

Connections between Māori freshwater rights and interests and proposed reforms of the resource management system

October 2021

Purpose

1. This paper is intended to provide an initial assessment of the connections between Māori freshwater rights and interests (FR&I) and the proposed reforms of the resource management system (RM reforms); in particular, where the RM reforms could either preclude, or contribute to upholding, options to address FR&I.
2. This paper was written prior to officials being advised of the outcome of the Cabinet Priorities Committee hui on 19 October 2021. While the potential implications of that hui are not fully explored in this paper, they are discussed briefly in the key findings section.

Approach

3. Ministers have guaranteed that the RM reforms will not preclude any options for addressing FR&I and their consideration as part of the ongoing discussions with iwi, hapū, and Māori.¹
4. Ensuring that this guarantee is upheld is something of an exercise in metaphorical tight-rope walking, as we are still awaiting a Cabinet mandate to progress work on FR&I and freshwater allocation. Not only does this prevent us from developing detailed options, it would also be irresponsible for us to do so without engaging with our Treaty partners (although we need to be ready and informed to advance these reforms). Essentially, we need to ensure that the RM reforms are sufficiently enabling for us to develop bespoke policy options to address FR&I, without being too prescriptive on what those options might be. But how can we make this assessment without having done the detailed work?
5. Looking to the past provides one answer for this apparent catch-22. We are standing on the shoulders of over a decade of policy work on FR&I. Hundreds of options have been developed by officials and Māori, even if most of them never progressed beyond the public consultation stage. The Waitangi Tribunal also issued a comprehensive set of recommendations in its 2019 report on stage two of the inquiry into freshwater and geothermal resources (the Wai 2358 stage two report).
6. It would be a lengthy exercise to assess all of the proposed components of the RM reforms against all of the proposed options to address FR&I. For one thing, there is no guarantee which of these options will be progressed once Cabinet agrees on next steps, or whether new options might be developed. Instead, this paper identifies the more commonly suggested options / categories of options, and assesses these against the RM reforms. This, it is suggested, is more in the spirit of viewing these as a sort of intellectual supermarket to explore and build upon with our Treaty partners rather than a detailed blueprint that must be rote-implemented.
7. Some progress has been made in addressing FR&I through the Crown's various freshwater policy reforms over the last decade, as well as through Treaty settlements and

¹ The accompanying paper to the NBA exposure draft states that the draft 'does not preclude any options for addressing freshwater rights and interests and their consideration as part of the ongoing discussions with iwi, hapū, and Māori' (para 25). Ministers Parker and Allan have also reassured Te Tai Kaha that the broader resource management reforms '[are] not intended to preclude any options that might be agreed as part of the freshwater rights and interests work programme' (21-M-00718).

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locally-negotiated arrangements relating to freshwater. This paper assumes that, at a minimum, the RM reforms will need to preserve these and provide space to build upon them where it might be appropriate to do so.

The FR&I context

What do we mean when we refer to FR&I?

8. Whakapapa is central to understanding FR&I. In Te Ao Māori, whakapapa enables Māori to position themselves in an extended genealogy that encompasses all things across time in the terrestrial and spiritual worlds. Within this extended web of kinship, environmental taonga such as freshwater bodies are not resources but tupuna (ancestors) to whom Māori can trace direct familial connections. These connections bestow upon Māori a bundle of obligations to care for, and make decisions on behalf of, their ancestors. When these obligations are unilaterally appropriated or overridden by another party (such as the Crown or local authorities), this treads upon the mana of the groups which hold that whakapapa relationship – especially if the mauri of the resource is diminished.
9. From a legal perspective, FR&I are usually framed in terms of residual use rights that may still exist under the common law doctrine of aboriginal title.² From a policy perspective, however, we have a much broader scope to consider options to address FR&I. Te Tiriti o Waitangi provides a useful way of framing potential policy discussions. Broadly speaking in a water context, Article Two guaranteed Māori te tino rangatiratanga (the full and undisturbed exercise of chieftainship) over their freshwater taonga for so long as they wished to retain it, and Article Three rights guaranteed equity of access and use of freshwater (which, in practice, usually includes restoring equity lost through historical injustices).
10. The Crown has acknowledged that Māori have rights and interests in freshwater since the first serious attempt to introduce national freshwater regulations through the Sustainable Water Programme of Action in 2003-2004.⁸ This was most clearly set out in the then Deputy Prime Minister Bill English's evidence to the High Court in 2012 in the context of the Mixed Ownership Model litigation:

The Crown acknowledges that Māori have rights and interests in water and geothermal resources ...

The recognition of rights and interests in freshwater and geothermal resources must, by definition, involve mechanisms that relate to the ongoing use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use ...

At the outset of discussions between Ministers and the Iwi Leaders Group, it was agreed that there would be no disposition or creation of property rights or interests in water without prior engagement ... with iwi.³
11. The Supreme Court's decision to dismiss the appeal was based partially on these commitments, which the court found were not an empty promise. Many Māori groups have since referred back to these commitments, using them as a sort of yardstick to measure the Crown's progress in addressing FR&I.
12. From a policy perspective, FR&I are typically grouped under four broad 'pou':

² For more information on the history of New Zealand's legal framework for freshwater, refer to [this paper](#).

³ Affidavit of Simon William English in opposition to application for judicial review, 7 November 2012 (filed in *Pouakani Claims Trust v Attorney-General*, CIV-2012-485-2185), paras 28, 29, 38. While the original affidavit used the phrase 'engagement and agreement', the Crown clarified in a follow-up affidavit that the word 'agreement' was included in error.

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- 1) **Water quality**
- 2) **Recognition**
- 3) **Governance / management / decision-making**
- 4) **Economic development**

13. These four pou were distilled from a series of over 20 regional hui and a series of case studies held by the Freshwater Iwi Leaders Group (ILG) and Iwi Advisors Group (IAG) in 2014 / 2015 to assemble a comprehensive picture of what FR&I entailed. They subsequently formed the basis of a joint work programme agreed by the Crown and the ILG in July 2015.⁴ They were reiterated by Cabinet in July 2018 as part of the new government’s reframing of its position on FR&I, albeit with some slight wording changes.⁵

2015 Crown / ILG joint work programme	2018 Shared interests in freshwater
<p><i>Water quality:</i> Develop a range of mechanisms to give effect to iwi / hapū values in order to maintain and improve freshwater quality</p> <p><i>Recognition:</i> Enable formal recognition of iwi / hapū relationships with particular water bodies, and address uncertainty of supply of potable water on all marae and papakāinga</p> <p><i>Governance / management / decision-making:</i> Enhance iwi / hapū participation at all levels of freshwater decision-making, and build capacity and capability among iwi / hapū and councils (including resourcing)</p> <p><i>Economic development:</i> Develop a range of mechanisms to enable iwi / hapū to access freshwater resources in order to realise and express their economic interests</p>	<p>Improving water quality and the health of ecosystems and waterways</p> <p><i>Recognition:</i> Ensuring there is formal recognition of iwi / hapū relationships with particular freshwater bodies</p> <p><i>Governance / management / decision-making:</i> Māori want to be involved in freshwater decision-making, and have the capacity and capability to do so effectively</p> <p><i>Economic development:</i> Māori want to be able to access and use freshwater resources (i.e. water takes and discharges) in order to realise and express their economic and development interests (within the context of a holistic view of Te Mana o te Wai).</p>

14. For convenience, this paper makes use of the four pou to assist with categorising FR&I options. It makes no judgment on whether they remain a robust framework for understanding FR&I going forward.

15. One of the drawbacks of the four ‘pou’ framework is that it does not holistically address transition issues, such as implementation support, capacity and capability building to engage in the overall RM system, and the length of time it may take to address FR&I in every catchment (particularly access and use rights). The ILG’s Ngā Mātāpono ki te Wai framework includes a separate transition stream.

What work has been done so far to address FR&I?

16. Some progress has been made in addressing aspects of FR&I over the last ten years:
- a. A National Policy Statement for Freshwater Management (NPSFM) was introduced in 2011 and revised in 2014, 2017 and 2020. The key components from a FR&I perspective are:

⁴ CAB Min (15) 26/10, para 6. The exact framing of these pou reflect certain political realities. They had to fit within the context of the National government’s bottom lines at the time (set in November 2014), so residual proprietary rights were not included. ‘Customary uses’ was also originally a separate pou but was subsequently woven into the other four pou instead. ‘Economic development’ also presumes that Māori aspirations with respect to freshwater access and use are solely financial, which might not always be the case.

⁵ ENV-18-MIN-0032, para 2

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- i. The Te Mana o te Wai framework (including the six principles and the hierarchy of obligations, and the requirement to 'give effect to' the five requirements set out in section 3.2(2) of the NPSFM 2020)
 - ii. The introduction of mahinga kai as a compulsory value, and the requirement for regional councils to work collaboratively with and enable, tangata whenua to carry out the NOF process for mahinga kai and any other freshwater values they identify
 - iii. The requirement to 'actively involve' tangata whenua in various freshwater management and decision-making processes (formerly known as 'Part D' but strengthened and expanded in section 3.4 of the NPSFM 2020).
- b. The introduction of Mana Whakahono ā Rohe to the Resource Management Act in 2017 was intended to contribute to addressing the second and third pou.
- c. A variety of forms of redress associated with Treaty settlements relating to specific freshwater bodies, including:
- i. Legal personhood (for Te Awa Tupua)
 - ii. Catchment frameworks / values that carry different legal weightings which must be upheld by decision-makers (such as the Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River, and Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika (Whangaehu River)).
 - iii. Catchment vision / strategy documents that carry different legal weightings which must be upheld by decision-makers (such as Te Ture Whaimana (the vision and strategy for the Waikato and Waipā Rivers), Te Heke Ngahuru (the Whanganui River strategy document), the Rangitaiki River Document, the Kaituna River Document, and the Tarawera River strategy document)
 - iv. A variety of co-governance and co-management arrangements relating to various functions within the current RM system, including developing planning documents, assessing resource consent applications (including hearings and boards of inquiry) and undertaking monitoring and reporting
 - v. The establishment of statutory bodies (such as the Waikato River Authority and the Rangitaiki River Forum), permanent joint committees⁶ (such as the Rotorua Lakes Strategy Group and Te Maru o Kaituna River Authority) or advisory groups
 - vi. Recognition of the exercise of customary activities without the need for resource consents (such as fishing rights, collection of hāngi stones or waka launching rights)
 - vii. Revesting of river or lake beds
 - viii. Roles in respect of water conservation orders (such as providing advice or appointing panel members)
 - ix. Statutory acknowledgements regarding the group's cultural, spiritual, historical and traditional association with specified areas
 - x. Requirements to engage early when developing policy.

What options have been suggested to-date to address FR&I?

⁶ Under Schedule 7 of the Local Government Act

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17. A significant number of options to address FR&I have been proposed since the first serious attempt to introduce national freshwater regulations through the Sustainable Water Programme of Action in 2003-2004.⁷ Collating all of these options would be a herculean task, and likely an unnecessary one; times and opinions change, after all, rendering older options less likely to remain relevant. Appendices 1-4 provide summaries of the following, more recent, sets of options and recommendations:
- a. Appendix 1 lists the 62 options identified by officials and the ILG / IAG in August 2015 (sometimes referred to as the 'traffic light' document), which formed the basis for ongoing policy work over the next two years
 - b. Appendix 2 lists the options recommended by the Waitangi Tribunal in 2019 in the Wai 2358 stage two report
 - c. Appendix 3 summarises the options proposed independently of the Crown by the ILG, Kāhui Wai Māori (KWM), New Zealand Māori Council (NZMC), Federation of Māori Authorities (FOMA) and Te Wai Māori Trust (TWMT) up until their decision to form a Collective (later two Collectives) for the purposes of engaging on the RM and FR&I reforms in December 2020
 - d. Appendix 4 summarises the options proposed by these five groups since December 2020 (individually and as part of the two Collectives).

