Interim Regulatory Impact Statement:

Simplifying the wetland provisions in the NPS-FM and NES-F

Coversheet

Purpose of Document	
Decision sought:	*This interim analysis is to support the release of a public discussion document on freshwater national direction amendments relating to the wetland provisions of the National Policy Statement for Freshwater Management 2020 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020*
Advising agencies:	*Ministry for the Environment (MfE)* *Ministry for Primary Industries (MPI)*
Proposing Ministers:	*Minister Responsible for RM Reform* *Minister of Agriculture* *Minister of Conservation* *Associate Minister for the Environment*
Date finalised:	*12 March 2025*

Problem Definition

There is tension between the need to protect wetlands, ensuring their long-term ecological health and extent, and the growing demand for land use and development needs, such as infrastructure, housing, and agriculture.

The National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) and Resource Management (National Environmental Standards for Freshwater Management) Regulations 2020 (NES-F 2020) were designed to manage and regulate activities that pose risks to wetlands. However, the policies have been criticised as complex and resource consenting costly, which may create barriers to sustainable development, agricultural land-use and the achievement of positive environmental outcomes.

Executive Summary

The changes in this interim Regulatory Impact Statement (RIS) are part of 'phase two' of the reform of the resource management system, which will make targeted changes to the existing resource management system to address the most pressing issues.

In scope of phase two are amendments to the NPS-FM 2020 and NES-F 2020. In respect of the wetland provisions in these instruments, these amendments relate to Cabinet's agreement to explore adjustments to the 2017 National Policy Statement for Freshwater Management (NPS-FM 2017) policies on wetlands, fish passage and river extent, that support the NES-F (CAB-24-MIN-1413.01 refers).

The options outlined in this interim RIS have benefited from initial targeted engagement with iwi/Māori and stakeholders (council representatives, industry representatives, and environmental non-government organisations (eNGOs)). This RIS is intended to support Cabinet decisions on which proposals should be progressed to consultation. Further

information is needed to inform final option development and cost-benefit analyses, which we intend to seek during public engagement. Before the introduction of the NPS-FM 2020 and NES-F 2020 on 3 September 2020, there was no specific national direction for wetland management, and they were managed as freshwater under the policies of the NPS-FM 2017. The NPS-FM 2017 used the *Resource Management Act* 1991 (RMA) wetland definition.

The wetland specific policies in the NPS-FM 2020 and regulations in the NES-F 2020 introduced a narrower version than the RMA definition with several exclusions and rule structure. The aim of this amendment was to protect remaining natural wetland extent and achieve a policy objective of 'no further loss of natural inland wetland extent or value' through strict controls on land and water use in natural inland wetland areas.

Parts of the definition and rule structure proved difficult to interpret and or were viewed as overly prescriptive, amendments were made in 2022 to clarify the definition.

Despite this, officials from MPI and MfE (Officials) have heard that interpretation of the definition remains complex and costly. The natural inland wetland definition continues to include areas that are perceived as un-natural and/or have limited ecological value, and subject them to strict land and water use rules in the NES-F 2020.

The 2022 amendments also introduced consent pathways for additional purposes. However, Officials have heard that there are important activities for other purposes, such as farming (primarily livestock and crops) and wetland construction, that are not provided for or are limited by the NES-F 2020 regulations.

The lack of provision for wetland construction is leading to missed opportunities to achieve positive environmental outcomes, while the lack of appropriate provision for farming activities results in overly onerous regulation of day-to-day on-farm activities.

Officials are also aware that councils have been struggling to meet the mapping requirements currently set out at clause 3.23 of the NPS-FM 2020.

This interim RIS discusses options to address three policy problems.

- The definition of a "natural inland wetland" is complex and costly.
- The NPS-FM and NES-F framework prevent some farming activities and wetland construction.
- The mapping requirements are onerous and difficult for councils to meet.

Feedback from targeted pre-engagement is summarised below.

- While many councils consider that the current framework is working well to protect wetlands, they were broadly supportive of a simplified wetland definition.
- Councils may also support additional consent pathways that could simplify consent applications and consenting decisions.
- Councils will respond differently to the proposal to remove the mapping requirements, depending on the time and resources they have already used to meet the requirements.
- There was general support from primary industries stakeholders to simplify and improve the wetland regulations. For example, addressing restrictions around using water within 100 metres of a wetland, or issues with the definition of a natural inland wetland. It is considered to be a complex, expensive process to identify a wetland, sometimes requiring multiple expert assessments.

- We have heard that there is concern from Environmental Non-Government Organisations (ENGOs) and Iwi/Māori about the removal of environmental protections for wetlands. We intend to test through consultation whether they would support the removal of the pasture exclusion and introduction of a consent pathway for farming activities.
- ENGOs and Iwi/Māori support, in-principle, options to better incentivise and provide for wetland construction.

The overarching objective of the proposals in this interim RIS is to amend the existing wetland regulations to achieve the intended environmental and freshwater outcomes. The specific objectives and options for each of the policy areas are outlined below.

The definition of a "natural inland wetland"

- Provide clarity to land users and regulatory authorities about what constitutes a wetland.
- Avoid capturing unintended areas under the wetland definition.

The NPS-FM and NES-F framework

- Provide clarity about how and what farming activities are regulated under the NES-F 2025.
- Incentivise wetland construction.
- Reduce consenting requirements and therefore cost required for farming activities and constructed wetlands (and other diffuse mitigation systems).

The wetland mapping requirements

- Reduce burden on councils.

Of the options considered, the recommended options discussed in detail below strike the best balance between wetland protection and development and land use.

Limitations and Constraints on Analysis

- The options explored to address the policy problem have been informed by the scope of change determined by Ministers and feedback received during initial targeted pre-engagement.
- These options are amendments to the existing wetland rules and policies in the NPS-FM 2020 and NES-F 2020.
- There is limited information available on how changes would impact current resource consent applications.
- Many impacts and perspectives outlined in this interim RIS have been drawn from previous consultations on the wetland provisions in the NPS-FM 2020 and NES-F 2020.
- There has been limited opportunity for Treaty Partner engagement and stakeholder testing through options development due to significant timeframe constraints. However, some targeted pre-engagement has occurred with pan-Iwi groups, post settlement governance entities, regional councils and industry groups.

- Additional analysis of impacts will be obtained during consultation, including analysis of impacts on iwi rights and interests and wetlands of cultural significance

This RIS reviews the options in general terms as an environmental management technique. Specific wording for the NPS-FM 2025 and NES-F 2025 will be developed following consultation.

Responsible Managers	
Nik Andic *Manager* *Freshwater Policy* *Ministry for the Environment*  *11 March 2025*	*Claire McClintock* *Manager* *Water policy and adaptive farming* *Ministry for Primary Industries*  *12 March 2025*

Quality Assurance (completed by QA panel)	
Reviewing Agency:	*Ministry for the Environment*
Panel Assessment & Comment:	*A quality assurance panel with officials from the Ministry for the Environment and the Ministry for Primary Industries has reviewed the Regulatory Impact Statement "Simplifying the wetland provisions in the NPS-FM and NES-F" and considers that it partially meets the quality assurance requirements.* *The panel assessed the Regulatory Impact Statement using standard assessment criteria (complete, convincing, clear and concise, and consulted). The panel considers that the document clearly articulates the problem, objectives and options. It explains trade-offs and provides useful practical examples to support policy decisions. However, as noted in the cover sheet, there were a range of constraints and limitations on the analysis. Analysis of the impacts of the proposals is partial, and the proposals have complex interactions with other parts of resource management reform that are themselves not finalised. We expect many of these limitations will be addressed following consultation and as the wider reform program progresses.*

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Context and current state

1. Wetlands are an important part of our landscape. These ecosystems play a crucial role in maintaining the health of freshwater, reduce the impacts of flooding, stabilise shorelines and riverbanks, and support a raft of animal and plant life, much of which is native to New Zealand and classified as 'Threatened'.

2. Wetlands have cultural and spiritual significance for tangata whenua as a source of mahinga kai and resources such as raupo, a home of taniwha, and as part of New Zealand's network of waterways over which kaitiakitanga is exercised.

3. New Zealand's wetlands are at risk. Some 90 per cent of 'natural wetlands' have been lost since human settlement began and their degradation and loss are ongoing.

4. Through consultation during the development of the NPS-FM 2020, subsequent amendments, and in targeted pre-engagement on the options explored in this RIS, Officials have heard that there is broad support for the protection of wetlands across stakeholder groups (e.g., developers, primary industries, councils and iwi/Māori), both in terms of their extent and ecological values.

5. Prior to the introduction of the NPS-FM 2020 and NES-F 2020, there was no specific national direction for wetland management. Wetlands were managed as freshwater under the policies of the NPS-FM 2017.

