



Ministry for the
Environment
Manatū Mō Te Taiao

Ministry for Primary Industries
Manatū Ahu Matua



ESSENTIAL
FRESHWATER
WAI MĀORI
MĀTUATUA



Fish passage factsheet

Essential Freshwater is part of a new national direction to protect and improve our rivers, streams, lakes and wetlands. The Essential Freshwater package aims to:

- stop further degradation of our freshwater
- start making immediate improvements so water quality improves within five years
- reverse past damage to bring our waterways and ecosystems to a healthy state within a generation.

Te Mana o te Wai is fundamental to all freshwater management

Te Mana o te Wai recognises the vital importance of water. It expresses the special connection that New Zealanders have with freshwater. By protecting the health of freshwater, we protect the health and well-being of people and our ecosystems. When managing freshwater, Te Mana o te Wai ensures the health and well-being of the water is protected and human needs are provided for before enabling other uses of water. Through discussions with regional councils, tangata whenua and communities will have a say on how Te Mana o te Wai is applied in freshwater management locally. More information can be found in the [Te Mana o te Wai factsheet](#).

Who should read this factsheet

This factsheet is part of a [series](#) and provides information on the new regulations and policies relating to fish passage and that apply to culverts, dams, weirs, fords and tide gates. It is primarily intended for council staff and land users, but may also be of interest to iwi, the wider agricultural industry, farm advisors and consultants, and anyone else with an interest in freshwater policy.

New provisions for fish passage in rivers

When planning new structures with potential to block or impede fish passage, the [National Environmental Standards for Freshwater](#) (NES) require applicants to provide information about the structure to the regional council. The requirements apply whether the structures are

permitted or otherwise require a resource consent in accordance with rules in a regional plan, or by the regulations in the NES. The NES does not apply to existing structures (that is, structures in place at the NES's commencement) or customary weirs. However, the NPS does encourage regional councils to undertake a process of review and remediation of existing structures which may be ineffective at providing fish passage.

The NES comes into force on 3 September 2020.

Why these regulations?

Indigenous fish (such as tuna/eels and īnanga/whitebait) and sports fish (such as trout and salmon) need to be able to move between freshwater habitats to access feeding and spawning environments and maintain viable populations. Many freshwater fish also need access to the sea to complete their life cycle.

Structures such as culverts, dams, weirs, fords and tide gates can delay or prevent fish movement and stop them from accessing critical habitats.

Many indigenous freshwater fish species are classified as threatened or at risk of extinction, with loss of habitat connectivity within the river system a contributing factor.

What does the National Policy Statement for Freshwater Management 2020 require?

The National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) requires regional councils to produce an action plan to provide for fish passage and include this objective in their regional plan (or words to the same effect) as soon as possible:

The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.

This objective must be inserted into regional plans as soon as practicable, without the use of the [Schedule 1 process in the Resource Management Act 1991](#) (RMA).

Regional councils must include policies in their regional plans to identify desirable and undesirable species and their environments, and how these environments are impacted by instream structures. The same species may be desirable in one environment, but not in others. Regional councils must also have regard to the provision, monitoring, and maintenance of desirable fish passage when assessing resource consent applications and promote the remediation of existing structures.

What does the NES require?

Culverts and weirs

The NES requires any person who places, alters, extends or reconstructs a **culvert** or **weir** to comply with specified conditions, in the form of design requirements, for it to be a permitted activity.

A **culvert** is a pipe, box structure or covered or arched channel that has an inlet and outlet which is in, and connects the water or bed of, the same river or connected area.

A **weir** is an open-topped structure across the full width of any river or connected area that:

- alters the water level and flow characteristics of the water
- allows water to flow passively through or over the top.

The design requirements for culverts and weirs are based on the **New Zealand Fish Passage Guidelines**. Performance standards need to be met such as the correct sizing and positioning of structures in the channel, which together achieve fish passage over the life of the structure. Activities that comply with these standards do not require a resource consent under the NES, but regional plans may have other rules that apply.

