



ENVIRONMENT AND CONSERVATION ORGANISATIONS OF NZ INC.

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4 April 2018

Chairperson
Environment Select Committee
Parliament Buildings
Wellington

Submission on Conservation (Infringement System) Bill

1. Introduction

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of about 45 groups with a concern for the environment and conservation. Some of these member bodies are themselves federations or multiple groups.

ECO has followed issues of conservation and environmental management and practice, law and policy since its formation in 1971-2 and we have member groups from all around New Zealand.

We wish to be heard

ECO would like to be heard in support of this submission. Please contact Michael Pringle or at the ECO office at 043857545 and eco@eco.org.nz, or myself, at the contact details in the covering email that accompanies this submission.

2. General Comments

ECO supports the inclusion of infringement offences for less serious offending. This is a way of reducing costs of enforcement which is essential under Conservation statutes. Similar provisions exist for other Government agencies in a range of other statutes eg under the Fisheries Act or the Resource Management Act.

The statutes administered by the Department of Conservation and local authorities, include:

- Conservation Act 1987;
- Marine Mammals Protection Act 1978;
- Marine Reserves Act 1971;
- National Parks Act 1980;

- Reserves Act 1977;
- Trade in Endangered Species Act 1989;
- Wild Animal Control Act 1977; and
- Wildlife Act 1953.
- The Native Plant Protection Act 1934

ECO agrees that the provisions for infringement notices should exclude serious offences such as those that “would involve:

- significant risk to public safety;
- unsafe discharge of a firearm or other hunting weapon;
- commercial gain disproportionate to the level of infringement fee for the offence;
- significant harm or potential significant harm to conservation values.”

ECO has considered the issue of providing similar powers to Fish and Game. In our view, Fish and Game should, subject to safeguards, be given the power to deal with infringements. Below we respond to some of the questions raised in the DoC briefing.

The approach applied to the SPCA being able to use infringement notices for Animal Welfare enforcement is an appropriate model for empowering Fish and Game Councils and trained and warranted staff or others designated by Fish and Game to undertake the work of infringement controls.

3. Responses to questions raised and some suggestions.

Q: Should Fish and Game councils have infringement powers?

Yes. The approach applied in the Animal Welfare Act to empowering the RSPCA and other approved organisations, to issue infringement notices for Animal Welfare enforcement is an appropriate model for Fish and Game Councils having the powers to pursue infringements. We reproduce as Appendix 1, sections from Part 7 of that Act which may be a helpful model to follow.

Section 122 of the Animal Welfare Act sets out provisions for an approved organisation which under section 120(d):

“specify the powers of inspectors and auxiliary officers, including their powers of search and their powers in relation to animals.”

Section 189 says that the “Royal New Zealand Society for the Prevention of Cruelty to Animals, Incorporated, is an approved organisation for the purposes of this Act. “

Section 189 also allows the Minister to set conditions on approval and change conditions.

Fish and Game Councils could meet comparable tests under the Conservation and Wildlife Acts

As the DoC paper notes, Fish and Game Councils have significant enforcement powers but lack two essential powers: the ability to collect information and evidence for prosecutions and an infringement system.

DoC also notes that DoC also lacks necessary information gathering powers. We consider that this is another area which clearly needs to be rectified with safeguards to avoid capricious or inappropriate action.

Other Approved Organisations

Some thought could also be given to whether there are other organisations and entities that could be similarly authorised to do infringement control work – the provisions of the Animal Welfare Act 1999 provide a model.

Possible safeguards

ECO agrees that safeguards are needed to avoid capricious or inappropriate infringement action.

These safeguards include:

- Requiring that only rangers who are warranted and trained in taking infringement action can undertake the infringement control work;
- Clear reporting requirements annually in the Annual Report on action taken, appeals, number of warranted officers etc. The Select Committee could consider whether a 5 year review is required but ECO notes that a similar provision has not been applied to other infringement powers.
- Clear grounds and a process to remove warrant powers from individuals who do not live up to the requirements.

Which rangers should be able to collect information?

The powers to take action and collect specific information should be limited to trained and warranted rangers. As is the case now, any ranger should be able to collect general information – the key issue for consideration here is the power to require that personal and other relevant specific information be provided on demand, the collection and storage of such data and the security of such. This power to request and hold specific information should be limited to trained warranted officers. Safeguards for private information must be designed and implemented consistent with the law and the infringement control purpose.

Warranting should be done at a senior level within Fish and Game or DoC. This could be the function of the CEO of Fish and Game or warranting could be done by the Director-General

of Conservation. The process could be that the Director-General of DoC approves on the recommendation of the CEO, possibly subject to DoC checking. And other vetting.

There should be a clear process to warrant staff and to remove warrants if the need arises. Criteria for removal should be articulated and should comply with the principles of natural justice. There should be clear process to ensure that any complaints are dealt with in an open and transparent way. Privacy, Human Rights and data protection must also be designed into the system.

Who could be warranted to issue an infringement notice?

ECO notes that DOC intends to issue infringement notices centrally, at a later date rather than “on the spot”. Such a process ensures quality control and national consistency, allows for cooling off and quality auditing, and reduces the chance of capricious or inappropriate action. The Ministry of Primary Industry applies the Fisheries Act in a similar way.

