



Te Wai Māori

RESPONSE TO THE DEPARTMENT OF CONSERVATION'S
DISCUSSION DOCUMENT - "IMPROVING WHITEBAIT
MANAGEMENT - TE WHAKAPAI AKE I TE WHAKAHAERE
ĪNANGA"





Response to the Department of Conservation's Discussion Document - "*Improving Whitebait Management – Te Whakapai ake i te Whakahaere Īnanga*"

Introduction

1. This document provides Te Wai Māori Trust's response to the Department of Conservation's (DOC) Discussion Document - "*Improving whitebait management – Te whakapai ake i te whakahaere ĩnanga*" (the Discussion Document), released January 2020.
2. Te Wai Māori Trust works on behalf of 58 mandated Iwi organisations (MIOs), who represent all Iwi throughout Aotearoa. This submission was provided to these MIOs for feedback. However, 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.

Executive Summary

3. The following provides a summary of Te Wai Māori Trust's response to the Discussion Document:
 - The discussion document makes no reference to Section 4 of the Conservation Act, nor to the numerous Treaty settlement arrangements that contain specific provisions relating to whitebait and freshwater fisheries. Further exacerbating this is the general lack of analysis regarding the impact of these proposals on Māori. We consider that the absence of this analysis, and the poor attempt by DOC to engage with Māori and Te Wai Māori Trust falls short of DOC's obligations under Section 4 of the Act.
 - Te Wai Māori Trust seek an immediate commitment from DOC to completely reframe the way it engages with Māori (including Te Wai Māori Trust), to ensure that moving forward engagement is mana-enhancing and Te Tiriti-based.
 - Te Wai Māori Trust is supportive of the management goal, which seeks to "**Ensure healthy and restored whitebait populations and provide for a sustainable fishery**" and the eight proposed outcomes. However, the Discussion Document does not strategically or adequately capture what is required to achieve these aspirations and it raises questions over who will have responsibility for how and when these outcomes will be achieved. This is further exacerbated by the fact that much of what is included in the rationale for these outcomes is outside the scope of the Discussion Document.



- Te Wai Māori Trust is concerned that the relationship of Māori with traditional waters and fisheries must be given appropriate recognition. Māori maintain a relationship with the natural environment through sustainable use, and we do not support permanent exclusion of Māori from traditional mahinga kai. Te Wai Māori Trust seeks a commitment from DOC to co-design the process surrounding whitebait refuges from initial identification and narrowing of the current 'long-list' through to review and potential uplift if/when established, with Iwi/hapū.
 - Te Wai Māori Trust is generally supportive of the inclusion of a proposal to phase out the export of whitebait subject to appropriate impact analysis being undertaken, including economic impact analysis, to determine what impact this proposal will have on Māori.
 - To be able to effectively manage the whitebait species and fishery into the future and achieve the proposed management goal, better research; data; and compliance, monitoring and enforcement is required, and we believe this should be a priority for DOC moving forward. We are disappointed at the failure to include consideration of catch limits (for both recreational and commercial fishers) and requirements around data collection and monitoring as part of this review.
4. We address the above points in greater detail in the proceeding sections of this response.

Te Wai Māori Trust

5. This response is made on behalf of Te Wai Māori Trust who are an independent Māori Trust established under the Maori Fisheries Act 2004 (the Maori Fisheries Act). The purpose of Te Wai Māori Trust is to advance Māori interests in freshwater fisheries¹(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.
6. Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries. The long-term outcomes Te Wai Māori Trust work towards include:
- enhancing the health and well-being of the indigenous fisheries and their environment;

¹ The Maori 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.

