



## PROACTIVE RELEASE COVERSHEET

<b>Minister</b>	Hon David PARKER	<b>Portfolio</b>	Minister for the Environment
<b>Minister</b>	Hon Damien O'CONNOR	<b>Portfolio</b>	Minister of Agriculture
<b>Name of package</b>	Resource Management (Stock Exclusion) Amendment Regulations 2023	<b>Date to be published</b>	17 October 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
23 August 2023	<a href="#">Regulatory Impact Statement (RIS) - Options to amend stock exclusion regulations to enable more flexibility for lower intensity farms</a>	MfE and MPI
<b>Information redacted</b>	<b>There are no redactions proposed</b>	

# Regulatory Impact Statement: Options to amend stock exclusion regulations to enable more flexibility for lower intensity farms

## Coversheet

Purpose of Document	
Decision sought:	<i>Approval to amend the Resource Management (Stock Exclusion) Regulations 2020 to enable more flexibility for lower intensity farms</i>
Advising agencies:	<i>Ministry for the Environment, Ministry for Primary Industries</i>
Proposing Ministers:	<i>Minister for the Environment, Minister of Agriculture</i>
Date finalised:	<i>23 August 2023</i>
Problem Definition	
<p>Livestock entering water bodies causes a range of environmental effects, including increased contaminant losses, and damage to the banks and beds of water bodies. These effects can adversely impact freshwater ecosystems, human health, and cultural values.</p> <p>To reduce environmental damage to waterways from livestock, the Resource Management (Stock Exclusion) Regulations 2020 (the Regulations) require the exclusion of specified stock from water bodies in a range of situations.</p> <p>However, the application of the Regulations to lower intensity farms is not an efficient means of improving water quality. Lower intensity farms tend to be stocked at lower rates, and the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for higher costs to farmers (ie, per unit of stock excluded).</p>	
Executive Summary	
<p>The Resource Management (Stock Exclusion) Regulations 2020 (the Regulations) were gazetted in 2020. They require certain types of stock to be excluded from waterways, and they apply to any person who owns or controls deer, pigs, dairy support cattle, dairy cattle and beef cattle. They took immediate effect in 2020 for new pastoral systems, with compliance for existing farms required by mid-2023 or mid-2025, depending on stock type and practices.</p> <p>The low slope map is incorporated by reference into the Regulations. It determines where non-intensively grazed beef cattle and deer must be excluded from lakes and wide rivers, and where all stock must be excluded from natural wetlands with an area of more than 500 square metres, from 1 July 2025.</p> <p>Requiring lower intensity farms to exclude livestock from entering water bodies is not an efficient means of improving water quality. Lower intensity farms tend to be stocked at</p>	

lower rates, and the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for higher costs (ie, per unit of stock excluded).

Under the current Regulations, any beef cattle and deer in areas captured by the low slope map will need to be excluded from water bodies – including on lower intensity farms – from 1 July 2025.

A further issue for lower intensity farms is the requirement to exclude stock from wetlands. Wetlands support high levels of biodiversity, provide habitats, improve water quality and resilience to flooding, and have strong cultural and spiritual importance for Māori. Grazing stock have the potential to damage wetlands. However, many wetlands exist in their current state as part of a farming system and may benefit from the ongoing weed management that grazing animals provide.

In addition to the broader issues surrounding the cost of excluding stock, excluding stock from wetlands in lower intensity farms is also unlikely to be efficient. At particularly low stocking rates, farmers are more likely to destock and/or operate more intensively on smaller areas that can be fenced efficiently.

This Regulatory Impact Statement assesses the feedback we sought through public consultation on the following issues.

- Issue One: Options to exempt lower intensity farms from the map of low slope land.
- Issue Two: Addressing the unintended outcomes of excluding stock from wetlands where they are part of a lower intensity farming system. Options include:
  - defining lower intensity farm systems; or
  - relying on certified freshwater farm plans.
- Issue Three: Minor and technical issues of clarification, including looking at:
  - whether the definition of a permanent fence in the Regulations is too prescriptive
  - whether amendments should clarify the associated requirements to exclude stock do not apply to areas above 10 degrees in slope and still captured by the map.

