

Simplifying the decision-making process for freshwater aquatic life transfers

1.0. Purpose of this review

The Department of Conservation, in association with Ministry of Fisheries, is proposing to clarify and streamline section 26ZM of the Conservation Act and Part 8 of the Freshwater Fisheries Regulations, as part of the proposed Conservation Law Reform Bill of 2004. The Conservation Act and Freshwater Fisheries Regulations are administered by the Department of Conservation.

Cabinet has approved most elements of the reform, but required further consultation with iwi and Fish and Game stakeholders on options for improving the decision – making process, “without materially affecting jurisdictional boundaries”.

The purpose of this document is to provide information about the current aquatic life transfer consent processes and options for rationalisation to assist those who wish to express their views on the options outlined.

The results of this consultation will contribute to the drafting of the aquatic life transfer provisions in the proposed Conservation Law Reform Bill. Parties will have a further opportunity to make submissions on the Bill when it is referred to a Select Committee later this year.

Comments on the proposed options can be made to:

“Decision-making process for aquatic life transfers review”

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The submission closing date is Monday 19 April 2004.

2.0. Context of the reform

In April 2003 Cabinet agreed to a review of the provisions relating to the transfer of freshwater aquatic life to resolve some immediate problems. Broader issues relating to freshwater management will be dealt with by a more complete review at a later date.

The immediate problems that the reform seeks to address are:

- Existing legislation does not contain criteria for decision-making and therefore consistency between decision-makers is hard to maintain
- The establishment of some fisheries require multiple consents from more than one agency or Minister

- The terminology in the Act and associated regulations is inconsistent and confusing
- All transfers to a site where a species is not currently present require public notification even if they pose no risk to public interests. This can impose significant costs
- There is no provision for Fish and Game Councils or Ministry of Fisheries to recover costs of processing applications
- There is no provision for applicants to have decisions reviewed except through the courts

Changes agreed to by Cabinet in April 2003 for inclusion in the Conservation Law Reform Bill included:

- removing the requirement for public notification and submissions for low risk applications
- specifying clear criteria to be used by decision-makers
- allowing applicants to apply to the decision –maker for a reconsideration of a decision
- providing for one consent to cover multiple transfers to the same site, where appropriate
- recovery of application processing costs by the Ministry of Fisheries and Fish and Game Councils. This currently only applies to the Department of Conservation
- defining clearly the terms used in the legislation

3.0. The existing legislation and consents required

As the following text and Figure 1 shows there are a number of overlapping provisions relating to the transfer or release of freshwater aquatic life.

Section 26ZM of the Conservation Act addresses the transfer, release or movement of freshwater aquatic life. Under s26ZM(2) the prior approval of the Minister of Fisheries is required for the movement of aquatic life between:

- sites where the species already exists
- islands of New Zealand

Under s26ZM(3) the prior approval of the Minister of Conservation is required for the transfer or release of aquatic life to:

- a new location where that species does not already exist (includes fish farms)
- any land or water managed under the Conservation Act or other Acts listed in the First Schedule to the Conservation Act (e.g. Reserves Act, National Parks Act)

Applications requiring Minister of Conservation approval require public notification and a public submissions process. s26ZM does not apply to the transfer of sports fish to another location in the same island where the species is already present except where the Minister of Conservation or Minister of Fisheries requires a Fish and Game Council to apply for consent.

Regulations 58-63 of the Freshwater Fisheries Regulations also address the transfer of freshwater aquatic life. Regulation 58 requires the consent of the Director General of conservation for liberating any species of mollusca, crustacean, protozoan, insecta, annelid, nematode, platyhelminth or oligochaete worm into any lake, river or stream. Regulation 59 requires the consent of the Fish and Game Council for the area to liberate any fish or fish ova into any river, lake or stream. Consent is required from the Director General of Conservation under Regulation 60 for the same matter for areas not under the jurisdiction of a Fish and Game Council.

