

CRITERIA AND METHODOLOGY FOR DETERMINING OUTSTANDING FRESHWATER BODIES

Literature Review One, Part One: Stocktake

December 2015



Ministry for the
Environment
Manatū Mo Te Taiao



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1. Executive summary

- 1.1 This report forms Part One of the literature review and is a stock take of the existing literature produced over the last seven years to inform the development of the National Policy Statement for Freshwater Management (NPSFM), with a specific focus on the outstanding freshwater body (OFWB) provisions.
- 1.2 Part One will inform Part Two of the literature review which draws on the literature summarised to answer questions around the original intent of the NPSFM OFWB provisions.
- 1.3 Each piece of literature contained in this review has been separately summarised in this report, specifically noting the following:
 - a. Its purpose and relevance to the NPSFM;
 - b. Any discussion on OFWBs, particularly around:
 - how to identify OFWBs;
 - what constitutes an OFWB;
 - the expected number of waterbodies that will qualify as outstanding under the NPSFM;
 - the relationship between the NPSFM OFWB provisions and Water Conservation Orders (WCOs);
 - c. Any discussion around the terms 'protection' and 'outstanding' in the context of the NPSFM's OFWB provisions; and
 - d. Any definitions which could assist with interpreting the NPSFM OFWB provisions.
- 1.4 A summary is provided at the bottom of each section for quick reference.

2. Purpose

- 2.1 The purpose of this paper is to carry out a review of the relevant documents used in developing the NPSFM, specifically seeking out discussions around the provisions relating to OFWBs.
- 2.2 This report forms Part One of the literature review and provides a summary of each piece of literature and any associated discussions around OFWBs. This purpose of this report is to inform Part Two of the literature review which will draw on the summarised literature to answer the following questions:
 - a. What were the key changes to the OFWB provisions in the proposed 2008 NPSFM, the 2011 NPSFM and the 2014 NPSFM, and associated implications?
 - b. What was the intent behind the NPSFM OFWB provisions?
 - c. Why does the Ministry for the Environment (MfE) guidance state it expects there to be only a small number of OFWBs identified across New Zealand?
 - d. Did the NPSFM development contemplate and describe the relationship between WCOs and OFWBs as per the NPSFM?

- e. Did the NPSFM development contemplate whether a water body should be regarded as outstanding if it only has one outstanding value or is it the overall characteristics of the water body that should be assessed?
 - f. Did the NPSFM development contemplate whether a water body should be outstanding in a regional or national context?
 - g. Did the NPSFM development contemplate whether a water body should be outstanding for 'use values' such as gravel extraction, irrigation or hydro-generation?
 - h. Did the NPSFM development contemplate the level of protection accorded to a water body once it is deemed outstanding under the NPSFM?
- 2.3 The literature review will be used to inform the Community Environment Fund (CEF) project being undertaken by Hawke's Bay Regional Council. That CEF project proposes to develop a set of criteria, and associated methodology for applying the criteria, that can be used by practitioners and decision-makers throughout New Zealand for the assessment and identification of OFWBs for the purposes of the NPSFM.

3. Documents reviewed

- 3.1 For the purposes of this literature review, the key documents reviewed include:
- a. Ministry for the Environment, July 2008. Proposed National Policy Statement for Freshwater Management. Section 32 Evaluation.
 - b. Board of Inquiry, January 2010. Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management.
 - c. Land and Water Forum, September 2010. Report of the Land and Water Forum: A Fresh Start for Fresh Water.
 - d. Ministry for the Environment. January 2011, National Policy Statement for Freshwater Management 2011: Summary of Board of Inquiry Recommendations and Minister for the Environment's decision.
 - e. Ministry for the Environment. May 2011, Cabinet Paper, National Policy Statement for Freshwater Management.
 - f. Ministry for the Environment. November 2011. National Policy Statement for Freshwater Management 2011: Implementation Guide.
 - g. Ministry for the Environment, April 2011. Proposed National Policy Statement for Freshwater Management. Section 32 Evaluation.
 - h. Land and Water Forum, April 2012. Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity, and Freshwater Policy- and Plan-Making Through Collaboration.
 - i. Ministry for the Environment, November 2012, Briefing note: Water Reform: Draft Cabinet Papers.

- j. Ministry for the Environment, November 2012, Cabinet Paper, Water Reform Paper Two: Objective and Limit Setting under the National Policy Statement for Freshwater Management 2011.
- k. Ministry for the Environment, November 2012, Regulatory Impact Statement: Fresh Start for Fresh Water – Objective and Limit Setting.
- l. Ministry for the Environment, March 2013. Freshwater Reform 2013 and Beyond.
- m. Ministry for the Environment, June 2014, Cabinet Paper, Freshwater Programme: Amendments to the National Policy Statement for Freshwater Management.
- n. Ministry for the Environment, July 2014. National Policy Statement for Freshwater Management 2014: Summary of Recommendations and Minister for the Environment’s Decision.
- o. Ministry for the Environment, July 2014. Report and Recommendations on the Proposed Amendments to the National Policy Statement for Freshwater Management and Public Submissions.
- p. Ministry for the Environment, July 2014. Proposed Amendments to the National Policy Statement for Freshwater Management 2011. Section 32AA Evaluation.
- q. Ministry for the Environment, November 2014. National Policy Statement for Freshwater Management 2014: Implementation Guide.
- r. Ministry for the Environment. August 2015. National Policy Statement for Freshwater Management 2014: A Guide to the National Policy Statement for Freshwater Management 2014.

4. Common abbreviations in this report

MFE	Ministry for the Environment
NPSFM	National Policy Statement for Freshwater Management
OFWB	Outstanding Freshwater Body(ies)
WCO	Water Conservation Order(s)
NOF	National Objectives Framework (in 2014 NPSFM)
RMA	Resource Management Act 1991

5. Summary of literature

5.1 Proposed National Policy Statement for Freshwater Management, Section 32 Evaluation, Ministry for the Environment, July 2008

- 5.1.1 The section 32 evaluation was undertaken by the MfE in July 2008, to consider the appropriateness, alternatives, costs and benefits of the proposed National Policy Statement. The report was based on an evaluation carried out by Beca Carter Hollings and Ferner Limited for the MfE.
- 5.1.2 The 2008 proposed NPSFM required the identification of notable values (including potential values) of outstanding freshwater resources and subsequent protection through water quality and quantity standards.
- 5.1.3 The section 32 evaluation provides a brief discussion around the OFWB provisions clarifying that the underlying definition of outstanding freshwater resources is the concept of 'notable values' which includes scientific, ecological, biodiversity, cultural or recreational values.
- 5.1.4 To implement these provisions, the report states that Regional Councils need to identify freshwater resources that are considered to be outstanding, and then protect the respective notable value categories through the use of freshwater quality standards and environmental flows and water levels.
- 5.1.5 The report notes that implementation of quality and quantity standards will vary between Councils, and in some cases may not result in a substantial change from the status quo.
- 5.1.6 No discussion is provided in the section 32 evaluation around the term outstanding or how to identify OFWBs in accordance with the definition of 'outstanding freshwater resources' (i.e. Notable Values and/or Tangata Whenua Values). However, the report implies that Regional Councils need to work with local iwi and hapu to identify tangata whenua values and interests in OFWBs.
- 5.1.7 The report does not specifically discuss the term 'protection', or how values which fall outside the notable value categories should be dealt with.

