

Wildlife (Powers) Amendment Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Wildlife (Powers) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Wildlife (Powers) Amendment Bill would amend the Wildlife Act 1953. The bill aims to reduce offending against protected wildlife by increasing the powers available to rangers. The new powers aim to help rangers effectively detect and investigate offences, and apprehend offenders.

The bill proposes new powers for full-time Department of Conservation (DOC) rangers and approved officers from other central government agencies that work with DOC:

- The power to seize a wider range of evidence.
- The power to stop a person. Currently rangers only have powers to stop vehicles, vessels, and other items such as bags in transit.
- The power to intervene to prevent offending if the ranger believes that a person is committing or about to commit an offence.

The bill would also provide a power of arrest to specifically warranted DOC rangers and approved officers from other central government agencies that work with DOC. This power would be limited to offences against absolutely protected wildlife, or to the obstruction of officers investigating such offences.

The bill also proposes giving DOC rangers the ability to require date-of-birth information and evidence of identification from suspected offenders.

This commentary covers the main amendments that we recommend to the bill. It does not cover minor or technical amendments.

Certain rangers to have additional powers

We recommend amending clause 5 to insert new section 39AA. This new section would

- clarify which classes of rangers could exercise the proposed new powers in sections 39A, 39B, 39C, and 39D, and which could not
- remove honorary fishery officers from the class of rangers that can exercise the proposed new powers.

Power to seize evidential material

We recommend an amendment to clause 5, new section 39A, to make it clear that a ranger could seize evidential material if it related to the investigation of a suspected offence. This would align with the language in the Search and Surveillance Act 2012.

Powers to prevent offending

We recommend amending clause 5, new section 39B, to clarify the effect of the powers to stop a thing, an item in transit, or a person. We note that the power to stop would not enable a ranger to use force. To emphasise this, we recommend reframing the power to stop a person as the power to require a person to stop.

In considering this amendment, we noted submitters' concerns about the length of time rangers could stop an individual for, and the basis on which a ranger could use this power. We note that people could be held only for a time period that is "reasonable in the circumstances", and that a ranger must have reasonable grounds to stop a person.

We also recommend inserting new section 39C(2). This would clarify that the proposed power to intervene to prevent offending would not affect the existing powers contained in section 39(1)(f) of the principal Act, which relate to the ability to enter certain places and premises.

Rangers to have written authority to arrest

Clause 5, new section 39D would allow the Director-General to authorise certain rangers to exercise a power of arrest.

We recommend amending new section 39D(1) to clarify that only specifically authorised DOC rangers would be given the power of arrest, and this would be done through a written authority, as opposed to a warrant. We recommend this clarification because the use of the word "warrant" in the bill as introduced is confusing, given that the power being granted is the power to arrest without warrant.

Obstructing rangers

We recommend inserting new clause 5A to replace section 40 of the principal Act.

This new clause sets out more clearly the types of behaviour that constitute obstructing a ranger or other person from performing their duties under this legislation. A person who obstructs a ranger would be committing an offence and would be liable, on conviction, to the penalty set out in section 67D of the principal Act. These provisions would support the safety of rangers attempting to restrain or otherwise physically stop suspected offenders.

We recommend updating section 40 to

- clarify that a person who refuses to stop when required to under new section 39B would commit an obstruction offence
- extend the range of powers covered by the section to include the new powers inserted by this bill
- extend the people protected by the section to include all of those authorised to exercise the power to arrest under new section 39E.

Offenders to give identifying information

We recommend replacing section 66A, inserted by clause 7 of the bill, with new section 66A. This amendment would set out more clearly who is authorised to require what information from suspected offenders.

The amendment also provides that a person would be required to produce evidence within a reasonable timeframe. Not doing so would be an offence.

We also recommend, for clarity, including the following three new definitions in new section 66A(4): “authorised person”, “honorary fish and game ranger”, and “honorary fishery officer”.

Conservation Act 1987 to be consequentially amended

We recommend that new clause 9A includes a consequential amendment to the Conservation Act 1987, replacing an outdated reference to the Fisheries Act 1983.

