

JOINING THE HERD: A CASE FOR CLOSING NEW ZEALAND'S DOMESTIC IVORY MARKET

By
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This Article examines the evidence supporting the implementation of a domestic ivory trade ban in New Zealand, with the aim of informing policy-makers and compelling the New Zealand government to act to establish a legal and policy framework. There is widespread support for the closure of domestic ivory markets worldwide, and this Article seeks to persuade New Zealand to join this groundswell.

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The question is, are we happy to suppose that our grandchildren may never be able to see an elephant except in a picture book?

—Sir David Attenborough¹

Ivory trade is devastating African elephants.² If the current level of poaching continues, African elephants may be extinct from the wild by 2023.³ While international ivory trade is regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the domestic trade in many countries is unregulated.⁴ Evidence shows that domestic markets perpetuate demand for illegal international ivory and facilitate the laundering of illegal ivory.⁵ While New Zealand has expressed support for global and

¹ Jack Shepherd, *David Attenborough: 15 of the Naturalist's Best Quotes*, INDEP. (May 8, 2017, 1:24 PM), <https://www.independent.co.uk/arts-entertainment/tv/news/david-attenborough-best-quotes-birthday-a7724216.html> [<https://perma.cc/3LR3-X5PL>] (accessed May 27, 2020).

² This Article focuses on the African elephant ivory trade. While Asian elephants are also threatened by poaching, most illegal ivory is poached from African elephants. *E.g.*, *Asian Elephants: Threats*, WORLD WIDE FUND FOR NATURE (WWF), https://wwf.panda.org/knowledge_hub/endangered_species/elephants/asian_elephants/asian_elephant_threats/ [<https://perma.cc/L54U-C3VG>] (accessed Apr. 23, 2020); Micaela Jemison, *Poachers are Killing Endangered Elephants for Their Skin and Meat, Not Their Tusks*, SMITHSONIAN INSIDER (Mar. 20, 2018), <https://insider.si.edu/2018/03/poachers-are-killing-endangered-asian-elephants-for-their-skin-and-meat-not-their-tusks/> [<https://perma.cc/KG6C-WQSW>] (accessed May 27, 2020); *see also* UNITED NATIONS OFFICE ON DRUGS & CRIME, WORLD WILDLIFE CRIME REPORT: TRAFFICKING IN PROTECTED SPECIES 42 n.4 (2016), https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf [<https://perma.cc/BVC7-P6J7>] (accessed May 27, 2020) [hereinafter UNODC] (“Asian elephants are not currently considered a significant source of ivory supply, although they were in the past and still contribute to some markets.”).

³ *See, e.g.*, Maina Waruru, *Slow-to-breed Elephant Hurtles Towards Extinction*, NEW SCIENTIST (Aug. 31, 2016), <https://www.newscientist.com/article/2103783-slow-to-breed-elephant-hurtles-towards-extinction/> [<https://perma.cc/JC2X-FS2W>] (accessed May 27, 2020) (stating that at the current rate of poaching, “forest elephants will be essentially extinct in one decade—by 2023”); Fredrick Nzwili, *Kenya's Elephants May Vanish in 10 Years, Warns Prominent Naturalist*, CHRISTIAN SCI. MONITOR (July 27, 2013), <https://www.csmonitor.com/World/Africa/2013/0727/Kenyas-elephants-may-vanish-in-10-years-warns-prominent-naturalist> [<https://perma.cc/WPJ6-VG8F>] (accessed May 27, 2020) (“Kenya’s elephants could be wiped out by poaching in 10 years, unless urgent measures are taken to end the crisis . . .”).

⁴ INT’L AFF., U.S. FISH & WILDLIFE SERV., CITES & ELEPHANTS: WHAT IS THE “GLOBAL BAN” ON IVORY TRADE? (2015).

⁵ *See, e.g.*, *The Ivory Trade*, BORN FREE FOUND., <https://www.bornfree.org.uk/ivory-trade> [<https://perma.cc/HN87-PAYU>] (accessed May 27, 2020) (observing that “domestic markets are being recognised as significant drivers of elephant poaching and ivory trafficking”); Rebecca Drury, *A Beginner's Guide to Ivory Trade*, FLORA & FAUNA INT’L (FFI) (July 19, 2017), <https://www.fauna-flora.org/news/a-guide-to-ivory-trade> [<https://perma.cc/8BBJ-B97W>] (accessed May 27, 2020) (stating that increasing evidence suggests that legal supply of ivory fuels demand and provides cover for illegal trade); Damian Carrington, *World's Nations Agree Elephant Ivory Markets Must Close*, GUARDIAN (Oct. 2, 2016, 5:00 PM), <https://www.theguardian.com/environment/2016/oct/02/worlds-nations-agree-elephant-ivory-markets-must-close> [<https://perma.cc/G49N-H>

domestic efforts to reduce elephant poaching, the domestic ivory market remains unregulated.⁶ Growing international momentum in favor of implementing domestic ivory trade bans positions New Zealand as an outlier.⁷ In September 2019, the New Zealand government announced a review of its domestic ivory trade as part of a broader review of the Trade in Endangered Species Act 1989 (TIES Act).⁸ This Article examines the evidence supporting the implementation of a domestic ivory trade ban in New Zealand, with the aim of compelling the Government to act to ensure it is on the right side of history and not complicit in the African elephant crisis.

I. INTRODUCTION TO THE ILLEGAL INTERNATIONAL WILDLIFE TRADE

A. *The International Wildlife Trade*

The illegal international wildlife trade is having a devastating impact on animals and ecosystems globally.⁹ This trade, worth an estimated U.S. \$7 to \$23 billion annually,¹⁰ has been linked to other forms of organized crime such as human trafficking, money laundering, drug trafficking, and the arms trade.¹¹ It has also been reported that terror-

GM2] (accessed May 27, 2020) (referring to the growing consensus among conservationists and states that legal domestic ivory markets provide cover for criminals to launder illegal ivory).

⁶ CITES, *Implementation of Provisions Relating to Domestic Ivory Markets Contained in Resolution Conf. 10.10 (Rev. COP17): Responses Provided by Parties to Notification 2017/077*, at 7, CITES SC70 Doc. 49.1 A2 (Oct. 1–5, 2018), <https://cites.org/sites/default/files/eng/com/sc/70/E-SC70-49-01-A2.pdf> [https://perma.cc/3J92-KH4U] (accessed May 27, 2020).

⁷ Fiona Gordon, *New Zealand Domestic Ivory Trade Doubles*, J. AFR. ELEPHANTS (Aug. 20, 2019), <https://africanelephantjournal.com/new-zealand-domestic-ivory-trade-doubles/> [https://perma.cc/QQ2H-ZAY3] (accessed May 27, 2020).

⁸ *Plan to Protect Endangered Species from Illegal Trade*, SCOOP MEDIA (Sept. 24, 2019, 8:06 AM), <https://www.scoop.co.nz/stories/PA1909/S00190/plan-to-protect-endangered-species-from-illegal-trade.htm> [https://perma.cc/F2DY-Z3BX] (accessed May 27, 2020).

⁹ Therese Coffey, *Voices: The Illegal Wildlife Trade Is Causing Unimaginable Damage – Here’s How We’re Working to End It*, INDEP. (Oct. 10, 2018, 2:15 PM), <https://www.independent.co.uk/voices/illegal-wildlife-trade-poaching-environment-ecosystem-endangered-species-therese-coffey-a8577566.html> [https://perma.cc/U7ZB-2DP3] (accessed May 27, 2020).

¹⁰ *Where the Wild Things are Going: Illegal Wildlife Trade*, ECONOMIST 48, 48 (Aug. 10, 2019), https://link-gale-com.library.lcproxy.org/apps/doc/A595900718/ITOF?u=lacc_legal&sid=ITOF&xid=43114bd6 [https://perma.cc/5T2G-QDTC] (accessed May 27, 2020); see also Daniel W.S. Challender & Douglas C. MacMillan, *Poaching Is More Than an Enforcement Problem*, 7(5) CONSERVATION LETTERS 484, 484 (Sept./Oct. 2014) (estimating the annual profits of wildlife trade to be US \$20 billion globally); cf. UNODC, *supra* note 2, at 21 (commenting that factors such as the volatility in markets and seizure records make it nearly impossible to accurately estimate the revenue generated by wildlife trafficking).

¹¹ *E.g.*, UNODC, *supra* note 2, at 23; UNITED NATIONS ENV’T PROGRAMME ET AL., ELEPHANTS IN THE DUST—THE AFRICAN ELEPHANT CRISIS 54 (2013), [hereinafter UNEP ET AL.]; UNITED NATIONS ENV’T PROGRAMME, THE ENVIRONMENTAL CRIME CRISIS—

ist groups and rebel militia use the proceeds of wildlife trafficking to finance their activities.¹² Despite efforts to curb wildlife crime, it has continued to grow and is now recognized as a significant and specialized area of transnational organized crime.¹³

B. Recent and Emerging Trends in the International Ivory Trade

African elephant poaching and the illegal trade of their ivory has more than doubled since 2007 and more than tripled since 1998—the highest level it has been in two decades.¹⁴ This increase has been attributed to a range of factors, including political instability, corruption, increasing sophistication of poaching and trafficking operations and, perhaps most importantly, a rise in market demand, especially in the growing economies of Asia.¹⁵ Poverty in range countries can provide incentives for poaching while growing wealth in destination countries drives demand as more people can afford ‘luxury’ wildlife products previously inaccessible to them.¹⁶

In 2019, the Environmental Investigation Agency (EIA) created an interactive ivory seizure map depicting 175 “large-scale ivory

THREATS TO SUSTAINABLE DEVELOPMENT FROM ILLEGAL EXPLOITATION AND TRADE IN WILDLIFE AND FOREST RESOURCES 10 (Christian Nellemann et al. eds., 2014 [hereinafter UNEP]); INT’L FUND FOR ANIMAL WELFARE, CRIMINAL NATURE—THE GLOBAL SECURITY IMPLICATIONS OF THE ILLEGAL WILDLIFE TRADE 5, <https://www.ifaw.org/resources/criminal-nature-the-global-security-implications-of-the-illegal-wildlife-trade> [<https://perma.cc/GY2H-8PEY>] (accessed May 27, 2020) [hereinafter IFAW].

¹² *E.g.* UNEP, *supra* note 11, at 8, 48–49, 78; IFAW, *supra* note 11, at 5, 8, 11–13; Carl Safina, *Blood Ivory*, N.Y. TIMES (Feb. 11, 2013), <https://www.nytimes.com/2013/02/12/opinion/global/blood-ivory.html> [<https://perma.cc/7M9Q-DUGUU>] (accessed May 27, 2020).

¹³ *See, e.g.*, UNODC, *supra* note 2, at 23 (outlining the specialized nature of wildlife crime); *Illegal Trade Seizures: Large-Scale Elephant Ivory Seizures*, ENVTL. INVESTIGATION AGENCY (EIA) (June 2019), <https://eia-international.org/wildlife/wildlife-trade-maps/large-scale-elephant-ivory-seizures/> [<https://perma.cc/PG3B-DJMV>] (accessed May 27, 2020) (illustrating the size and growth of the illegal ivory trade); WILDLIFE JUST. COMM’N, SNAPSHOT ANALYSIS—IVORY SMUGGLING: 2015–2019—CONCEALMENT, ROUTES AND TRANSPORTATION METHODS (2019), https://wildlifejustice.org/wp-content/uploads/2019/09/WJC_Ivory-Smuggling-Snapshot-Analysis_September.pdf [<https://perma.cc/RZV8-QLXM>] (accessed May 27, 2020) [hereinafter WJC] (outlining current trends and growth in the illegal ivory trade).

¹⁴ UNEP ET AL., *supra* note 11, at 6, 43, 69.

¹⁵ *Id.* at 6, 12; UNODC, *supra* note 2, at 19, 20; UNEP, *supra* note 11, at 10, 14; Elizabeth L. Bennett, *Legal Ivory Trade in a Corrupt World and Its Impact on African Elephant Populations*, 29 CONSERVATION BIOLOGY 54–60 (2014).

¹⁶ UNODC, *supra* note 2, at 19; *see also* Rachel Bale, *U.S.-China Deal to Ban Ivory Trade Is Good News for Elephants*, NAT’L GEOGRAPHIC (Sept. 25, 2015), <https://www.nationalgeographic.com/news/2015/09/150925-ivory-elephants-us-china-obama-xi-poaching/> [<https://perma.cc/N6YL-XW8Z>] (accessed May 27, 2020) (observing that the industry “has been driven largely by China’s booming middle class, in which some people covet ivory as a status symbol”).

seizures¹⁷ between the year 2000 and March 2019.¹⁸ These seizures correspond to “approximately 293 tons of ivory, equivalent to an estimated 43,840 dead elephants.”¹⁹ Between January and March 2019, almost 22.5 tons of ivory were seized in large-scale seizures, the equivalent of an estimated 3,358 elephants.²⁰ The map shows that Vietnam has outstripped mainland China as “the world’s leading destination for illegal ivory.”²¹ More than nine tons of ivory was seized in Vietnam in March 2019, giving the country the dubious honor of the world’s largest ivory seizure to date.²² Hong Kong, Kenya, mainland China, and Thailand rounded out the top five countries with the highest numbers of large-scale ivory seizures.²³

This “industrial-scale poaching”²⁴ is reflected in a recent Wildlife Justice Commission (WJC) report analyzing the latest data on the volumes, routes, concealment, and transportation methods of ivory from Africa to Asian entry points.²⁵ The report detailed changes in the strategies implemented to smuggle ivory in the last two years.²⁶ Although the number of shipments being detected is less frequent, the average weight per shipment has increased by over 200%.²⁷ Compared to 1.1 tons in 2017, the average shipment of ivory is now estimated to weigh close to 3.5 tons.²⁸ An additional emerging issue is the increase in large shipments consisting of both ivory and pangolin scales.²⁹ The composition of combined shipments has also changed, with pangolin scales far exceeding ivory by volume.³⁰ The WJC observes that, although combining animal parts and products is not a new phenomenon, the prevalence of combined shipments is significant and could indicate “underlying changes in criminal dynamics.”³¹ The report confirms Vietnam as the main port of entry for ivory into Asian markets.³²

The EIA and WJC reports highlight the changing nature of wildlife trafficking and underscore the importance of refining investigative techniques and responses to address this activity.

¹⁷ EIA, *supra* note 13. Large-scale seizures are those of 500 kilograms or more. *Id.* Seizures of this size are considered to indicate the involvement of transnational ivory trafficking criminal groups. *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ This term is used by Beth Allgood et al., *U.S. Ivory Trade: Can a Crackdown on Trafficking Save the Last Titan?*, 20 ANIMAL L. 27, 34 (2013).

²⁵ WJC, *supra* note 13.

²⁶ *Id.* at 15.

²⁷ *Id.* at 2, 15.

²⁸ *Id.* at 2.

²⁹ *Id.* at 4.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 12.

C. Impact on African Elephants

In the early twentieth century, there may have been as many as three to five million elephants across Africa.³³ Today, the continental total is estimated to be around 415,000 individuals.³⁴ The Great Elephant Census reported in 2016 that in less than a decade, nearly a third of savanna elephant populations (an estimated 144,000 elephants) were wiped out, “primarily due to poaching.”³⁵ This census further reported that African elephant populations declined “by an estimated 4% per year” between 2005 and 2014 and by “8% per year” between 2010 and 2014.³⁶

Africa’s forest elephants are also struggling to survive. A 2013 study found that their populations declined by about 62% between 2002 and 2011.³⁷

According to conservationists, the dramatic decline of both savanna and forest elephants is mainly due to poaching.³⁸ Other significant threats to their survival include: habitat loss and fragmentation, human–elephant conflict, armed conflict, and mining.³⁹

³³ *African Elephants*, WWF, http://wwf.panda.org/knowledge_hub/endangered_species/elephants/african_elephants/ [<https://perma.cc/5HSP-NEQR>] (accessed May 27, 2020).

³⁴ *Id.*; Michael J. Chase et al., *Continent-Wide Survey Reveals Massive Decline in African Savannah Elephants*, PEERJ (Aug. 31, 2016), <https://peerj.com/articles/2354.pdf> [<https://perma.cc/5YPU-5S2S>] (accessed May 27, 2020). This article reports the results of The Great Elephant Census, the first-ever continent-wide census of Africa’s savanna elephants, which estimated that there were 352,271 savanna elephants across the 18 countries surveyed. The total number of elephants across the continent was estimated to be 415,000, although Chase et al. state that there may be an additional 117,000 to 135,000 elephants in areas not systematically surveyed. *Id.*

³⁵ Note that this estimate is based on a model with large standard errors (SE). “[B]etween 2007 and 2014, elephant populations in areas with historical data declined by $144,213 \pm \text{SE of } 29,253$ elephants,” which translates to an estimated loss of “ $20,602 \pm 4,179$ elephants per year.” The estimated annual loss between 2010 and 2014 was “ $27,691 \pm 5,996$ elephants per year.” *Id.* at 14.

³⁶ *Id.* at 14.

³⁷ Fiona Maisels et al., *Devastating Decline of Forest Elephants in Central Africa*, 8 PLOS ONE 1, 3 (Mar. 2013), <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0059469&type=printable> [<https://perma.cc/HH37-2F7Q>] (accessed May 27, 2020).

³⁸ George Wittemyer et al., *Illegal Killing for Ivory Drives Global Decline in African Elephants*, 111 PNAS 13117, 13117–21 (Sept. 9, 2014), <https://www.pnas.org/content/pnas/111/36/13117.full.pdf> [<https://perma.cc/LY8G-A9XS>] (accessed May 27, 2020); Chase et al., *supra* note 34, at 17; UNEP ET AL., *supra* note 11, at 7.

³⁹ *E.g.*, Chase et al., *supra* note 34, at 2, 18; see also UNEP ET AL., *supra* note 11, at 7, 15 (stating that elephants are “threatened by increasing loss of habitat and subsequent loss of range as a result of rapid human population growth and agricultural expansions” and concluding that “[w]hile poaching is an immediate and direct threat to the African elephant, range and habitat loss are the most significant longterm threat to the species’ survival”); WWF, *supra* note 33 (stating that “elephant habitat is shrinking and becoming more fragmented” and that elephants “remain under severe threat from poaching, habitat loss, and human–wildlife conflict”).