Summary

- 5.1.8 In summary, the 2008 proposed NPSFM protected the notable values of OFWBs, through the use of quality and quantity standards.
- 5.1.9 No discussion is undertaken around the terms 'outstanding' and 'protection', or what constitutes an OFWB. The definitions are not specifically discussed, and no reference is made to WCOs apart from in the statutory context.

Definitions

- 5.1.10 **Outstanding freshwater resources:** Means those Freshwater Resources of a region whose Notable Values and/or Tangata Whenua Values and Interests are such as to require that priority be given to protection in order to achieve the purpose of the Act.
- 5.1.11 **Notable values:** includes scientific, ecological, biodiversity, cultural and recreational values.

5.2 Report of the Land and Water Forum: A Fresh Start for Fresh Water (Sept. 2010)

- 5.2.1 In 2009, the Government appointed a stakeholder-led Land and Water Forum to undertake a collaborative and consensus-based approach to freshwater management in New Zealand, ultimately aiming to provide a blueprint for land and water management reform and the NPSFM 2011. The Forum made 157 recommendations contained in three reports.
- 5.2.2 The first report provides some recommendations around potential reform of New Zealand's freshwater management, identifying shared outcome and goals, and options to achieve them. There is significant discussion in this report around national objectives, values, associated indicators for waterbodies and how they should be defined and given effect to, however there is no direct discussion around OFWBs.
- 5.2.3 While there is no discussion around OFWBs, the Land and Water Forum recommendations implicitly protect OFWBs through the recommended national objectives and the identification of values and limits for all waterbodies. For example, Regional Councils would be required to set limits and standards in a manner which recognises the values of all water bodies. It is expected that the values of OFWBs would be identified through this process and appropriately protected.
- 5.2.4 The report provides limited discussion around WCOs, noting the following:
“Water Conservation Orders (WCOs) are a national regulatory tool to achieve water quality outcomes. WCOs seek to protect outstanding waterbodies but are restricted to instream influences, and are not able to take an integrated management approach to influences on water quality, including from land use. Provisions for WCOs should be amended to achieve an integrated management approach”.

Summary

- 5.2.5 In summary, while no direct discussion about OFWBs takes place in the first Land and Water Forum report their recommendations implicitly provide for OFWBs.
- 5.2.6 It is interesting to note that the Land and Water Forum do not specifically recommend prioritising the management of OFWBs over other waterbodies. This means that while OFWBs are indirectly provided for in the recommendations, the timeframe for putting a management regime in place would be undefined.
- 5.2.7 No discussion is undertaken around the terms 'outstanding' and 'protection', what constitutes an OFWB, or the relationship between WCOs and the NPSFM OFWB provisions. The definition of 'value' is not directly discussed, however the executive summary's discussion around the significance of water is consistent with this definition.

Definitions

- 5.2.8 **Values:** *values of waterbodies include uses by people (e.g. drinking water, irrigation, hydro-generation, recreation) and intrinsic values (e.g. ecology, cultural, aesthetic, natural character).*

5.3 Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management (Jan. 2010); Summary of Board of Inquiry Recommendations and Minister for the Environment’s Decision (May 2011)

- 5.3.1 In January 2010 the Board of Inquiry made recommendations on the submissions it received on the NPSFM.
- 5.3.2 The MfE substantially changed the NPSFM provisions around OFWBs in accordance with the intent of Board of Inquiry recommendation’s; meaning that the concepts contained in the 2008 proposed NPSFM for OFWBs were not carried forward¹.
- 5.3.3 Specifically, the reference to ‘notable values’ was removed from the NPSFM, a new objective was inserted to protect the quality of OFWBs, the ability to set flows and levels with a specific focus on protecting OFWBs was replaced to require flows and levels to be set for all freshwater waterbodies in the region (i.e. the priority for protecting OFWBs was removed), and Objective 4 was amended to clarify that ecological values includes ecosystem processes and indigenous species and associated ecosystems².
- 5.3.4 The following conclusions underpinned the Board’s recommendations and subsequently the Minister’s decision on these amendments:
- a. The values of freshwater are wider than just ecological values, and should be widened to include ecosystem processes and indigenous species and their associated ecosystems;
 - b. The setting of environmental flows and levels needs to be done over time for all water bodies, not just those that are outstanding;
 - c. When setting environmental flows and levels, the range of values to be considered needs to be wider than notable values, i.e. security of supply for domestic and municipal supplies is only one of many values (including intrinsic values) that should be considered.
 - d. The quality of OFWBs should not be allowed to degrade while the overall water quality in a catchment is improved.
- 5.3.5 The result of these changes was that the protection for OFWBs was narrowed to the quality of water and the priority for protecting OFWBs was removed in favour of protecting all waterbodies. Accordingly, the amendments did not clearly result in the overall protection of OFWBs, i.e. because OFWBs were not specifically mentioned under the water quantity section, there was a risk that, providing the water in an OFWB was not being degraded, it could continue to be allocated.
- 5.3.6 The Board’s report indicates a desire to protect all water bodies over time, not just those that are outstanding, however no discussion occurs about the reduced protection for OFWBs and why they are no longer recognised as a priority for protection. Given this, it is

¹ The outstanding water body provisions in the 2008 proposed NPSFM required the identification of notable values of outstanding freshwater resources and subsequent protection through water quality and quantity standards. The overarching objective was Objective 4 which sought to recognise and protect life supporting capacity and ecological values.

² Objective 4 replaced with Objectives A1 and B1 in the 2011 NPSFM

reasonable to assume that this outcome was not intentional and the amendments were not meant to alter the level of protection under the NPSFM for OFWBs. Had it been intentional, it is expected there would be significant discussion around this matter with a clear conclusion as to why OFWBs did not warrant such protection.

Summary

- 5.3.7 In summary, the OFWB provisions contained within the proposed 2008 NPSFM were substantially changed in the final version of the 2011 NPSFM, with the protection of OFWBs restricted to the quality of its water, making it difficult to protect OFWB through flows and water quantity limits. The priority for protecting OFWBs was also removed in favour of protecting all waterbodies. As discussed above, it was unlikely the reduction in the protection for OFWBs was intentional.
- 5.3.8 The reports do not discuss the terms 'outstanding' and 'protection' or what constitutes an OFWB. Nor do they discuss the relationship between the NPSFM OFWB provisions and WCOs.
- 5.3.9 There is no discussion around the changes to the definition of 'outstanding freshwater resources', however the final version of the NPSFM 2011 shows this was amended to refer to 'outstanding freshwater bodies' as per the definition below.