- increasing Iwi and hapū capacity and capability in freshwater fisheries and their ability to take responsibility for the health and well-being of freshwater fisheries;
 - promoting and sharing indigenous fisheries expertise, knowledge and understanding; and
 - increasing the quality and range of information to Iwi and hapū on freshwater fisheries and their interests thereof.
7. Our core values are te mana o te wai, whakapapa, and kaitiakitanga and represent the natural order of the Te Wai Māori Trust worldview. First and foremost, we value freshwater and all that is encompassed in its ecosystems. The inherent right for water in its own state. Each water body has its own mauri. Whakapapa recognises our interdependence which binds us as tangata of the environment; and kaitiakitanga, our obligation and responsibility to care for Papatūānuku and ngā atua. Māori do not distinguish land from lakes, lagoons, rivers, wetlands, freshwater species and their associated beds. They are considered part of an undivided entity. Ensuring the health and well-being of freshwater is essential for the continued health and well-being of freshwater fisheries. 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.
8. Healthy freshwater fisheries depend on upholding our responsibilities to ensure the health and well-being of freshwater environments (including surrounding terrestrial and riparian habitats). This in turn requires good information, constructive inter-agency relationships, effective regulations and rules, and clear priorities for action.

Giving effect to the Treaty of Waitangi principles

9. The Deed of Settlement reaffirmed the Te Tiriti 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 regulations that impact Māori access to customary non-commercial and commercial fishing in freshwater and marine environments. This is also supported by section 4 of the Conservation Act where it states that the Conservation Act "*shall so be interpreted and administered to give effect to the principles of the Treaty of Waitangi*".
10. Iwi and hapū have expressed that there is a real need for the identification and articulation of Māori values and perspectives of freshwater ecosystems to help build greater understanding within and alongside Crown agencies. Effective understanding of Māori interests and values with Crown agencies requires full Iwi and hapū participation and a commitment from Crown agencies to collaborate in good faith and build strong, enduring relationships.
11. DOC and other Crown agencies must engage in mana-enhancing, Te Tiriti-based processes to formulate taonga freshwater fisheries policy. It is Te Wai Māori Trust's view that the development of policy and regulations that acknowledge cultural values and provide a role for Iwi and hapū nationwide in implementation and interpretation and would significantly add to improved understanding of taonga species. Much to Te Wai Māori Trust's discontent, DOC has not enabled



such a process to occur. Accordingly, Te Wai Māori Trust seek an immediate commitment from DOC to completely reframe the way it engages with Māori, to ensure that moving forward engagement occurs in a manner that is mana-enhancing and Te Tiriti-based².

A management goal for whitebait and proposed outcomes

12. Te Wai Māori Trust is supportive of the proposed management goal, which seeks to ***“ensure healthy and restored whitebait populations and provide for a sustainable fishery”*** but are concerned that the Discussion Document does not clearly articulate how this will be achieved.
13. With respect to the eight proposed outcomes (required to support the delivery of the management goal), Te Wai Māori Trust consider that further refinement, analysis and clarification is required, including to the wording of the outcomes and rationale. This is further exacerbated by the fact that much of what is included in the rationale for these outcomes are outside the scope of this Discussion Document.
14. When DOC originally sought public feedback on the issues and pressures facing whitebait, feedback included the need to address both fishing and environmental factors that affect the abundance of this species. This review was an opportunity for a coordinated cross-agency response to be initiated to address the wide range of threats facing the species including habitat loss and degradation, fish passage barriers, water quality degradation, climate change and predation by introduced species. Accordingly, we are disappointed to note that the focus of the review is limited to DOC’s responsibilities for the whitebait fishery under the Conservation Act, meaning that the majority of threats to whitebait populations, as outlined above, are not directly addressed through this review.
15. It is unclear how the limited scope of changes proposed under this review will feed into wider government reform occurring. For instance, the work currently underway on the proposed revised National Policy Statement for Freshwater, which includes a number of proposals that will likely be beneficial to the whitebait species and contribute toward achieving the objectives of this review, including those relating to water quality, habitat, fish passage and stock exclusion. Associated (Crown) responsibilities, timeframes and interdependencies need to be clearly identified as relevant to the proposed management goal and outcomes.

