

# Briefing: Material to introduce the Wildlife (Authorisations) Amendment Bill

<b>To</b>	Minister of Conservation	<b>Date submitted</b>	1 May 2025
<b>Action sought</b>	Agree to introduce the attached Wildlife (Authorisations) Amendment Bill	<b>Priority</b>	Very High
<b>Reference</b>	25-B-0184	<b>DocCM</b>	DOC-10277818
<b>Security Level</b>	In Confidence	<b>Timeframe</b>	5 May 2025
<b>Risk Assessment</b>	<p>Medium</p> <p>Some members of Parliament may query why the Bill is being progressed under urgency as this will not enable scrutiny by a Select Committee. The attached speech explains why urgency is justified.</p>		
<b>Attachments</b>	<p>Attachment A – Wildlife (Authorisations) Amendment Bill</p> <p>Attachment B – Legislative statement</p> <p>Attachment C – First Reading Speech</p> <p>Attachment D – Supporting information for the House processes, including questions and answers</p> <p>Attachment E – Clause by clause analysis of the Bill</p> <p>Attachment F – Draft press release</p>		

<b>Contacts</b>	
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## Purpose – Te aronga

- To provide you with the final Wildlife (Authorisations) Amendment Bill (**the Bill**), and material to support you when you introduce the Bill to the House in the week beginning 5 April 2025. This material includes the following:
  - the legislative statement for the Bill (**Attachment B**)
  - a speech to introduce the Bill (**Attachment C**)

- supporting information, including questions that may be asked about the Bill and answers (**Attachment D**)
- a clause by clause analysis of the Bill, if required (**Attachment E**).
- a draft press release for when the Bill is enacted (**Attachment F**).

### **Background and context – Te horopaki**

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2. On 14 April 2025, Cabinet approved the Wildlife (Authorisations) Amendment Bill [PCO 27258/15.0] for introduction and agreed that the Bill will be introduced in the week beginning 5 May 2025 [CAB-25-MIN-0120 refers].
3. Cabinet also authorised you, the Minister Responsible for RMA Reform and the Minister for Resources to finalise the wording for two provisions of the Bill:
  - a) a requirement for the Director-General of Conservation to be satisfied that the holder of an authority [for the incidental killing of wildlife] will take all reasonable steps to protect wildlife, including steps to avoid, minimise and mitigate impacts on individual animals
  - b) 9(2)(f)(iv) [REDACTED]
4. In addition, Cabinet authorised the Parliamentary Counsel Office (PCO) to continue to make minor changes to the Bill to settle technical matters in line with Cabinet's policy decisions and to incorporate feedback from proofreading and quality control processes up until the Bill is printed for introduction.

### **We have attached the latest Bill (Attachment A)**

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5. On 30 April 2025, your office informed us that you had reached a decision with the Minister Responsible for RMA Reform and the Minister for Resources for the final Bill to:
  - a) remove the word 'all' from section 53(b)(4) of the draft Bill so the final Bill will now specify that 'The Director-General may be satisfied that the overall effect of the authority would be consistent with the protection of individual wildlife only if satisfied that the holder of the authority will take reasonable steps (including by complying with any relevant conditions imposed on the authority) to avoid, minimise, and mitigate any adverse effects of the lawful activity on individual wildlife.'
  - b) 9(2)(f)(iv) [REDACTED]
6. The latest version of the Bill (Attachment A) does not currently reflect these changes. We are seeking your formal confirmation of these decisions through this briefing.
7. In the meantime, we can confirm that PCO is currently updating the Bill to give effect to these changes. We will share it with your office as soon as PCO provides it.
8. Your Office will need to provide a hard copy of the final Bill to the Office of the Leader of the House so that his Office can provide it to the Clerk of the House, before introduction.

## **We have also attached materials to support you when you introduce the Bill to the House**

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9. The legislative statement (Attachment B) provides a detailed explanation of the Bill's provisions to help members of Parliament understand the Bill.
10. As the Government is intending for the Bill to be accorded urgency, the legislative statement needs to be circulated to the Clerk of the House and to the leader, whip, or relevant spokesperson of each party before the Bill may be presented to the House.
11. Ahead of introduction, a motion for urgency will need to be put forward. Talking points in the Supporting information (Attachment D) have been provided for you (or a colleague on your behalf) to put this motion forward.
12. At any point from introduction Amendment Papers may be put forward. Officials will be available to assist in any consideration of Amendment Papers.
13. Following the presentation of the legislative statement you may start the first reading of the Bill. We have prepared a speech for you to support this (Attachment C).
14. After your speech, other Members of Parliament may raise questions about the Bill during members' speeches. We recommend adapting the first reading speech to acknowledge the feedback received from members during the second reading.
15. If the House agrees for the Bill to be accorded urgency, the Bill will not need to go to Select Committee and may be able to pass through most or all its stages on the day that it is introduced.

## **We have provided you with materials to support discussions during Committee of the Whole House**

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16. We have provided you with talking points and background information for any questions that may arise during Committee of the Whole House (Attachment D).

### ***You have options for how the Bill is considered in the House***

17. The Bill, when it is updated, will contain six clauses. The more substantive clauses are:
  - *clause 4*: inserts new sections 53A to 53C into the Act. The new sections are concerned with authorising killing of wildlife that is incidental; and
  - *clause 6*: retrospectively validates previous authorities granted under section 53 of the Act.

(Note that, given updates have not yet been made by PCO, these clauses are currently clauses 5 and 7 in the attached draft Bill.)
18. Given its small size, we recommend that you move that all six clauses of the Bill be considered as one part. This will ensure efficiency through the House processes.
19. We have provided you with a high-level clause-by-clause analysis if you choose not to move that the Bill be considered as one part (Attachment E). We note that debating the Bill in this way may extend the process as administrative clauses will also be debated.
20. Alternatively, you could move that clauses one to four be considered as one part, and clauses five and six be considered as another part. This will allow the debate to be broken down into the two more substantive policy changes being sought, without having to debate administrative clauses.
21. Officials will provide you with a folder with all supporting material that may be needed for the Committee of the Whole House debate.
22. We have also prepared a draft press release (Attachment F) for you to release when the Bill is enacted.

