Departmental Briefing

Department of Conservation
Te Papa Atawhai

In Confidence

GS ref: 20-B-0069
DOCCM: **6119534**

To:	Minister of Conservation	**Date:**	7 February 2020

Subject:	**Preferred policy options for amendments to the Trade in Endangered Species Act 1989**
Action sought:	Approve your preferred policy options for amendments to the Trade in Endangered Species Act 1989
Time Frame:	By 17 February 2020

Risk Assessment:	A delay in the timeframes would make it unlikely that a Bill will be introduced before the general election	**Department's Priority:**	High
		Level of Risk:	Medium

Contacts

Name and position	Cellphone	First contact	Principal author
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Executive summary – Whakarāpopoto ā Kaiwhakahaere

1. Following the recent closing of public consultation, we are now seeking your preferred policy options for amending the Trade in Endangered Species Act 1989 (TIES Act), including regulating the trade in elephant ivory. Once we have your decisions, we will provide you with a Cabinet paper and Regulatory Impact Assessment to be considered by Cabinet in April 2020. Our anticipated timeline is attached at **Appendix 1**.
2. The review of the TIES Act highlighted five policy areas, as well as technical amendments, that could be improved through changes to the TIES Act. The five policy areas with options for change were outlined in the TIES Act public discussion document released in September 2019:
   - regulating trade in elephant ivory
   - movement of taonga across international borders
   - personal and household effects (PHE)
   - technical issues with permits
   - cost recovery.
3. This briefing provides analysis on the benefits, costs and risks of these options, including information received through public submissions on the discussion document. A report on submissions received on the TIES Act discussion document is attached at **Appendix 2**.
4. Additionally, an outline of proposed technical amendments to improve the clarity and readability of the TIES Act is attached at **Appendix 3** for your information.

Regulating trade in elephant ivory

5. Regulating the domestic trade in elephant ivory would align New Zealand with countries like the UK and Australia that have regulated or will be regulating their domestic trade. However, due to the small size of the domestic market for elephant ivory in New Zealand, it is unlikely that regulating New Zealand's domestic market would have a measurable effect on poaching and the illegal trade of elephant ivory. The cost of regulating the domestic market in elephant ivory would also be significant.
6. A decision to ban the domestic trade in elephant ivory would not be based on New Zealand contributing to illegal poaching or the size of the market. Instead it would be based on aligning New Zealand with those countries that have decided to regulate their domestic markets.
7. We would like to discuss the options proposed in this briefing with you and the value of regulating the domestic market in elephant ivory versus the costs of implementing a regulatory system with limited conservation outcomes.

Movement of taonga across international borders

8. We propose a non-legislative approach to support those travelling with taonga to address items being seized at other countries' borders. DOC is implementing an outreach programme, working with Māori arts organisations like Toi Māori Aotearoa and Te Matatini to create resources for those travelling with taonga so they can understand the requirements for their items under CITES.
9. This is in line with the approach in the public discussion document, where the issue was outlined but no options provided. This approach was outlined and agreed to in meetings with Te Matatini and Māori arts practitioners.

Personal and household effects (PHE)

10. You are asked to agree to update the definition of PHE in the TIES Act to align with CITES guidance. This includes excluding trading PHE for commercial gain, that PHE

must be legally acquired, and that it is brought into New Zealand in someone's personal baggage or as part of a household move.

11. You are also asked to agree to including a regulation-making power in the TIES Act to exempt specific species from permitting. This will enable DOC to address high seizure/surrender rates by focusing exemptions on species that make up most seizures and will not harm populations in the wild. We propose implementing an exemption for specific Australian crocodile products and coral sands and fragments immediately. We propose doing further consultation with source countries on exemptions for hard corals and giant clams.

Technical issues with permits

12. You are asked to agree to a package of options to set up processes for addressing errors on permits where the error is outside of the importer's control This includes returning seized items to importers if there is an error on the permit outside of their control, and accepting replacement and retrospective permits under certain circumstances.

13. Setting up processes to return seized items when there are errors outside an importers' control on a permit, or a permit has been lost, stolen, destroyed or cancelled, will provide DOC a legal path to assess individual cases and return items where appropriate.

Cost Recovery

14. You are asked to agree to enable DOC to cost recover for services provided to commercial traders that are currently provided at no cost. This will provide resources for improved services to importers and improved risk-assessment at the border.

15. The package of proposed changes 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.

Drafting of the amendment Bill

16. Due to the number of amendments that may be required to implement the proposed changes, one option would be to re-write the TIES Act as part of the drafting process. Re-writing the TIES Act would add an additional month onto drafting timelines, which would mean there would not be enough time to take an amendment Bill to Cabinet Legislation Committee before the election.

17. Depending on your preferred options, a re-write of the TIES Act may be more appropriate.

Next steps

18. Once you have indicated your preferred options, the Department of Conservation (DOC) will provide you with a draft Cabinet paper and Regulatory Impact Assessment (RIA) to take to Economic Development Cabinet Committee (DEV) for approval. Drafting instructions will then be sent to the Parliamentary Counsel Office (PCO) to draft the Amendment Bill.

We recommend that you (Nga Tohutohu) –

		Paragraph	Decision
(a)	Note the Trade in Endangered Species Act 1989 is on the 2020 legislative programme as Category 4 (referred to Select Committee within the year)	27	

(b)	Agree to meet with officials to discuss your preferred option for regulating the trade in elephant ivory.	66-67	Yes / No
(c)	After meeting with officials, indicate your preferred option(s) for regulating trade in elephant ivory:	31-69	
	Status quo		Yes / No
	Option 1 – Register elephant ivory sellers		Yes / No
	Option 2 – Ban import of post-Convention ivory		Yes / No
	Option 3 – Ban import of ivory with exemptions		Yes / No
	Option 4 – Ban all domestic sales		Yes / No
	Option 5 – Ban domestic sales with exemptions		Yes / No
(d)	Note no legislative changes are recommended to address taonga getting seized at other countries' borders. Note that DOC will continue to work with Māori arts practitioners, iwi and hapu to provide advice and outreach on CITES requirements for those travelling overseas with taonga items. This is in line with the proposals in the discussion document.	70-83	
(e)	Indicate your preferred option for the definition of personal and household effects:	86-94	
	Option 1 – Change the definition of PHE in the TIES act to exclude items traded commercially		Yes / No
	Option 2 – Change the definition of PHE to the definition in CITES Resolution 13.7, i.e. personally owned or possessed for non-commercial purposes, legally acquired, worn or carried or included in personal baggage, or part of a household move (recommended).		Yes / No
(f)	Agree to the following options for managing large quantities of certain species being seized at New Zealand's border:	95-130	
	• Including a regulation-making power in the Trade in Endangered Species Act to enable species-specific exemptions from permitting.		Yes / No
	• An exemption from permitting requirements for Crocodylus porosus specimens from Australia.		
	• Allow importing coral sands and fragments without permits.		
(g)	Note that more information from source countries is required before exemptions from permitting for hard corals and giant clam shells can be implemented	113-117	

(h)	Agree to include a regulation-making power in the TIES Act enabling species-specific exemptions from permitting if it is a personal or household effects	103	Yes / No
(i)	Agree to the proposed suit of options to create a process to accept errors on permits under different circumstances, including accepting errors on permits, replacement and retrospective permits	131-149	Yes / No
(j)	Agree to include provisions in the TIES Act for DOC to cost recover for services to commercial operators	150-154	Yes / No
(k)	Indicate your preferred options for amending the TIES Act:	155-159	
	Option 1 – re-write the TIES Act		Yes / No
	Option 2 – only amend sections required to give effect to recommendations in this briefing		Yes / No
(l)	Note the anticipated timeline for introducing a Bill before the election attached at **Appendix 1**.		
(m)	Note the report on submissions received on the TIES Act discussion document attached at **Appendix 2**.		
(n)	Note to the proposed technical changes to the TIES Act attached at **Appendix 3**.		

9(2)(a) [redacted]

Peter Brunt
Director Policy

_____ ___ / ___ / ____

Hon. Eugenie Sage
Minister of Conservation

Purpose – Te Pūtake

19. Following the recent closing of public consultation, we are now seeking your preferred policy options for amending the Trade in Endangered Species Act 1989 (TIES Act), including regulating the trade in elephant ivory. Once we have your decisions, we will provide you with a Cabinet paper and RIA to be considered by Cabinet in April 2020. Our anticipated timeline is attached at **Appendix 1**.
20. This briefing provides analysis on the benefits, costs and risks of these options, including information received through public submissions on the TIES Act discussion document. A report on submissions received on the TIES Act discussion document is attached at **Appendix 2**.
21. An outline of proposed technical amendments to improve the clarity and readability of the TIES Act is attached at **Appendix 3** for your information.
22. Once you have indicated your preferred options, DOC will provide you with a draft Cabinet paper and RIA to take to DEV for approval. Drafting instructions will then be sent to PCO to draft the Amendment Bill. A timeline is attached at **Appendix 1**.

Background and context – Te Horopaki

23. A review of the TIES Act was initiated at the end of 2018 and was approved to be on the legislative programme for 2019. The legislative bid noted there was a number of policy areas of concern which risk operational efficiency, inability to implement our obligations under the TIES Act, and unfair outcomes. It also included considering regulating the domestic sale of endangered species, like elephant ivory.
24. Since then, a public discussion to support the review of the TIES Act was released on 24 September 2019. Submissions closed on 25 October 2019. DOC received 119 submissions.
25. The discussion document outlined five policy areas with options for review:
    - the trade in elephant ivory
    - movement of taonga across international borders
    - personal and household effects (PHE)
    - technical issues with permits
    - cost recovery.
26. DOC has also reviewed the TIES Act to identify legal issues and inconsistencies to be addressed through the review.
27. The TIES Act is on the 2020 legislative programme as Category 4 (to be referred to Select Committee in the year). Your approval of policy options is needed to progress legislative changes to the TIES Act.

