

National Environmental Standards for Freshwater

# Amendments to intensive winter grazing regulations

Section 32 report



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

Ministry for Primary Industries  
Manatū Ahu Matua



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

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# Glossary

Term	Definition
FW-FP	Freshwater farm plan
IWG	Intensive winter grazing
MfE	Ministry for the Environment
MPI	Ministry for Primary Industries
NES	National Environmental Standard
NES-F	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NOF	National Objectives Framework
NPS	National Policy Statement
NPS-FM 2020	National Policy Statement for Freshwater Management 2020
RIA	Regulatory impact assessment (also referred to as regulatory impact statement)
RIS	Regulatory impact statement
RMA	Resource Management Act 1991
Taonga*	A treasured item. It can be tangible or intangible
Te Mana o Te Wai*	Fundamental concept of the NPS-FM as defined in clause 1.3 of the NPS-FM 2020

\* Refer to the RMA and NPS-FM 2020 in the first instance for interpretation of terms.

# Executive summary

The Minister for the Environment has proposed amendments to the [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020](#) (NES-F) to address stakeholder feedback on intensive winter grazing (IWG) regulations 26 and 27.

The proposed amendments have been recommended following analysis undertaken and published by the Ministry for the Environment in 2021, reports from advisory groups and panels, and submissions received during the 2021 consultation period.

The proposed amendments address concerns from stakeholders identified through ongoing implementation of these regulations. They are designed to make complying with the IWG regulations more practical, while still ensuring the environmental effects of the activity are managed. Once available, the freshwater farm plan (FW-FP) pathway will enable a tailor-made approach to IWG activities, while the resource consent process will control activities that are unable to comply with the default conditions or obtain a FW-FP.

The proposed amendments will defer regulations 26 and 27 until 1 November 2022. The deferral is being made in recognition that farming decisions have already been made for the 2022 winter season and therefore allows farmers time to prepare to comply with the regulations before the 2023 winter season (which begins on 1 May 2023).

This section 32 report provides an evaluation of the proposed amendments to the intensive winter grazing regulations in accordance with the Resource Management Act 1991 (RMA). It should be read alongside the [2020 section 32 report](#), which provides a full evaluation of all the NES-F intensive winter grazing regulations and the higher-level freshwater objective and policy framework in the [National Policy Statement for Freshwater Management 2020](#) (NPS-FM 2020).

# Introduction

Intensive winter grazing (IWG) is a farming practice where livestock (cattle, sheep, and deer) are confined over winter to outdoor feeding areas planted with annual forage crops (eg, swedes, kale and fodder beet).

Annual forage crops are a part of some pastoral farm production systems. They provide feed when there is no or low pasture growth and contribute to pasture renewal rotations for improved production. However, it is widely acknowledged that, if done poorly or too extensively, IWG can have serious negative effects on both animal welfare and the environment, particularly freshwater and estuary health.

Due to the intensive nature of this grazing practice, which strips the protective vegetative cover from the land, it can result in the increased discharge of nutrients, sediments and microbial pathogens into surface water and groundwater. In some locations, and with good practice, these impacts can be reduced. Carried out too extensively, on heavy soils and steep slopes with poor practices, more extreme impacts occur.

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) regulate activities such as IWG, that pose a high risk to freshwater. The NES-F IWG regulations were due to come into effect on 1 May 2021. Following stakeholder feedback on the practical challenges associated with meeting and implementing the new requirements, implementation of the IWG regulations was deferred to 1 May 2022. That deferral provided time for further improvement in IWG practices, increased monitoring and compliance, and consideration of amendments to address the implementation issues.

The amendments now proposed to address the IWG implementation issues raised are the subject of this report, prepared under section 32 of the Resource Management Act 1991 (RMA). Prior to finalising these proposed amendments, the Ministry for the Environment (MfE) and the Ministry for Primary Industries (MPI) sought feedback through public consultation on the [managing intensive winter grazing discussion document](#). 85 submissions were received during the 26 August 2021 to 7 October 2021 consultation period.

The scope of the discussion document, submissions and the proposed amendments to the NES-F includes:

- total area
- slope threshold
- pugging
- buffer zones from waterways, specifically drains
- resowing
- critical source areas
- definitions
- commencement date for regulations 26 and 27 coming into force.

This section 32 report considers the proposed amendments to regulations 26 and 27 of the NES-F.

## Structure of the report

This report provides an overview of the proposed amendments to the IWG regulations, the statutory context for amending a national environmental standard and the requirements for preparing and publishing evaluation reports for the proposals. It also evaluates the efficiency and effectiveness of the proposed amendments to the IWG regulations.

This report has been prepared alongside the drafting of the proposed amendments being finalised. To the extent possible, this report reflects the most recent drafting of the proposed amendments to the regulations. There may be small differences between drafting described in this report and the final drafting. However, the conclusions in this report are consistent with the final drafting of the regulations.

## Reading this evaluation report

The [Overview](#) and [Statutory and policy context](#) sections are largely for the benefit of readers who are not familiar with the background and requirements of evaluations prepared under section 32 of the RMA.

The assessment of proposed amendments begins in the [Evaluation of the proposed amendments](#) section.



# Overview

The NES-F regulations came into force in 2020 alongside the new [National Policy Statement for Freshwater Management 2020 \(NPS-FM 2020\)](#). At the same time MfE published a [regulatory impact assessment \(RIA\)](#) and a [2020 section 32 report](#) that evaluated those two freshwater legislative instruments. The 2020 section 32 report provides a comprehensive evaluation of the freshwater objective, policies, and regulations. Therefore, that RIA and section 32 report should be read in conjunction with this report to provide the freshwater provisions framework for the IWG regulations and the context for the proposed amendments.

