



Briefing: Draft Cabinet paper to introduce the Wildlife (Authorisations) Amendment Bill

To	Minister of Conservation	Date submitted	3 April 2025
Action sought	Provide feedback on the attached draft Cabinet paper and Wildlife (Authorisations) Amendment Bill before they are due to be lodged with the Cabinet Office by 10am on 10 April 2025	Priority	Very High
Reference	25-B-0133	DocCM	DOC-10221102
Security Level	In Confidence	Timeframe	7 April 2025
Risk Assessment	High Making legislative changes rapidly increases risks of unforeseen consequences or drafting errors. We have mitigated these risks by ensuring the draft bill has undergone as wide as possible legal and operational testing in the time available.		
Attachments	Attachment A – Draft Cabinet paper to introduce the Wildlife (Authorisations) Amendment Bill 2025 Attachment B – Draft Wildlife (Authorisations) Amendment Bill 2025		

Contacts	
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Purpose – Te aronga

- To provide you, for your feedback:
 - the draft Cabinet paper (**Attachment A**) seeking agreement to introduce the bill into the House in the first week after the Easter recess (week commencing 5 May); and

Attachment B is withheld in full as it is legally privileged

- the draft Wildlife (Authorisations) Amendment Bill (**the draft bill**) (**Attachment B**).
2. This material is intended to support your planned Ministerial consultation over 7-9 April 2025.
 3. We seek your feedback, and any feedback from Ministerial consultation, **at or before 10am on Wednesday 9 April**. This will enable changes to be made ahead of lodgement by 10am on Thursday 10 April for Cabinet consideration and decisions on Monday 14 April.

Background and context – Te horopaki

4. On 24 March 2025, Cabinet provided the following policy approvals to amend the Wildlife Act 1953 (**the Wildlife Act**) [CAB-25-Min-0081 refers]:
 - a) to retrospectively validate previously authorised activities under section 53 of the Wildlife Act (including those that should have been considered under section 71) to ensure that it would not be an offence for developers or infrastructure providers to incidentally kill wildlife as part of their activities if the Department of Conservation (DOC) previously authorised this and they undertake activities in line with the authorisation granted and any conditions set out
 - b) to enable the Director-General of Conservation (DG) to authorise activities that are prohibited under the Act, particularly killing wildlife, if:
 - this is incidental to the purpose of carrying out otherwise lawful activities; and
 - all reasonable steps are taken to minimise and mitigate impacts on wildlife, consistent with any reasonable and proportionate conditions legally imposed by the Director-General.
5. Cabinet also authorised you to make further detailed decisions and issue drafting instructions to the Parliamentary Counsel Office (**PCO**), in line with Cabinet's decisions.
6. On 26 March 2025, we sought your direction on briefing instructions to provide PCO [25-B-0122 refers]. You agreed to:
 - a) establish a set of 'reasonable and proportionate' conditions that the DG could impose when granting an authorisation for incidental harm/killing (detailed below)
 - b) include a clause that states the DG can set conditions if they 'do not unreasonably duplicate any resource consent conditions.'
7. Your office has confirmed that these amendments are planned to be introduced to the House under urgency in the week of 5 May 2025, in order to pass through all stages and be enacted in that week.

The draft Cabinet paper seeks two additional policy decisions and approval to introduce the draft bill

s9(2)(f)(iv)

8. s9(2)(f)(iv)

9. s9(2)(f)(iv) [REDACTED]
10. s9(2)(f)(iv) [REDACTED]

The Cabinet paper also seeks agreement on the date that retrospective validation of past authorisations will take effect

11. The draft bill includes a mechanism to retrospectively validate previously authorised activities under section 53 of the Wildlife Act (in Schedule 1AA).
12. These provisions will not affect any legal proceedings commenced or in progress before 28 March 2025, which is the date that you announced Cabinet's decision to amend the Wildlife Act to give developers and infrastructure providers certainty that they would be able to lawfully undertake previously authorised activities.
13. PCO recommended including this date, and seeking Cabinet agreement to include it in the bill. We have included this decision in the attached draft Cabinet paper.
14. We are unaware of any legal proceedings currently underway, or any proceedings that commenced between 5 March 2025 (when the High Court made its recent decision on the Mt Messenger case) and 28 March 2025 (when you made the announcement for the Government).
15. However, if any legal proceedings did commence during this period, they would not be covered by the retrospective validation mechanisms in the bill after it is enacted. We view this risk as very low.

The draft bill incorporates some minor modifications since our last advice to you

16. You previously agreed to the following approach that we proposed for enabling the DG to grant an authorisation for incidental harm/killing of protected wildlife with the following conditions [25-B-0122 refers]:
- a) The DG is satisfied any impacts of the activity on individual protected wildlife, and populations of protected wildlife, are minimised and mitigated as far as practicable; and
 - b) The DG is satisfied the applicant's actions, including any protective measures (i.e. in giving effect to the authorisation), will not materially reduce the likelihood of the survival (viability) of the protected species; and
 - c) Before imposing a condition, the DG is satisfied that the condition:
 - is reasonable and proportionate (to ensure the ongoing viability/survival of the wildlife species – i.e. not proportionate to the scale of an infrastructure project or the economy); and
 - is an efficient and effective means of preventing or minimising harm to protected wildlife.

