

Wildlife (Powers) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Wildlife Act 1953 (the **Act**) classifies and provides for the management of New Zealand's land, freshwater, and marine species (but does not apply to domestic animals and birds, marine mammals, freshwater fish, or plants). It absolutely protects most native birds, all native reptiles, frogs, and bats, some specified native land and marine invertebrates, and 8 marine fish species. This means that, without proper authorisation, the species cannot be collected from the wild, hunted, killed, possessed (alive or dead), held in captivity, sold, or exported.

The Act also provides for the management of game birds (eg, mallard ducks, grey ducks, pukeko) by the New Zealand Fish and Game Council, and it is illegal to (for example) hunt or kill game birds in a closed season or without a licence.

The Act provides enforcement powers and penalties, but offences regularly occur. For example, New Zealanders have been prosecuted for taking or killing protected birds (eg, kereru, kiwi, oystercatchers, gulls, herons, plovers, and shags), catching weka in improperly set possum traps, and taking dogs into wildlife refuges, and since 2010, 7 foreign nationals have been convicted of attempted smuggling involving 68 endangered geckos. Such offending, even at low levels, can significantly affect native species already threatened by introduced predators and habitat loss.

Deterrence against offending can potentially be promoted by social expectations and peer pressure, by the likelihood of offenders being apprehended and prosecuted, and by the potential consequences of conviction. The latter was addressed in 2013 by the Conservation (Natural Heritage Protection) Act 2013, which significantly increased penalties in the Wildlife Act 1953 and 5 other conservation-related Acts. The Department of Conservation (**DOC**) also carries out many activities to promote awareness of New Zealand's wildlife and protected natural areas.

The objective of this Bill is to reduce offending against wildlife by improving the powers available to effectively detect and investigate offences and apprehend offenders.

The Bill focuses on gaps in the powers in the Act that hinder effective enforcement, and on inconsistencies with other conservation legislation that make it difficult for rangers to use common best practice.

The Bill includes 4 standard powers to address these gaps as follows:

- the power to intervene to prevent or stop offending: this power allows a ranger to prevent an offence (eg, by removing an illegally set trap) if the officer believes on reasonable grounds that the person is committing or is about to commit an offence:
- the power to stop a person: rangers currently have powers under the Act to stop vehicles, vessels, and bags or other items in transit that are believed to be involved in the offending that is being investigated, but do not have the power to stop people. The latter power can be necessary in order to question a person or exercise other enforcement powers, for example, in situations where the person is trying to evade a ranger or to hide evidence of offending:
- the power to require suspected offenders to give their date of birth and evidence of their identification: this power is necessary to support investigations and file prosecutions in courts:
- the power to seize a wider range of materials used in the commission of an offence or that may be evidence of an offence: this power will help officers to build a case and assist the court, or to prove intent if an offence is commercially motivated.

The Bill also provides a limited power of arrest that will enable an enforcement officer to temporarily arrest a suspected offender until the officer can deliver the suspect into Police custody.

The Department of Conservation's and the New Zealand Fish and Game Council's enforcement officers currently have access to the same existing enforcement powers under the Act. The 4 new standard powers in the Bill would be available to full-time DOC rangers in relation to all offences under the Act, but would not be available to fish and game rangers or to honorary or part-time DOC rangers.

The power of arrest is limited to specifically warranted DOC rangers and officers from other central government agencies who partner with DOC in joint agency operations and who have sufficient and suitable experience and expertise. It is also limited to serious offences in relation to absolutely protected wildlife, and obstruction of officers investigating those offences.

Departmental disclosure statement

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

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=99>

Regulatory impact statement

The Department of Conservation produced regulatory impact statements on 15 August 2012 and 1 April 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.doc.govt.nz/wildlifepowersamendmentbill-ris2012>
- <http://www.doc.govt.nz/wildlifepowersamendmentbill-ris2015>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Bill will come into force on the 28th day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Wildlife Act 1953 (the **principal Act**).

