

Essential Freshwater 2022

Amendments to the NES-F and NPS-FM

Section 32 report



Ministry for the
Environment
Manatū Mō Te Taiao



Te Kāwanatanga o Aotearoa
New Zealand Government

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Glossary

Term	Definition
CMA	Coastal marine area
ENGO	Environmental Non-Governmental Organisation
Ministry	Ministry for the Environment
NES	National Environmental Standard
NES-F	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NGO	Non-Governmental Organisation
NOF	National Objectives Framework
NPS	National Policy Statement
NPS-IB	(Proposed) National Policy Statement for Indigenous Biodiversity
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-UD	National Policy Statement on Urban Development 2020
RIA	Regulatory Impact Assessment (may also be 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

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

Executive summary

The Minister for the Environment (the Minister) has proposed amendments to the:

- [National Policy Statement for Freshwater Management 2020 \(NPS-FM\)](#)
- [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020 \(NES-F\)](#).

This report provides a section 32 evaluation of the proposed amendments to the NPS-FM and NES-F in accordance with the Resource Management Act 1991 (RMA).

The evaluation draws on analysis undertaken and published by the Ministry for the Environment (the Ministry) in 2021 and 2022, reports from advisory groups and panels and submissions received during consultation periods in 2021 and 2022. This report is intended to be read alongside these reports, and in particular the regulatory impact statements. It should also be read alongside the [2020 section 32 report](#), which provides a full evaluation of the NES-F and the higher-level freshwater objective and policy framework in the NPS-FM.

The proposed amendments to the NES-F and NPS-FM fall into three broad categories that seek to:

1. address stakeholder feedback on issues arising from implementation of the wetland regulations
2. address the application of the NES-F to wetlands in the coastal marine area (CMA)
3. make technical clarifications, to improve clarity, reduce complexity, and correct some errors without fundamentally changing the freshwater policy direction.

The proposed amendments provide clearer interpretation and application of wetland definitions and the control of activities where these impact natural inland wetlands, without fundamentally changing the NPS-FM objective and wetland policy intent (Policy 6 in the NPS-FM). In particular, the proposed amendments:

- amend the definition of 'natural wetland' to make it clearer and ensure that only the areas intended are captured by the regulations
- provide consenting pathways for specific purposes including quarrying, landfills/cleanfills, mining, water storage, NZ Defence Force infrastructure, ski area infrastructure and urban development
- better enable restoration activities to be undertaken and enable maintenance and biosecurity activities to be undertaken in and around natural wetlands
- amend provisions on water take, use, damming, diversion and discharge to better achieve the intent, by clarifying that these activities (and their buffer zones) are managed by the NES-F only where there is a hydrological connection with the wetland and they will impact the water level of a wetland
- clarify that the NES-F does not apply to wetlands within the CMA
- provide technical amendments to improve clarity, reduce complexity and correct errors.

The conclusion of this evaluation is that the proposed amendments to the NPS-FM and NES-F regulations are collectively the most appropriate way to achieve the purpose of the RMA with

respect to freshwater. The proposed amendments will assist implementation of the NPS-FM provisions and the NES-F rules, and align with the NPS-FM objective.

Part 1: Introduction

The National Policy Statement for Freshwater Management 2020 (NPS-FM) sets the framework for how freshwater is to be managed across Aotearoa New Zealand. Regional and district plans are required to give effect to it, according to its terms, via plan provisions. The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) set standards and requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems.

Wetlands

The provisions in the 2020 NPS-FM and NES-F that focus on wetlands and wetland ecosystem management, are together referred to as the 'wetland regulations' throughout this document. The NPS-FM gives the overarching policy intent, while the NES-F provides rules, including consenting pathways for specific purposes, for certain activities in and around wetlands.

Following the gazettal of the NPS-FM and NES-F in September 2020, councils and sector groups raised concerns about issues emerging when implementing the wetland regulations. In August 2021, the Government agreed to consult on amendments to the wetland regulations after determining that the matters raised were not able to be resolved by guidance alone. The initial changes proposed were set out in the [Managing our wetlands discussion document](#), and included:

- clarifying the definition of 'natural wetland'
- providing a consenting pathway for specific sectors including quarries, fill sites, mining and urban development
- making clear the wetland restoration policies and including maintenance and biosecurity in those policies.

Consultation on proposed changes to the wetland regulations occurred between 1 September and 27 October 2021. The Ministry for the Environment (the Ministry) then analysed submissions and prepared a [report of advice and recommendations](#) for the Minister for the Environment (the Minister). Feedback showed broad support for the protection of Aotearoa New Zealand's wetlands, but that issues identified by councils and others did need to be addressed.

Proposed amendments to the wetland regulations were then drafted, and exposure drafts of the NPS-FM and NES-F were [consulted on](#) between 31 May and 10 July 2022.

Technical changes

The Minister also proposed to address [technical amendments](#) to the NPS-FM and the NES-F needed to improve clarity, reduce complexity, and correct some errors, without fundamentally changing the freshwater policy direction. These amendments were also consulted on through the exposure draft process (combined with wetland amendments) between 31 May and 10 July 2022.

Wetlands in the coastal marine area

The original policy intent of the NES-F, as agreed by Cabinet in 2020, was to restrict activities likely to cause the loss or degradation of all natural wetlands, including those in the coastal marine area (CMA). Initially, however, many councils and stakeholders interpreted the NES-F as applying only to natural inland wetlands. In late 2021, a High Court decision¹ confirmed the NES-F applies to wetlands in the CMA.

The judgment is consistent with the Government's intent when the NES-F gazetted. However, further analysis and feedback from councils showed significant implications for consenting, compliance and operational functions when the NES-F is applied to the CMA – including questions around where exactly in the CMA it applies.

Where it applies was discussed by the High Court, which noted it was unlikely that the NES-F was intended to apply to the whole of the CMA (the seaward boundary of which is 12 nautical miles). The scope or extent of what *does* constitute a 'natural wetland' in the CMA, however, was not part of the appeal and remained an issue to be resolved following the High Court decision.

The Government agreed that leaving this undetermined creates uncertainty for councils and coastal users undertaking activities within the CMA and [consultation on proposals](#) to address the issue was undertaken in August and September 2022. The following three possible approaches were consulted on.

- Keep the status quo: The NES-F continues to apply to the CMA unchanged.
- Option 1: Amend the NES-F to clarify where and how it applies to the CMA.
- Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA.

Following feedback, the Minister has decided to proceed with Option 2.

1.1 Purpose of this report

Under section 53(1) of the Resource Management Act 1991 (RMA), the Minister must evaluate any amendments to a national policy statement (NPS) or national environmental standard (NES) in accordance with section 32 of the RMA. Amendments to national direction (NPS or NES) can be undertaken using one of the processes outlined in section 46A(1).

As required by section 32, this evaluation:

- examines whether the proposed provisions are the most appropriate way to achieve the objective of the NPS-FM by:
 - identifying other reasonably practicable options for achieving the objectives
 - assessing the efficiency and effectiveness of the provisions in achieving the objectives
 - summarising the reasons for deciding on the provisions.
- contains a level of detail that corresponds with the scale and significance of the environmental, economic, social, and cultural effects anticipated from the implementation of the proposal.

¹ *Minister of Conservation v Mangawhai Harbour Restoration Society Inc* [2021] NZHC 3113 at [117].

This evaluation considers:

- 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
- the risk of acting or not acting, if there is uncertain or insufficient information.

This evaluation draws on analysis undertaken and published by the Ministry in 2021 and 2022, reports from advisory groups and panels and submissions received during consultation periods in 2021 and 2022. This evaluation is intended to be read alongside these reports, and in particular:

- the final regulatory impact statement (RIS) on [inland wetlands](#) and the [final RIS on wetlands in the CMA](#). These contain detailed analysis of options and the costs and benefits of the proposed amendments to wetland regulations. Note an [earlier \(interim\) RIS \(on inland wetlands\)](#) was prepared in 2021 prior to consultation on the proposed amendments
- the [Action for Healthy Waterways 2020 section 32 report](#), which provides a full evaluation of the NES-F and the higher-level freshwater objective and policy framework in the NPS-FM.

A full list of relevant policy papers, reports, submission feedback and supporting evidence is set out in [Part 4: Evaluation of the proposed amendments](#).

1.2 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 proposal.

Section 32(3) applies when a proposal seeks to amend an existing regulation or standard. It requires an assessment of whether the existing objectives would remain if the proposed amendments were to take effect.

The proposed amendments to the NPS-FM and NES-F relate only to the wetland clauses (NPS-FM) and wetland rules (NES-F), including the application of the NES-F to wetlands in the CMA, or are otherwise technical amendments for clarification. The objective and policies of the NPS-FM remain unchanged.

The proposed amendments clarify aspects of the definitions or provide for additional consent pathways for specific purposes, to undertake activities in natural inland wetlands. These pathways require equivalent tests and adherence to the effects management hierarchy (including offsetting) in the same way as the existing pathways (eg, specified infrastructure). Although the number of 'purposes' provided with a consent pathway has increased (eg, inclusion of urban development), the framework to ensure the overall objective and policies of the NPS-FM are met remains unchanged (ie, that there is no net loss of wetland extent or values).

As the overarching objective and policies of the NPS-FM remain unchanged these are not assessed again here against Part 2 of the RMA (for this, see the [Action for Healthy Waterways 2020 section 32 report](#)). The assessment is therefore about the relevance of the amending proposal to the existing objective and policies and the extent to which these would remain if the amending proposal were to take effect.

1.3 Structure of the report

This report provides an overview of the proposed amendments to the NES-F and NPS-FM. It provides an evaluation of the efficiency and effectiveness of the proposed amendments to the NES-F and NPS-FM in accordance with section 32 of the RMA. It evaluates the appropriateness, alternatives, and costs and benefits of the amendments and as part of that, the extent to which the objective of the NPS-FM is relevant to the amendments and will remain if the proposed amendments take effect (section 32(3)(b)).

This report has been prepared alongside the drafting of the proposed amendments being finalised. As much as possible, this report reflects the most recent drafting of the proposed amendments. 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 national direction instruments.

[Part 2: Amendments overview](#) gives a summary of, and policy rationale for, the proposed amendments. [Part 3: Statutory and policy context](#) gives the background and requirements of evaluations prepared under section 32 of the RMA. [Part 4: Evaluation of the proposed amendments](#) provides an evaluation of the proposals and an assessment of their efficiency and effectiveness.

Part 2: Amendments overview

The NPS-FM and the NES-F came into force in September 2020. At the same time the Ministry published the [Action for Healthy Waterways 2020 regulatory impact assessment](#) (RIA), and the [Action for Healthy Waterways 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. That RIA and section 32 report should be read in conjunction with this report to provide the freshwater provisions framework for the regulations and the context for the proposed amendments.

This report does not re-evaluate the existing objective and policies of the NPS-FM (as these remain unchanged). It focuses on the scope of amendments made to the wetland regulations (including their application in the CMA), as well as technical clarifications throughout the NES-F and NPS-FM and how these relate to the existing objective and policies of the NPS-FM (as required by section 32(3)).

Reference should also be made to the [final RIS \(inland wetlands\)](#) and the [final RIS \(wetlands in the CMA\)](#). These documents contain detailed analysis of options and the costs and benefits of the proposed amendments to the wetland regulations in the NES-F and NPS-FM. (For a full list of other relevant documents, refer to [Part 4: Evaluation of the proposed amendments.](#))

The proposed amendments to the NPS-FM and NES-F fall into three broad categories:

- amendments to the wetland regulations, to address stakeholder feedback on implementation (see [Part 2.1](#))
- amendments to how the NES-F applies to wetlands in the coastal marine area (see [Part 2.2](#))
- technical clarifications – to improve clarity, reduce complexity and correct some errors without fundamentally changing the freshwater policy direction (see [Part 2.3](#)).

2.1 Amendments to the wetland regulations

After the regulations were gazetted in 2020, the Ministry received feedback that aspects of the wetland regulations may require amendment to support effective implementation and improve environmental outcomes.

Initial proposals to amend the wetland regulations were developed based on that feedback. These were set out in the [discussion document](#) on managing our wetlands, and were the subject of public consultation between 1 September and 27 October 2021.

The Ministry then analysed submissions and prepared a [report and recommendations on the proposed amendments](#). Feedback received showed that there is broad support for the protection of New Zealand's wetlands, their extent and ecological values but changes were required.

The proposed amendments were revised based on feedback received, and released through an [exposure draft consultation process](#) between 31 May and 10 July 2022. That process was aimed at testing the specific drafting to ensure the policy objectives were met and there were no unintended consequences. The [policy rationale document](#) that accompanied the exposure drafts provided the rationale for the proposed amendments, and additional context on changes since the initial consultation in 2021.

After the exposure draft consultation, the Ministry analysed all submissions and has prepared final recommendations to amend the wetland regulations. That analysis is in the [final RIS \(inland wetlands\)](#).

Final proposed amendments to the wetland regulations are summarised in table 1.

Table 1: Proposed amendments to the wetland regulations in the NPS-FM and NES-F

Proposed amendment	Detail
<p>Definition of ‘natural [inland] wetland’</p>	<p>See Part 4.3.1 of this report.</p> <p>See Part 2.2 of this report on application of the NES-F to the CMA for detail regarding the proposed change to ‘natural inland wetland’.</p> <p>Proposed clarifications are to the parts of the definition to assist with interpretation and application:</p> <ul style="list-style-type: none"> • streamlining the ‘pasture exclusion’ • incorporating by reference a ‘national pasture species list’ and ‘pasture assessment methodology’ that must be used to assess whether the exclusion applies • recognition of ‘threatened’ species to align with the compulsory value under the NOF.
<p>Creation of new consent pathways for:</p> <ul style="list-style-type: none"> • quarrying activities • landfills and cleanfill areas • the extraction of minerals and ancillary activities • urban developments 	<p>See Part 4.3.2 of this report. For detail on each proposed consent pathway see relevant parts.</p> <p>Any consent application for these purposes will need to meet the gateway tests set out in the NPS-FM (clause 3.22(1)). Any consent granted will be subject to the effects management hierarchy requirements. This includes applying the offset and compensation principles in new appendices 6 and 7 (complying with principles 1–6, and having regard to the remaining principles), as well as new requirements for consent conditions to address monitoring and long-term management of the offset (NPS-FM clause 3.22(3)(a) and (b) – see Part 4.3.3(B) for details).</p>
<p>Additions to the definition and consent pathway for ‘specified infrastructure’</p>	<p>See Part 4.3.3(A) of this report.</p> <p>The proposed amendment is to include the following in the definition of ‘specified infrastructure’ at clause 3.21 of the NPS-FM:</p> <ul style="list-style-type: none"> • water storage infrastructure • defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990 • ski area infrastructure. <p>This addition will provide a necessary consent pathway for these types of infrastructure, through the current specified infrastructure consent pathways (clause 3.22(1)(b) of the NPS-FM and regulations 45–47 in the NES-F).</p> <p>Any water storage, New Zealand Defence Force or ski area infrastructure consent application will need to meet the tests already set out for specified infrastructure in NPS-FM. Any consent granted will be subject to the effects management hierarchy requirements (including new requirements on consent conditions and compliance with the offset/compensation principles as set out in NPS-FM clause 3.22(3)(a) and (b) – see Part 4.3.3(B) for details).</p>

Proposed amendment	Detail
<p>Inclusion of aquatic offset and compensation principles, and requirements for consent conditions to address long-term management and monitoring of offsets</p>	<p>See Part 4.3.3(B) of this report.</p> <p>A set of principles for both offsets and compensation is proposed to be included in new appendices 6 and 7 of the NPS-FM (respectively). A proposed amendment to clause 3.22(3) of the NPS-FM will require that councils must be satisfied that where aquatic offsetting or aquatic compensation is applied, the applicant <i>has complied</i> with principles 1–6, <i>and had regard to</i> the remaining principles.</p> <p>New requirements are also proposed for consent conditions set out in NPS-FM at clause 3.22(3)(a) and (b) to ensure the efficacy of offsets and compensation undertaken over time.</p>
<p>Changes to restoration provisions</p>	<p>See Part 4.3.3(C) of this report.</p> <p>A suite of changes is proposed to assist with undertaking restoration activities and to recognise the need for wetland maintenance and biosecurity activities. They:</p> <ul style="list-style-type: none"> • define wetland maintenance and biosecurity, and enable activities to be undertaken for those purposes (as either permitted or restricted discretionary) • enable activities beyond the area threshold in regulation 38(4)(b) for: <ul style="list-style-type: none"> – clearance of exotic vegetation by any means for biosecurity purposes, and of indigenous vegetation where demonstrably necessary for biosecurity – clearance of exotic vegetation using hand-held tools for restoration and wetland maintenance purposes – clearance of exotic vegetation by any means for restoration and wetland maintenance purposes, provided that the activities are set out in a restoration plan or a certified freshwater farm plan • clarify that the exception (in regulation 38(5)) to the area threshold in regulation 38(4)(b), in relation to earthworks or land disturbance for planting, only applies to planting for restoration or wetland maintenance purposes • clarify that the intent of regulation 55(3)(e) of the NES-F is about the placement of debris and sediment, and does not relate to incidental entrance of sediment to wetlands • preclude councils from charging to receive or review notifications of intended permitted activity work (including restoration plans where required) for wetland restoration, maintenance and biosecurity.
<p>Clarify the take, use, dam, diversion, and discharge of water</p>	<p>See Part 4.3.3(D) of this report.</p> <p>Proposed amendments remove ‘discharges’ from the NES-F section <i>Drainage of natural wetlands</i> and:</p> <ul style="list-style-type: none"> • clarify that discharges are managed by the NES-F only where there is a hydrological connection to a natural wetland, the discharge will enter the wetland and will change, or is likely to change, the water-level range or hydrological function • clarify that water take, use, damming and diversion is managed by the NES-F only where there is a hydrological connection to a natural wetland and the activity will change, or is likely to change, the water-level range or hydrological function.