## **Risks**

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23. During the Parliamentary debate, some members of Parliament may query why the Bill is being progressed under urgency as this will not enable scrutiny by a Select Committee. The attached speech explains why urgency is justified.
24. The Bill was drafted rapidly to respond to a specific issue with the Wildlife Act 1953. As noted in previous briefings [25-B-0133 and 25-B-0153 refer], making legislative changes rapidly increases risks of unforeseen consequences or drafting errors. We mitigated these risks by ensuring the draft Bill has undergone legal and operational testing, as widely as possible in the time available.

## **Next steps – Ngā tāwhaitanga**

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25. You will have an opportunity to discuss the content of this briefing and the attached materials, as well as the process for introducing the Bill, at your meeting with officials from the Department on Monday 5 May.
26. Officials from the Department will also be in the House when the Bill is introduced and available to support you.

**We recommend that you ... (Ngā tohutohu)**

		<b>Decision</b>
<b>a)</b>	<p><b>Direct</b> that the Wildlife (Authorisations) Amendment Bill be updated to reflect decisions made by you, the Minister Responsible for RMA Reform, and the Minister for Resources to:</p> <p>1) remove the word 'all' from section 53(b)(4) of the Bill so it will now specify that 'The Director-General may be satisfied that the overall effect of the authority would be consistent with the protection of individual wildlife only if satisfied that the holder of the authority will take reasonable steps (including by complying with any relevant conditions imposed on the authority) to avoid, minimise, and mitigate any adverse effects of the lawful activity on individual wildlife.'</p> <p><b>and</b></p> <p>2) s9(2)(f)(iv) [REDACTED]</p>	<p>Yes / No</p> <p>Yes / No</p>
<b>b)</b>	<p><b>Note</b> that your office will need to:</p> <ul style="list-style-type: none"> <li>provide a hard copy of the final Bill to the Office of the Leader of the House so that his Office can provide it to the Clerk of the House, before introduction.</li> <li>circulate the legislative statement to the Clerk of the House and to the leader, whip, or relevant spokesperson of each party before the Bill is presented to the House.</li> </ul>	Yes / No
<b>c)</b>	<p><b>Note</b> we recommend that you move all six clauses of the Bill to be considered as one part in the House, to ensure efficiency through the House processes, but that you also have options to consider clauses one by one, or in two parts.</p>	Yes / No

**s9(2)(a)**

Date: 1 May 2025  
 Ruth Isaac, Deputy Director-General,  
 Policy and Regulatory Services

Date: / /  
 Hon Tama Potaka  
 Minister of Conservation

**ENDS**

s9(2)(h)

# Legislative statement: Wildlife (Authorisations) Amendment Bill

All stages

May 2025

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Presented to the House of Representatives under Standing Orders 272

## Overview of the Bill

### What does the Bill do?

1. The Bill makes targeted amendments to the Wildlife Act 1953 (the Act). It addresses legal uncertainty that has arisen regarding the authorisation of incidental killing of wildlife under section 53 of the Act. This is killing that can occur during many otherwise lawful activities and is unintended but foreseeable and often unavoidable.
2. The objectives of the Bill are to enable the Department of Conservation (DOC) to continue to manage incidental harm to wildlife; and to provide certainty to holders of existing section 53 authorisations that they can continue their activities lawfully if they comply with those authorisations.
3. The Bill focuses solely on the authorisation of incidental killing and does not affect other types of authorisations that may be provided under section 53.
4. The Bill will come into force on the day after Royal assent.

### Why is the Bill needed?

5. One of the principal purposes of the Act is the protection of wildlife throughout New Zealand, including some of New Zealand's most endangered species. The Act protects most native birds, all native reptiles, frogs, and bats, and a few specified invertebrates and marine fish. It does this by regulating many of people's interactions with these species, which cannot be lawfully taken, harmed or killed without proper authorisation. The Act also provides for the recreational hunting of game birds, which are protected outside the hunting season.
6. Section 53 of the Act enables the Director-General of Conservation (the Director-General) to authorise the taking or killing of wildlife for certain purposes, and the Director-General may delegate these powers to DOC officials (under section 44A of the Act). The application of section 53 was considered by the High Court in *Environmental Law Initiative v The Director General of the Department of Conservation and others* [2025] NZHC 391. The Court determined that there must be a direct connection between each act of killing wildlife and the protection of wildlife. The Court therefore ruled that it had been unlawful for DOC to authorise the incidental killing of protected wildlife.
7. The effect of the judgment was to significantly limit DOC's ability to regulate and manage incidental harm to wildlife. It also meant the status of such authorisations that DOC had previously granted was unclear. This has left holders of existing authorisations uncertain on whether they can continue to undertake their activities lawfully.

8. For example, activities that can involve incidental killing of wildlife include some subdivisions; land works; solar and wind farms; road and rail transport projects; power line maintenance; and pest control programmes (such as the TBfree programme).
9. The Court's decision also resulted in considerable uncertainty for holders of some section 53 authorisations, where section 71 of the Act was applicable. Section 71 provides for authorisations to be issued where activities affecting wildlife are carried out under named legislation specified in Schedule 9 of the Act (for example, the Government Roding Powers Act 1989). In such situations, the Minister of Conservation and the Minister who administers the Schedule 9 Act jointly consider and impose conditions on the activities.
10. The Director-General had granted several authorisations under section 53 in circumstances in which section 71 was applicable (for example, to the NZ Transport Agency for state highway projects). However, the High Court determined that where a consent under section 71 would apply, an authority under section 53 is not a valid substitute.

## **Main policy proposals**

### **Part 1 provides for future authorisations of incidental killing**

11. Clause 4 in Part 1 of the Bill inserts three new sections to the Act. These are intended to restore the approach DOC had taken to regulating incidental killing prior to the Court's judgment.

