

# **Wildlife (Penalties) Bill**

Member's Bill

As reported from the Local Government and  
Environment Committee

## **Commentary**

### **Recommendation**

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

### **Summary**

The bill aims to increase the deterrent effect of penalties for offences against wildlife by raising fines in the Wildlife Act 1953 from levels last adjusted in 1983 or earlier, and by introducing the penalty of imprisonment in certain cases. We recommend the bill be passed, but with amendments.

Our recommended amendments clarify the distinction between offences in respect of three separate categories of wildlife identified in the Act: game, partially protected wildlife, and absolutely protected wildlife. This is reflected in three ascending levels of penalty. Taking the fragility of breeding sites into account, similar levels of penalty for interfering with nests are proposed, retaining the distinction between the three separate categories of wildlife set out above.

The principal Act, under section 67(2), provides higher fines for bodies corporate than for individuals, for offences for which no penalty is provided elsewhere in the Act. We recommend that this distinction be incorporated into the Act as a whole, in recognition of the potential commercial gain that can be made by corporate entities from offences involving wildlife. We also recommend provisions to introduce liability for directors and managers of companies.

We recommend powers of search and seizure when the export of wildlife is suspected, to enable certain provisions to be enforced; and definition of offences under the Act as either offences of strict liability or offences that require proof of criminal intent.

We recommend that the title of the bill be changed to Wildlife (Penalties and Related Matters) Bill to better reflect the amendments.

## **Background**

Although in 1996, when fisheries legislation was updated, the penalty regime in the Wildlife Act 1953 for offences against protected marine wildlife was adjusted upwards substantially, most penalties for offences against provisions of the Act have not been raised since 1983 or earlier. For example, the maximum fine for killing endangered native birds, currently \$1,500, is perceived to have little deterrent effect in some circumstances. In the meantime, New Zealand's indigenous biodiversity has become more threatened.

## **Increased penalties**

All public submissions agreed that the present penalties in the Wildlife Act 1953 for offences against wildlife (other than marine wildlife) do not deter. They agreed that the new maximum penalties proposed would give the courts more scope to deal with serious offences.

## **A tiered approach**

The bill blurred the distinction between game and other protected wildlife. We address this blurred distinction by proposing, in new clause 5, a tiered approach to the level of penalties for offences. A top tier of penalties relates to offences involving absolutely protected wildlife (new section 67A), and to the offence of unauthorised liberation of wildlife (new section 67B). Next are penalties in respect of partially protected wildlife (new section 67C). A third tier

relates to offences in respect of game (new section 67E), and general offences (new section 67F). Fish & Game New Zealand would have preferred game penalties not to be on a lower tier, but we make the distinction on the grounds that offences against game pose less of a threat to biodiversity than offences against our indigenous species.

The proposed new section 67D in new clause 5 provides the penalty for an offence of obstructing a ranger. This penalty is listed separately because it includes a penalty of imprisonment not exceeding three months, and is not therefore within the tier structure set out above. It received at least qualified support from all the submitters.

We also recommend extending the application of “per head” penalties for offending. This is in recognition of the fact that in many cases a per head or per egg penalty may be more appropriate than a daily penalty.

### **Corporate offending**

The Wildlife Act 1953 sets higher maximum penalties for corporate offenders under the general offence provision in section 67(2). The bill maintains that differentiation under the general offence provision, but we recommend higher penalties for corporate offenders for all offences specified in the Act at twice the maximum level applicable for individuals. To further strengthen this approach, we recommend the introduction of liability for directors and managers of bodies corporate in their individual capacity (new clause 4).

We recognise that there is a range of reasons why people commit offences against this Act. Of particular concern are breaches of the Act for commercial gain. We consider that the maximum level of fine in such cases should substantially exceed the commercial value of the illegal operations. Enforcement measures are clarified (new clause 3).

### **A wider range of sentencing options**

We have introduced a provision (new section 67H in new clause 5) that offenders are liable to pay the costs of remedying any breach under the Act.

A wider range of penalties is of relevance not only when offenders have little ability to pay a fine. The penalty of imprisonment for certain offences allows the Courts to impose community-based sentences, where there is reason to expect that these could be of greater educational value from a conservation point of view.

There are currently only two exceptions to the general rule set out in section 29 of the Criminal Justice Act 1985, that community-based sentences are only available where imprisonment also exists as a sentencing option for that offence. These are under the Resource Management Act 1991, section 339(4), and the Crown Minerals Act 1991, section 101(4). Taking the value of conservation education into account, we consider that there would be occasions when the community-based sentencing option could usefully be used also in relation to offences against the Wildlife Act 1953 for which imprisonment is not available as a penalty.