#### **Issue One: Options to exempt lower intensity farms from the map of low slope land**

Four options were analysed in this regulatory impact analysis:

- the Status Quo where the current map is retained, with all beef cattle and deer farms captured by the map (including lower intensity farms) being required to exclude stock from water bodies from 1 July 2025 (or 3 September 2020, for new pastoral systems) – that is, the Regulations remain unchanged.
- removing the low slope map and associated requirements and relying on freshwater farm plans to manage stock exclusion
- creating an exception from the Regulations where a stocking rate is already set in a grazing licence or lease administered by Land Information New Zealand (LINZ) or Department of Conservation (DOC) (preferred option)
- defining lower intensity farming for the purpose of an exception to the map of low slope land.

Consultation on proposals to address the capture of lower intensity farming by the low slope map did not indicate strong support for any specific option to address the issue.

There was broad recognition that the low slope map is an imperfect tool and likely captures lower intensity farms, and that the regulatory system should provide flexibility for exceptions in specific circumstances, while also achieving freshwater outcomes.

The preferred option is creating an exception from the Regulations where a stocking rate is already set in a grazing licence or lease administered by LINZ or DOC. Although this may mean several lower intensity farms continue to be captured by the requirement to exclude stock from lakes and rivers, we consider this option best balances considerations of effectiveness and equity against freshwater outcomes.

### **Issue Two: Addressing the unintended outcomes of excluding stock from wetlands where they are part of a lower intensity farming system**

Four options were analysed in this regulatory impact analysis:

- retaining the current regulations requiring stock to be excluded from natural wetlands as outlined in the Regulations (status quo and preferred option)
- providing an exception to stock exclusion requirements for the Upper Taieri Scroll Plain by geographical area
- creating an exception from regulations 16 and 17 where a stocking rate is already set in a grazing licence or lease administered by LINZ or DOC
- providing an exception to the Upper Taieri Scroll Plain and/or South Island high country wetland requirements based on stocking rates.

In submissions received through consultation, excluding stock from natural wetlands for lower intensity farms was only identified as an issue for the Upper Taieri Scroll Plain by Otago Regional Council, and by the High Country Accord for South Island hill country, with no further evidence to support a broader national exception. During consultation, te Tiriti o Waitangi (te Tiriti) partners did not indicate support for an exception to the Upper Taieri Scroll Plain area, and some emphasised the need for further information and engagement before they would support an alternative to managing stock exclusion.

We have considered options to create exceptions for lower intensity farming that would provide weed control benefits. However, given a lack of evidence that lower intensity grazing for weed control would not impact freshwater quality, we recommend no change to the status quo.

The Minister for the Environment and Minister of Agriculture agreed to support the Otago Regional Council request for an exemption that would enable an alternative approach to stock exclusion in the Upper Taieri Scroll Plain [BRF-3641 / B23-0564 refers]. The Otago Regional Council has indicated its intention to implement a suitable management plan to manage grazing, supported by a robust monitoring programme to ensure the impacts are understood.

### **Issue Three: Minor technical issues of clarification and definition**

Changing the Regulations to allow for a less prescriptive definition of permanent fence would mean less fencing needing to be replaced to meet the definition under the status quo. This would decrease the marginal cost to farmers who would need to replace their

fences and decrease the cost to the environment from sediment loss when replacing fence lines. We recommend amending the definition of a permanent fence.

Some land that is greater than 10 degrees in slope has been inaccurately captured by the map. We recommend amending the Regulations to make it clear that low slope land does not include land that exceeds 10 degrees in slope, despite such land being included on the map of low slope.

We consider the recommended changes to be minor, as the exception will only apply to a small number of lower intensity farms, and the technical changes will improve clarity of the Regulations.

### Limitations and Constraints on Analysis

The scope of this Regulatory Impact Assessment is limited to interventions that can be carried out within the scope of the [Essential Freshwater regulatory package](#) and can best meet the outcomes previously agreed by Cabinet and Ministers.

In 2022, Cabinet authorised further work and consultation to develop an exception from the requirement to exclude stock from water bodies for farms that meet a threshold or definition for lower intensity farming, even where these are captured by the map of low slope land [ENV-22-MI-0051].

This further work was not intended to affect any other requirement to exclude stock, including where beef cattle and deer are intensively grazed, or where other requirements determine it is appropriate in the circumstances (ie, freshwater farm planning processes, regional council requirements). Cabinet also noted that an exception may be inappropriate in some circumstances – for example, where particularly sensitive water bodies are present.

