



Fisheries New Zealand

Tini a Tangaroa

Developing a new Special Permit Purpose

Management and Eradication of Pest Aquatic Life

Fisheries New Zealand Discussion Paper No: 2021/01

Prepared by Aquaculture and Fisheries Permitting Team

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1 Making a Submission

Fisheries New Zealand invites written submissions from interested parties on the proposed new special permit purpose outlined in this document.

Submissions should be emailed directly to: specialpermits@mpi.govt.nz

Alternatively, should you wish to forward hard copy submissions, please send them to the following address:

Aquaculture and Fisheries Permitting
Fisheries New Zealand
Private Bag 14
Nelson 7042

All written submissions, whether by email or in hard copy, must be received by Fisheries New Zealand no later than **5.00pm on Tuesday 9th March 2021**.

Fisheries New Zealand will consider all relevant material provided in submissions so you are encouraged to include as much supporting information as possible.

Please make sure you include the following information in your submission:

- the title of the consultation document;
- your name and title;
- your organisation's name (if you are submitting on behalf of an organisation, and whether your submission represents the whole organisation or a section of it); and
- your contact details (such as phone number, address, and email).

1.1 Submissions are Public Information

Please note that your submission is public information. Submissions may be the subject of requests for information under the Official Information Act 1982. The Official Information Act specifies that information is to be made available to requesters unless there are sufficient grounds for withholding it, as set out in the Official Information Act 1982.

Submitters may wish to indicate grounds for withholding specific information contained in their submission, such as if the information is commercially sensitive or if they wish personal information to be withheld. Fisheries New Zealand will take such indications into account when determining whether or not to release the information.

2 Purpose of this consultation paper

Fisheries New Zealand proposes to seek approval from the Minister of Fisheries (the Minister) for a new purpose to enable the issue of a special permit under section 97(1)(c) of the Fisheries Act 1996 ('the Act'). This new purpose will enable the granting of special permits to parties so that they can manage and eradicate New Zealand aquatic life pest species.

Fisheries New Zealand has developed this paper for the purpose of consultation as required under the Act. The views outlined in this paper are preliminary and are provided as a basis for consultation with persons and organisations with an interest in the granting of the special permit, including Māori, environmental, commercial and recreational interests.

3 Background

In New Zealand, all fishing requires a fishing permit under the Act. There are some exceptions such as customary and recreational fishing undertaken in accordance with the relevant regulations. However, some fishing activities do not fall within the exceptions provided in the Act and cannot be authorised by a fishing permit under section 91 of the Act. These activities require a ‘special permit’, authorised under section 97 of the Act.

3.1 Special Permits

Special permits are a fisheries management tool that authorises the taking of fish, aquatic life, or seaweed for purposes including but not limited to:

- investigative research;
- education;
- eradication and management of unwanted aquatic life;
- gear trials;
- for any other purpose approved by the Minister of Fisheries.

A special permit can override any section of the Act or regulations made under the Act as long as the activities are consistent with the purpose and principles of the Act. Because a special permit can override any section of the Act, a robust assessment of a special permit application is carried out. This assessment can involve input from the relevant experts across Fisheries New Zealand, the wider MPI and persons and organisations who MPI considers would have an interest if a special permit were issued.

Special permits are issued by the Director General of MPI for a specified period of time and may be revoked if they consider the applicant is not achieving the permit objectives or complying with any conditions. Special permits typically specify detailed conditions under which fish may be taken and disposed of, and the Act allows for these conditions to be changed or revoked at any time.

The authority to take, transfer, release or dispose of fish, aquatic life, or seaweed under special permits does not preclude the permit holder from having to obtain any other approvals under any other legislation or regulations administered by Fisheries New Zealand or any other agency, such as the Department of Conservation. This includes gaining appropriate authorisation to fish in areas subject to specific fisheries restrictions under regulations or rāhui.

Fisheries New Zealand also considers the input and involvement of local Tangata whenua. This includes the need to obtain written approval from the tāiapure management committee or Tangata Kaitiaki/Tiaki (North Island) or Tangata Tiaki/Kaitiaki (South Island) prior to fishing in any tāiapure–local fisheries or mātaihai area.