How do FR&I intersect with other Government work programmes?

18. Active policy work is currently underway on Freshwater Farm Plans, Three Waters, Essential Freshwater implementation and local government reform which intersects with FR&I. This paper notes where those connections exist, although it does not explore them in detail.

Key findings

What are the most commonly suggested options to address FR&I?

19. The following table sets out the most commonly suggested options to address FR&I (based on the information in Appendices 1-4), as well as the general categories of options more broadly. This summary provided the primary basis for the assessment of the connections with RM reform in the next section.

Pou	Commonly suggested options / categories of options
Overarching	Consider creating a separate piece of legislation for water (a 'Water Act')
(1) Water quality	<p>The options most commonly suggested can be bundled into the following categories:</p> <ul style="list-style-type: none"> • Use Māori concepts to frame national freshwater regulations and freshwater management more generally (most commonly Te Mana o te Wai or Ki Uta Ki Tai). • Strengthen Māori values / measures of freshwater health or make them mandatory (commonly suggested values / measures include mahinga kai, Te Mana o te Wai, and values identified locally through Treaty settlements and iwi management plans). • Make national freshwater regulations stricter and more comprehensive (such as by expanding the NOF to cover more contaminants, introducing more stringent bottom lines, providing for cultural / ecological flows, protecting wetlands / native fish species / fish passage, introducing stock exclusion regulations). • Strengthen obligations on local authorities (particularly regional councils) to identify and engage with tangata whenua about water quality in their freshwater taonga. • Provide stronger guidance and implementation support.

⁷ *Water Programme of Action: Water Allocation and Use*, MfE technical working paper, July 2004. Freshwater management and proprietary rights have also been a common issue in Waitangi Tribunal proceedings and Treaty settlement negotiations since the 1990s.

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(2) Recognition	<p>The most commonly suggested options for this pou are:</p> <ul style="list-style-type: none"> • Provide reliable water supply / water storage for marae and papakāinga. • Provide for water takes for customary practices, and/or funding for restoration of mahinga kai sites and dried-up puna. • Recognise relationships through forms of title, such as the vesting of river or lake beds, water columns, or water bodies themselves in Māori groups, or creating a new form of title and vesting it in Māori groups. • Provide for pou to be nominated by Māori and the Crown to speak for water bodies.
(3) Governance / management / decision-making	<p>The most commonly suggested options for this pou are:</p> <ul style="list-style-type: none"> • Establish a Water Commission or national freshwater co-governance body of some form (with a variety of suggested functions, the most common being system oversight, developing national regulations, reviewing draft or notified plans, providing implementation guidance and support, and developing and/or managing a freshwater allocation system). • Require local authorities to 'give effect to' the Treaty and/or its principles, or otherwise strengthen the existing Treaty clause to ensure that the Crown's Treaty responsibilities are upheld by local authorities. • 50/50 Crown/Māori partnership at all levels of the freshwater management system (and/or the environmental management system more broadly), • Remove the barriers to Joint Management Agreements / transfers of power and make them mandatory in some circumstances. • Enable co-governance / co-management in all catchments, covering functions such as plan-making, consenting, environmental monitoring / reporting, and CME. • Strengthen the legal weighting of Iwi Management Plans. • Ensure Māori are adequately resourced to perform freshwater management functions. • Provide stronger guidance and implementation support (such as reviewing the resourcing capabilities of Māori / local authorities, guidance on best practices, and training for councillors).
(4) Economic development	<p>The most commonly suggested options for this pou are:</p> <ul style="list-style-type: none"> • FR&I include both a whakapapa-based share of the resource (which should be perpetual, inalienable and not tied to land) and separate measures for Māori landowners (usually, but not exclusively, connected to underdeveloped Māori land). • Other mechanisms to address FR&I should be explored where this is required (such as royalties or compensation). • A variety of freshwater allocation regimes have been proposed, which seem to broadly fall under either administrative merit or market-based approaches. • A variety of claw-back / active protection mechanisms have been proposed (either to create headroom in overallocated catchments or to prevent consenting 'gold rushes'). These include a moratorium on new and renewed consents, 'tagging' consents for renewal at a later date, pooling consents at the end of their term for reallocation, and shaving a percentage off the top of existing consents. • Charges or royalties on commercial use should be introduced. • Grandparenting, the presumption of renewal and first-in-first-served should be done away with. • The NBA should include a preservation clause noting that it is not intended to, nor does it, adversely affect the take / use and discharge rights that Māori have in natural resources, including freshwater.

20. This table should not be mistaken for a comprehensive list of options to address FR&I. It is a summary of proposed options only. It does not capture all of the options that have previously been proposed, nor is it intended to limit where our conversations with Treaty partners may go once we have a mandate to progress the FR&I work.

What are the key connections between these options and the RM reforms?

21. The table in the next section explores the connections between the proposed RM reforms at a national and regional level and:

- a. The summary of FR&I options in the above table
- b. Existing requirements in the NPSFM and Treaty settlements relating to FR&I.

22. As noted above, the focus of this assessment was whether the different RM reforms could either preclude, or contribute to upholding, options to address FR&I.

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23. The key themes that emerge from this analysis are set out in the following table. **Please note that these were written with the assumption that Cabinet would agree to progress Māori freshwater rights and interests and freshwater allocation in time for them to be addressed alongside, and/or as part of, the RM reforms.** This no longer appears certain after the Cabinet Priorities Committee hui on 19 October 2021. If no decision is made to progress these kaupapa, some of the key assessments below may no longer hold. For example:

- a. The resource allocation framework is more likely to preclude options and/or not fully address FR&I if it is not accompanied by a specific work programme for freshwater allocation (such as in secondary legislation sitting under the NBA)
- b. The RM governance framework is more likely to preclude options and/or not fully address FR&I if it is not accompanied by bespoke freshwater provisions where required (such as at a catchment level).

Key theme	Further information
Overlaps between FR&I and the RM reforms	
<p>1. While the RM reforms intersect with all of the FR&I pou to some degree, the key area of alignment is in governance / management / decision-making</p>	<p>The RM reforms have implications for all four pou, although the strongest overlaps are in the governance proposals. This is unsurprising given the integrated nature of environmental governance in the current and proposed future system. We seem to be broadly on the same page as the national Māori groups in preferring an integrated system as much as is possible and appropriate (notwithstanding that bespoke arrangements for freshwater are likely to be necessary in some instances).</p> <p>Water quality and economic use also have strong overlaps with the RM reforms. However, at this stage it appears likely that they will be progressed through their own bespoke secondary instruments under an enabling NBA framework (i.e. section(s) in the NPF). This is not the case for governance arrangements which, at this stage, are likely to be largely prescribed in primary legislation. This raises the risk that RM decisions in the next few months could preclude FR&I options in governance / management / decision-making, which is discussed below at (5).</p>
<p>2. The recognition pou is least aligned with the RM reforms, and may therefore pose a risk</p>	<p>The RM reforms do not currently cover any of the most commonly suggested options for addressing the recognition pou of FR&I (although allocations for customary uses could potentially be considered as part of freshwater allocation). This poses a risk if our discussions with Treaty partners reveal that this is a priority for them. Titling of river / lake beds, for example, is potentially a complex and lengthy work programme in and of itself, somewhat akin to the MACA process.</p> <p>The most commonly suggested option for this pou – water supply for marae and papakāinga – could possibly be a part of the Three Waters reforms. It may be worth coordinating with DIA on this, even if it is not something they are actively considering at present.</p>
RM decisions which could preclude options to address FR&I	
<p>3. MOG decisions to-date have largely not precluded options to address FR&I</p>	<p>The majority of MOG decisions to-date have either:</p> <ul style="list-style-type: none"> • Been broad and enabling enough to capture potential FR&I options as part of the proposed RM system, and/or to not preclude bespoke options for freshwater if these may be required • Implicitly addressed a proposed FR&I option, but for the entire RM system rather than just freshwater (removing the barriers to JMAs and transfers of power is a good example of this).
<p>4. The few areas where FR&I options may have been precluded to-date do not appear to be 'showstoppers'</p>	<p>The following MOG decisions to-date could possibly preclude, or impact on, some FR&I options:</p> <ul style="list-style-type: none"> • The approved Treaty clause for the NBA exposure draft was to 'give effect to the principles of Te Tiriti' plus three areas relating to Māori participation, one of which was 'allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater)'. Linking resource allocation to the principles rather than the articles of the Treaty (or the principles and articles) could be seen as precluding options to address FR&I held under Articles 2 and 3. However, the FR&I caveat on the decision makes this low risk, and specific policy options could still be developed to address FR&I under the articles of the Treaty even if resource allocation is linked to the Treaty principles clause. • Several of the decisions relating to regional spatial strategies (RSSs) suggest that they will be very high-level. This could potentially preclude RSSs from being used to include strategic content for individual freshwater bodies (except those deemed significant enough to be included in an RSS). Strategy documents are also a common part of Treaty settlements relating to freshwater bodies, and the NPSFM 2020 also requires regional councils to work with local communities and tangata whenua to develop long-term visions.

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Key theme	Further information
	<p>If this is the case, it may need to be revisited at a later date if RSSs are determined to be the appropriate place for these matters.</p> <ul style="list-style-type: none"> One of the early decisions relating to combined regional plans noted that they would 'address resource use and allocation (regional councils) and land use and subdivision (territorial authorities) matters holistically to achieve integrated management'. This could preclude the option of dealing with freshwater allocation (and freshwater water management more broadly) through separate instruments and institutions. However, this appears to be low-risk, given that we and the national Māori groups thus far appear to be on the same page that an integrated approach is better as much as is possible / appropriate. The decision that joint committee composition will be worked through region-by-region could preclude the option of addressing FR&I in governance / management / decision-making through 50/50 representation across all joint committees. However, it does not preclude the ability to explore 50/50 governance arrangements for freshwater governance that sit alongside the joint committees (at a whole-of-region and/or catchment level).
<p>5. Upcoming decisions are much more likely to preclude options to address FR&I</p>	<p>As the MOG meeting series nears its conclusion, more concrete decisions will need to be made on various RM matters. Once this happens, the probability of FR&I options being precluded increases. This is most apparent with the governance / management / decision-making pou given how closely intertwined it is with environmental governance arrangements more broadly.</p> <p>Preclusion appears more likely to happen because of the different timeframes that RM and FR&I are operating under rather than decisions being made that might explicitly rule out FR&I options. In essence, the MOG is nearing the end of its meeting schedule and is seeking to finalise / close things down just as FR&I is beginning and wanting to open things up. Final decisions on institutional arrangements, the 'who' question, and funding for Māori could all have this effect.</p> <p>Once this starts happening, we may either need to signal that certain decisions may need to be revisited as part of the FR&I work programme, or else explore separate institutional (and possibly instrumental) arrangements for aspects of freshwater management.</p> <p>Some upcoming decisions could explicitly impact on FR&I. Designations, for example, might implicitly involve allocation decisions. If it's agreed that designations can override locally-set limits, this could also impact on the ability to uphold the Te Mana o te Wai hierarchy of obligations in the NPSFM 2020, as well as any targets and limits agreed to with tangata whenua for the mahinga kai compulsory value. They could also affect coastal rights and interests, although this does not currently seem to be interlinked with FR&I.</p>
<p>6. We may need to prioritise the process for developing the freshwater 'section' of the NPF</p>	<p>The process for developing the freshwater content of the first-generation NPF will likely be an important component of FR&I discussions. It is also one of the few aspects of FR&I that can possibly be progressed without a Cabinet mandate. It may therefore be worth prioritizing this in our discussions with the national Māori groups.</p> <p>Policy work to scope and develop the NPF will ramp up from early 2022. As the national entity will not be established in time, RM are actively thinking about how we can best work with Māori on the first-generation NPF. Care will be needed to ensure that no decisions are made prematurely that will prevent a process for developing the freshwater content that is consistent with addressing FR&I. We may need to make this a priority area of engagement with Treaty partners once we have a Cabinet mandate.</p> <p>The key questions we may need to consider include:</p> <ul style="list-style-type: none"> Do the existing suite of national freshwater regulations (the NPSFM, NES-F and 360 regs) sufficiently address the water quality FR&I pou, or is further work needed? (noting that (a) there may be limited scope to go beyond existing national directions in the first-gen NPF, and (b) any amendments could impact on councils' ability to notify freshwater plans by the end of 2024). What is an appropriate process for developing the freshwater 'section' of the NPF (and transitioning the policy intent of existing freshwater national directions)?
<p>7. The proposal to create an enabling framework for resource allocation in the NBA does not appear to preclude the ability to reform freshwater allocation and address FR&I</p>	<p>Advice on resource allocation policy including principles, powers and tools is scheduled to be taken to MOG 15. This is intended to provide an enabling framework under which freshwater allocation / FR&I can be addressed. The advice that the FR&I team have seen to-date seems broad and enabling enough so as not to preclude any options to address FR&I in the economic development pou, and we have provided advice to help ensure this is the case.</p> <p>This framework is unlikely to be sufficient in itself to address FR&I without an accompanying work programme for freshwater allocation (such as in secondary legislation sitting under the NBA), and could preclude options to address FR&I without safeguards in place to preserve the ability to address FR&I.</p>
<p>8. We may need to challenge the underlying assumption about Ministerial decision-making</p>	<p>While not explicitly covered by any MOG decisions, the assumption pervading the RM reforms is that Cabinet / Ministers will retain ultimate decision-making power over primary and secondary environmental legislation, including the content of the NPF. Any institutional arrangements involving Māori (such as the national entity) will provide advice and input, but will not have any decision-making powers (although this could be clarified in later decisions)</p>