This report does not re-evaluate each of the IWG regulations but focuses on the scope of amendments made to the specific default conditions contained within the regulations (Regulation 26 (4)).

Reference should also be made to the [Regulatory Impact Statement: Intensive Winter Grazing \(RIS\)](#) that assessed the proposed amendments to the NES-F. The RIS contains a detailed analysis of options and the costs and benefits of the proposed amendments to the NES-F.

## Purpose of this report

In 2021, the Minister for the Environment proposed changes to the NES-F IWG regulations under section 46A of the RMA. This report provides an evaluation of the proposed amendments to the NES-F IWG regulations in accordance with section 32 of the RMA.

Section 32 requires any person developing or amending a policy or regulatory instrument under the RMA to carry out an evaluation of the appropriateness of the proposal in achieving the purpose of the RMA. The evaluation examines the appropriateness of the proposal in two ways:

- the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA<sup>1</sup>
- whether the provisions in the proposal are the most appropriate way to achieve the objectives.<sup>2</sup> The provisions are the specific policies and methods that implement, or give effect to, the objectives of the proposal.

The evaluation must clearly identify the best practicable options for giving effect to the proposed objectives and provide an assessment of the efficiency and effectiveness of each of the proposed provisions. This includes consideration of:

- the risk of acting or not acting; and if there is uncertain or insufficient information; and
- the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including opportunities for, or effects on, economic growth and employment.

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<sup>1</sup> Section 32(1)(a) of the RMA - noting that in this case there is no evaluation of objectives included in this report as there are no changes proposed to any objectives.

<sup>2</sup> Section 32(1)(b) of the RMA.

Specifically, this section 32 report provides:

- an evaluation of whether the proposed amendments to the NES-F IWG regulations are the most appropriate way to achieve the objective of these amendments;
- a summary of the reasons for deciding on the proposed amendments to NES-F regulations; and
- an assessment of benefits and costs of the effects that are anticipated from the proposed amendments to the NES-F.

## Scale and significance of the proposal

Section 32(1)(c) of the RMA states that the evaluation must contain a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the proposed amendments to the IWG regulations.

The proposed amendments to the existing NES-F regulations are technical amendments related to IWG only. This report should be read in conjunction with the [2020 section 32 report](#) on the NPS-FM 2020 and NES-F. This report provides the rationale for the proposed amendments to the NES-F and evaluates the likely impacts, benefits, and costs of the proposals. It draws on the available relevant policy papers, reports, submission feedback and supporting evidence (refer to [Evaluation of the proposed amendments](#)).

## Overview of the proposed amendments

Initial proposals to amend the IWG regulations were developed based on stakeholder feedback about implementation issues. These were set out in the discussion document, and the subject of public consultation. Analysis of the submissions received then resulted in revised amendments. These were the subject of an exposure draft process, aimed at testing the specific drafting to ensure the policy objectives were met and there were no unintended consequences. This is all set out in the [Report and Recommendations on intensive winter grazing amendments](#). Final proposed amendments are set out here in Table 1.

**Table 1: Proposed amendments**

Default condition	Recommendations
Area (reg 26(4)(a))	<p>Make no change: retain the area limit as 50 hectares or 10 per cent of the farm, whichever is greater. <u>(Preferred)</u></p> <p>Preferred option because:</p> <ul style="list-style-type: none"> <li>• managing extent is an important tool for managing adverse effects</li> <li>• of the ability to increase the area beyond the area limit, subject to a resource consent or FW-FP conditions</li> <li>• it will be clarified that the area to be calculated is only the area in IWG.</li> </ul> <p><b>AND</b></p> <p>Develop clear guidance material to clarify how the total area is calculated (ie, the total area used for IWG (cultivated and grazed) in that year).</p>
Slope (reg 26(4)(b))	<p>Amend to measure slope as a <i>maximum</i> threshold (rather than measuring as <i>mean slope at the paddock scale</i>), and clarify that this slope threshold only applies to the area of land being used for IWG (ie, cultivated and grazed).</p> <p><b>AND</b></p>

Default condition	Recommendations
	<p>Specify that slope is measured as the slope across any 20-metre distance.</p> <p><b>AND</b></p> <p>Retain the slope threshold of 10 degrees.</p>
<p>Pugging (reg 26(4)(c))</p>	<p>Remove the pugging condition prescribing set restrictions on depth and area, and instead manage pugging through a stand-alone duty that requires farmers to take all reasonably practicable steps to minimise the effects on freshwater of any pugging that occurs on that land; and make any consequential amendments required to ensure this works together with the FW-FP pathway.</p> <p><b>AND</b></p> <p>Develop clear guidance material with relevant stakeholders to ensure effective implementation of the pugging stand-alone duty and ensure farmers and councils have a shared understanding of what practicable steps are.</p>
<p>Buffer zones and subsurface drains (reg 26(4)(d))</p>	<p>Amend the definition of ‘drains’ to exclude subsurface drains in relation to the IWG regulations.</p> <p><b>AND</b></p> <p>Note that we also recommend excluding subsurface drains from the definition of ‘critical source areas’. (See Critical source areas.)</p>
<p>Resow (reg 26(4)(e))</p>	<p>Remove the resow condition requiring farmers to resow by a prescribed date, and instead manage replanting through a stand-alone duty that requires farmers to ensure vegetation is established as ground cover over the whole area of that land (used for IWG) as soon as practicable after livestock have finished grazing the land; and make any consequential amendments required to ensure this works together with the FW-FP pathway.</p> <p><b>AND</b></p> <p>Develop clear guidance material with relevant stakeholders to ensure the effective implementation of this stand-alone duty and to give more clarity as to what steps could demonstrate that farmers are resowing as soon as practicable.</p>
<p>Critical source areas (CSAs) (new condition)</p>	<p>Include a new condition requiring that CSAs must be protected (uncultivated and ungrazed) during the period that IWG can take place (only) (ie, 1 May to 30 September each year), and that ground cover (other than annual forage crops) be maintained throughout that period.</p> <p><b>AND</b></p> <p>Define CSAs, using a definition which:</p> <ul style="list-style-type: none"> <li>• includes a connection to a waterbody</li> <li>• excludes subsurface drains</li> </ul>
<p>Definitions</p>	<p>Amend the definition of ‘annual forage crop’ to avoid capturing crops that are not intended to be included.</p>
<p>Deferral</p>	<p>Defer the regulations, to come into effect on 1 November 2022 instead of 1 May 2022.</p> <p><b>AND</b></p> <p>Clarify the relationship between IWG and temporary existing use rights, by amending the definition of ‘intensive winter grazing’ to clarify that it is a continuous, year-round activity with sowing, growing and grazing phases, while making any consequential changes necessary to avoid imposing additional controls on the non-grazing phases of the activity.</p>

