



the Jane Goodall Institute New Zealand

Submission on Review of the Trade In Endangered Species Act 1989 Discussion Document September 2019.

**Review of the Trade in Endangered Species Act
Department of Conservation
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NEW ZEALAND**

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Thank you for the opportunity to make this submission in response to the Review of the Trade In Endangered Species Act 1989 Discussion Document, September 2019 (DOC Discussion Document).

This submission focuses on Section 3 of the DOC Discussion Document and provides comment on Sections 1,2,4-8. This submission is set out as follows:

Section 1 - Objectives and criteria

Section 2 - CITES

Section 3 - Trade in elephant ivory:

- Background & Overview
- Mandate to close domestic ivory market
- Domestic ivory trade
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- Correlation: Ivory trade & illegal killing of elephants
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Section 1 - Objectives and criteria

The DOC Discussion Document proposing a Review of the Trade In Endangered Species Act 1989 (TIES Act) is welcomed. It is almost 30 years since New Zealand became a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the TIES Act came into force (1 June 1989). Significant changes have occurred during this time, including but not limited to:

- increased global connectivity (movement of goods and people);
- increased severity and complexity of the global illegal wildlife trade;
- evolution of international agreements, including CITES and IUCN, to better cater for shifts in the nature and scale of illegal trade;
- widespread and high level recognition of the positive cumulative effects of international cooperation and action needed to combat global illegal trade;
- increased number of species listed in CITES Appendices (roughly 5,800 species of animals and 30,000 species of plantsⁱ);
- significant increase in the seizures of CITES listed species at New Zealand's border;
- unprecedented poaching and decline of elephant and rhinoceros populations;
- more than 1,000 wildlife rangers have lost their lives in 10 years;
- increased number of CITES parties (and New Zealand international trade partners) implementing, or moving to implement, ivory trade bans;
- the publication of the inaugural World Wildlife Crime Report UNODC, 2016;ⁱⁱ
- the publication of IPBES Global Assessment Report on Biodiversity and Ecosystems, 2019;
- 2030 Agenda for Sustainable Development (adopted 2015) and United Nations Sustainable Development Goals.

The DOC Discussion Document notes a number of objectives that the review will seek to meet along with a list of criteria to be used when assessing the options for each policy area under review.

We encourage DOC to also consider objectives and criteria that focus on:

- enabling flexibility such that legislation can respond effectively and efficiently to changes in legal and illegal wildlife trade patterns and trends;
- enabling flexibility such that legislation can respond effectively and efficiently to changes to CITES Resolutions and Decisions;
- enabling a clear, effective and efficient process for New Zealand to put in place 'stricter domestic measures,' as appropriate;
- enabling a clear, effective and efficient process for New Zealand to put in place domestic trade regulations governing non-native species listed on CITES Appendices, as appropriate;
- recovering the actual implementation costs of legal trade from those undertaking trade, particularly where trade is for commercial purposes;
- recovering the actual costs associated with illegal trade from those undertaking illegal trade;
- ensuring Enforcement Officers have appropriate enforcement tools available;
- the prevention and deterrence of illegal trade;
- increased public awareness and demand reduction.

Section 2 – CITES

The DOC Discussion Document notes that *"The number of surrenders and seizures of CITES specimens without permits, increased from 2,593 in 2013, to 6,165 in 2017. This count includes specimens held by visitors travelling to New Zealand, New Zealanders returning from overseas travel, household moves and commercial importations. In 2017, 5,902 of the total 6,165 recorded were seized or surrendered from airport and cruise ship (port) passengers. The increases in surrenders and seizures reflects the stricter application of the TIES Act, as well as the increases in tourism to New Zealand and New Zealanders travelling overseas."*

According to data supplied by Department of Conservation, seizures of threatened and endangered wildlife at New Zealand's border have increased steadily from 2,268 seizures in 2011, to over 9,078 seizures in 2017.ⁱⁱⁱ It is important to note that each seizure may contain one or more item. This is an alarming 300 per cent increase in seizure incidents of internationally protected species at our border over the last seven years. Whether intentional or inadvertent infractions, each seizure contributes directly to the international illegal trade in wildlife. It is important to recall that seizures at the border are the 'ambulance at the bottom of the cliff' for species endangered and threatened by international trade.

Therefore, we encourage DOC to develop and implement non-regulatory methods as part of the TIES Act Review for targeted approaches to raise awareness and to reduce demand, with a view to prevent illegal trade.

In this regard, we encourage DOC to look thoroughly at the seizure data to decipher the species, products, main countries of export and travel context, with a view to developing such non-regulatory methods.

For example, 2017 seizure data^{iv} clearly illustrate those species and products most commonly seized and the country of export (see Table below). Data show that 95% of seizures occur at airports, 2% at the International Mail Centre and 3% at Ports. Of the 8,578 airport seizures in 2017, 78% occurred at Auckland airport, with 8%, 5% and 4% at Christchurch, Wellington and Queenstown airports respectively.

2017 PRODUCTS SEIZED & SOURCE^v

Product Seized	Number of Seizures	Observation	Country of Export
Corals and shells	Almost 6,000		Largely from the Cook Islands, Fiji, Australia, Tonga, Vanuatu, Indonesia, Samoa, Niue, French Polynesia and Indonesia.
Meat	>1,000	Mostly crocodile and alligator.	Australia (crocodile) and United States (alligator).
Medicine	>700 Pills, potions, ointments and plasters.	Contain a range of species including crocodile, orchid, costus (plant), primates, bears, leopard and turtles.	Largely from China. Also, from countries including Singapore, Australia and Malaysia.
Roots	>700	Mostly American Ginseng and also tropical tree ferns and gastrodia (orchid).	Largely from China. Also, from countries including the United States, Hong Kong, Malaysia and Canada.

2016 data^{vi} indicate that the percentage of seizures according to immigration status were as follows: New Zealand Residents (34%), New Zealand Citizens (33%) and Visitors (31%). However, it should be noted that where immigration status is not known, this is recorded by default as NZ Resident.

With such information readily available, we encourage DOC to develop a streamlined approach for raising awareness and reducing demand with the aim of preventing illegal trade. A further matter to consider is the IATA membership status of airlines operating in New Zealand and the implementation of the IATA Resolution on Illegal Trade in Wildlife,^{vii} the MOU between CITES and IATA^{viii} and the United for Wildlife Transport Taskforce Buckingham Palace Declaration.^{ix}

In addition to aiming to reduce the overall volume of illegal trade at our border, we encourage DOC to also place priority on deterring and preventing illegal trade of species listed in CITES Appendix I. Appendix I species are threatened with extinction and are identified as the most endangered among CITES-listed animals and plants, hence, CITES prohibits international trade in specimens of these species except in exceptional cases.^x Specimens of Appendix I species that are seized at New Zealand border include elephant, rhinoceros.

We also encourage DOC to review the adequacy of border control measures for the prevention and detection of illegal trade in CITES listed specimens with a particular focus on the International Mail Centre and Ports.

We would encourage DOC to assess the risk of non-detection at NZ border, particularly at the IMC and Ports. Seizure data show low seizure rates at the International Mail Centre and Ports. The reasons for this are not clear. Factors to consider should include the adequacy and limitations of current screening and detection techniques specifically for CITES listed species; the frequency of screening and inspections (including shipping containers for commercial items, household moves, air cargo and shipping cargo).

Another factor to consider are the strategies in place for Customs, Border Control, MPI and Biosecurity in terms of how well these cater for the effective detection of CITES listed species and the implementation of CITES obligations and TIES Act. These Strategic Documents tend to focus on increased speed of 'processing' of goods/passengers while catering for a projected increased movement of goods/passengers.

Section 3 – Trade in elephant ivory

The closure of all markets for elephant ivory, including New Zealand's domestic market, is readily justified by a strong ethical and moral argument. Anyone doubting this need only look to the growing body of scientific evidence that shows elephants are sentient animals, with the ability to feel, perceive, or be conscious, or to experience subjectivity.

Elephants are self-aware and empathetic. They are able to recognize themselves in a mirror - a test that to date has only been passed by elephants, bottlenose dolphins, great apes, and the magpie. Their capacity and ability to understand that they are their own entity, separate from others, is a crucial trait considered likely to underly both empathy and complex sociality.^{xi}

Elephants show both empathy and consolation and will reassure a distressed comrade by physically and vocally connecting with them. This trait was once thought to be unique to a select few primates, including humans. It has been shown that elephants mourn the loss of individuals and their behaviour patterns indicate feelings of grief, anxiety and depression.^{xii}

Elephants display conscious decision making and cooperation. They will wait for a partner in a task that requires two individuals for success – they have learned that not only is their partner necessary in the task, but that it is their partner's behaviour, as opposed to their mere presence, that is needed for success.