#### ***Section 53A enables incidental killing to be authorised***

12. A new section 53A clarifies that the Director-General may authorise the incidental killing of wildlife that occurs as a consequence of an otherwise lawful activity.
13. Section 53B clarifies how authorisations can be consistent with protecting wildlife. This section requires the Director-General to be satisfied that the overall effect of an authorisation and its conditions would be consistent with the protection of populations of wildlife and of individual animals.
14. This is the approach taken by DOC prior to the Court's judgment. DOC considered this approach was consistent with the Act's protection purpose.

#### ***Section 53B restores and clarifies***

15. Section 53B specifies when an authorisation will be consistent with the protection of wildlife and what the Director-General must have regard to when considering an application. This includes whether the overall effect of the authorisation and its conditions would address the potential adverse effect of the activity on affected wildlife populations and the viability of those species (for example, whether the species could become more threatened or extinct).
16. The Director-General must also be satisfied that the holder of an authorisation will take reasonable steps to avoid, minimise and mitigate any adverse effects on individual animals.

#### ***Section 53C allows for conditions on authorisations for incidental killing***

17. The new section 53C ensures the Director-General is able to impose conditions on an authorisation to address potential adverse effects of the activity on the affected populations of wildlife, the species, and individual animals. For example, some past authorisations have required affected wildlife to be collected and relocated, and for the habitat in those places to be enhanced to support the animals' survival.



## **Part 2 validates existing section 53 authorisations**

18. Part 2 of the Bill adds a new Schedule 1AA to the Wildlife Act. This validates authorisations for incidental killing that DOC had previously granted under section 53.
19. Part 2 also validates section 53 authorisations that were granted in circumstances in which section 71 was applicable. This applies to any such section 53 authorisation granted before the High Court's decision was announced on 5 March 2025.
20. These validations mean that it would not be an offence for holders of such authorisations to incidentally kill wildlife as part of their activities, provided they undertake those activities in line with the authorisation and any conditions in it.
21. However, these validations do not affect any legal proceedings that commenced before 28 March 2025, which is the date that the Minister of Conservation publicly announced the Government's intention to amend the Act in response to the Environmental Law Initiative case.

## **Support for the legislative requirements in the Bill**

22. Decisions on these Wildlife Act authorisations will be supported by the principles of administrative law and operational requirements for processing applications.
23. The principles of administrative law apply to all statutory decisions. They require that decision-makers act in accordance with the law, rationally, reasonably, and fairly. If this is not done, decisions can potentially be challenged through judicial review.
24. DOC is also currently updating its procedures for processing all concessions and permits, including permits for authorisation under the Wildlife Act, so they are more streamlined and efficient. This includes work to move to an online permissions platform where applicants will be able to track the progress of their application and instituting new practices to progress applications more quickly.
25. For applications to incidentally kill wildlife, DOC will be updating application forms to reflect the provisions in the Bill. DOC will ensure the forms seek the information needed from applicants, at a sufficient standard, to enable them to be processed. To support staff processing the applications and ensure conditions set through authorisations are reasonable, fair, and proportionate, DOC will have standard operating procedures in place.

## **Attachment C – First Reading Speech**

### **The Government has introduced this Bill today because we need to fix an issue with the operation of the Wildlife Act.**

- The Wildlife Act is an important piece of legislation but it is old and creaking. The Act provides for the protection of wildlife throughout New Zealand, including some of New Zealand's most endangered species. It protects our precious wildlife and it also recognises the need to regulate human interactions with them so that our actions do not negatively affect protected species in the long run.
- However an urgent issue has arisen as a consequence of a High Court decision in March that significantly limits the ability of the Department of Conservation to authorise and regulate the incidental killing of protected wildlife under the Wildlife Act.
- This issue is preventing people and organisations from having the confidence to continue with their development and infrastructure projects, because of concerns that they may be inadvertently breaking the law. It is also affecting important conservation activities.
- Incidental killing can occur during many lawful activities, such as housing, transportation, energy infrastructure, and pest control. The harming or killing of wildlife while doing these activities is unintended but foreseeable. It is also often unavoidable.
- Without a Wildlife Act permit, it is illegal to harm protected wildlife.
- Prior to the Court's decision, DOC regularly provided wildlife permits that authorised incidental killing, so long as permit holders met the conditions in their permit. These conditions were designed to maintain the viability of affected wildlife populations and to protect individual animals as much as possible. Through these conditions developers and infrastructure providers could ensure their projects proceeded responsibly while supporting the long-term viability of wildlife populations.

### **This Bill addresses the impacts of the recent High Court decision, and will enable projects to happen while protecting our precious wildlife.**

- The High Court ruling in March this year deemed the authorisation of incidental killing of protected wildlife during construction of the Mount Messenger highway in Taranaki to be unlawful.
- The decision has two significant implications.
- Firstly, it means DOC is now unable to authorise and manage incidental harm to wildlife that is likely to occur during various activities.
- Secondly, it creates significant uncertainty for those with existing Wildlife Act permits. They are now unsure if they can continue their activities lawfully. Without a lawful permit, harming protected wildlife is an offence.

- This is problematic for managing risks to threatened wildlife because it prevents new wildlife permits from being issued, and these permits would normally include requirements to protect wildlife during the activities.
- It is also problematic for developers and infrastructure providers who support our growing economy. They need assurance that they can carry out their activities lawfully.
- And it negatively impacts crucial conservation work such as pest control and wildlife research. These activities may sometimes harm individual animals but they are important as they benefit native species and ecosystems as a whole.

### **This Bill is needed under urgency to restore certainty and confidence.**

- Those who were granted an authorisation in the past have relied on these authorisations to undertake their activities in good faith. We need to fix this problem quickly so they can continue their activities lawfully and limit any flow on impacts to wildlife, and our economy.
- There are over 100 active authorisations that could be affected. These authorisations apply to development and infrastructure activities, such as subdivisions, construction projects, solar and wind farms, and road and rail projects - to name a few.
- Other types of activities are also affected, such as pest control to control bovine tuberculosis.
- On top of this, many applications for planned future activities that require wildlife permits are currently stalled. We urgently need to enable these applications to be processed so activities can go ahead, with appropriate safeguards to protect wildlife.

### **The Bill makes specific, targeted changes to fix this problem.**

- The Government's intent is for the Bill:
  - to restore people's confidence that they can carry out activities lawfully; and
  - to enable DOC to regulate incidental harm to wildlife so that activities do not cause permanent harm to the viability of protected wildlife.

