

[In Confidence]

Office of the Minister of Conservation

Cabinet Environment, Energy, and Climate Committee

Enabling commercial upland game preserves to continue operating, and providing for three additional preserves

Proposal

- 1 This paper seeks Cabinet's agreement to an Order in Council to allow existing commercial upland game preserves to continue operating, and provide for three additional preserves.

Relation to government priorities

- 2 This is a routine operational adjustment that requires Cabinet approval.

Executive Summary

- 3 An upland game preserve is an area of privately-owned land where captive-bred game birds (mainly pheasants) are released and then hunted recreationally. Upland game preserves have been operating for 20 years, provide valued recreational hunting opportunities, contribute \$6.7 million annually to the economy, and provide 40 full-time jobs. However, if no regulatory action is taken, all commercial game preserves will be required to cease operating after 6 May 2022 when the Wildlife Order 2019 expires.
- 4 Commercial game preserves were being required to close because of concerns they were inconsistent with the requirements of section 23(2) of the Wildlife Act 1953, which prohibits the sale of hunting rights. Cabinet accordingly agreed to the making of the Wildlife Order 2019, creating a temporary regime to allow commercial game preserves to wind down their operations over three years and then close [ENV-19-MIN-0021 refers]. Non-commercial preserves could continue operating.
- 5 Through recent historical research, officials have established that commercial game preserves are consistent with the original policy intent of the Wildlife Act because they create their own hunting resource and are not utilising a resource created at the expense of others. Commercial game preserves provide significant economic, employment, and recreational benefits in rural areas. I therefore propose that the current temporary regime be made permanent. This proposal is supported by the New Zealand Fish and Game Council and commercial game preserve operators.
- 6 To implement this regime, I seek Cabinet's agreement to a new Order in Council under section 8 of the Wildlife Act to allow the 16 existing commercial game preserves to continue operating. At the same time, provision can be made for three additional commercial game preserves. I would then need to publish a

notice under section 6 of the Act to specify the conditions for hunting on commercial game preserves.

Background

Game bird management

- 7 Recreational game bird hunting is managed by Fish and Game Councils established under section 26P of the Conservation Act 1987. The 12 regional Fish and Game Councils must manage, maintain, and enhance the game bird resource in the recreational interests of hunters (section 26Q(1) of Conservation Act). Regional Fish and Game councillors are elected by holders of whole season sports fishing and game bird hunting licences.
- 8 A national coordinating body, the New Zealand Fish and Game Council (NZ Council), established under section 26B of the Conservation Act, is made up of one representative from each of the 12 regional Fish and Game Councils. The 12 regional Councils and the NZ Council refer to themselves collectively as "Fish & Game."
- 9 A function of the NZ Council is to advise the Minister of Conservation on issues relating to sports fishing and game bird hunting (section 26C(1)(b) of Conservation Act), including recommending Open Season for Game notices for the Minister's approval (sections 15 and 16 of Wildlife Act). The Minister may approve a draft notice or require it to be amended in such manner as the Minister may specify.

Upland game preserves

- 10 An upland game preserve is an area of privately-owned land where captive-bred game birds (mainly pheasants, but some red-legged partridge) are released and then hunted recreationally. Some game preserves are operated commercially; others are operated non-commercially by private syndicates or family trusts. The land on which game preserves operate is normally used also for other farming activities, including livestock and crops. The cost of a day's hunting and associated activities on a commercial upland game preserve can be more than one thousand dollars per person per day.
- 11 The first upland game preserves began operating in 2001. They were established under annual Open Season for Game notices which define certain areas as 'Upland Game Properties with Special Conditions' and allow unlimited hunting of the specified game species within those areas.
- 12 There are currently 22 upland game preserves (16 commercial, 6 non-commercial), of which 18 operated over the 2021 season. The preserves contribute approximately \$6.7 million annually to the New Zealand economy and employ the equivalent of about 40 people full-time (FTEs). Most of the benefits are provided by the commercial preserves.
- 13 The national association of game preserve operators, the New Zealand Game and Conservation Alliance (NZGCA), believes the industry has largely reached maturity and considers that no more than a further five medium to large preserves

are likely to open over the next few years. There may be a number of small preserves that may wish to open but these will tend to be family and friends on farms and non-commercial in nature.

