

Conservation (Natural Heritage Protection) Bill

Member's Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Conservation (Natural Heritage Protection) Bill and recommends that it be passed with the amendments shown.

Introduction

The Conservation (Natural Heritage Protection) Bill is an omnibus bill that seeks to increase the penalties in the main enactments administered by the Department of Conservation. This is intended to encourage compliance and protect New Zealand's natural and historic resources and legally protected wildlife. It would also implement a consistent approach to the penalties administered by the department.

The bill as introduced would amend the following Acts:

- the Conservation Act 1987
- the National Parks Act 1980
- the Reserves Act 1977
- the Wildlife Act 1953

- the Wild Animal Control Act 1977.

The bill does not seek to alter the department's compliance and enforcement strategy, processes, or resources; it would maintain its existing policy of educating people to encourage compliance. Like other Crown enforcement agencies, the department would be required to apply Crown Law Office Prosecution Guidelines when determining whether to prosecute.

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

Purpose

We recommend deleting clause 3 to reflect the general principle that amendment bills should not include statements of purpose, as they could conflict with the purpose provisions of the principal Act or Acts.

Penalties

We recommend a number of amendments to Parts 1 to 5 to update and organise the existing penalties for offences we do not consider to be motivated by commercial gain or reward. We discuss penalties for offences motivated by commercial gain or reward below. This approach takes into account a number of factors, including intentionality and the type of offence.

For lesser offences we recommend that the following penalties apply:

- For individuals: a term of imprisonment not exceeding one year or a fine not exceeding \$100,000, or both.
- For bodies corporate: a fine not exceeding \$200,000.
- For a continuing offence: a further fine not exceeding \$10,000 per day.

For more serious offences, such as discharging a firearm into a protected area, injuring or taking absolutely protected wildlife, obstructing an officer, and taking plants from conservation areas, we recommend similar penalties, but with a higher maximum term of imprisonment, 2 years, for individuals.

Marine wildlife (Wildlife Act)

To reflect the bill's intended consistent approach to the penalties administered by the department, we recommend amending clause 13 to remove from section 67 of the Wildlife Act a further fine provision "not exceeding \$10,000 for every item of marine wildlife (other than coral)".

Offences committed for commercial gain or reward

We also recommend a number of amendments to Parts 1 to 5 to establish new standardised penalties for commercially-motivated offences. We recommend that the following penalties apply:

- For individuals: a term of imprisonment not exceeding five years or a fine not exceeding \$300,000, or both.
- For bodies corporate: a fine not exceeding \$300,000.
- For a continuing offence: a further fine not exceeding \$20,000 per day.

Recommending higher penalties for commercially-motivated offending (including smuggling) than for otherwise-motivated offending is intended to create a strong deterrent and penalise the most serious offending sufficiently severely.

Regulations and bylaws

Clauses 6 and 8 seek to increase the penalties for breaching Conservation Act regulations and National Parks Act bylaws. Consistently with the bill's aim of increasing and standardising penalties, we recommend inserting new clauses 11A and 15D and amending clause 17 to increase the maximum penalties for breaching regulations under the Reserves Act, the Wildlife Act, and the Wild Animal Control Act. We also recommend amending clause 11 (as it relates to section 104 of the Reserves Act) to remove the distinction between national reserves and other reserves, and apply the same penalty regime to all reserves. National reserve status does not necessarily designate the most important places and we consider the distinction to be unnecessary.

Other penalties

We recommend inserting new clause 4B to amend section 39 of the Conservation Act. Subclause (2) would increase the maximum penalties for releasing contaminants into various waterways. We also recommend amending clauses 14 and 15 to replace sections 67A(1) and 67B of the Wildlife Act.

Marine Mammals Protection Act

We recommend inserting new Part 6 to reflect the intention of bringing consistency to the penalties administered by the Department of Conservation. New Part 6 would update the penalty regime of the Marine Mammals Protection Act 1978. For the sake of consistency, we recommend that the changes be aligned with our proposed amendments to Parts 1 to 5.

