

Date: 15 July 2019
To: Mike Slater, Deputy Director-General Operations
CC: Martin Kessick, Deputy Director-General Biodiversity
From: Hilary Aikman, Director National Operations

Subject: ARTHUR'S PASS AREA - RODENT CONTROL OPERATION 2019

Purpose

1. To consider the granting of a revised permission for undertaking an aerial 1080 drop in Arthur's Pass for the control of rodents to protect indigenous birds, particularly kākārīki karaka / orange fronted parakeet.

Background

2. As a result of reviewing Permission 5922452 granted to s 9(2)(a), Vector Control Services on 6 May 2019 it was identified there were inaccuracies in that permission document and that a new permission should be considered.
3. Although the information provided in the application and assessment was sufficient to grant the permission, it was noted that the permission should have been granted to Vector Control Services and that further authorisation, including under the Wildlife Act 1953, should be stated. There was also insufficient documentation of the procedural decisions.
4. The operation has not commenced and so there is an opportunity for you to reconsider the permission and, if you consider it appropriate, to revoke the present permission and grant a new permission.
5. It was considered appropriate to request you as the Deputy Director-General to make the decision as a new decision-maker, as opposed to referring the matter back to the Director Operations who made the initial decision.
6. Attached is the application and assessment report which is still valid for this reconsideration. It is noted that the operation could occur shortly after the school holiday period has finished and so there is some urgency in undertaking this reconsideration.

Proposed Changes

Applicant

7. The Applicant is Vector Control Services, a business unit of the West Coast Regional Council, which is a legal entity. Staff of Vector Control Services will undertake the logistics but will also sub-contract with suppliers to undertake this operation.

8. The permission should be granted in the name of Vector Control Services, a unit of West Coast Regional Council (and not its Operations Manager). Vector Control Services should hold the permission, which will cover its staff and sub-contractors.

Hazardous Substances and New Organisms Act 1986

9. Under the HSNO Act, the Environmental Protection Authority (the Authority) has approved the use of 1080 but has imposed a requirement that:

No person may apply or otherwise use this substance on land administered or managed by the Department of Conservation unless the person first obtains a permission from the Authority.

10. The Authority has delegated its powers to the chief executive of the Authority, who has in turn delegated his powers under section 95A of the HSNO Act to grant permissions for the use of such substances on land administered or managed by DOC to named positions within DOC, including to you as the Deputy Director-General, Operations.
11. In considering an application, in accordance with s 95A(3) you must consider:
 - (a) the adverse effects involved in the use or uses of the substance to which the application relates; and
 - (b) the conditions (if any) that it thinks should be imposed as part of the permission.
12. The attached assessment sets out the earlier consideration of the adverse effects and conditions. These are still applicable and you are able to rely on that assessment, noting that the use of 1080 has been approved and so the focus of the consideration is the use of this approved substance on land administered or managed by DOC.
13. As a decision maker under the HSNO Act you also need to consider the purpose and principles of the HSNO Act, again recognising that the Authority has approved this substance generally. The purpose of HSNO Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances.
14. This purpose is supported by the principles in section 5, which are to be recognised and provided for, being:
 - (a) the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems:
 - (b) the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations.
15. It is also necessary to take into account the precautionary principle (section 7), the principles of the Treaty of Waitangi (section 8) and the matters in section 6, being:
 - (a) the sustainability of all native and valued introduced flora and fauna:
 - (b) the intrinsic value of ecosystems:

- (c) public health:
- (d) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga:
- (e) the economic and related benefits and costs of using a particular hazardous substance or new organism:
- (f) New Zealand's international obligations.