Definitions

- 5.3.10 ***Outstanding freshwater bodies:** those water bodies with outstanding values, including ecological, landscape, recreational and spiritual values.*

5.4 Freshwater Management National Policy Statement, Section 32 Evaluation, Harrison Grierson (April 2011)

- 5.4.1 The section 32 evaluation was undertaken in April 2011 by Harrison Grierson Consultants, to consider the appropriateness, alternatives, costs and benefits of the 2011 NPSFM. The report contains a detailed discussion around OFWBs.
- 5.4.2 The 2011 NPSFM provisions around OFWBs specifically relate to the protection of the quality of OFWBs.

'Outstanding'

- 5.4.3 The section 32 evaluation discusses the term 'outstanding' noting that it is open to interpretation and an assessment framework to identify OFWBs will need to be developed to address this issue. It states that definitions in the NPSFM will go some way to resolving this issue, particularly where they build on understandings of what is outstanding in a landscape context.
- 5.4.4 The report specifically references 'outstanding' as it was used in relation to WCOs and makes the following statements:

"Section 199 of the RMA states that the purpose of WCOs is to recognise and sustain outstanding amenity or intrinsic values which are afforded by waters in their natural state", and

“Environment Court decisions indicate in that context “the test as to what is outstanding is a reasonably rigorous one and that to qualify as outstanding a characteristic would need to be quite out of the ordinary on a national basis”³.

- 5.4.5 The report states there is merit in setting assessment matters in Regional Policy Statements (RPSs) to identify OFWBs based on Environment Court decisions, and notes this approach is similar to the approach taken by many RPSs to identify outstanding natural landscapes.
- 5.4.6 The report appears to focus on WCOs and ‘outstanding landscapes’ and the associated processes used to identify them. It is assumed this focus is due to significant case law and guidance around this issue as a result of section 6 and Part 9 of the Resource Management Act 1991 (RMA).
- 5.4.7 Given that the 2011 NPSFM provisions only protect the water quality of the OFWB, not other values, it is questionable as to whether the criteria around outstanding landscapes is actually relevant when determining OFWBs in this context. The report does not discuss this issue.
- 5.4.8 There appears to be an expectation in the section 32 evaluation that these interpretations will be used when developing assessment criteria for OFWBs in the context of the NPSFM 2011. Otherwise they would not have been referred to. However, it is interesting to note the language used in the section 32 evaluation (i.e. should be investigated), and while not the preferred option, this indicates that a completely new and separate understanding for ‘outstanding’ in the context of the NPSFM could be developed.

‘Protecting’

- 5.4.9 Objective A2(a) of the NPSFM refers to “protecting the quality of outstanding freshwater bodies”. The section 32 report is clear in that, while the term ‘protecting’ sets a high standard, it is not absolute and may be achieved while allowing a level of use. The report further notes that ‘protection’ is consistent with two of the priorities set in section 6 of the RMA, relating to indigenous vegetation, natural features and landscapes.
- 5.4.10 The report states that given the high standard sought by the ‘protection’ of OFWBs it is essential that a clear definition of exactly what is ‘outstanding’ is provided. The concern being, if this is not done correctly, Objective A2(a) will have undue impacts on the use and development of fresh water, thereby undermining the enabling aspects of the NPSFM. While not specifically stated, it is assumed this means that without a clear definition waterbodies could be incorrectly identified as outstanding limiting their development potential.

Summary

- 5.4.11 In summary, in order to deal with the potential issues around the interpretation of OFWBs, the section 32 report recommends developing an assessment framework to identify OFWBs. In developing a framework it suggests investigating:
 - a. definitions in the NPSFM, particularly where they build on understandings of what is outstanding in a landscape context;

³ Rangitata South Irrigation Ltd v NZ and Central South Island Fish and Game Council EnvC C109/04

- b. incorporating assessment matters to identify OFWBs in RPSs based on case law; and
 - c. existing case law dealing with the term outstanding.
- 5.4.12 The report advises that it is important to develop a clear definition for outstanding, noting the potential impacts on the use and development of fresh water, due to the level of protection required, if this is not done.
- 5.4.13 While there appears to be an expectation that existing interpretations of ‘outstanding’ will be used when developing assessment criteria for OFWBs, ultimately, the section 32 report appears to leave Regional Councils to develop an understanding about what constitutes ‘outstanding’ in the context of the NPSFM in consultation with their communities. This could be a completely new definition or based on an existing understanding.
- 5.4.14 The report discusses the term outstanding in the context of WCOs however, it does not discuss the relationship between a WCOs and the NPSFM OFWB provisions.

Definition

- 5.4.15 ***Outstanding freshwater bodies:*** *those water bodies with outstanding values, including ecological, landscape, recreational and spiritual values.*

5.5 Ministry for the Environment, Cabinet Paper, National Policy Statement for Freshwater Management (May 2011)

- 5.5.1 This paper was presented to Cabinet requesting their agreement to release the NPSFM 2011. The paper contains a full summary of the NPSFM, highlighting the protection of OFWBs as one of the six key areas of direction.

- 5.5.2 When summarising the provisions of the NPSFM, the paper advises the following:

“Cabinet agreed in June 2009 that most water bodies will provide for most ‘public values’ and some level of use, which may impose constraints on economic development and land use; relatively few water bodies being highly protected in a natural state; and very few water bodies being degraded if it is agreed that the economic benefits are sufficient to outweigh the other costs”

And

“The water quality objective recognises that there are a small number of outstanding water bodies that should be protected”.

- 5.5.3 No further discussion around OFWBs takes place, making it unclear as to the context for the sentence that refers to ‘relatively few waterbodies being protected in a natural state’.
- 5.5.4 It is interesting to note the reference to ‘only a small number of outstanding waterbodies being protected’ under the NPSFM, which is consistent with other literature.

Summary

- 5.5.5 In summary, this paper provides some useful background information around OFWBs, confirming the protection of OFWBs was a key area of direction in the NPSFM. This is interesting as very little discussion has taken place on this matter in other background documents associated with the NPSFM.

- 5.5.6 It is also interesting to note that advice to Cabinet in 2011, prior to adopting the NPSFM, was that there are a small number of OFWBs that should be protected. It is assumed that any associated cost/benefit analysis or regulatory impact statement (RIS) would have been based on this advice as well.
- 5.5.7 Given that Cabinet signed off the NPSFM based on this information it could be argued this was a key assumption underlying the NPSFM.
- 5.5.8 No discussion is undertaken around the terms 'outstanding' and 'protection', what constitutes an OFWB, or the relationship between WCOs and the NPSFM OFWB provisions.

