

Conservation (Indigenous Freshwater Fish) Amendment Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the Conservation (Indigenous Freshwater Fish) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983. The purpose of the bill is to improve how fisheries are managed under the Conservation Act.

The amendments in the bill would:

- enable indigenous freshwater fisheries to be better managed and protected
- provide better protection for threatened indigenous freshwater fish
- clarify and update various provisions in the Conservation Act related to freshwater fisheries
- ensure there are sufficient regulation-making powers in the Act to implement the changes the bill would make.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Defining freshwater fish

The bill as introduced would use the definition of freshwater fish found in the Conservation Act. We consider that definition unclear, and recommend replacing it with a list of fish considered to be freshwater fish for the purposes of the Act. For practicality, we recommend that this list be at the genus or family level, rather than listing species.

Our recommendation would replace the definition of freshwater fish in section 2 of the Conservation Act with our proposed new definition set out in clause 4(1).

Hierarchy of management plans

We recommend deleting clause 5(3) of the bill. As introduced, this clause stipulates that if there was a conflict between management plans, then a freshwater fisheries management plan would prevail over a sports fish and game management plan.

Part 3A of the Conservation Act already sets out the hierarchy of management plans, and specifies the procedure for preparing and approving a management plan. We consider that these provisions appropriately deal with any possible conflicts between plans. Therefore, we consider clause 5(3) unnecessary and think that it would undermine the provisions already in Part 3A of the Act.

Statutory jurisdiction over freshwater fisheries

Freshwater fisheries are managed under the Conservation Act, the Fisheries Act 1983, and the Fisheries Act 1996. Section 26ZG of the Conservation Act clarifies the relationship between these statutes. It does so by setting out the situations in which that Act's provisions relating to freshwater fisheries (contained in Part 5B) do not apply, and another statute applies instead.

Clause 6 of the bill as introduced would replace section 26ZG(2)(c) of the Conservation Act. The proposed new section would update the situations in which Part 5B of the principal Act would not apply. The aim is to reflect current law and provide clarity about the relationship between statutes.

We recommend making two amendments to the proposed new section.

The Fisheries Act 1983

We recommend amending clause 6 to remove the reference to the Fisheries Act 1983 in proposed new section 26ZG(2)(c)(i).

The Fisheries Act 1983 no longer contains any provisions that are relevant to section 26ZG of the principal Act. Therefore the reference is not needed.

Fisheries controls in Treaty settlement legislation

Clause 6 would amend section 26ZG(2)(c) of the Conservation Act. As introduced the provision would allow for persons authorised “whether generally or specifically” by Treaty settlement legislation to be exempt from Part 5B of the Act. We consider that the word “generally” makes the provision unclear and recommend that the

exemption only apply to persons specifically authorised by Treaty settlement legislation. We therefore recommend removing the word “generally” from proposed section 26ZG(2)(c)(iv).

Taking indigenous freshwater fish

We recommend several amendments to clause 7 and the insertion of new clause 16A to fine tune prohibitions and restrictions on taking indigenous freshwater fish.

Clause 7 would insert new sections 26ZHA to 26ZHD into the Conservation Act. New clause 16A would insert new Part 2 (which contains clauses 2 to 6) into Schedule 1AA of the Act which sets out transitional, savings, and related provisions.

We discuss clause 6 of new Part 2 later in our report as it relates to regulations.

Temporarily taking indigenous freshwater fish

Paragraph (c) of proposed new section 26ZHB(2) would allow freshwater fish to be taken temporarily in certain situations. As introduced, we consider that this provision could raise the possibility of indigenous freshwater fish being legally transferred between water bodies. We consider it undesirable to transfer indigenous freshwater fish between water bodies because it could create a biosecurity risk or result in fish being transferred to unsuitable habitats. We therefore recommend replacing proposed section 26ZHB(2)(c) to require fish to be kept in close proximity to the waters they are taken from.

Our recommendation would also require persons temporarily taking fish to be in close proximity of the fish and fishing device at all times. This would prevent the use of overnight set nets, which can harm fish. It would also encourage prompt return of fish temporarily taken, minimising the potential for fish to be harmed.

General authorisations from the Director-General

In the bill as introduced, the Director-General would need to issue specific authorisations to allow individuals to take indigenous freshwater fish from conservation areas. We recommend that the Director-General also have the power to issue general authorisations to take fish from an area other than a national park, by notice in the *Gazette*.