Public consultation ran for four weeks, from 19 June to 1 July 2023. Some submissions identified that this condensed consultation period led to limitations in their submissions and the information they were able to provide. This has potentially impacted the amount and quality of data available to us. For example, we have limited information on the number of lower intensity farms captured by the low slope map (see paragraph 24, below), or the extent of the implications of this, as well as the relative benefits of light grazing of wetlands (see the section on Issue Two).

The regulation-making powers under [section 360\(1\)\(hn\)](#) of the Resource Management Act 1991 regarding stock exclusion are limited, and do not permit the delegation of authority to a third party (eg, for regional plans or freshwater farm plan certifiers to determine whether the Regulations should apply to a lower intensity farm). This limits changes that can be made to the current regulations to address the identified issues. Therefore, we only assess options that are possible under section 360(1)(hn).

We have very limited data on the location and extent of existing wetlands. Wetland extent cannot be reported with accuracy, and it is not currently possible to quantify the rate of loss or measure quality change. We did not receive any information from submissions that provided further information about wetlands in lower intensity farms.

We have limited information about the marginal costs and benefits of the different options. We did not receive submissions with any clear figures on how much excluding stock would cost lower intensity farms, only qualitative submissions stating that the cost of excluding stock would be significant.

We have limited information on the impact of the Regulations, or any potential changes, on Māori, or how many lower intensity whenua Māori farms are captured by the low slope map.

### Responsible Managers

*Nic Andic*

*Manager, Land and Water Systems*

*Ministry for the Environment*



23.08.2023

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*Manager, Water and Biodiversity Policy*

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23.08.2023

### Quality Assurance

Reviewing agency:	Ministry for Primary Industries and Ministry for the Environment
Panel assessment & comment:	A quality assurance panel with members from the Ministry for Primary Industries and the Ministry for the Environment has reviewed the Regulatory Impact Statement. The panel considers that it <b>partially meets</b> the Quality Assurance criteria. The Interim Regulatory Impact Statement clearly sets out the context for the issues that it analyses and shows adequate consultation with affected parties. The Regulatory Impact Statement however lacks a clear analysis and conclusion of the options relative to the selected objectives in relation to issue one - Options to exempt lower intensity farms from the map of low slope land. Overall, the quality assurance panel considers that the information and analysis in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions".

# Section 1: Diagnosing the policy problem

## What is the context behind the policy problem, and how is the status quo expected to develop?

### Current state

1. Livestock entering water bodies cause a range of environmental effects, including increased contaminant losses (eg, pathogens, nitrogen) and damage to the banks and beds of water bodies. These effects can adversely impact freshwater ecosystems, human health, and cultural values.<sup>1</sup>
2. Some operative regional plans have stock exclusion requirements, but these are highly variable in scope and effectiveness, meaning there is inconsistency in whether stock is being excluded. Although industry initiatives (such as [Sustainable Dairying: Water Accord](#)) have increased voluntary stock exclusion in recent years, large stretches of water bodies remain unfenced.
3. In August 2020, as part of the [Essential Freshwater package](#), the Resource Management (Stock Exclusion) Regulations 2020 (the Regulations), developed under [Section 360](#) of the Resource Management Act 1991 (RMA) were gazetted. The Regulations require the exclusion of livestock from water bodies, which comprise rivers wider than one metre,<sup>2</sup> lakes and natural wetlands.
4. Requirements to exclude stock are intended to manage the environmental risks associated with stock entering water bodies, particularly in relation to sediment and *Escherichia coli* (*E. coli*), which can adversely impact freshwater ecosystems, human health, and cultural values. The Regulations are expected to reduce faecal contamination and support the National Policy Statement for Freshwater Management national target to increase proportions of specified rivers and lakes that are suitable for primary contact (ie, swimming) to at least 80 per cent by 2030, and 90 per cent no later than 2040.<sup>3</sup>
5. The Regulations took immediate effect in 2020 for new pastoral systems, with the compliance for existing farms required by mid-2023 or mid-2025, depending on stock type and practices, as outlined below.
  - 5.1. Dairy cattle and pigs must be excluded from lakes and rivers by 1 July 2023, regardless of land slope.
  - 5.2. Dairy support cattle must be excluded from lakes and rivers by 1 July 2025.
  - 5.3. Beef cattle and deer must be excluded from lakes and rivers by 1 July 2025, on low slope land as mapped.

