

From: [Rachel Millar](#)
To: [Indigenous Biodiversity](#); [Hayden Johnston](#)
Cc: [Sally Strang](#); [Egon Guttke \(NZFFA\)](#)
Subject: NPS IB amendment to give effect to the Ministers call to Councils to halt SNA mapping
Date: Monday, 25 March 2024 4:40:15 pm
Attachments: [image001.jpg](#)
[image002.png](#)
[Submission on National Policy on Indigenous Biodiversity - signed final.pdf](#)
[NBSIB Exposure Draft NZFOA submission Final.pdf](#)

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

To whom it may concern,

New Zealand Forest Owners Association (FOA) and New Zealand Farm Forestry Association (FFA) welcome the opportunity to provide feedback on the Government's proposal to cease the implementation of new significant natural areas (SNAs) and complete a review of the areas. FOA/FFA supports the need for a review of the SNA criteria. All of the concerns outlined in our original submissions to the National Policy Statement for Indigenous Biodiversity (NPS IB) exposure draft remain (submissions attached).

FOA/FFA agrees that the SNA criteria as proposed are overly broad. In particular we remain opposed to exotic vegetation that has been planted for the purposes of harvesting, being potentially captured under the regulatory regime designed specifically to protect remnant indigenous vegetation from clearance. We are also concerned that areas planted with native species for the express purpose of harvesting will be completely captured by the proposed criteria. The proposed approach is proving impractical to implement and is diverting resources to litigation and consultants that would be far better spent undertaking on-the-ground action that actually benefits biodiversity.

While FOA/FFA supports the approach of nationally consistent SNA criteria and the mapping of indigenous vegetation remnants that meet the SNA criteria to give landowners certainty, there is need for a level of pragmatism in the implementation of this, and recognition of the huge resources required to complete this accurately and effectively across the country. In our members experience SNA mapping cannot be completed at a desk top level, and ground truthing is essential, to ensure identified areas do in fact meet the criteria and that the boundaries are correct. That being the case, it is time consuming and costly. We question whether the resources are realistically available to complete this large exercise in the short time frames proposed, particularly for cash strapped councils facing other deadlines and budgetary challenges. The same concern applies for the requirement to map habitat for highly mobile fauna, which as the term suggests are highly mobile, making it difficult in some instances to map their specific habitat use over time.

FOA/FFA supports the need to pause the SNA mapping, whilst a review of the criteria is undertaken. To not do so risks Councils wasting resources undertaking mapping that will then need to be reviewed and updated if the criteria are amended.

Please do not hesitate to contact the undersigned if you require further information.

Ngā mihi nui

Rachel Millar | Environmental Manager

P 027 300 1413

Logo FOA





20 July 2022

Ministry for the Environment,
Box 10362,
Wellington 6143.
indigenusbiodiversity@mfe.govt.nz

SUBMISSION ON

National Policy Statement for indigenous Biodiversity – Exposure Draft

Submitter: New Zealand Farm Forestry Association Incorporated

Address: New Zealand Farm Forestry Association
9th Floor, 93 The Terrace, Wellington
PO Box 10 349,
The Terrace
Wellington 6143

Submitted by: Graham West, President

About this organization. The Association represents people who own small-scale private forests and/or are interested in the many values of trees. Currently we have over 1200 members representing a good cross-section of the approximately 15,000 entities owning private forests in New Zealand. Small forest owners are managing about 25% of the national exotic forests and also own generally sizable areas of indigenous forests, with some managed under the sustainable forest management provisions of the Forest Act.

Contact: To discuss this submission you are welcome to contact:

Egon Guttke
Ph 04 2370177
6 Glengavel Grove, PORIRUA 5024
Email egon.guttke@outlook.co.nz

Contents

Background and Summary	3
Key Concerns.....	3
Part 1 Preliminary provisions	5
Clause 1.5.3 Maintenance of indigenous biodiversity.....	5
Clause 1.6 Interpretation	5
Part 2: Objectives and Policies	6
Clause 2.1.1 (a) Objective	6
Clause 2.2 Policy 2 (b).....	6
Part 3: Implementation - Subpart 1	6
Clause 3.2 2 (b) (i)	6
Clause 3.5 Social economic and cultural wellbeing	6
Part 3: Implementation - Subpart 2	6
Clause 3.8.2 (c) Assessing areas that qualify as significant natural areas	6
Clause 3.8.2 (f) Assessing areas that qualify as significant natural areas	7
Clause 3.11.5 (a) Exceptions to clause 3.10.....	7
Clause 3.14.1 Plantation forests with SNAs.....	7
Clause 3.17 Maintenance of improved pasture.....	8
Clause 3.19.3 Identified taonga.....	9
Clause 3.19.5 and 3.19.6 Identified taonga	9
Clause 3.20.1 Specified highly mobile fauna	9
Clause 3.22.4 Increasing indigenous vegetation cover	9
Clause 3.25 Monitoring by regional councils.....	10
Appendix 1: Criteria for identifying areas that qualify as significant natural areas	10
Direction on Approach	10
Manner and form of assessment	10
A Representativeness criterion - 2.....	11
A Representativeness criterion - 3.....	11
B Diversity and pattern criterion - 5.....	11
C Rarity and distinctiveness criterion - 3.....	11
C Rarity and distinctiveness criterion - 6.....	12
D Ecological context criterion	12

Background and Summary

The Ministry for the Environment has issued an Exposure Draft National Policy Statement on Indigenous Biodiversity. The document includes the identification of biodiversity using very loose criteria which would in effect describe any indigenous vegetation. It also proposes to identify and protect biodiversity inside plantation forests.

Forests, both indigenous and exotic, encourage and protect biodiversity. Most land owners are good custodians of their land, and many of the areas that will become Significant Natural Areas only exist because their owners have actively managed and protected them. If policies are introduced that reduce their land management rights, increase their management costs and lower their land values, there will be unintended consequences such as less afforestation and more frequent clearing of native vegetation from farmland. Although the policy states that it wants to recognise the role of landowners as custodians and allow them to provide for their wellbeing, it is likely to achieve the opposite.

We support the protection of indigenous biodiversity but suggest that there is too much focus on blanket regulation and too little focus on incentives for good management or pest control. This will penalise those land owners who actively create and protect biodiversity.

Key Concerns

- 1 The criteria for Significant Natural Areas (SNAs) are very wide and will potentially include all native vegetation. There are four relevant criteria and only one needs to be met to designate an area as an SNA. One of them, "Representativeness," *"includes commonplace indigenous vegetation and the habitats of indigenous fauna... (and) degraded indigenous vegetation, ecosystems and habitats..."* Using this criterion alone any area with native vegetation, such as a hillside with bracken, will qualify as an SNA. By implication, the land area available for afforestation will shrink.

Another effect is that planting native species will become less attractive due to the loss of management rights and the restrictions imposed.

- 2 The policy proposes to identify SNAs in plantation forests. An SNA is defined as an area that meets the criteria in "Appendix 1". Yet the Exposure Draft Summary (Forestry) states that only the areas... "that support the Threatened or At Risk species" will be defined as SNAs. It also stipulates that only areas with "Threatened or At Risk species present" will qualify as SNAs. The intent of the Exposure Draft Summary (Forestry) is clearly not reflected in the detailed Exposure Draft policy.
- 3 SNAs in plantation forests would need *"to be managed over the course of consecutive rotations... to maintain long-term populations of any Threatened or at At Risk species present."* While species could migrate inside large forests containing a range of age classes, this might not be possible in small forests. Harvesting and replanting might be impossible for landowners with woodlots containing limited age classes, or forest blocks surrounded by farmland; and it would deter anyone from growing a single rotation forest. A woodlot planted as a retirement nest-egg may not be able to be harvested. Without some exceptions to Clause 3.14, the intent of Policy 10 in Clause 2.2 will not be met.

Currently the Exposure Draft is impractical and will be a major barrier to planting trees on farms.

- 4 District Councils will be responsible for ensuring that SNAs in plantation forests are managed *“to maintain long-term populations of any Threatened or at At Risk species present.”* It is unclear what rules or guidelines they will use, although Policy 5 in Clause 2.2 states that biodiversity will be managed in *“an integrated way, within and across administrative boundaries.”*

In order to meet Policy 5, it is imperative that a more prescriptive approach is developed - perhaps using best practice guidelines - and made available when the policy is implemented. It is also essential that the costs imposed by the regulations do not make the harvesting of a forest uneconomical.

- 5 Many of our members harvest selected native trees using a sustainable logging plan under the Forests Act. This can provide an important source of income, but the proposed policy will make this impossible. The reality on the ground is that by applying the principles in Appendix 1, all of those areas will become SNAs (as has already happened in the Kapiti District). Our Association has a special Indigenous Forest Section and all of those members and their forests - spread across the whole of New Zealand – will be affected. There will also be downstream effects on the availability of high quality timber for furniture making and other interior uses, which is likely to lead to higher imports of specialty timbers.
- 6 The policy does not address pest control which is one of the key reasons for the decline in biodiversity. The current, inadequate approach to pest control is as much a challenge for local government as central government. Many of our members spend significant amounts on pest control, and will now be faced with the loss of management rights over large areas of developing indigenous vegetation, just because they have looked after them. This has happened already in the Kapiti district, where a number of landowners have had indigenous vegetation with no outstanding features - covering from 60% to 90% of their land - declared as ecological sites. The policy will discourage people from undertaking pest control and penalise them for being good custodians of their land.
- 7 Biodiversity is a public benefit. Land owners establish and maintain biodiversity by planting forests, undertaking pest control, and protecting indigenous vegetation. Because the resultant ecosystem services are a benefit to all New Zealanders it is neither equitable nor realistic to expect land owners to bear the additional costs and restrictions associated with the proposed policy. There needs to be some recognition of this in district plans (enforced via the NPS-IB), to ensure that landowners are not unduly penalised, lest the natural incentive is to destroy biodiversity rather than nurture it.
- 8 The costs associated with applying the NPS-IB will be an ongoing charge against both land owners and councils. It is not clear whether these costs have been measured or even considered. We are especially concerned by the cost burden to be carried by woodlot owners, who may be prevented from extracting any value from their long-term forest investments.

- 9 In several instances the Exposure Draft Summary is at variance with the proposed policy. An important example concerns the type of area which will be covered. The summary states that only “*the indigenous biodiversity that is most significant and precious is identified and protected,*” yet the assessment principles say that “*commonplace indigenous vegetation is included*” and “*It is not restricted to the best or most representative examples.*”

There are other examples, and we suggest that submissions focussed just on the Discussion Document may suffer as a result of this ambiguity.

Our comments on specific clauses follow:

Part 1 Preliminary provisions

There are key Maori terms used in the draft policy: some of them are explained many are not. Examples are “kaitiaki”, “mauri”, and “te a o Māori.” Most New Zealanders do not speak Maori. Given that the document cannot be properly understood without an explanation of these key terms, it is difficult to access and excludes many of us from using it.