Objectives and criteria for the review were outlined in the discussion document

28. The review has the following objectives, as outlined in the public discussion document:
    - The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is implemented in New Zealand through clear and effective legislation
    - The TIES Act disincentivises illegal trade
    - The TIES Act meets Treaty of Waitangi obligations under section 4 of the Conservation Act 1987
    - The TIES Act enables operational clarity and efficiency
    - DOC has the legislative tools to respond to CITES resolutions and decisions

29. To determine the degree to which policy options will assist in meeting these objectives, we have analysed all options against the following criteria:

    - C1: 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 purposes)?
    - C2: Is the option consistent with CITES and Conference of the Parties resolutions and decisions?
    - C3: Is the option easy to implement and minimises costs for regulators?
    - C4: Does the option minimise costs and improve clarity and efficiency for the public and legal trades?

30. We are asking you to approve your preferred option for each policy area and to note the proposed technical amendments to the TIES Act outlined in **Appendix 3**.

Policy area 1: Regulating trade in elephant ivory

31. We are asking you to indicate your preferred option for regulating the trade in elephant ivory. This includes options to regulate the domestic market in elephant ivory and placing further restrictions for importing elephant ivory at New Zealand's border.

32. In 2016, the CITES Conference of the Parties (COP) 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 [1]. This decision reflects growing international concern for the role that domestic commercial trade in elephant ivory plays in the poaching and decline of elephant populations.

33. The five options outlined in the discussion document are assessed against the TIES Act review criteria in **Table 1** below.

[1] Conf 10.10, Rev COP17 https://www.cites.org/sites/default/files/document/E-Res-10-10-R17.pdf

Table 1 – Analysis of options for regulating elephant ivory

	Option 1 - Regulate domestic market by registering sellers	Option 2 - Ban import of post-Convention ivory	Option 3 - Ban import of ivory with exemptions	Option 4 - Ban domestic sale of elephant ivory	Option 5 - Ban domestic sale of elephant ivory with exemptions
C1 - TIES Act purpose	+ - 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	++ - Would ban sale of ivory where there is currently no regulation	++ Would ban sale of ivory where there is currently no regulation with targeted exemptions
C2 - Alignment with CITES	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. This is stricter than CITES, which is allowed.	0- Would only allow ivory to be imported if it qualifies for an exemption. This is stricter than CITES, which is allowed	0 - DOC considers New Zealand does not contribute to poaching and illegal trade, so already aligned with CITES	0 - DOC considers New Zealand does not contribute to poaching and illegal trade, so already aligned with CITES
C3 - Minimise cost and ease of implementation	- - New regulatory system required at high cost	- Incorporate into existing regime at border at cost for staff training	- Incorporate into existing regime at border at cost for staff training	- - New regulatory system required at high cost	- - New regulatory system required at high cost, added complexity of exemptions
C4 - Minimise cost to traders	- Traders need to register at a cost and provide providence documentation	- Traders would not be able to import post-Convention ivory. This mostly equates to hunting trophies	- - Traders would only be able to import ivory that meet exemptions, which could make system harder to understand	- - Traders would no longer be able to sell elephant ivory	- Elephant ivory can still be sold if qualify for exemptions
Similar policies overseas	Australia previously implemented a non-compulsory registration system	Australia	UK	Israel have announced total ban	UK, China, France, Taiwan, USA
Supported by submitters	10	92 (did not specify if post-Convention only)	92 (did not specify if exemptions only)	105 (86 from overseas)	20

Key:

++	much better when assessed against criteria
+	better when assessed against criteria
0	about the same as doing nothing
-	worse when assessed against criteria
- -	much worse when assessed against criteria

The domestic trade in elephant ivory in New Zealand is unlikely to contribute to poaching and illegal trade

34. DOC considers the domestic trade in elephant ivory to be small and is unlikely to be contributing to poaching or illegal trade. This is based on anecdotal data, information from submissions, and trade numbers.

35. The majority of elephant ivory imports are pre-Convention items[2] (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.

36. This position was reflected in the briefing provided to you on 15 February 2019, *Options for regulating the domestic elephant ivory market* [19-B-0035 refers], in which DOC recommended a combination of options: strategy to raise awareness and reduce demand for elephant ivory; require provenance documentation for elephant ivory and a ban on the import and re-export of post-Convention ivory.

Regulating the domestic trade in elephant ivory will align New Zealand with countries that support closing domestic markets

37. Regulating the domestic trade in elephant ivory would align New Zealand with countries like the UK and Australia that have regulated or will be regulating their domestic markets. It would also prevent New Zealand becoming a more attractive place to trade elephant ivory than other countries with increased restrictions. There has also been continued pressure from international and domestic NGOs to ban the domestic trade. This has increased as some countries have banned their domestic ivory markets.

38. The UK, China, France and Taiwan have all banned the domestic ivory trade with various exemptions. In 2019, Israel announced it will be implementing a full ban on the domestic trade in elephant ivory. Countries like China and the UK have large elephant ivory markets. Countries have also advised that trade bans on elephant ivory are in part a moral or ethical decision and they want to demonstrate geopolitical leadership. It will also ensure their markets are not used as a channel for illegal trade.

39. The UK banned its domestic trade with a number of exemptions through the Ivory Act 2018. The Ivory Act is seen as one of the stricter regimes for regulating elephant ivory. The Ivory Act is in the process of being implemented and is not yet in effect.

40. Some countries have implemented partial bans such as Canada (sales allowed for pre-1990 ivory) and USA (pre-Convention sales allowed). A number of countries or blocks have chosen not to introduce a ban. The European Union and Japan have not banned the trade of elephant ivory as their markets are not considered as contributing to poaching or illegal trade.

41. Australia announced at the CITES COP in August 2019 that it will implement a ban on its domestic trade in elephant ivory. This decision followed a Parliamentary Inquiry by the Australian Government that recommended Australia ban the domestic trade in elephant ivory and rhino horn with exemptions largely based on the UK legislation. This decision was made against the advice of the CITES management authority in the Department of Environment and Energy, that the Australian domestic ivory market does not contribute to the illegal trade and poaching of elephants.

There would be considerable implementation costs for all five options

42. As there is currently no regulatory system in place, any domestic regulation would require a new system to be set up at a high cost.

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[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

43. Further regulation at the border would also incur additional costs, but these would be lower as there is already are regulatory system in place.

44. These costs cannot be covered through current baseline funding. Additional funding would be required to implement any of the options. **Table 2** outlines the estimated cost of implementing each option over the next five years:

Table 2 - Cost of elephant ivory options over the first five years

Summary	Year 1	Year 2	Year 3	Year 4	Year 5 and ongoing	Total over 5 years
Regulate the domestic market by registering sellers	$1,678,885	$743,625	$765,934	$788,912	$812,579	**$4,789,935**
Ban import of post-Convention elephant ivory	$427,685	$303,260	$312,358	$321,729	$331,380	**$1,696,412**
Ban import of elephant ivory with exemptions	$631,235	$365,800	$376,774	$388,077	$399,720	**$2,161,606**
Ban domestic sale of elephant ivory	$1,322,385	$1,093,565	$1,126,372	$1,160,163	$1,194,968	**$5,897,453**
Ban domestic sales of elephant ivory with exemptions	$1,393,685	$1,597,425	$1,645,348	$1,694,708	$1,745,549	**$8,076,715**

Assumes 3% CPI increase per annum

45. The estimated costs for each option include:

- Staffing costs, including additional compliance and monitoring staff
- IT costs
- Communications costs including national and international awareness campaigns
- Staff training
- Infringements and prosecution costs

46. Options that have exemptions included have increased costs due to the complexity involved in implementation.

Submitters on the public discussion document supported a ban

47. The majority of submitters only commented on the elephant ivory section of the discussion document. Out of 119 submissions, 105 submitters (86 from overseas), supported a ban on the domestic trade of elephant ivory. 20 submitters supported a domestic ban with exemptions, 10 submitters supported sellers being registered, 92 supported banning importing ivory, and 84 supporting banning exporting ivory.

48. Two auction houses submitted on the discussion document, Dunbar Sloane and Cordy's. Dunbar Sloane estimated it sells between 400 and 600 ivory pieces per year (excluding musical instruments). Cordy's noted the average price of items ranges from $200 to $300. This equates to an estimated overall trade value of $80,000 - $180,000 per annum.

49. Dunbar Sloane noted that they see elephant ivory items on sale at most auctions, and elephant ivory items are traded at markets across Auckland. They also noted that the vast majority of items sold are antiques, and estimated items were generally produced between the late 18th century and early 20th century, with the majority produced between 1900 and 1950.

Analysis of options

Overall analysis of Option 1 – Regulate the domestic market by registering sellers

50. Option 1 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 specimens. 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.

51. 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.

52. 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.

Overall analysis of Option 2 – Ban import of post-Convention elephant ivory

53. Option 2 would mainly affect the import of hunting trophies and souvenirs made from elephant ivory. CITES provides for some regulated legal trophy hunting of Appendix I and II species, including elephants, in specified conditions set out in Resolution 17.9. Elephant ivory hunting trophies acquired through legal trophy hunting will no longer be able to be imported. Across the last 34 years, since 1985, there have been 73 instances of hunting trophies being legally imported into New Zealand. The impact of this options would therefore not be significant, due to the small number of elephant ivory hunting trophies being imported into New Zealand.

54. This option does not place restrictions on the domestic elephant ivory market. There would be a small decrease in the amount of elephant ivory being imported into New Zealand.

55. Specific exemptions will be required to ensure elephant ivory specimens for forensic testing can still be imported, as well as any items being traded as part of museum or gallery exhibitions.

Overall analysis of Option 3 – Ban the import of elephant ivory with exemptions

56. Option 3 would ban the import of elephant ivory with exemptions. Exemptions considered under this option include:

    - exemptions for musical instruments made prior to 1975;
    - items imported as part of a sale between museums;
    - items imported for forensic testing; and
    - scientific specimens imported by CITES registered institutions.

57. Permits would still be required for items that qualify for an exemption.

58. Elephant ivory items make up a small percentage of imports. For example, in 2018 there were 2144 permits for legal imports of CITES specimens into New Zealand, and only 21 were for elephant ivory. As the exemptions are quite narrow, DOC would expect even smaller numbers of elephant ivory to be imported.

59. This option does not place restrictions on the domestic elephant ivory market. It does place further requirements at the border and there would be a small decrease the amount of elephant ivory entering New Zealand

Overall analysis of Option 4 – Ban domestic sale of elephant ivory

60. Banning New Zealand's domestic ivory trade is unlikely to have a measurable effect on elephant poaching or illegal trade in elephant ivory due to the small size of the market, and that the majority of elephant ivory being sold is pre-Convention. The cost of implementing the option is therefore high compared to the impact it will have on reducing poaching and illegal trade of elephant ivory.