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<sup>1</sup> See Ministry for the Environment. 2020. [Regulatory Impact Analysis – Action for healthy waterways. Part II: Detailed Analysis](#). Wellington: Ministry for the Environment.

<sup>2</sup> Referred to throughout this document as “rivers”.

<sup>3</sup> Ministry for the Environment. 2023. [National Policy Statement for Freshwater Management 2020](#). Wellington. Ministry for the Environment. p. 67.



- 5.4. Beef cattle and deer 'intensively grazing'<sup>4</sup> on any terrain must be excluded from lakes and rivers.
  - 5.5. All cattle, deer and pigs must be excluded from natural wetlands identified in an operative regional plan, district plan, or regional policy statement as at 3 September 2020 by 1 July 2023.
  - 5.6. All cattle, deer and pigs must be excluded from natural wetlands that support a population of threatened species, or natural wetlands more than 500 square metres in area on low slope land, by 1 July 2025.
6. Where an existing regional plan has a more stringent rule for stock exclusion, the rule in the regional plan prevails over the national rules.

### Key features and objectives of the Regulations

7. The Regulations being considered in this Regulatory Impact Assessment relating to stock exclusion from rivers and lakes are [regulations 14, 15 and 18](#), which pertain to the exclusion of stock captured by the low slope map.<sup>5</sup> No changes are being considered for [regulations 9, 10, 11, 12 and 13](#).
8. The Regulations being considered in this Regulatory Impact Assessment in relation to stock exclusion from wetlands are [regulations 16 and 17](#), which pertain to the exclusion of stock from natural wetlands that meet specific criteria.
9. It was Cabinet's intent when introducing the Regulations that they would not apply to lower intensity and high country farming, because the impact on water bodies is lower, and the cost of fencing can be high. "Lower intensity farming" generally refers to a system that uses fewer inputs (eg, labour, fertilisers), relative to the land area being farmed, and has lower stocking rates than intensive farms. For this analysis, the term is used interchangeably with "extensive farming". Beef cattle and deer are farmed at a range of intensities.
10. When the Regulations were first put in place, Cabinet agreed the Regulations would require exclusion of beef cattle and deer on low slope land only, unless they are intensively grazed or fit under the wetland exclusion requirements [DEV-20-MIN-0077]. For this reason, the Regulations incorporate by reference a map of low slope land, which identifies land across Aotearoa New Zealand where beef cattle and deer must be excluded from water bodies from 1 July 2025 (or from 3 September 2020 on any new pastoral system). Low slope land was chosen to act as a proxy for intensity, as more intensive farming is not generally done on higher slope land.
11. The current map identifies low slope land as land with a slope between 0 and 5 degrees with an altitude threshold of 500 metres above sea level. It is estimated that the map captures an estimated 372,976 hectares of lower intensity farming area.
12. The requirements relating to the map of low slope land are only a partial picture of requirements to exclude certain stock from water bodies. For example, [regulation 12](#) requires beef cattle that are intensively grazing to be excluded from water bodies on

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<sup>4</sup> [Regulation 4](#) of the Resource Management (Stock Exclusion) Regulations 2020 defines 'intensively grazing' as:

- (a) break feeding; or
- (b) grazing on annual forage crops; or
- (c) grazing on pasture that has been irrigated with water in the previous 12 months.

<sup>5</sup> These provisions are referred to throughout this document as "the map and associated requirements to exclude stock".



any terrain, regardless of the map. [Regulation 13](#) stipulates the same requirement for deer.

13. Requirements to exclude stock under the Regulations are a minimum requirement. Regional plans and certified freshwater farm plans (FW-FPs), once available, can establish more stringent requirements.
14. Following gazettal of the Regulations, feedback received from councils, industry and the public included concerns that the map of low slope land:
  - 14.1. was inaccurate, due to the way it averaged slope across land parcels
  - 14.2. captured lower intensity hill country farms, contrary to Cabinet's intention when introducing the Regulations that lower intensity farms would not be captured.
15. As a result, the Government consulted on and subsequently approved changes to the map of low slope land. The changes, which took effect on 5 January 2023, were to:
  - 15.1. improve how the map identifies low slope land
  - 15.2. exclude lower intensity farming in the high country.
16. In spite of these changes, the map is still likely to capture some areas of lower intensity farming at lower slopes and altitudes. Approximately 6 per cent of the area identified by the map as 'low slope' is low producing grassland, which is often used in lower intensity beef cattle and deer farms.
17. The Government agreed to develop and undertake further consultation on an exception for lower intensity farms, to better understand and resolve these issues.