The Department of Conservation informs us that because of the provision for community sentencing in other legislation administered by the department, the management of this extension should not pose significant resourcing issues. We therefore recommend that the sentence of community service be available for offences against this Act, as set out in new clause 5 (new section 67G).

A particular change we recommend relates to the fragility of breeding sites. We consider that greater public awareness of the threat to our indigenous biodiversity caused by robbing or disturbing the nests of wildlife is needed. We recommend applying the same maximum fines for this offence as the maximum fines for other offences against the three categories of wildlife.

### **Defences for certain actions**

Taking into account the firmer penalty regime being proposed, the bill provides that “reasonable excuse” should be a defence against the offence of taking protected wildlife or game. Submissions from the public oppose this. One submitter argued that reliance on the present requirement to demonstrate lawful authority in this situation “permits traditional harvest when sanctioned by appropriate Māori processes”. We recommend omitting the reasonable excuse provision.

We recommend the insertion of a new section 68AB (in new clause 6). This provides that, except in a small number of mens rea offences, all other offences under the Act are to be strict liability in nature. A specific defence provision is also to be incorporated setting out the basis on which a defendant may escape liability.

**Consequential amendments**

New clause 7 of the bill introduces a schedule that makes a number of amendments to offence provisions in the Act which are consequential to the amendments outlined above. The schedule also provides for a significant increase in the level of penalties for offences against regulations made under the Act.

## **Appendix**

### **Committee process**

The Wildlife Penalties Bill is a Member's bill in the name of Jill Pettis. It was referred to the former Transport and Environment Committee on 17 March 1999. The closing date for submissions was 13 May 1999. We received six submissions from interested groups and individuals. Four of the submissions were supported by oral evidence in a session at which all four groups participated together. This hearing of evidence took 56 minutes. Consideration, including time spent in discussion with advisers from the Department of Conservation and the Ministry of Justice, and deliberation took a further 5 hours and 57 minutes.

### **Committee membership**

Jeanette Fitzsimons (Chairperson)

Martin Gallagher (Deputy Chairperson)

David Benson-Pope

Georgina Beyer

Ann Hartley

Joe Hawke

Owen Jennings

Hon Murray McCully

Eric Roy

Richard Worth

Jill Pettis replaced Joe Hawke for this item of business.

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**Key to symbols used in reprinted bill****As reported from a select committee****Struck out (unanimous)****[** Subject to this Act, **]**

Text struck out unanimously

**New (unanimous)**

[ Subject to this Act, ]

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

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Jill Pettis

# **Wildlife ((Penalties)) (Penalties and Related Matters) Amendment Bill**

Member's Bill

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### **Schedule Other amendments to principal Act**

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

#### **1 Title**

- (1) This Act is the **Wildlife ((Penalties)) (Penalties and Related Matters) Amendment Act 1998**.
- (2) In this Act, the Wildlife Act 1953<sup>1</sup> is called "the principal Act".

<sup>1</sup> 1953 No 31

#### **1A Commencement**

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

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|----------|--|----|
| <b>2</b> | <b>Taking protected wildlife or game</b><br>Section 63(1) of the principal Act is amended by inserting, after the words “lawful authority”, the words “or reasonable excuse”.  |    |
| <b>3</b> | <b>Taking of absolutely or partially protected marine wildlife</b><br>Section 63A of the principal Act is amended by inserting, after the words “lawful authority”, the words “or reasonable excuse”.  | 5  |
| <b>4</b> | <b>Penalties</b><br>Section 67 of the principal Act is repealed, and the following section substituted:  | 10 |
|          | <b>“67 Penalties</b>   |    |
|          | <b>“(1) Every person who—</b>  |    |
|          | “(a) without due authority hunts or kills any game during a closed season, is liable to a fine not exceeding \$5,000 and to a further fine not exceeding \$500 for each head of game so hunted or killed:  | 15 |
|          | “(b) not being the holder of a licence and not acting under the authority of any provision of this Act relating to the hunting or killing of game; hunts or kills any game during the open season, is liable to a fine not exceeding \$5,000, and to a further fine not exceeding \$500 for each head of game so hunted or killed: | 20 |
|          | “(c) commits an offence against section 14 (which relates to wildlife refuges) or against section 14A (which relates to wildlife management reserves) is liable to a fine not exceeding \$10,000, and to a further fine not exceeding \$1,000 for each head of game so hunted or killed:   | 25 |
|          | “(d) commits an offence against section 40 (which relates to resisting or obstructing rangers) to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100,000:   | 30 |
|          | “(e) commits an offence against section 56 (which relates to the liberation or export of animals, birds, and other   | 35 |