Our recommendation would amend clause 7 to insert new section 26ZHD into the Conservation Act. This would require the authorisation notice to specify the kind of fish that may be taken, and the area from which and manner in which they may be taken. It would also allow conditions or restrictions to be placed on an authorisation. We think these provisions would appropriately constrain the power to make a general authorisation.

The bill’s effect on whitebaiters

We recognise that the prohibitions and restrictions in clause 7 would stop some whitebaiters who have traditionally fished in conservation areas from continuing to do so.

The Department of Conservation (DOC) is currently reviewing how whitebait management could be improved. We believe the provisions in this bill should be able to

facilitate any changes that come out of the review and ensure that any prohibitions or restrictions are implemented fairly.

General authorisations

Our recommended new section 26ZHD would allow the Director-General to make a general authorisation to take indigenous freshwater fish. We consider this a suitable mechanism by which to allow people to fish for whitebait in conservation areas, if deemed appropriate.

Transitional provision for first year

We recommend inserting a transitional provision that would allow whitebaiting in conservation areas for the first year after the bill's enactment. We consider this a suitable amount of time for officials to consult on whether it would be appropriate to authorise continued fishing.

Our recommendation would insert clause 4 of new Part 2 into Schedule 1AA of the Conservation Act, which sets out transitional, savings, and related provisions.

Aquariums

There can be some circumstances in which it is desirable for people to take indigenous freshwater fish, such as taking fish for aquariums for educational purposes. New section 26ZHD would enable this to happen by authorisation of the Director-General.

Transitional, savings, and related provisions

Compliance with consent requirements under the Resource Management Act 1991

We recommend inserting clause 5 into schedule 1AA (new Part 2) of the Conservation Act. Our amendment recognises that some consents already granted under the Resource Management Act necessarily entail taking fish. It would provide an exemption from the prohibitions and restrictions in section 26ZHB for persons who must take fish to comply with a consent, if taking those fish was not restricted before the bill was enacted.

Existing authorisations under the Conservation Act

We recommend inserting clause 3 into schedule 1AA (new Part 2) of the Conservation Act. Our amendment would ensure that any authorisations for taking fish issued under the Conservation Act before the bill came into effect would continue to apply. We believe this would provide consistency and assurance to permit holders.

Spawning

Section 26ZJ of the Conservation Act makes it an offence to disturb or damage a spawning area. The bill acknowledges that this places an unreasonable burden on affected parties, creates a lot of uncertainty, and is too difficult to enforce. As introduced, the bill addresses some of the difficulties with compliance and enforcement.

However, we recommend several amendments to ensure that spawning areas are adequately protected, and to make it clear what activities and areas would be affected.

We recommend replacing existing section 26ZJ of the Conservation Act with new section 26ZJ, as set out in clause 9. We also recommend amending clause 9 to insert new section 26ZJA into the Act.

Declaration of spawning area

Currently, section 26ZL(1)(a) of the Conservation Act allows the Director-General to declare any specific waters to be a spawning area for freshwater fish. Clause 11 (new section 26ZL) of the bill as introduced would give the Director-General the same power in relation to spawning areas that are on land rather than in water.

We recommend that the mechanism for the Director-General to make such declarations be included in proposed new section 26ZJA. This would place all the provisions about spawning in consecutive sections of the Act.

We also recommend that a declaration of a spawning area should be made by notice in the *Gazette*. Further, before making such a declaration, the Director-General should be required to have reasonable grounds to believe that the area is being used by fish for spawning or that the area would be suitable as a spawning area for fish that use it.

To make these changes, we recommend amending clause 9 to insert new section 26ZJA into the Conservation Act. We also recommend amending clause 11 to remove proposed section 26ZL(1)(aa) and to repeal section 26ZL(1)(a).

Restricting entry to land

Clause 11 of the bill as introduced would allow the Director-General to prohibit entry to land that has been declared a spawning area, or to impose restrictions and conditions. We consider this unduly limiting because human entry is itself unlikely to affect spawning.

As noted above, we propose amending clause 11 to remove section 26ZL(1)(aa).

Defining what constitutes a spawning area

We recommend changes in new clause 9 to make it clear that provisions about disturbing spawning areas would only apply to areas that have been declared a spawning area by the Director-General.