Standing Order 288(1) states that a select committee may recommend only amendments that are relevant to the subject-matter and consistent with the principles and objects of a bill. We are confident that our proposal to include the Marine Mammals Protection Act in this bill meets this requirement.

We note that new Part 6 would not affect section 9 of the Act in terms of what constitutes the offence of “taking” a marine mammal without a permit including attracting, disturbing, or injuring.

Drafting amendments

To reflect current drafting practice we recommend that the term “corporation” be replaced with “body corporate”. For the sake of consistency, we also recommend replacing in clauses 5, 9, 11, and 18 references to a person being sentenced to community work with reference to an individual being sentenced.

Appendix

Committee process

The Conservation (Natural Heritage Protection) Bill was referred to the committee on 14 November 2012. The closing date for submissions was 28 February 2013. We received and considered eight submissions from interested groups and individuals. We heard one submission.

We received advice from the Department of Conservation.

Committee membership

Nicky Wagner (Chairperson)

Maggie Barry

Jacqui Dean

Paul Goldsmith

Claudette Hauti

Hon Phil Heatley

Gareth Hughes

Raymond Huo

Moana Mackey

Eugenie Sage

Hon Maryan Street

Andrew Williams

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Jacqui Dean

Conservation (Natural Heritage Protection) Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Conservation (Natural Heritage Protection) Act **2012**.

2 Commencement

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

3 Purpose

The purpose of this Act is—

- (a) to encourage compliance with enactments administered by the Department of Conservation by increasing penalties to better protect natural and historic resources and absolutely and partially protected wildlife; and
- (b) to implement a consistent approach to penalties across the main enactments administered by the Department of Conservation; and
- (c) to increase the penalties in the main enactments administered by the Department of Conservation.

Part 1**Amendments to Conservation Act 1987****4 Principal Act**

This **Part** amends the Conservation Act 1987 (the **principal Act**).

4A Section 27A amended (Nga Whenua Rahui kawenata)

In section 27A(1)(c), replace “44” with “**43C**”.

4B Section 39 amended (Other offences in respect of conservation areas)

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

- “(ba) contravenes or fails to comply with section 17O(2), which relates to activities carried out in conservation areas without a concession; or
- “(bb) contravenes or fails to comply with section 17ZF, which relates to operating aircraft in conservation areas without a concession or in an emergency or to repair a navigation aid; or”.

(1A) Repeal section 39(2).

(2) In section 39(6), replace “to a fine not exceeding \$30,000, and to a further fine of \$3,000 per day” with “to imprisonment for

a term not exceeding 2 years or a fine not exceeding \$100,000, or both, and to a further fine of \$10,000 per day”.

4C New sections 43C and 43D inserted

After section 43B, insert:

“43C Penalties for certain offences

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“(1) Every person who commits an offence against any of the provisions listed in **subsection (2) is liable on conviction to the penalties prescribed in **subsection (3)**.**

“(2) The provisions are—

“(a) section 26ZJ, which relates to unlawful acts in respect of spawning fish: 10

“(b) section 26ZR, which relates to the use of a substance or electric device to take or destroy freshwater fish:

“(c) section 30(6), which relates to the taking of plants from conservation areas: 15

“(d) section 38(4)(a), which relates to discharging weapons on, into, or over conservation areas:

“(e) section 39(1)(b), **(bb), (c), (ca), (d), (e), (f), (g), and (h), which relates to other offences in respect of conservation areas: 20**

“(f) section 39(3), which relates to the disposal of contaminants:

“(g) section 41(a), which relates to resisting or obstructing officers and rangers.

“(3) The penalties are,— 25

“(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:

“(b) in the case of a body corporate, a fine not exceeding \$200,000: 30

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.

“43D Penalties for offences committed for commercial gain or reward

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“(1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the Court is satisfied beyond rea-

sonable doubt that the offence was committed for the purpose of commercial gain or reward (whether or not any gain or reward is realised), the person is liable instead of any penalty otherwise prescribed to,—

“(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both: 5

“(b) in the case of a body corporate, a fine not exceeding \$300,000: 10

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$20,000 for every day on which the offence continues. 10

“(2) **Subsection (1)** overrides every other provision of this Act to the contrary.”