² We refer to the Waitangi Tribunal report *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity* (WAI 262) which found that: “a Treaty-compliant environmental management regime is one that is capable of delivering the following outcomes to kaitiaki:

- *control* by Māori of environmental management in respect of taonga where it is found that the kaitiaki interest should be accorded priority.
- *partnership* models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making, but other voices should also be heard, and
- *effective influence and appropriate priority* to kaitiaki interests in all areas of environmental management when the decisions are made by others.

It should be a system that is transparent and fully accountable to kaitiaki and the wider community for its delivery of these outcomes”.

16. While indirectly touched on through proposed upstream limits and whitebait refuges, we also find the absence of any commentary or direct focus on the adult form of the six whitebait species to be of concern and consider this should be included as an essential element to achieving the proposed management goal. Te Wai Māori Trust is disappointed that DOC have not taken the opportunity to develop fishery management plans for each of the six whitebait species. Each of the species differs in terms of distribution, habitat requirements, migration ability and threat status and should have specialised management plans that take these differences into account. Te Wai Māori Trust considers the limited scope of this review is a missed opportunity to provide direction for these environmental and habitat pressures.
17. To be able to effectively manage the whitebait species and fishery into the future and achieve the proposed management goal, better data and monitoring is also required. The failure to consider the introduction of catch limits and requirements around data collection as part of this review, is disappointing. Te Wai Māori Trust considers their inclusion essential if we are to track the efficacy of any changes made and ultimately improve the health and abundance of whitebait in our waterways.
18. We note the reference to the International Union for the Conservation of Nature (IUCN) threat classifications for shortjaw kōkopu and giant kōkopu, and the comment in the Discussion Document noting both have decreasing populations. Omitted from the document was more context, specifically the fact that the IUCN panel had no data (as there is no specific data available), and instead based their classifications on the basis of a limited amount of information on past and existing human pressures that whitebait have experienced over the last 20 years. Given this review of whitebait does not address any issues related to habitat for juveniles, adults or spawning adults (as identified by the IUCN), inclusion of the IUCN threat classifications seems disingenuous. Instead the review of whitebait should be reframed to also include pressures on adults (and provision for spawning cycles) of each of the six species, and some effort put toward gathering data on extractions of whitebait. Te Wai Māori Trust consider that data collection and long-term monitoring of all six³ whitebait species should be a priority for DOC moving forward.
19. Te Wai Māori Trust support Treaty partner involvement in the management of the fishery as a proposed outcome. However, the Discussion Document fails to provide detail of how this will occur in practice. Given its significance to Māori, this review was an opportunity to co-design a response between Māori and the Crown to all pressures, on indigenous freshwater fish. Taking this approach would assist DOC to engage and work with Māori in a way that is mana-enhancing, and Te Tiriti-based.

³ Not just inanga and shortjaw kokopu as currently proposed, through Biodiversity 2018 funding

20. While in theory Te Wai Māori Trust see merit in working toward a nationally consistent management approach to the whitebait fishery, the rationale put forward is problematic, stating that “customary regulations” may not be aligned with this outcome. Clarification is required from DOC and appropriate analysis must be undertaken of the potential implications of this.
21. Te Wai Māori Trust support the inclusion of a compliance related outcome, noting the importance of compliance (in addition to monitoring and enforcement) to achieving the objectives of this review. However, the proposed outcome needs to be refined as the current wording (“*the extent and severity of non-compliance does not increase over time*”) infers no improvement is sought to be achieved, rather that the status quo will be maintained. Considering that it is not apparent that DOC has sufficient capability and capacity to undertake adequate compliance, monitoring and enforcement functions, the actual purpose and intent of this outcome is questionable and in its current form toothless.

Proposals for amendments to the whitebait fishing regulations

22. Te Wai Māori Trust support the move to strengthen existing whitebait fishing regulations and recognise that such changes can contribute toward long-term outcomes that Te Wai Māori Trust aspire to achieve, including to enhance the health and well-being of indigenous fisheries. However, there needs to be an assessment conducted that explores the impact of these proposed changes to regulations on Māori.