61. The benefits of this option would therefore not be related to the impact on illegal poaching, but in New Zealand joining those countries that have implemented or have recently announced they will be banning domestic trade in elephant ivory.

62. A complete ban on the sale of elephant ivory would also penalise certain sectors that trade in items made predominantly from pre-Convention ivory and have no clear link to poaching and the illegal trade of ivory. For example, some musical instruments manufactured pre-Convention are traded but are accepted as not contributing to illegal poaching. Similarly, items traded between museums that contain elephant ivory are not seen to contribute to illegal poaching.

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

Overall analysis of Option 5 – Ban the sale of elephant ivory with exemptions

64. This option is unlikely to have an impact on illegal poaching of elephants but would align New Zealand with other countries that have bans on domestic elephant ivory markets with exemptions like the UK and the USA. Australia noted their ban on the domestic sale of elephant ivory will include exemptions.

65. Allowing for exemptions enables the continued sale of items that are considered not to contribute to the poaching and illegal trade of elephant ivory, for example musical instruments that are pre-Convention and items between museums. It does complicate the regulatory system and therefore increases implementation costs.

DOC would like to discuss the proposed options with you

66. A decision to ban the domestic trade in elephant ivory would not be based on New Zealand contributing to illegal poaching or the size of the market. Instead it would be based on aligning New Zealand with those countries that have decided to regulate their domestic markets.

67. We would like to discuss the options proposed in this briefing with you and the value of regulating the domestic market in elephant ivory versus the costs of implementing a regulatory system with limited conservation outcomes.

Risk assessment – Nga Whakatūpato

68. There is a risk that any option is likely to be seen as negatively affecting certain stakeholders interested in this issue. Only two of the five options outlined would place restrictions on the domestic trade in elephant ivory, Option 4 and Option 5. Implementing the other options would therefore not align New Zealand with countries that have placed bans or partial bans on their domestic markets for elephant ivory.

69. The cost of regulation is likely to outweigh any direct elephant conservation benefit. As New Zealand's domestic market is considered to be small, any regulation of the domestic market is unlikely to affect the poaching and illegal trade of elephant ivory. Regulating the domestic elephant ivory trade and further regulation at the border risks setting up an expensive system with limited conservation outcomes and dedication of resources that could be better deployed elsewhere, such as the protection of vulnerable and highly sought-after New Zealand wildlife from illegal trade and poaching.

Policy area 2: Travelling with taonga

70. Concerns have been raised by Māori art practitioners about taonga made from protected species carried by New Zealanders being seized at international borders for not having a CITES permit, and the potential for these items not able to be returned to New Zealand. Items have been seized as some taonga species are listed in the CITES Appendices; for example, whales are listed on Appendix I.

Permits are not required for items acquired in New Zealand when traded across New Zealand's border

71. Under section 4 of the Conservation Act 1987, that DOC is required to give effect to the Treaty principles. Treaty principles provide that Māori have control of the things that have value to them. This include taonga species and how these are used. This includes use for commercial gain.

72. DOC addresses this in the TIES Act by not requiring permits to export or import personal items that are considered taonga from New Zealand, through its personal household effects definition and exemption (which allows people to move personal items and household moves across borders without permits). Individuals can be asked to prove that an item was acquired in New Zealand.

73. 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.

74. There is no guidance in the CITES text on how to manage international trade of culturally significant specimens of endangered species.

DOC recommends non-legislative actions to support those travelling with taonga

75. DOC recommends a non-legislative response to this issue. 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 border. DOC is 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.

76. DOC has created a brochure which provides advice and guidance to New Zealanders travelling with taonga and has been actively distributing it to provide information on what permits, including CITES are required. DOC is creating a te reo Māori video in collaboration with iwi carvers, that will provide information on travelling with taonga to disseminate via social media.

77. DOC 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.

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

Consultation on travelling with taonga

79. There were 10 submissions that commented on this area, with all submissions supporting cultural use and practices. DOC received no written submissions from the Māori arts sector. DOC did however meet with Te Matatini and Māori arts practitioners to discuss this 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.

80. Te Matatini were supportive of DOC's approach to continue personal household effects that were acquired in New Zealand to be imported and exported without a permit. This allows iwi, hapu and whanau to move items made from endangered species across New Zealand's border without permits.

81. 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.

82. Those we met with agreed that more engagement with Māori who are travelling overseas is required. For example, New Zealand is sending a delegation to the Festival Pacific Arts in 2020 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 US to ensure they are not seized at their border.

Risk assessment

83. There is continued risk that taonga carried by New Zealand across international borders will be seized. DOC 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.

Policy area 3: Personal and Household Effects

84. We are asking you to indicate your preferred options for addressing issues identified with the personal and household effects (PHE) exemption in the TIES Act.

85. Two problems were identified in the discussion document relating to the PHE exemption:

- The definition of PHE does not exclude items traded for commercial purposes.
- Large quantities of some species are being seized in circumstances where it may not be appropriate.

Definition of the TIES Act

86. The TIES Act defines PHE as "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.

87. The way this definition interacts with the wording of the exemption allows some specimens to be exported from New Zealand for commercial purposes without a permit. This exemption exists under CITES because it is generally considered that people travelling with their personal items, or moving to a new country, do not contribute to unsustainable international trade. This exemption is not meant to enable the trade of specimens for commercial sale.

88. The following options for changing the definition of PHE were outlined in the discussion document:

- Option 1 – change the definition of PHE in the TIES Act to exclude items traded commercially
- Option 2 – change the definition of PHE to the definition in CITES Resolution 13.7:
    - "Personally owned or possessed for non-commercial purposes;
    - legally acquired;
    - at the time of import, export or re-export either:
        - worn or carried or included in personal baggage; or
        - part of a household move".

89. DOC recommends that the definition is updated to ensure items being traded for commercial reasons are excluded. The options for updating the definition is assessed against the criteria in **Table 3** below.

Table 3 Options for amending PHE definition analysed against criteria

	Option 1 – Change the definition of PHE in the TIES Act to exclude items traded commercially	Option 2 – Change the definition of PHE to the definition in CITES Resolution 13.7
C1 – Align with purpose of TIES Act	+ 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.
C2 – consistency with CITES	+ 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
C3 – Ease of implementation and minimise costs	0 – Some additional training to apply new definition of PHE	0 – some additional training to apply new definition of PHE
C4 – minimise cost and improve efficiency for traders	–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.

Analysis of options

90. DOC recommends Option 2 as it would align the TIES Act with CITES guidance. It will also ensure the PHE exemption in the TIES Act applies to all items imported, exported and re-exported, in keeping with the purpose of the TIES Act.

91. By requiring permits for commercial trading of CITES-listed species, the numbers of specimens being traded for commercial purposes can be captured for CITES trade reporting requirements. 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.

92. Including the requirement of being "legally acquired" will enable border officials to question traders if they suspect the item was not legally acquired, although this may add some complexity at the border. As the PHE exemption in the TIES Act only applies to items acquired in New Zealand, all PHE items that are listed on Appendix I or Appendix II would require a permit to enter New Zealand. The permit would provide proof of legal acquisition.

93. 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.

94. There were 15 submitters that commented on the definition of PHE. All submitters supported including that PHE needs to be for non-commercial purposes. Of the 15 submitters, two supported Option 1 and six supported Option 2.

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

95. Large amounts of hard coral, giant clams and crocodylia are being seized at New Zealand's border for not having permits. These three groups of specimens accounted for approximately 5000 out of 9436 seizures/surrenders in 2018[3]. All three these species are on Appendix II and are mostly acquired outside of New Zealand as tourist souvenirs. The TIES Act currently requires permits for PHE specimens that are Appendix I or II and were acquired outside of New Zealand.

96. CITES text and guidance allows for PHE specimens that are Appendix I and II to be traded without permits under certain conditions. This means that large quantities of some species are being seized in circumstances where it may not be appropriate.

Implications of differences between PHE exemption under CITES and the TIES Act

97. The PHE exemption under CITES allows for more PHE specimens to be traded without permits. Under the TIES Act, any item that is PHE, is on Schedule 1 or 2 of the TIES Act and has been acquired outside of New Zealand needs a permit to be imported. CITES, however, allows for PHE that are listed on Appendix II to be imported without permits if it meets the conditions. This results in New Zealand requiring permits under more circumstances than required by CITES.

98. DOC has considered the impact of amending the PHE exemption in the TIES Act to mirror Article VII of CITES. Information on meeting the specific conditions required to meet the PHE exemption under Article VII would not be readily available to officers at the border. This includes an importer's state of usual residence, whether the specimen was acquired from the wild, and whether the country the specimen came from required an export permit.

99. Due to the high level of inquiry that would be required to meet the conditions set out in Article VII, it is likely that MPI and Customs officers, who carry out initial inquiry, will refer all CITES specimens that qualify as PHE to DOC officers to determine whether it meets the PHE exemption. This would increase the workload for DOC officers as each specimen would have to be stored at the airport, assessed for meeting the criteria and then returned to the importer if it meets the criteria.

100. DOC is approaching the high seizure/surrender numbers of Appendix II specimens by focusing on the species that make up the majority of seizures/surrenders, i.e. hard stony corals, giant clam shells and crocodylia. By focusing on these species, DOC will address most Appendix II seizures/surrenders. DOC has therefore recommended enabling regulations under the TIES Act which can target specific species. This will also future proof the TIES Act as DOC will be able to respond through regulation to changing circumstances of species, rather than having to amend the primary legislation.

