

# Impact Statement: Improving indigenous biodiversity management under the Resource Management Act (1991)

Advising agencies	<i>Department of Conservation (DOC) and Ministry for the Environment (MFE)</i>
Decision sought	<i>Approval to notify proposed NPSIB for public consultation</i>
Proposing Ministers	<i>Associate Minister for the Environment, Hon. Nanaia Mahuta</i>

## Summary: Problem and Proposed Approach

<p><b>Problem Definition</b></p> <p><b>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</b></p>
<p>Provisions addressing indigenous biodiversity protection under the Resource Management Act 1991 (RMA) are unclear and therefore subject to different interpretation, application and monitoring by councils. This has led to repeat litigation costs, confusion and uncertainty, an undervaluing of biodiversity in decision making and inadequate regulatory protection contributing to indigenous biodiversity loss.</p>

<p><b>Proposed Approach</b></p> <p><b>How will Government intervention work to bring about the desired change? How is this the best option?</b></p>
<p>Government intervention would:</p> <ul style="list-style-type: none"> <li>• Improve consistency in indigenous biodiversity management under the RMA</li> <li>• Improve alignment between district and regional councils and clarify their roles and responsibilities</li> <li>• Reduce debate and litigation at a local level over time</li> <li>• Clarify minimum standards required to maintain biodiversity</li> <li>• Raise the value and profile of indigenous biodiversity in decision making.</li> </ul> <p>This RIS assessed five options for addressing the problem definition. The preferred option is the proposed National Policy Statement for Indigenous Biodiversity (NPSIB) (option 4) in combination with guidance, funding and support for councils and landowners (option 1).</p> <p>A draft NPSIB and recommendations for supporting non-regulatory measures have already been developed by a stakeholder-led Biodiversity Collaborative Group (BCG) under ministerial direction. Officials have tested and refined this draft into the proposed NPSIB. This option meets the identified policy gap and we consider it is both viable and acceptable</p>

to core stakeholders.

The proposed NPSIB will result in implementation costs that will have a significant impact particularly on councils, tangata whenua and landowners. It is therefore critical that this option is supported by option 1 – guidance, funding and support for councils and landowners. This is essential for ensuring public support and for effective implementation.

## Section B: Summary Impacts: Benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

#### **The expected benefits of the proposed NPSIB<sup>1</sup>**

The primary expected benefit of the proposed NPSIB is to New Zealand's natural capital. The proposed NPSIB will result in significant biophysical benefits that will have flow-on effects for current and future generations. This is in terms of ecosystem services and wider direct and indirect use values and non-use values provided by, and associated with, indigenous biodiversity. Quantifying and monetising the environmental benefits anticipated from the implementation of the proposed NPSIB is challenging and has not been attempted at this stage. A final Cost-Benefit-Analysis (CBA) will be done following public consultation. Information from public consultation may assist in quantifying and monetising benefits anticipated from implementation of the proposed NPSIB.

#### **The main beneficiaries of the proposed NPSIB<sup>2</sup>**

The main beneficiaries of implementing the proposed NPSIB as a planning instrument are the community at large, councils, central government, landowners and tangata whenua. The community will benefit to the extent that protection and enhancement of natural capital will be improved by the proposed NPSIB. This will have benefits in terms of ecosystem services provision and use and non-use benefits such as recreation and mental health.

Councils will benefit from clear policy direction which will allow them to manage indigenous biodiversity and other land use activities more effectively and efficiently, which is likely to translate to cost savings over time and reduced litigation. Regional councils will be better placed to evaluate the effectiveness of their regulatory framework as a result of developing and implementing a regional monitoring plan and biodiversity strategy as part of requirements under the proposed NPSIB. Central government will benefit from a better flow of targeted, up-to-date information on the state of indigenous biodiversity from the regions. This will build a more robust and accurate evidence base that will allow for more effective investment and future planning.

Achieving greater consistency in the management of indigenous biodiversity across regional policy statements and district plans will lead to a more effective and efficient national resource management system. Landowners, including Māori landowners, and owners of forestry, mining and extractive industries, and providers of national infrastructure will all benefit from greater certainty on the location and value of RMA

<sup>1</sup> Wyeth, J. and Hampson, N. 2019. National Policy Statement for Indigenous Biodiversity – Draft Section 32 Evaluation and Cost Benefit Analysis. Report prepared for the Department of Conservation.

<sup>2</sup> Wyeth and Hampson, 2019.

section 6(c) Significant Natural Areas (SNAs) and indigenous biodiversity generally. They will also maintain their ability to carry out existing and new activities where the adverse effects on indigenous biodiversity are addressed. Tangata whenua will benefit from greater involvement in resource management and decision making that impacts on indigenous biodiversity. This is through better incorporation of the concepts of Te Ao Māori, matauranga Māori and tikanga Māori in council practices and an acknowledgement of their role as kaitiaki.

### Where do the costs fall?

#### **The expected costs of the proposed NPSIB<sup>3</sup>**

Landowners, infrastructure providers and industry such as forestry and the agricultural sector may face increased costs to manage the effects of their activities on indigenous biodiversity as well as potential opportunity costs to subdivide, use and develop land (over and above the status quo). This will primarily occur when subdivision, use and development is within a SNA as this may result in planned activities being moved, scaled-down or modified, and in some cases prevented altogether. This is to ensure that certain adverse effects on SNAs are avoided or are appropriately avoided, remedied, mitigated, offset, and compensated where the proposed NPSIB effects management policies require this. The CBA assessed possible opportunity costs on landowners and industry. Potential impacts on individual property owners may be significant, but the CBA estimates that only a limited number of landowners will be affected significantly. It was not possible to monetise opportunity costs at this stage; however, it is anticipated that some opportunity costs will be able to be monetised following public consultation. Public consultation should also produce better data on implementation costs.

Most of the implementation costs generated by the proposed NPSIB are expected to fall on councils, and to a lesser extent central government and tangata whenua, to implement the proposed policies. The proposed NPSIB will require district councils to carry out extensive, resource intensive processes to identify and map SNAs, including undertaking physical inspections where practicable and engagement with landowners. Assuming no work has been completed on scheduling SNAs, costs have been estimated at between \$590,000-\$1,095,000 per council in present value terms, with this cost spread over five-years (implementation timeframe). The lower end of the range is for councils with a relatively small amount of indigenous cover and adopting a cost-sharing/collaborative approach. The upper end of the range is for councils with a large area of indigenous cover, a non-collaborative process and excluding any ground truthing on public conservation land.

Councils will also need to undertake extensive work to identify possible habitats of highly mobile fauna, taonga species, degraded and depleted environments, and areas targeted for restoration and enhancement. Regional biodiversity strategies are estimated to cost regional and unitary councils between \$60,000-\$112,000 (present value) each. The lower end of the range is for regional and unitary councils which only need to amend existing strategies, whereas the upper end of the range is for those which need to develop a strategy from scratch. It is assumed this cost might be incurred in year five after the NPSIB

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<sup>3</sup> Wyeth and Hampson, 2019.

comes into force.

Giving effect to the proposed NPSIB will also require councils to develop new/revised provisions to manage indigenous biodiversity and progress these changes to regional policy statements and district plans through the Schedule 1 process (including engagement, notification, public submissions, hearings and potential litigation and appeals). Plan change costs to implement the proposed NPSIB are estimated to range from between \$71,000-\$176,000 (present value) per regional council and between \$211,000-\$247,000 (present value) per unitary council. District council plan change costs fall within these indicative ranges. In addition, the requirement for biannual updates to SNA schedules are estimated at an additional \$64,000-129,000 (present value) per council over the period to 2050. Regional and unitary councils will also face costs to develop and implement a regional indigenous biodiversity monitoring plan. This set up and ongoing operation cost is estimated at between \$955,000-\$3,820,000 (present value) each over the next 30 years. The range is wide depending on how comprehensive existing monitoring of the state of indigenous biodiversity is within the region.

Tangata whenua and stakeholders will face costs (including time and financial) to resource their involvement in these processes although this may be supported to an extent by councils and central government.

Total guidance and support costs for central government have been estimated at between \$1.77m-\$2.65m in present value terms (excluding NPSIB costs to review the implementation and effectiveness of the NPSIB).

### **What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?**

The indicative CBA<sup>4</sup> found that it is difficult to predict the specific and exact impact of the proposed NPSIB given the high level of variability in how it will impact each council. Not only is the type, scale, geography and tenure of indigenous biodiversity variable throughout New Zealand, but the extent to which councils already provide for indigenous biodiversity protection in district plans and regional policy statements is also variable (e.g. 62 percent of councils have comprehensive lists of SNAs mapped and/or scheduled into their plans, the rest have not identified, or not fully identified SNAs<sup>5</sup>). This presents challenges for estimating costs for any one council, and in aggregate across New Zealand. Public consultation will assist with informing us of the impacts of the proposed NPSIB. The indicative CBA will be available during public consultation to assist parties with determining the type and scale of anticipated impacts.

As mentioned, it is critical that central government provides guidance, funding and support for councils and landowners to implement the proposed NPSIB. There is a risk that without appropriate non-regulatory support, some stakeholders will perceive the proposed NPSIB as constraining land use (in the case of SNAs) and therefore the proposed NPSIB may unintentionally disincentivise landowners from protecting and restoring indigenous

<sup>4</sup> Wyeth and Hampson, 2019.

<sup>5</sup> Myers, S.C. 2018. A Biodiversity Planning Snapshot - How Well Are Councils Protecting Biodiversity?“, NZ Ecological Society Conference, Wellington 2018.

biodiversity. This risk will also be assessed through public consultation, with the final policy decisions taking this into account.

Central government's ability to provide guidance and support to assist implementation is dependent on future budget decisions, though some money has been tentatively earmarked through the International Visitor Levy already. It is recognised that strong guidance and support from central government is needed to support implementation of the proposed NPSIB, given that some of the requirements will be new for councils, some policies (such as those around climate change) are more complex, and the capacity of councils and tangata whenua to effectively implement the NPSIB requirements (e.g. map SNAs) is highly varied. The extent of non-regulatory support will be confirmed following public consultation and final policy decisions.

### **Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.**

The preferred options in this RIS (the proposed NPSIB with non-regulatory support (option 4 and 1)) are compatible with the Government's 'Expectations for the design of regulatory systems'. While option 4 will result in potentially significant implementation costs for some councils, these costs are primarily short-term and will reduce substantially over time. There will be opportunity costs for some landowners and developers with SNAs on their properties. However, these are balanced against the wider public and environmental benefit of maintaining biodiversity. Option 1 will assist in reducing identified costs on councils and regulated parties and will support timely and effective implementation.

## **Section C: Evidence certainty and quality assurance**

### **Agency rating of evidence certainty?**

The evidence base supporting the problem definition is robust. The need for government regulation to address the problem definition has been recognised repeatedly over the last 20 years, in local and central government reports, independent publications and texts produced by non-government organisations.

The evidence supporting the problem definition also favours the development of an NPSIB to address the problem. Given this, and the fact that an NPSIB has already been drafted under Ministerial direction by a stakeholder-led Biodiversity Collaborative Group (BCG), other regulatory and non-regulatory options weren't explored in the same level of detail.

We acknowledge that there is some uncertainty around the costs and benefits of the preferred option. The indicative CBA identified costs and benefits but was unable to quantify many of these. Monetising non-market values is complex, particularly with regards to the values of indigenous biodiversity. Estimating costs on different parties is also complex, given the level of variability in current biodiversity management, the uncertainty around how the NPSIB will be translated into plan provisions and the unknowns with regards to landowner and industry intentions in terms of subdivision, use and development

of land (e.g. opportunity costs faced by landowners and industry were only able to be qualified at this stage, not quantified or monetised). We will seek feedback on the merits of the preferred option and the associated implementation costs and opportunity costs through public consultation. This information will feed into a final CBA following public consultation. Our initial s32/CBA analysis supports the preliminary conclusion that the aggregate, long-term and cumulative benefits of implementing the proposed NPSIB will, on balance, outweigh the expected aggregate and generally short-term costs.

*To be completed by quality assurers:*

**Quality Assurance Reviewing Agency:**

Joint MFE and DOC Quality Assurance Panel

**Quality Assurance Assessment:**

A Quality Assurance Panel with representatives from the Ministry for the Environment and the Department of Conservation has reviewed the Regulatory Impact Assessment (RIA) “Improving indigenous biodiversity management under the Resource Management Act (1991)” produced jointly by the Department of Conservation and the Ministry for the Environment. The review team considers that it meets the Quality Assurance criteria.