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Key theme	Further information
	<p>We may need to revisit this assumption as part of a FR&I work programme. For example, many of the proposals relating to a Water Commission (or a national co-governance body) envisage it having certain decision-making powers, or the ability to caveat or constrain Ministerial powers.</p> <p>In a similar vein, we may need to revisit the assumption that water should be dealt with under the NBA / SPA. A separate 'Water Act' has been proposed on several occasions in the past, although this was largely prior to the government's decision to repeal and replace the entire RMA so the demand for it might no longer be there.</p>

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Connections between FR&I and the RM reforms at a national and regional level

RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
<i>Matters which manifest at all levels (national, regional and local)</i>			
Funding	No decisions to-date on funding / resourcing for Māori.	<p>Delegated to the Minister for the Environment and Associate Minister Allan to confirm wording for outcome 3. b. "Māori have the opportunity to participate as Treaty partners across the resource management system, including in national and regional strategic decisions, and are sufficiently resourced for duties or functions that are in the public interest". Officials to provide advice on any unintended consequences of the phrase 'public interest' (MOG 2 rec 9)</p> <p>Further advice will be provided on the plan development process, including on the plan making secretariat engagement processes, including ... how enhanced iwi/Māori involvement in plan development is implemented and funded (MOG 11/12 paper 2 rec 20)</p> <p>Further advice will be provided on ... funding to enable effective [Māori] participation across the Resource Management system (MOG 11/12 paper 2 rec 25)</p>	<p>As no decisions have been made, no options have been precluded.</p> <p>Providing a percentage of water charges / royalties (if this is pursued as an option in the freshwater allocation work programme) could be one means of addressing FR&I. It's highly unlikely to be appropriate for the Crown to expect Māori to use this to fund their participation in the RM system (in the same way that Treaty settlement redress isn't appropriate for this purpose, even though it often is used for lack of an alternative funding source).</p>
The 'who' question	No decisions to-date on which Māori groups will participate in the system, and at which level(s).	<p>MOG 11/12 (paper 2 paras 17, 26-28) noted that further advice would be provided to a future MOG on who participates in the resource management system, including:</p> <ul style="list-style-type: none"> • identifying and recording who makes Māori appointments to joint committees • whether legislation should set appointments processes or whether to 	<p>As no decisions have been made, no options have been precluded.</p> <p>The 'who' question is equally important from a FR&I perspective, and includes the additional dimension of who might be the 'recipients' of rights to access and use freshwater.</p>

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
		<p>enable bespoke processes (eg, through enabling a tikanga or kaupapa Māori appointments process)</p> <p>Dom's hoping to take a paper to the Māori interests MOG sub-group on 24 November – key messages and possibly in-principle decisions only – then to MOG in new year.</p>	
<p>At a national level</p> <p><i>Possible connections with other work programmes – Three Waters</i></p> <ul style="list-style-type: none"> • Taumata Arowai was established through the Three Waters reforms in March 2021 as a national regulator of drinking water (with additional oversight functions for wastewater and stormwater). It will be supported by a Māori Advisory Group charged with advising on Māori interests and knowledge, which Taumata Arowai must have regard to. This includes: <ul style="list-style-type: none"> ○ Developing and maintaining a framework that provides advice and guidance on how to interpret and give effect to Te Mana o te Wai ○ Providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised. 			
<p>NBA purpose and related provisions</p>	<p>MOG 7 rec 44:</p> <ul style="list-style-type: none"> • The purpose of the NBA is to enable Te Oranga o te Taiao to be upheld and enable the use of the environment to support the wellbeing of present and future generations • The purpose is to be achieved by ensuring that: <ul style="list-style-type: none"> ○ The use of the environment is within environmental limits ○ Positive outcomes for the environment are provided for ○ Adverse effects of activities on the environment are avoided, remedied or mitigated <p>MOG 7 rec 47:</p> <ul style="list-style-type: none"> • The NPF and all plans must promote a series of environmental outcomes relating to the protection / restoration / improvement of freshwater, estuaries, ecological integrity, etc. Also the following outcomes: <ul style="list-style-type: none"> ○ the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected ○ the mana and mauri of the natural environment are protected and restored 	<p>May be subject to revision post-select committee. The NBA exposure draft inquiry departmental report that the FR&I team commented on included a number of proposed changes to the 'framework' of the NBA – the outcomes and the relationships between them, the priority of environmental limits, how limits are to be achieved where they are currently exceeded, the definition and scope of Te Oranga o te Taiao, the use of targets for objectives, the coverage / format of the NPF, etc.</p>	<p>In general, the proposals seem broad and enabling enough not to preclude any options to address rights and interests.</p> <p>It's unclear what 'protected customary rights' refers to. Presumably it's referring to protected customary rights under Te Takutai Moana Act 2011. Without a definition in the NBA, could this be construed as also protecting unextinguished customary rights to freshwater?</p>

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
	<ul style="list-style-type: none"> ○ cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values ○ protected customary rights are recognized 		
SPA purpose and related provisions	<p>MOG 7:</p> <ul style="list-style-type: none"> • Use the Panel’s indicative purpose for the SPA as the basis for drafting with modifications to align with the NBA (para 2) • The purpose of the SPA should include reference to the promotion of the wellbeing of present and future generations through the long-term strategic integration of functions exercised under specified legislation (para 3) • Definitions of terms referred to in the SPA purpose should align with the NBA definitions of those terms, including those for ‘wellbeing’ and ‘environment’ (para 6) • The SPA purpose sub-clauses that describe the functions under specified legislation will be aligned with NBA clauses (as appropriate) to promote alignment between the two Acts (para 7) • The SPA does not require its own outcomes but should instead provide that the NBA outcomes apply, with this decision to be revisited if necessary, following the exposure draft inquiry (para 12) 	Alignment between NBA and SPA outcomes to be considered further at MOG 14. The draft advice that the FR&I team commented on stressed that it is important to align the long-term outcomes across the two acts.	<p>The proposals suggest that the SPA purpose and related provisions will align with the NBA. Assuming this is the case, the FR&I implications are the same as noted above for the NBA purpose and related provisions.</p> <p>The draft paper for MOG 14 on ‘critical shifts’ suggests that the SPA will align with the NBA in terms of outcomes, Te Oranga o te Taiao and Treaty clauses.</p>
Resource allocation framework	<ul style="list-style-type: none"> • One of the agreed outcomes of Cabinet’s agreed objective to “give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori” is that Māori customary rights, cultural values and Treaty settlements are protected, and equitable access to resources for Māori is ensured (MOG 2 rec 6). • The Treaty clause for the NBA exposure draft should be to ‘give effect to the principles of Te Tiriti plus ...allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater) (MOG 6 rec 7). • The NBA will contain an enabling permissions regime that provides for greater proportion of ‘permitted activities’, supported by the provision of adequate information and assurance that conditions will be met (MOG 9 rec 1) 	Advice on resource allocation policy including principles, powers and tools will be taken to MOG 15. This is intended to provide an enabling framework under which freshwater allocation / FR&I access and use rights can be addressed.	<p>Decisions made to-date do not appear to preclude any options to address FR&I.</p> <p>The ‘equitable access to resources for Māori’ agreement at MOG 2 relates more to Article 3 than Article 2 FR&I, although it does not preclude any options.</p> <p>The reference to ‘allocation principles’ in the Treaty clause appears to presuppose that linking it with the Treaty clause will be one of the options pursued, although the FR&I caveat seems sufficient to address this.</p>

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
	<ul style="list-style-type: none"> • The NBA will provide that there is no compensation for the effects of planning provisions on interests in land (based on section 85(1) RMA), and a provision stating that a consent relating to water does not give any property rights in water (based on section 122 RMA) (MOG 10 paper 2 rec 9). • The NBA will provide processes for the review of consents, which will include the circumstances, purpose, scope, powers, matters to be considered, outcomes, appeal processes, implementation (including potential for a transition period), and cost recovery mechanisms for reviews (MOG 10 paper 2 rec 11). 		
Treaty clause	<ul style="list-style-type: none"> • The Treaty clause to be elevated to sit just after the NBA purpose, and will use the words 'Te Tiriti o Waitangi' which is to be defined as referring to the definition of 'Treaty' in the Treaty of Waitangi Act 1975 (MOG 6 rec 3) • The Treaty clause for the NBA exposure draft should be to 'give effect to the principles of Te Tiriti' plus: <ul style="list-style-type: none"> ○ participatory rights in preparing NBA and SPA plans and NPF ○ allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater) ○ the requirement that iwi management plans are taken into account in preparation of plans (MOG 6 rec 7). 		<p>Use of 'principles' rather than the articles or the principles and the articles could be seen as precluding options to address FR&I held under Articles 2 and 3 – however, this could be overcome if the specific policy options developed as part of a FR&I work programme address the FR&I held under these Articles.</p> <p>If this matter went before the courts, they would consider whether the policy intent intended to only refer to the principles or to the articles as well, so referring only to the principles might not preclude any options in this sense.</p> <p>The reference to 'allocation principles' in the Treaty clause appears to presuppose that linking it to the Treaty clause will be one of the options pursued, although the FR&I caveat seems sufficient to address this.</p>
Te Oranga o te Taiao	<ul style="list-style-type: none"> • Agreed to include Te Oranga o te Taiao in the purpose of the exposure draft (MOG 7 rec 44) • Noted that officials will continue to work with iwi / Māori groups on this clause (MOG 7 paras 53-54) 	May be subject to revision post-select committee. The NBA exposure draft inquiry departmental report that the FR&I team commented on included a number of proposed changes to the 'framework' of the NB, including, the definition and scope of Te Oranga o te Taiao.	In general the concept does not appear to preclude options to address FR&I, although the relationship between Te Oranga o te Taiao and Te Mana o te Wai still needs to be worked out (particularly given the latter's explicit

