



## »≈ ANNUAL REPORT

FOR THE YEAR ENDED  
31 DECEMBER | 2018



ADVOCATES  
FOR THE  
TONGARIRO  
RIVER

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## COMMITTEE 2018

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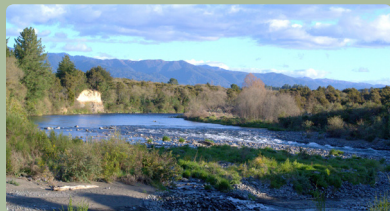
Gary Brown »	<b>PRESIDENT</b>
Warren Butterworth »	<b>CO VICE-PRESIDENT</b>
Tim Castle	
Virginia Church	
Sam Coxhead	
Stuart Crosbie »	<b>IMMEDIATE PAST-PRESIDENT</b>
Peter Deakin	
Mike Forret	
Richard Kemp »	<b>CO VICE-PRESIDENT</b>
Alasdair Keucke	
Julian Proctor	
John Toogood »	<b>TREASURER</b>
Eric Wilson »	<b>SECRETARY</b>

## LIFE MEMBERS

.....

Dr Mark Cosgrove  
Heather McDonald  
Bob McDonnell  
Sylvia Smith  
Eric Wilson

### COVER



Looking upstream to the Hydro Pool.  
The Hydro Pool is named after the camp  
established to build the transmission lines  
away from the two Power Stations.

The Registered Office of  
Advocates for the Tongariro  
River Incorporated  
117 Taupahi Road  
Turangi 3334

The postal address is  
PO Box 335

Turangi 3353

Contact can be made through our website  
[www.tongariroriver.org.nz](http://www.tongariroriver.org.nz)

≈ **NOTICE OF ANNUAL GENERAL MEETING**

The seventeenth Annual General Meeting of the Advocates for the Tongariro River Inc. will be held at the Tongariro National Trout Centre, Schoolroom, on Saturday 27th April 2019 at 10.00am. All welcome.

≈ **AGENDA**

The business of the Annual General Meeting will be to:

- record those present and note apologies
- receive the minutes of the sixteenth Annual General Meeting
- receive the President's report
- approve the financial statements
- consider motions of which due notice has been provided. The full rules of the Advocates for the Tongariro River Inc. are printed in the 2004 Annual Report and are also available on the Advocates website [www.tongariroriver.org.nz](http://www.tongariroriver.org.nz)
- appoint an executive committee comprising a President, Vice-President, Secretary, Treasurer and 10 committee members
- consider any other matters.

## ≈ MINUTES

Minutes of the Sixteenth Annual Meeting of the Advocates for the Tongariro River, held at Tongariro Lodge on Saturday 28 April 2018 at 10.00am.

### Present

Gary Brown, (Chairperson), Professor Troy Baisden, Nick Bradford, Warren Butterworth, Tim Coles, Alison Cosgrove, Mark Cosgrove, Sam Coxhead, Dave Conley, Stuart Crosbie, Mike Forret, Richard Kemp, Alasdair Keucke, Alasdair McNab, Julian Proctor, Robert Visscher, Betty Wheeler, Fergus Wheeler, Kathy White, John Williamson, Eric Wilson. Simon Stewart, Guest Speaker.

### Apologies

Professor David Hamilton, Louise Upston MP, Craig Brown, (Genesis Energy), Natalie Haines (Mercury Energy), Virginia Church, John Toogood, Peter Deakin, Jacqui Crosbie, Heather Macdonald, Jenny Shieff, Paul Williams.

*Moved* Graeme Nahkies, *Seconded* Mark Cosgrove, “that apologies be accepted.” *Carried.*

Gary welcomed all to the meeting.

### Minutes of the 15th Annual Meeting

*Moved* Warren Butterworth, *Seconded* Richard Kemp, “That the minutes of the 15th Annual meeting held 25th May 2016 be accepted.” *Carried.*

### Matters Arising

- The Tongariro River Trail has transferred to Bike Taupo who have the resources to maintain the TRT.
- The Advocates have accepted the science that shows conclusively that the lake bed in Waihi Bay and Southern part of Lake Taupo is sinking.

### President’s Report

The President’s Report was published in the 2016 Annual Report. The Report was taken as read.

*Moved* Gary Brown, *Seconded* Mark Cosgrove, “That the President’s Report be received.” *Carried.*



### Financial Report

Currently have \$30,109, \$12,000 is committed for projects.

*Moved* Gary Brown, *Seconded* Richard Kemp “That the Finance Report be accepted.”  
*Carried.*

### General Business

There was no further business.

### Election of Officers

The following committee was elected.

Warren Butterworth took the chair for the election of President and Gary Brown was re-elected.

That the committee for 2019 be:

President	Gary Brown
Co Vice President	Warren Butterworth
Co Vice President	Richard Kemp
Secretary	Eric Wilson
Treasurer	John Toogood
Committee (up to 9)	Tim Castle
	Virginia Church
	Sam Coxhead
	Stuart Crosbie
	Peter Deakin
	Mike Forret
	Alisdair Keucke
	Julian Proctor
	Robert Visscher

*Moved* Eric Wilson, *Seconded* Alison Cosgrove, *Carried.*

## **Simon Stewart**

### **Guest Speaker spoke on the topic of his PhD research on the Lake Taupo Food chain**

*Simon's power point presentation is in the Advocates Website, Library, Key documents, Simon Stewart's PhD presentation 20-4-18.*

The engine that drives the food chain is the turning of the water. The warm water sits at the top of the column and in winter the warmest water at the lake floor rises to the surface and in the process brings the nutrients with it to filter slowly down the column. The nutrients then feed the phytoplankton (algae) which feeds the Zooplankton which feeds the smelt which feeds the trout. 90% of the rainbow trout diet is from smelt. The depth at which algae is found determines the thermocline.

Simon has been able to trace the chain through carbon and nitrogen analysis.

Key points from questions:

- Fish concentrate at the level of the thermocline. Know where that is and catch fish.
- There is a twentyfold difference in phytoplankton and zooplankton between winter and summer
- Littoral (Lake edges) are the key food resource area. Little food in the deeper lake.
- Snails were a key part of trout diet in the 1930's until smelt were introduced.
- Brown trout take catfish. Rainbow trout don't.
- Ruapehu eruptions of 1995/6 resulted in increased size and condition of trout.
- Beetles as part of the diet are insignificant due to the size of the Lake.
- Limited Nitrogen influences food supply
- Fluctuating lake levels are not a significant factor.
- Community participation is important
- Observation
- Effects of forestry spraying is difficult to monitor due to lack of specialised labs.

Gary thanked Simon and wished him well for the future.

## **Other Business**

There was no other business to consider, the meeting closed at 11.45pm.

## ≈ PRESIDENT'S REPORT 2018

*President Gary Brown reports*

### **Nga mihi nui kia koutou katoa**

*Warm greetings to our advocate members*

*It is once again my pleasure to report on last year's activities and achievements.*

Our committee has met four times during the 2018 year. At a recent committee meeting it was decided that following this year's AGM our meetings will be two monthly to maintain a closer watch on our various activities. During the year we have been involved with a considerable number of issues concerning the river and its environs and with the overall health of the Taupo fishery, These are outlined in the various sections of this report and attached appendices.

Our committee have continued to maintain contact with local iwi, Ngati Tuwharetoa, Ngati Turangitukua and stakeholders Department of Conservation, Taupo Fishery Advisory committee, Taupo District Council, Genesis Energy, Mercury Energy, Waikato Regional Council and The National Trout Centre.

### **Taupo food web study**

As reported last year Simon Stewart's study was completed.

Simon will receive his PhD from Waikato University in May this year, and he has recently been appointed to the position of freshwater scientist to the Cawthron Institute in Nelson. Simon and his family have moved to Nelson. We wish him well in his new role.

### **Dr Mark Cosgrove**

It is with great sadness we record the death of our foundation member president Mark Cosgrove. Mark was a leader of the Advocates from day one. Mark's Trout fishing was a passion. He was a Life member of TALTAC, a committee member of The National Trout Centre and of the New Zealand Freshwater Anglers.

We are currently arranging for a commemorative seat alongside the river as a tribute to Mark for his excellent work for the Tongariro river and environs (see appendix 2).

### **Conservation (Indigenous Freshwater Fish) Amendment Bill**

This bill currently before Parliament is of great concern to our committee. We are very much in support of an assessment of the bill by Mr Graham Whyman (chair of the Taupo Fishery advisory committee). Graham addressed our committee at our February meeting this year and his key points are:

- Lack of consultation
- Opposition to any commercialisation within the fishery. No trout farming
- Need to protect waters
- Support for Sir Geoffrey Palmer Memo (This study and report on the bill was commissioned by Fish and Game NZ).

See appendices 2, for a copy of the bill.

Appendix 3 Sir Geoffrey Palmer

Appendix 4. Advocates For The Tongariro submission to the Govt. select committee)  
Tim Castle will speak to our submission at a time still to be determined.

### **River etiquette signage**

As I mentioned in last year's report our committee have been concerned for some time of the potential for conflict between people fishing with different methods and without due consideration for others in the same pool. The signs (for which we have contributed funding) have now been erected by DOC at strategic points along the river which we hope will help improve the situation. (see appendix 5) New DOC signs around the river include notice of river etiquette. Appendix 6.

### **River maintenance works**

The Waikato Regional Council is responsible for monitoring river flow channels to prevent undue flood damage. Major work has now been completed with the construction of the riprap wall along the true right bank between the main road bridge and Herekieke St.(Appendix 7) During the year we have had constructive discussions with WRC—particularly with respect to the removal of vegetation in the flood protection scheme area from the Hydro Pool to Smallman's Bend. The 2018-19 Annual Plan of Work for vegetation has not happened at this point.

### **River environment**

We continue to monitor the spread of wilding pines and noxious weeds. As mentioned in last year's report we successfully applied for a \$5000 grant from DOC community fund for wilding pine eradication in the blue pool /Boulder reach area. The grant included several onerous health and safety conditions and as a result instead of undertaking the project ourselves we arranged in association with DOC for the Project Tongariro team to carry out the work. The total cost of the project was \$12,000.00 and both the Advocates ( \$5,000.00) and DOC ( \$2,000.00) provided the additional funds for the contract. We have also assisted with working bees for planting native shrubs in the Hydro pool area. We also provided \$4,000.00 for weed control in the Taupahi reserve area.

### **Taupo fishery**

The river fishing continued to improve during 2018 and things are looking encouraging for this year with reports of several good conditioned fish being caught in the lower river early in the season. Delta fishing during this summer has been very patchy however and it appears fish in the lake are staying at depth in the colder water. The excellent blogs provided by our secretary Eric Wilson give us an ongoing update on fishing conditions.

### **Fishing regulations**

Committee members Richard Kemp and Eric Wilson continue to attend the Taupo Fishery advisory committee meetings and this keeps our committee up to date with fishery issues including any likely changes to regulations.

### **Strategic plan (appendix 1)**

During the year our committee has discussed whether or not we should be setting a forward strategic plan which would involve regular Key Performance Indicators (KPI) checks to evaluate strategic plan outcome. Recent modus operandi has been to identify issues as and when they occur, establish a budget if the issue requires finance, raise funds and restrict expenditure to the project budget. Our committee has resolved that as a watchdog group our methodology works adequately. All decisions are of course recorded in our meeting minutes and we operate as required within the Charitable trust guidelines.

### **Lindavia intermedia – Lake Snow**

Check Clean Dry is important. Lindavia intermedia now exists in Lake Taupo. See Appendix 8.

### **Membership**

Our current membership remains stable at 126 financial members. Maintaining a strong membership base is vitally important for the ongoing health of the Advocates, particularly in our applications for funding grants and when making submissions on behalf of the Tongariro river and the people we represent. To this end I would urge each member to make an effort to introduce at least one new member to our organisation this year.

### **Financial**

Our financial resources remain in good order and I would like to pay tribute to our treasurer John Toogood who keeps a close eye on our income and expenditure. The annual accounts are attached to this report.

### **Historic fishing hut from Taylors Lodge**

As mentioned last year, the hut was donated to us by the developer of the Taylors lodge site Collin Elder, Our proposal to locate the hut at the National Trout Centre is still awaiting approval from the Trout Centre and our committee have decided that if approval is not received by October this year we will reconsider its final location.

### **Conclusion**

I would like to thank all members of our Advocates committee for their work and attendance at our meetings during the year. Most of our committee come from various locations through the North Island. We are very fortunate to have the unstinting services of our secretary Eric Wilson who as a local Turangi resident has a wide knowledge of the Turangi/Tongariro area and of the various local stakeholders, and keeps us all up to date with his regular and informative blogs.

I wish all members well for the 2019 year—enjoy the Tongariro river and surrounding area and to our members who enjoy fishing—tight lines!!



**Gary Brown** *President.* March 2019

## ≈ FINANCIAL STATEMENTS

For the 12-month period ended 31 December 2018

### Income and Expenditure

		2018 \$	2017 \$
<b>Receipts</b>			
<i>Income</i>	Subscriptions	2,260	
	Donations	1,760	
		<b>4,020</b>	
	Interest	342	
	Refund Bank Charge	2	
		<b>4,634</b>	<b>5,184</b>
<i>Projects/Grants</i>	Pharazyn Trust	3,000	
		<b>7,364</b>	<b>10,184</b>
<b>Outgoings</b>			
<i>Operating expenses</i>	Admin/general expenses	310	
	Promotion	1,019	
	AGM, report, etc	782	
	Miscellaneous/subscriptions	-	
		<b>2,111</b>	<b>2,095</b>
<i>Projects</i>	Projects	9,009	
		<b>11,121</b>	<b>3,976</b>
<b>Excess outgoings/receipts</b>		<b>(3,757)</b>	<b>6,208</b>



## Statement of financial position

As at 31 December 2018

		2018 \$	2017 \$
<b>Current assets</b>			
<i>Bank accounts</i>	Current account	541	
	Online call account	28,611	
<b>Total assets</b>		<b>29,152</b>	<b>32,909</b>
<b>Total liabilities</b>	Funds committed to projects (see notes below)	–	–
<b>Nett assets</b>		<b>29,152</b>	<b>32,909</b>
	Opening balance 1 January 2018	32,909	
	Excess expenditure/receipts	(3,757)	
<b>Nett Funds before commitments as noted below</b>		<b>29,152</b>	<b>32,909</b>

## Notes to Accounts

<b>Funds committed for projects</b>	Projects/Environment Reserves	10,522	
	Beech trees – Project Tongariro	819	
		<b>11,341</b>	<b>17,350</b>
<b>Net retained unassigned funds</b>		<b>17,811</b>	<b>15,559</b>

**Subscriptions and donations** There was a nett decrease over the last year of \$500 to \$4,020

≈ **NOTES TO THE FINANCIAL STATEMENTS**

*For the period ended 31 December 2018*

**Statement of accounting policies**

*Reporting entity*

The Advocates for the Tongariro River Society Inc. is incorporated under the Incorporated Societies Act 1908. The financial statements have been prepared in accordance with generally accepted accounting practice. The accounting principles record historical cost. Subscriptions are recorded on a cash-received basis. There have been no overall changes in accounting policies. All policies have been applied on bases consistent with those used in the previous year.

*Preparation of accounts*

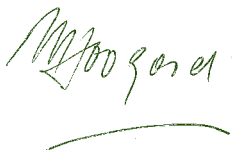
The accounts have been produced on information available to the Treasurer and have been reviewed and verified by John Austad, a former Chartered Accountant.