Based on 2011 ivory seizures, it has been estimated that in Africa an elephant is killed every fifteen minutes for their ivory.⁴⁰ African elephants are now being killed at a faster rate than they are reproducing.⁴¹ If poaching continues unabated, elephants could become extinct in some African countries within decades.⁴² The loss of Earth's largest terrestrial animal would be a tragedy. There would also be wide-ranging environmental consequences; elephants are a keystone species, meaning they play a crucial role in maintaining favorable habitats for other species.⁴³ Forest elephants, for example, create clearings in the forest canopy, which promotes the growth of new trees.⁴⁴ Savanna elephants reduce bush cover, creating an environment suitable for many grazing and browsing animals.⁴⁵ They also assist with plant dispersal by depositing undigested seeds in their dung.⁴⁶

II. OVERVIEW OF THE CITES INTERNATIONAL TRADE REGULATORY FRAMEWORK AND ITS IMPLEMENTATION IN NEW ZEALAND

A. Introduction to CITES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement that

⁴⁰ See Safina, *supra* note 12 (“If the 38 tons of tusks seized in 2011 represented ten percent of illegal ivory, it translates to something over 40,000 elephants killed annually—an elephant every 15 minutes.”); see also *Elephant Slaughter Escalates as Illegal Ivory Market Thrives*, ANIMAL WELFARE INST. (Winter 2013), <https://awionline.org/aw-quarterly/2013-winter/elephant-slaughter-escalates-illegal-ivory-market-thrives> [<https://perma.cc/2ZKJ-3Q9R>] (accessed May 27, 2020) (“Every 15 minutes, on average, an elephant is killed illegally in Africa to feed an insatiable demand for ivory.”).

⁴¹ See Wittemyer et al., *supra* note 38 (explaining that “the current offtake exceeds the intrinsic growth capacity of the species”). In addition to the aforementioned external threats to elephants, the long gestation period of elephants (around twenty-two months) and long inter-birth interval (3 to 7 years) may complicate efforts to increase elephant populations. See Imke Lueders et al., *Gestating for 22 Months: Luteal Development and Pregnancy Maintenance in Elephants*, 279 PROC. OF THE ROYAL SOC'Y B 3687 (June 20, 2012), <https://doi.org/10.1098/rspb.2012.1038> [<https://perma.cc/F2N9-FLJX>] (accessed May 27, 2020) (stating elephant pregnancy lasts, on average, 640 days).

⁴² E.g., Waruru, *supra* note 3 (“[P]oaching rates suggest that 12,000 to 15,000 forest elephants are being killed every year. At this rate, forest elephants will be essentially extinct in one decade”); Nzwili, *supra* note 3 (“Unless we do something now elephants will be gone from the wild within the next decade.”).

⁴³ See, e.g., Martin A. Nunez, & Romina D. Dimarco, *Keystone Species*, BERKSHIRE ENCYCLOPEDIA OF SUSTAINABILITY: ECOSYSTEM MGMT. & SUSTAINABILITY 226, 227 (2012), <https://web.utk.edu/~mnunez/Keystones%20Nunez%20Dimarco.pdf> [<https://perma.cc/ED8G-WN6R>] (accessed May 27, 2020) (citing *African Elephants as a Keystone Species*, WWF (Dec. 27, 2011), <http://www.worldwildlife.org/species/finder/africanelephants/africanelephant.html> [<https://perma.cc/E4BT-LBW5>] (accessed May 27, 2020) (“Scientists consider African elephants to be keystone species as they help to maintain suitable habitats for many other species in savanna and forest ecosystems.”).

⁴⁴ See *id.* at 226 (explaining that these types of keystone species, which create or modify habitats, are known as “ecosystem engineers”).

⁴⁵ *Id.* at 227.

⁴⁶ *Id.*

“aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.”⁴⁷ Over 35,000 species (approximately 30,000 species of plants and 5,800 species of animals) are covered by CITES.⁴⁸

CITES was conceived in response to international concerns about the rate at which wild animals and plants were threatened by unregulated trade.⁴⁹ It was recognized that because this trade crosses borders, efforts to regulate it and to protect certain species from over-exploitation would require international cooperation.⁵⁰ Although many wildlife species in trade are not endangered, the existence of an international agreement to ensure trade is sustainable is important to safeguard these natural resources.⁵¹

CITES entered into force on July 1, 1975. With 183 Parties, it has “near-universal membership.”⁵² New Zealand was the 100th Party to join CITES in 1989.⁵³

B. How CITES Works

CITES regulates the import and export of wild animal and plant species, and products derived from them, through a system of classification and licensing.⁵⁴ This system, which is implemented by the Parties through national legislation, is based on permits issued by importing and exporting countries.⁵⁵ The “import, export, re-export,

⁴⁷ *What Is CITES?*, CONVENTION ON INT'L TRADE IN ENDANGERED SPECIES OF WILD FAUNA & FLORA (CITES), <https://cites.org/eng/disc/what.php> [https://perma.cc/42YM-L4ZJ] (accessed May 27, 2020).

⁴⁸ *The CITES Species*, CITES, <https://cites.org/eng/disc/species.php> [https://perma.cc/37UM-3ELN] (accessed May 27, 2020).

⁴⁹ *What Is CITES?*, *supra* note 47.

⁵⁰ *Id.*

⁵¹ See, e.g., Peter H. Sand, *Endangered Species, International Protection*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. (updated Mar. 2017), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1574?rskey=pJoQVy&result=1&prd=OPIL> [https://perma.cc/S3ND-SR2B] (accessed May 27, 2020) (explaining that for many countries, especially developing countries, exports of products collected or harvested from the wild provide a significant income. Regulation of trade in wild species must therefore “strike a balance between the ecological concerns of nature conservation, and legitimate economic concerns of sustainable resource utilization.”); see also Maylynn Engler, *The Value of International Wildlife Trade*, 22 TRAFFIC BULL. 1, 4, 5 (2008), https://www.traffic.org/site/assets/files/2984/traffic_pub_bulletin_22_1.pdf [https://perma.cc/W53C-N5SP] (accessed May 27, 2020) (stating that the total volume of legal global wildlife trade (animals and plants, including fisheries and forests) and their products has been estimated to be worth U.S. \$332.5 billion annually).

⁵² Sand, *supra* note 51, ¶ 9; *List of Contracting Parties*, CITES, <https://cites.org/eng/disc/parties/chronolo.php> [https://perma.cc/R87H-DND4] (accessed May 27, 2020).

⁵³ *List of Contracting Parties*, *supra* note 52.

⁵⁴ *How CITES Works*, CITES, <https://cites.org/eng/disc/how.php> [https://perma.cc/E3WP-5WXD] (accessed May 27, 2020).

⁵⁵ Sand, *supra* note 51, ¶ 11.

and introduction from the sea”⁵⁶ of all species covered by CITES are subject to these permitting requirements.⁵⁷

The species included in CITES are listed in one of three Appendices, depending on the level of protection they require.⁵⁸ The requirements for permits vary depending on the Appendix in which the species is listed.⁵⁹

1. Appendix I

Appendix I comprises “species that are threatened with extinction” and bans all trade except in exceptional circumstances.⁶⁰ Import and export permits (or re-export certificates) are required.⁶¹ An import or export permit (or re-export certificate) can be issued only if:

- the Appendix I specimen is not to be used for primarily commercial purposes;
- the trade is for purposes that are not detrimental to the survival of the species;
- in the case of a live animal or plant, the proposed recipient is suitably equipped to house and care for the specimen, and the specimen is prepared and shipped to minimize any risk of injury, damage to health or cruel treatment;
- the specimen was legally obtained;
- in the case of re-export, the specimen was imported in accordance with CITES; and
- an import and export permit has already been issued.⁶²

2. Appendix II

Appendix II is for species that are not currently threatened with extinction, but may become so without trade controls.⁶³ An export permit (or re-export certificate) is required and can be issued only if:

- the specimen was legally obtained;
- the trade will not be detrimental to the survival of the species;
- in the case of re-export, the specimen was imported in accordance with CITES; and

⁵⁶ ‘Re-export’ is defined in Article I(d) of CITES as “export of any specimen that has previously been imported.” ‘Introduction from the sea’ is defined in Article I(e) of CITES as “transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State.” Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

⁵⁷ *How CITES Works*, *supra* note 54.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

- in the case of a live animal or plant, the specimen is handled and shipped to minimize any risk of injury, damage to health, or cruel treatment.⁶⁴

Appendix II species do not require an import permit, unless such a permit is required under national law.⁶⁵

3. Appendix III

Appendix III includes species that any country has identified “as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing” the assistance of other Parties to regulate trade.⁶⁶ In the case of export from a country that includes the species in Appendix III, an export permit issued by that country is required.⁶⁷ This can be issued only if:

- the specimen was legally obtained; and
- in the case of a live animal or plant, the specimen is handled and shipped to minimize any risk of injury, damage to health, or cruel treatment.⁶⁸

In the case of export from any other country, a certificate of origin is required.⁶⁹ In the case of re-export, a re-export certificate issued by the country of re-export is required.⁷⁰ While Appendices I and II are amended every three years in light of the changing conservation and trade status of listed species, Appendix III follows a distinct procedure for changes whereby each Party is able to make unilateral amendments to it.⁷¹

⁶⁴ *Id.*

⁶⁵ *Id.* For example, Australia has implemented stricter domestic measures than those in CITES with respect to the African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe. Under CITES, these populations are listed in Appendix II, whereas all other African elephant populations are listed in Appendix I. Under Australia's Environment Protection and Biodiversity Conservation Act 1999, the elephant populations of Botswana, Namibia, South Africa, and Zimbabwe are treated as if they were Appendix I species and are therefore afforded the highest level of protection along with all other African elephant populations. As a result, the permitting requirements applicable to Appendix I species apply to the trade of all African elephant specimens to and from Australia. CITES, *Australia's Stricter Domestic Measures for Trade in CITES Species*, Notification to the Parties No. 2018/025, ¶ 4 (Mar. 19, 2018).

⁶⁶ CITES, *supra* note 56, at art. II, ¶ 3.

⁶⁷ CITES, *supra* note 56, at art. V, ¶ 2.

⁶⁸ CITES, *supra* note 56, at art. V, ¶ 2(a)–(b).

⁶⁹ INT'L AFF., U.S. FISH & WILDLIFE SERV., UNDERSTANDING CITES: CITES APPENDIX III (May 2016).

⁷⁰ *Id.*

⁷¹ See *How CITES Works*, *supra* note 54 (noting approximately every “three years, a meeting of the Conference of Parties . . . is held to review, discuss, and negotiate changes in the implementation of CITES”).

C. Listing of Elephants

All species of elephants are CITES listed.⁷² Asian elephants have been included in Appendix I since 1975, when CITES entered into force.⁷³ The history of the listing of African elephants is more complex. They were first listed in Appendix III in 1976⁷⁴ and were moved to Appendix II (“up-listed”) in 1977.⁷⁵ During the next decade, African elephant populations plummeted by almost 50% resulting in an up-listing to Appendix I in 1989, thus banning the international commercial trade in African elephant ivory, effective January 20, 1990.⁷⁶ The African elephant populations of Botswana, Namibia, and Zimbabwe were transferred back to Appendix II (“down-listed”) in 1997, with an annotation that did not allow regular international ivory trade for commercial purposes.⁷⁷ South Africa’s population was down-listed to Appendix II in 2000, with the same annotation.⁷⁸ Aside from populations in these four countries, all other African elephants are currently included in Appendix I.⁷⁹ This situation, whereby different populations of a species are listed in different Appendices, is known as “split-listing.”⁸⁰ The split-listing of African elephants, resulting in a qualified ivory trade ban, is arguably one of the most controversial examples of the up-listing and down-listing process.⁸¹

D. Domestic Implementation of CITES

Parties to CITES have a duty to enact and enforce the terms of CITES through domestic legislation.⁸² They are also required to submit periodic trade data and implementation reports on legislative, regulatory, and administrative measures taken to enforce the Convention.⁸³ These reports are processed and compared by the

⁷² INT’L AFF., *supra* note 4.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ CITES Secretariat, *Current Rules on Commercial International Trade in Elephant Ivory under CITES and Proposals to CITES CoP17*, CITES (July 21, 2016), https://www.cites.org/eng/news/Current_rules_commercial_international_trade_elephant_ivory_under_CITES_Proposals_CITES_CoP17_200716 [<https://perma.cc/W73P-LKLH>] (accessed May 27, 2020).

⁸⁰ *CITES Glossary*, CITES, <https://www.cites.org/eng/resources/terms/glossary.php#s> [<https://perma.cc/7EZ4-UKL66>] (accessed May 27, 2020).

⁸¹ Sand, *supra* note 51, ¶ 12.

⁸² *What Is CITES?*, *supra* note 47.

⁸³ See CITES, *supra* note 56, at art. VIII(7)–(8), <https://www.cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf> [<https://perma.cc/C2QY-NSWB>] (accessed May 27, 2020) (setting out Measures to be taken by the Parties).

CITES Secretariat⁸⁴ to assess, among other things, the consistency of the data provided by importing and exporting countries.⁸⁵

Each Party to CITES must designate one or more Management Authorities to administer the permitting system and one or more Scientific Authorities to advise and monitor the effects of trade on listed species.⁸⁶

E. Meetings of the Conference of the Parties

A core process of CITES is the meeting of the Parties to CITES—known as the Conference of the Parties (CoP)—every two to three years.⁸⁷ The CoP provides a forum for Parties to review the implementation of the Convention, which includes reviewing progress in the conservation of CITES-listed species and considering and adopting proposals to up-list or down-list species.⁸⁸ In attendance at these meetings are observers, which include representatives of states that are not Parties to CITES, United Nations agencies, and other international Conventions, and non-governmental organizations involved in conservation or trade.⁸⁹ The most recent CoP was held in Geneva from August 17, 2019 to August 28, 2019 (CoP18).⁹⁰

F. CITES Resolutions

The original text of the Convention⁹¹ was signed in 1973 and “provides a basic framework for the implementation of CITES.”⁹² Some provisions from the original text are broad, needing additional agree-

⁸⁴ The Secretariat's functions are set out in Article XII of CITES. CITES, *supra* note 56, at art. XII. See also *The CITES Secretariat*, CITES, <https://cites.org/eng/disc/sec/index.php> [<https://perma.cc/43UC-XE3M>] (accessed May 27, 2020) (setting out the functions of the Secretariat).

⁸⁵ Sand, *supra* note 51, ¶ 11.

⁸⁶ *How CITES Works*, *supra* note 54; see also CITES, Res. Conf. 18.6 (Rev. CoP18), *Designation and Role of Management Authorities*, (2019), <https://cites.org/sites/default/files/document/E-Res-18-06.pdf> [<https://perma.cc/KM5B-R4UF>] (accessed May 27, 2020) (setting out the role of Management Authorities); CITES, Res. Conf. 10.3 (Rev. CoP10), *Designation and Role of the Scientific Authorities*, (1997), https://www.cites.org/sites/default/files/document/E-Res-10-03_0.pdf [<https://perma.cc/VJV3-DRDZ>] (accessed May 27, 2020) (setting out the role of Scientific Authorities).

⁸⁷ CITES, *supra* note 56, at art. XI, <https://cites.org/eng/disc/cop.php> [<https://perma.cc/S7B7-995Q>] (accessed May 27, 2020).

⁸⁸ *Id.*

⁸⁹ *Id.* at art. XI(6) (providing that representatives of, *inter alia*, U.N. agencies and states that are not Parties to CITES may attend CoPs as observers and shall have the right to participate but not to vote); see also *id.* at art. XI(7) (providing that observers from non-governmental organizations can participate in CoPs at the discretion of the Parties); *id.* at art. XI(6) (stating that members of the public may attend CoPs as visitors but cannot vote).

⁹⁰ *Id.* at art. XI.

⁹¹ *Text of the Convention*, CITES, <https://www.cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf> [<https://perma.cc/3HHS-GBAJ>] (accessed May 27, 2020).

⁹² *CITES Resolutions*, CITES, <https://cites.org/eng/res/intro.php> [<https://perma.cc/77LE-YNGU>] (accessed May 27, 2020).

ments to dictate how the provisions should be cohesively implemented.⁹³ Additionally, the intention behind some provisions is unclear and leaves room for interpretation.⁹⁴ This has resulted in a need for additional guidance to resolve issues and improve the efficacy of the Convention.⁹⁵

One of the tasks of the meetings of the CoP is to “make recommendations” to provide such guidance.⁹⁶ These recommendations are recorded as “Decisions” or “Resolutions.”⁹⁷ Decisions are more short-term in nature, often implemented by a specified time and then nullified, while Resolutions are generally intended to provide long-standing guidance.⁹⁸ Resolutions have “occasionally, [but] unsuccessfully, been challenged as ‘mere recommendations’” with no legal weight.⁹⁹ However, they are frequently sanctioned by collective trade embargoes¹⁰⁰ and form an integral and critical component of CITES. As such, when considering New Zealand’s obligations under CITES, one should recognize “the evolution of CITES over time” and give “full consideration” to both the original text of the Convention and subsequent Resolutions.¹⁰¹

G. Implementation of CITES in New Zealand

In New Zealand, CITES is implemented through the Trade in Endangered Species Act 1989 (TIES Act).¹⁰² The TIES Act is administered by the Department of Conservation (DOC),¹⁰³ and the Director-General of DOC is designated as the Management Authority.¹⁰⁴ The Scientific Authority consists of a committee of representatives from DOC, other government agencies, and research institutions.¹⁰⁵

The species listed in the Appendices to CITES are mirrored in three Schedules to the TIES Act. As with CITES, the TIES Act works by subjecting certain species to permitting requirements according to the Schedule in which they are listed and the circumstances of the trade—endangered, threatened and exploited species in Schedules 1, 2

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*; CITES, *supra* note 56, at art. XI(3)(e).

⁹⁷ CITES, *supra* note 56, at art. XI(3)(e).

⁹⁸ *Id.*; CITES Resolutions, *supra* note 90.

⁹⁹ Sand, *supra* note 51, ¶ 10.

¹⁰⁰ *Id.* ¶¶ 10, 17–18.

¹⁰¹ Fiona Gordon, Case for Regulations to be Made Under the Trade in Endangered Species Act 1989 (s 54) to Govern the Domestic Trade in Elephant Ivory and Rhinoceros Horn 3 (updated July 11, 2018) (unpublished manuscript) (on file with author).