**Reviewer Comments and Recommendations:**

The Panel considers the RIA convincingly sets out the evidence base for intervention that has accumulated over the preceding years, and draws on a comprehensive process by the Biodiversity Collaborative Group to make the case for the intervention proposed. The Panel considers that, in addition to the preferred option, a range of alternative options have been given serious consideration and a sound case is made for the preferred package.

It is difficult to have precise information on all aspects of the costs of the proposed option, particularly the impacts on landowners. The Panel considers that, as this is a pre-consultation RIA, the information on costs to stakeholders and the relatively high-level content on supporting measures is appropriate, given the consultation will look to elicit information on these particular things. The Panel considers that it will be important to ensure that the consultation on the proposed NPSIB is designed in a way that will draw out further information on these aspects, in particular on the relative ability to pay of different landowner members of the public.

# Impact Statement: Improving indigenous biodiversity management under the Resource Management Act (1991)

## Section 1: General information

Purpose
<p>The Department of Conservation (DOC) and the Ministry for the Environment (MFE) are solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none"><li>• key (or in-principle) policy decisions to be taken by Cabinet;</li><li>• Public, iwi, hapū and stakeholders to be consulted on a government discussion document.</li></ul>

## Key Limitations or Constraints on Analysis

### Limitations and constraints

A complex range of factors are driving the continued loss of indigenous biodiversity in New Zealand. At the strategic level, these are being considered through the development of a new national New Zealand Biodiversity Strategy (NZBS). This Strategy will set the overarching goals and priorities for biodiversity management in New Zealand.

The proposals in this Regulatory Impact Statement focus on addressing one of the factors driving biodiversity loss: the **provisions addressing biodiversity protection under the RMA are unclear** and therefore subject to different interpretation, application and monitoring by councils.

The Associate Minister of the Environment Hon Nanaia Mahuta has directed officials to progress the development of a National Policy Statement for Indigenous Biodiversity (NPSIB) for consideration by Cabinet and the public. A draft NPSIB has already been produced by a stakeholder-led Biodiversity Collaborative Group (BCG) who were specifically tasked with collaboratively developing an NPSIB and recommending supporting non-regulatory measures and system improvements.

The BCG was composed of key stakeholders with interests in biodiversity management. It included Forest and Bird, Federated Farmers, the Environmental Defence Society, the Forest Owners Association and representatives from the extractive/infrastructure industries, as well as a representative for the Iwi Chairs Forum. Central and local government officials participated as active observers.

The draft NPSIB produced by the BCG, and the stakeholder consensus achieved, was the foundation for officials' analysis. The proposed NPSIB is in close alignment with what the BCG proposed, with changes to improve clarity, consistency and ensure it's able to be implemented effectively by councils.

The scope of the proposed NPSIB is focussed on terrestrial biodiversity and aspects of wetlands as a result of a Ministerial decision based on official's advice.

Consultation to date has been limited to early engagement with councils and iwi and hapū on the draft NPSIB produced by the BCG and the revisions recommended by officials. Wider public consultation will take place from late 2019 to early 2020 on the proposed NPSIB.

**Responsible Director (signature and date):**

Peter Brunt

Director, Policy and Visitors

Department of Conservation

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Jo Gascoigne

Director, Natural and Built system

Ministry for the Environment

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# Section 2: Problem definition and objectives

## 2.1 What is the context within which action is proposed?

### Uniqueness of New Zealand’s indigenous biodiversity

New Zealand’s indigenous biodiversity is unique and distinctive. Many of our indigenous species, particularly our animals, come from old lineages – a result of millions of years of geographic isolation. They are internationally distinctive and important to global biodiversity with a large portion occurring nowhere else in the world (they are ‘endemic’). This includes 78 percent of vascular plants and 91 percent of animal species.<sup>6</sup> The ecosystems in which these species live are also highly distinctive. As an international biodiversity hotspot<sup>7</sup> New Zealand has the challenge of protecting globally unique and increasingly threatened flora and fauna. Species lost to New Zealand are lost to the world.

### How we value New Zealand’s indigenous biodiversity

Our identity as New Zealanders is closely linked to our indigenous biodiversity. Our natural landscapes are our backyards and our playgrounds, they support our ‘brand’ on the global stage and are a drawcard for millions of international visitors. Indigenous biodiversity (from genetic to ecosystem diversity) provides supporting, provisioning and regulating services, such as carbon sequestration, climate regulation, nutrient recycling, resistance to weeds and pests, pollination and commercial products such as Manuka honey which underpin our economic, social and cultural wellbeing. A study in 2013 concluded that the total economic value of all land-based ecosystem services in New Zealand is worth \$57 billion a year.<sup>8</sup> In te ao Māori, people are kaitiaki for biodiversity. Tangata whenua and plants have a common origin in the Māori story of creation with plants as the link between humans and the sacred ancestors Papatūānuku and Ranginui. Indigenous species enable, inform and inspire customary practices including mahinga kai, rongoā, waiata, and whaikōrero.<sup>9</sup>

Conservation is important to New Zealanders.<sup>10</sup> A third of our land area is legally protected and there has been an increase in active management of these areas and increasing public involvement in conservation.<sup>11</sup> At the same time, many New Zealanders consider the state and management of our indigenous biodiversity as ‘adequate’ or ‘good’ when in fact New Zealand’s indigenous biodiversity has long been declining.<sup>12</sup>

<sup>6</sup> Ministry for the Environment and Stats NZ. 2018. New Zealand’s Environmental Reporting Series: Our land 2018. Retrieved from [www.mfe.govt.nz](http://www.mfe.govt.nz) and [www.stats.govt.nz](http://www.stats.govt.nz).

<sup>7</sup> Mittermeier, R.A., Robles-Gil, P., Hoffmann, M., Pilgrim, J.D., Brooks, T.B., Mittermeier, C.G., Lamoreux, J.L. and Fonseca, G.A.B. 2004. Hotspots Revisited: Earth’s Biologically Richest and Most Endangered Ecoregions. CEMEX, Mexico City, Mexico.

<sup>8</sup> Patterson, M.G. and Cole, A.O. 2013. “Total economic value” of New Zealand’s land-based ecosystems and their services. In Dymond JR ed. Ecosystem services in New Zealand – conditions and trends. Manaaki Whenua Press, Lincoln, New Zealand.

<sup>9</sup> Ministry for the Environment and Stats NZ, 2018.

<sup>10</sup> Hughey, K.F.D., Kerr, G.N. and Cullen, R. 2016. Public Perceptions of New Zealand’s Environment: 2016. EOS Ecology, Christchurch, New Zealand.

<sup>11</sup> Brown, M., Stephens, R.T.T., Peart, R. and Fedder, B. 2015. Vanishing Nature: facing New Zealand’s biodiversity crisis. Environmental Defence Society, Auckland, New Zealand.

<sup>12</sup> Hughey, 2016.

### **State of indigenous biodiversity within New Zealand**

Over 700 years of occupation, two-thirds of New Zealand's forest has disappeared.<sup>13</sup> Habitats are now in smaller more isolated fragments, impacting habitat condition and resident taxa.

Continual loss is a result of the impacts of human activities such as habitat clearance, degradation and fragmentation; pollution from sediment, heavy metals and nutrients; development pressures and resource use; and the introduction of pests and diseases.<sup>14</sup>

Ecosystems which were once widespread (e.g. wetlands and sand dunes) continue to decline in extent with almost two-thirds of rare and naturally uncommon ecosystems now threatened, most of these in coastal and lowland environments. Of our remaining terrestrial indigenous biodiversity, 80 percent of our bat species, 84 percent of reptile species, 74 percent of terrestrial bird species and 75 percent of frog species are currently threatened with or at risk of extinction. This is in addition to 46 percent of our vascular plant species, 23 percent of mosses, hornworts and liverwort species and 10 percent of lichen species. The trend is one of continuing decline, as the extinction risk has worsened for 86 land, freshwater and marine species in the past 15 years.<sup>15</sup>

Global environmental pressures such as climate change pose an additional stress on New Zealand's indigenous biodiversity. Climate change has the potential to destabilise indigenous species' distribution and population patterns through increasing ambient temperatures, extreme weather events and sea level rise. With increased global trade, warmer temperatures and greater disturbances its likely disease and pathogen incursions will increase.<sup>16</sup>

While some data exists, a complete picture of the state and trend of indigenous biodiversity is limited by data gaps. We currently lack a nationally agreed, quantitative and scalable ecosystem classification and an integrated national level monitoring system and we also have limited information on the condition of the full range of indigenous ecosystems. We currently do not have information to assign a conservation status to 28 percent of assessed terrestrial taxa. Comprehensive information on the distribution, abundance, density and impacts of pests and weeds, particularly at finer scales, is also lacking.<sup>17</sup>

### **Appetite for change**

While the decline of indigenous biodiversity has been known for some time, action is challenging because of the complexity of the issue, the inability to explicitly value biodiversity and competing priorities for the development of land. 'Halting the decline' has been a national goal since the adoption of the current NZBS in 2000. While current initiatives have gone some way to addressing the biodiversity crisis in New Zealand, there is recognition that more action is needed, particularly on private land. There is appetite for this action to occur, spurred by recent biodiversity initiatives such as Predator Free 2050, the development of a

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<sup>13</sup> Brown, 2015.

<sup>14</sup> Ministry for the Environment and Stats NZ. 2019. New Zealand's Environmental Reporting Series: Environment Aotearoa 2019. Available from [www.mfe.govt.nz](http://www.mfe.govt.nz) and [www.stats.govt.nz](http://www.stats.govt.nz).

<sup>15</sup> Ministry for the Environment and Stats NZ, 2019.

<sup>16</sup> Ministry for the Environment and Stats NZ, 2019.

<sup>17</sup> Ministry for the Environment and Stats NZ, 2018.

new NZBS, a \$76 million funding boost for DOC and the development of a draft NPSIB by the BCG. The latter is a key opportunity to better manage biodiversity through council plans.

## 2.2 What regulatory system, or systems, are already in place?

### **National policy framework for biodiversity**

Biodiversity management is technically complex and New Zealand has a range of biodiversity-related legislation. There is a strong system for legal protection of public conservation areas which, while large, are not representative of the full range of ecosystems (about 20 percent of New Zealand's ecosystem types are either absent from public conservation land or already gone<sup>18</sup>). A significant portion of under-represented and at-risk habitats are located outside of these areas, on predominantly private land. While increased effort is required to manage biodiversity on our public conservation land, better direction is particularly required to improve outcomes for indigenous biodiversity outside the bounds of public conservation land.

### **Biodiversity regulatory system on public conservation land**

The Conservation Act 1987 is the key piece of legislation guiding biodiversity management on public conservation land. The Conservation Act formed, and is administered by, the Department of Conservation (DOC), the lead agency for conservation at a central government level. The Act protects in perpetuity approximately a third of New Zealand's land area. The Act grants DOC several responsibilities including management of public conservation land, preservation of indigenous freshwater fisheries and a conservation advocacy role (section 6). A range of statutory plans under the Act set out how DOC and its Treaty partner intend to manage public conservation land. Other pieces of legislation which influence biodiversity management on public conservation land include the Reserves Act 1977, the National Parks Act 1980 and the Resource Management Act 1991 (RMA).

### **The wider biodiversity regulatory system**

The RMA is the key piece of legislation managing New Zealand's environment, including indigenous biodiversity, on private land (though it also operates across public land). The RMA governs the use of all New Zealand's natural and physical resources, with almost all forms of resource use affecting biodiversity. The RMA is administered by the Ministry for the Environment (MFE) and is largely implemented through local governments. Biodiversity is recognised in the RMA in several ways:

- Section 5 which sets out the purpose of the Act, "to promote the sustainable management of natural and physical resources", is relevant because biodiversity falls within the definition of natural resources. Biodiversity is indirectly managed through all matters of 5(2).
- Section 6 outlines matters of national importance. 6(c) is the section most identified with the maintenance of biodiversity because it refers to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Biodiversity is also indirectly managed by protecting natural character (section 6(a)) and outstanding natural features and landscapes (section 6(b)).
- Section 7 outlines other matters that particular regard has to be given to. Biodiversity is indirectly managed through the maintenance and enhancement of the quality of the

<sup>18</sup> Brown, 2015.

environment (section 7(f)) and partially through the intrinsic values of ecosystems (section 7(d)) as the definition of 'intrinsic values' includes values derived from biological and genetic diversity.