### Feedback from stakeholders during public consultation

18. Public consultation on developing an exception from the low slope map for lower intensity farming was held over four weeks, ending on 16 July 2023. This was supported by a discussion document and targeted online workshops with te Tiriti o Waitangi (te Tiriti) partners and stakeholders.
19. The discussion document sought feedback on proposals to create an exception for areas of lower intensity farming from the requirements of [regulation 14](#) and [regulation 15](#) – either by defining lower intensity farming, or via inclusion in a farm's FW-FP. Certified FW-FPs are a legal instrument established under the RMA. All farms that meet specified thresholds (eg, farms with 20 hectares of land in pastoral use) will need to have begun getting a certified FW-FP within 18 months from the FW-FP regulations are switched on in their area. Among other things, the FW-FP must:
  - 19.1. identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems
  - 19.2. specify requirements that are appropriate for the purpose of avoiding, remedying, or mitigating the adverse effects of those activities on freshwater and freshwater ecosystems.
20. The discussion document also sought feedback on:

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<sup>6</sup> [ENV-22-MIN-0051]. For further background and the regulatory impact assessment on these changes, see Ministry for the Environment. [Stock exclusion regulations](#). Retrieved 5 September 2023.

<sup>7</sup> Resource Management Act 1991, s 217F.

- 20.1. whether an exception for areas of lower intensity farming is needed from the [regulation 18](#) requirements to exclude stock from natural wetlands
- 20.2. any other technical issues with the Regulations.
21. Consultation feedback included 76 written submissions and information gathered during 8 online workshops. A summary of feedback from the consultation is included in paragraphs 22–31 below.
22. Submitters broadly recognised that the low slope map is an imperfect tool and likely captures lower intensity farms.
23. Farming intensity was identified as an issue for some farm blocks which have licences or leases with the Department of Conservation (DOC) and Land Information New Zealand (LINZ). These lease arrangements allow the grazing of DOC and LINZ land at a lower intensity, and they include restrictions on stocking rates to manage adverse effects on freshwater.
24. Industry bodies undertook an analysis, using a stocking rate of 8 stocking units per hectare (SU/ha), across both low and medium<sup>8</sup> slope land. This analysis did not provide an accurate estimate of the scale of the issue on low slope land, but it did identify 592 lower intensity farms (not including DOC or LINZ lease arrangements) that could be captured by the low or medium slope map. The Regulations only require stock to be excluded from low slope land, meaning that 592 is likely to be an overestimate.
25. Excluding stock from natural wetlands for lower intensity farms was only identified as an issue for the Upper Taieri Scroll Plain and Otago Regional Council, and by the High Country Accord for South Island high country pastoral leases, with no further evidence to suggest any need for a broader national exception.
26. Submitters presented a range of views and suggestions addressing the issue with the low slope map and wetlands. Submissions from the primary sector generally supported the use of FW-FPs as an alternative to the low slope map. There was also some support for a stocking rate exception or a hybrid approach that used both a stocking rate and FW-FPs to establish situations in which stock should be excluded.
27. In contrast, environmental non-governmental organisations (ENGOs) expressed a preference for keeping livestock out of water bodies and not making changes at this time. They were not convinced there is a sufficient case for change and did not think proposals would provide for Te Mana o te Wai or achieve the objectives of the *Essential Freshwater* reforms.
28. Tiriti partners also expressed a preference for keeping livestock out of water bodies and achieving freshwater outcomes. Although they discussed the merits of the different proposals outlined in the discussion document, most of the submissions from Tiriti partners did not believe the proposals would provide for Te Mana o te Wai.
29. Some submissions noted that non-compliance with the Regulations is likely to be an issue in the short term, regardless of any changes made to refine exclusions. This was due to the cost, access to materials and time required to implement stock exclusion methods on farms of all intensities.

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<sup>8</sup> Ministry for the Environment via MfE Data Service. [Stock Exclusion Medium Slope Land 2022](#). Retrieved 5 September 2023.