**Struck out (unanimous)**

- species of wildlife) is liable to a fine not exceeding \$100,000, and to a further fine not exceeding \$1,000 for each head of game so hunted or killed:
- “(f) commits an offence against section 63(1)(a) (which relates to hunting or killing absolutely or partially protected wildlife) is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$100,000: 5
- “(g) commits an offence against section 63(1)(b) (which relates to buying or selling absolutely or partially protected wildlife) is liable to imprisonment to a term not exceeding 3 months, or to a fine not exceeding \$250,000, and to a further fine not exceeding \$10,000 for each head of game so hunted or killed: 10
- “(h) Commits an offence against section 63(1)(c) (which relates to disturbing the nest of absolutely or partially protected wildlife) is liable to a fine not exceeding \$5,000: 15
- “(i) commits an offence against section 63A(a) (which relates to the hunting or killing of absolutely or partially protected marine wildlife) is liable to imprisonment for a term not exceeding 6 months, or to a fine not exceeding \$250,000, and to a further fine not exceeding \$10,000 for every item of marine wildlife (other than coral) in respect of which the offence was committed: 20
- “(j) commits an offence against section 63A(b) (which relates to the buying or selling of absolutely or partially protected marine wildlife) is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100,000, and to a further fine not exceeding \$10,000 for every item of marine wildlife (other than coral) in respect of which the offence was committed: 25
- “(k) commits an offence against section 63A(c) (which relates to the disturbing or destruction of the nest of absolutely or partially protected marine wildlife) is liable to a fine not exceeding \$5,000: 35
- “(l) commits an offence against section 63B (which relates to the reporting of accidental or incidental death of

**Struck out (unanimous)**

- absolutely or partially protected wildlife) is liable to a fine not exceeding \$100,000:
- “(m) commits an offence against section 64 (which relates to offences in respect of wildlife sanctuaries) is liable to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day during which the offence continues: 5
- “(2) Every person who commits an offence against this Act for which no penalty is provided elsewhere is liable,—
- “(a) in the case of an individual, to a fine not exceeding \$5,000 and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day during which the offence continues: 10
  - “(b) in the case of a body corporate, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day during which the offence continues.” 15

**New (unanimous)**

- 2 Purpose**
- The purpose of this Act is—
- (a) to increase the penalties for offences committed against the principal Act; and 20
  - (b) to introduce a 3-tiered system of penalties for offences committed against the principal Act, with each tier providing a higher penalty for offences committed by bodies corporate; and 25
  - (c) to abolish penalties for continuing offences and replace them with penalties for each head of wildlife and egg of wildlife in respect of which an offence is committed; and
  - (d) to clarify the basis of liability for offences, by indicating which offences are offences of strict liability and which offences require the prosecution to prove that the defendant intended to commit the offence; and 30

**New (unanimous)**

- (e) to provide for other matters relating to the enforcement of the principal Act generally.

**3 New section 56A inserted**

The principal Act is amended by inserting, after section 56, the following section:

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**“56A Application of Customs and Excise Act 1996**

Sections 149, 160, and 161 of the Customs and Excise Act 1996 apply in relation to the exportation of any absolutely protected or partially protected wildlife or any item of absolutely protected or partially protected wildlife as if that wildlife or item of wildlife were a prohibited export within the meaning of that Act.”

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**4 New section 65A inserted**

The principal Act is amended by inserting, after section 65, the following section:

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**“65A Liability of directors and managers**

- “(1) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate is guilty of the same offence if the prosecution proves—

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“(a) that the act that constituted the offence took place with the director’s or manager’s authority, permission, or consent; or

“(b) that the director or manager knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

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- “(2) Where any director or person concerned in the management of a body corporate is convicted of an offence against this Act by virtue of **subsection (1)**, the director or person is liable to the penalty applicable to an individual who commits the offence.”

