

In Confidence

Office of the Minister of Conservation

Chair, Cabinet Environment, Energy and Climate Committee

IMPROVING WHITEBAIT MANAGEMENT

Proposal

1. This paper seeks agreement to release a discussion document on improving whitebait management, to ensure healthy and restored whitebait populations and provide for a sustainable fishery. This discussion document would support public consultation on whitebait management, including a proposed management goal for whitebait and amending the whitebait fishing regulations.

Executive Summary

2. Whitebait are highly valued by New Zealanders. These six species of native fish are a key part of our country's biodiversity and are taonga to Māori. The young of these fish comprise the iconic whitebait fishery.
3. A range of threats and pressures affect the six whitebait species. These include habitat loss and degradation, fragmentation (e.g. due to barriers to fish movement in waterways, such as culverts), introduced fish species and fishing pressure. As a result, four of the six whitebait species are classified as at risk or threatened.
4. The Department of Conservation holds most of the management responsibilities for whitebait, including management of the whitebait fishery. The regulations for whitebait fishing were last reviewed 25 years ago, in the 1990s.
5. Over time, the whitebait fishing regulations have become outdated. The rationale for some regulations is unclear, and there are unwarranted inconsistencies in the regulations that apply in different parts of New Zealand. Further, from a policy perspective, the management goal for whitebait species that the whitebait fishing regulations are intended to achieve is unclear.
6. Public engagement carried out by the Department of Conservation in 2018/19 found that 90% of approximately 3,000 contributors considered that action is required to make the whitebait fishery sustainable. Most contributors considered that the status quo for whitebait management is inadequate overall.
7. This paper seeks agreement to release a discussion document to support public consultation on improving whitebait management. The purpose of consultation is to seek feedback on proposals for:
 - A management goal for the six species of native fish that are fished and taken as whitebait

- Management outcomes for the whitebait fishery
 - Potential amendments to the whitebait fishing regulations, and,
 - Phasing out export of the whitebait species.
8. A high level of interest in the proposals in this discussion document is expected, because of the importance of whitebait to New Zealanders and the diverse values held for these fish. These proposals all received some support in the 2018/19 public engagement process.
9. Following public consultation on whitebait management, I expect to report back to Cabinet with any proposals for regulatory change in 2020.

Background

10. New Zealanders are passionate about whitebait. These native fish are an irreplaceable part of New Zealand's biodiversity and cultural heritage, and are taonga for Māori. Whitebait fishing is a popular activity for many people.
11. The whitebait fishery comprises the young of six species of New Zealand's native fish¹. Four of these six species are classified as at risk or threatened with extinction². The future of the whitebait fishery depends on these adult fish populations.
12. Threats and pressures that affect the whitebait species include habitat loss and degradation, fragmentation of habitat by barriers such as flood gates and culverts that prevent fish moving upstream and downstream, loss of spawning sites, introduced fish species, and fishing pressure. The nature and extent of threats varies among locations and between whitebait species.
13. The Department of Conservation (DOC) holds most of the management responsibilities for the whitebait species including managing the whitebait fishery. There are two sets of regulations that underpin the management of that fishery:
- the Whitebait Fishing (West Coast) Regulations 1994; and
 - the Whitebait Fishing Regulations 1994 (which cover the rest of New Zealand including the Chatham Islands).
14. There are key differences between management of the whitebait fishery and other recreational and freshwater fisheries in New Zealand (Appendix 1). For example, while the whitebait fishery is managed as a recreational one, anyone can sell or buy whitebait. There are no daily, seasonal or individual catch limits and fishers do not need a licence. There is also no total allowable (nationwide) catch.
15. The current regulations attempt to manage whitebait fishing mainly through:

¹ Īnanga* (*Galaxias maculatus*), kōaro* (*G. brevipinnis*), banded kōkopu (*G. fasciatus*), giant kokopu* (*G. argenteus*), shortjaw kokopu* (*G. postvectis*), and common smelt (*Retropinna retropinna*) (* identifies threatened or at risk species)