16. The use of 1080 in this case is for the purpose of killing rodents (primarily rats) to reduce the population over a large area. This will particularly assist kākāriki karaka / orange fronted parakeet and Great Spotted kiwi. Undertaking the operation will assist indigenous flora and fauna generally with a reduction in other pests including possums and stoats. Although it is recognised that the use of hazardous substances is not ideal, it is the best and most cost-effective option available for large scale pest operations. The control of rodents will ensure the sustainability of indigenous species (flora and fauna) and protect taonga. The biodegradability of 1080 means that it has limited long term adverse effects on ecosystems and human health and safety is protected. This is further reinforced by the need to obtain public health permission.
17. The assessment undertaken confirms that the purpose and principles of the HSNO Act have been considered, including ensuring the principles of the Treaty have been given effect to through consultation. The conditions imposed on this operation support a precautionary approach.
18. The assessment confirms that the application is in accordance with the purpose and principles of the HSNO Act and that the adverse effects have been considered and conditions imposed. The granting of a permission is recommended.

Wildlife Act 1953

19. Rodents are targeted in this operation. Possums and stoats may be killed as a secondary effect. Unfortunately, as a result of the 1080 operations it is possible that protected wildlife may be killed even though the best practice methods are used to avoid this situation – including controlling the colour, smell, size and distribution of bait so that it is not attractive to protected wildlife.
20. The purpose of the Wildlife Act is the protection and control of wildlife. Although this may apply to individual wildlife in some cases, the Act is focussed at a species level. The scientific research shows that, although there is some risk to individual birds as a result of a 1080 drop, the resulting improvement in successful breeding means the population numbers increase and thus the species is protected.
21. In these circumstances it is recommended that an authorisation be granted by the Director-General under section 53 of the Wildlife Act to kill absolutely protected wildlife (to cover off this possibility) as a result of this operation because it will, in the longer term, aid the protection of wildlife.
22. Section 54 enables the Director-General to authorise the killing of animals that he is satisfied are causing damage to other wildlife or land. Studies confirm that rodents (particularly rats) do cause damage to flora and indigenous wildlife (including birds

and their eggs and their food sources). You can be satisfied that rodents are causing damage and that killing them is for the benefit of protected wildlife. Any other unprotected wildlife (such as possums or stoats) which may die as a result of this operation do not require a specific authorisation under the Wildlife Act as they are not the targeted species. It is recommended that a section 54 authorisation, therefore, be granted for the killing of rodents as the “nuisance” animals.

National Parks Act 1980

23. The operation area includes Arthur’s Pass National Park. Authorisation is required for activities within a national park. The purpose of this activity is to kill rodents, although the death of some other pests and indigenous animals is possible. In this regard section 4(2)(b) of the Act provides:

... national parks shall be so administered and maintained under the provisions of this Act that— ...

except where the Authority otherwise determines, the native plants and animals of the parks shall as far as possible be preserved and the introduced plants and animals shall as far as possible be exterminated:

24. There is no specific power in the Act to authorise the killing of introduced pests. Section 51A of the National Parks Act provides that the Minister may authorise a person to do any thing that the Minister considers appropriate for the proper and beneficial management, administration and control of a park. The thing authorised cannot be inconsistent with the management plan. Section 5(2) provides that no person shall, without the prior written consent of the Minister, kill any indigenous animal found within a national park. Written consent can be given if consistent with a management plan.
25. The Arthur’s Pass National Park Management Plan recognises introduced animal pests as a threat in Section 2.3.2 and at Section 6.2.5 specifically deals with policies and methods related to introduced animals. It is recognised that extermination is not possible but that the Department does have the primary responsibility for rodents. Of particular relevance to this operation is Section 6.2.2.1 – Hawdon and Poulter Valleys and the Kākāriki Karaka / Orange-Fronted Parakeet Programme.
26. The stated Policies (set out below) are supported by an explanation and methods which confirm that pest control is supported by this Plan:
- 6.2.2.1(a)
To respond to predator eruptions within the Hawdon and Poulter valleys’ beech forests for the primary purpose of protecting Kākāriki karaka/orange-fronted parakeet within its current environment.
- 6.2.2.1(b)
To undertake the threatened species programme in a manner that minimises impacts on other National Park values, but recognising that the survival of the managed threatened species is paramount.
27. The Management Plan is supported by the General Policy for National Parks, in particular Policy 4.1 (which recognises the importance of indigenous species and that those within national parks should be managed to prevent their loss or decline and to restore genetic integrity and diversity) and Policy 4.3 relating to management of threats to indigenous species. Policy 4.3(d) provides, for example:

- iii) eradicating, where practicable, and containing and reducing the range of established introduced plants and animals; and
- iv) controlling widespread introduced species where necessary to maintain the general welfare of national park indigenous species, habitats and ecosystems or to maintain scenic and landform values.