**Gary Brown**

*President*

*February 2019*

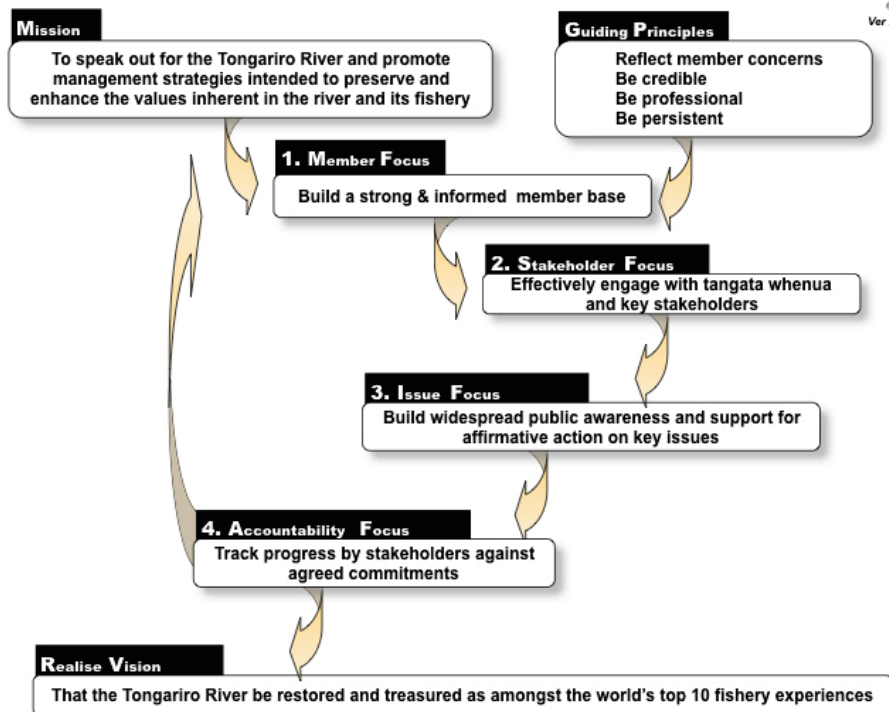


**John Toogood**

*Treasurer*

*February 2019*

≈ APPENDIX 1 » STATEMENT OF OBJECTIVES



≈ APPENDIX 2 » A TRIBUTE TO  
DR MARK MCELROY COSGROVE

**Mark was responsible for setting up the Advocates For The Tongariro River and was the first President of the organisation.**

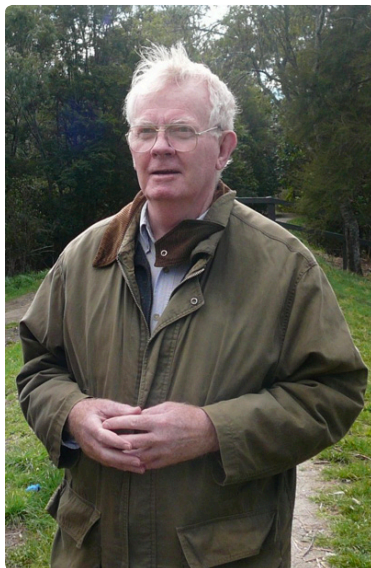
He was firstly a scientist with a BSc degree from Canterbury University, M.Sc from Victoria University and a PhD from Waikato University. His love of trout fishing was just another scientific experiment of total enjoyment.

*From:* Mark Cosgrove

*Date:* 3 October 2017 at 10:59:30 PM NZDT

*To:* Eric Wilson <secretary@tongariroriver.org.nz>

*Subject:* BOATING



*A Boating holiday to Hokio Beach near Levin, nearly went awry despite a fair bit of Physics on board.*

*Ken, the skipper's young teenage son, his father and one other arrived at the beach, and finding the Tasman Sea as calm as the proverbial millpond, put to sea to give the motor a run.*

*Ken recalled the rest of the story.*

*I was 14 at the time of the boat sinking. How I remember it was that we went out shortly after arriving at the holiday house, it was mirror flat sea and we went out about 2 miles from shore. I think Dad saw the first wave first, but I recall looking around behind us and then up to a 20 foot wave. It crashed right on top of us and threw Dad out of the boat, killed the 5 hp engine and then was followed by about 4 more waves. Dad managed to hang on to the boat then turn it so we were pointing towards the beach. I remember sequences of 4-5 waves with about 2 minutes of calm between.*

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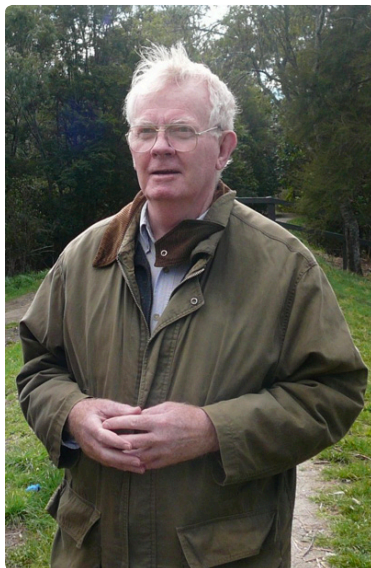
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*I remember you saying that you could not swim and I helped you in to a life jacket (also put one on too). I emptied the fishing tackle box and started bailing – I think Dad was making all the decisions from in the water. You managed to get the motor going momentarily but the boat was too slow and we were swamped again. Finally after about 20 minutes a wave lifted the boat up and Dad assisted it in flipping the boat over and managing to trap some air underneath it. Dad and I helped you on to the top of the up turned boat and then we decided that I should swim in for help -it was August and a skinning feller like me was not going to last long out there.*

*I swam in about 2 miles and as I got to shore I was dragged out again by the under tow but managed to get to standing depth on my second go. I saw some people (probably 18 -20 year olds) with cars driving around on the beach and I yelled for help. They helped me out of the water and quickly sorted out what was going on. I suspect one of them drove off to get help but I'm not sure. I was bundled in to the back seat of one of the cars wrapped in a blanket between 2 of the girls. It was then that the surreal nature of the event subsided and I didn't know if either you or Dad would make it.*

*About 15 mins later (actually I don't know how long it was) I saw Dad walking on the beach wrapped in a white blanket (it looked like a parachute to me) and he came over to where I was in the car. He said that his legs had cramp up and he had to leave you and swim in using his arms or he would not have made it. He said that he had 'tied' you to the top of the boat.*

*It was now dark and the team with the cars were following the boat as it drifted north along the beach and using their headlights to keep it in view.*

*The Police arrived and one of them swam out and got you off – he said that the boat had drifted in to about ½ mile off shore.*

*The fast Police car drive to Station and then wives were notified etc.*

I think this was Mark's explanation as to why he found trout fishing a superior style of fishing to that of the sea.

Mark offered leadership.

He became a Committee member of TALTAC shortly after moving to Turangi around 1976 and when Allan Cooper stepped down as TALTAC President Mark stepped into the role. Mark at that time had moved to Hamilton to a position on the staff of Waikato University. His major contribution to TALTAC was to upgrade the accommodation. A move to Sydney as Professor of Science Education at University of Technology, Sydney, saw him step down as TALTAC President. TALTAC rewarded him with a Life Membership. While President, Mark served a period on the NZFWA committee. Mark retired early and returned to Turangi.

In response to a plea from Virginia Church, The Advocates for the Tongariro River (AFTR) was formed. The 2002-3 Annual Report was a forceful statement setting out the reasons for the formation of the Advocates and the task ahead.

AFTR was well set up and its credibility has maintained a presence with stakeholders which gives us an opportunity to sit at the table as a "critical friend."

The Advocates have achieved much. The completion of the PhD study by Simon Stewart on the Food Web was initially led by Mark. He realized the problem and sought an answer resulting in Simon's research project.

Mark stepped down as President in 2008. He suffered from Parkinson's and desired a less public existence. Mark finally put his fishing rods away some 5 years ago as his disease advanced. It was a cruel end for a brilliant mind of a man committed to a better future for anglers. His interests were much wider than angling.

He will be missed.

**Eric Wilson**



≈ **APPENDIX 3 » CONSERVATION (INDIGENOUS FRESHWATER FISH)**

**AMENDMENT BILL**

*GOVERNMENT BILL 87—1*

*EXPLANATORY NOTE*

**General policy statement**

This Bill primarily relates to indigenous freshwater fish, and threats to those fish. The objectives of the Bill are to:

- improve the workability of fisheries management tools in the Conservation Act 1987 (the Act):
- fill gaps in the regulation-making powers relating to freshwater fisheries management, including to provide regulation-making powers relating to all matters in the Freshwater Fisheries Regulations 1983:
- repeal provisions in the Freshwater Fisheries Regulations 1983 that have been superseded by more recent provisions in the Act:
- remove some provisions relating to the protection of fish from the Freshwater Fisheries Regulations 1983 and provide updated provisions in the Act:
- provide protection for indigenous freshwater fish within conservation areas:
- improve the relationship between management of fish under the Act, the Fisheries Act 1983, the Fisheries Act 1996, and Treaty settlement legislation:
- ensure that the relevant provisions in the Act are efficient and accord with modern legislative design and drafting standards.

The reforms to the existing legislation are necessary to:

- allow existing regulations to be reviewed and reformed:
- provide more efficient and effective tools for fisheries management of indigenous freshwater fisheries, threats to fish, and noxious fish, which can be used in ways to minimise possible impacts on other interests:
- ensure that the fisheries management toolbox is adequate to address all fisheries management needs for indigenous freshwater fisheries:
- remove regulations that have been superseded by provisions in the Act, to reduce legal risk and remove unnecessary regulations:

- bring the basic controls on the taking of fish into line with current practice and expectations, including by removing unnecessary controls on the temporary taking of fish for education purposes, and by placing controls on unacceptable fishing activities:
- address the protection of fish within conservation areas to bring the treatment of fish into line with the treatment of other species within conservation areas and into line with the treatment of fish in reserves and national parks:
- make minor adjustments to the jurisdictional relationships between the legislation that covers management of indigenous freshwater fisheries, and ensure there are no unintended effects on Māori fishing and Treaty settlements.

In general, the reforms do not in themselves alter fisheries management. Rather, they are intended to provide a complete and effective toolbox for future fisheries management.

The Bill achieves these objectives generally through amendments to existing provisions.

### Departmental disclosure statement

The Department of Conservation is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found [HERE](#).

### Regulatory impact assessment

The Department of Conservation produced a regulatory impact assessment in July 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found [HERE](#) and [HERE](#).

## Clause by clause analysis

**Clause 1** is the Title clause.

**Clause 2** provides for commencement. This Bill comes into force on the day after the date it receives the Royal assent.

**Clause 3** provides that this Bill amends the Conservation Act 1987 (the principal Act).

## PART 1 » AMENDMENTS TO CONSERVATION ACT 1987

**Clause 4** amends section 2 of the principal Act, which provides for the interpretation of terms. Clause 4:

- renames indigenous fish as indigenous freshwater fish (to avoid confusion with indigenous fish that are salt water fish):
- includes a new definition, Treaty settlement legislation, for ease of reference:
- clarifies the definition of freshwater fish. One element of the current definition requires that the relevant fish species inhabit freshwater during its life history. Because freshwater is defined to include bodies of water that comprise seawater and freshwater (for example, coastal lagoons), the requirement that the fish species inhabit freshwater in its lifetime is amended to exclude those parts of the freshwater that is seawater.

**Clause 5** amends section 17J of the principal Act. The amendment deals with any conflict between a provision in a freshwater fisheries management plan and a provision in a sports fish and game management plan. If there is conflict, the provision in the freshwater fisheries management plan prevails.

**Clause 6** concerns the application of Part 5B of the principal Act to freshwater fisheries. Paragraph (c) of section 26ZG(2), which states situations where Part 5B does not apply, is replaced. The new paragraph states that Part 5B does not apply to the taking, holding, possession, sale, or disposal of freshwater fish by a person who is:

- specifically authorised under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either of those Acts; or
- specifically authorised under regulations made under section 48B of the principal Act (which relates to South Island freshwater fisheries); or

- acting under the authority of a registration of a fish farmer under Part 9A of the Fisheries Act 1996; or
- authorised (whether generally or specifically) under Treaty settlement legislation.

**Clause 7** inserts new sections 26ZHA and 26ZHB, both of which relate to indigenous freshwater fish.

New section 26ZHA relates to an approval under the principal Act or an Act listed in Schedule 1 of the principal Act that enables access to public land for recreation purposes. New section 26ZHA states that such an approval is not of itself an approval for recreational fishing of indigenous freshwater fish in any fisheries water on that land.

New section 26ZHB contains the following new rules relating to the fishing of indigenous freshwater fish:

- a person must not take indigenous freshwater fish from a conservation area without authorisation under that section (new section 26ZHB(1));
- a person may take indigenous freshwater fish from freshwater that is not a conservation area only if:
- the person is authorised under that section; or
- the person takes the fish primarily as food for human consumption and in accordance with any regulations or notice made under the principal Act; or
- the person takes the fish in a way that does not injure or kill the fish and promptly returns the fish into the water (new section 26ZHB(2)).

When considering an application for authorisation, the Director-General of Conservation must apply the criteria in new section 26HB(4).

A person who contravenes new section 26ZHB(1) or (2) commits an offence and is liable to a fine not exceeding \$5,000.

**Clause 8** inserts a cross-heading above section 26ZJ of the principal Act.

**Clause 9** amends section 26ZJ of the principal Act, under which it is an offence to carry out activities that affect the spawning ground of freshwater fish, their eggs, or

their larvae. The amendment provides that a person does not commit an offence if the person is authorised by the Director-General (in accordance with new section 26ZJ(4)) or regulations.

**Clause 10** inserts a cross-heading for the grouping of provisions in Part 5B.

**Clause 11** amends section 26ZL of the principal Act, which enables the Director-General to impose by notice certain restrictions on fishing. Section 26ZL(1) is amended to enable specified land to be declared a spawning ground. (Currently, specified waters can be declared, but not land.)

**Clause 12** amends section 26ZM of the principal Act. Section 26ZM states the process for obtaining the Minister of Conservation's approval to transfer or release live aquatic life in an area. Currently, an applicant must advertise the proposed activity for 2 consecutive Sundays in a local newspaper in the area concerned. The amendment enables the Director-General to relax the requirement to advertise if satisfied that the proposed activity is unlikely to have an adverse effect on the freshwater fishery concerned.

**Clause 13** amends section 26ZP of the principal Act (which relates to closed seasons for fishing) by:

- providing that a closed season can relate to 1 or more species of freshwater fish (other than sports fish) in a specified area for a specified period of time not exceeding 5 years; and
- requiring the Director-General's notice to state the purpose of the closed season; and
- enabling the Director-General to authorise the taking of fish to which a closed season applies if satisfied that the taking is consistent with the purpose of the closed season and any requirements in regulations have been met.

**Clause 14** amends section 26ZR of the principal Act. The amendment replaces a reference to a warranted officer with a reference to an employee or a contractor of the Department of Conservation.

**Clause 15** makes minor amendments to section 48 of the principal Act, which empowers the making of regulations.

**Clause 16** amends section 48A of the principal Act, which enables regulations and notices to be made relating to freshwater fisheries. The amendments, among other things, clarify regulation-making powers, state further matters relating to indigenous freshwater fish for which regulations may be made, and enable regulations to state criteria and impose conditions or restrictions in relation to certain authorisations given by the Director-General under Part 5B.

