

# Departmental Disclosure Statement

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Wildlife (Powers) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Conservation.

The Department of Conservation certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Tuesday 10 November 2015

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## Part One: 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 (e.g. 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 nevertheless regularly occur. For example, New Zealanders have been prosecuted for taking or killing protected birds (e.g. 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 occurring (e.g. 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.

DOC'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. These powers would not be available to full-time or honorary 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>A Regulatory Impact Statement: Wildlife (Powers) Amendment Bill was produced by the Department of Conservation on 15 August 2012 and submitted to Cabinet when policy approval was sought. The proposed Bill amended both penalties and powers in the Wildlife Act. Cabinet approved the policy proposals, but the Bill but did not progress further at that time.</p> <p>A copy of this RIS can be accessed at <a href="http://www.doc.govt.nz/wildlifepowersamendmentbill-ris2012">www.doc.govt.nz/wildlifepowersamendmentbill-ris2012</a>.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The RIA Team did not give an independent opinion on the Regulatory Impact Statement's (RIS's) quality because the RIS did not meet the threshold for RIA Team assessment.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
<p>A justification to use force when exercising other powers was originally proposed in the Bill but is no longer required due to existing provisions Crimes Act 1961 and in the Search and Surveillance Act 2012 (e.g. in s 110(c), 115(3) in relation to the search and seizure of property).</p> <p>The Bill also updates the power of a ranger to call upon a person for assistance—to make it consistent with human rights based legislation, and with the Search and Surveillance Act 2012.</p> <p>The RIS also originally proposed that DOC rangers and full-time NZ Fish and Game Council rangers would have access to the proposed new standard powers, but not honorary Fish and Game rangers. The Bill now limits these powers to full-time DOC rangers—the powers would not be available to full-time or honorary Fish and Game rangers, or to honorary or part-time DOC rangers.</p>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
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A revised Regulatory Impact Statement was produced on 1 April 2015 by the Department of Conservation, as part of the process of seeking reconfirmation of the 2012 policy approvals. The scope of the Bill and RIS was now limited to amending the Wildlife Act's enforcement powers (as the penalties in the Act had been amended by the Conservation (Natural Heritage Protection) Act 2013). However the Cabinet paper and RIS did not go to Cabinet as the Cabinet Office determined that policy reconfirmation was not necessary.

A copy of this 2015 "Regulatory Impact Statement: Wildlife (Powers) Amendment Bill" can be accessed at [www.doc.govt.nz/wildlifepowersamendmentbill-ris2015](http://www.doc.govt.nz/wildlifepowersamendmentbill-ris2015).

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Training enforcement officers incurs costs but this should be limited for the new powers. DOC has approximately 200 rangers and Fish and Game has 52 full-time and 222 honorary rangers. In addition, for DOC warranted officers, the additional powers (other than arrest) proposed for the Wildlife Act already occur in other conservation legislation. These powers are therefore already addressed in existing routine warranted officer training courses, but will now be able to be applied to offending under the Wildlife Act.</p> <p>Additional training may be required for the new arrest power under the Act, but this will involve only a very small group of DOC officers, and will build on training for an arrest power under the Trade in Endangered Species Act 1989.</p> <p>The costs of training were briefly addressed in the 2015 Regulatory Impact Statement and can be accessed at <a href="http://www.doc.govt.nz/wildlifepowersamendmentbill-ris2015">www.doc.govt.nz/wildlifepowersamendmentbill-ris2015</a>.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>This Bill does not of itself impose any new obligations or offences on the general public. However as the Bill focuses on enhancing enforcement powers, its potential benefits are directly related to public compliance with the Act and with the implementation of the powers</p> <p>The objective of the Bill is to reduce offending against wildlife by improving the deterrence provided by the ability to effectively investigate and prosecute offending.</p> <p>The current gaps in the Act can make it difficult to investigate offences and bring prosecutions, particularly in cases of wildlife smuggling where there is a significant risk of offenders absconding. They can also make it difficult for officers to use common investigative tools across the Acts. The proposed changes are intended to help address these issues and therefore aid compliance.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Advice was sought from the Department of Conservation's legal team.

International obligations in relation to endangered wildlife are covered by the Convention on International Trade in Endangered Species (CITES), which is given effect in New Zealand by the Trade in Endangered Species Act 1989 (TIES Act). Neither CITES nor the TIES Act are affected by this Bill.