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**5 New sections 67A to 67H inserted**

The principal Act is amended by inserting, after section 67, the following sections:

## New (unanimous)

- “67A Penalties for offences in respect of absolutely protected wildlife**
- “(1) A person convicted of an offence under any of the provisions listed in **subsection (2)** is liable,—
- “(a) in the case of an individual,— 5
- “(i) to imprisonment for a term not exceeding 6 months; or
- “(ii) to a fine not exceeding \$100,000 plus a further fine not exceeding \$5,000 for each head of wildlife and egg of wildlife in respect of which the offence is committed: 10
- “(b) in the case of a body corporate, to a fine not exceeding \$200,000 plus a further fine not exceeding \$10,000 for each head of wildlife and egg of wildlife in respect of which the offence is committed. 15
- “(2) The provisions are—
- “(a) **section 56(5)(a)** (which relates to capturing, having in possession for the purpose of liberating, or exporting absolutely protected wildlife):
- “(b) **section 63(1A)(a)** (which relates to hunting, killing, buying, or selling absolutely protected wildlife, or robbing or disturbing the nest of absolutely protected wildlife): 20
- “(c) **section 65(2)(a)** (which relates to receiving absolutely protected wildlife taken without authority):
- “(d) **section 65(3)(a)** (which relates to being a party to an offence committed in respect of absolutely protected wildlife). 25
- “67B Penalty for offence of liberating wildlife**
- A person convicted of an offence under **section 56(4)** (which relates to liberating wildlife) is liable,— 30
- “(a) in the case of an individual,—
- “(i) to imprisonment for a term not exceeding 6 months; or
- “(ii) to a fine not exceeding \$100,000 plus a further fine not exceeding \$5,000 for each head of wildlife in respect of which the offence is committed: 35

**New (unanimous)**

“(b) in the case of a body corporate, to a fine not exceeding \$200,000 plus a further fine not exceeding \$10,000 for each head of wildlife in respect of which the offence is committed.

“67C **Penalties for offences in respect of partially protected wildlife** 5

“(1) A person convicted of an offence under any of the provisions listed in **subsection (2)** is liable,—

“(a) in the case of an individual, to a fine not exceeding \$10,000 plus a further fine not exceeding \$500 for each head of wildlife and egg of wildlife in respect of which the offence is committed: 10

“(b) in the case of a body corporate, to a fine not exceeding \$20,000 plus a further fine not exceeding \$1,000 for each head of wildlife and egg of wildlife in respect of which the offence is committed. 15

“(2) The provisions are—

“(a) **section 56(5)(b)** (which relates to capturing, having in possession for the purpose of liberating, or exporting partially protected wildlife): 20

“(b) **section 63(1A)(b)** (which relates to hunting, killing, buying, or selling partially protected wildlife, or robbing or disturbing the nest of partially protected wildlife):

“(c) **section 65(2)(b)** (which relates to receiving partially protected wildlife taken without authority): 25

“(d) **section 65(3)(b)** (which relates to being a party to an offence committed in respect of partially protected wildlife).

“67D **Penalty for offence of obstructing ranger**

A person convicted of an offence under section 40(1) (which relates to obstructing a ranger or other authorised person) is liable,— 30

“(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000: 35

## New (unanimous)

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

“67E **Penalties for offences in respect of game**

- “(1) A person convicted of an offence under any of the provisions listed in **subsection (2)** is liable,— 5
- “(a) in the case of an individual, to a fine not exceeding \$5,000:
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.
- “(2) The provisions are— 10
- “(a) section 17(8) (which relates to failing to comply with a written notice in respect of game):
- “(b) section 19(5) (which relates to failing to produce an appointment endorsed on a game licence):
- “(c) **section 22A** (which relates to acting as a game hunting guide without a licence): 15
- “(d) **section 23(2A)** (which relates to the sale of game and game shooting rights).
- “(3) A person convicted of an offence under any of the provisions listed in **subsection (4)** is liable,— 20
- “(a) in the case of an individual, to a fine not exceeding \$5,000 plus a further fine not exceeding \$100 for each head of game and egg of game in respect of which the offence is committed:
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000 plus a further fine not exceeding \$200 for each head of game and egg of game in respect of which the offence is committed. 25
- “(4) The provisions are—
- “(a) **section 15(6)** (which relates to hunting or killing game in a close season): 30
- “(b) **section 16(2)** (which relates to hunting or killing game in breach of notification):
- “(c) **section 17(2)** (which relates to hunting or killing game in a designated area where food has been placed): 35