It is likely that fish spawn in many locations across a water body, and it is difficult to identify spawning areas. Currently, spawning areas could be interpreted to mean most of a water body or only the few areas which are known spawning areas. Therefore, we consider it necessary to better define what would be considered a spawning area.

Our recommendation would replace section 26ZJ(1)(a) of the Conservation Act with our proposed new section 26ZJ(1)(a) so that the offence of disturbing a spawning area would only apply to a declared spawning area.

Prohibition of activities which disturb spawning areas

Under the Conservation Act at present, a person commits an offence if they disturb or damage a spawning area for any freshwater fish. We propose simplifying this offence to focus on disturbing a spawning area, as any damage to a spawning area would also disturb it.

We recommend amending clause 9 to insert new section 26ZJA(6) into the Act. This would make it clear that an activity is considered to disturb a spawning area if it disturbs the act of spawning or makes the area less suitable for spawning. We consider it unnecessary to criminalise activities which disturb spawning areas but do not affect their suitability for spawning.

Authorising disturbance to spawning areas

General authorisations

We recommend inserting new section 26ZJA(3) which would allow the Director-General to make a general authorisation, by notice in the *Gazette*, to allow an activity to be undertaken that would disturb a spawning area. We believe disturbing a spawning area is justifiable in some circumstances and should be provided for. We recommend including safeguards so that, before a general authorisation was made, the Director-General would have to be satisfied that one of the following criteria was met:

- The activity would have no more than a minor effect on the suitability of the area for spawning.
- The activity is necessary for the restoration of the spawning area.
- The purpose of the activity outweighs any adverse effects on the spawning area.

We also foresee situations where it would be uncertain whether an activity would disturb a spawning area. We wish to avoid any confusion this may cause. We believe that a general authorisation would be an appropriate mechanism to quickly clarify whether an activity was allowed.

Our recommendation would insert new section 26ZJA(3) into the Conservation Act, through new clause 9.

Specific authorisations

The bill as introduced would allow the Director-General in very limited circumstances to authorise a person to undertake an activity that would disturb a spawning area. We recommend that the constraints on issuing specific authorisations be the same as those for general authorisations. This would slightly widen the situations in which a specific authorisation could be issued. As explained above, we believe the proposed constraints strike a suitable balance.

To do this, we recommend deleting the specific authorisation provision in clause 9(3) and inserting a new specific authorisation provision in new clause 9. This would insert new section 26ZJA(4) into the Conservation Act.

Restrictions on transfer of aquatic life

We recommend amending clause 12 to require the Minister of Conservation to notify the relevant fish and game council at least 10 working days before a decision is made to transfer a sports fish under section 26ZM of the Conservation Act. We also recommend that, when deciding to transfer a sports fish, the Minister should have regard to any comments provided by the fish and game council.

Our recommendation would make fish and game councils aware of the transfer of sports fish without risking lengthy consultation processes or burdening councils by requiring them to respond.

This recommendation would insert new section 26ZM(4)(d) into the Conservation Act.

Regulations

Hydroelectricity dams

Section 48A(1)(na), inserted by clause 16(2) of the bill, would allow regulations to be made which would prohibit, restrict, or regulate any structure that could impede or affect the passage of a freshwater fish.

We recommend inserting a provision into new clause 16A that would exempt existing hydroelectricity dams from such regulations, except in relation to maintaining existing facilities that permit the passage of fish. Our reasons for this exemption are:

- there are not many hydroelectricity dams in New Zealand
- the effects of hydroelectricity dams on fish passage are well understood
- the owners of these dams have almost no options to mitigate the effects on the passage of fish.

Our amendment would insert clause 6 into new Part 2 of Schedule 1AA of the Conservation Act.

Indigenous freshwater fish

Clause 16(3), inserting new section 48A(1)(r)(ii), would create a new regulation-making power to control activities that are reasonably likely to injure or kill specified indigenous freshwater fish. We consider the proposed power too broad. We recommend that controls should only be allowed that are reasonably necessary to prevent fish being injured or killed.

We recommend amending proposed new section 48A(1)(r)(ii) of the Conservation Act accordingly.

Consultation requirement

We recommend inserting clause 16(3A) to insert new section 48A(1A) into the Conservation Act. Our amendment would require the Minister of Conservation to consult appropriately before they make any regulation. While we expect that this would happen in the normal course, we consider it good practice to include a consultation requirement in primary legislation for any regulation-making power.

New Zealand National Party minority view

Executive Summary

The New Zealand National Party (National Party) opposes this bill.