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
			definition of the six principles and the hierarchy of obligations).
Natural environmental limits	<ul style="list-style-type: none"> • The purpose of environmental limits is to protect either or both (a) the ecological integrity of the natural environment, and (b) human health (MOG 2 rec 21 and decisions taken between MOG 5 and 6 rec 20) • Freshwater is one of the matters for which environmental limits must be prescribed (Cabinet paper rec 61) along with biodiversity, habitat and ecosystems, and estuaries. • Limits are set in a way that is flexible enough to accommodate different levels of environment quality in different circumstances and locations, if provided for in the NPF (MOG 2 rec 22) • A precautionary approach must be adopted when setting limits (MOG 2 rec 23 and decisions taken between MOG 5 and 6 rec 18) 	<p>May be subject to revision post-select committee. The NBA exposure draft inquiry departmental report that the FR&I team commented on included a number of proposed changes to the 'framework' of the NBA, including the priority of environmental limits, how limits are to be achieved where they are currently exceeded, the use of targets for objectives.</p> <p>Carrying over section 14(3)b)(ii)</p>	<p>In general these proposals do not appear to preclude options to address FR&I, although work will be required to determine how the Te Mana o te Wai hierarchy aligns with the purpose of environmental limits under the NBA (probably through the process of developing the NPF, discussed below).</p>
National Planning Framework	<ul style="list-style-type: none"> • The NPF will include and replace existing forms of national direction, combining the current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA (CAB-20-MIN-0522 para 69) • The process and substance of the NPF and plan-making decisions should give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori (MOG 2 rec 6) • The role of the NPF is to ... provide a mechanism by which the NBA and SPA will give effect to the principles of Te Tiriti and reflect te ao Māori (MOG 3 rec 3.3) • The NPF may provide direction where consistency is desirable on a sub-national scale (MOG 3 rec 3.2) • The policy intent is to enable a process that ensures (among other matters): <ul style="list-style-type: none"> ○ a role for Māori that gives effect to the principles of Te Tiriti (MOG 3 rec 3.9(b)) 	<p>The Minister for the Environment has delegated authority to determine the details of the process for development the NPF (MOG 3 rec 3.10). This has yet to happen.</p> <p>The first-generation NPF will be developed prior to the establishment of a national Māori entity. Work is still underway to determine how the Crown will work with Māori to develop the first-generation NPF.</p>	<p>In general the process for developing the NPF seems broad and enabling enough to ensure that no options to address FR&I are precluded (see comments on the national entity below).</p> <p>The process for developing the first-generation NPF content relating to freshwater will likely be an important component of FR&I discussions. Care will be needed to ensure that no decisions are made prematurely that will prevent this.</p> <p>A key consideration for the freshwater component of the NPF will be whether the existing national directions (the NPSFM, NES-F and 360 regs) are sufficient to address FR&I or will need amendment. Any amendments could impact on councils' ability to notify freshwater plans in 2024.</p>

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
	<ul style="list-style-type: none"> ○ appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making (MOG 3 rec 3.9(c)) ● A national entity will be established to enable Māori input into NPF development and appointments of any Māori representatives to the NPF Board (MOG 11/12 paper 2 paras 5-6) 		
System monitoring and oversight	<ul style="list-style-type: none"> ● Environmental monitoring and reporting in the system should be focused on supporting the purpose of the NBA, including upholding Te Oranga o te Taiao, and monitoring against environmental limits and targets, and environmental outcomes (MOG 10 paper 4 rec 1) ● The proposed approach to environmental monitoring and reporting will include ... the ability to involve Māori in developing and undertaking monitoring and reporting activities. (MOG 10 paper 4 rec 2(c)) ● System monitoring and oversight in the future system should reflect ... mechanisms to monitor how the system gives effect to the principles of Te Tiriti (MOG 10 paper 4 rec 5(e)) ● A national entity will be established to enable Māori input into system / oversight functions and Tiriti compliance (MOG 11/12 paper 2 paras 5-6) 	Further detail on system monitoring and oversight at a regional / local level is being considered by the natural environment and rural development sub-group. This is discussed in more detail in the relevant sections below.	In general the process seems broad and enabling enough to ensure that no options to address FR&I are precluded (see more specific comments on the national entity below).
National Māori entity	<ul style="list-style-type: none"> ● A national entity will be established to enable Māori participation at a national level, with functions in: <ul style="list-style-type: none"> ○ System oversight / monitoring ○ Input to NPF development ○ Appointment of any Māori representatives to NPF board ○ A role in monitoring Tiriti performance across the RM system (MOG 11/12 paper 2 paras 5-7) ● The entity should be set up independently to the government of the day (MOG 11/12 paper 2 rec 8) ● The entity will be established in a way as to not usurp the mana of hapū and iwi at place, or negatively impact Crown responsibilities provided through Treaty settlements and other agreements (MOG 11/12 paper 2 rec 9) 	Work remains to be done on the composition, scope and powers of the national entity including whether the national entity should have a role in dispute resolution for iwi, hapū and/or Māori appointments to joint committees or whether this should be a role for the Māori Land Court (MOG 11/12 paper 2 rec 10).	While the national entity and its recommended functions do not appear to preclude any options, decisions made by MOG must be flexible enough to ensure that bespoke freshwater options can be explored at a later date if required. Several options have been proposed by Māori, the Crown, the Waitangi Tribunal and other parties over the last fifteen years which could be explored further as part of the freshwater allocation and FR&I work programmes (including a Water Commission or other national

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
			<p>water body and a moratorium on consents).</p> <p>One of the key considerations from a FR&I standpoint will be whether 'input' is sufficient, or whether any national-level roles for Māori with respect to freshwater should also include decision-making powers (which could have constitutional implications for the roles of Ministers / Cabinet).</p> <p>The Crown has also committed through Treaty settlement legislation to 'have particular regard to' certain freshwater values and strategies when exercising functions, powers or duties under the RMA (including the development of national freshwater regulations) and to engage early with specific iwi on policy proposals which relate to their freshwater taonga. These commitments will need to be provided for in the institutions and instruments for developing national freshwater policy.</p>
<p style="text-align: center;">At a regional level</p> <p><i>Possible connections with other work programmes – Three Waters</i></p> <ul style="list-style-type: none"> • The government is proposing to create four supra-regional water entities to provide Three Waters services. These entities must give effect to Te Mana o te Wai and respond to Te Mana o te Wai statements (more on these in the 'local' section below). • Each entity will have a Regional Representative Group which sets strategic and performance expectations and appoints an independent selection panel that appoints the entity board. Mana whenua will hold half the positions on the Regional Representative Group • Mana whenua groups may issue 'Te Mana o te Wai statements' which the supra-regional water service entities will be required to respond to. <p><i>Possible connections with other work programmes - Essential Freshwater</i></p> <ul style="list-style-type: none"> • Freshwater hearing panels were introduced as part of the Essential Freshwater package to hear submissions on regional freshwater plans and make recommendations. Substantive appeal rights only exist when regional councils decline to accept the panel's recommendations. • Freshwater hearing panels must collectively have knowledge of and expertise in tikanga Māori and mātauranga Māori. One person with these skills must be nominated by local tangata whenua or appointed by the Chief freshwater commissioner where no nomination is made. <p><i>Possible connections with other work programmes – Freshwater Farm Plans</i></p>			

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<ul style="list-style-type: none"> All farms with 20 or more hectares of land in arable, pastoral or mixed use, or five or more hectares of the farm in horticultural land use, are required to prepare freshwater farm plans. The government has proposed that these be required by mid-2022. Freshwater farm plans could be required to identify mahinga kai values / locations and other important sites which need to be protected. Tangata whenua could be involved in various aspects of the freshwater farm plan system (through the requirement in the NPSFM that regional councils 'actively involve' tangata whenua in freshwater management / decision-making). <p><i>Possible connections with other work programmes – local government reform</i></p> <ul style="list-style-type: none"> The government has repealed the binding poll provisions to make it easier for local authorities to establish Māori wards and constituencies. 			
Regional spatial strategies	<p>Purpose / scope / related provisions</p> <ul style="list-style-type: none"> Purpose of RSSs is to promote overall system integration and the wellbeing of present and future generations through the long-term strategic integration of functions exercised under specified legislation (MOG 7 paras 3, 14) RSSs will uphold relevant Treaty settlement legislation and other bespoke Māori-related legislation that amends or interacts in a relevant way with the RMA to the extent it is affected by SPA planning (MOG 7 rec 14(f)). Should be strategic and high-level, improve the efficiency and effectiveness of the system (MOG 7 rec 15) Set strategic direction for at least the next 30 years, and up to 100 years as appropriate (MOG 7 rec 17) RSSs may cover other matters that meet a statutory test or criteria relating to their significance (MOG 7 rec 20) 	<p>MOG 14 will be considering three proposed 'critical shifts' in the SPA. The FR&I team are working with RM to determine the potential FR&I implications of these shifts.</p> <p>The MOG 14 paper also sets out some proposed statutory criteria for determining whether other matters are 'significant' enough for inclusion in an RSS.</p>	<p>Several of the recs agreed to by MOG 7 (along with the significance criteria as drafted in the MOG 14 paper) suggest that they will be very high-level. This could potentially preclude RSSs from being used to include strategic content for individual freshwater bodies (except those deemed significant enough to be included in an RSS). Strategy documents are also a common part of Treaty settlements relating to freshwater bodies, and the NPSFM 2020 also requires regional councils to work with local communities and tangata whenua to develop long-term visions. If this is the case, it may need to be revisited at a later date if RSSs are determined to be the appropriate place for these matters.</p>
	<p>Preparation</p> <ul style="list-style-type: none"> The SPA will not prescribe a single process for public engagement on RSS development, allowing committees to develop a process that will work for their region (MOG 11/12 paper 3 rec 2) The SPA will require that the process for developing an RSS must include early engagement with interested parties, public notification and a summary report of written submissions (MOG 11/12 paper 3 rec 5) 	<p>MOG 14 will be considering three proposed 'critical shifts' in the SPA. The FR&I team are working with RM to determine the potential FR&I implications of these shifts.</p> <p>The draft MOG 14 paper did not recommend any further decisions on mātauranga Māori.</p> <p>Courts and appeals are to be considered at MOG #14.</p>	<p>Does not appear to preclude any options to address FR&I.</p> <p>Early targeted engagement on RSS content relating to freshwater could contribute to addressing FR&I in governance / management / decision-making (although it is unlikely to be sufficient by itself).</p>