4. Pest Aquatic Life

The definition of a “pest” species is not legally bound by legislation or regulation. Pests are defined by the national or regional councils’ pest management plans. This definition is quite narrow; therefore, for this new special permit purpose, the following criteria for what constitutes a pest will be followed:

- An organism that is currently in a regional/national pest management plan (or is regarded as a pest species by the lead agency or council); or
- An introduced or invasive organism, whether present in New Zealand or not, that has undesired effects on native flora and fauna, and their habitats¹ ; or
- An organism that is also an Unwanted Organism (Biosecurity Act 1993) or a Noxious fish (Freshwater Fisheries Regulations 1983).

The pest species of particular focus will include (but not limited to) freshwater pest fish and marine fauna pest species.

4.1 Marine Pest Fauna

There are 11 marine fauna pest species currently present in New Zealand that fit the definition of a pest species. Each of these species is noted within at least one regional council’s pest management plan.

Table 1: List of pest marine fauna pest species that are present under different regional council pest management plans.

Common Name	Scientific Name	Legal Status	Legislation	NZ Status
Asian paddle crab	<i>Charybdis japonica</i>	No status	-	Established
Australian droplet tunicate	<i>Eudistoma elongatum</i>	No status	-	Yes - Investigating
Carpet sea squirt / Whangamata sea squirt	<i>Didemnum vexillum</i>	No status	-	Present
Clubbed tunicate	<i>Styela clava</i>	Unwanted Organism	Biosecurity Act 1993	Established
Japanese mantis shrimp	<i>Oratosquilla oratoria</i>	No Status	-	Present
Mediterranean fanworm	<i>Sabella spallanzanii</i>	Unwanted Organism	Biosecurity Act 1993	Established
Perna perna	<i>Perna perna</i>	No status	-	Controlled
Pyura sea squirt	<i>Pyura doppelganger</i>	No status	-	Established

¹ Adapted from the definition of a “freshwater pest” in the Freshwater Biosecurity Partnership Programme 2016-2021 Strategy.

4.2 Freshwater Pest Fish

There are eight freshwater fish species that fit this criteria of pest, as outlined in table 1. The management and the status of each of these eight species are highly variable regionally and locally.

Table 2: List of pest fish that are present under different regional council pest management plans (the status of each pest fish will vary across each regional council).

Common Name	Scientific Name	Legal Status	Legislation
<i>Gambusia</i> /Mosquitofish	<i>Gambusia affinis</i>	Unwanted organism	Biosecurity Act 1993
Koi Carp	<i>Cyprinus carpio</i>	Unwanted organism	Biosecurity Act 1993
		Noxious fish	Freshwater Fisheries Regulations 1983
Rudd	<i>Scardinius erythrophthalmus</i>	Noxious fish	Freshwater Fisheries Regulations 1983
		Sports fish	Conservation Act 1987
Perch	<i>Perca fluviatilis</i>	Sports fish	Conservation Act 1987
Tench	<i>Tinca tinca</i>	Sports fish	Conservation Act 1987
Brown bullhead catfish	<i>Ameiurus nebulosus</i>	No legal status	Under Freshwater (Amateur Fishing) Regulations: must be killed upon capture
Goldfish	<i>Carassius auratus</i>	No legal status	-
Orfe	<i>Leuciscus idus</i>	No legal status	-

4.3 Legislative framework for Freshwater Pest Fish

Not all pest fish have legal status: however, all are managed through either regional councils and regional pest management plans, the Department of Conservation (DOC), or Fish and Game New Zealand (F&G). Pest fish management varies due to the different legislation relevant to each fish and the severity and urgency involved in their management.

For some introduced fish species, there is inconsistency in legal status and therefore tension between different legislation, governing organisations, and management objectives. For example, Tench, Perch and Rudd are termed ‘pest fish’ in most regional council pest management plans but are also defined as ‘sports fish’ under the Freshwater Fisheries Regulations 1983. Under the Conservation Act 1987, F&G is required to manage these same ‘sports fish’ and their habitats.