Proposed amendment	Detail
Allow an increase in size of infrastructure for fish passage	See Part 4.3.3(E) of this report . Proposed amendments correct an inconsistency between the fish passage provisions in regulations 58–60, and regulation 46(4)(b) which states that permitted activities must not increase the size of specified infrastructure or other infrastructure.
Exempt flood control and drainage works from certain general conditions	See Part 4.3.3(F) of this report . The proposed amendment to regulation 46(4)(a) includes flood protection and drainage works as activities also being exempt from those general conditions at regulation 55(2), (3)(b) to (d) and (5).
Amend sphagnum moss harvesting and refuelling	See Part 4.3.3(G) of this report . The proposed amendment allows refuelling <i>within</i> a wetland using containers of 20 litres or less rather than outside a 10-metre setback from the natural wetland.

2.2 Amendments to how the NES-F applies to wetlands in the coastal marine area

Context

The NES-F refers to, and applies throughout to, ‘natural wetlands’. This differs from the NPS-FM which employs the term ‘natural inland wetlands’. Both these terms are defined in the NPS-FM (the NES-F refers back to the NPS-FM for the relevant definitions). The intent of the NES-F to apply to wetlands that are both ‘inland’ and situated in the coastal marine area (CMA) is set out in the 2020 supporting documents ([Cabinet decisions](#), the [Action for Healthy Waterways 2020 RIA](#) and [Action for Healthy Waterways 2020 section 32 report](#)).

However, in late 2020 during the course of appeals on Northland Regional Council’s proposed regional plan a question arose as to whether the NES-F applies to wetlands in the CMA. To resolve the uncertainty a declaration was sought. The Environment Court subsequently declared that the NES-F only applies to the CMA upstream of any river mouth.² This interpretation was contrary to previous Cabinet decisions, and in March 2021, the Minister of Conservation (supported by the Ministry for the Environment), with Forest and Bird, appealed the declaration.

On 18 November 2021, the High Court issued a decision that the NES-F applies to all natural wetlands in the CMA.³ The decision did not go into the implications of applying the NES-F to the CMA but focused on the statutory interpretation of the policy and regulations. Subsequently, councils and others became widely aware that the NES-F applies to wetlands in the CMA and the full implications of that. At the forefront of the implications are two issues: firstly, where exactly in the CMA does the NES-F apply and second, how does this align (or not) with regional coastal plans developed under the requirements of section 12 of the RMA and the New Zealand Coastal Policy Statement (NZCPS)? These two issues are discussed further below.

² *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 6.

³ *Minister of Conservation v Mangawhai Harbour Restoration Society Inc* [2021] NZHC 3113.

What parts of the CMA does the NES-F apply to?

The RMA definition of a ‘wetland’ is broad and *includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.*

The 2020 NES-F uses the term ‘natural wetland’ (defined in the NPS-FM) which is the RMA definition of a wetland but with exclusions (eg, artificial wetlands, geothermal wetlands, and pasture-dominated wet areas/wetlands). These exclusions are unlikely to be relevant in the CMA, so a large proportion of the CMA meets the RMA definition of a wetland and can be interpreted to be a ‘natural wetland’ for the purposes of the NES-F. However, in the *Minister of Conservation v Mangawhai Harbour Restoration Society Inc*, Campbell J stated, “No-one is suggesting the entire CMA is a wetland subject to the Freshwater Standards. While the scope of a “wetland” was not in issue on this appeal, I am reasonably confident it does not encompass the entirety of the CMA, the seaward boundary of which is the outer limits of New Zealand’s territorial sea.”⁴

As a result of the decision there is certainty that the NES-F applies to the CMA but the question of the seaward boundary and the ‘type’ of coastal wetland it applies to remains uncertain. The Ministry has undertaken work on developing a method to delineate coastal wetland types based on an existing coastal hydrosystems classification ([NZ Coastal Hydrosystems](#)⁵). This can provide certainty as to where the NES-F applies, but other issues would remain as follows.

Implications of applying the NES-F to the CMA – in addition to regional coastal plans

Coastal plan content is driven by the NZCPS, and the matters set out in section 12 of the RMA. All of the section 12 matters for activities such as reclamation/drainage, structures (jetties/wharves), foreshore disturbance etc in the CMA must be addressed via coastal plan rules (ie, it is either permitted or consent is required).

In contrast, the NES-F regulates three types of activities – (1) vegetation clearance, (2) earthworks/land disturbance and (3) water takes, use, damming, diversion and discharges (activities that would impact the water level of the wetland). The NES rules (permitted, restricted discretionary, etc) are for select purposes (eg, construction of specified infrastructure, maintenance of wetland utility structures) with a catch-all, non-complying rule for everything else. The drainage of natural wetlands in part or in full is either non-complying (outside but within 100 metres of the wetland) or prohibited (within the wetland). The rules are stringent given the NPS-FM policy is to halt the loss of natural inland wetlands extent and values.

Councils now need to assess their coastal plan rules and change these where they are contrary to the NES-F (noting that the regional plan may be more stringent than the NES-F but not more lenient).

Regional councils and others have raised concerns about the implications for planning, consenting and compliance when the NES-F is applied on top of regional coastal plans in the

⁴ *Minister of Conservation v Mangawhai Harbour Restoration Society Inc* [2021] NZHC 3113 at [117].

⁵ [NZ Coastal Hydrosystems - Dataset - data.govt.nz - discover and use data.](#)

CMA. Councils informed the Ministry that the NES-F is not suitable to apply in the CMA because it:

- is intended and structured for inland wetlands, and the things that are a risk to them
- has not been co-designed with communities and tangata whenua, like coastal plans
- remains uncertain about where the NES-F applies compared with the coastal plans
- requires activities with minor effect (currently permitted under coastal plans) to obtain consent, or be considered non-complying despite those minor effects
- raises Treaty implications when it cuts across co-governance arrangements, which are sometimes used in the CMA.

Department of Conservation view

The Department of Conservation (DOC) is the custodian of the NZCPS, which gives direction to coastal plans. Coastal plans are approved by the Minister of Conservation. However, the NES-F would interact with coastal plan content in anticipated ways. This has broad implications for DOC, both in terms of supporting the Minister of Conservation in her coastal marine role under the RMA, as well as undertaking its conservation functions in CMA wetlands.

Is the NES-F appropriate for managing wetlands in the CMA?

While there is ongoing concern regarding the loss and degradation of wetland ecosystems within the CMA – the NES-F may not be the appropriate tool to address the risks these ecosystems face.

The risks to wetlands in the CMA are different from inland wetlands. The NES-F is well structured to address risks to inland wetlands (vegetation clearance, earthworks and water takes/discharges) but it does not appropriately address coastal risks such as sedimentation, marine activities and responses to climate change.

The NES-F rules will capture activities that are otherwise appropriate in the CMA and apply very strong regulatory requirements to these. In some cases this will mean consent cannot even be considered for an activity that may otherwise be appropriate in the CMA (eg, where the prohibited activity status in the NES-F is triggered). Other rules such as those on water take, use, damming and diversion have limited applicability when applied to coastal systems. (See the [RIS \(wetlands in the CMA\)](#) for a full discussion on the impacts.)

The blunt protection provided by the NES-F is outweighed by the unintended impacts of applying its rules to the wider coastal environment. Therefore, as it currently stands, the NES-F it is not the most suitable regulatory tool to achieve the ecosystem outcomes the Government seeks for wetlands in the CMA.

Options considered

The Ministry has considered how to define a ‘natural wetland’ in the CMA for the purposes of the NES-F and options to address the unintended impact of the NES-F as follows:

- Option 1: Clarify the application of the NES-F to the CMA
 - i. define ‘natural coastal wetland’ for the purposes of these regulations
 - ii. amend the NES-F to clarify which rules apply to ‘natural coastal wetlands’
- Option 2: Amend the NES-F to not apply to the CMA
 - i. amend the NES-F so that it only applies to ‘natural inland wetlands’
 - ii. develop new regulations specifically for wetlands within the CMA through the current work program developing better protection for estuaries.

Option 1 aligns with the High Court decision, but some conflict would remain in terms of applying the NES-F on top of the rules of coastal plans.

Under Option 2, new direction would be developed specifically for wetlands within the CMA alongside the work programme to provide better protection for estuaries. This direction would make clear the relationship between the NZCPS and NPS-FM in the CMA and provide better integration across freshwater and coastal management, reducing uncertainty.

Consultation feedback on the proposed options

Option 2 to amend the NES-F wetland provisions to not apply to wetlands in the CMA, is well supported by all councils, submitters from the business sector and industry bodies. Most of these submitters cite the two key issues identified above as reasons for change. These submitters consider this option is a straightforward and effective way to resolve issues with the status quo.

In contrast, Option 1 to amend the regulations by defining what is a coastal wetland and modifying the application of the rules, is supported by ENGOs, the Parliamentary Commissioner for the Environment, the Māori Trustee and others. They considered the rules of the NES-F to be appropriate given the vulnerable status of wetlands (including those in the CMA), and considered this is consistent with the original policy intent.

Several submitters noted that the NZCPS and regional coastal plans cannot be relied upon to safeguard against further loss of coastal wetland extent (although most councils consider this is the appropriate mechanism to achieve this).

Most submissions received from iwi/hapū generally supported maintaining the status quo or progressing Option 1 in some form. A common basis for this was that they considered that these options were more consistent with Te Mana o te Wai than Option 2.

Ultimately almost all submitters noted that appropriate rules for wetlands in the CMA are required and supported the need for policy change (though some of those supporting Option 2 did not want to see the NES-F removed until such change is in place). A discussion on the feedback received can be found within the [report and recommendations](#) on these proposed amendments to the NPS-FM and NES-F.

Following analysis of the submissions received, the Ministry recommended to the Minister that the NES-F be amended so that it no longer applies to the CMA and that national direction appropriate to managing the risks and impacts that coastal systems face take its place in the CMA.

2.3 Technical clarifications

Since the NPS-FM and NES-F were gazetted in August 2020, the Ministry has maintained a record of technical issues and provisions that could benefit from clarification. Amendments aim to improve clarity of policies, reduce complexity of drafting and in some cases correct errors. They are consistent with previous decisions made by Cabinet when putting the *Essential Freshwater* package in place in 2020, and do not alter the policy intent or have an additional impact.

Table 2 summarises the proposed technical clarifications to the NES-F and NPS-FM.

Table 2: Technical clarifications to NPS-FM and NES-F

Proposed amendment	Detail
Grammatical changes (throughout the NPS-FM)	<p>The proposed amendments will correct a number of minor grammatical errors or make adjustments to align with drafting best practice. An example of this is where references to 'regional plan(s)' have been simplified to 'regional plan'. This reflects good drafting practice (and section 19 of the Legislation Act 2019, that the singular includes the plural and vice versa, as appropriate).</p> <p>Amendments include other similar corrections, to address grammatical or punctuation errors that have no impact on the meaning but will improve the clarity of the document.</p>
Definitions (NPS-FM clause 1.4)	<p>Feedback indicated a number of definitions were not clear, and amendments are proposed to address the uncertainty this creates.</p> <p>For example, in the definition 'commencement date means the date on which this National Policy Statement comes into force', the proposed amendment will specify 'ie, 3 September 2020'. This is the date that was already intended by that term, but simply stating it increases clarity.</p> <p>Proposed amendments introduce cross-references for consistency within the document, for example, where a document that is incorporated by reference is noted within the NPS-FM, it is usually followed with '(see clause 1.8)' (naming the clause that explains where to find documents incorporated by reference). We have added that cross-reference in where it was missing, for consistency and to assist the reader.</p> <p>Several defined terms were also not in alphabetical order, so proposed amendments will reorder these.</p>
Best information (NPS-FM clause 1.6 and throughout)	<p>Clause 1.6 of the NPS-FM provides direction on how councils should proceed in the absence of complete and scientifically robust data. It makes it clear that councils can use a range of information sources and must not delay making decisions solely because of uncertainty about the quality or quantity of the information available.</p> <p>Currently, drafting constrains the application of this clause to parts of the NPS-FM that specifically require the use of 'best information available'. These parts direct councils to identify baseline states, set target attribute states, set resource use limits and set environmental flows and levels. However, related parts of the NPS-FM that direct councils to identify take limits and manage attributes affected by nutrients, do not currently specify the use of best information available. This is an unintended outcome of specifically referencing 'best information available' in some parts but not others, of the NPS-FM.</p> <p>The proposed amendments will clarify that this requirement to use the best information applies to implementation of the whole NPS-FM. This is consistent with the standard of evidence applied under the RMA, and its approach to uncertainty more generally.</p>

Proposed amendment	Detail
Policy 5 (NPS-FM clause 2.2)	The proposed amendment will refer to '(including through a National Objectives Framework)' to clarify that the National Objectives Framework (NOF) is one way that freshwater should be managed, but not the only way. There is no change in intent, just a change to drafting to make this point clear.
Transparent decision-making (NPS-FM clause 3.6)	<p>Clause 3.6 of the NPS-FM directs regional councils to make decisions relating to tangata whenua involvement and developing action plans in a transparent way. It requires councils to publish the matters considered and the reasons for decisions reached.</p> <p>This clause was included because decisions relating to tangata whenua involvement and developing action plans may not be adequately recorded by processes associated with development of a regional plan (ie, hearings under Schedule 1 of the RMA or a regional council's evaluation report prepared under section 32 of the RMA). How councils give effect to other parts of the NPS-FM (eg, limit-setting) should already be transparent in the content of regional plans and supporting documents, and adequately addressed by such processes.</p> <p>Feedback has indicated the distinction is not well understood. The proposed amendment would apply clause 3.6 to all decisions made in implementing the NPS-FM.</p> <p>The proposed amendment would remove any doubt as to whether or not specific decisions need to be made transparent. Existing processes under the RMA can continue to be the mechanism by which decision-making is made transparent (further supported by the ability to appeal or judicially review decisions and the Local Government Official Information and Meetings Act 1987).</p>
Special provisions for attributes affected by nutrients (NPS-FM clause 3.11–3.14)	<p>Clause 3.13 of the NPS-FM directs councils to achieve target attribute states for nutrient attributes and attributes affected by nutrients (eg, periphyton, macroinvertebrates) by managing nitrogen and phosphorus. It describes a process by which regional councils derive the instream concentrations and exceedance criteria, or instream loads, needed to achieve target attribute states for a range of ecosystem health attributes and outcomes for downstream receiving environments. Once derived, clauses 3.12 and 3.14 direct councils on how to achieve these.</p> <p>Feedback indicated that these provisions are unclear and may unnecessarily add to the complexity of managing nutrients.</p> <p>These proposed changes attempt to address these issues by simplifying the drafting of clause 3.13 and related provisions. This is in order to focus on policy intent (ie, requiring regional councils to manage nutrients as needed to achieve desired outcomes for other ecosystem health attributes) and to clarify how the clause relates to limit-setting.</p> <p>The proposed amendments will simplify drafting to avoid unnecessary distinctions between attributes and attribute types. Once nitrogen and phosphorous outcomes are derived under clause 3.13, they are simply treated as nutrient outcomes that need to be achieved in their own right, and regional councils are directed to set limits on resource use under clause 3.12(1).</p> <p>Note, clause 3.14 includes consequential changes, for consistency with other relevant clauses.</p>
Attribute tables (NPS-FM appendices 2A and 2B)	Proposed amendments will provide consistency and clarity as to the sampling frequencies and statistical specifications for the attributes in those tables.

Proposed amendment	Detail
<p>Description of permeability threshold</p> <p>(NES-F regulations 10 and 13)</p>	<p>The proposed amendment will address ambiguity in the drafting of the permeability standards (at regulations 10(3)(a) and 13(4)(a)).</p> <p>These provisions currently refer to: “the base area of the [stockholding area/feedlot] must be sealed to a minimum permeability standard of 10⁻⁹ m/s”. One reading of the standard arguably requires that the base of the feedlot must be at least as permeable as 10⁻⁹ m/s, rather than less permeable as intended. The amendment clarifies this intent.</p>
<p>Reference to when a consent can be granted</p> <p>(NES-F regulations 24 and 30)</p>	<p>The proposed amendment will address ambiguity in when a consent can be granted (at regulations 24(1) and 30(3)).</p> <p>Regulations 24(1) and 30(3) currently use similar language, referring to:</p> <p><i>A resource consent for ... discretionary activity ... may be granted only if the consent authority is satisfied that granting the consent will not result in an increase in—</i></p> <ul style="list-style-type: none"> <i>(a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020; or</i> <i>(b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.</i> <p>The relationship between the subclauses is unclear – the intent is that a consent may <i>only</i> be granted <i>if neither</i> clause is triggered. The proposed amendment clarifies this intent, in both regulations.</p>

Part 3: Statutory and policy context

3.1 Developing and amending national direction

3.1.1 National policy statements

The purpose of an NPS is to state the objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA. It provides direction to local authorities about how to carry out their responsibilities under the RMA when it comes to matters of national significance. Consent authorities must also 'have regard to' the relevant provisions of an NPS when considering an application for resource consent.⁶ Regional policy statements, regional plans and district plans are all required to give effect to an NPS.

The requirements for amending an NPS are outlined in sections 46A–54 of the RMA, and this evaluation under section 32 fulfils the requirements in section 52(1)(c).

