

In confidence

Office of the Minister of Conservation

Cabinet Environment, Energy and Climate Committee

Targeted improvements to conservation planning processes and initiating review of the Wildlife Act

Proposal

- 1 Conservation legislation requires reform to create a system that will restore the health of our declining biodiversity and better reflect New Zealanders' unique connections with our lands, waters, and history. As there is already a significant programme of reform work underway across government, I propose to defer a decision on comprehensive conservation legislation reform in favour of:
 - 1.1 Amending conservation management planning and concessions legislation during this term of government; and
 - 1.2 Establishing a foundation for future comprehensive conservation legislation reform, including by initiating review of the Wildlife Act 1953.

Relation to government priorities

- 2 The proposal supports the Government's manifesto commitment to protect, preserve and restore New Zealand's natural heritage and biodiversity. It also supports the cooperation agreement commitment to work with the Green Party to achieve the outcomes of *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (ANZBS)*.

Executive Summary

- 3 To assist Cabinet in making future decisions on a comprehensive conservation legislative reform programme, preparatory policy analysis is underway. Meanwhile, there are other opportunities to deliver direct, incremental improvements to address Government priorities.
- 4 Streamlining conservation management planning and concessions processes would improve environmental outcomes in public conservation areas and provide near-term efficiencies for applicants, regional councils, and central government.
- 5 Initiating review of the Wildlife Act is a key first step towards addressing deficiencies in the current system. It would support future comprehensive reform of species legislation and conservation legislation more generally.
- 6 To support Māori and stakeholders to plan their engagement with these processes, I propose to release and regularly update a roadmap for changes to conservation legislation (Appendix 1).

- 7 I intend to report back to Cabinet to seek policy decisions on amendments to conservation management planning and concessions legislation during the [redacted] OIA S9(2)(f)(iv) I intend to report back to Cabinet with an update on progress on the review of the Wildlife Act during the [redacted] OIA S9(2)(f)(iv)

Background

- 8 We are at a defining moment for nature. Along with climate change, the loss of biodiversity is considered one of the biggest long-term threats to human society. We need better tools—starting with a foundation of modern legislation—to halt and reverse the decline of New Zealand’s biodiversity.
- 9 The conservation system¹ is built on 9 main acts² and 15 other acts (Appendix 2). Conservation legislation interacts with environmental legislation and is supported by a broader natural resources context that includes the Resource Management Act 1991 and Biosecurity Act 1993. Treaty settlements (and negotiations) also interact with conservation legislation. In some cases, conservation legislation implements international obligations.
- 10 Conservation legislation was developed over a span of 85 years, largely on an ad hoc basis. As a result, the conservation legislation system is complex and key elements are poorly aligned. Most conservation legislation is more than 40 years old and has not kept pace with evolving biodiversity pressures and environmental knowledge or the changing expectations of society. A number of acts have provisions that emphasise process over outcomes and create technical barriers to projects that have cultural, economic, and environmental benefits.
- 11 The Conservation Act 1987 established the Department of Conservation (DOC) and provides a framework for conservation governance and management, including the regulation of commercial activities on public conservation lands and waters. The act was intended to improve system function and provide clear parameters, but its lack of clear purpose creates ambiguity and uncertainty.
- 12 The Conservation Act was written just as the Waitangi Tribunal was starting to consider historical Te Tiriti o Waitangi claims. Section 4 of the act requires conservation legislation to be interpreted and administered so as to give effect to the principles of the Treaty. While the Crown’s responsibilities in conservation have evolved over time, conservation legislation has not been updated to reflect developments in Treaty jurisprudence.

The drivers for comprehensive conservation legislation reform

- 13 *Te Mana o te Taiao – ANZBS* highlights the failure of the current conservation system to protect biodiversity and proposes review of natural resource legislation by 2025.

¹ The conservation system comprises legislation, governance and leadership, science and monitoring, and operations. The system includes a range of players, including those with statutory roles and responsibilities, as well as communities, tangata whenua (whānau, hapū, iwi), Māori organisations, non-governmental organisations, industry, and individuals.