Part 1

Creation of new powers

Clause 4 amends section 39 of the principal Act, which provides for the powers of rangers. The amendment updates the power of a ranger to call on a person for assistance to broaden the range of people that the ranger may call on and to require that the ranger have oversight of the person.

Clause 5 inserts *new sections 39A to 39F* into the principal Act.

New sections 39A to 39C extend the powers of rangers, other than fish and game rangers or rangers to whom section 38(2) of the principal Act applies.

New section 39A provides for a power to seize evidential material in relation to the investigation of an offence against the principal Act or any regulations made under the principal Act.

New section 39B provides for a power to stop any person or thing or any article in transit in investigating a suspected offence against the principal Act or any regulations made under the principal Act.

New section 39C provides for a power to intervene to prevent or stop an offence against the principal Act or any regulations made under the principal Act.

New sections 39D and 39E provide for a power of arrest to be exercised in relation to offending against absolutely protected wildlife. *New section 39D* specifies the people

who may exercise the power of arrest. *New section 39E* sets out the circumstances in which the power of arrest may be exercised and the procedures that must be followed in exercising the power.

New section 39F provides that Part 4 of the Search and Surveillance Act 2012 applies to the exercise of a power granted by the principal Act.

Clause 6 amends section 66 of the principal Act. The amendment narrows the focus of the section to allowing certain people to require an offender to stop committing an offence and making it an offence to continue an offence after being required to stop. The requirement for an offender to give his or her full name and residential address is moved into *new section 66A*, inserted into the principal Act by *clause 7*. *New section 66A* also allows rangers (other than fish and game rangers or rangers to whom section 38(2) of the principal Act applies) to require a person to provide his or her date of birth and to produce evidence of identifying information.

Part 2

Consequential amendments

Clause 8 amends section 67F(6)(h) of the principal Act to reflect the insertion of *new section 66A*.

Clause 9 replaces section 68AB(5)(g) of the principal Act and inserts *new paragraph (h)* to clarify that, in a prosecution for an offence under section 66(2) or *new section 66A(3)* of the principal Act, the prosecution must prove that the defendant intended to commit the offence.

Clause 10 amends the Schedule of the Search and Surveillance Act 2012 to reflect *new section 39E*.

Hon Maggie Barry

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

This Act is the Wildlife (Powers) Amendment Act **2015**.

2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Wildlife Act 1953 (the **principal Act**).

Part 1**Creation of new powers** 10**4 Section 39 amended (Powers of rangers)**

(1) Replace section 39(1)(e) with:

(e) call on any person for assistance, and the person is authorised to assist the ranger—

- (i) in the exercise of a search power in accordance with section 113 of the Search and Surveillance Act 2012; or 15
- (ii) in the exercise of any other power if the person acts under the direction and supervision of the ranger:

(2) Repeal section 39(3).

5 New sections 39A to 39F inserted 20

After section 39, insert:

39A Power to seize evidential material

A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, may seize any evidential material (as defined in section 3(1) of the Search and Surveillance Act 2012) that he or she reasonably believes relates to the investigation of an offence against this Act or any regulations made under this Act. 25

39B Power to stop

(1) A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, who is investigating a suspected offence against this Act or any regulations made under this Act may, if there is reasonable cause, stop, and keep stopped for a period that is reasonable in the circumstances, any person or thing or any article in transit. 30

(2) This section does not limit the power in section 39(1)(d).