30. In relation to other technical issues, almost all submissions agreed that the definition of a permanent fence is too prescriptive, with multiple alternative definitions provided.
31. Most submissions agreed changes should clarify that the map and associated requirements to exclude stock do not apply on slopes that are greater than 10 degrees (ie, on any land currently identified as low slope that is in fact steeper). Submitters also generally noted the inaccuracy of the map (eg, land identified as low slope that is in fact steeper than 10 degrees).

### How is the status quo expected to develop if no action is taken?

32. Requiring lower intensity farms to exclude livestock from entering water bodies is not an efficient means of improving water quality. Lower intensity farms tend to be stocked at lower rates, and the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for higher costs (ie, per unit of stock excluded).
33. Under the status quo, any beef cattle and deer in areas captured by the low slope map will need to be excluded from water bodies – including on lower intensity farms.
34. Using low producing grassland as a proxy to estimate the area of lower intensity farming captured by the map, we estimate that 372,976 hectares – or 6 per cent of the total area captured by the low slope map – could capture lower intensity and high country farms (see [table 1](#)), which Cabinet did not intend would be captured when it made the Regulations [DEV-20-MIN-0077].
35. Estimated fencing costs vary by fence type and steepness of terrain (among other factors). Costs are highest for deer fencing. Other significant costs of excluding stock from lakes and rivers for such beef cattle and deer farms would include:<sup>9</sup>
  - 35.1. stock water reticulation, although it is not known how many of Aotearoa New Zealand’s waterways are currently used as a source of stock drinking water
  - 35.2. the opportunity costs of retiring productive land because of fencing.

**Table 1: Estimated area and cost of fencing of lower intensity farms in the stock exclusion area of the map**

Area of low producing grassland (ha)					
Region	Not captured by the low slope map	Captured by the low slope map	Total area	Percentage captured by low slope map	Estimated fencing cost (\$million)
Northland	27,182	14,420	41,601	35%	0.24
Auckland	16,061	4,760	20,821	23%	0.12

<sup>9</sup> For more detailed information on the benefits and costs of excluding stock from water bodies, see Ministry for the Environment, Ministry for Primary Industries. 2016. *National Stock Exclusion Study: Analysis of the costs and benefits of excluding stock from New Zealand waterways*. MPI Technical Report No: 2016/55. Wellington: Ministry for Primary Industries. See also Semadeni-Davies A, Haddadchi A, Booker D. 2020. *Modelling the impacts of the Draft Stock Exclusion Section 360 Regulations on river water quality: E. coli and Sediment*. Prepared for the Ministry for Primary Industries and Ministry for the Environment by the National Institute of Water & Atmospheric Research. Wellington: Ministry for the Environment and Ministry for Primary Industries.

Waikato	145,734	19,540	165,273	12%	0.96
Bay of Plenty	33,954	9,408	43,362	22%	0.25
Gisborne	218,448	4,317	222,765	2%	1.30
Hawke's Bay	184,677	14,775	199,452	7%	1.16
Taranaki	67,324	7,860	75,183	10%	0.44
Manawatū	527,353	20,480	547,834	4%	3.19
Wellington	129,863	10,945	140,809	8%	0.82
West Coast	248,948	45,720	294,668	16%	1.72
Canterbury	1,766,318	101,599	1,867,917	5%	10.88
Otago	1,578,166	61,275	1,639,441	4%	9.55
Southland	599,745	44,618	644,363	7%	3.75
Tasman	96,696	4,735	101,431	5%	0.59
Nelson	3,152	228	3,381	7%	0.02
Marlborough	405,052	8,296	413,347	2%	2.41
<b>Grand total</b>	<b>6,048,673</b>	<b>372,976</b>	<b>6,421,649</b>	<b>6%</b>	<b>37.40</b>

36. A further issue for lower intensity farms is the requirements to exclude stock from wetlands. Grazing stock have the potential to damage wetlands, which support high levels of biodiversity, provide habitats, improve water quality and resilience to flooding, and have strong cultural and spiritual importance for Māori.<sup>10</sup> However, many wetlands exist in their current state as part of a farming system, and may benefit from the ongoing weed management that grazing animals provide.
37. In addition to the issues around the cost of excluding stock, excluding stock from wetlands in lower intensity farms is also unlikely to be efficient. At particularly low stocking rates, farmers are more likely to destock and/or operate more intensively on smaller areas that can be fenced efficiently, which may lead to:
- 37.1. reduced weed management of the wetland area and a negative outcome to wetlands (eg, relatively impenetrable thatches of pasture grasses to the detriment of smaller, low growing and threatened indigenous plants)
  - 37.2. adverse effects on water quality where farmers choose to operate more intensively on smaller areas of land.

