

Game Animal Council Bill clause by clause comments – New Zealand Conservation Authority submission

Clause 3

Clause 3(c) Delete “his or her”. This removes the implication that it is all the minister’s powers. The Bill retains that discretion to the Minister. The Authority is opposed to the delegation of the Minister’s powers to designate herds of special interest and the approval of herd management plans and submits accordingly under the relevant clauses.

Clause 4

Clause 4 game: The Authority opposes the reclassification of all deer, tahr, chamois and goats as game regardless of location or whether or not a herd of special interest has been designated by the Minister. Insert after ‘means’, *where associated with a herd of special interest* to avoid that interpretation. This request is consistent with the consequential amendment to the Wild Animal Control Act 1977 identified in Schedule 3. Without this qualification there will be a legislative gap with regard to the control and management of game animals not on conservation land.

Clause 4 game trophy: “in the previous ten years” appears to our mind to be unreasonable if it is a back-dating of the Act. It also appears this would affect New Zealanders leaving to work in e.g. Australia and taking their personal possessions.

Clause 4 herd: Replace ‘a group’ (which means *a number* (Concise Oxford Dictionary) and therefore could encompass a single family group) with *a large number* (see Concise Oxford Dictionary definition of herd).

Clause 4 overriding considerations (b): General policies may also be made and be relevant in this context under section 11 Hauraki Gulf Marine Park Act 2000 and section 16 Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act. The Authority recommends that they also be referred to.

Clause 4 overriding considerations (e): add section 5(1)(d) Wild Animal Control Act 1977. Management plans under the Wild Animal Control Act 1977 are approved by the Minister of Conservation and apply to the management and control of wild animals on both public and private land. There is a current Plan for Himalayan Tahr. It would be unworkable for a management plan for game animals e.g. Tahr under the Game Animal Council Act not to be consistent with a management plan for wild animals e.g. Tahr under the Wild Animal Control Act.

Clause 6

The Authority requests that the Council be an Autonomous Crown Entity under the Crown Entities Act 2004. That Act provides a consistent framework for the establishment, governance, and operation of entities established to manage Crown assets outside the core department network, and clarifies the accountability relationships

between Crown entities, their board members, their responsible Ministers on behalf of the Crown and Parliament.

Clause 7

Clause 7(1)(d) This appears to be a public advocacy role. The Authority opposes this provision. It is inappropriate that a statutory body with delegated statutory powers of decision making for the management of game animals on public conservation land be enabled to undertake what appears to include activist advocacy in the interests of only one of many interests in those animals and public conservation land

Clause 7(1)(e) The Authority opposes this clause with its purpose “to improve hunting opportunities”. The only ways in which this could occur are to breed more game animals, or release them into areas they do not currently live, or obtain rights of access to private (including Maori) property rights.

Clause 7(1)(e) The Authority opposes the word ‘liaise’ and requests that it be replaced with “consult”. Liaise is weak and carries no expectation that the views of those liaised with need to be considered. The meaning of “consult” is underpinned by case law and carries with it clear standards and expectations appropriate in the context of managing public resources.

Clause 7(1)(g)(i) The Authority requests the addition of reference to the ‘overriding considerations’. This adds clarity to what is meant by ‘compatible with the management of conservation land’.

Clause 7(1)(g)(ii) There is no guidance in the Bill as to the criteria by which “effective management of the herd” is to be measured. The Authority seeks the addition of measureable criteria to assess “effective management”.

Clause 7(1)(h) The Authority opposes the word “ancillary” which it considers could give the Minister problems in its application. It requests this be changed to “essential”.

Clause 7(2) The Authority supports the requirement that the Council must have regard to any views expressed in writing by the Minister to the Council. This is a provision which already applies to the Authority.

Clause 8

Clause 8(1) The Authority supports the appointment of members of the Council by the Minister. It would not support this power being delegated or transferred to the Council e.g. to select members to replace appointees who resign or die, or elected by hunters along the lines of Fish and Game Councils. Appointment by the Minister ensures that persons with appropriate skills and experience are selected and an appropriate balance of interests achieved.