New section 48A(6) is inserted to deal with any inconsistency between:

- a provision in certain regulations made under the principal Act relating to indigenous freshwater fish; and
- a provision in Treaty settlement legislation or a provision in regulations relating to Māori fishing rights made under the Fisheries Act 1996.

If there is inconsistency, the provision in Treaty settlement legislation or the relevant regulations under the Fisheries Act 1996 prevails over the provision in regulations made under the principal Act.

## **PART 2 » AMENDMENTS TO FRESHWATER FISHERIES REGULATIONS 1983**

**Clause 17** and the *Schedule* make amendments to the Freshwater Fisheries Regulations 1983.

### **CONTENTS**

Explanatory note

- 1 Title
- 2 Commencement
- 3 Principal Act

### **Part 1 » Amendments to Conservation Act 1987**

- 4 Section 2 amended (Interpretation)
- 5 Section 17) amended (Freshwater fisheries management plans)
- 6 Section 26ZG amended (Application of Part)
- 7 New sections 26ZHA and 26ZHB and cross-heading inserted

#### *Indigenous freshwater fish*

26ZHA Approval under specified Acts to access public land is not approval for recreational fishing of indigenous freshwater fish

26ZHB Prohibitions and restrictions on taking of indigenous freshwater fish

- 8 New cross-heading above section 26ZJ inserted

#### *Spawning fish*

- 9 Section 26ZJ amended (Offences relating to spawning fish)
- 10 New cross-heading above section 26ZK inserted

#### *Various restrictions relating to fishing and aquatic life*

- 11 Section 26ZL amended (Restrictions on fishing)
- 12 Section 26ZM amended (Transfer or release of live aquatic life)
- 13 Section 26ZP amended (Determination of closed seasons for fishing)
- 14 Section 26ZR amended (Using hazardous substances to catch or destroy fish)
- 15 Section 48 amended (Regulations)
- 16 Section 48A amended (Special regulations relating to freshwater fisheries)

### **Part 2 » Amendments to Freshwater Fisheries Regulations 1983**

- 17 Amendments to Freshwater Fisheries Regulations 1983

**Schedule** Amendments to Freshwater Fisheries Regulations 1983



## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Conservation (Indigenous Freshwater Fish) Amendment Act 2018.

### 2 Commencement

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

### 3 Principal Act

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

## Part 1 » Amendments to Conservation Act 1987

### 4 Section 2 amended (Interpretation)

(1) In section 2(1), definition of freshwater fish, replace “fresh water” with “freshwater (but not any part of that water that is seawater)”.

(2) In section 2(1), repeal the definition of indigenous fish.

(3) In section 2(1), insert in their appropriate alphabetical order:

indigenous freshwater fish means any freshwater fish that is indigenous to New Zealand Treaty settlement  
legislation means an Act that settles the historical claims of iwi or other Māori groups under the Treaty of Waitangi and includes any regulations, bylaws, or

other legislative instruments made under that Act

### 5 Section 17J amended (Freshwater fisheries management plans)

(1) In section 17J(1) after “areas”, insert “or throughout all New Zealand”.

(2) In section 17J(4) after “area”, insert “or throughout all New Zealand”.

(3) After section 17J(5), insert:

(6) However, if there is any conflict between a provision in a freshwater fisheries management plan and a provision in a sports fish and game management plan, the provision in the freshwater fisheries management plan prevails.

### 6 Section 26ZG amended (Application of Part)

Replace section 26ZG(2)(c) with:

(c) the taking, holding, possession, sale, or disposal of freshwater fish by—

(i) a person who is specifically authorised under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either of those Acts; or

(ii) a person who is specifically authorised under any regulations made under section 48B of this Act; or

(iii) a person acting under the authority of a registration of a fish farmer under Part 9A of the Fisheries Act 1996; or

(iv) a person who is authorised (whether generally or specifically) by or under Treaty settlement legislation.

### 7 New sections 26ZHA and 26ZHB and cross-heading inserted

After section 26ZH, insert:

#### *Indigenous freshwater fish*

26ZHAApapproval under specified Acts to access public land is not approval for recreational fishing of indigenous freshwater fish

(1) An approval under this Act or an Act listed in Schedule 1 that enables access to public land for recreation purposes is not of itself an approval for recreational fishing of indigenous freshwater fish in any fisheries water on that land.

(2) In subsection (1), an approval under an Act includes an approval under any instrument made under that Act.

26ZHBProhibitions and restrictions on taking of indigenous freshwater fish

(1) A person must not take any indigenous freshwater fish from a conservation area unless authorised under this section.

(2) A person may take indigenous freshwater fish from freshwater that is not a conservation area or part of a conservation area only if—

(a) the person is authorised under this section; or

(b) the person takes the fish—

(i) primarily as food for human consumption, including for sale as food for human consumption; and

(ii) in accordance with any regulations or notice made under this Act; or

(c) the fish are—

(i) taken in a manner that does not lead to their injury or death; and

(ii) returned to those waters as soon as practicable after being taken.

(3) A person who

contravenes subsection (1) or

(2) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

(4) The Director-General may, on application, authorise a person to take indigenous freshwater fish—

(a) from a conservation area if satisfied that the activity is consistent with the purpose for which the land is held and

any requirements in regulations have been met; or

(b) from a freshwater area that is not a conservation area or part of a conservation area if satisfied that the activity is consistent with the management of freshwater fisheries in that area and any requirements in regulations have been met.

(5) An authorisation may be subject to any conditions or restrictions specified by the Director-General or in regulations.

#### 8 New cross-heading above section 26ZJ inserted

After section 26ZL, insert:

##### *Spawning fish*

#### 9 Section 26ZJ amended (Offences relating to spawning fish)

(1) In section 26ZJ(1), after “who”, insert “without authorisation”.

(2) In section 26ZJ(1)(c), replace “is in” with “takes or has”.

(3) Replace section 26ZJ(2) with:

(2) Subsection (1) does not apply to the taking of freshwater fish subsequently found to contain eggs or larvae.

(3) In this section, authorisation means,—

(a) in relation to subsection (1)(a), an authorisation in regulations; and

(b) in relation to subsection (1)(b) to (e), an authorisation from the Director-General under subsection (4).

(4) The Director-General may, on application, authorise a person to carry out an activity that would otherwise contravene 1 or more of paragraphs (b) to (e) of subsection (1) if satisfied that—

(a) the person cannot reasonably avoid the contravention when carrying out the activity; and

(b) the activity is unlikely to have a significant effect on the affected fish population.

(5) An authorisation may be subject to any conditions or restrictions specified in the authorisation.

#### 10 New cross-heading above section 26ZK inserted

After section 26ZJ, insert:

##### *Various restrictions relating to fishing and aquatic life*

#### 11 Section 26ZL amended (Restrictions on fishing)

After section 26ZL(1)(a), insert:

(aa) declare any specified land to be

spawning grounds for freshwater fish and prohibit or impose restrictions and conditions on entry on to that land:

**12 Section 26ZM amended (Transfer or release of live aquatic life)**

(1) In section 26ZM(2)(a), replace “sites” with “locations”.

(2) In section 26ZM(4)(a), replace “shall” with “must, unless subsection (4A) applies,”.

(3) After section 26ZM(4), insert:

(4A) The Director-General may, at the request of the applicant, determine that compliance with subsection (4) is not required if satisfied that the proposed activity is unlikely to have an adverse effect on the freshwater fishery concerned.

**13 Section 26ZP amended (Determination of closed seasons for fishing)**

Replace section 26ZP(1) to (3) with:

(1) The Director-General may, by notice,—

(a) determine a closed season for fishing 1 or more species of freshwater fish (other than sports fish) in an area for a period not exceeding 5 years; or

(b) extend or vary a determination or

vary a determination that has been extended so long as the total period of the closed season does not exceed 5 years.

(2) A notice—

(a) must state the purpose of the closed season, the species of fish and the area to which the closed season applies, and the duration of the closed season; and

(b) does not take effect until the Director-General has published the notice for at least 2 consecutive Saturdays in 1 or more of the daily newspapers circulating in the area concerned.

(3) A person commits an offence who, without authorisation under this section, takes, possesses, or in any way injures or disturbs a fish to which a closed season applies.

(2) In section 26ZP(5), replace “sports fish” with “fish”.

(3) After section 26ZP(5), insert:

(6) The Director-General may, on application, authorise a person to take fish to which a closed season applies if satisfied that—

(a) the taking of the fish is consistent with the purpose of the closed season;

and

(b) the person has met the requirements (if any) set out in regulations.

(7) An authorisation may be subject to any conditions or restrictions specified by the Director-General or in regulations.

#### 14 Section 26ZR amended (Using hazardous substances to catch or destroy fish)

Replace section 26ZR(2)(a) with:

(a) a fish and game ranger or an employee or a contractor of the Department; or

#### 15 Section 48 amended (Regulations)

(1) In section 48(1)(a), after “issued”, insert “or authorisations to be given”.

(2) In section 48(1)(b), replace “or permits” with “permits, or authorisations”.

(3) In section 48(3), after “section”, insert “that relate to a conservation area”.

#### 16 Section 48A amended (Special regulations relating to freshwater fisheries)

(1) Replace section 48A(1)(f) with:

(f) regulating or prohibiting—

(i) the taking of any specified freshwater fish, including any method of taking that fish; and

(ii) the use, possession, or sale of any specified freshwater fish:

(2) After section 48A(1)(n), insert:

(na) prohibiting, restricting, or regulating any structure or alteration to a water body that could impede or affect the passage of freshwater fish or specified freshwater fish:

(3) After section 48A(1)(q), insert:

(r) in relation to indigenous freshwater fish,—

(i) specifying activities that are reasonably likely to injure or kill specified indigenous freshwater fish; and

(ii) regulating, restricting, or imposing conditions on those specified activities; and

(iii) specifying indigenous freshwater fish that are endangered and restricting or prohibiting the taking of those fish:

(s) in relation to an authorisation by the Director-General under section 26ZHB, 26ZJ, or 26ZP,—

(i) stating any requirements that must be

met by the person seeking the authorisation; and

(ii) imposing conditions or restrictions on the authorisation:

(t) specifying freshwater fish that are noxious fish and providing for their control, regulation, or prohibition:

(u) for the purpose of section 26ZJ(1)(a) and (3)(a),—

(i) authorising the carrying out of activities that would otherwise disturb or damage the spawning ground of a specified freshwater fish; and

(ii) specifying conditions and restrictions that must be complied with by persons carrying out those activities:

(v) imposing reporting requirements relating to the taking, injuring, killing, use, possession, or sale of specified freshwater fish.

(4) After section 48A(4), insert:

(5) Subsection (6) applies if there is inconsistency between—

(a) a provision relating to indigenous freshwater fish in regulations made under subsection (1)(b), (f), or (i); and

(b) a provision in Treaty settlement legislation, or a provision in regulations

relating to Māori fishing rights made under the Fisheries Act 1996.

(6) If this subsection applies, a provision described in subsection (5)(b) prevails over a provision described in subsection (5)(a).

## **Part 2 » Amendments to Freshwater Fisheries Regulations 1983**

### **17 Amendments to Freshwater Fisheries Regulations 1983**

Amend the Freshwater Fisheries Regulations 1983 as set out in the Schedule.

## **Schedule Amendments to Freshwater Fisheries Regulations 1983**

s 17

*Freshwater Fisheries Regulations 1983 (SR 1983/277)*

Revoke Part 7.

Revoke regulations 58 to 61.

In regulation 62(1),

replace “Notwithstanding regulation 61 no” with “No”.

Revoke regulation 63.

In regulation 64(a), delete “or any mosquito fish (*Gambusia affinis*)”.

Revoke regulations 70 and 71.

In regulation 72(2), replace “51(1), 51(4), 57A, 57E(1), 58 to 66, 67B(2), and 68 to 71” with “57A, 57E(1), 62, 64 to 66, 67B(2), 68, and 69”.

≈ **APPENDIX 4 » LEGAL OPINION ON INDIGENOUS FRESHWATER FISH AMENDMENT  
BILL BY SIR GEOFFREY PALMER**

**SIR GEOFFREY PALMER**

QUEENS COUNSEL



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**MEMORANDUM**

**TO:** Martin Taylor, Chief Executive Officer, New Zealand Fish and Game Council  
**FROM:** Geoffrey Palmer QC and Elana Geddis  
**DATE:** 30 August 2018  
**Re:** Conservation (Indigenous Freshwater Fish) Amendment Bill

**INTRODUCTION**

1. You have asked us for our advice on the implications of the Conservation (Indigenous Freshwater Fish) Amendment Bill for the sports fisheries regime managed by Fish and Game under the Conservation Act 1987.
2. The Regulatory Impact Statement notes that *"the reforms being proposed do not directly affect sports fish but will more effectively manage some threats to sports fish"* (pg. 7). We do not consider that this is entirely accurate. Aspects of the reforms impact directly and negatively on Fish and Game. Others have the potential to impact on sports fish.
3. In particular, we highlight:
  - a. **Clause 5** of the Bill will give Freshwater Fisheries Management Plans prepared by DOC priority over the Sports Fish and Game Management Plans prepared by Fish and Game.
  - b. **Clause 6** of the Bill will allow Treaty settlements to override several important elements of the sport fisheries management regime. This is inconsistent with the Court of Appeal's finding in *McRitchie v Taranaki Fish and Game Council* [1999] 2 NZLR 139.
  - c. **Clause 17** of the Bill revokes existing regulations in the Freshwater Fisheries Regulations 1983 that expressly require the consent of Fish and Game Councils before fish can be transferred or released in their area of jurisdiction.



- d. The **ongoing overlap** between DOC's statutory powers in respect of "freshwater fish" and Fish and Game's statutory powers in respect of "sports fish". There is currently no mechanism to ensure Fish and Game is consulted before decisions are taken by DOC that could impact on the sports fish management regime.
4. Central to all of these points is the need for the provisions of Part 5A of the Act regarding sports fish (administered by Fish and Game) and Part 5B of the Act regarding freshwater fisheries (administered by DOC) to operate consistently with each other. This is an ongoing issue. It would benefit both parties for the cooperative relationship between DOC and Fish and Game to be placed on a clear statutory footing.
5. We earlier provided you with preliminary advice that **clause 6** of the Bill had the potential to undermine section 26ZI of the Act, which prohibits any person from fishing for sports fish without a licence. We have reviewed that preliminary advice and advise that this specific problem does not arise. But, as discussed further below, Clause 6 still has the potential to impact on other important elements of the sports fisheries regime.

#### CLAUSE 5

6. At present section 17J of the Act creates the power for the Minister to adopt Freshwater Fisheries Management Plans on a regional basis. When preparing a Freshwater Fisheries Management plan the Director-General must have regard to any Sports Fish and Game Management Plan having effect in that region. This ensures that the two sets of plans are coherent.
7. Clause 5 of the Bill extends the impact of Freshwater Fisheries Management Plans in two significant ways:
  - a. It enables the Minister to adopt a national Freshwater Fisheries Management Plan that applies "throughout all New Zealand"; and
  - b. It provides that Freshwater Fisheries Management Plans prevail over Sports Fish and Game Management plans in the event of any conflict.
8. Under the amendments any Freshwater Fisheries Management Plan will therefore have priority over the Sports Fish and Game Management Plans prepared by Fish and Game. This is despite the fact that both types of management plans are approved by the Minister and have the same legal status under the Act.
9. The new power to adopt a national Freshwater Fisheries Management Plan increases the potential for conflict with Sports Fish and Game Management Plans, which are adopted on a regional basis.