Timing of the whitebait season

23. Options are proposed to align the whitebait fishing season around New Zealand (excluding the Chatham Islands). Te Wai Māori support the inclusion of proposals reviewing the timing of the whitebait season as a straightforward and potentially effective way to alleviate fishing pressure. We note that compliance, monitoring and enforcement will be key to the effectiveness of the proposed changes to timing of the whitebait season.

Nationwide upstream limits on whitebait fishing

24. Currently the only regulations relating to upstream fishing limits, apply to the West Coast of the South Island via the Whitebait Fishing (West Coast) Regulations 1994. These include the introduction of back-pegs as a means of displaying the final point along the stream where whitebait fishing can occur and, where back-pegs are not used, limiting where whitebait fishing can occur to a tidal portion of waterways. DOC proposes to apply these regulations across New Zealand in order to align regulations nationwide and, therefore, improve national consistency in the management regime.
25. Te Wai Māori Trust is generally supportive of these measures as they seek to increase species abundance and improve national consistency in the management regime but consider an



assessment of the potential impact on Māori of these proposed regulatory changes must be undertaken.

Creating short-term and longer-term refuges for whitebait species

26. Te Wai Māori Trust consider that one of the most important considerations for providing for an 'abundant and sustainable fishery' is to provide the necessary habitat for the six species of whitebait throughout all of its life stages. Equally important is the need for Māori to maintain their relationship with their waters. For generations this has been done through the exercise of kaitiakitanga, the reciprocal relationship that Māori have with the natural environment, including taonga species. For whitebait this relationship is maintained through the sustainable harvest of fish, however, it is also the right to use the resource in a way that provides for social, cultural and economic wellbeing. Approaches that seek 100% preservation, and exclude Māori from their traditional waters, fisheries and resources do not align with kaitiakitanga.
27. As currently framed, alienation of Māori from their waters and impact of that on social, cultural and potentially economic wellbeing is a concern to Te Wai Māori. This is due to the lack of transparency with respect to the process for identification and review of refuge sites and possibility of permanent exclusion (i.e. as is possible through DOC's preferred option). We have also received feedback from Iwi that a mix of the refuge options be applied depending on the specific site conditions, rather than blanket application of a single option.
28. Te Wai Māori Trust is, in general, supportive of the idea of exploring the establishment of temporary whitebait refuges and note that rāhui have been implemented as a management mechanism for whitebait in some catchments. Te Wai Māori Trust seek a commitment from DOC to co-design the process surrounding whitebait refuges from initial identification and narrowing of the current 'long-list' through to review and potential uplift if/when established. We consider that this would require Iwi/hapū involvement in a decision-making capacity.
29. We recommend further engagement with kaitiaki, through Iwi on this issue and that particular consideration be given to overlapping interests and ensuring that disputes aren't created between neighbouring Iwi/hapū.

Whitebait fishing practices

30. While Te Wai Māori Trust is generally supportive of the inclusion of proposals intended to change whitebait fishing practices, we advocate for impact assessment taking place to determine the potential impacts on Māori of these proposals. Again, we note the importance of compliance, monitoring and enforcement to effectiveness of these proposed changes to whitebait fishing practices.



Phasing out Exports

31. While Te Wai Māori Trust generally support exploring proposals to phase out export of whitebait, we consider a greater level of information is required on the existing export market, particularly any Māori involvement in it. We recommend DOC undertake analysis specific to impacts on Māori, including any potential impacts on the Māori economy.

General comments

32. Te Wai Māori Trust do not consider the Discussion Document to be of high quality. It does not read well, with key information articulated; structured and presented poorly (notably Tables 3 and 4). Te Wai Māori consider this to be particularly problematic for general members of the public grappling to understand the raft of changes proposed and participate in a process that is already intimidating for many.

If you would like to discuss this submission please contact Carly O'Connor, Senior Policy Analyst: Te Wai Māori Trust. Carly.O'Connor@teohu.maori.nz or 027 700 6856



Te Wai Māori