

In Confidence

Office of the Minister of Conservation
Chair, Cabinet Development Committee

DISCUSSION DOCUMENT TO SUPPORT THE REVIEW OF THE TRADE IN ENDANGERED SPECIES ACT 1989

Proposal

1. This paper seeks agreement to release a public Discussion Document on the review of the Trade in Endangered Species Act 1989 (TIES Act).

Executive Summary

2. The TIES Act has not been reviewed since it was enacted in 1989. Since then, various inconsistencies, technical issues and unclear definitions have been identified that make it difficult for operational staff to implement.
3. The TIES Act is on the legislative programme for 2019 as Category 5, instructions to Parliamentary Counsel Office (PCO) by the end of the year (CAB-19-MIN-0049 refers). The TIES Act is being reviewed to address inconsistencies, technical issues and unclear definitions that make the TIES Act hard to implement. The review also seeks to enable the TIES Act to be responsive to changes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the international convention the TIES Act implements.
4. CITES is an international agreement that aims to ensure that international trade in specimens of animals and plants does not threaten their survival in the wild.
5. I seek Cabinet approval to release a public Discussion Document to canvas views on four key areas for policy change in the TIES Act and on new regulations for the trade in elephant ivory. Each policy area presents specific challenges to the effective operation and implementation of the TIES Act. The discussion document provides options under each of these areas and asks for public input on the best option to address the challenges.

Background

6. The TIES Act is on the legislative programme for 2019 as Category 5, instructions to PCO by the end of the year (CAB-19-MIN-0049 refers).
7. The TIES Act is being reviewed:
 - 7.1. to improve operational implementation, particularly at the border; and

- 7.2. to enable the TIES Act to be responsive to changes to CITES.
8. I am also exploring whether to further regulate the trade in elephant ivory domestically and at New Zealand's border.
 9. Approximately 5,800 species of animals and 30,000 species of plants are subject to CITES. These animal and plant species are listed in Appendix I, II or III of CITES, according to the degree of protection they need. The requirements for permits and certificates needed to trade a specimen differ, depending on which Appendix the species is listed on. The function of each Appendix is outlined below:
 - Appendix I lists species that are threatened with extinction.
 - Appendix II lists species not threatened with extinction, but which could become so if international trade isn't sustainably managed.
 - Appendix III lists species where Parties need the cooperation of other countries to prevent unsustainable or illegal exploitation.
 10. The TIES Act implements CITES, which New Zealand ratified in 1989. The CITES Appendices are mirrored in Schedule 1, 2 and 3 of the TIES Act.

The Discussion Document focuses on six policy areas

11. I seek Cabinet approval to release a public Discussion Document to support the review of the TIES Act. The Discussion Document is attached at **Appendix 1**. The Discussion Document asks for feedback on five policy areas:
 - 11.1. The trade in elephant ivory
 - 11.2. Movement of taonga across international borders
 - 11.3. Personal and household effects
 - 11.4. Technical issues with permits
 - 11.5. Cost recovery
12. Policy areas 11.3-11.5 present specific problems for the effective operation and implementation of the TIES Act. The Discussion Document provides options under each of these areas and asks for public input on the best option to address the problem. I also intend to consult on options for the regulation of trade in elephant ivory. Each policy area with proposed options is outlined below.

The trade in elephant ivory

13. New Zealand's legislation does not currently regulate the sale of non-native endangered species within New Zealand. I am using the opportunity of

reviewing the TIES Act to consider options to regulate the trade in elephant ivory, either at the border or in terms of domestic sales.