Relief sought: Maori terms need to be either be defined, or translated into English.

Clause 1.5.3 Maintenance of indigenous biodiversity

The clause expresses a requirement that indigenous biodiversity must not be reduced. However, there are natural events outside of human control which will affect biodiversity. The policy should exclude such events, and focus on the effect of human activities.

Relief sought: Following the words “requires at least no reduction” insert the words “caused by human activities”.

Clause 1.6 Interpretation

New subdivision, use or development: It is not clear whether the harvesting of a production forest is a new use, although that is implied in the summary document as well as in clause 3.14.

Relief sought: add: “for the avoidance of doubt, all plantation forest activities managed by the NES-PF do not constitute “new use” in an existing forest.

SNA, or significant natural area: The definition is very wide, and at variance with the Draft Exposure Summary (Forestry), which states that only areas with “Threatened or At Risk species present” will qualify as SNAs.

Relief sought: Amend the definition to ensure that in plantation forests, only areas with “Threatened or At Risk species present” qualify as SNAs.

Part 2: Objectives and Policies

Clause 2.1.1 (a) Objective

The objective is unclear: the meaning of “kaitiaki” requires a concise definition; it should be clarified whether or not the role is exclusive, and if it is the role of landowners and local communities should be spelled out.

Relief sought: clarify the objective so that it can be understood.

Clause 2.2 Policy 2 (b)

The term “Taonga” is undefined and wide open to interpretation.

Relief sought: define the term taonga.

Part 3: Implementation - Subpart 1

Clause 3.2 2 (b) (i)

The meaning of “kaitiakitanga” is not clear. Is this an exclusive role for the protection, maintenance, and restoration of indigenous biodiversity? And to what extent will this affect private property rights?

Relief sought: Define the above including any effect on private property rights.

Clause 3.5 Social economic and cultural wellbeing

Clause 3.5 twists the requirement of the RMA to cater for the social, economic and cultural wellbeing of communities and people. Just stating that the policy needs to consider this does not cater for those requirements. For example:

- A number of people and small communities rely on the on the extraction of timber under sustainable logging plans. This is especially important in more remote locations. The proposed NPS-IB makes this impossible as any such areas will be defined as SNAs. Sustainable logging is not catered for in anywhere in the policy and will have a significant negative effect on the wellbeing of such communities.
- The large-scale designation of land as SNAs will have a major negative effect on the value of such land. This will impact on the wellbeing of most rural communities.

Relief sought: In clause 3.5 (1) replace “Local authorities must consider” with “Local authorities must ensure”.

Part 3: Implementation - Subpart 2

Clause 3.8.2 (c) Assessing areas that qualify as significant natural areas

We fully support that assessments should be undertaken by physical inspections. We have seen many assessments of SNAs based on statements such as “could provide habitat” or

“species x may be present.” To ensure that assessments are of a high quality, we expect all assessments to be evidence based.

Where the presence of a Threatened or At Risk species is referenced (e.g. in clause 3.14) current or recent proof of such presence should be required.

Relief sought: Add at the end of policy 3.8.2 (c): “All assessments must be evidence based. The presence of Threatened or At Risk species requires on site observations.”

Clause 3.8.2 (f) Assessing areas that qualify as significant natural areas

We agree with the intent of clause 3.8.2 (f) but there are often situations where a large area, perhaps thousands of hectares with hundreds of land owners is identified as an SNA. One such area is K047 in the Kapiti district, covering more than 40,000 hectares. In such situations there can be small parcels of land included in the SNA that are just outside of a fence line, boundary, or on the other side of the road. Not taking boundaries into consideration will be impractical and generally lead to difficulties in pest management. As long as the integrity and the values of an SNA are protected, we believe that some consideration needs to be given to the practicality of boundaries.

Relief sought: Add at the end of policy 3.7f: “It is recognised that minor adjustments can be made to SNA boundaries to cater for property boundaries, geographical features or the operational requirements of land owners, provided that the integrity and the values of the SNA are not affected.”

Clause 3.11.5 (a) Exceptions to clause 3.10

Clause 3.10 should not only be ignored when there is a risk just to public health and safety. A land owner should be able to remove a risk to his family or his own health, without having to apply for resource consent. This is essential in situations where urgency is required.

Relief sought: Remove the word “public” from clause 3.11.5 (a).

Clause 3.14.1 Plantation forests with SNAs

There are several issues with Clause 3.14.

- The definition of plantation forestry follows that used in the NES-PF, which implies that an area of less than a hectare does not qualify as a plantation forest. Many of our members, especially farmers, have woodlots of less than a hectare, often with species other than radiata pine. Managed for timber and protected from grazing, these blocks inevitably develop some native understory over time, which will qualify them as SNAs outside clause 3.14. Not only will the owners be prevented from harvesting these blocks they will see the risks of planting more, which will reduce the amount of afforestation going forward.
- Another area of concern is that the NES-PF only covers trees which have been planted for the purpose of harvesting. It does not include fruit and nut trees such as

chestnuts or olives. In many situations, especially on organic farms, such land could easily become an SNA, making it impossible to continue with the intended operation.

Relief sought: Alter the definition of a plantation forest to include woodlots smaller than one hectare and plantations where the trees are not grown for the purposes of harvesting.

- Plantation Forestry Biodiversity Areas would need *“to be managed over consecutive rotations to maintain long-term populations of the species present.”* This would potentially make it impossible to harvest or replant small, single-aged forests. At the beginning of a rotation there are wide open dry and sunny areas, which over time become covered by a cooler and darker mature forest. As the habitat changes, so do the species that live in it.
- To *“maintain long-term populations of the species present”* over consecutive rotations is not possible with flexible land use, where forests are planted for one rotation only and the land use changes after harvest. The increase in biodiversity while the land is in trees is clearly a bonus, but to require land owners to maintain that biodiversity at the cost of land use flexibility is unrealistic.

Relief sought: Create an exception for small forests so that they can be harvested where the protection of the values of the SNA is not economically feasible.

- Without any guidance or best practice documentation, each District Council will develop its own approach to ensure compliance with clause 3.14.1. This could go as far as requiring an ecological assessment or consent before a forestry activity such as thinning could be undertaken. To ensure that Policy 5 in Clause 2.2 is adhered to, it is essential that standards and guidelines are developed prior to the commencement of the NPS-IB, taking into account the costs to be borne by councils and land owners.

Relief sought: Develop best practice guidelines for Councils before the policy is implemented; and ensure the costs imposed by the regulations do not make the harvesting of small forests uneconomical.

- Clause 3.14.1 uses the term SNA as defined in Clause 1.6. That definition is very wide, and at variance with the Draft Exposure Summary (Forestry), which states that only areas with “Threatened or At Risk species present” will qualify as SNAs.

Relief sought: Amend either the definition of an SNA in Clause 1.6 or the criteria for identifying an SNA in Appendix 1, to ensure that in plantation forests only areas with “Threatened or At Risk species present” qualify

Clause 3.17 Maintenance of improved pasture

The periodic clearing of rural land includes forest land as well as pasture. It takes place to keep fence lines free, to maintain access tracks, roads, and other infrastructure, or for health and safety reasons. For farming and forestry, it is essential to enable this to continue.

Relief sought: Alter the clause to ensure that the activities included in the definition of “maintenance of improved pasture” can also be undertaken by forest owners for operational reasons including keeping fence lines free, maintaining access tracks, roads, and other infrastructure, or for health and safety reasons.

Clause 3.19.3 Identified taonga

The clause states that taonga will be mapped as agreed by tangata whenua. Where this affects private land, natural justice demands that landowners are advised prior to any mapping, and a sufficient level of detail is provided to land owners to give them the ability to challenge decisions affecting them.

Relief sought: Establish a process that allows landowners to be involved prior to any mapping of taonga and are able to challenge decisions affecting them.

Clause 3.19.5 and 3.19.6 Identified taonga

The policy requires local authorities to manage taonga as necessary to protect their values. The clause can be seen to override any private property rights or (for example) the requirement to manage regional and national infrastructure.

Relief sought: Alter the clause to ensure the consideration of existing property and use rights, as well as the development and maintenance of important infrastructure.

Clause 3.20.1 Specified highly mobile fauna

Similar to tangata whenua and territorial authorities, landowners must be involved in the identification and mapping of highly mobile fauna in areas affecting them.

Relief sought: Add “affected land-owners” to the parties listed in Clause 3.20.1

Clause 3.22.4 Increasing indigenous vegetation cover

The requirement for all regional councils to increase their indigenous vegetation cover is misguided. It ignores the fact that many are not even able to undertake basic pest control on the land they own (this is also true for the Department of Conservation). It would be both environmentally and economically much more effective to improve biodiversity by undertaking better pest control, rather than by creating more indigenous vegetation that will simply increase pest habitat.

Furthermore, some regional councils already have large areas of indigenous vegetation, and little land available to support rural and other economic activity. It would be inappropriate and inequitable to expect such a council to reduce its economic base to meet the stipulated requirements.

Relief sought: Change the wording to require councils to develop plans to improve biodiversity, and only to require an increase in indigenous vegetation cover where this is less than 10%.

Clause 3.25 Monitoring by regional councils

The clause requires extensive monitoring of indigenous biodiversity by regional and district councils. This will require significant resources and expertise, and it is doubtful whether councils and communities have the resources to do this. In the absence of any standards, the quality and format of data collection will also vary from region to region, making it difficult to establish just what is being accomplished.

Relief sought: Work with councils to develop practical national standards that are available prior to the commencement of the NP-IBS.

Appendix 1: Criteria for identifying areas that qualify as significant natural areas

Direction on Approach

The assessment principles for the criteria should not just provide guidance on what is included, but should also include details on what is **not** included. This will lead to less variation and better quality assessments.

Because smaller areas may not be viable over the long term, there should also be some parameters as to the minimum size of an SNA, e.g. for indigenous vegetation a minimum size of one hectare or a minimum width of 30 meters. The parameters should also take into account the practicability of assessments, management, and council's ability to identify and monitor such sites.

The approach should allow for areas of indigenous biodiversity that have established themselves within an existing land use and that are incidental to a permitted activity, to be excluded from the policy and not assessed as an SNA. This would address many of the concerns in our submission.

Relief sought: Better delineate what is and is not covered by the policy, and identify some basic minimum requirements for SNAs.

Manner and form of assessment

Where different criteria apply in different parts of an SNA, these subareas need to be clearly identified on the map and all evidence used in their assessment referenced or included, to ensure that the values requiring protection are clearly understood by all stakeholders.

District councils should be required to map not just the total SNA, but also the areas where specific criteria and attributes apply. If there are different rare species, then their habitats should be mapped, both in the interests of clarity and to ensure that these areas can be properly managed and protected.

Relief sought: change the policy to ensure that mapping is undertaken at least at criterion and species level, and add the requirement that all evidence must either be referenced or included in an assessment.