¹⁰² *The Convention in International Trade in Endangered Species (CITES)*, DEP’T OF CONSERVATION, <https://www.doc.govt.nz/cites> [<https://perma.cc/WEF6-VN3S>] (accessed May 27, 2020).

¹⁰³ *Id.*

¹⁰⁴ Trade in Endangered Species Act 1989 (TIES Act 1989), s 3(1) (N.Z.).

¹⁰⁵ TIES Act 1989, s 7.

and 3 respectively.¹⁰⁶ The TIES Act also provides exemptions from permit requirements in certain circumstances.¹⁰⁷

The TIES Act has been amended multiple times to ensure consistency with changes to the three Appendices of CITES-listed species.¹⁰⁸ New Zealand has also adopted a stronger position than is required under CITES (known as a stricter domestic measure) for the international movement of personal and household effects.¹⁰⁹

H. *Permitting Requirements for the Import and Export of Ivory to and from New Zealand*

The permitting requirements for the import/export (or re-export) of ivory under the TIES Act reflect those under CITES, outlined above. As African elephants are listed under Appendix I CITES/Schedule 1 TIES Act species, the following applies to ivory from African elephants (except the populations of Botswana, Namibia, South Africa, and Zimbabwe):

- No commercial trade is permitted, unless the ivory is pre-Convention.¹¹⁰

¹⁰⁶ TIES Act 1989, s 1–3; see also *CITES Permits*, DEP'T OF CONSERVATION, <https://www.doc.govt.nz/about-us/international-agreements/endangered-species/permits/> [<https://perma.cc/K66D-CTZM>] (accessed May 27, 2020) (setting out information about permit requirements); *Travelling with Elephant Products and Ivory*, DEP'T OF CONSERVATION, <https://www.doc.govt.nz/about-us/international-agreements/endangered-species/elephant-and-elephant-products/> [<https://perma.cc/LS8L-GUV7>] (accessed May 27, 2020) (setting out guidance regarding permit requirements for ivory).

¹⁰⁷ TIES Act 1989, s 2.

¹⁰⁸ *TIES Act 1989: Versions and Amendments*, PARLIAMENTARY COUNS. OFF., <http://www.legislation.govt.nz/act/public/1989/0018/latest/DLM145966.html> [<https://perma.cc/W2HJ-EYPT>] (accessed May 5, 2020).

¹⁰⁹ Under these provisions, “import into New Zealand of personal and household effects of Appendix I and II species requires an export permit, re-export certificate, pre-Convention certificate, or other certificate of exemption issued by an appropriate Management Authority,” except where the specimen was acquired by the owner in New Zealand. Personal and household effects of Appendix III species imported for non-commercial reasons do not require an export permit or re-export certificate, regardless of country of acquisition. See CITES, *Stricter Domestic Measures Regarding Personal and Household Effects*, Notification to the Parties No. 2015/003 (Jan. 16, 2015), <https://cites.org/sites/default/files/notif/E-Notif-2015-003.pdf> [<https://perma.cc/BLX6-7MAA>] (accessed May 27, 2020) (setting out stricter domestic measures adopted by New Zealand in relation to personal and household effects). Since adopting stricter domestic measures regarding personal and household effects, New Zealand has sought the assistance of CITES Parties to implement these stricter domestic measures. See CITES, *New Zealand's Stricter Domestic Measures for Trade in Personal and Household Effects*, Notification to the Parties No. 2018/072 (Oct. 12, 2018), <https://www.cites.org/sites/default/files/notif/E-Notif-2018-072.pdf> [<https://perma.cc/MA4H-XUVN>] (accessed May 27, 2020) (requesting that Parties to CITES issue permits for the export and re-export of CITES specimens where the import would breach New Zealand's stricter measures).

¹¹⁰ ‘Pre-Convention’ means that the ivory was legally acquired prior to the species being listed under CITES (i.e., prior to February 26, 1976 for African elephants, and prior to July 1, 1975 for Asian elephants). INT'L AFF., *supra* note 4. See, e.g., *Travelling with Elephant Products and Ivory*, *supra* note 106 (“All Asian and some African elephants are on the CITES protected list under Appendix I. This means that no commer-

- To import ivory into New Zealand: an import permit from DOC and export/re-export permit from the country of export is required.
- To export ivory from New Zealand: an import permit from the country of destination and an export/re-export permit from DOC is required.¹¹¹

As Appendix II CITES/Schedule 2 TIES Act species, the following applies to ivory from elephants from Botswana, Namibia, South Africa, and Zimbabwe:

- Some regulated trade of ivory is permitted.
- To import ivory into New Zealand: an export or re-export permit from the country of export is required.¹¹²
- To export ivory from New Zealand, an export or re-export permit from DOC is required.¹¹³

1. *Pre-Convention Specimens*

With respect to the importation of pre-Convention specimens into New Zealand, the DOC website states:

If your item has a known date of legal acquisition before CITES added the species to the protected list, it may qualify for pre-Convention status. If your item qualifies for this status, a CITES Pre-Convention Certificate will be needed to import it. . . . If your item does not qualify for pre-Convention status, you will need to apply for a CITES export or re-export permit. The export permit must both be applied for and issued by the country from where you are departing, and the import permit to New Zealand must be issued by DOC.¹¹⁴

DOC issues pre-Convention certificates in New Zealand, and can do so when a CITES-listed specimen is exported or re-exported from New Zealand.¹¹⁵ In order to satisfy DOC that the specimen is pre-Convention, the exporter must provide evidence of the age of the item, such as “authentication from an antiques dealer, old family wills and documents, or a signed affidavit.”¹¹⁶

I. Enforcement of the TIES Act

The New Zealand Customs Service and the Ministry for Primary Industries (MPI) enforce the TIES Act at New Zealand’s border.¹¹⁷ Border officials working for these agencies are Endangered Species Of-

cial trade is allowed of them or their products such as ivory unless the product is a certain age.”).

¹¹¹ *CITES Permits*, *supra* note 106.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *CITES Species*, DEP’T OF CONSERVATION, <https://www.doc.govt.nz/about-us/international-agreements/endangered-species/cites-species/> [https://perma.cc/85F6-M6B9] (accessed May 27, 2020).

¹¹⁶ *Id.*

¹¹⁷ *The Convention in International Trade in Endangered Species (CITES)*, *supra* note 102.

ficers and are responsible for checking specimens to ensure they have been traded with the correct documentation.¹¹⁸

The maximum penalty for a wildlife trade offense under the TIES Act is five years' imprisonment, or a fine of up to N.Z. \$100,000 for individuals and N.Z. \$200,000 for corporations, or both.¹¹⁹

J. Regulation of New Zealand's Domestic Wildlife Trade

The New Zealand government does not regulate the domestic trade of non-native CITES-listed specimens, including ivory.¹²⁰ However, it is an offense under the TIES Act to be in possession of a specimen that the holder knows, or has reasonable grounds for suspecting, was illegally imported into New Zealand.¹²¹ According to the TIES Act, if a specimen is illegally imported it can be seized from its holder.¹²²

Notably, in New Zealand there is no legal requirement for a person selling or facilitating the sale of ivory to provide evidence of the legal importation, age, or provenance¹²³ of a specimen.¹²⁴

III. THE DOMESTIC IVORY TRADE IN THE INTERNATIONAL CONTEXT

A. Domestic Ivory Trade—Fueling, Covering, and Condoning the Illegal International Trade

While the international commercial trade in ivory is controlled under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the domestic trade in many countries is either legal or, in New Zealand's case, unregulated.¹²⁵ These domestic markets are facing growing criticism for driving elephant poaching and ivory trafficking.¹²⁶ There is also a growing consensus that legal

¹¹⁸ *Id.*; TIES Act 1989, ss 27, 35.

¹¹⁹ TIES Act 1989, s 44.

¹²⁰ DEPT. OF CONSERVATION, REVIEW OF THE TRADE IN ENDANGERED SPECIES ACT 1989: DISCUSSION DOCUMENT 4, 38 (2019).

¹²¹ TIES Act 1989, s 45.

¹²² TIES Act 1989, s 39; INT'L FUND FOR ANIMAL WELFARE, UNDER THE HAMMER 19 (2016) [hereinafter UNDER THE HAMMER] ("Under the TIES Act, a specimen that has been illegally imported can be seized from its holder.").

¹²³ 'Provenance' is the record of a specimen's history. *See, e.g.*, UNDER THE HAMMER, *supra* note 122, at 21 ("Provenance refers to the record of an object's history. Short of performing laboratory analyses, provenance provides the most useful information to assist in determining the authenticity, origin and legality of elephant ivory.").

¹²⁴ *Id.* at 19.

¹²⁵ *The Ivory Trade*, *supra* note 5.

¹²⁶ *See id.* (discussing failures of controlled elephant ivory trade); Drury, *supra* note 5 ("Despite the international trade ban, ivory poaching has more than doubled . . ."); Carrington, *supra* note 5 (discussing arguments for why elephant ivory markets should be closed rather than regulated); *Antiques Trade Bid to Quash Landmark UK Ivory Act Fails in the High Court*, EIA (Nov. 5, 2019), <https://eia-international.org/news/antiques-trade-bid-to-quash-landmark-uk-ivory-act-fails-in-the-high-court/> [<https://perma.cc/>

domestic markets provide a cover for illegal trade because it is difficult to distinguish between new and antique ivory.¹²⁷

According to Mary Rice, Executive Director of the Environmental Investigation Agency (EIA), “Wherever legal domestic ivory markets may be, the evidence clearly shows they provide easy opportunities for the laundering of illegal ivory and also sustain demand for ivory among consumers.”¹²⁸ Similarly, the first-ever transnational organized crime threat assessment, published by the United Nations Office on Drugs and Crime (UNODC) in 2010, concluded:

[T]he trade in illicit ivory is only lucrative because there is a parallel licit supply, and ivory can be sold and used openly. Ivory would lose much of its marketability if buying it were unequivocally an illegal act, or if ownership of these status goods had to be concealed. In some cases, consumers are duped; in others, there is willing blindness.¹²⁹

In its submission in response to Australia’s inquiry into the domestic trade in elephants and rhinoceroses, the EIA also observed:

Various studies . . . show that a legal domestic ivory market provides opportunities for laundering of illegal ivory, further fuelling the elephant poaching crisis. It is very difficult to differentiate illegal ivory from legal ivory and traffickers use various techniques to launder illegal/new ivory by making it look legal/old/antique.¹³⁰

These ‘techniques’ referred to in the EIA comment include deliberately cracking, staining, dyeing, or marking the ivory.¹³¹

It is also argued that a legal ivory trade makes such trade ‘socially acceptable.’¹³² Legalization of the trade removes the stigma that might otherwise be associated with ivory, sending a message to consumers

UX7J-BN4J] (accessed May 27, 2020) (discussing some of the issues that come with regulating ivory trade).

¹²⁷ See generally *The Ivory Trade*, *supra* note 5 (discussing the complexity of identifying older ivory); Drury, *supra* note 5 (mentioning exemptions for antique ivory trade); Carrington, *supra* note 5 (“[M]any countries allow antique and other ivory pieces to be bought and sold domestically.”); EIA, *supra* note 126 (stating that supporters of the Ivory Act argued “any legal trade in ivory provides cover for illegal trade because it is difficult to distinguish between antique and newly carved ivory”).

¹²⁸ *UK Ivory Ban Becoming Law Is the Best Christmas Gift for the World’s Threatened Elephants!*, EIA (Dec. 20, 2018), <https://eia-international.org/news/uk-ivory-ban-becoming-law-best-christmas-gift-worlds-threatened-elephants/> [https://perma.cc/UNF2-KJTX] (accessed May 27, 2020).

¹²⁹ UNITED NATIONS OFFICE OF DRUGS & CRIME, *THE GLOBALIZATION OF CRIME: A TRANSNATIONAL ORGANIZED CRIME THREAT ASSESSMENT* 278 (2010), https://www.unodc.org/res/cld/bibliography/the-globalization-of-crime-a-transnational-organized-crime-threat-assessment_html/TOCTA_Report_2010_low_res.pdf [https://perma.cc/JXP9-VEQR] (accessed May 27, 2020).

¹³⁰ ENVTL. INVESTIGATION AGENCY, *RESPONSE TO INQUIRY INTO TRADE IN ELEPHANTS AND RHINOCEROSSES IN AUSTRALIA (SUBMISSION 33)* 4 (2018), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Elephantivoryrhinohorn/Submissions [https://perma.cc/6AUC-BVFU] (accessed May 27, 2020) [hereinafter EIA].

¹³¹ UNDER THE HAMMER, *supra* note 122, at 21.

¹³² See EIA, *supra* note 126, at 7 (commenting that “[a]s dealing in ivory becomes illegal, consumer appetite for ivory as a socially-acceptable product declines”).

that it is acceptable to profit from the death of elephants.¹³³ Given the devastating impacts of the ivory trade—not only on populations but also the welfare impacts on individual elephants and family groups¹³⁴—playing any part in this trade should be anything but socially acceptable.

With growing recognition of the contribution of legal and unregulated domestic markets to global wildlife trafficking, multiple organizations have recommended the closure of domestic ivory markets.¹³⁵ Fauna & Flora International (FFI), for example, argue that the closure of domestic markets “will make the law clearer cut and law enforcement more straightforward, while also making it easier to reduce [consumer] demand.”¹³⁶

Importantly, most African elephant range states also support the closure of domestic ivory markets.¹³⁷ These include range states that

¹³³ Rachel Bale, *A Legal Trade in Ivory Would Wipe Out Elephants, Study Finds*, NAT. GEOGRAPHIC (Sept. 15, 2016), <https://www.nationalgeographic.com/news/2016/09/wildlife-legal-ivory-trade-not-sustainable-study/> [<https://perma.cc/RRA4-GYL6>] (accessed May 27, 2020).

¹³⁴ See, e.g., Kathleen Gobush et al., *Long-Term Impacts of Poaching on Relatedness: Stress Physiology, and Reproductive Output of Adult Female African Elephants*, 22 CONSERVATION BIOLOGY 1590, 1590 (2008), <http://faculty.washington.edu/wirsinga/Gobush2008.pdf> [<https://perma.cc/3AQV-95C6>] (accessed May 27, 2020) (discussing the impact of poaching on the social structure of matrilineal African elephant family groups); Elizabeth A. Archie & Patrick I. Chiyo, *Elephant Behaviour and Conservation: Social Relationships, the Effects of Poaching, and Genetic Tools for Management*, 21 MOLECULAR ECOLOGY 765, 775 (2011), <https://doi.org/10.1111/j.1365-294X.2011.05237.x> [<https://perma.cc/L68A-ZN9U>] (accessed May 27, 2020) (discussing how poaching, by “removing older animals and kin,” disrupts elephants’ social relationships and genetic structure, thereby “limit[ing] the adaptive value of female relationships”); Shifra Goldenberg, *Can Elephants Retain Their Social Bonds in the Face of Poaching?*, CONVERSATION (Dec. 17, 2015), <https://theconversation.com/can-elephants-retain-their-social-bonds-in-the-face-of-poaching-52274> [<https://perma.cc/N983-35E8>] (accessed May 27, 2020) (discussing the impact on surviving elephants of the loss of “socially critical” older elephants or “cornerstone matriarchs,” whom poachers target because of their large tusks).

¹³⁵ See, e.g., UNODC, *supra* note 2, at 11 (stating “[i]llegal trade could be reduced if each country were to prohibit, under national law, the possession of wildlife that was illegally harvested in, or illegally traded from, anywhere else in the world,” and “[t]he current international controls regulating trade do not extend into national markets, so domestic environmental laws should be expanded to provide protection to wildlife from other parts of the world”); see also UNEP ET AL., *supra* note 11, at 8 (discussing recommendations for action including: “[s]trength[ing] national legislation as necessary, and strictly enforce[ing] relevant provisions to eradicate illegal or unregulated domestic ivory markets”); UNEP ET AL., *supra* note 11, at 98 (discussing recommendations including: “[s]upport[ing] immediate, decisive and collective action to narrow the gap between commitments and compliance, such as the ones expressed in multilateral environmental agreements, through national implementation and enforcement, including the relevant decisions and resolutions taken by their governing bodies intended to combat the illicit trade in wildlife”).

¹³⁶ Drury, *supra* note 5.

¹³⁷ Shruti Suresh, *EIA Calls for the Closure of Legal Domestic Ivory Markets*, EIA (Aug. 12, 2016), <https://eia-international.org/blog/on-world-elephant-day-today-eia-is-calling-on-world-governments-to-vote-yes-and-support-the-closure-of-legal-domestic-ivory-markets/> [<https://perma.cc/HBM3-JM5T>] (accessed May 27, 2020).

are members of the Elephant Protection Initiative,¹³⁸ which consists of twenty member countries, and the African Elephant Coalition, a consortium of thirty-two African countries.¹³⁹ The Elephant Protection Initiative is committed to closing domestic ivory markets and has published guidance materials for resource mobilization in countries that are planning to close their domestic market.¹⁴⁰ In November 2015, the African Elephant Coalition adopted the Cotonou Declaration, under which the member countries agreed to “enact, implement and enforce legislation prohibiting domestic ivory trade and support all proposals and actions at international and national levels to close domestic ivory markets worldwide.”¹⁴¹

These calls for the closure of domestic ivory markets have been amplified through a series of resolutions and motions passed by international bodies in 2016 and 2017, culminating in a United Nations General Assembly (U.N. G.A.) Resolution.¹⁴²

B. Calls to Close Domestic Ivory Markets

1. International Union for Conservation of Nature (IUCN) World Congress motion: Closure of Domestic Markets for Elephant Ivory (September 2016)

At the International Union for Conservation of Nature (IUCN) World Conservation Congress in September 2016—where the bleak findings of the Global Elephant Census, discussed above, were unveiled—a majority of delegates passed a motion urging the governments of countries with legal domestic ivory markets to close them.¹⁴³ The motion notes that “any elephant ivory supply, including legal domestic markets, creates opportunities for the laundering of illegal elephant ivory under the guise of legality.”¹⁴⁴ The motion was welcomed

¹³⁸ *Africa’s Answer to the Elephant Crisis*, ELEPHANT PROTECTION INITIATIVE, <https://www.elephantprotectioninitiative.org/> [<https://perma.cc/RP43-D65Y>] (accessed May 27, 2020).

¹³⁹ *About the African Elephant Coalition*, AFRICAN ELEPHANT COAL., <https://www.africanelephantcoalition.org/> [<https://perma.cc/SD9S-XK2X>] (accessed May 27, 2020).