28. Although the death of an individual native animal is not desired, both the Act and the Arthur's Pass National Park Management Plan (supported by General Policy) recognise the importance of controlling introduced animals. The application is in accordance with the purpose of the Act, as identified through the principles to be applied to national parks in sections 4 and 5 of the Act, and the management plan to provide for the eradication or control of pest species which have a significant impact on the preservation of indigenous animals.

29. It is recommended that consent be granted under sections 5 and 51A of the National Parks Act for the possible killing of native animals and the killing of introduced animals, particularly rats.

Conservation Act 1987

30. Authorisation under the Conservation Act is concerned with conservation areas. This application relates to three different types of conservation area being a previous forest park now deemed to be conservation park (held under section 19), stewardship land (held under section 25) and marginal strips (held under Part 4A).

31. Section 19(1) provides:

Every conservation park shall so be managed—

- (a) that its natural and historic resources are protected; and
- (b) subject to paragraph (a), to facilitate public recreation and enjoyment.

32. Section 25 provides that every stewardship area shall so be managed that its natural and historic resources are protected.

33. The purpose of marginal strips is set out in section 24C and relates to conservation purposes with a focus on aquatic life, and access to water and recreational use.

34. Natural resources" includes animals of all kinds. Protection covers not only maintaining, but also enhancing.

35. In relation to each classification of conservation area it is relevant to consider the specific management requirements as well as the requirements of the section under which the permit is being granted. The purpose of killing rodents is aimed at having a positive effect for indigenous species, even if individual indigenous animals are killed. Although there is clearly concern about the deaths of individual birds as a result of this operation, from a species perspective the use of 1080 has been shown to provide protection.

36. This operation around Arthur's Pass is in accordance with management for conservation purposes and is also in accordance with the focus on the protection of natural resources (animals) for conservation areas. There is a slight restriction on the enjoyment of these areas, which may be seen as against the management requirements, but this is for a limited period and the protection of natural resources

does have primacy. Further, this is supported by the relevant conservation management strategy (discussed below). There is no relevant conservation management plan.

37. Under section 38 of the Conservation Act the Director-General may, if it is in accordance with a management plan (if any) and having had regard to the safety of the public, issue permits for hunting. Hunting for the purposes of this section includes the use of poison.
38. There is no relevant conservation management plan for the conservation areas covered by this application. Section 4.2 of the Conservation General Policy identifies the need to manage pest threats. This is carried through to the two Strategies which apply to this locality.
39. The West Coast Conservation Management Strategy 2010-20 recognises rats as threats to terrestrial biodiversity values (see Policies 3.3.1.3, 3.3.3.2 and 3.3.3.6 which identify the importance of pest management). The Canterbury (Waitaha) Conservation Management Strategy 2016 also identifies animal pests and in Appendix 6, in relation to mice and rats, notes as a method of control: Monitoring for presence and impact; eradication or control through registered vertebrate toxins.
40. Although there is no relevant management plan, the proposed operation would be consistent with the Conservation Act, the Conservation General Policy and the relevant Conservation Management Strategies.
41. Public safety has been provided for by the applicant. Consultation with user groups has taken place. Public Health Permission with appropriate conditions has also been obtained, which although focussed on public health, also imposes controls which support public safety.
42. While section 38 does not cover fresh water fish, it is noted that there is no evidence that the killing of fish needs to be authorised. Unlike mammals, fish such as trout and eels are not at significant risk from 1080 during pest control operations. Independent studies stretching back to the late 1970's indicate there is no detectable impact of 1080 on trout or the freshwater invertebrates they feed on such as koura, caddisflies, midges and mayflies. Recent published studies by Pending OIA consultation scientists also show that while eels and freshwater crayfish which were deliberately fed 1080 pellets and carcasses of animals killed with 1080 absorbed low concentrations of the toxin, the levels absorbed posed little risk to humans. These findings are not unexpected. Even if 1080 entered water directly during a pest control operation, fish would not be affected as 1080 is rapidly diluted to low concentrations in water and breaks down into harmless substances.