3.1.2 National environmental standards

The requirements for preparing an NES are outlined in sections 43–44A, and section 46A, of the RMA. An NES may prescribe technical standards, methods and/or requirements (section 43(1)) for land use and subdivision, use of water bodies and coastal marine area, water take and use, discharges or noise.

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)). Under section 43A(6), an NES that allows a resource consent to be granted for an activity may state that the activity is a controlled, restricted discretionary, discretionary or non-complying activity. It may also state the matters of control or discretion.

The RMA sets out a process for preparing an NES under section 46A.

For these proposed amendments to the NPS-FM and NES-F, the Minister established a process under section 46A(3)(b) that meets the statutory requirements of section 46A(4).

⁶ See section 104(1)(b)(iii) of the RMA.

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.

This process was followed by the Ministry from late 2021 to late 2022. (See [Part 2: Amendments overview](#) for further detail of the process that has been undertaken to achieve the proposed amendments outlined in this assessment.)

3.2 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 the implementation of the NPS-FM, the NES-F and new regulations under section 360 of the RMA.

3.2.1 The NPS-FM

The NPS-FM has a single objective and a suite of policies and implementation methods detailing how the objective is expected to be achieved. It provides direction to local authorities about how to carry out their freshwater management responsibilities under the RMA.

The NPS-FM applies a fundamental concept – Te Mana o te Wai – to freshwater management.⁷ It requires (among other things) that regional councils set long-term visions for freshwater in

⁷ Refer to clauses 1.3 and 3.2 of the [NPS-FM](#).

their regional policy statements, involve tangata whenua in freshwater management, and manage freshwater in an integrated way – including through the NOF.

The framework of Te Mana o te Wai encompasses six principles relating to the roles of tangata whenua and all New Zealanders in the management of freshwater as well as setting out a hierarchy of obligations. These are found in clause 1.3(5) and also comprise the NPS-FM’s single objective as follows.

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
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Councils must notify a regional plan by 31 December 2024 that gives effect to the NPS-FM in accordance with section 80 of the RMA.

In this evaluation the NPS-FM’s single objective with its three priorities, is evaluated in the environmental criteria set out in the analysis tables to follow.

3.2.2 The NES-F

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.

It contains rules (regulations) on vegetation clearance and earthworks/land disturbance, as these activities pose risks to wetland integrity. It also manages water takes, use, damming, diversion and discharges (of water to water) where these will, or are likely to, result in changes to wetland water levels and impact the hydrological functioning of the wetland. Consent pathways for select purposes are provided (eg, building wetland utility structures). Activities without a select purpose, and that would result in the complete or partial drainage of a wetland (earthworks or the taking, use, damming, diversion and discharges of water), are either non-complying (where that occurs outside of, but within 100 metres of, a wetland) or prohibited (within a natural wetland).

Regulation 54 is a general catch-all non-complying rule for all other activities that are not provided for through one of the specific purposes in the NES-F.

3.2.3 How the regulations work together

Together the NPS-FM and NES-F regulations contribute to achieving the NPS-FM objective which is to ensure that natural and physical resources are managed in accordance with the three priorities at clause 2.1 (as described above).

In addition, the provisions of both regulations support and achieve NPS-FM Policy 6 which requires that there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration promoted.

The regulations provide consent pathways for particular purposes (described above and listed in clause 3.22(1) of the NPS-FM). The consent pathways are subject to a series of gateway tests and an application for consent must be considered against the requirements of the effects management hierarchy. This is an approach to managing the adverse effects of an activity on the extent or values of a natural inland wetland and *must* be applied sequentially.

The effects management hierarchy begins with a requirement to avoid adverse effects, then minimise and remedy, followed by offsetting/compensation to ensure a no net loss (and preferably a net gain) in wetland extent and values (in accordance with Policy 6). Where offsets/compensation are not appropriate the activity itself must be avoided.

This hierarchy applies an approach that enables necessary activities in wetlands only where appropriate and ensures there is no further loss of wetland extent and values, in accordance with Policy 6, through the offsetting provisions and requirement for the offset to achieve a no net loss conservation outcome (*see* definition of aquatic offset in NPS-FM clause 3.21).

Part 4: Evaluation of the proposed amendments

This report has drawn on the following information to evaluate the proposed amendments to the NPS-FM and NES-F.

- [Action for Healthy Waterways 2020 section 32 report](#) (August 2020) (that accompanied the NPS-FM and NES-F)
- [Action for Healthy Waterways 2020 RIA](#) (May 2020) (that accompanied the NPS-FM and NES-F)
- [Discussion document](#) on managing our wetlands (September 2021)
- [Interim RIS on managing our wetlands](#) (August 2021)
- [Report, recommendations and summary of submissions](#) (June 2022)
- [Managing our wetlands: Policy rationale for exposure draft amendments 2022](#) (May 2022)
- [Overview of technical corrections and clarifications in the NPS-FM exposure draft](#) (May 2022)
- [Discussion document](#) on managing our wetlands in the coastal marine area (August 2022) (this document also serves as an interim RIS)
- [Final RIS on managing our wetlands](#) (November 2022)
- [Final RIS on managing our wetlands in the CMA](#) (November 2022)
- [Report and recommendations](#) on these proposed amendments to the NPS-FM and NES-F (November 2022)

4.1 Framework of evaluation for the proposed amendments

A fundamental part of carrying out an evaluation under section 32 of the RMA is examining how the objective(s) of the proposal are the most appropriate way of achieving the purpose and principles in Part 2 of the RMA.

The second requirement is to examine whether the ‘provisions’ (policies and clauses) of the proposal are the most appropriate way to achieve the objectives (in this case, the single objective of the NPS-FM in clause 2.1).

The NPS-FM 2020 provides national direction on the management of freshwater to achieve the purpose of the RMA in terms of promoting the sustainable management of natural and physical resources. The appropriateness of the NPS-FM to achieve this purpose was evaluated in 2020 and can be found at the links in the [Part 4](#) introduction above. As the objective of the NPS-FM remains unchanged its appropriateness in achieving Part 2 of the RMA is not assessed again here.

Section 32(3) contains additional requirements for evaluating a proposal that will amend an existing regulation.

Section 32(3) relates to when a proposal seeks to amend an existing regulation or standard. It requires an assessment of whether the existing objectives would remain if the proposed amendments were to take effect.

The proposed amendments to the NPS-FM and NES-F relate only to the wetland clauses (NPS-FM) and wetland rules (NES-F), including the application of the NES-F to wetlands in the CMA, or are otherwise technical amendments for clarification. The objective and policies of the NPS-FM remain unchanged.

The proposed amendments clarify aspects of the definitions or provide for additional consent pathways for specific purposes, to undertake activities in natural inland wetlands. These pathways require equivalent tests and adherence to the effects management hierarchy (including offsetting etc) in the same way as the existing pathways (eg, for specified infrastructure). Although the number of 'purposes' provided with a consent pathway has increased (eg, the addition of urban development), the framework to ensure the overall objective (Te Mana o Te Wai) and policies of the NPS-FM are met remains unchanged (ie, that there is no net loss of wetland extent or values).

As the overarching objective and policies of the NPS-FM remain unchanged these are not assessed again here against Part 2 of the RMA (for this, see the [Action for Healthy Waterways 2020 section 32 report](#)). The assessment is therefore about the relevance of the amending proposals to the existing objective and policies and the extent to which these would remain if the amending proposal were to take effect.

The required assessment is, therefore, the proposed amendments against the objective of the NPS-FM⁸. Both instruments are intended to work closely together to achieve the single objective of the NPS-FM which is:

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
 - (b) second, the health needs of people (such as drinking water)
 - (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 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 NOF process prescribed in the NPS-FM.⁹

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

An assessment of the effectiveness and efficiency of the amendments to the NPS-FM and NES-F in relation to the NPS-FM objective is outlined in tables 3–20 of this report.

⁸ See [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).

⁹ See [RIA Action for healthy waterways Part II: Detailed Analysis](#) (2020) (that accompanied the NPS-FM and NES-F) p 177.

4.2 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.

The *Essential Freshwater* package sought to strengthen the concept of Te Mana o te Wai, as outlined in clause 1.3 of the NPS-FM. It also sought to improve ecosystem health and water quality of our water bodies in order to provide further protection for freshwater taonga. Achieving this required a balance between setting directive policies and rules nationally and providing flexibility for matters to be addressed locally.

The package recognised the kaitiaki role of tangata whenua, and the important relationships that iwi, hapū and whānau have with freshwater. It incorporated te ao Māori into future freshwater management and planning processes. The package was also subject to extensive engagement and consultation before being agreed by Cabinet in 2020. The amendments now proposed are of a limited scope, focussed on how to improve upon existing Essential Freshwater regulations in the NPS-FM and NES-F. The assessment of iwi/Māori interests is considered within the context of this limited scope of options.

The assessment of this proposal and options to amend the wetland provisions included the criteria of ensuring that the wetland provisions support the effective implementation of the obligations of Te Mana o te Wai. Further detail of this assessment is set out in the [RIS \(inland wetlands\)](#) and [RIS \(wetlands in the CMA\)](#).

Another important aspect of Te Mana o te Wai and principles of Te Tiriti o Waitangi | 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:

- Early in the policy development process for the wetland amendments, officials provided an overview of the issues and proposed changes to Te Kahui Wai Māori and provided a subsequent update following public consultation.
- In September 2021, officials reached out to iwi/Māori stakeholders through Te Kōmiromiro e-pānui (the Ministry's newsletter aimed at delivering the latest updates for tangata whenua). This provided advance notice (by one week) of the upcoming public consultation and provided the proposals being consulted on, for consideration. It also invited further engagement with Ministry officials.
- Officials undertook full public consultation on the various proposed amendments, and through those processes, the Ministry received submissions from iwi/Māori. Specifically:
 - Initial consultation on managing our wetlands (1 September to 27 October 2021): 7 submissions from iwi/Māori.
 - Exposure draft consultation on wetlands and technical amendments (21 May to 10 July 2022): 9 submissions from iwi/Māori.
 - Consultation on managing wetlands in the coastal marine area (10 August to 21 September 2022): 5 submissions from iwi/Māori.

These submissions presented a variety of views on the proposed amendments, which Ministry officials considered both within the context of Te Mana o Te Wai, and Te Tiriti o Waitangi. Changes made after consideration of submissions are set out in the report, recommendations and summary of submissions, and the policy rationale document that accompanied the exposure draft.

4.3 Wetland amendments

The proposed amendments to the wetland regulations are summarised in table 1, in [Part 2: Amendments overview](#).

In evaluating possible amendments to the wetland regulations, the status quo and three other options were considered:

- Option 1: Remove prohibited activity status
- Option 2: Amend the natural wetland definition
- Option 3: Provide consent pathways for additional activities and enable restoration, wetland maintenance and biosecurity.

Option 1 would remove the strong protection provided by the non-complying and prohibited activity regulations. This would negate one of the key purposes of the *Essential Freshwater* programme, which is to halt the decline and loss of natural wetlands. For this reason, Option 2 was not preferred.

Option 2 would continue to achieve the objective of the NPS-FM by providing strong protection to natural wetlands under the regulations, for example effects management hierarchy and regulations 52 (non-complying activities) and 53 (prohibited activities) for all other activities within 100 metres of a wetland. Option 2 focuses the regulations on wetlands that were intended to be protected and excludes land the regulations were not intended to capture. Option 2 is not preferred because of the absence of needed consenting pathways for certain purposes.

Option 3 is the preferred option. It reduces the uncertainties associated with identifying natural wetlands and enables key industries and activities to occur in or around a wetland while ensuring there is no net loss of wetland extent. It does this through offsetting requirements associated with effects management hierarchy and the consent process. This is the package that the Government agreed to consult on in 2021.

Option 3 creates consenting pathways for specific activities including quarrying activities, mining (the extraction of minerals and ancillary activities), fill sites (landfills and cleanfill areas) and urban development. These sectors are important to provide for needed infrastructure (as well as upgrades) and well-functioning urban environments, which are required under the National Policy Statement on Urban Development 2020.

The amended natural wetland definition will remove ambiguity and assist implementation. The amendments will continue to provide strong protection of natural wetlands. At the same time they will enable consent to be sought for certain purposes as long as the gateway tests are met and effects management hierarchy applies so that there is no net loss, and preferably a net gain, in wetland extent and values.

Gateway tests and application of the effects management hierarchy

The proposed new purposes (eg, urban development) provided with a consent pathway will be subject to the same framework and requirements as the current pathways under the regulations (eg, for specified infrastructure). This involves a series of gateway tests that must be met before consent can be accepted for consideration by the consent authority. The consideration of the consent is then undertaken through the lens of the effects management

hierarchy, including the offsetting and compensation requirements, to ensure that there is no net loss (and preferably a net gain) of wetland extent and values.

The consent pathways for quarrying and mining recognise that these activities are constrained to the locations of the resource, and that these locations may be at times within, or within the 100-metre setback of (as set out in the NES-F), a natural inland wetland. The consent pathways require that applications demonstrate a *functional need* as a gateway test for the expansion of an existing, or for new, quarrying or mining activities. The functional need gateway test will be applied at the site scale. The other gateway test of significant regional or national benefit will ensure that only appropriate activities are considered and, may be granted on a case-by-case basis.

The consent pathways for fill sites and urban development recognise that these activities are not locationally constrained in the same way as quarrying and mining. The gateway tests for fill activities and urban development will both require applications to demonstrate that there is either no practicable alternative location or every other location would have equal or greater adverse effects on a natural inland wetland. In the case of urban development these constraints apply to the area of the development. In the case of fill sites, they will apply at a regional scale. The gateway test – that there is a significant district (in the case of urban development), regional or national benefit to allowing the activity within, or within the setback of, a natural inland wetland also applies.

Urban development has two additional gateway tests applied to it – that the activity must occur on land identified for urban development in an operative regional or district plan, and that it is not on land that is zoned rural.

For more details of the options and analysis refer to the [final RIS \(inland wetlands\)](#).

4.3.1 Wetland amendment: Definition of natural wetland

The proposed amendment revises the definition of natural wetland (NPS-FM clause 3.21). As the NPS-FM 'natural wetland' definition is referenced by the NES-F, the amended definition flows through to those regulations. (Note the change to natural *inland* wetland as a consequence of amending the application of the NES-F to the CMA is discussed separately in [Part 4.4 of this report](#), and is not included here).

Under the proposed amendment, the revised definition of natural wetland would be:

natural inland wetland means a wetland (as defined in the Act) that is not:

- (a) in the coastal marine area; or
- (b) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or
- (c) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
- (d) a geothermal wetland; or
- (e) a wetland that:
 - (i) is within an area of pasture used for grazing; and

- (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the *National List of Exotic Pasture Species* using the *Pasture Exclusion Assessment Methodology* (see clause 1.8)); unless
- (iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply

The intent of NPS-FM Policy 6 is that all natural wetlands regardless of size, value, or location, be provided strong protection by the regulations. The NES-F regulations prohibit an activity from occurring within a natural inland wetland where it will result in the full or partial drainage of a natural wetland. Activities that would result in full or partial drainage of a natural inland wetland, that occur outside it but within 100 metres are non-complying – unless provided with a specific pathway for a certain purpose.

Where an activity is granted consent under a specific pathway, the regulations require that no further loss of wetland extent or values occurs. This is required through a process provided by the effects management hierarchy, which requires this sequence: avoid, then remedy, mitigate, offset and compensate or cycle back to avoid where this is not appropriate (see [Part 4.3.3\(B\)](#) of this report for proposed amendments that strengthen the application of this).

The 2020 regulatory response is intentionally strong to stop the continued loss of wetland values and extent. As the regulations were being implemented, the feedback on the natural wetland definition demonstrated that the multiple qualifiers created confusion and variable interpretations.

This was particularly relevant in regard to the pasture exclusion (original part (c)) of the definition. It is intended to exclude highly modified wetland landscapes now utilised for pasture from the regulations, so they can continue to be used for pastoral purposes.

The amendments to the natural wetland definition include:

- replacing ‘improved pasture’ with ‘pasture’
- deleting reference to the commencement date
- replacing ‘is dominated by (that is more than 50% of) exotic pasture species’ with ‘has vegetation cover comprising more than 50% exotic pasture species’
- incorporating by reference a national list of exotic pasture species and a methodology to undertake the assessment
- removing ‘and is subject to temporary rain-derived water pooling’
- clarifying the meaning of ‘wetland constructed by artificial means’
- providing for the protection of threatened species by disapplying part (e) of the definition where threatened species are known to be present.

The intent of deleting ‘improved pasture’ and replacing it with ‘pasture’ is to provide for pasture for grazing purposes without being distracted by differing views on what constitutes ‘improved’. This is instead addressed through the inclusion of a national exotic pasture species list.

The removal of ‘and is subject to temporary rain-derived water pooling’ acknowledges that the wetland delineation hydrology tool is available, and that the ‘rain-derived pooling’ qualifier has limited use.

The inclusion of a national list of exotic pasture species (incorporated by reference in the NPS-FM) will help in determining whether wet pasture areas are excluded from the natural wetland definition. Recommendations for the list were developed by pasture species experts at AgResearch, with review from NIWA’s wetland weed expert to ensure these species were not over-represented. It will be used along with a nationally consistent methodology (also being incorporated by reference into the NPS-FM) to do the assessment. This, as well as the change to the definition of vegetation clearance to clarify that it does not include grazing, will also address any remaining ambiguity about how the NES-F regulations fit alongside the Resource Management (Stock Exclusion) Regulations 2020.

