

# Te Wai Māori Trust Comments on the Draft Conservation (Indigenous Freshwater Fish) Amendment Bill – 2018

## Introduction

1. Te Wai Māori Trust (Te Wai Māori) welcomes the opportunity to comment on the draft Conservation (Indigenous Freshwater Fish) Amendment Bill (the draft Bill). This is an important matter for us, particularly in the context of our statutory and fiduciary responsibilities. We are pleased the Minister of Conservation shares our aspirations to enhance, restore and protect the health and well-being of indigenous freshwater fisheries, and mitigate the damage to native freshwater fisheries caused by various pressures. We welcome the chance to work with iwi and hapū to support them to assist the Department of Conservation (DOC) in this process.
2. This document is provided on a without prejudice basis and should not be taken or viewed as a substitute to meaningful engagement and consultation with iwi and hapū on this issue. This document is not intended to usurp or detract from any responses made independently by iwi or hapū or any other pathways iwi and hapū may pursue to affirm their rights. Te Wai Māori also intends to submit on the Bill at Select Committee stage.

## Who we are

3. Te Wai Māori is an independent Māori Trust established under the Maori Fisheries Act 2004 (the Maori Fisheries Act) as part of the allocation of the Fisheries Settlement.
4. The purpose of Te Wai Māori is to advance Māori interests in freshwater fisheries<sup>1</sup> (s 94, Maori Fisheries Act) through:
  - undertaking or funding research, development and education;
  - promoting the protection and enhancement of freshwater fisheries habitat;
  - promoting the establishment of freshwater fisheries; and
  - using resources to bring direct and indirect benefits to Māori in respect of their freshwater fisheries interests.
5. Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to control their freshwater fisheries. The long-term outcomes Te Wai Māori work towards include:
  - increasing iwi and hapū capacity and capability in freshwater fisheries and their ability to control their freshwater fisheries;
  - promoting and sharing indigenous fisheries expertise, knowledge and understanding;
  - increasing the quality and range of information to iwi and hapū on freshwater fisheries and their interests thereof; and
  - enhancing the health and wellbeing of the indigenous fisheries and their environment.
6. Our core values are te mana o te wai, whakapapa, and kaitiakitanga and represent the natural order of the Te Wai Māori worldview. First and foremost, we value freshwater and all that is

<sup>1</sup> The Māori Fisheries Act defines “freshwater fisheries” as including the species, habitat, surrounding land, water column, and water quality and quantity. Sports fisheries or unwanted aquatic life or activities conducted under the Freshwater Fish Farming Regulations 1983 are excluded from this definition.

encompassed in its ecosystems. The inherent right for water in its own state. Whakapapa recognises our interdependence which binds us as tangata of the environment; and kaitiakitanga, our obligation to care for Papatūānuku and ngā atua that provide sustenance for our people. Ensuing the health and wellbeing of freshwater is essential for the continued health and well-being of freshwater fisheries. Iwi and hapū do not distinguish land from lakes, lagoons, rivers, swamps, freshwater species and their associated beds. They are considered part of an undivided entity. Each water body has its own mauri. Healthy waterbodies are a direct source of mahinga kai for Māori and the use of mahinga kai is an important expression of cultural identity and values, passed down through generations.

7. Healthy freshwater fisheries depend on good management of freshwater environments (including surrounding habitats) and harvesting pressure. This in turn requires good information, constructive inter-agency relationships, effective regulations and rules, and clear priorities for action. Most of the pressures on our taonga freshwater fisheries are due to modification of freshwater environments; including dams, culverts, flood gates, land-based activities and diversion of rivers and streams. Further problems are caused by erosion and the clearing of forests. Silt and sediment which build up over our riverbeds create barriers to migration of native fish migration such as tuna and whitebait. Predation and competition from introduced trout and other predatory fish also threaten our taonga freshwater species.
8. Iwi and hapū have expressed that there is a real need for the identification and articulation of iwi and hapū values and perspectives of freshwater ecosystems to help build better understanding within resource management agencies. Effective integration of Māori interests and values into resource management requires full iwi and hapū participation and a commitment from agencies to collaboration and strong, enduring relationships.
9. DOC and other Crown agencies must engage in mana-enhancing, Treaty-based processes to formulate taonga freshwater fisheries policy. It is our view that the development of policy and management regulations that acknowledge cultural values and provide a role for iwi and hapū nationwide in implementation and interpretation would significantly add to improved management of our taonga species.

