Regulatory Impact Statement: Competitive allocation of conservation concessions

Decision sought	Analysis produced to inform final Cabinet decisions
Agency responsible	Department of Conservation
Proposing Ministers	Hon Tama Potaka, Minister of Conservation
Date finalised	17 June 2025

The Minister of Conservation wants to make it easier to competitively allocate concession opportunities on public conservation land and clarify what is required to give effect to the principles of the Treaty of Waitangi in these decisions. This also involves defining the circumstances in which major commercial opportunities on public conservation land may (or may not) be contestable.

Summary: Problem definition and options

What is the policy problem?

Competitive allocation of concessions can be an effective mechanism to leverage competitive tension in the market to drive better outcomes for conservation on public conservation land (PCL). However, there is ambiguity about when and how competitive allocation can be used. Concessions can technically be competitively allocated, but the law constrains when or how this can happen.

There is also ambiguity about the role of competitive allocation in giving effect to Treaty principles. Section 4 of the Conservation Act 1987 requires the Act (including concessions processes and decisions) to be interpreted and administered to give effect to Treaty principles, and this obligation is a strong directive.

Treaty partners and concessionaires have markedly different views on what section 4 requires from decision makers. Treaty partners have expressed that section 4 requires the Department of Conservation (DOC) to facilitate their participation in contestable processes for major concession opportunities.

Concessionaires argue that there is a substantially narrower range of circumstances where section 4 would require such an outcome, if at all, and that contestable allocation of concessions with substantial private investment raises concerns about expropriation of private property.

What is the policy objective?

The objective is to ensure the framework for competitive allocation provides for high performing activities on PCL including when significant private investment is needed. This involves making it easier to competitively allocate concession opportunities on PCL where it

makes sense, and clarifying what is required to give effect to Treaty principles in these decisions.

What policy options have been considered, including any alternatives to regulation?

- **Option 1:** Status quo.
- **Option 2:** Make it easier to initiate competitive allocation.
- **Option 2A:** Clarify that competitive allocation is not triggered on Treaty principles grounds.

The Minister of Conservation's preferred option is a combination of options 2 and 2A.

What consultation has been undertaken?

Consultation on changes to competitive allocation took place from November 2024 to February 2025 as part of consultation on a wider suite of changes to modernise conservation land management. More than 5,500 submissions were received, but the majority of submitters used a template that was general and did not engage directly with the proposals.

Of those who provided feedback relating to competitive allocation, there was general support for greater enablement of competitive allocation, with clear criteria. However, submitters expressed more opposition than support for proposed criteria for when and how competitive allocation should be used.

There were divergent views on whether criteria for allocation should grant preference to Treaty partners or incumbent operators.

Treaty partners said competitive allocation is not appropriate in places of high cultural value, and that Treaty partners should be given preference and involved in the co-design of any competitive allocation models.

Concessionaires thought incumbent operators should not need to compete to retain opportunities they have previously held a concession for. Many thought it was unfair for those who have invested heavily in infrastructure to have what was previously their concession competitively allocated. Concessionaires, particularly those with significant infrastructure on PCL, also said that situations where they may be forced to sell assets or businesses following a competitive process is undesirable.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

There may be costs to applicants from preparing applications for competitive allocation processes. In particular, the first applicant may need to prepare a new application if a competitive process is initiated after declining their application. This can be minimised by running competitive processes proactively. There will be costs to Treaty partners from consultation in competitive allocation processes. There will be implementation costs to DOC.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Putting major opportunities to market maximises value-for-money and provides fair opportunities for private companies to do business with government. Likewise, some form of periodic auctioning of limited rights is also common (e.g. radio spectrum). Where the conservation system can practically derive benefit from contestable processes is to ration limited supply (i.e. where there is a total volume of allowable activity to be divided among multiple operators). In these cases, contestability can drive better environmental outcomes. Contestable processes can help identify operators able to provide services or amenities with the lowest net environmental effects. Tendering and auctions are also effective in determining the market rate.

The key benefits are to applicants for concession opportunities in competitive allocation processes. There are also benefits to the public and the economy from addressing any chilling effect on investment. Applicants will have more clarity and certainty in terms of explicit statutory timeframes, processes and criteria for competitive allocation. Increased certainty about when and how contestable processes will be run provides certainty for operators. Applicants may have better access to significant opportunities on PCL, which may in turn result in a range of benefits. Treaty partners will benefit from clear recognition of Treaty rights and interests in decision-making.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

The combination of options 2 and 2A has the potential to deliver the highest net benefits, and benefits are likely to outweigh the costs.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

DOC will be responsible for implementing and enforcing new arrangements. Implementation is expected to be able to be funded from existing baselines. The Minister of Conservation will make decisions during drafting on the commencement period for these changes.

Limitations and constraints on analysis

Timeframe limitations

The Minister of Conservation intends for Parliament to enact legislation in the current term. This has limited the time and resources available for analysis following public consultation. Due to the tight timeframes for policy analysis, some options in this RIS were developed after the public consultation process and there has been no opportunity to engage on them.

Data and information limitations

Known data issues relating to concessions mean it is hard to quantify impacts. Beyond regulatory impact, there are also limits to what is knowable in terms of the broader regulatory environment. For example, DOC does not know the scale of latent economic development/tourism opportunities that are potentially hindered by current regulatory settings and for which there is demand and supply in the market.

Assumption that objectives sought can be achieved within current scope of work

The Government is not considering changes to the purpose of the conservation system, and the primacy of achieving conservation outcomes compared to enabling other outcomes through conservation rules and processes (e.g. economic outcomes).

Other fundamental aspects of the conservation system that are not changing are the purposes for which PCL is held, and the requirement that any use of, or activities on, PCL must be consistent with those purposes. The proposals also do not involve any changes to how the effects of a proposed activity on, or use of, PCL are assessed.