The National Party supports the protection of indigenous freshwater fish but believes the bill has wide reaching ramifications which are not sensible.

The National Party is the champion of recreation and sports fishing. Sports fishing provides an opportunity to get outdoors, enjoy open spaces, and to put food on the table. As fishing tourism grows, it also provides opportunities for job creation and wealth in smaller communities. The bill as introduced could have negatively affected the sports fishery in New Zealand. National campaigned strongly on changes to clause 5 of the bill on behalf of recreational sports fishers and welcomes the changes as amended.

Whitebaiting creates livelihoods and is a treasured recreational pastime for many New Zealanders. The National Party believes sensible management measures, in conjunction with voluntary initiatives, will enhance population numbers so that we continue to see sustainability of the stock. The bill's transitional clauses suggest a duplicity to the contiguous but separate whitebait consultation process and subsequent management regime process to follow. This indicates that the fishery will be shut down.

The National Party is the defender of private property rights and, while it supports protection of indigenous freshwater fish, any declarations as to spawning areas on private property need to go through a just process. The effects and costs on the landowner need to be considered, particularly in relation to wider business and infrastructure requirements. While there are some exceptions permitted for use of a spawning area, these are all arbitrarily determined by the Director-General of Conservation.

Introduction

The National Party supported this bill at first reading as it takes the protection and conservation of our indigenous freshwater fish seriously. However, at first reading, the National Party had reservations regarding the extent of the bill. This includes the ramifications on private landowners' rights, our sports fishery, our recreational fishers, and where it leaves Treaty obligations. There are also matters relating to infrastructure development needs, such as gravel extraction and its effects on existing infrastructure, which need to be ironed out.

The National Party had serious concerns about the lack of consultation undertaken on the development of the bill prior to its introduction. Furthermore, we found there was

a lack of clarity when it came to explaining the purpose, effect, and need for the bill and the process for interrogation of this bill was at best muddled. The submission process was, however, very helpful, but as outlined above, submitters highlighted serious deficiencies in the bill. This gave rise to an extended report-back date.

On introduction the bill was described as minor and technical. The National Party does not agree with such a description. While clarity is provided to existing regulations, we believe that the bill goes wider than it should.

Spawning Areas

In particular, clauses 9 and 11 have been merged and rewritten to cover powers available to the Director-General of Conservation in relation to spawning areas of indigenous freshwater fish. Here, a mechanism is proposed to enable the Director-General to declare (via *Gazette*) an area to be a spawning area based on a “reasonable belief”.

As part of that, the Director-General can arbitrarily decide to prohibit some or all disturbance activities within that area, or authorise the same. For land adjacent to spawning areas this would have a significant impact on private property owners’ rights, potentially prohibiting certain activities.

The law as it stands currently renders any disturbance in a spawning area illegal. Conversely, it is admitted that there is little evidence available to prove an area is in fact a spawning area. Because of this, it is our opinion that this amendment will be less permissive in practical terms.

These powers of declaration remain unclear. Will they be subordinate, override the Resource Management Act or will declarations in fact void existing resource consents? This is the crux of Federated Farmers and other submitters’ concerns which remain unanswered: namely, will declarations apply to all land tenure? Has the Government undertaken surveys to ascertain potential habitat, furthermore, is there a list of restrictions as to activities? And is there a cost benefit analysis of potential restrictions applied to the land, including enforcement of them?

We are not confident that natural justice principles would be applied throughout the establishment of a declaration process because there is no right of reply built into it. This creates uncertainty and impinges on private property rights.

Whitebait

National Party members also have concerns with the piecemeal fashion of processes relating to the passage of this bill and the separate, but contiguous, whitebait consultation process. Both overlap yet determinations to be fed into the whitebait management regime process are still unavailable. The ramifications of this or how the bill will relate or be used in relation to it have not been adequately described. It has therefore been difficult to get a line of sight across the issues.

As it stands in the bill, fishing in conservation areas will be prohibited, and hence the transition clauses relating to whitebaiting on rivers (such as the Hokitika River) will give a one year grace period until the establishment of the relevant management plans.

It is the National Party's contention that the whitebait consultation process and subsequent management regime process is a stalking horse for this bill and that once it is passed, and the transition period exhausted, whitebaiting will be prohibited.