Powers for Fish and Game rangers

Ability to obtain date-of-birth details

All charging documents are required to include a date of birth. We understand from the New Zealand Fish and Game Council that its rangers are currently limited in their ability to perform their statutory role of enforcing game hunting because they are unable to require date-of-birth information from suspected offenders. Fish and Game cannot prosecute offenders unless they give this information voluntarily.

We were advised that, although this would be a useful power for full-time Fish and Game rangers, it would not be necessary to extend the power to honorary Fish and Game rangers. This is because honorary rangers are generally accompanied by full-time Fish and Game rangers.

Some of us disagree, and believe that all Fisheries officers and all Fish and Game rangers, including honorary rangers and Fish and Game officers, should be able to ask for date of birth.

New powers would not apply to Fish and Game rangers

The bill would exclude Fish and Game rangers from accessing the proposed new powers set out in the bill. We considered carefully whether this exclusion was appropriate.

We were advised that Fish and Game rangers should not be granted the proposed new powers because the focus of the bill is primarily on protected wildlife, not game birds. Another factor is that Fish and Game rangers are not State sector employees and therefore are not subject to the same standards of integrity and conduct, as outlined in the *Code of Conduct for the State Services*. We were also advised that Fish and Game rangers are not subject to the lines of accountability in the State Sector Act 1988. Some of us disagree with this logic, but nonetheless do not believe Fish and Game need the extra powers.

We acknowledge the important work of Fish and Game rangers, but we consider that the new powers should be restricted to full-time DOC rangers and approved officers from other central government agencies that work with DOC. We note that the powers would be inappropriate for Fish and Game rangers as they are responsible for game birds under the Wildlife Act and sports fish under the Conservation Act rather than protected wildlife. As this bill's intention is primarily to "reduce offending against protected wildlife", we felt that enhancing Fish and Game's powers would not align with the objective of the bill.

Appendix

Committee process

The Wildlife (Powers) Amendment Bill was referred to the committee on 29 March 2016.

The closing date for submissions was 12 May 2016. We received and considered seven submissions from interested groups and individuals. We heard oral evidence from four submitters in Wellington.

We received advice from the Department of Conservation and the Parliamentary Counsel Office.

Committee membership

Scott Simpson (chairperson)

Sarah Dowie

Matt Doocey

Paul Foster-Bell

Joanne Hayes

Tutehounuku Korako

Ron Mark

Hon David Parker

Eugenie Sage

James Shaw

Meka Whaitiri

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

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

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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
 - (ii) in the exercise of any other power if the person acts under the direction and supervision of the ranger:

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(2) Repeal section 39(3).

5 New sections 39AA to 39F inserted

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After section 39, insert:

39AA Certain rangers to have additional powers

(1) This section applies to a ranger who is not—

- (a) a fish and game ranger; or
- (b) a ranger appointed under section 38(2); or
- (c) an honorary fishery officer, within the meaning given in section 2(1) of the Fisheries Act 1996.

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- (2) A ranger to whom this section applies may exercise the powers provided in **sections 39A to 39C**.

39A Power to seize evidential material

A ranger, ~~other than a fish and game ranger or a ranger to whom section 38(2) applies, to whom **section 39AA** 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~~ a suspected offence against this Act or any regulations made under this Act.

39B Powers to require people to stop and to stop things or articles in transit

- (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.~~

- (1) In exercising a power or duty under this Act, a ranger to whom **section 39AA** applies who is investigating a suspected offence against this Act or any regulations made under this Act may, if there is reasonable cause,—

- (a) require a person to stop and to remain stopped for a period that is no longer than is reasonable in the circumstances; and
- (b) stop, and keep stopped for a period that is no longer than is reasonable in the circumstances, any thing or any article in transit.

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

39C Power to intervene to prevent or stop offending

- (1) ~~A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, to whom **section 39AA** 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.

- (2) This section does not affect the power in section 39(1)(f).

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, to whom **section 39AA** applies~~ a written warrant authority stating that the person ranger is authorised to exercise the power of arrest under **section 39E**.

