



Briefing: Cabinet paper proposing targeted amendments to the Wildlife Act 1953

To	Minister of Conservation	Date submitted	19 March 2025
Action sought	Provide feedback on the attached draft Cabinet paper and discuss with your colleagues, including the timing for introducing proposed amendments.	Priority	Very High
Reference	25-B-0109	DocCM	DOC-10215854
Security Level	In Confidence	Timeframe	21 March 2025
Risk Assessment	Medium - Targeted amendments to the Wildlife Act may generate public opposition. This can be mitigated through the recommended approach that seeks to ensure the status quo application of the legislation can lawfully remain.		
Attachments	Attachment A – Cabinet paper: Targeted amendments to the Wildlife Act 1953 to authorise and validate ongoing activities		

Contacts	
Name and position	Phone
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Purpose – Te aronga

1. To seek your feedback on a draft Cabinet paper proposing targeted amendments to the Wildlife Act 1953 (the Act) to authorise and validate past and ongoing permits for development activities. This paper is provided to support you to engage with your colleagues on the proposals contained, and timeframes to act.

Background and context – Te horopaki

2. The Department of Conservation (DOC) provided you with advice on the Mt Messenger Wildlife Act Authority High Court decision¹ [25-B-0107 refers].

¹ ELI vs DOC - S53 Wildlife Act - Mt Messenger

3. The Court's decision effectively limits DOC's ability to lawfully grant authority to developers to incidentally kill wildlife, as it has in the past, under section 53 (s53) of the Act. The decision further implies that DOC did not have the legal authority to authorise such incidental killing under s53 in the past.
4. DOC outlined options to respond to the effects of the court decision including:
 - appealing the Court's decision, or
 - progressing with targeted legislative amendments to the Act.
5. You provided Cabinet with an oral update regarding the High Court decision on 17 March 2025.
6. Cabinet invited you to return with a paper seeking decisions to progress urgent targeted amendments to the Act to enable current and future activities authorised under the Act to continue to be done lawfully. A draft of this paper is attached [Attachment A].

A Cabinet paper has been prepared that seeks approval for targeted amendments to the Wildlife Act 1953 to ensure the 'status quo' application of the Act can continue

7. The Cabinet paper seeks approval for targeted amendments to the Act. These enable the government to authorise and regulate activities that cause incidental killing of wildlife, while keeping appropriate safeguards in place to protect wildlife.
8. The paper proposes that amendments be targeted and narrow to meet your two objectives for delivering this outcome—providing **certainty** to developers **at speed** to enable continuation of activities under current and future authorisations.
9. The amendments proposed in the paper involve:
 - **For existing authorities**—enabling previously authorised activities to continue by retrospectively validating them.
 - **For new authorities**—enabling the government to keep authorising the kinds of activities and approaches it has previously authorised.
 - Potentially amending the defence provisions in the Act to provide further certainty.
10. These amendments will ensure that the Act continues to be interpreted and applied as it has to date, effectively enabling what was understood to be the 'status quo' to continue. This approach will give businesses and developers the certainty they need to continue authorised activities while still aligning with the Act's purpose to protect wildlife.
11. More significant changes to the Act could be considered, but doing this now would increase risks and take longer.

The Cabinet paper proposes amending section 53 as the preferred approach.

12. The paper recommends amending s53 of the Act to enable the Director-General of Conservation to authorise activities that are otherwise prohibited by the Act, including harming and killing wildlife, if this is incidental.
13. Incidental killing of wildlife is the undesired but foreseeable killing of wildlife that happens when doing otherwise lawful activities (e.g. during a construction project). This differs from 'accidental' killing, which is not foreseeable.
14. The amendment to s53 would clarify the Act to reflect DOC's understanding that:
 - the Act does not seek to regulate harm to wildlife at an individual level, and

- the protective purpose of the Act can be met by addressing effects on protected wildlife at a population level.
15. The amendment will therefore clarify that wildlife protection can be achieved where there is incidental killing, so long as reasonable steps are taken to minimise and mitigate harm, and wildlife populations are protected (e.g. through habitat enhancement, pest control etc).