A *Representativeness criterion - 2*

The assessment principles are in direct contradiction to the Exposure Draft Summary of the proposed policy. They say that “*commonplace indigenous vegetation is included*” and “*It is not restricted to the best or most representative examples*”.

In contrast the Exposure Draft Summary states on page 5 “*The intent of these provisions is not to identify all indigenous biodiversity but to ensure the indigenous biodiversity that is most significant and precious is identified and protected*”.

If the assessment principles are not changed to reflect the Exposure Draft Summary statement then the latter is misleading, which undermines the credibility of the submission process. We also would like to point out that in the Kapiti district – using criteria that were narrower than what is proposed – more than 60 % of the district was categorised as SNAs, including almost all native vegetation on private land. Much of this land has no special conservation values and is commonplace, such as hillsides with bracken or a narrow strip of roadside vegetation. We do not believe that this should be the intent or the outcome of the proposed policy.

Relief sought: Change the assessment principles to reflect the intent of the provisions of the Exposure Draft Summary, which is “*to ensure the indigenous biodiversity that is most significant and precious is identified and protected.*”

A *Representativeness criterion - 3*

The assessment says that “*Significant indigenous fauna habitat is that which supports the typical suite of animals.*” In the interests of clarity, it should be stated that to qualify for this criterion, the assessment needs to show that such fauna actually exists on the site. Our experience is that ecologists will at times assume that just because a habitat exists, it is occupied and meets the requirements of this criterion. For example kiwi are known to live in some pine forests. However it would be foolish to argue that since pine forests provide kiwi habitat, all pine forests are therefore SNAs.

Relief sought: Change the assessment principle to ensure that there is evidence that the fauna to be protected exists on the site.

B *Diversity and pattern criterion - 5*

The required attribute to qualify is “*diversity of indigenous species, vegetation, habitat of indigenous fauna...*” This is far too loose as a criterion. Any place will have some biodiversity; indeed, the median strip on a motorway would qualify using this wording.

Relief sought: Better define the requirements to ensure that they reflect the intent of the provisions of the Exposure Draft Summary, which is “*to ensure the indigenous biodiversity that is most significant and precious is identified and protected.*”

C *Rarity and distinctiveness criterion - 3*

We are concerned that the mere existence of habitat rather than the presence of species is sufficient to create an SNA (see “Representativeness criterion 3” above). We also are

concerned that the definition of rarity is devolved to territorial authorities, and may even be determined by ecological advice on a case by case basis. This will lead to inconsistencies and provide uncertainty for landowners.

Relief sought: To meet the definition of rarity, the presence of a species rather than the presence of a habitat should be required. Whether or not a species is designated as rare – at either a national or regional level – should be managed centrally, e.g. by DOC, rather than devolved to territorial authorities.

C Rarity and distinctiveness criterion - 6

The criteria are too loose. Under this section an indigenous plant grown in a private garden, outside the normal edge of its distributional limit (e.g. a pohutakawa tree in Wellington) would meet the requirement and become an SNA.

Relief sought: Tighten the attributes to ensure that only the most significant and precious indigenous biodiversity is included in SNAs.

D Ecological context criterion

The proposed attributes are too broad and poorly defined, and if an area meets any one attribute that is deemed sufficient for it to be declared an SNA. In Attribute 3 (a), all that is required is “*at least moderate size and a compact shape*”. “Moderate” is undefined, so several hectares of bracken in a completely degraded environment would, just on the basis of the shape and size, qualify.

Relief sought: Better define the attributes required to ensure that only the most significant and precious indigenous biodiversity is included in SNAs.

Thank you for the opportunity to make this submission. We trust that feedback from the NZ Farm Forestry Association and others will help improve the policy for the benefit of all.



Graham West
President, NZ Farm Forestry Assn.



**FOREST
OWNERS
ASSOCIATION**

Submission

The National Policy Statement for Indigenous
Biodiversity - Exposure Draft July 2022

Submission to:
Ministry for the Environment

21 July 2022

www.nzfoa.org.nz

**Growing
Your
Future**

Contents

Introduction.....	3
General concerns with the exposure draft	3
• Broad definition of SNA	4
• Practical issues of mapping SNAs in productive vegetation.....	5
• Unclear and confusing provisions.....	5
• Delegation of implementation to local authorities will be inefficient and nationally ineffective.....	6
• Costs and Benefits	6
• Lack of industry certainty for harvest	7
• Potential for perverse outcomes	7
• Interface with the National Environmental Standards for Plantation Forestry.....	7
• Significant discrepancies between the exposure draft and the accompanying summary material	8
• Requirement for further amendments to align with the Natural and Built Environments Act and Spatial Planning Ac.....	8
Alternate and complementary approach.....	8
Conclusion	9
Detailed submissions on the exposure draft.....	10

Introduction

- 1 The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand's plantation forests and over 80% of the annual harvest. FOA is submitting on behalf of our national membership.
- 2 FOA appreciates the opportunity to comment on the exposure draft of the National Policy Statement for Indigenous Biodiversity (the exposure draft). Given the now well understood biodiversity values in plantation forests, the NPS IB has the potential to have a very significant impact on the plantation forest industry. The industry has collectively invested significant resources into researching the biodiversity values in our forests, how key species utilise the forests and how best we can manage our forests to enhance the biodiversity benefits. Ironically it is the work undertaken by the industry that has increased knowledge of the species present in our forests that ultimately could result in significantly greater regulation. If not well drafted and thought through, the NPS IB has the potential to both significantly increase regulation and costs for forestry, for very uncertain benefits – at worst potentially creating a perverse outcome of deterring biodiversity initiatives.
- 3 FOA prepared detailed submissions on the Draft NPS IB, covering legal and practical issues with the approach and with detailed supporting evidence from Willie Shaw of Wildland Consultants. Communications from the Minister and ministry staff had indicated that our concerns had been heard and addressed. We were therefore extremely disappointed to see that in the exposure draft the approach is largely unchanged as it applies to forestry, with only very minor amendments. Very few of the issues raised in FOA's submissions have been addressed and all of the concerns stated in the original submission remain.
- 4 FOA is now very concerned that the NPS IB is becoming increasingly convoluted and tangled, to the point that it is legally unclear how the various clauses would be interpreted collectively. Given the intention to delegate implementation to territorial authorities, this will almost certainly result in:
 - inconsistent approaches
 - costly processes duplicating effort in 67 territorial authorities untangling the requirements
 - increased consenting costs and delays for the forest industry
 - challenges for already stretched local authorities to adequately resource the additional processes, and
 - perverse outcomes.
- 5 MfE staff have indicated their intention to develop guidance material to assist with interpretation of the NPS IB. FOA considers that is inappropriate to rely on guidelines to clarify matters. While guides as to meaning may be permissible when applying a contextual and purposive approach to interpretation, guidelines cannot provide the text of legislation, or change its legal meaning. It is critical that the NPS IB text can be legally interpreted to achieve the stated intent.

General concerns with the exposure draft

- 6 Our key concerns with the exposure draft remain as articulated in our original submissions:

- 7 **Broad definition of SNA :** The definition of significant natural areas (SNAs) is far too broad to be practical or meaningful. If applied literally, any indigenous vegetation of any condition, planted or natural, would meet the criteria. Even a single tree in a garden that is regularly used by threatened species would meet the definition. By contrast MfE staff describe SNAs as ‘the most significant’ indigenous biodiversity. In effect, regulation has been drafted specifically to protect the most significant biodiversity, but may be applied to all native vegetation, regardless of its significance – there is a mismatch between purpose and application. This is problematic in a plantation forest environment where the production trees are left to grow for several decades with no browsing or grazing, so indigenous vegetation grows up in the gaps between the plantation forest. Ensuring protection of those regenerated areas intertwined within productive stands and over access roads is simply not practical at harvest time.
- 8 The SNA criteria are particularly problematic when applied to habitat, and in particular the adventive use of plantation forests by indigenous fauna. The FOA has repeatedly expressed that using the exact same mechanism to protect indigenous vegetation remnants and habitat values in productive vegetation is fraught with problems. They are clearly very different situations to manage.
- 9 The approach of utilising extremely broad SNA criteria and then attempting to unwind that through a range of exceptions has resulted in an NPS that is confusing, convoluted and open to interpretation. As far as FOA is aware there is no legal or ecological reason for using the identical mechanism (SNAs) to manage both indigenous vegetation remnants and habitat in productive vegetation. The basis for this approach appears to be because some council definitions of SNA used to date have included the habitat of threatened and at-risk species in the criteria. It is notable that during the time these criteria have been in place there has been only one example of exotic plantation forests being mapped as SNA (rare orchids in an old crop stand in Kaingaroa Forest). This indicates that at a practical level, ecologists have been making a more refined assessment of the ‘significance’ of habitat, than a literal interpretation of the SNA criteria would indicate. We are aware of indigenous planted stands in ex Forest Service forests being mapped as SNA and therefore preventing harvest from taking place.
- 10 Management of habitat values in productive vegetation is complex requiring biodiversity values to be balanced against the social and economic needs of a productive land use. The social and economic needs associated with existing plantation forests are often significant, with large established workforces built up around forests and processing facilities reliant on the forests for feedstock. In a low carbon emissions constrained economy this will arguably become even more significant as forest feedstocks become critical to our future economy and environmental footprint.
- 11 In FOA’s view the only way to effectively manage biodiversity values is through well considered, clear and purpose designed regulations with:
- SNAs applying to significant indigenous vegetation remnants and significant habitat within indigenous vegetation remnants (that might not otherwise be considered significant) to ensure these areas are protected in perpetuity;
 - Purpose specific regulation for management of habitat use outside of SNAs.