Definitions

- 5.5.9 No definitions are contained in this document.

5.6 Implementation Guide for National Policy Statement for Freshwater Management 2011 (Nov. 2011)

- 5.6.1 The non-statutory Implementation Guide (the Guide) was published by the MfE in November 2011, and was designed to provide background information and commentary on the intent of the NPSFM. The Guide discusses the definition of 'outstanding freshwater bodies'⁴ and Objective A2.

Definition of 'outstanding freshwater bodies'

- 5.6.2 The Guide discusses the definition of 'outstanding freshwater bodies' and suggests that in order for a water body to qualify as outstanding, it must be exceptional in relation to at least one particular attribute. The attribute can be outstanding for either local or national reasons.
- 5.6.3 The Guide states that an outstanding value is a high threshold and expects only a small number of OFWBs to be identified throughout the country. It confirms regional communities will determine which waterbodies are outstanding through the regional objective-setting plan process.
- 5.6.4 This creates a significant amount of uncertainty. On one hand the Guide is saying a small number of waterbodies across New Zealand are expected to be deemed outstanding, and then on the other hand the Guide states that a water body can be outstanding in relation to one attribute that can be either locally or nationally significant.
- 5.6.5 No discussion exploring these issues is carried out in the Guide. However, it is considered that if a water body is being judged in a local context, assisted by local community, and only needs one outstanding attribute, it is likely that more than 'a few' outstanding waterbodies will be identified per region.

Objective A2

- 5.6.6 The Guide is clear that Objective A2 ensures that the quality of OFWBs is protected as an environmental bottom line. Interestingly, the Guide goes on to state that "Objective A2 recognises that there is a small number of outstanding waterbodies across the country that

⁴ being those water bodies with outstanding values, including ecological, landscape, recreational and spiritual values.

should be protected". There is no further discussion around this statement, and it is unclear how this conclusion is reached given that Objective A2 protects the quality of OFWBs rather than identifying them.

- 5.6.7 There is no further discussion around what constitutes an OFWB other than reiterating earlier comments that it is a high threshold.

'Protection'

- 5.6.8 The Guide clearly states that where an affected water body is 'outstanding' it must be protected, it goes on to state that "*protecting outstanding waterbodies is a high threshold which generally means that adverse effects on the quality of the water body will be avoided*".

- 5.6.9 No further discussion occurs on this matter.

Summary

- 5.6.10 In summary, there is no discussion around the process that should be followed to determine OFWBs, however the following direction is provided:

- a. To qualify as outstanding, a water body must be exceptional in relation to at least one attribute for either local or national reasons;
- b. An outstanding value is a high threshold;
- c. It is expected there will only be a small number of OFWBs identified throughout New Zealand;
- d. Regional communities will determine which waterbodies are outstanding through the regional objective-setting plan process; and
- e. Generally the adverse effects on the quality of water in an OFWB must be avoided.

- 5.6.11 This direction creates a significant amount of uncertainty around how to determine which waterbodies would qualify as outstanding. For example, there are likely to be a number of waterbodies that would qualify as outstanding based on one locally exceptional attribute, however this is inconsistent with advice that only a 'few' waterbodies should be deemed outstanding throughout New Zealand.

- 5.6.12 The Guide discusses the term 'protection' noting it is a high threshold which generally means that adverse effects on the quality of the water body will be avoided.

- 5.6.13 No discussion is undertaken around the relationship between WCOs and the NPSFM OFWB provisions.

Definitions

- 5.6.14 ***Outstanding freshwater bodies:*** are those waterbodies with outstanding values, including ecological, landscape, recreational and spiritual values.

5.7 Philip Milne, Resource Management Journal, The NPS on Freshwater Management, What will it mean in practice (Nov. 2011)

5.7.1 In November 2011, Philip Milne wrote an opinion piece for the Resource Management Journal on the NPSFM making the following key observations:

- a. Case law has defined ‘outstanding’ in an RMA context as meaning “out of the ordinary” or standing out;
- b. It is not clear whether a water body should be regarded as outstanding if it only has one outstanding value or whether it is the overall characteristics of the water body that should be assessed. The latter approach is preferred in Philip Milne’s view; and
- c. It is unclear whether a water body has to be outstanding on a national or regional level. Philip Milne notes this could be argued either way, i.e. since the NPSFM is a national level document, the term should be interpreted as meaning ‘nationally outstanding’. However, he believes the stronger argument is that since the NPSFM was designed to be implemented at a regional level, OFWBs should include those that are regionally outstanding. He notes this is supported by section 32 of the NPSFM.

Summary

5.7.2 Philip Milne’s opinion piece provides some useful advice on the NPSFM by a solicitor. However, it must be acknowledged that this is his opinion (as opposed to information from documents used in developing the NPSFM) meaning the weight that can be attributed to it is limited.

5.7.3 The key conclusions by Philip Milne in his opinion piece are as follows:

- a. The overall characteristics of the water body should be assessed when determining if a water body is outstanding under the NPSFM; and
- b. OFWBs under the NPSFM should be determined in a regional context.

5.8 Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity, and Freshwater Policy and Plan Making through Collaboration (April 2012)

5.8.1 The second report of the Land and Water Forum provides recommendations around the way the freshwater reform should be implemented, particularly focusing on how objectives and limits should be set for freshwater quantity and quality and the associated decision-making processes.

5.8.2 This report does not specifically discuss OFWBs, however given it supports all the national objectives of the 2011 NPSFM, it implicitly supports Objective A2 which protects the quality of OFWBs.

5.8.3 As discussed in Paragraph 5.2.3, the recommendations contained in the report implicitly protect OFWBs (i.e. outstanding values and interests would be identified and protected through the recommended process and thereby protected). However, with no prioritisation, the timeframe for putting a management regime in place for OFWBs is undefined.

- 5.8.4 The report contains definitions for ‘values’ and ‘outstanding freshwater bodies’⁵. It contains significant discussion around values, associated indicators and national objectives and how they should be defined. However, there is no discussion around what constitutes an OFWB.

Summary

- 5.8.5 In summary, while no direct discussion about OFWBs takes place in this report, the Forum’s recommendations implicitly protect OFWBs.
- 5.8.6 The definitions of ‘outstanding freshwater waterbodies’ and ‘value’ are not directly discussed. However, there is significant discussion in the report around values which is consistent with the definition.

