

Attachment 2: Cabinet Paper

In Confidence

Office of the Minister Conservation
Chair, Cabinet Legislative Committee

TRADE IN ENDANGERED SPECIES ORDER 2019

Proposal

1. That the Cabinet Legislation Committee authorise the submission to the Executive Council of The Trade in Endangered Species Order 2019. This Order in Council is routine and is required to give effect to international obligations. No new policy decisions are required.

Background

2. New Zealand acceded to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1989. CITES is implemented in New Zealand through the Trade in Endangered Species Act 1989 (the TIES Act). Species that are protected by CITES are listed in three Appendices to the Convention which are reflected in the First, Second, and Third Schedules of the TIES Act.
3. The 18th meeting of the CITES Conference of the Parties (CoP18) was held in August 2019. CoP18 made decisions on amendments to CITES Appendices I and II in accordance with the provisions of Article XV of CITES.
4. Several changes have also been made to Appendix III of CITES as the result of nominations of individual species by Parties. These species are subject to regulation within the nominating Party's jurisdiction for preventing or restricting exploitation, and are identified as needing the cooperation of other Parties in the control of trade.
5. The decisions made on the CITES Appendices now require all CITES Parties to update their implementing legislation. The Schedules to the TIES Act need to be amended through an Order in Council pursuant to section 53 of the Act. The Schedules were last updated by the Trade in Endangered Species Order 2017 following CoP17.

The Order

6. The Trade in Endangered Species Order 2019 (the Order) is essential to comply with existing international obligations that are binding on New Zealand. Article VIII(1) of CITES makes it mandatory for Parties to take appropriate measures to enforce the provisions of CITES.

7. The Order amends the Schedules to the TIES Act, pursuant to Section 53. It gives legal effect to the changes made to the CITES Appendices I and II at CoP18, and to those changes to CITES Appendix III resulting from nominations by Parties.
8. The amendments to Schedules 1, 2, and 3 of the TIES Act proposed by the Order include the agreed alterations and additions to species listings as follows:

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|-------------|---|
| Schedule 1: | Species added 16; species deleted 8 (moved to Schedule 2) |
| Schedule 2: | Species added 33; species deleted 8 (moved to Schedule 1) |
| Schedule 3: | Species added 24; species deleted 7. |
9. In addition to the species added to or deleted from the Schedules, several species have had their names changed to take account of nomenclatural updates agreed at CoP18. New Zealand did not enter a reservation for any of the amendments
10. Under Article XV(1)(c) of CITES, the amendments agreed by CoP 18 to Appendices I and II enter into force on 26 November 2019, 90 days from the date they were agreed. There is an exception for some marine species (sea cucumbers) and one species of cedar where a longer lead in time was agreed (28 August 2020). The amendments to Appendix III of CITES also come into effect on 26 November 2019 with the exception of three species of cedar (to be deleted on 28 August 2020).
11. Prompt amendment to domestic legislation is an expected response to CoP decisions on amendments to the Appendices, to ensure the ongoing integrity of the international regime. The finalisation of the Order within 90 days of the COP was not possible given the drafting time required and available resources to complete the work. However, the Order will come into effect on 9 January 2020.
12. For drafting reasons, the Order replaces the current TIES Act Schedules with new Schedules that accurately reflects all Appendix listing decisions of CoP18.

Implications of the Order

13. The new species listing with the most direct impact on New Zealand are the two species of mako shark which are now listed in Appendix II. Both (*Isurus oxyrinchus*) shortfin mako shark and (*Isurus paucus*) longfin mako shark occur in New Zealand water. The mako shark is included in the Quota Management System. It is caught commercially around mainland New Zealand as well as surrounding high seas.
14. A listing in Appendix II of CITES allows regulated trade. It requires that before export can happen, the CITES Scientific Authority of the country of export must determine that the export of specimens will not be detrimental to the survival of the species in the wild (i.e. issue a non-detriment finding). The CITES Management Authority must be satisfied that the specimens were legally acquired before a permit for export can be issued. The inclusion of mako sharks in the Quota Management System aligns well with the requirements for an Appendix II listing.

15. Trade in these species may also fall under the “Introduction from the sea” (IFS) provisions of CITES. IFS provisions cover transportation into a State of specimens of any species which were taken in marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law.
16. Industry has been alerted to the changes to the regulatory regime and the requirement for permits for these new marine listings. Agencies are working together to ensure this process is as efficient as possible.
17. Another species now listed in Appendix II, *Syrmaticus reevesii* (Reeve’s pheasant), is found in New Zealand in captive bred facilities and zoos but is not naturalised in New Zealand.
18. Aside from the newly listed species that occur in New Zealand, there are others in which there may be trade in to and out of New Zealand. Agencies will work to ensure border officials know of the Amendments.

Timing and the 28-day rule

19. The Order is intended to be gazetted on 12 December 2019 and come into force on 9 January 2020. No waiver of the 28-day rule is sought.

Compliance

20. The Order complies with the following:
 - 20.1. the principles of the Treaty of Waitangi;
 - 20.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 20.3. the principles and guidelines set out in the Privacy Act 1993;
 - 20.4. relevant international obligations;
 - 20.5. the Legislation Guidelines (2018 edition).

Regulations Review Committee

21. There are no grounds for the Regulations Review Committee to draw the Order to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

22. The Order was certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

23. The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the regulatory impact analysis requirements on

the basis that Government has limited statutory discretion. The regulatory proposals are essential (the minimum necessary) to comply with international obligations that are binding on New Zealand.

Consultation

24. The Ministry for Primary Industries, Fisheries New Zealand, the Ministry of Foreign Affairs and Trade, and the New Zealand Customs Service have been consulted on the Order. The Treasury was consulted with regards to the exemption to the Regulatory Impact Assessment requirements.

Financial Implications

25. CITES documentation is issued on a cost recovered basis. The new listings are not expected to involve any significant cost implications.

Publicity

26. A press statement is intended to be released.

Proactive Release

27. The Minister proposes to release the paper proactively in whole.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. Note that the Convention on International Trade in Endangered Species of Wild Fauna and Flora has made several changes to the lists of species managed under the Convention, and New Zealand is bound by those decisions.
2. Note that the legal mechanism for giving effect to the new decisions is amendment to the Schedules of the Trade in Endangered Species Act, by Order in Council.
3. Note the Trade in Endangered Species Order 2019 will give effect to the international decisions.
4. Note that the Trade in Endangered Species Order 2019 will come into force from 9 January 2020, with the exception to the changes relating to three species of sea cucumber and three species of cedar which will come into force on 28 August 2020.
5. Authorise the submission to the Executive Council of the Trade in Endangered Species Order 2019.

Authorised for lodgement

Hon Eugenie Sage

Minister for Conservation

Released by Minister of Conservation