

Departmental Briefing



Department of Conservation
Te Papa Atawhai

In Confidence

GS ref: 20-B-0418
DOCCM: 6321809

To: Minister of Conservation **Date:** 24 June 2020

Subject: Draft Cabinet paper – Trade in Endangered Species Act 1989 review

Action sought: Provide feedback on the attached draft Cabinet paper.

Time Frame: By 6 July 2020

Risk Assessment:	We consider the risk related to the timeframe for progressing the review to be low. It is unlikely a Bill will be referred to Select Committee in the year.	Department's Priority:	Normal
		Level of Risk:	Low

Contacts

Name and position	Cellphone	First contact	Principal author
Disee Anorpong, Manager, Tourism and Economic Development Policy	9(2)(a)	✓	
Jeanne Barnard, Policy Advisor			✓

We recommend that you (Nga Tohutohu) –

	Decision
(a) <u>Note</u> the Trade in Endangered Species Act 1989 review has been on hold since March 2020 due to resources being deployed to support work related to COVID-19.	
(b) <u>Agree</u> to provide feedback on the Trade in Endangered Species Act 1989 review draft Cabinet paper attached at Appendix 1.	Yes / No
(c) <u>Note</u> it is not possible for a Bill to be referred to Select Committee by the end of the year.	
(d) <u>Agree</u> to banning the export of elephant ivory from New Zealand alongside the import of elephant ivory as part of the proposal in the Cabinet paper.	Yes / No
(e) <u>Note</u> the proposed restrictions on importing and exporting elephant ivory in the Cabinet paper are stricter than those proposed in the UK Ivory Act 2018.	
(f) <u>Agree</u> to exempting pre-Convention elephant ivory items from the ban on domestic sales.	Yes / No
(g) <u>Agree</u> to add a recommendation to the Cabinet paper delegating decision-making to the Minister of Conservation for further technical changes to be incorporated in the amendment Bill as they may arise through the drafting process.	Yes / No

9(2)(a)

_____ / _____ / _____
Disee Anorpong
Manager Tourism and Economic
Development Policy

Hon. Eugenie Sage
Minister of Conservation

Purpose – Te Pūtake

1. You are asked to provide feedback on the draft Cabinet paper for the review of the Trade in Endangered Species Act 1989 (TIES Act) by 6 July 2020. The draft Cabinet paper is attached at **Appendix 1** and a timeline for consideration by Cabinet is attached at **Appendix 2**.
2. You are also asked to make some further decisions to finalise proposals in the Cabinet paper.

Background and context – Te Horopaki

3. In February 2020 we provided you with a briefing outlining options for amending the TIES Act [briefing 20-B-0069 refers]. The options were based on the discussion document that was consulted on from 24 September 2019 to 25 October 2019. The Department of Conservation (the Department) received 119 submissions.
4. The Department was in the process of finalising a draft Cabinet paper to be considered by Cabinet in April 2020. Due to COVID-19, the TIES Act review has been on hold as part of the reprioritisation of the Department's work programme.
5. The draft Cabinet paper asking for agreement to issue drafting instructions for an amendment Bill has been prepared based on your preferred options from the February briefing:
 - Ban the import and domestic sale of elephant ivory with exemptions
 - Change the definition of Personal and Household Effects to align with CITES Resolution 13.7¹
 - Include a regulation-making power in the TIES Act to enable species-specific exemptions from permitting
 - Allow imports of farmed crocodile products from Australia without permits
 - Allow imports of coral sands and fragments without permits
 - Enable a process to accept errors on permits under specific circumstances, including accepting errors on permits, replacement permits and retrospective permits
 - Include provisions in the TIES Act for the Department to recover costs for services to commercial operators
 - Re-write the TIES Act to update to modern legal language and incorporate changes.