39C	Power to intervene to prevent or stop offending	
	A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, who believes on reasonable grounds that a person is committing or is about to commit an offence against this Act or any regulations made under this Act may intervene, in a manner that is reasonable in the circumstances, to prevent or stop the offence.	5
39D	Certain people to have power of arrest	
(1)	The Director-General may issue to a ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, a written warrant stating that the person is authorised to exercise the power of arrest under section 39E .	10
(2)	The following people may also exercise the power of arrest under section 39E :	
(a)	every constable:	
(b)	every officer in command of any vessel, aircraft, or unit of the New Zealand Defence Force:	15
(c)	every Customs officer (as defined in section 2(1) of the Customs and Excise Act 1996):	
(d)	every fishery officer appointed under section 196(1) of the Fisheries Act 1996.	
39E	Power of arrest	20
(1)	A person authorised under section 39D (an authorised person) may arrest a person without warrant if—	
(a)	the authorised person believes on reasonable grounds that the person has committed or is committing an offence against a provision listed in section 67A(2) (which contains offences in respect of absolutely protected wildlife); or	25
(b)	the authorised person believes on reasonable grounds that the person has committed or is committing an offence in relation to absolutely protected wildlife against section 56(4) (which relates to liberating wildlife) or section 63A (which relates to hunting, killing, buying, or selling marine wildlife, or robbing or disturbing the nest of marine wildlife); or	30
(c)	the authorised person believes on reasonable grounds that the person is obstructing the investigation of an offence referred to in paragraph (a) or (b) .	
(2)	At the time of arrest, the authorised person must, unless it is impracticable to do so,—	35
(a)	identify himself or herself; and	
(b)	produce evidence that he or she is authorised under section 39D ; and	
(c)	tell the person that the power is being exercised under this Act; and	

	(d) tell the person the reason for the arrest.	
(3)	If the authorised person is not a constable, the authorised person must deliver the arrested person into the custody of a constable as soon as is reasonably practicable (unless the person is sooner released).	
39F	Application of Search and Surveillance Act 2012	5
	Part 4 of the Search and Surveillance Act 2012 applies, with any necessary modifications, in relation to the exercise of a power under section 39(1) or any of sections 39A to 39E .	
6	Section 66 amended (Offenders to give name and address to rangers, etc)	
(1)	Replace the heading to section 66 with “ Continuing offence after being required to desist ”.	10
(2)	In section 66(1), delete “and also to tell his real Christian name, surname, and place of abode”.	
(3)	Repeal section 66(3).	
7	New section 66A inserted (Offenders to give identifying information)	15
	After section 66, insert:	
66A	Offenders to give identifying information	
(1)	An authorised person, as defined in section 61(3), who believes on reasonable grounds that a person has committed, is committing, or is about to commit an offence against this Act or any regulations made under this Act may require the person to give his or her full name and residential address.	20
(2)	A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, who believes on reasonable grounds that a person has committed, is committing, or is about to commit an offence against this Act or any regulations made under this Act may (in addition to the power in subsection (1)) require the person to give his or her date of birth, and to produce evidence of his or her full name, date of birth, and residential address.	25
(3)	A person commits an offence if, after being required to give information or produce evidence under subsection (1) or (2) , the person—	
	(a) fails to give the information:	30
	(b) gives false information:	
	(c) fails to produce the evidence within a reasonable time.	
(4)	A person who commits an offence under subsection (3) is liable on conviction to the penalty set out in section 67F(5).	

Part 2

Consequential amendments

8 Section 67F amended (Penalties for other offences)

Replace section 67F(6)(h) with:

- (h) **section 66A(3)** (which relates to failing to give or produce evidence of identifying information or giving false identifying information). 5

9 Section 68AB amended (Mens rea and strict liability offences)

Replace section 68AB(5)(g) with:

- (g) section 66(2) (which relates to wilfully continuing an offence):
- (h) **section 66A(3)** (which relates to failing to give or produce evidence of identifying information or giving false identifying information). 10

10 Search and Surveillance Act 2012 amended

(1) This section amends the Search and Surveillance Act 2012.

(2) In the Schedule, replace the item relating to the Wildlife Act 1953 with:

Wildlife Act 1953	39(1), 39A to 39E	Ranger may exercise variety of entry, seizure, stopping, and related powers in connection with enforcement of Wildlife Act 1953. Specifically warranted rangers and specified enforcement officers from other government agencies may exercise arrest power	All
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