**New (unanimous)**

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| “(d) <b>section 17(3)</b> (which relates to hunting or killing game in a designated area where there are artificially formed waters):                 |    |
| “(e) section 17(6) (which relates to hunting or killing game where a person knows that food has been placed or there are artificially formed waters): | 5  |
| “(f) <b>section 18(1A)</b> (which relates to breaching restrictions on the taking of game):   |    |
| “(g) <b>section 19(1)</b> (which relates to hunting or killing game without a licence):   | 10 |
| “(h) <b>section 22(1)</b> (which relates to shooting at or attempting to shoot at a game bird not in flight):   |    |
| “(i) <b>section 63(1A)(c)</b> (which relates to hunting, killing, buying, or selling game, or robbing or disturbing the nest of game):                | 15 |
| “(j) <b>section 65(2)(c)</b> (which relates to receiving game taken without authority):   |    |
| “(k) <b>section 65(3)(c)</b> (which relates to being a party to an offence committed in respect of game).   |    |
| <b>“67F Penalties for other offences</b>  | 20 |
| “(1) A person convicted of an offence under any of the provisions listed in <b>subsection (2)</b> is liable,—   |    |
| “(a) in the case of an individual, to a fine not exceeding \$5,000:   |    |
| “(b) in the case of a body corporate, to a fine not exceeding \$10,000.   | 25 |
| “(2) The provisions are—  |    |
| “(a) <b>section 14(3A)</b> (which relates to prohibited acts committed in wildlife refuges):  |    |
| “(b) section 17(7) (which relates to destroying, defacing, or tampering with a notice):   | 30 |
| “(c) section 51 (which relates to obstructing an inspector):  |    |
| “(d) section 53(7) (which relates to the failure of a person or officer to comply with an authorisation):   |    |
| “(e) section 58(1) (which relates to certain acts committed in relation to homing pigeons):   | 35 |

## New (unanimous)

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| “(f) <b>section 59(5)</b> (which relates to interfering with structures or services on land):  |    |
| “(g) <b>section 59(5A)</b> (which relates to interfering with vehicles, animals, equipment, or supplies brought onto land):  |    |
| “(h) section 59(6) (which relates to obstructing the Director-General or an officer in the exercise of powers):  | 5  |
| “(i) section 61(2) (which relates to failing to produce a licence):  |    |
| “(j) section 61(6) (which relates to failing to produce various items):  | 10 |
| “(k) <b>section 62(2)</b> (which relates to transporting wildlife without proper information on the container):  |    |
| “(l) section 65(1) (which provides for various miscellaneous offences):  |    |
| “(m) <b>section 65(3)(d)</b> (which relates to being a party to an offence, other than an offence committed in respect of absolutely protected or partially protected wildlife or game):                   | 15 |
| “(n) <b>section 66(2)</b> (which relates to wilfully continuing an offence):   | 20 |
| “(o) <b>section 66(3)</b> (which relates to failing to give a name, or giving a false name or address).  |    |
| “(3) A person convicted of an offence under any of the provisions listed in <b>subsection (4)</b> is liable,—  |    |
| “(a) in the case of an individual, to a fine not exceeding \$5,000 plus a further fine not exceeding \$100 for each head of wildlife and egg of wildlife in respect of which the offence is committed:     | 25 |
| “(b) in the case of a body corporate, to a fine not exceeding \$10,000 plus a further fine not exceeding \$200 for each head of wildlife and egg of wildlife in respect of which the offence is committed. | 30 |
| “(4) The provisions are—   |    |
| “(a) <b>section 6(3)</b> (which relates to hunting, killing, or possessing wildlife in breach of conditions imposed by the Minister):  | 35 |

**New (unanimous)**

- “(b) **section 7(2)** (which relates to hunting, killing, or possessing wildlife in contravention of a notification):
- “(c) **section 7C(2)** (which relates to farming certain unprotected animals without authorisation):
- “(d) **section 9(4)** (which relates to breaching a Proclamation in respect of a wildlife sanctuary): 5
- “(e) section 14(1C) (which relates to breaching a Proclamation or notice in respect of a wildlife refuge):
- “(f) section 14A(4) (which relates to breaching a Proclamation in respect of a wildlife management reserve): 10
- “(g) **section 56(5)(c)** (which relates to capturing, having in possession for the purpose of liberating, or exporting wildlife that is not absolutely protected or partially protected):
- “(h) **section 64** (which relates to acts committed in wildlife sanctuaries). 15
- “67G **Sentence of community service**  
Despite section 29 of the Criminal Justice Act 1985, a Court may sentence any person who commits an offence against this Act to a sentence of community service (whether the offence is punishable by imprisonment or not) and the provisions of Part III of that Act apply with all necessary modifications. 20
- “67H **Offenders also liable for loss or damage**
- “(1) A person convicted of an offence against this Act is liable, in addition to the penalty for the offence, for any loss or damage or expenses arising from or caused by the act constituting the offence. 25
- “(2) The amount payable under **subsection (1)** in respect of the loss, damage, or expense may be awarded by the Court in fixing the penalty and may be recovered as a fine. 30
- “(3) In assessing any amount payable under **subsection (1)**, the Court—

## New (unanimous)

- “(a) may take into account salaries, wages, and incidental expenses incurred in the investigation of the act constituting the offence or in remedying the loss or damage caused by the act; and
- “(b) must take into account all other relevant factors.”