To not acknowledge and give full consideration to such scientific findings in the policy development process, would not reflect evidenced-based decision making. As our knowledge base evolves, so too must our practises and we are compelled to check our moral compass. The slaughter of these sentient non-humans for their body parts is an archaic practice, not reflective of what we understand about these magnificent animals. Further, continuing New Zealand's ivory trade is now grossly out of step with the rest of the world.

There an equally robust policy argument for the closure of New Zealand's trade in ivory. It is a complex argument. This is partly because the issue of illegal trade in elephant ivory is complex in itself, but also because a genuine analysis of the issue, the options and effects, requires us to take a most modern and global view – that is, beyond the national context and direct domestic costs and benefits upon which a traditional analysis would typically focus.

The issue compels us to fully consider the actual, potential and significant cumulative effects, both direct and indirect, at the national and international levels, and across the conservation, social and economic portfolios into the realms of sustainable development and international relations.

3.1 Background & Overview

Elephant and rhinoceros are our global flag ship species in the fight against illegal wildlife trade. They face an unprecedented crisis. They are being traded into extinction by a global demand for trinkets, carvings, ornaments and jewellery. 1 elephant is killed for its ivory every 25 minutes. 1 rhino is brutally killed for its horn every 8 hours. Less than 415,000 African elephant and 30,000 rhinoceros now remain. They are not only falling victim to the work of highly organized international criminal syndicates, but also to the seemingly innocuous purchase of tourist trinkets and the unwitting infractions by otherwise law-abiding citizens.

New Zealand is part of this global problem. Since the 1989 international ivory trade ban thousands of elephant ivory carvings, ivory pieces and tusks have been legally imported into New Zealand for non-commercial purposes. CITES data shows that over 60 per cent of these imported ivory items are not noted as pre-1976 (pre-Convention), instead noted as being sourced from the 'wild' or of 'unknown' source. Most of this ivory arrives from South Africa, Zimbabwe, Botswana, and some from Mozambique or it is re-exported from Great Britain and Australia.^{xiii}

In addition to such imports, between 2010 and 2016 (inclusive) a total of 4,692 ivory items - specifically ivory carvings, ivory pieces and tusks - were re-exported from New Zealand. Most of these items were noted as pre-Convention. Destination countries include Australia, Great Britain, United States.

Legal domestic markets, particularly unregulated domestic markets, present a real and demonstrable risk of enabling illegal product to be sold under the guise of legality. Further, they maintain a demand and monetary value for ivory and rhino horn and promote the social acceptability of these products, which in turn provides incentives for poaching and illegal trade.

Hence, maintaining domestic markets for ivory and rhino horn sends a confusing message that can undermine current and future conservation gains and runs counter-productive to the enormous efforts underway by governments, range states, conservation organisations and local communities who are investing significant resources into measures that specifically aim to stop the buying, stop the trafficking and stop the killing.

New Zealand's legal domestic market remains completely unregulated, without even the most basic requirements to verify the age, source or import history (i.e. provenance documentation) of the elephant ivory or rhino horn offered for sale.

Concerningly, as other nations move to close their domestic ivory markets, New Zealand's domestic ivory trade appears to be increasing. A recently completed 10 month survey of just two New Zealand auction houses found over 800 ivory items for sale, more than double the number found for sale at four New Zealand auction houses during a 9 month survey reported in 2016. A large proportion of the ivory items found for sale were entirely made of ivory, including carvings, okimonos and netsukes.^{xiv}

New Zealand is not immune to illegal trade. Ivory is seized at New Zealand's border and there have been two New Zealand convictions for illegal trade in ivory. These convictions include evidence that substantial amounts of illegally imported ivory passed through the New Zealand border undetected by authorities and that some of this ivory was subsequently sold on New Zealand's domestic market.

Enforcement Officers operate under an extremely limited legal mandate to instigate any investigation into ivory found on the domestic market. Hence, illegal trade within our domestic market runs a low risk of detection and an associated low risk of penalty. It is clear that our unregulated domestic trade perpetuates a real and present risk of further illegal trade.

These are precisely the reasons why Parties to CITES made an historic decision at 17th meeting of the Conference of the Parties (CoP17) in 2016 urging all Parties and non-Parties to close their domestic ivory markets where these are contributing to poaching or illegal trade, as a matter of urgency.

Further to this and following the recent decisions at the 18th meeting of the Conference of the Parties (CoP18) in 2019, Parties that have not closed their domestic ivory markets are requested to report on what measures they are taking to ensure that their domestic ivory markets are not contributing to poaching or illegal trade.

Commendably, New Zealand voted in support of such decisions. The United Kingdom, China, United States, France, the Netherlands, Taiwan, Singapore, Hong Kong, Australia, Belgium and Israel have either closed or are preparing to close their domestic ivory trades. However, New Zealand remains an outlier from the global response to this crisis and is falling short of its CITES commitments.

Hence, we congratulate the Department of Conservation for presenting the proposed options to ban New Zealand's domestic ivory trade and to further restrict imports. Such measures will help to ensure that our domestic ivory market is not contributing to poaching or illegal trade, confirm New Zealand as a world leader in conservation, and bring about positive conservation benefits including the cumulative effect of global market closures. As stated in the DOC Discussion Document, such measures will also emphasise that New Zealand considers the sale of ivory to be morally wrong.

The following provides specific submission points and information intended to constructively inform the current policy development process.

3.2 Mandate to close domestic ivory market

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

New Zealand is Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and a member on the CITES Standing Committee. CITES Resolution Conference 10.10^{xv} urges all parties to –

- (a) close all domestic ivory markets that contribute to illegal trade or to poaching (clause 3,4,5);^{xvi} and
- (b) regulate all unregulated domestic ivory markets (clause 6).^{xvii}

As noted above, following the recent decisions at the COP18 in 2019, *“Parties that have not closed their domestic markets for commercial trade in raw and worked ivory are requested to report to the Secretariat for consideration by the Standing Committee at its 73rd and 74th meetings on what measures they are taking to ensure that their domestic ivory markets are not contributing to poaching or illegal trade.”*^{xviii}

CITES is implemented in New Zealand through the Trade in Endangered Species Act 1989 (TIES Act). The object of the Act is *“to enable New Zealand to fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and to promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species.”*

According to the Minister of Conservation between 2013 and 2017 a total of 33 illegal seizures of elephant ivory (incidents not quantity) were made by New Zealand authorities.^{xix} Over the same period two convictions (2013 and 2015) for illegal ivory trading confirmed that tens of thousands of dollars-worth of illegally imported ivory entered New Zealand undetected at the

border. Court evidence substantiates that some of the illegally imported elephant ivory (African elephant ivory) was offered for sale and sold within New Zealand's unregulated domestic market.^{xx}

The continuing lack of domestic trade regulation in New Zealand appears to reflect historical assumptions, including that:

- ivory on New Zealand's domestic market has been legally obtained and legally imported; and
- any illegal items are prevented from entering New Zealand at the border.

While it is impossible to validate such assumptions under the current unregulated domestic trade arrangement, on the other hand, court evidence has proved both assumptions to be false.

New Zealand's domestic trade in elephant ivory is unregulated, with no checks and balances in place to prevent or reduce illegal trade. Further, New Zealand's domestic trade in elephant ivory contributes to illegal trade. Hence, CITES Resolution Conference 10.10 clearly applies to New Zealand.

New Zealand's current approach therefore is inconsistent with CITES Resolution Conference 10.10 and does not achieve the Object of the Trade in Endangered Species Act 1989 (TIES Act).

International Union for Conservation of Nature (IUCN)

New Zealand is a Member State of the International Union for Conservation of Nature (IUCN). IUCN Motion 007 was adopted by the World Conservation Congress (2016) which *"urges the governments of countries in which there is a legal domestic market for elephant ivory, or any domestic commerce in elephant ivory, to make all necessary legislative and regulatory efforts to close their domestic markets for commercial trade in raw or worked elephant ivory."*^{xxi}

New Zealand's current approach is inconsistent with IUCN Motion 007 adopted by the World Conservation Congress (2016).

3.3 Domestic ivory trade

It should be noted that the DOC Discussion Document states that *"A 2016 report by the International Fund for Animal Welfare (IFAW) investigated of the nature of the auction house trade in elephant ivory and rhinoceros horn in Australia and New Zealand. The report found over a nine month period, 363 elephant ivory items for sale across 22 auction houses."*

The above statement is incorrect. The report found over a nine month period, 363 elephant ivory items for sale at four New Zealand auction houses, across 22 auctions.

The following information is provided with a view to assist in building a more thorough picture of the New Zealand domestic ivory trade.