¹⁴⁰ John Stepherson, *Elephant Protection Initiative*, GEOPOLICITY WORLD, <https://www.geopolicity.com/elephant-protection-initiative> [<https://perma.cc/D9K6-DSDG>] (accessed May 27, 2020); ELEPHANT PROTECTION INITIATIVE, MONITORING & EVALUATION FRAMEWORK 5 (February 2019).

¹⁴¹ Meeting on African Elephant Coalition, *Cotonou Declaration*, ¶ 3 (Nov. 4, 2015), <http://www.africanelephantcoalition.org/wp-content/uploads/2016/05/cotonou-declaration.pdf> [<https://perma.cc/33R5-4DUH>] (accessed May 27, 2020).

¹⁴² Press Release, CITES, CITES Welcomes Powerful New UN Resolution on Tackling Illicit Wildlife Trafficking (Sept. 12, 2017).

¹⁴³ See, e.g., Shreya Dasgupta, *Countries at IUCN Congress Vote to Ban Domestic Ivory Markets*, MONGABAY (Sept. 12, 2016), <https://news.mongabay.com/2016/09/countries-at-iucn-congress-vote-to-ban-domestic-ivory-markets/> [<https://perma.cc/9LJ6-PCCA>] (accessed May 27, 2020) (describing the significance of the motion passed at the IUCN World Conservation Congress to ban all domestic ivory markets).

¹⁴⁴ IUCN Res. 011, Preamble (Sept. 10, 2016).

by organizations working to protect elephants, with the Natural Resources Defense Council (NRDC) stating, “Today’s vote by IUCN members is the first time that a major international body has called on every country in the world to close its legal markets for elephant ivory. It’s truly a landmark moment, and a victory for elephants”¹⁴⁵

2. *CITES CoP17: Resolution Conference 10.10 (Rev. CoP18)—Trade in Elephant Specimens (October 2016)*

At the seventeenth meeting of the Conference of the Parties (CoP) in October 2016, 182 Parties passed a Resolution to phase out domestic ivory markets that contribute to poaching or illegal trade.¹⁴⁶ The Resolution:

Recommends that all Parties and non-Parties 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.¹⁴⁷

Under Resolution Conference 10.10 (Res. Conf. 10.10 (Rev. CoP18)), Parties are requested to report to the CITES Secretariat “the status of the legality of their domestic ivory markets.”¹⁴⁸ That information is reported to the CITES Standing Committee meetings and at future meetings of the CoP.¹⁴⁹ While the Resolution is not legally binding on Parties, it elevates the issue of domestic trade and “puts pressure on countries that have not closed their domestic markets.”¹⁵⁰ This Resolution is significant as it is the first time that Parties to CITES have agreed that domestic ivory markets should be closed rather than just regulated.¹⁵¹

¹⁴⁵ *Global Experts Call for the Close of All Domestic Ivory Markets*, NAT. RESOURCES DEF. COUNCIL (Sept. 10, 2016), <https://www.nrdc.org/media/2016/160910> [<https://perma.cc/8AZM-JQDA>] (accessed May 27, 2020).

¹⁴⁶ Press Release, Wildlife Conservation Society, CITES CoP17 Delegates: Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally (Oct. 2, 2016), <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9319/CITES-CoP17-Delegates-Adopt-Resolution-Recommending-Closure-of-Domestic-Elephant-Ivory-Markets-Globally.aspx> [<https://perma.cc/B45Q-RWJP>] (accessed May 27, 2020).

¹⁴⁷ *Id.*; CITES, Res. Conf. 10.10 (Rev. CoP18), *Trade in Elephant Specimens Resolution Conference*, ¶ 3 (2016), <https://cites.org/sites/default/files/document/E-Res-10-10-R18.pdf> [<https://perma.cc/2JLT-356Y>] (accessed May 27, 2020) [hereinafter CITES Res. Conf. 10.10 (Rev. CoP18)]. Resolution Conference 10.10 was agreed at CoP17 and revised at CoP18, hence being referred to as Resolution Conference 10.10 (Rev. CoP18).

¹⁴⁸ *Id.* ¶ 9.

¹⁴⁹ *Id.* ¶ 10.

¹⁵⁰ Julie L. Maher, *CITES CoP17 Delegates Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally*, NAT'L GEOGRAPHIC (Oct. 2, 2016), <https://blog.nationalgeographic.org/2016/10/02/cites-cop17-delegates-adopt-resolution-recommending-closure-of-domestic-elephant-ivory-markets-globally/> [<https://perma.cc/5HNP-WHG9>] (accessed May 27, 2020).

¹⁵¹ Carrington, *supra* note 5 (stating that the Resolution will increase pressure on countries that still host legal ivory markets).

Res. Conf. 10.10 (Rev. CoP18) envisages that “narrow exemptions . . . for some items may be warranted,” but these “should not contribute to poaching or illegal trade.”¹⁵² The final wording of Res. Conf. 10.10 (Rev. CoP18) was a compromise, in that the domestic markets referred to must be “contributing to poaching or illegal trade.”¹⁵³ There are concerns that this provides a potential loophole, whereby countries can argue that their domestic trade does not (or cannot be proven to) contribute to poaching or illegal trade.¹⁵⁴ However, Justice Jay’s opinion in the recent U.K.’s High Court of Justice decision, *FACT v. DEFRA*, provides support for a broader interpretation of the Resolution:

I read this resolution as recording CITES’s view that the existence of a legal domestic market contributes to the illegal trade, in the sense that it indirectly encourages and stimulates it, but that it may be possible to carve out exemptions which do not. I cannot accept [the plaintiff’s] submission that CITES is of the opinion that whether or not legal domestic markets may contribute to illegal trade is case specific.¹⁵⁵

In other words, despite the qualifying language in the Resolution, it can be understood to mean that—unless an exemption applies—domestic markets do contribute to poaching or illegal trade. It is not necessary to prove this to be the case on a country-by-country basis.

3. *United Nations General Assembly Resolution—Tackling Illicit Trafficking in Wildlife (September 2017)*

Global support for the implementation of Res. Conf. 10.10 (Rev. CoP18) was strengthened by a Resolution adopted by the 193 Member States of the United Nations in September 2017.¹⁵⁶ The U.N. G.A. Resolution on Tackling Illicit Trafficking in Wildlife calls upon Member States to “ensure that legal domestic markets for wildlife products are

¹⁵² CITES Res. Conf. 10.10 (Rev CoP18), *supra* note 147, ¶ 4.

¹⁵³ See, e.g., Carrington, *supra* note 5 (citing Daniela Freyer of Pro Wildlife, who criticized the E.U. and “a small minority of southern African countries” for “watering down the motion,” resulting in the final wording specifying that the domestic ivory markets referenced in the Resolution are those that are “contributing to poaching or illegal trade”).

¹⁵⁴ See *Implementing Aspects of Resolution Conf. 10.10 (Rev. CoP17) on the Closure of Domestic Ivory Markets*, Committee II, Doc. 69.5 ¶¶ 23, 28 (Aug. 21, 2019), <https://cites.org/sites/default/files/eng/cop/18/doc/E-CoP18-069-05.pdf> [<https://perma.cc/8SVV-KJ9S>] (accessed May 27, 2020) (identifying possible loophole in requirement that only markets “contributing to poaching or illegal trade” should be closed); see also *Analysis of Proposals and Documents on Elephants and Ivory*, CITES CoP18 (Aug. 16, 2019), <https://www.africanelephantcoalition.org/wp-content/uploads/2019/09/ELEPHANTS-IVORY-REPORT-CITES-COP-18.pdf> [<https://perma.cc/9QGD-QXB5>] (accessed May 27, 2020) (summarizing that Document 69.5 “[u]nderlines the loophole in Resolution Conf. 10.10 (Rev. CoP17) specifying that only markets “contributing to poaching or illegal trade” should be closed”).

¹⁵⁵ *Friends of Antique Cultural Treasures Ltd. v. Sec’y of State for the Dep’t of Env’t, Food & Rural Affairs*, [2019] EWHC 2951 (Admin.) ¶ 11, <https://www.judiciary.uk/wp-content/uploads/2019/11/FACT-v-SoS-Final.pdf> [<https://perma.cc/24AS-GZYS>] (accessed May 27, 2020) [hereinafter *FACT v. DEFRA*]; see *infra* Part IV.

¹⁵⁶ Press Release, CITES, *supra* note 142.

not used to mask the trade in illegal wildlife products,” and urges parties to implement Res. Conf. 10.10 (Rev. CoP18).¹⁵⁷

There are three other U.N. G.A. Resolutions on tackling illicit wildlife trafficking.¹⁵⁸ However, the 2017 Resolution is significant in that it is the first to specifically address the issue of legal domestic markets and their contribution to the illegal wildlife trade.¹⁵⁹ This provides political momentum and support for those arguing for the closure of domestic ivory markets.

These resolutions have raised the profile of the domestic markets issue in international fora, and added political weight to the calls for closure of these markets.¹⁶⁰ Since the passing of these resolutions, several countries have implemented or announced a ban on the domestic trade of elephant ivory. The next Part outlines these and discusses some of the implications arising from the bans, with a focus on recent developments in the U.K.

IV. RECENT INTERNATIONAL EFFORTS TO BAN OR RESTRICT DOMESTIC IVORY TRADE

Since CoP17, the United States, China, Hong Kong, Taiwan, Singapore, France, the Netherlands, and the U.K. have announced or implemented domestic ivory trade bans.¹⁶¹ Other countries, including Japan, Thailand, Australia, and Belgium, and other European Union (E.U.) countries are reviewing or strengthening their existing regulatory frameworks.¹⁶²

¹⁵⁷ U.N. G.A. Res. 71/326, Tackling Illicit Trafficking in Wildlife, ¶ 21 (Sept. 11, 2017).

¹⁵⁸ U.N. G.A. Res. 69/314 (July 30, 2015); U.N. G.A. Res. 70/301 (Sept. 9, 2016); U.N. G.A. Res. 73/343 (Sept. 16, 2019).

¹⁵⁹ U.N. G.A. Res. 71/326, ¶ 21.

¹⁶⁰ See *infra* Part IV (discussing different countries that implemented or announced bans on domestic trade of elephant ivory following the CITES and U.N. resolutions).

¹⁶¹ See BORN FREE FOUND. & BORN FREE USA, CITES CoP18: POSITION PAPER 3–4 (Aug. 2019), https://www.bornfreeusa.org/wp-content/uploads/Born_Free_CITES_Cop18_Report_0719_FINAL.pdf [<https://perma.cc/JSS4-SUXC>] (accessed May 27, 2020) (“An increasing number of countries have implemented Paragraph 3 of Resolution Conf. 10.10 (Rev. CoP17) by banning or restricting trade in ivory, including the USA, China, France, Luxembourg and the UK. Additional jurisdictions have committed to or are considering similar action, including Singapore, Taiwan, Hong Kong, Australia and Belgium.”); see also *Taiwan Announces Domestic Ivory Ban Starting in 2020*, WILDAID (July 16, 2018), <https://wildaid.org/taiwan-announces-domestic-ivory-ban/> [<https://perma.cc/YMZ2-VGSP>] (accessed May 27, 2020) (“Taiwan joins mainland China and Hong Kong SAR, as well as Vietnam, the United Kingdom and the United States in instituting a domestic ban on ivory sales. Thailand has significantly strengthened its ivory regulations with several minor exceptions short of a full ban.”).

¹⁶² WILDAID, *supra* note 161; BORN FREE FOUND. & BORN FREE USA, *supra* note 161.

A. *The United States*

In June 2016, the U.S. announced “a near-total ban on the domestic commercial trade of African elephant ivory.”¹⁶³ The ban represented another step towards fulfilling President Obama’s 2013 Executive Order to combat wildlife trafficking,¹⁶⁴ issued in response to criminal investigations that had shown the legal ivory market to be a cover for the illegal trade.¹⁶⁵ The ban also fulfilled an agreement made with China in September 2015 to enact general ivory trade bans at the domestic level, with some limited exceptions, and for both countries “to take significant and timely steps to halt their domestic commercial trades in elephant ivory.”¹⁶⁶

The regulations, which took effect on July 6, 2016, restrict imports, exports, and sales of ivory between states, and limit a hunter’s ivory trophy imports to two per year (previously, ivory trophy imports were unlimited).¹⁶⁷ There are exemptions for the non-commercial movement of musical instruments and museum specimens containing pre-Convention antique ivory, as well as the movement of ivory for scientific purposes or law enforcement.¹⁶⁸ There is also a *de minimus* exemption for items containing less than 200 grams of ivory and comprising less than 50% ivory by volume and value.¹⁶⁹ Although the United States ban applies only to interstate trade, some states have implemented legislation that further restricts intrastate ivory sales.¹⁷⁰

¹⁶³ Press Release, U.S. Fish & Wildlife Service, Administration Takes Bold Step for African Elephant Conservation: Completes Near-Total Elephant Ivory Ban to Cut Off Opportunities for Traffickers (June 2, 2016).

¹⁶⁴ Exec. Order No. 13648, 78 Fed. Reg. 40621, 40621–23 (July 5, 2013).

¹⁶⁵ See *Revisions to the Endangered Species Act (ESA) Special Rule for the African Elephant: Questions & Answers*, U.S. FISH & WILDLIFE SERV. (June 6, 2016), <https://www.fws.gov/international/pdf/questions-and-answers-african-ivory-4d-final-rule.pdf> [<https://perma.cc/8JLT-7AAG>] (accessed May 27, 2020) [hereinafter *Revisions to the ESA Special Rule for the African Elephant*] (“Our criminal investigations and anti-smuggling efforts have clearly shown legal ivory trade can serve as a cover for illegal trade. . . . Therefore, we are further regulating import, export and interstate sale, enacting a near-total ban on elephant ivory trade in the United States.”).

¹⁶⁶ *Fact Sheet: President Xi Jinping’s State Visit to the United States*, WHITE HOUSE (Sept. 25, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states> [<https://perma.cc/F2YZ-XHPG>] (accessed May 27, 2020); Jani Actman, *U.S. Adopts Near-Total Ivory Ban*, NAT’L GEOGRAPHIC (June 3, 2016), <https://www.nationalgeographic.com/news/2016/06/us-ivory-ban-regulations/> [<https://perma.cc/4MAV-F6U6>] (accessed May 27, 2020); Bale, *supra* note 16.

¹⁶⁷ Actman, *supra* note 166.

¹⁶⁸ *Revisions to the ESA Special Rule for the African Elephant*, *supra* note 165.

¹⁶⁹ *Id.*

¹⁷⁰ These include California, Hawaii, New York, New Jersey, Oregon, and Washington. See Rachel Kramer et al., *The U.S. Elephant Ivory Market: A New Baseline*, TRAFFIC REP. (July 2017), https://www.traffic.org/site/assets/files/1378/traffic_us_ivory_report_2017.pdf [<https://perma.cc/BSJ8-F22Z>] (accessed May 27, 2020) (analyzing United States state legislation governing the intra-state commercial trade in elephant ivory).

B. China

As noted above, in September 2015, China and the United States agreed to implement “nearly complete” ivory bans, including ending their respective domestic ivory trades.¹⁷¹ China’s ban took effect at the end of 2017.¹⁷² The ban prohibits the import and export of ivory, and resulted in the closure of all licensed ivory carving factories and retailers.¹⁷³ The ban applies only to the commercial trade of ivory; there are exemptions for museums and private antique collectors, the transport, gifting and display of ivory, and the auction of “cultural relics of a legal origin.”¹⁷⁴

Despite these exceptions, the ban is a significant development for a country that is not only one of the world’s largest consumers of ivory,¹⁷⁵ but where the government itself legitimized the trade.¹⁷⁶ Consumer research indicates that attitudes towards ivory have started to change since the ban was implemented.¹⁷⁷ For example, there was an almost 50% decrease in consumer intention to buy ivory compared to the year prior to the ban.¹⁷⁸ Support for the ban remained high in 2018, with 91% of respondents stating they support it.¹⁷⁹ However, further action is needed to influence some segments of Chinese society,

¹⁷¹ *Fact Sheet: President Xi Jinping’s State Visit to the United States*, *supra* note 166.

¹⁷² Douglas Whitehead, *China’s Ivory Ban: Achievements and Enforcement Challenges*, VT. L. SCH., U.S.-ASIA PARTNERSHIPS FOR ENVTL. L.: ASIA ENV’T GOVERNANCE BLOG (Feb. 27, 2018), <http://asia-environment.vermontlaw.edu/2018/02/27/chinas-ivory-ban-achievements-and-enforcement-challenges/> [https://perma.cc/55CV-E4UY] (accessed May 27, 2020).

¹⁷³ Rachael Bale, *China Shuts Down Its Legal Ivory Trade*, NAT’L GEOGRAPHIC (Dec. 30, 2017), <https://www.nationalgeographic.com/news/2017/12/wildlife-watch-china-ivory-ban-goes-into-effect/> [https://perma.cc/YL86-SD3N] (accessed May 27, 2020).

¹⁷⁴ Whitehead, *supra* note 172 (“[T]he State Council’s notice makes an exception for legal ivory for use in museums and other non-commercial activity, as well as “cultural relics of a legal origin . . .”). China’s ban does not specify a date before which ‘relics’ must have been produced. *See Government Confirms U.K. Ban on Ivory Sales*, DEP’T FOR ENV’T, FOOD & RURAL AFFAIRS ET AL. (Apr. 3, 2018), <https://www.gov.uk/government/news/government-confirms-uk-ban-on-ivory-sales> [https://perma.cc/8F9N-PQUQ] (accessed May 27, 2020) (“The Chinese ban exempts ivory ‘relics’, without setting a date before which these must have been produced.”).

¹⁷⁵ *See* UNODC, *supra* note 2; UNEP ET AL., *supra* note 11.

¹⁷⁶ Rachael Bale, *U.S.-China Deal to Ban Ivory Trade Is Good News for Elephants*, NAT’L GEOGRAPHIC (Sep. 25, 2015), <https://www.nationalgeographic.com/news/2015/09/150925-ivory-elephants-us-china-obama-xi-poaching/> [https://perma.cc/F5XX-R4TZ] (accessed May 27, 2020).

¹⁷⁷ *See generally* WANDER MELJER ET AL., TRAFFIC & WWF, DEMAND UNDER THE BAN—CHINA IVORY CONSUMPTION RESEARCH POST-BAN 2018 (Zijing Nui trans., 2018), <https://www.traffic.org/site/assets/files/11150/demand-under-the-ban-2018-1.pdf> [https://perma.cc/Z34S-JAJJ] (accessed May 27, 2020) (summarizing consumer research findings on the effects of the China ivory ban).