Terminology across the legislation is also inconsistent, which can sometimes make interpretation difficult. For example, under the Freshwater Fisheries Regulations 1983, having Noxious Fish ‘under control, or rear, catch, hatch or consign’ is illegal; whereas under the Biosecurity Act 1993, ‘Unwanted Organisms’ have ‘restricted sale, distribution and propagation’.

The creation of a new special permit purpose will enable all species that can be defined as pest fish, regardless of legislation, to be managed or eradicated under a single purpose. Before the potential issue of any special permit that includes a pest species managed by another governing body (such as F&G), thorough consultation will be undertaken.

4.4 Other Pests (including flora)

There are also numerous marine and freshwater plant species that fit the definition of a pest species. These species include undaria (*Undaria pinnatifida*), didymo (*Didymosphenia geminata*), alligator weed (*Alternanthera philoxeroides*), water hyacinth (*Eichhornia crassipes*) and oxygen weed (*Lagarosiphon major*). All these species and most other plant pest species have been classified as unwanted organisms under the Biosecurity Act 1993.

5 Proposed New Purpose

Fisheries New Zealand proposes that the Minister approves a new special permit purpose under s 97(1) (c) of the Act to enable special permits to be granted so that pest aquatic life can be managed and/or eradicated. The purpose will enable any person, or agency to apply for special permits to ‘take’ and dispose of pest aquatic life for management and eradication purposes.

The proposed special permit purpose is:

“To allow a person or agency to manage and eradicate pest aquatic life”

Applications made under the new purpose should look to align with regional councils’ or government agencies’ pest management plans as they define a pest and are the lead agencies in managing biodiversity. If an introduced or invasive pest is not reflected in a regional or agency pest management plan, it is technically not classified as a pest in that particular region.

To address this gap and allow more flexibility, Fisheries New Zealand proposes to consider pest species managed under the new purpose within these criteria:

- An aquatic organism that is currently in a regional/national pest management plan (or is regarded as a pest species by the lead agency or council); or
- An introduced aquatic organism, whether present in New Zealand or not, that has undesired effects on native flora and fauna, and their habitats² ; or
- An aquatic organism that is also an Unwanted Organism (Biosecurity Act 1993) or a Noxious fish (Freshwater Fisheries Regulations 1983).

The new purpose will focus on two major aquatic life pest groups, freshwater pest fish and marine pest fauna. Previous special permit applications have sought to manage or eradicate these species eg, brown bullhead catfish and Asian paddle crab, which are not classified as unwanted organisms under the Biosecurity act 1993.

Marine and freshwater plants pests species are mostly defined as unwanted aquatic life, hence why there is no need to highlight these species. Additionally, the majority of marine pest organisms are already managed through biofouling measures in place by Biosecurity New Zealand.

With reference to freshwater pest fish, it is important to note that some sports fish may be also be termed as pest fish under regional councils’ pest management plans. For any special permit application that involves the “take” and “disposal” of sports fish, Fisheries New Zealand will engage with F&G, as the agency who manages sports fish.

² Adapted from the definition of a “freshwater pest” in the Freshwater Biosecurity Partnership Programme 2016-2021 Strategy.

Fitting the criteria of what defines a pest does not instantly mean that an applicant will automatically gain a special permit. If a species fits the criteria, a robust assessment of the application will follow that will include:

- consultation with relevant parties who have an interest in the granting of a special permit for such a purpose, including Māori, environmental, commercial, and recreational interests; and
- reviewing the quantity of take, locations of collection, collection and disposal methods, and measures in place to mitigate bycatch; and
- ensuring the applicant is aware of certain restrictions under different legislation/regulations and all other relevant approvals are attained before any activity is carried out.

The new purpose will also look to align with the Biosecurity 2025 direction statement and the Biodiversity Strategy 2000-2020 (which will be renewed this year) that outlines a multi-agency approach to preventing biodiversity decline in New Zealand. The new purpose will align with the following objectives of the Biodiversity Strategy³ below:

- Objective 2.2 outlining the need to prevent, control and manage pest fish that pose a threat to native freshwater biodiversity; and
- Objective 3.5 outlining the need to establish appropriate management responses to prevent and reduce biosecurity risks to marine biodiversity and minimise these impacts.