5 Section 44 replaced (Penalties) 15

Replace section 44 with:

“44 Penalties

Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable,— 20

“(a) where the offence was committed by an individual, to imprisonment for a term not exceeding 2 years and to a fine not exceeding \$100,000; and, where the offence is a continuing one, to a further fine not exceeding \$10,000 for every day on which the offence has continued; and 25

“(b) where the offence was committed by an individual for commercial purposes, to imprisonment for a term not exceeding 3 years and to a fine not exceeding \$200,000; and, where the offence is a continuing one, to a further fine not exceeding \$20,000 for every day on which the offence has continued; and 30

“(c) where the offence was committed by a corporation, to a fine not exceeding \$200,000 and, where the offence is a continuing one, to a further fine not exceeding \$20,000 for every day on which the offence has continued. 35

44 Penalties

Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable on conviction to,—

“(a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both: 5

“(b) in the case of a body corporate, a fine not exceeding \$200,000:

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.” 10

44A Sentence of community work

A court may sentence any ~~person~~ individual who commits an offence against this Act to a sentence of community work, and the provisions of Part 2 of the Sentencing Act 2002 apply with all necessary modifications.” 15

6 Section 48 amended (Regulations)

In section 48(1)(n), replace “\$50” with “\$500”.

Part 2 20

Amendments to National Parks Act 1980

7 Principal Act

This **Part** amends the National Parks Act 1980 (the **principal Act**).

8 Section 56 amended (Bylaws) 25

~~In section 56(1), replace paragraphs~~ Replace section 56(1)(m) and (n) with:

“(m) prescribing fines, not exceeding \$5,000 in any one case, for the breach of any bylaw made under paragraphs (a) to (j):” 30

“(n) prescribing fines, not exceeding \$10,000 in any one case, for the breach of any bylaw made under paragraphs (k) to (l).”

8A Section 60 amended (Offences in parks)

- (1) Repeal section 60(7).
- (2) In section 60(8), replace “For the purposes of subsections (6) and (7)” with “For the purpose of subsection (6)”.

8B New sections 69A and 69B inserted

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After section 69, insert:

“69A Penalties for certain offences

“(1) Every person who commits an offence against any of the provisions listed in **subsection (2)** is liable on conviction to the penalties prescribed in **subsection (3)**.

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“(2) The provisions are—

“(a) section 13(5), which relates to access to specially protected areas:

“(b) section 60(1)(a) to (i), (k), and (l), which relate to unauthorised acts in parks:

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“(c) section 60(2)(a) and (b), which relate to failure to remove animals, vehicles, or aircraft from parks:

“(d) section 60(4)(b) and (c), which relate to the use of firearms:

“(e) section 63(a), which relates to wilfully obstructing rangers.

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“(3) The penalties are,—

“(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:

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“(b) in the case of a body corporate, a fine not exceeding \$200,000:

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.

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“69B Penalties for offences committed for commercial gain or reward

“(1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the Court is satisfied beyond reasonable doubt that the offence was committed for the purpose of commercial gain or reward (whether or not any gain or re-

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ward is realised), the person is liable instead of any penalty otherwise prescribed to,—

“(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both:

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“(b) in the case of a body corporate, a fine not exceeding \$300,000:

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$20,000 for every day on which the offence continues.

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“(2) **Subsection (1)** overrides every other provision of this Act to the contrary.”

9 Section 70 replaced (Penalty for offences)

Replace section 70 with:

~~70~~ Penalties

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Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable,—

“(a) where the offence was committed by an individual; to imprisonment for a term not exceeding 2 years and to a fine not exceeding \$100,000; and, where the offence is a continuing one; to a further fine not exceeding \$10,000 for every day on which the offence has continued; and

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“(b) where the offence was committed by an individual for commercial purposes; to imprisonment for a term not exceeding 3 years and to a fine not exceeding \$200,000; and, where the offence is a continuing one, to a further fine not exceeding \$20,000 for every day on which the offence has continued; and

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“(c) where the offence was committed by a corporation; to a fine not exceeding \$200,000 and, where the offence is a continuing one; to a further fine not exceeding \$20,000 for every day on which the offence has continued.

