

In Confidence

Office of the Minister of Conservation

Cabinet Environment, Energy and Climate Committee

Report back on the review of the Wildlife Act 1953

Proposal

- 1 This paper responds to Cabinet's invitation to report back on the ongoing review of the Wildlife Act 1953 [ENV-21-MIN-0056, CAB-21-MIN-0402 refers]. It outlines the findings from the first phase of the review and seeks Cabinet's agreement to the approach for the next steps in the review process.

Relation to Government priorities

- 2 The proposals support the Government's 2020 manifesto commitments to: protect, preserve and restore our natural heritage and biodiversity and promote the recovery of threatened species; continue our commitment to our obligations under Te Tiriti o Waitangi (Te Tiriti); and recognise the vital contribution of mātauranga Māori.
- 3 The proposals in this paper also support the cooperation agreement commitment to work with the Green Party to achieve the outcomes of Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (ANZBS).

Executive Summary

- 4 In October 2021, Cabinet agreed to initiate a review of the Wildlife Act 1953 (the Act) [ENV-21-MIN-0056, CAB-21-MIN-0402].
- 5 Reviewing the Act is a key step towards addressing deficiencies in the conservation system to tackle the serious decline in biodiversity in Aotearoa New Zealand. The Act plays an important role within the conservation and natural resource systems and protects wildlife throughout New Zealand by regulating human interactions. However, there are significant problems with the current Act. It is increasingly out of step with other elements of natural resource legislation, modern biodiversity management, and the values people hold for wildlife. The Waitangi Tribunal has found that it ignores Crown obligations under Te Tiriti.
- 6 In line with previous Cabinet decisions, alongside the review of the Act, I am progressing other legislative amendments that will also contribute to the ANZBS strategic priority of "getting the system right". I also intend to progress a new parallel workstream to develop options for additional high-priority amendments to legislative settings across other conservation statutes.
- 7 In 2022, DOC undertook targeted engagement with tangata whenua and key stakeholders through 40 hui on the issues with the current Act and the opportunities for a new species management system. An independent Strategic Oversight Group (SOG) has also been established to provide collective conservation knowledge and advice on the review of the Act.
- 8 The Department of Conservation (DOC) has analysed existing resources, used the feedback from the engagement and advice from the SOG to develop a problem definition and high-level objectives for guiding and evaluating policy work.
- 9 There is strong support for the review of the Act and a shared vision for indigenous species to be thriving. The analysis and engagement to date has also confirmed there

are some complex and potentially contentious issues where further policy work will need to be undertaken. For example, while there is widespread agreement that a new species management system should prioritise the protection of indigenous species, further work needs to be done to analyse how to address valued introduced species. Additional analysis is also needed to consider issues such as management options on the spectrum from absolute protection to sustainable use and, who should be involved in making decisions (including what delegations are important for species management), how decisions should be made, and what information should inform decision making.

- 10 To set the foundation for the next stage of work, I am seeking Cabinet agreement to the high-level objectives for this work. The policy objectives encompass improving the protection of species and their habitats, creating a framework that better achieves Treaty outcomes, reflecting the connections between people and species, and improving governance and management frameworks.
- 11 I have considered a range of options to progress the review and it is my view that, given the extent and nature of the problems with the current Act, it would be difficult to address them through amendments to the Act. The current Act lacks coherence due to repeated piecemeal amendments and there is a significant risk that further amendments would exacerbate this lack of coherence. I am therefore proposing to repeal and replace the Act.
- 12 I am seeking Cabinet agreement for DOC to progress work on repealing and replacing the Act, including developing policy advice on the general purpose and key elements of a new species-related Act. The feedback DOC received, and the initial policy analysis that officials have carried out, suggests that a repeal and replace of the Act would result in greater protection of species and improved biodiversity outcomes. There is also the potential for new decision-making policy settings that better give effect to Te Tiriti and reflect the contemporary context.
- 13 I am proposing to report back to Cabinet in the first quarter of 2024 with policy options for a new species-related act, priorities for wider legislative reforms in conservation laws, and plans for the timeline and processes to progress the work on both.