10. For example, a Freshwater Fisheries Management Plan could identify the restoration of indigenous freshwater fish as an over-arching priority objective – either nationally or in a particular area. That objective could be implemented by DOC requiring trout and salmon to be removed from particular water bodies in order to give priority to indigenous fisheries. In that case the objective in the Freshwater Fisheries Management Plan would prevail even if a water body has previously been identified by the Minister as a significant trout and salmon habitat in a Sports Fish and Game Management Plan.
11. Similar situations have already arisen, particularly where commitments have been given by the Crown as part of Treaty settlement negotiations. Fish and Game has not been consulted during the settlement negotiations and Sports Fish and Game Management Plans and Part 5A of the Act have not been taken into account in the settlement agreements.
12. Clause 5(3) will therefore impact directly on the specific management regime for sports fish set down in the Act. Sports fish are managed under a series of detailed rules and licence conditions developed by Fish and Game and approved by the Minister. These flow from the management objectives for each region approved by the Minister in the regional Sports Fish and Game Management Plans. Section 17L(3)(c) of the Act already provides that a Sports Fish and Game Management Plan must not derogate from the provisions of a Freshwater Fisheries Management Plan. This provision is sufficient to address any situation of conflict that might arise.
13. We accordingly recommend that **Clause 5(3) of the Bill should be deleted.**

#### CLAUSE 6

14. Clause 6 exempts a person who is authorised under Treaty settlement legislation from the restrictions on taking, possessing or selling fish under Part 5B of the Act. This allows the Crown and iwi to agree to set aside the ordinary rules of Part 5B as part of a Treaty settlement.
15. Part 5B includes a number of provisions that apply to sports fish.
16. Central to these is section 26ZI, which prohibits fishing for sports fish without a licence. Clause 6 will not create an exemption from section 26ZI. Existing section 26ZG(3) of the Act provides that the provision amended by clause 6 does not apply to section 26ZI. We consider that section 26ZG(3) is sufficient to protect Fish and Game's interests with respect to section 26ZI. It will not be changed by the Bill.
17. But there are several other provisions in Part 5B which contain important elements of the sports fisheries regime that would be affected by the amendment in clause 6. In particular:
  - a. Section 26ZK, which prohibits fishing competitions for sports fish except in accordance with regulations adopted under the Act.

- b. Section 26ZN, which prohibits the sale of fishing rights.
  - c. Section 26ZO, which requires occupiers of land to comply with the requirements of Anglers Notices adopted by the Minister to set out the conditions for sports fishing.
  - d. Section 26ZQ(1A), which prohibits the sale of sports fish.
18. From the Cabinet paper and other background material there appears to be no intention to use the new provision in clause 6 to specifically override these provisions. But even if this is not intended clause 6 creates the legal possibility that this could occur. It opens up the potential for direct conflict between Treaty settlement legislation and the sports fisheries regime. This is inconsistent with the Court of Appeal's finding in *McRitchie v Taranaki Fish and Game Council* [1999] 2 NZLR 139.
19. In order to avoid this potential conflict, we recommend that clause 6 be amended by inserting the language in bold as follows:

- "(c) the taking, holding, possession, sale or disposal of freshwater fish by—
- (i) a person who is specifically authorised under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either of those Acts; or
  - (ii) **other than for sports fish**, a person who is specifically authorised under any regulations made under section 48B of this Act; or
  - (iii) a person acting under the authority of a registration of a fish farmer under Part 9A of the Fisheries Act 1996; or
  - (iv) **other than for sports fish**, a person who is authorised (whether generally or specifically) by or under Treaty settlement legislation."

#### CLAUSE 17

20. Clause 17 and the Schedule to the Bill revoke several regulations in the Freshwater Fisheries Regulations 1983. These include:
- a. Regulation 59, which requires that fish or ova cannot be released in an area under the jurisdiction of a regional Fish and Game Council without that Council's consent; and
  - b. Regulation 63, which prohibits the transfer of sports fish and ova between the North and South Islands without the written agreement of the relevant Fish and Game Council.

21. If these regulations are to be revoked it is important that some other mechanism is put in place to ensure that regional Fish and Game Councils are consulted with respect to the introduction or release of fish within their regions.
22. In particular, it is critical that regional Fish and Game Councils are consulted in relation to any transfer or release of sports fish in waters under their jurisdiction. This is necessary if regional Fish and Game Councils are to properly discharge their functions under section 26Q of the Act. Fish and Game Councils are responsible under the Act for monitoring sports fish populations and for stocking or restocking sports fisheries.
23. We recommend that Clause 12 of the Bill be amended to insert a new sub-section 26ZM(3A) into the Act as follows:

**“(3A) Provided that the Minister must not grant approval under subsections 2 or 3 to authorise the movement, transfer or release of any live aquatic life to any location within the jurisdiction of a Fish and Game Council without prior consultation with that Council.”**

#### OVERLAPPING POWERS

24. The Bill creates a number of new powers for DOC and the Minister with respect to the management of freshwater fish generally. Clauses 9, 11 and 12 create new authorisation powers on the part of the Director-General of DOC. Clause 16 creates several new regulation making powers for the Minister.
25. These powers have the potential to be used in a way that could impact on sports fish. This arises in two ways:
  - a. Directly from the fact that as defined in the Act “sports fish” are a sub-set of “freshwater fish”. So all powers in the Act held by DOC or the Minister that relate to “freshwater fish” can also potentially be applied to “sports fish”.
  - b. And indirectly, in that decisions taken with respect to the management of other types of freshwater fish could have implications for any sports fish population in the same area.
26. This could have both positive and negative implications. For example:
  - a. Clause 16 authorises regulations to prohibit, restrict or regulate any structure that could impede the passage of freshwater fish. This would include the passage of migratory sports fish such as trout or salmon. Greater protection for fish passage would be very positive and would help Fish and Game to discharge its statutory purpose of managing, maintaining and enhancing sports fish.

- b. On the other hand, Clause 9 creates a new power for the Director-General to authorise an activity that would disturb or damage spawning freshwater fish, including sports fish such as trout or salmon. The Director-General must first be satisfied that the activity "is unlikely to have a significant effect on the affected fish population".
27. In both cases, Fish and Game would have a legitimate interest in how the new statutory powers are exercised. The relevant regional Fish and Game Council will be best placed to assess the impact of activities on sports fish or their habitats. However, at present the Act does not specifically require Fish and Game to be consulted before these powers are used.
28. It is important that the management regimes created by the Act operate in harmony. Actions taken by DOC under its management powers for freshwater fish should take account of and not undermine the maintenance, management and enhancement of sports fish as provided for in Part 5A of the Act.
29. An obligation for DOC to consult with Fish and Game will arise as a matter of common law given the statutory purposes and functions of both the New Zealand Council and the regional Fish and Game Councils under sections 26B, 26C, 26P and 26Q of the Act. The need for consultation is already recognised in the Act in certain circumstances. Section 26ZL(3), for example, provides that the Director-General may not impose any restriction that relates to the taking of sports fish without first consulting with the relevant regional Fish and Game Council. However, there is at present no clear mechanism to ensure that such consultation takes place in all cases.
30. We consider that the Bill provides a useful opportunity to clarify this point and to record the consultation obligation in the Act itself. We accordingly recommend that section 6 of the Act be amended to include a new sub-section 6(2) as follows:
- "(2) In exercising its functions and powers the Department shall have regard to the provisions of Part 5A of the Act. Where a decision is likely to affect the management of sports fish and game or the interests of angler and hunters the Department shall consult with the New Zealand Fish and Game Council or the relevant regional Fish and Game Council as appropriate."**
31. A general provision of that nature would provide a statutory basis for Fish and Game and DOC to develop a memorandum of understanding setting out how the consultation obligation would operate in practice.

## CONCLUSION

32. The functions of DOC under section 6 of the Act include both the preservation of indigenous fisheries and the protection of recreational freshwater fisheries and freshwater fish habitats. These sit alongside specific functions given to Fish and Game to manage, maintain and enhance sports fish under Part 5A of the Act.
33. It is important that the two parts of the Act work together in a coherent way and that the increased emphasis on the protection of indigenous fisheries under the Bill does not undermine the system for the management of sports fish already in the Act. We consider that the amendments outlined above will achieve that objective while still meeting the central purpose of the Bill.



**Sir Geoffrey Palmer**  
Queens Counsel



**Elana Geddis**  
Barrister

≈ **APPENDIX 5 » SUBMISSION BY THE ADVOCATES FOR THE TONGARIRO RIVER**

Item of business:

**Conservation (Indigenous Freshwater Fish) Amendment Bill Submission**

**Advocates For The Tongariro River**

Comments Our first preference is that the proposed amendment bill be abandoned on the basis that there are already adequate legal provisions for Department of Conservation (DOC) and Fish and Game (F&G) to coherently manage the preservation of indigenous fisheries (section 6 of the Act) alongside protecting recreational freshwater fisheries (part 5A of the Act).

In the event that the bill does proceed, the Advocates for the Tongariro River (AFTR) would request the recommended changes proposed by Sir Geoffrey Palmer (see attached file) be adopted in full.

Recommendations:

- That clause 5(3) of the Bill should be deleted (see paragraphs 6-13 of Sir Geoffrey's legal opinion)
- That clause 6 of the Bill should be amended to exempt sports fish from the provisions (see paragraphs 14-19 of Sir Geoffrey's legal opinion)
- That clause 12 of the Bill should be amended to ensure F&G is properly consulted before Ministerial authorisation for movement, transfer or release of live aquatic life. (see paragraphs 20- 23 of Sir Geoffrey's legal opinion)
- That section 6 of the Act be amended to include a consultation obligation by DOC in the Act itself (see paragraphs 24-31 of Sir Geoffrey's legal opinion) Page 1 of 1.

≈ APPENDIX 6 » FISHING MANNERS/ETIQUETTE SIGNAGE

### FISHING MANNERS

Irrespective of the method of angling:

- 1) An incoming angler should not enter a/the river in front of an angler already fishing a pool without consulting him/her first.
- 2) If others are fishing in the same pool no angler should occupy a position on that pool indefinitely but should keep moving through it.
- 3) An angler should always give room to another angler who hooks and plays a fish near him/her.
- 4) No angler should move into the place of another angler who is landing or has just landed a fish.



Be a Tidy Angler



Enjoy Your Fishing

have taken and kept six fish.

### Angling etiquette

- When up-streamers meet down-streamers, the angler first in the pool should be given right of way. No one fishing method has right of way on the river.
- Don't enter the river in front of an angler already fishing without their consent.
- If you are sharing a pool keep moving through it steadily.
- Allow other anglers room to play a fish.





≈ **APPENDIX 7 » WAIKATO REGIONAL COUNCIL ACHIEVEMENT  
FROM ANNUAL WORK PLAN**



The work achieved from the 2017-18 Annual Work Plan for the Tongariro River.

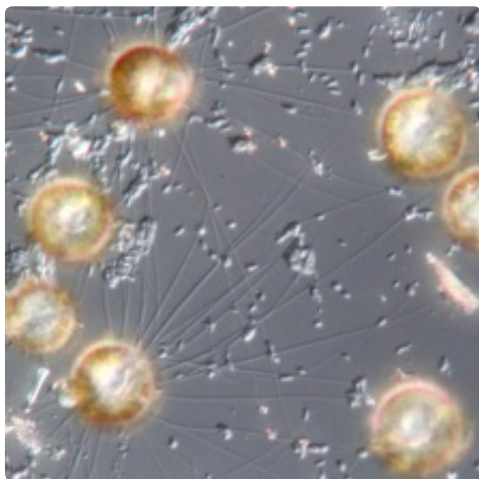
## ≈ APPENDIX 8 » LINDAVIA INTERMEDIA

*Lindavia intermedia* is a microscopic algae species that has been found for the first time in the Waikato and Manawatū-Whanganui regions. It poses no risks to human or animal health, and does not affect food sourced from lakes. It is unlikely to affect a lake's ecological health. However, it can cause lake snow – a sticky, mucus-like substance that hangs under the water. This slimy substance can be a nuisance to water users. It sticks to fishing gear and boat hulls, and can also cling to swimmers. It can clog boat filters, as well as industrial and domestic water supply filters.

The discovery of *Lindavia intermedia* has prompted a reminder to all water users to 'check, clean, and dry' when moving between waterways.

Download our *Lindavia intermedia* factsheet [HERE](#).

### Where has *Lindavia intermedia* been found?



*Lindavia intermedia* is an extremely small algae species that floats in water and has the potential to create lake snow.

*Lindavia intermedia* was discovered in Lake Waikaremoana in 2008 and it has now been confirmed in Lake Taupō. Further investigation has indicated it is also present in Lake Rotoaira.

Waikato Regional Council is collecting and testing water samples collected from hydro lakes downstream from Lake Taupō, as well as Lake Rotongaio.

While other waterways may also have *Lindavia intermedia*, rivers and streams with fast moving flows do not provide an ideal environment for the algae to thrive.

### **What is *Lindavia intermedia*?**

*Lindavia intermedia* is an extremely small algae species that floats in water and has the potential to create lake snow.

In the scientific world *Lindavia intermedia* is known as a diatom, meaning its cells are made out of silica.

There are an estimated 100,000 different types of diatoms world-wide. With so many different species it isn't possible for scientists to study them all in great detail. *Lindavia intermedia* is one of the less researched species, so we know comparably very little about it.

Like all diatoms, *Lindavia intermedia* is microscopic. It's smaller than the width of a human hair and it's therefore difficult to detect its presence in lakes unless specific tests are carried out.

*Lindavia intermedia* poses no risk to food sourced from lakes, and there are no human or animal health risks. There is currently no known impact on the health of lakes.

### **What we're doing**

Councils are working with stakeholders and researchers to find out more about what conditions influence the growth of *Lindavia intermedia*. In particular, we are keen to understand what causes it to produce lake snow like it has in some South Island lakes.

## What is lake snow?



*Lake snow is sticky and looks like strands of mucus or slime “hanging” under the water.*

Lake snow may be found by members of the public as slime on fishing gear and boat hulls. It could also cling to them when swimming. It can clog boat filters, as well as industrial and domestic water supply filters.

Researchers don't know for sure what causes *Lindavia intermedia* to produce lake snow. What we do know is that it's likely to have been in these Waikato and Manawatū-Whanganui region lakes for more than a decade. Over that time, it has not produced lake snow and we have no evidence of it causing issues.

## Protect your favourite waterways

### *Check, Clean, Dry*

There is currently no known way of removing *Lindavia intermedia* or lake snow once it is present in a lake. Our aim is to prevent the spread.

NIWA research for lake snow presence in the South Island identified that methods used in Clean, Check, Dry are appropriate for use with lake snow.

You can help to protect your favourite waterways if you always check, clean, then dry any equipment that comes into contact with the water, between every waterway, every time.

### *Cleaning options*

- Dishwashing detergent or nappy cleaner - 5% solution (500mls diluted to 10 litres in water). Soak or spray all surfaces for at least 1 minute, or –
- Bleach - 2% solution (200mls diluted to 10 litres in water). Soak or spray all surfaces for at least 1 minute, or;
- Freezing until solid.

Drying can be used as stand-alone treatment for non-absorbent items if you take great care to:

- make sure gear is completely dry to touch, inside and out;
- leave dry for at least another 48 hours (after drying), before entering a different waterway.