Regulation 61 requires the consent of the Director General of Conservation to liberate any fish or fish ova into a lake, river or stream if the person or Fish and Game Council cannot show that species is already present. For the purpose of this regulation any portion of river or stream above a dam or waterfall is deemed to be a separate river or stream to that below. Regulation 62 requires the consent of the Director General and the appropriate Fish and Game Council to transfer any sports fish or ova to another catchment. Regulation 63 requires the consent of the Director General of Conservation and the appropriate Fish and Game Council to transfer aquatic life (excluding ornamental tropical fish and goldfish bred and kept only in artificial ponds or aquariums) between islands of New Zealand.

Under the existing controls an applicant is required to lodge an application with the Department of Conservation for consents from the Director General and Minister of Conservation; Ministry of Fisheries where consents are required from the Minister of Fisheries and the appropriate Fish and Game Council when Fish and Game Council consents are required.

A summary of all the Conservation Act and Freshwater Fisheries Regulations provisions is shown in Figure One.

Box 1 contains definitions. There are, however, no definitions in the legislation for the terms “transfer”, “liberate”; movement”, “introduce”, “release” and “place” (as a verb). This has created considerable confusion and disagreement as to the meaning of particular sections. Examples of the different uses of terms include:

- Conservation Act s26ZM(3) controls “transfer” to and “release” in
- Conservation Act s26ZM (2) controls “movement” between
- Freshwater Fisheries Regulations 58-62 controls “place, liberate or introduce”
- Freshwater Fisheries Regulations 62 -63 controls “transfers”

Box 1: Conservation Act terminology related to aquatic life transfers

Aquatic life: “any species of plant or animal life (except birds) that must, at any time of the life history of the species, inhabit freshwater, and includes any part of such plant or animal”
Freshwater: “All waters of rivers, streams, lakes, ponds, lagoons, wetlands, impoundments, canals, channels, watercourses, or other bodies of water whether naturally occurring or artificially made: (b) All waters of estuaries or coastal lagoons: (c) All other fresh or estuarine waters where freshwater fish indigenous to or introduced into New Zealand are found: (d) All waters in the mouth of every river or stream, and the mouth of every river and stream shall be deemed to include every outlet thereof and the seashore between those outlets and the waters of the sea or lying a distance of 500m from any place where at low tide the waters of a river or stream meet the waters of the sea.”

Freshwater fish : “includes all species of finfish of the classes Agnatha and Osteichthyes, and all shellfish of the classes Mollusca and Crustacea, that must, at any time in the life history of the species, inhabit freshwater; and includes any part thereof and such finfish and shellfish that seasonally migrate into or out of freshwater.”

4.0. Options for improving decision-making processes for aquatic life transfers

A number of options for improving decision making processes have been considered by the Ministry of Fisheries and the Department of Conservation. The options presented here aim to provide for more co-ordinated decision making without materially affecting the existing jurisdictional responsibilities of Ministers.

Both options remove the Freshwater Fisheries Regulation 59 consenting role of Fish and Game Councils for transfers of fish and fish ova to rivers, lakes and streams. In the first option this is replaced by including Fish and Game New Zealand as part of an agency advisory group making recommendations to the decision-making Minister. In the second option the agency advising the decision-making Minister is required “to have particular regard to the advice of Fish and Game New Zealand”.

Both options remove the separate decision-making roles of the Director General of Conservation where these can be covered by Ministerial decision-making.

4.1. Option1: Agency Advisory Group

Under this option (Figure 2) all applications to transfer aquatic life would be made to the Department of Conservation. The Department of Conservation would initially assess the application to determine whether the application was of sufficient public interest as to require public notification and arrange for this as appropriate.

The application would then be distributed to the Ministry of Fisheries and Fish and Game New Zealand. Where appropriate the application may be sent to the relevant iwi authority and/or outside specialist(s). Once the application had assessed by the relevant parties, and any public submissions received, the Department of Conservation would convene an “Agency Advisory Group” of Department of Conservation, Ministry of Fisheries and Fish and Game New Zealand. This would usually be convened electronically to save costs. The advice received by each agency would be circulated to each group member who would seek to achieve a consensus recommendation to be sent to the decision-making Minister. The Minister would receive advice on any dissenting views as well as the application and appropriate background information.