6. The NPS-FM 2017 used the *Resource Management Act* 1991 (RMA) wetland definition and required that the significant values of wetlands for water quality and quantity were maintained or improved.

7. The RMA wetland definition is much broader than the current definition of natural inland wetland, and therefore more areas were subject to the NPS-FM 2017 requirements (e.g., wetlands dominated by pasture species and constructed wetlands). The use of the RMA definition also led to some confusion in implementation about the distinction between wetlands and other waterbodies e.g., lakes and rivers.

8. The NPS-FM 2020 introduced the current, narrower natural inland wetland definition and specific policies for wetland protection, mapping and management. It aims to embed long-term change through regional plans, including policies to restore wetlands. The NES-F 2020 regulates activities in and around natural inland wetlands.

9. Since coming into effect on 3 September 2020, the wetland regulations in the NES-F 2020 have been identified by a range of stakeholders, including councils, ENGOs, land developers, and primary industries, as placing limitations on their activities.

10. In response to feedback, on 5 January 2023, the Government made targeted amendments to the NPS-FM 2020 and NES-F 2020 wetland provisions to better support their implementation.

11. Despite these amendments we have heard from stakeholders that the:

- natural inland wetland definition:
    - remains complex to apply due to the multiple exclusions
    - often required costly ecological assessments to comply with the pasture exclusion (part (e))
    - continues to capture induced wetlands and protect them stringently, which is may lead to consenting burdens for development and infrastructure
- the NPS-FM 2020 and NES-F 2020 do not clearly and appropriately provide for farming activities (for example some councils have interpreted things like fencing in a wetland setback as non-complying) and wetland construction. This leads to confusion, over-regulation, and disincentivising of beneficial environmental activities
- the mapping requirements of clause 3.23 of the NPS-FM 2020 are proving difficult for some councils to implement, particularly in regions where there is extensive forest cover e.g., the West Coast where wetlands are hard to map aerially or ground truth due to accessibility.

12. These issues can lead to legal uncertainty and inconsistent implementation. They may create barriers to certain land-use that is likely to have a negligible impact on wetland extent and value.

13. Officials have heard that the lack of incentivisation for the construction of new wetlands is also preventing activities that are likely to have beneficial environmental outcomes, such as water quality improvements.

The definition of a "natural inland wetland"

14. The RMA definition is: "wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions". The NPS-FM 2017 used the RMA definition alone.

15. The NPS-FM 2020 refined the RMA definition to:

natural inland wetland means a wetland (as defined in the Act) that is not:
(a) in the coastal marine area (CMA); or
(b) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or
(c) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
(d) a geothermal wetland; or
(e) a wetland that:
(i) is within an area of pasture used for grazing; and
(ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless
(iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply.

Complexity of the current definition

16. Officials have heard from a broad range of stakeholders that the definition defines what is not a wetland, rather than what is a wetland, and is complicated to interpret and apply due to the multiple exclusions compared to the RMA definition.

17. During targeted pre-engagement, several councils preferred a standalone RMA definition over the 'natural inland wetland' definition as they considered the wetland definition easier to apply under the NPS-FM 2017.

The pasture exclusion (part (e) of the current natural inland wetland definition)

18. The pasture exclusion under part (e) of the current 'natural inland wetland' definition has proved particularly contentious. The pasture exclusion was intended to enable land-use in heavily modified areas to continue without the requirement to obtain costly resource consents under the NES-F 2020.

19. However, the pasture exclusion is not working as intended and consent applicants need to obtain costly ecological assessments to establish whether a wetland is present on their land. In some cases, this results in litigation with the consenting authority.[1]

Example 1: Litigation as a consequence of variant interpretations of the pasture exclusion

In *Greater Wellington Regional Council v S L Adams* (2022), Greater Wellington Regional Council (GWRC) sought enforcement orders against the owners of recently subdivided land, to restrict activities in an area that GWRC contended was a natural inland wetland. The position of the subdividing parties, new landowners, and Upper Hutt City Council which granted the subdivision consent was that the land in question met pasture exclusions in the relevant wetland definitions.

20. During targeted pre-engagement on the options presented in this RIS, Officials heard the following issues:
    - consent applicants must obtain costly ecological assessments to establish whether a wetland is present
    - different interpretations of the pasture exclusion clause have led to disputes or even litigation between consent applicants and territorial authorities
    - significant wetlands may also be captured by the pasture exclusion, having become degraded and colonised by pasture species[2].

21. In effect, the pasture exclusion leads to a dual cost in many circumstances – of procuring both ecological assessments and resource consents. It also contributes to uncertainty and resource drain for both land-users and regional councils where appeals and litigation are involved.

22. However, we are aware that the pasture exclusion has been working as intended for some consent applicants. Large-scale developers and infrastructure providers e.g., NZ Transport Agency, no longer require resource consents under the NPS-FM 2020 and NES-F 2020 to develop land that meets the pasture exclusion.

[1] *Greater Wellington Regional Council v S L Adams* (2022) NZEnvC 25.

[2] Otago Regional Council informed officials that some "iconic" wetlands in Otago are not protected by the NPS- FM 2020 and NES-F 2020 because they meet the pasture exclusion.

23. However, we are aware that the pasture exclusion has been working as intended for some consent applicants. Large-scale developers and infrastructure providers e.g., NZ Transport Agency, no longer require resource consents under the NPS-FM 2020 and NES-F 2020 to develop land that meets the pasture exclusion.

Treatment of 'induced' and low-value wetlands

24. Some stakeholders feel that the current definition captures areas that should not be so stringently protected. These areas are primarily small and degraded wetlands with perceived low environmental value, and induced wetlands developed as an unintentional consequence of land use activities for purposes other than wetland or waterbody construction.

25. The NPS-FM 2020 and NES-F 2020 protect all natural inland wetlands regardless of their size or state. This supports the policy intent that all natural inland wetlands have the potential to be restored and to provide ecosystem benefits.

26. Induced wetlands are not defined in the RMA, NPS-FM 2020 or NES-F 2020. Many councils and RMA practitioners have developed their own working definitions which vary in scope, but all include the qualifier that the wetland has developed unintentionally because of human activity.

27. As they are not expressly excluded, induced wetlands are captured by the natural inland wetland definition (unless they meet one of the exclusions, e.g., the pasture exclusion). The difference between an induced wetland and a 'wetland that has developed in or around a deliberately constructed waterbody' has been a source of some confusion, as the latter is excluded from the definition.

28. The inclusion of induced wetlands in the definition has led to issues for land-users where unintentionally created wetlands with little ecological value become subject to stringent land-use controls under the NES-F 2020.[3]

Example 2: Where wetlands have developed in depressions in the land left by the construction of existing infrastructure e.g., buildings or roads

During the 2021 Managing our Wetlands consultation, Auckland Airport identified the inclusion of induced wetlands as a significant issue. They were concerned that wetlands formed as an unintentional consequence of runoff or pooling as the result of temporary stockpiling, earthworks or other construction would be captured. This may result in these areas being blocked from future development intended to occur after this temporary use.

Example 3: Where wetlands have developed in urban and residential areas because of stormwater infrastructure.

In targeted pre-engagement, Officials heard that a situation had arisen where an iwi housing project created an induced wetland through stormwater management related work. This is likely to mean that resource consents will need to be obtained under the NES-F 2020 for any future maintenance or expansion works necessary within the development due to the wetland's capture within the natural inland wetland definition.

[3] Auckland International Airport Limited, Submission on the Managing our Wetlands: A discussion document on proposed changes to the wetland regulations, p 4. 211020 AIAL submission Wetland regulation discussion document (3).pdf

Furthermore, where landowners do not maintain their stormwater infrastructure or drains this can lead to the development of induced wetlands on adjacent properties, then triggering the regulations for these landowners.

Example 4: Where wetlands have developed as a consequence of pastoral land use

Induced wetlands may develop on pastoral land as a consequence of infrastructure or building, or as a result of farming activities e.g., pugging.

In targeted pre-engagement Dairy NZ noted that induced wetlands should be treated differently because of the nature of their origins and that the application of the definition to them can cause unintended interruption to farming operations.

29. Where the types of induced wetlands outlined above are captured by the definition, the requirement to obtain a resource consent results in obstacles to the maintenance and expansion of existing buildings, infrastructure, and land-use. In some cases, these activities may not be possible where the threshold for regional significance (in particular) is not met.

30. The submission from Oyster Capital on the 2021 Managing our Wetlands discussion noted that the inclusion of induced wetlands in the natural inland wetland definition would result in less land being available for residential development. They warned that this would affect housing affordability, contrary to the National Policy Statement on Urban Development 2020 and the strong national direction to enable a greater supply of housing.[4]

31. The current inclusion of 'induced wetlands' in the natural inland wetland definition, but exclusion of wetlands that have developed around deliberately constructed waterbodies since the construction of that waterbody, has added another layer of confusion to an already complicated definition and may not be achieving the policy intent.

