

7 April 2025

Tēnā koe

Thank you for your request to the Department of Conservation (DOC), received on 10 March 2025, for the following:

'As per NZTA Waka Kotahi's permission to kill protected species at Mt Messenger being ruled unlawful: <https://www.rnz.co.nz/news/political/544279/nzta-waka-kotahi-s-permission-to-kill-protected-species-at-mt-messenger-ruled-unlawful>.

I would like a list of all permits granted that this ruling affects, the project that it was granted for, the justification that was used to prove the project was of "wider environmental benefit", and the application and approval dates of every permit granted.'

We have considered your request under the Official Information Act 1982 (the OIA).

Response

The Court's ruling has only set aside New Zealand Transport Authority Waka Kotahi's (NZTA) section 53 Wildlife Act 1953 authority for its works at Mount Messenger [91389-FAU]. It is not yet clear how the judgment could affect other existing section 53 authorities. I am therefore refusing your request under section 18(e) of the OIA – the information does not exist.

You are entitled to seek an investigation and review of my decision by writing to an Ombudsman as provided by section 28(3) of the OIA.

Context

The Wildlife Act 1953 (the Act) regulates human interactions with protected wildlife. Under the Act, it is unlawful to kill protected wildlife except with lawful authority. DOC provides authorisations to 'incidentally kill' protected wildlife (i.e. kill species while doing an otherwise lawful activity) under two sections – section 53 and section 71.

While NZTA does also hold a valid consent under section 71, 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. In response to the ruling, the Minister of Conservation has announced¹ urgent targeted amendments to the Act to ensure it can continue to be interpreted and applied as it has to date. The amendments will 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.

¹ [Wildlife Act fix will enable economic growth with animal protection | Beehive.govt.nz](#)

After these immediate changes are delivered, DOC expects to continue its work to repeal and replace the Act, which is over 70 years old. This is a complex and time-consuming process. It's 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.

Please note that this letter (with your personal details removed) may be published on DOC's website.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Phillippa Fox', written in a cursive style.

Phillippa Fox
Director Regulatory Authorisations
Department of Conservation
Te Papa Atawhai