- Section 30(1)(c)(iiiia) provides that it is a function of regional councils to control the use of land to maintain and enhance ecosystems in water bodies and coastal waters
- Section 30(1)(ga) provides that it is a function of regional councils to establish, implement and review objectives, policies and methods for maintaining indigenous biodiversity.
- Section 31(b)(iii) provides that it is a function of district councils to control the effects of the use of land on the maintenance of indigenous biological diversity.
- Section 62(1)(i)(iii) requires a regional policy statement to state the council responsible, in the whole or any part of the region, for specifying the objectives, policies and methods for the control of the use of land to maintain indigenous biodiversity.

In 2003, the RMA was amended to clarify that:

- Both regional councils and district councils have responsibilities for maintaining indigenous biodiversity
- Councils must consider the consequences of all effects on indigenous biodiversity, not simply the significance of the species or habitat.

The RMA provides several mechanisms that can be used by the Crown, and primarily councils, to assist with the maintenance of biodiversity. These mechanisms include national policy statements, national environmental standards, national planning standards, regional policy statements, regional plans and district plans. At a national level, we currently have in place the New Zealand Coastal Policy Statement 2010 (NZCPS) which includes direction on national priorities for biodiversity in the coastal environment (primarily through policy 11), the National Policy Statement for Freshwater Management 2014 (NPSFM) which includes direction around ecosystem health, and the National Environmental Standards for Plantation Forestry 2017 (NESPF) which include some requirements around the protection of specific indigenous biodiversity and habitats within plantation forests.

In addition to the RMA, a range of other legislation exists to, or has provisions to, manage indigenous biodiversity. The Local Government Act 2002 (LGA) allows councils to purchase parks and reserves. Long term and annual plans under the LGA deliver non-regulatory components of biodiversity maintenance and enhancement, primarily through funding allocation. The Biosecurity Act 1993 gives regional councils the responsibility to undertake pest control and prepare regional pest management strategies. Other key biodiversity-related legislation include the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the Marine Mammal Protection Act 1987, the Marine Reserves Act 1971, the Queen Elizabeth II National Trust Act 1977 and the Wildlife Act 1953.

### **The wider biodiversity management system**

The biodiversity regulatory system is part of a wider biodiversity management system which includes:

- New Zealand's engagement with international conventions (e.g. Convention for Biological Diversity, Bonn Convention on the Conservation of Migratory Species and the Ramsar Convention on Wetlands of International Importance);
- national initiatives (e.g. Predator Free 2050, wilding conifer management and the One

Billion Trees programme);

- science and innovation (e.g. the National Science Challenge and the Biodiversity Conservation Science Prospectus);
- regional and local initiatives (e.g. Iwi Environmental Management Plans and regional biodiversity strategies);
- non-regulatory measures (e.g. contestable funds like the DOC Community Fund and covenanting bodies like the Queen Elizabeth the II Trust and Ngā Whenua Rāhui for the protection of indigenous biodiversity on private and Māori land); and
- an increasing number of iwi, hapū, private and community led conservation projects.

### **Fitness-for purpose of biodiversity management system**

Despite the multitude of biodiversity initiatives, New Zealand's biodiversity management system is failing to halt biodiversity decline. The system has received widespread critique,<sup>19</sup><sup>20</sup> which is currently being addressed through work to develop a new national New Zealand Biodiversity Strategy (NZBS).

The NZBS is New Zealand's response to the Convention on Biological Diversity (CBD) which was ratified back in 1993. The 2000 NZBS established national goals to:

- turn the tide on the decline of the country's indigenous biodiversity
- maintain and restore a full range of remaining habitats and ecosystems, and viable populations of all native species.

The NZBS set out a comprehensive range of actions to achieve these goals. Despite substantive action, we failed to deliver on these goals. The new NZBS will look to address issues of system failure through the creation of a robust new strategic framework.

### **Why government regulation is warranted**

The complex problem that is indigenous biodiversity decline can be linked to a collective action and market failure issue. Biodiversity and the ecosystem services it provides aren't typically valued in decision making frameworks. The cost of biodiversity loss is born by communities and future generations, and the cost of avoiding impacts on biodiversity falls on individuals. This market failure has not been adequately addressed through the national policy framework (it is also a global problem).

The national policy framework is not robust or clear enough to address the challenges of coordination and market failure. This is particularly the case for private land which is predominately managed through the RMA and is not explicit enough about indigenous biodiversity.

In New Zealand, indigenous biodiversity management under the RMA is predominately the responsibility of local government. There is an opportunity through the RMA to address some of these challenges through additional national-level regulation. In summary, reasons for why clearer government regulation is warranted include:

- The issue of biodiversity decline is of national importance and some decisions should be made nationally

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<sup>19</sup> Willis, G. 2017. Addressing New Zealand's biodiversity challenge: a regional council thinkpiece on the future of biodiversity management in New Zealand. Enfocus. New Zealand.

<sup>20</sup> Brown, 2015.

- Local variation makes it harder to monitor and report biodiversity outcomes nationally
- In some regions/districts practice is poor and biodiversity outcomes are compromised
- The issue involves significant national benefits or costs, including litigation costs
- The issue is technically complex and central government may have better access to resources required to address it
- The issue relates to Government obligations (including Te Tiriti o Waitangi and international obligations).

National regulation, specifically in the form of a National Policy Statement for Indigenous Biodiversity (NPSIB), was recommended in the *Biowhat?*<sup>21</sup> report in 2000, the NZBS in 2000<sup>22</sup> and the review of the strategy in 2006<sup>23</sup>. There have been several attempts to develop one but until the BCG draft, it had not been possible to find consensus amongst key stakeholders.

Clearer national regulation could deliver a range of positive outcomes, including:

- Improving consistency in indigenous biodiversity management
- Improving alignment between district and regional councils and clarifying roles and responsibilities
- Assisting in reducing debate and litigation at a local level over time
- Clarifying minimum standards required to maintain biodiversity
- Raising the value and profile of indigenous biodiversity in decision making.

## 2.3 What is the policy problem or opportunity?

### The policy problem

The long-term policy objective is to reverse the ongoing decline of indigenous biodiversity in New Zealand. As noted, this is a systemic issue that cannot be addressed through one action alone; it will require a ‘toolkit’ of measures, implemented over time through a new NZBS that has an overarching function.

The specific policy problem to address in this proposal relates to the current regulatory regime, specifically the RMA. The key problem with this regime is that the **provisions addressing biodiversity protection under the RMA are unclear** and therefore subject to different interpretation, application and monitoring by councils. In particular there is:

- A lack of clarity about what the requirement to maintain indigenous biodiversity means
- Inconsistent/inadequate identification of sites with significant biodiversity value on private land and ambiguity about what “significant” means
- Regional variation over how to manage the effects of development on biodiversity
- Lack of clarity around roles and functions, and monitoring.

<sup>21</sup> Ministry for the Environment. 2000. Bio-what? Addressing the effects of private land management on indigenous biodiversity. Ministry for the Environment. Wellington, New Zealand.

<sup>22</sup> Department of Conservation, Ministry for the Environment and Ministry of Agriculture and Forestry. 2000 The New Zealand Biodiversity Strategy. Wellington, New Zealand.

<sup>23</sup> Green, W. and Clarkson, B.D. 2006. Turning the tide? A review of the first five years of the New Zealand biodiversity strategy – the synthesis report. Report to the Biodiversity Chief Executives. Wellington, New Zealand.

This problem has led to repeat litigation costs and effort as each jurisdiction individually interprets RMA provisions, confusion around roles and functions and resulting inaction/duplication and uncertainty for industry, iwi and hapū and stakeholders undertaking activities affecting biodiversity. Ultimately it has led to indigenous biodiversity being undervalued in decision making and inadequate regulatory protection for indigenous biodiversity resulting in biodiversity loss.

### **Lack of clarity around maintenance function**

The RMA requires councils to maintain indigenous biodiversity (section 6, 7, 30 and 31). It requires indigenous biodiversity to be considered in a wide range of resource management decision making contexts and through a range of functions (e.g. land use, discharges, abstractions). There is some confusion about whether the biodiversity maintenance function can be adequately exercised by simply protecting significant indigenous biodiversity as Significant Natural Areas (SNAs) under section 6(c) or whether a wider approach is required. Some plans only contain biodiversity provisions in relation to section 6(c) areas<sup>24</sup>, when it is now recognised that the protection of these discrete areas is not enough to maintain indigenous biodiversity.<sup>25</sup>

The lack of clarity around what the biodiversity maintenance function entails has resulted in a highly variable approach to biodiversity management as well as uncertainty, debate and repeat costly litigation.

### **Lack of clarity around "significance" and the protection of section 6(c) sites**

One key area of confusion and resulting variation is the determination of what a "significant" site or habitat is and therefore whether it is identified and protected. This determination is crucial given the RMA requirement to ensure the "*protection of areas of significant vegetation and significant habitats of indigenous fauna*" under section 6(c) and to some extent the "*maintenance of biodiversity*" under section 30. The RMA provides no definition of 'significance' and assessments of significance currently vary widely across the country.

Ambiguity around what defines 'significant' has been demonstrated to favour development interests by resulting in an underestimation of conservation values.<sup>26</sup> The devolution of what constitutes significance has resulted in three key impacts: debate is confined to a local context and not at the more visible national level; local needs tend to take precedence over national goals; and multiple definitions across the country make it difficult and costly for everyone involved.<sup>27</sup>

Defining significance involves defining a set of ecological significance criteria. An analysis of regional and district plans in late 2018<sup>28</sup> identified that 64 percent of district and regional plans have significance criteria. Of those that do have criteria, variation in criteria and methodology has implications for biodiversity management. It means councils and central government can't obtain baseline or trend data and compare sites, a pre-requisite to

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<sup>24</sup> Myers, 2018.

<sup>25</sup> Brown, M.A 2016. Pathways to prosperity: safeguarding biodiversity in development. Environmental Defence Society Incorporated. Wellington, New Zealand.

<sup>26</sup> Brown, 2016.

<sup>27</sup> Brown, 2016.

<sup>28</sup> Myers, 2018.

ensuring biodiversity is recognised and valued in decision-making. Defining significance criteria has also resulted in a large amount of litigation over the years, taking up time and money for everyone involved.

Identifying areas of significance is the next step. RMA provisions are silent on how this should be done and as a result there are a multitude of different approaches and broad variance in the degree to which councils identify sites; 62 percent<sup>29</sup> have comprehensive lists of sites of significance indigenous biodiversity value, which are mapped or scheduled however the rest have not identified, or not fully identified sites. Some plans have ecological descriptions of the values and criteria that have been met, others only list the criteria that have been met. Some assessments are based primarily on desktop analysis whereas other are based on surveys in close consultation with landowners. A number of plans rely solely on criteria in a plan at the time of consent (if criteria exist). Identification of sites with significant indigenous biodiversity value is vital for their protection, maintenance and enhancement.

### **Lack of clarity around how to manage impacts on biodiversity**

RMA section 5(2)(c) sets out that adverse effects of activities on the environment must be avoided, remedied or mitigated. This approach, plus the additional RMA options of ‘offsetting’ and ‘compensating’ effects are being used inconsistently and sometimes inappropriately across the country, consenting the loss of indigenous biodiversity.<sup>30</sup>

Case law and best practice guidance<sup>31 32</sup> both provide a hierarchy in how these tools should apply - avoid, then remedy, then mitigate, then offset and then compensate. Stepping through this mitigation hierarchy is essential to protecting biodiversity as the impacts or loss of biodiversity increase the further you go down the hierarchy. Some councils have set out this mitigation hierarchy in their plans and defined terms and expectations. However, the approach is still inconsistent and inadequate across the country.<sup>33</sup>

### **Lack of clarity around roles and functions**

Both regional and district councils have a statutory responsibility under the RMA to maintain indigenous biodiversity. A 2003 amendment to the RMA made biodiversity an express function of both district and regional councils. This has been cited as problematic in that the objective of “maintenance” is embedded within the function and the means to achieving the objective are spread across a range of agencies.<sup>34</sup> Some of the tools required to maintain indigenous biodiversity are beyond the role of regional and district councils (e.g. species management). The fulfilment of the function is also dependent, in large part, on the exercise of powers, which are, and according to local government<sup>35</sup> must remain, at the discretion of councils. There is a need for clarity around what *must* be done by councils and what *could* be

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<sup>29</sup> Myers, 2018.