32. Submissions from Tauranga City Council and the Environment Institute of Australia and New Zealand on the 2022 exposure drafts of changes to the NPS-FM 2020 and NES-F 2020 highlighted an issue with the current exclusion under part (c). The RMA definition of 'waterbody' does not include artificial watercourses such as farm drains. Therefore, only areas where wetlands have developed around a modified watercourse (and rivers/streams) are excluded from the definition, and wetlands that have developed alongside constructed farm drains are included.[5]

33. Some councils have suggested that induced wetlands be excluded from the definition. Other councils support the more stringent protection of the status quo as some of the most significant wetlands within their region are induced.

34. Most ENGOs and Iwi/Māori support the current settings and, if anything, would like to

[4] Oyster Capital, Managing our Wetlands – A discussion document on proposed changes to the Wetland Regulations, submission on behalf of Oyster Capital, 26 October 2021, p 4.
[5] Tauranga City Council , Submission on exposure draft of amendments to the National Policy Statement for Freshwater Management 2020 and Exposure draft of changes to the National Environmental Standards for Freshwater 2020, 8 July 2022, p 7 and Environment Institute of Australia and New Zealand, Submission: Exposure draft of amendments to the National Policy Statement for Freshwater Management 2020, 10 July 2022, p 2.

see fewer wetlands excluded from the natural inland wetland definition, i.e., inclusion of those wetlands excluded under part (e).[6]

The NPS-FM and NES-F framework

35. Clause 3.22(1) of the NPS-FM 2020 sets out purposes for specific activity pathways regulated under the NES-F 2020. For example, a permitted activity pathway is available for earthworks (activity) for the purposes of wetland restoration. Earthworks undertaken for the purposes of quarrying activities, however, is a discretionary activity.

36. Earthworks and the take, use, damming, discharge and diversion of water for any purpose other than those set out at clause 3.22(1) of the NPS-FM 2020 is a non-complying or prohibited activity if it is likely to result in the complete or partial drainage of that wetland.

Treatment of farming activities

37. Vegetation clearance and earthworks for the purpose of arable and horticulture land use are already a permitted within the setback of a natural inland wetland where it complies with the conditions of the (r50 of the NES-F)

38. However, how and what other farming activities are regulated under the NES-F 2020 is a continued source of confusion for consent applicants and councils. The inconsistent interpretation of the regulations by consent decision makers has led to uncertainty for farmers.

39. As discussed above, the pasture exclusion is not working as intended, leading to uncertainty for farmers about the status of their activities and resulting in costly ecological assessments to determine whether the pasture exclusion applies, at the cost of the landowner.

40. Where the exclusion does not apply, and the wetland is subject to the regulations, the status of activities is unclear. For example, Officials have heard of irrigation within 100m of a natural inland wetland being treated as a non-complying activity, leading to an unworkable situation on large farms where natural inland wetlands are present.

41. Stakeholders from the agricultural sector have told us that on-farm water storage outside, but within the setback, of a natural inland wetland is required for purposes such as irrigation and stock watering. Officials have also heard that the current provision for water storage under the specified infrastructure pathway does not provide for on farm water storage, due to the requirement for the infrastructure to provide national or regional benefits.

42. Other on-farm activities may be subject to unclear or overly onerous regulation by the NES-F 2020, including earthworks or land disturbance for the construction of on-farm infrastructure e.g., fencing and water storage and irrigation being captured as the discharge of water. We note that grazing is not regulated under the NES-F 2020, as it is expressly excluded from the vegetation clearance definition in the NES-F 2020.

43. We intend to test through consultation whether there are any other farming activities that are not clearly, consistently or appropriately regulated under the NES-F 2020.

[6] Officials have consistently heard from most Iwi/Māori and ENGOs that they perceive the pasture exclusion as a trade-off where agricultural activities are prioritised over wetland extent and values.

Treatment of wetland construction

44. Wetland construction only occurs in an area that was not previously a natural inland wetland and therefore is not subject to the regulations. However, depending on the scale and location of activities required to construct a new wetland, these activities may be captured under the NES-F 2020 if they occur in the setback of a natural inland wetland.

45. Officials have heard that the current rule structure disincentivises the construction of new wetlands. A NIWA[7] review into diffuse mitigation systems (which include constructed wetlands) identified variability across regional rules and the inevitable requirement to obtain a resource consent due to the potential short term adverse effects that come from the construction, operation and maintenance of activities near waterways.

46. Activities for the purpose of wetland construction are not currently provided for at clause 3.22(1) of the NPS-FM 2020. Officials have heard that some landowners wish to construct a wetland for the purpose of improving water quality entering a natural inland wetland on their property. This would require wetland construction within the 100m setback and, under the current regulations, would require a consent.

47. By definition, wetland construction does not occur in an existing wetland – such an activity would be restoration or maintenance, which already have activity pathways. There has been some confusion, however, about the status of activities required for wetland construction within the 100m setback from a natural inland wetland (i.e., what parts of the NES-F 2020 apply to activities undertaken for wetland construction).

48. Without express provision in the NES-F 2020, wetland construction within 100m of a natural inland wetland has an uncertain status. In some circumstances, councils interpret construction as being captured by the non-complying rule for earthworks and the take, use, damming and diversion of water (where there is a hydrological connection with an existing natural inland wetland) within 100m of a natural inland wetland (regulation 52).

The wetland mapping requirements

49. Section 3.23 of the NPS-FM 2020 sets out requirements for councils to map and monitor natural inland wetlands within their region.

50. Under the status quo councils are required to map all natural inland wetlands in their region by 2030. The intent of the mapping requirements was for councils to have an evidence basis for compliance monitoring and enforcement.

51. Officials have heard that it is very resource intensive and difficult to map natural inland wetlands within the current timeframes. While some councils have begun this process using LiDAR, ground truthing, and aerial survey, other councils lack the resources to do so. Furthermore, these methodologies are complicated where there is extensive tree cover (e.g., the West Coast).

52. During targeted pre-engagement, some councils informed Officials that they were

[7] https://niwa.co.nz/sites/default/files/2019131HN%20Final%20V2.pdf and https://niwa.co.nz/sites/default/files/NIWA%20Report%202%20Implementation%20of%20diffuse%20pollution%20mitigation%20systems.pdf

maximising limited resources and only mapping significant wetlands, as opposed to all natural inland wetlands.

53. However, concern has been raised that, should the current deadline be postponed or removed, council funding would not be prioritised to complete work that is already underway to map wetlands.

54. While most councils have made significant progress to date, it is apparent that mapping methodologies used, and the extent of mapping natural inland wetlands varies widely by region.

How is the status quo expected to develop if no action is taken?

The definition of a "natural inland wetland"

55. The definition will continue to be a source of confusion for land-users and resource consent applicants.

56. Costly ecological assessments will continue to be required to establish whether the pasture exclusion (under part (e)) is met.

57. The regulations will continue to apply to 'induced wetlands' and 'low-value wetlands'.

The NPS-FM and NES-F framework

58. The NPS-FM 2020 and NES-F 2020 will not clearly and appropriately provide for farming activities and wetland construction, leading to confusion, over-regulation and the disincentivising of beneficial environmental activities.

The wetland mapping requirements

59. Councils will continue to resource wetland mapping to varying degrees and approaches to mapping will continue to be inconsistent.

Key features and objectives of the NPS- FM and NES-F wetland regulations

60. Policy 6 of the NPS-FM 2020 is: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

61. The NPS-FM 2020 and NES-F 2020 are designed to work together to provide the ability to obtain a resource consent to undertake activities for certain purposes, while upholding the intent of Policy 6 through several safeguards and tests in both instruments, namely:
    a. the threshold tests for significance, location and effects management set out at clause 3.22(1) of the NPS-FM 2020, and the effects management hierarchy offsetting and compensation principles (Appendix 6 and 7 of the NPS-FM 2020)
    b. the purpose specific activity regulations (38-51 of the NES-F 2020), and the non-complying and prohibited activity catchalls for activities for all other purposes (52-54 of the NES-F 2020).

Relevant prior government decisions, legislation, and Regulatory Impact Statements

62. In June 2018, Cabinet approved the Essential Freshwater work programme to:

    a. stop further degradation of New Zealand's freshwater resources

    b. start making immediate improvements so that water quality is materially improving within five years

c. reverse past damage to bring New Zealand's freshwater resources, waterways, and ecosystems to a healthy state within a generation.