Background

- 14 The ANZBS highlights the importance of biodiversity to health, economic wellbeing, communities, and cultural wellbeing. The review of the Wildlife Act is one of the ways in which biodiversity can be protected and promoted. In their report on the Wai262 claim, *Ko Aotearoa Tēnei*, the Waitangi Tribunal also emphasised the overwhelming importance to tangata whenua of the places and species managed by DOC. The Tribunal noted that it is on public conservation land that most taonga species are found and where kaitiakitanga can be exercised. The Tribunal also noted that exercising kaitiakitanga ensures that a central element of mātauranga Māori can survive.
- 15 However, biodiversity loss and climate change are two of the biggest long-term threats to our environment and communities. Biodiversity in Aotearoa New Zealand is in serious decline: 500 indigenous species face a severe and immediate threat of extinction;¹ another 600 species face extinction in the short to medium term; and over 3,000 may become vulnerable if declines continue. Climate change will also both increase the severity and frequency of natural hazards in Aotearoa New Zealand and drive changes in habitat and species distribution.

¹ Such as the wandering albatross, giant wētā, long-tailed bat, flax snails, native orchids, Brydes whale.

- 16 One of the three strategic priorities in the ANZBS is “getting the system right”. As part of this, Goal 1.3 requires current natural resource legislation be reviewed to ensure that it is effective and comprehensive, recognises cumulative effects, and ensures ongoing biodiversity protection, including climate resilience. Reform of the resource management system is a key part of the Government’s response to this goal.
- 17 In October 2021, Cabinet agreed to initiate a review of the Act [ENV-21-MIN-0056, CAB-21-MIN-0402] and noted that decisions regarding future comprehensive reform of the conservation legislation system would be for a future government to make. Regardless of any future government decisions regarding comprehensive reform, I consider progressing a suite of legislative work, including reforming the Wildlife Act, will significantly improve the conservation system’s legislative settings.

Progressing amendments to other conservation legislation

- 18 The resource management reform package, the Biosecurity Act 1993 review, decisions Government takes next term on how we will respond to the Kunming-Montreal Global Biodiversity Framework, and other government environmental reform processes will also have direct or indirect effects upon the natural world and indigenous biodiversity. Future work on the Act will need to consider its relationship with legislation across the natural resource system, including the role of species management in relation to climate change mitigation and adaptation, and biosecurity.
- 19 In line with previous Cabinet decisions, I am progressing other legislative work that will also contribute to the ANZBS strategic priority of “getting the system right”. The review of the Act will complement this work and officials will work through any dependencies or overlaps. This wider legislative work includes:
- 19.1 The Conservation Management and Processes Bill: to enable more efficient processes and transparent decision making [CAB-21-MIN-0402, CAB-22-MIN-0539].
 - 19.2 The Hauraki Gulf Marine Protection Bill: to establish and manage 19 new marine protection zones in the Hauraki Gulf [CAB-22-MIN-0599.02].
 - 19.3 The Trade in Endangered Species (TIES) Bill: to repeal and replace the existing Act to ensure alignment with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), regulate the trade and domestic sale of elephant ivory, and improve operational efficiency [CAB-20-MIN-0157].
- 20 The TIES Bill is currently on hold to allow for other Government priorities to progress. However, the current TIES Act is outdated, unclear, and inefficient. Aotearoa New Zealand’s implementation of CITES obligations has also been the subject of international criticism. [Section 9\(2\)\(f\)\(iv\)](#)

- 21 [Section 9\(2\)\(f\)\(iv\)](#)

Identifying additional targeted changes to conservation legislation

- 22 In my view, there are additional legislative changes needed to address pressing issues in other conservation legislation. DOC's work on the review of the Wildlife Act, as well as other work programmes such as the CMAP Bill and the partial reviews of the general policies, have highlighted key issues across the conservation system.
- 23 Alongside the Wildlife Act reform and the other legislative work already underway, I intend to progress a parallel workstream to determine where targeted amendments can be made to other conservation legislation to address key problems.
- 24 When I report back on the Wildlife Act during the first quarter of 2024, I also intend to present options for potential targeted amendments to other conservation legislation. I have directed DOC to explore options to address the pain points and major constraints in current conservation legislation **Section 9(2)(f)(iv)**
[REDACTED]
- 25 The scope for amendments will not consider the purposes of the other pieces of conservation legislation, including the purpose of conservation itself. I consider these fundamental questions should only be canvassed within a more comprehensive reform programme, which would be difficult to progress in parallel next term alongside completing the current Bills, the Wildlife Act replacement; **Section 9(2)(f)(iv)**
[REDACTED]
- 26 This additional workstream would not preclude a future government from progressing more comprehensive reform but would identify the most high-priority fixes that could be made short of full-scale reform and within a more constrained time period.