¹⁷⁸ TRAFFIC, CITES BRIEFING DOCUMENT—18TH MEETING OF THE CONFERENCE OF THE PARTIES TO CITES 20 (2019), <https://www.traffic.org/site/assets/files/12220/cites-cop18-recommendations-en-vfinal-web.pdf> [https://perma.cc/Z3FK-MGUW] (accessed May 27, 2020).

¹⁷⁹ MELJER ET AL., *supra* note 177, at 45.

where “ivory’s draw as the ultimate status symbol has been hard to overcome.”¹⁸⁰ Unprompted awareness of the ban is also very low (8%), highlighting the need for public education campaigns.¹⁸¹

Concerns have also arisen from post-ban research examining the exemption that allows the sale of antique ivory; this exemption has reportedly created loopholes for laundering illegal ivory.¹⁸² Further, some auction houses mislabeled the age and material of catalogue items to evade ivory trade supervision.¹⁸³ For China’s—or any country’s—ban to be successful, enforcement officials must be vigilant to ensure exemptions are not exploited. There must also be effective coordination between agencies, clear accountability, and capable personnel on the ground.

There are also concerns about other “ivory trafficking hotspots particularly at the border with neighboring Viet Nam,” which has not closed its domestic market.¹⁸⁴ There is a risk that when a country implements a domestic ban, the illegal activity will be displaced to other countries with weaker, or no, domestic regulation.¹⁸⁵ The recent EIA and WJC investigations identified this risk, finding that Vietnam is now a main entry point of ivory into Asia.¹⁸⁶ The unregulated market of Laos has also been identified as ‘undermining’ China’s ban.¹⁸⁷ The risk of displacement must be borne in mind when implementing domestic bans. However, this should not be an argument against domestic bans, but an argument for international cooperation to mitigate against unintended consequences.

¹⁸⁰ Bale, *supra* note 133.

¹⁸¹ MEIJER ET AL., *supra* note 177, at 14, 18, 64, 65–66.

¹⁸² See, e.g., HSUN-WEN CHOU, TRAFFIC, CHINA’S IVORY AUCTION MARKET: A COMPREHENSIVE ANALYSIS OF LEGISLATION, HISTORICAL DATA AND MARKET SURVEY RESULTS 39 (Sept. 2018), <https://www.traffic.org/site/assets/files/11150/chinas-ivory-auction-market.pdf> [<https://perma.cc/FET7-DV KT>] (accessed May 27, 2020) (commenting that in the context of “weak compliance and the absence of criteria for appraisal of age and legality of origin, large numbers of ivory auction activities serve as loopholes and channels for illegal ivory laundry, thus weakening the effectiveness of implementation of the ivory trade ban”).

¹⁸³ *Id.* at 33, 37–38.

¹⁸⁴ TRAFFIC, *supra* note 178, at 20.

¹⁸⁵ See, e.g., *Vietnamese Carvers Move Centre Stage as China Cracks Down on Illegal Ivory Sales*, THE CONVERSATION (Aug. 4, 2016), <http://theconversation.com/vietnamese-carvers-move-centre-stage-as-china-cracks-down-on-illegal-ivory-sales-63357> [<https://perma.cc/WQT4-K86F>] (accessed May 27, 2020) (discussing how China’s crackdown on illegal ivory has resulted an increase in ivory trade in Vietnam).

¹⁸⁶ EIA, *supra* note 13; WJC, *supra* note 13, at 12.

¹⁸⁷ Shi Yi, *How Laos’ Black Market Undermines China’s Ivory Ban*, SIXTH TONE (June 6, 2017), <http://www.sixthtone.com/news/1000305/how-laos-black-market-undermines-chinas-ivory-banI> [<https://perma.cc/3WUC-PTY5>] (accessed May 27, 2020).

C. Hong Kong

In May 2018, the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 came into effect.¹⁸⁸ This is the first step in a three-part plan to phase out the domestic trade and tighten regulations on the import and export of ivory and elephant hunting trophies.¹⁸⁹

Under the second part of the plan, implemented in August 2018, the import and re-export of pre-Convention ivory was banned, and licensing controls were introduced for the commercial possession of pre-Convention ivory in local markets.¹⁹⁰

The final part of the process, which will be implemented by December 31, 2021, will ban the commercial possession and trade of all ivory in Hong Kong, excluding antique ivory.¹⁹¹

D. Taiwan

In April 2018, Taiwan announced that amendments to the Wildlife Conservation Act would phase out the country's domestic ivory market by 2020.¹⁹²

E. Singapore

In July 2019, Singapore reported a record seizure of 8.8 tons of African elephant ivory, estimated to be worth around U.S. \$12.9 million and representing almost 300 elephants.¹⁹³ A month later, the Government announced its intention to ban domestic ivory sales from September 2021.¹⁹⁴ As a major transit country for illegally traded wildlife,¹⁹⁵ this is a welcome development.

¹⁸⁸ Press Release, Government of the Hong Kong Special Administrative Region, Government Will Phase Out Local Ivory Trade and Increase Penalties on Illicit Trade in Endangered Species from May (Apr. 23, 2018), <https://www.info.gov.hk/gia/general/201804/23/P2018042000739.htm> [<https://perma.cc/UN63-RWWV>] (accessed May 27, 2020).

¹⁸⁹ *SAR to Phase Out Ivory Trade, Increase Penalties for Illicit Endangered Species Trade from May*, STANDARD (Apr. 23, 2018), <http://www.thestandard.com.hk/breaking-news.php?id=106217&sid=4> [<https://perma.cc/PPH4-MUTS>] (accessed May 27, 2020).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Taiwan Announces Move to Close Its Domestic Ivory Market By 2020*, TRAFFIC (Apr. 4, 2018), <https://www.traffic.org/news/taiwan-announces-move-to-close-its-domestic-ivory-market-by-2020/> [<https://perma.cc/RG2Y-A7FJ>] (accessed May 27, 2020).

¹⁹³ Aradhana Aravindan & John Geddie, *Singapore Seizes Ivory from Nearly 300 Elephants in Record Haul*, REUTERS (July 22, 2019), <https://www.reuters.com/article/us-singapore-wildlife-trafficking/singapore-seizes-ivory-from-nearly-300-elephants-in-record-haul-idUSKCN1U10CQ> [<https://perma.cc/LX3X-F59T>] (accessed May 27, 2020).

¹⁹⁴ *Singapore to Ban Domestic Elephant Ivory Trade*, DEUTSCHE WELLE (Aug. 12, 2019), <https://www.dw.com/en/singapore-to-ban-domestic-elephant-ivory-trade/a-49993890> [<https://perma.cc/54DA-BYS4>] (accessed May 27, 2020).

¹⁹⁵ Aravindan & Geddie, *supra* note 193.

F. Thailand

Alongside China, Thailand was once considered to have the largest unregulated ivory market in the world.¹⁹⁶ Since 2014, the country has transitioned to a regulated market.¹⁹⁷ Changes include passing the Elephant Ivory Act in 2015 to regulate the domestic market, and introducing new regulations to criminalize the sale of ivory.¹⁹⁸ These regulatory changes were complemented by a three-year campaign highlighting the impact of the ivory trade on African elephants.¹⁹⁹

A 2016 survey found that there was a 96% decrease in the amount of legal ivory being sold openly on Bangkok's market (from a high of 7,421 ivory items in 2014 to just 283 products in June 2016).²⁰⁰

While this transition has been hailed as a success, additional measures have been recommended to enhance law enforcement, for example random testing of registered ivory to ensure it was not taken from African elephants.²⁰¹ Ultimately, there are calls for Thailand to close its domestic market rather than continue to enhance regulation and monitoring.²⁰²

G. Japan

In March 2019, Japan announced its plan to introduce a registration system for the domestic ivory trade.²⁰³ This system, which took effect on July 1, 2019, requires ivory dealers to verify through carbon

¹⁹⁶ See UNEP ET AL., *supra* note 11, at 6, 43 (noting that at the time of the report (2013), China and Thailand were the two major final destinations for the illicit ivory trade); see also KANITHA KRISHNASAMY ET AL., IN TRANSITION: BANGKOK'S IVORY MARKET—AN 18-MONTH SURVEY OF BANGKOK'S IVORY MARKET, TRAFFIC 20 (2016), http://d2ouvy59p0dg6k.cloudfront.net/downloads/traffic_report_bangkok_ivory_2.pdf [<https://perma.cc/TW3Q-7ATV>] (accessed May 27, 2020) (noting that while China was the primary “end-use destination” at the time of CoP16 in 2013, “Thailand held the second most prominent position as an unregulated ivory market in Asia”).

¹⁹⁷ See KRISHNASAMY ET AL., *supra* note 196, at 2 (“[I]n December 2014, Thailand amended the Wild Animal Reservation and Protection Act (WARPA) B.E 2525 (1992) by listing the African Elephant *Loxodonta africana* as a protected species, thereby prohibiting the import, export, trade and sale of ivory from African Elephants.”).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 1–2; see also *Massive Downturn in Bangkok Ivory Market*, WWF (Sept. 29, 2016), https://wwf.panda.org/wwf_news/?279673/massive-downturn-bangkok-ivory-market [<https://perma.cc/WJ96-W5FS>] (accessed May 27, 2020) (describing “the transformation of Thailand’s ivory market” following the public awareness campaign).

²⁰⁰ KRISHNASAMY ET AL., *supra* note 196, at 6.

²⁰¹ *Id.* at 23.

²⁰² See WWF, *supra* note 199 (“Tightening up regulations and tougher law enforcement are key in the short term but WWF believes that the best option for long term management is for the government to close the domestic market.”).

²⁰³ Press Release, Gov’t of Japan, Ministry of the Env’t, Strict Registration Examination Method for Ivory Maintaining Ivory-Prohibition of Domestic Transaction of All Ivory (Mar. 22, 2019), <https://www.env.go.jp/press/106580-print.html> [<https://perma.cc/YAJ7-3QEZ>] (accessed May 27, 2020).

dating that the ivory specimens were obtained legally.²⁰⁴ Before this, there was no requirement to provide verifiable proof of when, where, or how ivory was obtained.²⁰⁵

While the requirement appears to be a big step for the country, it does not apply to the 170 tons of tusks stockpiled in Japan.²⁰⁶ The registration system also does not enforce against carved ivory or cut tusks.²⁰⁷ As a result, conservationists have criticized the proposal, saying it will have little to no impact on curbing the illegal trade.²⁰⁸ The logistical details about the operation of the system have not been released or explained by the government.²⁰⁹

H. The European Union

To date, the E.U. has done little more than encourage Member States to end raw ivory exports.²¹⁰ Given the size of its ivory consumer market and position as a transit hub, the E.U. is under increasing pressure to implement a comprehensive ivory trade ban.²¹¹

Some E.U. countries have implemented their own trade bans or restrictions, without waiting for possible further action from the E.U. In August 2016, the French Government implemented an ivory and rhinoceros horn trade ban in France and its overseas territories.²¹² Ex-

²⁰⁴ *Japan Announces Tighter Controls on Domestic Ivory Market*, WILDAID (Mar. 25, 2019), <https://wildaid.org/japan-announces-tighter-controls-on-domestic-ivory-market/> [<https://perma.cc/Q7P9-FSLG>] (accessed May 27, 2020).

²⁰⁵ *Id.*

²⁰⁶ Rachel Nuwer, *Japan's New Rules for Curbing Ivory Trade Won't Work, Many Experts Say*, NAT'L GEOGRAPHIC (Apr. 8, 2019), <https://www.nationalgeographic.com/animals/2019/04/japan-requires-carbon-dating-to-curb-illegal-ivory-trade/> [<https://perma.cc/QV6Q-X89Q>] (accessed May 27, 2020).

²⁰⁷ *Id.*

²⁰⁸ *See, e.g., id.* (quoting Masayuki Sakamoto, Executive Director of the Japan Tiger and Elephant Fund—a non-profit organization advocating for an ivory ban—who cautions that the general public and media may misconstrue recent developments in Japan as a step towards closing the country's domestic ivory market which, she says, is incorrect).

²⁰⁹ *Id.*

²¹⁰ *EU Momentum Building: NGOs Call on the EU to Close Its Ivory Market*, EIA (Mar. 26, 2019), <https://eia-international.org/press-releases/eu-momentum-building-ngos-call-eu-close-ivory-market/> [<https://perma.cc/MYT6-LJVF>] (accessed May 27, 2020).

²¹¹ *Id.*; *see Pressure Mounting on EU to End Ivory Trade*, FRANCE 24 (Aug. 21, 2019, 2:06 PM), <https://www.france24.com/en/20190821-pressure-mounting-on-eu-to-end-ivory-trade> [<https://perma.cc/XW5R-XEAD>] (accessed May 27, 2020) (referring to a coalition of seventeen non-governmental organizations that are calling for an E.U.-wide ban on ivory).

²¹² *France Introduces Total Ban on Ivory Sales*, RADIO FRANCE INTERNATIONALE (Aug. 17, 2016, 2:26 PM), <http://www.rfi.fr/en/environment/20160817-france-introduces-total-ban-ivory-sale> [<https://perma.cc/HQ42-HGW2>] (accessed May 27, 2020); *see* Martin Banks, *France Praised for Ban on Ivory Trade*, PARLIAMENT MAG. (Aug. 26, 2016), <https://www.theparliamentmagazine.eu/articles/news/france-praised-ban-ivory-trade> [<https://perma.cc/CEB2-YDTZ>] (accessed May 27, 2020) (explaining that the ban, which follows an earlier move by France to suspend re-exports of elephant ivory, goes far beyond the current E.U. wildlife trade regulations).

emptions apply to the sale of worked ivory up to July 1, 1975—only where it is supported by CITES documentation—possession of ivory and rhinoceros horn, and ivory antiques kept by museums or private individuals.²¹³ In July 2018, Luxembourg introduced higher fines for individuals trading in illegal ivory.²¹⁴ In December 2018, the Netherlands announced a ban on the trade in raw ivory.²¹⁵ While a step in the right direction, this has been criticized for failing to cover worked ivory.²¹⁶

I. *The United Kingdom*

1. *The U.K. Ivory Market*

A 2004 survey of European ivory markets revealed that the U.K. had the most outlets selling ivory products in the world, ranking ninth globally for the total number of ivory items available.²¹⁷ In August 2017, the U.K. was revealed to be “the world’s largest exporter of legal ivory—and the largest exporter of legal ivory to Hong Kong and China.”²¹⁸ As such, the U.K. appears to play a large role in stimulating consumer demand, both within its own borders, and also in “two of the world’s largest markets for both legal and illegal ivory.”²¹⁹

2. *Background to the Ivory Act 2018*

In October 2017, the U.K. Government announced its plans to impose a ban on the domestic sale of ivory.²²⁰ The U.K. Secretary for the Environment, Rt. Hon. Michael Gove, stated:

²¹³ *French Ivory Ban Only for Post-1975 Works*, ANTIQUES TRADE GAZETTE (Aug. 31, 2016), <https://www.antiquestradegazette.com/news/2016/french-ivory-ban-only-for-post-1975-works/> [<https://perma.cc/NBR3-JHQ7>] (accessed May 27, 2020); *France Introduces Total Ban on Ivory Sales*, *supra* note 212.

²¹⁴ Frank Elsen, *Luxembourg’s Fight Against Illegal Ivory Trade*, RTL (updated July 15, 2018), <https://today.rtl.lu/news/luxembourg/a/1209181.html> [<https://perma.cc/DP4P-A8E3>] (accessed May 27, 2020).

²¹⁵ *IFAW Welcomes the Dutch Ivory Ban as a First Step*, IFAW (Dec. 18, 2018), <https://www.ifaw.org/eu/news/ifaw-welcomes-the-dutch-ivory-ban-as-a-first-step> [<https://perma.cc/R7SY-554P>] (accessed May 27, 2020).

²¹⁶ *Id.*

²¹⁷ ESMOND MARTIN & DANIEL STILES, *IVORY MARKETS OF EUROPE: A SURVEY IN FRANCE, GERMANY, ITALY, SPAIN AND THE UK* 5, 99 (2005); *but see* WILSON LAU ET AL., *A RAPID SURVEY OF UK IVORY MARKETS* 3 (2016) (noting that most of the European ivory in Martin & Stiles’ study was considered antique, pre-1947, or was crafted from registered pre-Convention ivory and so was, in principle, legal, whereas much of the ivory openly for sale in African and Asian countries “had been acquired and crafted more recently and was potentially illegal”).

²¹⁸ *UK Is the Largest Supplier to the World’s Ivory Markets*, EIA (Aug. 10, 2017), <https://eia-international.org/press-releases/uk-largest-supplier-worlds-ivory-markets/> [<https://perma.cc/7CXU-NC3Q>] (accessed May 27, 2020).

²¹⁹ *Id.*

²²⁰ DEFRA et al., *Government Sets out Plans for Ivory Ban*, GOV.UK (Oct. 6, 2017), <https://www.gov.uk/government/news/government-sets-out-plans-for-ivory-ban> [<https://perma.cc/4KJJ-RE9Z>] (accessed May 27, 2020).