An alternate approach, amending section 71 of the Act, is noted in the Cabinet paper

16. Section 71 enables Ministers to weigh up the purposes of different pieces of legislation listed in Schedule 9 of the Act to decide whether to permit an activity involving protected wildlife. Ministers can then grant consent to projects that may harm and kill wildlife, with conditions attached.
17. Amendments to s71 of the Act could require substantially more policy work to:
- address current process issues, and
 - determine what Acts should be added, removed and amended from Schedule 9.
18. The policy work would require close involvement and engagement with agencies that administer other legislation on options for inclusion in Schedule 9. We would also need to assess what options are best suited to deliver on the purpose of the Act and other objectives.
19. This option would therefore take much longer than the recommended targeted amendments to the Act.

Risks, implications, and consultation

20. Legislative changes are likely to attract significant attention from stakeholders. Some groups may perceive the Government to be over-riding a recent legal decision, to make it easier to kill protected species.
21. It will be crucial to communicate that these changes are intended to clarify and reinforce established DOC processes.
22. Maintaining the current settings without legislative changes could have significant consequences. This includes the suspension of development projects due to developer concerns about the legality of incidental harm to species (even with authorisations). By implementing the proposed changes, these projects can proceed with clear authorisation provisions, supporting both conservation efforts and development initiatives.

Financial implications - Te hiraunga pūtea

23. There are no direct financial implications of these proposals.

Legal implications – Te hiraunga a ture (Confidential, legally privileged)

24. This proposal responds to an existing legal risk emerging from the recent Court decision. Further legal risk will accrue to DOC and existing authority holders the longer the issue remains unresolved.
25. In addition to having impacts on developers and infrastructure providers, the Court's decision also means that DOC cannot authorise the incidental killing of wildlife as part of TBfree programme, which aims to control and eradicate bovine tuberculosis, and may have implications for DOC's own pest eradication programmes.

Consultation – Kōrero whakawhiti

? PenTao?

26. In preparing the Cabinet paper, DOC consulted with the Department of the Prime Minister and Cabinet, the Ministry of Business, Innovation and Employment, Crown Law, Te Waihangā - the New Zealand Infrastructure Commission and the Ministry of Transport.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

27. Treaty partners have long-standing interest in updating the Act including changing policy to allow customary kill, take and possession of wildlife. Treaty partners may see targeted changes as not providing them with the opportunity to seek broader change.
28. Clear communication that these changes are not proposed to affect DOCs longer-term work programme to repeal and replace the Wildlife Act, may provide greater certainty to Treaty partners. The broader review programme is intended to modernise the legislation to provide clear and sufficient protection for indigenous species in a way that also meets social expectations regarding access and use, and the Crown's Treaty obligations. DOC will provide you with further information on this work programme as it progresses.

Next steps – Ngā tāwhaitanga

29. We seek your feedback on the draft Cabinet paper by Friday 21 March, to feed into ongoing development of advice and support you to engage with you colleagues on the proposals.
30. To further support your engagement with your colleagues we will provide a follow-up one-pager by Friday 21 March, as commissioned by your office. This could be taken and shared as an item to Cabinet on Monday 24 March.
31. We understand your office has been in touch with the office of the Leader of the House to discuss timeframes for passing urgent legislation in the week commencing 5 May. Progressing under urgency minimises the risk that these amendments open up a bigger scope, jeopardising the ability to get the changes done in a timely manner.
32. As there is no Cabinet Legislation Committee in the week prior to 5 May (as it is a non-sitting week) we are exploring the potential for a draft Bill to be taken to Cabinet Business Committee on 28 April. If this is feasible, we recommend seeking Cabinet decisions by the week of 7 April (prior to the three-week Easter recess beginning).
33. This timetable would enable you to engage with Ministers on the proposals and provide the Parliamentary Council Office with approximately two weeks to draft the amendments.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	<p>Provide feedback by Friday 21 March on the attached draft Cabinet Paper seeking approval of targeted amendments to the Wildlife Act 1953:</p> <ul style="list-style-type: none">• providing certainty to developers to continue authorised activities that affect wildlife,• while maintaining the Wildlife Act's purpose to protect wildlife	<p>Yes / No</p>

b)	Note the proposed timeframes to enable passing of the legislation in the week of 5 May will require: <ul style="list-style-type: none"> • Cabinet agreement to the proposals no later than 7 April • Parliamentary Counsel Office drafting between 8 and 24 April • Cabinet approval to introduce the Bill on 28 April 	Noted
c)	Note that we will provide your office with a one-pager to support your engagement with your colleagues by Friday 21 March.	Noted

s9(2)(a)

pp Siân Roguski

Date: 19 March 2025

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Regulatory Services

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Date: 22 / 3 / 2025.

Hon Tama Potaka
Minister of Conservation

ENDS