[www.mpi.govt.nz/check-clean-dry](http://www.mpi.govt.nz/check-clean-dry)

### **I've seen lake snow – who do I tell?**

Report anything that looks like lake snow to the Ministry for Primary Industry's pest and diseases hotline: **0800 80 99 66**.

## PROFILE OF ADVOCATES FOR THE TONGARIRO RIVER COMMITTEE FOR 2018

### 2018 Office Holders



**Gary Brown** – *President, Committee member since 2011*

Gary's family has an association that has lasted over a half century with the Lake Taupo fishery and he has had a life-long interest in hunting and fishing. Gary's prime focus as a committee member is therefore the state of the fishery and monitoring the effectiveness of the Department of Conservation's Taupo Sports Fishery Plan.

Gary lives in New Plymouth and is a retired architect.



**Warren Butterworth** – *Committee member since 2014  
Vice President from 2015*

Warren is a lawyer and part time farmer. He has fished the Tongariro and surrounding streams for more than 40 years and been a member of TALTAC for most of that time.

Warren resides in Auckland and is a board member of two substantial charitable trusts and of many private companies.



**Tim Castle** – *Committee member 2016*

Tim, a Wellington Barrister was elected to the committee in 2016. His home is in Wellington but he has a keen interest in the area and a holiday home for some years in Waitetoko.

Tim has studied Te Reo Maori and culture since the 1990's and has worked closely with iwi through his legal work.

He does not profess to being more than a keen learner angler.



**Virginia Church** – *Committee member since 2011*  
*Acting Secretary from October-December 2013*

Virginia's 2001 Petition to Parliament on the plight of the Tongariro, was supported by 602 signatures. This, and the Submission based on that Petition that was presented in 2002 to the Parliamentary Select Committee for Local Government and the Environment, was the catalyst for formation of the Advocates as an incorporated society.

After living in Australia, Virginia and her family have returned to Turangi where they have very close hapu associations with local iwi.



**Sam Coxhead** – *Committee member since 2014*

Sam has been coming to Turangi for the last 20 odd years. He is a keen angler, who relishes any time he can spend on the river.

Sam and his large young family now have a home in Turangi. It has become more important for him to help with the responsibilities of looking after the river.

Sam wants to help ensure that the fishery, and river environment as a whole, is looked after so the future generations are able to enjoy all it has to offer.



**Stuart Crosbie** – *Immediate Past President*  
*President 2009-2012; Committee member for seven years*

Stuart is the driving force behind the Advocate's Integrated Catchment Management Plan framework and the Advocate's statistical analyses of lake levels and river flow rate data spanning the past century. He was an Advocate's appointed founding director of the Tongariro River Trail (TRT) Ltd and in that role maintained a policy overview of the trail's development.

Stuart now lives in Taupo and is a director of a number of charitable and not-for-profit entities.





**Peter Deakin** – *Co-opted member 2017*

Early life in British Merchant Navy. His interest in rivers and the environment saw him join an angling club as a youngster. Spent nine years in the British Merchant Marine. Then spent the next 33 years as a commercial fisherman. He started the Wellington Trawlerman's Association.

Has retired to Turangi as owner of the Creel Lodge. Is now able to indulge two passions; Fly fishing particularly Brown Trout, and looking after the River environment.

“When people pull together it is amazing what they can achieve.”



**Mike Forret** – *Co-opted member 2017*

Mike Forret has been a keen angler for more than twenty years. He enjoys coming to the Tongariro and Turangi whenever he can and is very supportive of the Advocates aims.

Mike retired from the University of Waikato in 2016 where he worked in science and technology education for over twenty years. His main involvement with the advocates has been provision, maintenance and support of the Advocates' website and membership database through his web services company iConcept Enterprises Ltd.



**Richard Kemp** – *Committee member since 2002*

A Wellingtonian, Richard has been coming to Turangi to fish all his life – as has his father before him and his son after him. He has a passion for the fishery and a particular interest in its sustainability.

Richard served as Vice-President from 2006-2010 and has been the Advocate's legal advisor throughout. He is the current Advocate's representative on the Taupo Fishery Advisory Committee.

As a lawyer, Richard's networks have been invaluable in helping to profile the Advocates and successfully source funds from philanthropic sources.



**Alisdair Keucke** – *Committee member since 2018*

Alisdair Keucke retired to Turangi from Auckland in 2015 after a career in manufacturing and electrical engineering. The third generation of an old Raetihi family he recalls holidaying as a child in one of the only two bachs in Kuratau in the 1950's. His father was a keen fly fisherman. Alisdair describes himself as a mere beginner.

Alisdair always had a keen interest in the environment and is primarily interested in the conservation of the Tongariro River and its environs. He had 10 years' experience co-chairing Auckland's Little Shoal Bay Action Committee, which resulted in North Shore City Council buying back reserve land sold to developers, to preserve it as a reserve and protected wetland.



**Julian Proctor** – *Committee member since 2018*

My father fished the Taupo area in the late 1940's after returning to NZ and started me fishing there in 1954 and built a house in Turangi in 1960. I have fished all of the rivers in the Taupo area and most of the stream mouths but my love has always been the Tongariro river.

I have been a member of TALTAC since i started fishing in Turangi and am now a committee member of the Advocates..

I love all types of fishing and still do a lot of shooting.

I retired in 2016 and now spend as much time as possible in Turangi.



**John Toogood** – *Committee member since 2005, Treasurer*

John and his family have been coming to the area and enjoying the Tongariro for over five decades. A keen environmentalist at heart, John has led the Advocates' campaign to 'bring back the bush' and rid the river environs of wilding pines and other weeds. His work, supported by Eric Wilson and former Committee member Marja ter Haar, was recognised in 2010 when the Advocates received Environment Waikato's Weedbusters' Award.

John runs his own business in Wellington and his commercial skills are of benefit to the Advocates also, especially with regards to marketing.



**Eric Wilson** – *Secretary*

*Secretary for past 12 years and Treasurer for past ten years*

Eric is a local government appointee to Waikato Regional Council's Lake Taupo Liaison Sub-Committee, an Advocate's appointed director of the TRT Ltd and a key local liaison person involved in just about everything.

Without Eric's sustained dedication and extensive commitment to Advocate matters, our society simply would not survive.

Eric has been a local Turangi resident for the past 40 years and is a former Principal of Tongariro High School.

≈ LIST OF MEMBERS

Anderson	Sue	Gibbon	Scott	Rodger	Molly
Andrews	Charles J	Godkin	Wayne	Ross	Carol
Avery	Bill	Godkin	Wendy	Ross	Grace
Bartle	Murray	Grace	Andrew	Ross	Jonathon
Bamford	Dave	Grant	David	Ross	Miles
Batson	Brian	Hancox	Rod	Sherbourne	Mary
Beasley	Antony	Hancox	Margaret	Shieff	Jenny
Bingham	Peter	Hayes	Carter	Shief	June
Blackbeard	Rob	Hazelwood	Robert	Short	Murray
Brace	Robert	Hodder	Marie	Short	Niwa
Brennan	Paul	Hodder	Selwyn	Smith	Barry
Brown	Gary	Hocking	Lesly	Smith	Catherine
Brown	Marie	Horton	Warwick	Smith	Peter
Buckley	Rob	Hughes	Mike	Smith	Sylvia
Butterworth	Brad	Hughes	Gail	Stevenson	Anna
Butterworth	Nick	Jamieson	Murray	Stevenson	Dan
Butterworth	Warren	Kemp	Richard	Stevenson	Prue
Canziani	Peter	Kemp	Honor	Stevenson	Sally
Canziani	Monique	Keucke	Alisdair	Stevenson	Sam
Castle	Tim	Lean	Peter	Sullivan	Bernie
Church	Hemi	Macdonald	Heather	Sutton	Annabel
Church	Liam	MacDonnell	Robert	Sutton	Terry
Church	Jock	McCallum	John	terHaar	Marja
Church	Virginia	McCallum	Elizabeth	Toogood	John
Cosgrove	Alison	McGregor	Craig	Toogood	Susie
Cosgrove	Mark	McGregor	Rod	Toogood	Georgina
Coxhead	Sam	McHattie	Ali	Toy	Max
Coxhead	Katie	McHattie	David	Walker	Rob
Crosbie	Stuart	McNab	Alasdair	Watson	Richard
Crosbie	Jacquie	Mills	Jim	Whyte	Elizabeth
Cunnack	Renny	Nahkies	Graeme	Whyte	Malcolm
Dandy	Valerie	Nahkies	Natasha	Williams	Peter
Deakin	Peter	Parlane	Maurice	Williams	Paul
Dickson	Steve	Pritt	Christine	Williams	Gwynne
Duff	Graeme	Proctor	Julian	Wilson	Alex
Duff	Marion	Ramsay	Nettie	Wilson	Eric
Elliot	Helen	Rickards	Adrian	Wilson	Lorraine
Fair	Bill	Rickards	Renee	Wilson	Sam
Frank	Tricia	Rodger	Ian	Wilson	Vergne
Forret	Joan	Rodger	Greta		
Forret	Mike	Rodger	Lola		
				6 un-named	

≈ **NOTES**

≈ COMMITTEE NOMINATION FORM

One form per nominee

\_\_\_/\_\_\_/2019

I nominate:

Signed by nominee:

Nominator (signed):

Secondar (signed):

(Tick position nominated)

- ☐ President  
☐ Vice-President  
☐ Committee member

Either

- ☐ Secretary  
☐ Treasurer

Or

- ☐ Secretary/Treasurer

President, Vice-President, Secretary/Treasurer and up to 11 committee members + Immediate Past-President (15) or  
 President, Vice-President, Secretary, Treasurer and up to 10 committee members + Immediate Past-President (15).

One form per nominee

\_\_\_/\_\_\_/2019

I nominate:

Signed by nominee:

Nominator (signed):

Secondar (signed):

(Tick position nominated)

- ☐ President  
☐ Vice-President  
☐ Committee member

Either

- ☐ Secretary  
☐ Treasurer

Or

- ☐ Secretary/Treasurer

President, Vice-President, Secretary/Treasurer and up to 11 committee members + Immediate Past-President (15) or  
 President, Vice-President, Secretary, Treasurer and up to 10 committee members + Immediate Past-President (15).

One form per nominee

\_\_\_/\_\_\_/2019

I nominate:

Signed by nominee:

Nominator (signed):

Secondar (signed):

(Tick position nominated)

- ☐ President  
☐ Vice-President  
☐ Committee member

Either

- ☐ Secretary  
☐ Treasurer

Or

- ☐ Secretary/Treasurer

President, Vice-President, Secretary/Treasurer and up to 11 committee members + Immediate Past-President (15) or  
 President, Vice-President, Secretary, Treasurer and up to 10 committee members + Immediate Past-President (15).

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GREATEST RIVER & TROUT FISHERY  
THE MIGHTY TONGARIRO**

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*I remember you saying that you could not swim and I helped you in to a life jacket (also put one on too). I emptied the fishing tackle box and started bailing – I think Dad was making all the decisions from in the water. You managed to get the motor going momentarily but the boat was too slow and we were swamped again. Finally after about 20 minutes a wave lifted the boat up and Dad assisted it in flipping the boat over and managing to trap some air underneath it. Dad and I helped you on to the top of the up turned boat and then we decided that I should swim in for help -it was August and a skinning feller like me was not going to last long out there.*

*I swam in about 2 miles and as I got to shore I was dragged out again by the under tow but managed to get to standing depth on my second go. I saw some people (probably 18 -20 year olds) with cars driving around on the beach and I yelled for help. They helped me out of the water and quickly sorted out what was going on. I suspect one of them drove off to get help but I'm not sure. I was bundled in to the back seat of one of the cars wrapped in a blanket between 2 of the girls. It was then that the surreal nature of the event subsided and I didn't know if either you or Dad would make it.*

*About 15 mins later (actually I don't know how long it was) I saw Dad walking on the beach wrapped in a white blanket (it looked like a parachute to me) and he came over to where I was in the car. He said that his legs had cramp up and he had to leave you and swim in using his arms or he would not have made it. He said that he had 'tied' you to the top of the boat.*

*It was now dark and the team with the cars were following the boat as it drifted north along the beach and using their headlights to keep it in view.*

*The Police arrived and one of them swam out and got you off – he said that the boat had drifted in to about ½ mile off shore.*

*The fast Police car drive to Station and then wives were notified etc.*



I think this was Mark's explanation as to why he found trout fishing a superior style of fishing to that of the sea.

Mark offered leadership.

He became a Committee member of TALTAC shortly after moving to Turangi around 1976 and when Allan Cooper stepped down as TALTAC President Mark stepped into the role. Mark at that time had moved to Hamilton to a position on the staff of Waikato University. His major contribution to TALTAC was to upgrade the accommodation. A move to Sydney as Professor of Science Education at University of Technology, Sydney, saw him step down as TALTAC President. TALTAC rewarded him with a Life Membership. While President, Mark served a period on the NZFWA committee. Mark retired early and returned to Turangi.

In response to a plea from Virginia Church, The Advocates for the Tongariro River (AFTR) was formed. The 2002-3 Annual Report was a forceful statement setting out the reasons for the formation of the Advocates and the task ahead.

AFTR was well set up and its credibility has maintained a presence with stakeholders which gives us an opportunity to sit at the table as a "critical friend."

The Advocates have achieved much. The completion of the PhD study by Simon Stewart on the Food Web was initially led by Mark. He realized the problem and sought an answer resulting in Simon's research project.

Mark stepped down as President in 2008. He suffered from Parkinson's and desired a less public existence. Mark finally put his fishing rods away some 5 years ago as his disease advanced. It was a cruel end for a brilliant mind of a man committed to a better future for anglers. His interests were much wider than angling.

He will be missed.

**Eric Wilson**

≈ **APPENDIX 3 » CONSERVATION (INDIGENOUS FRESHWATER FISH)**

**AMENDMENT BILL**

*GOVERNMENT BILL 87—1*

*EXPLANATORY NOTE*

**General policy statement**

This Bill primarily relates to indigenous freshwater fish, and threats to those fish. The objectives of the Bill are to:

- improve the workability of fisheries management tools in the Conservation Act 1987 (the Act):
- fill gaps in the regulation-making powers relating to freshwater fisheries management, including to provide regulation-making powers relating to all matters in the Freshwater Fisheries Regulations 1983:
- repeal provisions in the Freshwater Fisheries Regulations 1983 that have been superseded by more recent provisions in the Act:
- remove some provisions relating to the protection of fish from the Freshwater Fisheries Regulations 1983 and provide updated provisions in the Act:
- provide protection for indigenous freshwater fish within conservation areas:
- improve the relationship between management of fish under the Act, the Fisheries Act 1983, the Fisheries Act 1996, and Treaty settlement legislation:
- ensure that the relevant provisions in the Act are efficient and accord with modern legislative design and drafting standards.

The reforms to the existing legislation are necessary to:

- allow existing regulations to be reviewed and reformed:
- provide more efficient and effective tools for fisheries management of indigenous freshwater fisheries, threats to fish, and noxious fish, which can be used in ways to minimise possible impacts on other interests:
- ensure that the fisheries management toolbox is adequate to address all fisheries management needs for indigenous freshwater fisheries:
- remove regulations that have been superseded by provisions in the Act, to reduce legal risk and remove unnecessary regulations:

- bring the basic controls on the taking of fish into line with current practice and expectations, including by removing unnecessary controls on the temporary taking of fish for education purposes, and by placing controls on unacceptable fishing activities:
- address the protection of fish within conservation areas to bring the treatment of fish into line with the treatment of other species within conservation areas and into line with the treatment of fish in reserves and national parks:
- make minor adjustments to the jurisdictional relationships between the legislation that covers management of indigenous freshwater fisheries, and ensure there are no unintended effects on Māori fishing and Treaty settlements.