# Statutory and policy context

## Part 2 of the RMA

A fundamental part of carrying out an evaluation under section 32 of the RMA is understanding how the proposal achieves the purpose and principles in Part 2 of the RMA.

The sections below identify the matters in Part 2 of the RMA that are most relevant to the proposal.

### Section 5

Section 5 of the RMA states the purpose of the RMA as follows:

#### **5 Purpose**

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while-
  - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
  - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

### Section 6

Section 6 of the RMA states the matters of national importance that must be recognised and provided for in achieving the purpose of the RMA. The matters of national importance that are most relevant to freshwater management are:

#### **6 Matters of National Importance**

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

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

...

- (e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

...

- (g) the protection of protected customary rights:

## Section 7

Section 7 sets out other matters that must be given particular regard to in managing the use, development, and protection of natural and physical resources in achieving the purpose of the RMA. The matters of most relevance to freshwater management are:

### 7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
  - (aa) the ethic of stewardship:
  - (b) the efficient use and development of natural and physical resources:
    - (ba) the efficiency of the end use of energy:
  - (c) the maintenance and enhancement of amenity values:
  - (d) intrinsic values of ecosystems:
- ...
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

## Section 8

Section 8 requires the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) be taken into account in achieving the purpose of the RMA.

### 8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

# National Environmental Standards

The requirements for preparing National Environmental Standards (NES) are outlined in sections 43–44A, and section 46A, of the RMA.

An NES must not state that an activity is a permitted activity if that activity has significant adverse effects on the environment (section 43A (3)). An NES can also restrict the granting of a resource consent to matters specified in an NES (section 43A (1)(c)).

The RMA sets out a process for preparing an NES under section 46A. For these proposed amendments to the NES-F, the Minister for the Environment established a process under section 46A (3)(b) that meets the statutory requirements of 46A (4).

## Process under section 46A (3)(b) and 46A (4)

Under 46A (3)(b) and (4), the process must include the following:

- (a) the public and iwi authorities must be given notice of—
  - (i) the proposed national direction; and
  - (ii) why the Minister considers that the proposed national direction is consistent with the purpose of the Act; and
- (b) those notified must be given adequate time and opportunity to make a submission on the subject matter of the proposed national direction; and
- (c) a report and recommendations must be made to the Minister on the submissions and the subject matter of the national direction; and
- (d) the matters listed in section 51(1) must be considered as if the references in that provision to a board of inquiry were references to the person who prepares the report and recommendations.

The process that has been undertaken to achieve the proposed amendments outlined in this assessment has been provided in the [Evaluation of the proposed amendments](#) section of this report.

# National Direction for Freshwater Management

The Government set out to address New Zealand’s freshwater quality and ecosystem health issues through a series of initiatives including the *Essential Freshwater: Healthy Water, Fairly Allocated* package introduced in October 2018. The overarching objectives of the *Essential Freshwater* package are to:

1. stop further degradation of New Zealand’s freshwater resources and start making immediate improvements so that water quality is materially improving within five years
2. reverse past damage and bring New Zealand’s freshwater resources, waterways and ecosystems to a healthy state within a generation
3. address water allocation issues having regard to all interests including Māori and existing and potential new users.

A major part of the *Essential Freshwater* package is being delivered through new regulations under section 360 of the RMA, and implementation of the NPS-FM 2020, and NES-F.

## The NPS-FM 2020

The NPS-FM 2020 has a single objective, policies and implementation policies. It provides direction to local authorities about how to carry out their freshwater management responsibilities under the RMA.

The NPS-FM 2020 applies a framework that considers and recognises Te Mana o Te Wai as an integral part of freshwater management.<sup>3</sup> It requires that regional councils set long-term visions for freshwater in their regional policy statements, and adopt freshwater objectives, policies, rules (including limits) in their regional plans by 31 December 2024.

Te Mana o te Wai, and the priority it gives to the health and wellbeing of water bodies and freshwater ecosystems, is represented in the environmental protection criteria set out in the RIS and efforts to engage with iwi/Māori described above.

## The NES-Freshwater

The NES-F is the primary implementation tool to stop further degradation of New Zealand's freshwater resources and to start making improvements so that water quality is materially improving within five years. The standards for farming activities (Part 2 of the NES-F) control high-risk farming activities to contribute to achieving the NPS-FM 2020 objective of stopping further degradation of freshwater. The default conditions for IWG provide a permitted activity pathway for the activity to be carried out while freshwater regional planning instruments and certified freshwater farm plans (FW-FP) are being developed.