Options

101. Two options to address this problem were discussed in the discussion document:

- Option 1 – Implement some or all of the quantitative limits listed in CITES Resolution 13.7 for caviar of sturgeon, rainsticks of Cactaceae, crocodylia, queen conch shells, seahorses, gaint clam shells and agarwood
- Option 2 – Allow some types and/or amounts of coral to be imported into New Zealand:
    - Option 2a – allow coral fragments to be imported into New Zealand with a PHE exemption; or

[3]DOC provided you with a detailed memo on the numbers of seizures of Appendix II specimens in 2019 [19-B-0231 refers]

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

102. The options are assessed against the criteria in **Table 4** below.

Table 4 - Assessing options for addressing large amounts of specimens being seized

	Option 1 – Implement some or all the quantitative limits listed in CITES Resolution 13.7	**Option 2a – allow coral fragments to be imported into New Zealand**	**Option 2b – allow worn, eroded, beach washed coral, including fragments (number or amount limit) to be imported into New Zealand with a PHE exemption**
C1 – Align with purpose of TIES Act	+ –Aligns with the purpose of the TIES Act	+ As coral sands and fragments are not considered specimens under CITES, it is appropriate that trade in these items is not subject to regulation under the TIES Act.	DOC does not currently have enough evidence on whether Option 2b aligns with the purpose of the TIES Act.
C2 – consistency with CITES	+ 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.	DOC does not have enough evidence on whether Option 2b is consistent with CITES.
C3 – Ease of implementation and minimise costs	+ 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. Additional training would be required.	0 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 implement option.	++ Worn, eroded, beach washed hard corals make up a large proportion of seizures at the border, therefore an exemption would decrease the number of seizures and operational burden at the border.
C4 – minimise cost and improve efficiency for traders	+ 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.

Recommended options

103. DOC recommends a modified version of Option 1. Instead of exempting all species listed on Resolution 13.7 from permitting up to a certain limit, we recommend including a regulation-making power in the TIES Act that would enable species-specific exemptions to be made on a case by case basis to address high volumes of certain species being imported.

104. From the three species that make up the most seizures at the border (crocodylia, giant clams, and hard corals), DOC recommends using this regulation-making power to immediately implement an exemption from permitting requirements for specimens of farmed crocodylia from Australia[4].

105. We currently do not have enough information on the impacts of exempting giant clams and hard corals on wild populations to recommend an exemption from permitting at this time. DOC will be consulting countries where giant clam and hard corals specimens are sourced (source countries) to establish whether exempting giant clams and larger pieces of hard corals would have a negative impact on wild populations.

106. Once consultation with source countries is complete DOC can assess whether to implement a species-specific exemption for giant clams and hard corals.

107. DOC also recommends implementing option 2a, as CITES clearly outlines that coral sand and fragments do not qualify as specimens and therefore CITES does not apply. Clarifying this in the TIES Act will provide certainty around importing coral sand and fragments without permits.

Analysis of options

Modified version of option 1 - exempting Australian crocodilian specimens

108. From the list of species in Resolution 13.7, DOC only sees large numbers of crocodilian and giant clam shells. As already noted, crocodylia and clam shells make up a large proportion of items seized at the border.

109. 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.

110. Australian officials have previously investigated Crocodylia products on sale within Australia and found the source of specimens to be from crocodile farms. Of the two Crocodylia species in Australia, only *Crocodylus porosus* is farmed. The market is highly regulated with the registration of authorised captive breeding establishments or closed cycle farms required under Australian legislation.

111. Australian authorities have, at New Zealand's request, worked to advise retailers of permitting requirements for the export of crocodylia products to New Zealand, including providing pre-filled permits available at point of sale. This had little impact on the volume of crocodylia specimens being seized without a permit on arrival in New Zealand. The Australian CITES Management Authority has indicated that they would support any decision which allowed a permitting exemption for their Crocodylia products.

112. While provided for in the CITES exemptions, a permitting exemption of Crocodylia from other countries is not supported as *Alligator mississippiensis* from USA can be illegally sourced (poached from the wild) and alligators are generally sourced from the wild to manufacture products such as couture watchstraps.

Further consultation is required for considering exemption for giant clam shells and hard corals

113. Further consultation with source countries is required before an exemption for giant clam shells and larger pieces of hard coral can be implemented, to establish if there will be any negative impacts on wild populations and ecosystems.

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

114. The Cook Islands (non-Party) have expressed some concern over the level of giant clam meat being exported without permits. Shells are naturally a by-product of this potentially illegal activity.

115. DOC is not able to confirm what the impact of an exemption for larger pieces of hard corals would be on coral ecosystems in source countries, specifically from the Pacific Islands where most surrendered hard corals are from. There is a risk that if no permits are required, it could incentivise the collecting of corals from beaches to bring back to New Zealand as souvenirs.

116. At the 2019 Conference of the Parties held in Geneva in August, representative from DOC discussed this option with representatives from the Pacific Islands. The representatives from the Pacific Islands were interested in the option and noted that they would like to better understand the amount of coral from their islands involved and consider the proposal in the context of their own legislative frameworks.

117. Once the impact on wild populations of giant clam shells and larger pieces of hard corals can be established, exemptions from permitting using the proposed regulation-making power can be considered.

Tabua could also be considered as part of further consultation with source countries

118. Tabua are *Physeter macrocephalus* (sperm whale) teeth that are culturally significant in Fiji. Tabua are often given as gifts at special occasions or worn by Fijians.

119. Sperm whale are listed on Appendix I and dependent on age, requires both a CITES export and import permit to be traded. Under the TIES Act, tabua require permits if they were acquired outside of New Zealand.

120. There have been 26 instances in the five-year period from 2013-2018, where tabua has been seized at New Zealand's border due to a lack of permits. DOC officers dedicate considerable time to these cases, recognising the cultural importance of these taonga. All seized tabua are held in secure storage. In 2017, 146 tabua were repatriated to the Fiji CITES Management Authority by New Zealand.

121. DOC intend to discuss with Fiji whether New Zealand can assist with further awareness programmes with a goal to achieving 'zero-seizures' at New Zealand's border and to support the control of tabua being exported through Fiji's quota system.

122. DOC does not consider that we currently have enough information on the impacts of a possible exemption for tabua to recommend an exemption from permitting at this time. DOC will raise the matter of importing tabua into New Zealand with Fiji when we consult on possible exemption for hard corals and giant clams. The Fijian Management Authority has indicated it would like to address this matter.

Financial implications

123. All the options addressing problems with the PHE exemption will require staff training and public outreach to ensure any new exemptions are understood.

Risk assessment

124. Updating the definition of PHE is low risk. There will be relatively small impact, but the proposed changes will align the TIES Act with CITES.

125. Regarding the exemption for farmed crocodylia, Appendix I and Appendix II species may be difficult to identify at the border when in the form of leather, meat and other products, potentially resulting in the release of Appendix I specimens which would otherwise have required import and export permits. This risk is mitigated by only accepting crocodylia products from Australia where DOC is reassured the species is farmed and products are often clearly marked as farmed.

126. DOC is taking a precautionary approach with an exemption for hard coral, by consulting with source countries to ensure that exempting hard coral from permitting will have no adverse effects on coral ecosystems.

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

127. DOC's section 4 obligation requires that DOC should give effect to the Treaty principles. Treaty principles provide that Māori have control of the things that have value to them. This include taonga species and how these are used. This includes use for commercial gain. The PHE exemption under CITES puts restrictions on the trade of personal items, including that species on Appendix I cannot be traded for commercial purposes.

128. Some Māori arts practitioners have noted that they would like to sell artwork that contains endangered species, like whale bone carvings, to international buyers. Under the current provisions of CITES and the TIES Act this is not permitted. DOC does not propose to change this position but will continue to work with Māori arts practitioners in interpreting the requirements of CITES.

129. DOC will also be considering whether to seek a resolution or amendment to CITES in relation to cultural use of endangered species, aligning with the principles of the Treaty.

130. The other options in this section relate to species from other countries, therefore we consider there to be no Treaty implications.

Policy area 4: Technical errors on permits

131. You are asked to agree to the proposed suite of options to create a process for assessing cases where there are errors on permits, or no permit has been presented at the time of import, to enable the return of items under specific circumstances. This process is intended to be used rarely in the approximately 30 to 40 cases per annum where DOC is pressured to release items after they have been seized/surrendered.

132. Currently there are no mechanisms in the TIES Act to enable DOC to deal with errors on permits. 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 destroyed. Importers who have gone through the correct process can therefore be penalised, which does not contribute to the managed trade of CITES species.

133. DOC proposes a package of options should be implemented to enable considering errors on permits:

- enable seized items to be returned if permits have a minor error outside of the importers' control;
- enable replacement permits from overseas management authorities to be accepted; and
- enable retrospective permits from overseas management authorities to be accepted.

134. Decisions on whether to return a surrendered/seized item where there is an error on the permit outside of the importers' control would be at the discretion of the Director-General (which can be delegated to DOC border staff). The trade would still have to comply with the purpose of the TIES Act.

135. Enabling DOC to accept replacement permits will allow seized items to be returned where, due to circumstances outside the trader's control, a permit has been lost, cancelled, stolen, destroyed or where there has been an administrative error by the issuing management authority.

136. Enabling DOC to accept retrospective permits is an additional option to what was outlined in the discussion document. It would cover circumstances where no previous permit has been issued due to specific circumstances, including:

- irregularities that have occurred that are not attributable to the exporter, re-exporter or importer;
- in consultation with relevant enforcement authorities, there is evidence a general error has been made and that there was no attempt to deceive;
- that the export, re-export or import of the specimen is otherwise in compliance with CITES and relevant domestic legislation; and
- excludes specimens on Appendix 1.

137. In the discussion document only minor errors were discussed, however, considering the different types of cases DOC has had to consider in the past, it is considered appropriate to broaden the scope to all errors that are outside of the control of the importer, which can be assessed on a case by case basis.

138. The package of options is assessed against the criteria in **Table 5** below.

Table 5 - Assessing package of options against the criteria

	Suite of options to enable the return of seized/surrendered items if criteria are met
C1 – Align with purpose of TIES Act	+ Errors on permits or where no permit is presented, will not be accepted unless it aligns with the purpose of the TIES Act and CITES
C2 – consistency with CITES	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.
C3 – Ease of implementation and minimise costs	+ DOC already manages cases of permits with minor errors, holding items while the permit is being assessed. Clear provisions would assist DOC in making decisions about when the permit could be accepted 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.
C4 – minimise cost and improve efficiency for traders	+ These options will provide processes for when errors on permits 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.

139. These options will allow DOC to consider legitimate cases where errors on 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.

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

141. Further legal analysis of the package of options and how it will operate at the border is still required. This analysis will be included in the draft Cabinet paper DOC will provide once you have indicated your preferred options.