Size, Types of Items, Trend

The ivory trade in New Zealand is completely unregulated, with no requirement to verify an item's legal status, age, source or import history. In 2016 the results of a nine-month investigation into the auction house trade in ivory and rhinoceros horn in Australia and New Zealand were presented in the International Fund for Animal Welfare's "Under the Hammer" Report.^{xxii}

A total of 2,772 ivory items were found for sale at 175 auctions in 21 auction houses in Australia and New Zealand. These included carvings, figures, jewellery, walking sticks, billiard cues, picture frames and ivory handled knives, as well as raw and carved tusks. Only 8% of the catalogue listings for ivory lots included comments on provenance, including referencing estates or collections, retail and purchase dates, purchase locations, and previous auction information.

The Report showed hundreds of ivory items were offered for sale at four auction houses in New Zealand without any documentation verifying their age or source. More than 60% of the ivory found on New Zealand's domestic market were entirely made of ivory, including carvings, figures, ornaments, jewellery and tusks.

A recently completed 10 month survey of just two New Zealand auction houses found over 800 ivory items for sale, more than double the number found for sale at four New Zealand auction houses during the 9 month survey reported in 2016. A large proportion of the ivory items found for sale were entirely made of ivory, including carvings, okimonos and netsukes. The vast majority of the items were offered for sale with no accompanying documentation to verify their provenance (age, source or import history).^{xxiii}

As the table below illustrates, it appears that the frequency of auctions offering ivory for sale, the number of lots containing ivory and the number of ivory items for sale, have all increased substantially since 2016.

OBSERVATIONS – New Zealand Domestic Ivory Market	Number of Auctions where ivory was offered for sale	Number of Lots Containing Ivory	Number of Ivory Items
2019 Survey – Two Auction Houses ¹			
10-month survey (October 2018 - July 2019)	40	606	803
<i>Extrapolated to 12 months</i>	48	727	964
2016 Survey – Four Auction Houses ²			
9-month survey (October 2014 - June 2015)	22	285	363
<i>Extrapolated to 12 months</i>	29	380	484
% Difference – 2016 to 2019 <i>Based on extrapolated 12 months data</i>	64%	91%	99%

¹ Gordon Consulting, New Zealand.

² International Fund For Animal Welfare (IFAW) (2016) "Under the Hammer – Are Auction Houses in Australia and New Zealand Contributing to the Demise of Elephants and Rhinos?"

It is of concern that New Zealand's unregulated domestic ivory trade, with the inherent problems it presents, appears to have increased substantially. With the progressive closure of domestic ivory markets around the world, all nations, including New Zealand, must remain vigilant and proactively guard against potential shifts in illegal trade to areas with lax or no regulation.^{xxiv}

Of course, the market observations presented here are limited to only those auction houses observed and therefore does not include any ivory trade that may be occurring at other outlets or other auction houses. Anecdotal evidence indicates that ivory is also traded in New Zealand via second hand shops, bric-a-brac stores and markets. Further, it may be possible that ivory items are sold prior to being listed in auction house catalogues, hence, any such 'behind-the-scene' transactions are not readily observable and cannot be represented here.

The images below illustrate the types of ivory items typically found on the New Zealand market. The images are of actual elephant ivory items found on New Zealand's domestic market with no indication of age or source or other provenance information. The images are sourced from the internet and are provided here for educational purposes only.

Images: Examples of elephant ivory on New Zealand domestic market 2018 with no provenance information.



Provenance Documentation, Age and Source

Ivory is notoriously difficult to accurately date from a visual assessment or images alone. Distinguishing between 'old', 'new', legal or illegally sourced ivory is practically impossible without scientific testing (e.g. Carbon Dating) or provenance documentation.

New Zealand auction houses rarely provide any statement, let alone any verifiable evidence, as to the age or source of the ivory they sell or note the name or history of the artist that produced the item. Often the ivory offered for sale is simply described as 'old' or 'antique' or 'vintage'.

New Zealand auction houses have commented publicly that they deal in 'old' ivory and are operating within the law.^{xxv} Auction house personnel have explained that they can tell the age of an ivory item due to their years of experience; that the ivory they sell is collected from various sources including estate sales and second hand shops within New Zealand; that artist signatures on ivory items indicate a 'finer example' and will typically command a higher price. However, the same auction house personnel have also commented that signatures are not necessarily related to a particular period or date and that research into such matters is rarely undertaken.^{xxvi}

It is important to note that should an auction house make a statement as to the age or source of the ivory for sale, some auction house policies and terms and conditions absolve the auction house and the vendor from any liability for errors in the descriptions provided or for the correctness of any statement as to the authorship, origin, date, age, attribution, genuineness, or provenance of any lot. Any statements provided are 'statements of opinion' and are 'not to be relied upon as statements of representations of fact'. Potential buyers are required to 'satisfy themselves by inspection or otherwise' as to such matters.^{xxvii}

New Zealand auction houses can command a 15 to 35 per cent premium plus tax on the hammer price of every lot sold via vendor commission and buyer premiums.^{xxviii}

It is of concern that no measures are in place for the verification of the provenance and legal status of ivory found on New Zealand's domestic market and that no accountability for such matters rest with either the vendor or the trader.

Domestic Trade Investigations

Numerous ivory items have been brought to the attention of the Department of Conservation (DOC) as items that may require investigation in terms of their legal status and provenance (age, source, import history).^{xxix} Such ivory items tend to be entirely made of ivory, typically carvings and figures, with no information on the age or source (or other provenance information) and where there are:

- (a) multiple items that appear to be identical within the same lot; and/or
- (b) multiple items that appear to be identical across several lots; and/or
- (d) bags of items that appear to be identical; and/or
- (e) multiple items that appear to be identical across several auction houses over a similar time frame; and/or
- (f) other factors.

In order to effectively investigate any ivory item offered for sale on New Zealand's domestic market, it is understood that an Enforcement Officer must first hold reasonable grounds to believe it has been illegally imported under the Trade in Endangered Species Act.

With no domestic trade regulations in place, it is difficult to see on what grounds an investigation could be instigated as there is little, if anything, to assist an Enforcement Officer to substantiate 'reasonable grounds'. In practice, it appears that an investigation could realistically only be instigated should an item be found at the border without the appropriate CITES documentation. This situation is exemplified in the following response from the Department of Conservation with regard to multiple ivory carvings brought to their attention:

"Thank you for sending through the auction house listings for elephant ivory. As you noted the domestic trade in elephant ivory is not regulated, however the import and export of elephant ivory is subject to the provisions of the Trade in Endangered Species Act 1989. In order investigate the illegal import (or export) of elephant ivory, any officer is required to have reasonable grounds to believe an offence has been committed. These reasonable grounds are requisite to requiring domestic traders in ivory to produce documentation, and other evidence, related to their trade.

With regard to the items you have highlighted below unfortunately there is nothing, based on my experience, to suggest the items have been illegally imported. The items are of types commonly traded (and imported) legally, and there are no other factors that suggest to me they have been illegally imported." ^{xxx}

Other responses from the Department of Conservation with regard to other ivory carvings brought to their attention include:

“the Department is now satisfied that the specimens were legally acquired, having been accumulated from local estate sales and second-hand/op shops.”^{xxxix}

“the Department is now satisfied that the specimens were legally acquired.”^{xxxix}

It is not immediately clear as to how the Department is satisfied that the items were legally acquired. However, it is clear that with the current unregulated domestic ivory market, potential investigations are easily stifled or will likely go-around-in-circles.

This situation does not provide adequate tools to Enforcement Officers, hindering their efforts, while providing any would-be illegal traders the opportunity to operate with relative impunity.

The gravity of this situation becomes even more concerning considering comments recently received from a licenced antiques dealer and ex-customs officer:^{xxxix}

“I have been a licensed antique dealer for almost 14 years, and I absolutely support the immediate ban on the trade in ivory and a ban on products made from rhino horn. There is no place in NZ for this support of the wholesale slaughter of animals for profit. And trust me, the profit is huge.”

“As an antique dealer, there is no way of assessing an items age without expensive scientific analysis, and no dealer or auction house in NZ undertakes this level of testing. Trade in new horn and ivory products masquerading as ‘antique’ is rampant.”

“Customs Officers also do not have the required skill to identify these products at the border, apart from the occasional fluke interceptions. I was a Customs Officer before being an antiques dealer. I know how hard it is, even with all my experience from being raised in the antique world through my family business”

“The small number of big dealers would be affected, but not the average NZ consumer. And the big dealers know that what they are doing is illegal”.

“The domestic trade in ivory and products made from rhino horn should be stopped immediately.”

3.4 Seizure data and illegal trade

The following information is provided with a view to assist in building a more thorough picture of the illegal trade in ivory in New Zealand.