The NES-F regulations came into force in September 2020, except for the regulations relating to:

- intensive winter grazing (some came into force on 1 May 2021, while regulations 26 and 27 were deferred, initially until 1 May 2022 and now will be deferred to 1 November 2022)
- stockholding areas other than feedlots and synthetic nitrogen fertiliser (1 July 2021).

The purpose of staging the implementation of these regulations was to provide time for the primary sector to prepare.

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<sup>3</sup> Refer to sections 1.3 and 3.2 of the [NPS-FM 2020](#).

# Evaluation of the proposed amendments

This report has drawn on the following information to evaluate the proposed amendments to the IWG regulations:

- [2020 section 32 report](#) that accompanied the NPS-FM 2020 and NES-F
- [regulatory impact assessment](#) that accompanied the NPS-FM 2020 and NES-F
- [report](#) from the Southland Intensive Winter Grazing NES Advisory Group (SAG)
- [discussion document](#) on proposed changes to intensive winter grazing
- [summary of submissions](#) and submissions from the 2021 consultation on the discussion document
- [report and recommendations](#) on intensive winter grazing amendments
- [interim regulatory impact statement](#) on intensive winter grazing (August 2021)
- [final regulatory impact statement](#) on intensive winter grazing (March 2022).

## Intensive winter grazing regulations

Winter forage crops are an important part of the pastoral farm production system and profitability. Meeting feed demand from increased stock numbers, has meant that some stock grazing systems are becoming increasingly intensive.

There is evidence that environmentally risky IWG practices have expanded in scope, frequency, and onto unsuitable areas (eg, steeper slopes) causing soil erosion and degradation of waterways. Currently, many regional plans do not regulate IWG in a targeted way, yet the farming practice has become prominent in some regions including Southland, Canterbury, and Otago.<sup>4</sup>

NES-F regulations 26 and 27 introduced a nationally consistent consenting regime that targets the environmental risks associated with IWG practices. The regulations provide a set of parameters for managing land and land use activities to minimise sediment in runoff to waterways.

### Regulation 26

[Regulation 26](#) provides two pathways for IWG activities to occur as a permitted activity:

- Pathway 1: permitted if a set of default conditions are met (regulation 26 (4)).
- Pathway 2: permitted if a certified FW-FP is obtained, under which the adverse effects must be no greater than had the default conditions been met (regulation 26 (3)).

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<sup>4</sup> The [regulatory impact analysis](#) (2020) (that accompanied the NPS-FM 2020 and NES-F) provides further commentary on IWG in these regions.



For Pathway 1 the scope of the default conditions under the permitted activity currently includes:

- total area
- slope
- pugging
- buffer zones from waterways
- resowing.

Pathway 2 is not yet available, and the Ministry for the Environment and the Ministry for Primary Industries are currently developing the FW-FP regime and certification process which sits behind this pathway.

## Regulation 27

Regulation 27 establishes that a resource consent as a restricted discretionary activity is required for IWG activities that are not able to meet the permitted activity conditions in regulation 26. Applicants and decision makers need to specifically consider the matters set out in [Regulation 27\(4\)](#):

### 27 Restricted discretionary activities

...

(4) The discretion of a consent authority is restricted to the following matters:

- (a) the adverse effects of the activity on ecosystems, freshwater, and water bodies;
- (b) the adverse effects on the water that people come into contact with;
- (c) the adverse effects of the activity on Māori cultural values;
- (d) the susceptibility of the land to erosion and the risk of sediment loss and other contaminants to water;
- (e) methods proposed to avoid, remedy, or mitigate the loss of contaminants to water.

## Te Tiriti o Waitangi | Treaty of Waitangi

Freshwater is a precious and limited resource, a taonga of huge significance, and is of particular importance to Māori. The Crown has a range of duties as a result of Treaty settlements. It also has broad responsibilities to protect taonga, the exercise of tino rangatiratanga and kāwanatanga, and the principles of the Treaty of Waitangi.

Related to this, proposals to amend IWG regulations have been assessed against Te Mana o te Wai as a criteria and the priority it gives to the health and wellbeing of water bodies and freshwater ecosystems.<sup>5</sup>

Another important aspect of Te Mana o te Wai and principles of the Treaty of Waitangi is engaging with iwi/Māori, as kaitiaki and partners. In this context, the process for developing proposed changes can be summarised as:

- Government received feedback on regulations, including from the SAG which included Te Ao Marama Inc (TAMI) as observer. This raised implementation issues that are more prevalent in the south of New Zealand, and Ngāi Tahu's takiwā.
- In September 2021, officials reached out to iwi/Māori stakeholders through Te Kōmiromiro e-pānui (MfE's newsletter aimed at delivering the latest updates for tangata whenua from te Manatū mō te Taiao). This included notification of the public consultation process, and details for those interested in attending online hui.
- Officials undertook full public consultation from 26 August to 7 October 2021. This included a discussion document outlining the proposed changes, an online submission portal, and online hui (as part of combined sessions also covering engagement on the FW-FP regime and proposed changes to the low slope map in the stock exclusion regulations). In this process, officials had limited engagement with iwi/Māori: three submissions were received from iwi/Māori groups. This is understandable given the range of reforms underway that iwi/Māori are interested in; the limited scope of this work; and that IWG is largely a South Island activity, falling with Ngāi Tahu's takiwā.
- Through the targeted exposure draft process undertaken in March 2022 (further details below), officials engaged directly with Ngāi Tahu and Te Ao Marama to seek their feedback on the proposed drafting of the amendments. As set out in the RIS, that exposure draft process sought to test whether the drafting of the proposed changes would address the implementation issues as intended, and to minimise the risk of unintended consequences. It was not seeking further submissions on policies (which had been sought through the public consultation process), but was testing the workability of specific drafting changes to the NES-F.

