

Departmental Disclosure Statement

Conservation (Indigenous Freshwater Fish) Amendment Bill
--

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Paula Warren of the Department of Conservation.

The Department of Conservation certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 July 2018

Contents

Contents 2
Part One: General Policy Statement 3
Part Two: Background Material and Policy Information 4
Part Three: Testing of Legislative Content 6
Part Four: Significant Legislative Features 8

Part One: General Policy Statement

The Bill only relates to indigenous freshwater fish, and threats to those fish (including noxious fish). The Bill does not relate to introduced sports fish.

The objectives of the Bill are to:

- Improve the workability of fisheries management tools in the Conservation Act.
- To 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- Repeal some 1983 regulations which have been superseded by more recent provisions in the Act.
- To remove some provisions relating to the protection of fish from the Freshwater Fisheries Regulations 1983 and provide updated provisions in the Conservation Act.
- To provide protection for fish within conservation areas.
- To ensure that the relevant provisions in the Act are efficient and accord with modern legislative design and drafting standards.
- Improve the relationship between management of fish under the Conservation Act, the Fisheries Acts, and Treaty settlement legislation.

These 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 for 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 the indigenous freshwater fishery.
- Remove regulations which have been superseded by provisions in the Act, to reduce legal risk and remove unnecessary regulations.
- Bring the basic controls on take of fish into line with current practice and expectations, including removing unnecessary controls on temporary take of fish for education purposes, and 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 fresh water 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 generally achieves these objectives through amendments to existing provisions.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	No

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	No

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	Yes
"Impact Statement: Conservation (Freshwater Fisheries Regulation) Reform Bill" Department of Conservation 20 April 2018	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	Yes
<p>"The Regulatory Quality Team at the Treasury has reviewed the Regulatory Impact Assessment "Conservation (Freshwater Fisheries Regulation) Reform Bill" produced by the Department of Conservation and dated 20 April 2018. The review team considers that it partially meets the Quality Assurance criteria. We consider the options analysis meets the quality assurance criteria. However the key constraint, which has been acknowledged in the Regulatory Impact Assessment, is that the time frame did not allow consultation with iwi and stakeholders. Although attempts have been made to mitigate the lack of consultation by narrowing the proposed legislative reforms to those required to improve the legislative toolkit, stakeholders are likely to have some concerns about the lack of consultation and the limited scope of the review".</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	No

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	No

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	Yes
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	No
The information available is in the Impact Statement. There is only limited information. No effects on income or wealth were identified.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	Yes
(b) the nature and level of regulator effort put into encouraging or securing compliance?	Yes
There is information on implementation in the Impact Statement.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
Analysis by experts within the Department of Conservation.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
Analysis by experts within the Department of Conservation. The Bill includes new provisions to improve consistency of the Act with the principles of the Treaty. The Act already contains an obligation to give effect to the principles.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	Yes

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	Yes
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	No
Clauses 7 and 13 create offences and penalties.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	Yes
Penalties for those offences, where not already in the Act, have been set at the same level as equivalent offences. Ministry of Justice has vetted those penalties and consider them appropriate and proportionate.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	No

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	Yes
An exposure draft of the Bill was provided to Te Wai.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	Yes
The Bill reflects work that has been done on reform of the current regulations. That work informed the analysis of the need for reforms and the types of provisions that are required for modern fisheries management.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	No

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	No

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	No

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	Yes
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	No
This reflects the approach in the existing Act.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	No

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	No

Powers to make delegated legislation

<p>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</p>	<p>Yes</p>
<p>The Bill amends the regulation-making powers in the Act. One of the changes will allow changes to spawning sites to be approved by regulation. Currently any disturbance or destruction of spawning sites is an offence.</p>	

<p>4.8. Does this Bill create or amend any other powers to make delegated legislation?</p>	<p>Yes</p>
<p>The Bill amends the regulation-making powers in section 48A of the Act to make them more comprehensive and makes minor amendments to section 48.</p>	

Any other unusual provisions or features

<p>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</p>	<p>No</p>