### **This Bill does not make fundamental changes to the Wildlife Act.**

- As I have said, the Wildlife Act has an important role. It protects almost all our native birds, all native reptiles, frogs and bats, and a few specified native invertebrates and marine fish. Many of these animals are at high risk of extinction.
- It ensures wildlife cannot be lawfully taken, harmed or killed without a permit. These permits in turn protect the wildlife by including requirements designed to minimise adverse effects to individual animals and the species.
- This Bill addresses the issue at hand following this Court decision, while maintaining the existing foundations of the Act. This Bill:

- does not change the purpose of the Wildlife Act or water it down.
- does not affect all decisions and permits under the Act but focuses solely on permits for incidental harm.

**Instead, the Bill essentially restores what was understood to be the status quo before the Court's decision.**

- The Court's decision that authorising incidental harm is unlawful under the Wildlife Act was based on the view that every act of killing individual animals must be consistent with the Act's purpose of protecting wildlife.
- However, prior to the Court's decision, DOC had interpreted the Act to mean that a permit could meet the Act's protective purpose by addressing effects at a population level. For example, a wildlife permit might allow an activity to harm some individual animals but require the permit holder to undertake activities such as habitat improvements and pest control that support the wildlife population.

**The Bill clarifies the ability to authorise incidental killing.**

- The Bill now clearly allows DOC to authorise an activity to incidentally kill some animals if the wider affected population is protected.
- This will remove the block preventing applications for activities being processed.
- But let me be clear – these changes do not change or lower the bar for the protection of wildlife. The Bill still requires that making and authorising wildlife permits be consistent with protecting wildlife. Permit holders must still take reasonable steps to avoid, minimise and mitigate harm to wildlife.
- The Bill also provides clear guidance on how decisions should be made. For example, it requires DOC to consider what potential impacts the activity might have on the affected wildlife populations and the viability of their species, and the extent to which the permit will manage these effects.

**The Bill also validates authorisations that had been previously granted for incidental killing.**

- These validations will give those already holding wildlife permits the confidence that they can carry out their activities lawfully.
- It will not be an offence to incidentally kill wildlife during these activities, provided that permit holders comply with the conditions that are part of their permit.
- So if you have been given a wildlife permit already, kei te pai. As long as you are following its conditions, you do not need to do anything differently.

**There is more work to be done on the Wildlife Act.**

- This Bill deals with an immediate problem. But there is much more work to be done on the Wildlife Act over the longer term.
- The legal problem this Bill deals with has arisen in part because the Wildlife Act is over 70 years old. We know there are many issues with this legislation. We need to modernise the Act and ensure it is robust and fit for purpose.

- But I am not proposing to make fundamental changes to the Act in an ad hoc way now. This would risk making the Act even less coherent, less effective, and more difficult to work with.
- This Bill is not a replacement for a full review of the Wildlife Act. A full review remains a priority, but it will be complex and take time.
- In the meantime, this Bill is a first step. It fixes the current issue we have while maintaining appropriate safeguards to protect wildlife.

**I commend the Bill to the House.**

# Information to support you through the House processes for the Wildlife (Authorisations) Amendment Bill 2025

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## Talking points

### 1. Motion for urgency

- Mister Speaker, I move, that urgency be accorded to the introduction and passing through all stages of the Wildlife (Authorisations) Amendment Bill.
- The Government is moving urgency because it is necessary for these changes to come into effect as quickly as possible – for conservation, economic and legal reasons. I note that copies of the Bill have been provided to the Opposition to allow them to have forewarning about what is coming, given the urgency and significance of the Bill.

### 2. About the Bill

#### **This Bill targets an issue with the Wildlife Act that urgently need fixing**

- As you are aware, the High Court recently decided that the Director General of Conservation had unlawfully authorised the incidental killing of protected wildlife under section 53 of the Wildlife Act for a new highway at Mt Messenger.
- The Court's decision has wide-ranging impacts that could delay or stop many projects.
- It affects:
  - infrastructure and development projects that previously received authorisation under section 53 of the Wildlife Act
  - other projects that are important for our environment and economy, such as the TBfree programme
  - future projects that would require authorisation under s 53 of the Wildlife Act, such as new housing developments, roads, wind farms, and many other types of projects, like tourism activities and research, that are important for our society and economy.

#### **This Bill will effectively restore the status quo before the Court's decision.**

- It does this in two ways. It:

1. validates previously authorised activities under section 53 of the Wildlife Act, before the Court's decision, so these activities can lawfully continue
2. enables the Director-General of Conservation to grant authority to kill wildlife incidentally, and to set conditions as part of these authorisations.

### **Firstly, this Bill validates previously authorised activities**

- Validation will apply to all authorisations granted under section 53 of the Wildlife Act before 5 March 2025.
- This is when the date of the judgment in the Environmental Law Initiative case was received.
- This legislation should not interfere with cases already before the courts.
- There are no legal proceedings currently underway that officials are aware of.

### **Secondly, this Bill gives the Director-General of Conservation the power to grant authorisations to incidentally kill wildlife**

- Incidental killing is unintentional but can be an inevitable and foreseeable consequence of carrying out a lawful activity, such as consented construction works.
- The power to authorise incidental killing needs to be consistent with the protective purpose of the Wildlife Act.
- To determine whether an authorisation to incidentally kill wildlife is consistent with protecting wildlife, the Bill requires the Director-General to consider the impacts of an activity on the survival of species. For example, the Director-General would consider whether an activity would lead to a species becoming extinct.
- The Director-General would need to be satisfied that an applicant will take reasonable steps to avoid, minimise, and mitigate any harmful effects of their activities on wildlife.
- The Director-General can also set conditions as part of authorisations.