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**6 New section 68AB inserted**

The principal Act is amended by inserting, after section 68A, the following section:

**“68AB Mens rea and strict liability offences**

- “(1) In any prosecution for an offence under any of the provisions listed in **subsection (5)**, the prosecution must prove that the defendant intended to commit the offence. 10
- “(2) In any prosecution for an offence under a provision that is not listed in **subsection (5)**, it is not necessary for the prosecution to prove that the defendant intended to commit an offence. 15
- “(3) It is a defence in any prosecution for an offence not listed in **subsection (5)** if the defendant proves—
- “(a) that the defendant did not intend to commit the offence; and
- “(b) that,— 20
- “(i) in any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done;
- “(ii) in any case where it is alleged that anything prohibited was done, that the defendant took all reasonable steps to ensure that it was not done. 25
- “(4) The defence provided in **subsection (3)** is in addition to any other defence or excuse provided by this Act.
- “(5) The provisions are— 30
- “(a) section 17(6)(c) (which relates to hunting or killing waterfowl where a person knows that food has been placed or artificial waters formed);
- “(b) section 40(1) (which relates to obstructing a ranger);
- “(c) section 58(1)(a) (which relates to shooting at, killing, disabling, or injuring a homing pigeon): 35

**New (unanimous)**

- “(d) **section 59(5A)** (which relates to interfering with vehicles, animals, equipment, or supplies brought onto land):
- “(e) section 59(6) (which relates to obstructing the Director-General or an authorised officer in the exercise of powers): 5
- “(f) **section 65(2)** (which relates to receiving wildlife):
- “(g) **section 66(2)** (which relates to failing to give a name and address, or giving a false name and address).
- “(6) Sections 63A and 63B continue to apply as if this section had not been enacted.” 10

**7 Other amendments to principal Act**

The principal Act is amended in the manner indicated in the Schedule.

## New (unanimous)

s 7

## Schedule

### Other amendments to principal Act

**Section 6**

Repeal subsection (3) and substitute:

“(3) Every person who hunts, kills, or has in his or her possession any wildlife to which any notification under subsection (1) refers, otherwise than in accordance with any conditions prescribed by the Minister under this section, commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(3)**.” 5

**Section 7**

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Repeal subsection (2) and substitute:

“(2) Every person who in any area and during any period specified in any notification under subsection (1) hunts, kills, or has in his or her possession any wildlife to which the notification refers, commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(3)**.” 15

**Section 7C**

Repeal subsection (2) and substitute:

“(2) Every person who contravenes subsection (1) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(3)**.” 20

**Section 9**

Repeal subsection (4) and substitute:

“(4) Every person who does any act that is for the time being prohibited by a Proclamation issued under this section or fails to comply in any respect with any condition imposed in any such Proclamation commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(3)**.” 25

**Section 14**

Insert in subsection (1C), after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(3)**”. 30

Insert, after subsection (3):

**New (unanimous)**

**Section 14**—continued

“(3A) Every person who contravenes subsection (3) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(1)**.”

**Section 14A**

Insert in subsection (4), after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(3)**”.

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**Section 15**

Repeal subsection (6) and substitute:

“(6) Every person who hunts or kills any game during a close season commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(3)**.”

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**Section 16**

Repeal subsection (2) and substitute:

“(2) Every person who hunts or kills game, or during any open season has in his or her possession any game, otherwise than in terms of a notification, commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(3)**.”

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“(3) In any prosecution for an offence that the defendant has in his or her possession a number of game in excess of the number specified in a notification, it is a defence if the defendant proves that the excess game were taken by some other person or persons and all the game in the possession of the defendant have affixed or tied to the game a label on which the following particulars are legibly written:

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“(a) the names and addresses of the persons by whom the game were taken; and

“(b) the numbers of the licences to hunt or kill game held by those persons; and

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“(c) the name of the Fish and Game Council by which those licences were issued; and

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“(d) the date or dates on which the game were taken.”

