

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

Government Bill

As reported from the committee of the whole House

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Bill**

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Eugenie Sage

Conservation (Indigenous Freshwater Fish) Amendment Bill

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Schedule

Amendments to Freshwater Fisheries Regulations 1983

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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

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

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3 Principal Act

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

Part 1

Amendments to Conservation Act 1987

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4 Section 2 amended (Interpretation)

- (1) In section 2(1), replace the definition of **freshwater fish** with:

	freshwater fish means—	
	(a) all species of Anguillidae <i>Anguilla</i> , Cyprinidae, Eleotridae <i>Gobiomorphus</i> , Galaxiidae, Ictaluridae, Percidae, Poeciliidae, Retropinnidae, and Salmonidae:	
	(b) all species of <i>Echyridella</i> :	5
	(c) all species of <i>Paranephrops</i> :	
	(d) Cheimarrichthyidae <i>Cheimarrichthys fosteri</i> :	
	(e) Geotridae <i>Geotria australis</i> :	
	(f) Gobiidae <i>Acentrogobius pflaumi</i> :	
	(g) Microdesmidae <i>Parioglossus marginalis</i>	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”.	
6	Section 26ZG amended (Application of Part)	
	Replace section 26ZG(2)(c) with:	25
	(c) the taking, holding, possession, sale, or disposal of freshwater fish by—	
	(i) a person who is specifically authorised under the Fisheries Act 1996 or any regulations made under that Act; or	
	(ii) a person who is specifically authorised under any regulations made under section 48B of this Act; or	30
	(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 by or under Treaty settlement legislation.	
7	New sections 26ZHA to 26ZHD and cross-heading inserted	35
	After section 26ZH, insert:	

Indigenous freshwater fish

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. 5
- (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 except in accordance with an authorisation given under **section 26ZHC(1)(a) or 26ZHD**. 10
- (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 takes the fish in accordance with an authorisation given under **section 26ZHC(1)(b) or 26ZHD**; or 15
- (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 20
- (c) the person—
- (i) takes the fish from the waters in a manner that does not lead to its injury or death; and
- (ii) returns the fish to those waters as soon as practicable after taking it; and 25
- (iii) 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.
- (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction to a fine not exceeding \$5,000. 30

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—
- (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 35

(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.	
(2)	An authorisation may be subject to any conditions or restrictions specified by the Director-General.	5
26ZHD Director-General may authorise taking of indigenous fish by <i>Gazette</i> notice		
(1)	The Director-General may, by notice in the <i>Gazette</i> , give authorisation for the taking of indigenous freshwater fish from an area other than a national park.	10
(2)	The notice must specify—	
(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.	15
(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	20
	After section 26ZI, insert:	
	<i>Spawning fish</i>	
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) section 26ZJA(3) :	
(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
(ca)	<u>disturbs any sports fish that are congregating or have congregated to spawn:</u>	
(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:	35

- (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 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. 5
- (2) ~~Subsection (1)~~ **Subsection (1)(a) to (c)** does not apply to the taking of freshwater fish subsequently found to contain eggs or larvae.
- (3) ~~Subsection (1)(d) and (e)~~ **Subsection (1)(ca) to (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)~~ **section 26ZJA(4) or (5)**. 10
- 26ZJA Director-General may declare spawning area**
- (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—~~ 15
- (a) is being used for the spawning of freshwater fish; or
- (b) is suitable for the spawning of freshwater fish.
- (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~~ 20
- (b) ~~the person complies with any conditions or restrictions specified by the Director-General.~~
- (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—~~ 25
- (a) ~~the activity would have no more than a minor effect on the suitability of the area for the spawning of freshwater fish; or~~
- (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.~~ 30
- (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—~~
- (a) ~~**subsection (3)(a), (b), or (c)** applies to the activity; and~~ 35
- (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.~~

- (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.

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26ZJA Director-General may declare spawning area

- (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.
- (2) Without limiting **subsection (1)**, the Director-General may make a notice declaring a spawning area under that subsection on the recommendation of the New Zealand Fish and Game Council in relation to the spawning of sports fish in the area.
- (3) A person must not carry out an activity in a declared spawning area that disturbs or is reasonably likely to disturb the area unless—
- (a) the Director-General has given authorisation under **subsection (4) or (5)** for the activity to be carried out; and
 - (b) the person complies with any conditions or restrictions specified in the authorisation.
- (4) The Director-General may, by notice in the *Gazette*, give authorisation for a specified activity to be carried out in a declared spawning area that disturbs or is reasonably likely to 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
 - (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.
- (5) The Director-General may, on application, give a person written authorisation to carry out a specified activity in a declared spawning area that disturbs or is reasonably likely to disturb the area if the Director-General is satisfied that—
- (a) **subsection (4)(a), (b), or (c)** applies to the activity; and
 - (b) any requirements in regulations have been met.