17. s9(2)(h) [REDACTED]

- a) s9(2)(h) [REDACTED]
- b) s9(2)(h) [REDACTED]
18. s9(2)(h) [REDACTED] The remaining element addressed through the third part of the approach set out – proportionality – is clearly included in the draft Bill. There is a specific provision requiring that a condition may be imposed only if the DG is satisfied that it is proportionate to the severity of the harm that imposing the condition is intended to address.

We are still working through some detailed drafting issues, which will be resolved in time for the bill to be lodged

19. Given the speed of this drafting process, and the complexity of the existing provisions of the Wildlife Act, there are several detailed issues which are still being worked through in the draft bill. This includes:
- Detailed wording that will accurately and clearly represent the distinction between the expectation that operators will minimise and mitigate the impacts of their activities on individual animals and populations, while not materially impacting species viability.
 - How to best incorporate the clause ensuring that conditions should not unreasonably duplicate resource consent conditions, while ensuring that this does not reduce or remove the ability to set additional / different conditions if these are considered necessary to meet the Wildlife Act's protective purpose.
 - The implications of the date specified in relation to retrospective recognition of authorities already granted. This is currently specified at the date that you publicly communicated Cabinet's decision to amend the legislation but could shift should there be any implications signalled of this choice – for example, should it prevent there being adequate coverage for operators relying on their authorities or have implications for potential legal action taken between now and the passing of the bill. Should this date change we would adjust the section in the Cabinet paper seeking agreement to the date specified.
20. We will continue to work with PCO to resolve or confirm our approach on these, and other, detailed issues in time for the bill to be lodged next week and keep you advised.

Risks, implications, and consultation

21. Given the speed of this process, there have been limited opportunities to consult and engage with interested parties, including agencies, and to incorporate input. We consider the potential risks of this to be low given the targeted approach to amending the Act.
22. The speed of the process may have implications for the workability of the bill, given the tight timeframes.
23. s9(2)(g)(ii) [REDACTED]

Financial implications - Te hiraunga pūtea

24. There are no direct financial implications of this paper or the attached bill.

Legal implications – Te hiraunga a ture

25. The Cabinet paper is intended to introduce the bill to amend the Wildlife Act. DOC's legal team worked closely with PCO to draft the bill.

Consultation – Kōrero whakawhiti

26. On 1 April 2025, we shared an earlier draft of the Cabinet paper with the following agencies: Crown Law, the Department of Prime Minister and Cabinet, the Ministry of Business, Innovation and Employment, the Ministry for the Environment, the Ministry of Housing and Urban Development, the Ministry of Justice, the Ministry of Primary Industries, the Ministry of Regulation, the Ministry of Transport, Te Puni Kōkiri, Te Waihangā New Zealand Infrastructure Commission, and the Treasury.
27. We have provided information on the amendments, including the initial draft of the Bill, to the Ministry of Justice for its Bill of Rights Act vet. We will keep the Ministry updated on any changes to the bill.
28. We have not received any comments from these agencies on the draft Cabinet paper.

Next steps – Ngā tāwhaitanga

29. You may wish to circulate the attached draft Cabinet paper and draft bill to your Ministerial colleagues to seek feedback ahead of finalising it for lodgement next Thursday. Given timeframes for lodgement we suggest that you ask for feedback to be provided **no later than 9am Wednesday, 9 April**, so that any changes you request can be actioned.
30. This would support lodging the paper for consideration at Cabinet on Monday 14 April.
31. Key next steps from here, with these dates in mind, are set out in the table below.

Table 1: Timeframes through to enactment of Wildlife Act amendments

Week beginning	Date	Action
7 April	Monday 7 April	<ul style="list-style-type: none">Ministerial consultation on draft Cabinet paper and bill.
	Tuesday 8 April	
	Wednesday 9 April	<ul style="list-style-type: none">Final changes sought to Cabinet paper to be advised by 10am.Updated Cabinet paper and final bill to be provided by 5pm (or early Thursday).
	Thursday 10 April	<ul style="list-style-type: none">Cabinet paper and bill due to be lodged for Cabinet consideration by 10am (unless late lodgement is sought and granted).
14 April (recess)	Monday 14 – Friday 14 April	<ul style="list-style-type: none">Cabinet decisions made on Monday 14 April. Note: Friday is a public holiday (Good Friday).
21 April (recess)	Monday 21 – Friday 25 April	Note: this week includes two public holidays (Easter Monday and Anzac Day).
28 April (recess)	Monday 28 April – Friday 2 May	<ul style="list-style-type: none">Your Office will be provided with a briefing and collateral required to support the Committee of the Whole House (COWH) process and to make a public announcement once the bill has been introduced.Hard copies of the COWH package will be provided.

Week beginning	Date	Action
5 May	Monday 5 – Friday 9 May	<ul style="list-style-type: none"> • Bill to be introduced to the House, progress through all stages and be enacted. • Public announcement to be made once the bill is introduced.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Circulate the draft Cabinet paper and draft bill for Ministerial engagement early next week, for feedback by 9am Wednesday, 9 April 2025.	Yes / No
b)	Agree to provide feedback on the draft Cabinet paper and draft bill, and to communicate any changes sought as a result of Ministerial consultation, before 10am Wednesday, 9 April, to enable final changes to be made before they are lodged with Cabinet on 10 April 2025.	Yes / No

s9(2)(a)

Date: 3 April 2025

Ruth Isaac, Deputy Director-General,
Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

ENDS