14. The CITES Conference of Parties has explored the issue of regulating the domestic trade in ivory. In 2016, CITES Parties adopted a Decision 10.10 recommending that countries in:

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

15. This Decision reflects growing recognition of the role that domestic commercial trade plays in endangering elephant populations. Many conservation non-profit organisations in New Zealand have publicly supported a ban on the domestic sale of elephant ivory via regulation, on the assumption that it is not possible to regulate its movement across New Zealand's borders without changing the TIES Act.
16. Information on the size of the New Zealand domestic market for ivory is limited. The Department of Conservation (DOC) manages the New Zealand CITES database which records data on all CITES specimens, including elephant ivory, seized and surrendered at the border, as well as recording legal trade (specimens that have entered New Zealand legally with a CITES permit). Data from this, as well as anecdotal evidence, suggests the domestic market is relatively small. DOC considers New Zealand to be more removed from the illegal ivory trade which contributes to elephant poaching.
17. I consider there to be a moral argument to be made for banning the international trade or domestic sale in elephant ivory, despite the associated regulatory costs. The driver for a ban is making a statement that New Zealand considers trade in elephant ivory to be morally wrong. The UK banned the sale of elephant ivory in 2018, with some exemptions. Other countries that have banned their domestic markets in elephant ivory include China, the USA, Taiwan and France.

Options for regulating the domestic elephant ivory market

18. There are various ways elephant ivory could be regulated by New Zealand. Five options are canvassed in the discussion document:

- Option 1 – ban the domestic sale of elephant ivory in New Zealand,
- Option 2 – ban the domestic sale of elephant ivory in New Zealand with exemptions,
- Option 3 – regulate the domestic market for ivory by requiring registration of elephant ivory sellers and tracking of all elephant ivory item that are sold,

- Option 4 – ban the import of all post-Convention ivory,
 - Option 5 – ban the import of ivory with exemptions.
19. Option 1 and 2 focus on the domestic market and propose a ban on all sales of elephant ivory, or a ban with exemptions respectively. As New Zealand legislation is currently silent on the regulation of elephant ivory sales on the domestic market, a new regulatory regime would be required to implement these options. Option 1 would mainly affect auction houses and the musical instrument industry¹. Exemptions considered under Option 2 would allow for continued sale of elephant ivory if the item meets certain criteria.
 20. Option 3 would continue to allow the sale of elephant ivory items but would regulate the market by setting up a database of registered sellers and tracking all ivory sales. It would also enable DOC to audit sellers to verify the origin of ivory items.
 21. Options 4 and 5 would focus on tightening the import regime around elephant ivory by banning its import. Option 4 would ban the import of post-Convention elephant ivory. The majority of ivory imported to New Zealand is pre-Convention (1975/76), so this option would mainly affect hunting trophies. Option 5 would ban the import of elephant ivory with exemptions. Option 5 would not exempt items made exclusively from ivory (e.g. whole tusks, or carvings made completely out of ivory), so import of those would be banned.

Movement of taonga across international borders

22. Items made from taonga, for example carvings made from whale bone, are often worn or carried by New Zealanders travelling overseas. Most whales are listed on Appendix I of CITES, which affords them the highest level of protection in terms of limits on international trading. This means that a CITES permit is usually required to move items made from whale species listed on Appendix I across international borders. Concerns have been raised by Māori carvers, and other carvers, about taonga made from protected species being seized at international borders for not having a permit. Seized items may potentially not be returned to New Zealand or can be destroyed at international borders.
23. The Discussion Document outlines this issue and asks for feedback on other ways DOC could support New Zealanders when travelling overseas with their taonga. DOC currently provides information on its website about when permits are required, to help mitigate the risk of taonga made from protected species getting seized at international borders.
24. DOC has had preliminary discussions with prominent Māori taonga art practitioners, who have asked for further dialogue. DOC has also been in contact with Toi Māori Aotearoa (an independent arts organisation that

¹ Many instruments have ivory parts, such as piano keys, violin bows and bagpipes. Banning ivory sales would mean these instruments could no longer be sold in New Zealand.

represents Māori art and artists nationally and internationally). Toi Māori Aotearoa has had experience with the problem described above and will be working with DOC to design a process that considers cultural use of endangered species materials.

