

Appendix C

Regulatory Impact Statement

PROPOSAL TO INTRODUCE AN INFRINGEMENT NOTICE SYSTEM FOR LESS SERIOUS OFFENDING AGAINST CONSERVATION LEGISLATION

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Conservation.

It provides an analysis of options to improve the effectiveness of conservation compliance and law enforcement as an environmental protection tool that both educates the public and acts as a deterrent.

The proposal includes the introduction of separate legislation to introduce an infringement notice system for less serious instances of offending under conservation legislation.

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Signature:

Date:

Status quo and problem definition

Status quo

1. The Department of Conservation (DOC) administers about one third of New Zealand's land area (more than 8 million hectares), 44 marine reserves, and 6 marine mammal sanctuaries (totalling 4,115,669 hectares) for the purposes of conservation. In addition, DOC protects, conserves, or manages native freshwater fisheries, recreational freshwater fisheries, and protected native wildlife, and controls harmful species of introduced wild animals and regulates the hunting of these animals. The Conservation Act 1987 is the primary Act, and other legislation administered by DOC is listed in Schedule 1 of that Act. This legislation is referred to as 'conservation legislation' for the purposes of this RIS.
2. One of the conservation tools provided by the legislation is law enforcement, and the acts and regulations accordingly contain a number of offence provisions. These are referred to as 'conservation offences' for the purpose of this RIS. Most of these offences encompass a wide range of misconduct. For example, most native birds are protected wildlife, and it is an offence to kill any of them. However killing a kākāpō or kiwi is likely to have much more serious consequences than killing a more common species such as a fantail. The seriousness of the offending may also be impacted by factors such as the frequency or volume of offending, and the motivation and degree of deliberation by the offender.
3. Conservation compliance and law enforcement is in the main undertaken by warranted DOC officers, but other bodies with administrative functions in relation to lands, waters and species protected under conservation legislation also have compliance and law enforcement roles. Fish and game councils are established under the Conservation Act 1987 with functions in relation to the management of freshwater sports fisheries and game birds, including law enforcement functions. Although DOC administers the majority of reserves under the Reserves Act 1977, some are administered by local authorities, and others by reserves boards, trustees, or other appointed organisations, including iwi post settlement governance entities as administering bodies of reserves.
4. DOC's compliance and law enforcement approach covers a spectrum from proactive (general and targeted) education, through to written warnings and court proceedings. None of the conservation offences are able to be proceeded with by way of an infringement notice, other than specified offences in the Freedom Camping Act 2011¹. If a warning is insufficient, the only other response is to file a charging document (prosecute).
5. This is in contrast to the wide use of infringement notice systems by other operational agencies. Since their introduction in the Transport Amendment Act 1968, infringement notice systems have been extended to a number of statutes and become an established part of the criminal justice system. They are widely used in other environmental law enforcement, for instance in the Resource

¹ The Freedom Camping Act 2011 is jointly administered with the Department of Internal Affairs.

Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Biosecurity Act 1993, and the Fisheries Act 1996.

6. Policy approvals were received in 2003 for an infringement notice system in conservation legislation (POL Mins (03) 7/17, (03) 7/18, (03) 7/19, CAB Min (04) 39/1C). This was part of a wider exercise to rationalise and update compliance and law enforcement provisions across conservation legislation. The Conservation (Authorisations, Compliance and Enforcement) Bill was substantially drafted and in Category 3 for several years, but it did not progress.
7. Initially the application on the proposed system should be only to DOC as part of the Crown and to local authorities experienced in administering infringement systems.
8. Other bodies with administrative functions under conservation legislation could be included at a later stage, without legislative amendment, if Ministers decided it was appropriate after a review of the system.