5.1 Rationale for Proposed New Purpose

The current purposes for issuing a special permit do not fully encompass the management or eradication of pest aquatic life. This is due to the differing legal status of pest species and no clear definition of pests in legislation or regulation.

Pest aquatic life are currently managed and eradicated under the Act through the purpose of either:

- i. investigative research, as a before and after project involving monitoring (section 97 (1) (ii)) ; or
- ii. management or eradication of unwanted aquatic life (section 97 (1) (iii)).

The “management or eradication of unwanted aquatic life” purpose does not encapsulate all pest aquatic life as not all pests are legally defined as unwanted aquatic life. Freshwater pest fish such as the brown bullhead catfish, golden orfe and rudd (outside of the Auckland/Waikato Fish and Game region), and the marine fauna such as the Asian paddle crab and Australian droplet tunicate do not fall under this purpose.

The other avenue for a special permit in this scenario is through the use of the “investigative research” purpose. This purpose is only suitable for projects that have an experimental

³Biodiversity Strategy 2000-2020: <https://www.doc.govt.nz/globalassets/documents/conservation/new-zealand-biodiversity-strategy-2000.pdf>

element such as a feasibility trial, research objectives, or the use of a new innovative method. Projects or programmes that are specific to long term management or purely for eradication purposes do not fit this purpose.

Creating a new purpose for the eradication or management of pest aquatic life will provide a clearer pathway to gaining a special permit for this purpose, and encapsulate all pest aquatic life regardless of their legal status. The special permits under this new purpose are aimed at supporting current regional and national pest management plans across different regions (but not limited to only the pest species specified there), account for the differing legislation and regulations already in place for various pest aquatic life, and ensure best practice for minimising bycatch of native fish and bird species. The proposed special permit conditions are discussed as follows.

6 Proposed Standard Conditions

6.1 Duration of the special purpose

The proposed special permits under the new purpose will be valid for a maximum of five years. This period is the maximum for any special permit issued. However, the exact duration will depend on how specific the project is in terms of timeframes (For example, short one-off eradication project compared to a long-term management project). This flexibility reflects the continuous need for management and eradication of pest aquatic life across water bodies in New Zealand.

Permit holders will be able to apply to renew their special permit, if required. This renewal will enable Fisheries New Zealand to reassess the work that is being carried out and ensure that special permits are updated with the latest standards.

6.2 Where fishing may be undertaken

Special permits under the new purpose will define the area that may be fished. A permit could be limited to a council's specific area, or could apply to all New Zealand fisheries waters governed by the Act (this includes estuaries as defined in the Act), except those waters that are closed by a regulation under the Act.

The permit holder will also be required to:

- obtain any relevant approvals from the Department of Conservation or the relevant Fish and Game Council before taking freshwater species from any inland waters. These approvals include authorisation from the Department of Conservation to fish within a protected area (such as any national park or reserve under the Reserves Act 1977); and
- obtain written approval from the tāiapure management committee or Tangata Kaitiaki/Tiaki (North Island) or Tangata Tiaki/Kaitiaki (South Island) prior to fishing in any tāiapure–local fisheries or mātaihai area.

6.3 Collection of pest aquatic life

Husbandry and Holding of pests

Under this proposed new purpose, pest species that are taken must be euthanised at point of capture, as soon as practicably possible. The handling, holding, euthanasia and transport of fish must meet the obligations set out in the *Animal Welfare Act 1999* and relevant provisions of codes of welfare under the Act, including the code of welfare for transport. This is to ensure that live pest species are humanely disposed of and are not introduced accidentally into other catchments or areas where they were previously not present.

Fisheries New Zealand does not propose to limit the quantity of pest species that can be taken. This aligns with the purpose of managing and eradicating pest aquatic life.

