

Wildlife (Authorisations) Amendment Bill

Government Bill

Explanatory note

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 may be granted by the Director-General of Conservation (the **Director-General**), consistently 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 about how they could continue to undertake their activities lawfully.

The High 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 speci-

fied 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 before 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 that 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 be satisfied—
 - that the overall effect of the authority would be consistent with protection of populations of wildlife and protection of individual wildlife; and
 - that the holder of the authority will take reasonable steps to avoid, minimise, and mitigate any adverse effects of the lawful activity on individual wildlife; 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 excludes 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.

Departmental disclosure statement

The Department of Conservation is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information

about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2025&no=146>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. If the Bill is enacted, the Act will come into force on the day after Royal assent.

Clause 3 identifies the Wildlife Act 1953 (the **principal Act**) as the Act being amended by the Bill.

Part 1

Amendments about authorisations

Clause 4 inserts *new sections 53A to 53C* into the principal Act. The new sections are concerned with authorising killing of wildlife that is incidental to carrying out an otherwise lawful activity.

New section 53A allows the Director-General to grant an authority under section 53 that authorises killing of wildlife that is incidental to carrying out an otherwise lawful activity. Killing of wildlife is **incidental** if it is not directly intended but is unavoidable and foreseeable as a consequence of carrying out the lawful activity.

New section 53B provides that, to avoid doubt, the authority may be granted only if it is consistent with the protection of wildlife. The authority is to be treated as consistent with the protection of wildlife if, in granting it, the Director-General is satisfied that its overall effect would be consistent with the protection of populations of wildlife and the protection of individual wildlife. The new section also provides for—

- matters relating to the requirement for the Director-General to be satisfied of that overall effect; and
- matters that the Director-General is not required to be satisfied of in granting the authority.

One of the matters that the Director-General is not required to be satisfied of in granting the authority is that each individual act of killing, viewed in isolation, would be consistent with protecting wildlife. This directly responds to the judgment of the High Court in *Environmental Law Initiative v The Director-General of the Department of Conservation and others* [2025] NZHC 391 (the **Environmental Law Initiative case**). *See*, in particular, paragraph 75.

New section 53C provides for conditions that may be imposed on an authority under section 53 that authorises killing of wildlife that is incidental to an otherwise lawful activity.

Part 2

Amendments about transitional, savings, and related provisions

Clause 5 inserts *new section 2AA*, to provide for transitional arrangements.

Clause 6 inserts *new Schedule 1AA*, which provides for transitional, savings, and related provisions. *Part 1* of the new schedule sets out provisions relating to the Bill, including 2 provisions that—

- validate certain authorities to kill wildlife granted or purportedly granted under section 53; and
- ensure that authorities granted or purportedly granted under section 53 before 5 March 2025 (the date of the judgment in the Environmental Law Initiative case) are not unlawful merely because consent is required under section 71, rather than an authority under section 53.

However, those 2 provisions do not—

- affect any proceedings commenced or in progress before 28 March 2025 (the date on which the Minister of Conservation announced the Government’s intention to amend the principal Act in response to the Environmental Law Initiative case); or
- generally apply to the authority granted under section 53 that was the subject of the Environmental Law Initiative case.

Hon Tama Potaka

Wildlife (Authorisations) Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2
Part 1		
Amendments about authorisations		
4	New sections 53A to 53C inserted	2
	53A Authority may be granted under section 53 to kill wildlife incidentally	2
	53B Authority under section 53 to kill wildlife incidentally: consistency with protection of wildlife	2
	53C Conditions that may be imposed on authority under section 53 to kill wildlife incidentally	3
Part 2		
Amendments about transitional, savings, and related provisions		
5	New section 2AA inserted (Transitional, savings, and related provisions)	3
	2AA Transitional, savings, and related provisions	3
6	New Schedule 1AA inserted	4
	Schedule	5
	New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Wildlife (Authorisations) Amendment Bill **2025**.

2 Commencement

This Act comes into force on the day after Royal assent.

5

3 Principal Act

This Act amends the Wildlife Act 1953.

Part 1**Amendments about authorisations****4 New sections 53A to 53C inserted**

10

After section 53, insert:

53A Authority may be granted under section 53 to kill wildlife incidentally

- (1) Without limiting section 53, the Director-General may grant an authority under that section that authorises killing of wildlife that is incidental to carrying out an otherwise lawful activity.
- (2) Killing of wildlife is **incidental** if it is not directly intended but is unavoidable and foreseeable as a consequence of carrying out the lawful activity.
- (3) In this section, **wildlife** means wildlife or game referred to in section 53(1).