Draft Cabinet paper

6. You are asked to provide feedback on the draft Cabinet paper attached at **Appendix 1** by 6 July. The paper incorporates your preferred options indicated in the February 2020 briefing. A draft timeline for Cabinet consideration is attached at **Appendix 2**.
7. The TIES Act is currently on the legislative programme as Category 4 (Bill to be referred to Select Committee in the year). It is unlikely that a Bill will be drafted and able to be referred to Select Committee before the end of the year.
8. If approved by Cabinet, drafting instructions can be issued so drafting could begin this year, with a Bill completed for consideration by the Legislative Committee early 2021.

Further decisions required to finalise draft Cabinet paper

9. There are some matters that require further decisions to finalise the draft Cabinet paper. These are outlined below.

¹CITES Resolution 13.7 provides guidance on the Personal and Household Effects exemption, including a recommended definition and how the exemption should be applied.

Banning the import and export of elephant ivory

10. The discussion document and the briefing sent to you in February considers banning the import of elephant ivory. We recommend that the export of ivory is also banned. If only the import of elephant ivory is banned, elephant ivory could still be exported for sale in other jurisdictions where the sale is not banned. This would not be consistent with supporting the global response to stopping the sale of elephant ivory.
11. We are proposing the following exemptions from the ban:
 - Musical instruments acquired before 1975 (pre-Convention)
 - Items traded between museums
 - Items traded for forensic testing by bona fide forensic laboratories
 - Scientific specimens traded by CITES registered institutions.
12. 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 13 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.

Ban on domestic sale of elephant ivory only for post-Convention items

13. The discussion document and briefing included a proposal to ban the domestic sale of elephant ivory with exemptions. At the time, the advice did not provide details on what the exemptions are. We propose that elephant ivory items that are pre-Convention are exempt from the ban and have outlined this proposal in the attached draft Cabinet paper. We propose exempting the sale of items acquired before 1975 (pre-Convention), including musical instruments, from the ban on the domestic sale in elephant ivory.
14. These exemptions will allow for the continued domestic sale of items such as cutlery with elephant ivory handles, chess sets, musical instruments, 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.

Further decisions to be delegated to the Minister of Conservation

15. The draft Cabinet paper recommends re-writing the TIES Act. We recommend adding a recommendation allowing delegated decision-making to the Minister of Conservation for further technical changes to be incorporated in the amendment Bill as they may arise through the drafting process.

Risk assessment – Nga Whakatūpato

16. The risk with progressing the TIES Act review is low. There are no statutory deadlines for the review of the TIES Act, and it is not possible for a Bill to be drafted and referred to Select Committee by the end of the year.
17. There is limited time for Ministerial consultation, however we do not consider the proposals to be controversial and do not expect substantial feedback from other Ministers.
18. There has been recent interest from stakeholders in the progress of the TIES Act review. As public consultation has occurred there will be an expectation from stakeholders that this work is progressed. The delay in the process can be attributed to the impact of COVID-19 and to the General Election taking place in September.

Treaty principles (section 4) – Nga mātāpono o te Tiriti (section 4)

19. The proposals in the Draft Cabinet 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.

20. The Department is recommending a non-legislative approach to supporting those travelling with taonga to have the correct permits and will be working with Treaty partners to increase engagement on CITES requirements.

Consultation – Kōrero whakawhiti

21. The draft Cabinet paper was sent out for agency consultation in March. There was no significant feedback from agencies on the draft Cabinet paper. The Ministry of Culture and Heritage noted it would like to work with the Department on developing educational materials for travelling with taonga.
22. The Ministry of Justice also noted that they would like to see the amendment Bill once drafted to review changes to penalties.
23. We have also consulted the Parliamentary Counsel Office (PCO) on the draft Cabinet paper to ensure it provides enough detail for drafting instructions for an amendment Bill. PCO has confirmed it supports our approach.

Legislative implications – Te Taha Ture

24. The draft Cabinet paper recommends instructing PCO to draft a Bill giving effect to the proposed amendments to the TIES Act.

