

8 July 2022

SUBMISSION ON EXPOSURE DRAFTS OF CHANGES TO THE NES FOR FRESHWATER AND NPS FOR FRESHWATER MANAGEMENT

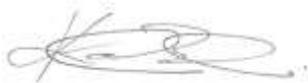
Thank you for the opportunity to comment on exposure drafts of changes proposed to the National policy Statement for Freshwater Management (NPS-FM) and the National Environmental Standards for Freshwater (NES-F). For the most part, our comments respond to whether the drafting is clear, and if there are any unintended consequences arising from the drafting.

Te Uru Kahika's submission on natural wetlands

As a Regional Council, we are under the canopy of Te Uru Kahika (the sixteen regional councils and unitary authorities of New Zealand). Te Uru Kahika's submission focusses on the exposure draft's absence of changes to clearly articulate that the NES-F and NPS-FM ought to apply to natural **inland** wetlands, and not cast an ambiguous shadow into the coastal marine area or parts thereof. We support Te Uru Kahika's submission in that regard.

Thanks again for the opportunity to provide feedback on these proposed changes prior to them coming into effect.

Yours sincerely



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APPENDIX ONE

Ref	What	Issue/Comment
NPSFM CI 3.9.4	Example of deletion of reference to plural regional plans.	<p>It is still conceivable that a council could have two or more regional plans applicable for different waterbodies / FMUs. Not every region has one single fully combined regional plan.</p> <p>This ‘minor change’ occurs at numerous clauses throughout the NPS-FM. We do not itemise each and every instance, but our comment remains the same.</p>
NPSFM CI 3.11.6	Setting of interim target attribute states – no changes proposed in Exposure Draft.	<p>Reality is that the setting interim targets for attribute states at ten yearly intervals is not supported by models that can predict the impacts of (often) complex management responses and interactions. Especially when considering sediment management (and probably P in HB) where there is such a lot of temporal and spatial variability in sediment loss. This policy directive is well-intentioned, but very likely to be un-implementable with capabilities of current common modelling tools.</p>
NPSFM 3.21	Definition of ‘biosecurity’ relating to wetlands and riverbeds	<p>This is a fairly narrow meaning for a word that an entire separate act is given over to managing. The Biosecurity Act also has definitions for pest and unwanted organisms. Suggest using the words "eliminating or managing pests and unwanted organisms" or use the words Pest Control which means eliminating or</p>
NPSFM CI 3.21	Definition of ‘natural wetland’	<p>Clause (a) is confusing. Several interpretations are plausible. Likely that the construction of clause (a) with double-negative expressions unhelpfully casts doubt and prompts more than one interpretation here.</p> <p>Re Clause (b), we anticipate challenges clearly determining where the edge of a “deliberately constructed water body” stops or starts relative to location of wetland having developed around it since construction.</p> <p>This ambiguity may be tolerable in a policy setting, but intolerable (un-implementable) if/when this same meaning is transferred across to Regulations (such as the NES for Freshwater).</p> <p>Clause (d) – what level of evidence is required to determine “known to contain”? This could mean any artificial wetlands that becomes home to threatened species is then treated as if it is a natural wetland. Seems</p>

		<p>very heavy handed - and a perverse incentive for landowners who have farm dams/ponds etc.</p> <p>Reference to “ground cover” in (d)(ii) will need further clarification as a lot of our wetlands have an understorey dominated by exotic species, but can have more native influence in canopy.</p> <p>Unclear how clause (d)(iii) would work in practice for mobile species. For example, how long would a bittern have to be present for the area to be classed as habitat “known to contain” that threatened species?</p>
NPSFM CI 3.22	Natural inland wetlands	<p>Clause (c) – support this insofar as urban development activities are subject to the additional caveats in (ii) to (v) rather than connected by ‘or’ statements. This is essential to ensure that not just any urban development activity trumps the value of natural wetlands and wetland ecosystems.</p> <p>Clause (c)(ii) – should remove reference to regional plans here as regional plans rarely “identify” land for urban development. It is more likely that a regional policy statement would do such identification, but it is not universal to every RPS.</p> <p>Clauses (d) and (e) – similar to above, support this insofar as mineral extraction, landfills and cleanfills are subject to the additional caveats in those clauses. This is essential to ensure those activities do not trump the values of natural wetlands and wetland ecosystems.</p>
NPSFM Apdx 6	Principles for aquatic offsetting	<p>These principles should align as much as possible with similar ‘offsetting principles’ proposed to be included in the NPS for Indigenous Biodiversity (acknowledging that the NPS-IB has been drafted to not apply to aquatic indigenous biodiversity).</p>
NPSFM Apdx 7	Principles for aquatic compensation	<p>These principles should align as much as possible with similar ‘compensation principles’ proposed to be included in the NPS for Indigenous Biodiversity (acknowledging that the NPS-IB has been drafted to not apply to aquatic indigenous biodiversity).</p>
NES-F Reg 24(1)	Catchment loads as at 2 September 2020.	<p>This change does not address the current and ongoing difficulties (if not impossibilities) in calculating catchment load as at 2 Sept 2020. The proposed changes do not clarify Regulation 24 in this regard.</p>

NES-F Reg 38	Permitted activities in/near natural wetlands	<p>These changes do not address the RMA s13(1)(c) requirement to have a rule permitting the introduction or planting of plants to beds of rivers and lakes (or when either becomes a natural wetland). Rather, they relate to RMA sections 13(2) and 2A(b).</p> <p>Sub-clause (5) is very complex. There are lots of cross-referencing. Further simplification and therefore clarity is required here.</p> <p>Sub-clause (6) and (5)(c) appear to introduce a discretion on a permitted activity. This is poor resource management practice at best, and this sort of discretion for a permitted activity verges on being ultra vires. Standards for permitted activities in the NES-F should not be dependent on an assessment against reg 55 and a schedule as complex as that in Schedule 2. Have all of these matters been addressed effectively? Who determines this?</p> <p>Furthermore, by dint of not being empowered to charge for certain things, Regulation 75(2) infers that the consent authority is NOT intended to have a role of reviewing or scrutinising any documentation, but rather, merely receive it. Need further clarification here about intent and expectations of consent applicant c.f. consent authority roles.</p>
NES-F Reg 39(3A)(b)	'Hydrological connection' between discharge and a natural wetland.	<p>The quality of knowledge and information available on hydraulic connectivity is highly variable within our region. Changes are unclear if the onus is on the consent applicant or consent authority to prove or disprove that there is a connection between the discharge and a natural wetland. The intent here has merit, but the expression is loaded with uncertainty.</p>
NES-F Reg 45	Construction of specified infrastructure.	<p>Nothing in the proposed changes appear to enable the construction of various structures— rather, they relate to some of the effects of construction/ maintenance/operating activities. Is this intentional, or assumed that, given the title of the part, subpart or section, if these effects are managed, then the structure can be built or activity undertaken? (refer RMA s13(1)).</p>