The Wildlife Act 1953

- 27 The Wildlife Act is one of the eight main Acts by which DOC manages the natural and historic resources it is responsible for.² The Act plays an important role in the conservation and natural resource systems by classifying what animal species are wildlife,³ establishing whether they are protected or unprotected throughout New Zealand, and by regulating human interaction with wildlife.
- 28 Almost all indigenous wildlife species within scope of the Act are absolutely protected under the Act, while most introduced wildlife is unprotected.⁴ However not all threatened species are protected by the Act. Other wildlife species have varying levels of protection, for example landowners may control silvereye/tauhou if they are causing damage to property. The Act does not require indigenous wildlife species to be actively

² The major Acts in the conservation system are the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, Marine Reserves Act 1971, Wildlife Act 1953, Wild Animal Control Act 1977, Marine Mammals Protection Act 1978, and Trade In Endangered Species Act 1989.

³ Indigenous wildlife includes all indigenous birds, bats, reptiles, and frogs (531 species); 71 land invertebrates (e.g. giant wētā, kauri snails); nine marine fish, and 256 corals. The Act excludes freshwater fish, and marine mammals are managed under another Act. Most introduced birds, mammals, reptiles and frogs that are living in the wild are also wildlife (e.g. starling, Canada geese, rats, possums, ferrets, feral cats, rainbow skinks) with some exceptions (e.g. deer, pigs, rabbits).

⁴ "Absolutely protected" means that without authorisation it is an offence to hunt or kill that wildlife species anywhere in New Zealand, buy, sell or possess it, or to liberate or export it.

managed or restored.⁵ Rather, the Act focuses on protecting wildlife by regulating human interactions.

- 29 The Act provides for and regulates game bird hunting (e.g. mallards, quail, pukeko) and regulates the activity, through the issuing of permits, of those that variously seek to kill, manage, or hold protected wildlife (including tangata whenua, researchers, schools, universities, museums, zoos, rehabilitation centres, wildlife parks, community and environmental groups, airports, and developers).

Initial engagement on the Wildlife Act review

- 30 The review is taking a first-principles approach rather than using the features of the old system as a blueprint. Between May and July 2022, DOC carried out targeted engagement on the review through 40 hui. The purpose was to hear people's views on the issues with the current species management system, opportunities for improvement, and their aspirations for the future. The discussions were structured across three themes of: biodiversity, people's relationships with species, and systems.
- 31 The 40 hui included: 18 hui with tangata whenua, 10 hui with stakeholders, three hui with government agencies, and nine hui with statutory conservation bodies. Stakeholders included environmental and hunting organisations, researchers, commercial and recreational fishers, the dairy and agriculture industry, and the tourism industry. Statutory bodies included the New Zealand Conservation Authority (NZCA), Conservation Boards, the New Zealand Fish and Game Council, and the Game Animal Council.
- 32 Many participants indicated their wish to continue to be involved as the review progresses. Tangata whenua indicated that the processes for progressing the review must look to improve the relationships, trust, and confidence between DOC and tangata whenua as Treaty partners.
- 33 DOC also engaged with the NZCA and key government agencies both during initial engagement and through subsequent workshops. These meetings sought to test early policy thinking and to discuss any links with other agencies' work programmes.

Key messages from the engagement

- 34 There was general agreement that the current Act is no longer fit-for-purpose in a modern context and support for its review. The importance of Te Tiriti in species management was also raised in many hui.
- 35 Key messages in relation to biodiversity included:
- 35.1 We need to urgently address biodiversity decline. There was a vision for indigenous species to be thriving.
- 35.2 The system should provide a more coherent framework for protecting species. Some species need better protection, in particular those threatened with extinction.
- 35.3 The system should be more creative in managing for both species and ecosystems and to ensure habitats better support species to thrive.
- 35.4 Mātauranga Māori should be woven into research and the management of critical habitats and ecosystems.

⁵ In contrast, the Conservation Act 1987, National Parks Act 1980 and Reserves Act 1977 include requirements to preserve and protect indigenous plants and animals, their habitats, and ecosystems, primarily on public conservation land and waters.