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	<ul style="list-style-type: none"> Interested parties must at minimum include ... urban marae, local Māori councils, iwi/ hapū with rohe/areas of interest within or adjacent to the region and relevant Māori land trusts/incorporations, and customary takutai moana rights holders (MOG 11/12 paper 3 rec 6(b)) The process developed by committees must be publicly notified and be Treaty compliant (MOG 11/12 paper 3 paras 3-4) RSSs should be informed by robust information and evidence, including mātauranga Māori that is proportionate to the level of detail required in the strategies (MOG 7 rec 28, MOG 8 rec 4.2). 		
	<p>Review</p> <ul style="list-style-type: none"> The SPA will require committees to review their whole RSS every 9 years using the engagement process set out above (MOG 11/12 paper 3 rec 11) The SPA will require committees to adopt a policy identifying what they deem to be a 'significant change' that will cause them to initiate a review of their RSS sooner than 9 years (MOG 11/12 paper 3 rec 12) If the committee decides to amend the RSS after a review, the full engagement process must be followed (unless the review only relates to part of the RSS) (MOG 11/12 paper 3 paras 15, 17) RSSs must be amended to give effect to the NPF (MOG 11/12 paper 3 rec 20) 	<p>MOG 14 will be considering three proposed 'critical shifts' in the SPA. The FR&I team are working with RM to determine the potential FR&I implications of these shifts.</p>	<p>Does not appear to preclude any options to address FR&I.</p> <p>One of the 'triggers' for amending an RSS outside of the general review cycle could be the creation or amendment of catchment-level agreements that contain content suited for incorporation into an RSS.</p>
	<p>Decision-making</p> <ul style="list-style-type: none"> Governance arrangements should give effect to the principles of Te Tiriti o Waitangi and uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori (MOG 8 rec 4.4) 	<p>MOG 14 will be considering three proposed 'critical shifts' in the SPA. The FR&I team are working with RM to determine the potential FR&I implications of these shifts.</p>	<p>Does not appear to preclude any options to address FR&I at this stage, chiefly because governance / decision-making matters are still yet to be resolved.</p> <p>One of the 'critical shifts' identified in the draft MOG 14 paper is the need for partnership between central government, local government, and</p>

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			<p>mana whenua; however, the details are yet to be discussed.</p> <p>It's not clear to me whether the MOG 11/12 recs relating to joint committees also apply to committees charged with developing RSSs. Will there be a single joint committee for both RSSs and combined regional plans? It seems unlikely given the different skillsets involved.</p> <p>FR&I team have queried whether there is scope for sub-regional decision-making on some strategic matters (such as at a catchment level), and whether Treaty partnership committees could be a vehicle for this.</p>
	<p>Implementation</p> <ul style="list-style-type: none"> • RSSs should be strategic / high-level and ... inform the development of more detailed implementation agreements (MOG 7 rec 25(d)). 	<p>The details of implementation plans / agreements will be the subject of advice to MOG 14.</p>	<p>FR&I team feedback on the draft paper for MOG 14 was that it does not appear to preclude any options to address FR&I, although there are some potential overlaps in terms of governance / decision-making and water quality.</p>
<p>NBA plans (or combined regional plans)</p>	<p>Purpose / scope / related provisions</p> <ul style="list-style-type: none"> • Combined regional plan structure and contents will address resource use and allocation (regional councils) and land use and subdivision (territorial authorities) matters holistically to achieve integrated management (MOG 4 rec 7). • There will be one plan per region (MOG 4 rec 5). • Combined regional plans have a role in ... providing for kaitiakitanga and tikanga Māori and the use of mātauranga Māori (MOG 4 rec 13(b)) 		<p>The inclusion of 'resource use and allocation' within combined regional plans could preclude the option of dealing with water through separate instruments / institutions (i.e. catchment boards / plans). Having said that, discussions thus far indicate that the national Māori groups support an integrated system.</p>

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RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
	<p>Preparation and review</p> <ul style="list-style-type: none"> • The plan development and change process should be fair and proportionate to the size and scale of the process or change and must ensure: <ul style="list-style-type: none"> ○ a role for Māori that gives effect to the principles of Te Tiriti o Waitangi ○ appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making (MOG 4 oara 21(c)-(d)) • The plan making process should provide ... an early and sustained role for iwi/hapū/Māori in the plan development process that recognises iwi/hapū/Māori as experts and kaitiaki of their own rohe, and has a place for local decision-making (MOG 11/12 paper 4 paras 1(b) and (d)) • The NBA should require iwi/Māori involvement in plan development through technical and mātauranga Māori input (MOG 11/12 paper 2 rec 18) • Appropriate weighting and consideration should be given to Māori technical inputs (eg, iwi management plans) (MOG 11/12 paper 2 rec 20) • Plans will be reviewed on a cyclical basis in response to plan and other forms of monitoring, with initiation of a full review of NBA plans being required within a fixed number of cycles (MOG 11/12 paper 4 rec 21) 	<p>Further advice will be provided on the plan development process, including on the plan making secretariat engagement processes, including:</p> <ul style="list-style-type: none"> • roles and participation for iwi/Māori in the plan making secretariat and process for their involvement • what engagement should be undertaken with iwi/Māori at the various stages of the plan development process • how enhanced iwi/Māori involvement in plan development is implemented and funded (MOG 11/12 paper 2 rec 20). <p>Further advice will also be provided on:</p> <ul style="list-style-type: none"> • Whether a statutory requirement to consult should include Māori groups (MOG 11/12 paper 4 rec 7). • The role of the Minister of Conservation with respect to plan content relating to the coastal marine area (MOG 11/12 paper 4 rec 26) • Appeals (MOG 11/12 paper 4 rec 27). <p>MOG authorized the Minister for the Environment in consultation with the Minister of Local Government to make further policy decisions on the details of the NBA plan development process, plan reviews and plan change process, including the process for private plan changes (MOG 11/12 paper 4 rec 24).</p> <p>Courts and appeals are to be considered at MOG #14.</p>	<p>Decisions to-date do not appear to preclude any options to address FR&I, although their content may intersect with FR&I in some ways. For example:</p> <ul style="list-style-type: none"> • Early and sustained engagement on NBA plan content relating to freshwater could contribute to addressing FR&I in governance / management / decision-making (although it is unlikely to be sufficient by itself). • Local place-making documents relating to freshwater taonga could be one option for addressing rights and interests. While this paper recommends that no legal weighting be given to local place-making documents, this does not preclude the option of developing documents for specific freshwater taonga and assigning them a legal weighting. Such documents already exist (or are being developed) as part of Treaty settlements for specific freshwater taonga, and the NPSFM requires regional councils to work with local communities and tangata whenua to develop long-term visions for freshwater bodies. <p>The NPSFM 2020 already requires regional councils to actively involve tangata whenua in freshwater management / decision-making processes. This includes:</p> <ul style="list-style-type: none"> • Identifying local approaches to give effect to Te Mana o te Wai • Making or changing plan content relating to freshwater

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			<ul style="list-style-type: none"> Implementing the NOF / mahinga kai compulsory value Developing and implementing mātauranga monitoring and other monitoring Investigating the use of JMAs / transfers of power / Mana Whakahono with respect to freshwater functions.
	<p>Decision-making</p> <ul style="list-style-type: none"> The decision-making model for combined regional plans should: <ul style="list-style-type: none"> provide a strategic role for Māori to ensure NBA plans include mātauranga Māori to reflect Māori interests, and give effect to the principles of Te Tiriti o Waitangi, and maintain local government accountability (MOG 4 para 19(b)-(c)) Governance arrangements should give effect to the principles of Te Tiriti o Waitangi and uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori (MOG 8 rec 4.4) Joint committee composition will be worked through region-by-region (MOG 11/12 paper 2 rec 11) Treaty partnership committees will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights, and existing voluntary Resource Management arrangements (MOG 11/12 paper 2 rec 13). 	<p>Officials intend to seek decisions on joint committee composition on a region-by-region basis and how this is provided for in legislation at a later MOG (MOG 11/12 paper 2 rec 12).</p>	<p>The recommendation to allow joint committee composition to be worked through region-by-region suggests that 50/50 representation at a whole-of-taiao level may be unlikely; however, it does not preclude the possibility of 50/50 governance arrangements for freshwater, such as:</p> <ul style="list-style-type: none"> For freshwater as a 'domain' within regions (i.e. a water committee sitting alongside the joint committee) For specific catchments / water bodies within regions. <p>Treaty partnership committees could be one vehicle through which these and other bespoke options might be developed.</p>
	<p>Implementation</p> <ul style="list-style-type: none"> One of the agreed objectives for transition and implementation of the new RM system is to enable iwi/hapū/Māori to effectively participate as a partner in the new system; and enable te ao Māori and mātauranga Māori to guide transition and implementation of the new system (MOG 11/12 paper 5 rec 1(c)). 	<p>Unsure</p>	<p>Seems broad enough at this stage not to preclude any options to address FR&I.</p> <p>Addressing FR&I / freshwater allocation is likely to come with its own set of implementation requirements, which could involve things like (depending on which options are pursued):</p>

NOT GOVERNMENT POLICY

RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
			<ul style="list-style-type: none"> Working with councils to claw back overallocated catchments (possibly via 'initial reallocations' where all existing consents are revisited); Working out who are the 'holders' of freshwater rights and interests in each catchment (i.e. hapū, iwi, whānau, Māori landowners etc.); Assisting those FR&I holders in entering into agreements to receive quanta of water / royalties (if these are part of the package of reforms); Holding / managing quanta of water / royalties until such agreements are reached.
Compliance monitoring and enforcement	<ul style="list-style-type: none"> A variety of recommendations designed to strengthen regional CME (including cost recovery, an uplift in financial penalties, broadening the types of offences, broadening the scope of contraventions, creating a new offence for contravening a consent condition, and enabling regulators to apply to revoke a consent in response to non-compliance) (MOG 10 paper 3 paras 1-19) 	<p>Further advice will be provided on Māori participation in compliance monitoring and enforcement (MOG 10 paper 3 rec 21, MOG 11/12 paper 2 rec 25)</p> <p>Specific decisions on the design of regionally consolidated CME services need to occur in the context of broader decisions about the governance of the system and the responsibilities of institutions to be decided at a later MOG (MOG 10 paper 3 rec 22)</p>	No options to address FR&I appear to have been precluded, chiefly because the role of Māori in CME has yet to be considered.
Environmental monitoring and reporting	No decisions as yet.	A draft paper on monitoring and reporting is going to the natural environment and rural development MOG sub-group meeting on 28 October. I think it's going to MOG 15 after that?	<p>The draft paper for the MOG sub-group did not appear to preclude any options to address FR&I because its recommendations:</p> <ul style="list-style-type: none"> Were broad enough to enable bespoke freshwater monitoring and reporting options to be developed at a later date if required Captured existing monitoring and reporting requirements in the

NOT GOVERNMENT POLICY

RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
			<p>NPSFM 2020 relating to long-term visions for water bodies, mātauranga Māori and tangata whenua involvement in freshwater management.</p> <ul style="list-style-type: none"> Did not propose options at this stage for how Māori participation and decision-making will occur (although they suggest that the Integrated Partnerships Process (IPP) could be a key mechanism at a local / taonga level)
Integrated Partnerships Process	<p>MOG 11/12 paper 2:</p> <ul style="list-style-type: none"> The legislation should provide for an enhanced Mana Whakahono ā Rohe process that is integrated with transfers of powers and JMAs (an Integrated Partnerships Process) (para 22) Power sharing arrangements (transfers of power and JMAs) are better enabled through the Integrated Partnerships Process, with barriers removed (para 23) 	Further work will be undertaken on the scope of Integrated Partnerships Processes and mandatory requirements for what must be covered (MOG 11/12 paper 2 rec 24).	<p>Nothing precludes any options to address FR&I – in fact, it addresses the commonly suggested option of removing the barriers to JMAs / transfers of power.</p> <p>IPPs could be a potential mechanism for local authorities and mana whenua to 'bundle up' various agreed options to address FR&I at place (i.e. involvement in plan-making, consenting, allocation decisions, monitoring / reporting, etc.). This was one of the intentions behind Mana Whakahono in the first place, and these recommendations will make them more powerful. We should explore this further once we have a mandate to do so.</p>
Preserving Treaty settlements	<ul style="list-style-type: none"> Governance arrangements should give effect to the principles of Te Tiriti o Waitangi and uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori. In regards to Treaty settlements: <ul style="list-style-type: none"> uphold all undertakings in negotiated Treaty settlements uphold all agreements in current Treaty negotiations being undertaken ensure that any future Treaty settlement negotiations will be undertaken on the same equitable basis as all Treaty 	A paper on the interface between the RM reforms and Treaty settlement arrangements was supposed to go to MOG 13 but was pulled. The FR&I team's advice on the paper at the time was that, as the paper did not seek any decisions, it was not going to preclude any options to address FR&I.	Treaty settlements relating to freshwater taonga are among the most complex settlements that have been negotiated to-date. In addition to the more standard settlement provisions for environmental taonga (such as statutory acknowledgements and joint management arrangements), they include some of the more complex mechanisms set out earlier in this paper. Preserving these arrangements will be

