by also prescribing when permits and certificates need to be produced. The requirements for when permits and certificates are produced should be covered in one section.

- The way the PHE exemption is set up in section 30 is unclear and not easily understood. We propose this section is re-written in plain language to make the section easily understood by the public.

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- Section 34, which provides for certificates of capture, should be removed from the TIES Act as certificates of capture are not a requirement under CITES and the section serves no purpose.

- Section 46 creates an offence for not complying with conditions set out in Part 1. This does not currently apply to certificates issued under Part 2. Offences should apply to all permits and certificates issued under the TIES Act.

- Section 45 makes it an offence to be in possession of a CITES specimen that was traded in contravention of the TIES Act. This means that where museums or galleries have been gifted a seized item by the Management Authority/DOC, the institution is committing an offence. This is common practice and is allowed under section 42 of the TIES Act. We propose that it is not an offence to be in possessions of a CITES specimen traded in contravention of the TIES Act, if gifted or loaned by the Management Authority.

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