27 April 2023

Honourable Minister Willow-Jean Prime
Parliament Buildings
Private Bag 18041
WELLINGTON 6160

Tēnā koe e te Minita

Initial Strategic Oversight Group Advice on the Review of the Wildlife Act 1953

Introduction

1. Thank you for the opportunity to provide our independent oversight of and strategic advice for the review of the Wildlife Act 1953, including in respect of how the review interacts with the strategic direction of the wider conservation sector. Issues in the Wildlife Act Review sit at the heart of conservation values across Aotearoa.

2. We are an expert group with diverse specialist knowledges, many of us at the forefront of our professions. Our strength has been the different perspectives and interests we hold as they are reflective of the views of a much wider cross section of the public.

3. We commend the Government on its commitment to modernise conservation laws and consider that doing so is critical in order to halt the decline of biodiversity, particularly indigenous biodiversity.

4. We agree with the Government that the Wildlife Act 'is not fit for modern conservation management. It lacks the tools we need to protect threatened species. It also prevents fulfilment of some obligations under Te Tiriti o Waitangi.'

5. The Government has already developed an excellent vision in *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*. We consider this same vision should be used to guide any subsequent conservation law and policy reform.

Te wawata – Te Mauri Hikahika o te Taiao *The vision – the life force of nature is vibrant and vigorous*

6. We are still in the early stages of robust discussions for distilling our initial recommendations to you but at this stage we are able to highlight the issues we

were able to reach early consensus on and also signal those issues that require further exploration.

Our advice

7. We recommend that the Wildlife Act urgently be repealed and replaced, and that replacement legislation should address at least the following principles.

Principle One: Prioritise protection of indigenous and threatened species and their habitats

8. The Wildlife Act 1953 makes no distinction between indigenous, threatened and common species and yet dedicated management of threatened species is required to prevent extinction. Aotearoa NZ has ratified the Convention on Biological Diversity which requires parties to enact threatened species legislation. Other OECD countries have this. Aotearoa is therefore well behind international best practice in threatened species protection and recovery laws.

9. Aotearoa has over 1,000 species that are threatened with extinction (including over 500 that face a severe and immediate threat). Nearly all of these species are found only in Aotearoa. From a Māori perspective, many of these species are our older siblings. While the current Wildlife Act is primarily concerned with the protection, control and regulation of wildlife, new legislation should prioritise protection and recovery of indigenous and threatened wildlife species and their habitats.

Principle Two: Have a clear background, purpose and principles section

10. New legislation should embrace best ecological principles and the innovation common in modern legislation particularly in Treaty of Waitangi claim settlement legislation to describe why we must urgently care for indigenous species and their habitats and why this is important to all New Zealanders. We like the approach taken in Te Urewera Act 2014, sections 3, 4 and 5.

11. The current biodiversity crisis, coupled with the challenges posed by a rapidly warming climate, means the legislative purpose needs to future proof ecological evolution and ensure outcomes that provide resilience to indigenous species. It also needs to recognise the importance of human connection to improve health and well-being outcomes, without compromising the species the legislation seeks to protect. For example a key purpose should be for the rights of an indigenous species to thrive and for its habitat to be protected to enable it to do so.

Principle Three: Embed Te Tiriti o Waitangi

12. Te Tiriti o Waitangi and its principles should be the foundation of any new system. Tu te mana, tu te mauri, Tu Te Tiriti o Waitangi. Options that are founded on the bedrock of the Treaty will protect taonga and advance interests for all. Our view is that legislation that has the foundation of a Treaty relationship, is rooted in te ao Māori, and allows the fullness of kaitiakitanga and rangatiratanga to be recognised is the only viable way forward.

13. Section 4 of the Conservation Act 1987 requires that the Act (and the other Acts administered by the Department, including the Wildlife Act) be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. However, the current Wildlife Act is a barrier to the exercise of kaitiakitanga and rangatiratanga. Three key examples of this in the current Act are the lack of provision for tangata whenua to be involved in decision-making, restrictions around customary use, and Crown ownership of wildlife.

Principle Four: Remove Crown ownership of wildlife

14. The current Wildlife Act is based on the assumption the Crown owns all wildlife, except unprotected species. Where species are absolutely protected, the Crown continues to own those species even after death, including their feathers and bones.
15. The Waitangi Tribunal in its report *Ko Aotearoa Tēnei* (2011) found the Wildlife Act to be in breach of the Treaty of Waitangi. The Tribunal recommended that the Wildlife Act be amended so that no one owns wildlife and should instead provide for shared management of protected species in line with the Treaty principle of partnership. The Waitangi Tribunal also recommended that the new Act make explicit that the Crown does not own taonga works derived from protected wildlife as is currently the case, but instead allows tangata whenua to have lawful ownership of the taonga they have created from natural materials to sustain Māori culture, mātauranga and tradition.
16. We agree that the notion of Crown ownership of wildlife, and Crown ownership of the creative works of Māori derived from natural materials of wildlife is not useful in terms of designing a new Act fit for the issues we face in 2023 and beyond. Our advice to you on this matter, is that it requires innovative and visionary thinking to design a new Act, that is Treaty of Waitangi compliant and addresses the shortfalls of the current legislation. Sharing responsibility for the protection of indigenous wildlife species with Māori makes good sense as we have already seen that the current system predicated on Crown ownership, has not worked, nor will it work in the future.

Principle Five: Create a cohesive framework for the protection of species and their habitats

17. Aotearoa New Zealand comprises many different indigenous and introduced species which are part of its ecological reality today and for the future. While we recognise that accommodating these views might be a challenge, for any species management system conservation to work in the future the categories of interests will need to be reconciled.