Problem definition

9. The bulk of offending against conservation provisions is at the less serious end of the spectrum. The most common instances of offending relate to:
 - Whitebait fisheries
 - Marine reserves
 - Dogs
 - Hunting permits
 - Sports fisheries and game birds (administered by fish and game councils)
 - The Taupō sports fishery
 - Un-permitted and non-authorised commercial activities
10. The costs to DOC include staff time preparing the file, travelling to court, and attendance at court hearings, the costs of serving the information, and, in contested hearings, the costs of conducting the case. The costs to the courts system include registrar and judge time, and in some instance offenders may receive legal aid.
11. The cost to alleged offenders includes time and travel costs in attending court hearings, the costs of legal representation, and if convicted, the costs of the fine or other sentence imposed. Criminal convictions are often imposed and forfeiture of property involved in the offending (for instance a fishing rod) is frequently ordered. Intangible costs include the embarrassment/disruption that results when a summons is served and a court appearance required. A resultant criminal record may impact on travel and other future options.
12. The wider costs of disproportionate responses to offending may be resentment from offenders and their associates when relatively minor offending results in a conviction. DOC may be seen as overly bureaucratic and authoritarian.
13. Warnings are used for the least serious offending. Over time, the high costs associated with court proceedings may lead to overuse of warnings, a possible decline in respect for conservation law enforcement, and increases in offending.

14. The main benefits of the status quo are that DOC has been undertaking enforcement and legal compliance since its inception in 1987, and many of the systems date back to DOC's predecessors. As a result, DOC has considerable institutional knowledge and experience, and a well established system with which to respond to offending. The Freedom Camping Act 2011 has given DOC some experience of operating an infringement notice system.
15. Since the raising of penalties by the Conservation (Natural Heritage Protection) Act 2013, penalties for serious and moderate offending have been increased. The root cause of the problem is that DOC does not have adequate tools to deal with the bulk of offending, which is at the less serious end of the spectrum. This proposal is designed to address that.

Objectives

16. To improve the effectiveness of conservation compliance and law enforcement as an environmental protection tool that both educates the public and acts as a deterrent through:
 - a. enabling simpler and more efficient law enforcement for the bulk of offending, which is at the less serious end of the spectrum.
 - b. enabling the consequences to better fit the circumstances and relative seriousness of the offending, in particular so that people guilty of minor offending generally do not receive a criminal record.
 - c. creating greater awareness of, and respect for, conservation values which should decrease incidences of harm to natural and historic heritage.
 - d. contributing to the Government's objectives of improving government interaction with New Zealanders and delivering better public services for less cost, by enabling better use of resources, and reducing costs and delays in the courts system.

Regulatory impact analysis

Regulatory options

Option 1: Comprehensive reform of conservation law enforcement provisions

17. A comprehensive review and updating of all of the provisions relating to powers, offences, penalties and related matters across all conservation legislation would improve the effectiveness of conservation compliance and law enforcement. Penalty levels and offence definitions could be updated and made more consistent between the various pieces of conservation legislation, and brought into line with current practice. Modern more accessible drafting practice could be applied. Having standardised and more transparent provisions across the Acts would help to make enforcement more effective and efficient. The current anomalies and inconsistencies reflect the different time periods in which the various pieces of legislation were developed. This review could include adding to the enforcement tools available, in particular adding an infringement notice system.

Option 2: Introduction of an infringement notice system for less serious offending (*preferred option*)

18. Introducing an infringement notice system for less serious instances of offending would fill the gap between warnings for the least serious offending, and prosecuting the most serious instances of offending.
19. The optimal infringement notice system for DOC is one which enables proportionate responses to the wide range of conduct encompassed by many conservation offences, as outlined in paragraph 2. This means that an infringement notice can be issued for less serious misconduct, while the more serious instances are prosecuted and may lead to a conviction, fines and in some instances, imprisonment. Warnings would still be used for the least serious instances of offending.
20. This can be achieved by creating new infringement offences in parallel with many of the current offences. The main points of this proposal are:
 - a. The offences in each of the Acts would remain the same, retaining the same penalties (fines and/or imprisonment).
 - b. Infringement offences would be created in parallel to a number of these offences. An infringement fee would be set for each infringement offence. All infringement offences would be strict liability offences.
 - c. Almost all offences currently in regulations and bylaws would be converted to infringement offences, again with an infringement fee.
21. Parallel infringement offences would not be created for all offences. There are a number of offences for which it would never be appropriate to respond with an infringement notice. These are offences against the person (for example obstructing a warranted officer), offences against the administration of justice (for example refusing to give name and address when requested by a warranted officer), offences that involve a firearm, offences with a commercial element, or offences where every instance would have a major impact on conservation values. There are also some other offences that are so rarely committed as to not warrant the creation of a separate infringement offence.
22. This proposal applies to selected offences in the Conservation Act 1987, and the following Acts which are listed in the first schedule to that Act: the Marine Mammals Protection Act 1978, the Marine Reserves Act 1971, the National Parks Act 1980, the Reserves Act 1977, the Trade in Endangered Species Act 1989, the Wild Animal Control Act 1977, and the Wildlife Act 1953. It also applies to offences in regulations and bylaws made under those Acts, all of which would become infringement offences, except for a very few, which are against the administration of justice.
23. A Bill to implement an infringement notice system for conservation legislation has been given category 3 (to be passed if possible in the year) in the 2016 legislation programme.