25. DOC will also be consulting museums and other Māori groups through targeted engagement. DOC will also have further discussions with other interested Māori practitioners and groups that are identified through the public consultation process. Detailed policy discussions will take place once the release of the Discussion Document has been agreed by Cabinet.
26. DOC has engaged the Ministry of Foreign Affairs and Trade about consultation with Pacific countries on their specific issues.

Personal and household effects

27. CITES allows some exemptions from permitting requirements. One of these exemptions is called a Personal and Household Effect (PHE) exemption. The PHE exemption generally provides that if a specimen is defined as PHE, it can be exempt from requiring a permit to move the specimen across borders in certain circumstances.
28. This exemption exists because it is generally considered that people travelling overseas with their personal items do not contribute to unsustainable international trade. Such personal items usually include items such as jewellery, furniture or musical instruments that contain or are made of endangered species (e.g. rosewood tables or bagpipes). This exemption applies where the owner acquired the item in the country they normally reside in and is retaining it for their own personal use.
29. Under the TIES Act, the PHE exemption works in the following way:
 - Every item that is defined as a PHE can be exported from New Zealand with no documentation required by New Zealand.
 - Items defined as PHE being imported into New Zealand do not require documentation unless:
 - it is listed in Schedule 1 or Schedule 2 of the TIES Act and was acquired outside New Zealand; or
 - it is in any of the Schedules and is being imported for primarily commercial reasons.
 - If the item being imported requires a permit due to one or more of the reasons above, a pre-Convention certificate or certificate of acquisition can be presented in lieu of a permit. Otherwise, all permitting requirements will apply.

30. There are two problems with the PHE exemption that DOC would like to address:
- a) the definition of PHE does not capture the appropriate items; and
 - b) large quantities of some species (e.g. coral) are being seized in circumstances where it may not be appropriate.

Problem A – The definition of PHE is not capturing the appropriate items

31. The TIES Act defines PHE as “any article of household or personal use or ornament.” If an item meets this definition then it may be subject to the PHE exemption, and not require a permit.
32. 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. For example, if someone wants to sell a piece of art that contains parts of an endangered species to an overseas buyer, under the current definition of PHE they would not require a permit to make the sale. This contradicts the rationale behind the PHE exemption, which was based on enabling people to move their personal belongings across borders without requiring permits. It is not meant to enable commercial trade in endangered species.

33. CITES Resolution 13.7 defines PHE as:

Specimen that is:

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

34. This definition is more prescriptive than that in the TIES Act, and outlines that an item cannot be traded for commercial purposes, if it is to qualify as PHE.

35. The following options will be canvassed 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.

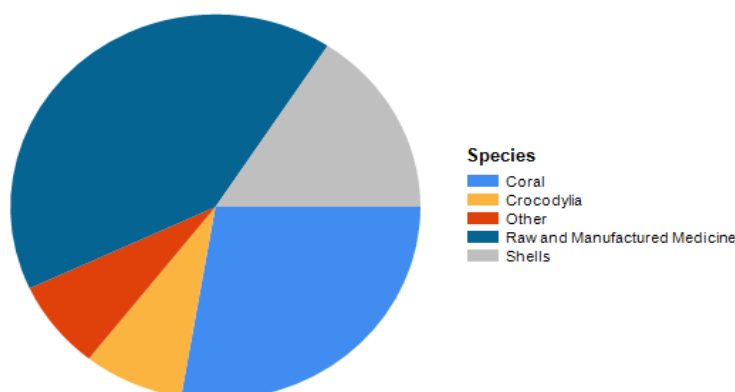
36. Both Option 1 and 2 would clarify the definition of PHE in the TIES Act to ensure the exemption is being applied in the way it is intended to be. Option 2 is different to Option 1 in that it would require enquiry into legal acquisition, and would also require the item being traded to be worn or carried or included in personal baggage, or as part of a household move.