Clause 8(3) The Authority opposes the current structure of this clause and requests that it be reconfigured to require –

(1) at least one member from each of groups (b)(c) and (d).

(2) the amendment of (ii) to read *commercial interests* with the consequential deletion of sub-groups (iii) to (vi). As currently configured, the clause could be seen to guide the Minister to appoint more members with commercial interests than those with non-commercial recreational and personal food gathering interests. Members with commercial interests are likely to have greater resources than other members which could contribute to an internal imbalance of power and influence within the Council. A more balanced Council is desirable if the Minister is to receive genuinely balanced advice.

Clause 8(3)(viii) The Authority opposes the narrow scope of the research expertise. It requests that it be broadened to refer to “game animals in New Zealand”. The reference to New Zealand is essential due to our unique ecosystem and biodiversity that evolved without the existence of land mammals. Overseas research and expertise would be of questionable relevance.

Clause 10

The Authority supports clause 10.

Clause 11

The Authority supports clause 11.

Clause 12

The Authority supports clause 12

Clause 13

Clause 13(3) The Authority opposes the wording of this subclause as there appears to be some duplication between this clause and clause 13(1).

The Authority recommends that clause 13(3) be rewritten to read *No meeting can take place and no business can be transacted unless a quorum is present.*

Clause 14

Clause 14(4) Insert *and speak at* after ‘attend’. This aligns with legislative provisions relating to the Authority, the New Zealand Fish and Game Council, the regional fish and game councils and the Queen Elizabeth the Second National Trust.

Clause 16

Clause 16(1). The Authority is opposed to the limitations on the Minister's consideration of whether or not to designate a herd as being of special interest. While the Authority notes the requirement for the Minister to consult the Department of Conservation in addition to the Council (clause 16(2)), and "any representative organisations" at her discretion, that consultation is confined by the criteria set in clause 16(1).

The Authority requests additional criteria for the Minister to consider when determining whether a herd of game animals should be designated a herd of special interest. It suggests that they be the purposes for which the conservation land is held (e.g. national park, scientific reserve, recreation reserve), its ecosystem and native species and habitat values, and other interests (economic, cultural, recreational, research).

Clause 16(1) The term 'conservation land' is defined in clause 4. In a small number of instances this includes private land (section 6(a) Conservation Act 1987 refers). The Authority suggests that *public* be inserted before 'conservation land' in this clause.

Clause 18

The Authority requests that the Minister be given the power to control game animals.

The Authority opposes the delegation of many of the Minister's powers under clause 18. It has explained its opposition under clause 20 – Delegation of Minister's powers to the Council.

Clause 18(1) The Authority requests that this be amended to specifically prohibit the release of game animals into a new habitat.

Clause 19

There is an existing wild animal control plan under the Wild Animal Control Act 1977 for Himalayan Tahr (tahr), one of the principle proposed game animals and widely touted in the electronic media as a primary target to be declared a herd of special interest. If this occurs, as the Bill is currently drafted, it appears that the Himalayan Tahr Control Plan will automatically become obsolete if no new herd management plan is in place; at least for tahr on public conservation land. (Schedule 3 Consequential amendments Wild Animal Control Act refers). This long-established collaborative model with considerable advantages for recreational hunters would be lost.

The Authority requests that the Himalayan Tahr Control Plan remain in force until any replacement plan is prepared for public conservation land and in any case for the control and management of tahr on private land thereafter.

The Authority opposes the delegation of the power to make or amend herd management plans to the Council. It requests that the power to make herd management plans be retained by the Minister and not able to be delegated.

Clause 19(3)(c) provides for the Minister to consult with the Council before making a herd management plan. If the Minister delegated the making of a herd management plan to the Council, the Council would be consulting itself. This defeats the purpose of consultation; especially when consulting with any others is at the discretion of the Council.

If, despite the Authority's request, such a delegation is retained, the Authority further requests that the Act require the Council to follow a consultation process, including consultation with the Ministers of Conservation and Biosecurity, to a standard appropriate for a public resource on public property in both of which there are multiple interests; not just hunter interests.