Legality problem and response

- 14 Section 23(2) of the Wildlife Act 1953 prohibits the sale of hunting rights for game species. From 2001 until 2018, upland game preserves operated in the understanding that they avoided breaching this prohibition by charging for guiding and the many other (generally costly) services provided to clients on commercial game preserves, while providing free hunting rights.
- 15 However, in 2018 it was realised that because many of the services provided on a game preserve are non-discretionary, the prohibition on the sale of hunting rights in section 23(2) of the Act still applies to commercial game preserves despite the exemption for guiding services provided in section 23(4)(a).
- 16 The NZ Council decided in 2018 that it could not, in future, recommend an Open Season for Game notice to the Minister for approval if the notice included provisions that would essentially authorize non-compliance with section 23(2). The NZ Council consulted the regional Fish and Game Councils and decided that all commercial game preserves should close within three years, by the end of the 2021-2022 game season (*i.e.*, by the close of 6 May 2022). This was intended to allow commercial game preserves time to wind down their operations in an orderly manner.
- 17 This policy was recommended by the NZ Council, and adopted by Cabinet in 2019 [ENV-19-MIN-0021 refers]. To implement the policy, an Order in Council was made to remove pheasants and red-legged partridge from Schedule 1 of the Wildlife Act and place them temporarily on Schedule 3, when on commercial game preserves. For areas outside commercial game preserves, the two species remain on Schedule 1 of the Act. The sale of hunting rights for Schedule 3 species is not prohibited by section 23(2) of the Act, and species listed on Schedule 3 may be hunted if the Minister of Conservation authorises hunting via a published notice.
- 18 The Wildlife Order 2019 (LI 2019/154) and associated Wildlife (Pheasant and Red-legged Partridge) Notice 2019 (2019-go3221), which implemented this policy, were designed as an interim measure to allow commercial game preserves to operate from the beginning of the 2019-2020 game bird hunting season to the end of the 2021-2022 season. The Order and the Notice both expire at the close of 6 May 2022.
- 19 If no regulatory action is taken, all commercial game preserves will be required to cease operating, resulting in a loss of business activity, employment, and a loss of tens of thousands of hours of recreational enjoyment annually for participants in recreational hunting on commercial preserves.

Proposal for preserves to continue

New information and changed NZ Council recommendation

- 20 Through recent historical research, Department of Conservation (DOC) officials have established that the policy intent of section 23(2) of the Wildlife Act was to prevent private landowners from deriving a financial benefit from a resource provided at the expense of others. Since game preserve operators create their hunting resource at their own expense, charging for hunting on preserves is not contrary to the policy intent of section 23(2), despite being contrary to that section as worded. Further details of this are provided in Appendix 1 of this paper.
- 21 Upon being advised by DOC that the operation of commercial game preserves was not contrary to the policy intent of the Wildlife Act, and that preserves could be provided for under existing legislation, the NZ Council changed its view regarding the closure of preserves and in July 2021 recommended that commercial game preserves be allowed to continue operating. The commercial game preserve operators support this recommendation as they and their clients want their activities to be able to continue.
- 22 I therefore propose that the current temporary regime be made permanent by making an Order in Council under section 8 of the Wildlife Act to allow the existing commercial game preserves to continue operating. I also propose, at the same time, to have three new commercial game preserves added to the list of preserves described on Schedule 3.
- 23 The proposed permanent regime for game preserves is for pheasants and red-legged partridge to continue to be listed on Schedule 1 of the Act (as game birds) in areas outside commercial game preserves, and continue to be listed on Schedule 3 (as non-game birds) within commercial game preserves. The birds would be game species in areas where the hunting resource is managed and provided by Fish and Game Councils, and non-game species in areas where the hunting resource is created by a commercial game preserve's private owner. This is consistent with the policy intent of section 23(2) the Wildlife Act.
- 24 Pheasants and red-legged partridge would continue to be listed on Schedule 3 when in the Chatham Islands.
- 25 I would then publish a notice under section 6(1) of the Wildlife Act to specify the conditions for hunting and possessing pheasants and red-legged partridge when on commercial game preserves.
- 26 I would continue to approve the conditions for hunting pheasants and red-legged partridge in other parts of the country (all areas outside commercial preserves) through annual Open Season for Game notices, under sections 15(3) and 16(1) of the Act.
- 27 This option would avoid the prohibition set out in section 23(2) in regard to pheasant hunting on commercial game preserves, but would not conflict with the policy intent behind section 23(2). This is because the hunting resources on game preserves are provided by the preserve operators and not at the effort and expense of the Fish and Game Councils.