² under the New Zealand Threat Classification System

- specified seasons and times of day when fishing can occur
 - some controls on fishing gear
 - excluding whitebait fishing around some sites where whitebait aggregate (e.g. culverts)
 - provisions relating to fishing from licensed structures (known as whitebait stands)
 - areas closed to whitebait fishing, and,
 - upstream limits on fishing.
16. The whitebait fishing regulations have not been updated since the 1990s. Up to that time, the regulations were focused on sharing catch equitably among fishers. However, the rationale for some regulations has become unclear over time. Further, unwarranted inconsistencies exist between the whitebait fishing regulations that apply to the West Coast of the South Island and the rest of New Zealand.
17. More broadly, the management goal for the six whitebait species has not been set out in recent decades. The management outcomes that the fishing regulations are intended to support are also unclear.
18. The purpose of this consultation is to seek feedback on proposals for:
- A management goal for the six species of native fish that are fished and taken as whitebait
 - Management outcomes for the whitebait fishery
 - Amendments to the whitebait fishing regulations, and,
 - Phasing out export of the whitebait species.
19. In October 2019, the Conservation (Indigenous Freshwater Fish) Amendment Bill passed its third reading and received Royal assent. This Bill improved the suite of tools available for managing indigenous freshwater fish. It did not specifically address the whitebait fishing regulations.
20. In November 2018, the Minister of Finance and I approved the Biodiversity 2018 Contingency Business Case. The purpose of this funding package is to slow the decline in New Zealand's biodiversity. Biodiversity 2018 provides funding, released over four years, for work on migratory fish including two of the whitebait species (īnanga and shortjaw kōkopu).
21. Work supported by this funding will include habitat improvement at selected sites and monitoring of freshwater biodiversity. This work is expected to decrease the rate of decline, but will not reverse the decline, of adult populations of the whitebait species. It does not comprehensively address the threats and pressures affecting whitebait, or management of the fishery.

Improving whitebait management

22. In 2018, I directed DOC to examine issues for whitebait and options for improving whitebait management. This included a detailed review of scientific and technical information, and an extensive public engagement process co-designed with Māori subject-matter experts.
23. More than 3,000 people and organisations contributed during the public engagement on whitebait and findings were collated into a summary of feedback³. The majority of contributors considered that the status quo for whitebait management is not adequate. 90% of respondents considered that management of the whitebait fishery required improvement, to make that fishery sustainable. 39% of whitebait fishers reported that their catch had decreased in the last decade.
24. Contributors highlighted issues that could be addressed by management improvements in three main areas: the habitat that these fish require, the fishery, and the management framework (Table 1). They supported a range of management options to address the issues identified for whitebait (Table 2).
25. DOC concurs that the issues for whitebait highlighted by the public are significant. Some, such as restoration of spawning habitat, can be done without needing to amend whitebait fishing regulations. Others require public consultation and changes to regulation. This consultation seeks to address five of the major issues identified in the public engagement process (Table 2).

Proposals for consultation on whitebait management

26. The discussion document for whitebait management sets out proposals for a management goal and management outcomes for whitebait, and amendments to the whitebait fishing regulations.
27. The management goal proposed for the six whitebait species is:
 - To ensure healthy and restored whitebait populations and provide for a sustainable fishery
28. This goal is defined to:
 - Provide confidence about population status of the six native fish species whose young are collectively known as whitebait, and,
 - Clarify that both the conservation of these species and providing for a whitebait fishery in perpetuity are important.
29. The management outcomes proposed to support this goal are:
 - The whitebait fishery is well-managed

³ DOC. 2019. New Zealanders' views on whitebait management: Summary of a public engagement process. Department of Conservation. Available at: <https://www.doc.govt.nz/whitebait-management>