<sup>30</sup> Brown, 2016.

<sup>31</sup> Maseyk, F., Ussher, G., Kessels, G., Christensen, M and Brown, M. 2018. Biodiversity offsetting under the Resource Management Act: a guidance document. Prepared for the Biodiversity Working Group on behalf of the BioManagers Group. New Zealand.

<sup>32</sup> New Zealand Government. 2014. Guidance on good practice biodiversity offsetting in New Zealand. Available at <https://www.doc.govt.nz/about-us/our-policies-and-plans/guidance-on-biodiversity-offsetting/>.

<sup>33</sup> Brown, 2016.

<sup>34</sup> Local Government New Zealand. 2017. Addressing the biodiversity challenge: A regional council thinkpiece on the future of biodiversity management in New Zealand. Enfcus, New Zealand.

<sup>35</sup> Willis, G. 2014. Biodiversity: Roles and functions of regional councils. Enfocus. New Zealand.

done by councils in order to fulfil their indigenous biodiversity maintenance function.

Additional clarity is required on division of responsibilities between regional and district councils. The responsibilities of regional councils (section 30) and district councils (section 31) with regards to biodiversity maintenance under the RMA overlap. Riparian management and wetlands are key examples where councils have overlapping functions. Section 62 was added in 2003 to address this by requiring a Regional Policy Statement (RPS) to specify which council was responsible for controlling the use of land to maintain indigenous biodiversity (section 62(1)(i)(iii)). A variety of approaches exists in how responsibilities are allocated. Confusion around functions has resulted in inaction in some cases or doubling up in other cases.

#### **Lack of clarity about managing climate change and biodiversity**

Under the RMA, all persons exercising functions and powers are required to have particular regard to the effects of climate change. There is currently no direction on how to achieve this as part of planning and decision-making in a sustainable management framework, and in particular what this means for indigenous biodiversity maintenance. Climate change is an emerging threat for indigenous biodiversity however conserving biodiversity also contributes to climate change mitigation and adaptation. The interaction of climate change and biodiversity is a technically challenging, nationally important issue with significant cost ramifications.

#### **Lack of clarity around biodiversity monitoring**

Under RMA section 35 every council shall monitor the state of the environment of its region or district in order to carry out its functions – maintenance of biodiversity being one of these. The extent to which this function is fulfilled and how is highly variable.<sup>36</sup> This makes understanding the state and threats to indigenous biodiversity and the success of management interventions fraught.

#### **Lack of clarity around matauranga Māori and giving effect to Te Tiriti o Waitangi/the Treaty of Waitangi in relation to biodiversity management**

There are a range of provisions in the RMA that recognise and give effect to relationships of tangata whenua with te taiao (e.g. sections 6(e), 7(a), 8, 33 and 188). The implementation of these provisions has been inconsistent, unmonitored and in some cases non-compliant with legislation. This was documented in the recommendations for change made by the Waitangi Tribunal's report on the Wai 262 claim.

## **2.4 Are there any constraints on the scope for decision making?**

### **Constraints on scope**

This RIS sets out a range of possible options to address the problem of provisions addressing biodiversity protection under the RMA being unclear and therefore subject to different interpretation, application and monitoring by councils.

As noted, significant work has been completed on one option – the development of a NPSIB and supporting non-regulatory measures by a stakeholder group. This work was commissioned because previous attempts to develop an NPSIB failed in part due to

<sup>36</sup> Brown, 2015.

divergent stakeholder views. The explicit role of the stakeholder group was to:

- *develop a draft National Policy Statement on Indigenous Biodiversity (NPSIB) and;*
- *make recommendations on supporting and complementary measures to address agreed issues and opportunities for biodiversity.*

An agreed draft NPSIB from the BCG presents a key opportunity to make progress, alongside assessing other possible options. The BCG's draft has already been significantly progressed by officials and is now referred to as the proposed NPSIB.

Within the proposed NPSIB option, the scope has been narrowed to focus on the terrestrial domain and aspects of wetlands on the basis that this was where the stakeholder group was able to find consensus and due to the range of other work underway in the freshwater and marine domains that will benefit biodiversity. The further work required to include freshwater and coastal marine biodiversity had undesirable timeframe implications. The conclusion was that coastal marine and freshwater biodiversity will be addressed through existing or new work programmes or through later amendments to the NPSIB. The NPSIB option focuses on all land tenures.

Wider biodiversity system issues are being addressed through the development of a new NZBS. This proposal links with other existing and proposed regulation and other work programmes and measures that form part of the biodiversity system.

### **Connections to other work programmes**

Other existing and proposed regulation, work programmes and measures that form part of the biodiversity system and relate to this proposal include:

Other national direction under the RMA:

- The NZCPS, for which extensive guidance is currently being released
- The NPSFM including current amendments and a new NES for freshwater management as part of the Essential Freshwater Package.
- The NESPF, which is currently undergoing implementation review
- The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG)
- The National Policy Statement on Electricity Transmission 2008 (NPSET)
- The National Environmental Standards for Electricity Transmission 2009 (NESET)
- The National Policy Statement on Urban Development Capacity 2016 (NPSUDC)
- The proposed National Policy Statement on Highly Productive Land (NPSHPL)
- The proposed National Policy Statement on Urban Development (NPSUD)

The proposed NPSIB has been developed to be implemented alongside these pieces of national direction. For instance, while the NPSREG promotes the benefits of renewable electricity generation, NPSs such as the NPSIB, NZCPS and NPSFM deal with the effects management necessary to protect specific values impacted through development and use. Where there is overlap between instruments, guidance and support from central government is essential to provide certainty at a local government level. We recognise that even with consistent, well-integrated national direction, competing environmental priorities will need to be resolved by councils in their RMA planning processes.

Other central government work programmes which have the potential to interact and synergise with the proposal include:

- climate change (Zero Carbon targets, ETS reform and Just Transitions work programme, renewable electricity targets)
- mining reforms (reform of Crown Minerals Act; no new mining on conservation land)
- land use support and incentives (Green Investment Fund, projects for Māori Land, Provincial Growth Fund, 1 Billion Trees programme)
- Kiwibuild and the provision of land and supply of aggregate for housing
- Biodiversity work programmes (Predator Free 2050, threatened species work, marine work programme)
- Resource Management Act reforms and comprehensive Resource Management System reforms.

## 2.5 What do stakeholders think?

### Stakeholders and their interests

The ongoing loss and management of our indigenous biodiversity is an issue for all New Zealanders and even gleans international interest. As such, there are a wide array of stakeholders. These include: regional and district councils, which both have responsibilities for biodiversity maintenance under the RMA; iwi as Treaty Partners and land owners; Crown agencies, in particular relevant Crown agencies - MFE, DOC, Land Information New Zealand (LINZ), Te Puni Kōkiri (TPK) and the Ministry for Primary Industries (MPI) - which have responsibilities for biodiversity management; Local Government New Zealand (LGNZ), on behalf of councils; land owners as they will be affected by the regulation of private land; and environmental non-government organisations (NGOs), industry and communities and the general public interested in looking after indigenous biodiversity.

### Stakeholder views on the problem definition

The need for national regulation, in particular the call for an NPS on indigenous biodiversity, has been articulated repeatedly since the *Biowhat?* report in 2000<sup>37</sup>. The problem definition set out in this proposal is broadly consistent with that set out in the RIS accompanying the 2011 proposed NPSIB.<sup>38</sup>

Public submissions on the 2011 proposed NPSIB indicated 55 percent of all submitters supported the need for an NPSIB.<sup>39</sup> The greatest level of support for an NPSIB came from NGOs and professional organisations while the bulk of opposition came from private landowners, business and industry. This reflects the fact that biodiversity loss is a public interest problem. Opposition to government regulation as per the 2011 proposed NPSIB summary of submissions included concerns about: the cost of protecting indigenous biodiversity on private (particularly productive) land; extended constraints on private property rights; lack of funding and financial compensation or incentives to support regulation; and economic impacts on agencies, industry (e.g. electricity generators) landowners and the private sector.

<sup>37</sup> Ministry for the Environment, 2000.

<sup>38</sup> Ministry for the Environment. 2011. Regulatory Impact Statement: improving the protection of indigenous biodiversity on land outside the public conservation estate. Wellington, New Zealand.

<sup>39</sup> Ministry for the Environment. 2011. Proposed National Policy Statement on Indigenous Biodiversity: Summary of submissions. Wellington, New Zealand.

The need for government regulation has been set out above (section 2.2). The need for government regulation (as well as non-regulatory support) to address the problem definition is further justified through the commitment of key stakeholders (BCG) to a collaborative process which resulted in a draft NPSIB and recommendations for system improvements and non-regulatory support, presented in October 2018<sup>40</sup>. The BCG, in its development of a draft NPSIB, engaged and received advice from central and local government, iwi, their individual membership bodies and technical experts. The BCG consisted of key stakeholders that had concerns with the previous 2011 proposed NPSIB as well as agencies that would be responsible for implementation of the NPSIB. The collaborative design process and emphasis on supporting non-regulatory methods mitigates much of the opposition that arose from the 2011 proposed NPSIB.

MFE and DOC officials undertook early engagement with councils and iwi and hapū on the BCG's draft NPSIB between December 2018 and March 2019. Early engagement showed councils generally support the need for an NPSIB. Councils have emphasised that the NPSIB is only one tool of many needed to address the ongoing indigenous biodiversity decline in New Zealand. They are equally interested and involved in the development of a new NZBS which is pitched at addressing biodiversity system issues. Councils desire to see the NPSIB delivered as part of a package of supporting measures, to assist implementation. These measures should include resourcing and funding assistance for councils and funding and incentives for landowners.

Regional council views on New Zealand's biodiversity challenge are set out in a regional council think piece.<sup>41</sup> The think piece outlines five key shifts necessary to enhance the ability for regional councils to make a more effective contribution to halting the decline in biodiversity. These are: 1) strong leadership and clearer lines of accountability, 2) building on what regional councils do best, 3) better decision-making through better information, 4) planning and delivering joined up action and 5) modern, fit for purpose frameworks. Regional councils were involved in the BCG process as active observers so have been privy to the development of a draft NPS. Their feedback on the proposed NPSIB is that it reflects key issues similar to the key shifts in their think piece.

The problem definition, objectives and criteria in this RIS were workshopped with relevant Crown agencies (MFE, DOC, LINZ, TPK, MPI) in January 2019. There was general agreement between agencies.

### **Māori views on the problem definition**

As Treaty partners, kaitiaki and landowners, the issue of biodiversity decline is of particular interest to Māori. This was communicated through the early engagement we did with iwi and hapū across the country on the BCG's draft NPSIB. We engaged with iwi, hapū in 20 hui across the country between December 2018 and March 2019. The need for mātauranga Māori and Te Tiriti o Waitangi/the Treaty of Waitangi to be appropriately considered in resource management decision making was repeatedly emphasised. Wai262 and the need for government regulation to reflect its recommendations was often raised. A key message was that iwi, hapū and whānau at place needed to be actively included at every level of the decision-making process. National regulation needs to allow for local priorities and

<sup>40</sup> Biodiversity Collaborative Group. 2018. Report of the Biodiversity Collaborative Group. Biodiversity (Land and Freshwater) Stakeholder Trust. Wellington, New Zealand.

<sup>41</sup> Willis, 2017.

knowledge to be applied. Resourcing and capacity building were noted as essential to supporting their role in resource management decision making. The iwi and hapū we engaged with all expressed a strong desire to see New Zealand's indigenous biodiversity restored. As landowners, they expressed differing aspirations for the use of land. The provisions within the draft NPSIB which recognise the under-development of Māori land due to historic and cultural reasons and the high proportion of Māori land in indigenous cover and therefore provide for flexibility from the management framework, were acknowledged and appreciated.

#### **Public consultation**

Public consultation on the proposed NPSIB is planned for late 2019 into early 2020. This draft RIS will accompany the discussion document and submitters will have a chance to comment on the problem definition.