The decline in the elephant population fuelled by poaching for ivory shames our generation. The need for radical and robust action to protect one of the world's most iconic and treasured species is beyond dispute. Ivory should never be seen as a commodity for financial gain or a status symbol—so we want to ban its sale. These plans will put the U.K. front and centre of global efforts to end the insidious trade in ivory.²²¹

The Government initiated a twelve-week consultation process to “work with conservationists, the arts and antiques sectors and other interested parties” to determine how exemptions would be “defined, implemented, and enforced so as to avoid loopholes” that would enable the continued poaching of elephants.²²² The consultation generated overwhelming public support, with over 70,000 responses, 88% of which supported a domestic ivory sales ban.²²³

In April 2018, the Government confirmed it would proceed with the ban.²²⁴ It noted that the proposed exemptions had been tightened through the consultation process to ensure that exempted items did not contribute to elephant poaching, while also providing balance to ensure that people would not be unfairly impacted.²²⁵

3. *The Ivory Act 2018*

On December 20, 2018, the Ivory Act 2018 passed into law.²²⁶ The core objectives of the Ivory Act are set out in the Explanatory Notes (to the then Bill):

The aim of the Ivory Bill is to help conserve elephant populations, specifically by reducing poaching, through significantly limiting the legal market for ivory in the U.K. This is intended to reduce demand for ivory both within the U.K., and overseas through the application of the sales ban to re-exports of ivory from the U.K. The Bill also aims to remove the opportunity to launder recently poached ivory as old ivory products through legal markets, and for it to be re-exported to “demand” markets, i.e. those markets where ivory continues to be a desirable commodity. Such markets are also the primary destinations for newly poached and illegally sourced ivory. This is intended to prevent products from the U.K. contributing, including inadvertently, to markets which create a demand for ivory, driving poaching and the illegal trade in ivory. Finally, the ivory ban will demonstrate the U.K. does not consider commercial activities in any ivory that could fuel poaching to be acceptable and it sends a strong message that similar actions should be taken globally The Government, through the Ivory

²²¹ *Id.*

²²² *Id.*

²²³ DEFRA et al., *Government Confirms UK Ban on Ivory Sales*, Gov.UK (Apr. 3, 2018), <https://www.gov.uk/government/news/government-confirms-uk-ban-on-ivory-sales> [https://perma.cc/WV4H-23JQ] (accessed May 27, 2020).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Ivory Act 2018, c. 30 (U.K.), <http://www.legislation.gov.uk/ukpga/2018/30/contents> [https://perma.cc/TBS4-43ZU] (accessed May 27, 2020).

Bill, is addressing its domestic and international commitments by adopting a ban on commercial activities in ivory.²²⁷

The Ivory Act creates a general prohibition against the dealing in items made of, or containing, elephant ivory.²²⁸ This includes “buying, selling, or hiring” ivory; “offering or arranging” such activities; keeping ivory “for sale or hire”; or “exporting it from” or “importing it into the U.K. for sale or hire.”²²⁹ The Act permits “the mere retention and use of ivory, and its gifting by will or otherwise.”²³⁰ The general prohibition is subject to the following exemptions:

- “Rarest and most important items of their type.”²³¹ These items must be “of outstandingly high artistic, cultural or historical value,” and made prior to 1918.²³² Their rarity and importance will be assessed by specialist institutions such as the U.K.’s most prestigious museums before exemption permits are issued.²³³
- Portrait miniatures. Often painted on thin slivers of ivory, these must have been made before 1918.²³⁴
- Items with low ivory content. Such items must be comprised of less than 10% ivory by volume and have been made prior to 1947.²³⁵
- Musical instruments. These must have an ivory content of less than 20% and must have been made prior to 1975.²³⁶
- Sales to and between accredited museums. This applies to museums accredited by Arts Council England, the Welsh Government, Museums and Galleries Scotland, the Northern Ireland Museums Council in the U.K., or the International Council of Museums for museums outside the U.K.²³⁷

The Act provides for a range of civil and criminal sanctions, depending on the nature of the breach.²³⁸ The three categories of offenses that apply to the commercial use of ivory are:

- engaging in commercial activity without meeting an exemption;
- improperly or falsely registering an item for exemption from sale; and
- causing or facilitating the sale of ivory or other commercial activities.²³⁹

²²⁷ Ivory Act 2018, c. 30, Explanatory Notes, ¶¶ 5–6, 9, <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0215/en/180215en.pdf> [https://perma.cc/CFJ4-CJK7] (accessed May 27, 2020).

²²⁸ Ivory Act 2018, c. 30, § 1.

²²⁹ Ivory Act 2018, c. 30, § 1.

²³⁰ *FACT v. Defra* [2019] EWHC 2951 (Admin), [20].

²³¹ DEP’T FOR ENV’T, FOOD & RURAL AFFAIRS, IVORY BILL FACTSHEET—COMPLIANCE 2 (June 29, 2018) (U.K.), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721456/ivory-bill-factsheet-compliance.pdf [https://perma.cc/H3FY-XNXS] (accessed May 27, 2020).

²³² Ivory Act 2018, c. 30, § 2.

²³³ Ivory Act 2018, c. 30, § 2.

²³⁴ Ivory Act 2018, c. 30, § 6.

²³⁵ Ivory Act 2018, c. 30, § 7.

²³⁶ Ivory Act 2018, c. 30, § 8.

²³⁷ Ivory Act 2018, c. 30, § 9.

²³⁸ Ivory Act 2018, c. 30, §§ 12–13.

²³⁹ Ivory Act 2018, c. 30, §§ 12–13.

4. Registration System

To ensure compliance with the Ivory Act, the U.K.'s Management Authority, the Animal and Plant Health Authority (APHA), will implement and administer an online registration system of ivory items in the U.K.²⁴⁰ This database will be accessible by the Government, regulatory bodies, and the Police.²⁴¹ There will also be a new registration system for the sale of ivory.²⁴² If an owner of an ivory item wishes to sell an item, they will need to apply for an exemption through APHA and provide provenance documentation.²⁴³ If the seller believes the item qualifies for the “rarest and most important items” exemption, an institution with a recognized specialist must assess the validity of this claim.²⁴⁴

Going forward, there will likely be a need for practical guidance as to how aspects of the Act will operate. For example, it is expected that the exemption for items of “outstandingly high artistic, cultural or historical value” will require guidelines to help specialists determine what qualifies under the exemption.²⁴⁵ It will also be important to ensure that the exemptions operate as narrowly as possible, as intended under the Act, so that they are not exploited to enable the continued trade of ivory.

The U.K. Government sees the legislation as “a landmark” in the country’s “fight to protect wildlife and the environment.”²⁴⁶ As “one of the strongest ivory bans in the world,” the Ivory Act has been widely lauded.²⁴⁷ Former New Zealand Prime Minister and UNDP Administrator, Rt. Hon. Helen Clark, stated: “This show of leadership from the UK comes at a crucial time for wildlife conservation internationally—and will go a long way towards influencing countries, including New Zealand and Australia, on movement towards their own bans.”²⁴⁸ However, the Ivory Act has not gone unchallenged.

²⁴⁰ DEP’T FOR ENV’T, FOOD & RURAL AFFAIRS, *supra* note 231, at 2 .

²⁴¹ *Id.* at 3.

²⁴² *Id.*

²⁴³ *Id.* at 4–6.

²⁴⁴ *Id.* at 3.

²⁴⁵ Ivory Act 2018, c. 30, § 2(2)(b).

²⁴⁶ Press Release, DEFRA et al., World-leading UK Ivory Bill Becomes Law (Dec. 20, 2018), <https://www.gov.uk/government/news/world-leading-uk-ivory-bill-becomes-law—2> [<https://perma.cc/2ZXN-QC52>] (accessed May 27, 2020).

²⁴⁷ See, e.g., EIA, *supra* note 128 (“The UK’s new Ivory Act is one of the strongest ivory bans in the world and covers the vast majority of items in trade, subject to certain narrow exemptions.”).

²⁴⁸ Press Release, DEFRA et al., Ivory Alliance 2024: Political Leaders, Conservationists and Celebrities Join Forces to Tackle Ivory Demand (Oct. 11, 2018), <https://www.gov.uk/government/speeches/foreign-secretary-remarks-during-a-press-conference-in-santiago-de-chile> [<https://perma.cc/FB4L-VCUF>] (accessed May 27, 2020).

J. FACT v. Defra [2019] EWHC 2951 (Admin)

A company representing the interests of antique ivory dealers and collectors, the Friends of Antique Cultural Treasures Ltd. (FACT), sought judicial review of the Ivory Act, claiming that it was incompatible with E.U. law.²⁴⁹ FACT contended that the Act was contrary to E.U. law²⁵⁰ because:

- the U.K. Parliament did not have competence to legislate in light of the existing E.U. regulations in this area; or alternatively
- the ban was a disproportionate interference with the free movement of goods and antique dealers' rights.²⁵¹

In a judgment handed down on November 5, 2019, Justice Jay dismissed the claim for judicial review.²⁵² FACT's first argument—that the fully harmonized E.U. measures, which allow trade of ivory if “worked” before March 3, 1947, did not allow the U.K. to introduce more stringent measures—was rejected.²⁵³ Justice Jay held that the U.K. had been competent to enact the Act as it was an area of shared competence with the E.U., and Member States were permitted to impose more stringent environmental measures than existing E.U. measures.²⁵⁴ Justice Jay noted that more stringent measures are compatible with E.U. law when they are necessary for “the protection of the life and health of animals.”²⁵⁵ He referred to *Criminal Proceedings Against Tridon*,²⁵⁶ in which the Court of Justice of the European Union (CJEU) ruled that “Member States were not precluded from enacting legislation” that have “a more onerous impact than” E.U. Regulations in the interest of “conservation of a species.”²⁵⁷

As for the second argument—based on the proportionality of the measures and their impact—Justice Jay referred to the European Court of Justice (ECJ) decision, *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, which sets out the general approach in the context of E.U. law:

[N]ational measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be

²⁴⁹ FACT v. Defra [2019] EWHC 2951 (Admin) at [5].

²⁵⁰ *Id.* at [6]. A detailed discussion of the applicable E.U. law is beyond the scope of this Article, and not directly relevant to the New Zealand context.

²⁵¹ *Id.*

²⁵² *Id.* at [198].

²⁵³ *Id.* at [141].

²⁵⁴ *Id.* at [126], [160].

²⁵⁵ *Id.* at [150].

²⁵⁶ *Id.* at [131] (citing Case C-510/99, *Criminal Proceedings Against Tridon* [2003] 1 CMLR 2).

²⁵⁷ *Id.* at [117], [131].

suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it.²⁵⁸

Justice Jay agreed that the Ivory Act derogated from the right of free movement of goods in the E.U., which necessitated “a stricter approach to proportionality.”²⁵⁹ However, even FACT accepted that there was an “imperative requirement in the general interest to endeavor to protect dwindling elephant populations.”²⁶⁰

FACT argued that there was a lack of evidence connecting demand for antique ivory with newly poached ivory, and that the sale of antiques had no impact on the illegal ivory market.²⁶¹ In response to this, Justice Jay stated:

Although the evidence bearing on the issues of indirect causation and demand in Far Eastern markets may be uncertain, statistically questionable, impressionistic and often anecdotal, I consider that these factors do not preclude the taking of bold and robust action in the light of the precautionary principle.²⁶²

Justice Jay considered the impact assessment undertaken by the U.K. Government to be “deficient,”²⁶³ in that it “considerably understates the impact of the Act (then the Bill) on businesses, and fails completely to deal with collectors, whether they be amateur or expert.”²⁶⁴ Nevertheless, he considered that the updated evidence presented by FACT would not have “materially affect[ed] the outcome” of the ban’s introduction.²⁶⁵ Observing that only a “relatively small” number of antique ivory dealers would “likely . . . suffer the significant losses” claimed by FACT’s witnesses, Justice Jay concluded “the Act contains a series of coherent and proportionate measures which do not amount to the metaphorical sledgehammer.”²⁶⁶ Dismissing the claim for judicial review, Justice Jay concluded:

[T]he UK is leading the world in its endeavour to protect these magnificent animals, and to the extent that they may not be doing so already, other countries may well follow. The UK cannot sensibly be accused of applying double standards.²⁶⁷

On November 14, 2019, the England and Wales High Court (EWHC) granted FACT leave to appeal the decision to the Court of

²⁵⁸ *Id.* at [149] (citing the European Court of Justice (ECJ) decision Case C-55/94, *Gebhard v. Consiglio dell’Ordine degli Avvocati e Procuratori di Milano* [1995] I-4165, at section 37).

²⁵⁹ *Id.* at [160] (citing *R (on the application of Lumsdon) v. Legal Servs. Bd.* [2015] UKSC 41).

²⁶⁰ *Id.* at [149].

²⁶¹ *Id.* at [149].

²⁶² *Id.* at [155].

²⁶³ *Id.* at [170], [191].

²⁶⁴ *Id.* at [170].

²⁶⁵ *Id.* at [196].

²⁶⁶ *Id.* at [196].

²⁶⁷ *Id.*

Appeal.²⁶⁸ The appeal will reportedly “[focus] on the ‘proportionality’ argument,” namely that the ban is too wide and “its impact on dealers and collectors is not justified.”²⁶⁹

While aspects of the *FACT v. Defra* decision pertaining to E.U. law are not directly applicable in the New Zealand context, the judgment is informative nonetheless. In considering any legislative or regulatory change in relation to the domestic ivory market, it would be prudent for New Zealand government officials to be cognizant of potential challenges from certain stakeholders such as antique dealers and collectors. Further, aspects of Justice Jay’s decision that recognize the importance of the Ivory Act and the worthy objectives it seeks to achieve may be helpful to support any similar legislation that New Zealand may seek to enact.

K. Australia

In March 2018, “the Parliamentary Joint Committee on Law Enforcement (the Committee) initiated an inquiry into Australia’s domestic elephant ivory and rhinoceros horn trade.”²⁷⁰ The Committee received 84 submissions and 1,135 form letters, all in favor of a domestic trade ban.²⁷¹ The Committee also held public hearings in four cities.²⁷²

In September 2018, the Committee published its report, which stated that Australia could be facilitating the illegal ivory trade through its domestic market.²⁷³ The Committee recommended a ban with exemptions based largely on the U.K. legislation.²⁷⁴ “Commonwealth, states and territories, through the Council of Australian Gov-

²⁶⁸ Noelle McElhatton, *Dealers and Collectors Make Their Final Challenge to Ivory Act*, ANTIQUES TRADE GAZETTE (Nov. 13, 2019), <https://www.antiquestradegazette.com/news/2019/dealers-granted-leave-to-appeal-decision-in-ivory-act-judicial-review/> [https://perma.cc/7NWS-S495] (accessed May 27, 2020).

²⁶⁹ *It’s Not Over Yet—Antiques Trade Appeals Over Its Failed Bid to Quash Landmark UK Ivory Act*, EIA (Nov. 14, 2019), <https://eia-international.org/news/its-not-over-yet-antiques-trade-appeals-over-its-failed-bid-to-quash-landmark-uk-ivory-act/> [https://perma.cc/C669-JA9G] (accessed May 27, 2020). This will further delay the implementation of the Act, which was initially expected to come into force in late 2019; see also Noelle McElhatton, *Ivory Act: Court Date Set ‘Earlier than Expected’ for Final Legal Challenge by Dealers and Collectors*, ANTIQUES TRADE GAZETTE (Jan. 31, 2020), <https://www.antiquestradegazette.com/news/2020/ivory-act-court-date-set-earlier-than-expected-for-final-legal-challenge-by-dealers-and-collectors/> [https://perma.cc/V6X4-CNRL] (accessed May 27, 2020) (reporting that the Court of Appeal hearing has been set down for February 24–25, 2020).

²⁷⁰ PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT, PARLIAMENT OF AUSTRALIA, INQUIRY INTO THE TRADE IN ELEPHANT IVORY AND RHINOCEROS HORN 2 (Sept. 2018), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/ElephantIvoryRhinohorn/Report [https://perma.cc/N3GK-GKAG] (accessed May 27, 2020).

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.* at 4.

²⁷⁴ *Id.* at 32.

ernments, [should] develop and implement a national domestic trade ban on elephant ivory and rhinoceros horn. The domestic trade ban should be consistent with those implemented in other like-minded international jurisdictions.”²⁷⁵

Australia has announced its intention to follow the Committee’s recommendation to close the country’s domestic ivory and rhinoceros horn market.²⁷⁶ However, there does not yet appear to be a timeline for implementation of the ban.²⁷⁷

V. NEW ZEALAND’S IVORY TRADE

A. Overview of Illegal Wildlife Trade to and from New Zealand

Described as an “ancient life-raft,”²⁷⁸ New Zealand is a biodiversity hotspot with high levels of endemism in both plant and animal species.²⁷⁹ This makes New Zealand “an attractive target for smugglers.”²⁸⁰ As an island nation, New Zealand’s geographical isolation affords it a level of control over its borders not available to most

²⁷⁵ *Id.* at 98.

²⁷⁶ See, e.g., Matthew Doran, *Australia to Ban Local Ivory and Rhino Horn Trade amid Concerns It Legitimises Illegal Poaching*, ABC NEWS (Aug. 22, 2019), <https://www.abc.net.au/news/2019-08-22/australia-bans-local-ivory-and-rhino-horn-trade/11437822> [<https://perma.cc/AY3W-QQKJ>] (accessed May 27, 2020) (reporting that “Australia will ban the domestic trade of ivory and rhino horn, with state and territory environment ministers to discuss how to enforce the [ban] later this year”); Shreya Dasgupta, *Australia to Ban Domestic Trade in Elephant Ivory and Rhino Horn*, MONGABAY (Aug. 22, 2019), <https://news.mongabay.com/2019/08/australia-to-ban-domestic-trade-in-ivory-and-rhino-horn/> [<https://perma.cc/4V8N-PQW4>] (accessed May 27, 2020) (reporting that “Australia has formally announced a plan to ban its domestic trade in elephant ivory and rhino horn”).

²⁷⁷ See Matthew Doran, *Ivory and Rhino Horn Sale Ban Could Be Undermined by Exemptions for Antiques, Conservationist Warns*, ABC NEWS (Sep. 17, 2019), <https://www.abc.net.au/news/2019-09-17/ivory-rhino-horn-ban-undermining-risk-federal-government-warned/11518728> [<https://perma.cc/F7FJ-9YNM>] (accessed May 27, 2020) (reporting that Environment Minister Sussan Ley “would not commit to a timeframe for the ban to be put in place, but said all of Australian jurisdictions would be on board with the basic principles of the changes”).

²⁷⁸ *New Zealand, About This Hotspot*, CRITICAL ECOSYSTEM PARTNERSHIP FUND, <https://www.cepf.net/our-work/biodiversity-hotspots/new-zealand> [<https://perma.cc/45MY-XDLR>] (accessed May 27, 2020).

²⁷⁹ See DEP’T OF CONSERVATION, N.Z. GOV’T, *NEW ZEALAND BIODIVERSITY ACTION PLAN 2016–2020* 4–5 (Sept. 2016), <https://dcon01mstr0c21wprod.azurewebsites.net/globalassets/documents/conservation/new-zealand-biodiversity-action-plan-2016-2020.pdf> [<https://perma.cc/PK43-572F>] (accessed May 27, 2020) (explaining that New Zealand evolved in isolation for 80 million years, resulting in high levels of endemism; in addition to rich marine biodiversity, more than 80% of New Zealand’s vascular plants, 90% of insects, 25% of birds, all reptiles, and the country’s only terrestrial mammals (several species of bats) are endemic; see also Norman Myers et al., *Biodiversity Hotspots for Conservation Priorities*, 403 NATURE 853 (Feb. 24, 2000), <https://www.nature.com/articles/35002501> [<https://perma.cc/ABQ3-FLKS>] (accessed May 27, 2020) (identifying New Zealand as one of the world’s twenty-five biodiversity hotspots and a global conservation priority).