Whitebaiting is a kiwi tradition: it puts food on the table, creates livelihoods, and is a valued recreational pastime. In parts of New Zealand the whitebaiting community has already subscribed to voluntary protections to assist in the fishery's sustainability. They therefore deserve respect as to any co-management.

Sports Fishery

The National Party are fierce advocates of recreational fishers and the protection of their rights to fish sports fish. We were concerned (as were numerous submitters) as to the effect of the original drafting of clause 5 where indigenous freshwater fish plans would have priority over sports fish plans. This would render them totally void should there be an inconsistency between the two and enable carte blanche eradication of game species from any waterway without the involvement of Fish and Game.

That is why we welcome the deletion of clause 5(3), which does not dispute the hierarchy of plans, but would enable a more conducive operation of Fish and Game's statutory mandate and management of the sports fishery along with that of the Department of Conservation's mandate.

Conclusion

The National Party had hoped to be in a position to support this bill. Further measures taken on the conservation estate would have been welcomed such as habitat enhancement, conservation, and practical measures to increase population numbers of indigenous freshwater fish.

However this bill goes too far by impinging on private property rights and potentially riding roughshod over recreational fisheries. And, for a Minister who talks openly about consultation, there was little throughout the formation of this bill.

Appendix

Committee process

The Conservation (Indigenous Freshwater Fish) Amendment Bill was referred to the committee on 11 September 2018. The closing date for submissions was 25 October 2018. We received and considered 1,406 submissions from interested groups and individuals. We heard oral evidence from 61 submitters at hearings in Christchurch and Wellington.

We received advice from the Department of Conservation.

Committee membership

Dr Duncan Webb (Chairperson, from 25 July 2019)

Dr Deborah Russell (Chairperson until 25 July 2019)

Dr Liz Craig (from 25 July 2019)

Hon Clare Curran (until 25 July 2019)

Sarah Dowie

Jenny Marcroft

Todd Muller

Hon Scott Simpson

Erica Stanford

Chlöe Swarbrick

Angie Warren-Clark

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Eugenie Sage

Conservation (Indigenous Freshwater Fish) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Conservation (Indigenous Freshwater Fish) Amendment Act **2018**.
- 2 Commencement** 5
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)”. | |
| (1) | <u>In section 2(1), replace the definition of freshwater fish with:</u> | 10 |

freshwater fish means—

- (a) all species of Anguillidae *Anguilla*, Cyprinidae, Electridae *Gobiomorphus*, Galaxiidae, Ictaluridae, Percidae, Poeciliidae, Retropinnidae, and Salmonidae:
- (b) all species of *Echydella*: 5
- (c) all species of *Paranephrops*:
- (d) *Cheimarrichthyidae* *Cheimarrichthys fosteri*:
- (e) *Geotridae* *Geotria australis*:
- (f) *Gobiidae* *Acentrogobius pflaumi*:
- (g) *Microdesmidae* *Parioglossus marginalis* 10

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

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

declared spawning area means an area declared under **section 26ZJA**

indigenous freshwater fish means any freshwater fish that is indigenous to New Zealand 15

national park means a national park constituted under the National Parks Act 1980

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 20

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.~~ 25

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— 30
 - (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~~ that Act; or
 - (ii) a person who is specifically authorised under any regulations made under section 48B of this Act; or 35
 - (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 specifically authorised ~~(whether generally or specifically)~~ by or under Treaty settlement legislation.

7 New sections 26ZHA and 26ZHB to 26ZHD and cross-heading inserted

After section 26ZH, insert:

| | | |
|---|---|----|
| <i>Indigenous freshwater fish</i> | | 5 |
| 26ZHA Approval 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. | 10 |
| (2) | In subsection (1) , an approval under an Act includes an approval under any instrument made under that Act. | |
| 26ZHB Prohibitions 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 <u>except in accordance with an authorisation given under section 26ZHC(1)(a) or 26ZHD.</u> | 15 |
| (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 <u>takes the fish in accordance with an authorisation given under section 26ZHC(1)(b) or 26ZHD; or</u> | 20 |
| (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 | 25 |
| (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. | |
| (c) | <u>the person—</u> | 30 |
| (i) | <u>takes the fish from the waters in a manner that does not lead to its injury or death; and</u> | |
| (ii) | <u>returns the fish to those waters as soon as practicable after taking it; and</u> | |
| (iii) | <u>at all times until the fish is returned, keeps the fish in close proximity to the waters, the person, and any fishing device used to take the fish.</u> | 35 |