### **The Bill does not raise or lower the bar for conditions that the Director General of Conservation may set**

- The Director General already has broad powers to set conditions for authorisations to take or kill wildlife in the Wildlife Act.
- The Bill does not limit these existing powers or expand how they are exercised.
- Instead, the Bill provides clarity on the types of conditions that the Director General may impose as part of an authority for incidental killing.
- These include:
  - measures to avoid making a species more threatened or extinct

- measures to avoid, minimise, or mitigate harm to protected animals.
- These measures are consistent with the types of conditions that the Director General has previously set for authorisations to incidentally kill wildlife.
- For example, the Director-General of Conservation has previously set conditions to protect species such as kiwis by requiring applicants to:
  - follow animal management plans submitted by applicants
  - follow best practice guidelines to capture and relocate animals, and
  - undertake predator control and site enhancement in places where animals are relocated.

### **We need to amend the Act as soon as possible**

- As you are aware, we urgently need to amend the Wildlife Act.
- Over the last few weeks, I have been contacted by a growing number of businesses and industry groups that are concerned about the implication of the Court's decision. They are urging the government to take action now to fix this issue.
- On 28 March, I announced the Government's intent to promptly change the Wildlife Act.
- Now we are ready to deliver on this by progressing this Bill under urgency.

### **A regulatory impact analysis has not been completed for this Bill**

- Cabinet agreed to progress this Bill with urgency to limit any flow-on implications to wildlife populations and the economy, and to provide certainty to operators where projects may result in incidental harm to wildlife.
- Due to urgency (and the consequential time constraints) completing a comprehensive regulatory impact analysis (RIA) is impractical for this Bill.
- The proposals are narrow and targeted to the specific issues raised in the Court's decision. We consider the risk of unintended consequences is low given the changes confirm what has previously been the usual practice under s 53.
- A post-implementation review will be developed within two years after implementation. Conducting a post-implementation review will provide a useful safeguard to ensure that this change is meeting its objectives and can identify potential improvements.
- Any key concerns identified in the post-implementation review will inform the government's planned work programme to repeal and replace the Wildlife Act.

## **3. Response to speeches concerned about 'greenlighting' developments**

- Mr Speaker, I understand that some have voiced concerns that these changes will greenlight major construction projects that are a threat to our endangered wildlife and precious taonga. I want to reassure you, Mr Speaker, this is not the case.



- Development or infrastructure projects may pose threats to wildlife, as may many other human interactions with wildlife. Having section 53 authorisations help to manage these risks and ensure that conservation efforts are integrated into the planning and execution of such projects.
- The changes being made by this Bill will ensure that our treasured species continue to be protected even in cases where we know that some harm may occur.
- While this might initially seem contradictory to the goal of protecting wildlife, these authorisations are designed with safeguards.
- Section 53 of the Wildlife Act only allows incidental harm under strict conditions so that actions do not negatively affect protected species in the long run.
- This balance is key in the protection and conservation of wildlife populations and key to protecting the world that our mokopuna deserve.

#### **4. Response to speeches concerned that this Bill is replacing a review**

- Mr Speaker, it is well known that the Wildlife Act is old and has lost coherence over time. That is a key reason why we are sitting here today having to make these urgent amendments to ensure that our treasured species and taonga continue to be protected.
- These changes are targeted to address the specific issues raised by the court decision. They address a symptom of a bigger issue. This has not changed this Government's view that a broader review of the Wildlife Act is needed.
- This 70-year-old Act needs replacing, but along with 70 years of amendments, there have been 70 years of establishing processes and systems. Mr Speaker, this will take time to work through, so that we can ensure that any new legislation is robust, fit-for-purpose and in line with current knowledge.
- The targeted changes in this Bill are being prioritised now to ensure DOC can continue issuing authorisations and minimise any resulting impacts to wildlife populations, and authority holders. After these immediate changes are delivered, work to review the Act will continue to be prioritised.

# Responses to key questions that may be raised

## About Wildlife Act Authorisations

### **1. What is a Wildlife Act authorisation and what does it let you do?**

- The Wildlife Act is the principal means of protecting wildlife in New Zealand, including many of our most endangered species. It is unlawful to kill protected wildlife without authority granted under the Act.
- An authorisation permits certain actions that are normally not allowed under the Act. For example, it may allow wildlife to be captured, killed, or moved. These authorisations come with conditions designed to minimise harm to wildlife, both for individual animals and entire populations.
- These authorisations span a range of activities where interactions with wildlife could occur including translocations, rehabilitation, subdivisions, construction work, energy generation projects, powerline maintenance, roading projects, research, and pest control.
- Authorisations provide developers and infrastructure providers and others with the necessary permissions they need to interact with wildlife while undertaking their lawful activities. They do not permit the development activities themselves, which will generally be enabled under other Acts – for example, the Resource Management Act.

### **2. How do authorisations support conservation outcomes?**

- Authorisations ensure that wildlife is protected while developers, infrastructure providers and others interact with wildlife. They establish safeguards and help to minimise harm – both to wildlife individually and at a population level.
- By issuing these authorisations, DOC can ensure that development projects consider and provide for wildlife protection, allowing progress without compromising conservation. Authorisations can require developers to take actions that protect wildlife, such as safely relocating species, creating wildlife corridors, or implementing habitat restoration plans. This ensures that development doesn't result in permanent harm to ecosystems.
- But authorisations are not only needed for projects involving development and infrastructure provision. In some cases, authorisations are granted for activities that could otherwise be harmful, but which are essential for the recovery of endangered or threatened species. This includes capturing individual animals for breeding programs or relocating them to safer areas.
- Wildlife capture and other controlled activities can also support research efforts aimed at understanding species' behaviours, health, and population dynamics. This knowledge is crucial for designing effective conservation strategies that protect wildlife populations in the long-term.

### **3. Why is DOC authorising the killing of protected wildlife if its goal is to protect species?**

- The purpose of the Wildlife Act 1953 is to protect and control wildlife. Under this Act, DOC's role is to regulate harm that may be caused to wildlife. This includes through ensuring that there are appropriate conditions in place to protect wildlife when DOC issues an authorisation.
- Sometimes, projects that provide essential benefits to society, such as housing, transportation, and energy infrastructure, can cause harm to wildlife.
- By seeking authorisations and implementing mitigation strategies, developers and infrastructure providers can ensure their projects proceed responsibly while supporting the long-term viability of wildlife populations. This has been the status quo for some time.