The proposals do not directly amend section 4 of the Conservation Act but are intended to support effective implementation of section 4 by clarifying its application to concessions processes through the addition of specific provisions/measures. The preferred option requires a narrower application of section 4 than present. Drafting will make it clear that complying with these specific measures will be sufficient to comply with section 4 (in relation to the relevant processes).

A key assumption in preparing this RIS is that the nature and extent of change sought can be achieved within the scope described above.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

s9(2)(a)

Eoin Moynihan
Policy Manager – Regulatory Systems Policy
17/06/25

Quality assurance statement

Reviewing agency: Department of Conservation, Ministry for Primary Industries, Ministry of Business, Innovation and Employment	**QA rating:** Partially meets

Panel comment:
The Regulatory Impact Assessment Panel of officials from multiple agencies has reviewed the Regulatory Impact Statement (RIS). The Panel considers that the RIS partially meets the Quality Assurance criteria. The requirements were not fully met because of the limited engagement undertaken on certain options and some missing clarity on full range of options.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

An overview of concessions

1. Activities on public conservation land (PCL) require authorisation in the form of a concession from the Minister of Conservation, with some exceptions.[1] This means a wide range of activities are regulated through concessions, such as grazing, tourism businesses, visitor accommodation, energy infrastructure, filming and research activities.

2. The concessions system is intended to enable tourism and other commercial activities on PCL where they can be operated in ways which do not conflict with its protection. It helps the Department of Conservation (DOC) ensure activities on and uses of PCL are compatible with the overriding purpose of conservation.[2] It also helps ensure services and facilities provided for visitors are appropriate and of a suitable standard, and that activities do not conflict with visitor enjoyment and recreation.

3. The concessions system has four key regulatory objectives:

    a. Delivering effective land management: the concessions system is responsible for ensuring any activities maintain the values of PCL. It enables DOC to control which activities can occur, assess any adverse effects, and apply any conditions necessary for activities to take place and manage long term liabilities/risks for the landowner, i.e. the Crown.

    b. Providing well-governed access opportunities: appropriate private use and development of PCL needs an enabling mechanism. A clearly regulated environment gives legitimacy to that use, provides a reasonable level of certainty and clarifies responsibilities.

    c. Securing public benefit from private use and development: a royalty is paid when the use of PCL results in commercial gain. DOC generally refers to these royalties as activity fees. Securing a fair return to the Crown for the use of a public asset is the basis for charging activity fees.

    d. Clarifying public and private entitlements and responsibilities: a concession agreement clarifies entitlements and responsibilities for both parties in situations where both DOC and the concessionaire have interests and duties relating to the activity.

---

1 These exceptions are recreational activities without any specific gain/reward; activities carried out by the Minister of Conservation or DOC in exercising functions, duties or powers under any law; activities authorised by conservation legislation; and activities to save or protect life or health, to prevent serious damage to property, or to avoid actual or likely adverse effect on the environment.

2 The Conservation Act 1987 defines 'conservation' as preserving and protecting natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

Statutory framework for concessions

4. Part 3B (sections 170 – 17ZJ) of the Conservation Act sets out the statutory framework for concessions, including:

    a. the Minister of Conservation's decision-making, condition-setting and fee-collection powers;

    b. the process for considering an application;

    c. the factors that must be considered in determining if a concession can be granted; and

    d. the Minister's responsibilities to monitor and enforce concession agreements.

5. Section 4 of the Conservation Act applies to all of DOC's work under conservation legislation including administering of concessions. Section 4 requires the Act to "be interpreted and administered as to give effect to the principles of the Treaty of Waitangi." This is one of the strongest Treaty clauses in legislation. Section 4 requires anyone working under the Conservation Act (or any of the associated Acts listed in schedule 1 of the Conservation Act) to give effect to the principles of the Treaty of Waitangi when interpreting or administering anything under those Acts. However, there is no further specificity in the Act about how the principles are to be given effect to.

6. All Treaty principles apply, but the principles of partnership, informed decision making, and active protection are most frequently relevant to concessions management.

7. A concession may be in the form of a permit, easement, licence or lease:

Type	*Purpose*	*Examples*	*Term*
Permit	Gives the right to undertake an activity that does not require an interest in the land	Guiding, filming, aircraft landings, research	Up to ten years
Easement	Grants access rights across land e.g. for business, private property access or public work purposes	Ability to access utilities through PCL	Up to 30 years (or 60 years in exceptional circumstances)
Licence	Gives the right to undertake an activity on the land and a non-exclusive interest in land	Grazing, beekeeping, telecommunications infrastructure	
Lease	Gives an interest in land, giving exclusive possession for a particular activity to be carried out on the land	Accommodation facilities, boat sheds, storage facilities	

8. When deciding whether a concession can be granted, DOC:

    a. assesses if the activity is consistent with the purpose for which land is held, the Conservation Act and other statutory tests (e.g. for some concessions, can it take place off PCL), relevant statutory planning documents, DOC's own land management goals for the area;

b. assesses if the effects of the activity can be understood, and if there are any methods to avoid, remedy or mitigate these effects (referred to as an 'effects assessment'); and

c. assesses it against Treaty rights and interests and sometimes consults with iwi, hapū and whānau at place.

9. While concessions are granted in the name of the Minister of Conservation, applications are administered by DOC acting under delegation. A concession gives a concessionaire:

a. a legal right to carry out their activity on PCL alongside obligations that go with it;

b. a formal relationship with DOC, so both parties are aware of their obligations; and

c. security of tenure for the term of the concession, provided the conditions of the concession are complied with.

The Minister of Conservation can tender the right to make a concession application

10. Section 17ZG(2)(a) of the Conservation Act allows the Minister (or their delegate) to tender the right to make a concession application, invite applications or carry out other actions that may encourage specific applications (e.g. an expression of interest process). This mechanism is often used for concession opportunities where there are limits on the opportunity (e.g. limited capacity without significant environmental effects) or where multiple parties have expressed an interest in the opportunity.