In general, the reforms do not in themselves alter fisheries management. Rather, they are intended to provide a complete and effective toolbox for future fisheries management.

The Bill achieves these objectives generally through amendments to existing provisions.

### Departmental disclosure statement

The Department of Conservation is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found [HERE](#).

### Regulatory impact assessment

The Department of Conservation produced a regulatory impact assessment in July 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found [HERE](#) and [HERE](#).

## Clause by clause analysis

**Clause 1** is the Title clause.

**Clause 2** provides for commencement. This Bill comes into force on the day after the date it receives the Royal assent.

**Clause 3** provides that this Bill amends the Conservation Act 1987 (the principal Act).

## PART 1 » AMENDMENTS TO CONSERVATION ACT 1987

**Clause 4** amends section 2 of the principal Act, which provides for the interpretation of terms. Clause 4:

- renames indigenous fish as indigenous freshwater fish (to avoid confusion with indigenous fish that are salt water fish):
- includes a new definition, Treaty settlement legislation, for ease of reference:
- clarifies the definition of freshwater fish. One element of the current definition requires that the relevant fish species inhabit freshwater during its life history. Because freshwater is defined to include bodies of water that comprise seawater and freshwater (for example, coastal lagoons), the requirement that the fish species inhabit freshwater in its lifetime is amended to exclude those parts of the freshwater that is seawater.

**Clause 5** amends section 17J of the principal Act. The amendment deals with any conflict between a provision in a freshwater fisheries management plan and a provision in a sports fish and game management plan. If there is conflict, the provision in the freshwater fisheries management plan prevails.

**Clause 6** concerns the application of Part 5B of the principal Act to freshwater fisheries. Paragraph (c) of section 26ZG(2), which states situations where Part 5B does not apply, is replaced. The new paragraph states that Part 5B does not apply to the taking, holding, possession, sale, or disposal of freshwater fish by a person who is:

- specifically authorised under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either of those Acts; or
- specifically authorised under regulations made under section 48B of the principal Act (which relates to South Island freshwater fisheries); or

- acting under the authority of a registration of a fish farmer under Part 9A of the Fisheries Act 1996; or
- authorised (whether generally or specifically) under Treaty settlement legislation.

**Clause 7** inserts new sections 26ZHA and 26ZHB, both of which relate to indigenous freshwater fish.

New section 26ZHA relates to an approval under the principal Act or an Act listed in Schedule 1 of the principal Act that enables access to public land for recreation purposes. New section 26ZHA states that such an approval is not of itself an approval for recreational fishing of indigenous freshwater fish in any fisheries water on that land.

New section 26ZHB contains the following new rules relating to the fishing of indigenous freshwater fish:

- a person must not take indigenous freshwater fish from a conservation area without authorisation under that section (new section 26ZHB(1));
- a person may take indigenous freshwater fish from freshwater that is not a conservation area only if:
- the person is authorised under that section; or
- the person takes the fish primarily as food for human consumption and in accordance with any regulations or notice made under the principal Act; or
- the person takes the fish in a way that does not injure or kill the fish and promptly returns the fish into the water (new section 26ZHB(2)).

When considering an application for authorisation, the Director-General of Conservation must apply the criteria in new section 26HB(4).

A person who contravenes new section 26ZHB(1) or (2) commits an offence and is liable to a fine not exceeding \$5,000.

**Clause 8** inserts a cross-heading above section 26ZJ of the principal Act.

**Clause 9** amends section 26ZJ of the principal Act, under which it is an offence to carry out activities that affect the spawning ground of freshwater fish, their eggs, or

their larvae. The amendment provides that a person does not commit an offence if the person is authorised by the Director-General (in accordance with new section 26ZJ(4)) or regulations.

**Clause 10** inserts a cross-heading for the grouping of provisions in Part 5B.

**Clause 11** amends section 26ZL of the principal Act, which enables the Director-General to impose by notice certain restrictions on fishing. Section 26ZL(1) is amended to enable specified land to be declared a spawning ground. (Currently, specified waters can be declared, but not land.)

**Clause 12** amends section 26ZM of the principal Act. Section 26ZM states the process for obtaining the Minister of Conservation's approval to transfer or release live aquatic life in an area. Currently, an applicant must advertise the proposed activity for 2 consecutive Sundays in a local newspaper in the area concerned. The amendment enables the Director-General to relax the requirement to advertise if satisfied that the proposed activity is unlikely to have an adverse effect on the freshwater fishery concerned.

**Clause 13** amends section 26ZP of the principal Act (which relates to closed seasons for fishing) by:

- providing that a closed season can relate to 1 or more species of freshwater fish (other than sports fish) in a specified area for a specified period of time not exceeding 5 years; and
- requiring the Director-General's notice to state the purpose of the closed season; and
- enabling the Director-General to authorise the taking of fish to which a closed season applies if satisfied that the taking is consistent with the purpose of the closed season and any requirements in regulations have been met.

**Clause 14** amends section 26ZR of the principal Act. The amendment replaces a reference to a warranted officer with a reference to an employee or a contractor of the Department of Conservation.

**Clause 15** makes minor amendments to section 48 of the principal Act, which empowers the making of regulations.

**Clause 16** amends section 48A of the principal Act, which enables regulations and notices to be made relating to freshwater fisheries. The amendments, among other things, clarify regulation-making powers, state further matters relating to indigenous freshwater fish for which regulations may be made, and enable regulations to state criteria and impose conditions or restrictions in relation to certain authorisations given by the Director-General under Part 5B.

New section 48A(6) is inserted to deal with any inconsistency between:

- a provision in certain regulations made under the principal Act relating to indigenous freshwater fish; and
- a provision in Treaty settlement legislation or a provision in regulations relating to Māori fishing rights made under the Fisheries Act 1996.

If there is inconsistency, the provision in Treaty settlement legislation or the relevant regulations under the Fisheries Act 1996 prevails over the provision in regulations made under the principal Act.

## **PART 2 » AMENDMENTS TO FRESHWATER FISHERIES REGULATIONS 1983**

**Clause 17** and the *Schedule* make amendments to the Freshwater Fisheries Regulations 1983.

### **CONTENTS**

Explanatory note

- 1 Title
- 2 Commencement
- 3 Principal Act

### **Part 1 » Amendments to Conservation Act 1987**

- 4 Section 2 amended (Interpretation)
- 5 Section 17J amended (Freshwater fisheries management plans)
- 6 Section 26ZG amended (Application of Part)
- 7 New sections 26ZHA and 26ZHB and cross-heading inserted

#### *Indigenous freshwater fish*

26ZHA Approval under specified Acts to access public land is not approval for recreational fishing of indigenous freshwater fish

26ZHB Prohibitions and restrictions on taking of indigenous freshwater fish

- 8 New cross-heading above section 26ZJ inserted

#### *Spawning fish*

- 9 Section 26ZJ amended (Offences relating to spawning fish)
- 10 New cross-heading above section 26ZK inserted

#### *Various restrictions relating to fishing and aquatic life*

- 11 Section 26ZL amended (Restrictions on fishing)
- 12 Section 26ZM amended (Transfer or release of live aquatic life)
- 13 Section 26ZP amended (Determination of closed seasons for fishing)
- 14 Section 26ZR amended (Using hazardous substances to catch or destroy fish)
- 15 Section 48 amended (Regulations)
- 16 Section 48A amended (Special regulations relating to freshwater fisheries)

### **Part 2 » Amendments to Freshwater Fisheries Regulations 1983**

- 17 Amendments to Freshwater Fisheries Regulations 1983

**Schedule** Amendments to Freshwater Fisheries Regulations 1983



## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Conservation (Indigenous Freshwater Fish) Amendment Act 2018.

### 2 Commencement

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

### 3 Principal Act

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

## Part 1 » Amendments to Conservation Act 1987

### 4 Section 2 amended (Interpretation)

(1) In section 2(1), definition of freshwater fish, replace “fresh water” with “freshwater (but not any part of that water that is seawater)”.

(2) In section 2(1), repeal the definition of indigenous fish.

(3) In section 2(1), insert in their appropriate alphabetical order:

indigenous freshwater fish means any freshwater fish that is indigenous to New Zealand Treaty settlement  
legislation means an Act that settles the historical claims of iwi or other Māori groups under the Treaty of Waitangi and includes any regulations, bylaws, or

other legislative instruments made under that Act

### 5 Section 17J amended (Freshwater fisheries management plans)

(1) In section 17J(1) after “areas”, insert “or throughout all New Zealand”.

(2) In section 17J(4) after “area”, insert “or throughout all New Zealand”.

(3) After section 17J(5), insert:

(6) However, if there is any conflict between a provision in a freshwater fisheries management plan and a provision in a sports fish and game management plan, the provision in the freshwater fisheries management plan prevails.

### 6 Section 26ZG amended (Application of Part)

Replace section 26ZG(2)(c) with:

(c) the taking, holding, possession, sale, or disposal of freshwater fish by—

(i) a person who is specifically authorised under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either of those Acts; or

(ii) a person who is specifically authorised under any regulations made under section 48B of this Act; or

(iii) a person acting under the authority of a registration of a fish farmer under Part 9A of the Fisheries Act 1996; or

(iv) a person who is authorised (whether generally or specifically) by or under Treaty settlement legislation.

### 7 New sections 26ZHA and 26ZHB and cross-heading inserted

After section 26ZH, insert:

#### *Indigenous freshwater fish*

26ZHAApapproval under specified Acts to access public land is not approval for recreational fishing of indigenous freshwater fish

(1) An approval under this Act or an Act listed in Schedule 1 that enables access to public land for recreation purposes is not of itself an approval for recreational fishing of indigenous freshwater fish in any fisheries water on that land.

(2) In subsection (1), an approval under an Act includes an approval under any instrument made under that Act.

26ZHBProhibitions and restrictions on taking of indigenous freshwater fish

(1) A person must not take any indigenous freshwater fish from a conservation area unless authorised under this section.

(2) A person may take indigenous freshwater fish from freshwater that is not a conservation area or part of a conservation area only if—

(a) the person is authorised under this section; or

(b) the person takes the fish—

(i) primarily as food for human consumption, including for sale as food for human consumption; and

(ii) in accordance with any regulations or notice made under this Act; or

(c) the fish are—

(i) taken in a manner that does not lead to their injury or death; and

(ii) returned to those waters as soon as practicable after being taken.

(3) A person who

contravenes subsection (1) or

(2) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

(4) The Director-General may, on application, authorise a person to take indigenous freshwater fish—

(a) from a conservation area if satisfied that the activity is consistent with the purpose for which the land is held and

any requirements in regulations have been met; or

(b) from a freshwater area that is not a conservation area or part of a conservation area if satisfied that the activity is consistent with the management of freshwater fisheries in that area and any requirements in regulations have been met.

(5) An authorisation may be subject to any conditions or restrictions specified by the Director-General or in regulations.

#### 8 New cross-heading above section 26ZJ inserted

After section 26ZL, insert:

##### *Spawning fish*

#### 9 Section 26ZJ amended (Offences relating to spawning fish)

(1) In section 26ZJ(1), after “who”, insert “without authorisation”.

(2) In section 26ZJ(1)(c), replace “is in” with “takes or has”.

(3) Replace section 26ZJ(2) with:

(2) Subsection (1) does not apply to the taking of freshwater fish subsequently found to contain eggs or larvae.

(3) In this section, authorisation means,—

(a) in relation to subsection (1)(a), an authorisation in regulations; and

(b) in relation to subsection (1)(b) to (e), an authorisation from the Director-General under subsection (4).

(4) The Director-General may, on application, authorise a person to carry out an activity that would otherwise contravene 1 or more of paragraphs (b) to (e) of subsection (1) if satisfied that—

(a) the person cannot reasonably avoid the contravention when carrying out the activity; and

(b) the activity is unlikely to have a significant effect on the affected fish population.

(5) An authorisation may be subject to any conditions or restrictions specified in the authorisation.

#### 10 New cross-heading above section 26ZK inserted

After section 26ZJ, insert:

##### *Various restrictions relating to fishing and aquatic life*

#### 11 Section 26ZL amended (Restrictions on fishing)

After section 26ZL(1)(a), insert:

(aa) declare any specified land to be

spawning grounds for freshwater fish and prohibit or impose restrictions and conditions on entry on to that land:

**12 Section 26ZM amended (Transfer or release of live aquatic life)**

(1) In section 26ZM(2)(a), replace “sites” with “locations”.

(2) In section 26ZM(4)(a), replace “shall” with “must, unless subsection (4A) applies,”.

(3) After section 26ZM(4), insert:

(4A) The Director-General may, at the request of the applicant, determine that compliance with subsection (4) is not required if satisfied that the proposed activity is unlikely to have an adverse effect on the freshwater fishery concerned.

**13 Section 26ZP amended (Determination of closed seasons for fishing)**

Replace section 26ZP(1) to (3) with:

(1) The Director-General may, by notice,—

(a) determine a closed season for fishing 1 or more species of freshwater fish (other than sports fish) in an area for a period not exceeding 5 years; or

(b) extend or vary a determination or

vary a determination that has been extended so long as the total period of the closed season does not exceed 5 years.

(2) A notice—

(a) must state the purpose of the closed season, the species of fish and the area to which the closed season applies, and the duration of the closed season; and

(b) does not take effect until the Director-General has published the notice for at least 2 consecutive Saturdays in 1 or more of the daily newspapers circulating in the area concerned.

(3) A person commits an offence who, without authorisation under this section, takes, possesses, or in any way injures or disturbs a fish to which a closed season applies.

(2) In section 26ZP(5), replace “sports fish” with “fish”.

(3) After section 26ZP(5), insert:

(6) The Director-General may, on application, authorise a person to take fish to which a closed season applies if satisfied that—

(a) the taking of the fish is consistent with the purpose of the closed season;

and

(b) the person has met the requirements (if any) set out in regulations.

(7) An authorisation may be subject to any conditions or restrictions specified by the Director-General or in regulations.

#### 14 Section 26ZR amended (Using hazardous substances to catch or destroy fish)

Replace section 26ZR(2)(a) with:

(a) a fish and game ranger or an employee or a contractor of the Department; or

#### 15 Section 48 amended (Regulations)

(1) In section 48(1)(a), after “issued”, insert “or authorisations to be given”.

(2) In section 48(1)(b), replace “or permits” with “permits, or authorisations”.

(3) In section 48(3), after “section”, insert “that relate to a conservation area”.

#### 16 Section 48A amended (Special regulations relating to freshwater fisheries)

(1) Replace section 48A(1)(f) with:

(f) regulating or prohibiting—

(i) the taking of any specified freshwater fish, including any method of taking that fish; and

(ii) the use, possession, or sale of any specified freshwater fish:

(2) After section 48A(1)(n), insert:

(na) prohibiting, restricting, or regulating any structure or alteration to a water body that could impede or affect the passage of freshwater fish or specified freshwater fish:

(3) After section 48A(1)(q), insert:

(r) in relation to indigenous freshwater fish,—

(i) specifying activities that are reasonably likely to injure or kill specified indigenous freshwater fish; and

(ii) regulating, restricting, or imposing conditions on those specified activities; and

(iii) specifying indigenous freshwater fish that are endangered and restricting or prohibiting the taking of those fish:

(s) in relation to an authorisation by the Director-General under section 26ZHB, 26ZJ, or 26ZP,—

(i) stating any requirements that must be

met by the person seeking the authorisation; and

(ii) imposing conditions or restrictions on the authorisation:

(t) specifying freshwater fish that are noxious fish and providing for their control, regulation, or prohibition:

(u) for the purpose of section 26ZJ(1)(a) and (3)(a),—

(i) authorising the carrying out of activities that would otherwise disturb or damage the spawning ground of a specified freshwater fish; and

(ii) specifying conditions and restrictions that must be complied with by persons carrying out those activities:

(v) imposing reporting requirements relating to the taking, injuring, killing, use, possession, or sale of specified freshwater fish.