Definitions

- 5.8.7 ***Outstanding freshwater bodies:*** *Those waterbodies with outstanding values, including ecological, landscape, recreational and spiritual values.*
- 5.8.8 ***Values:*** *values of waterbodies include uses by people (e.g. drinking water, irrigation, hydro-generation, recreation) and intrinsic values (e.g. ecology, cultural, aesthetic, natural character).*

5.9 Third Report of the Land and Water Forum: Managing Water Quality and Allocating Water (Oct. 2012)

- 5.9.1 The third report of the Land and Water Forum recommends a number of tools and approaches required to manage fresh water and to realise the potential of New Zealand’s fresh water economy.
- 5.9.2 While the third report states that provision is made to protect OFWBs in the ‘context’ section of the report there are no specific recommendations in relation to the management of OFWBs.
- 5.9.3 While no specific discussion takes place around OFWBs, the recommendations contained in this report implicitly protect OFWBs, i.e. the recommended National Objectives Framework (NOF) ensures a wide range of values for fresh water are taken into account (including those for OFWBs) with subsequent prioritisation based on the current state of the water body relative to the NOF. Target limits would be set in accordance with national objectives (in the case of OFWBs, this would be Objective A2 of the NPSFM – protecting the quality of outstanding waterbodies).
- 5.9.4 The report contains a definition for ‘values’, which is the same as the first and second Land and Water Forum report’s definition for values. The definition for outstanding waterbodies is not referred to in the third report.

Summary

- 5.9.5 In summary, the recommendations contained in the Land and Water Forum’s third report indirectly provide for OFWBs.

⁵ The definition for outstanding freshwater body is from the NPSFM 2011.

- 5.9.6 There is no specific discussion around OFWBs apart from the general statement at the start of the report which states that ‘provision is made to protect outstanding waterbodies’.

Definitions

- 5.9.7 *Values: values of waterbodies include uses by people (e.g. drinking water, irrigation, hydro-generation, recreation) and intrinsic values (e.g. ecology, cultural, aesthetic, natural character).*

5.10 Ministry for the Environment, Cabinet Paper, Water Reform Paper Two: Objective and Limit Setting under the National Policy Statement for Freshwater Management 2011 (Nov. 2012)

- 5.10.1 This Cabinet paper discusses the proposed content for the discussion document on improving objective and limit setting under the NPSFM. Among other things, it is proposed to consult on issues associated with the WCOs process in the discussion document, with a signal for further discussion at a later date outlining national expectations for how OFWBs and/or the significant values of wetlands are defined and identified.
- 5.10.2 The paper also requests commitment from Cabinet to review the need to retain WCOs as a mechanism for protecting outstanding waterbodies in the longer term.

Water conservation orders

- 5.10.3 WCOs are an existing mechanism for protecting outstanding waterbodies, which elevates the objective and limit setting for these water bodies to a national level. The paper contains a detailed discussion around WCOs and indicates a desire to review the need for WCOs in the reformed freshwater management system in the long term.
- 5.10.4 The paper provides the following advice to Cabinet around WCOs:
- a. In the shorter term, the MfE may get requests to amend existing WCOs as regional councils consider how they fit with their wider regional planning context through the implementation of the NPSFM.
 - b. In general, it is expected that applications for new WCOs, or amendments to existing WCOs, will be an agreed outcome from a regional planning process. However, there is the potential for WCO applications to be used tactically to bypass regional planning processes and/or stop infrastructure proposals.
 - c. There is a lack of clarity about the grounds on which the Minister for the Environment may reject an application.
- 5.10.5 Cabinet is advised, in the short term, the purpose of any change to the WCO processes would be to reduce time and costs, and to ensure the outcomes sought from WCO applications (including amendments) are agreed through the regional planning process.
- 5.10.6 The paper outlines a number of criticisms of WCOs, detailed as follows:
- a. WCOs cannot include land use rules and therefore cannot protect all the values recognised by the Order;
 - b. The process does not ensure the best candidates are considered for protection;

- c. The types of values they can protect are limited; and
 - d. WCOs can overly constrain development. This is because they are subject to an 'outstanding' and 'protection' test rather than the balancing approach applied to all other decisions under the RMA.
 - e. There are inefficiencies in the existing WCO process which can result in significant costs and delays.
- 5.10.7 The Cabinet paper notes these issues, and requests agreement from Cabinet to review the need for WCOs in the context of the reformed management system. It is recommended this take place alongside the five year review of the NPSFM. The hope being that once people can see how implementation of the NPSFM is progressing, there may be more ability for consensus to be reached about what changes are required.

'Outstanding freshwater bodies'

- 5.10.8 The paper notes that the current NPSFM requires OFWBs to be protected. It highlights the potential for wide interpretation and expects this to be an area of debate through regional planning processes. Risks of such a wide interpretation are that too many waterbodies are considered outstanding, leading to missed development opportunities, or too few are identified as outstanding to adequately protect regional and national interests.
- 5.10.9 The paper advises that the proposed NOF could be used to help identify water bodies that are outstanding because of their excellent state e.g. recreational or ecological values. However, it notes that such waterbodies should not automatically be classed as outstanding as other judgements are necessary.
- 5.10.10 The paper recommends that other criteria should also be developed to ensure there is a nationally consistent approach to identifying waterbodies that are outstanding, e.g. a water body may not be considered to be in an excellent state in terms of ecological health but it may contain a nationally important rare species habitat that requires protection from further degradation.
- 5.10.11 The paper does not provide any further discussion on this issue and signals later in 2013 a proposal will be developed outlining national expectations for how OFWBs and/or significant values of wetlands are defined and identified.

Summary

- 5.10.12 In summary, this paper provides some useful history to the background of the OFWB provisions, the associated risks, and the expected relationship between them and WCOs. The paper notes a desire for a nationally consistent approach to identifying waterbodies that are outstanding.
- 5.10.13 While, proposals to amend WCOs are currently on hold with no plan to progress them in the short term, it is clear from comments in the paper that the Government, in the long term, potentially saw the OFWB provisions in the NPSFM eventually replacing the need for WCOs. This provides some insight into the intent around the NPSFM OFWB provisions and the level in which the criteria to identify OFWBs should be pitched at (i.e. a high level around that of a WCO).

- 5.10.14 This is supported by comments in the paper that indicate a desire not to identify too many waterbodies as outstanding due to the missed development opportunities, or too few which would not adequately protect regional and national interests.

5.11 Ministry for the Environment, Briefing Note: Water Reform: Draft Cabinet Papers (Nov. 2012)

- 5.11.1 This briefing note was prepared jointly by the MfE and the Ministry for Primary Industries (MPI) on the core elements of water reform.
- 5.11.2 This document provides a brief discussion around WCOs, and seeks agreement to address process issues associated with the WCO mechanism in 2013. Cabinet is advised that applications for new WCOs are unlikely from stakeholders in the short term. It is expected that stakeholders would want to see how regional planning processes give effect to the NPSFM requirement to protect OFWBs before new applications are made.
- 5.11.3 Cabinet is advised the following *“applications to amend existing WCOs are more likely in the short term, as regions consider them alongside the broader regional planning context for freshwater management. In the longer term, the role of WCOs in a strengthened freshwater management system will need to be considered”*.