²⁸⁰ IFAW, *CLICK TO DELETE: ENDANGERED WILDLIFE FOR SALE IN NEW ZEALAND 2* (2014), https://afbeeldingen.animalstoday.nl/IFAW_Internet-Trade-Report_NZ-web.pdf

other countries.²⁸¹ However, a recent comparative study of illegal wildlife trade seizures in Australia, the U.K., and New Zealand found that New Zealand had the highest number of incidents—with almost double the number of seizures than the U.K. “and over ten times as many as Australia.”²⁸² New Zealand’s geographical location also means it can be used as a conduit for international trade in the South Pacific and Asia.²⁸³ The UNODC’s 2013 report, *Transnational Organized Crime in East Asia and the Pacific—A Threat Assessment*, stated:

The illegal wildlife trade in the Pacific region is reportedly well organized by opportunistic criminal networks and unscrupulous traders. New Zealand is a source, transit and destination country for the illegal wildlife trade. Between 2007 and 2011, more than 13,000 seizures of prohibited wildlife took place in New Zealand, mainly at airports.²⁸⁴

Since the publication of the UNODC report, New Zealand border seizures and surrenders of CITES specimens that did not have permits has more than doubled—“from 2,593 in 2013 to 6,165 in 2017.”²⁸⁵ Seizures consisted of specimens and products of “316 different CITES species,” including elephant, pangolin, lion, primates, lizards, and various bird species.²⁸⁶ Three species—*crocodylia* products, hard corals, and shells—represented “the majority of seizures.”²⁸⁷ Records show that the prohibited export of birds historically comprised the largest portion of New Zealand’s illegal wildlife trade.²⁸⁸ However, the

[<https://perma.cc/GUA7-4 QXZ>] (accessed May 27, 2020) (citing Myers et al., *supra* note 279, at 858).

²⁸¹ Tanya Wyatt, *A Comparative Analysis of Wildlife Trafficking in Australia, New Zealand and the United Kingdom*, 2(1) J. OF TRAFFICKING, ORGANIZED CRIME & SECURITY 62, 63 (2016), <https://pdfs.semanticscholar.org/db9b/03cc114c9d38642fdc0eec6680e168b505b0.pdf> [<https://perma.cc/7CJH-ZA8A>] (accessed May 27, 2020).

²⁸² *Id.* at 70 (using the CITES trade database to explore illegal trade incidents in the three countries).

²⁸³ UNODC, TRANSNATIONAL ORGANIZED CRIME IN EAST ASIA AND THE PACIFIC—A THREAT ASSESSMENT 80–81 (2013), https://www.unodc.org/res/cld/bibliography/transnational-organized-crime-in-east-asia-and-the-pacific-a-threat-assessment_html/TOCTA_EAP_web.pdf [<https://perma.cc/JC9Y-CW79>] (accessed May 27, 2020).

²⁸⁴ *Id.* at 85.

²⁸⁵ DEP’T OF CONSERVATION, N.Z. GOV’T, REVIEW OF THE TRADE IN ENDANGERED SPECIES ACT 1989—DISCUSSION DOCUMENT 10 (Sept. 2019), <https://www.doc.govt.nz/global/assets/documents/getting-involved/consultations/2019/ties-act-consultation/ties-act-consultation-discussion-document.pdf> [<https://perma.cc/G46L-N4PR>] (accessed May 27, 2020) (attributing the increase in seizures to “the stricter application of the TIES Act, as well as the increase in tourism to New Zealand and New Zealanders travelling overseas”); *cf.* Emma Hatton, *Thousands of Protected Species Seized at the Border*, RADIO N.Z. (Aug. 22, 2018), <https://amp.rnz.co.nz/article/cd336199-9c41-4978-82d9-dcd614b46a5c> [<https://perma.cc/7BED-ZYHW>] (accessed May 27, 2020) (reporting that there were 9,078 seizures in 2017, representing a 300% increase from 2011).

²⁸⁶ REVIEW OF THE TRADE IN ENDANGERED SPECIES ACT 1989, *supra* note 285, at 10.

²⁸⁷ *Id.*

²⁸⁸ Wyatt, *supra* note 281, at 70; *see also* TRAFFIC OCEANIA, TRADE IN CITES-LISTED BIRDS TO AND FROM NEW ZEALAND 20 (1997), https://www.traffic.org/site/assets/files/5601/trade_in_cites-listed_birds_to_and_from_new_zealand.pdf [<https://perma.cc/XA2P-ARCE>] (accessed May 27, 2020) (concluding that “New Zealand may be [being]

UNODC's 2013 report on transnational organized crime in East Asia and the Pacific refers to "enforcement operations in 2011—during which German couriers were arrested"—concluding that this suggests "the existence of an emerging market in Europe for New Zealand lizards, specifically geckos."²⁸⁹ Ongoing attempts to export native lizards indicate that there is a continuing demand for these animals.²⁹⁰

This data indicates that New Zealand needs international support in protecting its own endangered species from exploitation. Given that wildlife trafficking is, by nature, international, and given the reciprocity of international agreements such as CITES, New Zealand also has a responsibility to support other countries in protecting their endangered wildlife. In light of the international momentum for implementation of domestic trade bans, New Zealand's unregulated domestic ivory market is starting to position New Zealand as an outlier. New Zealand is at risk of becoming part of the problem rather than a partner in the global response to wildlife trafficking.

B. A Snapshot of Ivory Entering New Zealand

Between 2007 and 2017, 215 CITES permits were issued to import ivory into New Zealand—an average of around twenty per year.²⁹¹ Each shipment typically comprises only one or two items.²⁹² The number of permits issued annually during this period ranged from 3 to 70.²⁹³ While there have been dips in the number of permits issued (for example, in 2011 and 2012, there were only 5 and 3 permits issued, respectively), overall the number of permits is increasing.²⁹⁴ The highest number of annual permits were issued in 2014 and 2017 (38 and

used as a laundering point for the legal export of illegally obtained non-native CITES listed birds").

²⁸⁹ UNODC, *supra* note 283, at 85.

²⁹⁰ See, e.g., Alanah M. Eriksen, *Thousands for Stolen Geckos on European Black Market*, N.Z. HERALD (June 29, 2010), https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10655356 [<https://perma.cc/E6DR-TWQM>] (accessed May 27, 2020) (reporting that seven protected geckos were stolen from a Northland conservation park); David Clarkson, *Wildlife Smugglers Not All Caught*, STUFF (May 4, 2012), <http://www.stuff.co.nz/the-press/news/6860316/Wildlife-smugglers-not-all-caught> [<https://perma.cc/8PKJ-QEYV>] (accessed May 27, 2020) (reporting on the sentencing of a German visitor to sixteen weeks' imprisonment for hunting and possessing native jewelled geckos and noting that the sentencing judge had urged the legislature to increase financial penalties and terms of imprisonment for such offending); *DOC Seeks Information After Lizards Found*, DOC (Aug. 15, 2017), <https://www.doc.govt.nz/news/media-releases/2017/doc-seeks-information-after-lizards-found/> [<https://perma.cc/NE72-JW7L>] (accessed May 27, 2020) (noting that the latter incident may have been a failed smuggling attempt).

²⁹¹ *Trade in Elephant Ivory*, DOC, <https://www.doc.govt.nz/about-us/international-agreements/endangered-species/trade-in-ivory/> [<https://perma.cc/B6JH-4NMY>] (accessed May 27, 2020).

²⁹² *Id.*

²⁹³ DEP'T OF CONSERVATION, *supra* note 285, at 11.

²⁹⁴ *Id.*

70, respectively).²⁹⁵ “The vast majority” of these items were pre-Convention and classified as personal and household effects.²⁹⁶ A small quantity of ivory has also been imported “for forensic testing and as museum acquisitions.”²⁹⁷

A 2013 article on the U.S. ivory trade explained the problem with exceptions to international ivory trade bans that apply to, *inter alia*, “personal effects” and antiques.²⁹⁸ The writers suggest “that these exceptions, combined with inadequate oversight of the domestic market, create a veneer of legality for the illegal ivory trade and allow illicit products to enter into commerce—the wildlife equivalent of money laundering.”²⁹⁹ Given that most ivory legally entering New Zealand is classified as pre-Convention and for personal use, and that the domestic trade is unregulated, it is reasonable to surmise that a similar problem exists in New Zealand.

C. Seizures and Convictions for Illegally Traded Ivory

Between 2008 and 2017, 124 ivory specimens were seized and surrendered at the border for failing to have a permit or pre-Convention certificate.³⁰⁰ It is unknown what penalties were imposed.³⁰¹

In New Zealand, there have been two convictions under Section 44 of the TIES Act, for illegal trade in ivory.³⁰² In 2013, Jiezhen Jiang was the first person to be convicted for illegally importing ivory into New Zealand.³⁰³ Jiang engaged voraciously in online trade between May 2010 and September 2011, purchasing “299 items, including objects made of silver, bone china and ivory, worth around [N.Z.] \$180,000” (approximately U.S. \$115,000).³⁰⁴ He reportedly admitted “that he knew elephants were being killed for their ivory, but thought the pieces would be good investments as they would increase in

²⁹⁵ UNODC, *supra* note 283, at 11.

²⁹⁶ DEP’T OF CONSERVATION, *supra* note 285, at 11.

²⁹⁷ *Trade in Elephant Ivory*, *supra* note 291.

²⁹⁸ Allgood et al., *supra* note 24, at 48.

²⁹⁹ *Id.* at 68.

³⁰⁰ *Trade in Elephant Ivory*, *supra* note 291.

³⁰¹ This information was not found while researching and writing this Article, but could potentially be obtained via an Official Information Act 1982 request.

³⁰² Edward Gay, *First Ivory Trading Conviction in NZ*, OTAGO DAILY TIMES (July 10, 2013), <https://www.odt.co.nz/news/national/first-ivory-trading-conviction-nz> [https://perma.cc/4BWM-WWC3] (accessed May 27, 2020); *Napier Man Fined for Illegally Importing Elephant Ivory*, DOC (Dec. 22, 2015), <https://www.doc.govt.nz/news/media-releases/2015/napier-man-fined-for-illegally-importing-ivory/> [https://perma.cc/3GAA-6FKL] (accessed May 27, 2020).

³⁰³ Gay, *supra* note 302; *see also Auckland Man Fined \$12,000 for Illegally Importing Ivory*, DOC (July 10, 2013), <https://www.doc.govt.nz/news/media-releases/2013/auckland-man-fined-12000-for-illegally-importing-ivory/> [https://perma.cc/LM4B-GYD9] (accessed May 27, 2020) (quoting DOC Senior Investigator, Dylan Swain, who stated that “[t]his is the first time someone has been prosecuted, convicted and sentenced for illegally importing ivory into New Zealand”).

³⁰⁴ Gay, *supra* note 302.

value.”³⁰⁵ He purchased one item—a carved face mask—for N.Z. \$105 (U.S. \$67) and then offered it for sale on a Chinese website with a N.Z. \$2,300 (U.S. \$1,474) price tag.³⁰⁶

Jiang faced eight charges of trading in an endangered species without the required permit.³⁰⁷ He pleaded guilty and was fined N.Z. \$1,500 (U.S. \$961) for each charge—a total of NZ \$12,000 (US \$7,688).³⁰⁸ He was also required to pay court costs amounting to N.Z. \$132 (U.S. \$85).³⁰⁹ As noted in Part II, these charges carry a maximum penalty of five years imprisonment, a N.Z. \$100,000 (U.S. \$64,000) fine, or both.³¹⁰

In 2015, Patrick Cooper became the second person convicted in New Zealand for illegally trading in ivory.³¹¹ Authorities were first alerted to the illegal trading during a routine inspection of mail.³¹² Cooper had declared the package to contain “ornament, resin.” However, DNA testing revealed that the antique carving, purchased from France for around N.Z. \$3,500 (U.S. \$2,242), was actually African elephant ivory.³¹³ Cooper told the sender to post the carving “with an ‘appropriate customs declaration e.g. \$150’ and to call it a ‘resin ornament.’”³¹⁴ Another antique, purchased by Cooper on eBay for N.Z. \$150 (U.S. \$96), was seized during a house search.³¹⁵ Cooper also faced a representative charge, “based on information from emails,” which revealed that over a two-month period, he had imported around twenty ivory items with a value of approximately N.Z. \$18,000 (U.S. \$11,532).³¹⁶ According to the summary of facts, Cooper’s activity on Trade Me and eBay (which have both banned the trade of ivory products) revealed he had won over sixty auctions in which “the items were described using common ‘code words,’ ‘ox bone’ or ‘faux ivory.’”³¹⁷ Cooper pleaded guilty to five charges of illegally trading in a specimen of an endangered species and was fined N.Z. \$8,000 (U.S. \$5,126).³¹⁸

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Auckland Man Fined \$12,000 for Illegally Importing Ivory*, *supra* note 303.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Napier Man Fined for Illegally Importing Elephant Ivory*, *supra* note 302.

³¹² Marty Sharpe, *Napier Man Patrick Cooper Fined \$8000 for Importing Illegal Ivory*, STUFF (Dec. 22, 2015 11:06), <https://www.stuff.co.nz/national/75354422/napier-man-patrick-cooper-fined-8000-for-importing-illegal-ivory> [https://perma.cc/Z3MR-CT8U] (accessed May 27, 2020).

³¹³ *Ivory Trader Tried to Sell Tusk on Trademe*, N.Z. Herald (Dec. 23, 2015, 7:30 AM), https://www.nzherald.co.nz/hawkes-bay-today/news/article.cfm?c_id=1503462&objectid=11565134 [https://perma.cc/DF6N-MS5B] (accessed May 27, 2020).

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Napier Man Fined for Illegally Importing Elephant Ivory*, *supra* note 302.

In addition, he was ordered to pay N.Z. \$600 (U.S. \$384) “towards the cost of DNA testing carried out on the items.”³¹⁹

Cooper’s associate in the United States, Shahram Roohparvar, was sentenced in California in 2016 for falsifying documents and illegally selling and shipping ivory to New Zealand.³²⁰ Roohparvar was sentenced to three months’ imprisonment and “three months in a location-monitoring program and two years supervised release.”³²¹ He was also ordered to pay a U.S. \$27,400 fine and a further \$27,400 to the Lacey Act Reward Fund.³²²

Jiang’s and Cooper’s convictions included evidence that illegally imported ivory passed through New Zealand’s border undetected by authorities, and that some of the ivory was subsequently sold on New Zealand’s unregulated domestic market “under the guise of legality.”³²³ This shows that, despite New Zealand’s comparatively small ivory trade on a global scale, “it is not immune to illegal trade.”³²⁴

D. Ivory Sold on New Zealand’s Domestic Market

1. Ivory Items Available in Auction Houses

In 2016, the International Fund for Animal Welfare (IFAW) investigated the elephant ivory and rhinoceros horn trade in Australian and New Zealand auction houses.³²⁵ Over a nine-month period, the study found 1,318 ivory lots³²⁶, comprising 2,772 items, for sale at 175 auctions in 21 auction houses in both countries.³²⁷

“The majority (64%)” of the items were “made entirely or mostly of ivory.”³²⁸ These included: “carvings and figures, jewellery, okimonos (decorative objects) and netsukes (small sculptural objects), and raw

³¹⁹ See *Ivory Trader Tried to Sell Tusk on Trademe*, *supra* note 313 (reporting that although the offending was similar to that of Jiang, Cooper received a lighter sentence because he had no previous convictions and was well-regarded in the community).

³²⁰ *American Sentenced to Prison After Illegally Trafficking Ivory to New Zealand*, N.Z. HERALD (Nov. 10, 2016), https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11746005 [<https://perma.cc/J6DZ-TA6A>] (accessed May 27, 2020).

³²¹ *Id.*; Fiona Gordon, *New Zealand’s Dirty Ivory Trade Exposed*, NAT’L GEOGRAPHIC (Nov. 21, 2016), <https://blog.nationalgeographic.org/2016/11/21/new-zealands-dirty-ivory-trade-exposed/> [<https://perma.cc/UQ9D-B5Y8>] (accessed May 27, 2020).

³²² *American Sentenced to Prison After Illegally Trafficking Ivory to New Zealand*, *supra* note 320; see also Gordon, *supra* note 321 (reporting further details of Cooper and Roohparvar’s communication, as set out in the court documents).

³²³ *Submission on Review of the Trade in Endangered Species Act 1989 Discussion Document*, JANE GOODALL INST. N.Z. (Sept. 2019), <http://www.janegoodall.org.nz/nz-ivory-trade-submission/?fbclid=IWAR0oHKJZd2DB7ypKoYXxn18GKFJ5N3V58uCKLJtqHMLgJk9c7-UAddL4> [<https://perma.cc/7GT8-EKZ5>] (accessed May 27, 2020).

³²⁴ *Id.*

³²⁵ UNDER THE HAMMER, *supra* note 123, at 5.

³²⁶ *Id.* at 8 (explaining that in auction terminology, a ‘lot’ refers to an individual object or a group of objects offered for sale as a single unit. As some lots contain multiple items, some containing ivory and others not, the number of total ivory items given in the IFAW report are approximations).

