



Briefing: Drafting instructions to amend the Wildlife Life Act

To	Minister of Conservation	Date submitted	26 March 2025
Action sought	Approve the policy approach for drafting instructions to amend the Wildlife Act 1953	Priority	Very High
Reference	25-B-0122	DocCM	DOC-10219673
Security Level	In Confidence	Timeframe	26 March 2025
Risk Assessment	High Making legislative changes rapidly increases risks of unforeseen consequences or drafting errors. This reinforces the need for clear drafting instructions, to mitigate these risks.		

Contacts	
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Purpose – Te aronga

- 1) This briefing seeks your approval of the policy approach to inform drafting instructions to the Parliamentary Counsel Office (**PCO**) for urgent amendments to the Wildlife Act 1953 (**the Wildlife Act**).

Background and context – Te horopaki

- 2) On 24 March 2025, Cabinet agreed to proceed with amendments to the Wildlife Act. We are awaiting the Cabinet minute from this meeting, but we understand that Cabinet agreed to the following policy approvals:
 - a) Retrospectively validate previously authorised activities under section 53 of the Wildlife Act (including those that should have been considered under section 71): it would not be an offence for developers or infrastructure providers to incidentally kill wildlife as part of their activities if the Director-General of Conservation (**the Director-General**) previously authorised this and they undertake activities in line with the authorisation granted and any conditions set out.
 - b) Enable the Director-General 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.
- 3) We understand that Cabinet also agreed to authorise the Minister of Conservation to make further detailed decisions and issue drafting instructions to PCO, in line with Cabinet's decisions on the advice.

We are seeking your approval to the approach we have taken for detailed policy decisions

- 4) We have drafted instructions to PCO in line with Cabinet's decisions.
- 5) Cabinet's direction to retrospectively validate previously authorised activities under section 53 of the Wildlife Act was clear, so we do not consider that further decisions on this are required for drafting instructions.
- 6) There are three details for the drafting instructions that we are seeking your approval on. These are:
- Conditions for authorising the 'incidental harm/killing' of species
 - Avoiding duplication with requirements under other legislation
 - Defence provisions in the Act.

Conditions for authorising the 'incidental harm/killing' of species

- 7) We have considered what 'reasonable and proportionate' conditions the DG of Conservation could impose. We propose that the Director-General of Conservation could grant an authorisation for incidental harm/killing as follows:
- a) The Director-General 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 Director-General 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 Director-General 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
- 8) Collectively, this approach would ensure that the Director General can continue to approve or decline authorisations as they did before the Court decision. This would allow the Director-General to decline in the case where it would materially impact a whole species and that cannot be mitigated or offset, but also enable offsetting if that will enable a species to be maintained (through strengthening other populations) despite the deaths of individual animals at a particular site. Importantly, it enables the Director-General to approve authorisations with appropriate conditions.

9(2)(f)(iv)

9(2)(f)(iv)

Defence provisions in the Act

- 13) In the draft Cabinet paper we provided you last week [25-B-0109], and in our 14 March briefing [25-B0107 refers], we raised the option of amending the defence provisions in the Act (section 68AB) to provide further certainty.
- 14) We noted that changing the defence provisions would come with risks, as doing so may reduce incentives for developers and infrastructure providers to seek active permission for their activities that may result in harm to wildlife.
- 15) We understand that Cabinet did not consider, or agree to, amending the defence provisions in the Act. Given Cabinet's decision to agree to the other policy approvals (i.e. changes that involve amending section 53 of the Act), we do not view it as necessary to amend the defence provisions.
- 16) The drafting instructions will therefore not include any changes to the defence provisions in the Act. This aligns with what we understand Cabinet has agreed to.

Next steps – Ngā tāwhaitanga

- 17) Given the speed with which the Government wants to proceed with the Wildlife Act amendments, we need to confirm with PCO as quickly as possible whether you support the approach we've outlined above.
- 18) PCO will then draft a Bill to amend the Wildlife Act, which we will attach to a paper for you to take to the Cabinet Legislative Committee next week, or directly to Cabinet on 7 April 2025. We are currently working with your office to finalise timeframes.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Agree to the 'reasonable and proportionate' conditions outlined in this paper that the Director-General of Conservation could impose when granting an authorisation for incidental harm/killing.	Yes / No
b)	9(2)(f)(iv)	Yes / No
c)	Agree that there will be no amendments to the defence provisions (s 68AB) in the Wildlife Act.	Yes / No

s 9(2)(a)

Date: 26 March 2025

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

9(2)(a)

Date: 26/03/25

Hon Tama Potaka
Minister of Conservation

ENDS