63. In August 2020, the Essential Freshwater regulatory package was gazetted. This package included:

    a. the NPS-FM, directed at embedding long-term change through regional plans and including policies to restore wetlands

    b. the NES-F, which provided the regulatory framework for undertaking activities, including in natural wetlands.

64. The NPS-FM and the NES-F came into force on 3 September 2020. Subsequently a range of industry and stakeholders identified issues with the implementation of the wetland provisions, particularly those in the NES-F.

65. In September-October 2021, Officials consulted on options to address these issues with the NPS-FM and NES-F wetland provisions (the Managing our wetlands consultation).

66. In May-July 2022, Officials undertook a further round of consultation on an exposure draft of proposed amendments to the NPS-FM and NES-F wetland provisions.

67. The following amendments came into effect in January 2023:

    a. the NPS-FM 2020 and NES-F 2020 were amended to:
        i. clarify the definition of a natural wetland

        ii. provide consent pathways for more purposes

        iii. make restoration and wetland maintenance easier to undertake

        iv. improve the clarity of policies, reduce the complexity of drafting and, in some cases correct errors.

    b. the NES-F 2020 was amended so its wetland provisions no longer apply to wetlands in the coastal marine area.

68. Both the Act[8] and NZ First[9] coalition agreements committed to replacing the NPS-FM 2020. In scope of the replacement of the NPS-FM 2020 are National Party policy plans to amend the scope of the natural inland wetland definition and to make wetland construction a permitted activity.

69. In June 2024, Cabinet Economic Policy Committee (ECO) agreed that targeted engagement with key stakeholders and Māori should be undertaken ahead of final Cabinet decisions on proposals to be included in the national direction programme [ECO-24-MIN-0112].

70. On 29 October 2024, Cabinet agreed that the starting point for targeted engagement on replacing the NPS-FM 2020 should be the NPS-FM 2017 and that adjustments to

[8] Replace the National Policy Statement for Freshwater Management 2020 to allow district councils more flexibility in how they meet environmental limits and seek advice on how to exempt councils from obligations under the National Policy Statement for Freshwater Management 2020 as soon as practicable.
National_ACT_Agreement.pdf

[9] Replace the National Policy Statement for Freshwater Management 2020 and the National Environmental Standards for Freshwater to better reflect the interests of all water users. National_ACT_Agreement.pdf
NZFirst Agreement 2.pdf

the NPS-FM 2017 be explored for policies on wetlands that support the NES-F 2020 [CAB-24-MIN-0413.01].

Other government work programmes with interdependencies and linkages

71. The Government has established its priorities for resource management and is taking a phased approach to reforming the resource management system[10] [CAB-24-MIN-0473].

    a. **Phase one**: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (completed in December 2023).

    b. **Phase two**: targeted changes to the existing resource management system, to address the most pressing issues:

        a. **Fast-track Approvals Act** – passed into law on 23 December 2024

        b. **two bills to amend the Resource Management Act and a package of national direction** – changes to the existing system that can address the most pressing issues in the short term.

    c. **Phase three**: legislation to replace the Resource Management Act.

72. The changes in this interim RIS form part of 'phase two' of this approach and provide for targeted legislative amendments to national direction under the RMA. The changes deliver on the following Government priorities:

    a. reforming the resource management system, including making targeted legislative amendments

    b. replacing the NPS-FM 2020 to better reflect the interests of all water users

    c. delivering actions to cut red tape and supercharge the rural economy, including replacing one-size-fits-all rules with local decision-making.

73. Options to amend the location-based gateway test for quarrying activities from functional need to functional or operational within the NES-F 2020 are also being considered by the Ministry of Business, Innovation and Employment.

74. Amending the location-based gateway test for specified infrastructure to functional or operational need is being considered through the development of the National Policy Statement for Infrastructure that will include amendments to the wetland regulations where necessary.

75. Wider reform of national direction tools aims to ensure that, where appropriate, the effects management hierarchy within the NPS-FM 2020 is consistent with approaches elsewhere in national direction to manage the adverse effects of an activity on the extent or values an ecosystem.

76. In October 2024, the *Resource Management (Freshwater and Other Matters) Amendment Act* 2024 amended the extraction of minerals consent pathway in the wetland provisions of the NPS-FM 2020 and NES-F 2020 to remove additional controls on the extraction of coal.

[10] RMA Reform Phase Three fact sheet.pdf

What is the policy problem or opportunity?

77. The Government has heard that New Zealand's freshwater rules make it too hard to get things done.

78. The complex, time consuming and costly resource consenting process for activities in and around wetlands under the NPS-FM 2020 and NES-F 2020, prevents development, land-use, and the achievement of positive environmental outcomes.

The definition of a "natural inland wetland"

79. The Government has committed to "change rules for how wetlands are defined on legislation to only cover actual wetlands, rather than areas with limited environmental value."[11]

80. There is a policy opportunity to fulfil this commitment and address some of the policy problems with the current definition by:

    - simplifying the way wetlands are defined in the NPS-FM 2020 and NES-F 2020
    - enabling land-use in heavily modified landscapes and removing the confusion and lack of clarity that the pasture exclusion (part (e) of the definition) has resulted in
    - clarifying what constitutes an induced wetland and excluding them from being subject to the NES-F 2020 as an unintended consequence of other earthworks or infrastructure.

The NPS-FM and NES-F framework

81. The National Party policy plan committed to let farmers get back to farming, enable water storage and make the creation and maintenance of wetlands a permitted activity under the RMA.[12]

82. The NES-F regulates vegetation clearance, land disturbance, earth works, and the take, use, damming, discharge, and diversion of water within a natural inland wetland or the defined setback. Where these activities are undertaken for the purposes set out at clause 3.22(1) of the NPS-FM 2020, they are regulated by purpose specific rules in the NES-F 2020.

83. Earthworks and the take, use, damming, discharge and diversion of water for any purpose other than those set out at clause 3.22(1) of the NPS-FM 2020 is non-complying or prohibited if the activity is likely to result in the complete or partial drainage of that wetland.

Farming activities

84. As discussed above, the lack of clear direction in the NPS-FM 2020 and NES-F 2020 has led to varied interpretations and approaches by councils when considering certain farming activities. In many instances, this has led to over regulation, with negligible impact on neighbouring wetlands.

[11] National Party, 'Getting back to farming' package, 18 April 2023, at [13] Getting_back_to_Farming.pdf.
[12] National Party, Primary sector growth plan – Fixing Resource Management, 18 April 2023, p 4. Plan_Primary_Sector_Growth.pdf.

Example 5: Over regulation of irrigation within 100m of a natural inland wetland
In some cases, irrigation within 100m of a natural inland wetland is being treated as a non-complying activity, due to the potential for groundwater to enter the wetland, leading to an unworkable situation on large farms where natural inland wetlands are present.I In reality, the environmental effect of such irrigation within the 100m setback is likely minor and therefore may be over regulated.

Example 6: Over regulation of construction of on-farm water storage within 100m of a natural inland wetland
The 2022 amendments to the NPS-FM 2020 and NES-F 2020 included water-storage within the specified infrastructure consent pathway. However, to obtain consent under this pathway the test for regional-national benefit is required to be met. In effect, this means that the construction of small scale on farm water-storage within 100m of a natural inland wetland remains a non-complying activity, even where it would have a negligible impact on the wetland itself.

85. There is an opportunity to explicitly provide for farming activities (e.g., on farm water storage, fencing and irrigation) through a bespoke pathway within the NES-F 2025.

Wetland construction

86. Like their natural counterparts, constructed wetlands can trap sediment and soils, filter out nutrients, remove contaminants, and reduce flooding. They can also be constructed to sequester carbon and to support biodiversity and resilience.

87. Officials have heard from a variety of stakeholders that the NES-F 2020 currently prevents or disincentivises the construction of new wetlands.

88. Land-users may want to construct wetlands for a wide range of purposes, including within the setbacks of existing natural inland wetlands. These purposes could include, but are not limited to:

    a. water quality improvement (water treatment, sediment or nutrient retention)

    b. biodiversity improvement

    c. flood mitigation

    d. carbon sequestration.

89. There may be instances where land-users want to construct a wetland within 100m of a natural inland wetland. Many of the activities required to construct a wetland within the setback of an existing natural inland wetland are strictly regulated by the NPS-FM 2020 (i.e., earthworks and the take, use, discharge, damming and diversion of water). Without a clear pathway for wetland construction in the regulations, there are circumstances where these activities are captured by the non-complying catchall at regulation 54 of the NES-F 2020.

90. Many land-users, especially those in the agricultural sector, wish to construct wetlands to harness their ecosystem services, e.g., to improve the quality of water before it enters a natural inland wetland or waterway. The current settings are presenting unnecessary obstacles to achieving these environmentally beneficial objectives.