Summary

- 5.11.4 In summary, the paper provides clarification about the relationship between WCOs and the OFWB provisions indicating that the OFWB provisions in the NPSFM may eventually be a replacement for WCOs. This is consistent with information contained in the 2012 Cabinet paper on objective and limit setting under the NPSFM.
- 5.11.5 The paper provides some insight into the standard a water body would need to meet in order to qualify as outstanding, i.e. similar to that of a WCO. This is also consistent with MfE guidance that only a few outstanding waterbodies will be identified throughout the country, as the higher the standard the fewer the number of waterbodies would qualify.

5.12 Ministry for the Environment, Regulatory Impact Statement: Fresh Start for Fresh Water – Objective and Limit Setting (Nov. 2012)

- 5.12.1 This RIS was prepared jointly by the MfE and the MPI, to provide an analysis of options available in the setting of objectives and limits required under the NPSFM.
- 5.12.2 The RIS discusses five reform options that could be used to provide greater central government direction on setting objectives and limits. One relates to national expectations for the management of OFWBs and/or the significant values of wetlands.
- 5.12.3 The RIS identifies some risks around the requirement in the NPSFM for OFWBs and significant values of wetlands to be protected, particularly around potential for wide interpretation of this provision. For example if too many OFWBs are identified in a region it may lead to missed development opportunities, or if too few are identified regional and national interests may not be adequately protected.

- 5.12.4 The RIS indicates that the OFWB provisions would be supported by the use of the NOF banded structure (i.e. poor, fair, good, excellent) to clearly identify, using a nationally consistent guideline, those water bodies and wetlands that fall into that category.
- 5.12.5 While there is no specific discussion around the numbers of OFWBs expected to be identified across New Zealand, the RIS does provide some useful background information about the risks around identifying too many or too few OFWBs.

Summary

- 5.12.6 In summary, the RIS provides some useful background information about the risks around identifying too many or too few OFWBs. It is possible that the link between the MfE Guidance stating there are only 'a few outstanding waterbodies' expected to be identified throughout the country is related to the associated costs of identifying too many and associated missed development opportunities.

5.13 Freshwater Reform 2013 and Beyond, Ministry for the Environment (March 2013)

- 5.13.1 In response to the Land and Water Forum recommendations, the Government issued a consultation document outlining its preferred approach to freshwater reform in New Zealand. The proposed reforms were consistent with the Land and Water Forum's recommendations.
- 5.13.2 No specific discussion around OFWBs takes place, however the report does state the intention of the Government to provide guidance and direction around how to give effect to the NPSFM requirement for OFWBs and significant values of wetlands to be identified and protected.

Summary

- 5.13.3 In summary, no specific discussion around OFWBs takes place in this document.

5.14 Ministry for the Environment, Regulatory Impact Statement – Amendments to the National Policy Statement for Freshwater Management 2011 (May 2014)

- 5.14.1 This RIS was prepared by the MfE and the MPI to describe the options assessed to address the two main problems councils are having in implementing the NPSFM, being setting freshwater objectives, and managing over-allocation of resource use.
- 5.14.2 No discussion occurs around the OFWB provisions, apart from a footnote which states that the amendment to Objective A2 referencing significant values is minor.

Summary

- 5.14.3 In summary, no discussion around the OFWB provisions is contained in this document.

5.15 Ministry for the Environment, Cabinet Paper, Freshwater Programme: Amendments to the National Policy Statement for Freshwater Management (June 2014)

5.15.1 This paper was presented to Cabinet for their agreement to amend the NPSFM 2011. Significant discussion occurs around the NOF, however no discussion occurs around the OFWB provisions.

Summary

5.15.2 In summary, no discussion around the OFWB provisions is contained in this document.

5.16 Ministry for the Environment. Report and Recommendations on the Proposed Amendments to the National Policy Statement for Freshwater Management and Public Submissions (July 2014)

5.16.1 In July 2014, the MfE provided a number of recommendations to the Minister for the Environment on proposed changes to the NPSFM 2011.

5.16.2 Key areas of discussion, and associated recommendations, around OFWBs are discussed below:

- a. Objectives A2(a) and B4 do not diminish the responsibilities of Regional Councils in relation to fresh water planning overall. OFWBs are a limited class of freshwater bodies intended to attract additional protection over and above other fresh water bodies;
- b. If OFWBs are identified, their significant values should be protected under Objectives A2(a) and B4. "Significant values" are an intentionally limited class of values. The additional protection afforded to OFWBs should not apply to all values, but only to those which relate to it being outstanding. For example, a stream may be identified as an OFWB for its recreational values. Human health values may contribute to this and may warrant additional protection;
- c. Defining "significant values" within the NPSFM would provide little value. What is a significant value will vary from region to region and between freshwater bodies, any definition would be broad and non-specific. Regional Councils and communities are better placed to define the significant values relevant to any OFWB, bearing in mind regional circumstances; and
- d. To help Regional Councils identify OFWBs and define the relevant significant values, implementation guidance is recommended for Objectives A2(a) and B4.

Summary

5.16.3 In summary, the recommended amendments to the OFWB provisions are discussed in this document. It is considered that the following statement contained in this document sums up the intent behind the OFWB provisions since 2008:

"Outstanding freshwater bodies are a limited class of freshwater bodies intended to attract additional protection over and above other fresh water bodies".

- 5.16.4 The changes to the provisions since 2008 appear to have been about the best way to achieve this. The recent changes contained in the 2014 NPSFM conclude the best way to achieve this is to protect the significant values of OFWBs, which is consistent with the recommendations contained in this report.
- 5.16.5 No discussion is undertaken about the terms 'outstanding' and 'protection' and the report intentionally decides against defining 'significant values' (although they are discussed in the draft Implementation Guide 2014) for the reasons outlined above.
- 5.16.6 There is no discussion contained in this document about what constitutes an OFWB, the relationship between WCOs and OFWBs, or how many OFWBs are expected across New Zealand.

5.17 National Policy Statement for Freshwater Management 2014: Summary of Recommendations and Minister for the Environment's Decision (July 2014)

- 5.17.1 In July 2014, the Minister for the Environment announced a number of substantive changes to the NPSFM.
- 5.17.2 A summary document was released outlining the key amendments, including a move to protect all significant values of OFWBs, rather than just the quality of water. The OFWB provisions were classed as minor and not discussed in this summary document.
- 5.17.3 It is debatable as to whether the changes to the OFWB provisions could be classed as minor. Maybe in the context of the whole NPSFM, the OFWB provisions could be viewed as a minor component, however the subsequent changes between the 2011 and 2014 NPSFM versions were significant, with the 2014 version providing significantly more protection for OFWBs.