Efficiency and effectiveness

The efficiency and effectiveness evaluation of the amendment to the natural wetland definition is provided in tables 3, 4 and 5.

Table 3: Assessment of effectiveness of the proposed amendments to the natural inland wetland definition – against the NPS-FM objective

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
Resources are managed in a way that prioritises:	The natural inland wetland definition continues to rely on the RMA definition capturing wetlands except those that were intended to be excluded.
(a) first, the health and well-being of water bodies and freshwater ecosystems	The amendment provides clarification around which wetlands are captured by the regulations, and methodologies to standardise assessments to ensure those wetlands continue to be protected and managed by the regulations.
(b) second, the health needs of people	The clarifications to the natural wetland definition provide certainty for the farming sector, which provides essential primary sector resources essential for the health of people.
(c) third, the ability of people and communities to provide for their social, economic and cultural wellbeing, now and in the future.	The pasture exclusion acknowledges the importance of the farming sector in providing resources that are essential for the functioning and wellbeing of communities. The proposed amendments aim to ensure the pasture exclusion in the natural wetland definition is applied as was intended, and enables the continued use of highly modified wetland landscapes for pastoral purposes.

Table 4: Assessment of effectiveness of the proposed amendments to the natural wetland definition – against the elements of the specific problem definition

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Clarity around pasture exclusion	<p>Replacing ‘improved pasture’ with ‘pasture’ removes the current ambiguity about what counts as ‘improved’. The intent is simply to capture pasture, and this is now clear.</p> <p>Deleting ‘at the commencement date’ removes the need for councils to back-cast to a fixed date in the past (the commencement date of the NPS-FM). Back-casting (by an increasing number of years) is likely to be contentious and may unnecessarily exclude some areas of pasture.</p> <p>Removing the words ‘dominated by’ makes the definition simpler; they were not necessary as it already specifies ‘50% of’.</p> <p>Adding the national list of pasture species (incorporated by reference) removes ambiguity and gives certainty about what species are considered</p>

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
	<p>exotic pasture species here, and the methodology provides a standard of assessment that must be used.</p> <p>Removing ‘subject to rain-derived pooling’ signals that now the hydrology delineation tool is in place, this is has limited utility.</p> <p>Together, these changes will better achieve the original intent of part (c) of the definition, which is to enable existing pastoral land use to continue and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F. This original intent was progressed even though it was known that it would inevitably exclude a portion of ephemeral wetlands in pasture areas.</p>
<p>Clarify wetlands constructed by artificial means and induced wetlands</p>	<p>The proposed amendment to clarify what is meant by ‘wetland constructed by artificial means’ gives more clarity, as that term is not defined in the NPS-FM and was open to interpretation.</p> <p>The precise drafting has developed based on consideration of the RMA definition of ‘wetland’ (which is the starting point for this definition), and the possibility of defining extra terms.</p> <p>The RMA definition does not differentiate on the basis of how wetlands come about, and so no extra definition relating to induced wetlands was determined to be necessary. The intent is that induced wetlands are considered to be natural wetlands (ie, not caught by this exclusion).</p> <p>Through the drafting process, and consideration of defining extra terms such as ‘wetlands constructed by artificial means’, a better description was developed that enables it to be covered within the definition of natural wetland, and so removes the need for a separate definition.</p> <p>This proposed change addresses the uncertainty and gives more clarity on the scope of this exclusion.</p>
<p>Protect threatened species</p>	<p>This proposed amendment provides for the protection of threatened species, by ensuring that the pasture exclusion does not apply if the location is the habitat of threatened species. This will ensure that, where a wetland passes the pasture exclusion test (ie, has ground cover comprising more than 50% exotic pasture species), but is also known to contain threatened species, the protections in the NES-F will apply.</p> <p>The NPS-FM provides for the protection of threatened species as a compulsory value in the NOF. This amendment cross-refers to the locations of threatened species identified under that part of the NOF, to give clarity and certainty about what threatened species this relates to and to align across the NPS-FM.</p> <p>Without this amendment, there would be a risk of losing threatened species through the pasture exclusion in the definition.</p>

Overall assessment of effectiveness

The amendments to the natural wetland definition give clarity and certainty in applying the pasture exclusion in the natural wetland definition.

Together, these changes will better achieve the original intent, which is to enable existing pastoral land use to continue and not be subject to under the strong rules (and cumulative effect of the setbacks) in the NES-F. It aligns with the NOF by providing protection for threatened species.

Controls on activities that can be undertaken within, or within the setback of, natural wetlands will be achieved through the select purposes with a consent pathway, relevant gateway tests (eg, significant national or regional benefit, functional need or no practicable alternative location) and the application of the effects management hierarchy. The provisions are appropriate, and through removing ambiguity and uncertainty, they are both an effective and efficient way of achieving the objectives of the proposal.

Table 5: Assessment of efficiency of the proposed amendments to the natural wetland definition

Effects being considered	Benefits	Costs
Environmental	<p>The amendment ensures that the intent of the NPS-FM objective is achieved by continuing to ensure that activities within a natural wetland are managed.</p> <p>The amendment provides clarity about which natural wetlands are subject to the regulations. However, all activities being managed within, or within a setback of, a natural wetland are still managed through the controls of the relevant consent pathways and the gateway tests requiring consideration of the benefits of the activity, and alternative locations.</p> <p>Any activities being considered through a discretionary or restricted discretionary activity consent process for location in, or partially in, or within the setback of, natural wetlands will require consideration and application of the effects management hierarchy. A strong emphasis on avoidance where practicable remains, and only after that, minimisation and remediation and offsetting and/or compensation are to be considered.</p> <p>Offsetting for works within natural wetlands will require offsetting in line with the effects management hierarchy. Together, the provisions will set a high bar and protect the extent and values of wetlands.</p>	<p>(Note that costs associated with the change to 'inland' wetland throughout are assessed in Part 4.4 of this report.)</p>
Economic	<p>The proposed amendments ensure the pasture exclusion only applies where it was intended, thereby enabling existing pastoral land use to continue and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F.</p>	<p>The agriculture sector will face costs when assessing whether the pasture exclusion applies. This cost was also present prior to the proposed amendments, which are expected to marginally reduce it.</p>
Social	<p>The proposed amendments provide increased certainty in the application of the wetland provisions.</p>	<p>Some sectors consider the changes do not go far enough in terms of clarity about when the regulations apply and will result in ongoing uncertainty for users (ie, until wetland boundaries are mapped by councils)</p>
Cultural	<p>There are no specific cultural benefits of this proposed change, see Part 4.2 for further detail on Te Tiriti o Waitangi.</p>	<p>There are no specific cultural costs of this proposed change, see Part 4.2 for further detail on Te Tiriti o Waitangi.</p>
Additional sector commentary	<p>The proposed amendments to the definition were generally well supported by submitters on the exposure draft. Most agreed with the changes, noting that these would help implementation and provide certainty for users.</p>	

Effects being considered	Benefits	Costs
Opportunities for economic growth and employment to be provided or reduced	<p>The proposed amendments clarify that existing pastoral land use can continue and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F on land used for the purposes of grazing. This will lessen a potential impact on the primary industries.</p> <p>High country landowners consider the definitions of 'natural wetland' in the Resource Management (Stock Exclusion) Regulations ('Stock Exclusion Regulations') and the NES-F as applied to High Country pastoral leases will result in perverse environmental outcomes and costly implications.</p>	
Risks of not acting and uncertainty	The risk of not acting is ongoing uncertainty of how to implement the regulations. That could lead to variable interpretations across councils, resulting in costs to consent applicants.	

4.3.2 Wetland amendments: Consent pathways

Policy 6 of the NPS-FM requires that there is no further loss of extent of natural inland wetlands, their values are protected and their restoration is promoted.

The regulations manage certain activities that pose a risk to wetlands, such as vegetation clearance, earthworks or land disturbance, and water takes, use, damming, diversion, or discharge, within or near natural inland wetlands. Consent pathways are provided for specific purposes as set out in clause 3.22(1) of the NPS-FM where the council is satisfied the relevant gateway tests have been met.

Policy 6 is upheld through the consent pathways by applying the effects management hierarchy (NPS-FM clause 3.21(1)). The effects management hierarchy is an approach to managing the adverse effects of an activity. The hierarchy must be applied sequentially and the offsetting/compensation provisions ensure that there will be no net loss and 'preferably a net gain' in extent and values of a wetland (and river).

There are existing consent pathways (eg, for specified infrastructure), and the proposed additional consent pathways are for associated purposes including quarrying activities, fill sites (landfills and cleanfills), mining (minerals) and urban development. The proposed pathways have the same framework as the existing specified infrastructure pathway.

Where an activity does not have a consent pathway (or cannot meet the gateway tests in the pathway), and would result in full or partial drainage of a natural inland wetland, it is either a non-complying activity (regulation 52 – for activities outside of, but within 100 metres of, the wetland) or prohibited (regulation 53 – for activities occurring within the wetland). A general non-complying catch-all rule (regulation 54) for the activities of vegetation clearance, earthworks or water take, use, damming, diversion or discharge covers all other activities.

The proposed amendments provide new consent pathways for activities to be undertaken in or near natural inland wetlands, using the gateway tests to ensure they can only be considered and/or consented where these are met, and applying the effects management hierarchy to manage the risk of adverse environmental effects.

The 'significant national or regional benefit' test is kept as a gateway test in all the proposed new consent pathways (noting that urban development also recognises district benefit to acknowledge tier 1 district councils and the requirement to provide for sufficient development capacity under the National Policy Statement on Urban Development 2020 (NPS-UD)).

The 'functional need' test is critical to balancing land use activities with protection of natural inland wetlands. Requiring an activity to be undertaken elsewhere, if it can be done so, is consistent with the RMA definition of sustainable management, and ensures that natural inland wetlands are only affected where an activity must locate or operate at that location.

While the 'functional need' test will have the intended effect of setting a high bar and providing strong protection to natural inland wetlands, it is not a suitable test for all the proposed new consent pathways. The functional need test is considered to be fit for purpose for specified infrastructure (as currently required), and also for quarrying and mining (which by their nature, must locate where the resources are located). It also provides a check and balance against the ancillary activities associated with quarrying and mining.

However, it is not a suitable test for fill sites (landfills and cleanfills) and urban development. The functional need test was developed specifically with linear infrastructure in mind and as such would be inappropriate for fill sites and urban development, as there would be no functional need for these activities to be located within a natural inland wetland. However, there may be other reasons or limitations that make it appropriate.

A new 'no practicable alternative location' test is used instead to support a resource consent pathway for fill sites and urban development. This test requires that "there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland". This test will ensure there is still an assessment about whether the activity must be located within the natural inland wetland, and will require the activity to be undertaken elsewhere, if it can be done so. This is consistent with the RMA definition of sustainable management, and ensures that natural inland wetlands are only affected where an activity must locate or operate at that location.

In considering alternative tests to enable the resource consent pathway for fill sites and urban development, other tests were considered: a modified functional need test and the operational need test.¹⁰

Neither of these tests were advanced on the basis that they did not provide the same rigour as the proposed 'no practicable alternative location' test, and could be more permissive, providing insufficient protection to natural inland wetlands. Applying an untested interpretation of 'functional need' as the test for these activities could result in implementation issues, ranging from inconsistent interpretation to an unviable consent pathway. Conversely, an operational need test would be too broad and would likely result in widespread loss of natural inland wetland extent.

Consent pathway A – Quarrying activities

Aggregate resources are required for the construction of 'specified infrastructure' which already has a consenting pathway in the regulations. Aggregate is locationally constrained, meaning that it can only be sourced from geographic locations where the resource is naturally present. Having a specific pathway provides the ability for this sector to apply for consent, recognising that aggregate resources are necessary to support the construction and maintenance of infrastructure.

¹⁰ Defined in the [National Planning Standards 2019](#).

The proposed amendments provide a consenting pathway for *quarrying activities* as a discretionary activity. This is set out in the NPS-FM at proposed clause 3.22(1)(d), and in the NES-F at proposed new regulation 45A. *Quarrying activities* will be defined through reference to the definition of *quarrying activities* in the National Planning Standards.

The discretionary activity status enables councils to assess each application on a case-by-case basis, considering the range of matters relevant to a particular application. The potential for significant adverse effects is mitigated through applying the gateway tests of significant national or regional benefit and functional need, and applying the effects management hierarchy, including the offsetting requirements (see [Part 4.3.3\(B\)](#) below for detail on proposed amendments around offsetting).

The consent pathway allows for the expansion of current quarrying activities and the development of new quarries within, or within 100 metres of, a natural inland wetland. The intent is to provide the ability to apply for consent and the quarrying activities to continue to occur where the resource is located, along with ancillary quarrying activities that are also locationally constrained (ie, need to be in close proximity to the quarrying operations).

This approach enables quarrying activities in locations that may be within, or within 100 metres of, a natural inland wetland with controls appropriate to the scale of activity on a case-by-case basis. The gateway tests will ensure resource consents are only sought for quarrying and ancillary activities (eg, access roads, site offices) where those tests are met.

Efficiency and effectiveness

The efficiency and effectiveness evaluation of the quarrying consent pathway is provided in tables 6, 7 and 8.

Table 6: Assessment of effectiveness of the proposed consent pathway for quarrying – against the NPS-FM objective

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
Resources are managed in a way that prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems	Any application will be subject to the gateway tests of functional need and significant national or regional benefit to ensure that only appropriate activities are considered. Any consent granted must have the effects management hierarchy applied to it. Councils have the ability to exercise discretion in deciding whether to grant a consent, which will enable them to consider other aspects of the activity in a specific location.
(b) second, the health needs of people	The consent pathway provides for the quarrying sector, which supports the development of specified infrastructure projects, urban development and the provision of needed housing, which are necessary for the health of people.
(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.	The consent pathway acknowledges the importance of the quarrying sector in providing materials for infrastructure and urban development projects that are essential for the social and economic and cultural well-being of communities.

Table 7: Assessment of effectiveness of the proposed consent pathway for quarrying – against the elements of the specific problem definition

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Quarrying definition	<p>Submissions on the proposed amendments recommended a definition for quarrying be included within the NPS-FM and NES-F.</p> <p>Informed by feedback, the proposal now uses the definition of ‘quarrying activities’ in the National Planning Standards. This includes the extraction of aggregate, as well as ancillary activities that are a necessary part of undertaking quarrying.</p> <p>The functional need test and the significant national or regional benefit test ensure that only quarrying activities meeting those thresholds could occur within, or within the setback of, a natural inland wetland.</p>
Ancillary activities	<p>The consent pathway acknowledges the material being extracted is locationally constrained and can be located within, or within the setback of, a natural inland wetland. Ancillary activities face similar constraints, in that they must be located in close proximity to the extraction, and are therefore included in the consent pathway.</p> <p>Providing a consent pathway for ancillary activities is consistent with the intent of the policy, to provide a pathway for quarrying to be undertaken in recognising that location of aggregate resources are locationally constrained. Not providing for ancillary activities risks making the consent pathway unviable. The gateway tests and effects management hierarchy will apply to ancillary activities and provide the same checks and balances against those activities as for quarrying, to ensure they are only consented where appropriate.</p> <p>The definition of ‘quarrying activities’ in the National Planning Standards was established to streamline the resource consenting process and prevent multiple consents being sought for essential activities associated with the extraction of aggregate. It does this by including ancillary activities within the term quarrying activities. Using this term will provide consistency throughout the regulations, and clarity around the scope of the pathway.</p>
Activity status	<p>The discretionary activity status enables councils to consider all matters relevant to an application on a case-by-case basis. Controls on the scale of activity can be achieved through the significant national or regional benefit and functional need tests.</p> <p>The same applies to ancillary activities. These will be included in the consent pathway to provide clarity and consistency around how all the activities related to the quarrying are assessed, as part of one application. This provides a clear signal of the policy intent and certainty for councils and industry as to what is within scope of the definition.</p>
Small-scale quarrying activities	<p>It is unlikely that resource consent applications for small-scale quarrying activities will meet the gateway test of significant national or regional benefit.</p> <p>The intention of the regulations is to provide a pathway for quarries of significant national or regional benefit to ensure a balance between the protection of natural inland wetlands and the importance of enabling certain activities.</p> <p>While small-scale extraction of aggregate may be cost-effective and convenient for some operators, undertaking the activity in a natural inland wetland is not considered to be consistent with the requirement for sustainable management under the RMA.</p>

Overall assessment of effectiveness

The proposed amendments provide a discretionary activity consent pathway for the purpose of expanding an existing quarry or developing a new quarry for the purpose of extracting aggregate and undertaking ancillary activities.

The discretionary activity status will enable councils to assess a range of matters on application for consent.

Controls on the scale of activity will be achieved through the requirements of the significant national or regional benefit and functional need tests, and application of the effects management hierarchy. The provisions are appropriate, and both an effective and efficient way of achieving the objectives of the proposal.