² The Conservation Act 1987, Reserves Act 1977, Marine Reserves Act 1971, National Parks Act 1980, Wildlife Act 1953, Marine Mammals Protection Act 1978, Wild Animal Control Act 1977, and the Trade in Endangered Species Act 1989. The QE II National Trust promotes covenants on private land under the Queen Elizabeth II National Trust Act 1977.

- 14 Current Government reforms reflect how thinking about conservation and the environment has shifted since most conservation legislation was drafted. Key reforms include resource management reform (which will provide an improved framework for long-term planning and management of the natural and built environment)³ and reform of marine protected areas legislation. Other examples of related work programmes include freshwater management initiatives, OIA S9(2)(f)(iv) [redacted] and the Government's response to the Climate Change Commission's recommendations [redacted] OIA S9(2)(g)(i) [redacted]
- 15 Several recent reviews and court decisions have brought to light significant challenges in the conservation system and have identified areas within legislation that need reform.⁴
- 16 Within this context, I consider there are three major drivers for change.
- 16.1 Current conservation legislation does not adequately provide for the management of current or emerging large-scale pressures (e.g., climate change, pests and predators, land use changes, fragmentation of habitats and landscapes) on ecosystems and species.
- 16.2 The Māori–Crown partnership in conservation needs to be reset in a way that recognises contemporary partnership approaches and considers the post-settlement environment.
- 16.3 Current conservation legislation does not reflect the role of conservation in society and the economy or adequately support wellbeing objectives.⁵

Preparatory work for comprehensive reform

- 17 To assist Cabinet in making future decisions on a comprehensive conservation legislation reform programme, DOC is undertaking preparatory research, analysis, and planning. As part of this preparation, DOC will also continue to input and coordinate at a cross-agency level into environmental and natural

³ The reforms will establish limits to protect the ecological integrity of the natural environment, supported by comprehensive national direction.

⁴ These include:

- DOC, August 2020, *Te Mana o Te Taiao – ANZBS 2020*.
- Waitangi Tribunal Report, 2011, *Ko Aotearoa Tēnei: Te Taumata Tuatahi, A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*.
- Partial reviews of the Conservation General Policy and the General Policy for National Parks.
- Resource Management Review Panel, June 2020, *New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel*.
- Parliamentary Commissioner for the Environment, December 2019, *Pristine, popular...imperilled? The environmental consequences of projected tourism growth*.
- Climate Commission, 31 January 2021, *He Pou a Rangi Climate Change Commission 2021 Draft Advice for Consultation*.
- New Zealand Tourism Futures Taskforce, December 2020, *Tourism Futures Taskforce interim report – We are Aotearoa*.
- *Ngāi Tai ki Tāmaki Tribal Trust vs Minister of Conservation* [2018] NZSC 122.
- *Shark Experience Ltd vs PauaMAC5 Inc* [2019] NZSC 111.

⁵ The Treasury's Living Standards Framework, which prompts thinking about policy impacts across the different dimensions of wellbeing, is available on their website <https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/our-living-standards-framework>.

resource legislation reforms to ensure a co-ordinated approach across the Government's reform program.

18 Other complementary work will also help inform future policy decisions:

18.1 Work to implement *Te Mana o te Taiao – ANZBS* is underway at DOC, across other central government agencies, and at the regional level. As this work progresses, examples of innovative methods and tools that should be enabled in conservation legislation will be identified. The implementation of the strategy will also highlight additional areas where the current legislation is a barrier to protecting and restoring biodiversity.

18.2 Acknowledging the existing barriers to achieving a thriving Te Tiriti o Waitangi partnership in conservation, in August 2019 the former Minister of Conservation and the New Zealand Conservation Authority directed DOC to partially review the Conservation General Policy⁶ and the General Policy for National Parks.⁷ OIA S9(2)(f)(iv)

18.3 The Environmental Defence Society has undertaken a conservation law reform project to provide an outside-of-government view on possible reform pathways. The first phase culminated in August 2021 with the publication of *Conserving Nature – Conservation Reform Issues Paper*.⁹ The report presents a high-level view of the statutory environment grounded by the input of those working and engaging with the current conservation system. The second phase will present specific legislative options for consideration and is expected to be complete by the end of 2022.