11. In some cases, DOC may tender the right to apply for an already defined opportunity (including any environmental conditions that will be attached to the concession). The purpose of the competitive process in these cases is to determine the most appropriate concessionaire(s) or allocate limited supply among multiple potential operators. Tendering opportunities where a limit has been set out in a management plan is an example of this.[3]

12. In other cases, the opportunity may be less clearly defined, and DOC may run an expression of interest process to better understand the possible uses for an area and their effects. DOC can then consider the possible acceptable uses for the area and invite applicants to apply for a concession. This approach is especially relevant when use of the area might limit other uses or public activities.

13. Section 17R(2) of the Conservation Act requires that a person must not directly apply for a concession if a process has been initiated under section 17ZG(2)(a). Where a competitive allocation process is initiated by DOC, only applications that conform with the competitive allocation process can progress. Non-conforming applications are returned to the applicant.

3 A hierarchy of general policies and management plans set policies for concessions.

What is the policy problem or opportunity?

Contestable processes can drive better outcomes for conservation in some circumstances

14. Contestability is the government's default approach when procuring services at scale or for significant capital projects. Putting major opportunities to market maximises value-for-money and provides fair opportunities to private companies to do business with government. Likewise, some form of periodic auctioning of limited rights is also common (e.g. radio spectrum).

15. However, there are several key differences when applying contestability to the allocation of rights to do business on PCL:

    a. DOC is a land manager and must manage land for conservation purposes. The conservation system is oriented at ensuring acceptable use of PCL in terms of environmental effects (and maximising the market rate for this), rather than best use or provision of highest economic value; and

    b. the conservation system also does not proactively identify business opportunities on PCL – this tends to be a reactive process, driven by proposals from the market. This makes sense given the land manager and the Crown do not have a business development role.

16. Where the conservation system can practically derive benefit from contestable processes is to ration limited supply (i.e. where there is a total volume of allowable activity to be divided among multiple operators). In these cases, competitive allocation can drive better environmental outcomes and returns to conservation. For example, contestable processes can help identify operators able to provide services or amenities with the lowest net environmental effects. Tendering and auctions are also effective in determining the market rate.

But there is ambiguity about when and how competitive allocation can be used

17. The need for competitive allocation has grown over time as demand for limited tourism and other economic uses of PCL has increased. However, the law constrains when or how this can happen. A key issue is that the Minister cannot decline an application once it has been received to then initiate a competitive allocation process - section 17T of the Conservation Act requires that the Minister must consider the application.

18. The Minister currently has the ability to decline an application if a review of the relevant management plan is considered more appropriate. While this could be used to add or change policy on competitive allocation for that area, management planning documents are costly to make, review and update in terms of time and resources (as outlined in the companion regulatory impact statement on management planning). Processes to create or review them tend to take years rather than months.

19. The ambiguity surrounding DOC's ability to return an application if a competitive allocation process has not already been initiated means that concessions are generally allocated on a 'first-come, first-served' basis. This limits DOC's ability to drive better environmental outcomes and returns to conservation from some concessions, or to consider what might be the best visitor opportunity and/or operator at place. It also creates legal risks.

20. In some instances, DOC has used operational workarounds to ensure a competitive allocation process can be initiated before individual applications are submitted. These workarounds include aligning term expiry dates so a competitive process can be run when all relevant concessions are about to expire. This approach has allowed for some competitive allocation of opportunities where there is limited supply, and demand exceeds supply (e.g. rationing limited use opportunities like beehives, or water-based transportation around Abel Tasman National Park).

21. The Parliamentary Commissioner for the Environment (PCE)[4] and the Environmental Defence Society (EDS)[5] have noted in recent reports that allocating concessions on a first-come, first-served basis has led to challenges and fairness concerns. This is both in relation to deciding which operators should be awarded concessions for limited opportunities, and in appropriately pricing opportunities and the rents DOC should charge for them.

22. In 2022, Cabinet agreed to amend the Conservation Act to enable the Minister of Conservation to return a concession application in favour of initiating any competitive allocation process [ENV-22-MIN-0059]. This change was not enacted due to changes in Government. The current Minister of Conservation now seeks to make this change as part of current reforms to the law relating to concessions.

There is ambiguity about the role of competitive allocation in giving effect to Treaty principles

23. The Conservation Act does not prescribe any process or specific requirements for giving effect to Treaty principles in concessions management. Instead, DOC has to comply with the general obligation in section 4 of the Act, to give effect to Treaty principles. The operational approach differs based on the factual context, including the Treaty partners, the locations in question, and the nature of the activity. Some Treaty settlements also have bespoke requirements and processes outlining how DOC and the relevant iwi or hapū will manage concessions.

24. In 2018, in relation to a case about DOC's awarding of commercial concessions, the Supreme Court clarified relevant considerations to decision-making in light of section 4:[6]

    a. in applying section 4, DOC must, so far as is possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty;

    b. in some circumstances, giving effect to the Treaty principle of active protection requires decision-makers to consider extending a degree of preference to Iwi as well as looking at the potential economic benefit of doing so;

4 'Not 100% - but four steps close to sustainable tourism' (report-not-100-but-four-steps-closer-to-sustainable-tourism-pdf-24mb.pdf)

5 'Conserving Nature: Conservation Reform Issues Paper (eds.org.nz/wp-content/uploads/2021/12/Conserving-Nature-Report.pdf)

6 *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

c. Section 4 requires more than procedural steps. Substantive outcomes for Iwi may be necessary including, in some instances, requiring that concession applications by others be declined;

d. Enabling iwi or hapū to reconnect to their ancestral lands by taking up opportunities on the conservation estate (whether through concessions or otherwise) is one way the Crown can give practical effect to Treaty principles; and

e. Section 4 does not create a power of veto by an iwi or hapū over the granting of concessions in an area in which the iwi or hapū has mana whenua.