NOT GOVERNMENT POLICY

RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
	settlements undertaken prior to the development of the NBA and SPA (MOG 8 rec 4.4)		central to the work to transition Treaty settlement provisions across to the new system.
Water conservation orders	[todo: add decisions from MOG 13 once we receive them]		[todo: add assessment of MOG 13 protection paper]
Consenting	<ul style="list-style-type: none"> • The NBA will contain an enabling permissions regime that provides for greater proportion of 'permitted activities' within environmental limits (supported by the provision of adequate information and assurance that conditions will be met), and a clear process and decision-making framework for the approval or decline of activities not enabled in a plan (MOG 9 rec 1, MOG 10 paper 1 rec 2) • Criteria in the NBA, content in the NPF and/or plans will direct who is to be notified of consents (MOG 10 paper 1 rec 10) • The NBA will provide processes for the review of consents, which will include the circumstances, purpose, scope, powers, matters to be considered, outcomes, appeal processes, implementation (including potential for a transition period), and cost recovery mechanisms for reviews (MOG 10 paper 2 rec 11). <p>[todo: add decisions from MOG 13 once we receive them]</p>		[todo: add assessment of MOG 13 consenting / permissions paper]
Designations	No decisions as yet.	<p>A MOG 6 rec noted that officials would report back on how designations will be enabled within the new system (MOG 6 rec 9).</p> <p>A paper on enabling infrastructure is going to the infrastructure and urban development MOG subgroup on 28 October, and from there to MOG 14 (I understand).</p>	The FR&I team have provided some initial thoughts to the authors of the subgroup paper. Our key concern (along with the allocation team) was that designations might implicitly involve allocation decisions. In addition, if designations can override locally-set limits, this would impact on the ability to uphold the Te Mana o te Wai hierarchy of obligations in the NPSFM 2020, as well as any targets and limits agreed to with tangata whenua for the mahinga kai compulsory value.

NOT GOVERNMENT POLICY

RM reform proposal	Key MOG decisions to-date which may relate to FR&I	Areas still under development	Relation to Māori freshwater rights and interests
			The role of Māori in decision-making with respect to designations also still needs to be explored.
Iwi management plans	<ul style="list-style-type: none"> • The Treaty clause for the NBA exposure draft should be to 'give effect to the principles of Te Tiriti plus ... the requirement that iwi management plans are taken into account in preparation of plans (MOG 6 rec 7). • Appropriate weighting and consideration should be given to Māori technical inputs (eg, iwi management plans) (MOG 11/12 paper 2 rec 20) 	Unclear if further work is expected on this.	Strengthening the wording of iwi management plans is a commonly suggested options to address FR&I. Not doing so could preclude this option, unless a bespoke option could be pursued later for iwi management plans / plan content relating specifically to freshwater.

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Appendix 1: Options to address Māori freshwater rights and interests identified by officials and ILG from 2014 to 2017

Pou	Option	Where did the option get to?
(1) Water quality	Amend the definition of fresh water in line with 'ki uta ki tai'; include coastal lagoons and estuaries e.g. in the RMA or Freshwater NPS.	Not progressed, but expressed in the NPSFM 2020 in the context of integrated management.
	Increase the consideration that councils and/or collaborative groups must extend to tāngata whenua values in freshwater planning processes.	Mahinga kai made a compulsory value in the NPSFM 2020, and regional councils required to work collaboratively with / enable tangata whenua to identify any other values and involve them in decision-making processes with respect to those values.
	Institute Te Mana o te Wai as an 'overarching korowai' for the identification of freshwater values, and setting of objectives and limits e.g. redraft the Freshwater NPS to require Te Mana o te Wai to be used as a mandatory frame for community discussions on freshwater values, or reflect the concept in the RMA.	Included in the 2014 NPSFM, strengthened in 2017 and again in 2020.
	Include Te Mana o te Wai as a national objective. e.g. Te Mana o Te Wai sits beside, and has the same weight, as Objectives A1 and A2. It should be framed as a narrative objective.	Made an objective in the 2017 NPSFM, then the overarching korowai in 2020 with a requirement to 'give effect to'.
	Provide national-level guidance on iwi/hapū engagement with councils on <i>[identifying]</i> freshwater values.	Possibly being pursued by SLUD / KWM through the mana whakahaere mahi?
	Amend Policy D1 to provide for values that have been statutorily recognised through Treaty settlements and/or are articulated in iwi/hapū planning or statutory documents (including Iwi Management Plans).	Not pursued (although the NPSFM 2020 requires regional councils to work collaboratively with / enable tangata whenua to identify any other values and involve them in decision-making processes with respect to those values).
	Require councils, at the outset of their freshwater planning process, to compile a list of all iwi/hapū associations with waterbodies [or FMUs] in their region. In compiling this list, councils must have regard to: <ul style="list-style-type: none"> Treaty settlement provisions (i.e. including existing strategy documents, statutory acknowledgements) Iwi Management Plans Councils must take reasonable efforts to solicit the input of tāngata whenua to this list, including through existing Treaty settlement arrangements [and via means identified in any Iwi Participation Agreement] The list must be appended to councils' Regional Policy Statement [and other planning documents as appropriate] 	Consulted on as part of 'Next Steps for Freshwater' but not progressed.

NOT GOVERNMENT POLICY

Pou	Option	Where did the option get to?
	Require councils, when identifying values and setting objectives, to solicit any view of iwi/hapū identified to have relationships with those waterbodies.	The NPSFM 2020 requires regional councils to work collaboratively with / enable tangata whenua to identify any other values and involve them in decision-making processes with respect to those values).
	Encourage better integration of land and freshwater management.	
	Create a minimum standard framework for councils and iwi/hapū to engage in freshwater planning processes (e.g. including direction on local authorities' implementation of Te Mana o te Wai, and direction on giving effect to iwi/hapū freshwater values).	Section 3.4 of the NPSFM 2020 included stronger provisions for tangata whenua involvement in freshwater management processes (including decision-making)
(2) Recognition	Formally recognise iwi/hapū spiritual relationship with waterways. n.b. Where required, measures to restore this relationship should be provided for.	
	Provide for Pou (people) to be nominated <i>[by iwi and the Crown]</i> as guardians/the face of the awa.	
	Provide formal recognition of iwi/hapū relationships with water bodies (e.g. through vesting title to riverbeds, lake beds and/or water columns in iwi/hapū, or in individual waterbodies themselves).	
	Create a new form of title [to waterbodies]; vest this in iwi and hapū.	Considered at the time to be outside the National Government's five 'bottom lines'.
	Require councils to provide for customary takes (i.e. allocation for marae, papakāinga, and mahinga kai) in regional plans, before baselines <i>[objectives and limits]</i> are set.	
	Provide for iwi/hapū to receive priority allocation of fresh water (e.g. for marae).	
	Consider funding to develop or improve existing infrastructure for drinking water on marae and in papakāinga.	Consulted on as part of 'Next Steps for Freshwater' but not progressed. Now falls within 3 waters?
	Consider funding for iwi/hapū water storage and reservoir development to enable capitalisation on plentiful supply and planning for low-flow periods.	
	Consider funding for restoration of mahinga kai sites and puna that have dried up.	
	Consider funding for <i>[development of]</i> sustainable marae and papakāinga models.	
Reviewing of long-term consents and the ability to correct over-allocation through consent reviews.	Seems like more of an access / use thing – not sure why it was included here. Was referred at the time to LAWF's 'Managing within Limits' work stream.	

NOT GOVERNMENT POLICY

Pou	Option	Where did the option get to?
(3) Governance / management / decision-making	Formally recognise iwi/hapū as having a kaitiaki role with regards to water within their tribal territory, which entails a right to participate in all levels of decision-making.	
	Make RMA s33 (transfer of powers) or s36B (joint management agreements) compulsory in particular circumstances.	
	Increase the weighting that councils must give to Iwi Management Plans in freshwater decision-making.	
	Provide training/consider resource capability for iwi/hapū members to become certified hearings commissioners (e.g. via the Making Good Decisions course).	
	Review the resourcing capabilities of councils and iwi/hapū to undertake Joint Management Agreements, transfers of power, and other collaborative arrangements.	
	Require councils to consider the relationship between iwi/hapū and particular waterbodies when making consenting decisions and/or engage with the iwi/hapū group as appropriate.	
	Make RMA s33 and s36B more accessible to councils, and iwi/hapū e.g. Remove the 'efficiency' requirement currently stipulated for these arrangements; provide that 'improving iwi/hapū participation in freshwater decision-making' constitutes satisfactory grounds to establish an agreement; outline procedural steps and/or best practices for the establishment/termination of JMAs and transfers of power.	Being pursued as part of the RM reforms.
	Enhance iwi/hapū participation in Water Conservation Order application processes.	Consulted on as part of 'Next Steps for Freshwater' but not progressed.
	Enable co-management and co-governance arrangements in all catchments (e.g. in relation to consenting processes and at the freshwater governance level).	
	Conduct a national audit of iwi/hapū resourcing requirements to deliver freshwater governance effectively	Not progressed, although some internal work done.
	Commission a financial analysis of the current contributions of iwi/hapū in performing and discharging a range of governance roles and responsibilities [<i>in freshwater management</i>]	
	Develop a national calendar of governance capacity-building opportunities for iwi/hapū and formal governance partners, including Councils and Crown agencies [<i>with a view that further initiatives are created based on identified need?</i>]	
	Provide guidance to councils on best practices in giving effect to Iwi Management Plans	

NOT GOVERNMENT POLICY

Pou	Option	Where did the option get to?
	Provide guidance to councils on best practices in engaging with tāngata whenua in freshwater management activities.	Possibly being pursued by SLUD / KWM through the mana whakahaere mahi?
	Provide training for councils on giving effect to Iwi Management Plans.	
	Provide training for councils on engaging with tāngata whenua in freshwater management activities.	
	Review resource capability of iwi/hapū to develop Iwi Management Plans.	
(4) Economic development	Administrative-based allocation – National prioritisation Local government body allocates water according to known rules/principles that are set nationally via NPS (or other statutory instrument)	
	Administrative-based allocation – Regional prioritisation Local government body allocates water according to regional priorities that are set out in regional plans (or other statutory instrument).	
	Require councils to create allocation plans for catchments that are at or above 75% allocated. <i>[This assumes that councils have the information necessary to assess the relative status of catchments and have set quantity and quality limits.]</i>	
	Provide guidance to councils on factoring in iwi/hapū economic development aspirations into water quantity and quality allocation plans. <i>[This option likely will not be sufficient on its own but usefully may be included in a larger suite of options on quantity and quality allocation.]</i>	
	Pooling at the end of consent term At the end of current consent terms, water would be 'pooled' within a catchment and available to be allocated according to the preferred allocation mechanism (i.e. National prioritisation). <i>[This presumes administrative priority of consent reapplications is cancelled or suspended.]</i>	
	Require councils, in processing water permit reapplications, to reduce consented volumes to reasonable or efficient use <i>[with the excess to be pooled and reallocated according to criteria/ allocation plans].</i>	
	Require councils to create quality and/or quantity headroom in some areas or circumstances (e.g. via Freshwater NPS).	
	Create incentives for existing users to voluntarily surrender consents and transition into new regime.	