15

53B Authority under section 53 to kill wildlife incidentally: consistency with protection of wildlife

20

- (1) To avoid doubt, the Director-General may grant an authority referred to in **section 53A** only if it is consistent with the protection of wildlife.
- (2) The authority is to be treated as consistent with the protection of wildlife if, in granting it, the Director-General is satisfied that its overall effect would be consistent with the protection of—
 - (a) populations of wildlife; and
 - (b) individual wildlife.
- (3) In determining whether the overall effect of the authority would be consistent with the protection of populations of wildlife, the Director-General must have regard to—
 - (a) any potential adverse effects of the lawful activity on—
 - (i) populations of wildlife that the Director-General is satisfied may be affected by the lawful activity; and
 - (ii) the viability of the species to which that wildlife belongs; and

25

30

(b)	the extent to which the authority (including any conditions that the Director-General proposes to impose on the authority) addresses those potential adverse effects; and	
(c)	any other matter that the Director-General considers is relevant.	
(4)	The Director-General may be satisfied that the overall effect of the authority would be consistent with the protection of individual wildlife only if satisfied that the holder of the authority will take reasonable steps (including by complying with any relevant conditions imposed on the authority) to avoid, minimise, and mitigate any adverse effects of the lawful activity on individual wildlife.	5
(5)	In granting the authority, the Director-General is not required to be satisfied—	10
(a)	that the lawful activity is itself consistent with the protection of wildlife; or	
(b)	that each individual act of killing, viewed in isolation, would be consistent with the protection of wildlife.	
53C	Conditions that may be imposed on authority under section 53 to kill wildlife incidentally	15
(1)	The Director-General may impose, on an authority referred to in section 53A , any conditions providing for measures that the Director-General is satisfied are needed—	
(a)	to address potential adverse effects of the lawful activity on populations of wildlife or the viability of the species to which that wildlife belongs (including, for example, measures to offset adverse effects caused by killing individual wildlife belonging to that species); or	20
(b)	to avoid, minimise, or mitigate any adverse effects of the lawful activity on individual wildlife.	25
(2)	This section does not limit the application of section 53(5) or (5A) to the authority.	

Part 2

Amendments about transitional, savings, and related provisions

5	New section 2AA inserted (Transitional, savings, and related provisions)	30
	After section 2A, insert:	
2AA	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.	

6 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Schedule
New Schedule 1AA inserted

s 6

Schedule 1AA
Transitional, savings, and related provisions

5

s 2AA

Part 1
Provisions relating to Wildlife (Authorisations) Amendment Act
2025

- 1 Validation of certain authorities** 10
- (1) This clause applies to any authority to kill wildlife that was granted or purportedly granted under section 53 before the commencement of new **sections 53A and 53B(5)** (whether or not it is in force immediately before that commencement).
- (2) An authority to which this clause applies is validated to the extent that the authority would have been valid had new **sections 53A and 53B(5)** been in force when the authority was granted or purportedly granted. 15
- (3) In this clause, a reference to a **new** provision is a reference to the provision as inserted by the Wildlife (Authorisations) Amendment Act **2025**.
- 2 Lawfulness of certain section 53 authorities when section 71 applicable** 20
- (1) This clause applies to an authority that was granted or purportedly granted under section 53 before 5 March 2025 (whether or not it is in force immediately before the commencement of this clause).
- (2) An authority to which this clause applies is not unlawful merely because the person to whom the authority was granted, or purportedly granted, required consent under section 71 (rather than an authority under section 53) to carry out an activity authorised or purportedly authorised under section 53. 25
- (3) A person is not to be treated as having committed an offence against section 63, 63A, or 65(1)(f) or (j) merely because the person has done anything without consent under section 71, so long as when the thing was done it was authorised or purportedly authorised by an authority to which this clause applies. 30
- (4) In this clause, **doing anything** includes causing anything to be done.
- 3 Savings relating to commenced proceedings**
- Clauses 1 and 2** do not affect any proceedings commenced or in progress before 28 March 2025, or any rights of appeal. 35

- 4 Effect of clauses 1 and 2 relating to High Court judgment**
- (1) **Clauses 1 and 2** do not—
- (a) apply to the authority—
 - (i) that the Director-General granted or purportedly granted to the New Zealand Transport Agency under section 53 on 22 December 2021; and 5
 - (ii) that was the subject of *Environmental Law Initiative v The Director-General of the Department of Conservation and others* [2025] NZHC 391; or
 - (b) affect any party’s rights of appeal in respect of that judgment. 10
- (2) However, **clauses 1 and 2** are to be treated as applying to that authority for the purposes of any proceedings for an offence against section 53(7), 63, 63A, or 65(1)(f) or (j) that are commenced on or after 28 March 2025.