25. While this case was focused on questions of 'preference', that concept is itself very fact-specific. Consistent with earlier jurisprudence, the Supreme Court emphasised the importance of factual context in determining how section 4 influences particular decision-making powers. The central finding from the case is that:

a. section 4, and the Treaty principle of active protection, may require a degree of preference for iwi or hapū in relation to concession opportunities over lands where they have mana whenua; and

b. that their economic interests are a relevant consideration to this assessment.

26. In recent years, Treaty partners have expressed the view that section 4 requires DOC to facilitate their participation in contestable processes for many major concession opportunities. This is in particular where the activity is the primary economic opportunity at place, or where a statutory planning document directs there will only be one operator. Following the court case, in some situations, DOC has sought to provide shorter concession terms on renewal for incumbent operators in order to address section 4. This is done to allow competitive allocation to take place in the medium term.

27. The obligation to give effect to Treaty principles is a strong directive. It does not dictate any particular result but requires good faith and reasonable action by the Crown and Māori in the circumstances. However, iwi and concessionaires have markedly different views on what section 4 requires from decision makers.

28. Iwi argue that there are a broad range of circumstances whereby giving effect to section 4 requires enabling them to access economic opportunities including allocating concessions for existing and ongoing activities (i.e. renewals of leases) to them. Concessionaires argue that there is a substantially narrower range of circumstances where section 4 would require such an outcome, if at all.

29. Giving effect to Treaty principles, depending on the circumstances, could therefore mean:

a. declining an application and encouraging specific applications, including from Iwi;

b. granting an application as is (whether from iwi applicants or other applicants);

c. granting an application with special conditions to address the section 4 considerations, such as to mitigate the potential effects of an activity (e.g. reducing the term length or changing what can be done to address iwi views);

d. declining an application or shortening the term of a non-iwi incumbent applicant to run a competitive allocation process in future that iwi and potentially others can participate in; or

e. signalling 'renewal' of a concession will be contestable (open or closed tender) before it ends.

How is the status quo expected to develop?

30. Without changes, the shortcomings described above are expected to continue or worsen in the coming years. In particular:

a. DOC must continue to take a 'first in, first served' approach when concession applications are received. This limits the ability to use competitive allocation or means that duplicate processes must be run or short terms given to enable them to be run. It also potentially requires DOC to assess an application for a lease before an incumbent or existing operator applies for a 'renewal'; and

b. uncertainty about what is required to give effect to Treaty principles in relation to particular concession applications will continue to result in protracted and costly decision-making processes. There are several high-profile applications in the system that raise these issues, with a very high likelihood of litigation to resolve ambiguity through the courts.

31. Both lead to poor outcomes and inefficiency in the system for operators and DOC.

What objectives are sought in relation to the policy problem?

32. There are five broad objectives for this work. These are guided by the purpose of the concessions system outlined at paragraph 3 (i.e. to ensure that any activities undertaken on PCL support its values and provide a fair return to the public for its use):

a. **Effectiveness**: this objective relates to the purpose of the conservation system, which is supporting conservation by educating, regulating and enforcing for good outcomes, while also supporting other outcomes, such as allowing for recreation, tourism, economic opportunities or key infrastructure development;

b. **Efficiency**: this means reducing the time and cost involved in processing concessions on all parties involved. This includes concessionaires, applicants, Treaty partners, stakeholders, researchers, businesses, local government, the public and DOC;

c. **Good regulatory practice**: this includes ensuring clarity and certainty for the regulator and regulated parties. It also includes ensuring the regulator (DOC) has the necessary tools, functions, powers and levels of discretion/flexibility to satisfactorily perform its statutory duties;

d. **Upholding Treaty obligations**: this means having clarity about the legal requirements for the Minister or DOC to interpret and administer the Conservation Act in a way that gives effect to the principles of the Treaty of Waitangi. It is also about ensuring any changes or new arrangements uphold the intent of Treaty settlements, including redress commitments made by the Crown; and

e. **Implementation**: processing concessions is a significant part of DOC's day-to-day work and how regulated parties interact with the conservation system. Poor implementation of any changes could mean that the intended benefits are not able to be realised.

What consultation has been undertaken?

33. In October 2024, Cabinet agreed to consult on changes to modernise conservation land management [ECO-24-MIN-0235]. The proposals aimed to:

    a. create a more streamlined, purposeful and flexible planning system;

    b. set clear process requirements and timeframes for concessions;

    c. establish how and when concessions should be competitively allocated;

    d. establish standard terms and conditions for concessions;

    e. enable more flexible land exchange and disposal settings; and

    f. provide clarity around Treaty of Waitangi obligations in these processes, including engagement requirements and decision-making considerations.

34. Consultation on these changes took place from November 2024 to February 2025, alongside proposals on charging for access to some PCL.

35. DOC held 25 regional hui with iwi, as well as 15 stakeholder engagements and 4 public information sessions during the consultation period. DOC also engaged on the proposals with the Director-General of Conservation's commercial External Advisory Panel and the Concessionaire Reference Group.

Submissions overview

36. In total, more than 5,500 submissions were received on the proposals to modernise conservation land management.

37. Most submissions were from individuals, with a large number using Forest & Bird's template (87% of total submissions). This template did not directly engage with the proposals in the discussion document.

Type of submissions	Number of submissions	Proportion of all submissions
Forest & Bird template submission	4,837	87%
DOC website submission	451	8%
Freeform submission	277	5%
Total submissions	**5,565**	

38. 80% of submitters who used the DOC submission form were individual submitters, with the remaining 20% coming from Treaty partners, conservation groups and tourism

businesses. These submitters could choose which questions in the discussion document they responded to, and generally did not provide feedback on all proposals.