## **Section 3: Options identification**

### **3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

We have developed the following criteria from the key problem identified in section 2.3: **RMA biodiversity provisions are unclear** and use these to assess the pros and cons of each option:

- 1. Clarity** - Roles, responsibilities and functions under the RMA are clarified, leading to better biodiversity management.
- 2. Consistency**: A 'minimum standard' for indigenous biodiversity maintenance, where more uniform protection will result in the best outcome for indigenous biodiversity.
- 3. Flexibility** - Provides for appropriate level of local flexibility in management approaches where this will result in the best outcome for indigenous biodiversity.
- 4. Implementable** - Able to be developed and implemented in a reasonable timeframe without placing undue costs on central government, councils, tangata whenua, landowners and other key stakeholders.
- 5. Acceptability** - consistent with community expectations and outcomes, consistent with tangata whenua outcomes and fulfils Crown Te Tiriti o Waitangi/the Treaty of Waitangi obligations.

#### **Linkages between criteria**

Criteria 2 and 3 are opposing. The option will need to achieve the right balance of consistency around minimum standards for biodiversity maintenance but flexibility in regional and local management approaches when this will result in better outcomes for indigenous biodiversity. Criteria 4 depends in part on criteria 5 because an option is easier to implement if it is accepted by key stakeholders and tangata whenua. Criteria 4 also depends on criteria 1-3 as successful implementation requires clear policy that includes a balance of mandatory and flexible management approaches.

### 3.1 What options are available to address the problem?

#### Overview

We have considered five options for addressing the key problem that the **provisions addressing biodiversity protection under the RMA are unclear** and therefore subject to different interpretation, application and monitoring by councils:

- **Option 1:** Guidance, funding and support for councils and landowners (preferred option alongside option 4)
- **Option 2:** Amend RMA to provide more direction on planning requirements relating to indigenous biodiversity
- **Option 3:** National Environmental Standards to require consistent approach to biodiversity provisions in the RMA
- **Option 4:** National Policy Statement similar to the Biodiversity Collaborative Group recommendation (preferred option alongside option 1)
- **Option 5:** National Policy Statement using habitat classification approach

Addressing the key problem will contribute to the long-term policy objective of reversing the decline of indigenous biodiversity in New Zealand.

#### Status quo

The status quo is described in section 2.2. It consists of current RMA provisions which exist as part of the wider biodiversity management system. This biodiversity system includes a wide array of regulation, instruments and other actions out of scope of this proposal. The NPSFM, the NZCPS and the NESPF are examples of existing regulation which have brought clarity to some aspects of biodiversity management under the RMA. The system also includes a wide array of other instruments such as non-statutory guidance (e.g. Quality Planning website), support, advice, advocacy and funding for biodiversity management (e.g. Community Conservation Fund, Natural Heritage Fund, Mātauranga Kura Taiao Fund, Community Environment Fund) as well as voluntary tools such as covenants (e.g. QEII National Trust and Ngā Whenua Rāhui); and existing council provisions and rules relating to indigenous biodiversity.

The status quo includes the rewrite of the NZBS which is due to be completed at the start of 2020. System improvements and non-regulatory measures recommended by the BCG (minus those earmarked as direct support alongside regulation) will be consulted on through the NZBS and may be adopted.

At this point, the trend under the status quo is that RMA biodiversity provisions will continue to be unclear resulting in continued litigation costs and effort (though this might reduce as case law and best practice continues to develop), continued confusion around roles and functions and lack of clarity for resource users, indigenous biodiversity being undervalued in decision making and inadequate regulatory protection for indigenous biodiversity resulting in biodiversity loss.

#### **Option 1: Guidance, funding and support for councils and landowners (preferred option alongside option 4)**

Central government could produce detailed guidance on how RMA biodiversity provisions (including section 6c, 30, 31, 6e, 7a, 8, 33 and 188) should be given effect to (or on the

NPSIB (option 4) if progressed). Definitions for ecological terms currently lacking in the RMA could also be defined in guidance disseminated to councils. If Government regulation is progressed, then guidance can assist with interpretation of this regulation.

Central government could review the resourcing of covenanting bodies to ensure they have enough resources to meet the demand for covenants and are able to undertake effective monitoring, reporting and where necessary, enforcement. Additional funding and expertise could also be made available to support private landowners in protecting, restoring and enhancing indigenous biodiversity. The DOC Community Fund currently has approximately \$4.6 million available a year for practical projects targeted at conserving NZs indigenous biodiversity, but it is highly oversubscribed, about 10 times over.

Central government could provide expertise to assist councils with implementing RMA biodiversity provisions or the proposed NPSIB (option 4) if progressed. Funding could also be made available to assist those councils struggling to meet their obligations for maintaining indigenous biodiversity under the RMA (and to help councils implement the proposed NPSIB (option 4) if progressed). Funding would have to be applied for but can come from the Government Budget and from the International Visitor Levy. A portion of funds from the latter has already been tentatively earmarked for implementation of the proposed NPSIB (option 4). We estimate at least \$1,77m - \$2.65m (2020-2050, DR 6%) would be needed for central government support and guidance alongside option 4. This is subject to revision following public consultation. There are currently no plans to provide this funding without an NPSIB.

This option would be easy to implement in the sense that it would not require a regulatory process. Incentives and support are necessary but not enough to drive change and address the issues listed above. They encourage landowners and councils to improve practice but do not provide minimum standards and national consistency.

Feedback through early engagement firmly supports implementation of this option alongside government regulation. The BCG, who were tasked with developing a draft NPSIB and recommending non-regulatory measures and system improvements, see non-regulatory support as critical alongside their draft NPSIB. While most of the BCG's recommendations will be progressed under the status quo scenario, as part of consultation on the new NZBS, officials have earmarked some of the BCG's recommendations as essential to implement alongside government regulation (specifically the proposed NPSIB). These measures consist of those described above – guidance, funding and support for councils and landowners.

### **Option 2: Amend RMA to provide more direction on planning requirements relating to indigenous biodiversity**

The RMA could be amended to define 'maintenance' and 'ecological significance' and provide more specific direction on planning requirements for maintaining indigenous biodiversity, such as requiring that councils apply baseline ecological criteria and identify sites using a nationally consistent method. Amendments could also specify the roles of regional councils versus district councils in more detail, including clarifying roles where responsibilities overlap. They could ensure Te Tiriti o Waitangi/the Treaty of Waitangi is given effect to holistically, not just for indigenous (terrestrial) biodiversity.

This option would provide clear unambiguous direction however it would be hard to implement as it is at odds with the existing RMA framework which generally sets out processes and principles rather than prescribing matters of technical detail. Legislative

change takes a long time and legislation cannot be easily amended to take account of new information (e.g. ecological context).

### **Option 3: National Environmental Standards to require consistent approach to biodiversity provisions in the RMA**

National Environmental Standards (NES) are regulations issued under section 43 of the RMA. A NES may include standards, methods or requirements. By operating effectively as plan rules, a NES can provide greater consistency and certainty in resource consent requirements nationally. A NES would prevail over plan rules, except where the NES expressly states plan rules can be more stringent or lenient.

A NES for indigenous biodiversity could provide greater certainty, consistency and clarity in the protection and management of indigenous biodiversity. For example, by:

- Setting nationally consistent requirements and methods to identify section 6(c) sites;
- Providing a nationally consistent set of resource consent requirements and conditions for proposed activities within section 6(c) sites; and
- Setting out requirements for monitoring indigenous biodiversity.

A benefit of a NES is that they can take effect immediately upon gazettal and can prevail over district and regional plan rules to provide increased certainty and consistency in implementation. This could see immediate improved outcomes for indigenous biodiversity, particularly where current practice and plan provisions are poor. However, transition provisions may be more realistic and achievable for councils to comply with. The upfront implementation costs of a NES for councils tend to be lower than for a National Policy Statement (NPS) as councils do not need to go through a Schedule 1 plan change process to amend their plans.

A NES can prescribe how councils must manage activities and resources and, as a stand-alone regulation, can be independently enforced through the enforcement provisions of the RMA. By directly removing a certain amount of decision-making discretion away from councils it can provide for greater certainty of outcome (particularly in relation to resource consents).

The Resource Legislation Amendment Act 2017 (RLAA) enabled NESs to provide flexibility at a regional and/or district level when this is more appropriate for good decision making. This, alongside the ability for a NES to specify that plan rules can be more stringent or lenient affords a NES for indigenous biodiversity scope for flexibility where it will result in the best outcomes. This scope for flexibility is recognisably limited, however, if the consistency and certainty benefits or the NES are to be achieved. Other limits and risks associated with a NES for indigenous biodiversity include:

- No clear guidance on the outcomes sought for New Zealand's indigenous biodiversity as a NES cannot include objectives or policies (although the NZBS could provide this to some extent in a broader context);
- Risk that a NES undermines existing plan rules established through case law that are more stringent, unless the NES allows for more stringent rules (which would then compromise consistency);
- Risk that the regulatory focus of a NES undermines the goodwill of landowners and existing relationships and initiatives relating to indigenous biodiversity that are

voluntary/non-regulatory in nature;

- Private compliance costs could be high as a NES can override existing use rights currently held under section 10 RMA and/or force a resource user to apply for consent within 6 months;
- The opportunity costs for landowners associated with nationwide regulatory protection of section 6(c) sites could be high and not always commensurate with the benefits of protecting these sites. A NES would limit local judgement in evaluating these costs and benefits;
- There are potentially high social costs to consider as a NES could be perceived by councils as a contradiction to the devolved approach to environmental management; and
- There are likely to be significant complexities, long timeframes and extensive costs to develop a NES that is fit-for-purpose with certainty it will not result in (potentially significant) unintended outcomes. This would result in further delay to the introduction of national intervention which poses further risk to, and loss of, New Zealand's indigenous biodiversity.

For these reasons, a NES for indigenous biodiversity is not considered the most appropriate option. The option has not been specifically consulted on, however, during early engagement with councils on the proposed NPSIB, the option of a NES to deal with a part of the problem definition (namely consistency around the identification of significant indigenous biodiversity (s 6(c) RMA) was raised. A viable option is for a NES to be developed alongside a NPS. Given RLAA enabled NPSs to now also include methods and requirements, a NPS can now provide a level of specificity on how objectives and policies are to be given effect to without the need of a separate NES. A NES could provide increased prescription in the form of rules, for instance for the protection of significant indigenous biodiversity, however this increased prescription risks limited local flexibility to respond to local ecological and social circumstances. The need for a NES to complement a NPS can be considered at a later stage, when reviewing implementation of a NPS.

#### **Option 4: Proposed National Policy Statement based on BCG recommendation (preferred option alongside option 1)**

A National Policy Statement (NPS) issued under sections 45-55 of the RMA set out objectives, policies, methods and other requirements which councils then must give effect to in their resource management plan provisions and give weight to when considering resource consents. Because NPSs focus on policy objectives and decision-making frameworks, rather than the content of the policy, provision or rules themselves, they allow councils some scope and flexibility in determining how they are going to achieve the policy objectives or work within the decision-making framework according to their local ecological context.

The proposed NPSIB clarifies RMA biodiversity provisions by providing clear direction on the outcomes sought for indigenous biodiversity and clear requirements for councils to achieve those outcomes. This includes setting limits and constraints on subdivision, use and development where appropriate and the methods councils must use to identify SNAs (section 6(c) sites). The proposed NPSIB includes a set of definitions for common ecological terms including 'ecological significance' which would reduce uncertainty, variation and litigation. Ecological significance is defined through a standard set of ecological criteria (representativeness, diversity and pattern, rarity and distinctiveness and ecological context) which align with good practice and existing guidance. The risk that these criteria may lead to

re-litigation of existing council criteria established through case law was investigated with the result that there is a high degree of consistency between the criteria proposed and those used by many councils. In defining ecological significance, the proposed NPSIB sets a clear minimum standard critical for indigenous biodiversity maintenance for those councils that have not defined, or inadequately defined ecological significance.