A small number of submitters commented on the permitting section

142. Of the submitters that commented on this section, 10 out of 12 submitters supported accepting minor errors.

143. The discussion document focused on addressing what were described as "minor errors on permits". There have been a number of cases in the past where DOC has come under pressure to release seized items back to importers where there has been issues with permits which cannot be considered "minor". For example, cases where the permit has expired or where there has been no permit at all. DOC therefore considers that the issue of all errors, including cases where there have been no permits, should also be considered as part of this analysis.

144. This broader interpretation of errors was not consulted on in the discussion document. Any issues that may arise with the broader interpretation can be considered as part of the Select Committee process once a Bill is introduced.

Financial implications

145. DOC already spends considerable time addressing enquiries from importers who have had items seized. These options will enable a process to consider permits with errors, and reduce costs over time from dealing with such enquiries.

146. There will be initial training costs for staff to learn new processes around returning items or dealing with retrospective or replacement permits.

Risk assessment

147. There is a risk that by enabling errors on permits to be accepted under certain circumstances that more people will try and be considered as part of this new process. Clear legislation and guidelines for DOC staff will support the process being used in the intended way. It will also provide clear guidance for DOC staff to respond to complaints if they do not meet the criteria.

148. There will still be cases that are not addressed by this package of options. For example, Appendix I listed specimens will not be eligible for retrospective permits as CITES guidance only allows for retrospective permits to be issued for Appendix II and III specimens.

149. There could be cases where the relevant management authority does not agree to issue a replacement or retrospective permit. The item would then have to be treated as forfeit to the Crown for disposal.

Policy area 5: Cost recovery

150. You are asked to agree to enabling cost recovery for services provided for commercial consignments. 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 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.

151. Screening high risk commercial consignments require DOC CITES Officers to spend between two and eight hours a week on risk screening commercial consignments, costing approximately $30,000 - $35,000 per annum.

152. There were nine submitters that commented on this section. Eight submitters were supportive of cost recovering for services to commercial operators, with one opposing.

153. 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.

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

Other technical issues identified in the TIES Act

155. You are asked to indicate whether you prefer a re-write of the TIES Act or for PCO to only focus on the specific sections required for implementing decisions.

156. DOC has identified multiple technical issues within the TIES Act, for example, out of date definitions and sections not in line with CITES, that require amendment to ensure the TIES Act functions effectively.

157. DOC sought advice from PCO in 2019 on the approximate time required to draft a Bill to amend the TIES Act. Due to the range of technical issues in the TIES Act, PCO noted one options is to re-write the TIES Act so it is written in modern language and structural concerns would be able to be addressed. PCO noted that re-writing the TIES Act would likely add an additional month onto drafting timelines.

158. The benefits of re-writing the TIES Act is that structural issues can be addressed more easily, as the risk of contradicting existing sections of the TIES Act would be removed. The language of the TIES Act would also be updated to reflect modern legal drafting practices and improve its general readability.

159. Only amending the sections outlined in this briefing would require less drafting time, but risk new amendments not aligning with the remaining sections of the TIES Act.

160. The technical amendments identified are outlined in **Appendix 3**.

Risk assessment – Nga Whakatūpato

161. The risks outlined for each policy area have been outlined in the earlier sections of the briefing.

Consultation – Kōrero whakawhiti

162. A public discussion document was out for public consultation from 24 September to 25 October. DOC received 119 submissions on the TIES Act discussion document. A report on the submissions received is attached at **Appendix 2**. Most submitters only commented on the elephant ivory sections, with 86 supporting a ban on the domestic sale.

163. DOC met with the Jane Goodall Foundation to discuss their submission which supports a full ban on the domestic trade.

164. As mentioned previously, DOC met with Te Matatini and Māori arts practitioners to discuss the review and the proposed approach to keep supporting those travelling with taonga to get the correct permits when travelling overseas.

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

165. DOC considers there to be no Treaty implications for options relating to elephant ivory, allowing errors on permits, or cost recovery. Treaty implications for travelling with taonga and PHE are outlined in the appropriate sections above.

Legislative implications – Te Taha Ture

166. All the proposed changed will require amendments to the TIES Act. The TIES Act is on the legislative programme as Category 4 (to be referred to Select Committee in the year).

Next steps – Nga Tāwhaitanga

167. You are asked to consider the recommendations and indicate your preferred options. Once you have indicated your preferred options, DOC will provide you with a draft Cabinet paper and Regulatory Impact Assessment (RIA) to be considered by Cabinet in April 2020.

168. If Cabinet agrees, drafting instructions will be sent to PCO in April 2020. Drafting will take approximately three months if the TIES Act is amended, and would enable an amendment Bill to go to LEG in July 2020.

169. If you prefer a total re-write of the TIES Act, this will likely take an additional month to draft. As the House rises on 6 August, an amendment Bill would not be able to be considered by LEG before the election if the TIES Act is re-written. A timeline is attached at **Appendix 2**.

Attachments – Nga Tāpiritanga

- Appendix 1 – Timeline for introduction of an amendment TIES amendment Bill
- Appendix 2 – Report on submissions received on the review of the Trade in Endangered Species Act 1989 discussion document
- Appendix 3 – Proposed technical legal issues to be addressed through the TIES Act review

ENDS

Timeline for introducing an amendment Bill

Step	***Proposed date***
Preferred options briefing to Minister of Conservation	4 February 2020
Draft Cabinet paper and RIA to Minster of Conservation	21 February 2020
Ministerial and cross-party consultation	9 March 2020
Lodgement of Cabinet paper and RIS	19 March 2020
Consideration by Cab Committee	1 April 2020
Considered by Cabinet	6 April 2020
Drafting instructions sent to Parliamentary Counsel Office	April 2020
Bill provided to the Ministry of Justice (or the Crown Law Office if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990	July 2020/ August 2020 if TIES Act is re-written
Lodgement of Cabinet paper and amendment Bill	16 July 2020/after the election if TIES Act is re-written
Considered by LEG for introduction	22 July 2020/ after the election if TIES Act is re-written
Bill introduced	July 2020/ after the election if TIES Act is re-written

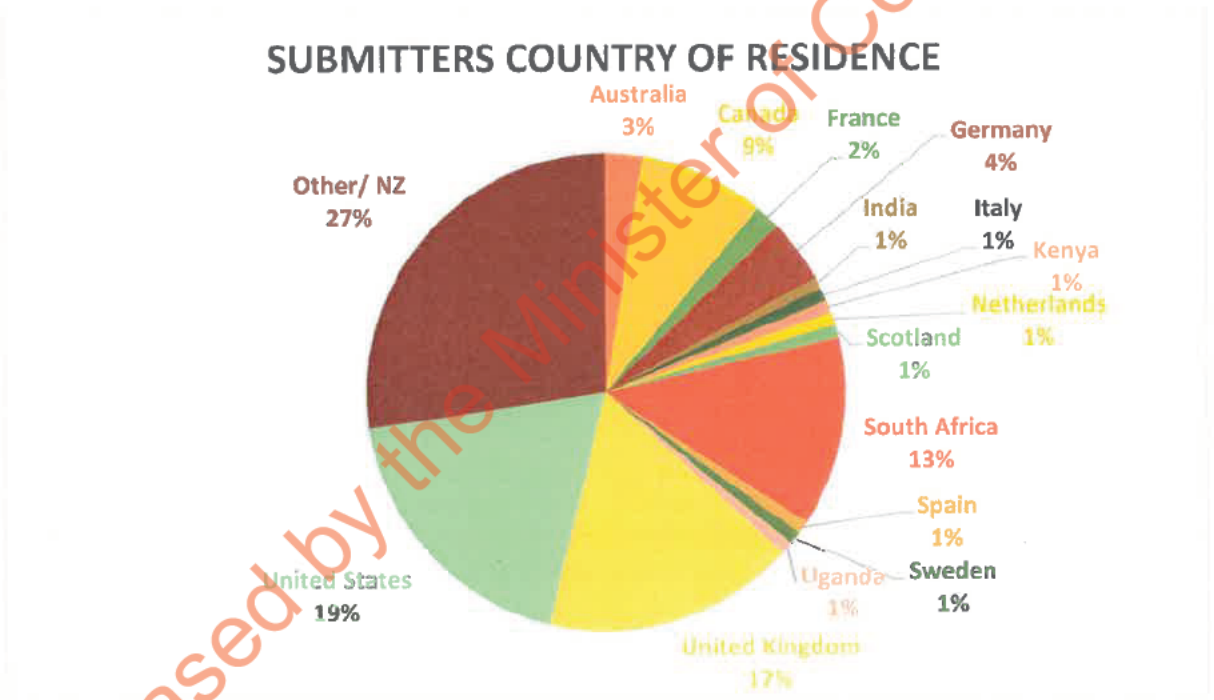
Summary of the 2019 TIES Act discussion document submissions received during public consultation

Background

This document summaries the public submissions received by the Department of Conservation (DOC) on the proposed changes to the Trade in Endangered Species Act 1989 (TIES Act). This summary focuses on the main, common and substantive issues and themes relevant to the review of the TIES Act; it does not cover all matters.

Submissions and submitters

In total, there were 119 submissions received on the TIES Act discussion document. The majority of submitters (72%) identified themselves as overseas individuals or organisations, a total of 86 of the 119 submissions. This wide international interest is shown below in Graph 1. It is noted that those who did not list a country as their address in the submission are recorded in the Other/NZ category below. This international interest stems from the potential changes proposed to the trade in elephant ivory, as 114 (96%) of the submitters commented on this section as compared to between 8-14 (7-12%) submitters commenting on the other sections. This focus by submitters on the trade in elephant ivory meant that some submitters discussed elephant ivory in other sections of the discussion document, for example in the objectives and criteria, taonga, PHE and technical issues sections.



Graph 1. The countries that submitters identified in their submission on the TIES Act discussion document.

The high number of international organisations and individuals that commented shows this is a global issue. There was also confusion by some submitters on the role of the TIES Act, and the interpretation of the TIES Act. For example, New Zealand approaches the issue of the personal household effects exemption differently to CITES with the current Act using the wording "acquired in New Zealand" rather than the CITES wording "acquired in the usual state of residence."