39. Roughly 49% of freeform submissions came from individual submitters, 11.5% from Treaty partners and Māori organisations, 11.5% from various recreation and commercial stakeholders, 11% from concessionaires, 9% from statutory bodies, 5.5% from environmental non-government organisations (ENGOs) and conservation groups and 3.5% from councils. About a third of the freeform submissions did not engage directly with the proposals in the discussion document. They expressed support for other submissions, support for protecting conservation values, or said that the Crown should not treat Treaty partners differently to others.

40. Approximately 1,300 people who used the Forest & Bird template submission also provided personalised comments expressing concerns about climate change, the lack of safeguards to protect nature, the sale of land, and that the discussion document was too focused on commercial interests.

Feedback from submissions

41. The discussion document proposed criteria for when and how competitive allocation could be used. Feedback was also sought on whether there were any situations in which competitive allocation should not be used, and the approach to asset valuation to smooth transitions between concessionaires (which could arise following a competitive process).

42. Of the approximately 700 submissions that were not template submissions, only around 250 engaged directly with proposals relating to competitive allocation. More submitters were neutral/unsure than the combination of those explicitly in support or opposed to the proposed changes. The number of submitters opposed to the proposals slightly outnumbered those in favour.

43. Themes from submissions included the following:

    a. Treaty partners said competitive allocation is not appropriate in places of high cultural value to mana whenua, and that Treaty partners should be involved in the co-design of any competitive allocation models. They also said it is important for people to have an opportunity to compete for a concession. Treaty partners expressed that they should have preference in competitive allocation over other applicants.

    b. Concessionaires thought competitive allocation is more suitable for activities where there are limited opportunities or supply is limited, but that incumbent operators should not need to compete to retain opportunities they have previously held a concession for. Many thought it was unfair for those who have invested heavily in infrastructure to have what was previously their concession competitively allocated, and that they should have preference in any competitive allocation. Concessionaires, particularly those with significant infrastructure on PCL, also said that situations where they may be forced to sell assets following a competitive process is undesirable.

    c. ENGOs said the criteria for when and how competitive allocation is used should focus more on conservation outcomes and returns to conservation.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

44. Options for change will be compared to the status quo using the criteria below:

Effectiveness	• Contribution to conservation outcomes, including ensuring that conservation values and the effects of the concession activity are well managed through the concession process. • Contribution to other outcomes in section 6 of the Conservation Act (allowing for recreation, tourism) as well as economic opportunities or key infrastructure development).
Efficiency	• Efficient use of conservation land in terms of environmental effects and ability to maximise market rate accordingly. • Time and cost for concessionaire to obtain concession decisions. • Time and cost to regulator (DOC) to assess, approve and regulate concessions.
Consistency with good regulatory practice	• Clarity for regulated parties about concessions. • Certainty for regulated parties about concessions. • Flexibility for the regulator in making concession decisions (including commercial decisions where required). • Consistent regulatory decision-making.
Consistency with Treaty obligations	• Certainty about performing statutory functions in a manner that gives effect to Treaty principles, consistent with section 4 of the Conservation Act 1987 (noting the interpretation of section 4 may change as a result of clarifying and codifying its application). • Consistency with Treaty settlement commitments and other obligations.
Ability to implement changes	• Feasibility. • Ease of implementation, including time and costs.

45. When it comes to effectiveness, contribution to conservation outcomes is weighted more heavily than contribution to other outcomes. This reflects the purpose of the conservation regulatory system.

46. In addition, some options may only be able to be assessed for direct impacts at this stage, rather than indirect impacts, making it hard to draw conclusions about effectiveness. For example, the Government is considering changes to the concessions framework, but the effectiveness of concessions in achieving conservation and other outcomes will ultimately also depend on what rules are set through changes to the planning system (i.e. how any new framework or processes are used).

47. Some of the criteria, and relationships between criteria, are founded in law. For example, section 4 of the Conservation Act requires DOC to interpret and administer the Conservation Act (e.g. process and decision-making on concessions) in a way that gives effect to the principles of the Treaty of Waitangi. In relation to effectiveness and

contribution to outcomes other than conservation, the Conservation Act also sets out that fostering the use of natural and historic resources for recreation and allowing for tourism is only to the extent that this is not inconsistent with conservation of those resources.

48. There are also likely to be differing views on how to achieve the objectives. Significantly, what the Treaty requires is the subject of debate. The Supreme Court stated in *Ngāi Tai ki Tāmaki* that section 4 is not to be balanced with other considerations.[7] Instead, what is required is a process under which the meeting of other statutory or non-statutory objectives is achieved, to the extent that this can be done consistently with section 4, in a way that best gives effect to the relevant Treaty principles.

What scope will options be considered within?

49. The Government has set some boundaries for this work. The Government is not considering changes to:

    a. the purpose of the conservation system, and the primacy of achieving conservation outcomes compared to enabling other outcomes through conservation rules and processes (e.g. economic outcomes);

    b. the purposes for which PCL is held, and the requirement that any use of or activities on PCL must be consistent with those purposes; and

    c. how the effects of a proposed activity on or use of PCL are assessed.

50. Practicalities involved in the transfer of assets and/or a change in business as a result of competitive allocation have not been worked through for this RIS and will be the subject of future policy decisions.

51. An option to require all concessions to be contestable has been discarded. It is inefficient to require all concessions to be offered up given the huge range of activities they cover, the variable demand for to operate these activities, and that some opportunities are not limited in supply.

Approach to Treaty obligations

52. The Government's Treaty obligations relating to conservation are reflected in section 4 of the Conservation Act, specific commitments in Treaty settlement legislation, and agreements with iwi and hapū (e.g. relationship agreements and protocols).