The DOC Discussion Document notes that over the 10-year time period, 2008-2017 (inclusive), *“124 ivory items were seized and surrendered at the border for not having a permit or a pre-Convention certificate. In the majority of these cases, importers were reportedly unaware of New Zealand’s permit and pre-Convention certificate requirements.”*

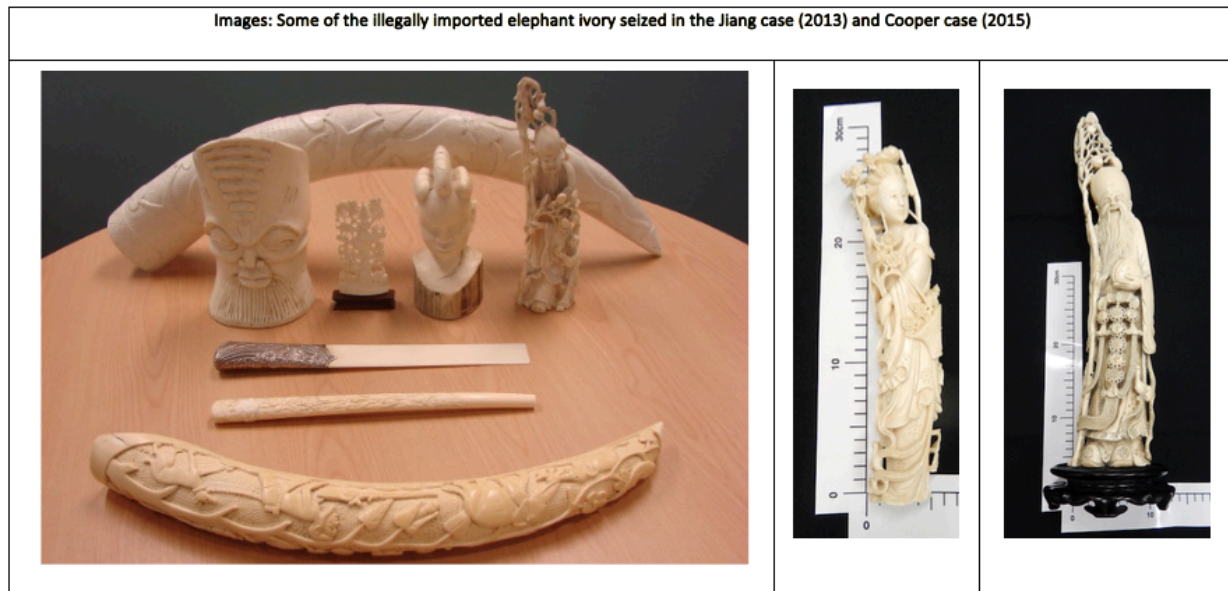
It is worthy of note that other elephant specimens are also been seized by authorities. For example, data supplied from Department of Conservation^{xxxix} indicates that between 2010 and 2016 (inclusive) authorities seized a total of 82 ivory carvings, ivory pieces and tusks, along with a further 54 items including hair, powder, bone, teeth, leather, feet and medicine.

In addition to seizures, illegal trade in ivory in New Zealand has been well documented for two New Zealand convictions for illegal trading. These two convictions directly link New Zealand shores to illegal trading in France, United Kingdom, United States, and China.^{xxxix}

Of particular concern is the 2015 conviction involving the illegal importation of African elephant ivory (as determined by DNA analysis) that was subsequently sold on New Zealand’s domestic market.^{xxxix} Several ivory items were confiscated by authorities, however court evidence of monetary transactions and international courier records confirmed that at least NZD\$18,000 worth of ivory and 20 ivory items (and potentially an additional 66 ivory items) were illegally imported into New Zealand without detection at our border. The location of all of these illegally imported ivory items remains unclear, but it is conceivable that they were traded on New Zealand’s unregulated domestic ivory market under the guise of legality.

As with other prohibited or restricted goods, ivory seizures at our border can only ever represent a portion of the true extent of the illegal trade. The 2015 conviction case illustrated that many ivory products illegally entered New Zealand undetected at the

border. With no regulations governing the domestic trade in ivory a person that manages to illegally import ivory into New Zealand may offer it for sale on the domestic market and operate with relative impunity.



Images supplied from Department of Conservation.

3.5 International ivory trade

Ivory Imports

The DOC Discussion Document notes that, *“the majority of ivory items legally entering New Zealand are classified as a Personal Household Effect (PHE) and are pre-Convention, which means the ivory was acquired, taken from the wild or born in captivity prior to the species being listed as protected under the Convention in 1975/763. Common examples of these items are pianos, bagpipes, chess sets, Mah-jong sets and small carvings.”*

The following comments and observations are provided with a view to assist in building a more thorough picture of ivory importation into New Zealand and are based on import data sourced from the CITES Database (data 1990 – 2016) and data supplied via OIA from the Department of Conservation (data 2017-2018). Numbers reported are based on “Importer Reported Quantity” unless otherwise stated.

The data indicate that since the 1989 ban thousands (approximately 2,140 items) of elephant ivory items have been legally imported into New Zealand, mostly for non-commercial purposes (personal use and hunting). These items are noted in the data specifically as ‘ivory carvings’, ‘ivory pieces’, ‘ivory jewellery’ and ‘tusks’. These numbers exclude approximately 14 records for ‘Piano keys’ and ‘Sets of Piano Keys’. It should be noted that the data do not contain any readily identifiable records for ‘bagpipes’, ‘chess sets’, or ‘Mah-jong sets’.

Over 60 per cent (approximately 1,330 items) of the imported ivory items are not noted as pre-1976 (pre-Convention), instead these are noted as sourced from the ‘wild’ or of ‘unknown’ source. It is understood that ivory that is not noted as pre-Convention has been taken from elephants killed since 1976, that is, taken from elephants killed within the last 43 years.

Most of this ‘wild’ and ‘unknown’ source ivory arrives from South Africa, Zimbabwe, Botswana, some from Mozambique and some is re-exported from Great Britain and Australia. Almost all (approximately 97%) of the ivory items not noted as pre-Convention were imported specifically for personal purposes and hunting.

There are no restrictions placed on the use of ivory that is legally imported into New Zealand. It is important to consider then that any ivory imported specifically for personal use (or hunting), including ivory not noted as pre-Convention, could be offered for sale within New Zealand’s domestic market. Allowing the sale of ivory imported specifically for non-commercial purposes would seem contrary to the intent of the 1989 international ivory trade ban.

Further, it is conceivable that ivory from elephants killed since 1976 may be sold on the New Zealand market, a matter that is likely to be highly disconcerting to unsuspecting public in New Zealand, and again would seem contrary to the intent of the 1989 international ivory trade ban.

The DOC Discussion Document notes that, “between 2008 and 2017, there were 215 permits issued to import elephant ivory into New Zealand. The vast majority of items imported were pre-Convention and for personal use. The number of ivory imports permitted over the last decade is broken down by year in Table 2 below.”

Table 2-Trend in number of CITES permits for ivory being imported over the last decade

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Permits	13	5	23	5	3	18	38	17	23	70	215
Number of items	45	10	50	5	4	19	76	17	60	118	404

Source: DOC Discussion Document

The following comments and observations are provided with a view for build a more thorough picture of ivory importation into New Zealand and are based on import data sourced from the CITES Database (data 1990 – 2016) and data supplied via OIA from the Department of Conservation (data 2017-2018). Numbers reported are based on “Importer Reported Quantity” unless otherwise stated.

Between 2008 – 2017 (inclusive) the data indicate a total of approximately 863 ivory items were imported for personal, hunting and trade purposes. Excluding piano keys, the total is approximately 657 ivory items. These numbers appear to differ from those reported in the Discussion Document. It may be that these discrepancies are due to using different data sets, however, it would be useful to clarify why these differences exist so as to ensure the most accurate and reliable data is used to inform current policy development.

Understanding that the majority of the imports were for personal purposes, it would also be useful to clarify and consider the circumstances under which these imports were made. For example, clarify if these were Personal and Household Effect exemptions, part of household moves, items on a person at the time of travel, or posted or couriered from overseas via the International Mail Centre, Port or Air cargo; and to clarify whether these items were imported by NZ Citizens, New Zealand Residents or visitors to New Zealand.

The “Exporter Reported Quantity” and “Importer Reported Quantity” differ greatly in the dataset. For example, over the 2008 – 2017 (inclusive) period, the “Importer Reported Quantity” is approximately 863 ivory items and the “Exporter Reported Quantity” is approximately 2,579 ivory items. While Importer and Exporter Reported Quantities can differ for a number of reasons (such as varying permit requirements of other countries or unused permits) it is not immediately clear as to why the difference that exists is so substantial. It would be useful to clarify why such a large difference exists, including identifying any permits that were issued but not used, so as to ensure the most accurate and reliable data is used to inform current policy development.