If the Select Committee agrees to Fish and Game having infringement powers then the process envisaged by DoC should be used.

Where would infringement fees be paid?

ECO supports the use of infringement fees in ecological restoration or similar activity rather than just disappearing into the consolidated accounts. While it is not a penalty, coastal tender money under section 165V of the Resource Management Act (RMA) must be used in achieving the purpose of the Act in the Coastal Marine Area. This means that any funds cannot be used - in that case - for non-RMA purposes. An equivalent provision would be that under this Bill, any funds must be applied to the purpose of the Act under which the infringement notice is being issued.

Two options exist under the RMA for the deployment of funds resulting from enforcement action. Firstly, under section 342 ninety percent of the fines are paid to the local authority while 10% is paid into the consolidated accounts to cover costs of the courts. Under section 343D of the RMA all infringement fees are retained by the Local Authority.

ECO is unaware of any problems with these arrangements under the RMA, rather it seems local councils are remiss in not taking action for serious pollution events.

A similar arrangement to section 343D of the RMA could be made for DoC and for Fish and Game with the requirement that the funds be used in a similar way to section 165V of the RMA, but be used to cover the costs of the actions and be deployed for the purposes of the Act in question.

Transitional and Review provisions

ECO supports regular reporting on enforcement action, eg, no of action taken; infringement notice issued, fines paid etc. This should include:

- Clear reporting requirements annually in the Annual Report on action taken, appeals, number of warranted officers etc.
- The Select Committee undertaking a 5-year review of the provisions.

4. Conclusion

ECO supports the Bill and recommends changes to allow certain Fish and Game rangers to use infringement notices.

ECO would like to be heard in support of this submission. Please contact Michael Pringle or myself at 043857545.

Regards

Barry Weeber
Co-Chairperson, ECO

Appendix 1 follows.

Appendix 1

Animal Welfare Act 1999 (as reprinted 1 March 2017)

Part 7, sections 120 to 123A.

Part 7 **Provisions relating to administration**

120 Purpose

The purpose of this Part is to—

- (a) specify the criteria for an organisation to be declared as an approved organisation; and
- (b) provide for the appointment of inspectors and auxiliary officers; and
- (c) specify the powers and duties of approved organisations in relation to animals in their custody; and
- (d) specify the powers of inspectors and auxiliary officers, including their powers of search and their powers in relation to animals.

Approved organisations, inspectors, and auxiliary officers

121 Approved organisations

(1) The Minister may from time to time, on the application of any organisation, declare that organisation, by notice in the Gazette, to be an approved organisation for the purposes of this Act.

2) The application must include—

- (a) the full name and address of the applicant; and
- (b) the area in which the applicant will, if declared to be an approved organisation, operate as an approved organisation; and
- (c) information that will enable the Minister to assess whether the organization meets the criteria set out in section 122.

122 Criteria

(1) The Minister must, before declaring an organisation to be an approved organisation for the purposes of this Act, be satisfied, by the production to the Minister of suitable evidence, that—

- (a) one of the purposes or roles of the organisation concerns the welfare of animals or a particular species of animal; and
- (b) the accountability arrangements, financial arrangements, and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (c) the functions and powers of the organisation are not such that the organization

could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation; and

(d) the employment contracts or arrangements between the organisation and the organisation's inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and

(e) the persons who may be recommended for appointment as inspectors or auxiliary officers—

(i) will have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on inspectors and auxiliary officers under this Act; and

(ii) subject to section 126, will be properly answerable to the organisation.

(2) The Minister may, in making a declaration under section 121, impose, as conditions of the Minister's approval, conditions relating to the establishment by the organisation of performance standards and technical standards for inspectors and auxiliary officers.

(3) The Minister may, in making a declaration under section 121, specify that the approval is given in respect of—

(a) only the species specified in the declaration; or

(b) all animals.

(4) Nothing in this section obliges the Minister to make a declaration under section 121.

(5) The Minister may, in making a declaration under section 121, impose, as conditions of the Minister's approval, any other conditions or requirements that relate to the organisation's performance of its functions and powers that he or she considers necessary or desirable.

123 Amendment or revocation of declaration

(1) The Minister may from time to time, by notice in the Gazette, revoke any declaration made under section 121 if the Minister is satisfied that—

(a) the organisation no longer meets any 1 or more of the criteria set out in section 122; or

(b) the organisation has failed to comply with any condition imposed under section 122(2); or

(c) the organisation has failed to comply with any condition imposed under section 122(5).

(2) The Minister may from time to time, by notice in the Gazette,—

(a) revoke any condition imposed under section 122(2) or (5):

(b) revoke any condition imposed under section 122(2) or (5), and impose another condition in its place:

(c) amend any condition imposed under section 122(2) or (5) or this section.

123A Appointment of auditors

(1) The Director-General may appoint auditors to carry out audits of approved organisations for the purposes of this Act.

(2) The Director-General may appoint as auditors only those persons who have appropriate experience, technical competence, and qualifications relevant to the audits.

(3) Auditors may, but need not, be persons who are employed under the State Sector Act 1988.