

Freshwater Fisheries and Fast Track

Freshwater fish are managed under the Conservation and Fisheries Acts, and Freshwater Fisheries Regulations (FFR) under the Conservation Act (CA). Their habitats are largely managed through the freshwater provisions of the RMA. The Fast Track (FT) legislation seeks to streamline the current dual jurisdiction in respect of some common activities in water bodies affecting fish populations which can be managed in standard ways.

The work to develop the FT Bill identified several activities that are subject to fisheries-related regulations that commonly occur in infrastructure and similar development work:

- Works in waterbodies that have temporary effects on fish, such as temporary draining and diversion to allow work to be undertaken and minor gravel removal.
- Activities where fish become trapped and need to be salvaged for release in an adjacent part of the same waterbody. Where the salvaged fish is a noxious species, such as a koi carp, it needs to be killed rather than released.
- The building of simple structures such as low fords or culverts which, if designed poorly, will impede fish passage and deny fish access to potentially significant habitat.

This part of the Bill was intended to clarify scope, set basic outcomes for these activities, and if the conditions imposed under the RMA ensure that the activity complies with that standard, remove any need for permissions under fisheries legislation. That reduces costs and uncertainty for developers.

Where an unusual activity was being undertaken, like construction of a dam that needing a fish ladder, or transfer of fish between waterbodies (posing significant biosecurity risk), the normal FFR/CA provisions would continue to apply, allowing case-by-case design approaches to be agreed. In those cases, the panel could recommend that the effects be addressed only through the fisheries regulatory system, and that no RM conditions on those matters need be included. An applicant could seek fisheries approval before or after FT approval.

The speed at which the Bill was drafted led to some ambiguity as to what is in scope of FT, which can be defined as three categories. We are seeking to clarify the scope of policy intent and amend the Bill to better specify this.

1. **In FT scope:** instream activities such as instream works, culverts and fords affecting water bodies for which standard conditions or NES Freshwater permitted activity rules can provide for fish habitat and fish passage and provide for minor activities to move fish within the same catchment to avoid direct effects from those usually temporary instream works, avoid spawning times for the species present, with fish passage to be designed and maintained in standard ways.
2. **Potentially in scope:** activities such as low dams (< 4m in height¹) which may:
 - a. divert water from the water body (thus affecting river flows or water levels which may affect fish habitat/carrying capacity both at the site and up- or down-stream);
 - b. impede fish passage and thus require special or bespoke methods to be specified for fish passage over the dam; and
 - c. fish screening to prevent loss of fish into any diversion structures such as penstocks which carry the diverted waters away from the water body to some other water use.

¹ As defined in the NZ Fish Passage Guidelines, which are applied only to those dams less than 4 m high.

3. **Not in scope:** dams greater than 4m in height which may impound or divert a significant proportion of water, impede migratory fish, alter habitat and would require site specific measures including a fish facility approval under sections 43 and 44 of the FFR.

This will be clarified in further Bill drafting. To consider any relevant listed applications now, there may be insufficient detail in an application seeking a project be listed to confirm if a dam proposed meets the FT requirements in respect of fish passage, fish screening and appropriate flows or water levels.

Options

There are two options to address this issue immediately:

1. [*Preferred*] Defer a decision on the activity status by placing the application on Schedule B, which would provide sufficient time for more information to be included in an application to include appropriate resource consent conditions to address the fishery management issues;
or
2. Process the application under FT without including those aspects, which could be addressed by a separate FFR fish facility approval.