Clause 19(6). The Authority opposes any restriction or effect on the legal rights or powers of the Director-General of Conservation. In particular it is essential that the Director-General retains the right to control any introduced species causing damage to any indigenous species or habitat (section 53(3)(g) Conservation Act 1987) and to discharge any Crown ownership responsibilities.

Clause 19(6)(b). This is a critical provision which is supported by the Authority.

However, the Authority opposes this provision being ancillary to the effect or otherwise of a herd management plan on the legal rights and powers of the Director-General. It requests that there be a separate clause requiring that a herd management plan be consistent with the overriding considerations.

Clause 20

Clause 20(1) The Authority opposes the delegation of "all or any of [the Minister's] powers under [the] Act" beyond those listed under clause 18 (but see also the Authority's request for a new power under clause 18 and its further comments below. The Authority requests that 20(1) be amended to refer specifically to those powers listed in clause 18. It notes that clause 21 refers to clause 18 only, giving rise to its belief that its requested amendment is indeed the policy intent. The Authority requests that the power of delegation be limited to the delegation of specific management functions.

Clause 20(1) The Authority supports the Minister retaining the power to capture, convey or liberate game animals in herds of special interest (clause 18(1)(e)) subject to the amendment requested under Clause 18.

Clause 20(1) The Authority opposes the delegation of the Minister's powers under sub-clauses 18(1)(b) (c) and (d) to determine who receives authorisations to hunt game animals in a herd of special interest; to cancel or suspend authorisations; and to specify conditions of hunting. These broad powers, if delegated to the Council, would enable it to introduce tiers of authorisations that convey special benefits on those who are prepared to pay, including exclusive access, and disadvantage recreational hunters and food gathers.

Clause 20(1)(b) If this power is delegated, it will necessitate the development of robust systems, duplicating the investment already made by the Department of Conservation. It will impose extra costs on aircraft operators who would then need to obtain one authorisation from Council for game-related activities and one from the Department to cover non-game animal related activities. It will make monitoring for compliance and enforcement for non-compliance with concession requirements (which may differ from one agency to the other) impractical. It will create a precedent for other interests in Crown resources to seek a similar right, further eroding the underpinning principle of integrated management of conservation assets.

The Authority requests that the authorisation of all commercial activity on public conservation land under this Act be the retained responsibility of the Department of Conservation and administered in accordance with Part IIIB of the Conservation Act 1987.

Clause 20(4) The Authority requests the clause be amended to mirror that of section 58(8) of the Conservation Act to read “...*this section shall affect or prevent the exercise of....*”. The Authority supports this subclause as amended.

Clause 20(6) The Authority supports this clause; particularly (b).

Clause 21

The Authority supports clause 21 with its reference to section 18.

The Authority requests that this clause also apply to any other delegation of ministerial powers to the Council.

Clause 22

The Authority opposes clause 22 as worded because it could be read as saying that the only requirement before the export of a game trophy can be made is payment of the prescribed levy.

The Authority suggests for reasons of clarity that a new clause be added that payment of the levy does not release the exporter from meeting any other export requirements e.g. CITES (tahr), animal health/biosecurity.

Clause 30

Clause 30(1) The reference to ‘escape’ is not understood. Escape means to get free of confinements. Animals on public conservation land are not restricted or controlled by fencing etc. If this clause relates back to 18(1)(e) ‘capture, convey or liberate’, the additions of words akin to *after capture or during conveyance* would add clarity to the coverage of 30(1).

Schedule 1

Schedule 1 Clauses 1, 2 and 8(2)

The Authority reads these sections to imply that the Department of Conservation will be required to meet the costs of enforcement officers and enforcement. The Authority opposes any such requirement. Direct costs associated with the Council, its activities, functions and powers must be borne by the Council. This includes any good neighbour responsibility that may be introduced under other legislation. The Department, while it is the land occupier of public conservation land, cannot be held responsible for Crown-owned animals on that land where their management has been allocated to another entity.

The Authority requests that a new clause be inserted in the Bill that all costs related to enforcement and good neighbour responsibilities will be met from the funds of the Council.

Schedule 1 Clause 8(2) Insert if any after 'trial'.

Schedule 3

The Authority suggests that a consequential amendment may also be appropriate to subsection 5, section 7 of the Biosecurity Act.