The proposed NPSIB further clarifies the RMA biodiversity maintenance function. 'Maintenance' is defined in an objective and supported through a policy framework which directs how adverse effects on indigenous biodiversity should be managed. This policy framework clarifies that protecting SNAs (sites under section 6(c) RMA) is only a part of the biodiversity maintenance function. Biodiversity management outside of SNAs and restoration and enhancement (e.g. through provisions requiring regional biodiversity strategies and restoration of depleted environments) is also part of 'maintenance'. This supports a consistent approach to biodiversity management where this is critical to reversing the ongoing loss of indigenous biodiversity. While the proposed NPSIB is detailed, management approaches, methods and rules are mostly left to the regional and local level. This flexible approach allows councils to respond to local pressures, priorities and ecological contexts when giving effect to the NPSIB. In this way the proposed NPSIB does not undermine existing relationships and initiatives relating to indigenous biodiversity.

The proposed NPSIB clarifies a range of other RMA provisions. It sets out how the effects of climate change on indigenous biodiversity should be considered in decision-making and includes direction around impact management (e.g. parameters around the use of biodiversity offsets). Regional and district council responsibilities under the RMA are also clarified in every policy and specific objectives and policies exist to clarify what is required to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi and provide for Mātauranga Māori while also providing flexibility to recognise the different tikanga, priorities and values of tangata whenua.

The approach to section 6(c) RMA is to direct SNAs, as per ecological significance criteria, to be scheduled in plans and mapped across all tenures. Scheduling and mapping SNAs is the most common and widely accepted approach to giving effect to section 6(c). By requiring SNA identification and mapping the proposed NPSIB creates certainty for landowners and councils. It would also support nationally consistent monitoring and reporting on the state of indigenous biodiversity and improve strategic oversight and the ability to manage indigenous biodiversity proactively. A key limitation of SNA identification and mapping is cost. The identification and mapping of SNAs requires field surveys to verify ecological value. These field surveys and the process of working with landowners is costly and time-consuming. The indicative Cost Benefit Analysis<sup>42</sup>, which focused on 6 case-study councils, found that costs per council range from an estimated \$795,000 - \$1,400,000 each (2020-2050, DR 6%). The cost is ongoing as the proposed NPSIB requires councils to regularly check for and schedule any new SNAs. Landowner goodwill and provision of access is also key.<sup>43</sup>

The proposed NPSIB provides a balance between flexibility and the need for clear direction around national minimum standards for indigenous biodiversity maintenance. A limitation of

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<sup>42</sup> Wyeth, J. and Hampson, N. 2019.

<sup>43</sup> Maseyk, F.J.F and Gerbeaux, P. 2015. Advances in the identification and assessment of ecologically significant habitats in two areas of contrasting biodiversity loss in New Zealand. *New Zealand Journal of Ecology*. 39(1): 116-127.

the proposed NPSIB is that it only focuses on terrestrial indigenous biodiversity and some aspects of wetlands. This is discussed in section 2.4. It means indigenous biodiversity management is heavily reliant on the proposed NPSIB being well integrated with other government regulation in the coastal marine and freshwater environments. This approach risks misalignment with the Te Ao Māori worldview that the environment is intrinsically linked, and that indigenous biodiversity should be managed in an integrated and holistic manner.

A key advantage of the proposed NPSIB is that it builds on the extensive work and consensus achieved by the BCG. The extensive work that has taken place also enables national direction to be in place in a relatively short timeframe while ensuring that the proposed NPSIB follows a robust policy process that meets statutory obligations for public consultation, feedback and refinement. This, alongside the fact that the proposed NPSIB addresses key gaps and inconsistencies in the management of indigenous biodiversity under the RMA and provides the right balance between flexibility and the need for clear direction makes this option the preferred option. Recognising the costs and effort that would be involved in implementing this option, the preferred approach is that this option is implemented alongside option 1.

#### **Option 5: National Policy Statement using habitat classification approach**

There are alternative approaches to giving effect to section 6(c) of the RMA. Horizons Regional Council has adopted a habitat classification approach in its *One Plan* which has been upheld by Environment Court as a way of giving effect to section 6(c) RMA. An alternative to the proposed NPSIB (option 4) would be an NPS which utilises the Horizons habitat classification approach.

Horizons uses a schedule of habitat types classified as either 'Rare', 'Threatened' or 'At Risk'. A higher level of protection is afforded to Rare or Threatened habitat types than to At Risk habitat types, though resource consent is required for any activity that has an adverse environmental effect on a scheduled area. Habitat types were identified using a combination of statistical predictive models, national research projects and expert opinion. The Operative Plan includes 39 habitat types, 17 classified as Rare, 15 as Threatened and 7 as At Risk.

In addition to the schedule of habitat types, the *One Plan* includes a set of significance criteria that provide the link to the section 6(c) requirements of the RMA. The *One Plan* uses these criteria in two ways:

1. The assessment of significance (done remotely, at a habitat-type level (Rare and Threatened habitat types automatically qualify as significant) and through field assessment at the site level (particularly for At Risk habitat types))
2. The identification of site values during the decision-making process for a resource consent application. Indigenous habitats classified as having no threat category (all habitat types) are assessed on a case by case basis. Where an activity may have an effect, these habitats are assessed using ecological significance criteria outlined in Policy 13-5 of the *One Plan*: representativeness, rarity and distinctiveness, and ecological context.

The Environment Court decision on the *One Plan* ([NZEnvC 182 (2012), Part 3) concluded that a schedule of habitat types rather than a list of SNAs provides enough certainty to support regulatory protection. The habitat classification approach potentially offers regulatory protection to a greater amount of ecologically significant habitat (Maseyk and Gerbeaux 2014). However, as the proposed NPSIB (option 4) sets a policy framework for indigenous biodiversity outside of SNAs this is not necessarily the case.

A key benefit of the habitat classification approach used by Horizons is that it can support regions and districts in setting priorities for restoration and protection (several councils already use habitat maps for this, e.g. Waikato and Auckland). Another key benefit is that it is cost effective as field inspections of ecological values are not required to the same degree that they are in the SNA identification and mapping approach outlined in option 4. The habitat classification approach also provides continued protection when the spatial extent of habitat changes over time. For the SNA identification and mapping approach (option 4), the identification and scheduling of new SNAs would require a plan change. If identified in a Regional Policy Statement however, indigenous biodiversity outside SNAs will still be managed through the mitigation hierarchy.

A key limitation of the habitat classification approach is that, without clear demarcation on maps showing where ecologically significant areas are, it is less clear to resource consent applicants what restrictions apply where (and restrictions will still apply). The habitat classification approach also focuses on rare and threatened habitats rather than representativeness (what is typical of the character of an ecological district). It tends to undervalue regenerating and successional habitats that are important for functioning and maintenance of indigenous biodiversity and other ecological significance criteria such as diversity and pattern are only marginally dealt with. To an extent these are assessed when a consent application comes in, but this is limited as many of the criteria can only be appropriately assessed in the context of the whole region.

While habitat classification has advantages, the SNA identification and mapping approach (as proposed in option 4) is the most widely used approach to giving effect to RMA section 6(c). It has the support of the Environmental Institute of Australia and New Zealand (EIANZ) and DOC. SNA identification and mapping provides greater certainty for landowners; allows councils to proactively manage adverse effects; supports better monitoring of the state and trend of indigenous biodiversity and already has the buy-in of a wide range of stakeholders (e.g. BCG).

### 3.3 What other options have been ruled out of scope, or not considered, and why?

**Planning standards** – ruled out of scope at this stage as they are a very new instrument (the first standards were released April 2019) and are currently just focused on regional and district plan structure and definitions. The intent is that they can include plan content so in future they could be considered in the option set.

## Section 4: Impact Analysis

	Status quo	Option1: Guidance and support (non-reg)	Option 2: RMA amendments	Option 3: NES	Option 4: Proposed NPSIB	Option 5: NPS 2
<b>Criteria 1: Clarity</b>	0	++ Would provide clear direction	+ Would provide clear direction at high level only as RMA doesn't prescribe technical matters	+ Would provide clear detailed direction on some aspects of problem definition through methods and rules	++ Would provide clear direction on all aspects of problem definition	++ Can provide clear direction on all aspects of problem definition
<b>Criteria 2: Consistency</b>	0	0 Consistency can only be encouraged not enforced	+ Supports consistency at a high level only as RMA doesn't prescribe technical matters. Lack of consistency risks poor outcomes.	++ Supports consistency through methods and rules	++ Supports consistency through detailed objectives and policies	++ Supports consistency through objectives and policies
<b>Criteria 3: Flexibility</b>	0	+ Flexibility inherent as management approaches non-mandatory. Too much flexibility risks poor outcomes for biodiversity	++ Flexible management possible because RMA can only provide high level direction.	- Providing for local flexibility possible but limited if also intending to provide for consistency	++ Provides flexibility in methods and rules and ability to adapt to local contexts	++ Provides flexibility in methods and rules and ability to adapt to local contexts
<b>Criteria 4: Implementable</b>	0	+ Has stakeholder and iwi and hapū support but would require	-- Not in keeping with level of detail in RMA. Legislative	- likely to be significant complexities, long timeframes and	- Potentially high costs for councils, iwi and hapū and	-- New approach for many. Significant cost and timeframes

		sourcing additional funding	change takes a long time	extensive costs to develop a NES that is fit-for-purpose with certainty it will not result in (potentially significant) unintended outcomes	resource users	implications in changing from the status quo
<b>Criteria 5: Acceptable</b>	<b>0</b>	- There is appetite and a need for regulation. This option would be expected by stakeholders and tangata whenua alongside regulation	+ Ensures Tiriti o Waitangi is given effect to holistically but can only provide high level direction so risks not meeting stakeholder expectations	- Prescriptive nature of an NES risks undermining goodwill of key stakeholders, existing relationships and biodiversity initiatives. Difficult to fulfil Te Tiriti o Waitangi/the Treaty of Waitangi obligations at this level of prescription	+ Supported by key stakeholders. Would give effect to Te Tiriti o Waitangi/the Treaty of Waitangi within scope. Domain constraint does not support Te āo Maori worldview	- New approach for many that would require significant change from the status quo. Not endorsed by key stakeholders. Can give effect to Te Tiriti o Waitangi
<b>Overall assessment</b>	<b>0</b> Status quo	+ Better than the status quo in relation to most criteria	+ Better than the status quo in relation to most criteria	<b>0</b> Overall about the same as the status quo	++ Much better than the status quo in relation to most criteria	+ Better than the status quo in relation to most criteria

**Key:**

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

# Section 5: Conclusions

## 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

### Preferred option

We recommend the proposed NPSIB (option 4) alongside guidance, funding and support for councils and landowners (option 1).

The proposed NPSIB would provide clarity, consistency and flexibility for regulated parties and for wider government. The proposed NPSIB clearly sets out what is required to maintain indigenous biodiversity under the RMA, and who is responsible for undertaking what function. The proposed NPSIB balances providing local flexibility in management approaches with clear direction on minimum standards where consistency in management is vital for indigenous biodiversity maintenance.

The proposed NPSIB is based on a draft NPSIB developed by the BCG. Given the BCG's commitment to developing an NPSIB to address lack of clarity of RMA indigenous biodiversity provisions, and the proposed NPSIB's consistency in intent with the BCG's draft NPSIB, the proposed NPSIB is considered the most acceptable option to progress. It is also likely the most acceptable approach because it incorporates the most common and widely accepted approach to giving effect to section 6(c).

Aside from option 1, it is likely to be the fastest option to progress, considering the extensive work that has already taken place.

We recognise that the proposed NPSIB will result in implementation costs that will significantly impact some parties. We consider it critical that this option is supported by option 1 – guidance, funding and support for councils and landowners. Feedback from stakeholders also firmly supports this non-regulatory option sitting alongside and complementing the regulatory approach.

We expect further feedback through public consultation in late 2019 and early 2020.

## 5.2 Summary table of costs and benefits of the preferred approach

The indicative cost-benefit analysis (CBA) was done using a case-study approach, so impacts are indicative only. It has not been possible to estimate monetised costs from the proposed NPSIB with any certainty based on the data available at this time. The table below provides a high-level summary of the anticipated costs and benefits directly and consequently anticipated to arise from the proposed NPSIB.

The full indicative CBA<sup>44</sup> will be available during public consultation. The CBA will be updated following that consultation.

<sup>44</sup> Wyeth and Hampson, 2019.