- (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:
- (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. 5

39E Power of arrest

- (1) A person authorised under **section 39D** (an ~~authorised person~~arresting officer) may arrest a person without warrant if—
 - (a) the ~~authorised person~~arresting officer 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 10
 - (b) the ~~authorised person~~arresting officer 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 15
 - (c) the ~~authorised person~~arresting officer believes on reasonable grounds that the person is obstructing the investigation of an offence referred to in **paragraph (a) or (b)**. 20
- (2) At the time of arrest, the ~~authorised person~~arresting officer must, unless it is impracticable to do so,—
 - (a) identify himself or herself; and 25
 - (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~~arresting officer is not a constable, the ~~authorised person~~arresting officer must deliver the arrested person into the custody of a constable as soon as is reasonably practicable (unless the person is sooner released). 30

39F Application of Search and Surveillance Act 2012

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**. 35

5A Section 40 replaced (Obstructing rangers)

Replace section 40 with:

40 Obstructing persons acting under this Act

- (1) A person must not—
- (a) wilfully resist, impede, or obstruct a person acting under this Act; or
 - (b) wilfully incite or encourage another person to resist, impede, or obstruct a person acting under this Act; or 5
 - (c) wilfully use abusive or threatening language to, or behave in a threatening manner to, a person acting under this Act; or
 - (d) wilfully fail to comply with a lawful demand made by a person acting under this Act (including a requirement under **section 39B(1)(a)**); or
 - (e) wilfully refuse to allow a person acting under this Act to exercise a power conferred on that person by or under this Act. 10
- (2) A person who does not comply with this section commits an offence and is liable on conviction to the penalty set out in section 67D.
- (3) In this section, a **person acting under this Act** means—
- (a) a ranger exercising a power conferred on that ranger by or under this Act; and 15
 - (b) a person assisting a ranger under **section 39(1)(e)**; and
 - (c) a person authorised under **section 39D(2)** who is exercising the power of arrest in **section 39E**. 20

5B Section 60 amended (Protection of rangers and others) 20

In section 60, after “functions”, insert “or powers”.

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**”.
- (2) In section 66(1), delete “and also to tell his real Christian name, surname, and place of abode”. 25
- (3) Repeal section 66(3).

7 New section 66A inserted (Offenders to give identifying information)

After section 66, insert:

66A Offenders to give identifying information 30

- (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.
- (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 35

~~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.~~

- (3) ~~A person commits an offence if, after being required to give information or produce evidence under **subsection (1) or (2)**, the person—~~ 5
- ~~(a) fails to give the information;~~
 - ~~(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).~~ 10

66A Offenders to give identifying information

- (1) A ranger or an authorised person 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 information or produce evidence as follows: 15

<u>Type of ranger or authorised person</u>	<u>Information or evidence that ranger or authorised person may require</u>
<u>Authorised person who is not a ranger</u>	<u>The person's full name and residential address</u>
<u>Honorary fish and game ranger, honorary fishery officer, or ranger appointed under section 38(2)</u>	<u>The person's full name and residential address</u>
<u>Fish and game ranger, other than an honorary fish and game ranger</u>	<u>The person's full name, residential address, and date of birth</u>
<u>All other rangers</u>	<u>The person's full name, residential address, and date of birth, and evidence of that information</u>

- (2) A person who is required to give information or produce evidence under **subsection (1)** must— 20
- (a) give the information;
 - (b) produce the evidence within a reasonable time.
- (3) A person who contravenes **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 67F(5).
- (4) In this section,—
- authorised person** has the meaning given in section 61(3)
- honorary fish and game ranger** means a person appointed to be a fish and game ranger in an honorary capacity under section 26FA(2) of the Conservation Act 1987 25
- honorary fishery officer** has the meaning given in section 2(1) of the Fisheries Act 1996.

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

9A Conservation Act 1987 amended

- (1) This section amends the Conservation Act 1987.
- (2) In section 59(9), replace “Part 6 of the Fisheries Act 1983” with “Part 11 of the Fisheries Act 1996”. 15

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 All 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
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Legislative history

2 December 2015
29 March 2016

Introduction (Bill 99–1)
First reading and referral to Local Government and Environment Committee