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<sup>10</sup> Stats NZ. [Wetland area](#). Retrieved 5 September 2023.

## Relevant prior government decisions, legislation, and Regulatory Impact Statements

38. Paragraphs 9–15 above outline previous government decisions relating to the stock exclusion Regulations. Regulatory Impact Statements were prepared to support these decisions.<sup>11</sup>
39. The Regulations incorporate by reference the map, which identifies low slope land as a proxy for higher intensity farms. Beef cattle and deer on land identified on the map must be excluded from water bodies from 1 July 2025 (or from 3 September 2020, on any new pastoral system). Cabinet agreed the Regulations would require exclusion of beef cattle and deer on low slope land only, using low slope land as a proxy for high intensity [DEV-20-MIN-0077].

### Other government work programmes with interdependencies and linkages

40. Alongside the Regulations, the *Essential Freshwater* package also comprises:
  - 40.1. the [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020 \(NES-F\)](#)
  - 40.2. the [National Policy Statement for Freshwater Management 2020 \(NPS-FM\)](#)
  - 40.3. the [Resource Management \(Measurement and Reporting of Water Takes\) Amendment Regulations 2020](#).
41. Further background and analysis relating to the *Essential Freshwater* package can be found on the Ministry for the Environment’s website,<sup>12</sup> including regulatory impact analysis that supported the development and amendment of the Regulations in 2020 and 2023, respectively.<sup>13</sup>
42. The Ministry for the Environment and the Ministry for Primary Industries are continuing to engage with stakeholders and partners to identify issues as they arise, and to ensure that stakeholders and partners have the support needed to effectively implement the *Essential Freshwater* package. This has included partnering with iwi/Māori, regional councils, and the primary sector on key areas of work; establishing a cross-sector Freshwater Implementation Group; and appointing freshwater commissioners to facilitate the preparation of freshwater planning instruments by regional councils.
43. The NPS-FM requires regional councils to map natural inland wetlands that are 0.05 hectares or larger, or wetlands that are smaller than 0.05 hectares and known to contain threatened species. When completed, this mapping will support implementation

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<sup>11</sup> Ministry for the Environment. 2020. *Regulatory Impact Analysis – Action for healthy waterways. Part II: Detailed Analysis*; 2019. *Essential freshwater – public consultation on national direction for freshwater management*. Cabinet Paper; 2020. *Action for healthy waterways – Decisions on national direction and regulations for freshwater management*. Wellington: Ministry for the Environment. For detailed recommendations relating to stock exclusion, see Ministry for the Environment. 2020. *Appendix 1: Action for healthy waterways detailed policies and recommendations for drafting the NPS-FM, NES, and Section 360 regulations*. Wellington: Ministry for the Environment.

<sup>12</sup> Ministry for the Environment. *Supporting evidence for Government freshwater work programme*. Retrieved 5 September 2023.

<sup>13</sup> Ministry for the Environment. 2020. *Regulatory Impact Analysis – Action for healthy waterways. Part II: Detailed Analysis*. Wellington: Ministry for the Environment. And see Ministry for the Environment. *Stock exclusion regulations*. Retrieved 5 September 2023.

requirements to exclude stock on low slope land from natural wetlands 0.05 hectares or greater in size by 1 July 2025.

44. Certified FW-FPs are a legal instrument established under [Part 9A](#) of the RMA (sections 217A to 217M). Eventually all farms that meet specified thresholds (eg, 20 hectares of land in pastoral use) will need a certified FW-FP. Among other things, a FW-FP must:<sup>14</sup>
  - 44.1. identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems
  - 44.2. specify requirements that are appropriate for the purpose of avoiding, remedying, or mitigating the adverse effects of those activities on freshwater and freshwater ecosystems.
45. Stock exclusion is a straightforward way to manage the effects of stock entering water bodies and may be required for some farms because of FW-FPs, including in situations where the Regulations do not require it (ie, on higher slopes). New regulations to create the FW-FP system were gazetted in June 2023, and a staged approach by time and region will be taken to implement the system across regions. It is intended the FW-FP system will commence across the entirety of all 16 regions by the end of 2025.
46. Recently proposed changes to the [Resource Management \(National Environmental Standards for Sources of Human Drinking Water\) Regulations 2007](#) (NES-DW) are aimed at improving the protection of drinking water sources used for human consumption.<sup>15</sup> Mapping criteria introduced under the NES-DW could overlap with the Regulations and impose additional requirements. Proposed changes to the NES-DW are still subject to Cabinet approval.