37. DOC is exploring these two options separately because they require different levels of enquiry by border officials, and separating the options clearly demonstrates the varying levels of restriction that could be imposed. While both options include “non-commercial purposes”, Option 2 is an extension that requires a higher level of enquiry at the border. DOC sees Option 1 as a minimum standard, but is seeking input as to how restrictive any PHE exemption should become, with increasing restriction meaning increasing complexity for frontline staff. New Zealand’s international obligations will also be taken into account.
38. Both Option 1 and Option 2 would reduce the number of items considered to be PHE, resulting in more items being subject to permitting requirements. Option 2 would result in fewer items being defined as PHE, increasing the number of items requiring permits compared to Option 1.

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

39. Resolution 13.7 provides guidance on implementing the PHE exemption. Part of Resolution 13.7 urges Parties to implement quantitative limits for certain Appendix II species. This enables people to import a limited quantity of certain species which are PHE acquired when overseas without permits.
40. The TIES Act does not provide for the quantitative limits listed in Resolution 13.7 and requires a permit to import any of those species to New Zealand. This leads to specimens of the species listed in Resolution 13.7 being seized at New Zealand’s border if not accompanied by a permit.
41. Considerable amounts of Appendix II CITES specimens are seized at New Zealand’s border. This takes up operational resources in circumstances where the Conference of Parties recommends that permits are not required. The majority of specimens seized at New Zealand’s border are hard corals, giant clams and crocodylian (alligators, crocodiles, gharials, caimans) species. Figure 1 shows the categories of seizures and surrenders of Appendix I and II species.

Figure 1: Categories of seizures and surrenders of Appendix I and II species (averaged across 2007-2017)



42. Figure 1 shows that between 2007 and 2017, shells and crocodylia made up around a quarter of all seizures of Appendix I and Appendix II species.

Options to be canvassed in the Discussion Document.

43. The following options will be canvassed in the Discussion Document:
- 43.1. Option 1 – Implement some or all of the quantitative limits listed in Resolution 13.7 for caviar of sturgeon, rainsticks of Cactaceae, crocodylia, Queen conch shells, seahorses, giant clam shells and agarwood.
- 43.2. Option 2 – Allow some types and/or amount of coral to be imported into New Zealand under a PHE exemption
- Option 2a – Allow coral fragments to be imported into New Zealand with a PHE exemption
 - 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
44. These two options are not mutually exclusive and a combination of them could be implemented. Both Option 1 and 2 would decrease the number of specimens being seized at the New Zealand's border. Option 1 would not provide for an exemption for corals, which are a substantial proportion of specimens seized at the New Zealand border.
45. I wish to canvas public views on whether we should implement the CITES limits (Option 1, Resolution 13.7), or ones that are specific to New Zealand.

Technical issues with permits

46. The TIES Act does not allow for minor technical issues with permits. Permits with small errors or permits not presented at the right time due to unforeseen circumstances, are invalid under the TIES Act. These specimens are seized or surrendered, and ownership is forfeited to the Crown. These specimens are subject to the same disposal discretion as all other illegally traded specimens.
47. DOC considers that this strict regime does not always further the purpose of the TIES Act and can unnecessarily penalise importers trying to follow the correct process. Penalising importers that have gone through the correct process, but have an invalid permit due to circumstances outside their control, does not contribute to the managed international trade of CITES species.

Option to be canvassed in the Discussion Document

48. To address this problem the Discussion Document asks for feedback on two proposed changes to the TIES Act:

- Enable seized items to be returned if permits have a minor technical error outside of the importers' control
 - Enable replacement permits from overseas management authorities
49. These two proposed changes could be implemented together, and I wish to canvas views on both.
50. This will allow DOC to accept permits that have minor errors and allow for a replacement permit to be produced in circumstances that meet specific criteria. This will enable importers with minor errors on their permits for reasons out of their control to have their items returned to them.