However the Bill should assist in complying with CITES. It will complement the TIES Act by enhancing the ability to apprehend wildlife smugglers within New Zealand rather than at the border. Earlier apprehension of offenders should also help to reduce impacts on the wildlife.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Department is bound by section 4 of the Conservation Act 1987, which requires DOC to administer the Act so as to give effect to the principles of the Treaty of Waitangi. This requirement also applies to other conservation legislation administered by the Department, including the Wildlife Act 1953. In relation to the principles of partnership, informed decision-making, active protection, and redress and reconciliation:

- The Department consulted with Te Puni Kokiri, who did not identify any issues of significance to Maori in the proposals.
- The Department considered whether the proposals would be relevant to any Treaty of Waitangi settlement Acts. The Department discussed the proposals with Te Runanga o Ngai Tahu, as the Ngai Tahu Claims Settlement Act 1998 (s 293) requires the Minister of Conservation to advise Ngai Tahu in advance of any policies etc relating to a Ngai Tahu taonga species. The Bill's proposals are relevant to this as they will provide more effective mechanisms for preventing the loss of taonga species.
- Provision may be made for access to cultural material (for example feathers from protected species), through an authorisation under the Wildlife Act, or through specific provisions in Treaty settlement legislation. These will not be affected by the changes to the enforcement powers as the powers will only apply when an activity is an offence.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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YES
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The Ministry of Justice was consulted on the proposed powers and provided advice on including reasonableness/good cause thresholds to avoid limiting rights and freedoms. These were included. For example, the Bill provides that:

- The power to stop may only be exercised in relation to the investigation of a suspected offence, and only for a period which is reasonable in the circumstances.
- An authorised person may arrest a person only if they believe on reasonable grounds that the person has committed or is committing an offence.
- Likewise, an authorised person must believe on reasonable grounds that a person has committed, is committing, or is about to commit an offence before require the to give their name birth date, and address, or to provide evidence of these.
- The actions taken to intervene to prevent or stop offending must be reasonable in the circumstances.
- The ranger must reasonably believe the evidential material being seized relates to the investigation of an offence.

Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Department discussed the proposed changes to the Wildlife Act with Te Runanga o Ngai Tahu (TRONT), the New Zealand Fish and Game Council, and the NZ Conservation Authority (NZCA) in both 2012 and 2015. The discussions were in confidence, by phone call and e-mail.</p> <ul style="list-style-type: none"> <li>• The New Zealand Fish and Game Council has statutory functions and enforcement powers under the Wildlife Act. The Department advised the Council of the proposed changes to powers. They: <ul style="list-style-type: none"> <li>– supported the four new standard powers, while noting that there would be a need for adequate training and legislative safeguards;</li> <li>– considered that it would be appropriate for their full-time rangers to have access to all the standard powers;</li> <li>– considered that their honorary rangers should have access to all the standard powers, except for the power to stop a person;</li> <li>– agreed that the power of arrest should not apply to any Fish and Game enforcement officers.</li> </ul> </li> <li>• TRONT was advised as the Ngai Tahu Claims Settlement Act 1998 (s 293) requires the Minister of Conservation to advise Ngai Tahu in advance of any relevant policies etc relating to a Ngai Tahu taonga species. Te Runanga o Ngai Tahu has advised that it considers the proposals will provide practical mechanisms for preventing the loss of taonga species and enhancing the ability to gather evidence to secure prosecutions.</li> <li>• The NZCA was advised as it is a statutory body with policy, planning and advocacy functions under the Conservation Act 1987. The NZCA supported the proposals for the Bill, noting that ensuring wildlife are protected will require effective implementation of the provisions.</li> </ul> <p>There was no broader public consultation on the proposals as the amendments only enhance compliance provisions, and do not affect the Wildlife Act's core principles, such as the protection status of wildlife, or how wildlife is managed.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Department's senior compliance and law enforcement officers and solicitors provided advice on the gaps in the powers available under the Wildlife Act 1953 and what powers were required to provide effective enforcement.</p> <p>The Department also consulted with the NZ Police, the NZ Defence Force and the Ministry of Justice on what statutory and administrative safeguards would be required, particularly for the proposed limited power of arrest.</p> <p>Following the Bill's enactment, the Department also intends to work closely with the NZ Police to ensure there will be sufficiently robust training and appropriate supporting policies and procedures for the limited power of arrest.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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