#### What is the Fisheries Settlement and how is it relevant for freshwater fisheries?

10. A full and final settlement of Māori claims to fishing rights, guaranteed under the Treaty of Waitangi, was agreed between Māori and the Crown in 1992 and:
  - codified in a Deed of Settlement signed by the Crown and Māori in September 1992;
  - confirmed that Māori supported the QMS as a lawful and appropriate regime to manage commercial fisheries in New Zealand;
  - delivered quota, fishing companies and cash to Māori through iwi; and
  - promulgated regulations enabling iwi, hapū and whānau to take responsibility for customary non-commercial fishing.
11. Te Ohu Kaimoana was established to implement and protect the Fisheries Settlement. Te Ohu Kaimoana works on behalf of 58 mandated iwi organisations (MIOs), who in turn represent all Māori. Te Ohu Kaimoana is responsible for allocating and transferring settlement quota shares to MIOs.
12. The model agreed by Iwi for allocating the Fisheries Settlement included the establishment of Te Wai Māori and an allocation of funds to enable Te Wai Māori to advance Māori interests in

freshwater fisheries. Tuna (longfin and shortfin eels) have been introduced into the quota management system. Settlement quota for longfin and shortfin eel forms 20% of the quota shares in these fisheries.

### The Fisheries Settlement is the basis for an ongoing Treaty partnership

13. The Deed of Settlement reaffirmed the Treaty partnership between the Crown and Māori. Iwi expect a partnership with the Crown on strategic issues including collaboration and co-design on any changes in policy or management that impact Māori access to customary non-commercial and commercial fishing. In achieving its purpose, Te Wai Māori (and Te Ohu Kaimoana) support iwi in their partnership with the Crown.

### Te Wai Māori Commentary on the Draft Bill

#### Purpose/Intent

14. In a letter sent to individual iwi members entitled Freshwater Fisheries Management Reform, the Minister of Conservation outlined a desire to address challenges facing freshwater fisheries. The Minister indicated that a technical clean-up Bill was required to “enable a consistent and practical regulatory kit.” Te Wai Māori had questions regarding the intent of this Bill, given the Bill was originally going to progress to be introduced to the House without any consultation.
15. An outline of the proposed Bill included in the initial correspondence from DOC indicated a number of matters which could be examined within the Bill. These included revoking the 1983 regulations, bringing controls on recreational fishing, updating existing regulations, fixing minor drafting problems, and creating new regulation making powers to address challenges as they arise. This outline provided no additional clarification as to what the overall intent was.
16. Subsequent conversations with DOC staff clarified that this was an “opportunity bill” in which they were to update and clean up technical aspects and regulatory issues within the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983. This draft Bill appears to largely pursue that purpose, updating existing tools and regulations while expanding the regulation-making powers at the Minister of Conservation’s disposal.
17. One of the stated intents was to provide the Minister with full regulation making powers with regards to freshwater fisheries management. While it is important to address management pressures relating to freshwater fisheries, it should be noted that significant overlaps with powers granted to the Minister of Fisheries under the Fisheries Act 1996 remain unaddressed. These overlaps will be discussed in detail later in this document. DOC staff acknowledged the overlap and stated that it will not be addressed in this legislation given the political difficulties surrounding separating residual overlaps. While Te Wai Māori understands this, we would like to stress that this will need to be resolved at some point. Decisions made under both Acts carry potential consequences for Māori fishing rights and roles need to be clarified to ensure optimal, efficient management of environmental challenges.

## Section-Specific Comments on the Draft Fish Bill

### *Definitions*

18. Amendments to Section 2 (Interpretation) of the Conservation Act 1987 provide updated definitions of “freshwater” and “indigenous freshwater fish”. These updated definitions are beneficial for clarifying the coverage of this Act and associated regulations.
19. Te Wai Māori is heartened by the inclusion of “Treaty Settlement Legislation” within the definitions. We would like to clarify that “other Māori groups” and “legislative instruments” include the legislation that gives effect to the 1992 Deed of Settlement and Māori fishing rights guaranteed by those legislative instruments.

### *Section 17J Freshwater Fisheries Management Plans*

20. Amendments to Section 17J of the Act adjust the scope of Freshwater Fisheries Management Plans to include “or throughout all New Zealand”. National-level plans should be to provide high-level guidance that then feeds into regional or catchment-focused plans (addressing the unique conditions facing each catchment). A national plan on its own would likely be too general to be effective.
21. Overarching guidance can be given statutory weight through another means; such as a National Policy Statement. Updating the scope of Freshwater Fisheries Management Plans to serve this purpose would duplicate existing tools with little benefit.