53. The Minister's approach to resolving ambiguity relating to section 4 is to:

    a. retain section 4 as a general, operative, clause in the Conservation Act;

    b. add specific measures to clarify what is (or is not) required to give effect to Treaty principles in particular processes or decisions; and

    c. make it clear that complying with these specific measures will be sufficient to comply with section 4 in relation to the relevant processes or decisions.

---

7 *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 at [54].

54. This approach may evolve during drafting based on legal advice about how best to achieve the Government's desired outcome. The Legislation Design and Advisory Committee's guidelines advise caution about the interaction between new legislation, existing legislation and the common law.[8] Not properly understanding and addressing these interactions can make the law more confusing, undermining the policy objective.[9]

55. Any changes that would not uphold Treaty settlements are out of scope.[10] This means options that allow for bespoke arrangements – where needed to accommodate existing settlement commitments in law – are explicitly in scope of option design. This is still being worked through with post-settlement governance entities.

Issues out of scope due to phasing of work

56. Any options that relate to the next phase of work on concessions are out of scope. This includes:

    a. institutional arrangements across the conservation system (e.g. conservation governance reform or alternative institutional arrangements for managing concessions); and

    b. rationalising aspects of the conservation system (e.g. integrating multiple land classification and management regimes, improving the land classification system).

What options are being considered?

Option 1: Status quo

57. Under the status quo there will continue to be ambiguity about when and how concession opportunities can be competitively allocated and how existing fixed assets may be managed in a competitive allocation situation. Uncertainty about what is required to give effect to Treaty principles in competitive processes will remain.

58. It is likely that DOC will have to continue to default to a 'first in, first served' approach to most concession applications.

59. As a result, DOC may miss opportunities to maximise environmental outcomes and returns to conservation from private activities. There will likely continue to additional deliberation over whether some applications should be competitively allocated and this will continue to prolong processing times.

---

8 Legislation Guidelines (2021 edition), Guidelines 3.1 – 3.5.

9 As seen in Court of Appeal and Supreme Court cases about the apparent inconsistency between the plain words of section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011 and that Act's purpose (section 4) and Treaty provisions (section 7). *Re Edwards Whakatōhea* [2023] NZCA 504 at [416] and *Whakatōhea Kotahitanga Waka (Edwards) and Ors v Te Kāhui and Ors* [2024] NZSC 164.

10 Conservation has more Treaty settlement commitments than any other portfolio. In addition to commitments in settlement legislation, the Government intends to uphold any rights under Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Option 2: Make it easier to initiate competitive allocation

60. This option removes barriers to competitive allocation so that the Minister can run a contestable process when there is limited supply and a reasonable level of demand. It has several components, some of which require legislative change:

    a. setting guidance on when competitive allocation may/should be used (can be either legislative or non-legislative);

    b. allowing the Minister to decline an application to initiate a competitive process within a specified timeframe (requires legislative change);

    c. setting guidance for how to allocate concessions if there are multiple suitable applicants (can be either legislative or non-legislative); and

    d. allowing the Minister to offer a concession directly to the successful applicant in a competitive process (requires legislative change).

61. Two of the changes above – allowing the Minister to decline an application to initiate a competitive process, and to allow the Minister to directly offer a concession to a successful applicant at the end of a competitive process – were consulted on in 2022. They are described further below:

Allowing the Minister to decline an application to initiate a competitive process within a specified timeframe	This would allow DOC to decline a concession application if multiple parties have informally expressed an interest in the opportunity, there is likely to be wider interest in the opportunity, or the applicant is not the current concession-holder and DOC wishes to provide the incumbent with an opportunity to apply as well. The ability to decline an application could be effective in circumstances where DOC has received an application and wishes to consider other potential uses of the opportunity and assess them against the applicant's proposal. DOC may already be aware that multiple parties would be interested in the opportunity (additional to an incumbent), or it may become apparent through initial analysis of the application that a competitive process would be more appropriate. DOC would determine what type of competitive process is to be initiated, in line with section 17ZG(2)(a).
Allowing the Minister to offer a concession directly to the successful applicant in a competitive process	This would enable direct allocation of a concession following a tender process. Current provisions require two processes as they only allow the Minister of Conservation to tender the opportunity to apply for a concession, not directly grant the successful candidate(s) a concession. This means the successful applicant in a tender process then needs to formally submit a concession application to DOC before they can be awarded the concession. This is duplicative and time-consuming.

62. These two changes received majority support from submitters, with strong support from prospective concessionaires seeking clarity on the progress of their application. Public consultation also highlighted the need for certainty around the timeframes regarding the

initial decision to decline the application. More information on these two changes is available in a previous regulatory impact statement.[11]

Guidance on when to use competitive allocation

63. This option would set guidance on when competitive allocation may, or should, be used. This guidance would signal when particular types of opportunities may be put to market. Situations that may warrant contestability include the following:

    a. limited supply opportunities, whether due to environmental factors or other restrictions (e.g. limits in planning instruments);

    b. situations where demand exceeds supply; and

    c. when the benefits of running a competitive process outweigh the costs.

64. Submitters generally supported having criteria to guide decisions on when to use competitive allocation, but more submitters wanted changes to the criteria than those who supported them. Some Treaty partners said the criteria needed to reflect the inappropriateness of using competitive processes to allocate opportunities that should be first or directly offered to iwi/hapū. An ENGO raised that climate change criteria needed to be included. Some concessionaires said that opportunities with incumbent operators should not be subject to a competitive process at the end of a term.

65. The discussion document included a fourth criterion: where opportunities are for exclusive use. Given current practice involves competitive allocation for non-exclusive opportunities, that criterion could inadvertently restrict competitive allocation, rather than making it easier. It has therefore been removed following consultation.