Next steps – Nga Tāwhaitanga

25. Once you have provided comments on the draft Cabinet paper, the Department will provide you with an updated version to progress through Ministerial consultation and lodge with the Cabinet Office by 23 July for consideration by DEV on 29 July.
26. The draft Cabinet paper notes the approval of the proposed amendments will be publicised. The Department will support your office in preparing suitable arrangements for an announcement if the proposals are agreed by Cabinet.

Attachments – Nga Tāpiritanga

- Appendix 1 - Draft Cabinet paper – Review of the Trade in Endangered Species Act 1989.
- Appendix 2: Timeline for consideration of TIES Act review Cabinet paper by Cabinet

ENDS

Draft Cabinet paper – Review of the Trade in Endangered Species Act 1989

Released by the Minister of Conservation

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:
 - update 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 seized¹ items to individuals where there are permit irregularities outside of their control; 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.

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 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.

5. Technical adjustments to the TIES Act to ensure the regulatory systems function more efficiently require Cabinet approval.

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-Convention² will be exempt from the domestic ban as it is considered lower risk. 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 partner with Māori, iwi and hapū to develop support and guidance for those travelling with taonga.
12. Proposed changes to the personal and household effects (PHE) exemption in the TIES Act will update the definition to align with CITES guidance, ensuring the exemption is used as intended. 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 permit irregularities outside of their control. 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.

²Items 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.

14. This will allow officials to consider cases where legitimate errors on permits or in the permitting process are 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.
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 these 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 taking a risk-based approach and providing for exemptions.
18. Costs related to banning the international and domestic trade will not be able to be covered by current baseline funding. Implementation costs in year one are approximately \$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 to draft an amendment Bill.

Background

20. The TIES Act implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). New Zealand became a signatory 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 exploitations of a species (Schedule 3 in the TIES Act).

Report back on public consultation

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.

Stakeholder meetings

27. Officials met with Māori art practitioners and carvers (Toi Māori Aotearoa, Te Matatini and specific Māori arts practitioners) to discuss proposals around taonga.
28. Officials also met with Te Papa and the Jane Goodall Foundation to discuss the proposals for regulating the domestic trade 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.
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 trade 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 56)
 - 36.2. Personal and household effects (paragraphs 57 to 72)
 - 36.3. Technical issues with permits (paragraphs 73 to 85)
 - 36.4. Cost recovery (paragraphs 86 to 90)
 - 36.5. Technical amendments (paragraphs 91 to 138)
37. I am proposing a non-legislative approach to support the movement of taonga across international borders. This approach is outlined in paragraphs 139 to 151.

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 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 warranted³.

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 items that are considered not to contribute to the poaching and illegal trade of elephant ivory, for example elephant ivory handles, chess sets, musical instruments such as pianos and bagpipes, billiard sets and carvings, that are pre-Convention⁴.
41. Banning the import and export 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 and exporting 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.

Proposed exemptions for international trade in elephant ivory

42. 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
 - Scientific specimens traded by CITES registered institutions.
43. This proposal will lead to a 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. The decrease in overall imports is therefore likely to be small.
44. 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.
45. 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

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.

46. 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.
47. 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.
48. These exemptions will allow for the continued sale of items such as cutlery with elephant ivory handles, chess sets, 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 trade in elephant ivory will support international efforts to reduce elephant poaching and illegal trade

49. There is increased 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, it could be seen as a more attractive place to trade elephant ivory than other countries with increased restrictions.
50. 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

51. 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.
52. Most elephant ivory imports are pre-Convention items (85% between 2008 and 2018). Between 2008 and 2017, only 215 CITES permits for legally importing elephant ivory were presented at New Zealand's border. 124 elephant ivory items were seized over the same period.
53. Banning the domestic trade in elephant ivory is therefore unlikely to have a measurable impact on illegal poaching of elephants or illegal trade in ivory.
54. 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

55. 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.
56. 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.
57. 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.
58. 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

59. 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

60. 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.
61. 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.