The proposed advisory group would consist of a senior representative from each of the existing consent agencies (Ministry of Fisheries, Department of Conservation, and Fish and Game New Zealand) and would be established under statute and convened as required to consider applications. It is proposed that this group would have a fixed membership to maintain consistency in its recommendations.

4.1.1. Decision-makers

The Minister of Conservation would continue to make decisions on applications for:

- new introductions of species and subspecies to waters where they are not naturally present or have not been legally introduced;
- transfers to lands and waters administered under the Conservation Act and all the enactments listed in the First Schedule of the Conservation Act; and waters protected by water conservation orders.

The Minister of Fisheries would make decisions on applications for subsequent transfers to waterbodies where the species or subspecies already legally occurs and movements between the islands of New Zealand. This will not apply to releases to any waters where decisions have been made by the Minister of Conservation.

4.2. Option 2: Agency Consultation

Under this option (Figure 3) applications to transfer aquatic life would be made to either the Department of Conservation or Ministry of Fisheries, depending on which Minister is likely to make the final decision. The Department of Conservation would distribute the applications they receive to the Ministry of Fisheries and Fish and Game New Zealand for their assessment. The Department would be required “to have particular regard to” their advice. Where appropriate the application may be sent to the relevant iwi authority and/or outside specialist(s). The Department of Conservation would also determine whether the application was of sufficient public interest as to require public notification and arrange for this as appropriate.

Similarly the Ministry of Fisheries would distribute applications they receive to the Department of Conservation and Fish and Game New Zealand and would be required “to have particular regard to” their advice.

Under this option there would be no multi-agency advisory group that makes a single recommendation to the decision-making minister. Instead the recommendations to the Minister of Conservation would come from the Department of Conservation, while the recommendations to the Minister of Fisheries would come from the Ministry of Fisheries.

4.2.1. Decision-makers

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- transfers to lands and waters administered under the Conservation Act and all the enactments listed in the First Schedule of the Conservation Act; and waters protected by water conservation orders.

The Minister of Fisheries would make decisions on applications for subsequent transfers to waterbodies where the species or subspecies already legally occurs and movements between the islands of New Zealand. This will not apply to releases to any waters where decisions have been made by the Minister of Conservation.

4.3. Comparison between options

Table 1 compares the main features of each option which each other and the status quo

Table1: Comparison between options

Component	Status quo	Option 1: Advisory Group	Option 2: Agency consultation
Number of consents required by applicants	A single application may require multiple consents from different Ministers and several agencies. Separate applications to the Minister of Fisheries are required for restocking after the initial Minister of Conservation approval	Most applications will require a single consent although separate applications to the Minister of Fisheries may still be required for restocking after the initial Minister of Conservation approval	Most applications will require a single consent although separate applications to the Minister of Fisheries will still be required for restocking after the initial Minister of Conservation approval
Where applications are lodged	Applications are lodged with the agency (Department of Conservation, Ministry of Fisheries, Fish and Game Council) that makes each decision or makes the recommendation to its Minister	All applications go to Department of Conservation irrespective of which Minister will make the decision	Applications go to Department of Conservation or Ministry of Fisheries depending on which Minister will make the decision
Role of Fish and Game New Zealand	Fish and Game Councils have a consent role for release of fish or fish ova to lakes, rivers and streams under Freshwater Fisheries Regulations 59; between catchments (R62) and between islands (R63). There is no legislative requirement to consult them on other applications	Fish and Game New Zealand is a member of the 3 agency advisory group making a recommendation to the decision-making Minister for all applications. It no longer has a consent role for any releases.	Particular regard is to be had to the advice of Fish and Game New Zealand by both the Department of Conservation and Minister of Fisheries when they make recommendations to their respective Ministers for all applications. It no longer has a consent role for any releases.
Role of Director General of Conservation	The Director General has consenting roles under Freshwater Fisheries Regulations 58, 60, 61, 62, 63	Those Director General consenting roles that duplicate existing Minister of Conservation and Minister of Fisheries consents will be removed. The Minister of Conservation consent role will be	Those Director General consenting roles that duplicate existing Minister of Conservation and Minister of Fisheries consents will be removed. The Minister of Conservation consent role will be