66. There are choices as to the vehicle for this guidance. It could be included in legislation to signal to regulated parties when the Minister may consider using competitive allocation, without limiting the Minister's discretion. Alternatively, it could inform policy. Given the criteria above are not intended to be binding (e.g. to require the use of competitive allocation in particular situations), policy would be a more appropriate vehicle than legislation.

Guidance on how to allocate opportunities

67. This option would also provide guidance to decision-makers on how to choose between multiple suitable applicants in a competitive process.

[11] Department of Conservation. 2023. Regulatory Impact Statement: Targeted amendments to concessions processes. 2023. Department of Conservation. [accessed 14 May 2025]. https://www.doc.govt.nz/globalassets/documents/about-doc/role/legislation/targeted-amendments-to-concessions-processes-ris.pdf

68. If multiple applications meet statutory tests to be awarded a concession, the following criteria can be used to guide decisions on which applicant(s) should be successful:

Performance	• Applicants' experience and compliance record. • Financial sustainability of applicant (and activity if alternatives are being considered). • Ability to meet environmental or cultural conditions.
Returns to conservation	• Financial returns to the Crown. • In-kind returns to conservation. • Contribution to conservation, scientific and mātauranga research.
Offerings to visitors	• Quality of experience offered to customers. • Readiness of applicant to begin operating. • Link to vision and outcomes for place.
Benefits to local area	• Employment or training opportunities. • Enhancement of cultural, historic or conservation narratives at place. • Building authentic relationships with tangata whenua and communities.
Recognition of Treaty rights and interests	• Importance of taonga (resource or land) to activity. • Use and enhancement of kaitiakitanga, connection to whenua and customary practices (may include modern technology). • Promotion of general awareness of tikanga and mātauranga Māori.

69. Feedback was sought on the above criteria. Responses from submitters who engaged with this proposal were mixed, with those opposed (approximately 70) outnumbering those in favour (approximately 40). Submitters generally supported there being criteria to guide allocation decisions, but there were strongly divergent views on whether these criteria should include recognition of Treaty rights and interests. Some submitters wanted clear and strong preference for Treaty partner applicants, and others said incumbent operators should receive preference. Some submitters also thought the criteria contained internal inconsistencies and did not sufficiently consider broader conservation outcomes.

70. Due to time constraints, the criteria have not been amended or updated following consultation. There is scope to revisit and improve the criteria during the legislative process (including during drafting) based on consultation feedback.

71. Similar to the criteria for when to use competitive allocation, there are choices as to the vehicle for these criteria. They could be included in legislation to send clear signals to regulated parties about how allocation decisions will be made, without limiting the Minister's discretion to include other criteria (e.g. relating to a particular opportunity).

Option 2A: Clarify that competitive allocation is not triggered on Treaty principles grounds

72. Treaty partners have expressed interest in applying for some of concession opportunities when current terms expire. The Supreme Court's judgment in *Ngāi Tai ki Tāmaki* is relevant, which found that section 4 and the Treaty principle of active protection may require a degree of preference for iwi/hapū in relation to concession opportunities over

lands where they have mana whenua, and that their economic interests are a relevant consideration to this assessment.

73. Under this option, section 4 would not provide any grounds to make these concessions contestable. This is to resolve the ambiguity about what giving effect to Treaty principles requires in these situations. It is an addition to Option 2. This option was not directly consulted on but is based on feedback from submissions about whether particular opportunities should or should not be contestable.

74. The discussion document sought feedback on whether there are any situations in which competitive allocation should not take place, even if the criteria in option 2 above are satisfied. In their submissions, concessionaires who have made significant capital investments and improvements opposed the possibility of concessions they currently hold being competitively allocated in the future. In feedback from ongoing engagement on concession applications, some concessionaires have cited the perceived risk of future competitive allocation as a reason for not investing in maintenance of existing assets, particularly towards the end of a concession term. They also argue contestability would amount to expropriation of private property.

75. These issues are not theoretical: they are live questions in relation to several major concessions. When they arise, they have tended to result in decision-making processes becoming protracted, causing frustration to all parties and significant delays. S [redacted] Continuing with the status quo is not desirable. Litigation risk is high regardless of the decision. This also means the process is fraught and expensive, and subject to legal costs and arguments at every step on all sides (Government, concessionaires, Treaty partners).

76. Whether to allow contestability for these concessions depends in part on views about the extent of the Crown's obligations to give effect to Treaty principles, including by supporting Māori economic interests. There is a strong case for supporting Māori economic interests through opportunities on PCL, and concessions in particular. The case for supporting Māori economic interests through concessions is stronger where there are minimal opportunities for investment and employment other than activities on PCL (e.g. tourism).

77. However, there are multiple ways the Crown can support Māori economic interests, on and off PCL, other than through requiring these types of leases and licences to be contestable at term expiry. On PCL, economic interests can be supported through new concession opportunities or other arrangements such as partnering with DOC in delivering a service. The Crown could also provide information to Māori and support Māori in exploring potential greenfield opportunities on PCL. Additionally, other opportunities to partner with incumbent concessionaires could be explored by Treaty partners directly, for example.

Interaction with section 4

78. Under this option, section 4 would not require these concessions to be contestable. This addresses the ambiguity about whether section 4 should require contestability. To have this effect, this option will require clear and explicit drafting that sets out that decision-makers will not need to make particular opportunities contestable to give effect to Treaty

principles.[12] Otherwise, the courts could still read in a requirement to allow contestability for these opportunities.

79. To some, this option will be seen being a narrower application of section 4 and may be seen as a weakening of Treaty and conservation protections. It could cause damage to Māori-Crown relations. It is, however, codifying DOC's emerging approach.

12 *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at [139] – [161], [237] and [296].

How do the options compare to the status quo?