Improving how the conservation system functions

19 In line with previous Cabinet decisions, I am progressing and have upcoming significant work to deliver Government priorities. These initiatives are central to 'getting the system right,' one of the three pou (pillars) of *Te Mana o te Taiao – ANZBS*:

19.1 Improving the effectiveness of the review and reclassification process of stewardship land [CBC-21-MIN-0045 refers];

19.2 Modernising the Trade in Endangered Species Act 1989 to enable its efficient and effective implementation and to better meet international obligations [CAB-20-MIN-0157 refers];

19.3 Alongside the Minister for Oceans and Fisheries, implementing *Revitalising the Gulf: Government action on the Sea Change Plan* [ENV-21-SUB-0032 refers], which provides a roadmap of interconnected

⁶ <https://www.doc.govt.nz/conservationgeneralpolicy>

⁷ <https://www.doc.govt.nz/about-us/our-policies-and-plans/statutory-plans/statutory-plan-publications/national-park-management/general-policy-for-national-parks/>

⁸ OIA S9(2)(f)(iv)

⁹ <https://www.eds.org.nz/our-work/publications/reports/conserving-nature-conservation-reform-issues/>

fisheries management and marine protection actions to improve the health of the Hauraki Gulf;

19.4

OIA S9(2)(f)(iv)



20 Appendix 1 (Conservation legislation reform roadmap) illustrates delivery timelines and key engagement milestones for these DOC work programmes. I propose to release this roadmap to help participants plan their engagement. The roadmap will be updated quarterly.

Near-term gains by streamlining processes and decision-making in conservation management planning and concessions systems

21 I propose to advance amendments to conservation management planning and concessions provisions¹⁰ to improve environmental outcomes in public conservation areas and address concerns of stakeholders, including concessionaires, around inefficiencies in the conservation system. While such changes cannot resolve fundamental system challenges, they would make processes more effective and agile within the current legislative framework. Importantly, these changes can be delivered within a much shorter timeframe than comprehensive reform can be achieved.

22 Work was previously undertaken to identify potential improvements to the conservation management planning¹¹ and concessions provisions.¹² In 2016, a range of policy proposals was put to public consultation and approved by Cabinet but not introduced as a bill [EGI-16-MIN-0334, CAB-16-MIN-0654 refer].¹³

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OIA S9(2)(f)(iv)



¹⁰ The Conservation Act and National Parks Act 1980 set out requirements for developing and reviewing statutory plans for public conservation land. The Conservation Act also requires a concession for many activities in public conservation areas and sets out the criteria and processes for concession applications. Where concessions involve wildlife, a Wildlife Act authority is also required. Permits and authorisations must be consistent with the National Parks Act 1980, the Reserves Act 1977, the Conservation Act 1987 or the Wildlife Act 1953, where any of those statutes are applicable.

¹¹ These proposals were developed in 2016 to address concerns raised with the current planning processes by the New Zealand Conservation Authority (NZCA), conservation boards and stakeholders. Particular concerns from the NZCA related to the ability of DOC to keep strategies and plans current, cumbersome review processes, and the lack of responsiveness of planning documents.

¹² The concessions proposals are based on DOC's 2010 review of the concessions regime. The review included consultation with other government departments and industry and compared processes to provisions in other similar legislation.

¹³ The Bill was not progressed due to shifting priorities. These policy directions were revisited in 2018 and further amendments were proposed within the scope and intent of the Bill.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Initiating work towards comprehensive reform of conservation legislation starting with review of the Wildlife Act 1953

- 25 To establish a foundation for future comprehensive conservation legislation reform, I propose to initiate review of the Wildlife Act. I have heard increasingly urgent calls from stakeholders to reform species protections. There is widespread acceptance that the current species protection legislation is not fit-for-purpose and is problematic to integrate within a modern conservation management approach.
- 26 Repeated amendments to the overall statutory scheme of the Wildlife Act over the course of the six decades since its enactment has caused it to lose coherence.¹⁴ There is a need for a modern, purpose-built species management system that has appropriate powers and mechanisms to protect, preserve, and restore biodiversity and meet the obligations of Te Tiriti o Waitangi.
- 27 Fundamental issues with the Wildlife Act include its lack of purpose statement or inbuilt objective, which has led to it becoming the fall-back means by which wildlife in New Zealand are protected. The act also lacks positive obligations or tools for the intervention or active protection of threatened species while providing absolute protection uncorrelated to threat level. Further, the act includes protection and control of wildlife and game, which may be better managed through other species legislation.
- 28 In addition, some provisions in the act prevent the Crown from meeting its obligations under Te Tiriti o Waitangi.¹⁵ Crown ownership of wildlife is a form of cultural dispossession, constrains rangatiratanga, and is not aligned with te ao