- 12 **Practical issues of mapping SNAs in productive vegetation:** Mapping of habitat use in plantation forests is often more challenging than in native remnants given the changing and rapidly evolving habitat created by harvest and fast growing trees. Other than a few species (such as kiwi) that utilise all stages of the plantation forest, most fauna found in forests tend to use niche habitats within specific age classes. Long-tailed bats tend to be in their highest concentrations at mature forest edges where they make use of the habitat of the tall trees and feed on insects in the cutover. Similarly NZ Falcon nest near forest edges for similar reasons. Therefore by default, habitat areas for a species will move around the forest as the trees are harvested and replanted. In many cases their exact habitat range can only be determined with certainty via detailed and costly surveys. At any point in time it could be determined where habitat use exists, however within a season or two that information would be out of date as the species will have moved on to different parts of the forest.
- 13 As MfE staff will be aware, an appeal on the Thames Coromandel District Plan has resulted in a protracted mediation process to attempt to resolve the issue of possible SNAs within plantation forest. In that case (applying the Waikato Regional Policy Statement SNA criteria) it was concluded that the plantations forests in the District could potentially meet SNA criteria. For the reasons detailed above it was eventually concluded that accurate SNA mapping in plantation forests could not practically be undertaken. That being the case, we question the practicality of a regulation that effectively requires that same process to be carried out in every district in the country.
- 14 An additional practical difficulty is that the threat status of indigenous species are regularly reviewed and updated, resulting in regular changes either increasing or decreasing species threat status. These reviews take place on a significantly shorter time frame than plan changes. This will result in material changes as to what habitat qualifies as FNA based on the SNA criteria, as species fall in and out of the threat status referred to in the criteria. This would in theory require local authorities to update their mapping to remove species that no longer qualify, and include new species for which the threat status has increased, to ensure the mapping reflects the criteria.
- 15 The requirement to map the extent of highly mobile (threatened and at-risk) fauna habitat will be even more challenging, for species that could potentially be anywhere in the region that has suitable vegetation.
- 16 **Unclear and confusing provisions:** The current layout of the NPS IB is confusing and open to misinterpretation. This in a large part stems from:
- a. The very broad SNA criteria which then requires a range of exceptions to unwind the approach into something that is moderately practical and workable.
 - b. The confusing approach to dealing with existing land uses and activities that is circular and open to interpretation to the point that it is almost impossible to determine whether an activity is existing or new under the NPS IB, or neither.
 - c. The lack of a hierarchy in the clauses in sub-part 2 making it difficult to understand which clause would take precedence if an activity falls under more than one clause eg plantation forests that are also existing activities, or habitat of highly mobile fauna that would also qualify as SNA.

- 17 To attempt to clarify the potential interpretation of the exposure draft, FOA sought a legal opinion from resource management barrister Gillian Chappell. Her opinion is attached. From communications with MfE staff it is clear that **the legal interpretation of the exposure draft does not align with the MfE's intent**, in a number of respects. This is particularly concerning given it is a national instrument required to be interpreted and translated into further regulation by a large number of local authorities. The risk of misinterpretation is high. We urge MfE to fully consider the concerns being raised by submitters, the need for additional regulation and take the time to get this right.
- 18 **Delegation of implementation to local authorities will be inefficient and nationally ineffective:** Delegation of implementation of the NPS IB to 67 local authorities effectively means that the same difficult and complex issues will need to be considered 67 times, in many instances by local authorities with no staff with the necessary qualifications to be able to consider these issues. This is compounded by the fact that for many species little is known about how they utilise plantation forests, other than that they are routinely observed in second, third and fourth rotation forests in good numbers, indicating that they are well adapted to the full cycle of forestry activities. The NPS IB will place local authorities in a difficult situation of attempting to write regulations and resource consent conditions to achieve concrete outcomes over long time frames, based in some cases on very little factual information and without any staff with the necessary specialist knowledge.
- 19 Given the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF) are in place, it would make far more sense to provide national direction for biodiversity management in plantation forests through the biodiversity provisions already in place under the NES PF. These provisions can be extended over time as additional information comes available. Specific areas of uncertainty could be made a priority for research to improve the science that underpins regulation in a coordinated way, with funding from the industry and the Ministries.
- 20 NZ FOA is aware that additional biodiversity provisions were considered as part of the one year review of the NES-PF, but given the difficulty in developing workable and science based regulations this did not progress. Based on this very recent attempt, FOA is keenly aware of the burden the exposure draft will place on local authorities (which they are not equipped to manage) and we suspect would not achieve an outcome any different to that determined by the ministry undertaking the NES-PF review. The perverse outcomes of local authority responsibility would include:
- a. Piecemeal and inconsistent regulation
 - b. Protracted litigation
 - c. Uncertainty for our industry (a key driver of the need for the NES-PF)
 - d. Decreased investment in plantation forests based on uncertainty and costs of harvest
 - e. Costs in bureaucracy instead of being of benefit to our biodiversity
- 21 **Costs and Benefits:** FOA strongly questions the previous cost benefit analysis undertaken on the NPS IB and considers that it greatly underestimates costs to landowners. The minor changes to the exposure draft have not addressed the concerns previously raised. The costs of implementation of this instrument are potentially open-ended in terms of:
- a. councils undertaking the necessary work to understand and interpret the provisions

- b. litigation to resolve differences in interpretation
 - c. implementation costs arising from resource consenting
 - d. ongoing costs of any controls imposed.
- 22 The major concern is that **there is no certainty that this additional bureaucratic cost will result in any better outcomes for biodiversity in our forests**, particularly for species that are already thriving in third and fourth rotation plantation forests without regulation.
- 23 **Lack of industry certainty for harvest:** As currently worded in the exposure draft, it is conceivable that the NPS IB could result in large areas of plantation forests being mapped as SNAs and effectively made unharvestable through impractical and unworkable regulations or consent obligations. The result could effectively transition existing forests from plantation forests to permanent forests. This would be counterproductive to the Government stated intent to introduce additional regulation to control or prevent afforestation for permanent exotic forests, due to the perceived social impacts in rural communities. Clearly the social and economic impacts of turning existing plantation forests into permanent forests is even greater than for forests intentionally planted for carbon. Dependent workforces and processors that have built up around existing forests, and without harvest forest owners would be left without any income given the majority of existing forests are pre-1990 and therefore ineligible for the ETS. Locking up forests would potentially result in worse biodiversity outcomes given there would be no income to pay for forest management and plant and animal pest control.
- 24 The summary document and comments from MfE staff during the consultation process indicate that this is not their intent. The summary document states that “*the NPS IB aims to provide for production forestry activities to continue while protecting the rarest species*” (page 2). However, there is **no text in the exposure draft to articulate that intent**, other than an oblique reference to ‘over the course of consecutive rotations’ in clause 3.14. By contrast, all of the relevant provisions, including clause 3.14 mandate the need to protect biodiversity. The only positive obligation in relation to forestry is the requirement to write objectives, policies and methods to manage biodiversity in plantation forestry, but there is no indication that this is within the bounds of the plantation forestry activity being able to continue. By comparison, clause 3.17 makes continuance of the core activity clear for “the maintenance of improved pasture”.
- 25 **Potential for perverse outcomes:** The approach of the NPS IB will inevitably and perversely penalise those land uses that provide for biodiversity, with greater costs, regulation and reduced certainty, increasing ongoing management costs and potentially reducing land values. The approach of the NPS IB can only serve to deter land uses that create habitat for threatened species, and activities (such as predator control) that increase their populations. It will particularly deter the planting of indigenous production species, given that harvesting would almost certainly become impossible.
- 26 This undermines years of good will and biodiversity protection that has been undertaken voluntarily in plantation forests throughout New Zealand.
- 27 **Interface with the National Environmental Standards for Plantation Forestry:** As stated in our previous submission, the exposure draft does not interface well with the NES PF. When the NES PF was drafted it was not contemplated that the plantation forest itself could be a SNA. Many of the regulations were drafted on the basis that the activity would occur outside of SNAs. Regulations 93

and 94 (indigenous vegetation) will become confusing to apply while many of the regulations will become non-sensical if the plantation forest itself is SNA (eg a requirement to clear wildings or not replant, within the productive forest area). If the SNA criteria are not amended to exclude plantation forest (our strong preference), then it will be essential that the NES PF is amended simultaneously to interface as intended with the NPS IB. We note that this intention is signalled at the bottom of page 2 of the forestry summary document.

- 28 **Significant discrepancies between the exposure draft and the accompanying summary material:** It has become clear through the course of consultation and discussions with MfE staff that there is clear variance between the described intent of the NPS IB as articulated in summary documents and presentation materials, and the actual text of the exposure draft. Statements in the summary documents such as *'the intent of these provisions is not to identify all indigenous biodiversity but to ensure the indigenous biodiversity that is most significant and precious is identified and protected'*, *'with regard to forestry, the NPS IB aims to provide for production activities to continue while protecting the rarest species'*, *'those areas are only SNAs if there are Threatened or At-risk species present'* and *'this ensures harvest is still able to occur'* do not accurately reflect the legal interpretation of the text of the exposure draft.
- 29 The summary material completely misleads affected stakeholders as to the practical implications of the NPS IB on their land and operations. This is particularly concerning giving the far-reaching implications of the NPS IB on the viability of many routine rural activities.
- 30 **Requirement for further amendments to align with the Natural and Built Environments Act and Spatial Planning Act:** The exposure draft is clearly written to align with the RMA. Given the RMA is soon to be replaced by the Natural and Built Environments Act and Spatial Planning Act, for efficiency we question the sense in pushing the NPS IB through, when in very short order it is going to require a major review to comply and align with two new pieces of legislation. This seems to us to be an unnecessary double up in regulatory activity. Given the new Acts are imminent it would surely make more sense to wait until they are resolved, followed by release of a further exposure draft of the NPS IB in an aligned form.

Alternate and complementary approach

- 31 FOA members are committed to maintaining and improving biodiversity values in their forests, as evidenced by the many biodiversity initiatives described in our original submissions to the NPS IB discussion document. It is forest owners strong desire that these projects can continue. To achieve this requires a regulatory approach that positively recognises and encourages biodiversity enhancement, and at best does not deter and penalise it as is currently proposed in the exposure draft.
- 32 Ministry staff, through discussions, have made it clear that the intent is to fast track the NPS IB, and there is little appetite to substantially amend the text as provided in the exposure draft. Given the serious implications of the NPS IB for our sector, this is untenable. However on that basis FOA has attempted to provide solutions to amend the exposure draft to better align with the ministry's stated intent and achieve an outcome that is more efficient, consistent and effective. Our detailed comments and suggestions for changes to the exposure draft are provided in the following table.

33 Conclusion

- 34 NZ FOA is extremely disappointed in the exposure draft. Virtually all of the concerns stated in our original submission on the Draft NPS IB in 2020 remain unresolved. The potential negative implications of the NPS IB for the plantation forest industry and for management of biodiversity in our forest are serious.
- 35 Given the far-reaching implications for all rural land use, we urge MfE to spend the time to amend the NPS IB to be both clearer and more transparent, and reflective of the stated intentions.
- 36 We strongly recommend that any provisions in relation to plantation forestry management are deferred to the NES-PF to enable a nationally consistent approach underpinned by strong science.



Sally Strang
Resources and Environment Committee Chair
NZ Forest Owners Association

Detailed submissions on the exposure draft

The following table details concerns and proposed changes to key sections of the exposure draft.

