

Departmental Disclosure Statement

Wildlife (Authorisations) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Conservation.

The Department of Conservation certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 May 2025.

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Part One: General Policy Statement

The Wildlife Act 1953 (the Act) is the principal means by which wildlife is protected in New Zealand. The Act provides for the management of New Zealand's land, freshwater, and marine species. It regulates many human interactions with wildlife species. The Act absolutely protects most native birds, all native reptiles, frogs, and bats, some specified native land and marine invertebrates, and 9 marine fish species. Without proper authorisation, the species cannot be lawfully taken or killed.

One of the principal purposes of the Act is the protection of wildlife. This Bill provides that authorisations to kill wildlife can be granted by the Director-General of Conservation (the Director-General), consistent with this protective purpose, where the overall effect of granting the authority will be protective of wildlife. The objective of this Bill is to enable the Department of Conservation to regulate the incidental killing of wildlife that inevitably occurs during the carrying out of otherwise lawful activities. While undesired, the incidental killing of some individual wildlife is often unavoidable when undertaking many activities.

The Bill responds to legal uncertainty regarding the scope of section 53 of the Act, which provides a power to lawfully authorise the taking or killing of wildlife for certain purposes. This provision was considered by the High Court in *Environmental Law Initiative v The Director General of the Department of Conservation and others* [2025] NZHC 391. In that case, the Court determined that under the current law, there must be a direct nexus between killing and protecting wildlife. The effect of the judgment was to significantly limit the Department's ability to regulate incidental harm to wildlife. It also left the status of existing authorisations uncertain, leaving existing authorisation holders unclear on how they could continue to undertake their activities lawfully.

The Court also determined that section 71 of the Act is the appropriate authorisation power for acts in respect of protected wildlife performed under an Act specified in Schedule 9 of the Act, rather than section 53, and that where section 71 applies, an authority under section 53 is not a valid substitute for consent under section 71. The Director-General had granted several authorisations under section 53 in circumstances in which section 71 was applicable.

The Bill restores the regulatory approach that had been taken by the Department prior to the judgment. The Bill enables the Director-General to continue to authorise the killing of wildlife that occurs incidentally to an otherwise lawful activity, where the overall effect of the authorisation, including its conditions, will protect wildlife. The Bill also clarifies that neither the lawful activity itself nor each individual act of killing needs to be consistent with wildlife protection. The Bill ensures activities, such as development and infrastructure projects, and conservation work, such as pest control, do not cause permanent harm to the viability of protected species.

The Bill:

- enables the Director-General to grant an authority under section 53 of the Act that authorises killing of wildlife that is incidental to carrying out an otherwise lawful activity; and
- provides that in making decisions to authorise incidental killing, the Director-General is to have regard to any potential adverse effects of the lawful activity on the survival of populations of wildlife, the persistence of the species to which that wildlife belongs; and the extent to which the authority addresses those

effects, and any other matter that the Director-General considers is relevant; and

- provides that, in making decisions to authorise incidental killing, the Director-General is to have regard to:
 - any potential adverse effects of the lawful activity on the survival of populations of wildlife and the viability of the species to which that wildlife belongs; and
 - the extent to which the authority addresses those effects; and
 - any other matter that the Director-General considers is relevant.