Non regulatory options

Option 3: Increased use of warnings for less serious offending

24. Warnings are already an important component of the compliance and law enforcement approach, and are used for behaviour at the least serious end of the offending spectrum. Approximately 200 written warnings are given each year. One option would be for DOC and other conservation compliance and law enforcement bodies to use warnings more extensively in order to avoid the costs and negative impacts of prosecutions.

Option 4: Increased focus on prevention of offending and reduced focus on responses to less serious offending

25. General and targeted education about compliance and law enforcement is already an important component of conservation compliance and law enforcement. Existing practice includes providing information about proscribed activities on the DOC website, on signs and notice boards, and in pamphlets. Media advertising is used, and rangers provide information and advice in well used areas, in places of concern such as marine reserves, and at special events such as fishing contests and hunting expositions. The national trout centre in Turangi has a major educative function regarding sports fishing, and fish and game councils provide education and information through their publications and websites.

26. DOC and other conservation compliance and law enforcement bodies could expand these activities in an attempt to further reduce less serious instances of offending. At the same time, enforcement would be reduced in order to avoid the negative impacts and costs of court proceedings, and to make resources available for more education.

Analysis of options

27. The four options are analysed against the following three dimensions:

- a. Impacts: who does it impact on and how?
- b. Risks.
- c. Likelihood that the outcome will be better or worse than the status quo.

28. The four options are also assessed as to whether they will meet the objective of the policy as outlined above at paragraph 16.

Table 1: Impacts analysis

	Impacts: who and how?
Option 1: Comprehensive reform of conservation law enforcement provisions	People who commit conservation offences — enforcement provisions more transparent and consistent. Compliance and law enforcement officers in DOC, fish and game councils etc — greater efficiencies in detection and prosecution due to standardised provisions. The courts system — greater efficiencies due to standardised provisions, less cases taking less court time if

	<p>infringement system included. Some infringements may be challenged or filed for enforcement in the courts. It is unlikely that this will be common, but if it happens this will displace some costs from one part of the courts system to another.</p> <p>The public interest in conservation — greater clarity in the provisions, and improved and updated compliance and law enforcement tools should provide enhanced deterrence, and increased protection for natural and historic resources.</p>
<p>Option 2: Introduction of an infringement notice system for less serious offending</p>	<p>People who commit conservation offences whose misconduct is at the less serious end of the spectrum (e.g. many of those involved in offending relating to sports fisheries, game bird hunting, and whitebaiting) — more proportionate response to offending, no conviction if issued an infringement notice, and no court costs unless choose to challenge the notice.</p> <p>Compliance and law enforcement officers in DOC and local government, and potentially non-Crown bodies (subject to Cabinet decision on a review to consider extending the system to these bodies at a later stage) — reduced prosecution costs, respect for conservation values enhanced by more targeted enforcement.</p> <p>The courts system — fewer cases taking less court time. Some infringements may be challenged or filed for enforcement in the courts. It is unlikely that this will be common, but if it happens this will displace some costs from one part of the courts system to another.</p> <p>The public interest in conservation – an additional tool would provide greater deterrence and increased protection for natural and historic resources.</p>
<p>Option 3: Increased use of warnings for less serious offending</p>	<p>People who commit conservation offences whose misconduct is at the less serious end of the spectrum (e.g. many of those involved in offending relating to sports fisheries, game bird hunting, and whitebaiting) — less chance of prosecution.</p> <p>Compliance and law enforcement officers in DOC, fish and game councils etc — fewer prosecutions at least initially, more time spent on warnings, more offending to deal with over time as deterrence decreases.</p> <p>The courts system — fewer prosecutions taking less court time, though this may change over time as deterrence decreases.</p> <p>The public interest in conservation – more warnings may erode the efficacy of warnings and result in greater risks to natural and historic resources.</p>