Summary

- 5.17.4 In summary, no discussion around the OFWB provisions is contained in this document, indicating the amendments were considered by the Minister for the Environment to be minor.

5.18 Proposed Amendments to the NPSFM 2011, Section 32AA Evaluation (July 2014)

- 5.18.1 The section 32AA analysis was undertaken in July 2014 by the MfE, it provides limited discussion around OFWBs and associated amendments in the NPSFM, despite what would be classed by some as significant changes, as discussed in Paragraph 5.17.3.
- 5.18.2 The key change in the 2014 NPSFM for OFWBs was that the scope for protecting OFWBs was widened, with amended provisions allowing for the protection of all 'significant values' of OFWBs as opposed to just the protection of the 'quality' of water of OFWBs in the 2011 NPSFM.
- 5.18.3 The section 32AA report briefly discusses the amendments stating the provisions for OFWBs have been updated to ensure there is a consistent reference to values. No further

assessment of the amendments takes place as they are classed as minor and are not considered to significantly alter the 2011 NPSFM.

- 5.18.4 While there is no justification around the OFWB provisions, the section 32AA states that the NOF process outlined in Part CA⁶ provides for the identification of significant values for freshwater bodies and together with Policy B1 will ensure their protection, achieving Objective B4. There is no discussion around Objective A2 and Policy A1 and how they fit into the process.
- 5.18.5 The section 32AA report does not provide any additional information about the intent of the amended provisions for OFWBs and relies on earlier section 32 reports for justification.

Summary

- 5.18.6 In summary, the section 32AA report concludes that the amended OFWB provisions do not significantly alter the NPSFM and relies on earlier section 32 reports for justification.
- 5.18.7 It is interesting that these amendments are viewed as minor by the Minister for the Environment given they significantly increase protection for OFWBs. Weighing up the Minister's response to these amendments it is reasonable to conclude that the Minister does not believe the amendments alter the original intent of the OFWB provisions, otherwise further analysis and discussion would have taken place in the section 32AA evaluation. This supports a conclusion that the intent around OFWBs and their associated protection has remained consistent since 2008.
- 5.18.8 There is no discussion contained in this document about what constitutes an OFWB, the relationship between WCOs and OFWBs, or how many OFWBs are expected across New Zealand.

Definitions

- 5.18.9 No relevant definitions are discussed in this document.

5.19 Draft Implementation Guide for NPSFM 2014 (November 2014)

- 5.19.1 An updated Implementation Guide (the Guide) in draft form was published by MfE in November 2014. Discussion and guidance around OFWBs is very similar to the 2011 version it replaces despite some key amendments around the OFWB provisions. Specifically, the Guide discusses the definitions of 'outstanding freshwater bodies'⁷ and 'values', the term 'significant values' and Objectives A2 and B4.

Definition of 'outstanding freshwater bodies'

- 5.19.2 The 2014 NPSFM amends the definition of 'outstanding freshwater bodies' to include only those waterbodies identified as outstanding in a RPS or Regional Plan. This amendment is

⁶ The Part CA process involves firstly identifying the values for each freshwater management unit, then secondly for each value, identifying measurable characteristics of the freshwater body (known as attributes) that support that value. Those values/attributes that are outstanding must be protected.

⁷ being those water bodies identified in a regional policy statement or regional plan as having outstanding values, including ecological, landscape, recreational and spiritual values.

not discussed. It is noted that the 2011 Guide's discussion around the definition of OFWBs is repeated in the 2014 Implementation Guide.

Significant values

- 5.19.3 The Guide discusses the term 'significant values', and what this means in relation to OFWBs. It indicates that identifying significant values and subsequent protection will need to be determined according to regional community preferences, and suggests that Councils may choose to set criteria for significant values in their RPSs to enable identification of OFWBs.

Values

- 5.19.4 The NPSFM 2014 includes a new definition for value as follows:

***Values:** Means: a) any national value; and b) includes any values in relation to fresh water, that is not a national value, which a regional council identifies as appropriate for regional or local circumstances (including any use value).*

- 5.19.5 Discussion in the Guide clarifies that values are those intrinsic qualities, uses or potential uses associated with fresh water. They are qualities or uses that people and communities appreciate about freshwater bodies and wish to see recognised in the on-going management of those freshwater bodies. Intrinsic qualities include ecosystem health, and natural form and character. Uses or potential uses of fresh water by people include water supply, irrigation, cultivation, hydro-generation and recreation.

Objective A2

- 5.19.6 The 2014 NPSFM amends Objective A2 to create additional protection for OFWBs by directing that RPSs and Regional Plans must protect their significant values not just the water quality of those OFWBs.
- 5.19.7 The Guide states that in protecting OFWBs, it is those significant values that contribute to making a water body outstanding that should be identified and protected. It specifically notes this can be achieved by:
- a. Following the NOF process outlined in part CA, which describes how to derive freshwater objectives based on the values held for a water body; and
 - b. Amending an RPS or Regional Plan to include a set of criteria for significant values that would be applied to OFWBs.

Objective B4

- 5.19.8 The 2014 NPSFM amends Objective B4 to protect the significant values of OFWBs in the context of water quantity. Previously this section was silent on OFWBs.
- 5.19.9 The Guide notes that it is the significant values that contribute to making a water body outstanding that should be identified and protected. It goes on to state that depending on the identified values, limit setting alone may not be enough to protect the values of the OFWBs. A combination of measures may be required, such as water quality through Objective A2 and non-regulatory measures.

Protection

- 5.19.10 The Guide is clear that protecting the significant values of waterbodies is a high threshold, stating that once a water body has been identified as outstanding, adverse effects on its values will be avoided.
- 5.19.11 No further discussion occurs on this matter.

Summary

- 5.19.12 In summary, the Guide does not provide any further clarification around the OFWB provisions than that contained in the 2011 Guide. The following direction around OFWBs is still as follows:
- a. To qualify as outstanding a water body must be exceptional, for either local, regional or national reasons, for at least one particular feature;
 - b. An outstanding value is a high threshold;
 - c. It is expected there will be only a small number of OFWBs identified throughout New Zealand; and
 - d. Regional communities will determine which waterbodies are outstanding through the regional objective-setting plan process.
 - e. Adverse effects on the significant values OFWB will be avoided.
- 5.19.13 As discussed in Paragraph 5.6.4, this direction creates a significant amount of uncertainty around how to determine which waterbodies would qualify as outstanding, raising a number of questions.
- 5.19.14 There is no discussion contained in this document about what constitutes an OFWB, the relationship between WCOs and OFWBs, or how many OFWBs are expected across New Zealand.