The Bill validates existing authorities to kill wildlife granted under section 53, and exclude authorities granted under section 53 from legal challenge on the ground that consent is required under section 71, rather than authorisation under section 53. The validation set out is limited in nature and will not affect the ability to challenge a section 53 decision on any basis other than in relation to the matters addressed in this legislative amendment.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<u>Environmental Law Initiative v Director-General of the Department of Conservation [2025]</u> <u>NZHC 391 (5 March 2025)</u>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>No impact analysis was prepared when Cabinet originally made policy decisions on this proposal [CAB-25-MIN-0081 refers], and the Ministry for Regulation had not exempted the proposal from the impact analysis requirements. Therefore, it did not meet Cabinet's requirements for regulatory proposals.</p> <p>The Ministry for Regulation and the Department of Conservation have agreed that a post-implementation review will be developed and provided to Cabinet within two years after implementation.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>DOC has some information on the impacts that may arise from this Bill. However, this information is limited and insufficient to inform a full impact assessment in the time available.</p> <p>The High Court determined it was unlawful for the Director-General to authorise the killing of protected species under s 53 of the Wildlife Act unless there is a direct nexus between that killing and protecting wildlife [CAB-25-MIN-0081 refers].</p> <p>The proposed Bill is not anticipated to cause any group to suffer significant, unavoidable losses in income or wealth. However, the counterfactual of not implementing the Bill may result in certain groups facing substantial and unavoidable financial losses due to the regulatory uncertainty linked to existing Wildlife Act authorisations, following the court's decision</p> <p>The Court's decision impacts:</p> <ul style="list-style-type: none"> • Over 100 current authorisations provided under s 53 of the Wildlife Act to incidentally harm wildlife if specific conditions are met to protect wildlife, relating to a range of infrastructure and development projects. Affected developers and infrastructure providers are concerned that they could be exposed to prosecution and other legal proceedings if they incidentally kill wildlife in carrying out their projects, despite being previously authorised to do so and complying with all conditions set. This may lead to project delays or cancellations, harming our economy. • Other current projects that are important for our environment and economy that may also incidentally harm wildlife and require authorisation under s 53 of the Wildlife Act. This includes the TBfree programme that aims to control and eradicate bovine tuberculosis and other pest control programmes. • Future projects that would require authorisation under s 53 of the Wildlife Act to incidentally harm wildlife. Over 300 applications for authorisations under s 53 of the Act for a variety of activities are pending decision by DOC. DOC is continuing to process these applications, but the Director-General will not make any decisions involving incidental killing of wildlife until this legal issue is resolved. 	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>DOC considers that any changes proposed in this Bill will not alter level of compliance as this Bill is intended to clarify and maintain existing practice and does not make fundamental changes to the legislation.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The amendments in this Bill are intended to maintain previous practice and do not make fundamental changes to the policy intent of the legislation. DOC considers that any changes proposed in this Bill are consistent with New Zealand's international obligations (such as under the Convention on Biological Diversity) as these changes are intended to clarify and reinforce already established DOC processes, and appropriately balance protection and human-wildlife interactions.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The amendments in this Bill are targeted and intended to enable the previous regulatory approach to continue. The Bill does not make fundamental changes to the policy intent of the legislation. DOC considers that any changes proposed in this Bill are consistent with the government's Treaty of Waitangi obligations as these changes are intended to clarify and reinforce already established DOC processes.
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Separately, Treaty partners have communicated to DOC longstanding interests in updating the Wildlife Act to address broader issues with the government's Treaty of Waitangi obligations. However, this Bill is narrow and targeted to address the immediate issues raised by the Court's decision. DOC considers that wider and more fundamental changes to policy are required to address the broader issues with the Act raised by Treaty partners as well as others. DOC has a work programme underway to repeal and replace the Wildlife Act that will be a more suitable avenue to address these broader issues. Ahead of the completion of this work, and any changes agreed by Cabinet, this Bill will do what is needed to protect wildlife and make sure that the kinds of projects and activities that have been authorised in the past can be undertaken lawfully.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice (MOJ) is undertaking an assessment of whether the Bill is consistent with the New Zealand Bill of Rights Act 1990 and will provide advice to the Attorney-General. Advice provided to the Attorney-General by MOJ is generally expected to be made available on the MOJ website on introduction of a Bill, at Compliance reports New Zealand Ministry of Justice