- (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~~ 5
 - (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.~~ 10
- (5) ~~An authorisation may be subject to any conditions or restrictions specified by the Director-General or in regulations.~~

26ZHC Director-General may authorise taking of indigenous fish on application

- (1) The Director-General may, on application, give a person written authorisation to take indigenous freshwater fish— 15
- (a) from a conservation area if the Director-General is 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 the Director-General is satisfied that the activity is consistent with the management of freshwater fisheries in that area and any requirements in regulations have been met. 20
- (2) An authorisation may be subject to any conditions or restrictions specified by the Director-General. 25

26ZHD Director-General may authorise taking of indigenous fish by *Gazette* notice

- (1) The Director-General may, by notice in the *Gazette*, give authorisation for the taking of indigenous freshwater fish from an area other than a national park.
- (2) The notice must specify— 30
- (a) the kind of indigenous fish that may be taken; and
 - (b) the area from which the fish may be taken; and
 - (c) the manner in which the fish may be taken.
- (3) An authorisation may be subject to any conditions or restrictions specified by the Director-General. 35
- (4) A notice under this section is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

8 New cross-heading above section 26ZJ inserted

After section 26ZI, insert:

Spawning fish

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

- (1) ~~In section 26ZJ(1), after “who”, insert “without authorisation”.~~ 5
- (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,—~~ 10
 - (a) ~~in relation to subsection (1)(a), an authorisation in regulations; and~~
 - (b) ~~in relation to subsection (1)(b) to (c), 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 (c) of subsection (1) if satisfied that—~~ 15
 - (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.~~ 20
- (5) ~~An authorisation may be subject to any conditions or restrictions specified in the authorisation.~~

9 Section 26ZJ replaced (Offences relating to spawning fish)

Replace section 26ZJ with:

26ZJ Offences relating to spawning fish 25

- (1) Every person commits an offence who—
 - (a) contravenes **section 26ZJA(2)**:
 - (b) without authorisation, disturbs or injures the eggs or larvae of any freshwater fish:
 - (c) without authorisation, takes or has possession of the eggs or larvae of any freshwater fish: 30
 - (d) with any spear, gaff, speargun, net, trap, or similar device takes any sports fish from any river or stream where sports fish are congregating or have congregated for spawning:
 - (e) while in the vicinity of any river or stream where sports fish are congregating or have congregated for spawning, has possession or control of 35

any spear, gaff, speargun, trap, or similar device or material suitable for the taking of any sports fish, in circumstances likely to result in the taking of sports fish.

- (2) **Subsection (1)** does not apply to the taking of freshwater fish subsequently found to contain eggs or larvae. 5
- (3) **Subsection (1)(d) and (e)** does not apply to actions taken by a fish and game ranger.
- (4) In this section, **authorisation** means an authorisation given under **section 26ZJA(3) or (4).**

26ZJA Director-General may declare spawning area 10

- (1) The Director-General may, by notice in the *Gazette*, declare an area to be a spawning area if the Director-General has reasonable grounds to believe that the area—
- (a) is being used for the spawning of freshwater fish; or
 - (b) is suitable for the spawning of freshwater fish. 15
- (2) A person must not carry out an activity in a declared spawning area that may disturb the area unless—
- (a) the Director-General has given authorisation under **subsection (3) or (4)** for the activity to be carried out; and
 - (b) the person complies with any conditions or restrictions specified by the Director-General. 20
- (3) The Director-General may, by notice in the *Gazette*, give authorisation for specified activities to be carried out in a declared spawning area that may disturb the area, if the Director-General is satisfied that—
- (a) the activity would have no more than a minor effect on the suitability of the area for the spawning of freshwater fish; or 25
 - (b) the activity is necessary for the restoration of the area; or
 - (c) the purpose of the activity outweighs any adverse effect it may have on the spawning of freshwater fish in the area.
- (4) The Director-General may, on application, give a person written authorisation to carry out an activity in a declared spawning area that may disturb the area if the Director-General is satisfied that— 30
- (a) **subsection (3)(a), (b), or (c)** applies to the activity; and
 - (b) any requirements in regulations have been met.
- (5) An authorisation under **subsection (3) or (4)** may be subject to any conditions or restrictions specified by the Director-General. 35
- (6) In this section, an activity **may disturb the area** if the activity is reasonably likely to—

- (a) disturb the spawning of freshwater fish in the area; or
- (b) make the area less suitable for the spawning of freshwater fish in the area.
- (7) A notice under **subsection (3)** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 5

Various restrictions relating to fishing and aquatic life

10 ~~New cross heading above section 26ZK inserted~~

~~After section 26ZJ, insert:~~

Various restrictions relating to fishing and aquatic life 10

11 Section 26ZL amended (Restrictions on fishing)

Repeal section 26ZL(1)(a).