91. We are also aware of other edge-of-field diffuse mitigation systems, such as woodchip bioreactors, which could be better enabled.

92. There is an opportunity to ensure that the construction of wetlands is incentivised. This will result in a net gain in wetland extent and provide beneficial environmental outcomes.

The wetland mapping requirements

93. The current mapping requirements at clause 3.23 of the NPS-FM 2020 are unlikely to be met consistently by councils. Where they are met, it is likely to be at considerable cost to councils who are already resource and time poor.

94. Furthermore, conventional mapping methods (i.e., LiDAR and aerial survey) may not work in some regions. This is likely to lead to inconsistent approaches and mapping across the country.

95. Removing the mapping requirements would provide councils flexibility to work within their resource means to develop their own evidence bases to support wetland monitoring and implementation of the NPS-FM 2020 and NES-F 2020.

96. There is an opportunity to reduce cost and burden on councils by removing the wetland mapping requirements in the NPS-FM 2025.

What objectives are sought in relation to the policy problem?

97. The policy proposals in this interim RIS are part of phase two of the reform of the resource management system which is guided by the following objectives:

    Making it easier to get things done by:

    - unlocking development capacity for housing and business growth
    - enabling delivery of high-quality infrastructure for the future, including doubling renewable energy
    - enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining)

    while also:

    - safeguarding the environment and human health
    - adapting to the effects of climate change and reducing the risks from natural hazards
    - improving regulatory quality in the resource management system
    - upholding Treaty of Waitangi settlements and other related arrangements [ECO-24-MIN-0022 refers].

98. The overarching objective of the proposals in this interim RIS is to amend the existing wetland regulations to achieve the intended environmental and freshwater outcomes. The specific objectives for each of the two option areas are outlined below.

The definition of a “natural inland wetland”

99. Provide clarity to land users and regulatory authorities about what constitutes a wetland.

100. Avoid capturing unintended areas under the wetland definition.

The NPS-FM and NES-F framework

101. Provide clarity about how and what farming activities are regulated under the NES-F 2025.

102. Incentivise wetland construction.

103. Reduce consenting requirements and therefore cost required for farming activities and constructed wetlands (and other diffuse mitigation systems).

The wetland mapping requirements

104. Reduce burden on councils.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

105. To ensure alignment with the overall objective the following criteria was used in the assessment of options.

Criteria	Approach for the analysis
Effectiveness	• The option contributes to the understanding of hazards and risks to source waters (by councils, water supplier, resource user, public). • The likelihood the option will reduce contamination of the source water that is high-risk to human health. • Option improves the likelihood of compliance with the DWSNZ by reducing the reliance on treatment.
Efficiency	• Is it providing enough flexibility to allow local circumstances to be adequately taken into account/addressed at the local level? • Is it cost-effective in so far as it ensures better management of the risks that some land use activities pose to the drinking water safety, while doing so at the least possible cost?
Alignment	• Does the option integrate well with other proposals and the wider statutory framework?
Implementation	• The option is clear and leaves little room for interpretation. In cases where flexibility is allowed, there are clear parameters guiding a decision when not to apply default methods. • The ease of implementation. • Sufficient resources are available for implementation of the option in a timely way.
Treaty of Waitangi	• Iwi, hapū, whānau Māori can exercise rangatiratanga and make decisions over their respective resources and taonga which they wish to retain. • The degree the options provide protection for drinking water managed by and for iwi, hapū and whanau Māori under the principles of kawanatanga, active protection and equity.

What scope will options be considered within?

106. The scope of this interim RIS is defined by the Government commitment to address issues with the existing wetland regulations by mid-2025 as part of the integrated national direction work programme.

107. In March 2024, the Cabinet Economic Policy Committee (ECO) agreed that the second phase of resource management reform would include developing or amending national direction to unlock development and investment in infrastructure and primary industries while achieving good environmental outcomes [ECO-24-MIN-0022].

108. In June 2024, ECO agreed that the national direction work programme would be delivered as part of an integrated programme through three packages, one of which includes the primary sector by mid-2025 [ECO-24-MIN-0112 refers]. Freshwater national direction is part of the primary sector package.

Options considered but determined to be out of scope

109. System level changes, such as repealing the NES-F 2020, have not been assessed as part of this RIS.

What options are being considered?

Issue A: The definition of a "natural inland wetland"

Status quo

- Retain the current definition of natural inland wetland.

Option A1 (recommended)

- Remove the pasture exclusion (part (e) of the definition).
- Remove the set of wetland types excluded from the definition and retaining only the current reference to the RMA definition of a 'wetland' (list the wetland types that the regulations do not apply to in a separate section).
- Define 'induced wetlands' and exclude them from the regulations (except where identified as regionally significant by a council).

Option A2

- Remove the pasture exclusion (part (e) of the definition).
- Define induced wetlands[13]
- Exclude induced wetlands from the regulations and revise (c) of the definition to reflect this.

Option A3

- Remove the pasture exclusion (part (e) of the definition).
- Define induced wetlands.
- Exclude induced and constructed wetlands from the definition (except where identified as regionally significant by a council) and revise part (c) of the definition to reflect this.
- Devolve to councils the ability to exclude 'low value' wetlands from the definition (include in the NPS-FM 2025 some principles to guide this decision making).

Issue B: Amend the NPS-FM and NES-F framework

Status quo

- Retain the current policy structure and regulations in the NPS-FM 2020 and NES-F 2020.

Option B1 (recommended)

- Provide a consent pathway for farming activities (such as fencing, on-farm water storage and irrigation) at clause 3.22(1) of the NPS-FM 2025 and include purpose specific regulations in the NES-F 2025.
- Define wetland construction.
- Provide a consent pathway for wetland construction in the NPS-FM 2025 at clause 3.22(1) and include purpose specific regulations in the NES-F 2025.
- Include an objective or policy to encourage wetland construction (and other edge-of-field mitigations or environmental enhancement projects more generally) via regional

[13] Induced wetlands are that have developed unintentionally as an outcome of human activity for purposes other than creating a wetland

plans.

Option B2

- Remove specific consent pathways by removing clause 3.22(1) of the NPS-FM 2020.
- Amend the NES-F 2025 so that all activities in wetlands are restricted discretionary, except for those that are already permitted.
- Limit matters to which discretion is restricted to application of the effects management hierarchy and functional or operational need.

Option B3

- Define wetland construction.
- Provide a consent pathway for wetland construction at clause 3.22(1) of the NPS-FM 2025 and include purpose specific regulations in the NES-F 2025.
- Include a policy in the NPS-FM 2025 to encourage and facilitate wetland construction.

Issue C: The wetland mapping requirements

Status quo

- Retain the current mapping requirements.

Option C1 (recommended)

- Remove the mapping requirements from clause 3.23 of the NPS-FM 2020
- Devolve to councils on how they continue to monitor wetlands within their region.

Option C2

- Amend clause 3.23 of the NPS-FM 2025 so that only significant natural inland wetlands are required to be mapped.

How do the options compare to the status quo/ counterfactual?

Issue A: The definition of a "natural inland wetland"