Utilisation of pests

Pest fish taken under this proposed new purpose, in most cases, will not be used for the purpose of sale, personal use or collection, for human consumption, or for bait.

For freshwater pest fish, certain fish can be taken under different permits such as 67a of the *Freshwater Fisheries Regulations 1983*, which enables the harvest of koi carp from within the koi carp containment area. In this case, applicants would still need a special permit for the “take” of koi carp if the methods used would contravene fisheries regulations. A special permit under this purpose is viewed as the most appropriate available mechanism to enable this.

Additionally, if an individual can demonstrate that the pest species will be utilised in a genuine manner (for example, donating fish as food to a marae) that does not create continuous product, a special permit may be issued. The special permit will enable this through the disposal conditions (see 5.5 below). This will be assessed on a case-by-case basis with each application. However, it is important to note here that this new special permit purpose is for management and eradication reasons and allowing a continuous commercial benefit from pest species by creating a valuable product will undermine the underlining reasoning for creating this purpose. This would ultimately create a disincentive to eradicate pest fish.

In the event where eradication is deemed unachievable and the practical approach for managing a pest species is long term management and range control, utilisation for the purpose of sale may be deemed acceptable. An example of such is the ability to harvest koi carp from the koi carp containment area where the aim is centralised around long-term management in contrast to eradication.

6.4 Collection Methods

An experienced or qualified individual(s) will need to be present to ensure the agreed methods within the specific special permit are being carried out appropriately.

The methods used in collecting pest species will be assessed on a case-by-case basis depending on the target pest species, duration and location. This assessment will include outlining what is currently best practice, accounting for the objectives of the project and input from experienced person(s) internally within MPI such as Fisheries New Zealand and Biosecurity NZ, and externally with key parties such as DOC, F&G and local Iwi.

Bycatch of non-target species

The pest management and eradication projects will differ in location, scale, targets, potential bycatch species and methods. Therefore creating a specific bycatch standard within the purpose does not allow for flexibility in tailoring the best possible outcomes for both the bycatch and the project.

In saying such, Fisheries New Zealand will consider and place appropriate conditions on each permit to ensure that there is no significant bycatch of native flora and fauna (particularly taonga species such as freshwater eels) and non-target sports fish; and that when bycatch occurs, the approved fishing methods enable greater survivability.

In previous special permits granted for the management and eradication of unwanted aquatic life (koi carp), specific conditions were included covering the use of set nets, trammel nets and soak time. These conditions were tailored to the location, species involved and the scale of the project.

Any individual that is operating under this new purpose will only be able to ‘take’ pest species. If an individual plans to take any other species (such as native fish or sports fish), whether accidentally or deliberately, they would need to make sure that their current special permit or any other applicable permit allows this. For example, an individual holding a F&G Licence would be able to ‘take’ sports fish in line with the methods that both authorisations allow. Special permit holders will not need additional permits (such as a F&G Licence) if bycatch is immediately released to the point of capture.

6.5 Disposal of pests

Any special permits issued under the proposed new purpose will in most cases not allow the transfer or retention of live pest species.

Sports fish species that are also pest fish can be transferred but only in line with the Act, Freshwater Fisheries Regulations and the Conservation Act, as well as F&G for transferring sports fish. Any transfer of dead pest fish will have to be in line with the Biosecurity Act 1993, and the Act.

Pest species must be humanely euthanised, as outlined within the *Animal Welfare Act 1999*, at point of capture and will either be;

- i. disposed of in a biosecure manner⁴ to land. This will preferably be in close proximity to the capture site to ensure that there is no accidental transfer of pest species.
- ii. disposed of by any other method approved by the delegated FNZ manager. Any other method approved will be in line with biosecurity requirements outlined in 6.6, with further consultation undertaken with the relevant agencies.

6.6 Biosecurity requirements

Any individual fishing (as defined in s 2 of the Act) under a special permit will be required to do so in accordance with the *Biosecurity Act 1993*. This includes the disposal of pest species taken under the special permit. In addition, the person or agency will follow best practice applicable to the site, to avoid high levels of by-catch of native fish species and birds caught in nets.