<p>Option 4: Increased focus on front-event prevention of offending and reduced focus on responses to less serious offending</p>	<p>Individuals using conservation areas — receive more information.</p> <p>People who commit conservation offences whose misconduct is at the less serious end of the spectrum (e.g. many of those involved in offending relating to sports fisheries, game bird hunting, and whitebaiting) — less chance of prosecution.</p> <p>Compliance and law enforcement officers in DOC, fish and game councils etc — more time spent in education, less prosecutions at least initially, potentially more offending to deal with over time as deterrence decreases.</p> <p>The courts system — fewer prosecutions taking less court time, though this may change over time as deterrence decreases.</p> <p>The public interest in conservation – improved awareness generally, but over time, the deterrence effect of the system could be reduced, resulting in greater risks to natural and historic resources.</p>
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Table 2: Risks analysis

	Risks
<p>Option 1: Comprehensive reform of conservation law enforcement provisions</p>	<p>There is a high risk that this option may not progress to implementation. This assumption is based on experience with the previous Bill, which did not progress despite having policy approvals and being substantially drafted. The assumption also takes account of the time and resources (consultation, policy development and PCO and parliamentary time) that would be required for comprehensive law reform.</p>
<p>Option 2: Introduction of an infringement notice system for less serious offending</p>	<p>There is a low risk that this option would not achieve the objectives because:</p> <ul style="list-style-type: none"> • The conservation offences have been carefully assessed as to the range of misconduct they encompass, whether this includes lower end misconduct suitable for an infringement offence. • The enforcement officers are experienced and will be supported by a sound operational policy to promote consistency and optimal use of the discretion on whether to respond to offending with a warning, by issuing an infringement notice under the infringement offence, or by filing a charging document for the criminal offence. (See paragraphs 39-44 for discussion of how the implementation risks around the exercise of discretion will be managed). <p>There is a risk that, if infringement fees are paid back to non-departmental issuing authorities, they will be used for revenue generation rather than in a considered manner as a response to offending. Measures to mitigate this risk are outlined in paragraph 42.</p>

Option 3: Increased use of warnings for less serious offending	There is a high risk that this option would reduce respect for conservation law enforcement and its deterrence value — more warnings would lose their value if not backed by sufficient enforcement.
Option 4: Increased focus on front-event prevention of offending and reduced focus on responses to less serious offending	There is a high risk that this option would reduce respect for conservation law enforcement and its deterrence value — additional prevention and education would lose its value if not backed by enforcement sufficient to maintain the deterrent effects of the system.

Table 3: Likelihood of improvement analysis

	Likelihood that the outcome will be better or worse than the status quo
Option 1: Comprehensive reform of conservation law enforcement provisions	If implemented, this option is very likely to result in improvements to the status quo, but it is unlikely that it would be implemented, as noted above in the analysis of risks.
Option 2: Introduction of an infringement notice system for less serious offending	This option is highly likely to lead to better outcomes than the status quo because it provides a tool to enable a proportionate and cost effective response to the bulk of offending against conservation provisions.
Option 3: Increased use of warnings for less serious offending	This option is likely to lead to worse outcomes than the status quo, because overuse of warnings is likely to reduce the overall deterrence value of the system. Potential offenders may begin to discount the likelihood of any consequences, leading to increased incidences of low level offending and cumulative harm to natural and historic heritage.
Option 4: Increased focus on front-event prevention of offending and reduced focus on responses to less serious offending	This option is likely to lead to worse outcomes than the status quo, because additional prevention and education without sufficient enforcement is likely to reduce the overall deterrence value of the system. Potential offenders may begin to discount the likelihood of any consequences, leading to increased incidences of low level offending and cumulative harm to natural and historic heritage.