	Option 1: Status quo	Option 2: Make it easier to use competitive allocation	Option 2A: Clarify that competitive allocation is not triggered on Treaty principles grounds
Effectiveness	0	+ Improvement generally and for new concessions in particular, by providing clarity about when and how competitive allocation may be used. Operational policy will guide when and how it is used. Could improve conservation outcomes and returns to conservation through greater competition among concessionaires.	+ + Provides more stable investment environment, contributing to tourism and recreational outcomes, and less directly to conservation outcomes. Potential to drive better outcomes for the Crown through the possibility of a competitive process on grounds other than section 4.
Efficiency	0	+ Some improvement by reducing duplicative processes and barriers to competitive allocation.	+ + Removes need for lengthy and contentious decisions about whether to allocate opportunities on section 4 grounds, while allowing for contestability where suitable for other reasons.
Consistency with good regulatory practice	0	+ Improvement in terms of clarity about when and how competitive allocation may be used.	+ Provides clarity that contestability is not required on section 4 grounds.
Consistency with Treaty obligations	0	+ Improvement in terms of clarifying how Treaty rights and interests factor into allocation decisions.	0 More certainty that concessions do not need to be contestable on section 4 grounds. However, this certainty is provided by narrowing the application of section 4, s9(2)(f)(iv) [redacted]
Ability to implement	0	0 Relatively easy to deliver – therefore same as status quo.	+ Could result in litigation to resolve any residual ambiguity depending on how clear legislation is about relationship to section 4.
Overall assessment	0	4	6

Key for qualitative judgments

++	much better than status quo	0	about the same as status quo	-	worse than status quo
+	better than status quo			- -	much worse than status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

80. Implementing a combination of options 2 and 2A is the preferred option. This option has the potential to deliver the highest net benefits and is recommended in the Minister's Cabinet paper.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

81. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence certainty
Additional costs of the preferred option compared to taking no action			
First concession applicant	Additional costs for adjusting initial application if competitive allocation process is initiated after their application is declined. These costs only apply in situations where competitive allocation is used to allocate opportunities (which will be a minority of all concessions) and where contestability is not signalled before any applications are received. Impact certainty based on limited previous use of competitive allocation for concessions.	Medium	Low
Subsequent concession applicants	Additional costs in preparing applications to submit to competitive allocation processes. These costs only apply in situations where competitive allocation is used to allocate opportunities, which will be a minority of all concessions. Impact certainty based on limited previous use of competitive allocation for concessions, and limited knowledge of likely interest in future concession opportunities.	Low	Low
Treaty partners (who may also be applicants or incumbents)	Additional costs to consider interests and communicate with DOC. Impact certainty based on limited knowledge of likely interest in future concession opportunities, and extent of Treaty rights and interests in relation to those opportunities.	Low – Medium	Low
DOC	Additional costs to communicate changes and establish operational policy and guidance.	Medium	Low

	Impact certainty based on limited previous use or competitive allocation for concessions, and limited knowledge of likely interest in future concession opportunities.		
Total monetised costs	Monetised costs cannot be estimated due to poor evidence certainty.	N/A	
Non-monetised costs	Low confidence based on limited use of competitive allocation for significant concessions to date, and limited knowledge of wider interest in future concession opportunities.	Medium	Low
Additional benefits of the preferred option compared to taking no action			
General public	Improved experiences or visitor offerings on conservation land.	Low	Low
First concession applicant	Benefits in terms of clarity and certainty from having clearer process, timeframes and criteria for assessment. Impact certainty based on feedback from consultation.	Medium	Medium
Subsequent concession applicants	Improved access to opportunities. Benefits in terms of clarity and certainty from having clearer process, timeframes and criteria for assessment for these. Impact certainty based on feedback from consultation.	Medium	Medium
Treaty partners (who may also be applicants or incumbents)	Improved ability to inform allocation processes and promote applications that acknowledge and enhance te ao Māori, mātauranga Māori and kaitiakitanga. Impact certainty based on feedback during consultation, noting limited use of competitive allocation for concessions to date, and limited knowledge of wider interest in future concession opportunities.	Medium	Low
DOC	Reduced ambiguity about how to give effect to Treaty principles, improving efficiency and effectiveness of decision-making. Impact certainty based on limited previous use or competitive allocation for concessions, and limited knowledge of likely interest in future concession opportunities.	High	Low
Total monetised benefits	Monetised benefits cannot be estimated due to poor evidence certainty.	N/A	
Non-monetised benefits	Low confidence based on limited use of competitive allocation for significant concessions	High	Low

	to date, and limited knowledge of wider interest in future concession opportunities.		

Section 3: Delivering an option

How will the proposal be implemented?

82. DOC will be responsible for implementing changes to competitive allocation of concession opportunities. There may also be changes to how other parties interact with concession processes, such as concessionaires (including potential concessionaires), Treaty partners, businesses, local authorities and the public.

83. Changes are expected to be able to be funded from current baselines.

Legislation

84. The Conservation Act will need to be amended to give effect to the Minister of Conservation's preferred option. A Bill for these changes holds a category 5 priority on the 2025 Legislation Programme (to be referred to select committee within the year).

85. The Minister will decide the commencement period(s) for the Bill during drafting, which will determine when any changes come into effect. Other implementation details and arrangements are not yet clear and will be the subject of further work during drafting. The Minister has several potential Cabinet report-backs during drafting which provide an opportunity to resolve any implementation risks or issues.

Operational policy and guidance

86. DOC will ensure it has the necessary systems, processes and resources to deliver any changes to concession allocation, including monitoring compliance and taking enforcement action if needed. DOC will also provide information about the changes to regulated parties.

87. Additional operational policy and guidance may be necessary to give effect to the proposals.

How will the proposal be monitored, evaluated and reviewed?

88. DOC will be responsible for monitoring, evaluating and reviewing any changes. The Minister of Conservation intends to continue with a second phase of reform (e.g. to institutional arrangements and land classifications in the conservation system). This provides a further legislative vehicle to make adjustments if any issues arise.