Fisheries New Zealand will also consider biosecurity treatment of gear, vehicles and vessels used in the capture, transport and disposal of pest species. This will mitigate the risk of transferring any target and non-target invasive species such as macrophytes and algae that may be transferred in the process. Check Clean Dry protocols will be included and adhered to in all stages of the operations.

6.7 Record-keeping and compliance

The proposed new purpose (as with most other special permits) will require a pre-trip notification before any activity. This will include the special permit holder’s details including name, special permit number, the intended date(s), time(s) and location(s) of collection, the

⁴ Biosecure manner in this context means burying dead species at least a metre deep to prevent scavenging and also above the high-water mark to prevent accidental reintroduction of eggs or parthenogenesis (advanced pregnant gambusia can exhibit this).

species to be collected, method(s) to be used and the name(s) of the person(s) responsible for the collection.

In addition, an annual report provided by the permit holder outlining the projects undertaken, the number or type of each species or species groups collected, the general area where fishing occurred and the fate of all organisms taken.

Completing and providing this report will be mandatory and will enable Fisheries New Zealand to monitor and enforce all requirements and restrictions permitted under the special permit.

6.8 Registration of vessel

Any vessel(s) used while specifically operating under this proposed new purpose will not be able to engage in commercial fishing for any species under the authority of a fishing permit (issued under section 91 of the Act). Once this vessel(s) is not operating under this proposed special permit, it may engage in commercial fishing again.

For the purposes of interpretation, ‘commercial fishing’ is defined as the taking of fish, aquatic life, or seaweed within New Zealand fisheries waters for the purpose of sale.

6.9 Cost of special permit

The costs to assess and process a special permit application is at an hourly rate of \$133.88 (including GST). This cost can be waived if a request for a ‘fee waiver’ is received and approved.

Regulation 83 of the Fisheries (Commercial Fishing) Regulations 2001 allows the Director-General to waive or remit, in whole or in part, the fee of an application for a special permit under section 97 of the Act. The fee is only waived if the Director-General considers that the waiver or remission is in the public interest.

Community groups or charitable trusts who are considering a special permit for pest aquatic life management or eradication projects may be able to attain a fee waiver if it has public interest.

7 Outcomes of Issuing a Special Permit under this new purpose

7.1 Effects on other users

Fisheries New Zealand considers the proposed methods, species and quantities likely to be approved under any special permit for this new purpose will unlikely have an adverse effect on recreational, commercial or customary fishers because the intention of the new special permit purpose is to ‘take’ pest species for management and eradication.

The new special permit purpose will align with the “Biosecurity 2025” partnership and the “Biosecurity Direction Statement”. This will improve the state of New Zealand’s biodiversity through the eradication and management of pest species.

7.2 Impacts

Section 9 of the Act requires Fisheries New Zealand to take into account the following principles:

- a) associated or dependent species should be maintained above a level that ensures their long-term viability;
- b) biological diversity of the aquatic environment should be maintained;
- c) habitat of particular significance for fisheries management should be protected.

There are no significant sustainability or environmental concerns associated with the above principles. The eradication and management of pest species will help to improve the native biodiversity, particularly native freshwater fish and marine fauna, and the state of their habitats.

Depending on the methods that applicants apply for through a special permit, there may be environmental concerns that arise. These concerns are considered during the assessment stage of a special permit, with the relevant experts consulted on when needed.

Fisheries New Zealand believes that the proposed conditions and the assessment that follows every special permit application will address any effects that this new purpose will have on other fisheries users and members of the public.

7.3 Benefits

Special permits should only be used in special circumstances and not to avoid the normal recreational, customary or commercial fishing requirements. Developing a special permit purpose for eradicating or managing pest species enables protection and enhancement of native biodiversity. It will also provide a clear purpose for the eradication or management of all pest species (regardless of their legal status) and will be conditioned appropriately to address any effect on other fisheries users.

The new special permit purpose will enable DOC, F&G, regional councils, ecological companies, community groups, charitable trusts and other persons to apply for a special permit to effectively manage or eradicate pest species.