Do the options meet the objectives?

29. The policy objective is to improve the effectiveness of conservation compliance and law enforcement as an environmental protection tool that both educates the public and acts as a deterrent through the sub-objectives a), b), c) and d) as outlined below.

Table 4: Analysis against objectives

	a) Enabling simpler and more efficient law enforcement for the bulk of offending	b) Enabling the consequences to better fit the offending	c) Creating greater awareness of, and respect for, conservation values	d) Better public services for less cost
Option 1: Comprehensive reform of conservation law enforcement provisions	Yes	Yes	Yes	Yes
Option 2: Introduction of an infringement notice system for less serious offending	Yes	Yes	Yes	Yes
Option 3: Increased use of warnings for less serious offending	Initially Yes, in the longer term No	No (convictions avoided for minor offending, but prosecutions not taken when they should be)	No	Initially Yes, in the longer term No
Option 4: Increased focus on front-event prevention of offending and reduced focus on responses to less serious offending	? Less enforcement is not necessarily simpler nor more efficient	No (convictions avoided for minor offending, but prosecutions not taken when they should be).	Initially Yes, in the longer term No	Initially Yes, in the longer term No

Recommended option

30. Based on the analysis in tables 1 to 4, option 2, the introduction of an infringement notice system for less serious offending behaviour, is the recommended option. Although option 1 (comprehensive review) would also meet all of the objectives, as noted in table 2, there is a high risk that option 1 will not proceed to implementation.

Costs comparison between an infringement notice system and the status quo²

31. The estimated costs to DOC of the status quo and of the recommended option are set out in tables 5 and 6. Estimates of prosecution costs are based on current practice. The estimate of \$350 to issue each infringement notice is based on assumptions about the time taken to investigate the offence, and administrative and decision-making to determine the appropriate response, i.e. warning, infringement, or prosecution. These estimates assume that offending behaviour will follow current patterns.
32. Note that the estimates do not allow for unpaid fees. This is not a drawback of infringement systems as such, rather, a collection issue for the Court system generally.

Table 5: Status quo: DOC costs

Average number of written warnings per annum	Average number of prosecutions per annum	Average number of prosecutions per annum that result in a guilty plea & average cost per guilty plea	Average number of prosecutions per annum that are defended & average cost per defended hearing	Estimated total cost of prosecutions per annum
200	100- 150	About 85% of prosecutions result in a guilty plea, i.e. 85 – 128 prosecutions @ average cost of \$3 000 each \$255 000 – \$384 000	About 15% of prosecutions result in a defended hearing, i.e. 15 – 22 prosecutions @ average cost of \$10 000 each \$150 000 – \$220 000	For 100 prosecutions (guilty plea and defended) \$405 000 For 150 prosecutions (guilty plea and defended) \$604 000

² The figures contained throughout this section are based on data collated in 2013. DOC's prosecutions per year have increased from a range of 100-150 prosecutions in 2013, to approximately 200 prosecutions for the 2015 year. Therefore the estimated savings are conservative.

Table 6: Infringement notice system: estimated DOC costs

Estimated average number of written warnings per annum	Estimated average number of infringement notices issued per annum	Estimated total cost of infringement notices issued per annum	Estimated average number, and total cost, of prosecutions per annum	Estimated total cost of infringements and prosecutions per annum
100	180-220 (50% of current warnings (100) + 80% of current prosecutions (80-120))	For 180 infringement notices @ \$350 each: \$63 000 For 220 infringement notices @ \$350 each: \$77 000	These will be for more serious instances of offending so it is expected that approximately 50% will be defended hearings. 20 prosecutions. (10 x \$3000 + 10 x \$10 000) = \$130 000. 30 prosecutions, (15 x \$3000 + 15 x \$10 000) = \$195 000	180 infringement notices and 20 prosecutions \$63 000 + \$130 000 = \$193 000 220 infringement notices and 30 prosecutions \$77 000 + \$195 000 = \$272 000

33. Comparison:

- status quo estimated total cost = \$405 000 - \$604 000
- infringement notice system estimated total cost = \$193 000 - \$272 000
- difference (savings to DOC) per annum = \$212 000 - \$332 000

34. The Ministry of Justice have indicated that as the number of prosecutions avoided by the proposal is within the bounds of annual caseload fluctuations, the proposal does not warrant an estimation of cost savings for the courts system.