As a result of three submissions from the above, we understand issues of particular interest to iwi/Maori submitters include the following:

- Te Tumu Paeroa – The Office of the Māori Trustee had concerns relating to the application of the IWG regulations to leasehold land and the potential for driving unintentional consequences regarding the use of leased Māori land and freehold land (in particular, regarding the limitations on area and slope).
- Ngāi Tahu's submission can be summarised as that, while agreeing that some of the proposed amendments to the IWG regulations are appropriate in some areas, they are not appropriate in other areas (eg, conditions managing area, slope). Ngāi Tahu's view is that this reinforces why a localised approach to environmental management, recognising mātauranga and local knowledge is important not only for recognising rangatiratanga and kaitiakitanga, but for ensuring good environmental outcomes. Ngāi Tahu also commented

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<sup>5</sup> The RIS sets out the criteria used to assess the proposed amendments. Those criteria are a refinement of the more generic criteria used in the regulatory impact assessment (RIA) for the Essential Freshwater programme (dated 22 April 2019). Those continue to be relevant and are assessed as part of the analysis of the options against the criteria listed in the RIS.

that there is no proposal for mana whenua input into guidelines relating to pugging, and the identification of CSAs.

- Ngāi Tahu also noted enforcement concerns, especially regarding the conditions managing pugging and resow.
- Te Ao Marama were largely supportive of the proposed amendments. Their concerns relate to the implementation and enforcement of the “practicable” standard in pugging and resow. These concerns are shared by other submitters, and addressed further below and in the Report and Recommendations.

Officials acknowledge these concerns, and agree that there are limitations with a permitted activity standard managing intensive winter grazing, given the local variation of the activity. This issue is addressed throughout the RIS, noting that FW-FPs will ultimately enable a more localised approach to environmental management, once they are available.

Officials acknowledge the concern raised by Ngāi Tahu about a lack of provision for mana whenua input into identifying CSAs within their takiwā. We propose to seek input from mana whenua into the development of guidance material relating to CSAs, which will include guidance on the identification of CSAs. This would be a more efficient and meaningful way to engage on this issue than regarding the identification of each individual CSA.

Concerns about enforceability are also shared by other submitters, and are assessed in more detail below and in the Report and Recommendations. However, the impacts of restrictions on total area and the decision-making roles under the RMA fall outside the scope of these proposals, and this work has a limited ability to address those wider concerns. These matters are also discussed in the RIS, and in the Report and Recommendations.

## Evaluation of the purpose of the proposed amendments

Section 32(1)(a) of the RMA requires that an evaluation examines the extent to which the objective of the proposal (ie, the objective of the set of proposed amendments) is the most appropriate way to achieve the purpose of the RMA. The NES-F is a standards-based instrument and does not contain any objectives. However, the objective of the proposed amendments is to make the NES-F regulations more workable, enforceable and effective for the protection of freshwater, all in order to support the NPS-FM 2020 and to meet the government’s Action for healthy waterways goals.<sup>6</sup> These goals aim for a holistic approach in achieving sustainable freshwater management, including across RMA jurisdictions.<sup>7</sup> Both instruments are intended to work closely together to achieve the single objective of the NPS-FM 2020 which is:

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<sup>6</sup> As set out in the Action for healthy waterways [discussion document](#).

<sup>7</sup> Refer to [A guide to section 32 of the Resource Management Act: Incorporating changes as a result of the Resource Legislation Amendment Act 2017](#) (Ministry for the Environment, 2017).

## 2.1 Objective

- (1) ... to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems; and
  - (b) second, the health needs of people (such as drinking water); and
  - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

The intent of the NPS-FM 2020 objective is not that the first priority (clause 2.1(1)(a)) be read as a bottom line with the goal of achieving a pristine or “pre-human” water quality state. Rather, it is to shift the way we think about managing freshwater and guide implementation of the National Objectives Framework (NOF) process prescribed in the NPS-FM 2020.<sup>8</sup>

The NPS-FM 2020 objective is clear in what it prioritises but is flexible in its approach, which is consistent with the RMA effects-based approach.

## Effectiveness and efficiency

Table 2 and table 3 assesses the effectiveness of the proposed amendments to the IWG standards and table 4 considers the efficiency of the same.

**Table 2: Assessment of effectiveness of proposed amendments to the IWG standards – against the NPS-FM objective**

Elements of the NPS-FM objective	Contribution of IWG standards towards achieving the purpose
<p><b>Resources are managed in a way that prioritises:</b></p> <p><b>(a) first, the health and wellbeing of water bodies and freshwater ecosystems</b></p>	<p>The NES-F is directed at making early change to high-risk activities including IWG, to stop further degradation to freshwater. The IWG regulations manage the adverse environmental effects of this activity. In particular, they focus on managing sediment runoff to waterways.</p> <p>Whether through the permitted activity pathways, or the consenting pathway, the IWG regulations provide a framework to manage this activity, without councils having to endure lengthy and costly plan changes.</p> <p>Once available, certified FW-FPs will provide a permitted activity pathway which enables bespoke mitigation to manage adverse environmental effects of IWG at a catchment and farm scale. This flexibility would resolve some of the implementation issues identified with the IWG regulations. However, certified FW-FPs are not yet available – they will begin to be rolled out by the end of 2022, but won’t be available nationwide for several years.</p> <p>The proposed amendments to the default conditions address the implementation issues identified with the IWG regulations, primarily the default conditions that are weather dependant and difficult to practically measure.</p> <p>The proposed amendments will improve the ability of the regulations to minimise risks to freshwater such as, sediment loss, while providing more implementation certainty than the status quo and therefore greater effectiveness in terms of compliance, monitoring and enforcement (CME) of activities.</p> <p>The new condition to manage critical source areas will increase environmental protection.</p>