- 36 Key messages for people's relationships with species included:
- 36.1 A new species system should consider community values and wellbeing, although there were differing views on how values and uses should be provided for and the appropriate balance between them.
 - 36.2 There was a desire to restore cultural practices and, through that, to restore the connection of younger generations to te taiao.
 - 36.3 There was a vision for species populations to be restored to levels that could support sustainable use.
- 37 Key messages in relation to systems included:
- 37.1 System change is needed. The status quo is not serving either ecosystems or society and tinkering with the existing system will not achieve desired outcomes.
 - 37.2 A new species management system should be underpinned by the Treaty, te ao Māori, and mātauranga Māori.
 - 37.3 Tangata whenua should be involved in governance, management, and decision-making structures.
 - 37.4 A new system should enable local decision-making.
 - 37.5 Crown ownership of wildlife, which is a barrier to kaitiakitanga and rangatiratanga, should be removed.

Establishment of a Strategic Oversight Group

- 38 In April 2022, the then Minister of Conservation Hon Kiritapu Allan agreed to the establishment of an independent Strategic Oversight Group (SOG) to provide oversight of and strategic advice for the review of the Act, including in respect of how the review interacts with the strategic direction of the wider conservation sector.
- 39 The subsequent Minister, Hon Poto Williams, appointed the 12 members of the group who each bring diverse skills and expertise in te ao Māori, conservation, law, environmental policy, tourism, science, game animal management, and governance.⁶ The SOG has met six times and provided advice on key issues for the review and how it interacts with the strategic direction of the wider conservation sector.

Problems identified with the current Wildlife Act

- 40 The Act, and how it is interpreted, is increasingly a source of legal risk. Issues with the Act are well documented in sources such as the Waitangi Tribunal's *Ko Aotearoa Tēnei* report and in cases such as the 2019 Supreme Court decision in *PauaMAC5* (the *PauaMAC5* case).⁷
- 41 Officials have distilled the feedback from the targeted engagement held in 2022 and an analysis of existing resources into five problem statements that I propose will inform future policy work. The statements have been tested and broadly confirmed by the SOG, NZCA, and agencies.

⁶ There are currently two vacancies on the group as a result of two members stepping away due to personal commitments.

⁷ *Shark Experience Ltd vs PauaMAC5 Inc* [2019] NZSC 111; see also *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1.

Problem 1: The Wildlife Act lacks a clear purpose for biodiversity outcomes.

42 The *PauaMAC5* case confirmed that the primary purpose of the Act was wildlife protection based on the Act's long title, structure, and text. However, in the absence of a clear purpose section there is little to aid decision makers.

43 The Act's lack of a clear purpose is a fundamental issue as it is closely linked to other core issues such as: what species are protected; the protection framework, including how offences and authorisations are managed; and what matters should be included in the Act.

44 Further policy work in this area will need to consider ecosystem interactions between species and the habitats they need to survive and between species, particularly between indigenous and valued introduced species. Additional work will also be needed to analyse knowledge, data, and monitoring frameworks (including te ao Māori, western science, and other) that the species management system needs to consider.

Problem 2: The Wildlife Act does not explicitly address the protection of threatened or at-risk species.

45 The Act does not provide any legal tools to support the management or restoration of threatened wildlife, other than for marine wildlife.

46 Unlike many other countries, Aotearoa New Zealand does not have dedicated threatened species legislation. Whereas Australia, Canada, and the United States all have different categories of listed species that are protected by legislation, our threat-based species management and prioritisation occurs outside of legislation.

47 There are also indigenous species that are at risk of extinction but are not covered by the Act, so the Act does not regulate potentially harmful human interactions. For example, threatened plants, such as some native orchids and the wood rose, are vulnerable to over-collection.

48 The next stage of policy work will need to consider how the structure for permitting human interactions accommodates activities intended to benefit threatened or at-risk species (e.g., research, rehabilitation, translocation) and deals with education or advocacy activities.

Problem 3: The Wildlife Act creates barriers to the exercise of kaitiakitanga and rangatiratanga and does not recognise mātauranga Māori or tikanga.

49 Section 4 of the Conservation Act 1987 requires DOC to give effect to the principles of Te Tiriti, this requirement applies to the Wildlife Act. However, during engagement hui tangata whenua raised the need to improve how section 4 is implemented. In addition, some proposals such as for joint decision making cannot be achieved through section 4 but require legislative change. The report of the Options Development Group also identified potential legislative changes in addition to the review of the Conservation General Policy to support giving effect to the principles of Te Tiriti.