Clause	Concern	Proposed Amendment
Clause 1.3 Application	If our proposal for biodiversity in plantation forests to be managed by the NES PF is accepted, for consistency and clarity the NES PF should be referred to in clause 1.3. This amendment requires a corresponding definition.	Add to Clause 1.3 <i>(2)(e) Plantation forestry activities are managed by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 subject to clause 3.14</i>
Definition of 'existing activity'	The current definition of "existing activity" attempts to create a differentiation between existing land use protected by section 10 of the Act and "existing activities" under the NPS IB. The result is that section 10 existing land uses is not an "existing activity" under the NPS IB. This is confusing to most people and requires an in-depth knowledge of the Act. For most rural land uses, there is not a clear delineation between activities and land use – the land use is made up of a series of activities. A further confusion is that rural land uses include elements that are managed by territorial and regional authorities with the result that these activities are protected by both section 10 and section 20A of the Act. The result is that for an activity such as harvesting which may be both a territorial and regional council function (refer reg 62 NES-PF) , as a regional council function, harvesting will not be protected by section 10. It is then a question of whether the harvesting had taken place at the commencement of the NPSIB. Our advice is that first rotation harvesting may not be an "existing activity" for the purpose of the NPS-IB.	Either change the approach to existing activities to make that more logical, or alternatively make it clear to readers of the NPS IB that section 10 activities fall outside of the NPS IB are not regulated, other than through the definitions. Amend the definition of existing activity as follows: <i>existing activity means</i> <i>(a) a subdivision, use or development that is:</i> <i>(I) Lawfully established at the commencement date; but</i> <i>(II) Not a land use covered <u>protected</u> by section 10 of the Act</i> <i><u>or</u></i> <i>(b) <u>a plantation forestry activity other than afforestation:</u></i>

Clause	Concern	Proposed Amendment
	MfE staff commented that the intention is that once a plantation forestry is planted, from then on it is considered as an existing activity. Clarification of this would resolve the confusion, at least for plantation forestry.	
New Definition of plantation forest activity	A new definition is required to provide greater clarity that a planted forest and activities within that forest may continue regardless of whether harvesting and other associated activities that are anticipated as part of afforestation have already occurred as at the date of commencement of the NPS IB.	Plantation forestry activity or activities has the meaning in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.
Section 2.2 Policy 12	Policy 12 serves no real purpose and inappropriately singles out plantation forestry from other land uses. The NPS IB requires indigenous biodiversity to be managed across all land uses.	Delete policy 12.
Section 2.2 Policy 13	For the reasons below in relation to clause 3.21 we consider that Policy 13 is a step too far.	Amend policy 13 to delete the words “is provided for”.
Section 3.8 (2) (b), (c) and (d)	<p>In New Zealand Plantation forests are often owned by persons other than the landowner. Crown Forest Licences and Forestry Rights are legal instruments particular to New Zealand. Such rights are registered on land titles. There needs to be recognition of the NZ situation and a requirement where practicable to consult with plantation forest owners as well as the landowners.</p> <p>Currently clause (c) does not include the requirement that the ecologist ground truths the area to ensure the values described in fact exist and that the boundaries are accurate. MfE staff have indicated that in some instances mapping with aerial photography would be sufficient. For plantation</p>	<p>Amend sub sections 2(b) and (d) to include “and relevant plantation forest owners”.</p> <p>Amend clause (c) to require ground truthing. Alternatively provide that the onus is on the territorial authority to prove that the assessment is correct.</p>

Clause	Concern	Proposed Amendment
	forest owners, experience with SNA mapping to date has resulted in significant errors in mapping, with the cost then imposed on landowners to check for errors and prove those areas where the mapping is incorrect. For forest owners with large land holdings this can be a significant undertaking.	
Clause 3.10	<p>As currently worded, any indigenous vegetation that meets the SNA definition, is effectively fully protected on a 'no net effects basis'. In a plantation forest this could apply to indigenous vegetation that develops during the growing phase of the plantation trees, including understory, vegetation in gaps in the stand and over access roads etc. It could also apply to plantation forests that qualify as SNA habitat if the wording of the NPS IB is not clarified. If this vegetation or habitat is protected through objectives, policies and methods, it would potentially make the forest unharvestable. To date, appropriate management of indigenous vegetation has been effectively addressed through regulation 93 of the NES PF, which is largely being implemented by councils and proving workable. Objectives, policies and methods developed under the NPS IB will potentially over-ride regulation 93 and 94 of the NES PF and unravel the existing framework</p> <p>It is imperative for plantation forestry that it is not subject to clause 3.10.</p>	<p>Possible solutions include:</p> <ul style="list-style-type: none"> • Amending the SNA criteria to apply to truly significant indigenous vegetation, and specifically exclude the examples included in regulation 93(2) of the NES PF from being considered as significant (vegetation overgrowing and existing track, under story, areas of failed plantings, regenerating cutover etc), or • Extending clause 3.14 to also cover indigenous vegetation reserves within plantation forests and regulating these areas under regulation 93 and 94 of the NES PF. • Clearly excluding plantation forestry activities from clause 3.10 in clause 3.11.
3.11(1)(c)	The wording of clause 3.11(1) that it applies only to new subdivision, use and development creates some confusion as to the intended coverage of clause 3.14 which it refers to. One interpretation is that Clause 3.14 only applies to 'new'	<p>Amend Clause 3.11 as follows:</p> <p>(1) (c) "SNAs within a plantation forest (see clause 3.14)</p> <p>Add</p>

Clause	Concern	Proposed Amendment
	<p>plantation forestry which from our discussion with MfE staff does not appear to be the intent.</p> <p>The proposed amendments are consistent with the intent and drafting in relation to other exclusions.</p>	<p>(6) <u>Clause 3.10 does not apply to any adverse effects of plantation forestry activities on an SNA.</u></p>
3.12 SNAs on maori land	Currently the exposure draft provides for a more permissive approach for SNA's on maori land except where the SNA is a plantation forest. This could potentially result in more stringent rules for plantation forest on maori land than for indigenous forest remnants which seems nonsensical.	Amend Clause 3.12(b) so that clause 3.18 also applies to plantation forests on maori land.
3.14 Plantation Forests with SNAs	<ol style="list-style-type: none"> 1. It is unclear what 'plantation forests with SNAs' means. From discussions with MfE it appears this is intended for the situation where the productive vegetation itself is mapped as SNA habitat, as opposed to indigenous vegetation remnants embedded within plantation forests – though this is how the clause could be read. This needs to be clarified. 2. The terminology used in clause 3.14 referring to 'plantation forests' (as defined under the NES PF) could be interpreted that the clause only applies to the growing phase of the forest – not the associated activities which are defined separately under the NES PF. If that interpretation were applied the associated activities would then fall to clause 3.10 or 3.15, depending on the interpretation of the definitions of new and existing activities. We do not believe this is the intent. This requires clarification. 	<p>FOA proposes 3 possible solutions to clarify the management of SNAs in plantation forests, in order of preference.</p> <ol style="list-style-type: none"> 1. Amend the SNA criteria to specifically exclude plantation forest vegetation from the criteria and delete clause (2) and replace it with new clause (2) below. This avoids, large areas of planted forest from being subject to new methods and leaves intact the workability of the NES PF. 2. Retain the previous approach of using 'plantation forestry biodiversity areas' as a description for plantation forestry that meets the SNA criteria and delete clause (2) and replace it with new clause (2) below. While this makes little difference under the NPS IB, it assists in retaining the meaning of the NES PF (references to SNA's in the NES PF retain their meaning as applying to indigenous vegetation). 3. Retain the approach of the exposure draft and completely reword clause 3.14 to make it clear that: <ul style="list-style-type: none"> o It applies to all plantation forests, whether planted prior to the NPS IB or after.

Clause	Concern	Proposed Amendment
	<p>3. Clause 3.14 refers to ‘at-risk’ species whereas the SNA criteria now refers only to ‘at-risk (declining)’ which creates a mismatch.</p> <p>4. The wording of clause 3.14 suggests that the NPS IB imposes a positive obligation on forest owners to undertake activities to maintain threatened species populations even when no activities are taking place, or a population is declining for reasons outside of the forest owners control (eg predation, climate change, disease, migration to another location). This goes well beyond obligations typically imposed on landowners under the RMA.</p> <p>5. The exposure draft summary document and statements by MfE staff indicate that the intent of clause 3.14 is that it covers all existing plantation forests, that any forest that is already planted is considered to be ‘existing’ regardless of the timing of planting, and that it is intended that forestry activities (including harvesting) should continue. None of these things are currently clear in the current exposure draft text.</p> <p>6. Clause 3.14 requires councils to develop regulation to achieve an outcome that is almost impossible to know with any certainty – i.e ensuring the maintenance of a population over potentially many decades.</p> <p>7. As currently drafted, implementation of clause 3.14 will be delegated to 67 local authorities, inevitably resulting in a plethora of regulatory approaches, most likely deferring to resource consents resulting in even more variation in approaches. The inevitable result is high</p>	<ul style="list-style-type: none"> ○ It applies to both the production forest itself and indigenous forest remnant SNAs within the forest that could be impacted by harvest. ○ The intention under the regulation is that harvesting and replanting must be allowed to be continued (as is the case for improved pasture). ○ Defer regulation to protect threatened and at-risk species within plantation forests to the NES PF and work with the industry and subject experts to develop over time practical and workable requirements underpinned by sound science. ○ Include provisions in clause 3.14 relating to indigenous vegetation SNAs and the indigenous vegetation that grows up within the plantation forests and defer management of these areas to regulations 93 and 94 of the NES PF. <p>If option 3 remains MfE’s preferred approach (as has been stated by MfE), then FOA proposes the following alternative wording to clause 3.14 to make the intent clear:</p> <p><i>3.14 Plantation Forestry Activities</i></p> <p><i>(1) This clause applies to all plantation forestry activities that may affect an SNA, including SNAs that are indigenous vegetation located adjacent to the plantation forest and plantation forest that has been identified as an SNA due to habitat values.</i></p> <p><i>(2) Local Authorities must allow for plantation forestry activities to be carried out in accordance with the Resource Management</i></p>

Clause	Concern	Proposed Amendment
	<p>regulatory cost (both developing and implementing regulation) and very low certainty of achieving consistent and effective regulation that achieves any benefits for threatened and at-risk species. Given the significant challenges in drafting this regulation it would be far more efficient and effective for this to be implemented nationally via the NES PF, which was promulgated to avoid inconsistent and inefficient duplication. The proposed amendments will work in conjunction with amendments to the NES PF so that it interfaces correctly with the NPS IB. Ideally this should be accompanied by a body of work with input from industry and subject experts to develop over time practical and workable guidance for managing species that utilise plantation forests, underpinned by sound science.</p> <p>8. It is noted that the summary document accepts that “Some related changes to the NESPF might be needed to clarify the extent to which councils can provide for biodiversity in plantation forests” (page 2).</p>	<p><i>(National Environmental Standards for Plantation Forestry) Regulations 2017.</i></p>
3.15 Existing activities affecting SNAs	<p>It is currently unclear whether existing plantation forestry activities are managed under both clause 3.14 and clause 3.15. Discussions with MfE suggest the intention is that all plantation forestry activities are managed only under clause 3.14. That being the case that should be made clear.</p>	<p>Amend Clause 3.15 to include:</p> <p><i>This clause does not apply to plantation forestry activities (clause 3.14 applies).</i></p>
3.16 Maintaining indigenous biodiversity outside of SNAs	<p>The requirements of clause 3.16 when combined with the description of “maintenance of indigenous biodiversity” in section 1.5 (3) are arguably completely outside of the</p>	<p>Amend Clause 3.16 to recognise the limitations of what can realistically be achieved by local authorities, given their limited influence over permitted private land use, and complete</p>

