



Planning Bill and Natural Environment Bill: Biodiversity challenges

27 March 2026

To Environment Select Committee

Introduction

Biodiversity stands out from the other environmental challenges these Bills must deal with for three reasons:

- Biodiversity is inherently complex;
- The current legal standing of biodiversity is unclear; and
- It is unclear how biodiversity will be managed under the two Bills.

Regardless of the differing views about how biodiversity should be managed, there is a clear need for better information to understand the best way forward.

Biodiversity is inherently complex

Any environmental management system needs to address the issue of how to protect biodiversity. Of all the environmental domains addressed (air, water, land and marine), biodiversity is by far the most complex and difficult to manage. While one can look to preserve and manage some of the specific species of flora and fauna that make up 'biodiversity', whether or not those species thrive depends on the extent to which the habitats and ecosystems they are a part of are functioning well. In short, managing biodiversity is about ensuring ecosystem functionality.

It is easy to call for biodiversity to be protected. But to do that properly is immensely expensive – both for the Crown as a landowner and for Pākehā and Māori landowners. Given the pressures of pests, weeds and climate, even habitat in a good state cannot be expected to stay that way. We have bought ourselves a never-ending management challenge. Rules can prohibit habitat destruction, but they can't prevent landowners from allowing indigenous habitat to disappear through neglect.

Equally, if we are serious about protecting representative elements of New Zealand's unique, deeply endemic biodiversity, we cannot simply rely on managing the biodiversity that remains on Crown-managed land (notwithstanding the fact that the Crown is unable to fund that adequately). The fact is that some rare ecosystems exist mainly on private property.

Furthermore, given the mobility of many species, those inhabiting Crown land can be dependent on regionally proximate privately owned habitat – and vice versa – forming 'corridors' of habitat. Ecosystems and the species they comprise do not fit neatly within property boundaries, but these are the primary unit of resource management. An enduring biodiversity management system needs to start with a shared understanding of the issues at stake. Given the economic framing of the Bills, this includes the need for an understanding

of the economics of biodiversity. Once we have an agreed definition, we can then develop coherent objectives; what is it that we are trying to achieve through the management of biodiversity? Finally, before any implementation can start, there are informational deficits to overcome to understand the extent and magnitude of the challenge in achieving those objectives. The objectives may need to be revisited if they prove to be unachievable or unrealistic.

The current legal treatment of biodiversity is fragmented and inconsistent

While ‘biodiversity’ is generally considered a public resource, the law, awkwardly, doesn’t address biodiversity as a whole. Rather, it addresses biodiversity’s constituent parts quite differently.

- Most vegetation, including indigenous ecosystems on private land, does not have specific legal protection. Most people feel they own the vegetation on their property, and they can do what they like with it. But there are specific exceptions. For instance, harvesting native timber is strictly controlled under the Forests Act.
- The law provides much more protection for indigenous vertebrates – for instance, most indigenous birds and reptiles have been protected under the Wildlife Act for decades.¹ Some non-indigenous fauna is also protected.
- The legal situation is fuzzier for indigenous insects and other life forms.

The different treatment of various bits of our biodiversity (irrespective of whether they are indigenous or non-indigenous) overlooks the fact that plants, animals and insects are all interdependent. It’s hard to protect ecosystems cohesively, if the law treats their parts separately.

The Resource Management Act 1991 was an early attempt to take a holistic approach to indigenous biodiversity. Under the RMA, biodiversity was given prominence upfront in section 6 as a matter of national importance that required “the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna” to be recognised and provided for. In doing so, it built on an earlier exercise called the Protected Natural Areas Programme, which between 1981 and 2003 had conducted comprehensive surveys in some ecological districts but had failed to reach many others.

Councils took up the identification of ‘significant’ areas individually through plans, rules and consenting from 2000. How well they did it varied considerably across the country. Promulgation of the National Policy Statement for Indigenous Biodiversity 2023 was an attempt to provide some national direction and consistency to the identification and protection of significant natural areas.² The different legal nature of vegetation led to friction between landowners and councils as councils attempted to identify SNAs.

The RMA also set out a preference under the mitigation hierarchy to avoid, minimise or rehabilitate any impacts on biodiversity. Offsetting or compensating the loss of biodiversity

¹ The reason for this protection can be found by thumbing through the paintings of extinct species in *Buller’s Birds* or visiting Te Papa’s haunting collection of extinct, taxidermised species.