50 The *Ko Aotearoa Tēnei* report states that the Crown's ownership of absolutely protected wildlife, and the materials from it that Māori use to create taonga works, ignores the Crown's obligations under Te Tiriti to safeguard Māori rights to control or manage these species. The cultural harvest of absolutely protected indigenous species is also not possible under the Act. At the engagement hui, tangata whenua reflected on how the Act has contributed to the loss of tikanga and alienation of people from the taonga they relate to. Treaty settlement acts have provided case-by-case opportunities to address some of the barriers the Act creates for tangata whenua, but by definition these apply only narrowly and many iwi (including settled iwi without such redress) are seeking similar opportunities.

- 51 Te Tumu mō te Pae Tawhiti is a whole of government work programme focusing on the matters considered in the Waitangi Tribunal's *Ko Aotearoa Tēnei* report. The review of the Act, and some of the related conservation legislative work, are a critical component of the Te Pae Tawhiti work programme. DOC will continue to work closely with Te Puni Kōkiri and other relevant agencies as part of the Te Pae Tawhiti work programme.
- 52 Further policy work in this area will need to explore options to determine viable alternatives that address legal concerns and that are consistent with the principles of Te Tiriti. Additional work is also needed regarding the role of tangata whenua in decision-making about indigenous species. Additional analysis could also examine how innovative Treaty settlement legislation might inform the framework or provisions of a new Act.

Problem 4: The Wildlife Act does not recognise the variety of ways people value, relate to, and want to interact with species, including how to reconcile trade-offs for activities that are important for individual, community, and economic wellbeing.

- 53 Government policy is increasingly recognising a wider spectrum of values and making more transparent choices between them, with clearer benefits from the use of public resources. This is evident in the resource management system reforms, the Essential Freshwater package, and in the ANZBS. These work programmes directly and indirectly affect how New Zealanders interact with the natural world and with indigenous species.
- 54 The activities and effects explicitly provided for in the Act reflect the priorities in 1953 and earlier (e.g. game bird hunting, homing pigeons). There are many other ways people value, relate to, and want to interact with species, including activities important for individual and community wellbeing, and for economic and other environmental outcomes.
- 55 Although the Act enables some activities to be authorised, the effect of the *PauaMAC5* case has been to constrain the discretion to do so. The Act also does not provide guidance on how to ensure species thrive while providing for activities, or how to resolve potential conflicts between different uses and values.
- 56 Additional policy work will need to consider frameworks for species protection, access, and use. The issue of sustainable use will need to consider the intrinsic value of species alongside cultural, customary, commercial, and recreational purposes.

Problem 5: The relationship between the Wildlife Act and other conservation and natural resource legislation for safeguarding and enhancing the future of New Zealand's biodiversity lacks coherency.

- 57 The lack of clarity on the respective roles and responsibilities of legislation is a system-wide issue. Tools for protecting and managing species and ecosystems, and the habitats species need to survive, are fragmented and inconsistent across conservation legislation and do not work together coherently as parts of a clear overall statutory system. This can make it difficult for people to understand, implement, and comply with the system.
- 58 The current Act is also not equipped to help address threats to indigenous species such as changes in land use, habitat fragmentation, and the impacts of introduced species and climate change. There is a risk of the Act becoming further out of step as legislative changes occur in other areas of the natural resource system.
- 59 Further policy work should consider how biodiversity outcomes are considered and balanced in situations where there are strong economic or community implications, for example in housing developments or infrastructure responses to extreme weather events. Analysis will be needed to determine how new legislation can better enable

decision-makers to consider the impacts of species, and how these can be provided for alongside other objectives.