Cost recovery

51. The TIES Act does not enable DOC to cost recover for two activities that are currently being funded from DOC baseline funding:
- Reviewing product inventories of a commercial nature prior to import from 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, such as traditional Asian medicines containing artificially propagated Appendix I species and hunting trophies.
52. These two functions require DOC CITES Officers to spend between two and eight hours a week on risk screening commercial consignments, with an approximate cost of \$30-\$35,000 per annum. There is currently authority for DOC to cost recover for some of its work administering the TIES Act, for example providing CITES permits for people either importing or exporting CITES listed specimens. However, it does not allow for cost recovery of the two aforementioned activities. If DOC could cost recover, the resources could be spent on other high risk activities.

Option to be canvassed in the Discussion Document

53. To address this, the Discussion Document asks for feedback on a cost recovery proposal which will:
- Cost recover for reviewing product inventories for private commercial importers, and
 - Cost recover for risk screening consignments at the border.
54. This proposal would allow DOC to cost recover for a service it currently provides to commercial importers for free. It would also enable DOC to cost recover for risk screening mostly commercial consignments at the border. Properly resourcing this function would allow DOC to expand risk screening of

commercial consignments, decreasing the risk of endangered species specimens being imported illegally or without proper permits.

Consultation

55. The Ministry for Primary Industries, Te Arawhiti, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, New Zealand Customs Service, Ministry of Culture and Heritage, Ministry of Business, Innovation and Employment, and the Treasury have been consulted. The Department of Prime Minister and Cabinet have been informed.
56. DOC has had preliminary discussions with prominent Māori taonga art practitioners, who have asked for further dialogue. DOC has also been in contact with Toi Māori Aotearoa, and will be working with them to design a process that considers cultural use of endangered species materials.

Financial Implications

57. There are no immediate financial implications as a result of this paper. There may be financial impacts as a result of amendments to the TIES Act recommend as a result of the review. The options with the most significant increase in costs would be to regulate the sale of elephant ivory in New Zealand. As a regulatory system is not currently in place to track or monitor the sale of elephant ivory in New Zealand, a new regulatory system would need to be set up, including additional staff, audit and IT systems.
58. Costs associated with other proposed options are modest. In the majority of cases, increased costs would mostly result from additional border official training, outreach and staff costs. Detailed costing of the options will be the subject of my next Cabinet paper.

Legislative Implications

59. There are no legislative implications as a result of the proposals in this paper. I will report back to Cabinet with proposed amendments to the TIES Act following public consultation. The TIES Act is currently on the legislative agenda as Category 5. I am looking to introduce an Amendment Bill early next year, with legislation passed in mid-2020.

Impact Analysis

60. The Discussion Document substitutes for a Regulatory Impact Assessment. The Department of Conservation and the Ministry for Primary Industries have reviewed the Discussion Document and confirm that it is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to support subsequent decisions.

Human Rights

61. The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications and disability perspective

62. There are no gender or disability implications in this paper.

Publicity

63. I propose to publish the Discussion Document, subject to minor edits and design changes, agreed by Cabinet. I will also publicise the release of the Discussion Document.

Proactive Release

64. I intend to proactively release this paper within 30 days of Cabinet making a final decision.

Recommendations

The Minister of Conservation recommends that the Committee:

1. **note** that the Trade in Endangered Species Act 1989 (TIES Act) is on the legislative programme for 2019 as Category 5 (drafting instructions to PCO within the year);
2. **note** that the Minister of Conservation intends to release a public Discussion Document to support the review of the TIES Act;
3. **note** that the public Discussion Document will cover the following policy areas:
 - 3.1. The trade in elephant ivory
 - 3.2. Movement of taonga across international borders
 - 3.3. Personal and household effects
 - 3.4. Technical issues with permits
 - 3.5. Cost recovery.
4. **agree** to publish the public Discussion Document to support the review of the TIES Act;
5. **agree** that minor edits and design changes can be made prior to publication; and
6. **note** that the Minister of Conservation will report back to Cabinet with recommended amendments to the TIES Act following public consultation.

Authorised for lodgement

Hon Eugenie Sage

Minister of Conservation