Clause	Concern	Proposed Amendment
	control of a local authority. First, any requirement to achieve 'no reduction' in the size of populations of indigenous species or their range would require widespread predator control, most obviously for the Department of Conservation estate which is not currently the case. It would also require control of causes of decline and changing habitat use that are broader than local human activities such as unusual weather patterns, climate change, disease etc. As currently worded the only lever available to local authorities is through resource consent conditions, meaning that consented activities will inevitably bear the brunt of costs associated with attempting to achieve an unrealistic goal. In reality this concept will require support of all landowners, including the Government.	absence of control over Department of Conservation land where much of the declining biodiversity populations reside. It needs to be clear that applying conditions on resource consents alone cannot possibly achieve the objectives of clause 3.16 to halt biodiversity decline.
3.20 Highly Mobile Fauna	The current SNA criteria include any vegetation that 'provides habitat for an indigenous species that is listed as Threatened or At Risk (declining)'. As many of the listed highly mobile fauna are threatened or at risk (declining) it seems that there is an overlap in protection of their habitat as both SNAs and habitats of highly mobile fauna, or that one provision makes the other redundant. MfE staff have explained that 'the mere presence of threatened or at risk species does not necessarily make vegetation SNA', hence the need for the additional highly mobile fauna provisions. This advice is at odds with the SNA criteria which are black and white.	Amend the SNA criteria relating to habitat use, as suggested below, which would then remove the duplication with clause 3.20.
3.24 Information requirements	FOA does not support clause 3.24 that will requires every single resource consent application to be accompanied by a report prepared by a qualified and experienced ecologist.	Amend provision 3.24 to make it clear that an ecologists report is only required where the resource consent will have a

Clause	Concern	Proposed Amendment
	For plantation forestry harvesting, where effectively the same activity involving the same production species is being carried out in multiple locations in the same area, it makes absolutely no sense to have ecologists churning out the same advice over and over again. This is simply a make work for consultant ecologists, creating significant cost and potentially no benefits for biodiversity. The money would be better spent by forest owners on activities that actually create benefits, such as plant or animal pest control. As detailed in our submission, FOA proposes that plantation forest biodiversity issues are addressed at a national level via the NES PF processes, underpinned by sound science.	significant or unusual impact on biodiversity that is not well understood.
Appendix 1, Clause 3 Manner and Form of Assessment	Currently the manner and form of the assessment does not include the requirement that the ecologist ground truths the area to ensure the values described in fact exist and that the boundaries are accurate. MfE staff have indicated that in some instances mapping with aerial photography would be sufficient. As noted above, in practice plantation forest owners have found mapping of SNAs from aerial photography results in significant mapping errors, resulting in a very time-consuming process to identify the errors and seek changes. For forest owners with large land holdings this can be a significant undertaking.	Include in section 3 that the assessment by a suitably qualified ecologist must include ground truthing. Alternatively provide that the onus is on the territorial authority to prove that the assessment is robust.
Appendix 1: Criteria for identifying areas that quality as significant natural areas	As described above the current SNA criteria are so broad that they effectively describe any and all indigenous vegetation, and any vegetation that could provide habitat with threatened or at risk (declining) species. This is contrary to the described intent of the NPS IB that it is intended to protect <i>'indigenous biodiversity that is most significant and precious'</i> and inconsistent with s6 of the Act.	Amend the SNA criteria to better describe truly significant indigenous vegetation and remove descriptions such as 'common place', 'degraded', 'typical' etc which are clearly at odds with the described intent of the NPS IB. Amend the criteria C(6)(a) to <i>'significant habitat of an indigenous species that is listed as 'Threatened or At Risk (declining)' in the NZ Threat Classification System.</i>

Clause	Concern	Proposed Amendment
		<p>Specifically exclude from the SNA criteria:</p> <ul style="list-style-type: none"> • Plantation forest vegetation and its understory • Vegetation that has recently regrown within a plantation forest environment including all of the vegetation types covered by clause 93(2) of the NES PF • Alternatively if MfE's position remains that the criteria simply cannot be amended for any reason, to retain the intended meaning of the NES PF, rename these areas with a different term to SNA, such as 'plantation forest biodiversity areas' (used in the Draft NPS IB) to differentiate them from indigenous forest remnants.
Interface with the NES PF	As noted above the NPS IB does not interface well with the NEF PF, making the NES PF unworkable in situations where the plantation forest itself is SNA. Regulations 93 and 94 will effectively be over-ridden by councils writing regulation to give effect to the NPS IB.	<p>Amend the NES PF simultaneously with the NPS IB to align with the NPS IB including:</p> <ul style="list-style-type: none"> • Amending all current references to SNAs in the NES PF to make it clear that they apply only to SNAs that are indigenous vegetation remnants (or alternatively use a different term for plantation forestry SNA's in the NPS IB as suggested above). • Developing additional species-specific rules and guidance for management of threatened or at-risk (declining) species within plantation forestry habitat. • In addition to the above, deleting clause (2)(b) of regulation 6 of the NES PF to remove the ability for rules in a plan to be more stringent if the rule recognises and provides for the protection of SNAs.

Attention: Sally Strang
Chair - Environment Committee
New Zealand Forest Owners Association

By Email: sstrang@hnrg.com
cc. rachel.millar@nzfoa.org.nz

8 July 2022

REVIEW OF THE NPSIB EXPOSURE DRAFT

1. INTRODUCTION AND OVERVIEW

- 1.1 This opinion addresses the National Policy Statement Indigenous Biodiversity (“NPSIB”) Exposure Draft. Sections 2 to 6 answer specific questions. In section 7 I have included an overview of the key clauses that apply to new uses (interpreted as first rotation harvesting activities) as compared to existing activities (i.e second plus rotation forestry activities).

[Executive summary](#)

- 1.2 Overall, for plantation forestry, the drafting of the NPSIB Exposure Draft is unclear, unnecessarily complex and at times, circular. Particular concerns are:
- (a) It is ambiguous about its relationship with the Resource Management (National Environment Standards for Plantation Forestry) Regulations 2017 (“NESPF”);
 - (b) It is difficult to assess the approach applied to new uses versus existing activities;
 - (c) A fundamental issue is the unknown extent to which plantation forests will be identified as SNAs in accordance with Appendix One. In view of the broad definition and the concept anticipated by the ‘carve out’ clause 3.14 that SNAs will be identified in areas of plantation forest, it is reasonable to assume significantly greater areas of SNAs will be identified by territorial authorities following implementation of the NPSIB;
 - (d) Adding to the confusion and lack of transparency is the lack of clarity about the methods local authorities will employ to implement the matters mandated by the NPSIB. As such, it is impossible to understand the extent to which the provisions

will be applied by different local authorities, and the direct implications for plantation forests.

- 1.3 Though the NPSIB recognises plantation forestry in a limited manner, the provisions may not intend to be as narrow as drafted. If this is the case, it may be possible to more clearly carve out plantation forestry. However, for that to be successful, firstly, it is imperative that the extent to which SNAs are likely to be applied to existing planted forests is understood. Secondly, the relationship with the NESPF needs to be specified, and thirdly, territorial authorities require greater guidance about what objectives, policies and methods they are expected to apply to manage the issues identified. It is then a question as to the reasonableness of such provisions, noting that this is a matter for the NZFOA to determine.

2. Question 1:

How does section 6(c) apply to the drafting of new district council policies objectives and methods and to the consideration in the future of resource consents?

Drafting of new objectives and policies

- 2.1 Section 6(c) of the Resource Management Act 1991 (“RMA”) provides:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

(b) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

- 2.2 The following considerations are relevant:

- (a) The purpose of a national policy statement (“NPS”) is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the Act. (s45(1)). NPSs are not limited to matters of national importance specified in s6, as the section is directed towards matters of national significance.
- (b) Section 55 – local authority recognition of NPSs: A local authority must amend its plans¹ if a NPS directs it to, to include specific objectives and policies or to give effect to objectives and policies specified in the NPS.
- (c) Sections 67 and 75 – local authorities must give effect to NPSs through their regional and district plans.

¹ In this opinion a reference to plans may also include policy statements.

- (d) Section 104 - when considering an application for a resource consent, the consent authority must, subject to part 2 have regard to any relevant provisions of a NPS.
- (e) A regional authority has functions in relation to matters of regional significance and to achieve integrated management (s30).
- (f) A territorial authority's functions include the maintenance of indigenous biological diversity (s31). The maintenance of indigenous biodiversity is now defined in Part 1 of the NPSIB.
- (g) The NPSIB provides that part 3 is a "non-exhaustive list of things that local authorities must do to give effect to the Objectives and Policies in Part 2 of this ... [NPS], but nothing in this Part limits the general obligation under the Act to give effect to that Objective and those policies." Clause 3.1 (2) then clarifies that "Nothing in this Part limits a local authority's functions and duties under the Act in relation to indigenous biodiversity." These provisions relate only to Part 3 which implements the NPSIB.
- (h) Reg 6 of the NESPF provides that a rule in a plan may be more stringent than the NESPF regulations if the rule gives effect to an objective developed to give effect to the NPSFM or specific policies of the NZCPS 2010, or if the rule recognises and provides for the protection of SNAs.
- (i) A local authority is required to observe and enforce national environmental standards.²

2.3 Under the RMA, the territorial authority's functions include the maintenance of indigenous biodiversity, while the NPSIB sets an objective to protect, maintain and restore indigenous biodiversity (in a way that achieves the subclauses that follow). This objective is more encompassing than the functions of local authorities under the Act, (as it applies to indigenous biodiversity generally) and the matters of national importance set out in s6. By comparison s6(c) provides for "the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna" without reference to restoration. As a result, the NPSIB extends the ambit of s6.

2.4 Additionally, in accordance with the broad discretion provided to councils under the NPSIB Exposure Draft, there is nothing in the NPSIB that constrains councils from applying objectives or policies beyond those directed by the NPSIB. However, there are some constraints on the extent to which methods (e.g. rules) can be more stringent than the NESPF, which is discussed in more detail in section 6.3-6.5 below.³ In summary, regulation 6 of the NESPF provides that a rule in a plan may be more stringent than the NESPF regs if the

² Section 44A(7) and (8) of the RMA

³ Noting that the NESPF does not contain objectives and policies.

rule gives effect to an objective developed to give effect to the NPSFM or specific policies of the NZCPS 2010, or if the rule recognises and provides for the protection of SNAs.

- 2.5 It is noted that S32(4) of the RMA may operate to provide a check on the extent to which a proposal will impose a greater restriction on an activity to which a NES applies than the existing prohibitions or restrictions in that standard. It does so by requiring an evaluation report to establish whether the restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect. However, there is no equivalent test for the situation where a plan proposes provisions that go beyond, and may be more restrictive than a NPS.
- 2.6 In summary, Councils may apply the NPSIB Exposure Draft by drafting objectives and policies in their plans (and policy statements) to extend the ambit of s6(c) and may also, by applying the NPSIB, draft rules that are more stringent than the NESPF for the purpose of giving effect to the NPSIB Exposure Draft, provided the rule recognises and provides for the protection of SNAs and s32(4) has been considered.