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>Offences and Penalties: The Bill does not create or remove offences or penalties. Existing offences and penalties in the Wildlife Act 1953 (the Act) will continue to apply.</p> <p>Jurisdiction of a court or tribunal: The Bill itself does not create, amend or remove the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal).</p> <p>To ensure appropriate safeguards are in place to avoid affecting the jurisdiction of a court or tribunal, in line with section 33 of the Legislation Act 2019, the Bill:</p> <ul style="list-style-type: none"> • will apply from enactment of the provisions relating to the Wildlife (Authorisations) Amendment Act 2025. • is limited so that it does not affect the ability to challenge a s 53 decision on any other basis. • will not apply to the authority that the Director-General granted to the New Zealand Transport Agency under section 53 on 22 December 2021, and that was the subject of <i>Environmental Law Initiative v The Director General of the Department of Conservation and others</i> [2025] NZHC 391. • will not affect any proceedings commenced or in progress before 28 March 2025 (the date that Cabinet's decision to amend legislation was communicated), or any rights of appeal. <p>However, there is a period (between the date of the Court's decision and the date at which these amendments take effect) where further applications for judicial review could be received. The amendments will limit the ability of applicants filing proceedings during this time to challenge earlier s 53 decisions.</p> <p>There are over one hundred existing authorities granted under s 53 of the Act, many of which authorise the killing of wildlife where there is no direct nexus between that killing and the protection of other wildlife. Based on the High Court judgment, the decisions to grant these authorities were unlawful and, if challenged, could be set aside by the Court. Those authority holders face uncertainty, and this uncertainty could lead to some authority holders pausing activities until the position is clarified. Cabinet agreed to retrospectively validate all authorised activities under s 53 (including those that should have been issued under section 71) [CAB-25-MIN-0081].</p> <p>As at the finalisation date of this document, DOC is not aware of any proceedings challenging additional authorities. The risk of additional proceedings being filed ahead of enactment is considered low. The sooner this Bill is enacted, the lower the risk of additional litigation during this period.</p> <p>To avoid any additional implications during this period, DOC has not made decisions on any further applications under s 53 since the court's judgment. There are currently over 300 applications under s 53 being processed. Decisions on these applications will recommence once this Bill has been passed, and these legal issues are addressed.</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
<p>The Ministry of Justice was consulted regarding any implications for the Bill of Rights Act. The Ministry of Justice was not consulted on the provisions of the Bill, as the amendments to existing penalties are minor (as described above).</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
Due to urgency and time constraints, it has not been possible to consult externally on the Bill. This Bill is narrow and targeted to the specific issues raised in the court decision. Given the changes confirm what has previously been the usual practice under s 53, the risk of unintended consequences is considered low. DOC considers it is reasonable to make this urgent amendment, without broader analysis and consultation, to avoid any flow-on implications to wildlife populations or the economy.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
No further testing or assessment has occurred, as the intent is to clarify and maintain status quo policy settings.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill retrospectively authorises some incidental harm under the Wildlife Act, in line with DOC's interpretation of sections 53 and 71 of the Wildlife Act prior to the High Court decision. This ensures that people and organisations that have already been issued authorisations can continue to lawfully undertake the activities associated with those authorisations.</p> <p>The Legislation Design and Advisory Committee guidelines anticipate situations in which litigation leads to an outcome that Parliament may wish to countermand. In this case, DOC previously considered applications that needed authorisation under s 53 of the Wildlife Act and set conditions to protect wildlife populations. Authority holders relied on these authorisations to lawfully undertake their activities. Through no fault of their own, their projects are now affected. It is appropriate to enable those authorisations to continue, to restore regulatory certainty. See section 3.4 of this disclosure statement.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill will amend s 53 of the Wildlife Act 1953 to enable the Director-General to authorise the incidental killing of wildlife if this is incidental to the purpose of carrying out activities, if:</p> <ul style="list-style-type: none">• all reasonable steps are taken to minimise and mitigate impacts on wildlife, and• the applicant's actions will not materially reduce the likelihood of the protected species surviving in New Zealand. <p>The Bill contains safeguards to limit the Director-General from granting an authority to incidentally harm/kill wildlife if this would lead to a species becoming more endangered or extinct. This ensures that the power will be exercised consistently with the protective purpose of the Act.</p> <p>This approach ensures that the Director-General can continue to approve or decline authorisations as they did before the Court's decision. The clarification drafted in the Bill neither lowers or raises the 'bar' for authorisations and/or conditions put on authorisations.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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