Ivory Re-Exports

Re-exports of ivory are not mentioned in the DOC Discussion Document. The following comments and observations are provided with a view for build a more thorough picture of ivory re-exports from New Zealand and are based on re-export data supplied via the Department of Conservation (data 1/1/2010 – 31/12/2016).

The data indicate that between the period 2010 – 2016 (inclusive) a total of 4,692 ivory items were re-exported from New Zealand. These items are noted specifically as ‘ivory carvings’, ‘ivory pieces’ and ‘tusks’. The majority of the ivory items were re-exported for personal purposes, some for Trade (99 items) and several for hunting purposes. The majority of the ivory items were noted as pre-Convention.

More than half the ivory items were re-exported to Australia and Great Britain, large proportions were re-exported to United States, Switzerland and Canada, with smaller proportions re-exported to Germany, Portugal and Papua New Guinea.

Understanding that the majority of the re-exports were for personal purposes and with a view to assist in informing current policy development, it would be useful to clarify the circumstances under which these re-exports were made. For example, whether these were part of household moves, items on a person at the time of travel, or posted or couriered overseas via the International Mail Centre, Port or Air cargo; and useful to clarify whether these items were re-exported by NZ Citizens, New Zealand Residents or visitors to New Zealand.

Further, it would be useful to clarify if any of the re-exported items recorded in the data are specifically Personal and Household Effects exemptions, which can be re-exported from New Zealand with no documentation required by New Zealand border officials.

It is important to consider that any ivory items re-exported from New Zealand specifically for personal purposes could conceivably be offered for sale at the country of import, unless domestic ivory trade restrictions are in place at the destination country.

Currently there are no measures in place to prevent or deter the future sale of ivory re-exported specifically for non-commercial purposes, which would seem contrary to the intent of the 1989 international ivory trade ban.

It is worthy of note that for the period 2010 – 2016, it appears that a substantially higher number of ivory items have been re-exported from New Zealand in comparison to the number of ivory items imported into New Zealand, as follows:

- 213 ivory items imported (DOC Discussion Document data)
- 4,293 ivory items re-exported (Data provide by Department of Conservation).

International Trade & International Collaboration

Australia, Great Britain and United States are amongst the countries most frequently connected to New Zealand's import and/or re-export of ivory.

The DOC Discussion Document notes that in *"September 2018, a Parliamentary Inquiry by the Australian Government recommended that Australia ban the domestic trade in elephant ivory and rhino horn. The Inquiry recommended a ban with exemptions largely based on the UK legislation. The recommendations noted that Australia could be facilitating the illegal trade in ivory through their domestic market. Australia is currently considering its response to the recommendations."*

Indeed, Australia formally announced at the CITES 18th Meeting of the Conference of Parties, the intention to close their domestic trade of elephant ivory and rhino horn and encouraged other nations to close domestic markets.^{xxxvii} The United States and United Kingdom have put in place legislation that greatly increases restrictions on their international and domestic ivory trades.

It is important then to consider the implications of New Zealand's currently unregulated domestic ivory market and continued import and re-export of ivory in the context of the considerable efforts of Australia, United States and the United Kingdom. There is clearly an opportunity for New Zealand to take actions consistent with those of Australia, United States and the United Kingdom, a collaborative measure that would effectively put an end to the ivory trade within a substantial proportion of Oceania.

3.6 Correlation: Ivory trade & illegal killing of elephants

In 1997 CITES agreed to down list elephants of Botswana, Namibia and Zimbabwe to Appendix II and sell stockpiles to Japan. This was followed by down listing of South Africa's elephants and sale to Japan and China (agreed to in 2007). The two sales were distinctly different. The first sale, was touted as a 'one-off' sale and was only to Japan. The second sale was not, by definition, a 'one-off sale' and included China as a consumer nation – a vastly different market (including in terms of size and socio-economic factors) to that of Japan.

Essentially, the second sale (a) illustrated that more sales were possible at the end of the 9 year moratorium on further sale proposals, (b) enabled a mechanism for illegal ivory to be mingled with legal ivory, (c) re-established acceptability of ivory as a product, (d) opened up a an extremely large and growing market within China (growing middle and upper middle class). Split-listing also created expectation of future sales and re-opening of ivory trade.

Overall, evidence shows that the Appendix II listings of specific elephant populations and related CITES approved international ivory sales have led to the increased poaching and severe decline of other elephant populations. Indeed, poachers appear now to have moved into Southern Africa.

Evidence for a relationship between illegal killing of elephants for ivory and the legal sale of ivory comes from analysis of two types of data: the number of illegally killed elephants and the amount of illegal ivory seized at points of the supply chain, both in relation to decisions taken by CITES to allow 'one-off' sales of government stockpiles from southern Africa. Analyses by statisticians working for MIKE (F. Underwood and R. Burn) found a gradual rise in PIKE from 2006 towards a peak in 2011.

However, in 2016 a new analysis of the same data by S. Hsiang and N. Sekar (independent scientists from the Universities of California, Berkeley, and Princeton) found instead there was a striking jump in PIKE that coincided with the SC57 decision, a clear indication of a response by poachers to the announcement of the ivory sale.^{xxxviii}

“International trade of ivory was banned in 1989, with global elephant poaching data collected by field researchers since 2003. A one-time legal sale of ivory stocks in 2008 was designed as an experiment, but its global impact has not been evaluated. We find that international announcement of the legal ivory sale corresponds with an abrupt ~66% increase in illegal ivory production across two continents, and a possible ten-fold increase in its trend. An estimated ~71% increase in ivory smuggling out of Africa corroborates this finding, while corresponding patterns are absent from natural mortality and alternative explanatory variables. These data suggest the widely documented recent increase in elephant poaching likely originated with the legal sale.” (Abstract)

A second line of evidence supports the Hsiang & Sekar conclusions. The data on ivory seizures collated by TRAFFIC under the Elephant Trade Information System (ETIS) showed a sharp – not gradual – increase in 2008 in the amount of ivory being moved in international illegal trade, in clear response to the opening up of a legal channel for ivory. The ETIS report to CoP16 (Bangkok, March 2013), observed that raw ivory transactions *“began to increase more sharply, especially from 2008 onwards”*, with an increase in large-sale seizures from 2009-2011, indicating the involvement of organized crime syndicates. The report concluded there was *“a progressively sharper and statistically significant increase in illicit ivory trade from 2008 onwards”*.

3.7 Effects of ivory trade bans

A growing body of evidence confirms that closing legal ivory markets is an effective tool for combatting illegal ivory trade and for reducing demand for ivory, ultimately reducing elephant poaching. Findings point to positive effects, including shrinking ivory markets and decreased market value for ivory, while illustrating a need for vigilance regarding shifts in trade and noting the difficulties associated with exemptions. For example, at the Seventieth meeting of the CITES Standing Committee a document submitted by Secretariat and prepared by Environmental Law Institute^{xxxix} notes with regard to the effects of ivory trade bans in China, Hong Kong SAR, and the United Kingdom, that:

“These announcements and bans have had impacts both domestically and internationally. Within each country, the legal ivory markets are shrinking. As not all of the bans have come fully into effect, legal retailers are liquidating their stock, leading to dramatic decreases in the price of elephant ivory. While declines in market value may suggest the effectiveness of the bans as binding tools, such bans still present new complex difficulties. For example, exceptions to bans still exist, especially for items incorporating ivory such as musical instruments. Without a full ban, there is still the potential for illegal ivory to be worked into seemingly legal pieces. The bans also have had the effect of shifting ivory markets to other countries, increasing the volume of sales in other countries despite the decrease in price.”

It is worthy of note that Trade Me in New Zealand implemented policies in September 2014 effectively banning the trade of elephant ivory and the trade of CITES Appendix I Listed species on their trading platform.^{xl} In making this decision, Trade Me notes, *“we’re doing this as it is the right thing to do. We’ve consulted with a lot of experts in this area, including advocacy groups and the Department of Conservation. This move is in line with international trends.”*

The efforts of Trade Me should be commended. Unfortunately, despite ample opportunity over the last 5 years, no other traders in New Zealand have followed suit. A potential effect of such voluntary policies is that ivory trade shifts to other outlets. As stated previously, survey information indicates that ivory trade at several auction houses in New Zealand has increased significantly since 2016.

3.8 Discussion Document Proposed Options

Domestic Ivory Trade: Options 1 – 3

We submit in support of a complete ban of the domestic commercial trade in elephant ivory, that would effectively:

Prohibit the domestic commercial trade in elephant ivory, with no exemptions.