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~~70~~ Penalties

Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable on conviction to,—

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- “(a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both:
- “(b) in the case of a body corporate, a fine not exceeding \$200,000:
- “(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.

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“70A Sentence of community work

A court may sentence any ~~person~~ individual who commits an offence against this Act to a sentence of community work, and the provisions of Part 2 of the Sentencing Act 2002 apply with all necessary modifications.”

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Part 3

Amendments to Reserves Act 1977

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10 Principal Act

This **Part** amends the Reserves Act 1977 (the **principal Act**).

10A New sections 102A and 102B inserted

After section 102, insert:

“102A Penalties for certain offences

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“(1) Every person who commits an offence against any of the provisions listed in **subsection (2)** is liable on conviction to the penalties prescribed in **subsection (3)**.

“(2) The provisions are—

“(a) section 94(1)(a) to (k), (l), and (m), which relate to unauthorised acts on reserves:

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“(b) section 94(2)(a), (b), (d) and (da), which relate to failure to comply with requirements relating to animals, vehicles, aircraft, or boats:

“(c) section 94(4)(b) and (c):

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“(d) section 97(1), which relates to unauthorised fires:

“(e) section 98(b), which relates to assaulting or obstructing rangers:

“(f) section 100(5), which relates to obstructing officers.

“(3) The penalties are,—

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“(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:

“(b) in the case of a body corporate, a fine not exceeding \$200,000:

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.

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“102B Penalties for offences committed for commercial gain or reward

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“(1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the Court is satisfied beyond reasonable doubt that the offence was committed for the purpose of commercial gain or reward (whether or not any gain or reward is realised), the person is liable instead of any penalty otherwise prescribed to,—

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“(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both:

“(b) in the case of a body corporate, a fine not exceeding \$300,000:

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“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$20,000 for every day on which the offence continues.

“(2) **Subsection (1)** overrides every other provision of this Act to the contrary.”

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11 Sections 103 and 104 replaced

Replace sections 103 and 104 with:

“103 Penalties

Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable,—

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“(a) where the offence was committed by an individual, to imprisonment for a term not exceeding 2 years and to a fine not exceeding \$100,000, and, where the offence is a continuing one, to a further fine not exceeding \$10,000 for every day on which the offence has continued; and

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- ~~“(b) where the offence was committed by an individual for commercial purposes, to imprisonment for a term not exceeding 3 years and to a fine not exceeding \$200,000; and, where the offence is a continuing one, to a further fine not exceeding \$20,000 for every day on which the offence has continued; and~~ 5
- ~~“(c) where the offence was committed by a corporation, to a fine not exceeding \$200,000 and, where the offence is a continuing one, to a further fine not exceeding \$20,000 for every day on which the offence has continued.~~ 10

“103 Penalties

Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable on conviction to,—

- “(a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both; 15
- “(b) in the case of a body corporate, a fine not exceeding \$200,000;
- “(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues. 20

“104 Penalty for breach of bylaws

Every person who commits a breach of any bylaw under this Act commits an offence, and is liable, on conviction to— 25

- ~~“(a) in the case of an offence committed in respect of a national reserve, to a fine not exceeding \$10,000; and, where the offence is a continuing one, to a further fine not exceeding \$1,000 for every day on which the offence has continued;~~ 30
- ~~“(b) in the case of any other offence, to a fine not exceeding \$5,000; and, where the offence is a continuing one, to a further fine not exceeding \$500 for every day on which the offence has continued.~~
- “(a) a fine not exceeding \$5,000; and 35

“(b) where the offence is a continuing one, a further fine not exceeding \$500 for every day on which the offence continues.”

“104A Sentence of community work

A court may sentence any person individual who commits an offence against this Act to a sentence of community work₂ and the provisions of Part 2 of the Sentencing Act 2002 apply with all necessary modifications.” 5

11A Section 123 amended (Regulations)

In section 123(1)(b),—

- (a) replace “\$200” with “\$5,000”;
(b) replace “\$5” with “\$500”.