Reserves Act 1977

43. The operation area includes a scenic reserve and two local purpose reserves for gravel and a campsite / hut. As public conservation land, these areas are administered by the Department under the Reserves Act. The general purpose of the Act provides for the preservation of areas of New Zealand with particular attributes for the benefit and enjoyment of the public. More relevant for this operation is section 3(1)(b):

ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats,

...

44. In relation to scenic reserves, section 19(2)(a) provides that scenic reserves are to be managed so “the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved, and for this purpose, except where the Minister otherwise determines, exotic flora and fauna shall as far as possible be exterminated ... provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953”.
45. Both local purpose reserves are no longer used for their stated local purpose. Although the Reserves Act requires that the purpose of the reserve has primacy, a local purpose reserve is to be administered so that the biological features are managed and protected (section 23(2)(a)). This is, however, subject to the Wildlife Act in respect of actions towards fauna.
46. Section 50 provides that the Minister in relation to a scenic reserve and the administering body (in this case the Director-General through the Department) in relation to a local purpose reserve may authorise the killing of specified fauna within the reserve and authorise the use of objects to do so. This is also subject to the killing not being in contravention of the Wildlife Act.
47. As the purpose of the operation is to kill rodents which will have the effect of assisting the survival of indigenous flora and fauna the actions of killing pests, including the risk of killing some indigenous animals, is within the purpose of the Reserves Act and the purpose for which the reserves were established. Further, the conservation management strategies and Conservation General Policy, which also relate to reserves, discussed above under the Conservation Act heading, also support this approach.
48. If you are minded to grant the authorisations under sections 53 and 54 of the Wildlife Act then you are able to authorise the killing of both pests and indigenous fauna in these reserves – on behalf of the Minister for the scenic reserve and on behalf of the Director-General as the administering body for the local purpose reserves. It is recommended that appropriate authorisations be granted under section 50.

Consultation

49. The Department complies with section 4 of the Conservation Act across all of the Acts it administers. Ensuring that the principles of the Treaty of Waitangi are given effect to requires consultation with the Treaty partner. The assessment report confirms that the applicant has undertaken consultation with local iwi and the Department has undertaken consultation with Pending OIA consultation. The responses have been supportive.
50. The requirements for consultation imposed by the Authority under the HSNO Act are extensive. That consultation did, therefore, cover the issues of killing pests and protected wildlife, which is the focus of the approvals under the conservation legislation. There is confidence that the proposed operation and the consultation undertaken gives effect to the principles of the Treaty.

Conclusion

51. The application is consistent with the above provisions and the proposed replacement permission reflects this. The proposed changes have been incorporated within a new permission document which is attached for your consideration.

Recommendations

It is recommended that you:

1. Consider the application, assessment report and this memo;
2. Note that the consultation undertaken by the applicant and the Department is sufficient to meet the section 4 Conservation Act obligations;
3. Agree, under sub-delegation from the chief executive of the Environmental Protection Authority, to revoke permission 5922452 to enable the inaccuracies within that document to be corrected through a replacement permission;

Agree / Disagree

4. Agree to grant a new permission in the name of Vector Control Services, a business unit of the West Coast Regional Council (including its staff and sub-contractors);

Agree / Disagree

5. Agree that the proposed permission and conditions consider the adverse effects of the use of these substances on DOC managed or administered land and that granting the permission is in accordance with the purpose of the HSNO Act, recognising the life-supporting capacity of ecosystems and the well-being of people and communities and taking into account the principles of that Act;

Agree / Disagree

6. Agree, under sub-delegation from the chief executive of the Environmental Protection Authority, to grant permission under s 95A of the Hazardous Substances and New Organisms Act for the use of 1080 on the land managed or administered by DOC in the operation area;