62. 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.
63. Including the requirement of being 'legally acquired' will enable border officials to question traders if they suspect the item was not legally acquired. 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 require a permit to enter New Zealand. This change will not result in any change in approach in relation to items that are not acquired in New Zealand.
64. Changing the definition would have a relatively minor impact on current practice. It 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

65. 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.
66. 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.
67. 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, including setting up quantitative limits for certain species.
68. 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, it does not qualify for the PHE exemption which requires items to be acquired in New Zealand.
69. 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 Australia⁵.

70. I propose the immediate 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.
71. Exempting crocodile products from Australia will decrease the number of seizures at New Zealand's border while still 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.
72. 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

73. 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 the issuance of permits for export.
74. 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

75. 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, or in limited circumstances, where no permit has been presented at the time of import, to enable the return of items.
76. 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 many specimens traded under these circumstances are seized and forfeited to the Crown and disposed of. Importers who

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

have gone through the correct process can therefore be penalised, which does not contribute to the managed trade of CITES species.

77. 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.
78. 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 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.

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

79. 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.
80. 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 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

81. 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 personal 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 has been considered as unreasonable by the public.
82. 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

83. 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.
84. 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.
85. 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
 - specimen is not included on Schedule 1 of the TIES Act.
86. 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

87. 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

88. 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.
89. 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.
90. 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 \$30,000-\$40,000 per annum.
91. 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.
92. Cost recovery will be implemented through existing systems within DOC.

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

93. 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.
94. 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.
95. 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.
96. 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.
97. 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.
98. My proposed amendments for your agreement are outlined below.

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

99. 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.

100. This will include penalties in section 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.
101. 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

102. I propose aligning the pre-Convention date in the TIES Act with the date a species was listed on relevant CITES Appendices as per Resolution 13.6.
103. 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.
104. 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.
105. 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
 - 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

106. 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.
107. 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.
108. This option will likely primarily be used for cases that met specific criteria (e.g. higher value or sensitive cultural 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 higher value items.

Further amendments that will lead to operational changes

109. 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. 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.
110. Section 11(3) of the TIES Act requires the Management Authority (Director-General of DOC) 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.
111. 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. I propose amending section 27 so importers who declare items that are being imported without permits can be prosecuted. This will enable importers to be prosecuted if they are suspected of trying to deceive border staff.
112. 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 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

113. 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.
114. 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, as per the new guidance in Resolution 18.6 released by CITES after the Conference of the Parties in August 2019.
115. I propose amending the definition of specimen to ensure the term 'readily recognisable part of 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.

116. 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.
117. 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. I propose that MPI and NZCS border officials are also empowered to serve infringement notices.

Enabling captive breeding facilities to be registered with CITES

118. I propose enabling New Zealand captive breeding facilities to be registered with the CITES Secretariat. There is currently no provision in the TIES Act for registering captive breeding 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.
119. Guidance for setting up captive breeding 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 the re-write

120. 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.
121. 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.
122. 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.
123. 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.

124. 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.
125. 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.
126. 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.
127. 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.
128. 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.
129. 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.
130. 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. I propose clarifying this section to ensure it refers to all people intending to reside in New Zealand on a long-term basis.
131. 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.
132. 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.
133. 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.
134. 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 so those requirements apply.
135. 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.

136. 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.
137. 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.
138. 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.
139. 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.
140. 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 possession of a CITES specimen traded in contravention of the TIES Act, if gifted or loaned by the management authority.

Outreach and support for those travelling with taonga overseas

141. 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.
142. 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 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

143. 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 should give effect to the Treaty principles⁶. Treaty principles provide that Māori have control of the things that have value to them. This includes taonga species and how these are used.