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Part 4

Amendments to Wildlife Act 1953

12 Principal Act

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

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12A Section 9 amended (Wildlife sanctuaries)

In section 9(4), replace “section 67F(3)” with “**section 67F(7)**”.

12B Section 14 amended (Wildlife refuges)

- (1) In section 14(1C), replace “section 67F(3)” with “**section 67F(5)**”.
(2) In section 14(3A), replace “section 67F(1)” with “**section 67F(5)**”.

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12C Section 14A amended (Wildlife management reserves)

In section 14A(4), replace “section 67F(3)” with “**section 67F(5)**”.

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- 12D** **Section 53 amended (Director-General may authorise taking or killing of wildlife for certain purposes)**
In section 53(7), replace “section 67F(1)” with “**section 67F(5)**”.
- 12E** **Section 59 amended (Entry on land for purposes of Act)** 5
In section 59(6), replace “section 67F(1)” with “**section 67F(7)**”.
- 12F** **Section 61 amended (Person in pursuit of wildlife to comply with demand by authorised officer)**
In section 61(6), replace “section 67F(1)” with “**section 67F(5)**” 10
- 12G** **Section 64 amended (Offences in relation to wildlife sanctuaries)**
In section 64, replace “section 67F(3)” with “**section 67F(7)**” 15
- 12H** **Section 65 amended (Other offences)**
In section 65(1), replace “section 67F(1)” with “**section 67F(5)**”.
- 12I** **Section 66 amended (Offenders to give name and address to rangers, etc)** 20
In section 66(2) and (3), replace “section 67F(1)” with “**section 67F(5)**”.
- 13** **Section 67 amended (Penalties for offences in respect of marine wildlife)**
In section 67(fa), replace “6 months” with “2 years” 25
Replace 67(1)(fa) with:
“(fa) commits an offence against section 63A (which relates to the taking of absolutely or partially protected marine wildlife) is liable to imprisonment for a term not exceeding 2 years, or to a fine not exceeding \$250,000, or both:” 30

14 Section 67A amended (Penalties for offences in respect of absolutely protected wildlife)

(1) In section 67A(1)(a)(i), replace “6 months” with “2 years”.

(2) After section 67A(1), insert:

“(1A) Where the offence was committed by an individual for commercial purposes, to imprisonment for a term not exceeding 3 years and to a fine not exceeding \$200,000, and, where the offence is a continuing one, to a further fine not exceeding \$5,000 for each egg or head of wildlife in respect of which the offence is committed.”

Replace section 67A(1) with:

“(1) Every person who commits an offence against any of the provisions listed in subsection (2) is liable on conviction to,—

“(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:

“(b) in the case of a body corporate, a fine not exceeding \$200,000.”

15 Section 67B amended replaced (Penalty for offence of liberating wildlife)

In section 67B(a)(i), replace “6 months” with “2 years”.

Replace section 67B with:

“67B Penalty for offence of liberating wildlife

Every person who commits an offence against section 56(1)(ab) is liable on conviction to,—

“(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:

“(b) in the case of a body corporate, a fine not exceeding \$200,000.”

15A Section 67D amended (Penalty for offence of obstructing ranger)

(1) In section 67D(a),—

(a) replace “3 months” with “2 years”; and

(b) replace “\$5,000” with “\$100,000, or both”.

(2) In section 67D(b), replace “\$10,000” with “\$200,000”.

15B Section 67F amended (Penalties for other offences)