- 28 Game bird licence holders would continue to enjoy existing pheasant and red-legged partridge hunting opportunities over most of the country, with their hunting resource improved by leakage of birds from preserves. Commercial game preserve operators and their clients would be able to enjoy the additional resources within commercial game preserves created at their own expense.
- 29 The proposed Order in Council would therefore make the current temporary regime permanent and enable the continuation of a valuable recreational activity that has been undertaken since 2001, and maintain the business activity and employment provided by commercial game preserves. A new Order in Council would need to take effect as soon as possible after 6 May 2022, the day the Wildlife Order 2019 expires.

Agreement to new proposal

- 30 On 20 July 2021 the NZ Council resolved to support the continuation of commercial game preserves. The NZ Council considers that commercial game preserves provide increased hunting opportunities for game bird licence holders, both through participation at the preserves and from the leakage of birds beyond preserve boundaries. Once birds leave a preserve, they may be hunted at no cost by any holder of a game bird hunting licence. The NZGCA also supports this proposal. I recommend that Cabinet adopt this recommendation of the NZ Council.
- 31 The Auckland/Waikato Fish and Game Council subsequently wrote to me expressing its opposition to the establishment of commercial game preserves in its region (there are currently five non-commercial preserves in its region), or in any region without the agreement of the relevant Fish and Game Council. The NZ Council then also expressed support for this request. There are currently no commercial game preserves in the Auckland/Waikato Fish and Game Region, and none would be created in that region through the proposed Order. The 16 commercial game preserves currently listed on Schedule 3, and the three proposed new ones in the Hawke's Bay and Nelson/Marlborough Fish and Game regions, are all supported by the Fish and Game Councils of the regions concerned.
- 32 To implement the proposal to allow commercial preserves to continue, I seek Cabinet's agreement to the making of an Order in Council under section 8 of the Wildlife Act to allow the existing commercial game preserves to continue operating and to add three additional commercial game preserve areas to the list of preserves in Part 2 of Schedule 3 of the Act. The three new preserve areas are described in Appendix 2 of this paper.

Implementation

- 33 Once the Order in Council is made, I will need to publish a notice under section 6(1) of the Wildlife Act to prescribe the conditions for hunting on commercial game preserves. I will continue to provide for hunting of pheasants and red-legged partridge outside commercial game preserves through my approval of Open Season for Game notices under sections 15(3) and 16(1) of the Act.

- 34 No other actions would be required by the Government. This proposal would merely enable the continuation of an activity that has been ongoing for two decades.

Financial Implications

- 35 The matters considered in this paper have no significant financial implications for DOC or for Fish and Game Councils.
- 36 If commercial game preserves are not enabled to continue operating after 6 May 2022 (*i.e.*, if no regulatory action is taken) there will be financial implications for preserve businesses which will have to close, for bird breeding companies and other suppliers which will have reduced business, and for employees of preserves and breeding companies from loss of employment.
- 37 Any decision not to enable commercial upland game preserves to continue would have significant financial implications for preserve operators who ordered birds from bird breeding companies in September 2021 for the 2022 hunting season once the NZ Council recommended to the Minister of Conservation that commercial preserves be allowed to continue. If preserves are not enabled to continue, preserve operators would lose the value of these latest investments.
- 38 Taking regulatory action to enable commercial preserves to continue would maintain existing businesses and employment – estimated at \$6.7 million annually to the economy and the equivalent of approximately 40 full-time jobs.

Legislative Implications

- 39 If no regulatory action is taken, all commercial game preserves will become unlawful after 6 May 2022 when the Wildlife Order 2019 (LI 2019/154) expires.
- 40 To implement the proposals in this paper, an Order in Council under section 8 of the Wildlife Act will be required to retain existing preserves on, and to add three additional preserve areas (described in Appendix 2 of this paper) to, Part 2 of Schedule 3 of the Act. The Order needs to take effect as soon as possible after 6 May 2022.
- 41 Once the Order has been made, I will need to approve a notice under section 6 of the Wildlife Act to authorise hunting within the commercial game preserves listed on Schedule 3. I will continue to authorise hunting of pheasant and red-legged partridge outside Schedule 3 preserves through my approval of annual Open Season for Game notices made under sections 15 and 16 of the Wildlife Act.

Impact Analysis

- 42 A regulatory impact statement (RIS) is required and is attached. DOC's Regulatory Impact Assessment Panel has reviewed the RIS and associated supporting material, and considers that the RIS partially meets the Quality Assurance criteria.