<sup>8</sup> Regulatory impact analysis (2020) (that accompanied the NPS-FM 2020 and NES-F). p.177

<b>(b) second, the health needs of people</b>	The proposed amendments to the NES-F relating to IWG are not considered relevant to this aspect of the NPS-FM objective.
<b>(c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future</b>	<p>The effects and risk-based rules regime limits the ability to farm land intensively where it may adversely affect freshwater. This is likely to reduce farming practice options for some farmers which may have economic and social impacts associated with the use of alternative practices.</p> <p>The proposed amendments to the default conditions provide clarity on how the regulations are to be applied, and when resource consents will be required.</p> <p>The proposed amendments address the implementation issues in the short-term while FW-FPs are unavailable, while still managing the environmental effects of IWG activity.</p> <p>They provide a permitted activity pathway that is expected to be more workable (ie, in terms of farmers being more confident they will be able to comply), and thereby reduce the number of resource consent applications otherwise expected (up to 10,000 under the status quo, at a cost to both farmers and regional councils). These risks will also be mitigated in the future when FW-FPs are available.</p> <p>The amendments to the default conditions will increase the certainty about whether compliance with the default conditions will be possible, and reduce reliance on the resource consent pathway and associated costs, compared to the status quo.</p>

**Table 3: Assessment of effectiveness of amendments to the IWG standards – against the elements of the specific problem definition**

Elements of the specific problem definition	Likely success of the IWG standards in solving the problem it was designed to address
<b>Inclusion of new default condition – critical source areas</b>	<p>The inclusion of the critical source area (CSA) condition when applied in conjunction with the conditions relating to pugging, resow and area provides a practical permitted activity pathway. The amendments will be more practical and easier for farmers to comply with than the status quo.</p> <p>The CSA condition has been adopted from the proposed Southland Water and Land Plan.</p> <p>Submissions identified the definition of CSAs should require there to be a direct connection to a water body. This is appropriate, as the purpose of managing CSAs is to reduce sediment and contaminant loss to freshwater; those benefits would not be achieved through protecting areas not connected to a waterway.</p>
<b>Amendments to default conditions</b>	<p><i>Slope (reg 26(4)(b))</i></p> <p>Sediment loss increases significantly where IWG activities are undertaken on steeper slopes. Undertaking IWG on land with greater slope thresholds than 10 degrees would result in greater potential for sediment loss.</p> <p>While the default conditions cannot permit an activity that results in a significant environmental effect, IWG activities could still be undertaken on steeper land through the FW-FP pathway (once available) or resource consent pathway.</p> <p>Amending the slope default condition to measure slope as a ‘maximum’, and specifying this is to be measured over any 20-metre distance, will ensure that the intent of the regulation is met and will resolve the practical difficulties of measuring slope at a paddock scale.</p> <p><i>Pugging (reg 26(4)(c))</i></p> <p>The intent of including a pugging condition was aimed at minimising soil disturbance and subsequent sediment loss due to the hooves of grazing livestock.</p> <p>The existing condition that prescribes a pugged soil depth and total pugged area has meant that farmers will struggle to practically determine whether they comply with this default condition and therefore, the permitted activity pathway.</p>

Elements of the specific problem definition	Likely success of the IWG standards in solving the problem it was designed to address
	<p>The proposed change to instead require farmers to consider a broader set of factors when minimising pugging acknowledges the difficulties with implementing the existing pugging condition, while enabling flexibility when determining the most appropriate mitigation options. The proposed change will meet the intent of managing pugging to minimise soil loss and provides an avenue for councils to take enforcement action if required.</p> <p><i>Buffer zones and subsurface drains (reg 26(4)(d))</i></p> <p>The proposed amendment to ‘drain’ definition would exclude subsurface drains. Their inclusion was an unintended outcome through drafting. Some submissions recommended the subsurface drainage be captured as part of the CSA condition, but this can be better addressed through FW-FPs (once available) and local implementation of the NPS-FM 2020.</p> <p><i>Resow (reg 26(4)(e))</i></p> <p>The resow condition is targeted at minimising the amount of time that ground is bare and at the greatest risk of sediment mobilisation. The proposed amendment to the resow condition acknowledges regional variation and planting practices (eg, companion planting) currently being utilised while ensuring that bare ground following IWG is managed to minimise sediment loss.</p>
<b>Intensive winter grazing is managed</b>	<p>The amendments will address implementation issues with the default conditions, while providing a permitted activity pathway that manages the effects of the activity.</p> <p>A consenting pathway will be available where a farm is unable to meet the default conditions or obtain a FW-FP to manage any significant adverse effects.</p> <p>Given the diversity of farming practices and natural conditions (which vary nationwide) there is limited ability to provide more specific permitted activity conditions. The amended conditions address the practicality issues that have been identified in the current wording.</p>
<b>Addresses resource consent burden</b>	<p>The amendments to the default conditions provide clarity on how the regulations are to be applied, and when resource consents will be required.</p> <p>The proposed amendments address the implementation issues in the short-term while FW-FPs are unavailable, while still managing the environmental effects of IWG activity.</p> <p>They provide a permitted activity pathway that is expected to be more workable (ie, in terms of farmers being more confident they will be able to comply), and thereby reduce the number of resource consent applications otherwise expected (up to 10,000 under the status quo, at a cost to both farmers and regional councils). These risks will also be mitigated in the future when FW-FPs are available.</p> <p>The deferral of the IWG regulations taking effect will provide additional time for farmers to either determine compliance with default conditions, or to obtain a resource consent if necessary.</p>

## Overall assessment of effectiveness

The NES-F amendments address the implementation concerns raised by the primary sector and regional councils.