(4) After section 48A(4), insert:

(5) Subsection (6) applies if there is inconsistency between—

(a) a provision relating to indigenous freshwater fish in regulations made under subsection (1)(b), (f), or (i); and

(b) a provision in Treaty settlement legislation, or a provision in regulations

relating to Māori fishing rights made under the Fisheries Act 1996.

(6) If this subsection applies, a provision described in subsection (5)(b) prevails over a provision described in subsection (5)(a).

## **Part 2 » Amendments to Freshwater Fisheries Regulations 1983**

### **17 Amendments to Freshwater Fisheries Regulations 1983**

Amend the Freshwater Fisheries Regulations 1983 as set out in the Schedule.

## **Schedule Amendments to Freshwater Fisheries Regulations 1983**

s 17

*Freshwater Fisheries Regulations 1983 (SR 1983/277)*

Revoke Part 7.

Revoke regulations 58 to 61.

In regulation 62(1), replace “Notwithstanding regulation 61 no” with “No”.

Revoke regulation 63.

In regulation 64(a), delete “or any mosquito fish (*Gambusia affinis*)”.

Revoke regulations 70 and 71.

In regulation 72(2), replace “51(1), 51(4), 57A, 57E(1), 58 to 66, 67B(2), and 68 to 71” with “57A, 57E(1), 62, 64 to 66, 67B(2), 68, and 69”.

≈ **APPENDIX 4 » LEGAL OPINION ON INDIGENOUS FRESHWATER FISH AMENDMENT  
BILL BY SIR GEOFFREY PALMER**

**SIR GEOFFREY PALMER**

QUEENS COUNSEL



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**MEMORANDUM**

**TO:** Martin Taylor, Chief Executive Officer, New Zealand Fish and Game Council  
**FROM:** Geoffrey Palmer QC and Elana Geddis  
**DATE:** 30 August 2018  
**Re:** Conservation (Indigenous Freshwater Fish) Amendment Bill

**INTRODUCTION**

1. You have asked us for our advice on the implications of the Conservation (Indigenous Freshwater Fish) Amendment Bill for the sports fisheries regime managed by Fish and Game under the Conservation Act 1987.
2. The Regulatory Impact Statement notes that *"the reforms being proposed do not directly affect sports fish but will more effectively manage some threats to sports fish"* (pg. 7). We do not consider that this is entirely accurate. Aspects of the reforms impact directly and negatively on Fish and Game. Others have the potential to impact on sports fish.
3. In particular, we highlight:
  - a. **Clause 5** of the Bill will give Freshwater Fisheries Management Plans prepared by DOC priority over the Sports Fish and Game Management Plans prepared by Fish and Game.
  - b. **Clause 6** of the Bill will allow Treaty settlements to override several important elements of the sport fisheries management regime. This is inconsistent with the Court of Appeal's finding in *McRitchie v Taranaki Fish and Game Council* [1999] 2 NZLR 139.
  - c. **Clause 17** of the Bill revokes existing regulations in the Freshwater Fisheries Regulations 1983 that expressly require the consent of Fish and Game Councils before fish can be transferred or released in their area of jurisdiction.

- d. The **ongoing overlap** between DOC's statutory powers in respect of "freshwater fish" and Fish and Game's statutory powers in respect of "sports fish". There is currently no mechanism to ensure Fish and Game is consulted before decisions are taken by DOC that could impact on the sports fish management regime.
4. Central to all of these points is the need for the provisions of Part 5A of the Act regarding sports fish (administered by Fish and Game) and Part 5B of the Act regarding freshwater fisheries (administered by DOC) to operate consistently with each other. This is an ongoing issue. It would benefit both parties for the cooperative relationship between DOC and Fish and Game to be placed on a clear statutory footing.
5. We earlier provided you with preliminary advice that **clause 6** of the Bill had the potential to undermine section 26ZI of the Act, which prohibits any person from fishing for sports fish without a licence. We have reviewed that preliminary advice and advise that this specific problem does not arise. But, as discussed further below, Clause 6 still has the potential to impact on other important elements of the sports fisheries regime.

#### CLAUSE 5

6. At present section 17J of the Act creates the power for the Minister to adopt Freshwater Fisheries Management Plans on a regional basis. When preparing a Freshwater Fisheries Management plan the Director-General must have regard to any Sports Fish and Game Management Plan having effect in that region. This ensures that the two sets of plans are coherent.
7. Clause 5 of the Bill extends the impact of Freshwater Fisheries Management Plans in two significant ways:
  - a. It enables the Minister to adopt a national Freshwater Fisheries Management Plan that applies "throughout all New Zealand"; and
  - b. It provides that Freshwater Fisheries Management Plans prevail over Sports Fish and Game Management plans in the event of any conflict.
8. Under the amendments any Freshwater Fisheries Management Plan will therefore have priority over the Sports Fish and Game Management Plans prepared by Fish and Game. This is despite the fact that both types of management plans are approved by the Minister and have the same legal status under the Act.
9. The new power to adopt a national Freshwater Fisheries Management Plan increases the potential for conflict with Sports Fish and Game Management Plans, which are adopted on a regional basis.



10. For example, a Freshwater Fisheries Management Plan could identify the restoration of indigenous freshwater fish as an over-arching priority objective – either nationally or in a particular area. That objective could be implemented by DOC requiring trout and salmon to be removed from particular water bodies in order to give priority to indigenous fisheries. In that case the objective in the Freshwater Fisheries Management Plan would prevail even if a water body has previously been identified by the Minister as a significant trout and salmon habitat in a Sports Fish and Game Management Plan.
11. Similar situations have already arisen, particularly where commitments have been given by the Crown as part of Treaty settlement negotiations. Fish and Game has not been consulted during the settlement negotiations and Sports Fish and Game Management Plans and Part 5A of the Act have not been taken into account in the settlement agreements.
12. Clause 5(3) will therefore impact directly on the specific management regime for sports fish set down in the Act. Sports fish are managed under a series of detailed rules and licence conditions developed by Fish and Game and approved by the Minister. These flow from the management objectives for each region approved by the Minister in the regional Sports Fish and Game Management Plans. Section 17L(3)(c) of the Act already provides that a Sports Fish and Game Management Plan must not derogate from the provisions of a Freshwater Fisheries Management Plan. This provision is sufficient to address any situation of conflict that might arise.
13. We accordingly recommend that **Clause 5(3) of the Bill should be deleted.**

#### CLAUSE 6

14. Clause 6 exempts a person who is authorised under Treaty settlement legislation from the restrictions on taking, possessing or selling fish under Part 5B of the Act. This allows the Crown and iwi to agree to set aside the ordinary rules of Part 5B as part of a Treaty settlement.
15. Part 5B includes a number of provisions that apply to sports fish.
16. Central to these is section 26ZI, which prohibits fishing for sports fish without a licence. Clause 6 will not create an exemption from section 26ZI. Existing section 26ZG(3) of the Act provides that the provision amended by clause 6 does not apply to section 26ZI. We consider that section 26ZG(3) is sufficient to protect Fish and Game's interests with respect to section 26ZI. It will not be changed by the Bill.
17. But there are several other provisions in Part 5B which contain important elements of the sports fisheries regime that would be affected by the amendment in clause 6. In particular:
  - a. Section 26ZK, which prohibits fishing competitions for sports fish except in accordance with regulations adopted under the Act.

- b. Section 26ZN, which prohibits the sale of fishing rights.
  - c. Section 26ZO, which requires occupiers of land to comply with the requirements of Anglers Notices adopted by the Minister to set out the conditions for sports fishing.
  - d. Section 26ZQ(1A), which prohibits the sale of sports fish.
18. From the Cabinet paper and other background material there appears to be no intention to use the new provision in clause 6 to specifically override these provisions. But even if this is not intended clause 6 creates the legal possibility that this could occur. It opens up the potential for direct conflict between Treaty settlement legislation and the sports fisheries regime. This is inconsistent with the Court of Appeal's finding in *McRitchie v Taranaki Fish and Game Council* [1999] 2 NZLR 139.
19. In order to avoid this potential conflict, we recommend that clause 6 be amended by inserting the language in bold as follows:

- “(c) the taking, holding, possession, sale or disposal of freshwater fish by—
- (i) a person who is specifically authorised under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either of those Acts; or
  - (ii) **other than for sports fish**, a person who is specifically authorised under any regulations made under section 48B of this Act; or
  - (iii) a person acting under the authority of a registration of a fish farmer under Part 9A of the Fisheries Act 1996; or
  - (iv) **other than for sports fish**, a person who is authorised (whether generally or specifically) by or under Treaty settlement legislation.”

#### CLAUSE 17

20. Clause 17 and the Schedule to the Bill revoke several regulations in the Freshwater Fisheries Regulations 1983. These include:
- a. Regulation 59, which requires that fish or ova cannot be released in an area under the jurisdiction of a regional Fish and Game Council without that Council's consent; and
  - b. Regulation 63, which prohibits the transfer of sports fish and ova between the North and South Islands without the written agreement of the relevant Fish and Game Council.

21. If these regulations are to be revoked it is important that some other mechanism is put in place to ensure that regional Fish and Game Councils are consulted with respect to the introduction or release of fish within their regions.
22. In particular, it is critical that regional Fish and Game Councils are consulted in relation to any transfer or release of sports fish in waters under their jurisdiction. This is necessary if regional Fish and Game Councils are to properly discharge their functions under section 26Q of the Act. Fish and Game Councils are responsible under the Act for monitoring sports fish populations and for stocking or restocking sports fisheries.
23. We recommend that Clause 12 of the Bill be amended to insert a new sub-section 26ZM(3A) into the Act as follows:

**“(3A) Provided that the Minister must not grant approval under subsections 2 or 3 to authorise the movement, transfer or release of any live aquatic life to any location within the jurisdiction of a Fish and Game Council without prior consultation with that Council.”**

#### **OVERLAPPING POWERS**

24. The Bill creates a number of new powers for DOC and the Minister with respect to the management of freshwater fish generally. Clauses 9, 11 and 12 create new authorisation powers on the part of the Director-General of DOC. Clause 16 creates several new regulation making powers for the Minister.
25. These powers have the potential to be used in a way that could impact on sports fish. This arises in two ways:
  - a. Directly from the fact that as defined in the Act “sports fish” are a sub-set of “freshwater fish”. So all powers in the Act held by DOC or the Minister that relate to “freshwater fish” can also potentially be applied to “sports fish”.
  - b. And indirectly, in that decisions taken with respect to the management of other types of freshwater fish could have implications for any sports fish population in the same area.
26. This could have both positive and negative implications. For example:
  - a. Clause 16 authorises regulations to prohibit, restrict or regulate any structure that could impede the passage of freshwater fish. This would include the passage of migratory sports fish such as trout or salmon. Greater protection for fish passage would be very positive and would help Fish and Game to discharge its statutory purpose of managing, maintaining and enhancing sports fish.

- b. On the other hand, Clause 9 creates a new power for the Director-General to authorise an activity that would disturb or damage spawning freshwater fish, including sports fish such as trout or salmon. The Director-General must first be satisfied that the activity "is unlikely to have a significant effect on the affected fish population".
27. In both cases, Fish and Game would have a legitimate interest in how the new statutory powers are exercised. The relevant regional Fish and Game Council will be best placed to assess the impact of activities on sports fish or their habitats. However, at present the Act does not specifically require Fish and Game to be consulted before these powers are used.
28. It is important that the management regimes created by the Act operate in harmony. Actions taken by DOC under its management powers for freshwater fish should take account of and not undermine the maintenance, management and enhancement of sports fish as provided for in Part 5A of the Act.
29. An obligation for DOC to consult with Fish and Game will arise as a matter of common law given the statutory purposes and functions of both the New Zealand Council and the regional Fish and Game Councils under sections 26B, 26C, 26P and 26Q of the Act. The need for consultation is already recognised in the Act in certain circumstances. Section 26ZL(3), for example, provides that the Director-General may not impose any restriction that relates to the taking of sports fish without first consulting with the relevant regional Fish and Game Council. However, there is at present no clear mechanism to ensure that such consultation takes place in all cases.
30. We consider that the Bill provides a useful opportunity to clarify this point and to record the consultation obligation in the Act itself. We accordingly recommend that section 6 of the Act be amended to include a new sub-section 6(2) as follows:  
  

**"(2) In exercising its functions and powers the Department shall have regard to the provisions of Part 5A of the Act. Where a decision is likely to affect the management of sports fish and game or the interests of angler and hunters the Department shall consult with the New Zealand Fish and Game Council or the relevant regional Fish and Game Council as appropriate."**
31. A general provision of that nature would provide a statutory basis for Fish and Game and DOC to develop a memorandum of understanding setting out how the consultation obligation would operate in practice.

## CONCLUSION

32. The functions of DOC under section 6 of the Act include both the preservation of indigenous fisheries and the protection of recreational freshwater fisheries and freshwater fish habitats. These sit alongside specific functions given to Fish and Game to manage, maintain and enhance sports fish under Part 5A of the Act.
33. It is important that the two parts of the Act work together in a coherent way and that the increased emphasis on the protection of indigenous fisheries under the Bill does not undermine the system for the management of sports fish already in the Act. We consider that the amendments outlined above will achieve that objective while still meeting the central purpose of the Bill.



**Sir Geoffrey Palmer**  
Queens Counsel



**Elana Geddis**  
Barrister

≈ **APPENDIX 5 » SUBMISSION BY THE ADVOCATES FOR THE TONGARIRO RIVER**

Item of business:

**Conservation (Indigenous Freshwater Fish) Amendment Bill Submission**

**Advocates For The Tongariro River**

Comments Our first preference is that the proposed amendment bill be abandoned on the basis that there are already adequate legal provisions for Department of Conservation (DOC) and Fish and Game (F&G) to coherently manage the preservation of indigenous fisheries (section 6 of the Act) alongside protecting recreational freshwater fisheries (part 5A of the Act).

In the event that the bill does proceed, the Advocates for the Tongariro River (AFTR) would request the recommended changes proposed by Sir Geoffrey Palmer (see attached file) be adopted in full.

Recommendations:

- That clause 5(3) of the Bill should be deleted (see paragraphs 6-13 of Sir Geoffrey's legal opinion)
- That clause 6 of the Bill should be amended to exempt sports fish from the provisions (see paragraphs 14-19 of Sir Geoffrey's legal opinion)
- That clause 12 of the Bill should be amended to ensure F&G is properly consulted before Ministerial authorisation for movement, transfer or release of live aquatic life. (see paragraphs 20- 23 of Sir Geoffrey's legal opinion)
- That section 6 of the Act be amended to include a consultation obligation by DOC in the Act itself (see paragraphs 24-31 of Sir Geoffrey's legal opinion) Page 1 of 1.