² Note that the NPS-Indigenous Biodiversity is not the only national direction instrument for biodiversity. There are also the National Environmental Standards for Commercial Forestry, the National Environmental Standards for Freshwater Management, and the New Zealand Coastal Policy Strategy. Biodiversity is broad, and as a result is addressed by multiple instruments.

is used as a last resort. This was appropriate because – as set out above – biodiversity is so complex that determining “equivalence” is challenging. In practice, offsetting has often been poorly implemented due to a lack monitoring and enforcement.

Recounting this history is important because, if we had completed either of the two earlier attempts to identify our extant indigenous ecosystems properly, we would be able to assign levels of significance and have an idea about the magnitude of the resource that is needed, by one means or another, to protect that biodiversity. We have spent several decades failing to complete the task.

It is unclear how biodiversity will be managed under the two Bills

The new Bills make a number of changes to the current treatment of biodiversity:

- There is the goal of “no net loss of biodiversity” but it is not clear how this will be defined, operationalised or monitored. In short, it is unclear whether the Minister is under any obligation to even issue national direction in respect of biodiversity (other than obliquely as part of a methodology for ecosystem health limits) or, if he does, how he will balance that against any number of other “goals”.
- The mitigation hierarchy is removed to allow for greater use of offsetting, potentially to achieve the goal of no net loss. As noted above, offsetting has a chequered history in practice. It is possible to do offsetting well, but it is incredibly complex and doesn’t come cheaply.
- The inclusion of regulatory relief requires compensation for landowners where controls to protect native biodiversity restrict the use of their property rights. This is seen by some as a *de facto* right to destroy biodiversity on private land, although it is unclear how that would work with any obligation to offset any net biodiversity loss. Is someone else (the taxpayer or ratepayer) responsible for offsetting any loss of biodiversity on private land? In practice, given rates capping and the vastly different rating bases of different regions, regulatory relief is likely to lead to a “postcode lottery” of biodiversity protection. In other words, local authorities will protect what they can afford to protect. Achieving no net loss under these circumstances would be impossible.

The Bills see biodiversity on private land as a regulatory relief problem. It might be better to see it as an incentive and affordability problem. Where valuable biodiversity on private land is providing ecological ‘services’ to the wider environment, there is certainly a good case for public money to help protect it. The question – as always – is who should pay? Taxpayers, ratepayers or is there a need for a new funding source? And what (if any) responsibilities should the property owner bear?

Information is a key part of the way forward

As discussed, defining what is valuable is the unfinished task of first the Protected Natural Areas Programme, and latterly the Significant Natural Areas work. We have never even achieved an agreed baseline with which to engage the community. There is also a question about whether the concept of environmental limits makes much sense as a way of managing biodiversity. Limits work well for things that are easily quantifiable and fungible. But how, exactly, does one define, measure and quantify biodiversity given the broad and diverse ecosystems that collectively make up biodiversity? Other measures, such as protected areas, might be more appropriate.

Committee members will be familiar with my frequent calls for environmental information. I feel this case illustrates the urgency of the issue – how can we understand the baseline of biodiversity before landowners destroy it? In my view the transitional arrangements require that current RMA rules and overlays which protect biodiversity should continue in force while this information is gathered. Then, with a good idea of the baseline of biodiversity that currently exists, we can determine which parts of that are most deserving of protection and for which, presumably, we are willing to pay.

Concluding questions

In conclusion, biodiversity is complex and good management requires a systemic approach. This is challenging to deliver in practice, but I hope this note prompts further thinking. Further questions the Committee might like to seek clarity on include:

1. Is the Minister under any obligation to issue national direction in respect of biodiversity (other than as part of a methodology for ecosystem health limits)?
2. If the Minister does issue national direction, how will the importance of biodiversity be balanced against any number of other “goals”?
3. If the intention is to make greater use of offsetting, will an investment be made in the methodologies necessary to make this robust?
4. How will offsetting requirements interact with regulatory relief?
5. Who will pay and how?
6. Will the necessary investment be made into the environmental information needed to make all of this work in practice – in other words, to complete the unfinished attempts to define the extent and significance of the biodiversity we are trying to protect?



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