~~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.~~ 15

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,”. 20

(2A) After section 26ZM(4)(c), insert:

- (d) if the live aquatic life that is to be transferred or released is a species of sports fish, at least 10 working days before the Minister decides whether to give approval,—
 - (i) the Director-General must give written notice to the Fish and Game Council for the region or regions in which the transfer or release of the sports fish is to take place; and 25
 - (ii) the Minister must have regard to any comments provided by the Fish and Game Council within the time frame specified in that notice. 30

(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) 35

- (1) 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. 5
- (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 10
 - (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. 15
- (2) In section 26ZP(5), replace “sports fish” with “fish”.
- (3) After section 26ZP(5), insert:
- (6) The Director-General may, on application, ~~authorise—give~~ a person written authorisation to take fish to which a closed season applies if satisfied that— 20
- (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. 25
- 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 30
- 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”. 35

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

(1AAA) In section 48A(1), after “Council,”, insert “on the recommendation of the Minister.”

- (1) Replace section 48A(1)(f) with:
 - (f) regulating or prohibiting— 5
 - (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 (see clause 6 of Schedule 1AA): 10

- (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 15
 - (ii) regulating, restricting, or imposing conditions on those specified activities that are reasonably necessary to prevent the killing or injuring of those fish; and
 - (iii) specifying indigenous freshwater fish that are endangered and restricting or prohibiting the taking of those fish: 20
 - ~~(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 25~~
 - ~~(ii) imposing conditions or restrictions on the authorisation:~~
 - (s) specifying any requirements that must be met by a person seeking an authorisation under **section 26ZHD, 26ZJA(4), or 26ZP(6)**:
 - (sa) imposing conditions or restrictions that apply to an authorisation under **section 26ZP**: 30
 - (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 35~~
 - ~~(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.

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

(1A) Before making any recommendation under subsection (1), the Minister must consult any person or organisation that the Minister considers is likely to be substantially affected by, or will be representative of the interests of people likely to be substantially affected by, the regulations.

5

(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

10

(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)**.

15

16A **Schedule 1AA amended**

In Schedule 1AA, after Part 1, insert:

Part 2

**Provisions relating to Conservation (Indigenous Freshwater Fish)
Amendment Act 2018**

20

2 **Interpretation**

In this Part, commencement date means the commencement date of the Conservation (Indigenous Freshwater Fish) Amendment Act 2018.

3 **Taking of fish in accordance with prior authorisations not affected**

Section 26ZHB does not affect the taking of fish by a person in accordance with an authorisation or permit that was granted under this Act before the commencement date and that is still in force.

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4 **Application of section 26ZHB(1) to whitebait fishing in conservation areas delayed until 1 year after commencement date**

Until the date that is 1 year after the commencement date, **section 26ZHB(1)** does not apply to a person who fishes for whitebait from a conservation area in accordance with the Whitebait Fishing Regulations 1994 or Whitebait Fishing (West Coast) Regulations 1994.

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- 5** Application of section 26ZHB to taking of fish in compliance with consent under Resource Management Act 1991
Section 26ZHB does not affect a person who takes freshwater fish in order to comply with a condition of a consent that was granted under the Resource Management Act 1991 before the commencement date, if before that date, the person was not required to obtain any kind of authorisation or permit under this Act to take the fish. 5
- 6** Application of regulations made under section 48A(1)(na) to existing hydroelectricity dams
Regulations made under subsection 48(1)(na) do not apply to any hydroelectricity dams constructed before the commencement date except where those regulations impose requirements that relate to the maintenance of any structure that could impede or affect the passage of freshwater fish or specified freshwater fish. 10

Part 2 15

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. | 5 |
| 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 (<i>Gambusia affinis</i>)”. | |
| Revoke regulations 70 and 71. | 10 |
| 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”. | |

Legislative history

9 August 2018
11 September 2018

Introduction (Bill 87–1)
First reading and referral to Environment Committee