Component	Status quo	Option 1: Advisory Group	Option 2: Agency consultation
		amended to include any outstanding matters.	amended to include any outstanding matters.
Role of Minister of Fisheries	The Minister of Fisheries has decision making responsibilities under Conservation Act s26ZM(2)	The Minister of Fisheries has decision making responsibilities equivalent to those under Conservation Act s26ZM(2) as at present	The Minister of Fisheries has decision making responsibilities equivalent to those under Conservation Act s26ZM(2) as at present
Role of Minister of Conservation	The Minister of Conservation has decision making responsibilities under s26ZM(3)	The Minister of Conservation has decision making responsibilities equivalent to those under s26ZM(3) as at present with minor amendment to include any outstanding Director General of Conservation consents not already covered by existing Ministerial consents	The Minister of Conservation has decision making responsibilities equivalent to those under s26ZM(3) as at present with minor amendment to include any outstanding Director General of Conservation consents not already covered by existing Ministerial consents
Recommendations to decision making Ministers	These are made by Department of Conservation for Minister of Conservation decisions, and by Ministry of Fisheries for Minister of Fisheries decisions	These are made by a three agency advisory group	These are made by Department of Conservation for Minister of Conservation decisions and by Ministry of Fisheries for Minister of Fisheries decisions. In both cases they are to have "particular regard to" the advice of " the other department and Fish and Game New Zealand

Figure One: The existing consent requirements for transferring freshwater aquatic life (more than one consent may be required)