General overview of submissions

All submitters were generally supportive of the review of the TIES Act. Submissions reflected the views of a variety of interest groups as shown below in Table 1. A total of 9 interest

groups, with 27 specific individuals or organisations, commented on the TIES Act submission document.

Table 1. The interest groups represented by TIES Act discussion document submitters.

Interest group represented	Number of submissions	Name of organisations that submitted
Hunting	2	NZ Professional Hunting Guides Association, Safari Club International (NZ branch)
Conservation (NZ)	3	Forest & Bird, New Zealanders for Endangered Wildlife, Jane Goodhall Foundation (Gordan Consulting)
Conservation (International)	14 (12%)	Wildlife Direct, Elephant Reintegration Trust, Save African Rhino Foundation, Environmental Investigation Agency, Wildlife Conservation Network, Wild Aid, Tusk Taskforce*, IFAW, Born Free Foundation, Global March for Elephants and Rhinos, World Animal Protection, Animal Defenders International, African Wildlife Specialty
Zoo or wildlife park	1	Orana Wildlife Park
Antique / Auction House	2	Cordy's Auctions, Dunbar Sloane Ltd
Research	2	University of Portsmouth, Massey University
Fisheries	1	Fisheries Inshore NZ
Specific interest individual or organisation	2	Big Game Artistry (Taxidermist), Parrot Breeder
General public	92 (77%)	The majority of these were form submissions focusing on the trade in elephant ivory section. (The Jane Goodhall Foundation and New Zealanders for Endangered Species organised these form submissions)

*this organisation submitted on the discussion document twice, with a written submission and a web submission

Feedback on the discussion document

Objectives and Criteria

The majority of submitters supported the review of the TIES Act, the criteria and objectives discussed in the document.

Of the 15 submissions that commented on this section only 1 submission was critical of DOC's proposed criteria. The international conservation group (Born Free Foundation) questioned the third and fourth criteria about minimising costs for regulators, the public and industry. They asserted that these questions introduce a potential bias towards policy options which reduce the current regulatory burden but may not be best suited to meet the objectives of the review.

An issue mentioned by a national and an international conservation group (Orana Wildlife Park and Tusk TaskForce) was the potential for DOC to collaborate with others to form the final criteria and objectives for this review. It was acknowledged that the criteria and objectives were appropriate from a New Zealand perspective but could benefit from collaboration with agencies within and outside of the New Zealand government. Orana Wildlife Park mentioned consulting with international agencies such as IUCN, WAZA, WWF, Interpol and African Governments could identify criteria that may assist to improve effectiveness.

Several submitters proposed additional criteria or objectives for DOC to consider. These include:

- An ecosystem holistic approach that balances the species, habitat and local people partnership (Big Game Artistry)
- Tackling the issue of illegal trade and wildlife trafficking (Tusk TaskForce)
- Recovering the actual implementation cost of legal trade from those undertaking the trade (Jane Goodhall Foundation)
- Ensuring there is no biodiversity loss from changes to the current Act (Forest & Bird)

CITES and the TIES Act

10 submitters commented on this section, with most either bringing up points already covered by the review or agreeing that there were no other factors that needed to be considered.

A new issue raised by a specific individual (taxidermist) was how to accommodate countries that leave CITES or are not a part of CITES if they are managing and conserving their wildlife for the betterment of the wildlife, habitat and local peoples. The TIES Act implements our international obligations under CITES, as a signatory we are obliged to fulfil our commitment to CITES and as such DOC would still require all the appropriate documentation. Non-Parties produce comparable documentation which should contain all the requirements of an actual CITES permit.

The Jane Goodhall Foundation commented on the need to explore non-regulatory methods and review seizure data. The department is aware of the need to combine regulatory and non-regulatory methods, and already has several new operational projects in this space e.g. creating videos with information on travelling with taonga.

The trade in elephant ivory

Overall, as shown below in Table 2, the majority of submitters supported a ban on the domestic trade of elephant ivory as well as a ban on the importation and exportation of elephant ivory.

Table 2. Opinions of submitters on the different options for further regulating the trade in elephant ivory in New Zealand.

Submitters Opinion	Ban domestic trade	Ban domestic trade 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

The domestic ban on the trade in elephant ivory was supported by most submitters. The reasoning behind the support was:

- to contribute to global efforts to cut the supply and demand for elephant ivory,
- that any trade at all results in ongoing elephant poaching,

- that New Zealand is a growing tourism market with close proximity to Asia (a large market),
- that ivory should not be viewed as socially acceptable, and
- the importance of strengthening our legislation and abiding by our CITES obligations.

Some submitters also wished for more acknowledgment in the document of the importance and general characteristics of elephants.

The domestic ban option was opposed by both the Auction Houses, a specific individual (Taxidermist), a hunting group (Safari Club International) and a researcher. Their reasoning was that the ban would:

- create a black market,
- that registry's do not work,
- the high cost of this system, and
- that there is no evidence to support this ban will have any effect on elephant poaching.

NZ Professional Hunting Guides Association advocated for the Act to make specific reference to the role that sustainable use, including well-regulated hunting programs, plays in wildlife conservation. They wished to acknowledge that the money from trophy hunting is used for wildlife conservation. Removing the ability to trophy hunt would reduce the appeal of managed hunting and with it the revenue derived from the activity.

6 submitters noted that the real problem was not the regulation of elephant ivory in New Zealand but the poaching of elephants. Similarly, 6 submitters noted that the real problem was the illegal market or ivory trafficking in New Zealand. These larger problems are probably more relevant to countries which have populations of elephants or have identified their domestic markets as significant.

Some of the submitters detailed the type of exemptions that DOC should consider. The most popular exemption as shown below in Table 3, would be an exemption that allows for musical instruments.

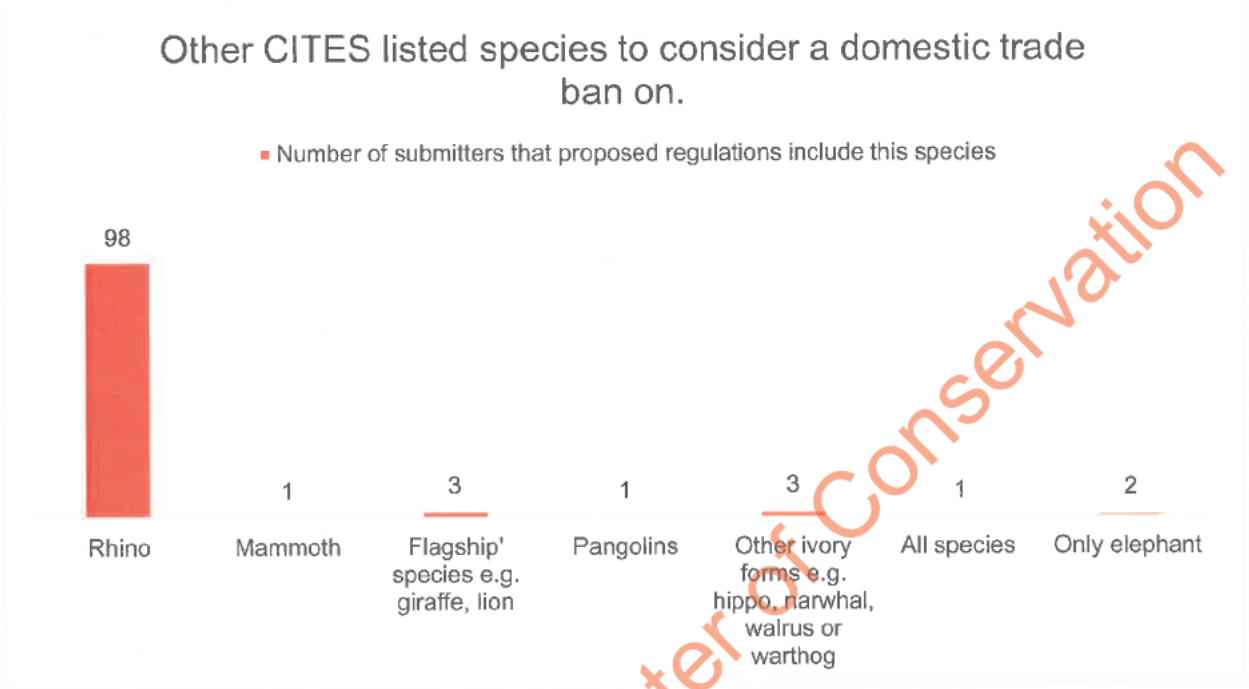
Table 3. Preferred submitter exemptions, as identified by those that answered the questions on whether there should be any exemptions to a ban similar to UK or specific NZ exemptions.

Type of exemption that New Zealand should consider	**Number of submitters that support**	**Number of submitters That oppose**
Musical instruments	11	
All the UK exemptions	5	
No exemption	4	
Non-commercial education	4	
Cultural, historic or artistic between museums or art institutions	4	
Narrow	3	
Science and law enforcement	1	
Legal beneficiaries	1	
Rare & important items	3	3
Sales between museums		1
Contains higher ivory		1

The other options or special New Zealand specific exemptions DOC could consider include:

- 6 submitters mentioned the importance of provenance documentation and a wish to require this documentation to be provided for every individual item
- Banning the trade in unworked elephant ivory, i.e. tusks and part tusks (Dunbar Sloane)

Out of the 114 submitters, 82% (98 submitters) also wished the possible regulations banning the domestic trade of elephant ivory to include rhino horn. This is shown below in Graph 2.



Graph 2. Bar graph of other species that submitters wished to include in possible regulations banning the domestic trade of elephant ivory.

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 would 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.

Giving effect to Treaty Principles

In total 10 submissions commented on this section of the document, with all submitters supportive of accommodating cultural practices. No Māori groups or organisations made written submissions. DOC has met with several Māori organisations, groups and individuals in the TIES Act engagement process to discuss the discussion document and other non-regulatory projects.

Submitters understood the need to acquire and present certification when travelling with taonga made from protected species to minimise the risk of taonga being seized at international borders. A number of suggestions were raised to improve the current TIES Act including adding provisions to identify each taonga item through provenance or other documentation, providing clear guidance for when permits are required, and regulating for cultural use of endangered species in the Act.