	Status quo	Option A1 (recommended)	Option A2	Option A3
Effectiveness	0	++ (+) Reduces burden to farmers by removing the pasture exclusion (part (e) of the definition) (+) Simplifies how a wetland is defined and brings consistency across the RMA and national direction (+) Clarifies scope of regulations by moving wetland types currently excluded under the "natural inland wetland definition to clause 37 of the NES-F 2020 (When the subpart does not apply). These include: - Coastal Marine Area (CMA) wetlands - Geothermal wetlands - Constructed wetlands (+) Introduces a definition for 'induced wetlands' and excludes them from the regulations under subpart 37 of the NES-F 2020.	+ (+) Reduces burden to farmers by removing the pasture exclusion (part (e) of the definition) (+) Excludes induced wetlands from the regulations (-) Adds another definition to NIW definition ('induced wetland")	0 (+) Reduces burden to farmers by removing the pasture exclusion (part (e) of the definition) (+) Excludes induced wetlands from the regulations (-) Adds another definition to NIW definition (-) Undermines the initial policy intent of the NPS-FM to protect all wetlands on the basis that even small or degraded wetlands have the potential to be restored and provide ecosystem benefits
Efficiency	0	++ (+) Removes the need for costly ecological assessments under pasture exclusion (+) Excludes induced wetlands from the regulations unless identified as regionally significant (+)Clarifies which types of wetlands are not subject to the regulations. These include: - CMA wetlands - Geothermal wetlands - Constructed wetlands - Induced wetlands. (-) Removes previous carve out for pasture wetlands, may lead to farmers applying for more consents	+ (+) Removes the need for costly ecological assessments under pasture exclusion (+) Excludes induced wetlands from the regulations unless identified as regionally significant (-) Removes previous carve out for pasture wetlands, may lead to farmers applying for more consents	0 (+) Removes the need for costly ecological assessments under pasture exclusion (+) Allows for regional flexibility in determination of which wetlands to protect (-) Removes previous carve out for pasture wetlands, may lead to farmers applying for more consents (-) May require councils to undertake costly ecological assessments to determine if a wetland is "low-value"
Alignment	0	+ (+) This option would align the definition of a wetland across the RMA and national direction tools (+) This option aligns with manifesto commitments to simplify the definition of a wetland and prevent areas perceived as low value from being subject to the regulations (-) Removing pasture exclusion could have significant consequential effects on stock exclusion regulations	0 (+) This option may add to the complexity of the NIW definition, but would prevent induced wetlands from being subject to the regulations (-) Removing pasture exclusion could have significant consequential effects on stock exclusion regulations	- (+) This option may add to the complexity of the NIW definition but would prevent areas perceived as low-value from being subject to the regulations (-) Removing pasture exclusion could have significant consequential effects on stock exclusion regulations (-) Factors that a council may consider in determining whether a wetland is 'low value' i.e., degradation and size, compromise the policy intent to protect wetland extent
Implementation	0	+ (+) Clarifies where regulations do/do not apply (+) Simplifies how a wetland is defined (+) Brings consistency across the RMA and national direction (-) requires amendment across the NPS-FM 2020 and NES-F 2020 to remove reference to NIW and replace with "wetland" as defined in the RMA (-) Removing pasture exclusion could leave uncertainty for farmers without explicit consent pathways for farm activities	+ (+) Clarifies where regulations do/do not apply (-) Removing pasture exclusion could leave uncertainty for farmers without explicit consent pathways for farming activities	-- (+) Clarifies where regulations do/do not apply (-) Removing pasture exclusion could leave uncertainty for farmers without explicit consent pathways for farming activities (-) Factors that a council may consider in determining whether a wetland is 'low value' (i.e., degradation and size) would likely be inconsistently applied and compromise the policy intent to protect wetland extent
Treaty of Waitangi	0	0 Refer to the overarching Treaty Impact Analysis.(TIA)	The TIA only assesses the preferred option	The TIA only assesses the preferred option
Overall	0	++	+	-

Key for qualitative judgements	++ much better than doing nothing / the status quo / counterfactual	+ better than doing nothing / the status quo / counterfactual	0 about the same as doing nothing / the status quo / counterfactual	- worse than doing nothing / the status quo / counterfactual	- - much worse than doing nothing / the status quo / counterfactual

Issue B: The NPS-FM and NES-F framework

	Status quo	Option B1 (recommended) •	Option B2	Option B3
Effectiveness	0	+ (+) Explicitly provides for agricultural activities and wetland construction (+) Encourages wetland construction (and other edge-of- field mitigations or environmental enhancement projects more generally) via regional plans (-) higher risk (compared to status quo) that poor enforcement result in wetland degradation	+ (+) Simplifies the NPS-FM wetland provisions (+) Enables an activity for any purpose to apply for consent (-) requires all activities without permitted activity status to apply for consent	+ (+) Explicitly provides consent pathway for wetland construction in the setback of a wetland (+) Encourages wetland construction (and other edge-of- field mitigations or environmental enhancement projects more generally) via regional plans (-) Does not provide a consent pathway for farming activities leaving uncertainty for farmers
Efficiency	0	++ (+) Provides clarity and allows farmers to undertake farming activities (+) Enables and encourages wetland construction (and other edge-of-field mitigations or environmental enhancement projects more generally) via regional plans	- (+) Provides greater flexibility for local decision making (-) Process is still costly for land users, especially farmers (-) Forcing everyone through consent pathways may result in large consenting burden for councils	- (+) Provides greater flexibility for local decision making (-) Process is still costly for land users, especially farmers (-) Leaves uncertainty for farmers regarding what activities qualify for consent
Alignment	0	++ (+) Aligns with manifesto commitments to let farmers get back to farming (+) Aligns with manifesto commitments to enable wetland construction	0 (+) Simplifies the NPS-FM wetland provisions at face value (-) Likely to increase consent applications required for landowners and consenting burden for councils	0 (+) Aligns with manifesto commitments to enable wetland construction (-) Does not address feedback from farmers that there is uncertainty around what farming activities are subject to the regulations
Implementation	0	+ (+) Explicitly provides for farming activities and wetland construction	- (-) Implementation is likely to be complex as all activities without permitted activity status will be required to apply for consent	0 (+) Explicitly provides consent pathway for wetland construction in the setback of a wetland (-) Leaves uncertainty for farmers regarding what activities qualify for consent
Treaty of Waitangi	0	0 Refer to the overarching Treaty Impact Analysis.(TIA)	The TIA only assesses the preferred option	The TIA only assesses the preferred option
Overall Assesment	0	+	-	0

Key for qualitative judgements	++ much better than doing nothing / the status quo / counterfactual	+ better than doing nothing / the status quo / counterfactual	0 about the same as doing nothing / the status quo / counterfactual	- worse than doing nothing / the status quo / counterfactual	- - much worse than doing nothing / the status quo / counterfactual

Issue C: The wetland mapping requirements

	Status quo	Option C1 (recommended)	Option C2
Effectiveness	0	+ (+) Addresses feedback from councils that the mapping requirements are too onerous	0 (+) Addresses feedback from councils that the mapping requirements are too onerous (-) This may not reduce burden on some councils who have determined all wetlands are significant
Efficiency	0	+ (+) Removes mapping requirements in entirety, relieving councils of all resource burden (+) leaves decision to councils how and if they choose to continue their mapping efforts (-) removal of mapping requirements may lead to councils de-prioritizing work that is already underway leading to wasted effort	- (+) Theoretically reduces mapping requirements, reducing resource burden on councils (-) requires resourcing by councils to determine which wetlands are regionally significant (-) requires engagement with Iwi/Māori and community by councils to determine which wetlands are regionally significant
Alignment	0	++ (+) Reduces resource burden on councils (+) Retains policy intent by still requiring councils to monitor condition and extent of wetlands within their region	0 Addresses feedback from councils that the mapping requirements are too onerous but may not reduce resourcing required in practice
Implementation	0	+ (+) Provides clear direction by removing mapping requirements in entirety (+)relieves councils of all resource burden (-) Removes part of the evidential basis for prosecution where illegal activities occur in un- mapped wetlands	- (+) Provides clear direction by removing mapping requirements in entirety (-) Removes part of the evidential basis for prosecution where illegal activities occur in non-regionally significant wetlands (-) requires additional assessment step by councils to determine which wetlands are regionally 'significant' (+) Retains policy intent by still requiring councils to monitor condition and extent of wetlands within their region
Treaty of Waitangi	0	0 Refer to the overarching Treaty Impact Analysis.(TIA)	The TIA only assesses the preferred option
Overall	0	+	-

Key for qualitative judgements

++ much better than doing nothing / the status quo / counterfactual	+ better than doing nothing / the status quo / counterfactual	0 about the same as doing nothing / the status quo / counterfactual	- worse than doing nothing / the status quo / counterfactual	- - much worse than doing nothing / the status quo / counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Issue A: The definition of a "natural inland wetland"

108. We recommend option A1.

109. Option A1 simplifies how a wetland is defined while clarifying which types of wetlands are not subject to the regulations, simplifying implementation.

110. Option A1 addresses the main concerns raised regarding the inclusion of 'low value' areas by explicitly defining and excluding induced wetlands from the regulations.

111. The removal of the pasture exclusion in option A1 should relieve some cost to land users and provides an opportunity to give clarity to farmers with the introduction of explicit consent pathways for farming activities set out in option (B1).

112. The changes proposed under option A2 would reduce the scope of areas captured by the natural inland wetland definition and remove the pasture exclusion. It would not, however, resolve the confusion caused by the definition containing multiple exclusions that define what is not a wetland, rather than what is a wetland.

113. We do not recommend including exclusions for 'low value' wetlands (as proposed in option A3). Determining what is a 'low value' wetland is likely to be incredibly complex and may materially result increased resource burden on councils and risks challenge from ENGOs and potentially from iwi/Māori for their subjective determinations.

Complexity of the current definition

114. Option A1 simplifies how a wetland is defined, brings consistency across the RMA and national direction, and addresses feedback from stakeholders that the definition currently outlines what a wetland is not which is difficult to interpret and implement.

115. Clarity can be provided by listing the types of wetlands that are not subject to the NES-F 2020 regulations in clause 37. This would include:

- Wetlands in the CMA
- Geothermal wetlands
- Constructed wetlands
- Induced wetlands.