Table 8: Assessment of efficiency of the proposed consent pathway for quarrying

Effects being considered	Benefits	Costs
Environmental	<p>The amendment ensures that the intent of the NPS-FM objective is achieved by ensuring that the activity can only occur within a natural inland wetland where there is a clear functional need for it to be located there.</p> <p>The amendment requires that resource consent applications consider other locations ahead of progressing quarrying activities in, or within the setback of, a natural inland wetland.</p> <p>Any quarries being considered through a discretionary activity consent process for location in, or partially in, or within the setback of, natural inland wetlands will require consideration and application of the effects management hierarchy. A strong emphasis on avoidance is kept where practicable, and only after that, minimisation and remediation and offsetting and/or compensation are considered in the hierarchy.</p> <p>Furthermore, the proposed new principles of aquatic offsetting and aquatic compensation (proposed new appendices 6 and 7 of the NPS-FM) both include principles of:</p> <ul style="list-style-type: none"> • no net loss and preferably a net gain (offsetting) • additionality (offsetting and compensation) • trading up (compensation). <p>There is the potential for environmental benefits to arise, while enabling appropriate quarries. Together, the provisions will set a high bar and protect the extent and values of wetlands.</p>	<p>The consenting pathway requires application of the effects management hierarchy, which contemplates (if avoidance is not practicable), minimisation or remediation of effects, then there is the potential for minor adverse residual environmental effects. The environmental costs of these cumulative minor and less than minor residual adverse effects need to be acknowledged.</p> <p>The combination of the NPS-FM policies (including the unchanged Policy 6) and offsetting and compensation actions of the effects management hierarchy (that apply where there are 'more than minor' residual adverse environmental effects) means that the cumulative environmental costs of the proposed amendments are also no more than minor.</p>

Effects being considered	Benefits	Costs
	<p>Offsetting for works within natural inland wetlands will require offsetting in line with the effects management hierarchy. Together, the provisions will set a high bar and protect the extent and values of natural inland wetlands.</p>	
Economic	<p>The amendment enables quarrying activities to continue to provide materials to support the development of nationally and regionally important infrastructure and urban development projects.</p> <p>The amendments provide increased certainty for quarry operators carrying out quarrying activities. The amended regulations provide for the expansion of existing quarries and the development of new quarries where there is a functional need and significant national or regional benefit. This is a benefit to the quarry sector, but also an important consequential economic benefit for the whole community in terms of enabling the development of infrastructure and urban development.</p> <p>The consenting pathway will ensure that urban development and infrastructure projects are supplied with aggregate materials without significant cost increases for the material.</p>	<p>Consenting costs may be significant for some applicants. However, when considered in context they will be less than the opportunity costs that occur when there is no viable consenting pathway available to have proposals considered on their merits.</p>
Social	<p>The amendment enables quarrying activities to continue to provide necessary materials for specified infrastructure and nationally or regionally significant projects that support communities, with their associated positive social effects.</p> <p>The amendment provides increased certainty for the existing operations and their employees about ongoing employment.</p>	-
Cultural	<p>Councils will need to consider impacts on cultural values as part of the assessment of effects of applications for a discretionary activity.</p>	<p>The offsetting and/or remediation required for allowing quarrying activities may not restore the mana or mauri of a freshwater body after the activity has occurred. It will at least take time to realise values.</p> <p>Ongoing costs through involvement in consent processes.</p>
Additional sector commentary	<p>Industry submitters highlighted that the aggregate industry is a fundamental contributor to the delivery of specified infrastructure. If the prohibited activity status remained for quarrying within, or within 100 metres of, a natural inland wetland, substantial additional costs could be incurred by quarries and their customers. This</p>	

Effects being considered	Benefits	Costs
	<p>would flow through to increased costs for aggregate and in turn for urban development and infrastructure projects.</p> <p>Individual submitters and some councils expressed concern about providing a consent pathway for quarries but recognised that quarrying may be necessary to support the implementation of the NPS-UD.</p> <p>Ngāi Tahu expressed concern that quarrying activities would result in more than minor damage to natural inland wetlands and that “no amount of minimisation, remediation or offsetting will restore the mana or mauri of a natural wetland after such an activity has occurred”.</p> <p>A small number of submissions were received on whether the consent pathway would apply to small-scale farm-based quarries. Agricultural industry and land holders submitted that these operations were a common way of sourcing gravel and limestone for the construction of animal movement and standing areas. It was proposed by Irrigation New Zealand that these could be a permitted activity and controlled through the freshwater farm plan process.</p>	
<p>Opportunities for economic growth and employment to be provided or reduced</p>	<p>The wetland amendments enable a consent pathway for the expansion of existing quarries and the development of new quarries where there is a functional need and significant national or regional benefit, whereas the existing regulations do not (in circumstances where activities would be in, or within the setback of, any natural inland wetlands regardless of their size or significance). The amendments provide opportunities for economic growth and employment, noting the consequential benefit derived from the quarrying material and enabling the development of infrastructure and urban development.</p> <p>An increased demand for experts is likely, to assist in demonstrating functional need and evaluating offsetting and compensation proposals to support resource consent applications and by councils processing applications.</p>	
<p>Risks of not acting and uncertainty</p>	<p>The risks of not acting could result in an increased cost of aggregates for nationally and/or regionally significant projects and for specified infrastructure projects. This would have a flow on cost to the building sector eg, for housing and other urban development projects.</p> <p>The risks of not acting exceed the risk of acting.</p>	

Consent pathway B – Landfills or cleanfill areas

Fill sites (landfills and cleanfill areas) are not locationally constrained in the same way as quarrying and mining. Generally, fill sites are located in valleys or gullies for functional reasons and are often damp areas of pasture or gully heads where natural inland wetlands may occur. Under the current NES-F, new or expanding fill sites would likely be assessed as a non-complying activity or prohibited (within a wetland where the activity would result in the full or partial drainage of the wetland).

Fill sites however, are a necessary part of construction and maintenance of infrastructure (as already provided for under the regulations). Where fill sites are not in close proximity to the source area this can constrain the development or construction required by the inability to dispose of waste and overburden appropriately and efficiently.

The proposed amendments provide a consent pathway for landfills and cleanfill areas (as defined in the National Planning Standards 2019) as a discretionary activity. This is set out in the NPS-FM at proposed clause 3.22(1)(f), and in the NES-F at proposed new regulation 45B.

Councils would determine consents for these activities on a case-by-case basis. The significant national or regional benefit and no practicable alternative location gateway tests (see [Part 4.3.2 of this report](#) for a full discussion on the requirements of these tests) would place controls on accepting resource consent applications for fill activities.

The test for no practicable alternative location will require that applications demonstrate that other locations for fill sites within the region have been considered before locating a fill site within a natural inland wetland.

These tests create a threshold or ‘bar’ to be met before the council can accept an application for consent. The effects management hierarchy (EMH) then provides the lens or framework on which council will assess the application. The EMH must be applied sequentially (eg, cannot jump to, and apply, compensation only). The steps require an assessment of the extent to which the activity can be avoided, remedied, then mitigated. Offsetting/compensation are applied where appropriate (to achieve a no net loss, and preferably a net gain, in wetland extent and values as required by the definition of aquatic offset). If this is not possible or appropriate the activity must be avoided and consent declined.

Proposed offsetting/compensation principles must be complied with (principles 1–6) and the remaining principles ‘had regard’ to. This will better ensure offsetting is appropriate. Proposed new requirements to be included as consent conditions will ensure that offsets are managed and monitored and/or other methods and measures are in place to ensure success of the offset over time.

Efficiency and effectiveness

The efficiency and effectiveness evaluation of the proposed consent pathway for fill sites is provided in tables 9, 10 and 11.

Table 9: Assessment of effectiveness of the proposed consent pathway for fill sites – against the NPS-FM objective

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
Resources are managed in a way that prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems	Any application will be subject to the gateway tests of no practicable alternative location and significant national or regional benefit, to ensure any new resource consents or expansions of existing resource consents are appropriate. The no practicable alternative location test will ensure that other locations are assessed and prioritised over locating a fill site within, or within the setback of, a natural inland wetland. The ability of councils to exercise discretion in deciding whether to grant a consent will enable them to consider other aspects of the viability of the activity within that area. The effects management hierarchy must also be applied.
(b) second, the health needs of people	The amendments enable a landfill (and cleanfill) consenting pathway which will enable landfills to provide waste management services which are essential for the health needs of people. This also supports the quarrying consent pathway (through the provision of cleanfill sites for overburden), which in turn supports the development of specified infrastructure projects, including those essential for the health of people.

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
(c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.	The consent pathway acknowledges the importance of the landfill and cleanfill sector in providing facilities that benefit infrastructure and urban development projects that, in turn, are essential for the functioning and well-being of communities.

Table 10: Assessment of effectiveness of the proposed consent pathway for fill sites – against the elements of the specific problem definition

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Definitions of landfills and cleanfill areas	The proposed amendment uses the definitions of ‘landfill’ and ‘cleanfill areas’ in the National Planning Standards, to employ consistent terminology across planning documents.
Cleanfill pathway to support mining and quarrying activities	<p>The mining, quarrying and development sectors noted that cleanfills are essential near their activities, to operate without the large carbon and financial costs of transporting overburden and managed waste greater distances. Quarrying and mining often remove and stockpile overburden, often for site rehabilitation.</p> <p>Fill sites should be located outside natural inland wetland areas wherever possible. However, because of the prevalence of natural wetlands in areas where fills tend to be located (ie, depressions in the landscape), and the need to be located near mining and quarrying sites, this may not always be feasible. The proposed consent pathway for fill sites will support the mining, quarrying and urban development pathways and ensure they are viable.</p>
No practicable alternative location test	<p>Fill sites do not have a ‘functional need’ to operate within a natural inland wetland area. This is because these sites are less restricted in where they can be situated.</p> <p>However, fills are commonly located within valleys or gullies, which are often damp and meet the definition of ephemeral wetlands. There are several reasons for locating in geographic depressions. For example, cleanfill may be used to infill an area so it can be used for another purpose, such as development (which may have previously been constrained by the original topography). For landfills, the reason is to avoid displacement of water or odour by prevailing winds.</p> <p>The no practicable alternative location test will ensure that alternative locations are considered, and used, unless the alternative locations would have equal or greater adverse effects on a natural inland wetland.</p>
Activity status	The discretionary activity status enables councils to consider all matters relevant to an application on a case-by-case basis. This includes where cleanfill areas are appropriate to support other activities that have been provided a consent pathway under the regulations. Applications will be subject to the tests of significant national or regional benefit and no practicable alternative location.
Size of fill sites	<p>Consents for fill activities should be determined based on the necessity to be situated in that location, and significant national or regional benefit.</p> <p>A size criterion is not included the regulation. This was to ensure a balance was maintained between providing a consent pathway for fill sites and the overall objective to protect natural inland wetlands.</p>

Overall assessment of effectiveness

The NES-F amendments provide a discretionary activity consent pathway for the purpose of expanding an existing, or developing a new, landfill or cleanfill operation.

The discretionary activity status will enable councils to assess a range of matters on application for consent.

Controls on the scale of activity will be achieved through the requirements of the significant national or regional benefit test and no practicable alternative location test. The provisions are appropriate, and both an effective and efficient way of achieving the objectives of the proposal.

Table 11: Assessment of efficiency of the proposed consent pathway for fill sites

Effects being considered	Benefits	Costs
Environmental	<p>Any fills being considered through a discretionary activity consent process will require consideration and application of the effects management hierarchy. A strong emphasis on avoidance is retained. Only after avoidance are minimisation and remediation, and offsetting and/or compensation considered in the hierarchy. The proposed new principles of aquatic offsetting and aquatic compensation (proposed new appendices 6 and 7 of the NPS-FM) both include principles of:</p> <ul style="list-style-type: none"> no net loss and preferably a net gain (offsetting) additionality (offsetting and compensation) trading up (compensation). <p>There is the potential for environmental benefits to arise from offsetting and compensation, as well as enabling appropriate fills.</p> <p>Offsetting for works within natural inland wetlands will require offsetting in line with the effects management hierarchy. Together, the provisions will set a high bar and protect the extent and values of natural inland wetlands.</p>	<p>Leaching effects from fill sites could still result in adverse ecological effects on freshwater more generally where leachate enters freshwater bodies downstream of a fill site.</p> <p>There are no incentives to consider different waste disposal options other than the status quo, although this is guided by the Waste Minimisation Act 2008.</p> <p>There is the potential for minor adverse residual environmental effects to the extent that the consenting pathway requires application of the effects management hierarchy, which contemplates (if avoidance is not practicable), minimisation or remediation of effects.</p> <p>The environmental costs of these cumulative minor and less than minor residual adverse effects need to be acknowledged.</p> <p>The combination of the NPS-FM policies (including the unchanged Policy 6) and offsetting and compensation actions of the effects management hierarchy (that apply where there are “more than minor” residual adverse environmental effects) means that the cumulative environmental costs of the proposed amendments are also no more than minor.</p>
Economic	<p>The amendments will support the delivery of national and regionally significant infrastructure.</p>	<p>Consenting costs, including ongoing costs associated with offsets/compensation may be significant for some applicants. However, when considered in context they will be less than the opportunity costs that occur when there is no viable consenting pathway available to have proposals considered on their merits.</p>

Effects being considered	Benefits	Costs
Social	The amendments enable landfills and cleanfills to continue to provide necessary services for the functioning of communities, including waste management and supporting development and infrastructure.	-
Cultural	Councils making decisions on discretionary activity consent applications will need to consider impacts on cultural values as part of the assessment of effects.	<p>There is the potential for future disputes about alternative locations and the robustness of an assessment where applications are seeking to locate fill sites in, or within a setback of, a natural wetland.</p> <p>Ongoing costs through involvement in consent processes.</p> <p>Consents being granted for fill activities that in some way affect natural wetlands could be contrary to Te Mana o te Wai. However, the rigorous consenting parameters, application of the effects management hierarchy and the principles for offsetting and compensation will ensure that adverse effects on cultural values are considered and avoided to the extent practicable, and that a high bar is set for successful consents.</p>
Additional sector commentary	<p>A consenting pathway for fill sites was broadly supported by the quarrying and development sectors.</p> <p>Submitters from the waste industry emphasised the importance of fill sites for the maintenance and growth of communities and that fill sites remain of importance to the overall waste management system.</p> <p>NGOs generally opposed the consent pathways.</p> <p>Submitters generally agreed the discretionary activity status was appropriate, while others considered a restricted discretionary status was appropriate to give the industry confidence in the consenting pathway.</p> <p>Submissions from the quarrying and development industry indicated that cleanfills are often ancillary services to their activities. In some circumstances it may be appropriate for cleanfills to be consented in natural inland wetlands where they support other activities that are provided with a consent pathway under the regulations.</p>	
Opportunities for economic growth and employment to be provided or reduced	<p>The wetland amendments enable a consent pathway for the expansion of existing landfills and cleanfills, and the development of new sites where there is a significant national or regional benefit and no practicable alternative location. The existing regulations do not provide such a pathway and an application would default to non-complying/prohibited (in circumstances where activities would be in, or within the setback of, any natural inland wetlands regardless of their size or significance).</p> <p>The consequential benefit of the landfill and cleanfill services for infrastructure and urban development (and the functioning of communities generally) will provide opportunities for economic growth and employment.</p>	

Effects being considered	Benefits	Costs
Risks of not acting and uncertainty	<p>The risk of uncertainty from not acting could result in there being limited consented fill sites and a lag in time between future sites being identified, assessed, and then consented to receive material. This could slow down the delivery of nationally or regionally significant projects and/or specified infrastructure projects.</p> <p>The risks of not acting exceeds the risk of acting.</p> <p>The no practicable alternative location test ensures the overall objective for the NPS-FM can be delivered, and the policy framework supports the intent through requiring applications to demonstrate a need to be located within, or within a setback from, a natural inland wetland.</p>	

Consent pathway C – Mining (minerals)

Mining can only occur where the resource is located. The amendments to the regulations include a consenting pathway for the “*extraction of minerals and ancillary activities*” as a discretionary activity. This will enable councils to assess resource consent applications on a case-by-case basis and to apply controls and/or grant consent as appropriate. This is set out in the NPS-FM at proposed clause 3.22(1)(e), and in the NES-F at proposed new regulation 45D.

The gateway tests of significant national or regional benefit and functional need apply, as do the requirements of the effects management hierarchy (including the application of the offset/compensation principles and new consent conditions (see [Part 4.3.3\(B\) of this report](#)).

During consultation, submitters identified that the sacrifice of natural inland wetlands to provide for coal mining was contrary to the requirement for sustainable management under the RMA and conflicted with the goal to move toward sustainable energy. To acknowledge this point, the consent pathway for coal mining is available only for existing coal mines, that are lawfully established at the date the amendments come into effect (29 December 2022). The proposal will provide for the operation and expansion of existing mines but will not provide for any new mines.

Additionally, the ability to apply for consent to expand a thermal coal mine is available only until 2030, in line with the Government’s goal for 100 per cent renewable electricity generation by 2030. The ability to apply for consent for coking coal mining activities within a natural inland wetland will continue past 2030. The extended timeframe beyond 2030 for coking coal acknowledges that at this stage there are few alternatives available and the production of some materials, such as steel, are still heavily reliant on coking coal.

The same question applies to mining as it does to quarrying, being whether the proposed pathway should also provide for ancillary mining activities at the location and extraction of the mineral. As with quarrying, the intent of the policies is to provide a pathway for minerals to be extracted and that includes ancillary activities where they meet the functional need test.

There is no appropriate definition for mining activities as there is for quarrying activities – the definition of ‘mining operations’ in the Crown Minerals Act 1991 is inappropriate and too broad. The proposed amendment therefore uses the phrase ‘extraction of minerals and ancillary activities’. This is intentionally undefined in the regulations and will be supported through guidance.

Efficiency and effectiveness

The efficiency and effectiveness evaluation of the mining consent pathway is provided in tables 12, 13 and 14.