However, should exemptions to a complete ban of the domestic commercial trade be required, we submit that any such exemptions must be limited and narrowly defined.

We could therefore support a ban of the domestic commercial trade in elephant ivory with limited and narrowly defined exemptions, that would effectively:

Prohibit the domestic commercial trade in raw and non-worked elephant ivory; and

Prohibit the domestic commercial trade in worked elephant ivory with limited and narrowly defined exemptions for worked ivory, as follows -

1 De Minimis ivory Pre-1947

An item consisting of or containing ivory is exempt from the prohibition if—

- (a) the item is pre-1947; and
- (b) all the ivory in the item is integral to it; and
- (c) the volume of ivory in the item is less than 10% of the total volume of the material of which the item is made; and
- (e) the ivory component is no more than 200g; and
- (e) is accompanied by provenance documentation.

2 Musical Instruments Pre-1975

An item consisting of or containing ivory is exempt from the prohibition if—

- (a) the item is a pre-1975 musical instrument,
- (b) the volume of ivory in the instrument is less than 20% of the total volume of the material of which the instrument is made, and
- (c) is accompanied by provenance documentation.

3 Portrait Miniatures Pre-1918

An item consisting of or containing ivory is exempt from the prohibition if—

- (a) the item is a pre-1918 portrait miniature with a surface area of no more than 320 cm², and
- (b) is accompanied by provenance documentation.

We do not support the adoption of the UK Ivory Act exemption for *“sales of ivory items between accredited museums”* proposed in the Discussion Document.

We support allowing for the non-commercial distribution of ivory and rhinoceros horn:

- for bonafide educational, scientific and law enforcement purposes;
- for bonafide educational, cultural, historical and artistic purposes to and between museums and art institutions;
- to legal beneficiaries.

We do not support the adoption of the UK Ivory Act exemption for *“the rarest and most important items of their type”* (or ‘items of outstanding artistic value and importance’) proposed in the Discussion Document.

We do not support any exemption(s) for items containing higher volumes of ivory.

Through the consultation process, stake holders may seek additional exemptions and/or seek to expand the scope of the 3 exemptions set out above (i.e. De Minimis ivory Pre-1947, Musical Instruments Pre-1975, Portrait Miniatures Pre-1918). While these will be important conversations in developing exemptions that are appropriate for the New Zealand context, we do not support allowing exemptions for any items containing a higher volume of ivory.

Items containing higher amounts of ivory are the main cause for concern for reasons including, but not limited to:

- it is notoriously difficult, if not impossible, to verify the age of such items without scientific testing;
- items consisting entirely or mostly of ivory – such as tusks and ivory carvings and figures, netsukes and okimonos and jewellery - fall within the category of items in high demand through illegal trade (including illegal trade in New Zealand);
- items consisting entirely or most of ivory perpetuate the demand for ivory and monetary value associated with ivory.

In addition, exemptions for items containing a higher volume of ivory would necessitate:

- the implementation of a complex government-based registration system for each individual ivory item and an Exemption Certificate process (as is required in the United States and the UK Ivory Act). Government would incur increased costs for a such a complex registration system.
- extremely high standards for Provenance Documentation, with an absolute requirement for documentation that definitively verifies the origin, source and age of the item including but not limited to historical letters, dateable photos, original sale or purchase receipts, wills, certificates of authenticity, CITES permits, radio-carbon dating analysis results.

Registered Trader System

We would support the introduction of a Registered Trader System only for the 3 exemptions set out above whereby the domestic commercial trade in exempted ivory could only be undertaken via a Registered Trader.

We recommend the following with regard to a Registered Trader system:

Traders should be required to meet specified criteria to qualify as a Registered Trader, including for example, current registration as a New Zealand Registered Auctioneer (under the Auctioneers Act 2013) or current membership with the Auctioneers Association of New Zealand Inc. or current membership with the New Zealand Antique Dealers Association.

Registered Trader approval should be granted by a Government Agency (e.g. Director-General of Conservation) and a list of Registered Traders should be readily available to the public (e.g. government website). An existing example of a similar application process and publicly available list is that of the Ministry of Business Innovation and Employment Registered Auctioneer process.

Such a Registered Trader system restricted to trade in only the 3 limited and narrowly defined exemptions set out above, would remove the need for a more resource intensive individual registration system for exempted items (such as the individual registration of items required under the UK Act).

Trade records should be maintained by Registered Traders and made available to Enforcement Officers (e.g. Endangered Species Officers under TIES Act) on request for inspection, or for regular audit, and submitted to government as Annual Trade Reports.

Such a system would require establishing basic processes such as a Registered Trader application and approval process, a compliance monitoring and the receipt of Annual Trade Reports. The associated costs should be recovered directly from Registered Traders, for example via annual Registration Fees and annual Trade Report Fees.

Provenance Information & Burden of Proof

We recommend that any trade in ivory items falling within the 3 exemption categories set out above must require that the exempted items are accompanied by provenance documentation that verifies the items age, source and import history. Provenance documentation requirements should be clearly set out in regulations and the burden of proof and liability should appropriately rest with the trader, owner and vendor.

Provenance documentation for the 3 exemption categories set out above could include, for example, a combination of the following:

- written appraisal by a current New Zealand Registered Auctioneer or current member of the Auctioneers Association of New Zealand Inc. or current member of the New Zealand Antique Dealers Association;
- an affidavit signed by the vendor;
- an affidavit signed by the Registered Trader; and
- documentation including, but not limited to, historical letters, dateable photos, original sale or purchase receipts, wills, certificates of authenticity, CITES permits.

The level of provenance documentation examples provided here is relatively low. This reflects the nature of the 3 exemptions set out above while appropriately assigning accountability and enabling traceability. As noted previously, any exemptions for items containing higher volumes of ivory would necessitate much higher standards for Provenance Documentation (e.g. Carbon Dating) and an individual registration system (such as Exemption Certificates required under the UK Ivory Act.)

We support the introduction of Offense Provisions for trade by any person not in compliance with the ban, and for non-compliance by Registered Traders with any Registered Trade system.

We support the introduction of Penalty Provisions, including Civil Sanctions (Infringement Fines) and Criminal Sanctions with limits set accordingly.

We support specifying that possession of ivory and obtaining an appraisal in itself is not an offense.

We support the introduction of Fees, for example for Trader Registration, Enforcement Officer Inspections or audits, and receipt of Trade Reports etc.

International Ivory Trade: Options 4 & 5

We submit in support of a complete ban on the import and re-export of elephant ivory.

Should exemptions to a complete ban on the import and re-export of elephant ivory be required, we submit that any such exemptions be limited and narrowly defined, as per the 3 exemptions set out above.

3.9 Other Specimens

Rhinoceros Horn

We submit in support of a complete ban on the domestic trade and import and re-export of rhinoceros horn to effectively:

Prohibit the domestic commercial trade in rhinoceros horn, with no exemptions.

Prohibit the import and re-export of rhinoceros horn, with no exemptions.

CITES Resolution Conference 9.14 (CoP17)^{xli} urges all parties to adopt and implement comprehensive legislation and enforcement controls, including internal trade restrictions and penalties aimed at reducing illegal trade in rhinoceros parts and derivatives, including any specimen that appears from an accompanying document, packaging, mark or label, or other circumstances, to be a rhinoceros part or derivative.

New Zealand's domestic trade in rhinoceros horn is unregulated, with no checks and balances in place to prevent or reduce illegal trade. Hence, CITES Resolution Conference 10.10 clearly applies to New Zealand. Rhinoceros horn items (raw/unworked and carved horn) have sold at New Zealand auction houses. The sale of a pair of raw, mounted rhinoceros horns with no provenance information for NZD\$38,500 is a notable example.^{xliii}

According to the Minister of Conservation^{xliii} between 2013 and 2017 a total of 3 illegal seizures of rhino horn (totalling 7 packets of medicine) were made by New Zealand authorities.

New Zealand's current approach is inconsistent with this important CITES Resolution and does not achieve the Object of the Trade in Endangered Species Act 1989 (TIES Act).

Hunting Trophies

The CITES database shows that between 2010 and 2018 (inclusive) 286 records exist for the importation of hunting trophies into New Zealand including lion, cougar, leopard, caracal, lynx, bobcat, hippo, elephant, zebra, wolf, bears. 59 of these records were for hunting trophies for Appendix I species. Appendix I species are threatened with extinction and are identified as the most endangered among CITES-listed animals and plants, hence, CITES prohibits international trade in specimens of these species except in exceptional cases.

With specific regard to elephants, for the period between 1989 and 2018 (inclusive) there exist 83 import records for hunting and trophies. The specimens include tusks, ivory carvings, trophies, leather, skin, bone pieces, trunks, skulls, feet, ears, tails, teeth and hair products.