Definitions

- 5.19.15 **Outstanding freshwater bodies:** *Those water bodies identified in a regional policy statement or regional plan as having outstanding values, including ecological, landscape, recreational and spiritual values.*
- 5.19.16 **Values:** *Means: a) any national value; and b) includes any value in relation to fresh water, that is not a national value, which a regional council identifies as appropriate for regional or local circumstances (including any use value).*

5.20 A Guide to the NPSFM 2014 (August 2015)

- 5.20.1 The 2014 Draft Implementation Guide for the NPSFM 2014, was revised and replaced by “A Guide to the National Policy Statement for Freshwater Management 2014” in August 2015.
- 5.20.2 The discussion and guidance contained in the 2015 Guide is substantially different in parts to the 2011 and Draft 2014 NPSFM Implementation Guides, when discussing the NPSFM OFWB provisions.

Definition of ‘outstanding freshwater bodies’

- 5.20.3 The 2015 Guide discusses the definition of ‘outstanding freshwater bodies’ partly repeating the text in the 2011 and 2014 Guides by stating that a freshwater body may be outstanding at the local, regional or national level, and confirming that in order for a water body to qualify as outstanding, it must be exceptional in relation to at least one particular feature, or it may have a number of outstanding features.
- 5.20.4 However, the 2015 Guide does not contain the advice found in the 2011 and 2014 Guides around an outstanding value needing to be a high threshold, and that only a small number of OFWBs are expected to be identified across New Zealand. Instead, the 2015 Guide states that Regional Councils will generally identify those outstanding values that contribute to making a water body outstanding through the process set out in Policy CA2(a-b)⁸ of the NPSFM.

‘Values’ and ‘significant values’

- 5.20.5 The discussion and guidance around the terms ‘values’ and ‘significant values’ is essentially the same in both the 2014 and 2015 Guidance documents. The 2011 version of the NPSFM did not refer to the significant values of OFWBs, so the term ‘significant values’ was not discussed in the 2011 Guide.

Objective A2

- 5.20.6 The 2015 Guide is clear that the intention of Objective A2 is to protect only those characteristics that make a water body outstanding. This replaced previous advice in the Draft 2014 Guide that stated that the intention of Objective A2 was to avoid adverse effects on the values of OFWBs.
- 5.20.7 Some difference in the language used in the two Guides is particularly noteworthy: the Draft 2014 Guide refers to the protection of ‘significant values’ of an OFWB, while the 2015 Guide refers to the protection of ‘outstanding values’ of an OFWB only. Whether intentional or not, the wording in the 2014 Guide suggests that significant or important values of an OFWB would be protected even they don’t quite meet the outstanding threshold, while the wording in the 2015 Guide indicates that only those values which are outstanding would be protected under Objective A2.
- 5.20.8 The 2015 Guide repeats advice contained in the 2014 Guide indicating that a RPS or Regional Plan could include criteria for significant values of OFWB, which would guide the setting of freshwater objectives for the water body.

Objective B4

- 5.20.9 The discussion and guidance around Objective B4 is the same in both the 2014 and 2015 Guidance documents.

‘Protection’

- 5.20.10 The discussion and guidance around what protection is accorded to a water body once it has been identified as outstanding is substantially different between the 2014 and 2015 Guides.

⁸ Identifying a set of relevant values for each Freshwater Management Unit

- 5.20.11 While both guides affirm that the term ‘protecting’ sets a high standard, guidance in the documents as to what this protection looks like in practice, is very different.
- 5.20.12 The Draft 2014 Guide is clear that protecting the significant values of OFWBs is a high threshold and once a water body has been identified as outstanding, adverse effects on its significant values will be avoided. This advice implies that in no circumstances will any adverse effects on an OFWB’s significant values be acceptable.
- 5.20.13 The 2015 Guide states that once a water body has been identified as outstanding, adverse effects on its significant values may need to be avoided in some instances to provide for those values. The Guide also notes that while Objective A2 allows the degradation of some aspects of water quality within a region (offset by a proportionate improvement to ensure overall quality is maintained or improved), the degradation cannot be at the expense of the significant values associated with an OFWB. This advice implies that adverse effects on OFWB will be allowed in some circumstances.
- 5.20.14 The Guide further notes that Objective A2 does not require every aspect of an OFWB to be fully protected, unless that is necessary to protect the outstanding characteristics. The example is used, where a water body is outstanding because of its habitat for endemic fish, protecting that fish may be possible even if some water takes and discharges are authorised.

Summary

- 5.20.15 In summary, the following direction is contained in the 2015 Guide around OFWBs:
- a. To qualify as outstanding, a water body must be exceptional, for either local, regional or national reasons, for at least one particular feature;
 - b. outstanding values that contribute to making a water body outstanding will generally be identified through the process set out in Policy CA2(a-b)⁹.
 - c. adverse effects on OFWBs will be allowed in some circumstances.
- 5.20.16 While the 2015 Guide attempts to provide further clarification around a process that could be followed in order to determine which waterbodies would qualify as outstanding, the changes between the Draft 2014 Guide and the 2015 Guide creates some uncertainty around the intent of the NPSFM, particularly around whether an outstanding water body must meet a high threshold and if only a small number of OFWBs ought to be identified throughout New Zealand, by deleting the advice on these aspects of the NPSFM.
- 5.20.17 These are considered notable differences between the Draft 2014 and final 2015 Guidance documents. To assist with interpreting these changes, the authors made contact with MfE’s lead authors of the 2015 Guide. MfE personnel have confirmed¹⁰ that the changes to the text in the 2015 version of the Guide do not indicate a change in the Government’s policy intent and the 2011 version of the Guide is still relevant.
- 5.20.18 This advice, combined with the fact that Implementation Guides have no statutory weight and were not part of the decision making process prior to the NPSFM being adopted, confirms it is important to find a connection between information contained in the Guides

⁹ Identifying a set of relevant values for each Freshwater Management Unit

¹⁰ Pers comm with Jonny Osborne et al via email

and earlier literature associated with the NPSFM development to show the NPSFM's intent around these issues.

- 5.20.19 There is no discussion contained in the 2015 Guide about what constitutes an OFWB; the relationship between WCOs and OFWBs; or how many OFWBs are expected across New Zealand.

6. CONCLUSION

- 6.1 This report provides a stocktake of the existing literature since 2008 that has assisted in the development of the NPSFM, particularly the OFWB provisions.
- 6.2 This report forms Part One of the literature review and provides a summary of each piece of literature noting any discussions around OFWBs. Its purpose is to inform Part Two of the literature review.
- 6.3 While some conclusions have been made in the context of each piece of literature summarised, Part Two of the literature review draws on the literature as a whole to answer a number of questions around the original intent of the NPSFM OFWB provisions, such as what constitutes an OFWB, expected numbers across the country and associated protection accorded to them once deemed outstanding.