³²⁷ *Id.*

³²⁸ *Id.* at 8.

and carved tusks.”³²⁹ The rest of the lots consisted of “[i]tems where ivory made up a significant part of the listing (16%) such as walking sticks, billiard cues, utensils and boxes,” those “where ivory was only a small component of the piece (19%),” along with “frames and ivory-handled knives.”³³⁰

Investigations into twenty-two New Zealand auctions identified approximately 363 ivory items across 285 lots.³³¹ Of these, 203 lots sold for a total value of N.Z. \$110,705 (U.S. \$70,926).³³² Estimated values per lot ranged from N.Z. \$30 (U.S. \$19) to N.Z. \$22,000 (U.S. \$14,000).³³³ The highest priced item sold was a single tusk (N.Z. \$7,250 or U.S. \$4,644), while the cheapest was a netsuke (N.Z. \$30 or U.S. \$19).³³⁴

2. *Lack of Provenance Information*

Provenance information, such as age and source of the ivory, was provided for only 8% of items listed at New Zealand auction houses.³³⁵ The report concluded that “auction houses provided an astounding lack of information regarding the provenance, authenticity, and legality” of ivory items.³³⁶ Further, despite the trade restrictions on ivory via CITES and the TIES Act, “investigators were unable to find written information for prospective buyers relating to CITES regulations and import or export permit requirements on the . . . websites of any of the auction houses investigated.”³³⁷

The auction houses covered in the study are registered under the Auctioneers Act 2013, which requires records to be maintained, including descriptions of property offered for sale.³³⁸ Despite this:

[C]atalogue descriptions . . . varied widely—from providing no information at all; describing items as ‘old’ or ‘antique’; noting a period or century; referencing markings, stamps, seals, or signatures; making reference to provenance; or making reference to documentation.³³⁹

This investigation confirms that ivory items are readily for sale at New Zealand auction houses, and that demand for these products is high.³⁴⁰ Despite the challenges differentiating legally from illegally sourced ivory—and the existence of CITES and the TIES Act—auction

³²⁹ *Id.* at 8.

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.* at 11.

³³³ *Id.*

³³⁴ *Id.* at 10.

³³⁵ *Id.* at 2, 24.

³³⁶ *Id.* at 3.

³³⁷ *Id.* at 20.

³³⁸ Auctioneers Act 2013, s 17, (N.Z.).

³³⁹ UNDER THE HAMMER, *supra* note 123, at 22.

³⁴⁰ *Id.* at 3.

houses fail to provide critical information about the history of ivory items.³⁴¹

These findings are broadly consistent with a 2017 study of U.K. auction house sales, which analyzed 180 ivory lots sold through 72 auction houses.³⁴² In 90% of cases, auction houses failed to satisfy the legal requirement “to provide proof of age for pre-1947 ivory items.”³⁴³ At one auction, “an illegal raw tusk and unworked ivory” was offered for sale, without a single check having been carried out.³⁴⁴

3. 2019 Research

A survey of two New Zealand auction houses, undertaken between October 2018 and July 2019, identified more than 800 ivory items for sale—over twice the number of items listed at four auction houses in 2016.³⁴⁵ According to this research, “[t]he number of auctions offering ivory . . . appears to have increased by 60%.”³⁴⁶ At one auction, “a swathe of ivory carvings” were sold “for around N.Z. \$10,000 (USD \$6,600).”³⁴⁷ Many of the items were made entirely of ivory.³⁴⁸

The increasing amount of ivory entering New Zealand, and the ease with which it can be traded domestically, creates the risk that newly-poached ivory is being laundered into the legal trade in New Zealand, where it can then be traded—either willfully or unwittingly—without consequences for traders.³⁴⁹ There is also a risk that these items will be re-exported, perpetuating the global trade: “In New Zealand, carved ivory fetches high prices at auction houses and antique shops, and many items are re-exported under lax regulations and could re-enter the market, fueling demand.”³⁵⁰ The rise in the last three years in the quantity of ivory on the New Zealand market indicates a growing need for tighter regulation of the country’s domestic ivory trade.

³⁴¹ *Id.*

³⁴² TWO MILLION TUSKS, IVORY: THE GREY AREAS, A STUDY OF UK AUCTION HOUSE SALES—THE MISSING EVIDENCE 4 (Oct. 2017).

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ Fiona Gordon, Commentary, *New Zealand Domestic Ivory Trade Doubles*, AFR. ELEPHANT J. (Aug. 20, 2019), <https://africanelephantjournal.com/new-zealand-domestic-ivory-trade-doubles/> [<https://perma.cc/88XT-774Z>] (accessed May 27, 2020).

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ Harleen Sehmi, *Closing Legal Markets for Illicit Ivory Will Save Africa’s Elephants*, AFR. WILDLIFE FOUND. (Apr. 5, 2019), <https://www.awf.org/blog/closing-legal-markets-illicit-ivory-will-save-africas-elephants> [<https://perma.cc/K754-TCTQ>] (accessed May 27, 2020).

³⁵⁰ *Id.*

VI. NEW ZEALAND'S INERTIA AND THE IMPORTANCE OF TAKING ACTION

A. *The New Zealand Government's Inertia*

Despite the international movement to implement domestic trade bans, and evidence of New Zealand's contribution to the illicit ivory trade, New Zealand has not acted.

In July 2014, a number of leading international conservation organizations and high-profile New Zealanders sent an open letter to the Government, urging it to “give full consideration to implementing a ban on all ivory trading.”³⁵¹ In response, the Foreign Affairs, Defence and Trade Committee stated that it “support[ed] the petitioners in their goal” and recognized “that poaching and the illegal ivory trade is driving” the decimation of elephants.³⁵² The Committee urged “the Government to push for the full implementation of [CITES].”³⁵³ However, the Committee appeared to downplay New Zealand's contribution to the elephant poaching crisis and global illegal ivory trade, stating that “[e]vidence from the United Nations indicates there is almost no domestic ivory trade in New Zealand.”³⁵⁴

At the 70th Meeting of the Standing Committee of CITES in 2018, the New Zealand government stated its support of “both global and domestic efforts to reduce elephant poaching and trafficking.”³⁵⁵ However, it went on to say that “New Zealand has a small volume of international trade in elephant ivory” and that “[l]egislation imposing a domestic ban . . . would have very high resourcing implications, particularly in relation to implementation and enforcement, and because of the low level of trade would deliver minimal conservation benefits.”³⁵⁶

Later that month, at the 2018 London Conference on Illegal Wildlife Trade, the Government signaled an increasing appetite for a ban.³⁵⁷ The New Zealand delegation to the Conference made a formal

³⁵¹ Letter from Sir Stephen Tindall et al., to Rt. Hon. Mr. John Key and the N.Z. Gov't (July 16, 2014) (on file with author).

³⁵² FOREIGN AFFAIRS, DEFENCE & TRADE COMM., REPORT ON PETITION 2011/108 OF VIRGINIA WOOLF AND 4,000 OTHERS (July 25, 2014), https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR56856_1/petition-2011108-of-virginia-woolf [https://perma.cc/DN2V-K8VZ] (accessed May 27, 2020).

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ CITES, 70th Meeting of the Standing Committee, *Implementation of Provisions Relating to Domestic Ivory Markets Contained in Resolution Conf. 10.10 (Rev. CoP17), Responses Provided by Parties to Notification 2017/077*, SC70 Doc. 49.1, Annex 2, at 7 (Oct. 1-5, 2018), <https://cites.org/sites/default/files/eng/com/sc/70/E-SC70-49-01-A2.pdf> [https://perma.cc/AN8H-JDT7] (accessed May 27, 2020).

³⁵⁶ *Id.* at 7.

³⁵⁷ London Conference on the Illegal Wildlife Trade, *Declaration Annex, New Zealand* (Oct. 11–12, 2018), <https://www.gov.uk/government/publications/declaration-london-conference-on-the-illegal-wildlife-trade-2018/london-conference-on-the-illegal-wildlife-trade-october-2018-declaration-annex-english-only#new-zealand> [https://perma.cc/Z6UZ-Q2N7] (accessed May 27, 2020).

commitment to “assess the need for regulation of New Zealand’s domestic ivory trade.”³⁵⁸ While framed in tentative terms, making such a statement in an international forum indicated that the Government was, at last, considering acting on this issue. Indeed, a year later, the Government announced a review of the TIES Act, including a review of the domestic ivory trade.³⁵⁹

B. *The Importance of Taking Action*

Even with a comparatively small ivory market, there is evidence that New Zealand is contributing to the international illegal ivory trade.³⁶⁰ The UNODC has stated that “virtually every country . . . plays a role” in wildlife crime,³⁶¹ a view echoed by the Wildlife Conservation Society: “[t]here is no legal market that doesn’t contribute to the illegal trade.”³⁶² Even if New Zealand’s contribution to the illegal ivory trade cannot be quantified, the act of implementing a ban is symbolically and politically important.

Australia appears to be on the cusp of implementing a domestic ivory ban, and given the risk of displacement discussed above,³⁶³ there is a risk that ivory traders will move their activity to New Zealand if the market there remains unregulated. Given New Zealand’s commercial ties with China,³⁶⁴ and its high number of Asian diaspora communities,³⁶⁵ it is also critical that New Zealand supports China and its neighbors in their efforts to curb the ivory trade. Further, with respect to New Zealand’s “relatively large and powerful” economic and political

³⁵⁸ *Id.*

³⁵⁹ Press Release, N. Z. Gov’t, Plan to Protect Endangered Species from Illegal Trade (Sept. 24, 2019), <https://scoop.co.nz/stories/PA1909/S00190/plan-to-protect-endangered-species-from-illegal-trade.htm> [<https://perma.cc/85EN-5PNU>] (accessed May 27, 2020).

³⁶⁰ Emma Hatton, *Call for Complete Ban on Ivory Trade in New Zealand*, RNZ (Aug. 12, 2018), <https://www.rnz.co.nz/news/national/363895/call-for-complete-ban-on-ivory-trade-in-new-zealand> [<https://perma.cc/C6NS-7Q82>] (accessed May 27, 2020).

³⁶¹ UNODC, *supra* note 2, at 13.

³⁶² Carrington, *supra* note 5 (quoting Susan Lieberman, Vice President of International Policy at the Wildlife Conservation Society).

³⁶³ *See supra* Part IV (stating that Australia, among other countries, is reviewing or strengthening its existing regulatory frameworks on the domestic trade of ivory and discussing the risk of displacement of illegal activity when a neighboring country implements a domestic ban).

³⁶⁴ *See New Zealand*, OBSERVATORY OF ECON. COMPLEXITY (2017), <https://oec.world/en/profile/country/nzl/> [<https://perma.cc/5EFV-W8P6>] (accessed May 27, 2020) (reporting that the top export destination of New Zealand is China (N.Z. \$8.79 billion)).

³⁶⁵ *See* Thomas Manch, *Census 2018: New Zealand Population Is Larger and More Diverse*, STUFF (Sept. 23, 2019, 19:21), <https://www.stuff.co.nz/national/politics/116005822/census-2018-new-zealand-population-is-larger-and-more-diverse> [<https://perma.cc/W4P3-LCTC>] (accessed May 27, 2020) (reporting that 15.1% of census respondents defined themselves as of an Asian ethnic group—an increase from 11.8% in 2013); *see also* Wyatt, *supra* note 281, at 72 (proposing that the diaspora populations from China and other parts of Asia may account for the pattern of illegal traditional medicines entering New Zealand).

position in the Pacific,³⁶⁶ New Zealand should show leadership in this region. This leadership should include not only implementing a domestic ivory trade ban, but also encouraging its associated territories, the Cook Islands and Niue, to join CITES.³⁶⁷

Submissions on the review of the TIES Act closed on October 25, 2019.³⁶⁸ Once submissions are published, it will be possible to gauge the level of public support for a domestic ivory trade ban. More than 40,000 people supported earlier campaigns led by the Jane Goodall Institute New Zealand and African Wildlife Foundation, urging the Government to close its domestic ivory trade.³⁶⁹ This level of public support should be a compelling factor in any decision the Government makes on this issue.

Opposition to a domestic ivory ban from small sectors—such as antiques traders and collectors, as seen in the U.K.³⁷⁰—is anticipated. While the Government is, of course, obliged to consider all views on this issue, objections from the antiques industry should not deter the Government from implementing a ban. It is unlikely that a ban would be a death knell for antiques traders. In the U.K., for example, it was found that ivory items represented less than 1% of the total number of lots for sale in auction houses surveyed.³⁷¹ Contrary to claims made by some auction houses that a domestic ivory trade ban would put them out of business, ivory sales were found to be “insignificant” to their sales.³⁷² As such, a ban would have little impact on their business.³⁷³

VII. RECOMMENDATIONS AND CONCLUSION

A. Recommendations

In light of the arguments presented in this Article, it is recommended that the New Zealand government develop and implement a domestic trade ban on elephant ivory. A framework similar to that implemented in the U.K.—a general prohibition with narrow exemptions—would be suitable for New Zealand. Such a ban would align with the object of the TIES Act “to enable New Zealand to fulfil[] its

³⁶⁶ Jon Fraenkel, *Story: Pacific Islands and New Zealand*, TE ARA—ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.TeAra.govt.nz/en/pacific-islands-and-new-zealand> [https://perma.cc/V5EC-U6FY] (accessed May 27, 2020).

³⁶⁷ Wyatt, *supra* note 281, at 64–65 (pointing out that the Cook Islands and Niue not being signatories to CITES may create a loophole for smuggling).

³⁶⁸ *Trade in Elephant Ivory*, *supra* note 291 (noting that submissions closed on October 25, 2019 and the “[c]abinet will decide on these recommendations in 2020”).

³⁶⁹ Gordon, *supra* note 345.

³⁷⁰ See David Cowdrey, *Victory for Elephants as the High Court Upholds the UK Ivory Act in the Face of Opposition*, IFAW (Nov. 5, 2019), <https://www.ifaw.org/eu/journal/victory-for-elephants-high-court-upholds-ivory-act> [https://perma.cc/E57J-FMCS] (accessed May 27, 2020) (noting the Friends of Antique Cultural Treasures Limited’s opposition to the 2018 Ivory Act).

³⁷¹ TWO MILLION TUSKS, *supra* note 342, at 4.

³⁷² *Id.*

³⁷³ *Id.* at 5.

obligations under [CITES] and to promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species.”³⁷⁴

Such a ban would also ensure compliance with New Zealand’s international obligations, as recognized at the 2016 IUCN World Conservation Congress, the 2016 CITES meeting of the CoP (CoP17), and the 2017 U.N. G.A., urging countries to close their domestic ivory markets.³⁷⁵

It is further recommended that:

- The mechanism³⁷⁶ through which the ban is implemented should enable the ban to be applied to other endangered species, as appropriate.³⁷⁷
- The Government ensures it provides the necessary resources and tools for the proper implementation and enforcement of the ban.³⁷⁸
- The Government gives consideration to how the ban might be designed to reach the online ivory trade.³⁷⁹

³⁷⁴ TIES Act 1989, s 2.

³⁷⁵ See Dasgupta, *supra* note 143 (urging “governments of countries in which there is a legal domestic market for elephant ivory . . . to make all necessary legislative and regulatory efforts to close their domestic markets for commercial trade in raw or worked elephant ivory”); Press Release, NRDC, World Leaders Vote to Close Domestic Ivory Markets (Oct. 2, 2016), <https://www.nrdc.org/media/2016/161002> [<https://perma.cc/3SYH-L263>] (“[CITES] today recommended that countries with domestic ivory markets that contribute to elephant poaching or the illegal ivory trade ‘take all necessary legislative, regulatory and enforcement measures to close [such] markets . . . as a matter of urgency.’”); Press Release, CITES, *supra* note 142 (urging “all [Member States] Governments close legal domestic ivory markets, as a matter of urgency, if these markets contribute to poaching or illegal trade”).

³⁷⁶ At this stage, it is unknown what mechanism would be used to implement the final policy decisions following the review of the TIES Act, i.e., whether any changes would be implemented via amendments to the principal Act or via regulations and whether any amendments would be required to the existing regulation-making provision in the TIES Act (s 54) to enable the implementation of a domestic ivory trade ban. Regulations have only once been made under s 54 of the TIES Act (the Trade in Endangered Species Regulations 1991, in relation to the breeding and holding of parrots in captivity) and it is unclear whether s 54 can be used to implement a ban on trade. It is beyond the scope of this Article to analyze further the potential legislative vehicle through which a domestic ivory trade ban might be implemented.

³⁷⁷ Given the evolving nature of wildlife trafficking (*see supra* Part I), it is considered that the ivory trade ban should be flexible and responsive. For example, given the current scale of trafficking in pangolin scales, it would be prudent to create a ban that can be extended to cover pangolin (and other species), should a domestic market for pangolin scales (and other specimens) emerge in New Zealand.

³⁷⁸ Legislation on its own will not be effective in combating the illegal wildlife trade; there needs to be ongoing and vigilant enforcement. If traders believe they can ignore the law without being detected, or with minimal consequences, then the law will not deter criminal behavior and will fail to achieve its purpose.

³⁷⁹ New Zealand’s largest online auction site, Trade Me, banned the sale of specimens of Appendix I CITES species in 2014. See *Ivory and Other Endangered Species Products Banned from Sale on TradeMe*, TRADEME (Aug. 15, 2014), <https://www.trademe.co.nz/trust-safety/2014/08/15/ivory-banned-from-sale-on-trade-me/> [<https://perma.cc/8RT7-9AUG>] (accessed May 27, 2020) (stating that the ban, which came into effect on September 17, 2014, “affects almost all ivory sales on TradeMe”). However, there are many

- The ban is accompanied by a public education campaign, with the purpose of raising awareness of the ban and reducing consumer demand for ivory.³⁸⁰

B. Conclusion

There is widespread support for the closure of domestic ivory markets worldwide, including support from African elephant range states, leading conservation organizations, and international bodies. The New Zealand government should be moved to act by this groundswell. Implementation of a domestic ivory trade ban would reduce New Zealand's contribution to the global illegal ivory trade by reducing demand for ivory and reducing opportunities for laundering illegal ivory. A ban would represent a positive response by the New Zealand government to the African elephant range states that have called on the worldwide community to act. Finally, and importantly, a ban would see New Zealand playing a positive role in the global response to illegal wildlife crime—supporting rather than undermining steps taken by other countries.

It is hoped that this Article will serve to inform policymakers and provide support for the establishment of a legal and policy framework that will see New Zealand become part of the solution to the crisis facing African elephants.

other online platforms used by New Zealanders. *See, e.g.*, IFAW, *supra* note 280, at 8 (“[W]ildlife products are being traded on the internet on New Zealand hosted websites, with no requirements in place to demonstrate an item’s legality or provenance.”). In light of this and emerging international evidence of “wildlife cybercrime,” it will become increasingly important for any ivory (and other wildlife) trade bans to address this complex issue.

³⁸⁰ It is considered that an essential component of legislative change of this nature is ensuring adequate information is provided to stakeholders such as traders, travelers, consumers, as well as those responsible for enforcing the ban. It is suggested that the purpose of such public education campaigns would be two-fold: firstly, to enable people to comply with the ban; and secondly, to reduce consumer demand. *See, e.g.*, UNEP ET AL., *supra* note 11, at 70 (stating that “[d]emand reduction must be accomplished through well-conducted and targeted awareness campaigns”).