- The fishery is managed for the recreational enjoyment of participants
 - The Crown's Treaty partner is involved in the management of the whitebait fishery
 - Fishing activity does not compromise the intrinsic value of the species and resource
 - The options of future generations are safeguarded
 - Management of the whitebait fishery is nationally consistent
 - Compliance with the management regime is the norm and the extent and severity of non-compliance does not increase over time, and,
 - The fishery is well supported by habitat management.
30. These proposed management outcomes are derived from the legislative and policy framework for the whitebait species (e.g. the Conservation Act 1987).
31. Regulatory proposals included in this consultation will contribute to achieving the management goal and outcomes set out above. These are:
- Amending the timing of the whitebait fishing season
 - Introducing nationwide upstream limits on whitebait fishing
 - Creating refuges for whitebait species in selected waterways (where whitebait fishing would be excluded for a specific timeframe)
 - Amending whitebait fishing practices, and,
 - Phasing out export of the whitebait species.
32. Broadly, the rationale for these regulatory proposals is to:
- Reduce fishing pressure on the six whitebait species, and bycatch species (which include threatened and taonga native fish species)
 - Make the availability of catch more equal among fishers (i.e. excluding gear that enables disproportionately high individual catch per unit effort), and,
 - Improve the nationwide consistency of the whitebait fishing regulations.
33. A summary of the proposed amendments to the whitebait fishing regulations, how they compare with the existing regulations, and DOC's recommended options is set out in Appendix 2.
34. When determining the scope of this consultation, I considered and set aside two additional options for improving whitebait management. These were:

- Phasing out the sale of wild-caught whitebait, and,
 - Introducing a licence for whitebait fishing.
35. These options were supported in the feedback received during public engagement. I set them aside at this time because I consider that the proposed suite of measures in this consultation can improve whitebait management when considered alongside the tools provided by the Conservation (Indigenous Freshwater Fish) Amendment Act, and the work on two whitebait species (īnanga and shortjaw kōkopu) that is supported by the Biodiversity 2018 funding package.
36. The whitebait fishing regulations have not been reviewed for 25 years.
37. The proposals set out in this discussion document for public consultation on whitebait management do not affect Māori fishing rights, including customary fishing rights.

The consultation process

38. Consultation on whitebait management would commence with the release of this discussion document. Consultation is proposed from mid-December through to March 2020. From late January and in February, public discussion sessions are planned to provide an opportunity for the public to ask questions about the proposals.
39. Treaty partner hui would be held on request during the consultation period. Hui would build on pre-consultation engagement with iwi conducted in 2019.

Consultation

40. The Ministry of Business, Innovation and Employment, Ministry for the Environment, Ministry for Primary Industries/Fisheries New Zealand, Office for Crown Māori Relations – Te Arawhiti, Te Puni Kōkiri, Treasury, and the Department of the Prime Minister and Cabinet were consulted in the preparation of this discussion document and Cabinet paper.
41. Feedback received during the public engagement process on whitebait conducted by DOC in 2018/19, and pre-consultation engagement with iwi in 2019, is reflected in this discussion document.

Climate Implications

42. There are no climate implications associated with the proposals set out for improving whitebait management.

Financial Implications

43. The release of the discussion document on whitebait management has no financial implications. If any such implications arise from proposals for regulatory amendment developed after public consultation, those would be brought to Cabinet for consideration.

Legislative Implications

44. There are currently no proposals for amending legislation or regulations. Proposals for regulatory amendment may arise as a result of the consultation carried out through this discussion document. Any such proposals would be brought to Cabinet for separate future consideration.

Impact Analysis

45. The discussion document on whitebait management functions as an interim Regulatory Impact Assessment. DOC's Regulatory Impact Assessment Panel has assessed the public consultation document and considers that it partially meets the Regulatory Impact Assessment requirements. An appropriate level of analysis of the options is presented, however the document as a whole is lengthy and complex. There is a risk that members of the public find the consultation document challenging to navigate and will not be able to easily engage with the key proposed changes to the management of the whitebait fishery that the Government is seeking feedback on.

Publicity

46. A press release is planned when this discussion document is published, and public consultation commences.
47. There is likely to be considerable interest in this consultation from Treaty partners, the wider public, and media. DOC is prepared for this, including with a communications plan and by proactively engaging with iwi and key stakeholders.

Proactive Release

48. It is proposed that this paper is proactively released (in whole) within 30 business days of the decision to release the discussion document being taken by Cabinet.

Recommendations

The Minister for Conservation recommends that the Committee:

1. agree to the release of the attached discussion document on improving whitebait management, for consultation starting mid-December 2019, and running through to March 2020;
2. authorise minor and technical changes and editorial amendments to the discussion document on improving whitebait management prior to its public release;
3. note that the outcomes of consultation will be reported to Cabinet, together with any emergent proposals for regulatory change, in the first half of 2020.