While not covered in any detail in this submission, it is important to note that while proponents of trophy hunting tend to claim that trophy hunting provides both conservation benefits to wildlife and economic benefits with regard to GDP and local communities, extensive literature exists that demonstrates this is not the case.^{xliiv}

We strongly recommend a complete ban on the import of all specimens derived from hunting activities from all CITES Appendix I species, Elephants, Rhinoceros and African lions.

National and International Support

There exists substantial national and international support for New Zealand to close its ivory and rhinoceros horn trades. Support has been shown via various platforms since 2013, including:

- 'iWorry' March for Elephant and Rhino, Wellington (2013)
- Petition of Virginia Woolf to New Zealand Parliament (2014)^{xliv}
- Open Letter to New Zealand Government (2014)^{xlvi}
- the Jane Goodall Institute New Zealand 'No Domestic Trade' Open Letter to New Zealand Government (2018)^{xlvii}
- the Jane Goodall Institute New Zealand 'No Domestic Trade' Letter to Minister Sage (2018/2019)
- Global March for Elephant and Rhino 'No Domestic Trade' Letter to Minister Sage (2018/2019)
- the Jane Goodall Institute New Zealand 'No Domestic Trade' Submissions to TIES Act Review (2019)
- Global March for Elephant and Rhino 'No Domestic Trade' Submissions to TIES Act Review (2019).

3.10 Other Matters

Restricting Future Sale

DOC do not place restrictions on the future use of any CITES listed items imported legally into New Zealand, regardless of the purpose of import. CITES Appendix I species are the most endangered among CITES-listed animals and plants. They are threatened with extinction and CITES prohibits international trade in specimens of these species except when the purpose of the import is not commercial.

Therefore, we recommend that DOC implement measures to effectively prevent, or deter, the future commercial trade (domestic and international) of any CITES Appendix I listed species where these are legally imported into New Zealand for non-commercial purposes. It may be that such measures could be created within the CITES permitting procedures.

TIES Act s54 - Regulations

As noted in the DOC Discussion Document "*New Zealand's legislation does not currently regulate the sale of non-native endangered species within New Zealand*". However, TIES Act s54 allows the Governor-General from time to time, by Order in Council, to make regulations for a limited and specified number of purposes.^{xlviii}

To date, the only Regulations that have been created under s54 are the Trade in Endangered Species Regulations 1991 (SR 1991/274).^{xlix} These regulations relate to the non-commercial loan, donation and exchange of particular specimens between scientific institutions; the breeding or holding of parrots in captivity; the export and re-export of live birds; and includes registration requirements, record keeping requirements, and stipulate fees and offenses.

A case for the use of TIES Act s54 to make regulations governing the domestic trade in elephant ivory and rhinoceros horn has twice previously been put to the Department of Conservation. However, DOC has twice determined to withhold its legal opinion on this matter.^l

We encourage DOC to give full consideration to the ability to use TIES Act s54 to make regulations governing the domestic trade of ivory and rhinoceros horn. This may present a cost effective and expedient avenue for such measures, particularly at this time in the TIES Act Review process and given the urgency clearly stipulated within the relevant CITES Resolutions.

We further recommend that the scope of s54 be clarified (or widened) such that the Governor-General may from time to time, by Order in Council, make regulations for the purpose of regulating the domestic commercial trade of any specimen of non-native species listed in CITES Appendices.

We further recommend that DOC review the following matters set out within s54:

- the level of fines and penalties, to ensure these remain at an appropriate level commensurate to the offense;
- the level of fees to be paid in respect of any permit or certificate granted under the TIES Act, to ensure these are set at an appropriate level reflecting a user pays system.

TIES Act s53 - Schedules

Currently under TIES Act s 53 Schedules, *“the Governor-General may from time to time, by Order in Council,—*

(a) add any item to, omit any item from, or amend any item in Schedule 1 or Schedule 2 or Schedule 3:

(b) add any Part to, or omit any Part from, Schedule 1 or Schedule 2 or Schedule 3:

(c) revoke any such schedule and substitute a new schedule—

in order that those schedules may conform with the Convention as amended from time to time.”

CITES allows for Parties to put in place ‘stricter domestic measures’. For example, New Zealand currently has in place stricter domestic measures for Personal and Household Effects Exemptions.ⁱⁱ

Australia has in place stricter domestic measures, including the following:ⁱⁱⁱ

Species treated as though they are listed on Appendix I to CITES: Australia implements stricter domestic measures that treat African lions (*Panthera leo*), African elephants (*Loxodonta africana*) and all whales and dolphins (Cetacea) as though they are listed on Appendix I to CITES.

Appendix I personal items and hunting trophies: Australia does not permit personal imports or exports of species listed on Appendix I to CITES, including hunting trophies, unless they are demonstrated to be pre-Convention specimens and are accompanied by relevant pre-Convention certificates.

Rhinoceros specimens: The import or re-export of Appendix-II listed rhinoceros hunting trophies is not permitted. Radiocarbon dating is required to conclusively demonstrate the pre-Convention status of a rhinoceros horn specimen before Australia will issue a pre-Convention certificate.

Personal and household effects exemptions: Australia does not recognise personal and household effects exemptions for Appendix I specimens.

Appendix II specimens: Australia requires import permits for trade in species listed on Appendix II to CITES, except for items covered by personal and household effects exemptions.

It appears that should New Zealand choose to put in place stricter domestic measures for import, export and re-export of CITES listed species, a full review of the TIES Act is likely necessary to make the changes required.

It is important that New Zealand has in place mechanisms that enable changes to be made to the TIES Act Schedules in an effective and efficient manner. It is also important that these mechanisms enable TIES Act Schedule changes that (a) conform with the Convention as amended, and (b) establish stricter domestic measures, as New Zealand deems appropriate.

We recommend that DOC establish mechanisms:

- that enable TIES Act Schedules to be reviewed, updated and amended without the need for a full TIES Act review process;
- that enable TIES Act Schedules to be reviewed, updated and amended to establish stricter domestic measures;
- that enable stricter domestic measures to be put in place for the import and re-export of CITES listed species without the need for a full TIES Act review process.

Section 4 – Giving Effect to Treaty Principles & Movement of Taonga Across International Borders

We acknowledge the concerns raised about taonga made from protected species carried by New Zealanders being seized at international borders for not having a permit, and the potential for these items to not be returned to New Zealand.

The DOC Discussion document notes that items made from taonga are often worn or carried by New Zealanders travelling overseas and that in most circumstances no permits are required to import or export Appendix I taonga for personal use into or out of New Zealand, if the taonga was acquired in New Zealand, and is not traded for commercial purposes.

We encourage DOC to:

- provide clear guidance specific to taonga made from protected species for when permits are required;
- implement all measures possible to minimise the risk of having taonga made from protected species seized at international borders when travelling;
- continue working with overseas Management Authorities to have any seized items returned.

Section 5 – Personal and Household Effects

Problem A – The definition of personal and household effects

The DOC Discussion Document notes that under the TIES Act, the PHE exemption works in the following way:

Items defined as a PHE can be exported from New Zealand, and no documentation is required by New Zealand border officials. 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 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.

It is understood that the TIES Act currently defines Personal or Household Effect (PHE) as “any article of household or personal use or ornament” and that the PHE exemption is not intended to enable the trade of specimens for commercial sale.

We support maintaining the stricter measures New Zealand currently has in place with regard to the import of PHE.

We do not support the current measures in place that enable items defined as PHE to be exported from New Zealand with no documentation required by New Zealand border officials. This provides a potential opportunity for any illegally acquired CITES listed specimens, or specimens imported to New Zealand specifically for non-commercial purposes, to be re-exported under the guise of personal use. See previous comments regarding the import and re-export of ivory from New Zealand and comments regarding the lack of restriction on the future sale of items specifically traded internationally for non-commercial purposes.

We recommend that the definition of Personal and Household Effect should be amended to (a) clearly apply only to items imported or exported for “non-commercial purposes,” and (b) to clearly not apply to specimens imported or exported for commercial purposes.

We submit in support of Option 2 proposed in the DOC Discussion Document such that that the definition of PHE is amended to be consistent with the definition outlined in CITES Resolution 13.7, which is a specimen that is:

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

This would align with the purpose of the TIES Act and ensure that the PHE exemption is only used for moving personal items across borders rather than for other purposes, such as commercial gain.

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

We commend DOC on the development a Coral Demand Reduction campaign, primarily aimed at New Zealanders travelling to the Pacific Islands, that includes a “public poster campaign in Auckland, Wellington and Christchurch, distribution of awareness pamphlets on board cruise ships, video messaging at international departure lounges and posters advising travellers of New Zealand’s permitting requirements in a selection of Pacific Island countries departure points.”