- (1) Repeal section 67F(2)(a), (c), (d), (h), (j), (l), (n), and (o).
- (2) Repeal section 67F(4)(d), (e), (f), and (h).
- (3) After section 67F(4), insert:
- “(5) Every person who commits an offence against any of the provisions listed in **subsection (6)** is liable on conviction to,— 5
- “(a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both:
- “(b) in the case of a body corporate, a fine not exceeding \$200,000. 10
- “(6) The provisions are—
- “(a) section 14(1C) (which relates to breaching a Proclamation or notice in respect of a wildlife refuge):
- “(b) section 14(3A) (which relates to prohibited acts committed in wildlife refuges): 15
- “(c) section 14A(4) (which relates to breaching a Proclamation in respect of a wildlife management reserve):
- “(d) section 53(7) (which relates to the failure of a person or officer to comply with an authorisation): 20
- “(e) section 61(6) (which relates to failing to produce various items):
- “(f) section 65(1) (which provides for various miscellaneous offences):
- “(g) section 66(2) (which relates to wilfully continuing an offence): 25
- “(h) section 66(3) (which relates to failing to give a name, or giving a false name or address).
- “(7) Every person who commits an offence against any of the provisions listed in **subsection (8)** is liable on conviction to,— 30
- “(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:
- “(b) in the case of a body corporate, a fine not exceeding \$200,000. 35
- “(8) The provisions are—
- “(a) section 9(4) (which relates to breaching an Order in Council in respect of a wildlife sanctuary):

- “(b) section 59(6) (which relates to obstructing the Director-General or an officer in the exercise of powers):
“(c) section 64 (which relates to acts committed in wildlife sanctuaries).”

15C New section 67I inserted (Penalties for offences committed for commercial gain or reward) 5

After section 67H, insert:

“67I Penalties for offences committed for commercial gain or reward

“(1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the Court is satisfied beyond reasonable doubt that the offence was committed for the purpose of commercial gain or reward (whether or not any gain or reward is realised), the person is liable instead of any penalty otherwise prescribed to,— 10

“(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both: 15

“(b) in the case of a body corporate, a fine not exceeding \$300,000. 20

“(2) **Subsection (1)** overrides every other provision of this Act to the contrary.”

15D Section 72 amended (Regulations)

(1) In section 72(2)(x), replace “\$2,000” with “\$5,000”.

(2) In section 72(2A)(b)(i), replace “\$5,000” with “\$10,000”. 25

(3) In section 72(2A)(b)(ii), replace “\$100” with “\$1,000”.

Part 5
Amendments to Wild Animal Control Act
1977

16 Principal Act 30
This **Part** amends the Wild Animal Control Act 1977 (the **principal Act**).

17 Section 39 amended (Penalties)

Replace section 39(2) with:

- “(2) Every person who, in carrying out a wild animal recovery operation, commits an offence under section 8(2) is liable on conviction,— 5
- “(a) in the case of an individual, to imprisonment for a term not exceeding 2 years and to a fine not exceeding \$100,000;
- “(b) where the offence was committed by an individual for commercial purposes, to imprisonment for a term not exceeding 3 years and to a fine not exceeding \$200,000; 10
- “(c) in the case of a corporation, to a fine not exceeding \$200,000.”
- (1) Replace section 39(1) to (3) with:
- “(1) Every person who commits an offence against any of the provisions listed in **subsection (2)** is liable on conviction to,— 15
- “(a) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both;
- “(b) in the case of a body corporate, a fine not exceeding \$200,000; 20
- “(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.
- “(2) The provisions are— 25
- “(a) section 8(2), which relates to unauthorised hunting or killing and unauthorised discharge of weapons;
- “(b) section 11(3), which relates to unauthorised capture, conveyance, possession, or liberation of wild animals;
- “(c) section 12A(10), which relates to failing to maintain deer enclosures; 30
- “(d) section 12B(6), which relates to failing to maintain animal enclosures on safari parks;
- “(e) section 17(2), which relates to obstructing, hindering, or resisting officers; 35
- “(f) section 36(1)(d), which relates to impeding, obstructing, or threatening officers;
- “(g) section 36(3), which relates to engaging in wild animal recovery operations without a concession.

- “(3) Every person who commits an offence against any regulations made under this Act for which no penalty is provided elsewhere than in this subsection is liable,—
- “(a) in the case of an individual,—
- “(i) to a fine not exceeding \$5,000; and 5
- “(ii) if the offence is a continuing one, to a further fine not exceeding \$500 for every day on which the offence continues:
- “(b) in the case of a body corporate,—
- “(i) to a fine not exceeding \$10,000; and 10
- “(ii) if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day on which the offence continues.
- “(3A) Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable on conviction to— 15
- “(a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both:
- “(b) in the case of a body corporate, a fine not exceeding \$200,000: 20
- “(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.”
- 18 New section sections 39A and 39B inserted (Sentence of community work)** 25
- After section 39, insert:
- “39A Sentence of community work**
- A court may sentence any ~~person~~ individual who commits an offence against this Act to a sentence of community work, and the provisions of Part 2 of the Sentencing Act 2002 apply with all necessary modifications. 30
- “39B Penalties for offences committed for commercial gain or reward**
- “(1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the Court is satisfied beyond reasonable doubt that the offence was committed for the purpose 35

of commercial gain or reward (whether or not any gain or reward is realised), the person is liable instead of any penalty otherwise prescribed to,—