- 43 The criteria of consultation have not been met fully. The Panel supports that the consultation undertaken is appropriate because the proposed changes do not amount to a full review of game preserves. The RIS sets out why the targeted consultation is proportional to the proposed minor and technical changes. The RIS also clearly sets out the limitations of a targeted consultation and that the views of stakeholders are well known.

Human Rights

- 44 There are no human rights implications arising from this paper.

Consultation

- 45 Commercial game preserves have been operating for 20 years, and the continued operation of such preserves has been discussed at length by the NZ Council, and among the 12 Fish and Game Councils and all affected parties (including the NZGCA), since early 2018. The full range of views among affected parties is therefore well known.
- 46 There is an issue of timing given that the current arrangements expire on 6 May 2022. DOC has been advised that birds have already been ordered from breeders for next year's hunting and employment for the people working on preserves has been continued (rather than ended).
- 47 On 20 July 2021 the NZ Council resolved to recommend that commercial game preserves be allowed to continue operating, and the NZGCA also supports this proposal. I do not consider that additional consultation is necessary for this long running activity.
- 48 Specific consultation with tangata whenua involved with existing commercial game preserves (consisting of only 16 farm areas in different parts of the country) was considered unnecessary. DOC is not aware of any other interests held by tangata whenua in the activity of shooting on commercial game preserves, beyond personal recreational participation in the activity or through employment. No concerns relevant to commercial game preserves have been raised by tangata whenua consulted by DOC on recent applications to release pheasants to the wild. DOC's Treaty Negotiations Team advises there are no Treaty settlement implications in relation to such preserves, nor in respect of the introduced species (pheasants and red-legged partridge) bred and released for hunting on preserves.
- 49 The following government agencies were consulted in the preparation of this paper: Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Department of Internal Affairs, Te Arawhiti, The Treasury, and Parliamentary Counsel Office. The Department of Prime Minister and Cabinet has been informed.

Communications

- 50 Once a decision has been made, DOC will advise the New Zealand Fish and Game Council and the New Zealand Game and Conservation Alliance, who will advise game licence holders and their members accordingly.

Proactive Release

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

Recommendations

The Minister of Conservation recommends that the Committee:

- 1 **note** that commercial upland game preserves have been operating for up to 20 years but will be required to cease operating after 6 May 2022 if no regulatory action is taken;
- 2 **note** that there will be adverse financial and employment impacts on commercial upland game preserve operators, their employees, and their suppliers if they are required to close;
- 3 **note** that the New Zealand Fish and Game Council supports the continuation of commercial game preserves as they provide increased hunting opportunities both within such preserves and beyond preserve boundaries;
- 4 **agree** that an Order in Council under section 8 of the Wildlife Act be made to enable the existing commercial game preserves to continue operating, and to add three new areas (described in Appendix 2 of this paper) to the list of game preserves listed in Schedule 3 of the Act;
- 5 **invite** the Minister of Conservation to issue drafting instructions to the Parliamentary Counsel Office for an Order in Council to give effect to the intention in paragraph 4 above, the new Order taking effect as soon as possible after 6 May 2022.

Authorised for lodgement

Hon Kiritapu Allan
Minister of Conservation

Appendix 1 – Policy intent of section 23(2) of Wildlife Act 1953

1 Section 23(2) of the Wildlife Act 1953 reads as follows:

(2) No person shall sell or let for fee or reward any right to hunt or kill game on any land or on any water on or adjoining any land.

2 This subsection was not contained in the original Wildlife Bill but was inserted by the Statutes Revision Committee (select committee) considering the Bill just before the Committee reported back to the House. The policy objective of section 23(2) is recorded in Hansard.

3 When presenting the report of the Committee on the Wildlife Bill to parliament and recommending that the Bill be allowed to proceed as amended, Mr Cyril Harker, MP for Hawke's Bay, stated ((19 August 1953) 299 NZPD p549):

"The amendments have been made as the result of representations by the various acclimatisation societies¹ throughout New Zealand... [some members of which]...met the departmental officers yesterday and the Committee this morning... There are two principal amendments to which I would refer briefly. The first is an addition made at the suggestions of the various representatives present², prohibiting the sale of game. This goes further than was proposed in the Bill before the Committee. **It not only prohibits the sale of game after it has been captured or shot, but also prohibits the sale of the rights by private owners to other people to shoot the game on the owner's property.**" [Emphasis added]

4 The corresponding explanatory note in the Wildlife Bill as reported back (Wildlife Bill 1953 (17-2) (Explanatory Note)) read:

Clause 23: ...Subclauses (2) and (3) make it illegal for game shooting rights to be sold.

