



# Decision not to return bear skin specimen, surrendered pursuant to section 27(2) of the Trade in Endangered Species Act 1989

<b>Legislation</b>	Ombudsmen Act 1975; Trade in Endangered Species Act 1989 ss27 and 42; Convention of International Trade in Endangered Species, Appendix II.
<b>Agency</b>	Department of Conservation
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	517937
<b>Date</b>	June 2020

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## Summary

Importation of bear skin into New Zealand without a permit, resulting in its surrender under section 27(2) of the Trade in Endangered Species Act 1989 (TIES) – whether the Department of Conservation gave reasonable consideration to exercising its discretion under section 42 of TIES in determining how to appropriately deal with the specimen – Chief Ombudsman concluded that the Department did not act unreasonably.

## Background

The complainant arrived at Auckland Airport from overseas with a bear skin (the specimen) harvested from another country. The complainant did not have a permit for the specimen. The complainant declared the specimen to an Endangered Species Officer (ESO) who advised that a CITES<sup>1</sup> permit was required for the specimen. The specimen was subsequently surrendered under section 27 of the TIES Act.

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<sup>1</sup> The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The complainant made a complaint to the Department of Conservation about having to surrender the specimen. The Department responded the same day stating:

*The entire family (Ursidae) of Bears ... is listed under Appendix II of CITES. As such the surrendered specimen, required a CITES Export or Re-export permit issued by [a] CITES Management Authority to be legally imported into New Zealand. As it was not accompanied by a valid permit the specimen has been forfeited to the Crown and will be disposed of in accordance with section 42 of the TIES Act...*

The complainant noted that prior to bringing the specimen into the country, he had checked with the Ministry of Primary Industries as to what was required of him in order to import a bear skin into New Zealand. The Ministry advised the complainant to contact the Department to find out if the specimen belonged to an endangered species. However, the complainant did not check with the Department further about the matter because he believed that the specimen did not belong to an endangered species. Accordingly, the complainant was not aware that he was not able to import the specimen into New Zealand.

## Investigation

The Chief Ombudsman notified the Department of his intention to investigate whether, having confiscated the specimen, it gave reasonable consideration to exercising its discretion under section 42 of the TIES Act in determining how to appropriately deal with the specimen.

### Relevant legislation

Although the complainant was unaware that he was required to obtain a permit for the specimen, the Chief Ombudsman considered that it was important to consider the matter within the context of the relevant legislation. The relevant legislation in this case is CITES and the TIES Act.

In respect of Appendix II specimens, (under which the entire family of bears, Ursidae, is listed) CITES provides that an export permit issued by the Management Authority of export is required, and may be issued only if the specimen was legally obtained and if the export will not be detrimental to the survival of the species.

Section 26 of the TIES Act provides that permits must be presented at the border. Furthermore, section 18 of the TIES Act provides that an original CITES permit must be presented with CITES specimens on arrival to border officials to enable entry into New Zealand. If this does not occur, the specimens are being traded contrary to the TIES Act. Those specimens must then be surrendered pursuant to section 27(2). As per section 28(1), the specimens are then forfeited to the Crown and must be disposed of in accordance with section 42.

Section 42 of the TIES Act provides for the disposal of specimens forfeited to the Crown:

*(1) Any specimen of an endangered, threatened, or exploited species forfeited to the Crown shall be disposed of in such manner as the Director-General may direct, after consultation with the relevant scientific and management authorities.*

*(2) The Director-General may negotiate the return, and the payment of any costs associated with that return, of any specimen imported into New Zealand, otherwise than in accordance with this Act, with the management authority of the country from where that specimen originated.*

...

The general purpose of CITES is to ensure that the international trade in specimens of wild animals and plants does not threaten their survival. Part 2 of [Resolution 17.8](#) of the Conference of the Parties (Disposal of illegally traded and confiscated specimens of CITES-listed species) provides guidance to parties to CITES in relation to disposing of confiscated specimens as follows:

*2. RECOMMENDS that:*

- a) Parties dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable; and*
- b) as a general rule, confiscated dead specimens, including parts and derivatives, of Appendix-II and Appendix-III species be disposed of in the best manner possible to achieve the purposes of the Convention, and steps be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal and that such disposal does not stimulate further illegal trade;*

## **Retrospective permit**

Subsequent to bringing the specimen into New Zealand, the complainant had obtained a 'permit' from the wildlife authority. The Chief Ombudsman noted that this document is not the same as the CITES permit required by the Department, and is used for harvest reporting and carcass inspection by the wildlife authority, rather than for permitting international trade.

The Department advised that under the TIES Act, a retrospective permit issued by an overseas management authority is only relevant to the extent that it informs a decision maker when utilising their discretion under section 42 of the TIES Act.

In this respect, the Chief Ombudsman noted that the Department had considered the document provided by the complainant, but was not persuaded that this document affected its decision not to utilise its TIES Act discretion.

## Returning the specimen to the complainant's family

The complainant suggested that if the specimen could not be brought into New Zealand, it could be sent back to his family overseas.

The Chief Ombudsman noted the Department's submissions that there were no circumstances specific to this case that indicated it would be reasonable to dispose of the specimen by returning it to the complainant under section 42(1). The Department advised that doing so would not be consistent with the purpose of the TIES Act. For the same reasons, the Department also considered that, in this case, section 42(1) could not be used to return the specimen to the complainant's family.

With regards to section 42(2), the Chief Ombudsman noted that article VIII 1(b) of CITES states that the Parties shall take '*appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures ... to provide for the confiscation or return to the State of export of such specimens.*' The Department advised that in November 2019, it approved internal guidance on the exercise of its discretion under section 42(2). The guidance states (emphasis in original):

*It is recommended that although repatriation requests continue to be considered case by case, approvals to repatriate are given when the circumstances of the case are of an exceptional or compelling nature only, consistent with the purpose of the TIES Act and CITES. Examples of cases that may meet this threshold could include where serious animal welfare issues are involved, where compelling conservation or humanitarian circumstances exist, where an overseas management authority has specifically requested the return of seized items, or where culturally significant items are formally returned en masse to the exporting country's management ...*

In the circumstances, the Chief Ombudsman considered the Department had grounds to decline to exercise its discretion to return the specimen to the complainant's family.

## Retaining of the specimen for educational or identification purposes

If the specimen could not be returned, the complainant proposed that it could instead be retained for educational or identification purposes.

In response to this, the Department stated that there would be no value in doing so, given that the CITES team already holds other bear specimens that are used for this purpose and the space to hold items is limited.

On this basis, the Chief Ombudsman considered that the Department had grounds for not wishing to retain the specimen for educational or identification purposes.

## Outcome

The Chief Ombudsman considered that the legislation governing the importing of CITES specimens makes it clear that a permit must be applied for prior to entry into New Zealand and

must be presented with the specimen upon arrival. The legislation gives the Department discretion in determining how to appropriately deal with a specimen, in limited circumstances. However, the Department had explained why it did not consider it appropriate to either return the specimen to the complainant's family or retain it for educational or identification purposes.

The Chief Ombudsman therefore formed the opinion that the Department had not acted unreasonably in determining how to appropriately deal with the specimen.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*