Table 12: Assessment of effectiveness of the proposed consent pathway for mining and ancillary activities – against the NPS-FM objective

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
Resources are managed in a way that prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems	Any application will be subject to the gateway tests of functional need and significant national or regional benefit to ensure that only appropriate activities are consented, and the effects management hierarchy must be applied. Councils have the ability to exercise discretion in deciding whether to grant a consent which will enable them to consider other aspects of the activity in a specific location. The provision for coal mining to apply only to existing mines (ie, no new coal mines), with a sunset clause of 2030 for any new consent for <i>thermal</i> coal recognises the impact coal use has on the whole environment and aligns with other initiatives to phase out coal use.
(b) second, the health needs of people	The consent pathway provides for the mining sector, which provides minerals that are essential for the health needs of people.
(c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.	The consent pathway acknowledges the importance of the mining sector in providing for the well-being of people and their communities by providing access to materials that are required in the production of steel products, energy, and manufacturing food over the medium term, while alternatives (to coal) are developed. Many of these minerals are required for society to function and/or to transition to a low-emissions economy.

Table 13: Assessment of effectiveness of the proposed consent pathway for mining – against the elements of the specific problem definition

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Inclusion of new consent pathway for mining activities	The discretionary activity status for resource consent applications enables councils to consider new mining consents or expansions to existing mines on a case-by-case basis. This will enable mining-specific assessments to ensure that no activities are being undertaken within, or within the setback of, a natural wetland unless necessary.
Scope of mining	The consenting pathway acknowledges that the mined material is locationally constrained and can be located in, or within the setback of, a natural inland wetland. As with quarrying activities, some ancillary activities to mining face similar constraints in that they must be located near the mining operations. They have therefore been included in the consent pathway. Providing a consent pathway for ancillary activities is consistent with the intent of the policy, to provide a pathway for mining to be undertaken, recognising that the location of mineral resources are locationally constrained. Not providing for ancillary activities risks making the consent pathway unviable. The gateway tests and effects management hierarchy will apply to ancillary activities and provide the same checks and balances (as for mining) against those activities to ensure they are only consented where appropriate.

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Controls on minerals to be mined	<p>Coal mining still plays a large part in the production of energy, and also for the construction of steel, lime and concrete and in food production in New Zealand.</p> <p>Submissions from the mining sector were concerned that the amendments to the freshwater legislation could be used as a proxy mechanism to ban coal mining in New Zealand. The regulations will now provide the ability to apply for consent for the operation or expansion of existing coal mines where certain tests are met. This includes ancillary activities, as it is not logical to separate ancillary activities from mining activities.</p> <p>The sunset clause for existing thermal coal mines recognises that coal-fired electricity/power generation is being phased out over time.</p> <p>The gateways tests applied to mining are functional need and significant national or regional benefit. The requirements of the effects management hierarchy also apply.</p>

Overall assessment of effectiveness

The amendments provide a discretionary activity consent pathway for the purpose of expanding, or developing new, mining operations, except that it only applies to *existing coal mines*. The discretionary activity status enables councils to assess a range of matters on an application for consent.

Controls on the scale of activity will be achieved through the requirements of the significant national or regional benefit and functional need tests. The provisions are appropriate, and an effective and efficient way of achieving the objectives of the proposal.

Table 14: Assessment of efficiency of the proposed consent pathway for the extraction of minerals and ancillary activities

Effects being considered	Benefits	Costs
Environmental	<p>The amendments require applications for resource consent to consider other locations ahead of progressing mining activities within a natural inland wetland.</p> <p>Any mining activities being considered through a discretionary activity consent process for a location in, or partially in, or within the setback of, natural inland wetlands will require consideration and application of the effects management hierarchy, which retains a strong emphasis on avoidance where practicable. Only after avoidance, then minimisation and remediation, are (where there are more than minor adverse residual effects) offsetting and/or compensation considered in the effects hierarchy.</p> <p>The proposed new principles of aquatic offsetting and aquatic compensation</p>	<p>Providing a consent pathway for existing coal mining to operate and expand aligns with the Government’s commitment to move to 100% renewable energy generation by 2030 and reducing carbon emissions. In its advice to the Government¹¹ the Climate Change Commission noted that there are alternatives to coal for electricity generation.</p> <p>The consenting pathway requires application of the effects management hierarchy, which contemplates (if avoidance is not practicable), minimisation or remediation of effects, then there is the potential for minor adverse residual environmental effects. The environmental costs of these</p>

¹¹ [Ināia tonu nei: a low emissions future for Aotearoa](#), released 31 May 2021.

Effects being considered	Benefits	Costs
	<p>(proposed new appendices 6 and 7 of the NPS-FM) both include principles of:</p> <ul style="list-style-type: none"> no net loss and preferably a net gain (offsetting) additionality (offsetting and compensation) trading up (compensation). <p>There is the potential for environmental benefits from offsetting and compensation methods while enabling appropriate mining activities. Together, the provisions will set a high bar and protect the extent and values of wetlands.</p>	<p>cumulative minor and less than minor residual adverse effects need to be acknowledged.</p> <p>However, the combination of the NPS-FM policies and the offsetting and compensation methods that apply where there are “more than minor” residual adverse environmental effects, means that the cumulative environmental costs of the proposed amendments are also no more than minor.</p> <p>Coal mining is phased out over time via the consent pathway being available only for operating or expanding an existing mine and for thermal coal this pathway closes after 2030 (coking coal can continue).</p>
Economic	<p>The amendments will enable mining activities to proceed (subject to the rigorous consenting process and environmental considerations noted above), and to then generate the corresponding economic benefits from the resource being mined.</p>	<p>Consenting costs may be significant for some applicants. However, when considered in context they will be less than the opportunity costs that occur (at present) when there is no viable consenting pathway available to have proposals considered on their merits.</p>
Social	<p>The amendments enable the provision of necessary services to the urban environment and development of specified or nationally or regionally significant projects. The amendments enable mining activities to continue to provide necessary resources for a range of other industrial processes that provide products for our communities, with their associated positive social effects.</p> <p>The amendments give increased certainty for the existing operations and their employees about ongoing employment.</p>	-
Cultural	<p>Councils through the discretionary activity resource consent pathway will need to consider impacts on cultural values as part of the assessment of effects.</p>	<p>Ongoing costs through involvement in consent processes.</p>
Additional sector commentary	<p>Submissions from the mining sector saw the amendments to the freshwater legislation as a mechanism to ban the use of coal in New Zealand. Submissions considered that it would be “constitutionally inappropriate to use subsidiary environmental legislation” to do this.</p> <p>Submitters from the extractive industry (quarrying and mining) considered there was little merit in distinguishing between mining and quarrying as both extractive industries would result in similar ecological effects on natural wetlands.</p>	
Opportunities for economic growth and employment to be provided or reduced	<p>The wetland amendments enable a consent pathway for the expansion of existing mines, and the development of new mines (except for coal) where there is a functional need for the activity to be undertaken in that location and where the extraction of minerals will provide significant national or regional benefit. The existing regulations do not (in circumstances where activities would be in, or within the setback of, any natural inland wetlands regardless of their size or significance).</p>	

Effects being considered	Benefits	Costs
	The amendments provide direct opportunities for economic growth and employment and additional benefits from the use of mined resources by other industries and communities generally.	
Risks of not acting and uncertainty	The risks of not acting could result in winter power outages and increased costs to consumers, as well as resource shortages and associated cost and emissions increases arising from imports. It could also result in increased cost to industries that rely on the minerals extracted. The risks of not acting exceed the risk of acting.	

Consent pathway D – Urban development

The NPS-UD requires local authorities to ensure that there is sufficient development capacity to meet demand for housing and business over the short term, medium term and long term, and that cities are ‘well-functioning environments’ that are responsive to change. Local authority decisions on urban development are required to be strategic, responsive and integrated with infrastructure planning and decisions.

The current NPS-FM and NES-F provide a consent pathway for some aspects of urban development, where it is listed in a regional policy statement or regional plan as ‘regionally significant infrastructure’. (This is provided for under the definition of ‘specified infrastructure’, and the associated consent pathways – discretionary for the construction of specified infrastructure, and either permitted or restricted discretionary for its maintenance and operation). However, there is no equivalent for urban development that is listed in a district plan and there are more aspects to good urban design than infrastructure which should be acknowledged and clearly provided for.

The proposed amendments provide a consent pathway for urban development as a restricted discretionary activity. This is set out in the NPS-FM at proposed clause 3.22(1)(c), and in the NES-F at proposed new regulation 45C.

The gateway tests for urban development are as follows:

3.22(1)(c) the regional council is satisfied that:

- (i) the activity is necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development); and
- (ii) the urban development will provide significant national, regional or district benefits; and
- (iii) the activity occurs on land identified for urban development in operative provisions of a regional or district plan; and
- (iv) the activity does not occur on land that is zoned in a district plan as general rural, rural production, or rural lifestyle; and
- (v) there is either no practicable alternative location for the activity within the area of the development, or every other practicable location in the area of the development would have equal or greater adverse effects on a natural inland wetland; and
- (vi) the effects of the activity will be managed through applying the effects management hierarchy; or

Alignment of the NPS-UD, NPS-FM and NES-F provides for urban development while encouraging good urban design (see matters of discretion at regulation 45C) that will avoid natural inland wetlands by, if necessary, increasing housing densities in other development areas to achieve the NPS-UD capacity targets.

Urban development occurs both at the regional and district level and the regulations need to reflect this, while striking a balance with the protection of natural inland wetlands. District councils have requirements for providing sufficient development capacity under the NPS-UD. Therefore, it is appropriate that development identified in a district plan (as well as a regional plan) is also provided with a consent pathway where it is zoned appropriately (NPS-FM 3.22(1)(c)(iii) and (iv)).

The gateway test at NPS-FM 3.22(1)(c)(v) is applied within the development area ie, *there is either no practicable alternative location for the activity **within the area of the development**, or every other practicable location **in the area of the development** would have equal or greater adverse effects on a natural inland wetland.* This differs from the way the test is applied fill sites (see above). Feedback on the exposure draft from a wide range of submitters noted that it is not practical for a developer to test effects across several areas within a region because requiring authority status would be needed to undertake the assessment.

Assessment at a regional level is also not appropriate for urban development because the consent requirements locationally constrain the consent pathway. These requirements are that the area be identified for development in operative provisions of a regional or district plan, and that it not be on land zoned general rural, rural production or rural lifestyle. The test is usefully applied within the area of development and is supported by matters of discretion at regulation 45C to encourage urban design that avoids wetlands in the first instance and instead utilises them (eg, for amenity purposes).

Consent applications for urban development (or any other purpose) within or adjacent to natural inland wetlands may not be granted unless the council is satisfied that each step of the effects management hierarchy will be applied to any loss of extent or values including potential values (NPS-FM 3.22(1)(c)(vi)).

The amendments include a transitional provision for Tauranga City Council for a period of five years from the commencement date of the proposed amendments. The transitional provision enables urban development identified as planned urban growth areas in the SmartGrowth *Urban Form and Transport Initiative Connected Centres Programme* to continue while Tauranga City Council undertakes plan changes to rezone land for urban land purposes (see NPS-FM 3.34).

Efficiency and effectiveness

The efficiency and effectiveness evaluation of the urban development consent pathway is provided in tables 15, 16 and 17.

Table 15: Assessment of effectiveness of the proposed consent pathway for urban development – against the NPS-FM objective

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
Resources are managed in a way that prioritises:	Any application will be subject to several gateway tests and the requirements of the effects management hierarchy. The gateway tests for urban development are the strongest for any of the pathways which reflects the restricted discretionary status of the pathway.

Elements of the NPS-FM objective	Contribution of proposed amendments towards achieving the purpose
(a) first, the health and well-being of water bodies and freshwater ecosystems	<p>The gateway tests of no practicable alternative location and significant national, regional or district benefit, are to ensure that only appropriate activities are authorised. The ‘no practicable alternative location’ test will ensure that other locations within the area of development are assessed and prioritised over locating urban development within, or within the setback of, a natural inland wetland. This could include looking at the design and configuration, including density and placement of amenity areas relative to the natural inland wetland.</p> <p>The requirement for the urban development to be within an area identified for urban development in an operative plan, and not zoned rural, will ensure that the development area has already been tested with the community through the planning process and may be further subject to additional rules the council/community may consider relevant – including providing additional protection to particular wetlands where warranted.</p> <p>In considering resource consent applications, council’s discretion is limited to certain matters, including the general matters set out in regulation 56 of the NES-F, and the additional matters set out in regulation 45C. The effects management hierarchy must be applied and in particular there are new requirements to ensure any offsets/compensation that form part of the granted consent are in compliance with principles 1–6 in appendices 6 and 7. There are also methods or measures that will ensure the offset/compensation will be managed and maintained over time. This is particularly relevant to urban development where the land developer seeking the consent has only a short-term interest in the land. This change will increase the efficacy of offsetting undertaken as part of a consent.</p>
(b) second, the health needs of people	<p>The proposed amendments provide a consent pathway to enable urban development to occur in the best way possible, where appropriate, to deliver increased housing capacity to address current and future demand for housing supply.</p>
(c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.	<p>The consent pathway acknowledges the importance of urban development projects in providing for the social, economic and cultural well-being of communities.</p>

Table 16: Assessment of effectiveness of the proposed consent pathway for urban development – against the elements of the specific problem definition

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Scope of urban development	<p>The proposed consent pathway provides for urban development that is necessary and that contributes to a well-functioning urban environment.</p> <p>This replaces the original proposal to refer to ‘plan-enabled development’, which was strictly to do with sufficient development capacity. The proposed reference to well-functioning urban development, as defined in the NPS-UD, better describes what is sought for this consent pathway. It signals that the provision is for housing, but also other aspects of good urban environments required to meet the needs of people to ‘live, work and play’.</p>
Activity status	<p>Restricted discretionary activity status provides consistency between the regulations and the NPS UD.</p> <p>A discretionary activity status for plan-enabled development would have resulted in inconsistency with the NPS-UD’s approach to plan-enabled</p>

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
	<p>development. The NPS-UD requires that plan-enabled development be subject to restricted discretionary, controlled or permitted activity status in order to be defined as plan-enabled.</p> <p>While the proposed amendments no longer use the term ‘plan-enabled’, it is still considered appropriate to have restricted discretionary activity status. Primarily this is because of the additional gateway tests that the urban development must be on land identified for urban development in an operative regional or district plan; and not be on land zoned in a district plan as general rural, rural production, or rural lifestyle. As such, the provision for urban development within that location will have been tested with the community via a plan process and any additional rules and/or requirements for urban development in and around wetland areas may be included in the plan (under the stringency provision of the regulations).</p> <p>The regulations already contain a discretionary consent pathway for the construction of urban development where the development is listed in a regional policy statement or regional plan as regionally significant infrastructure. They also provide permitted activity and restricted discretionary activity pathways for the maintenance and operation of urban development meeting that definition.</p> <p>A resource consent application will still need to pass the ‘no practicable alternative location’ gateway test and demonstrate that the development could not be located elsewhere (see below). The consideration and application of the effects management hierarchy will need to be demonstrated.</p>
<p>No practicable alternative location test</p> <p><i>“There is no other practicable alternative location in the area of development for the activity, or every other practicable alternative location within the area of would have equal or greater adverse effects on a natural inland wetland”.</i></p>	<p>The functional need test is not an appropriate test for urban development; it is unlikely for there to be a functional need for urban development to occur within a natural wetland. However, there are other reasons why urban development may need to be located in, or within the setback of, a natural inland wetland.</p> <p>A ‘best practicable location’ test was proposed as the replacement to ‘functional need’ in the report, recommendations and summary of submissions. Feedback on this test identified that in practice the wording would be too ambiguous for a gateway test.</p> <p>The proposed amendment now includes a test of <i>“there is no other practicable alternative location in the area of development for the activity, or every other practicable alternative location within the area of development would have equal or greater adverse effects on a natural inland wetland”</i>. This test better focusses on aspects within the area of development such as design/configuration/yield and location/enhancement of amenity. This means the adverse effects on a natural inland wetland are considered and avoided where a practicable alternative approach (design) is available.</p>

Overall assessment of effectiveness

The NES-F amendments provide a restricted discretionary activity consent pathway for the purpose of urban development.

The restricted discretionary activity status recognises that the requirements of the NPS-UD must also be met. The NES-F will require councils to apply several matters of discretion to an application for consent outlined at regulations 45C and 56. This must include an assessment of the extent to which the activity is necessary to contribute to a well-functioning urban

environment, and whether there are other practicable alternative locations/configurations/designs for the urban development that would result in lesser effects on the wetland. The requirements of the effects management hierarchy also apply – including offsetting to ensure no net loss.

The provisions are considered to be appropriate, and both an effective and efficient way of achieving the objectives of the proposal.