High-level objectives to evaluate new species-related legislation

- 60 Officials have developed a set of high-level policy objectives to guide and evaluate policy work to review the Act. The objectives draw on the analysis of problems with the existing Act, feedback from the engagement, and advice from the SOG. They are consistent with the ANZBS outcomes.
- 61 The objectives relate not only to what a species management system could aim to achieve, but also to desired outcomes for the broader conservation system. A new species Act would not necessarily be able to achieve the objectives in full by itself. Rather, the purpose of the objectives is to provide a framework for evaluating future proposals and whether, how, and to what extent a proposal for change will contribute to that objective. The proposed policy objectives are:
- 61.1 **Objective 1:** Protect, restore, and enhance species and their habitats so that they are naturally thriving and resilient.
 - 61.2 **Objective 2:** Partner with tangata whenua to design and implement frameworks that support their relationships at place with taonga species and te taiao.
 - 61.3 **Objective 3:** Consider the connections between people and species in our communities, in our heritage, and in New Zealand's nature-based economy in our decisions about how best to protect, sustainably use, and manage species.
 - 61.4 **Objective 4:** Provide a governance and strategic species management framework that appropriately supports local and national values and outcomes.
- 62 Criteria to evaluate policy options will be developed alongside the objectives. For example, as part of Objective 2, criteria would include how future policy proposals give effect to the principles of Te Tiriti, and how they might interact with Treaty settlement commitments (noting that any new legislation would not override existing settlements). Some settlement legislation includes provisions relating to species, for example, arrangements relating to species management and cultural materials. As work progresses, engagement with relevant post-settlement governance entities will be required to ensure any new legislation upholds Treaty settlement arrangements that intersect with the Act.

Legislative options for resolving the problems with the Wildlife Act

- 63 I have considered the following options for addressing the problems described above:
- 63.1 Option 1: Retain the status quo (no legislative changes)
 - 63.2 Option 2: Amendments to the current Wildlife Act
 - 63.3 Option 3: Repeal and replace the Wildlife Act
- 64 An A3 summarising the review of the Act so far, including my recommended option, is provided at **Appendix A**.

Option 1: Retain the status quo

- 65 Retaining the status quo (Option 1) means relying on operational policy changes, planning, and operational programmes to improve species management and strengthen Treaty partnerships within the current Act. DOC is working to make some

improvements to the way in which it operationalises the existing Act. However, such operational improvements alone cannot achieve species and Treaty goals.

- 66 There is also other work underway or planned by DOC and other central and local government bodies, to implement the ANZBS and government investment into programmes such as Jobs for Nature and Predator Free 2050, which may also support the objectives listed above. However, the ANZBS recognises that Aotearoa New Zealand needs the right legislative systems in place to tackle the biodiversity crisis.

Option 2: Amendments to the current Wildlife Act

- 67 Amending the Wildlife Act would entail making targeted amendments to fix specific issues within the current system. **Section 9(2)(f)(iv)**

[REDACTED]

- 68 However, any amendments would be constrained by the framework of the existing Act. This option is limited in the extent to which it could solve the problems within the current Act as many of the problems relate to fundamental parts of the Act's framework. For example, many of the offence provisions in the Act are predicated on the underlying presumption of Crown ownership. The Legislative Design and Advisory Committee also advises that it is difficult to retrofit a clear purpose provision while ensuring consistency with an Act's substantive provisions.⁸

- 69 Given the number and complexity of amendments that would be needed to resolve the existing issues within the current Act, it would be better legislative design to repeal the existing Act and replace it with new species management legislation. Moreover, in the *PauaMAC5* case, the Supreme Court observed that the Act lacks coherence due to past repeated, piecemeal changes, and I consider there is a high risk that further amendments would exacerbate this.

- 70 I consider that enacting a bill to amend the current Act would take a parliamentary term. This recognises that the policy work to carry out amendments within the current framework would be complex, and that engagement on any amendments would be needed.

Option 3: Repeal and replace the Wildlife Act (recommended option)

- 71 I recommend repealing and replacing the Wildlife Act (Option 3). This option presents the greatest opportunity to resolve the issues within the current system and achieve the objectives for the review of the Act. Ensuring that our legislation adequately protects and manages our species will be an important lever in tackling the biodiversity crisis. It will also provide a solid foundation should a future government decide to progress comprehensive reform.

- 72 Designing new species legislation would include considering the purpose, role, and scope of a new Act, including what species it relates to, and how it addresses threatened species. New legislation would also allow for the design of a system that better reflects the Crown's obligations under Te Tiriti and which provides for the relationships Māori have with taonga species and te taiao. **Section 9(2)(f)(iv)**

⁸ Legislation Design and Advisory Committee Legislation Guidelines (2021 Edition): Designing purpose provisions and statements of principle, at 6 (updated to 30 June 2022).

Section 9(2)(f)(iv)

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Section 9(2)(f)(iv)

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I consider that new legislation could be introduced within a parliamentary term. This timeframe includes appropriate engagement on proposed new legislation.

Proposed next steps for the review of the Wildlife Act

Report back in first quarter 2024

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I propose to report back to Cabinet in the first quarter of 2024 with further policy advice and my planned approach for repealing and replacing the Act. This report back will set out policy options for the framework for a new species-related act, and the timeline and processes to progress the work.