### **About why the changes are needed and why now**

#### **4. What changes are being made to the Act now, what will they do and when will they come into force?**

- A targeted and narrow set of amendments will urgently be made to the Act, so that it can continue to be interpreted and applied as it has to date.
- This will effectively enable what was understood to be the 'status quo' to continue – with important protections for wildlife – so that DOC can keep regulating and authorising the same kinds of activities it has in the past.
- These amendments will include:
  - *for existing authorities* - enabling previous s 53 authorisations to continue to be relied upon, and
  - *for new authorities* - enabling the government to continue to regulate the incidental killing of wildlife as it has in the past.
- The protective purpose of the Act will stay the same.
- This approach will give operators the certainty they need to continue authorised activities while still aligning with the Act's purpose to protect wildlife.

#### **5. Why are amendments needed?**

- The recent High Court decision on the Mt Messenger case means that the Department of Conservation can no longer authorise incidental (undesired but foreseeable) harm to wildlife under s 53 of the Wildlife Act as has been done in the past.
- This is because the Court decided it was unlawful for DOC to authorise the incidental killing of protected species under section 53 of the Act unless there is a direct connection between that killing and protecting wildlife. Effectively this means that the decision signals that animals may only be killed in the process of trying to protect them.

- This decision limits the ability to lawfully grant authority to incidentally kill protected wildlife under section 53 of the Act.
- Authority holders are concerned that because of the Court's decision, they could now be prosecuted if their projects kill any protected wildlife despite having an authorisation under section 53 of the Act. This may lead them to delay or stop projects spanning a wide range of activities – including subdivision, construction, solar and wind farms, powerline maintenance, road infrastructure and pest control.
- The Court's decision also impacts authorisations granted for the incidental killing of wildlife as part of translocations and pest control programmes. An example includes the TB free programme, which aims to control and eradicate bovine tuberculosis.
- Not addressing this issue would harm our wildlife and our economy. Progressing with these targeted changes to the Wildlife Act now allows us to address this issue quickly and limit any flow-on implications from projects being delayed.

## **6. Is it bad practice for the government to urgently legislate to effectively nullify what the Court has decided?**

- Although not usually best practice, I am confident that this an appropriate response in this instance.
- Taking urgent legislation forward to address this issue is consistent with the Legislation Design Advisory Committee's guidelines that Parliament may wish to amend legislation following court decisions, should judicial interpretation differ from previously understood practice.
- In this situation, in granting section 53 authorisations, DOC carefully considers the impacts to wildlife that would arise from proposed activities and imposes tailored conditions designed to protect wildlife populations.
- This solution is targeted to responding to the specific issues raised through the Mt Messenger court decision. It provides certainty to developers and infrastructure providers that they can continue to operate in line with the approach to wildlife protection which has, up until now been considered 'status quo' under section 53. As such it is justifiable as an urgent amendment.

## **7. Is the Government greenlighting development projects with these authorisations allowing incidental kill?**

- No, the main goal of these authorisations is to protect wildlife. Incidental harm can happen during various activities, not just development projects. For example, moving animals to new locations or conducting wildlife surveys can also cause harm despite efforts to avoid it.
- In most cases, incidental harm mentioned in authorisations relating to development projects, occurs during surveys to assess ecological impacts. The harm usually comes from activities like capturing or banding animals.
- In a few cases the incidental harm from the development or infrastructure project is directly authorised. In these cases, there are strict conditions that show measures to mitigate this harm have been made.

- Having these authorisations helps to collect information on how wildlife are affected by human activities, which is important for understanding the impacts on wildlife and improving mitigation measures to reduce harm.

## **8. What other options did the government look at to solve this issue?**

- I have considered alternative approaches, including the potential to appeal the Court's decision. These approaches would take much longer and would not deliver the certainty that businesses, developers and infrastructure providers are asking for.
- The proposed changes respond directly to the issues raised in the Court judgment. By being targeted, these changes to the Act will allow the government to address this issue quickly and limit any flow-on economic implications and other unintended consequences.
- These changes do not change the fact that the Wildlife Act is outdated, and that more work is needed to modernise the legislation.

## **9. What consultation have you done on these urgent changes?**

- There has been no formal consultation. I have heard directly from some operators about the uncertainty the court decision raised.
- This solution is targeted to responding to the specific issues raised in the court decision. The changes confirm what has, up until now, been the usual practice under section 53. The risk of unintended consequences is low, so it is reasonable to make this urgent amendment, without broader analysis and consultation.
- Wider consultation would have been necessary if broader changes, rather than just clarifying the previously understood 'status quo' in the Act, were being proposed.

## **10. Will watering down the Act lead to more wildlife deaths?**

- The Act is not being watered down.
- The targeted amendments will clarify and reinforce already established processes, allowing the 'status quo' to continue.
- These changes will clarify that the Act does not seek to regulate unintentional harm to wildlife solely at an individual level, and that the protective purpose of the Act can be met by addressing effects on protected wildlife populations.

## **About the broader review of the Wildlife Act**

## **11. Could we use this opportunity to target other known concerns with the Wildlife Act?**

- The Wildlife Act was enacted in 1953. It has been amended many times over the last 70 years and has lost coherence over time. This case is an example of why we need to ensure the legislation is updated and fit for purpose more broadly.

- That is why I confirmed to my department last year that the review of the Wildlife Act should continue.
- Trying to make more fundamental changes to the Act urgently now would risk making it even less coherent, less effective, and more difficult to work with. It would also take much longer to progress diverting attention away from the much-needed review of the Act.
- Ahead of that review, these proposed targeted changes will do what is needed to make sure that the kinds of projects and activities that have been authorised in the past can be undertaken lawfully in the future.

## **12. How is broader work to repeal and replace the Act progressing?**

- These targeted changes are being prioritised now, to ensure DOC can continue issuing authorisations and minimise any resulting impacts to wildlife populations, and for developers and infrastructure providers.
- After these immediate changes are delivered, I expect DOC to continue its work to review the Act.
- It is essential to conduct a thorough review to ensure that no important aspects are missed, and that the new legislation is robust and fit for purpose. Repealing and replacing the Wildlife Act is a complex and time-consuming process.
- Implementing any recommendations from this review will be a focus for the Government next term.