Table 17: Assessment of efficiency of the proposed consent pathway for urban development

Effects being considered	Benefits	Costs
Environmental	<p>Environmental benefits are difficult to quantify and depend on the demand for land for urban development.</p> <p>Urban development within natural inland wetland areas, with an emphasis on good urban design and spatial planning, will need to be worked through when reviewing district plans. This includes the benefits and costs of allowing the activity.</p> <p>Any urban development activities being considered through a restricted discretionary activity consent process around natural inland wetlands will require consideration and application of the effects management hierarchy, which has a strong emphasis on avoidance where practicable. Only after avoidance, are minimisation, remediation, and (where there are more than minor adverse residual effects) offsetting and/or compensation, considered. Furthermore, the proposed new principles of aquatic offsetting and aquatic compensation (proposed new appendices 6 and 7 of the NPS-FM) both include:</p> <ul style="list-style-type: none"> • no net loss and preferably a net gain (offsetting) • additionality (offsetting and compensation) • trading up (compensation). <p>There is potential for environmental benefits to arise from urban development, while enabling appropriate urban development activities. The provisions will set a high bar and protect the extent and values of wetlands.</p>	<p>The environmental benefits may be distributed unequally across regions or districts depending on the availability and demand for land for urban development.</p> <p>To the extent that the consenting pathway requires application of the effects management hierarchy, which contemplates (if avoidance is not practicable), minimisation or remediation of effects then there is the potential for minor adverse residual environmental effects. The environmental costs of these cumulative minor and less than minor residual adverse effects need to be acknowledged.</p> <p>The combination of the NPS-FM policies (including the unchanged Policy 6) and offsetting and compensation actions of the effects management hierarchy (that apply where there are “more than minor” residual adverse environmental effects) means that the cumulative environmental costs of the proposed amendments are also no more than minor.</p>
Economic	<p>The amendments will enable urban development activities to proceed (subject to the rigorous consenting process and environmental considerations noted above). These will generate a corresponding economic benefit from the range of activities that occur in urban communities.</p>	<p>The effects-based assessment requires an assessment of alternative locations to be undertaken as part of a resource consent application where urban development is located in, or within the setback of, a natural inland wetland. This is likely to increase costs associated with development in the short term where developers pass the costs of water-</p>

Effects being considered	Benefits	Costs
		sensitive design and lost density/capacity on to the future purchasers.
Social	The amendments enable urban development to provide for the growth and proper functioning of communities and the range of social benefits that accrue within urban areas. The application of the effects management hierarchy will ensure overall protection and enhancement of ecosystems. The associated range of benefits linked to ecosystem services will lead to improvements in general well-being.	-
Cultural	Consenting on urban development could result in better freshwater connection within the natural environment, enable exercise of kaitiakitanga and recognise ki uta ki tai.	Consents being granted for urban development that in some way affect natural inland wetlands, could be contrary to Te Mana o te Wai. However, the rigorous consenting parameters, application of the effects management hierarchy, and the principles for offsetting and compensation will ensure that adverse effects on cultural values are considered and avoided to the extent practicable, and that a high bar is set for successful consents. Ongoing costs through involvement in consent processes.
Additional sector commentary	<p>Ten local authorities submitted in support of urban development activities, with additional suggestions on how these could be provided for within the regulations.</p> <p>Most submissions received opposing the consent pathway for urban development were from private individuals and ENGOs. Some submitters held a perception that natural inland wetlands were being deprioritised and sacrificed for land use and development.</p> <p>A large number of submitters opposed the consent pathway for urban development on the basis that the use of natural inland wetlands for urban development is unsuitable for flood hazard and land stability reasons. Several individual submitters also pointed to the disproportionate impacts of the 2011 Christchurch earthquake on developments located on reclaimed or in-filled land.</p> <p>The majority of submissions, both in support and opposition, considered the functional need test should not apply to urban developments.</p>	
Opportunities for economic growth and employment to be provided or reduced	The proposed amendments enable a consent pathway for urban development (subject to the tests set out in the proposed NPS-FM clause 3.22), whereas the existing regulations do not ¹² . Urban areas are important for the functioning of communities, and the amendments provide significant opportunities for economic growth and employment. ¹³	
Risks of not acting and uncertainty	<p>Increased costs to the supply of urban infrastructure and housing developments.</p> <p>The risks of not acting exceed the risk of acting.</p>	

¹² In circumstances where activities would be in, or within the setback of, any wetlands regardless of their size or significance.

¹³ Urban development covers both housing and employment land, and associated reserves and infrastructure. Many trades and services exist to serve growing urban areas.

4.3.3 Wetland amendments: other amendments

The proposed amendments include a number of other changes to the wetland regulations. These are:

- include water storage, New Zealand Defence Force (NZDF) and ski area infrastructure in the definition of specified infrastructure
- include aquatic offset/compensation principles
- amend the restoration provisions
- clarify the take, use, dam, diversion, and discharge of water
- allow an increase in size of infrastructure for fish passage
- exempt flood control and drainage works from certain general conditions
- amend sphagnum moss harvesting and refuelling.

These amendments are outlined below, and consideration is given to the effectiveness and efficiency of the amendments. It is noted that some of the amendments are procedural or administrative and the comments provided below correspond with the scale of the amendment.

4.3.3(A) Additions to the specified infrastructure definition

Water storage infrastructure

Submissions received during the consultation period identified a need to provide for water storage. Similar to fill sites, water storage facilities tend to be situated in valleys where natural inland wetlands may be located.

Water storage is an essential part of New Zealand infrastructure. Climate change and changing rainfall patterns make securing water supplies critical. This includes for consumptive and non-consumptive uses ie, agricultural and horticultural use, stock drinking, hydro-electricity generation, and fire fighting in rural communities.

New Zealand Defence Force

The NZDF has identified situations where the wetland regulations may impact on its ability to construct new defence facilities. There is provision for NZDF infrastructure within the proposed National Policy Statement for Indigenous Biodiversity (NPS-IB), within the definition of specified infrastructure: (e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990. The proposed amendment is to include the same within the definition of specified infrastructure in the NPS-FM. This will align national direction regulations and ensure the NZDF is able to continue to construct infrastructure as needed – subject to the gateway tests and offsetting requirements (see below).

Ski area infrastructure

The Ski Areas Association of New Zealand (SAANZ) and RealNZ submitted on the recommendations in the [report, recommendations and summary of submissions](#) from earlier consultation in 2021. That report contained three options for this sector with a recommendation to rely on the ability for ski area infrastructure to be listed in a regional plan

or regional policy statement (therefore being regionally significant infrastructure under part (b) of the existing definition of specified infrastructure).

The SAANZ provided feedback that this option may not be viable. Indications are that councils intend using the RMA definition of infrastructure (roads/pipes) and consider ski areas to be “a type of land use”. The industry as a whole spans six regions, with significant ski areas situated in the Otago, Canterbury and Manawatū/Whanganui regions. For this sector to access the consent pathway for constructing new or necessary upgrades would require future involvement in six separate regional policy statements and/or plan processes (none are currently listed) – and the outcome is uncertain.

As such, the proposal is to include ski areas within the definition of specified infrastructure. The only change to current policy is that they would not first need to be listed in the regional policy statement or regional plan to access the consent pathway. They would still be subject to the significant national or regional benefit and functional need tests, and the effects management hierarchy. A definition for ski area infrastructure has been developed for the purposes of the wetland regulations (see below) to ensure only relevant ancillary infrastructure is addressed.

Amendment to the definition of specified infrastructure

The proposed amendment is to include the following to the definition of ‘specified infrastructure’ at clause 3.21 of the NPS-FM:

- water storage infrastructure
- Defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990¹⁴, and
- ski area infrastructure.

This addition will provide a necessary resource consenting pathway for these types of infrastructure, through the current specified infrastructure consent pathways (set out in clause 3.22(1)(b) of the NPS-FM, and regulations 45–47 in the NES-F). Any water storage, NZDF or ski area infrastructure will need to meet the tests already set out for specified infrastructure in NPS-FM, which are:

- demonstrate a ‘functional need’ to operate in the natural wetland area
- provide a significant national or regional benefit
- meet the requirements of the effects management hierarchy.

Effectiveness and efficiency

The amendments are effective in that they provide a resource consent pathway for necessary additional purposes as part of the existing specified infrastructure provisions.

The term ‘water storage infrastructure’ is not defined in the NPS-FM, NES-F regulations, or the National Planning Standards. The lack of a definition on this term could create ambiguity for what water storage activities would be included or excluded from this definition. However, the scale of the water storage infrastructure that can be consented through this pathway is limited through the gateway test of providing significant national or regional benefit. The scope of this

¹⁴ Note: The extent of defence facilities is set out in the Defence Act.

pathway is also limited by the functional need test, and the application of the effects management hierarchy. Guidance will be developed which can assist with interpretation.

The proposed amendment will define ski area infrastructure in the NPS-FM as ***ski area infrastructure*** means *infrastructure necessary for the operation of a ski area and includes transport mechanisms (such as aerial and surface lifts, roads, and tracks for any purpose), facilities for the loading or unloading of passengers or goods, facilities or systems for water, sewerage, electricity, gas and communications networks, snowmaking and snow safety systems*. This provides an exclusive list of the infrastructure provided for under this regulation and therefore clarity as to what the consent pathway provides for.

4.3.3(B) Include aquatic offset/compensation principles

A net positive outcome from offsetting cannot be guaranteed. The [National Wetland Trust report of 2020](#) found that not all offsetting required by consents has been done in the past. There is also little research on the long-term efficacy of offsetting in New Zealand. The NPS-FM can do more to ensure that offsetting is undertaken effectively.

A set of principles for both offsets and compensation is proposed to be included in appendices 6 and 7 of the NPS-FM. The proposed amendment to clause 3.22(3) of the NPS-FM now requires that councils must be satisfied that where aquatic offsetting or aquatic compensation is applied, the applicant has *complied* with principles 1–6, and *had regard* to the remaining principles. In addition, clause 3.22(3)(a)(iii) requires the council to be satisfied that there are methods (eg, bonds) or measures (eg, transfer mechanisms and monitoring) that will ensure that the offset or compensation is maintained and managed over time. If consent is granted the consent conditions must specify how the requirements in clause 3.22(3)(a)(iii) will be met.

Effectiveness and efficiency

The proposed amendments are effective in that they provide principles and consent requirements which councils must be satisfied have been met, and apply these as consent conditions to ensure that offsetting/compensation is designed well and undertaken effectively over the long term.

The proposed amendment is also efficient as it aligns with the proposed NPS-IB¹⁵. Aligning the approaches taken under the effects management hierarchy is efficient. For example, in the proposed amendment the application of the offset and compensation principles has been strengthened from how they were expressed in the exposure draft. Rather than *having regard* to all the principles, offset or compensation design must *now comply* with principles 1–6 and *have regard* to the remaining principles as appropriate. This approach aligns with that of the proposed offsetting and compensation principles within the NPS IB.

Aligning aquatic offsetting and compensation in the NPS-FM and the proposed NPS-IB is efficient as it would create certainty of how these terms are being applied under each of the policy statements.

¹⁵ Exposure draft NPS-IB <https://environment.govt.nz/assets/publications/NPSIB-exposure-draft.pdf>.

4.3.3(C) Amended restoration provisions

The NPS-FM and NES-F regulate activities in natural wetland areas for restoration purposes, through either permitted or restricted discretionary activity status. The intent was to enable low-impact activities, thereby removing barriers to restoration while still controlling activities that can have short-term negative effects on wetlands. The consent pathway enables restoration activities to be consented where they may result in (short-term) negative effects on natural wetlands (eg, earthworks) for the long-term purpose of restoring wetlands.

However, feedback indicated that the current restoration regulations are onerous and consequently, some desirable restoration work is not being carried out. It also highlighted that the regulations do not include maintenance and biosecurity within the definition of restoration. Because of this they do not provide for biosecurity work to be done to prevent new pest problems, or maintenance of current state, and those default to being non-complying.

The amendments to the wetland restoration provisions:

- define 'wetland maintenance' and 'biosecurity', and provide for activities to be undertaken for those purposes within the regulations for restoration (as either permitted or restricted discretionary)
- enable activities beyond the area threshold in regulation 38(4)(b) for:
 - clearance of exotic vegetation by any means for biosecurity purposes, and of indigenous vegetation where demonstrably necessary for biosecurity
 - clearance of exotic vegetation using hand-held tools for restoration and wetland maintenance purposes
 - clearance of exotic vegetation by any means for restoration and wetland maintenance purposes, provided that the activities are set out in a restoration plan or a certified freshwater farm plan
- clarify that the exception in regulation 38(5) to the area threshold in regulation 38(4)(b), in relation to earthworks or land disturbance for planting, only applies to planting for restoration or wetland maintenance purposes
- clarify that the intent of regulation 55(3)(e) is about the placement of debris and sediment, and does not relate to incidental entrance of sediment to wetlands
- preclude councils from charging to receive or review notifications of intended permitted activity work (including restoration plans where required) for wetland restoration, maintenance, and biosecurity.

Effectiveness and efficiency

Maintenance is an important part of retaining the ecological health of a natural wetland, and consistent with restoration. Providing for it ensures that maintaining the state of a natural wetland is enabled in the same way that restoring the state of a wetland is.

Biosecurity is also an important part in the eradication and management of invasive pest species, particularly before a pest species becomes established. The proposed definitions of wetland maintenance and biosecurity (in clause 3.22(1) of the NPS-FM, and regulation 3 of the NES-F), and the inclusion of those purposes in regulation 38 enables a more efficient and effective response to any incursions of invasive species before they establish. It ensures those activities, which have beneficial outcomes for the natural wetland, are encouraged and provided for.

The general conditions in regulation 55 would apply to wetland maintenance and biosecurity activities as they do to restoration activities. This provides an important check and balance to ensure that any unintended consequences of carrying out maintenance and biosecurity works in wetlands are avoided.

The remaining proposed amendments enable certain restoration, maintenance and biosecurity work to be undertaken as a permitted activity, in exemption to the area threshold. This ensures that beneficial restoration, maintenance and biosecurity work can be undertaken effectively and efficiently without needing to obtain a resource consent.

4.3.3(D) Clarification to take, use, dam, diversion, and discharge of water

Regulations 52 and 53 manage activities that may result in the drainage of natural wetlands (earthworks or the taking, use, damming, diversion, or discharge of water). Discharges of water into or near a wetland are however, unlikely to result in the drainage of a natural wetland. The proposed amendments therefore delete 'discharge' from regulations 52(2) and 53(2).

Regulation 54(c) is the catch-all rule for activities that include the taking, use, damming, diversion, or discharge of water within, or within 100 metres of, a natural wetland. This rule was to address activities that would result in changes to the water level of a wetland. The regulation has been applied more broadly than intended (eg, regardless of whether there is a hydrological connection to the natural wetland or whether it would result in an adverse effect on the wetland).

The NES-F was not intended to add another layer of regulation to the discharge of contaminants where these are controlled through other instruments. Rather, the NES-F is intended to prevent the discharge of water that could adversely affect the water level of a wetland and therefore its biodiversity, habitat and/or the ecological function of a natural wetland.

The proposed amendment to regulation 54(c) clarifies that the *taking, use, damming or diversion of water* within, or within a 100-metre setback from, a natural inland wetland is managed only where there is:

- a hydrological connection between the taking, use, damming or diversion and the natural wetland, and
- the discharge will, or is likely to, change the water-level range, or hydrological function of the wetland.

A new subclause of regulation 54(d) specifies that *discharges of water into water*, within, or within a 100-metre setback from, a natural inland wetland are regulated only where there is:

- a hydrological connection between the discharge and the natural wetland, and
- the discharge will enter the natural wetland, and
- the discharge will, or is likely to, change the water-level range, or hydrological function of the wetland.

Consequential changes are proposed to all provisions relating to the taking, use, damming, or diversion of water. Under the amendment, the taking, use, damming or diversion of water within, or within 100 metres of, a natural wetland, is managed only when it has a hydrological

connection to the wetland and that the activity will change, or is likely to change, the water-level range, or hydrological function of the wetland. This ensures that the regulations are only managing activities which impact the natural wetland, and do not capture activities that are occurring in the vicinity of a natural wetland, but have no connection to, or effect on, the wetland.

For the provisions relating to discharges, as well as this new requirement to have a hydrological connection to the natural wetland, there is also a requirement that the discharge will enter the wetland and will change, or is likely to change, the water-level range, or hydrological function of the wetland. This, too, is to ensure that the NES-F is not regulating discharges within, or within 100 metres of, a natural wetland, where those discharges are not impacting the wetland.

Effectiveness and efficiency

The proposed amendments in regulations 52(2) and 53(2) to remove reference to discharges of water to wetlands acknowledge that the regulation has been applied more broadly than intended. The removal of 'discharge' will reduce an unintended layer of regulation for discharges of contaminants where they have been addressed through another regulation. It recognises that a discharge of water to a wetland is unlikely to result in the drainage of that wetland and is therefore both efficient and effective.

The proposed amendment to regulation 54 and the corresponding rules on discharges and water taking, use, damming or diversion for the specific purposes throughout the NES-F narrows the application of the rules to where it addresses only the intended effects.

The combined effect of these proposed changes is that:

- the taking, use, damming or diversion of water is only being managed where it has a hydrological connection to the wetland and will, or is likely to, impact the wetland. The provisions are not seeking to manage all uses that are in the vicinity of a wetland, but which have no connection to, or impact on, the wetland
- discharges are clearly only being managed where they are discharges of water to water, and where the discharge has a hydrological connection to the wetland and has an impact on its hydrological function. These provisions are not seeking to manage discharges that are in the vicinity of a wetland, but which have no connection to, or impact on, the wetland.

The proposed changes are effective as they address only the impact sought to be managed, and efficient as the change will remove unnecessary consenting burden on matters already adequately addressed by plan rules (eg, the discharges of treated septic tanks).

4.3.3(E) Increase in size of infrastructure for fish passage

The NES-F amendments correct an inconsistency between the fish passage provisions in regulations 58–60 (Part 3, subpart 3 – Passage of fish affected by structures), and regulation 46(4)(b) which states that permitted activities must not increase the size of specified infrastructure or other infrastructure.

The proposed amendment provides an exception to regulation 46(4)(b) for an increase in the size of specified infrastructure or other infrastructure if it is to provide for fish passage. The activity would also still need to comply with the fish passage provisions in regulations 58–60.

Effectiveness and efficiency

The proposed amendment is an administrative change to remove an inconsistency in the existing regulation. It ensures the policy intent of enabling fish passage is able to be met, effectively and efficiently, through a permitted activity pathway.