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Section 9(2)(f)(iv)

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I will also report back to Cabinet in the first quarter of 2024 on options for potential targeted amendments to address issues in other conservation legislation, as well as the timing and proposed processes for taking the amendments forward.

Next stage of work

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DOC has undertaken policy analysis on the key elements that could form the basis of replacement legislation and has identified some areas which would need further policy work before options can be developed for our consideration. For example, there is widespread agreement that a new species management system should prioritise the protection of indigenous species; however, further work needs to be done to analyse the benefits and risk of including other species within the same framework. There is also general agreement that new species management legislation should support better Treaty outcomes, but further work needs to be done on how this is realized.

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The analysis for the 2024 report back is likely to require some engagement on specific questions. Given the targeted nature of these discussions, I consider that this engagement should be undertaken in the form of focussed discussions rather than full public consultation.

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I understand that the review of the Wildlife Act will have strong links to the work programmes and legislation of other agencies. For example, there are known transport issues around bird control and airport approaches and links to statutes such as the Fisheries Act 1996. Any potential implications for other agencies' legislation or work programmes will be considered as part of this work. DOC will work closely with relevant agencies to develop and assess options.

Continuing the SOG

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The SOG's Terms of Reference currently expire in June 2023. However, I consider that the breadth of the SOG's expertise and experience in conservation would be valuable to assist DOC in the next phase of policy work. Should Cabinet agree to

progress the next stage of work on the Act, I will take a paper to the Cabinet Appointments and Honours Committee noting my intention to extend the term of the current SOG until the end of Quarter One 2024. Extending the SOG's Terms of Reference will enable them to work closely with DOC on key elements of a new species management system for the first quarter 2024 report back.

- 82 After the report back, I will re-evaluate the SOG's Terms of Reference, including whether the term of the SOG should be further extended, and whether the current vacancies within the group should be filled.

Treaty Implications

83 Section 4 of the Conservation Act 1987 requires that the statutes specified in Schedule 1 of the Conservation Act (which includes the Wildlife Act) be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. The rights and interests of tangata whenua in taonga species have been acknowledged in court cases such as *Ngāi Tahu Māori Trust Board v Director-General of Conservation* (the Whales case), Waitangi Tribunal reports such as *Ko Aotearoa Tekei*, and in Treaty settlement legislation.

84 The Waitangi Tribunal has characterised partnership as the default setting for the relationship between DOC and Māori, in light of the importance of taonga species and public conservation land to tangata whenua. I consider that any future work will need to involve appropriate engagement with tangata whenua, and my report back to Cabinet in the first quarter of 2024 will include my proposed plan for further engagement.

85 There are also a number of Treaty settlement acts which make specific provision or acknowledgement of the relationship between tangata whenua and taonga species. DOC will undertake analysis of these existing provisions to ensure that any future work does not prejudice existing Treaty settlement legislation. These settlement provisions can also help ensure a better understanding of Māori rights and interests in species, and how legislation can better provide for them.

Financial Implications

86 This paper does not have direct financial implications. The next stage of work to repeal and replace the Wildlife Act will be a significant project that will be a major focus for the Department's policy work programme. As a cluster agency, DOC cannot seek funding until Budget 2025. Any financial implications will need to be met within baseline funding. Depending on our wider conservation portfolio priorities next term and the scale of consultation undertaken, we consider it is possible to meet these financial implications within DOC's baseline funding.

87 Future decisions relating to targeted amendments to other conservation legislation, or marine protected area reform, will include consideration of the financial implications of the options and what is possible within current resources alongside wider conservation portfolio priorities, including the Wildlife Act reform.

Legislative Implications

88 A Bill would be required to implement a repeal and replace of the Act. A bid will be made for a priority category on the legislative programme at the appropriate time.

Impact Analysis

89 The Regulatory Impact Analysis requirements do not apply for this proposal.

90 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

91 There are no immediate population implications from this proposal. The key population group likely to be affected is Māori, and there may also be implications for rural communities (for example, if the review considers how to manage hunting). However, population implications will depend on what is proposed for new species-related legislation and for changes to other conservation legislation. Advice will be provided as the legislative change options are developed.