Consultation

35. Work on this proposal has been underway since 2003 and there has been consultation with agencies and stakeholders at various stages through that process.

36. The following agencies were consulted: the Treasury, the Ministry of Justice, the Department of Internal Affairs, Te Puni Kōkiri, the Police, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry for the Environment, the Ministry of Culture and Heritage and Customs. The Legislation Design and Advisory Committee was consulted. The Department of Prime Minister and Cabinet was informed.

37. The Ministry of Justice is satisfied with the infringement proposal.

38. The Post Settlement Commitments Unit (PSCU) and Office of Treaty Settlements (OTS) of the Ministry of Justice provided feedback with regards to the options for potentially extending the infringement system to Te Urewera and iwi governance entities that are administering bodies of reserves.
39. The Chief Executive of Tūhoe Te Uru Taumatua has received preliminary information about the proposed system and has indicated it would be appropriate for Te Urewera Board to consider and, if appropriate, take up its application for Te Urewera.
40. Parliamentary Counsel Office was consulted on the development of this paper and advised that the parallel offence system would be appropriate in the context of conservation legislation. They noted that it is used in some other legislation.
41. The New Zealand Fish and Game Council was consulted some time ago and advised that all fish and game councils wish to be included in the system.
42. Local Government New Zealand supports the introduction of an infringement regime for less serious conservation offences.
43. The Queen Elizabeth the Second National Trust and reserve boards and iwi governance entities were also consulted some time ago on the former proposal.
44. The New Zealand Conservation Authority was advised of, and supported the former proposal.
45. The Queen Elizabeth the Second National Trust, reserve boards and iwi governance entities that administer reserves and the New Zealand Conservation Authority were not consulted on this version of the paper.
46. Changes that have been made to the proposal are that the infringement scheme would have fewer infringement offences, would not include offences relating to the discharge of firearms, and all fees would be paid to the Crown (except for in the case of local authorities and Te Urewera Board). Feedback on the adjusted proposal was sought from a number of agencies and Ministers during the 2013 work.
47. The way Customs officers' and biosecurity border control officers' roles would be handled was discussed with Customs and MPI, and the agreement reached.
48. Police support the proposed changes to the original proposal, and have agreed that the further exclusions proposed in relation to firearm offences address their concerns about those aspects of the original proposal.

Conclusions and recommendations

49. Based on the analysis of the options, including the cost comparisons as outlined above, DOC recommends option 2: the introduction of an infringement notice system for less serious offending. This option provides an effective, and readily legislated and implemented means to address the root problem and meet the policy objectives.

The infringement notice system proposal

50. As noted in paragraph 19, the optimal infringement notice system is one in which parallel infringement offences are created for many conservation offences, and in which almost all existing offences in the regulations, bylaws and notices would be converted to infringement offences.
51. It is proposed that the legislation provides that, after one year of commencement the Minister of Conservation, after consultation with Cabinet colleagues may consider whether expanding the use of the system to non-Crown bodies, such as the New Zealand Fish and Game Council and iwi governance entities that are administering bodies of reserves would be beneficial.