¹⁴ *PauaMAC5 Incorporated v Director-General of Conservation* [2018] NZCA 348 [29].
¹⁵ In *Kō Aotearoa Tēnei*, the report into the Wai 262 claim, the Waitangi Tribunal recommended the Wildlife Act be amended to revoke Crown ownership of wildlife.

Māori concepts such as the relationship between people and taonga species being one of responsibility, not ownership. Crown ownership of materials from absolutely protected wildlife also limits Māori economic development.¹⁶

Risks and mitigations

- 29 It is possible there will be criticism that time and resources are being applied to resolving discrete issues instead of addressing fundamental challenges through a programme of comprehensive legislative reform. I consider this to be legitimate cost; by focussing on some specific issues, benefits will be realised along the way instead of relying on comprehensive reform to address all the problems in the conservation system and to a much longer timeframe.
- 30 While capacity constraints also present a risk, the phased approach will allow time for capacity of officials, tangata whenua and stakeholders to expand as the complexity of the issues increases—starting with most straightforward issues and building towards comprehensive reform.

Implementation

31 OIA S9(2)(f)(iv) [Redacted]

[Redacted]	[Redacted]

[Redacted] OIA S9(2)(f)(iv) [Redacted]

¹⁶ While authorisations may allow a person to possess wildlife, the Crown continues to own materials from absolutely protected wildlife even after those materials have been used in the creation of taonga works. It follows that production and sale of cultural items/taonga works derived from wildlife (e.g., items such as korowai) cannot be sold, thus limiting economic opportunities.

Financial Implications

- 33 Progressing amendments to conservation management planning and concessions provisions and initiating a review of the Wildlife Act this term can be delivered within Vote Conservation baselines.
- 34 Implementation costs will be determined through regulatory impact analysis.
- 35 Undertaking a programme of comprehensive conservation legislation reform would require dedicated resources to increase policy, legal, engagement, and administrative capacity at DOC.

Legislative Implications

- 36 If Cabinet agrees to progress targeted amendments to conservation management planning and concessions provisions, legislative changes and implications would be detailed in a proposal to Cabinet in early 2022. Most of the previously proposed changes involve the Conservation Act and the National Parks Act. Where the concessions involve wildlife, some amendments may require changes to the National Parks Act, the Reserves Act, the Conservation Act or the Wildlife Act. OIA S9(2)(f)(iv)
- 37 Legislative changes and implications of prospective amendments to the Wildlife Act would be detailed in a future proposal to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 38 The Regulatory Impact Analysis requirements do not apply for this proposal.
- 39 If Cabinet agrees to progress targeted amendments to conservation management planning and concessions provisions, DOC will work with the Treasury to determine which amendments require regulatory impact analysis.¹⁷

Climate Implications of Policy Assessment

- 40 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal at this stage as there is no direct impact on emissions.

Population Implications

- 41 At this stage, the proposal does not have implications for population groups, but as policy recommendations are developed, these implications will need to be considered.
- 42 DOC is required under section 4 of the Conservation Act to give effect to the principles of Te Tiriti o Waitangi. Policy proposals will consider amendments

¹⁷ When streamlining amendments were last considered in 2018, the Regulatory Quality Team at the Treasury determined that the Regulatory Impact Statement prepared in 2016 covered relevant issues.

necessary to give effect to Treaty principles, including reflecting the Supreme Court decision in the *Ngāi Tai ki Tāmaki* case.¹⁸

- 43 Future consultation will need to include engagement, particularly with tangata whenua, rural communities, the tourism sector, recreational and environmental groups, and ethnic groups with long-standing connections to conservation heritage such as the Chinese community. The process will also need to consider health, disability, and gender implications more explicitly.
- 44 Officials will need to consider and appropriately manage the interaction of legislative changes with existing Treaty settlements and current Treaty settlement negotiations. Engaging with tangata whenua will include Post Settlement Government Entities and entities mandated for current negotiations.