Affected parties (identify)	Comment: <i>nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks</i>	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action			
Regulated parties	<b>Community at large</b> - Opportunity costs for new subdivision, use and development on land containing SNAs where that SNA effectively precludes these activities in total or limits the extent of what could otherwise be achieved (over and above operative rules) as a consequent effect of the proposed NPSIB policies.	Medium-High	Medium
	<b>Community at large</b> - Potential opportunity costs for existing activities that would otherwise continue to degrade or reduce ecological integrity in SNAs.	Low	Low
	<b>Community at large</b> - Potential opportunity costs for alternative uses of land in areas to be restored/enhanced as a consequence of the proposed NPSIB due to targets set in regional policy statements to increase vegetation cover.	Low	Medium
	<b>Community at large</b> - Potential rates increase required to fund council activities required to implement the proposed NPSIB where existing funding is not adequate to cover costs.	Low-Medium	Low
	<b>Community at large</b> - Time, travel and resource costs for community participation in council activities that implement the proposed NPSIB.	Low	Low
	<b>Tangata whenua</b> - There will be a cost for tangata whenua to	High	High

resource engagement and consultation in the development of provisions and to be involved in indigenous biodiversity management, development of a regional biodiversity strategy, monitoring plans and decision-making. Includes the opportunity cost of time.		
<b>Tangata whenua</b> - Potential impacts on cultural wellbeing where there are opportunity costs for new subdivision, use and development on Māori land. Loss in ability to connect with customary land.	Medium	Medium
<b>Landowners<sup>45</sup></b> - Opportunity costs in terms of potential constraints on new subdivision, use and development on land containing SNAs where that SNA effectively precludes these activities in total or limits the extent of what could otherwise be achieved (over and above operative rules) as a consequent effect of the proposed NPSIB policies.	Medium-High	Medium
<b>Landowners</b> - Potential opportunity costs as constraints on existing activities that would otherwise continue to degrade or reduce ecological integrity in SNAs and that are no longer provided for by councils under the proposed NPSIB.	Low	Low
<b>Landowners</b> - Potentially greater costs for landowners to manage pest and animal incursions, and manage disruption of indigenous biodiversity by people, pets and livestock where required by regional and district council provisions to better protect SNAs and maintain indigenous	High	Low

<sup>45</sup> Including Māori landowners

	biodiversity.		
	<b>Landowners</b> - Time and other costs to landowners to provide/facilitate access to council staff/representatives to confirm SNA boundaries and description. Potential time and monetary costs to participate in plan changes that relate to contested SNAs.	Low	High
	<b>Landowners</b> - potential additional application costs for landowners associated with applications to clear regenerated indigenous biodiversity to maintain improved pasture because of the proposed NPSIB.	Low	Low
	<b>Industry</b> - Potential for increased costs to manage effects on indigenous biodiversity where the proposed NPSIB results in tighter constraints on existing activities and new use and development than the status quo.	Low	Low
	<b>Industry</b> - Opportunity costs for new subdivision, use and development on land containing SNAs where that SNA effectively precludes these activities in total or limits the extent of what could otherwise be achieved (over and above operative rules) as a consequent effect of the proposed NPSIB policies.	Medium-High	Medium
<b>Wider government</b>	<b>Territorial Authorities</b> – implementation costs for SNA mapping and plan change to develop provisions to manage effects on indigenous biodiversity and two-yearly plan changes to update SNAs.	\$795,000 - \$1,400,000 per council (2020-2050, DR 6%)	Low
	<b>Regional Councils</b> – implementation costs for plan change to develop provisions to manage effects on indigenous biodiversity, produce a regional biodiversity strategy and deliver a	\$1,086,000 - \$4,039,000 each (2020-2050, DR 6%)	Low

	comprehensive monitoring plan.		
	<b>Unitary Councils</b> – implementation costs for SNA mapping and plan change to develop provisions to manage effects on indigenous biodiversity, 2 yearly plan changes to update SNAs, produce a biodiversity strategy and deliver a comprehensive monitoring plan.	\$1,816,000 - \$5,275,000 each (2020-2050, DR 6%)	Low
	<b>All councils</b> - Costs for councils to work with tangata whenua to map taonga species and ecosystems (where approved), map/survey the likely presence of highly mobile fauna, identify locations and opportunities for restoration and enhancement.	High	Low
	<b>All councils</b> - Costs for councils to develop (where required) arrangements and processes to more effectively involve tangata whenua in indigenous biodiversity management and decision-making.	Low	High
	<b>All councils</b> - Potential additional consent processing costs for councils where the number of consents impacting on indigenous biodiversity increases. Includes applications to clear regenerated indigenous biodiversity to maintain improved pasture because of the proposed NPSIB.	Low	Low
	<b>Central Government</b> – Indicative NPSIB support and guidance costs	\$1,77m - \$2.65m (2020-2050, DR 6%)	Low
	<b>Central Government</b> - NPSIB monitoring, review and reporting costs.	High	Low
<b>Total Monetised Cost</b>		N/A – Cost ranges per unit calculated only at this stage where possible	
<b>Non-monetised</b>		Low - High	Low - High

costs			
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Expected benefits of proposed approach, compared to taking no action			
Regulated parties	<p><b>Community at large</b> - The current state of New Zealand’s terrestrial indigenous biodiversity (and the ecosystem services that provides) is maintained (future loss and decline is avoided) and enhanced for current and future generations, including the state of species populations and occupancy, indigenous character, ecosystem representation, ecosystem connectivity, buffering, resilience and adaptability as a consequent effect of improved management and decision making, including consideration of cumulative effects.</p>	High	High
	<p><b>Community at large</b> - The current and future community at large, and local communities can continue to access and experience indigenous biodiversity (to the extent that this resource is not diminishing over time). Recreational, educational, scientific, historical, amenity, landscape and natural character values associated with areas of indigenous biodiversity are maintained (and potentially enhanced).</p>	High	High
	<p><b>Community at large</b> - Greater evidence and understanding (awareness) of the status of indigenous biodiversity (in aggregate and in specific areas of New Zealand) as a result of regional and district council monitoring requirements and the sharing of this information. Will support more targeted research, investment and restoration.</p>	High	High
	<p><b>Community at large</b> - Greater certainty for landowners of areas identified for protection, enhancement, restoration and the actions being undertaken regarding</p>	Low	High

	those areas and the methods available.		
	<b>Tangata whenua</b> - The concepts of Te Ao Māori, matauranga Māori and tikanga Māori are better incorporated into indigenous biodiversity management and decision-making.	High	Medium
	<b>Tangata whenua</b> - The connection between nature and cultural wellbeing is maintained. The mauri of the land is enhanced and protected.	High	Medium
	<b>Tangata whenua</b> - Relationships and partnerships between tangata whenua and councils are strengthened through clearer guidance on roles.	Medium	Medium
	<b>Tangata whenua</b> - The cultural and economic benefits associated with the development of Māori land are recognised and provided for.	Medium	Medium
	<b>Landowners</b> - Greater certainty for landowners on the location of SNAs, taonga, highly mobile fauna, threatened or at-risk species and degraded and depleted environments, as well as what effects must be avoided and managed in and out of SNAs.	Low	High
	<b>Landowners</b> - The impacts of activities, including subdivision, use and development, on indigenous biodiversity are better understood. Greater stewardship/kaitiaki of natural resources.	Medium	Low
	<b>Landowners</b> - A share of the wider benefits to the community of enhanced indigenous biodiversity, including a greater than per capita share of location-specific benefits accruing to landholdings.	High	High
	<b>Landowners</b> - Greater certainty about potential for new use, development and subdivision associated with locationally	Medium	Medium

	constrained Māori land as well as development of dwellings where there is no alternative house site		
	<b>Landowners</b> - Existing activities will not be adversely affected by provisions that manage indigenous biodiversity as a consequence of the proposed NPSIB if they are no greater in scale, character and intensity and will not reduce or degrade the ecological integrity of an SNA and are provided for by councils. This is in effect consent to continue activities which in the past may have adversely affected indigenous biodiversity, provided no additional adverse effects arise.	Low	Low
	<b>Industry</b> - Greater certainty for farmers, forestry owners, mining operators and national infrastructure providers on the location of SNAs, taonga, highly mobile fauna, threatened or at-risk species and degraded and depleted environments, as well as what effects must be avoided in and out of SNAs. Includes greater certainty for those parties that operate over multiple regions (savings in advocacy costs).	Low	High
	<b>Industry</b> - Greater certainty about potential for new use, development and subdivision associated with locationally constrained national infrastructure and mineral extraction	Medium	High
	<b>Industry</b> - Existing activities will not be adversely affected by provisions that manage indigenous biodiversity as a consequence of the proposed NPSIB if they are no greater in scale, character and intensity and will not reduce or degrade the ecological integrity of an SNA and are provided for by councils. This is in effect consent to continue activities which in the past may have adversely affected	Low	Low

	indigenous biodiversity, provided no additional adverse effects arise.		
	<b>Industry</b> - Potential increases in the tourism value of New Zealand's natural areas as a consequence of an enhanced state of the country's indigenous biodiversity, and/or, avoided loss of tourism value as a result of maintaining current levels of indigenous biodiversity. Arises through better local and aggregate outcomes.	Medium	Medium
	<b>NGOs</b> - Greater certainty for NGOs of areas identified for protection, enhancement, restoration and the actions being undertaken regarding those areas and the methods available. Will allow greater coordination of operations and more effective prioritisation.	Low	High
	<b>NGOs</b> - Greater certainty of progress being made through monitoring reports, including the positive collective impact (or not) of their actions and effectiveness.	High	High
<b>Wider government</b>	<b>All councils</b> - Greater certainty on the location and attributes of SNAs. The complexity and sensitivity of identifying SNAs is reduced through clear policy direction to ignore tenure and property boundaries.	High	High
	<b>All councils</b> - Greater consistency and efficiency in how councils manage indigenous biodiversity under the RMA, including a clearer understanding of the roles of district and regional councils. Reduced litigation costs for councils in plan making and resource consents over time.	High	Medium
	<b>All councils</b> - Better (and more integrated) decision making through clear policy guidance on what adverse effects on indigenous biodiversity are to be considered. Greater attention/detail provided	High	Medium

	that is specific to indigenous biodiversity in Assessments of Environmental Effects.		
	<b>All councils</b> - Relationships and partnerships between councils, tangata whenua and landowners are potentially strengthened.	Medium	Medium
	<b>Central government</b> - Greater consistency in the way that indigenous biodiversity is managed across New Zealand through resource management systems and processes. Management of indigenous biodiversity is brought “up to date” in terms of current research and best practice. Improved integrated management outcomes (consistency and linkages between planning instruments).	High	High
	<b>Central government</b> - Greater evidence and understanding of the status of indigenous biodiversity (in aggregate and in specific areas of New Zealand) as a result of regional and district council monitoring requirements and the sharing of this information with central government, as well as Ministry for the Environment’s own information gathering and monitoring. Will lead to more effective and efficient national direction and investment as a consequence of the proposed NPSIB.	High	High
<b>Total Monetised Benefit</b>		Monetisation not possible at this stage.	N/A
<b>Non-monetised benefits</b>		Low - High	Low - High

### 5.3 What other impacts is this approach likely to have?

#### **Significance of costs and benefits<sup>46</sup>**

Overall, the environmental benefits of the proposed NPSIB will be widespread and will be felt by current and future generations. The costs are primarily associated with implementing a more spatially explicit and stringent planning framework to protect SNAs and maintain indigenous biodiversity. While these costs are potentially significant for some councils, they are mostly faced in the short term and it is expected that the ongoing implementation costs of the NPSIB will reduce substantially over time. There may be some opportunity costs to a small portion of landowners and developers and, in some cases, the NPSIB policies to “avoid” specific adverse effects may constrain or prevent subdivision, use and development. Those costs must be balanced against the wider public good delivered by the aggregate effects of protecting and restoring indigenous biodiversity, particularly on private land where the greatest pressures and losses have occurred.

#### **Risks and uncertainties<sup>47</sup>**

The indicative cost-benefit analysis (CBA) was done using a case-study approach, so impacts are indicative only. It has not been possible to estimate monetised costs from the proposed NPSIB with any certainty based on the data available at this time. As such, the CBA reports indicative ranges of costs for different affected parties (informed by the data collected from the case study councils) and provides a spatial analysis of how SNA provisions in the NPSIB may impact different land uses and activities. The net benefits of the NPSIB have not been monetised. As such, the indicative CBA for the NPSIB does not present a benefit-cost ratio at this stage.