NOT GOVERNMENT POLICY

Pou	Option	Where did the option get to?
	Support increased infrastructure development in specific parts of the country (e.g. Hurunui, Taupō) to reduce pressure of freshwater resources and create headroom for new entrants, including iwi/hapū.	
	Status quo – Usufructuary/use rights Confer a softer form of right that enables the holder to use the resource under specified conditions. [<i>i.e. consents are permissions, not entitlements</i>]	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Unbundling right and allocation entitlement Right to access water is granted without a guarantee about the amount/frequency of water that will be available... it is conditional upon environmental criteria. The holder has certainty about how long the right will endure, but lower certainty about how much of the resource the right will entitle them to on a periodic basis. [<i>i.e. incorporation by reference; percentage allocation instead of quantum/frequency</i>]	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Unbundling right and environmental safeguards Long-term use right is granted in respect of a particular waterbody and/or catchment, with plan provisions allowing for a use up to a level which has minimal environmental impact. Any use beyond that point would have to meet more specific plan rules and/or be specifically permitted (i.e. through a resource consent)	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Separate 'take' and 'use' right The right to take water is not attached to land, whereas the right to apply that water to a particular use will be attached to the spatial location of the actual take. The right to take water can be transferred independent of the use right.	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Partial conditionality for specified portion of 'take' right / Creation of an 'at –risk' component The right is in two portions: Portion A provides for certainty amount and frequency of access with limited conditions: Portion B is highly conditional, allowing for environmental clawback/re-allocation on specified grounds of necessity/desirability. [<i>e.g. reliability bands</i>]	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Collectivising interests (full or partial) Collectivise some or all permissions over water to increase coordinated use of water within a particular catchment/area [<i>e.g. Water User Groups</i>]	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Market-based allocation – Open water market Allows free trade in water, largely without administrative interference.	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Market-based allocation – Spot markets Allows for real-time exchange of surplus commodities; may operate privately, through industry organisations, or via government.	Was referred at the time to LAWF's 'Managing within Limits' work stream.

NOT GOVERNMENT POLICY

Pou	Option	Where did the option get to?
	Market-based allocation – Catchment-based markets Allows for trading of water takes within a catchment. Trades could be open (without administrative intervention) or supervised (similar to status quo)	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Market-based allocation – Water storage markets Allows for trading of water contained within storage infrastructure.	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Status quo – Payment for administrative cost [i.e. cost recovery only] Prospective users of water pay for the cost of processing the consent application.	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Royalty/charging model Use charges and the revenue from them are linked to the costs of freshwater management. This seeks to incentivise water being used for highest [<i>value use</i>] and best purpose.	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Incentivise addressing externalities Use charges are graduated according to a formula that assesses environmental impact of the water use, with discounts for effective mitigation efforts by the applicant. Revenue to be applied to environmental restoration, with iwi/hapū to have some form of co-governance over the use of the fund.	Was referred at the time to LAWF's 'Managing within Limits' work stream.
	Proprietary rights Confer a harder form of 'ownership' right [/entitlement] that guarantees the holder certain privileges.	Considered at the time to be outside the National Government's bottom line that no-one owns freshwater.

Appendix 2: Wai 2358 stage 2 recommendations relating to Māori freshwater rights and interests

Pou	Recommendation
(1) Water quality	Make the overall aim of the NPSFM 'the improvement of water quality in freshwater bodies that have been degraded by human contaminants, so as to restore or protect the mauri and health of those water bodies, while maintaining or improving the quality of all other water bodies.'
	Introduce an objective in the NPSFM 'to protect the quality of outstanding fresh water, to enhance the quality of all fresh water contaminated as a result of human activities, and to maintain the quality of all other fresh water.'
	Introduce an objective in the NPSFM 'to safeguard the life-supporting capacity, ecosystem processes and indigenous species and associated ecosystems of fresh water from adverse effects of the use or development of land, and of discharges of contaminants.'
	Fully populate the National Objectives Framework (NOF) in the NPSFM to include attributes that were previously omitted (such as sediment and the macroinvertebrate index) as well as attributes and bottom lines for wetlands, aquifers and estuaries, and more effective controls for nutrients.
	Include more stringent bottom lines in the NPSFM so as to recognise and provide for Māori values (including Te Mana o te Wai).
	Te Mana o te Wai, and such other Māori values as the national co-governance body decides or recommends, should be made compulsory national values in the NOF, with national bottom lines. Cultural indicators should also be added to the NOF.
	Amend objective and policy AA1 in the NPSFM to state that Te Mana o te Wai must be recognised and provided for.
	Review the timeframes for implementing the NPSFM, and consider introducing interim measures (such as though a NES) to ensure that water bodies do not degrade further in the meantime.
	Promulgate NESs for ecological and cultural flows.
	Urgently devise measures and standards for the absolute protection of wetlands.
	Urgently develop measures for habitat protection and restoration, and any other measures necessary to save three-quarters of freshwater native fish species from the threat of extinction.
	Develop attributes and bottom lines for the mahinga kai value in the NOF.
	Develop measures to encourage and assist councils to dispose of sewage effluent to land wherever feasible.
	Design and oversee a programme for the restoration of freshwater bodies (which could include considering and deciding applications and monitoring projects), through levies on commercial users where possible.
	Identify priorities for the restoration of freshwater taonga.
	Consider retaining the Te Mana o te Wai fund as a long-term fund for the restoration of degraded freshwater taonga.
	Continue to provide funding for freshwater restoration while the above programme is being developed.
Urgently promulgate stock exclusion regulations	

NOT GOVERNMENT POLICY

Pou	Recommendation
(2) Recognition	Provide urgent assistance, including funding and expertise, for water infrastructure and the provision of clean, safe drinking water to marae and papakāinga.
(3) Governance / management / decision-making	Establish a national co-governance body with 50/50 Crown-Māori representation, to ensure that Treaty principles and Māori values, rights and interests are fully incorporated in freshwater policy and management. OR Continue to co-design freshwater policy options with a national Māori body or bodies, and that this be made a regular feature of Government where Māori interests are concerned.
	Amend section 6 of the RMA to include Te Mana o te Wai as a matter of national importance that must be recognised and provided for by RMA decision makers.
	Amend section 8 of the RMA to state that the duties imposed on the Crown in terms of the principles of the Treaty of Waitangi are imposed on all those persons exercising powers and functions under the RMA
	Statutory and practical barriers to the use of the RMA provisions concerning joint management agreements and transfers of power be removed.
	Co-governance and co-management of freshwater bodies be made a compulsory matter that must be discussed and agreed as part of Mana whakahoko a rōhe agreements.
	Give greater legal weight to iwi management plans in respect of water bodies where co-governance has not been arranged.
	Amend Objective D1 of the National Policy Statement for Freshwater Management (NPSFM) to state that iwi and hapū must be directly involved in decision-making, that Māori values/rights/interests must be recognised and provided for, and that councils must actively seek opportunities to enter into joint management agreements and transfers of power
	Revise and add to the policies in Part D of the NPSFM to give effect to the changes to Objective D1
	Offer co-governance/co-management agreements for freshwater bodies in all future Treaty settlements, unless sole iwi governance is more appropriate
	Assess whether a separate Water Act is necessary, either with a national co-governance body or in co-design with key national Māori organisations.
	(4) Economic development
Urgently reform the allocation regime so as to recognise and provide for Te Mana o te Wai.	
Replace the 'first in, first served' system and phase out over-allocation.	

NOT GOVERNMENT POLICY

Pou	Recommendation
	Devise a new allocation regime in partnership with Māori.
	Arrange for an allocation of water for the development of Māori land (including land returned in Treaty settlements) where such allocation is sustainable.
	Develop an approach for the allocation of discharge permissions to iwi and hapū and for the development of Māori land.
	Provide a percentage of water to iwi and hapū that is perpetually renewable and inalienable (except by lease or some other form of temporary transfer), or investigate alternatives where this is not possible (such as creating headroom or providing compensation).
	Investigate other possible mechanisms for 'proprietary redress', including royalties.

NOT GOVERNMENT POLICY

Appendix 3: Options to address Māori freshwater rights and interests proposed by the ILG, KWM, NZMC, FOMA and TWMT up until 2020

Group	Pou	Option
NZMC ⁸	(3) Governance / management / decision-making	Move freshwater from the Resource Management Act (RMA) to an independent Water Act. The Water Act would be Treaty compliant and guided by the principles of tikanga and mātauranga Māori. Its primary purpose would be to safeguard the mauri of water bodies, followed by the provision of drinking water, and then commercial uses of water.
		Establish a national water commission to govern freshwater, appointed by the Crown and Māori on a 50/50 basis. Its functions would include: <ul style="list-style-type: none"> • Administering a register of iwi and hapū rights in respect of particular water bodies • Establishing an allocation framework, including limits to ensure sustainable flows and ecosystem health • Establishing charges for commercial uses and the discharge of pollutants and waste water • Allocating funding for Māori economic development, the clean-up of degraded water bodies, and compensation for proprietary interests (where hapū cannot be allocated an appropriate amount of water) • Establishing a framework for freshwater management and give direction to regional catchment boards • Monitoring, reviewing, and occasionally overriding regional catchment boards
		Establish regional catchment boards to govern freshwater, appointed by the Crown and Māori on a 50/50 basis. Its functions would include: <ul style="list-style-type: none"> • Setting catchment-specific rules in relation to water quality, quantity and exemptions • Issuing resource consents • Issuing rāhui • Entering into joint management agreements with iwi and hapū • Undertaking compliance monitoring and enforcement • Maintaining a registry of rights and interests • Gathering information about water quality, allocation, data and trends • Undertaking community education
		In areas where there is a Treaty right or interest, affected hapū should be notified and 'super' consulted – otherwise the usual consultation process should be followed.
		Funding should be provided to hapū at a level that is sufficient to enable meaningful participation in governance and management. This could be provided through ongoing royalties and payments in respect of water use.

⁸ Wai 2358, #3.3.33, #3.3.52

NOT GOVERNMENT POLICY

Group	Pou	Option
		Reset the 'iwi bias' in the RMA in favour of hapū.
		Introduce a means to determine: <ul style="list-style-type: none"> Where Māori have a proprietary right or interest Where there is a case for co-management Where consultation will suffice.
	(4) Economic development	Provide Māori with proprietary rights to freshwater using a combination of the following to address past Treaty breaches and ensure a Treaty-consistent regime going forward: <ul style="list-style-type: none"> Reverse grand-parenting: a reduction and re-allocation to Māori over time of rights to take and discharge A QMS-type system involving a percentage allocation Ongoing royalties or taxes for commercial uses of water Cash as compensation for hapū that are not in a position to use an allocation of water, or where the quantity of water allocated is less than the Treaty entitlement.
KWM ⁹	(1) Water quality	Develop mandatory Māori measures of wellbeing in the NPSFM NOF (i.e. a compulsory Māori value).
		Implement a Te Mana o te Wai Capacity and Capability Strategy that: <ul style="list-style-type: none"> Values and supports mātauranga Māori and social science research to augment the focus on biophysical measures. Introduce a national science and research strategy around freshwater that is underpinned by Te Mana o te Wai and aligned with Vision Mātauranga Extends education programmes in land and water care⁰
	(3) Governance / management / decision-making	Establish an independent national Te Mana o te Wai Commission. Its functions would include: <ul style="list-style-type: none"> Setting national direction that promotes Te Mana o te Wai Calling-in applications at the local catchment level where appropriate Auditing water-related local government and catchment level processes and decisions Bringing, and participating in, proceedings relating to local government and catchment level processes and decisions.
		Give further consideration to establishing a standalone Water Act.
		Revise section 8 of the RMA to give effect to the principles of Te Tiriti o Waitangi (or to ensure the principles of Te Tiriti are upheld by authorities to whom resource management functions are delegated).