Human Rights

- 45 There are no implications for human rights in this paper.

Consultation

- 46 The following government agencies have been consulted on this paper: the Department of Internal Affairs, Land Information New Zealand, Ministry of Business, Innovation and Employment, Ministry for Culture and Heritage, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Housing and Urban Development, Ministry for Primary Industries, New Zealand Transport Agency, Te Arawhiti, Te Puni Kōkiri, and the Treasury have been consulted on the concepts in this paper. The Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet and have also been informed.

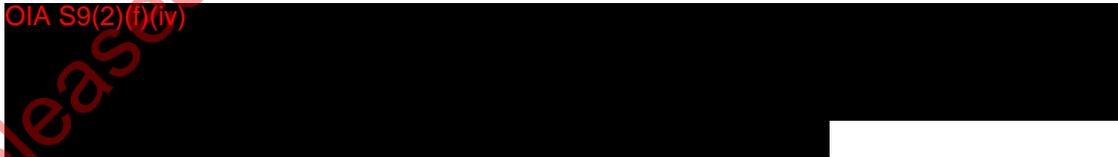
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OIA S9(2)(g)(i)



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OIA S9(2)(f)(iv)



Communications

- 49 Subject to Cabinet agreement, I will publicly announce my intention to initiate this work and release the conservation reform roadmap.

¹⁸ *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122. *The Ngāi Tai ki Tāmaki* judgment confirmed that in the context of decision-making in respect of concessions, section 4 of the Conservation Act requires "... a process under which the meeting of other statutory or non-statutory objectives is achieved, to the extent that this can be done consistently with s4, in a way that best gives effect to the relevant Treaty principles."

Proactive Release

- 50 I intend to proactively release the Cabinet paper in whole within 30 days of decisions being confirmed by Cabinet.

Recommendations

The Minister of Conservation recommends that the Committee:

- 1 **note** that the proposals in this paper support the Government's manifesto commitment to protect, preserve and restore New Zealand's natural heritage and biodiversity and the cooperation agreement commitment to work with the Green Party to achieve the outcomes of *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*;
- 2 **note** one of the goals identified in *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* is to review natural resource legislation to ensure it enables thriving biodiversity;
- 3 **note** that regarding comprehensive conservation law reform,
 - 3.1 decisions will be for a future government to make;
 - 3.2 the reform will require a phased approach;
 - 3.3 the Department of Conservation is doing work internally to prepare for future reform of the conservation legislation system; and,
 - 3.4 recent and upcoming analysis, reviews, and reports from within and outside of government will provide some options for possible reform pathways;
- 4 **note** that future legislative reform proposals will consider and appropriately manage interaction with existing Treaty settlements and current Treaty settlement negotiations;
- 5 **note** that while early preparatory policy analysis is underway, there are other opportunities to deliver direct, incremental improvements to address Government priorities;
- 6 **note** that on 5 December 2016, Cabinet agreed to policy directions for some conservation management planning and concessions amendments [EGI-16-MIN-0334, CAB-16-MIN-0654 refers];
- 7 **note** that streamlining conservation management planning and concessions processes and decision-making would improve environmental outcomes and provide benefits to stakeholders, tangata whenua, local government, and central government;
- 8 **note** that initiating review of the Wildlife Act 1953 will support future reform of species legislation or comprehensive conservation legislation reform;
- 9 **agree** to:

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- 9.1 progress targeted amendments to conservation management planning and concessions legislation; and,
- 9.2 initiate review of the Wildlife Act 1953;
- 10 **authorise** the Minister of Conservation to release the conservation reform roadmap, which will be periodically updated;
- 11 **invite** the Minister of Conservation to report back to Cabinet during the [REDACTED] OIA S9(2)(f)(iv) seeking policy decisions on amendments to conservation management planning and concessions provisions;
- 12 **invite** the Minister of Conservation to report back to Cabinet during the [REDACTED] OIA S9(2)(f)(iv) with an update on the review of the Wildlife Act 1953.

Authorised for lodgement.

Hon Kiritapu Allan
Minister of Conservation

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Appendices

- Appendix 1: Conservation legislation reform roadmap (A3)
- Appendix 2: Conservation portfolio overview (A3)

Released by the Minister of Conservation