Agree / Disagree

7. Agree you are satisfied that, in the area of the operation, rodents are causing damage to wildlife and land so killing of rodents in accordance with the application will meet the purpose of the Wildlife Act;

Agree / Disagree

8. Agree, under delegation from the Director-General of Conservation, to grant an authorisation under section 54 of the Wildlife Act for the killing of rats and mice in the operation area in accordance with the methods in the application;

Agree / Disagree

9. Agree that, for the purpose of providing greater protection for protected indigenous species, individual protected wildlife may be killed as a result of this operation even though the conditions on the permission are complied with, and that this is in accordance with the purpose of the Wildlife Act;

Agree / Disagree

10. Agree, under delegation from the Director-General of Conservation, to grant an authorisation under section 53 of the Wildlife Act for the killing of protected indigenous wildlife for the purpose of greater protection of indigenous wildlife in the operation area in accordance with the methods in the application;

Agree / ~~Disagree~~

11. Agree, in relation to the area of operation within the Arthur's Pass National Park, that this operation is in accordance with the purpose of the National Parks Act and is consistent with the Arthur's Pass National Park Management Plan;

Agree / ~~Disagree~~

12. Agree, in relation to the area of operation within the Arthur's Pass National Park and under delegated authority from the Minister of Conservation, to authorise under section 51A of the National Parks Act the killing of non-indigenous animals (particularly rodents);

Agree / ~~Disagree~~

13. Agree, in relation to the area of operation within the Arthur's Pass National Park and under delegated authority from the Minister of Conservation, to authorise under section 5 of the National Parks Act the possible killing of indigenous animals as part of this rodent control operation;

Agree / ~~Disagree~~

14. Agree, in relation to the area of operation that is conservation area that the hunting of animals by the use of poison is in accordance with the purpose of the Conservation Act, that no conservation management plan applies (but the operation is in accordance with the relevant conservation management strategies and conservation general policy), and that public safety has been provided for;

Agree / ~~Disagree~~

15. Agree, in relation to the area of operation that is conservation area and under delegated authority from the Director-General, to grant a permit under section 38 of the Conservation Act for hunting animals by the use of poison;

Agree / ~~Disagree~~

16. Agree, in relation to the area of operation that is scenic reserve and local purpose reserve, that the killing of fauna by the use of poison is in accordance with the purpose of the Reserves Act, the management of the scenic reserve and local purpose reserves, and the relevant conservation management strategies and conservation general policy.

Agree / ~~Disagree~~

17. Agree, in relation to the area of operation that is scenic reserve and under delegated authority from the Minister, to authorise the killing of fauna on the reserve as part of this rodent control operation (Note, you cannot agree to this if you have not agreed to the Wildlife Act authorisations);

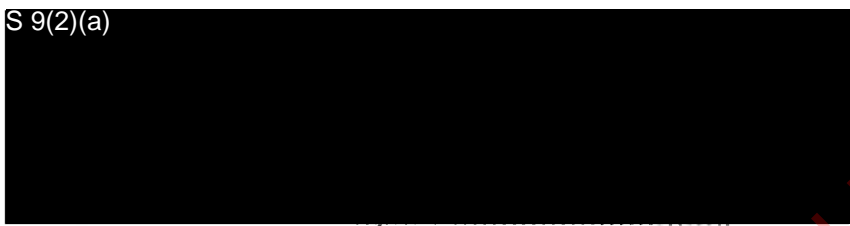
Agree / ~~Disagree~~

18. Agree, in relation to the area of operation that is local purpose reserve and under delegated authority from the Director-General as administering body, to authorise the killing of fauna on the reserves as part of this rodent control operation (Note, you cannot agree to this if you have not agreed to the Wildlife Act authorisations);

Agree / ~~Disagree~~

19. If you have agreed to the above, sign the attached Permission which immediately revokes Permission 5922452 and immediately replaces it with a new permission covering the above matters.


S 9(2)(a)



Hilary Aikman, Director National Operations

Decision made by me on 16th July 2019

S 9(2)(a)



Mike Slater, Deputy Director-General Operations

Released under the Official Information Act