116. Retaining only the current reference to the RMA definition of a 'wetland' and applying exclusions separately is a structural change, not a policy change. It retains the policy intent to exclude certain types of RMA wetland from coverage by the wetland provisions of both instruments but changes how it is expressed to provide clarity and simplicity.

The pasture exclusion (part (e) of the current natural inland wetland definition)

117. Option A1 would remove the requirement for costly ecological assessments to apply the pasture exclusion (part (e) of the definition).

118. During targeted pre-engagement, Officials heard that the pasture exclusion is creating more issues than it is solving for farmers. Their preference would be for a consent pathway for farming activities that provided clarity on the status of activities, rather than the current unclear carve out from the definition under the pasture exclusion.

119. However, we are aware that the pasture exclusion has been working as intended for some consent applicants. In particular, large-scale developers and infrastructure providers (e.g., NZ Transport Agency) to the extent that they no longer require resource consents under the NPS-FM and NES-F 2020 to develop land that meets the pasture exclusion.

Treatment of 'induced and 'low-value wetlands'

120. Option A1 clarifies what types of wetlands are not subject to the regulations and adds "induced wetlands" to the excluded types, reducing the number of areas perceived as "low-value" yet subject to the regulations.

121. However, as above, we have not recommended an exclusion for wetlands based on size, level of degradation or subjective value.

122. Factors that a council may consider in determining whether a wetland is 'low value' (i.e., degradation and size) would be problematic to apply, and compromise the policy intent to protect existing natural inland wetlands.

123. We intend to test the following definition of induced wetland through consultation:

Induced wetland *is a wetland that has developed as an unintended consequence of activities to construct a waterbody or infrastructure.*

124. Inclusion of a definition would clarify what Officials consider induced wetlands to be and may address some of the concerns from councils about their significant induced wetlands not being covered by the definition.

125. Under the proposed definition only wetlands induced by the construction of waterbodies or infrastructure are excluded, not <u>all</u> wetlands that have been induced as a result of human activity.

126. Further, devolving to councils the ability to determine whether to include an induced wetland under the regulations (through specific recognition in a policy or plan) will resolve many of the issues that have been raised with Officials about the inclusion of induced wetlands within the existing 'natural inland wetland' definition.

127. We know from the Managing our wetlands consultation in 2021 that a variety of submitters, including some councils, support the exclusion of induced wetlands from the definition.[14] However, some councils may oppose the change as it will result in a greater burden on them to identify their regionally significant induced wetlands.

128. This change is likely to be welcomed by most land and resource-users but will be unpopular with ENGO's as it is likely to be seen as a watering down of existing protections.

129. Further consultation will be required to determine whether Iwi/Māori would support

[14] EIANZ, Beef and Lamb NZ, NZ Steel, Hamilton City Council, Kapiti Coast District Council, Wellington City Council, Boffa Miskell, Pukehohe Vegetable Growers Assn, Hira Bhana (Hort enterprise), Oyster Capital, WasteMINZ, NZDF.

these changes.

Issue B: The NPS-FM 2020 and NES-F 2020 framework

130. We recommend option B1, which would create activity pathways for farming activities and wetland construction within the setback of a natural inland wetland. These activities are unlikely to impact the adjacent wetlands, and the pathways would reduce the consenting burden for landusers and councils.

131. Poor enforcement could, however, result in wetland degradation. Risks associated with construction can be managed through the conditions applied to the permitted activity pathways, similar to those of existing pathways. For example, r55(3) sets out general conditions relating to water quality and movement, including requirements that the activity must not:

- result in discharge to the wetland that causes more than minor adverse effects on aquatic life (after reasonable mixing) (3(a)(v))
- involve taking or discharging water to or from any natural inland wetland (though this is permitted for temporary activities, subject to conditions) (3(d))
- place debris or sediment within 10m of a wetland, or in a position where it may enter the wetland (3(e)).

132. The changes proposed under option B2 would enable activities for any purpose to apply for consent and add flexibillity for local decision making. However, requiring everyone to go through a consent pathway may result in a large consenting burden for councils.

133. Option B3 addresses manifesto commitments to explicitly provide for wetland construction, but fails to address feedback from the agricultural sector that the regulations are complex and prevent on-farm activities from obtaining consent.

Farming activities

134. Option B1 would enable activities such as irrigation, on-farm water storage or fencing to occur within the 100m set back of a natural inland wetland, with conditions to mitigate risks to natural inland wetlands.

135. For example, water discharges associated with water storage might occur within the 100m setback. As long as discharges occur more than 10m from the wetland, we don't expect the hydrological function or water levels of the wetland to be significantly altered. Similarly, land disturbance associated with fencing might occur within 100m of the wetland, but the ongoing benefits (such as stock exclusion) are likely to outweigh temporary impacts of works occuring >10m from the wetland edge.

136. As discussed earlier in this RIS, the pasture exclusion has not provided for continuity of agricultural land-use as intended. To the contrary, it has complicated land management for farmers due to the requirement to obtain ecological assessments to determine where the exclusion applies.

137. This has left farming activities inadequately provided for under the NPS-FM 2020 and NES-F 2020, as where the pasture exclusion is determined not to apply, there is no clear regulation of activities for the purposes of farm management (e.g, irrigation, on-farm water storage and fencing).

138. Officials have heard that the lack of clear provision has led to some necessary

farming activities being interpreted as non-complying by regional councils (see irrigation example provided earlier in this RIS).

139. We note for completeness that grazing is not regulated by the NES-F 2020 and is expressly excluded from the definition of vegetation clearance. Also, that stock exclusion is managed separately by the Resource Management (Stock Exclusion) Regulations 2020.

140. We intend to test through consultation what agricultural activities should be provided for under the proposed pathway.

141. We consider that provided that the permissibility of activities within a farming pathway is appropriate, the impact on the environment will be no greater, and potentially smaller, than under the current settings where farming is provided for under the pasture exclusion.

Wetland construction

142. A policy statement in the NPS-FM would send a clear direction to councils to encourage wetland construction in planning and resource consenting decisions (including where these activities may be regulated elsewhere under the RMA).

143. A permitted/restricted discretionary consent pathway for wetland construction within 100m of a natural inland wetland would clarify the status of these activities and better enable wetlands to be constructed for purposes such as nutrient attenuation and carbon sequestration.

144. Under 43A(3)(b) of the RMA, activities are unable to be permitted where they could have a significant adverse effect on the environment. We acknowledge that the intent of constructing wetlands is to provide environmental benefits, however it is necessary to protect against unintended adverse effects that may arise as a result of earthworks or the take, use, damming or diversion of water.

145. Activities for the purposes of wetland restoration, maintenance and biosecurity within a wetland or its relevant setback are permitted where conditions are met, and restricted discretionary where the conditions are not met.

146. Providing for wetland construction within 100m of a natural inland wetland in the same way would incentivise wetland construction whilst being consistent with the precautionary approach currently applied in the restoration, maintenance and biosecurity consent pathway.

147. Officials have heard that providing for wetland construction within 100m of a natural inland wetland would be beneficial for on-farm diffuse mitigation and carbon sequestration, However, we have limited information about where this pathway may be desired/beneficial outside of this.

148. The policy intent is to provide for environmentally beneficial wetland construction and to ensure that any constructed wetlands do not have immediate or delayed environmental impacts on the existing natural inland wetland, e.g., construction of a habitat for duck shooting that negatively impacts bird populations in the existing natural inland wetland.

149. We intend to test, through consultation and further policy development, the following definition of wetland construction:

> ***Wetland construction*** *is when an area is artificially engineered to mimic the functions of a natural inland wetland, where one did not previously exist.*

150. We also intend to test through consultation if wetland construction should only be permitted for specific purposes such as:

- water quality improvement (water treatment, sediment or nutrient retention)
- biodiversity improvement;
- flood mitigation
- carbon sequestration.

151. The development of specific conditions for a wetland construction permitted activity pathway will be key to achieving the policy intent to enable wetland construction. The conditions would need to be broad enough to enable wetland construction where there is unlikely to be an adverse environmental impact on the existing natural inland wetland, but also ensure that activities that may have an adverse effect are not permitted (and therefore become restricted discretionary).

152. Officials would develop and test permitted activity conditions with the Department of Conservation, and Regional Council stakeholders following consultation.

153. We consider that the intent to further incentivise wetland construction and other beneficial wetland activities under option 2 will be well received by stakeholders.

Issue C: The wetland mapping requirements

154. We recommend option C1.

155. While option C2 reduces some of the burden on councils, we have consistently heard that it is difficult for them to ground truth any mapping they undertake, and we have yet to deliver an agreed methodology (which would enable a national-level amalgamation of maps).

156. By removing the wetland mapping requirements from clause 3.23 from the NPS-FM 2020 reduces financial and resource burden on councils.