“(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both: 5

“(b) in the case of a body corporate, a fine not exceeding \$300,000:

“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$20,000 for every day on which the offence continues. 10

“(2) **Subsection (1)** overrides every other provision of this Act to the contrary.”

Part 6

Amendments to Marine Mammals Protection Act 1978

15

19 Principal Act

This **Part** amends the Marine Mammals Protection Act 1978 (the **principal Act**).

20 Section 9 amended (Offence to take marine mammal without permit)

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In section 9(1),—

(a) replace “6 months” with “2 years”; and

(b) delete “, and to a further fine not exceeding \$10,000 for every marine mammal in respect of which the offence was committed.”. 25

20A Section 16 amended (Reporting of accidental death or injury)

After section 16(4), insert:

“(5) Every person commits an offence against this Act who refuses or fails to furnish any information or particulars required by the Director-General under subsection (3A). 30

“(6) Every person who commits an offence against this section is liable on conviction before a District Court Judge to a fine not exceeding \$10,000.” 35

21 Section 23 amended (Offences and penalties)

(1) Replace section 23(1) with:

“(1) Every person commits an offence who—

“(a) acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act; or 5

“(b) makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Department of Conservation, or any duly authorised officer or employee of the Department of Conservation, or any officer (whether in writing or otherwise), for the purposes of this Act; or 10

“(c) refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Department of Conservation, or any officer, for the purposes of this Act. 15

“(1A) Every person commits an offence against this Act who—

“(a) acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under any regulations made under this Act; or 20

“(b) makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Department of Conservation, or any duly authorised officer or employee of the Department of Conservation, or any officer (whether in writing or otherwise), for the purposes of any regulations made under this Act; or 25 30

“(c) refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Department of Conservation, or any officer, for the purposes of any regulations made under this Act.” 35

(2) After section 23(2), insert:

“(2A) Every person who commits an offence against **subsection (1)** or **section 10 or 12(3)** is liable on conviction to,—

- “(a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both:
- “(b) in the case of a body corporate, a fine not exceeding \$200,000: 5
- “(c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.”
- (3) In section 23(3), delete “summary”.
- (4) Replace section 23(3)(a) with: 10
- “(a) in the case of an offence against subsection (2) or section 17,—
- “(i) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both: 15
- “(ii) in the case of a body corporate, a fine not exceeding \$200,000:
- “(iii) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues; and”. 20
- 22 New section 23A inserted (Penalties for offences committed for commercial gain or reward)**
- After section 23, insert:
- “23A Penalties for offences committed for commercial gain or reward** 25
- “(1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the Court is satisfied beyond reasonable doubt that the offence was committed for the purpose of commercial gain or reward (whether or not any gain or reward is realised), the person is liable instead of any penalty otherwise prescribed to,— 30
- “(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both:
- “(b) in the case of a body corporate, a fine not exceeding \$300,000: 35

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“(c) in any case, where the offence is a continuing one, a further fine not exceeding \$20,000 for every day on which the offence continues.”

“(2) **Subsection (1)** overrides every other provision of this Act to the contrary.”

5

23 **New section 26A inserted (Sentence of community work)**

After section 26, insert:

“26A Sentence of community work

A court may sentence any individual who commits an offence against this Act to a sentence of community work, and the provisions of Part 2 of the Sentencing Act 2002 apply with all necessary modifications.”

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Legislative history

20 September 2012
14 November 2012

Introduction (Bill 72–1)
First reading and referral to Local Government and
Environment Committee
