

[In Confidence]

Office of the Minister of Conservation

Chair, Cabinet Legislation Committee

## **Conservation (Indigenous Freshwater Fish) Amendment Bill: Approval to Release a Supplementary Order Paper**

### **Proposal**

1. That approval be granted to release a supplementary order paper for the Conservation (Indigenous Freshwater Fish) Amendment Bill (the Bill).

### **Policy**

2. The policy for the Bill was approved by Cabinet on 25 June 2018 (ENV-18-MIN-0030).
3. The Bill was introduced on 19 August 2018 and considered by the Environment Select Committee. The Committee reported back to the House on 31 July 2019. The proposed SOP affects two matters covered in the Bill as reported back.
4. The Bill as reported back replaces the existing provisions in the Conservation Act 1987 relating to the protection of spawning sites and events with new provisions. The aim of those changes was to provide more focused and effective protection for spawning sites and spawning events, while reducing uncertainty for those whose activities are regulated by the law (e.g. landowners, council operations in rivers).
5. The Bill as reported back also provides a one-year transition period before restrictions on taking indigenous freshwater fish in conservation areas apply to whitebaiting.
6. Once the amendments had been reported back, they were able to be scrutinised by affected parties.

### *Sports fish*

7. Discussions between fish and game councils and DOC about how the provisions might be implemented resulted in identification of a possible issue in relation to protection of sports fish while they are spawning.
8. Sports fish such as trout often spawn in shallow water in large groups. Those congregations of spawning fish are easily disturbed or poached (including by picking up fish without any fishing equipment).
9. The Bill as reported back creates a separate section that retains the existing provisions relating to spawning events, and replaces the existing provisions relating to protection of spawning sites. Prosecutions of individuals who poach spawning

trout without using nets are, however, currently done under a provision relating to spawning sites, and the new provision on spawning events does not fully cover that issue. The replacement of the provision on disturbing spawning sites therefore makes it more difficult to protect spawning trout.

10. That issue was taken to the law drafter responsible for the new provisions, and she confirmed that it would be preferable to amend the provisions to allow congregations of spawning fish to be directly protected, rather than attempting to use the new provisions for protecting spawning sites for that purpose.
11. Consideration of how the provisions might work in practice also concluded that it would be desirable for the New Zealand Fish and Game Council to be able to request a notice declaring a sports fish spawning site.
12. The work also identified minor technical amendments and a minor drafting correction that can usefully be made.

#### *Whitebaiting in conservation areas*

13. The Bill contains a provision that prohibits the taking of indigenous freshwater fish from a conservation area without an authorisation. That ensures that fish are treated in the same way as all other organisms and natural resources within conservation areas. The Bill provides for authorisations to be issued to an individual, or for a *Gazette* notice to provide a general authorisation to fish.
14. In the case of whitebait fishing in conservation areas, there is a transitional provision that allows whitebaiting for one year after the passing of the Bill without an authorisation being needed. This time period was included so that there would be no disruption to the current whitebaiting season.
15. Separate to the Bill, work is under way by DOC to look at improvements to whitebait management. Some stakeholder consultation has already been undertaken and further consultation is planned for later this year. This work could potentially result in changes to whitebait regulations.
16. Rather than have this transition provision expire after exactly one year, I consider that it would be more useful for the provision to continue for at least two years and until such time as the first *Gazette* notice to authorise whitebaiting in a conservation area comes into force. (At that time, conservation areas not covered by the notice would become closed to whitebait fishing.) The change to this transition provision will provide for more integrated timing with any future changes to the regulations that manage whitebait. It will also allow me to assure whitebaiters that any restrictions on whitebaiting in conservation areas would only occur after the current consultation is completed.

#### *Proposed amendments by SOP*

17. I therefore propose that the Bill be further amended to:
  - 17.1. Provide an additional paragraph in the new section 26ZJ(1) to make it an offence to disturb sports fish which are congregating or have congregated to spawn;

- 17.2. Provide an additional subsection after new subsection 26ZJA(1) to allow the New Zealand Fish and Game Council to recommend a *Gazette* notice to declare a spawning area in relation to the spawning of sports fish;
  - 17.3. Make a technical amendment to several new subsections (26ZJA(2)–(6)) relating to disturbance of spawning sites – replacing “may disturb” with “disturb or reasonably likely to disturb”;
  - 17.4. Add a new clause to amend the offence provisions in the Conservation Act (in relation to infringement offences) to reflect the changes to the spawning areas provisions;
  - 17.5. Correct the drafting in a reference to subsection 48A(1)(na) in clause 16A;
  - 17.6. Replace new clause 4 of Schedule 1AA to allow the transition period for whitebaiting in conservation areas to be at least two years, with the period only expiring once the first *Gazette* notice authorising whitebaiting in a conservation area comes into force.
18. In the case of changes to new section 26ZJA, PCO intend replacing all of the section to provide a clearly drafted new section with appropriate subsection numbering.
  19. These proposed amendments would refine the Bill and give better effect to the intent of the Environment Select Committee. I propose to present these changes at the Committee of the Whole House stage through a supplementary order paper.

### Impact analysis

20. A regulatory impact analysis was provided with the policy paper for the Bill.

### Consultation

21. The issues relating to the protection of sports fish spawning sites was identified in discussions with the New Zealand Fish and Game Council. The specific proposals were the outcome of discussions with the responsible law drafter in Parliamentary Counsel, and are consistent with her recommendations.

### Recommendations

The Minister of Conservation recommends that the Committee:

1. note that the Conservation (Indigenous Freshwater Fish) Amendment Bill was reported back by the Environment Committee on 31 July 2019;
2. note that the Bill as reported back provides new provisions (replacing existing provisions) for the protection of spawning areas;
3. note that further technical and legal work in relation to those provisions has identified a need for some adjustment to the new provisions to give full effect to the intention of the Committee and retain the existing ability to protect sports fish that are congregating for spawning;

4. note that the Bill as reported back provides for a one-year transition period before restrictions on taking whitebait apply to conservation areas;
5. note that there would be benefit allowing the transition period for whitebaiting in conservation areas to be at least two years;
6. note that some technical amendments and correction of a drafting issue would be beneficial;
7. agree that the Minister of Conservation release a supplementary order paper to make the necessary changes to the Bill at the Committee of the Whole House stage.

Authorised for lodgement

Hon Eugenie Sage  
Minister of Conservation

Released by the Minister of Conservation