Implementation

52. The main implementation risk concerns the discretion that warranted officers will have in instances where there are parallel infringement offences. Decisions must be made on whether an instance of offending should be the subject of a formal warning, whether it should be dealt with under the infringement offence and a notice issued, or whether the conduct is serious enough to warrant filing a charging document for the criminal offence. (Under the Summary Proceedings Act 1957 there is also the option to issue a charging document for an infringement offence. It is expected that this option will be rarely used as the choice between infringement notice and criminal offence will cover most circumstances.)
53. Within DOC, prosecutorial discretion will be managed by:
- a. Development and use of operational guidelines to support transparent and consistent decisions. These guidelines include the criteria and the processes to be followed. It is anticipated that at least initially, the majority of infringement notices will be issued from a central point, rather than 'on the spot'. Decisions will be made in consultation with, but independently of, the officer in the field, with peer review, and legal and technical advice obtained where necessary. In developing these guidelines, DOC is building on its own experience in exercising discretion, on the experience of other agencies with infringement systems, and on DOC's own experience with infringement offences under the Freedom Camping Act 2011.
 - b. Training and warranting of officers: Currently warranted officers will be selected for infringement training, and provided they successfully complete the course, these officers will receive an additional infringements warrant. The training will build on the existing officer training system.

Reporting

54. Implementing a recording and reporting system for infringements and other responses to offending, so that practice can be monitored, and making these statistics publicly available by means such as the DOC website, and filing these statistics with the Ministry of Justice.
55. Local authorities already have considerable experience with infringement notice systems, for instance in the Resource Management Act 1991, the Building Act

2004 and the Dog Control Act 1996. It is proposed that the legislation empower the chief executive of the local authority to warrant suitably trained and qualified rangers to issue infringement notices.

56. There would also be requirements for the chief executives to report publicly on performance against, and compliance with, those enforcement policies, and POL Min (08) 3/9 requires all agencies administering infringement schemes to file annual summary statistics with the Ministry of Justice. Infringement fees from notices issued by DOC's compliance and enforcement officers would be paid to the Crown. Fees resulting from infringement notices issued by local authorities would, in line with current practice, be paid to the local authority.
57. There is no deadline for the implementation of the policy; however, given the potential benefits, DOC will be seeking to have its administrative and operational support systems in place so that implementation can start once the legislation comes into force.

Impact on Māori

58. Māori, as tangata whenua, exercise kaitiakitanga with respect to the natural and cultural heritage protected by conservation legislation, and section 4 of the Conservation Act 1987 requires that the Act be interpreted and administered to give effect to the principles of the Treaty of Waitangi. Also relevant are the provisions of various historical Treaty of Waitangi claims settlement acts that have granted a form of customary right to iwi. Examples include: the Ngai Tahu Claims Settlement Act 1998, s296, whereby members of the Ngai Tahu whanui may possess parts of dead wildlife without a permit; and section 63 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, whereby iwi may authorise their people to take plant materials for cultural use subject to a flora cultural harvest plan.
59. The operational guidelines will specify that care be taken to ensure that any Māori customary right is respected when undertaking any compliance or enforcement action. In addition, the 'seriousness of offending' criterion in the guidelines will recognise whether a particular species has been declared a taonga species as part of a Treaty of Waitangi settlement. The guidelines will also recognise the impact of the offending on wahi tapu or other sites of particular significance to Māori.

Monitoring, evaluation and review

60. The effectiveness of the infringement notice system will be monitored and evaluated against the overall objective set out in paragraph 16 above. The Department proposes that this be done by the means set out below in table 8.

Table 8: Monitoring and evaluation against the objectives

	Monitored/evaluated by:
a) Enabling simpler and more efficient law enforcement for the bulk of offending	Ongoing collection and monitoring of numbers and costs of warnings, infringements, prosecutions, and numbers of infringements requiring court enforcement.
b) Enabling the consequences to better fit the offending	Monitoring of compliance with the operational guidelines on the exercise of discretion, and an audit of compliance with the guidelines after a suitable bedding-in period.
c) Creating greater awareness of, and respect for, conservation values	Ongoing collection and monitoring of trends in offending against conservation offences. Pre and post implementation survey questions regarding perceptions of DOC's responses to offending (included periodically in existing DOC surveys).
d) Better public services for less cost	Ongoing collection and monitoring of numbers and costs of warnings, infringements, prosecutions, and numbers of infringements requiring court enforcement. Pre and post implementation survey questions regarding perceptions of DOC's responses to offending (included periodically in existing DOC surveys).