### *Section 26*

22. Te Wai Māori is encouraged by the inclusion of Section 26ZL, allowing the declaration of lands as freshwater fish spawning habitats. This will provide for identification and protection of spawning grounds for īnanga.
23. Te Wai Māori is broadly supportive of the inclusion of a 5-year time period for temporary closures established under Section 26ZP for scientific purposes, the reintroduction of indigenous freshwater fish, and at the request of iwi and hapū. However, we are cautious with how this provision interacts with the Fisheries Act 1996 and Māori fishing rights. While any notice of a closed area must state the closure’s purpose, there is a lack of clarity regarding the criteria that would be applied when evaluating or determining that purpose. We consider that any purpose must clearly address an identified problem and have measurable objectives against which the closure would be evaluated. In cases where a proposed closure is in the rohe of an iwi or hapū there does not appear to be an ability for iwi and hapū to challenge the proposed closure or participate in the temporary closure process unless they initiate it. Te Wai Māori seeks clarity on these issues.

### *Section 48A*

24. Te Wai Māori has concerns with the ability to set total allowable catches (TAC) for any freshwater fishery under Section 48A of the Conservation Act 1987. This duplicates authority given to the Minister of Fisheries under the Fisheries Act 1996. In species that are not currently under the Quota Management System, this is less of a problem; however, for species such as tuna (eels), there is potential for overlapping regulations with no clear hierarchy. This is due to the fact that Section 48A (or Part 6 more generally) does not have the

same “application of part” conditions that clarify the primacy of the Fisheries Act. This residual power is regrettable and needs to be clarified.

25. DOC staff have confirmed to Te Wai Maori that the ability to set a TAC through this regulation making power has never been used and never will be used (noting that DOC staff confirmed in an email that it is *unlikely* it would be used). However, in the event that the Ministry for Primary Industries (MPI) /Fisheries New Zealand (FNZ) were to set a TAC, DOC notes that it would not necessarily be prevented from setting a lower one (albeit there may be enforcement issues). This situation does not provide regulatory clarity.
26. Te Wai Māori continues to maintain concerns about the overlap between the proposed new regulation making powers (specifically, section 48A(1)(r)(i-iii)) and the Fisheries Act 1996. Te Wai Māori believes that further conversations need to be held with FNZ and MPI about the intent and use of these powers.
27. Te Wai Māori is broadly supportive of the addition of subsections 5 and 6 which clarifies that, if there is inconsistency between:
  - a. a provision relating to indigenous freshwater fish in regulations made under subsection (1)(b) (which concerns the setting of a TAC), (f), or (i); and
  - b. a provision in Treaty settlement legislation or a provision in regulations relating to Maori fishing rights made under the Fisheries Act 1996,the Treaty settlement legislation or a provision in regulations relating to Maori fishing rights made under the Fisheries Act 1996 prevails.
28. It is Te Wai Māori’s expectation that these provisions will ensure that Māori rights under the Treaty of Waitangi and associated settlement legislation are not infringed inadvertently through regulations. This subsection could be strengthened by expanding it to apply to actions taken, and regulations made, pursuant to the Fisheries Act 1996 (which would alleviate previously stated concerns regarding jurisdictional overlap).
29. Other insertions under this Bill such as those relating to authorisations for activities that disturb spawning grounds are generally positive and can provide greater clarity and encourage compliance.

### *Amendments to Freshwater Fisheries Regulations 1983*

30. Changes made to the Regulations appear to be largely restricted to removing redundant provisions. This is consistent with the stated intent of the amendment Bill.
31. One outstanding concern for Te Wai Māori is that the regulations related to faunistic reserves were left untouched. Early conversations with DOC staff indicated a desire on their part to amend these provisions. The faunistic reserves provisions as they are currently drafted within the Regulations consist of a blanket ban on all fishing activity in a gazetted area. There are no provisions to allow species-specific or activity-specific exemptions. If such a reserve were to be gazetted, it would certainly impact on Māori rights. We were disappointed to see that these provisions remain. However, DOC staff stated that it was not possible to include these changes in the amendment Bill but that the new regulation making powers would enable the Minister to change these regulations. DOC staff have said that the Minister will consult on

changes to the regulations to allow them to be species/life stage specific (e.g. to just protect migrating eels heading out to sea). We also note that DOC staff have advised that this amendment Bill will ensure that customary fishing is unaffected by a faunistic reserve.

### Timeframe

32. It is the view of Te Wai Māori that this process should not be rushed. Full and open consultation needs to take place with the Treaty partner and statutory organisations such as ourselves to ensure the Bill achieves its stated intent without inadvertently negatively affecting Māori fishing rights and responsibilities of Māori fishers.



Ken Mair  
**CHAIR**

DRAFT FOR FEEDBACK