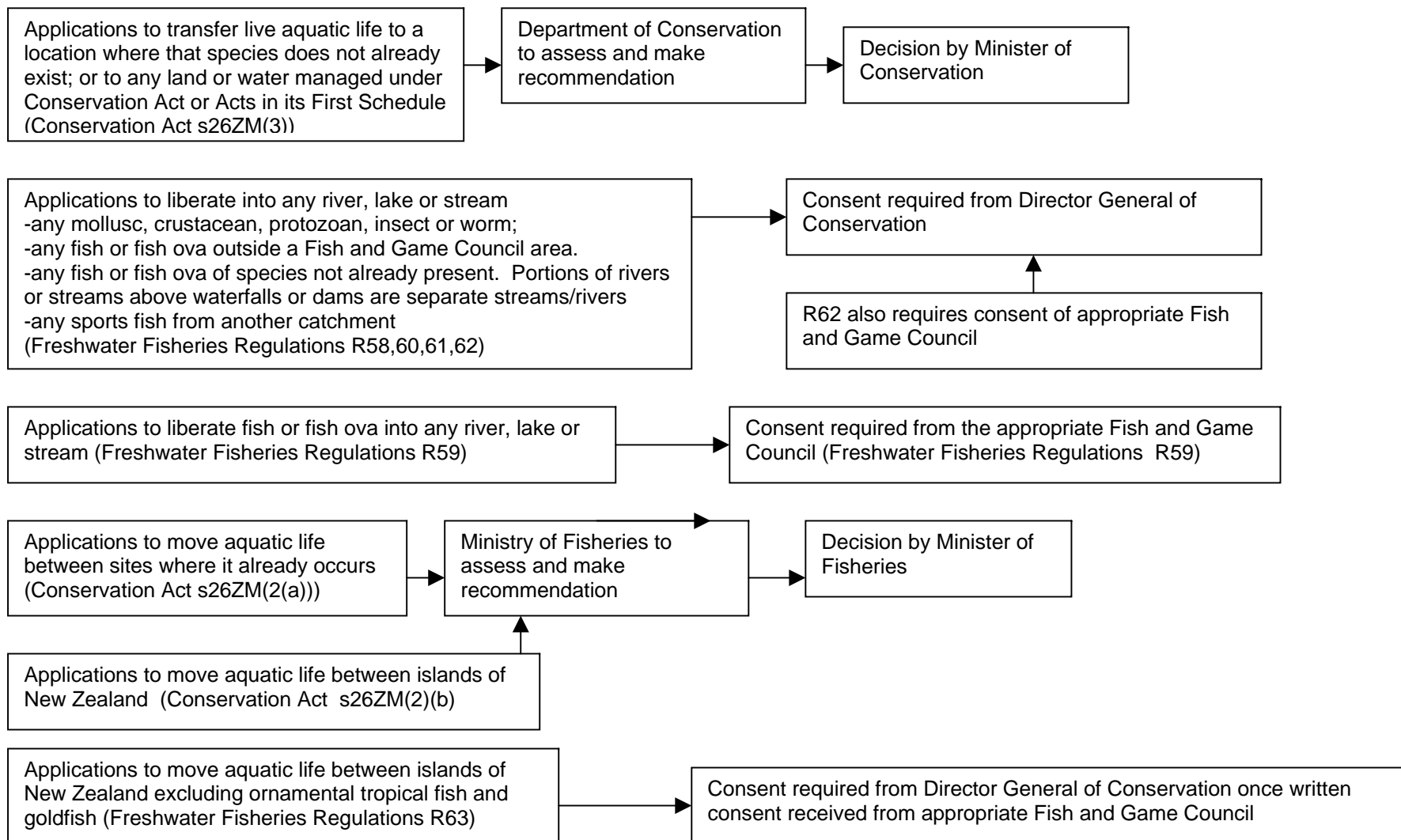


Figure Two: Agency Advisory Group Option 1 for freshwater aquatic life transfer decision making process under the Conservation Act

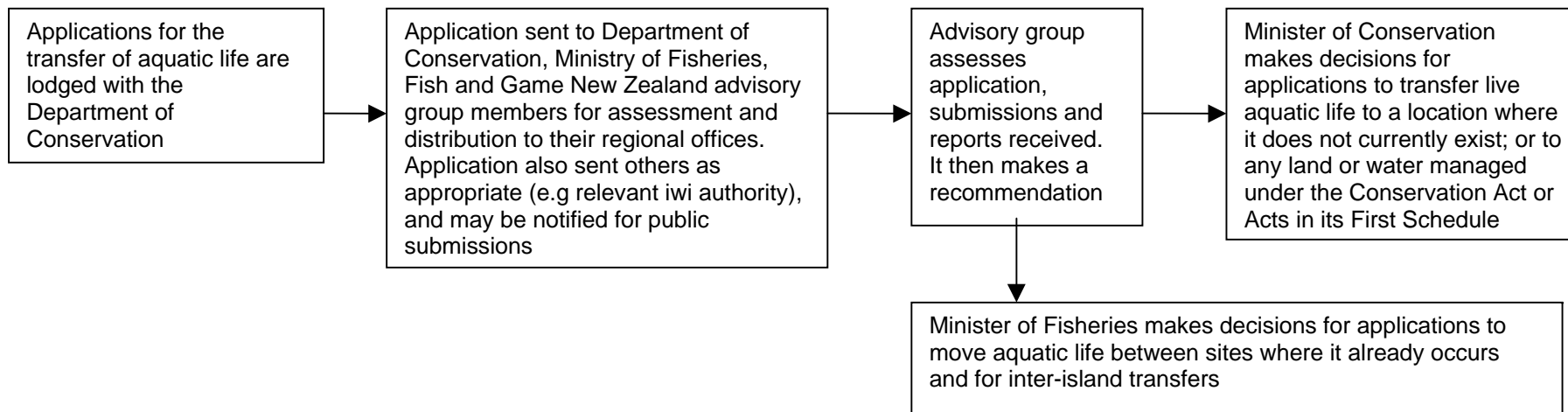


Figure Three: Agency Consultation Option 2 for freshwater aquatic life transfer decision-making processes under the Conservation Act