## New (unanimous)

**Section 17**

Repeal subsections (2) and (3) and substitute:

“(2) Every person who, without the consent of the Minister, hunts or kills waterfowl in any designated area where, during an open season for game or within the period of 30 days immediately preceding the open season, any food has been cast, thrown, placed, or planted commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(3)**. 5

“(3) Every person who hunts or kills waterfowl in a designated area within which the waters were artificially formed during an open season for game or within the period of 30 days immediately preceding that open season commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(3)**.” 10 15

Insert in subsection (6), after the words “against this Act”, the words “and is liable to the penalty set out in **section 67E(3)**”.

Insert in subsection (7), after the words “against this Act”, the words “and is liable to the penalty set out in **section 67F(1)**”.

Insert in subsection (8), after the words “against this Act”, the words “and is liable to the penalty set out in **section 67E(1)**”. 20

**Section 18**

Insert, after subsection (1):

“(1A) Every person who contravenes subsection (1) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(3)**.” 25

**Section 19**

Repeal subsection (1) and substitute:

“(1) Except as provided in subsection (3), every person who hunts or kills game of any species during an open season in any area, unless that person is the holder of a licence under this Act to hunt or kill game of that species available in that area during that season, commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(3)**.” 30

Repeal subsection (2).

Add to subsection (5) the words “and is liable on conviction to the penalty set out in **section 67E(1)**”. 35

**New (unanimous)**

**Section 22**

Repeal subsection (1) and substitute:

“(1) Except as provided in **subsection (1A)**, every person who shoots at or attempts to shoot at any game bird not in flight commits an offence against this Act and is liable to the penalty set out in **section 67E(3)**. 5

“(1A) No person commits an offence under **subsection (1)**—

“(a) who shoots at or attempts to shoot at any game bird already wounded by shooting:

“(b) where that person was acting in accordance with any authorisation under sections 53 or 54: 10

“(c) where that person was acting in accordance with any notification given by the Minister.”

**Section 22A**

Omit the words “and is liable to a fine not exceeding \$5,000”, and substitute the words “against this Act and is liable on conviction to the penalty set out in **section 67E(1)**.” 15

**Section 23**

Insert, after subsection (2):

“(2A) Every person who contravenes subsections (1) or (2) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67E(1)**.” 20

**Section 40**

Insert in subsection (1), after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67D**”. 25

Insert in subsection (1), after the word “who” in each place where it appears, the word “wilfully”.

Repeal subsection (2).

**Section 51**

Insert, after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(1)**”. 30

**Section 53(7)**

Add the words “and is liable on conviction to the penalty set out in **section 67F(1)**”.

## New (unanimous)

**Section 56**

Omit from subsection (1)(a) the words “, or liberate or turn at large or allow to go at large,”.

Insert in subsection (1), after paragraph (a):

“(ab) liberate or turn at large, or allow to go at large any wildlife; or”.

Repeal subsection (4) and substitute:

“(4) Every person who contravenes **subsection (1)(ab)** commits an offence against this Act and is liable on conviction to the penalty set out in **section 67B**.

“(5) Every person who contravenes subsection (1)(a) or (b) commits an offence against this Act and,—

“(a) in respect of an offence committed in relation to absolutely protected wildlife, is liable on conviction to the penalty set out in **section 67A(1)**;

“(b) in respect of an offence committed in relation to partially protected wildlife, is liable on conviction to the penalty set out in **section 67C(1)**;

“(c) in any other case, is liable on conviction to the penalty set out in **section 67F(3)**.”

**Section 58**

Insert in subsection (1), after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(1)**”.

**Section 59**

Repeal subsection (5) and substitute:

“(5) Every person who, not being duly authorised, takes away or is found in possession of, or removes, destroys, displaces, or moves the position of, any tent or other structure or any services, conveniences, or amenities erected or provided on any land pursuant to subsection (1) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(1)**.

“(5A) Every person who, not being duly authorised, wilfully removes, injures, or damages in any way any vehicle, animal, equipment, or supplies brought onto any land pursuant to subsection (1) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(1)**.”

**New (unanimous)**

**Section 59**—continued

Insert in subsection (6), after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(1)**”.

**Section 61**

Insert in subsections (2) and (6), in each case after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(1)**”.

**Section 62**

Add, as subsection (2):

“(2) Every person who contravenes subsection (1) commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(1)**.”