4.3.3(F) Exemption of flood control and drainage works

The NES-F provides for the maintenance and operation of specified infrastructure and other infrastructure as a permitted activity in regulation 46. Regulation 46(4)(a) requires the activity to comply with the general conditions in regulation 55, but exempts hydro-electricity infrastructure from certain of those general conditions (ie, those in regulation 55(2), (3)(b)–(d) and (5)). Those conditions relate to advance notice of works and the timing of the works, as well as requirements relating to the level of flood waters, takes or discharges and records being made before the activity is undertaken.

The proposed amendment to regulation 46(4)(a) includes flood protection and drainage works as activities also being exempt from those general conditions at regulation 55(2), (3)(b)–(d) and (5). Such works are of a similar nature to hydro-electricity infrastructure, and applying conditions around notifying councils ahead of the works (regulation 55(2), not increasing the level of flood water, or other water impacts (regulation 55(3), to flood and drainage management is not pragmatic.

Regulation 47 provides a restricted discretionary activity pathway for the maintenance and operation of specified infrastructure and other infrastructure. Regulation 47(5)(c) includes a requirement for the bed profile and hydrological regime to be returned to their original condition within 30 days.

The proposed amendments to regulation 47(6) provide an exception to this 30-day limit, where the maintenance and operation of the infrastructure requires the taking, use, damming, diversion, or discharge of water to be ongoing.

Effectiveness and efficiency

The amendments recognise flood protection and drainage works can require quick responses to operation and maintenance of infrastructure following flood events. Enabling the taking, use, damming, diversion and discharging of water to wetlands in response to flood events enables an efficient mitigation for people and property where there is flooding risk.

Removing the 30-day limit where there is an ongoing need for the activity to continue recognises that this pathway should be flexible in allowing for responsive operation and maintenance.

4.3.3(G) Sphagnum moss harvesting and refuelling

The regulations currently provide a consent pathway for existing sphagnum moss harvesting (permitted activity, regulation 48 of the NES-F), and for new sphagnum moss harvests (discretionary activity, regulation 49 of the NES-F).

The proposed amendments to condition (7) in schedule 4 of the NES-F will remove the requirement for a 10-metre setback from this condition. This will reduce the risk of damage to

a natural wetland where vehicles are tracking back and forth through the 10-metre setback to refuel.

Effectiveness and efficiency

The sphagnum moss harvesting amendment is an administrative change to improve the efficiency for moss harvesting operations within natural wetlands. It is effective in providing for this activity while managing the effects. There is a greater risk of damage to a natural wetland from vehicles traversing it to refuel beyond the 10-metre setback, than from the risk of a fuel spill from refuelling within the natural wetland.

4.4 Amendment to how the NES-F applies to wetlands in the CMA

Amendment

The proposed amendment is to have the NES-F apply to natural inland wetlands and not to wetlands in the CMA.

The proposed way to achieve this is to amend the definition of a ‘natural wetland’ to ‘natural inland wetland’, making clear that wetlands in the CMA are excluded from this definition; and apply the phrase ‘natural inland wetland’ throughout the NPS-FM and NES-F.

Assessment

The NES-F is part of the *Essential Freshwater* package of regulations which are intended to work together to achieve specific outcomes. As such, the proposed amendment to the NES-F is assessed against the overarching objective of the NPS-FM. Section 32(3) of the RMA requires an assessment of the proposed amendment against the NPS-FM objective, that resources are managed in a way that prioritises:

- (a) first, the health and well-being of *water bodies and freshwater ecosystems*
- (b) second, the health needs of people ...
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Although the RMA defines water bodies as being not in the CMA, and the NPS-FM objective is predominantly driving protection for freshwater bodies, the NPS-FM also requires adopting an integrated catchment management approach. Adopting *ki uta ki tai* means, among other things, recognising the interconnectedness of the whole environment. This includes receiving environments (lagoons and estuaries) and managing cumulative effects of land-use on these. As such, the assessment against the objective of the NPS-FM will be applied at a mountains-to-sea scale – rather than to freshwater bodies and ecosystems (table 18).

Table 18: Assessment of effectiveness of the proposal against the NPS-FM objective

Elements of the NPS-FM objective	Contribution of proposed amendment towards achieving the purpose
Resources are managed in a way that prioritises:	The proposed amendment recognises that the NES-F will have unintended impacts and does not address activities that pose the greatest risk to wetlands in the CMA. The NPS-FM will still manage

Elements of the NPS-FM objective	Contribution of proposed amendment towards achieving the purpose
(a) first, the health and well-being of water bodies and freshwater ecosystems	cumulative effects from land use, such as sedimentation, that pose a risk to wetlands in the CMA (eg, salt marsh and eel grass beds). The proposed amendment is a reset. Regulation will be developed that addresses specific risks to wetlands in the CMA and better achieves improved environmental outcomes.
(b) second, the health needs of people	Unintended impacts of applying the NES-F on recreational/cultural fisheries will be avoided and enable people to meet their health needs in terms of kai moana.
(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.	The proposed change enables the CMA and activities that are appropriate in the CMA to continue to be managed by regional coastal plans. Coastal plan content is driven by the NZCPS, and consent applications must have regard to its provisions (unless the more stringent NES provisions apply). Of particular relevance is the application of NZCPS Policy 6 which seeks to recognise that there are activities that have a functional need to be located in the CMA, and to provide for those activities in appropriate places, to recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, and recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them.

Table 19: Assessment of effectiveness of the proposed amendment against the elements of the specific problem definition

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
Lack of clarity over where in the CMA the NES-F applies	Amendments to delineate wetland type and extent in the CMA were proposed but questions remained from councils and others and further work is required to determine where regulations should apply. The proposed amendment removes the risk of unintended outcomes from applying the regulations too broadly in the CMA.
NES-F rules are not appropriate	<p>The rules are not appropriate to manage the risks to wetlands in the CMA, may restrict activities otherwise appropriate to the CMA (see case study below) and will have unintended impacts/costs. The problem remains even with the modified application of the NES-F rules proposed as part of the options. There is a risk that the rules will continue to overreach, and this risk is greater with varying interpretations of how they are applied. The proposed amendment removes this risk and allows for new rules to be developed, unencumbered by the existing rule structure.</p> <p>Case study: Rangitāne maritime development</p> <p>In September 2021, the Far North District Council and Far North Holdings Ltd applied to construct a public boat ramp facility at Rangitāne, Kerikeri, through the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTA). The FTA sets out criteria for projects that may be referred to an expert consenting panel or lodged with the Environmental Protection Authority (EPA). A project is not eligible if it includes an activity that is described as a prohibited activity in regulations made under the RMA, including a national environmental standard. The Rangitāne maritime development project was referred to a panel and lodged with the EPA. However, following the <i>Minister of Conservation v Mangawhai Harbour Restoration Society Inc</i> decision, the activity status of the proposed reclamation earthworks within the project were reassessed and the panel determined that those aspects of the proposal are now prohibited activities under the NES-F. Therefore, the consent application cannot be considered. This</p>

Elements of the specific problem definition	Likely success of the proposed amendments in solving the problem they are designed to address
	<p>means the public boat ramp facility, which may have had minor effects on the environment, is unable to be built under the current NES-F settings.</p> <p>The NES-F conflicts with the National Environmental Standards for Marine Aquaculture with respect to disturbance of the seabed associated with maintaining or realigning a marine farm. It also conflicts with the Marine Pollution Regulations, with respect to discharges of untreated sewage. The NES-F could recognise these instruments however, these examples illustrate the type of conflicts that can occur.</p>

Effectiveness and efficiency

The efficiency and effectiveness evaluation of the amendment to wetlands in the CMA is provided in table 20.

Table 20: Assessment of efficiency of the proposed coastal wetlands amendments

Effects being considered	Benefits	Costs (of acting or not acting)
Environmental	<p>Restoration within the CMA is currently managed through regional coastal plans and restoration plans. The proposed changes avoid risks associated with overlaying the NES-F regulations, which may lead to unwarranted and onerous consenting processes, or for existing projects to be captured as non-complying, with the outcome that they no longer proceed.</p>	<p>There is a risk that until replacement regulations are developed there is a gap in plan provisions that adequately protect wetlands in the CMA and loss of extent occurs.</p> <p>Iwi/Māori in particular raised concerns through consultation that the proposed amendment does not give effect to Te Mana o te Wai because it will remove protections for wetlands in the CMA.</p> <p>This cost is mitigated to some extent as the NPS-FM still applies with its requirements for councils to develop plans that give effect to Te Mana o te Wai. Wetlands in the CMA are covered by NPS-FM requirements to take an integrated catchment approach, including recognising receiving environments (eg, estuaries) and the cumulative effects of land-use on these, when developing freshwater plan content.</p>
Economic	<p>The proposed amendment will allow activities that are otherwise appropriate in the CMA to continue to be addressed via plan content. Consent applications can be considered by the council and effects managed as appropriate.</p> <p>Commercial fishing methods may have a land disturbance aspect that could be captured as non-complying under earthworks regulations in the NES-F, unless otherwise specified. It is not in the scope of the policy intent of the NES-</p>	-

Effects being considered	Benefits	Costs (of acting or not acting)
	<p>F to manage fishing-related activities. The amendment will avoid that unintended impact.</p>	
Social	<p>The proposed amendment will enable activities appropriate in the CMA to continue to be managed by regional coastal plans.</p>	<p>Planning costs to councils, ENGOs and coastal residents will likely continue to accrue in negotiating plan provisions for such matters as managing mangroves, rather than applying the NES-F rules on vegetation clearance.</p>
Cultural	<p>Both customary and commercial fishing may occur within an area defined as a coastal wetland and some fishing methods may have a land disturbance aspect that could be captured as non-complying under earthworks regulations in the NES-F, unless otherwise specified. The proposed amendment will avoid this impact.</p> <p>The NES-F inherently limits scope for local decision-making. Councils maintain that it may override existing memorandums of understanding and other formal agreements that exist between tangata whenua and councils in the CMA. Not having the NES-F apply to the CMA will allow these to continue and future regulations can be developed in conjunction with tanga whenua that are appropriate and achieve agreed outcomes.</p>	-
Additional sector commentary	<p>All regional councils were unanimously opposed to having the NES-F continue to apply to wetlands in the CMA.</p> <p>The majority of other submitters opposed to the proposed amendment seek to retain the NES-F (all or in part) while replacement regulations are developed.</p>	
Opportunities for economic growth and employment to be provided or reduced	<p>Some coastal activities that have been previously managed through coastal plans are unlikely to obtain resource consents under pathways in the NES-F. Some currently permitted activities will be captured as non-complying or prohibited and this may be inappropriate as these activities are already managed and appropriate to be considered in the context of the coastal space.</p> <p>Some of these activities may have no or minimal actual or potential adverse effects, but will result in onerous and costly consenting processes and require significant resourcing from council to process or monitor. Imposing a consent requirement for these minor activities requires applicants to pay an application deposit of \$7,000 (the standard deposit for infringement of a regional rule).</p>	
Risks of not acting and uncertainty	<p>While there are comprehensive matters listed in section 15 of the RMA that <i>must</i> be addressed through coastal plans, and in the NZCPS to drive detailed plan content, not all coastal plans give effect to the 2010 NZCPS and it is possible that planning ‘gaps’ exist in terms of protection for coastal wetlands. We do not currently have a national assessment of coastal plan provisions and their efficacy to establish whether such a gap exists (though it is considered likely in some cases) and if so, its extent (which is expected to be highly variable between councils).</p> <p>Conversely, it is known that the NES-F ‘conflicts’ with existing plan rules (council submissions and a comparison exercise undertaken for the Proposed Northland</p>	

Effects being considered	Benefits	Costs (of acting or not acting)
	<p>Regional Plan as part of the 2021 hearing). The process required to determine stringency of provisions and therefore which instrument applies on a case-by-case basis is onerous for councils. It presents uncertainty for the resource user as to which rules apply until this is established – often not until consent is applied for.</p> <p>This evaluation must also take into account aspects of good regulatory stewardship and the need for regulatory instruments to meet specific policy outcomes. The Government principles that guide ‘best practice’ in regulation making¹⁶ state <i>the burden of rules and their enforcement should be proportionate to the benefits that are expected to result.</i></p> <p>In this case, the costs of applying regulations are considered to outweigh the protection the regulations may provide if they remain. The NES-F will apply (sometimes) unwarranted restrictions and cost, while the environmental outcomes provided by the NES-F rules in the CMA are uncertain. Amendments proposed to mitigate the impact of the rules around water takes, use, damming, diversion, and discharge, coupled with providing a clear definition of where in the CMA the NES-F applies, would only address some of the known issues that the NES-F generates in the CMA. Further changes and clarification would still be required. The ‘benefit’ of leaving the rules in place may provide is not outweighed by the costs of applying rules that are known to not be appropriate in all circumstances. For that reason, neither the status quo nor Option 1 outlined above are considered viable in terms of best practice guidance for regulations.</p> <p>Overall, the risk of either, not acting or proceeding with disapplying some NES-F rules and defining coastal wetlands, outweighs the risk presented by the proposed amendment. The proposed amendment is viewed as a reset, providing an opportunity to develop regulations that will appropriately achieve improved environmental outcomes in the CMA.</p>	

4.5 Technical amendments

Amendments

Since the *Essential Freshwater* regulatory package was gazetted, the Ministry has maintained a record of technical issues and provisions that could benefit from clarification.

The Ministry drafted the proposed amendments, and tested them through an exposure draft alongside amendments to the wetland regulations, consulted on between 31 May and 10 July 2022.

These proposed technical amendments aim to improve clarity of policies, reduce complexity of drafting and in some cases correct errors. They are summarised in table 2 in [Part 2.3](#) above.

They are consistent with previous decisions made by Cabinet when putting the *Essential Freshwater* package in place in 2020, and do not alter the policy intent or have an additional impact.

¹⁶ [Best Practice Regulation – Seminar Presentation – Peter Mumford.](#)

Effectiveness and efficiency

These technical amendments do not alter the policy, but assist in implementation of the NPS-FM and NES-F by providing further clarity and correcting minor errors.

The proposed amendments are effective in that they clarify the intent of the existing policies, and remove ambiguity. This assists interpretation of these documents, and their implementation.

The following proposed amendments are more complex (ie, what these amendments will do, and their efficiency and effectiveness, may not be self-evident). As such, they are examined in further detail below (refer to table 2 in [Part 2.3](#) for more detail).

Use of best information and transparent decision-making

The changes to the best information and transparent decision-making provisions simplify the requirements – the proposed amendments make it really clear that, as is already the case, these apply to all decisions under the NPS-FM. Previously, that was spelt out in various places within the NPS-FM. The proposed amendments create efficiencies by further clarifying matters, for example, the transparent decision-making requirements are not duplicating existing requirements elsewhere – where another process such as such as section 32 reports already require this reporting. Regarding the use of best information, the proposed amendments will clarify that this requirement to use the best information applies to implementation of the whole NPS-FM. This is consistent with the standard of evidence applied under the RMA, and its approach to uncertainty more generally.

Amendments in the NES-F

The proposed amendments to regulations 24 and 30 in the NES-F are effective in ensuring that under these provisions, consent may only be granted if *neither* clause is triggered. This addresses the previous ambiguity in the drafting, and aligns with other drafting practice.

The changes to regulations 10 and 13 in the NES-F also remove an ambiguity, ensuring the regulations are effective in requiring that the base area must not allow water to permeate at a greater rate than is set. Ambiguity in the current drafting could result in the opposite interpretation, that the base area must be at least that permeable, which is not the intent.

Special provisions for attributes affected by nutrients

A number of the proposed amendments are to clause 3.11–3.14 of the NPS-FM, to clarify special provisions for attributes affected by nutrients. The proposed changes:

- remove unnecessary distinctions between different attributes and attribute types, to better reflect Cabinet’s agreed policy intent that nutrients should be managed as needed to achieve desired outcomes for other ecosystem health attributes
- clarify requirements to derive nutrient concentrations needed to achieve desired outcomes for other ecosystem health attributes, and to set limits on resource use to achieve those
- ensure consistent use of terminology and clarify the meaning of ‘exceedance criteria’.

Most submissions on the exposure draft supported the intent of proposed changes or did not comment, but some raised specific issues and/or suggested ways proposed changes could be improved. These are set out (with recommendations) below.

One such suggested further improvement is from a submission that noted that dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorous (DRP) may not always be the appropriate forms of nutrient to manage. It suggested that, for example, total nitrogen (TN) and total phosphorous (TP) may be more appropriate for lakes or estuaries and clause 3.13 should provide for this. Drafting was revised to enable the use of other nutrient forms, and to clearly signpost to councils that they are to determine the appropriate form(s) of nitrogen and phosphorous.

Nutrient tables in appendices 2A and 2B

Appendices 2A and 2B set out nutrient attribute tables. The submission from NIWA on the exposure draft highlighted several points of inconsistency across those tables, where further clarity is needed regarding sampling and statistical specifications for attributes. A range of changes was considered and tested with council scientists, to provide consistency and clarity across the requirements. For example, in table 5, the change from 'annual median' to 'annual 95th percentile' is based on a suggestion from NIWA, to align with table 6.

Other proposed amendments

Proposed amendments to several definitions also provide clarity and address concerns raised about interpretation. They will improve councils' ability to effectively and efficiently implement the NPS-FM.

Part 5: Conclusion

The conclusion of this evaluation is that the proposed amendments to the NPS-FM and NES-F regulations are collectively the most appropriate way to achieve the purpose of the RMA with respect to freshwater. The proposed amendments will assist implementation of the NPS-FM provisions and the NES-F rules and align with the NPS-FM objective.