≈ APPENDIX 6 » FISHING MANNERS/ETIQUETTE SIGNAGE

### FISHING MANNERS

Irrespective of the method of angling:

- 1) An incoming angler should not enter a/the river in front of an angler already fishing a pool without consulting him/her first.
- 2) If others are fishing in the same pool no angler should occupy a position on that pool indefinitely but should keep moving through it.
- 3) An angler should always give room to another angler who hooks and plays a fish near him/her.
- 4) No angler should move into the place of another angler who is landing or has just landed a fish.



Be a Tidy Angler



Enjoy Your Fishing

have taken and kept six fish.

### Angling etiquette

- When up-streamers meet down-streamers, the angler first in the pool should be given right of way. No one fishing method has right of way on the river.
- Don't enter the river in front of an angler already fishing without their consent.
- If you are sharing a pool keep moving through it steadily.
- Allow other anglers room to play a fish.





≈ **APPENDIX 7 » WAIKATO REGIONAL COUNCIL ACHIEVEMENT  
FROM ANNUAL WORK PLAN**



The work achieved from the 2017-18 Annual Work Plan for the Tongariro River.

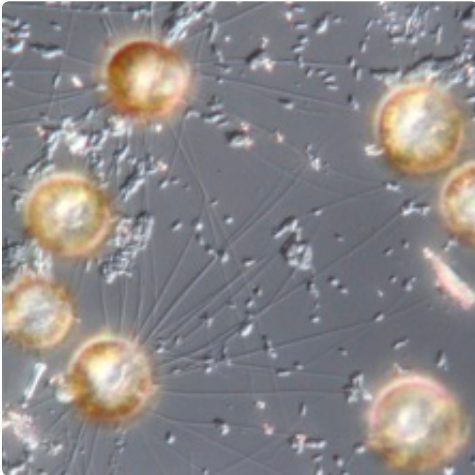
## ≈ APPENDIX 8 » LINDAVIA INTERMEDIA

*Lindavia intermedia* is a microscopic algae species that has been found for the first time in the Waikato and Manawatū-Whanganui regions. It poses no risks to human or animal health, and does not affect food sourced from lakes. It is unlikely to affect a lake's ecological health. However, it can cause lake snow – a sticky, mucus-like substance that hangs under the water. This slimy substance can be a nuisance to water users. It sticks to fishing gear and boat hulls, and can also cling to swimmers. It can clog boat filters, as well as industrial and domestic water supply filters.

The discovery of *Lindavia intermedia* has prompted a reminder to all water users to 'check, clean, and dry' when moving between waterways.

Download our *Lindavia intermedia* factsheet [HERE](#).

### Where has *Lindavia intermedia* been found?



*Lindavia intermedia* is an extremely small algae species that floats in water and has the potential to create lake snow.

*Lindavia intermedia* was discovered in Lake Waikaremoana in 2008 and it has now been confirmed in Lake Taupō. Further investigation has indicated it is also present in Lake Rotoaira.

Waikato Regional Council is collecting and testing water samples collected from hydro lakes downstream from Lake Taupō, as well as Lake Rotongaio.

While other waterways may also have *Lindavia intermedia*, rivers and streams with fast moving flows do not provide an ideal environment for the algae to thrive.

### **What is *Lindavia intermedia*?**

*Lindavia intermedia* is an extremely small algae species that floats in water and has the potential to create lake snow.

In the scientific world *Lindavia intermedia* is known as a diatom, meaning its cells are made out of silica.

There are an estimated 100,000 different types of diatoms world-wide. With so many different species it isn't possible for scientists to study them all in great detail. *Lindavia intermedia* is one of the less researched species, so we know comparably very little about it.

Like all diatoms, *Lindavia intermedia* is microscopic. It's smaller than the width of a human hair and it's therefore difficult to detect its presence in lakes unless specific tests are carried out.

*Lindavia intermedia* poses no risk to food sourced from lakes, and there are no human or animal health risks. There is currently no known impact on the health of lakes.

### **What we're doing**

Councils are working with stakeholders and researchers to find out more about what conditions influence the growth of *Lindavia intermedia*. In particular, we are keen to understand what causes it to produce lake snow like it has in some South Island lakes.

## What is lake snow?



*Lake snow is sticky and looks like strands of mucus or slime “hanging” under the water.*

Lake snow may be found by members of the public as slime on fishing gear and boat hulls. It could also cling to them when swimming. It can clog boat filters, as well as industrial and domestic water supply filters.

Researchers don't know for sure what causes *Lindavia intermedia* to produce lake snow. What we do know is that it's likely to have been in these Waikato and Manawatū-Whanganui region lakes for more than a decade. Over that time, it has not produced lake snow and we have no evidence of it causing issues.

## Protect your favourite waterways

### *Check, Clean, Dry*

There is currently no known way of removing *Lindavia intermedia* or lake snow once it is present in a lake. Our aim is to prevent the spread.

NIWA research for lake snow presence in the South Island identified that methods used in Clean, Check, Dry are appropriate for use with lake snow.

You can help to protect your favourite waterways if you always check, clean, then dry any equipment that comes into contact with the water, between every waterway, every time.

### *Cleaning options*

- Dishwashing detergent or nappy cleaner - 5% solution (500mls diluted to 10 litres in water). Soak or spray all surfaces for at least 1 minute, or –
- Bleach - 2% solution (200mls diluted to 10 litres in water). Soak or spray all surfaces for at least 1 minute, or;
- Freezing until solid.

Drying can be used as stand-alone treatment for non-absorbent items if you take great care to:

- make sure gear is completely dry to touch, inside and out;
- leave dry for at least another 48 hours (after drying), before entering a different waterway.

[www.mpi.govt.nz/check-clean-dry](http://www.mpi.govt.nz/check-clean-dry)

### **I've seen lake snow – who do I tell?**

Report anything that looks like lake snow to the Ministry for Primary Industry's pest and diseases hotline: **0800 80 99 66**.

## PROFILE OF ADVOCATES FOR THE TONGARIRO RIVER COMMITTEE FOR 2018

### 2018 Office Holders



**Gary Brown** – *President, Committee member since 2011*

Gary's family has an association that has lasted over a half century with the Lake Taupo fishery and he has had a life-long interest in hunting and fishing. Gary's prime focus as a committee member is therefore the state of the fishery and monitoring the effectiveness of the Department of Conservation's Taupo Sports Fishery Plan.

Gary lives in New Plymouth and is a retired architect.



**Warren Butterworth** – *Committee member since 2014  
Vice President from 2015*

Warren is a lawyer and part time farmer. He has fished the Tongariro and surrounding streams for more than 40 years and been a member of TALTAC for most of that time.

Warren resides in Auckland and is a board member of two substantial charitable trusts and of many private companies.



**Tim Castle** – *Committee member 2016*

Tim, a Wellington Barrister was elected to the committee in 2016. His home is in Wellington but he has a keen interest in the area and a holiday home for some years in Waitetoko.

Tim has studied Te Reo Maori and culture since the 1990's and has worked closely with iwi through his legal work.

He does not profess to being more than a keen learner angler.



**Virginia Church** – *Committee member since 2011*  
*Acting Secretary from October-December 2013*

Virginia's 2001 Petition to Parliament on the plight of the Tongariro, was supported by 602 signatures. This, and the Submission based on that Petition that was presented in 2002 to the Parliamentary Select Committee for Local Government and the Environment, was the catalyst for formation of the Advocates as an incorporated society.

After living in Australia, Virginia and her family have returned to Turangi where they have very close hapu associations with local iwi.



**Sam Coxhead** – *Committee member since 2014*

Sam has been coming to Turangi for the last 20 odd years. He is a keen angler, who relishes any time he can spend on the river.

Sam and his large young family now have a home in Turangi. It has become more important for him to help with the responsibilities of looking after the river.

Sam wants to help ensure that the fishery, and river environment as a whole, is looked after so the future generations are able to enjoy all it has to offer.



**Stuart Crosbie** – *Immediate Past President*  
*President 2009-2012; Committee member for seven years*

Stuart is the driving force behind the Advocate's Integrated Catchment Management Plan framework and the Advocate's statistical analyses of lake levels and river flow rate data spanning the past century. He was an Advocate's appointed founding director of the Tongariro River Trail (TRT) Ltd and in that role maintained a policy overview of the trail's development.

Stuart now lives in Taupo and is a director of a number of charitable and not-for-profit entities.



**Peter Deakin** – *Co-opted member 2017*

Early life in British Merchant Navy. His interest in rivers and the environment saw him join an angling club as a youngster. Spent nine years in the British Merchant Marine. Then spent the next 33 years as a commercial fisherman. He started the Wellington Trawlerman's Association.

Has retired to Turangi as owner of the Creel Lodge. Is now able to indulge two passions; Fly fishing particularly Brown Trout, and looking after the River environment.

“When people pull together it is amazing what they can achieve.”



**Mike Forret** – *Co-opted member 2017*

Mike Forret has been a keen angler for more than twenty years. He enjoys coming to the Tongariro and Turangi whenever he can and is very supportive of the Advocates aims.

Mike retired from the University of Waikato in 2016 where he worked in science and technology education for over twenty years. His main involvement with the advocates has been provision, maintenance and support of the Advocates' website and membership database through his web services company iConcept Enterprises Ltd.



**Richard Kemp** – *Committee member since 2002*

A Wellingtonian, Richard has been coming to Turangi to fish all his life – as has his father before him and his son after him. He has a passion for the fishery and a particular interest in its sustainability.

Richard served as Vice-President from 2006-2010 and has been the Advocate's legal advisor throughout. He is the current Advocate's representative on the Taupo Fishery Advisory Committee.

As a lawyer, Richard's networks have been invaluable in helping to profile the Advocates and successfully source funds from philanthropic sources.





**Alisdair Keucke** – *Committee member since 2018*

Alisdair Keucke retired to Turangi from Auckland in 2015 after a career in manufacturing and electrical engineering. The third generation of an old Raetihi family he recalls holidaying as a child in one of the only two bachs in Kuratau in the 1950's. His father was a keen fly fisherman. Alisdair describes himself as a mere beginner.

Alisdair always had a keen interest in the environment and is primarily interested in the conservation of the Tongariro River and its environs. He had 10 years' experience co-chairing Auckland's Little Shoal Bay Action Committee, which resulted in North Shore City Council buying back reserve land sold to developers, to preserve it as a reserve and protected wetland.



**Julian Proctor** – *Committee member since 2018*

My father fished the Taupo area in the late 1940's after returning to NZ and started me fishing there in 1954 and built a house in Turangi in 1960. I have fished all of the rivers in the Taupo area and most of the stream mouths but my love has always been the Tongariro river.

I have been a member of TALTAC since i started fishing in Turangi and am now a committee member of the Advocates..

I love all types of fishing and still do a lot of shooting.

I retired in 2016 and now spend as much time as possible in Turangi.



**John Toogood** – *Committee member since 2005, Treasurer*

John and his family have been coming to the area and enjoying the Tongariro for over five decades. A keen environmentalist at heart, John has led the Advocates' campaign to 'bring back the bush' and rid the river environs of wilding pines and other weeds. His work, supported by Eric Wilson and former Committee member Marja ter Haar, was recognised in 2010 when the Advocates received Environment Waikato's Weedbusters' Award.

John runs his own business in Wellington and his commercial skills are of benefit to the Advocates also, especially with regards to marketing.



**Eric Wilson** – *Secretary*

*Secretary for past 12 years and Treasurer for past ten years*

Eric is a local government appointee to Waikato Regional Council's Lake Taupo Liaison Sub-Committee, an Advocate's appointed director of the TRT Ltd and a key local liaison person involved in just about everything.

Without Eric's sustained dedication and extensive commitment to Advocate matters, our society simply would not survive.

Eric has been a local Turangi resident for the past 40 years and is a former Principal of Tongariro High School.

## ≈ LIST OF MEMBERS

Anderson	Sue	Gibbon	Scott	Rodger	Lola
Andrews	Charles J	Godkin	Wayne	Rodger	Molly
Avery	Bill	Godkin	Wendy	Ross	Carol
Bartle	Murray	Grace	Andrew	Ross	Grace
Bamford	Dave	Grant	David	Ross	Jonathon
Batson	Brian	Hamilton	Ian R	Ross	Miles
Beasley	Antony	Hancox	Rod	Sherbourne	Mary
Bingham	Peter	Hancox	Margaret	Shieff	Jenny
Blackbeard	Rob	Hayes	Carter	Shief	June
Brace	Robert	Hazelwood	Robert	Short	Murray
Brennan	Paul	Hodder	Marie	Short	Niwa
Brown	Gary	Hodder	Selwyn	Smith	Barry
Brown	Marie	Hocking	Lesly	Smith	Catherine
Buckley	Rob	Horton	Warwick	Smith	Peter
Butterworth	Brad	Hughes	Mike	Smith	Sylvia
Butterworth	Nick	Hughes	Gail	Stevenson	Anna
Butterworth	Warren	Jamieson	Murray	Stevenson	Dan
Canziani	Peter	Kemp	Richard	Stevenson	Prue
Canziani	Monique	Kemp	Honor	Stevenson	Sally
Castle	Tim	Keucke	Alisdair	Stevenson	Sam
Church	Hemi	Lean	Peter	Sullivan	Bernie
Church	Liam	Macdonald	Heather	Sutton	Annabel
Church	Jock	MacDonnell	Robert	Sutton	Terry
Church	Virginia	McCallum	John	terHaar	Marja
Cosgrove	Alison	McCallum	Elizabeth	Toogood	John
Cosgrove	Mark	McGregor	Craig	Toogood	Susie
Coxhead	Sam	McGregor	Rod	Toogood	Georgina
Coxhead	Katie	McHattie	Ali	Toy	Max
Crosbie	Stuart	McHattie	David	Walker	Rob
Crosbie	Jacquie	McNab	Alasdair	Watson	Richard
Cunnack	Renny	Mills	Jim	Whyte	Elizabeth
Dandy	Valerie	Nahkies	Graeme	Whyte	Malcolm
Deakin	Peter	Nahkies	Natasha	Williams	Peter
Dickson	Steve	Parlane	Maurice	Williams	Paul
Duff	Graeme	Pritt	Christine	Williams	Gwynne
Duff	Marion	Proctor	Julian	Wilson	Alex
Elliot	Helen	Ramsay	Nettie	Wilson	Eric
Fair	Bill	Rickards	Adrian	Wilson	Lorraine
Frank	Tricia	Rickards	Renee	Wilson	Sam
Forret	Joan	Rodger	Ian	Wilson	Vergne
Forret	Mike	Rodger	Greta	6 un-named	

≈ **NOTES**

≈ COMMITTEE NOMINATION FORM

One form per nominee

\_\_\_/\_\_\_/2019

I nominate:

Signed by nominee:

Nominator (signed):

Secondar (signed):

(Tick position nominated)

- ☐ President  
☐ Vice-President  
☐ Committee member

Either

- ☐ Secretary  
☐ Treasurer

Or

- ☐ Secretary/Treasurer

President, Vice-President, Secretary/Treasurer and up to 11 committee members + Immediate Past-President (15) or  
 President, Vice-President, Secretary, Treasurer and up to 10 committee members + Immediate Past-President (15).

One form per nominee

\_\_\_/\_\_\_/2019

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Signed by nominee:

Nominator (signed):

Secondar (signed):

(Tick position nominated)

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☐ Vice-President  
☐ Committee member

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☐ Treasurer

Or

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President, Vice-President, Secretary/Treasurer and up to 11 committee members + Immediate Past-President (15) or  
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