18. We hold a range of views around what kind of protection framework should be in the Act, however, in line with *Te Mana of Te Taiao*, we recognise and prioritise the special responsibility we have towards indigenous species, while still acknowledging the recreational, sustenance, economic and cultural benefits of valued non-indigenous species.

19. One approach would be to create a spectrum of protection based on how we value a species or habitat and the degree to which that species or habitat needs protection. For example, the continuum could be absolute protection to eradication and species could be placed along that based on value/use.

20. We recommend that further work is done on a framework for protection and what levels of protection would be appropriate for different types of species and habitats.

21. A fit for purpose framework for protection and use could help minimise conflicts that arise by providing better clarity on value, need and priorities. This conversation needs to be transparent and open to all interested parties.

Principle Six: Create a framework that supports decision making at both local and national levels

22. We support a distributed model of decision-making. This would be a delegated model for managing some interactions between humans and species. Our vision is that mana whenua and communities will have a say in decisions about species management locally. A delegated model would remove barriers for local people to be involved in conservation work. It could recognise and provide for both national interests and the rights and interests of mana whenua as kaitiaki of their taonga.
23. Alongside community decision-making, we see the need for national planning and direction to ensure the persistence of threatened and indigenous specis. We expect that national and local views and goals could differ and that this could be a point of conflict. It would be important for any new system to have ways to navigate potential disagreements.

Principle Seven: Enable customary use and the application of mātauranga, tikanga and kawa

24. In our view new wild species legislation should allow for mana whenua customary use according to mātauranga, kawa and tikanga. Indeed, the application of mātauranga, tikanga and kawa should be accorded greater visibility and weight in replacement legislation and throughout the conservation system.

Principle Eight; Opportunity to accommodate sustainable use

25. In our view, new wild species legislation should more explicitly accommodate and regulate sustainable use of some species under certain conditions including recreational and economic. Sustainable uses encompass many types of uses as well as take. Use and protection can exist together and be mutually beneficial.

Principle Nine: Broader reform across the conservation system is urgently needed

26. The Wildlife Act was singled out by this government as the first Act to be reviewed. We have discharged our terms of reference by focussing on the Wildlife Act but we are of the same view as that expressed by the Options Development Group in their report *Partial reviews of the Conservation General Policy and General Policy for National Parks regarding Te Tiriti o Waitangi / the Treaty of Waitangi* (2022) that fundamental reform of the entire conservation system is needed, particularly the Conservation Act and all associated Schedule One Acts. An essential component of this reform should be to reframe the purpose of conservation to ensure it is fit for purpose for Aotearoa New Zealand and so it would guide the reform.

27. More broadly we recognise legislation is only one part of the solution to critical biodiversity loss. Increasing funding and involvement across Aotearoa New Zealand are fundamental parts of reversing the biodiversity decline. To make any new legislation successful, we will need strong community support, adequate resourcing, and better data to make informed decisions.

Material Future work

28. We are still considering whether we think the replacement legislation should include rules for the protection and regulation of introduced wild species or whether these species should be accommodated in other legislation. The benefits and challenges of these options need to be thoroughly canvassed,

29. We suggest that answering the question of whether indigenous species and valued introduced species should be regulated in the same, or in separate pieces of, legislation should be the starting point of any future work. We only lightly considered the complex issues inherent in this fundamental point but note there are clear differences in how to approach the aforementioned principles depending on what position is taken on this point.

30. We all agree however that whatever approach is adopted, new wildlife law(s) should prioritise the protection and recovery of indigenous and threatened species and their habitats over other kinds of wild species.

We are here to help you with the next steps

31. We officially finish our tenure with the provision to you of this advice. However, should Cabinet decide to proceed with reform of the Wildlife Act, we request that you extend the terms of reference for the SOG until the Wildlife Act review is completed. We have only just embarked on this journey and consider the next phase of this important mahi would greatly benefit from our expertise.

Aroha Te Pareake Mead,
Chair, Strategic Oversight Group on behalf of the SOG

Strategic Oversight Group for the Review of the Wildlife Act
Members: Bruce Clarkson, Greg Duley, Rebecca Ingram, Hoani Langsbury, Debs Martin, Nicola McDonald, Aroha Mead, Gary Ottmann, Jacinta Ruru, Shay Schlaepfer

Appendix 1 – SOG Terms of Reference

The terms of reference for the Strategic Oversight Group for the review of the Wildlife Act 1953 were confirmed by the Minister of Conservation in April 2022.

The purpose of the Strategic Oversight Group is to provide independent oversight of and strategic advice for the review of the Wildlife Act 1953, including in respect of how the review interacts with the strategic direction of the wider conservation sector.

The Strategic Oversight Group will:

- provide advice to the Department of Conservation to ensure the review of the Wildlife Act 1953 aligns with the strategic direction of the wider conservation system;
- raise any issues, risks and opportunities relating to the review of the Wildlife Act 1953 with the Department of Conservation in a timely manner;
- identify key issues or topics that need to be analysed or considered in the review of the Wildlife Act 1953;
- recommend the establishment of ad-hoc working groups to focus on specific issues or topics and engage with working groups as required;
- provide feedback on critical pieces of work developed by the Project Team and working groups to ensure that diverse perspectives and world views are considered;
- bring general conservation sector knowledge to the review of the Wildlife Act 1953; and
- utilise their networks within the conservation sector to ensure others can engage with the review of the Wildlife Act 1953.

The members of the Strategic Oversight Group are not required to:

- report to the Minister of Conservation (but may provide advice to the Minister at critical junctures);
- produce a formal report; or
- represent their iwi or organisations they currently work for or have personal or professional links to.