Authorised for lodgement

Hon Eugenie Sage

Minister for Conservation

Released by the Minister of Conservation

Table 1. Major issues for whitebait recognised by contributors across DOC’s public engagement process. Blue: issues that will be addressed by Government work underway. Green: Issues that can be progressed without public consultation. Yellow: Issues that are included in this public consultation.

Habitat	The fishery	Management
Water quality / pollution	Non-compliance with regulations	No clear management goal / target
Loss of habitat	Ability to sell whitebait	No dedicated funding for management
Fish passage blocked	Fishing season is too long	Lack of knowledge e.g. to support / enable management
Lack of spawning sites	Fishery inadequately regulated	Management framework complex and does not adequately involve iwi
Inadequate enforcement (of habitat-related rules, consent conditions)	Inadequate enforcement of regulations	Management inconsistent with other freshwater fisheries
	Overfishing	
	Fishery not respected as shared resource	
	Lack of knowledge of fishing regulations	

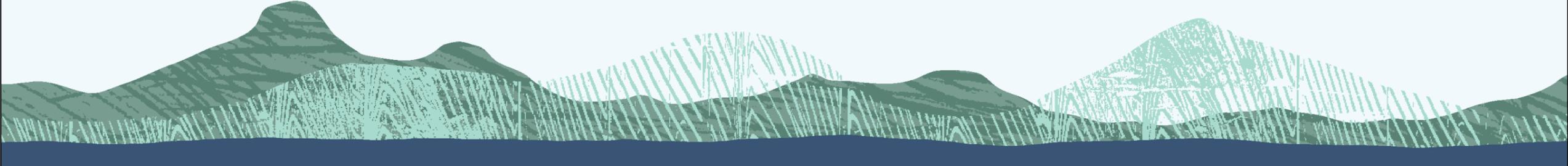
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Table 2. Management options for whitebait that were most strongly supported by contributors to the public engagement process. Options are grouped under the category of issues they address. Options included in this consultation are highlighted in yellow.

Habitat	The fishery	Management
Habitat protection and restoration	Increase enforcement of fishing regulations	More cohesive management (government, councils, iwi)
Mitigate barriers to fish passage	Temporary closure (rāhui) of some rivers to whitebaiting	Divide the fishery by sector for management
Increase enforcement relevant to whitebait habitat (e.g. consent conditions)	Permanent closure of some rivers to whitebaiting	Create a proper legislative framework for the sale of whitebait
	Require a licence to fish for whitebait	Science and research to address knowledge gaps
	Shorten the fishing season	
	Catch limits (e.g. daily)	
	Ban the sale of whitebait	
	Gear restrictions (e.g. ban sock nets, name gear)	
	Restrict fishing where whitebait aggregate	
	Restrict fishing to specific areas in rivers	
	Ban fishing on spring tides	

Appendix 1. Examples of how New Zealand’s recreational fisheries are managed.