⁹ KWM submission to the Resource Management Review Panel, 18 March 2020; Kāhui Wai Māori, *Te Mana o te Wai: The Health of our Wai, the Health of our Nation* (September 2019), p 9

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Group	Pou	Option
		Reform sections 5, 6, 7 and 8 of the RMA to better reflect te ao Māori, including Māori law, Māori rights and interests, Māori decision-making and to recognise Te Mana o te Taiao.
		Confer resource management decision-making directly on iwi and hapū via 50/50 involvement in decision-making in resource consents and plan-making hearings
		Amend the existing statutory governance mechanisms for transfer of powers, joint management and iwi participation in the RMA (in the case of Mana Whakahono ā Rohe) to make them compulsory
		Introduce a dispute resolution mechanism that, as a circuit breaker, uses the Māori Land Court's section 30 Te Ture Whenua Māori Act 1993 jurisdiction to advise on or determine representation of Māori groups where matters of representation have stalled.
		Establish a National Māori Advisory Board on Planning and the Treaty
		Require a mandatory national policy statement on Te Tiriti o Waitangi
		Give greater status to Iwi Management Plans in Part 5 of the RMA
		Develop new accountability and partnership requirements for local government (details to be worked out).
	(4) Economic development	Recognise and resolve iwi/hapū customary title and rights in water within the next 3 years (from 2019), including the implications in practice of this recognition.
		Declare a moratorium on additional discharges and water-related consents for 10 years.
		A new water allocation system must conform with Te Mana o te Wai and iwi/hapū rights and obligations, including the recognition of the long held exercise of ahi kā by Māori landowners. This new system should: <ul style="list-style-type: none"> • Ensure costs are borne by consumptive water users • Respect that each iwi/hapū or Māori landowner maintains their own mana over their waterways • Ensure the first consumptive takes and discharges provided for are to iwi / hapū • Distribute a certain percentage of the catchment-based developmental allocation of water for iwi/hapū/Māori landowners • Ensure that all consumptive users are responsible for protecting water, and can prove they have the systems and infrastructure in place to care for water, • Not provide for either grandparenting or perpetual use rights.
ILG ¹⁰		The ILG do not support a national water commission. They argue that the Crown should be dealing with the relevant iwi authorities in each catchment to manage and regulate water.

¹⁰ Wai 2358, #3.3.41

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Group	Pou	Option
	(3) Governance / management / decision-making	Co-management should be the benchmark, and hapū and iwi should be adequately resourced to use the tools developed to promote Māori involvement (such as Mana Whakahono ā Rohe). However, hapū engagement needs to be practical, and the iwi authority should be leading the majority of RMA processes.
	(4) Economic development	<p>A freshwater allocation system should follow the following points:</p> <ul style="list-style-type: none"> • Te Mana o te Wai: The first right to the water, goes to the water itself. In the context of allocation, Te Mana o te Wai must be achieved before an allocable quantum is available. In the interim, Councils in partnership with Iwi/hapū must measure our water use and only use what is reasonable. • Access: Communities should not have to pay to access water for drinking water purposes. • Wai Tuku Kiri: Once Te Mana o te Wai is achieved, drinking water must be the next priority. • User assessment: Whoever uses water must prove that they have the systems and infrastructure in place to care for it responsibly; permits should include assessments of users and not just effects. • Te Mana Motuhake o ia wai o ia wai ki te wai: Each catchment is different and so we will need a suite of tools to ensure this difference is honoured. There will be no one size to fit all. • Te Tiriti o Waitangi te tāhuhu o te Wai: Access to water for tangata whenua based on the Treaty partnership is not just related to land that we currently own, but is connected through whakapapa. • Te kaitiakitanga o ngā hapū me ngā iwi ki te wai: Costs of water use and the implications of water use must be borne by the user, not kaitiaki and not the ratepayer. • Certainty: Attributing value to water is expected to support efficiency and effectiveness of use as long as the value is then transferred to the river and to tangata whenua in an appropriate way. • Te kaitiakitanga o ngā hapū me ngā iwi ki te wai: A freshwater management system that is agile to address environmental shocks is required. • Equity: Iwi/hapū must have a perpetual and non-alienable right to water that is catchment based. In over-allocated systems all users must take a reduction in their water use to ensure the water is shared equitably and Te Mana o te Wai is met. There should be no grandparenting, but reverse grandparenting should be considered, recognising that Māori are disproportionately represented as owners of underdeveloped land and that iwi and hapū have been physically and economically shut out of equitable access to and use of the fresh water in their rohe. <p>Support the NZMC submission that rights and interests could be provided for through a mixture of reverse grand-parenting and reallocation, a QMS-type system, ongoing royalties or taxes, and cash compensation.</p>
TWMT ¹¹	(3) Governance / management / decision-making	A number of existing mechanisms under the RMA, such as transfers of power and joint management agreements, are underused due to chronic under-resourcing for Māori, lack of willingness on the part of local authorities, and the absence of robust monitoring and auditing by central government.

¹¹ Te Wai Māori submission on Choose Clean Water, 28 April 2017; Te Wai Māori submission for Action for Healthy Waterways (2045), 31 October 2021; Te Wai Māori, 'Further Feedback on the Resource Management Review Panel's Issues and Options Paper', March 2020, paras 15-17, 21.

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Group	Pou	Option
		Support the idea of an independent national body to provide oversight of freshwater management implementation.
		Support the recommendations of KWM.
	(4) Economic development	Government and councils need to ensure that any agreements entered into between the Crown and Māori as part of the fisheries settlement are recognized and furthered, and not undermined, by inadequate freshwater planning and engagement processes.
FOMA ¹²	(3) Governance / management / decision-making	The involvement of Māori landowners in local-level decision-making regarding water and nutrient allocation must be improved.
		Engagement with Māori must include all affected landowner groups, not just hapū and iwi.
	(4) Economic development	Māori landowners should have equitable access / treatment for freshwater use and discharge allocations.

¹² FOMA Submission on Clean Water Consultation 2017.

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Appendix 4: Options to address Māori freshwater rights and interests proposed by the two Collectives (and their constituent organisations) since they began engaging with the Crown on the RM reforms in 2021

Group	Pou	Option
TTK ¹³	(3) Governance / management / decision-making	A Te Mana o te Taiao Commission should be created with binding recommendations in particular circumstances, along with specific roles in relation to water allocation and pricing.
		50:50 Crown-Māori partnership at all levels of the environmental system.
		Selection bodies would be created for each region / catchment for the purpose of appointing persons to the Mana Whakahaere Committees in each region (which would be responsible for appointing members to RSS and NBA plan joint committees).
		Compliance monitoring and enforcement roles should be provided for Māori at a catchment / sub-catchment level in accordance with their own priorities (rangatiratanga) and responsibilities (kaitiakitanga).
	(4) Economic development	A preservation provision should be included in the NBA which specifically notes that the Bill is not intended to, nor does it, adversely affect the take / use and discharge rights that Māori have in natural resources, including freshwater.
		An allocation framework is needed (both for freshwater and other resources) to ensure that the permissive framework introduced by the NBA does not incentivize resource users to 'race' to secure discharge rights up to the prescribed environmental limits.
		A moratorium on new and renewed water consents should be introduced to preserve the ability to address freshwater rights and interests and prevent a 'gold rush' on water rights.
		New and renewed water consents should be 'tagged' for possible revision at a later date in order to address freshwater rights and interests.
ILG / TWMT ¹⁴	(2) Recognition	Access to drinking water is still an issue (especially rural supply – this needs to be acknowledged in the context of allocation discussions (as well as through 3 waters reforms))
	(3) Governance / management / decision-making	National body to provide advice to the Minister on national direction and have a mandated oversight role for national direction matters.

¹³ TTK proposals for a reformed management system, 23 August 2021; TTK submission on the NBA exposure draft, 2 August 2021; NZMC report on TTK hui, 24 April 2021; TTK briefing paper to Māori caucus, 13 April 2021; discussions with officials throughout 2021.

¹⁴ ILG / TWMT letter to Ministers, 30 September 2021; ILG / TWMT paper to Ministers, 10 May 2021; discussions with officials throughout 2021 (including allocation workshop on 10 June 2021).

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Group	Pou	Option
		50:50 Crown-Māori partnership at all levels of the environmental system.
	(4) Economic development	Must include an allocation for iwi / hapū to recognize Treaty / aboriginal rights that is permanent and inalienable, not land-based, and able to be leased. May need a transition period.
		First in first served should be replaced. May need a transition period.
		Need to deal with overallocation, generate headroom, and remove presumption of renewal.
		No fixed views on specific allocation approaches or mechanisms – possibly a mixed model.
ILG ¹⁵	(3) Governance / management / decision-making	Addressing freshwater FR&I includes decision-making roles on upholding the quality of the wai
	(4) Economic development	Addressing freshwater FR&I includes an equitable, fair and permanent share of access to water take and discharge entitlements for iwi/hapū (separate from and in addition to any policy initiatives for developing underdeveloped Māori land).
NZMC ¹⁶	(3) Governance / management / decision-making	The design of a new freshwater allocation system should sit with a national co-governance commission.
		Pricing and allocation systems to have a national design, with catchment authorities having decision-making pertaining to catchments, involving Mana Whakahaere Councils, Te Oranga o Te Taiao Rūnanga and Regional Councils.
	(4) Economic development	First in first served should be replaced with a criteria-based system referenced to the NPSFM 2020 and Te Mana o te Wai, with guidelines that support ecosystem health, use of resources within their renewable capacity, and regenerative land use. Potential criteria include: <ul style="list-style-type: none"> • Allocation for iwi and hapū, and Māori landowners • Rehabilitative land use such as regenerative agriculture, and incentives to reduce water use • Land use that reduces intensified dairy • Allocation and policy for land use that supports the health of waterways, such as forestry management to reduce or eliminate sediment. • Water and land use that reduces GHG emissions • Elimination of detrimental externalities such as toxic discharges, sediment biodiversity loss

¹⁵ ILG submission on the NBA exposure draft, 4 August 2021

¹⁶ NZMC submission on the NBA exposure draft

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Group	Pou	Option
		<ul style="list-style-type: none"> Incentives for biodiversity enhancement A system which rewards the provision of ecosystem services.
		Provide water for iwi, hapū and Māori landowners
		Support development within ecosystem health standards for papakāinga.
		Support for Māori investment in geothermal resources to ensure that Māori are beneficiaries of development of geothermal resources.
		<p>Other potential options include:</p> <ul style="list-style-type: none"> Setting a percentage reduction of commercial allocations to be phased in over the time of current consents Crown-funded compensation A moratorium on new consents.
KWM ¹⁷	(4) Economic development	<p>An allocation framework is needed (both for freshwater and other resources) to ensure that the permissive framework introduced by the NBA does not incentivize resource users to 'race' to secure discharge rights up to the prescribed environmental limits.</p> <p>This framework must also address Māori rights and interests.</p>
FOMA ¹⁸	(4) Economic development	A preservation provision should be included in the NBA which specifically notes that the Bill is not intended to, nor does it, adversely affect the take / use and discharge rights that Māori have in natural resources, including freshwater.
TOK ¹⁹	(4) Economic development	A preservation provision should be included in the NBA which upholds Māori fishing rights, the Fisheries Settlement and the 1992 Treaty of Waitangi (Fisheries Settlement) Act, and the rights and interests of Māori in regard to their existing and future Treaty settlements.

¹⁷ KWM submission on the NBA exposure draft, 4 August 2021

¹⁸ FOMA submission on the NBA exposure draft, 11 August 2021.

¹⁹ TOK submission on the NBA exposure draft,