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- (6) An authorisation under **subsection (4) or (5)** may be subject to any conditions or restrictions specified by the Director-General in the authorisation.
- (7) In this section, an activity **disturbs a declared spawning area** if it—
- (a) disturbs the spawning of freshwater fish in the area; or
 - (b) makes the area less suitable for the spawning of freshwater fish in the area. 5
- (8) A notice under **subsection (4)** 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.
- Various restrictions relating to fishing and aquatic life* 10
- 11 Section 26ZL amended (Restrictions on fishing)**
Repeal section 26ZL(1)(a).
- 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.” 15
- (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,— 20
 - (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
 - (ii) the Minister must have regard to any comments provided by the Fish and Game Council within the time frame specified in that notice. 25
- (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. 30
- 13 Section 26ZP amended (Determination of closed seasons for fishing)**
- (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; 35
 - or

<p>(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.</p> <p>(2) A notice—</p> <p style="padding-left: 20px;">(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</p> <p style="padding-left: 20px;">(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.</p> <p>(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.</p>	<p>5</p> <p>10</p>
<p>(2) In section 26ZP(5), replace “sports fish” with “fish”.</p> <p>(3) After section 26ZP(5), insert:</p>	<p>15</p>
<p>(6) The Director-General may, on application, give a person written authorisation to take fish to which a closed season applies if satisfied that—</p> <p style="padding-left: 20px;">(a) the taking of the fish is consistent with the purpose of the closed season; and</p> <p style="padding-left: 20px;">(b) the person has met the requirements (if any) set out in regulations.</p> <p>(7) An authorisation may be subject to any conditions or restrictions specified by the Director-General or in regulations.</p>	<p>20</p>
<p>14 Section 26ZR amended (Using hazardous substances to catch or destroy fish)</p> <p>Replace section 26ZR(2)(a) with:</p> <p style="padding-left: 20px;">(a) a fish and game ranger or an employee or a contractor of the Department; or</p>	<p>25</p>
<p>15 Section 48 amended (Regulations)</p> <p>(1) In section 48(1)(a), after “issued”, insert “or authorisations to be given”.</p> <p>(2) In section 48(1)(b), replace “or permits” with “permits, or authorisations”.</p> <p>(3) In section 48(3), after “section”, insert “that relate to a conservation area”.</p>	<p>30</p>
<p>16 Section 48A amended (Special regulations relating to freshwater fisheries)</p> <p>(1AAA) In section 48A(1), after “Council,”, insert “on the recommendation of the Minister,”.</p> <p>(1) Replace section 48A(1)(f) with:</p> <p style="padding-left: 20px;">(f) regulating or prohibiting—</p>	<p>35</p>

- (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): 5
- (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 10
- (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: 15
- (s) specifying any requirements that must be met by a person seeking an authorisation under **section 26ZHD, 26ZJA(4)–26ZJA(5), or 26ZP(6)**:
- (sa) imposing conditions or restrictions that apply to an authorisation under **section 26ZP**: 20
- (t) specifying freshwater fish that are noxious fish and providing for their control, regulation, or prohibition:
- (v) imposing reporting requirements relating to the taking, injuring, killing, use, possession, or sale of specified freshwater fish. 25
- (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. 30
- (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. 35
- (6) If this subsection applies, a provision described in **subsection (5)(b)** prevails over a provision described in **subsection (5)(a)**.

16AA Section 51F amended (Offences relating to spawning fish)

- (1) Replace section 51F(1)(a) with:
- (a) disturb a declared spawning area within the meaning of **section 26ZJA(7)**; or
- (2) In section 51F(1)(c), before “have”, insert “take or”. 5
- (3) After section 51F(1)(c), insert:
- (ca) disturb any sports fish that are congregating or have congregated to spawn; or
- (4) In section 51F(1)(d), replace “take, with a spear, gaff, speargun, net, trap, or similar device,” with “with any spear, gaff, speargun, net, trap, or similar device, take”. 10

16A Schedule 1AA amended

In Schedule 1AA, after Part 1, insert:

Part 2		
Provisions relating to Conservation (Indigenous Freshwater Fish) Amendment Act 2018		15
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.	20
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.	25
4	<u>Application of section 26ZHB(1) to whitebait fishing in conservation areas delayed</u>	30
(1)	<u>Until the date that the first notice under section 26ZHD authorising the taking of whitebait comes into force, 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.</u>	35

(2)	The notice described in subclause (1) must not come into force on a date earlier than 2 years after the commencement date.	
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	10
	Regulations made under subsection 48(1)(na) section 48A(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.	15

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 .	20

Schedule
Amendments to Freshwater Fisheries Regulations 1983

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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	Introduction (Bill 87–1)
11 September 2018	First reading and referral to Environment Committee
31 July 2019	Reported from Environment Committee (Bill 87–2)
22 August 2019	Second reading
15 October 2019	Committee of the whole House (Bill 87–3)