	Whitebait 	Trout 	Eel 	Snapper 
Limits	<ul style="list-style-type: none"> ▶ No licence ▶ No bag limit ▶ No size limit 	<ul style="list-style-type: none"> ▶ Licence ▶ Bag limit ▶ Size limit 	<ul style="list-style-type: none"> ▶ No licence ▶ Bag limit ▶ No size limit 	<ul style="list-style-type: none"> ▶ No licence ▶ Bag limit ▶ Size limit
Regulation	<ul style="list-style-type: none"> ▶ Freshwater Fisheries and Whitebait Regulations apply to recreational fishery ▶ Commercial allowed and unregulated ▶ Customary fishing allowed 	<ul style="list-style-type: none"> ▶ Recreational regulated regionally ▶ Commercial not allowed ▶ No customary fishing 	<p>Quota Management System includes:</p> <ul style="list-style-type: none"> ▶ recreational ▶ commercial ▶ customary <p>All are regulated</p>	<p>Quota Management System includes:</p> <ul style="list-style-type: none"> ▶ recreational ▶ commercial ▶ customary <p>All are regulated</p>
Plans	<ul style="list-style-type: none"> ▶ No fishery management plan ▶ 6 species managed as one 	<ul style="list-style-type: none"> ▶ Regional management plans ▶ Single species management 	<ul style="list-style-type: none"> ▶ Draft National Fisheries Plan for Freshwater (MPI) - whitebait and trout not included ▶ Single species management 	<ul style="list-style-type: none"> ▶ Snapper (SNA1) Management Plan (MPI) ▶ Draft National Fisheries Plan for Inshore Finfish (MPI) ▶ Single species management
Knowledge	<p>Fishery very poorly understood, including:</p> <ul style="list-style-type: none"> ▶ impact of fishing ▶ no catch reporting 	<ul style="list-style-type: none"> ▶ Fishery and fishing activity well understood ▶ No catch reporting 	<ul style="list-style-type: none"> ▶ Recreational fishery poorly understood ▶ No catch reporting 	<ul style="list-style-type: none"> ▶ Fishery somewhat understood (especially where the most fishing occurs) ▶ Recreational catch estimated every 5 years in some areas
Management	<ul style="list-style-type: none"> ▶ Managed by DOC ▶ Compliance: DOC ▶ Funded from baseline 	<ul style="list-style-type: none"> ▶ Managed by Fish & Game ▶ DOC manages Taupō trout fishery ▶ Compliance: F&G, DOC ▶ F&G and DOC funded from sale of fishing licences 	<ul style="list-style-type: none"> ▶ Managed by Fisheries New Zealand (MPI) ▶ Compliance: MPI ▶ Funded from baseline 	<ul style="list-style-type: none"> ▶ Managed by Fisheries New Zealand (MPI) ▶ Compliance: MPI ▶ Funded from baseline



Appendix 2. Regulatory proposals included in this consultation and how they differ from the current state (* DOC's recommended options)

Change proposed	Options (*DOC's recommended option)	Comparison with existing regulation
Timing of the whitebait season	For New Zealand, excluding the Chatham Islands: 15 August – 14 October* 1 September – 30 October 1 September – 15 November	1 September – 15 November is the current season for whitebait fishing on the West Coast of the South Island. In the rest of New Zealand excluding the Chatham Islands, the whitebait season runs 15 August – 30 November.
Nationwide upstream limits on whitebait fishing	Introduce back-pegs to mark upstream limits to whitebait fishing* Where back-pegs are not in place, whitebait fishing occurs within tidal limits*	The upstream limit of whitebait fishing is defined using back-pegs and the tidal extent on the West Coast of the South Island. Around the rest of New Zealand, there is no upstream limit.
Selected waterways are whitebait refuges (fishing excluded)	Temporary (2 years on, 2 years off) Temporary (5 – 10 year timeframe) Longer term (10+ year timeframe)*	Permanent whitebaiting exclusions are in place in some waterways on the West Coast. Whitebait fishing is excluded from national parks and certain reserves, unless a specific permission is in place.
Whitebait fishing practices	Phase out sock nets, traps in nets, screens*	Sock nets, traps and screens may be used around New Zealand.
	Nationwide size and location restrictions on screens and diversions	Regulations for screens differ between the West Coast (e.g. size and placement) and the rest of New Zealand (no specific requirements).
	No fishing from structures other than stands*	In place on the West Coast but not elsewhere around New Zealand.
	Fishing prohibited within 20 m of weirs, groynes and illegal diversions*	Whitebaiting is prohibited within 20 m of any tide gate, flood gate, outlet pipe or culvert around New Zealand. On the West Coast, fishing is also not permitted within 20 m of illegal diversions.
	Nets not to be located beyond outer edge of stand*	In place on the West Coast but not elsewhere around New Zealand.
	One net used when fishing from a stand*	In place on the West Coast but not elsewhere around New Zealand.
	Nationwide maximum overall length limit for gear of 6 m*	In place around New Zealand but not on the West Coast.
	Nationwide maximum incursion of gear (excluding stands) into a waterway of 1/4*	This distance is currently 1/3 of the width of a waterway (which is inconsistent with recreational fishing regulations for other species).
	Drag net provisions to apply nationwide	In place around New Zealand but not on the West Coast.
Minimum fixed distance of 20 m between fixed fishing gears (not whitebait stands)*	There is currently no minimum distance set between fixed fishing gears (excluding stands).	
Phase out export	Phase out the export of the whitebait species*	Export of the whitebait species is currently allowed.