Human Rights

92 There are no human rights implications in this paper.

Consultation

93 The following agencies were consulted on this paper: the Ministry for the Environment, Ministry for Primary Industries, Land Information New Zealand, Te Puni Kōkiri, Ministry of Business, Innovation and Employment, Waka Kotahi, Ministry of Transport, Ministry of Housing and Urban Development, Te Arawhiti, Department of Internal Affairs, Treasury, and the Department of the Prime Minister and Cabinet.

Communications

94 Following Cabinet's decisions, I will communicate the next steps on the Wildlife Act review. I will also communicate that Cabinet is seeking further advice on high-priority targeted amendments to legislative settings across other conservation statutes.

95 There is a high level of interest in this work, including a high level of interest in what the scope of the work will be, from tangata whenua, stakeholders and the wider public.

Section 9(2)(f)(iv)
[Redacted text]

Proactive Release

96 I intend to proactively release this Cabinet paper within 30 days of decisions being confirmed by Cabinet.

Recommendations

The Minister of Conservation recommends that the Committee:

1 **note** that in October 2021, Cabinet agreed to initiate a review of the Wildlife Act 1953 and invited the Minister of Conservation to report back to Cabinet Environment, Energy and Climate Committee during the second quarter of 2023 with an update on that review [CAB-21-MIN-0402].

2 **note** that alongside the review of the Wildlife Act, I intend to progress work to determine where targeted amendments can be made to other conservation legislation to address high-priority problems and will present options for Cabinet consideration in the first quarter of 2024.

- 3 **note** that targeted engagement on the review was carried out in 2022 involving 40 hui with tangata-whenua, stakeholders, government agencies, and conservation statutory bodies, and that there was general agreement that the Wildlife Act is not fit for purpose in a modern context, and there was widespread support for its review.
- 4 **note** that there are well-documented issues with the Act, including that:
- 4.1 the Act lacks a clear purpose for biodiversity outcomes;
 - 4.2 it does not explicitly address the protection of threatened or at-risk species;
 - 4.3 the Act creates barriers to the exercise of kaitiakitanga and rangatiratanga, and does not recognise mātauranga Māori or tikanga;
 - 4.4 the Act does not recognise the variety of ways people value, relate to, and want to interact with species, including the lack of a framework to reconcile trade-offs for activities that are important for individual, community, and economic wellbeing;
 - 4.5 the relationship between the Wildlife Act and other conservation and natural resource legislation for safeguarding and enhancing the future of New Zealand's biodiversity is not well described.
- 5 **agree** in principle to repeal and replace the Wildlife Act.
- 6 **agree** to the high-level policy objectives to guide further policy work in relation to species and the replacement of the Wildlife Act:
- 6.1 objective 1: Protect, restore, and enhance species and their habitats so that they are naturally thriving and resilient;
 - 6.2 objective 2: Partner with tangata whenua to design and implement frameworks that support their relationships at place with taonga species and te taiao;
 - 6.3 objective 3: Consider the connections between people and species in our communities, in our heritage, and in New Zealand's nature-based economy in our decisions about how best to protect, sustainably use, and manage species;
 - 6.4 objective 4: Provide a governance and strategic species management framework that appropriately supports local and national values and outcomes.
- 7 **invite** the Minister of Conservation to report back to the Cabinet Environment, Energy and Climate Committee during the first quarter of 2024 with advice on:
- 7.1 the potential approach for a new species-related Act, including its general purpose and key elements for its framework;
 - 7.2 potential targeted amendments that could be made to address high-priority systemic issues across other conservation statutes;
 - 7.3 a timeline and process for how the work in 7.1 and 7.2 could be progressed, including a plan for engagement.
- 8 **note** that should Cabinet agree to progress the next stage of work on the Act, I will take a paper to the Cabinet Appointments and Honours Committee noting my intention to extend the term of the current SOG until the end of Quarter One 2024.
- 9 **note** that work to develop advice for the report back in the first quarter of 2024 will require the Department to carry out some limited focussed discussions in 2023 with tangata whenua, local government, key stakeholders, and others.
- 10 **note** that a Bill to repeal and replace the existing Trade in Endangered Species Act [CAB-20-MIN-0157] is on hold **Section 9(2)(f)(iv)**

Authorised for lodgement

Hon Willow-Jean Prime
Minister of Conservation

Appendices

- Appendix A: Overview of the review of the Wildlife Act 1953 (A3)

RELEASED BY THE MINISTER OF CONSERVATION