## **Other information**

### **13. The section 53 permission has been found unlawful at Mt Messenger. Is DOC investigating if there has been any unlawful killing there?**

- The Mt Messenger authorisation is now provided under section 71, so is lawful.
- The conditions in the Mt Messenger authorisation require them to have ecologists on site and to report on any wildlife they know have been killed. Only two lizard deaths have been reported to DOC. They were found in a felled tree and reported within 48 hours. Other live lizards also found in the felled trees were salvaged.
- There was one kiwi found dead on the Mt. Messenger road and subsequently reported. This death did not occur as a result of the work being undertaken. The kiwi likely died from being run over on the main road.

### **14. How many animals are expected to be harmed under these authorisations?**

- It is impossible to determine the exact amount of harm to wildlife caused by large projects because many animals, like invertebrates, lizards, birds and eggs, are small and hard to detect. Where possible, authority holders are generally required to report on any known deaths that occur.

- During large construction and infrastructure projects, some incidental harm to wildlife is likely, but detecting and counting every individual is impractical unless the animals are large and more visible.
- What is important is that the authorisations have conditions that are intended to minimise and mitigate harm to wildlife. For example, a condition may require live lizards that are found to be captured and relocated to a safe location. The holder of the authorisation must comply with these conditions.
- Rather than attempting to count every individual animal, our efforts should prioritise minimising harm and safeguarding entire wildlife populations through actions like habitat enhancement and pest control. This is why allowing DOC to continue issuing permits and assessing risks to wildlife at a population level is important.

## **15. Does DOC know how many animals were killed by this type of authorisation?**

- Each authorisation has conditions tailored to a particular application. DOC carefully considers the impacts to wildlife that would arise from proposed activities and imposes tailored conditions designed to protect wildlife populations.
- Authorisation conditions are unique to each individual application and reports of impacts for species, including any potential deaths, are variously lodged with DOC's operations or permissions teams. DOC does not have a national database of all deaths, but conditions may have requirements to report on any wildlife known to have been killed. These reports are easier to provide for larger, more visible species.
- In order to determine the exact number of reported deaths across these activities, each authorisation would need to be manually worked through.
- Even the most rigorous reporting may not detect all the animals that are harmed or killed. For example, it would be difficult to tell if a bulldozer runs over a small, camouflaged animal such as a lizard.
- Wildlife Act authorisations are not solely about short-term data on species deaths but ensuring strategies are in place to minimise harm and promote long-term species persistence.

## **16. How regularly are authorised projects monitored?**

- This varies across New Zealand and according to the conditions of any relevant authorisation.
- For the Mt Messenger project, the conditions on the authorisation include requiring them to have ecologists on site. The local DOC office meets monthly with the NZTA and the ecologists on the project team to discuss compliance with the conditions. This includes reports on any wildlife killed. The DOC office and project team also regularly discuss issues as they arise.



## **17. What guarantee is there that project proponents will engage with DOC to ensure wildlife remains protected?**

- A developer may apply for a wildlife authorisation if they are aware that protected wildlife are present, or likely to be present, on a site that they are undertaking activity on and where harm to that wildlife would occur.
- While seeking an authorisation is not required, developers can be prosecuted if they have no authorisation and significant harm occurs. DOC may investigate if it receives reports that harm has occurred or that wildlife is at risk, regardless of whether an authorisation is in place. Often, where projects have significant wildlife impacts, the resource management process may serve as a prompt to seek an authorisation.
- When authorisations are applied for, DOC assesses the risk to wildlife of the activity alongside other factors such as the feasibility of translocating wildlife or enhancing its habitat through the development. Authorisations that are issued then have conditions that are intended to avoid or mitigate harm to protected wildlife. These conditions must be complied with, and the developer can be prosecuted if they do not.



## **Active Wildlife Act Authorities – Background Data**<sup>1</sup>

### Key numbers summary

- **There are 524 active permissions that have a section 53 component that could be affected by the Court's decision.** These authorities implicitly allowed for incidental kill, with specified conditions<sup>2</sup>.
- Some of these relate to research or conservation projects, where the link to protection is clearer.
- **263 of these authorities relate either directly or indirectly to development and infrastructure.**
- Most of these authorised activities involved survey or species management and the death of wildlife resulting from the survey activity as opposed to the development itself.
- **There are 378 applications pending** (up from 315) where section 53 may form part or all of the relevant legislation under which a permit or authority could be granted to the applicant.
- We will not know whether the pending permissions relate to incidental kill until they are processed.

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<sup>1</sup> Information sourced from the Department of Conservations Permissions Database. Noting that each authorisation has been reviewed manually under compressed timeframes. More extensive analysis will be needed to verify these numbers.

<sup>2</sup> It is unclear as to what extent the courts decision could impact the authorities where incidental kill is implicit versus directly authorised.