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

144. 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.
145. 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.
146. 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.
147. 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

148. 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.
149. A brochure which provides advice and guidance to New Zealanders travelling with taonga has been actively distributed providing information on 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

150. 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.
151. 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.
152. 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.
153. 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

154. 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.
155. 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.
156. 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.
157. I consider the other proposals to be low risk. There is some risk that traders become confused with how the new proposals will function. This will be mitigated through clear outreach and communications plans to ensure the public understand the new requirements.

Consultation

158. 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.
159. Ministry for Primary Industries and New Zealand Customs Service officials have been consulted to discuss implementation of the proposals at the border.

Financial Implications

160. 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.
161. 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.
162. 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.

163. These costs include: staffing costs; communications and outreach; staff training; and infringement and prosecution costs.
164. The other proposals in this paper may lead to cost savings over time from improved operational efficiency.

Legislative Implications

165. 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.
166. Regulations to implement the new ban on the domestic trade in elephant ivory will be progressed on a longer timeframe.

Impact Analysis

Regulatory Impact Statement

167. The impact analysis requirements apply. A Regulatory Impact Statement (RIS) has been prepared and is attached at Appendix 1.
168. The RIS was reviewed by an internal quality assurance panel at the Department of Conservation. The quality assurance panel considered that **TBC by Panel**

Climate Implications of Policy Assessment

169. 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

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

Population implications

171. 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

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

Proactive Release

173. 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.

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 meet its obligations under CITES.
5. **Note** there has been increasing international recognition of the role domestic markets in elephant ivory place in the illegal trade and poaching of elephants.
6. **Agree** to ban the domestic trade of elephant ivory with the following exemptions:
 - 6.1. Items acquired before 1975 (pre-Convention), including musical instruments
 - 6.2. Items traded between museums
 - 6.3. Items traded between scientific institutions
 - 6.4. Items traded for forensic testing
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 trade and import and export of elephant ivory through regulations.
9. **Note** that fewer exemptions apply at the border 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. **Agree** to a one-year transitional period from when an amendment Bill is enacted before the elephant ivory ban is implemented.
11. **Note** that outreach programmes are being put in place to support those travelling with taonga to have the correct documentation when moving items across international borders.
12. **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.:
- 12.1. personally owned or possessed for non-commercial purposes;
 - 12.2. legally acquired; and
 - 12.3. at the time of import, export or re-export either:
 - 12.3.1. worn or carried or included in personal baggage; or
 - 12.3.2. part of a household move.
13. **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.
14. **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.
15. **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.
16. **Note** that further information is required to consider implementing species-specific exemptions for hard corals and giant clam shells.
17. **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.

18. **Agree** to the following criteria to be met before an item can be returned or a replacement or retrospective permit can be accepted:
 - 18.1. aligns with purpose of the TIES Act.
 - 18.2. does not undermine the administration of the TIES Act.
 - 18.3. the error was outside of the importers' control.
 - 18.4. there was no attempt to deceive.
 - 18.5. specimen is not included on Schedule 1 of the TIES Act (only apply to retrospective permits).
19. **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.
20. **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.
21. **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.
22. **Agree** to the proposed technical amendments outlined in paragraphs 90 to 126 that will improve the implementation and effectiveness of the TIES Act.
23. **Invite** the Minister of Conservation to provide drafting instructions to Parliamentary Counsel Office for the Bill.
24. **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

Timeline for progressing TIES Act review Cabinet paper

Action	Proposed date
Draft Cabinet paper to Minister of Conservation	26 June
Feedback on draft Cabinet paper from Minister of Conservation	6 July
Final draft of Cabinet paper to Minister of Conservation	10 July
Ministerial consultation	13 – 21 July
Incorporate any feedback from Ministerial consultation	21 – 23 July
Lodge Cabinet paper with Cabinet office by 10:00am	23 July
Cabinet paper considered by DEV	29 July
Cabinet paper considered by Cabinet	3 August

Released by the Minister of Conservation

Released by the Minister of Conservation