Consideration of resource consents – s6(c)

- 2.7 With respect to the consideration of resource consents and Part 2 of the RMA, the Court of Appeal has summarised the effect of its *RJ Davidson Family Trust* decision as follows:⁴

... in the case of an application for a resource consent, the consent authority [is] not prevented from considering pt 2 of the RMA directly but would not be obliged to do so where a district or regional plan had been prepared in a manner that appropriately reflected the provisions of pt 2. In such a case, reference to pt 2 would not add anything, nor could it justify an outcome contrary to the thrust of the policies.

- 2.8 Thus s6(c) may be considered. However, where a plan has been amended pursuant to the NPSIB a consent authority may reasonably consider that it does not need to refer to s6(c) as these matters have been subsumed by the NPSIB and the amendments to plans required by the NPS.
- 2.9 The following clauses require the inclusion of new objectives, policies and methods to address the matters that are the subject of the respective clauses:
- (j) 3.10(2),(3),(4)
 - (k) 3.14(2)
 - (l) 3.15(2)

⁴ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73].

- 2.10 In practice, the NPSIB Exposure Draft provides no guidance to local authorities as to the drafting of the objectives, policies or methods they must include in their policy statements and plans to give effect to the various provisions of the NPSIB. As such, the status accorded to activities is at the local authority's discretion (subject to the proviso addressed in paras 2.4 -2.6 above). For example, any activity that is classified as restricted discretionary may require consideration of matters that address the matters raised in the NPSIB. In practice, and as plans are amended, consent applications are therefore more likely to have to consider the plan provisions revised by the NPSIB, than s6(c).
- 2.11 It is further noted that clause 3.21 provides for objectives, policies and methods that promote the restoration of indigenous biodiversity, including through reconstruction of areas and that the clause requires that consent conditions should be considered to achieve the prioritisation of certain areas.

3. Question 2:

Are the forestry activities regulated under the NESPF and identified as being regional council rules considered as new activities, rather than existing uses, under the draft provisions?

- 3.1 For the purpose of the NPSIB an "existing activity" is defined as "a subdivision, use or development that is: (a) lawfully established at the commencement date but (b) not a land use covered by section 10 of the Act."
- 3.2 "New subdivision, use, or development" is defined as "a subdivision, use, or development that is not an existing activity nor an activity captured by section 10 of the Act."
- 3.3 First, these definitions contain internal drafting inconsistencies.⁵ Secondly, section 10 of the Act does not "capture activities" or relate to "land uses covered by section 10". Section 10 of the Act is headed "Certain existing uses in relation to land protected" and provides for the use of land in a manner that contravenes a rule in a district plan under limited circumstances. The two definitions exclude existing uses protected by s10. It is not clear how existing uses under s10 are managed under the NPSIB, though it is presumed that the NPSIB does not apply in light of the s10 protection of district plan existing use rights. Overall, the drafting is confusing and unclear.
- 3.4 Notwithstanding the inconsistencies in drafting between the two definitions and the inherent circularity in defining existing activities by excluding existing uses, for the purpose of analysing the application of the definitions to the salient clauses in the NPSIB, it is assumed that these definitions relate to any district land uses, including subdivision, that

⁵ "not a land use covered by section 10 of the Act" vs "[not] an activity captured by section 10 of the Act"

have not yet been undertaken, and all activities subject to regional council rules.⁶ From a forestry perspective, earthworks, which are both a territorial function and a regional council function under the NESPF will be a “new subdivision, use or development” only to the extent they qualify as new activities managed by either a territorial authority or a regional council; i.e if the earthworks are otherwise able to meet the tests under s10 they will not be governed by the implementation provisions of the NPSIB. Earthworks that are managed by a regional council will be an “Existing Activity” if lawfully established at the commencement of the NPSIB. However, they will then need to meet the tests under clause 3.15 - or be managed under clause 3.10.

- 3.5 The overall effect of the NPSIB drafting is to create a new definition of “Existing Activities” in relation to regional council functions for the purpose of the NPSIB. The success of this mechanism is debatable.
- 3.6 One of the key questions for forestry is whether harvesting will qualify as an “Existing Activity”. Harvesting is generally managed by regional council rules so will qualify under the NPSIB as an existing activity if it was lawfully established at the commencement date. It is reasonable to infer that any plantation forest that has not been previously harvested (“First Rotation Harvesting”) will not be an “Existing Activity” and will be a new use. In comparison, where a plantation forest has been previously harvested, case law suggests that bearing in mind the cyclical and long term nature of forestry activities, it will be regarded as an existing activity /use, at least for the purpose of section 10.⁷ By extension the NPSIB definition will likely be interpreted to mean that “Second Plus Rotation Harvesting” is an Existing Activity.
- 3.7 This conclusion will also apply to other activities governed by the NESPF as regional activities.⁸ These will only be “Existing Activities” where they have been previously undertaken (and lawfully established when the NPSIB commenced).
- 3.8 Prima facie, First Rotation Harvesting will remain subject to clause 3.10, (this is addressed further below) despite the principle that the majority of forestry activities are indivisible, meaning that the activities are linked in a way that each activity is necessary for the entire cycle to occur. Earthworks managed as a regional function will also be subject to clause 3.10 if they have not previously been undertaken in that location of a plantation forest.
- 3.9 In my view the effect of clause 3.15 - which requires regional councils to identify the existing activities that the clause will apply to - is likely to identify only Second Plus Rotation Harvesting, as opposed to First Rotation Harvesting, as an Existing Activity. This is reinforced

⁶ With the exception of section 12 which relates to the Coastal Marine Area and which is excluded by clause 1.3(1). It is also noted that an activity under section 13 is excluded from the application of s10 so it is assumed that culverts do not have existing use rights and will be managed in the same way as regional council activities.

⁷ *Mawhinney v Auckland Council* [2018] NZEnvC 15

⁸ Or s13 activities (eg culverts)

by clause 3.15 which refers to the effects as not being greater in intensity, scale and character over time than at the commencement date. Such a test would be difficult for First Rotation Harvesting to meet. As a result, Second Plus Rotation Harvesting will be managed under clause 3.10 only if the intensity, scale or character of the activity has changed over time or it results in the loss of extent or degradation of ecological integrity of the SNA. Such effects may be cumulative.

- 3.10 In my view the drafting relationship between clause 3.15 and clause 3.10 is less than ideal. Clause 3.15 refers to when the effects of an “Existing Activity” must be managed, and impliedly sends the activity back to clause 3.10 for management purposes. However, clause 3.10 does not apply to Existing Activities as it relates only to new subdivision, use and development (which does not include Existing Activities). It refers to requiring the Existing Activity to be managed “in accordance with” clause 3.10, so may be intended to mean that clause 3.10 is extended to Existing Activities with effects. This drafting is uncertain and unclear.
- 3.11 If the Existing Activity is deemed to have an effect - and it is assumed clause 3.10 is intended to apply - it remains necessary to reconcile the extent to which clause 3.11 (“exceptions to clause 3.10”) then operates as an exemption.
- 3.12 Clause 3.10 does not apply to SNAs within a plantation forest; these are managed by clause 3.14. Clause 3.11 provides that “clause 3.10 does not apply to the following, and adverse effects on SNAs of new subdivision, use and development are managed instead by the clause as indicated.... (c) SNAs within a plantation forests (see clause 3.14)”.
- 3.13 Under clause 3.14 “An SNA that is within a plantation forest must be managed over the course of consecutive rotations of production in the manner necessary to maintain the long-term populations of any Threatened or At Risk species in the SNA.” Local authorities must make or change their policy statements and plans to include objectives, policies and methods to give effect to this requirement.
- 3.14 Although clause 3.11 refers to managing the adverse effects on SNAs of new subdivision, use and development, clause 3.14 contains no reference to this. As such, on its face, clause 3.14 does not differentiate between new use and development and could apply to new uses, as well as Existing Activities. This is further complicated by the structure of the clause which focuses on management of the SNA rather than the activities undertaken.⁹ Interpreting clause 3.14 as applying to new uses and Existing Activities is consistent with the reference in clause 3.14 to the management of the plantation forest over the course of consecutive rotations.

⁹ This clause contrasts with clause 3.17 which is clear that “local authorities must allow the maintenance of improved pasture to continue if...”. This clause also stands apart from the exclusions to clause 3.10, unlike clauses 3.18, 3.13 and 3.14.

Other comments in relation to clause 3.14 “Plantation forests within SNAs”

- 3.15 The extent of the SNAs managed by clause 3.14 also requires further consideration. The definition of “plantation forest” is derived from the NESPF and in general terms means “a forest deliberately established for commercial purposes, being at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted....”
- 3.16 A fundamental issue is whether a “SNA within a plantation forest” includes remnant areas or riparian margins or relates only to areas that are planted (eg understorey).
- 3.17 In view of the definition of Plantation Forest, arguably clause 3.14 is a relatively narrow ‘carve-out’ for plantation forests. In other words, it applies to understorey rather than say, riparian margins because it must relate only to areas that are planted. By implication, areas that are not planted, such as remnants, gullies or riparian margins are not “SNAs within a plantation forest”, but are SNAs outside planted areas. The difficulty with this approach is that if the broad definition of an SNA is used by Councils to map large tracts of land incorporating the boundaries of plantation forests in a way that includes remnants, gullies and riparian margins, then from a practical perspective it will be difficult to understand the extent to which clause 3.14 or 3.10 applies. This could result in different areas within plantation forests being managed for different purposes which is confusing and impractical.
- 3.18 If clause 3.14 is a narrow ‘carve-out’, clause 3.11 does not act as an exemption in relation to remnant areas, gullies or riparian margins within plantation forests (as these may be SNAs, but not “SNAs within a plantation forest”). New activities in those areas will be governed by clause 3.10. This conclusion generally aligns with the Exposure Draft Summary for the Forestry Sector which provides:

Within the perimeter of plantation forest properties there may also be mature remnants of indigenous vegetation, for example in gullies. These could qualify as SNAs under any of the Appendix 1 criteria and are not covered by clause 3.14. The normal SNA provisions in clause 3.10 apply for new activities, and existing activities will be allowed to continue in those circumstances.

- 3.19 For plantation forestry, this probably means that all First Rotation Harvesting¹⁰ will be covered by clause 3.14 to the extent that it affects understorey or such areas within the planted areas of the forest. However, any effects on riparian vegetation or remnant areas associated with First Rotation Harvesting will be managed by clause 3.10. It is recalled that the extent to which clause 3.14 applies to Existing Activities is unclear.
- 3.20 The Exposure Draft Summary for the Forestry Sector provides that:

¹⁰ Using an example only.