157. The policy intent will be retained as councils will still requiring monitor the condition and extent of wetlands within their region, avoiding further wetland loss.

158. We consider wetland mapping can be better achieved by central Government, for instance as part of climate mitigation work. Work is underway to explore how we collate mapping completed by councils to date and how we can fill in any gaps at a national level.

What are the marginal costs and benefits of the option?

Issue A: The definition of a natural inland wetland

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Environment	A degree of uncertainty remains regarding the return to the RMA wetland definition. How 'induced wetlands' are defined will affect the percentage of wetlands that become excluded under the proposed changes, as will the extent to which councils exercise their discretion in continuing to include significant wetlands within the definition. If the proposed definition is adopted, we perceive that the environmental costs will still be medium, as the removal of requirements to apply the effects management hierarchy is still likely to result in a net loss of wetland extent and therefore the loss of some of the biodiversity and ecosystem services that induced wetlands can provide. Some of this loss may be offset by better providing for wetland construction.	Medium	High
Iwi/ Māori	Changes to the types of wetlands excluded is likely to require additional resource and time from Iwi/Māori to work with councils to identify induced wetlands of regional significance. Non-monetised costs associated with the loss of values associated with 'induced wetlands' no longer being provided for under the definition are also likely, as the distinction between 'induced wetlands' and other wetlands is less compatible with the Te Ao Māori worldview that values water holistically, including groundwater.	Medium	Medium
Regulated groups	Both monetised and non-monetised costs associated with avoiding induced wetlands are likely to be substantially decreased. However, there is potential for additional monetised costs associated with obtaining ecological assessments where induced wetland status is contested.	Medium	High
Regulators	Will likely require additional resource to educate staff and ratepayers. But changes to the definition alleviate some existing confusion and would be clearer than under the status quo. Monetised and resourcing costs could be incurred in terms of council resourcing where induced wetland status is contested, resulting in additional assessments required to determine whether the definition applies.	Medium	Medium

Others (e.g., wider govt, consumers, etc.)	Costs associated with further production of guidance documents are likely.	Low	Medium
Total monetised costs	Not perceived to be materially higher than under the status quo.	Low	Medium
Non-monetised costs	Medium level costs associated with policy changes. Loss of net wetland extent likely.	Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Environment	May incentivise prioritisation of the protection of high-value induced wetlands and remaining natural inland wetland extent.	Low	Medium
Regulated groups	Reduced requirements for resource consenting. Compliance costs will reduce while certainty regarding the ongoing use of land will increase.	High	High
Regulators	Ongoing reduction of cost to grant and monitor resource consents. Compliance costs will reduce.	Medium	Medium
Others (e.g. wider govt, consumers, etc.)	Reduced requirements for resource consenting. Greater certainty regarding compliance with regulations.	Medium	Medium
Total monetised benefits	High level of monetised benefits, especially for consent applicants.	High	High
Non-monetised benefits	High level of benefit associated with a reduction in requirement to consider NPS-FM and NES-F wetland provisions in induced wetland areas.	High	High

Issue B: The NPS-FM and NES-F framework

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Environment	Wetland construction is more likely to occur. However, some risk remains that this will not be properly implemented, managed or maintained, resulting in reduced environmental and biodiversity values overtime.	Medium	Medium
Iwi/ Māori	No additional costs identified.	Low	Medium
Regulated groups	No additional costs identified.	Low	Medium
Regulators	Introduction of a permitted activity pathway for wetland construction will likely lead to a short-term increase in compliance and monitoring requirements. Additional resource and time may be required to educate staff and ratepayers.	Medium	Medium
Others (e.g., wider govt, consumers, etc.)	Further production of guidance documents likely required to clarify conditions on a permitted activity pathway.	Low	High
Total monetised costs	Not perceived to be materially higher than under the status quo.	Low	Medium
Non-monetised costs	Low level costs associated with policy changes. Loss of environmental and biodiversity values overtime possible if wetland construction is not properly implemented or managed.	Low	Low
Additional benefits of the preferred option compared to taking no action			
Environment	Wetland construction is more likely to occur. This is likely to result in several environmental benefits such as: - increase in extent of wetlands in Aotearoa - water quality improvement - biodiversity support - flood mitigation - carbon sequestration. An increase in wetland construction may also offset loss of wetland extent incurred by exclusion of 'induced wetlands' from the natural inland wetland definition. Additional benefits will depend on the extent to which the wetland construction pathway incentivises the construction of more wetlands, and the purposes for which these wetlands are made.	High	Medium

Iwi/ Māori	Wetland construction is more likely to occur and may contribute to enhanced Te Ao Māori values, e.g., availability of mahinga kai and other resources. Consenting and compliance costs will reduce for wetland construction, while certainty regarding the ongoing use of land for development will increase.	Medium	Low
Regulated groups	Wetland construction is more likely to occur. Consenting and compliance costs will reduce for wetland construction, while certainty regarding the ongoing use of land for development will increase.	Medium	High
Regulators	Reduction of consenting burdens for wetland construction. Monitoring and compliance costs should reduce over time.	High	High
Others (e.g., wider govt, consumers, etc.)	Wetland construction is more likely to occur. Consenting and compliance costs will reduce for wetland construction, while certainty regarding the ongoing use of land for development will increase.	Medium	Medium
Total monetised benefits	High level of monetised benefits, especially for consent applicants.	High	High
Non-monetised benefits	High level of benefit associated with ecosystem services provide by an increase in net extent of wetlands including: - water quality improvement - biodiversity support - flood mitigation carbon sequestration	High	Medium

Issue C: The wetland mapping requirements

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Environment	A degree of uncertainty remains regarding how removing the mapping requirements will impact wetlands as a whole.	Medium	Low
Iwi/ Māori	No additional costs identified.	Low	Medium
Regulated groups	If wetlands are unmapped, it may add uncertainty for whether consent is needed and require at place assessments.	Medium	High
Regulators	Removes part of the evidential basis for prosecution where illegal activities occur in unmapped wetlands.	Medium	Medium
Others (e.g., wider govt, consumers, etc.)	May require resourcing from central government should a national level map be needed.	Low	Medium
Total monetised costs	Not perceived to be materially higher than under the status quo.	Low	Low
Non-monetised costs	Medium level costs associated with policy changes. Loss of net wetland extent possible.	Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Environment	May incentivise prioritisation of the protection of high-value wetlands.	Low	Medium
Regulated groups	May reduce requirement to obtain costly assessments to dispute whether an area is a wetland (which we have heard is an issue under the status quo). This may also improve certainty regarding the ongoing use of land, though will vary depending on degree of mapping undertaken by council.	High	Medium
Regulators	Ongoing reduction of cost to map wetlands. May be able to re-prioritise resourcing to wetland monitoring.	Medium	Medium

Regulators	Ongoing reduction of cost to map wetlands. May be able to re-prioritise resourcing to wetland monitoring.	Medium	Medium
Others (e.g., wider govt, consumers, etc.)	No additional benefits identified.	Medium	Medium
Total monetised benefits	High level of monetised benefits, especially for councils.	High	High
Non-monetised benefits	High level of benefit associated with a reduction of resource burden on councils.	High	High

Section 3: Delivering an option

How will the new arrangements be implemented?

159. The new arrangements will be progressed as part of the National Direction Reform package and will undergo public consultation before a preferred option is progressed.

Ongoing operation and enforcement

160. Local authorities with resource management responsibilities under section 30 of the RMA (e.g., regional councils and unitary authorities) will have the principal role for managing and enforcing the amended wetlands regulations.

161. When introduced, the Ministry for the Environment will support regional councils (including any unitary authority) and the industry sectors to implement the new regulations through the publication of updated guidance documents and advisory notes.

How will the new arrangements be monitored, evaluated, and reviewed?

162. Monitoring natural wetlands is part of regional councils' statutory responsibility for monitoring and reporting on the state of the environment in their region under section 35 of the RMA.

163. Officials would expect that, under 35(2)(ca) of the RMA, councils' state of the environment reporting would also report on the effectiveness of policies and provisions within their plan for managing significant induced wetlands within their regions.

164. Officials will follow up with the farming sector following implementation to gauge uptake of the consent pathways for farming activities.

165. To evaluate if the policy intent of these changes has been met, Officials will follow up with councils post implementation to seek an update on:

- consent application numbers for farming activities
- consent application numbers for wetland construction
- consent processing times.

166. The effectiveness of the NES-F 2025 will be assessed in 2026, using reports on the state of New Zealand's freshwater prepared under the Environmental Reporting Act 2015 to determine trends in wetland extent and health.

Appendix A: Replacement of National Policy Statement for Freshwater Management 2020: Interim Treaty Impact Analysis

The Interim Treaty Impact Analysis for the freshwater package can be accessed here.