A proposal by Orana Wildlife Park, was the creation of a specific 'taonga permitting' process within CITES guidelines and the TIES Act, to enable permits to be swiftly processed. They commended that current processes in terms of scheduled trips worked well, but noted that with unscheduled last-minute trips, such as bereavements, the existing processing system couldn't cope. Processing time of CITES permits is within 20 working days and that operational staff are able to be contacted to discuss fast-tracking applications.

Finally, an issue raised by Forest & Bird was the inclusion of other countries taonga. They raised the issue of tabua, pointing to Australia's scheme which has rules that exempts tabua if it is in the form of a traditional necklace. This assertion was incorrect as Australia does not have a specific exemption for tabua.

CITES does not at present contemplate the issue of cultural use.

Personal and Household Effects Exemption

A. The definition of personal household effects

15 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 as shown in Table 4 below. 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.

Table 4. The preferred option of submitters on changing the definition of 'personal household effects'

Options	**Option 1 – change the definition of PHE in the TIES Act to exclude items traded commercially**	**Option 2 – change the definition of PHE to the definition in CITES Resolution 13.7**
Number of submitters that preferred this option	2	6

Other issues raised were a few general public submitters wishing to ban the PHE exemption for all animal products and a national conservation group (Jane Goodhall Foundation) stating the need to explore requiring export permits for items defined as PHE.

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

11 submitters made comments on this section. Overall submitters did not agree on a preferred option, as shown by Table 5. It was acknowledged that if an item fulfils the requirements for the PHE exemption, it does not require a permit.

Orana Park and Tusk TaskForce support the idea of having a definite limit on the importation of CITES Appendix II specimen, rather than the proposed exempting a limited number of specimens from permitting requirements. Tusk TaskForce stated that allowing for unlimited importation of these items as PHE would encourage their trade and the looting of beaches. Both organisations then also stated they supported options to allow more items to qualify for the PHE exemption.

Table 5. The opinion of submitters on the PHE Exemptions Options

Opinion of Submitters	**Potential Options for the PHE exemption**					
	Specific NZ Exemption			**CITES**	**Current NZ permitting**	**No PHE exemption**
	Coral exemption	**Farmed Crocodylia**	**Definite limit**	**Resolution 13.7***		**A total ban on PHE**
Support	4	2	3	-	2	1
Oppose	5	2	-	2	-	-

***caviar of sturgeon, rainsticks of Cactaceae, crocodylia, Queen conch shells, seahorses, giant clam shells and agarwood**

Another issue raised by a general public submission was whether New Zealand should have a PHE exemption. They submitted that a total ban is what is required to get the message to people that they should not be collecting endangered species.

Other relevant specific comments made on the options include:

1) Coral
    a. The definition proposed is open to misinterpretation, could vary considerably in interpretation and is open to abuse/exploitation. (Orana Wildlife Park)
2) Crocodylia
    a. In many cases wild crocodiles and farmed skins can also be separated by size of scales (farms harvest the animals at a much younger age, roughly 2-3 years) and quality (wild skins have more flaws). (University Researcher)
3) Resolution 13.7 species
    a. Not convinced that the regulations on these species is sufficiently monitored to ensure New Zealand would not be contributing towards further decline in these species. (Forest & Bird)
    b. Seahorses are inappropriate since both endangered and stable populations could be included. (Forest & Bird)
4) Other
    a. A quantitative PHE (potentially no more than 3) limit per person or group/family. (General Public)

Technical Issues with Permits

The majority of submitters approved of accepting minor technical errors on permits as shown in Table 6. Submitters saw accepting minor errors as an opportunity to create greater trust in the system, educate people on limits and restrictions, and as a way to align with CITES.

Table 6. The opinion of submitters on whether permits with minor technical errors should be accepted.

Opinion of submitters	**Submitters support accepting minor technical errors on permits**	**Submitters oppose accepting minor technical errors on permits**
Number	10	2

The circumstances in which permits with minor technical errors should be accepted, were described in both broad and strict circumstances, such as:

- Strict (World Animal Protection)
- On a case by case basis (Taxidermist / Safari Club International)
- With a serious warning or fine (Tusk TaskForce)
- As per Resolution 12.3, when a permit has been lost, stolen or cancelled (Jane Goodhall Foundation)
- Instances where corrections are issued and demonstrate complete compliance with the TIES Act (Orana Wildlife Park)
- When a border official misunderstands the process (General Public)
- After fair consideration by border officials (African Wildlife Specialty)
- An error outside of importers control such as human data entry error or damage to documentation (General Public)

Two other options proposed by Fisheries Inshore NZ to ensure less minor technical errors occur, would be to create an electronic permitting system and to create a permit which could

cover an amount of product within a timeframe (rather than one permit per entry/exit). At present DOC is not intending to create an electronic permitting system but is looking to ensure changes to the TIES Act have this potential in mind to future proof implementation options.

Cost Recovery

Of the 9 submitters that commented on this section, 8 of them approved the need to cost recover for services provided to commercial users and commercial consignment inspections. Only one submitter (General Public) questioned the need to cover recover, stating that there is cost recovery as the Ministry of Primary Industries and New Zealand Custom Services cost recover for their activities. However, the Department of Conservation is separate from the cost recovery processes of other government agencies.

Another submitter (Parrot Breeder) wished for DOC to conduct a review of all the current permit fee prices.

Additional cost recovery proposals suggested by submitters were:

- The introduction of fees for Trader Registration, Enforcement Officer Inspections or audits, and receipt of Trade Reports (Jane Goodhall Foundation)
- Penalties for those caught illegally trading, smuggling banned products (General Public)

Implementation, Monitoring and Evaluation

8 submitters commented on this section. Issues raised were to ensure alignment with the existing control and record system (Orana Wildlife Park), have complete transparency (Tusk TaskForce), the opportunity to connect to other agency system e.g. the MPI Biosecurity Investigators (General Public), and to use this as an opportunity to reduce resourcing requirements and costs (Jane Goodhall Foundation).

Proposed technical amendments to the TIES Act

Outlined below are technical issues that have been identified in the TIES Act that can be addressed through the TIES Act review.

Permits

1. There is no definition of what a valid permit or certificate is in the TIES Act. There can therefore be disputes on what constitutes a valid permit or certificate. For example, importers have presented photocopies of permits in the past. CITES guidance clearly states photocopies are not valid permits.
2. DOC recommends including a definition of what a valid permit and certificate is in the TIES Act. This would provide clear guidance to importers, exporters and re-exporters on what the requirements are around permits and certificates. DOC also recommends that the definition includes the ability to issue and accept electronic permits.
3. Guidance on permits and certificates is outlined in CITES Resolution 12.3. The guidance notes that permit or certificates can be issued in paper or electronic form if the importing and exporting management authorities agree to the electronic format.
4. The table below identifies further minor technical amendments related to permits to make the TIES Act function more effectively.

Issue	Recommended amendment
Section 11(3) requires the management authority to allow permit applicants to submit on conditions included on a permit. This is not current practice.	Amend section 11(3) so applicants do not have the opportunity to submit on conditions. The section will still allow applicants to submit on a decision if the Director-General consider the application is declined, before a final decision is taken.
Section 11(6) enables the management authority to either revoke or vary conditions on a permit at any time.	Split section 11(6) into two sections, so the power to revoke and vary permits or certificates are dealt with separately to improve clarity of section.
Section 10(1) of the TIES Act puts an obligation to apply for a permit if they 'propose to trade'.	Amend TIES Act so there is no obligation to apply for permits or certificates, but the ability to apply for a permit or certificate.
Section 10 sets out when a person needs to apply for a CITES permit. Section 10(2) of the TIES Act mentions 'type of trade'. This is not defined and too broad.	Change wording to 'purpose of trade' or something similar to align it with CITES wording which requires the purpose of a trade listed on permits.
Section 11(5) states 'Every such permit or certificate shall be in the form issued by the Department'. The Department is not referenced anywhere else in the TIES Act.	Amend section 11(5) to 'management authority' rather than 'the Department' to align with the rest of the TIES Act
DOC does not currently enable multi-consignment permits. This issue was raised through the discussion document by the fishing industry, who are concerned about Mako sharks being listed on Appendix II and therefore requiring import permits.	DOC to consider different permit solutions to support the fishing industry.

Definitions

Management Authority

5. The current definition of 'management authority' does not clearly set out the role of the management authority. The current definition states:

   - management authority means, -
     - In relation to New Zealand, the Director General; and
     - In relation to any other country, the management authority appointed by that country for the purposes of the Convention.

6. The role of the management authority in New Zealand is not outlined anywhere else in the TIES Act.

7. New guidance on the role of the management authority was also agreed at the Conference of the Parties held in August 2019. The new guidance set out in Resolution 18.6 outlines the required functions of management authorities, which include but are not limited to:

   - the issuing of permits and certificates in accordance with CITES and relevant resolutions;
   - responsibility of reporting on the implementation of CITES;
   - approving captive breeding facilities and providing details to the CITES Secretariat for registration purposes;
   - Communicating with the CITES Secretariat and other Parties;
   - submit proposals to amend Appendices and documents for meetings of the Conference of Parties and other subsidiary bodies;
   - make decisions on the disposal of seized live specimens; and
   - raise awareness of CITES domestically.

8. DOC recommends setting out the roles and responsibilities of the management authority in a new section in the TIES Act to ensure the roles and responsibilities are clearly set out.

Scientific Authority

9. The roles and responsibilities of the Scientific Authority is set out in section 7 of the TIES Act. Some of the definitions and government departments listed in this section is outdated. It currently lists the Ministry of Agriculture and Forestry and the Ministry of Fisheries. This can be amended to list the Ministry for Primary Industries.

10. There are also no terms of appointment for members for the scientific authority. DOC recommends including terms of appointment of six years for members of the Scientific Authority. The Conference of the Parties is held every three years. A term of six years will enable members to serve for a period covering two Conferences of the Parties. Members of the Scientific Authority are appointed by the Minister of Conservation.

11. The Scientific Authority is referred to as the 'Scientific Authority Committee' in the Act. DOC recommends changing the name to 'Scientific Authority', to avoid confusion or the suggestion that there is a 'Scientific Authority' and a 'Scientific Authorities Committee'.

Specimen

12. Specimen is currently defined in the TIES Act as 'any animal or plant, whether alive or dead; or any recognisable part of derivative thereof'.