Plantation forestry activities (such as earthworks and harvesting) are permitted within the SNA but need to be managed in a way that allows the Threatened or At Risk species to survive on your property long term (clause 3.14).

- 3.21 I do not read the NPSIB as necessarily providing for this outcome as it will be dependent on the extent to which the local authority makes provision for such activities within the NPSIB. As noted, it is up to the local authority to determine the extent to which it seeks to make its plan rules more stringent than the NESPF, where those rules apply to SNAs.

4. Question 3

Would draft clause 3.14 only apply to SNA areas identified as significant habitat for endangered species rather than SNAs for significant indigenous vegetation?

- 4.1 Under clause 3.14 an SNA that is within a plantation forest must be managed over the course of consecutive rotations of production in the manner necessary to maintain the long-term populations of any Threatened or At Risk species in the SNA.¹¹ The outcome of Clause 3.14 is focussed on threatened or at risk species in the SNA rather than significant indigenous vegetation *per se*. It is noted that “species includes taxa” (plant / animals).
- 4.2 In the definitions section an SNA “means an area... of significant indigenous vegetation or significant habitat of indigenous fauna...”. There is no suggestion that there are two distinct types of SNAs or that different objectives, policies or methods will apply to different types of SNA. An area qualifies as an SNA if it meets either condition.
- 4.3 In a situation where an SNA within a forest qualified as an SNA because of its significant indigenous vegetation, but it had no threatened or at risk species, in the absence of such species there is no population to maintain. However, while this might be the position at the time an SNA is identified within a plan this could change over time¹² and a local authority could draft rules that anticipated the SNA becoming a future habitat for threatened or at risk species further to 3.14 (2).
- 4.4 The Exposure Draft Summary for the Forestry Sector provides:

Where Threatened or At Risk species occur within the productive parts of a plantation forest, this creates an SNA but without the full set of SNA restrictions. Instead, the NPSIB requires the species to be managed to maintain their long-term populations over the course of consecutive rotations. This replaces the ‘avoid’ requirements and the effects management hierarchy which normally apply to SNAs (3.10(2)).

- 4.5 In my view that statement does not correspond with the wording of the NPSIB Exposure Draft. It is not just the existence of the threatened or at risk species within the productive

¹¹ It is noted that the heading to this clause reverses the definition in the clause itself; i.e the clause refers to an SNA within a plantation forest, not “plantation forests within SNAs”.

¹² For example, because the definition of Threatened, At Risk and At Risk (Declining) is updated or because the environment changes. Refer also clause 3.8(5).

parts of a plantation forest that determines an SNA or its management. That view is consistent with Policy 12 which is more general and provides that “Indigenous biodiversity is managed within plantation forestry”. Indigenous biodiversity includes “all forms of indigenous flora, fauna and fungi, and their habitats.”

- 4.6 In summary, clause 3.14 could apply to significant indigenous vegetation and significant habitats for endangered species, provided a threatened or at risk species was identified.

5. Question 4

If a plantation forest is identified as a SNA for habitat purposes for threatened or at risk species is clause 3.20 also able to be applied to plantation forests?

- 5.1 Clause 3.20 is within subpart 3 of Part 3 of the NPSIB. The overview section provides that “In this Part... (b) Subpart 2 sets out provisions relating to the identification of SNAs, the management of adverse effects on SNAs, and the general management of indigenous biodiversity outside SNAs: (c) subpart 3 sets out additional specific requirements relating to biodiversity”
- 5.2 Clause 3.20 applies to areas outside SNAs that are highly mobile fauna areas. Firstly, those areas must be identified. Secondly, they must be recorded, mapped and described. Thirdly, objectives, policies and methods must be included to manage and maintain the adverse effects of new subdivision, use and development in those areas. Finally, information is to be provided to the community which includes reference to best practice techniques for managing the adverse effects of the activity on any specified mobile fauna and their habitats. This could include requirements to harvest using specific processes.
- 5.3 There is no cross reference in clause 3.20 to clause 3.10. There is nothing to suggest that identification, recording and mapping of the areas outside SNAs should not include plantation forests.
- 5.4 As clause 3.20 is part of subpart 3 which “sets out additional specific requirements relating to biodiversity” this provision applies notwithstanding clause 3.10 and its “carve outs” which include clause 3.14.
- 5.5 Whether clause 3.20 (3) (objectives and policies) will apply to plantation forests will depend on which aspects of forestry are assessed as a new use. For example, a first rotation forest which is yet to be harvested may be subject to objectives and policies developed under this rule.
- 5.6 In effect, clause 3.20 (3) extends clause 3.14 so that whole forests may be managed for a similar purpose as SNAs within plantation forests; i.e. plans must set out specific objectives and policies or methods to “maintain viable populations of specified highly mobile fauna across their natural range.” At the same time, SNAs within plantation forests are managed to

“maintain the long term populations of any Threatened or At Risk species in the SNA.” The language and purpose are similar. Both clauses would apply only to new uses, eg first rotation forests.

- 5.7 If the intention is not to manage fauna within the whole of a plantation forest (but outside SNAs), this needs to be clarified. Otherwise, the NPSIB should be more specific about how it wishes to manage Plantation Forests.

6. Question 5

How does regulation 93 of the NESPF relate to the draft provisions of the NPSIB? The concern is with regard to the maintenance of indigenous biodiversity and whether the regulations of indigenous vegetation clearance, including understorey, will be retained.

- 6.1 Reg 93 of the NESPF provides for the vegetation clearance of indigenous vegetation associated with a plantation forestry activity as a permitted activity subject to some preconditions. There is an exception for forestry tracks in a SNA. The preconditions generally relate to the clearance of indigenous vegetation that forms part of the understorey of a plantation forest, or an area harvested in the last five years. In each case it must not be in an area identified as an SNA. Vegetation clearance of indigenous vegetation is a restricted discretionary activity (regulation 94). Importantly, regulation 93 allows for the vegetation clearance of understorey that has grown up under or that may have overtopped plantation forestry.
- 6.2 There are two parts to the intersection with regulation 93 and the NPSIB. The first part to this question is the SNA status of the plantation forestry. The simple point is that once the forest is identified as an SNA then regulation 93 will not apply, and the activity will be automatically classified as a restricted discretionary activity under regulation 94.
- 6.3 The second part to the question is the ability for local authorities to make rules that are more stringent than the NESPF. At present, regulation 6 of the NESPF provides that a rule in a plan may be more stringent than the NESPF regs if the rule gives effect to an objective developed to give effect to the NPSFM or specific policies of the NZCPS 2010, or if the rule recognises and provides for the protection of SNAs.
- 6.4 Thus, to the extent that any method (rule) recognises and provides for the protection of SNAs either, under the auspices of the NPSIB or for any other reason¹³, a rule may be more stringent.¹⁴ Once a plantation forest is identified as an SNA, the local authority will be able

¹³ Nothing in part 3 of the NPSIB limits a local authority's functions and duties under the Act in relation to indigenous biodiversity.

¹⁴ As noted above, in para 2.4 the tests in s32(4) should also be applied.

to rely on regulation 94 and there will be no need to be more stringent (unless they wished to classify the activity as non-complying).

- 6.5 Related to the above question is the application of clause 3.16. This clause sits within subpart 2 of section 3 of the Exposure Draft and relates to the maintenance of indigenous biodiversity outside SNAs. It clearly excludes Māori Land managed by clause 3.18 but contains no other exemptions. This provision would apply to plantation forestry that is not an SNA. Local authorities must change their policy statements and plans to apply the effects management hierarchy to any adverse effects on indigenous biodiversity and include “appropriate controls” (does this include rules?) that give effect to clause 3.16(2). This could extend to any first rotation forest activity (which is a new use).
- 6.6 As drafted, local authorities would not be able to make indigenous vegetation clearance (i.e the clearance of understorey as part of harvesting outside an SNA) subject to rules that are more stringent than the NESPF unless such a rule was justified as recognising and providing for the protection of an SNA.¹⁵ An argument might be that the need to manage highly mobile fauna is providing for the protection of adjacent habitat that is an SNA. Regardless, there is an unresolved tension between the provisions of the NPSIB and the NESPF about the application of the effects management hierarchy and the “appropriate controls” referred to in clause 3.16(2)(b) and how those would apply to harvesting as a permitted activity.
- 6.7 In summary, harvesting as a permitted activity pursuant to the NESPF will only apply if the plantation forest is not an SNA. If identified as an SNA, harvesting will be a restricted discretionary activity.
- 6.8 If the forest is not an SNA there is a tension between clause 3.16 and regulation 93, particularly with respect to First Rotation Harvesting.

7. Summary of provisions that apply to plantation forests

- 7.1 All forests, regardless of rotation stage, may be mapped in whole or in part by territorial authorities as SNAs if they meet the criteria in Schedule One.

Existing Activities

- 7.2 In terms of the potential for new objectives, policies and methods to be implemented by local authorities, the NPSIB Exposure Draft *prima facie* changes relatively little for Existing Activities. I consider that harvesting that has already occurred at least once during the cycle of forest rotations is likely to be an Existing Activity.

¹⁵ Refer to regulation 6

- 7.3 As such, clause 3.15 - which relates to Existing Activities affecting SNAs – is key. The issues associated with this clause are dealt with above. The risk is that clause 3.10 is deemed to apply.
- 7.4 Clause 3.21 – relating to prioritising areas for restoration - is also key for both Existing and new Activities. The risk is that restoration or enhancement conditions will be imposed on resource consents.
- 7.5 It is assumed that clause 3.14 is limited to new uses, though as noted above, this is not clear.
- 7.6 With the exception of the above clauses, Existing Activities will generally be managed subject to the NESPF. The key issue in this regard will be the extent of the SNA mapping.

New Activities

- 7.7 In terms of the potential for new objectives, policies and methods to be implemented by local authorities, the NPSIB Exposure Draft is a significant change for new uses. I consider that harvesting in a first rotation forest is likely to be a new use.
- 7.8 As such, the extent to which this is a significant change will also depend on the extent of mapping of SNAs.
- 7.9 Clauses 3.10, 3.16, 3.20, 3.21 all require new objectives, policies and methods to be implemented by local authorities in relation to new uses (generally in relation to SNAs except as identified below). This creates the potential for onerous and unknown controls on first rotation forest activities that may conflict with the permitted activity classification for harvesting provided for in the NESPF that currently applies to many forests.
- 7.10 Clause 3.14 applies only to understorey. Remnants, gullies and riparian margins identified as SNAs will be managed under clause 3.10 to avoid identified effects and by otherwise using the effects management hierarchy. Meanwhile, areas outside of SNAs that are highly mobile fauna areas will be managed according to clauses 3.16 (using the effects management hierarchy) and clause 3.20. Restoration matters are addressed by clause 3.21 through consent conditions. There may be more onerous requirements for ecological assessments.

Yours faithfully



Gill Chappell