5 The policy objective for this prohibition on the sale of shooting rights set out in section 23(2) was explained by the Hon William Bodkin, Minister of Internal Affairs, when moving that the Wildlife Bill be considered in Committee of the Whole House on 8 October 1953. He said (300 NZPD p1698):

"The Statutes Revision Committee has written a new provision into clause 23, making it unlawful for any landowner to sell or lease shooting rights. **It was considered wrong that a man who owned an area of swamp land should be allowed to commercialize it by selling shooting rights, because it was the acclimatization society which had gone to the considerable expense of stocking the area.** That is a very wise provision." [Emphasis added]

¹ Acclimatisation societies were the forerunners of Fish and Game Councils.

² That is, the acclimatisation society representatives present at the meeting with the Statutes Revision Committee on the morning of 19 August 1953, the same day that the Bill was later reported back to the House.

- 6 In other words, it was considered not appropriate for a landowner to make a financial gain from a resource that was provided by (non-commercial) acclimatisation societies, with management funded through game licence fees and the efforts of licence-holding volunteers. This principle is very sound and would be recommended by officials today.
- 7 In the case of game preserves, the hunting resource is created at the expense of the landowner (who pays for the breeding and release of the birds to be hunted) and not at the expense of Fish and Game Councils. Thus, charging for the right to hunt on a game preserve is not contrary to the policy intent of the Wildlife Act.
- 8 Section 23 of the Wildlife Act has been amended since its enactment by inserting two additional subsections – subsection (2A) relating to penalties, and subsection (4) relating to game hunting guides. Subsection (4) was inserted by section 7 of the Wildlife Amendment Act 1996 and reads:
 - (4) Nothing in this section—
 - (a) Prohibits the provision of game hunting guide services by a game hunting guide in accordance with this Act or the charging of fees in respect of such services; or
 - (b) Prevents the Minister granting to a game hunting guide any concession.
- 9 The establishment of the first commercial game preserves in 2001, and their subsequent operation until 2019, depended on section 23(4)(a) through the charging of guiding services. The services provided to clients on commercial preserves are substantial and it was believed that charging for these services was consistent with the Wildlife Act.
- 10 The Act, on its face, does not specifically provide for or specifically prohibit game preserves and it is likely that game preserves (commercial and non-commercial) were not envisaged at the time the Wildlife Act was passed.
- 11 However, because many of the services provided on a game preserve are non-discretionary, the prohibition on the sale of hunting rights in section 23(2) of the Act still applies to commercial game preserves despite the exemption in section 23(4)(a). While the sale of the right to hunt game birds on a game preserve is consistent with the policy intent of section 23(2), it is contrary to that section as worded.
- 12 When this was realised, Cabinet agreed to the making of the Wildlife Order 2019 – a temporary arrangement to allow commercial game preserves to operate lawfully by removing the game bird status of pheasants and red-legged partridge when on specified preserves [ENV-19-MIN-0021]. Section 23(2) does not apply to species that are not game.
- 13 The temporary regime was designed to provide for commercial operators to wind down their operations in an orderly manner. The Order expires at the close of 6 May 2022, after which time all commercial preserves will be required to cease operating if no regulatory action is taken.

Appendix 2 – Three new preserve areas proposed for addition to Part 2 of Schedule 3 of Wildlife Act 1953

- 1 The two areas proposed for addition to Part 2 of Schedule 3 of the Wildlife Act 1953, under the subheading *Hawke's Bay Fish and Game Region*, are as follows:
 - (ha) Poronui (Taharua Valley): 6449 ha, more or less, being the area covered by Certificates of Title SA33D/399, SA51D/718, SA61A/148, and SA72C/660:
 - (hb) Olig and Whanakino (Maraekakaho): 1623 ha, more or less, being Lot 2 DP 535991, Lot 3 DP 22254, Lot 5 DP 321684, Lot 1 DP 26344, Lots 3 and 4 DP 8713, and Sections 3 and 5 SO Plan 10203:
- 2 The area proposed for addition to Part 2 of Schedule 3 of the Wildlife Act 1953, under a new subheading *Nelson/Marlborough Fish and Game Region* (above the existing subheading *West Coast Fish and Game Region*), is as follows:
 - (ka) Ugbrooke (Lower Dashwood): 75 ha, more or less, being Lots 1 and 2 DP 520801 and Lot 3 DP 446989:

Released by the Minister of Conservation