A key finding of the indicative CBA is that there is a high level of variability in how the NPSIB will impact each council. Not only is the type, scale, geography and tenure of indigenous biodiversity highly varied throughout New Zealand, but the extent to which councils already provide for indigenous biodiversity protection in district plans and regional policy statements is also highly varied. This presents challenges for estimating costs for any one council, and in aggregate across New Zealand. Hence, extrapolating costs and benefits to the whole country has not been done in the indicative CBA but may be done in a revised CBA post consultation once more information and data has been collected.

There is uncertainty at present around what level of guidance and support central government will provide to Councils to help implement the NPSIB. Estimated guidance costs have been included within central governments implementation cost estimates above. Strong guidance and support from central government will be needed to support the implementation of the NPSIB given that some of the requirements will be new for councils, some policies (such as those around climate change) are more complex, and the capacity of councils and tangata whenua to effectively implement the NPSIB requirements (e.g. map SNAs) is highly varied. This is likely to require a comprehensive implementation programme from central government.

The proposed NPSIB requires that councils be specific about identifying locations for restoration and enhancement, as well as setting targets for restoration in Regional

<sup>46</sup> Wyeth and Hampson, 2019.

<sup>47</sup> Wyeth and Hampson, 2019.

Biodiversity Strategies. It is uncertain yet if there is any expectation of additional funding provided by councils to help realise these targets. There are costs and benefits associated with additional funding for restoration projects which are not summarised here but are identified in the detailed CBA.

#### **5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?**

The preferred options in this RIS are compatible with the Government's 'Expectations for the design of regulatory systems'. While option 4 will result in potentially significant implementation costs for some councils, these costs are primarily short-term and will reduce substantially over time. There will be opportunity costs for some landowners and developers with SNAs on their properties. However, these are balanced against the wider public and environmental benefit of maintaining biodiversity. Option 1 will assist in reducing identified costs on councils and regulated parties and will support timely and effective implementation.

# Section 6: Implementation and operation

## 6.1 How will the new arrangements work in practice?

### Implementation of an NPS plus supporting non-regulatory measures (option 4 + option 1)

The proposed NPSIB (option 4) will need to be given effect to by councils through their resource management plan provisions and given weight to by councils when considering resource consents. The proposed NPSIB contains transition provisions, to ease implementation. Implementation timeframes are either specified in the proposed NPSIB or are as soon as practicable, within eight years.

Land holding Crown agencies – DOC, LINZ, NZTA and NZDF – might have responsibility in identifying SNAs on public and agency owned land. This is being resolved between agencies and in conversation with councils at the same time as public consultation on the rest of the policy package. All interested stakeholders, community and iwi and hapū will be involved in the development of regional biodiversity strategies and in indigenous biodiversity conservation work resulting from the proposed NPSIB.

The supporting non-regulatory measures (option 1) will need to be developed by central government, following final policy approvals after public consultation. Public consultation will inform exactly what non-regulatory support is required. As a resource management tool, the proposed NPSIB will be administered by MFE. MFE is responsible for monitoring and supporting the implementation of the proposed NPSIB and reviewing the effectiveness of national direction under the RMA.

Feedback on the substance and implementation requirements of the combined option will be sought through public consultation in late 2019 and early 2020.

## 6.2 What are the implementation risks?

### Implementation risks and how risks will be mitigated

#### *Drafting and timeframes*

The proposed NPSIB includes specific timeframes for district councils to identify and map SNAs and for the collaborative development of regional biodiversity strategies. Terms such as ‘implemented’ and ‘substantial conformance’ are used but are not defined. There is a risk that this will lead to inadequate compliance with the proposed NPSIB. This risk will be mitigated by defining these terms in guidance alongside the proposed NPSIB and by setting out a process for councils to work through to demonstrate substantive compliance. This approach will be tested through the public consultation process.

The proposed NPSIB sets out a process for identifying SNAs in which councils must work closely with landowners. Doing this well will take time and effort and will rely on positive relationships with landowners. The proposed NPSIB requires district councils to identify and map SNAs within five years of the NPSIB coming into force. Councils have told us that, depending on how complete their current SNA schedules are and how well current

schedules conform with the proposed NPSIB, this could take up to 10 years in some cases. There is a risk that some councils may undertake a substandard process if not granted enough time or support. To mitigate this, we have set out an alternative staged implementation option in the discussion document. This option places different timeframe requirements on councils depending on their starting point. Regional councils have indicated support for this staged implementation approach. We will seek further feedback on this option through public consultation.

### ***Inclusion of restoration and enhancement***

Regional councils provided joined-up feedback on policy directions in the proposed NPSIB during early engagement. In their feedback regional councils expressed concern with the inclusion of restoration and enhancement as well as protection. There is a risk that by including restoration and enhancement, the proposed NPSIB expects too much of councils and that this may affect timeframes for compliance with the NPSIB. This includes the development of a regional biodiversity strategy. Iwi, hapū and councils may be so focused on other requirements in the NPSIB (namely SNA identification) in the first few years that they will have trouble engaging meaningfully in the development of a strategy. Regional councils acknowledge that restoration can be appropriate as protection, but that protection should be prioritised in the NPSIB. As restoration and enhancement fall under the obligation on councils to maintain indigenous biodiversity under the RMA, the approach to managing this risk is to ask for feedback during public consultation including what resources would assist in ensuring all aspects of the NPSIB are able to be implemented.

### ***Working with tangata whenua and incorporating mātauranga***

Another part of the proposed NPSIB that we recognise as an implementation risk is the emphasis on councils to work together with tangata whenua and incorporate mātauranga Māori into plans, monitoring and decision-making. This may place requirements, particularly on local iwi and hapū, that they don't have the capacity to meet (this issue was raised in hui).

### ***Monitoring***

Monitoring is another aspect of the proposed NPSIB that may be challenging for councils to implement. While monitoring the state of the environment is part of a council's responsibilities under the RMA, the extent to which this function is currently fulfilled is highly variable. The NPSIB monitoring policy potentially represents a shift in current practice and councils will likely need support. It is possible that this policy might be viewed as jumping the gun as biodiversity monitoring roles and methods are a whole of system issue that will be addressed through the NZBS.

### ***Highly mobile fauna***

Another part of the proposed NPSIB potentially challenging for councils to implement is the highly mobile fauna policy. While consistent with council responsibilities set under the RMA, it is perceived by councils as a shift in current practice for species protection.

Our mitigation approach for all of the above is to ask for feedback through public consultation, including what resources and support are essential (as part of option 1) to ensure compliance with these policy areas.

### ***Non-regulatory support***

Councils, iwi and hapū, during early engagement, all noted non-regulatory implementation

support as key to ensuring the proposed NPSIB is implemented successfully. This support would need to include guidance to support effective implementation of policies (noted by councils as a 'must have'). Funding support was also regularly called for by both iwi and hapū and councils, particularly to support SNA identification and to support landowners with SNA maintenance costs. The BCG suggested a contestable fund to support councils with a large land area and low rating base. Provision of technical expertise, improved monitoring, information and knowledge are all other suggestions to support implementation that have come out of early engagement. The discussion document will include high level detail of non-regulatory supporting measures and will seek views on what non-regulatory support is essential to support successful implementation of the NPSIB.

### ***Capacity and capability***

Successful implementation of the NPSIB will be determined by the capacity, capability and willingness of councils, iwi and hapū and others to play their roles. Part of this is ensuring collective buy-in to the policy. Extensive early engagement has been critical in assisting with this. Ensuring the proposed NPSIB aligns with the BCG's policy intent and the BCG is kept onboard has also been key. Capacity, capability and willingness will be influenced by the provision of non-regulatory support and by direction coming out of the review of the NZBS. The NZBS process has for instance identified system roles and responsibilities as something that needs immediate review. We have therefore not indicated a change to council roles in the proposed NPSIB from the general current practice but may need to review this after the NZBS has been developed. The NZBS has identified further system improvements that would also assist with implementation of the NPSIB. The NZBS is on a faster timeline than the proposed NPSIB and will thus set the context for the NPSIB. This context should assist with willingness and capacity to implement the NPSIB.

### ***National direction integration***

There is an increasing amount of RMA national direction in play, and in development, now. Councils might be at capacity to effectively engage with and implement the whole suite. Again, funding and other non-regulatory support is key to ensuring regional and local rate payers don't front the burden of funding additional capacity. Another risk is that these policy instruments do not integrate as well as needed, leading to duplications or gaps. This could make implementation difficult for councils. There has been substantive effort in drafting the proposed NPSIB, to assess interactions with other national direction instruments and resolve any risks. This has been communicated in the discussion document and we will continue to work across departments to address this in terms of policy integration and implementation. A specific focus of this, given the terrestrial focus of the proposed NPSIB, is integration with coastal marine and freshwater related national direction and work programmes.

### ***Political decision-making***

The political nature of local government may present a risk. Funding and resource is committed (or not) based on political decision-making with community input. If councils determine that they have other priorities, it may not be implemented fully, or lack sufficient resources required to implement it effectively. This is being addressed through the NZBS review which is looking at the effectiveness of the biodiversity system. The NZBS and NPSIB both will raise the profile of indigenous biodiversity in decision-making which should assist with giving it political visibility at a local government level.

***Non-compliance***

Non-compliance with the proposed NPSIB is a significant risk. Well-designed, tested policy, that has collective buy-in and sufficient non-regulatory support will help mitigate this risk. Non-compliance can be addressed through enforcement mechanisms in the RMA. Government is currently undergoing a wider work programme on compliance, monitoring and enforcement as this is a wider system issue.

***Gold-rush***

There is a risk that the proposed NPSIB will lead to a 'gold-rush' where indigenous biodiversity is adversely impacted as a result of stronger protections in the pipeline. This risk may be more severe in regions that currently don't have comprehensive biodiversity protection provisions in their council plans. This risk will be managed through careful policy drafting, testing and a well-drafted, well-executed stakeholder engagement and communications plan.

**Implementation support and success of the NPSIB**

If the non-regulatory support set out in option 1 does not accompany the proposed NPSIB, this would limit effective implementation of the NPSIB. An NPSIB however would still be the preferred option to address the problem definition there would just be consequences in terms of timely and effective implementation. Non-regulatory support is essential to ensuring the policy is appropriately interpreted and to confirming widespread buy-in. It would be essential alongside any option for government regulation. Implementation support is recognised as good practice for any RMA national direction, so some form of non-regulatory support is guaranteed. Funding support will have to go through a political approval process. We can apply for funding to assist with implementation of the proposed NPSIB from the Government Budget and from the International Visitor Levy. A portion of funds from the latter has already been tentatively earmarked for implementation of the proposed NPSIB.

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

### Monitoring the success of the NPSIB

The proposed NPSIB includes two monitoring policies that were added by officials when reviewing and refining the BCG’s draft NPSIB. These consist of one policy on regional council led monitoring and another policy on MFE monitoring and review of effectiveness.

The regional council led monitoring policy sets out that regional councils shall work together with district councils, relevant agencies and tangata whenua to develop a monitoring plan that monitors key aspects of the proposed NPSIB. Mātauranga Māori and tikanga Māori monitoring methods should be considered if possible where agreed by tangata whenua. The policy is deliberately high level and does not set out monitoring methods or timeframes. This is because under the NZBS a national monitoring framework will be developed and several initiatives to develop a set of achievable national indicators are already in the pipeline. The proposed NPSIB points to these developments and notes that as these parameters are developed so too will councils be required to use them as part of their monitoring frameworks.

The MFE monitoring and review of effectiveness policy sets out requirements for MFE when reviewing the effectiveness of the proposed NPSIB. These requirements are to ensure the right information is collected and reported on, using a robust process, to establish national indigenous biodiversity trends, issues and outcomes. *Environment Aotearoa 2019*<sup>48</sup> is a good source of national evidence on the state and trend of indigenous biodiversity (though it does not provide the complete picture). The policy also sets out that the NPSIB is to be reviewed eight years after it is gazetted.

In terms of compliance and enforcement, data on implementation and operational issues, including enforcement, is already collected at a local level by council compliance teams and to some degree at a national level by DOC and MFE. A consistent and robust nation-wide approach is needed to support national reporting.

## 7.2 When and how will the new arrangements be reviewed?

The proposed NPSIB requires that MFE review the effectiveness of the NPSIB eight years after it is gazetted. This requirement will be consulted on.

<sup>48</sup> Ministry for the Environment and Stats NZ, 2019.