When considering the proposed amendments as a whole, the changes meet the intent of the regulations to manage the adverse environmental impacts of IWG. The amendments address the workability of the IWG default conditions (ie, resow and pugging) and the technical changes will improve clarity for where and how the regulations apply. Overall, the amendments are considered to be effective.

**Table 4: Assessment of efficiency of amendments to the IWG standards**

Effects being considered	Benefits	Costs
Environmental	<p>Improved health of waterways and freshwater quality in line with objective of the NPS-FM 2020 over the long-term. The amendments will control farming practices through managing the IWG activities that contribute to increased sediment loss.</p> <p>The inclusion of a condition managing critical source areas (CSAs) will provide an additional layer of protection to the waterways from IWG activities.</p> <p>The amendments are targeted at improving several NES-F implementation concerns. The amendments to the permitted activity default conditions will provide more certainty on how they are to be implemented and enforced. In the long-term, FW-FPs will enable more bespoke mitigation to manage effects at a farm and catchment scale.</p>	<p>The proposed amendments include deferring the regulations for a further 6 months (until 1 November 2022). This means the IWG regulations will not manage environmental effects until winter of 2023 (however, under the status quo, existing use rights would have largely prevented existing regulations from doing so during the winter of 2022 anyway).</p> <p>Additional guidance for farmers could assist in managing adverse effects during the deferral.</p> <p>While compliance, monitoring and enforcement are expected to be more practical as a result of the proposed amendments, some risks remain. Guidance would help to address those risks.</p>
Economic	<p>Increased certainty for farmers carrying out IWG activities. The amended regulations will encourage better farm management practices, which can provide an economic benefit to the farming sector.</p> <p>Based on information received, officials estimate that consent numbers could decrease by up to 20%, as a result of the amendments to the IWG regulations.</p> <p>The deferral will also allow time for farmers to adjust their practices to comply with the permitted activity default conditions, to also reduce the number of consents and subsequent cost required in the short-term.</p>	<p>Compliance and monitoring costs to ensure the IWG default conditions are being complied with. The cost of compliance, monitoring and enforcement generally falls on councils, they are able to recover costs through a range of charges (including for the monitoring of permitted activities). Councils are not able to recover costs in this way in relation to stand-alone duties. This may mean additional costs are borne by regional councils.</p> <p>The slope and CSA default conditions could result in a reduction of land available for IWG activities. The reduction in land for IWG could affect the stocking rates that are able to be managed on farms through winter, which in turn could affect productivity/profitability for some farms.</p> <p>Guidance will be required to support the implementation of requirements for managing pugging, resowing and CSAs.</p>
Social	<p>Increased certainty about how the NES-F is applied. Reduction in the potential consenting burden on farmers and regional councils.</p>	<p>There is a decreased ability to cost recover for pugging and resow as stand-alone duties. However, in practice, that is not dissimilar if they were expressed as permitted activity conditions, as the ability to cost recover for any permitted activity condition is limited.</p>
Cultural	<p>The amendments to the regulations are expected to result in benefits to cultural values as the improved workability of the regulations, with the associated compliance, monitoring and enforcement</p>	<p>A localised approach to environmental management, which recognises mātauranga and local knowledge, is important for recognising rangatiratanga and kaitiakitanga, and also for ensuring good environmental</p>



	<p>benefits, will contribute to the maintenance and enhancement of the mauri of freshwater, and protection of mahinga kai adversely affected by increased sediment.</p> <p>If the resource consent pathway is required for IWG activities, any applications will need to consider impacts on cultural values as part of the assessment of effects. This could have resourcing impacts on iwi/Māori, however the amendments are expected to decrease the number of consent applications, as set out above.</p> <p>Once developed to implement the NPS-FM 2020, FW-FPs and regional freshwater planning instruments will give effect to Te Mana o te Wai. These documents, if required, can be updated to reflect changes to catchment management practices, values, limits and rules set by regional councils through the regional plan. Note under regulation 6(1) of the NES-F, limits set in district rules, regional rules or resource consents can be more stringent than the NES-F.</p>	<p>outcomes. The national approach necessary within an NES does not easily provide for such a localised approach. (That localised approach will be provided by FW-FPs, once available.)</p> <p>Iwi/Maori have also commented that there is no proposal for mana whenua input into guidance relating to pugging, and the identification of CSAs. (We acknowledge this concern, and propose to seek input from mana whenua into the development of guidance material relating to CSAs and pugging. This would be a more efficient and meaningful way to engage on this issue than regarding the identification of each individual CSA.)</p>
Additional sector commentary	<p>The feedback received on the amendments to the NES-F IWG regulations was largely supportive where they improved the workability of the default conditions. Submissions supported changes from mean slope to maximum as it would be more achievable to measure on farms, to comply with the default condition, monitor and enforce. The Southland Intensive Winter Grazing NES Advisory Group (SAG) identified that risks to freshwater from IWG activities are not determined by slope alone, and that other factors will provide mitigation ie, soil type, proximity to waterbodies and management of CSAs.</p> <p>The SAG recommended a new default IWG condition be included, based on the wording in the proposed Southland Water and Land Plan which required that CSAs be identified and protected from IWG activities. The SAG noted that the inclusion of a condition managing CSAs would provide improved freshwater outcomes, provide for more practical implementation and enforcement, and contribute to addressing the effects which the pugging, resowing and slope conditions manage.</p> <p>Submissions on slope threshold indicated a desire to increase the threshold to 15 or 20 degrees. However, the amendments retain the slope threshold at 10 degrees. Submitters indicated that the 10-degree threshold would mean some farms could not comply with this condition, and that a resource consent would be required. The recommendations include clarifying the maximum slope threshold relates only to areas where IWG is undertaken (ie, cultivated and grazed), and not the whole of a paddock which contains IWG.</p> <p>Along with the slope threshold, concerns were also raised about the area limits. However, no proposed amendments to the area limits were included in the discussion document. The <a href="#">Report and Recommendations</a> notes the feedback and sets out why no amendments to the area limits have been recommended.</p> <p>Feedback on the pugging and resow conditions generally supported the amendments as a practical approach which allows for these conditions to be addressed on a case-by-case basis rather than being prescribed. However, it was also noted that there were still concerns about what would be included in the guidance documents and what ‘practicable’ would mean for determining compliance with the permitted activity condition.</p> <p>The primary concern with the existing regulations was that it would only be possible to determine if a resource consent would be required after winter grazing was underway or, for resow, after winter grazing had finished. By this time, it would be too late to obtain a</p>	