Activities that do not comply with the permitted activity conditions in clause 70 and 72 of the NES are classed as discretionary activities and will require a resource consent. The application will be assessed against the regional plan's objective for fish passage.

Information about the culvert or weir must be provided to the regional council within 20 working days after the activity is finished. This is regardless of whether the structure is allowed as a permitted activity or requires a resource consent. The information needs to include the structure's location, width and photographs so the council can assess what maintenance the culvert or weir will need. For structures allowed by a resource consent, the NES also imposes maintenance and monitoring requirements that must be reflected in the structure's consent conditions.

Passive flap gates

The NES defines the placement, use, alteration, extension or reconstruction of a **passive flap gate** in rivers as a non-complying activity. Councils can only grant applications for non-complying activities if they are satisfied the adverse effects are minor, or granting the applications will be consistent with their regional plan's objectives and policies.

A **passive flap gate** is a flap gate whose opening or closing is:

- caused by a positive head differential on the upstream or downstream side, respectively
- not controlled by an automated and powered system (eg, electric or hydraulic) when the water reaches certain levels.

Consents granted under these regulations must impose conditions to provide specified information about the flap gate, and the NES's monitoring and maintenance requirements must be reflect in the conditions also.

Dam, ford or non-passive flap gate

Regional councils must be provided with information about the placement, alteration, extension or reconstruction of a **ford, dam or non-passive flap gate**, regardless of the activity status of the ford, dam or non-passive flap gate in their regional plans. Councils also require information on how these structures will achieve fish passage.

The NES does not set an activity status for installing dams, fords and non-passive flap gates but it does require details about their location, design, dimensions and materials to be provided to the regional council. If a proposed dam, ford or non-passive flap gate requires

a resource consent from the council, the monitoring and maintenance requirements in the NES must also be met.

For all in-stream structures

Regional plans may have additional requirements for the placement, use, alteration, extension or reconstruction of any culvert, dam, weir, ford and flap gate installed in a river. For example, the regional plan will have rules for disturbances of the bed of a river when the structures are installed.

Regional councils may choose to have more stringent rules than those in the NES, and more lenient rules for instream structures if they consider that impeding passage is required to protect certain fish species.

The relationship between these new regulations and existing consents or existing lawful activities is set out in section 43B of the RMA. In general:

- consents granted prior to gazettal¹ of the regulations prevail until reviewed
- consents also prevail if there was a decision made about whether or not to notify the relevant consent application prior to gazettal of the regulations
- activities that require a consent under the regulations may be able continue temporarily under **section 20A(2)** of the RMA if:
 - they were permitted, or allowed without a consent, and lawfully established, prior to the relevant regulations commencing; and
 - the effects of the activities are of the same or similar character, scale, and intensity as they were before commencement; and
 - the person carrying out the activities applies for consent no later than 6 months after commencement. The activities may continue until the consent application, and any appeals, are finally determined.

For activities to which section 20A applies, this means that people must apply for their consent no later than 2 March 2021.

More about the Essential Freshwater package

The package includes a number of new provisions including:

- new **National Environmental Standards for Freshwater**
- new **stock exclusion regulations** under section 360 of the RMA
- amendments to the **Resource Management (Measurement and Reporting of Water Takes) Regulations 2010**
- the **National Policy Statement for Freshwater Management 2020**, which replaces the NPS-FM 2017
- **amendments to the RMA** to provide for a faster freshwater planning process

¹ 5 August 2020

- **amendments to the RMA** to enable mandatory and enforceable freshwater farm plans, and the creation of regulations for reporting nitrogen fertiliser sales.

Factsheets in this series

The full set of Essential Freshwater factsheets are available [on our website](#).

Find out more and give us feedback

Contact us by emailing freshwater@mfe.govt.nz or visit the [Essential Freshwater page](#) on our website.

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