## Attachment E – Clause by clause analysis of the Bill

Details of each clause	Points to highlight
<p><b>Clause 1</b></p> <p>This is the Title clause.</p>	<p>These are administrative clauses.</p>
<p><b>Clause 2</b></p> <p>This is the commencement clause. If the Bill is enacted, the Act will come into force on the day after Royal assent.</p>	
<p><b>Clause 3</b></p> <p>This clause identifies the Wildlife Act 1953 (the principal Act) as the Act being amended by the Bill.</p>	
<p><b>Clause 4</b></p> <p>This clause inserts new sections 53A to 53C into the Wildlife Act. The new sections are concerned with authorising killing of wildlife that is incidental to carrying out an otherwise lawful activity.</p> <p><b>New section 53A</b> allows the Director-General to grant an authority under section 53 that authorises killing of wildlife that is incidental to carrying out an otherwise lawful activity. Killing of wildlife is incidental if it is not directly intended but is unavoidable and foreseeable as a consequence of carrying out the lawful activity.</p> <p><b>New section 53B</b> provides that, to avoid doubt, the authority may be granted only if it is consistent with the protection of wildlife. The authority is to be treated as consistent with the protection of wildlife if, in granting it, the Director-General is satisfied that its overall effect would be consistent with the protection of populations of wildlife and the protection of individual wildlife.</p>	<p>These clauses enable the Director-General to authorise the incidental killing of wildlife, and to set conditions as part of this to protect wildlife.</p> <p>Key points are:</p> <ul style="list-style-type: none"> <li>• The intent of these provisions is to enable the Director-General to continue to approve or decline authorisations as they did before the Court's decision.</li> <li>• The Bill neither lowers or raises the bar for authorisations and/or conditions put on authorisations.</li> <li>• This clause resolves a key issue behind the Environmental Law Initiative case.</li> <li>• Prior to the Court's decision, DOC's interpretation of the Wildlife Act was that this Act does not solely seek to protect wildlife from harm at an individual level. DOC considered that the protective purpose of the Act could also be met by addressing effects on protected wildlife at a population level.</li> <li>• DOC considered that this meant that wildlife protection could be achieved in situations where there was incidental harm to some individual animals, so long as reasonable steps are taken to minimise and mitigate this harm and wildlife populations are protected.</li> <li>• The Court's decision was based on the view that every individual act of harm or killing needs to be consistent with the purpose of protecting wildlife.</li> <li>• This clause of the Bill will allow the Director-General to authorise the incidental harm of protected wildlife in cases where some individual animals may be killed by an activity, but the wider population is being protected.</li> <li>• The Director-General may set conditions as part of granting an authorisation.</li> <li>• These conditions include:</li> </ul>

<p>The new section 53B also provides for—</p> <ul style="list-style-type: none"> <li>• matters relating to the requirement for the Director-General to be satisfied of that overall effect; and</li> <li>• matters that the Director-General is not required to be satisfied of in granting the authority.</li> </ul> <p>One of the matters that the Director-General is not required to be satisfied of in granting the authority is that each individual act of killing, viewed in isolation, would be consistent with protecting wildlife. This directly responds to the judgment of the Environmental Law Initiative case.</p> <p><b>New section 53C</b> provides for conditions that may be imposed on an authority under section 53 that authorises killing of wildlife that is incidental to an otherwise lawful activity.</p>	<ul style="list-style-type: none"> <li>○ measures to address potential adverse effects on wildlife populations and species</li> <li>○ measures to avoid, minimise, or mitigate any adverse effects on individual animals.</li> </ul>
<p><b>Clause 5</b></p> <p>This clause inserts new section 2AA, to provide for transitional arrangements.</p>	<p>This is an administrative clause, to enable clause 6.</p>
<p><b>Clause 6</b></p> <p>This clause inserts new Schedule 1AA, which provides for transitional, savings, and related provisions.</p> <p>Part 1 of the new schedule sets out provisions relating to the Bill, including 2 provisions that—</p> <ul style="list-style-type: none"> <li>• validate certain authorities to kill wildlife granted or purportedly granted under section 53; and</li> <li>• ensure that authorities granted or purportedly granted under section 53 before 5 March 2025 (the date of the judgment in the Environmental</li> </ul>	<p>This clause validates previously authorised activities under section 53 of the Wildlife Act, so that holders of existing authorities can lawfully continue their activities.</p> <p>Key points are:</p> <ul style="list-style-type: none"> <li>• Validation will apply to all authorisations granted under section 53 of the Wildlife Act before 5 March 2025. This is when the High Court made its decision on the Mt Messenger case and DOC put on hold any further authorisations for incidental killing under section 53 of the Wildlife Act.</li> <li>• This validation will not affect any legal proceedings underway before 28 March 2025, which is when the Government announced its intention to amend the Wildlife Act.</li> <li>• There are no legal proceedings currently underway, that officials are aware of.</li> <li>• Legislation should usually not have retrospective effect, but there are situations like this one where it is warranted.</li> </ul>

<p>Law Initiative case) are not unlawful merely because consent is required under section 71, rather than an authority under section 53.</p> <p>However, those 2 provisions do not—</p> <ul style="list-style-type: none"> <li>• affect any proceedings commenced or in progress before 28 March 2025 (the date on which the Minister of Conservation announced the Government’s intention to amend the principal Act in response to the Environmental Law Initiative case); or</li> <li>• generally apply to the authority granted under section 53 that was the subject of the Environmental Law Initiative case.</li> </ul>	<ul style="list-style-type: none"> <li>• In this case, DOC previously considered applications that needed authorisation under section 53 of the Wildlife Act and set conditions to protect wildlife populations.</li> <li>• Developers and infrastructure providers relied on these authorisations to lawfully undertake their activities. Through no fault of their own, their projects are now affected. It is appropriate to validate those authorisations to restore certainty.</li> </ul>
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## **Government fixes problems with the Wildlife Act**

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Legislation has today passed through Parliament to ensure that development projects, infrastructure works, and important conservation activities can continue to be authorised under the Wildlife Act, Conservation Minister Tama Potaka says.

The High Court recently decided it was unlawful for the Department of Conservation – Te Papa Atawhai to authorise incidental killing of wildlife unless there was a direct link between killing and protecting wildlife. Incidental harm to wildlife is unintentional, but sometimes happens when carrying out a lawful activity, such as consented construction works.

“This decision has placed multiple projects, which previously received DOC authorisations, in a state of uncertainty,” Mr Potaka says.

“These projects include activities for building new solar and wind farms, plantation forests, and powerline maintenance that are essential for supporting our growing economy. It also affects other important conservation work, like pest control.”

“These changes to the Wildlife Act give certainty to authority holders that their projects can continue lawfully, whether it’s for pest control or development and infrastructure projects.”

Today’s changes to the Wildlife Act restore the approach that DOC was taking for authorising activities before the Court’s decision and provide legal clarity. These changes keep safeguards to protect wildlife.

“It’s important Aotearoa New Zealand’s wildlife continues to be protected, and that species can thrive as we support a strong and growing economy. Under the amended Wildlife Act, authority holders are still expected to avoid and minimise harm to protected species. Examples include relocating animals before doing any construction work – to protect populations and support the ongoing viability of species,” says Mr Potaka.