**Section 63**

Repeal subsection (1) and substitute:

- “(1) No person may, without lawful authority,—
- “(a) hunt or kill any absolutely protected or partially protected wildlife or any game: 15
  - “(b) buy, sell, or otherwise dispose of, or have in his or her possession any absolutely protected or partially protected wildlife or any game or any skin, feathers, or other portion, or any egg of any absolutely protected or partially protected wildlife or of any game: 20
  - “(c) rob, disturb, or destroy, or have in his or her possession the nest of any absolutely protected or partially protected wildlife or of any game.
- “(1A) Every person who contravenes **subsection (1)** commits an offence and,— 25
- “(a) in respect of an offence committed in relation to absolutely protected wildlife, is liable on conviction to the penalty set out in **section 67A(1)**: 30
  - “(b) in respect of an offence committed in relation to partially protected wildlife, is liable on conviction to the penalty set out in **section 67C(1)**: 30
  - “(c) in respect of an offence committed in relation to game, is liable on conviction to the penalty set out in **section 67E(3)**.” 35

**New (unanimous)**

**Section 63A**

Insert, after the words “against this Act”, the words “and is liable on conviction to the penalty set out in section 67(fa)”.

**Section 63B**

Repeal subsection (5) and substitute:

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“(5) Every person who contravenes subsection (1) or subsection (2) commits an offence and is liable on conviction to the penalty set out in section 67(fb).”

**Section 64**

Repeal and substitute:

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“64 **Offences in relation to wildlife sanctuaries**

Every person who, without lawful authority, breaches or fails to comply with any of the provisions of this Act relating to wildlife sanctuaries or of any Proclamation under section 9 commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(3)**.”

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**Section 65**

Insert, after the words “against this Act”, the words “and is liable on conviction to the penalty set out in **section 67F(1)**”.

Repeal paragraphs (g) and (i).

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Add, as subsections (2) and (3):

“(2) Every person who, without lawful authority, receives any wildlife knowing that the wildlife was obtained without authority commits an offence against this Act and,—

“(a) in respect of an offence committed in relation to absolutely protected wildlife, is liable on conviction to the penalty set out in **section 67A(1)**;

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“(b) in respect of an offence committed in relation to partially protected wildlife, is liable on conviction to the penalty set out in **section 67C(1)**;

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“(c) in respect of an offence committed in relation to game, is liable on conviction to the penalty set out in **section 67E(1)**.”

“(3) Every person who counsels, aids, or assists in any breach of any of the provisions of this Act, or shares in any of the

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**New (unanimous)**

**Section 65**—continued

proceeds of that breach, commits an offence against this Act and,—

“(a) in respect of an offence committed in relation to absolutely protected wildlife, is liable on conviction to the penalty set out in **section 67A(1)**: 5

“(b) in respect of an offence committed in relation to partially protected wildlife, is liable on conviction to the penalty set out in **section 67C(1)**:

“(c) in respect of an offence committed in relation to game, is liable on conviction to the penalty set out in **section 67E(3)**: 10

“(d) in any other case, is liable on conviction to the penalty set out in **section 67F(3)**.”

**Section 66**

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Repeal subsection (2) and substitute:

“(2) Every person who, after being required to desist from offending under subsection (1), wilfully continues the offence commits a further offence against this Act and is liable on conviction to the penalty set out in **section 67F(1)**. 20

“(3) Every person commits an offence against this Act and is liable on conviction to the penalty set out in **section 67F(1)** who, after being required to give his or her Christian name, surname, and place of abode under subsection (1),—

“(a) fails to give his or her real Christian name, or surname, or place of abode: 25

“(b) gives a false name or place of abode.”

**Section 67**

Repeal paragraphs (a) to (f) and (g) of subsection (1).

Repeal subsection (2).

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Add to the heading to this section the words “**for offences in respect of marine wildlife**”.

**Heading to section 68B**

Add the words “**to offences in respect of marine wildlife**”.

**Section 72**

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Omit from subsection (2)(x) the expression “\$100” and substitute the expression “\$2,000”.

**New (unanimous)**

**Section 72**—continued

Omit from subsection (2A)(b)(i) the expression “\$2,000” and substitute the expression “\$5,000”.

Omit from subsection (2A)(b)(ii) the expression “\$20” and substitute the expression “\$100”.

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**Wildlife (*Penalties*) (*Penalties and  
Related Matters*) Amendment**

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**Legislative history**

3 December 1998

Introduction and first reading (Bill 248-1)

17 March 1999

Second reading and referral to Transport and  
Environment Committee