	resource consent and enforcement would be the remaining option. This has been addressed to some extent through the change to express pugging and resow conditions as stand-alone duties, instead of permitted activity conditions.
Opportunities for economic growth and employment to be provided or reduced	<p>The amendments to the default conditions are not anticipated to create any additional growth or economic opportunities beyond those assessed in the <a href="#">2020 section 32 report</a> that accompanied the NPS-FM 2020 and NES-F.</p> <p>Potential for increased demand for experts in farm management could lead to increased job growth in support industries, with flow-on positive effects for communities.</p>
Risks of not acting and uncertainty	<p>There is a moderate degree of uncertainty. The anticipated benefits to the freshwater bodies from making the amendments to the IWG default conditions are unknown and will vary between regions and land uses.</p> <p>The risks of not acting (not making the amendments to the IWG standards) exceed the risk of acting (making the amendments to the IWG standards).</p> <p>The effectiveness of the IWG regulations relies on clear and effective implementation guidance to assist councils and farmers.</p>

## Alternative options and reasons for deciding on the amendments

In evaluating amendments to the NES-F, officials considered the status quo, and two main options, along with a transitional approach. These can be summarised as:

- status quo: without amendments to the regulations.
- Option 1: Amend the default conditions for IWG and further defer commencement of the IWG regulations until 1 November 2022
- Option 2: Remove the permitted activity pathway based on default conditions (Pathway 1)) and instead manage IWG through certified FW-FPs only – once FW-FPs are available, with a deferral of the IWG regulations until then
- Transitional approach: Amend the default conditions for IWG. The default conditions pathway would then be removed once FW-FPs are available

Option 1 is the preferred option because it can be implemented immediately to manage the effects of IWG activity and addresses the impracticalities associated with the default conditions. The amendments, along with guidance, will address implementation concerns from stakeholders. They will make it more practical to comply with the IWG regulations, while still ensuring the environmental effects of the activity are managed. Once available, the FW-FP pathway will enable a tailor-made approach to IWG activities on a farm-by-farm basis, while the resource consent process will control activities that are unable to comply with the default conditions or obtain a FW-FP.

The deferral of the regulations until 1 November 2022 acknowledges that decisions made for the 2022 winter season will have already been made and therefore allows farmers time to adjust their farming practices in order to comply with the regulations before the 2023 winter season. In addition, the deferral will enable the additional guidance materials (pugging and resow) to be developed.

Unlike Option 2 and the transitional approach, Option 1 is not dependent on certified FW-FPs or regional freshwater planning instruments being in place. The rollout of the certified FW-FPs

is expected to commence by the end of 2022, but it is still expected to take several years to be fully implemented.

The amendments to the IWG regulations will enable the purpose of the NES-F to be achieved. For more details of the options and options analysis refer to the final [RIS](#).

# Conclusion

The conclusion of this evaluation is that amending the NES-F regulations is the most appropriate way to achieve the purpose of the RMA with respect to freshwater.

The amendments to the IWG permitted activity default conditions address the practical challenges associated with meeting and implementing regulation 26. In particular:

- Amending the requirement to measure slope land under an annual forage crop used for IWG, rather than measuring across a paddock scale, improves the ability of farmers and regional councils to determine compliance. Retaining the threshold at 10 degrees ensures the environmental protection against sediment loss, as the risk of sediment loss increases as slope increases.
- The removal of the default condition that required a farmer to determine whether they complied with the fixed pugging depth, and to instead 'take all reasonably practicable steps' to manage adverse effects as a standalone duty, improves the ability for a farmer to determine appropriate mitigations for their farm system.
- Removing the default condition to resow by a fixed date, and instead requiring that ground cover is established 'as soon as practicable' as a standalone duty, acknowledges the impact that variable climate across New Zealand has when determining compliance with such a condition.
- For both the pugging and resow requirements, expressing these as stand-alone duties prevents the need to determine whether a resource consent is required based on potentially ambiguous terms such as 'all reasonably practicable steps' when managing the adverse effects of pugging. In addition, enforcement action can be undertaken if non-compliance occurs with either duty. This ensures that amendments to the regulations are enforceable while meeting the objective of improving freshwater outcomes.
- The exclusion of subsurface drains from the buffer condition addresses feedback that this default condition would be difficult to practically comply with and corrects a drafting error within the existing regulations.
- The addition of the default condition to require management of CSAs will ensure that high-risk landscape features are managed to reduce sediment loss to connected water bodies. The protection of CSAs to reduce sediment loss is widely acknowledged as a highly effective management practice throughout the primary sector.
- The deferral will allow time for farmers to adjust their IWG practices to ensure they can comply with the amended NES-F in winter 2023.

The proposed IWG amendments to the NES-F regulations are considered to be effective and efficient and, overall, the most appropriate way of implementing the objective of the NPS-FM 2020.