13. Resolution 9.6 provided guidance on trade in readily recognisable parts and derivatives. The Parties agreed that the term 'readily recognisable part of derivative' should be interpreted to include any specimen that is listed on packaging, a mark or label. It 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. It was also agreed that urine,

faeces and ambergris are waste products and therefore are not subject to CITES. These matters have not been carried over to the TIES Act.

14. DOC recommends amending the definition of 'specimen' to align the definition with the guidance from Resolution 9.6 to ensure there is no confusion at the border on what qualifies as a specimen. For example, it would allow border staff to seize items like traditional medicines that state on the label it contains an endangered species, as this is deemed to be 'readily recognisable'. Currently medicines need to be tested to prove a certain species is present in the medicine.

15. DOC also recommends changing the definition to specifically exclude coral sands and fragments, urine, faeces and ambergris. This could be done by either amending the definition in the TIES Act or creating regulations that set out the requirements of what a specimen is.

Specimens bred in captivity or artificially propagated

16. CITES allows the captive breeding of Appendix I species if the breeding facility attains registration as a CITES captive bred facility. When an Appendix I species is bred in captivity or artificially propagated the species is deemed as Appendix II. CITES has a database of captive breeding facilities. The Management and Scientific Authorities assess applications, and should registration be successful this is then lodged with the CITES Secretariat and all Parties notified of the CITES registration.

17. 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 purpose (Appendix I as an Appendix II species). DOC has been contacted by breeders who would like to register their breeding facilities in order to export specimens, namely parrots. One submission on the TIES Act discussion document requested that the TIES Act enables registration of captive breeding facilities.

18. DOC recommends enabling captive breeding facilities to be registered as per the guidance in CITES and allow New Zealand captive breeding facilities to be registered with CITES. 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.

19. The table below identifies further minor technical amendments related to captive breeding facilities to the TIES Act to make it function more effectively.

Issue	Recommendation
Section 31 outlines the requirements for exporting specimens bred in captivity or artificially propagated. Currently the section is not clear on whether a certificate can be issued for Schedule 1 specimens that have been deemed as Schedule 2 due to being bred in captivity or being artificially propagated.	Amend section so certificates can be issued for Schedule 1 specimens deemed as Schedule 2 due to being bred in captivity or artificially propagated.
The definition of endangered species in the interpretation section states that if the specimen was bred in captivity or artificially propagated, the specimen is deemed to be threatened. It does not require the breeding facility to be a facility registered with CITES.	Amend definition in interpretation section to require the specimen to have been bred at a registered CITES facility.

Compliance

20. There are various sections in the TIES Act that outlines compliance measures. Some compliance matters are repeated in various sections or are not set out clearly.

Pre-Convention date

21. Section 29 (1) and 29(2) notes that a Certificate of Acquisition 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 certificate issued by other overseas management authorities will have different pre-Convention dates listed. There is no provision in the TIES Act for the issuance and acceptance of Pre-Convention Certificates, nor does the Convention refer to a Certificate of Acquisition, or apply the legislation implementation date as an equivalent to Pre-Convention.

22. CITES provides guidance on pre-Convention dates in Resolution 13.6. The Resolution states that:

- the date from which the provisions of the Convention apply to a specimen be the date on which the species concerned was first included in the Appendices; and
- the date on which a specimen is acquired be considered as the date on which the animal or plant or, in the case of parts or derivatives, the animal or plant from which they were taken, was known to be:
    - removed from the wild; or
    - born in captivity or artificially propagated in a controlled environment; or
    - if such date is unknown or cannot be proved, the date on which the specimen was acquired shall be the earliest provable date on which it was first possessed by any person.

23. DOC recommends aligning the TIES Act with the guidance in Resolution 13.6, so the pre-Convention date aligns with the date a species was listed on CITES Appendices. Cabinet did approve this change in 2008, however it was decided that due to the complexity of how the TIES Act is written it was not possible to make the amendment without changing other parts of the TIES Act.

Sections 26, 27, 29, 39, 40 and 41 – Seizure, surrender, and release provisions

24. Sections 26, 27 and 29 outlines the process for people arriving from overseas and crossing the border to present their permits and to surrender their items if there is no valid permit. In these sections, border officials can inspect a person's baggage or person if they have reasonable cause to believe or suspect that they are in possession of an endangered, threatened or exploited specimen.

25. Under section 27, if a person declares they have a CITES specimen and they do not have the required permits, they cannot be prosecuted as the import is deemed to have not taken place.

26. Section 39, 40 and 41 outlines the process for seizures when items enter New Zealand via ship, aircraft or through any port, aerodrome, transitional facility or customs-controlled area. Under section 39, any officer that has reasonable cause to believe a vehicle contains endangered, threatened or exploited species may inspect that vehicle.

27. These sections also create 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 does not allow for a specimen to be returned to an importer if it is found that the specimen was not an endangered, threatened or exploited species.

28. DOC recommends re-writing these sections to enable officers to require reasonable cause to believe or suspect to search for endangered, threatened or exploited species in both section 27 and 39. A release process also needs to be added to section 39 so an

item is returned if the officer finds it is not a specimen of endangered, threatened or exploited species.

29. DOC also recommends amending section 27 so importers who declare items that are being imported without permits can be prosecuted. This would enable DOC to prosecute if it suspects an importer of trying deceive border staff.

Minor technical errors

30. The table below identifies further technical issues related to compliance that DOC recommends amending to improve clarity and implementation of the TIES Act.

Issue	Recommendation
Section 27(2)(ii) notes where a person has voluntarily disclosed the presence of a specimen to an officer they will not be prosecuted.	Change 'voluntarily disclose' to 'declare' to align language with border language.
Section 28 applies to specimens surrendered from people arriving from overseas. Section 28(1) refers to 'New Zealand citizen, person resident in New Zealand, or person intending to reside in New Zealand'. The phrase 'person resident in New Zealand' is misleading and can be interpreted to mean resident of New Zealand as defined in the Immigration Act.	Replace the phrase 'person resident in New Zealand' to make section clearer as it is not intended to reference New Zealand Resident as outlined in the Immigration Act. The intention is that it applies to anyone returning to New Zealand who lives here on a long-term basis.
The title of section 29 is 'Certificate of acquisition'. This does not exist under CITES. The section is meant to refer to pre-Convention certificates.	Amend title to 'Pre-Convention Certificate', which the section is in practice referring to. 'Certificate of acquisition' is used throughout this section and should be changed to 'pre-Convention certificate'.
Section 29(1) notes that a person 'shall apply' for a certificate.	Recommend amending to 'may' apply as there may be circumstances where the item qualifies for an exemption from requiring a certificate e.g. a PHE exemption.

Offences

31. The table below identifies areas related to offences that DOC recommends amending to improve clarity and implementation of the TIES Act.

Issue	Recommendation
Section 45 creates an offence for possessing a specimen of an endangered, threatened or exploited specimen where there is reasonable grounds for suspecting the specimen was imported not in accordance with the TIES Act or is intended to be exported not in accordance with the TIES Act. Seized items are sometimes gifted to museums or galleries. This provision currently criminalises this practice.	Amend section 45 so it is not an offence when a specimen seized or surrendered to the New Zealand management authority has been gifted or loaned to a museum, gallery or other appropriate institution.
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.	Amend the TIES Act to ensure the offence created under section 46 applies to all permits and certificates issued by the New Zealand management authority. This may

	not be required if the section issuing certificates is moved to Part 1.
The current penalty for obstructing or hindering an officer is low in comparison to the penalties for obstructing by other agencies. The maximum fine under the TIES Act is $2000. The maximum fine under Customs legislation is $5000 or a term not exceeding 3 months imprisonment, under Biosecurity legislation it is a maximum fine of $100,000 or a term not exceeding 5 years imprisonment, and under Fisheries legislation the maximum fine is $250,000.	DOC recommends aligning the penalty with those in the Conservation Act, i.e. a fine not exceeding $100,000 and/or imprisonment for a term not exceeding 2 years.

Structural issues om the TIES Act

32. There are numerous structural issues in the TIES Act that can make it hard to interpret or confusing as various conditions are repeated in different sections. DOC has discussed these issues with PCO.

33. The table below identifies structural issues in the TIES Act. The best way to restructure the TIES Act will be discussed with PCO.

Issue
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.
Section 29 – pre-Convention certificates. This section 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.
Section 31 which outlines requirements for certificates for specimens bred in captivity or artificially propagated is currently in Part 2 which means requirements of Part 1 does not apply to it. As it issues certificates, it is not technically an exemption.
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).
Section 18 and 22 repeats parts of section 26 by also prescribing when permits and certificates need to be produced. Section 18 and 22 also only relates to threatened and exploited species as the New Zealand management authority would not issue import permits for threatened or exploited species, it would only issue them for endangered species.

Other sections to be amended in the TIES Act

34. The following sections do not fit in any of the previous categories but are also recommended to be amended.

<u>Section 28(2) – Holding items at the border for visitors</u>

35. Section 28(2) allows visitors to New Zealand can 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.

36. The section currently allows any "visitor" to apply for this option. It 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.

37. DOC consider it is useful to keep this provision with some amendments as it provides options for when items with specific significance, for example cultural items, do not have the correct permits and the person will be leaving New Zealand after a short stay.

38. DOC recommends amending this section so an item may be temporarily held at the discretion of DOC staff pending the person's departure from New Zealand. DOC staff would determine whether the circumstances are appropriate and the manner in which this would occur.

39. It is likely that this option would be used primarily 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.

40. This section is also useful as the PHE exemption in the TIES Act only applies to items that were acquired in New Zealand. It can therefore be used to hold items that meet a particular threshold at the border for visitors to collect when they leave.

41. The table below lists further minor issues to be addressed through the TIES Act review.

Issue	**Recommendation**
The management authority is defined as the Director-General in the TIES Act. The TIES Act then refers to the Director-General having powers throughout the Act rather than the management authority.	Recommend 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.
Section 30 sets up the PHE exemption in the TIES Act. The way the section is written is unclear and is not easily understood	Re-write section in plain language to make section easily understood by the public
Various sections of the TIES Act do not apply requirements to permits and certificates issues by overseas management authorities. This issue comes up in sections 9, 27, 29(3), 31(3), and 44.	Ensure all appropriate sections in the TIES Act refer to permits and certificates issues by overseas management authorities as well as those issued by the New Zealand management authority.