Raising public awareness and implementing demand reduction campaigns play important roles in helping to reduce illegal trade and creating a ‘no excuses’ environment with regard to complying with the international restrictions placed on the trade in endangered species.

The DOC Discussion Document notes that 77.1% of all seizures/surrenders at the border are specimens of the species listed in Resolution 13.7, such as giant clams and crocodilian species (alligators, crocodiles, gharials, caimans), and hard corals. DOC notes that these seizures occur because the items are not accompanied by permits and that the current level of seizures has high

resource implications for border staff. DOC also note that it is difficult to tell the difference between products made from farmed crocodiles or crocodiles caught from the wild.

Table 1 in the DOC Discussion Document shows that in 2017, there were 4,690 seizures of hard corals, shells (including clams) and crocodylia products and a further 2,002 seizures of other species (1,587 of which were plants or animals used in traditional Asian medicines). It also notes that DOC considers that *“seizing these specimens, including coral, does little to further the purpose of the TIES Act and CITES. It has also been agreed by CITES that importing limited amounts of these species (excluding coral) will have minimal effects on their populations.”*

Table 3 PHE exemption application under CITES and the TIES Act

Appendix II Species	CITES	TIES Act
Hard corals	No permit required for coral that meets the requirement of PHE.	Permit required to import all coral, except most fossilised coral.
Resolution 13.7 species	No permit required when importing under the quantitative limit for PHE. Permit required if importing above the limit.	Permit required to import any number or amount of these species.
Other Appendix II species	No permit required for all other Appendix II species that meet the requirement of PHE.	Permit required to import all Appendix II species

Table 1: Percentage and instances of seizures/surrenders of hard corals, shells and crocodylia at the New Zealand border 2017

Species	Percentage of seizures/surrenders in 2017	Instances of seizure/surrender	Weight (kg)
Hard corals	45.6%	2,088	1,975
Shells (including clams)	17.9%	1,417	1,014
Crocodylia products	13.6%	1,185	N/A
Other species	22.9%	2,002*	N/A

*1587 of these were plants or animals for medicinal use (traditional Asian medicines)

It is understood that for specimens of those species listed in Resolution 13.7 the CoP has recommended that permits should be required for certain Appendix II specimens only if the quantity exceeds specified limits. Presumably this is based on the premise that the specified quantities are expected not to be detrimental to the survival of the species in the wild.

However, the number of seizures reported in New Zealand indicates a large cumulative volume of annual trade that appears to be ongoing. We would further note that each seizure may, and often does, contain multiple specimens. The potential effects of this large cumulative volume of trade on the populations of these species, currently listed on Appendix II, must be fully and carefully considered.

Appendix II lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled. Permits or certificates should only be granted if the relevant authorities are satisfied that certain conditions are met, above all that trade will not be detrimental to the survival of the species in the wild.

We submit that DOC maintain the current permitting requirements for these species (i.e. hard corals, Resolution 13.7 species and other Appendix II species) and put in place targeted demand reduction campaigns (such as the Coral Demand Reduction campaign) and ensure that appropriate enforcement tools are utilised at the border, such as Infringement Fines. Cost recovery options to assist in meeting the actual costs of monitoring and enforcement should also be thoroughly considered. It is entirely appropriate for New Zealand to continue implementing stricter domestic measures than those recommended by CITES.

Section 6: Technical issues with permits

We recommend DOC adopt measures that are consistent with CITES Resolution 12.3 which allows for permits to be replaced if the permit has been lost, stolen or cancelled.

Section 7: Cost recovery

The DOC Discussion Document notes that *“private individuals and businesses have to pay a fee to get a permit to import or export CITES specimens. There is no price differential between business and personal permitting fees.”*

We submit in support of Option 1a - Cost recovery for reviewing product inventories for private commercial importers and Option 1b - Cost recover for risk screening consignments at the border. It is considered that both measures would appropriately shift the costs from the regulator to the importer.

Section 8: Implementation and monitoring and evaluation

We encourage DOC to:

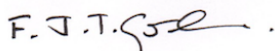
- evaluate options for cost recovery that shift the costs of implementation and monitoring appropriately to those undertaking the import and export of CITES listed specimens, particularly where the trade is for commercial purposes;
- ensure that Infringement Fines and penalties are set at levels that appropriately reflect the gravity of the infraction and enable cost recovery for the costs of enforcement where this is appropriate;
- ensure TIES Act s54 clearly allows for the Governor-General to, by Order in Council, make regulations for the purpose of regulating the domestic commercial trade of non-native species;
- establish mechanisms that would enable TIES Act Schedules to be reviewed, updated and amended without the need for a full TIES Act review process;
- establish mechanisms that would enable stricter domestic measures to be put in place without the need for a full TIES Act review process.

The DOC Discussion Document notes that *“implementing the options for regulating elephant ivory would be more resource intensive. Implementing Options 1 to 3, which regulates the domestic market, would require setting up entirely new regulatory systems, as DOC does not currently have a system for regulating and monitoring the domestic sale of non-native species. This would require more staff as well as additional IT systems to manage seller registrations and tracking of ivory items. There would also be training and outreach costs. These costs will be considered in the final proposals.”*

We encourage DOC to evaluate options that could reduce implementation, monitoring and enforcement resourcing requirements - please see previous comments regarding ivory trade regulation including provisions for a Registered Trader System, fees, offense provisions and penalties.

Thank you once again for the opportunity to make this submission.

Fiona Gordon



the Jane Goodall Institute New Zealand, Ambassador – Wildlife Trade.
Director of Gordon Consulting.



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- ⁱⁱ <https://www.unodc.org/unodc/en/data-and-analysis/wildlife.html>
- ⁱⁱⁱ CITES seizure Data supplied by Department of Conservation (2018)
- ^{iv} CITES Seizure/Surrender Data Jan 2016 - May 2018 (selected 2017 data only 9078 entries)
- ^v CITES Seizure/Surrender Data Jan 2016 - May 2018 (selected 2017 data only 9078 entries)
- ^{vi} CITES NZ Illegal Trade Report 2016 (2016 data only 8457 entries)
- ^{vii} IATA Resolution: <https://www.iata.org/pressroom/pr/Documents/resolution-agm-2016-wildlife.pdf>
- ^{viii} MOU between CITES and IATA: <https://www.iata.org/policy/environment/Documents/cites-iata-mou.pdf>
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- ^x <https://www.cites.org/eng/app/index.php>
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- ^{xviii} CITES CoP18 Com. II Rec. 9 (Rev. 1) – p. 1 https://cites.org/sites/default/files/eng/cop/18/Com_II/SR/E-CoP18-Com-II-Rec-09-R1.pdf
- ^{xix} Letter from Minister Sage to Fiona Gordon, 21 September 2018
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- ^{xxi} IUCN, The World Conservation Congress, at its session in Hawai'i, United States of America, 1-10 September 2016 Motion 007 - Closure of domestic markets for elephant ivory. <https://portals.iucn.org/congress/motion/007>
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- ^{xxvi} Personal communications, Fiona Gordon
- ^{xxvii} See Terms and Conditions at New Zealand Auctions houses, for example Dunbar Sloane and John Cordy Limited
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- ^{xlviii} TIES Act 1989 (Reprint as at 21 December 2018)
- 54 Regulations - *The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:*
- (a) prescribing the fees to be paid in respect of any permit or certificate granted under this Act:
- (b) prescribing the recording of trade in endangered, threatened, or exploited species:
- (c) regulating the non-commercial loan, donation, and exchange between scientists and scientific institutions in New Zealand and those in other countries:
- (d) prescribing the registration of scientists and scientific institutions in New Zealand involved in such exchanges:
- (e) regulating the breeding in captivity, in the case of an animal, and the artificial propagation, in the case of a plant, of any specimen of endangered, threatened, or exploited species:
- (ea) specifying requirements with respect to taking and analysis of samples of specimens where such taking and analysis is authorised for any purpose under this Act:
- (f) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this Act; and prescribing fines not exceeding \$2,000 in respect of any such offence:

(fa) prescribing infringement offences for the contravention of regulations made under this Act:

(fb) specifying that an infringement offence is a border infringement offence (either always, or only if committed in certain places or circumstances):

(fc) prescribing penalties for infringement offences, which,—

(i) in the case of infringement fees, must not be more than \$1,000; and

(ii) in the case of maximum fines, must not be more than twice the amount of the infringement fee for the offence; and

(iii) may be prescribed at different levels for the same offence based on whether the offence relates to endangered, threatened, or exploited species; and

(fd) prescribing information to be included in infringement notices and reminder notices, including any additional particulars required in an infringement notice for a border infringement offence:

(g) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

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