### Longer-term change

47. Most submitters agreed that the regulatory system for stock exclusion should provide some flexibility for exceptions in specific circumstances, while also achieving freshwater outcomes.
48. The regulation-making powers under [section 360\(1\)\(hn\)](#) of the RMA are limited, in that it must be clear on the face of it whether a requirement to exclude stock applies. For example, we are not able to allow regional councils to be more permissive through their regional plan, in the same way we could through a national environmental standard.
49. To enable a broader range of exceptions in the future and improve consistency with other regulations, it is possible to transition the Regulations into another legislative instrument, but this was not consulted on. There are multiple possible instruments that could be considered, such as through national environmental standards, through transition into the second National Planning Framework, or through the [Resource Management \(Freshwater Farm Plan\) Regulations 2023](#). In any case, this represents a longer-term change, meaning there is still reason to explore potential changes to the Regulations that can be made under [section 360\(1\)\(hn\)](#) of the RMA.
50. This transition would be part of a future work programme and subject to future Cabinet decisions. This option has not been assessed in detail within this Regulatory Impact Assessment.

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<sup>14</sup> Resource Management Act 1991, s 217F.

<sup>15</sup> Ministry for the Environment. [Improving the protection of drinking-water sources](#). Retrieved 5 September 2023.



## What is the policy problem or opportunity?

### Nature, scale, and scope of the problem

#### *Issue One: Lower intensity farms captured by the map of low slope land*

51. The Regulations are intended to manage the environmental risks associated with stock entering water bodies. Cabinet did not intend the Regulations to apply to lower intensity and/or hill country farming, because the impact on water bodies is lower and the cost of fencing can be high [DEV-20-MIN-0077].
52. The application of the Regulations to lower intensity farms is not an efficient means of improving water quality. Lower intensity farms tend to be stocked at lower rates, and the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for higher cost (ie, per unit of stock excluded).
53. Areas of lower intensity farming are still likely to be captured by the map. This is because the map is based on the characteristics of land (eg, slope, altitude) and is an imperfect proxy for the intensity of land use. The Government has no direct data on the number of lower intensity farms captured by the low slope map, but estimates that approximately 6 per cent of the map's current area is low producing grassland, which is often used for lower intensity beef cattle and deer farms.
54. Submissions identified the West Coast region as an area where lower intensity farms are being captured by the map. In this area, there are large amounts of DOC- and LINZ-administered leased land with set stocking rates, equalling approximately 6,900 hectares.
55. Submissions indicated that, if the Regulations apply to DOC- or LINZ-leased land, lower intensity herds may need to be removed from the river flats. This would incur a substantial loss of income for farms and make farming economically unviable in some cases. This may also lead to stock being confined to smaller areas, which may pose risks to freshwater bodies.
56. We did not receive any other submissions indicating the scale of the issue outside the West Coast, so we requested further information from industry bodies. They undertook an analysis, using a stocking rate of 8 SU/ha, across both low and medium slope land. This did not provide us with an accurate estimate of the scale of the issue on low slope land, but it did identify 592 lower intensity farms (not including land under DOC or LINZ lease arrangements) that could be captured by the low or medium slope map.

#### *Issue Two: Unintended outcomes of excluding stock from wetlands where they are part of a lower intensity farming system*

57. A related matter is whether an exception for lower intensity farming should also apply more broadly to requirements to exclude stock from wetlands. These requirements, when applied in lower intensity farms, could lead to reduced weed management and negative environmental outcomes for some wetlands.
58. Most of the submissions did not support an exception applying more broadly to wetlands. However, there were two areas where this was identified as an issue: the Upper Taieri Scroll Plain and pastoral lease land in the South Island high country. Information in submissions added little to the evidential basis to support a broader exception being necessary, beyond the identified examples.



## What objectives are sought in relation to the policy problem?

59. The consideration of objectives is guided by the purpose of the RMA and the objectives of the *Essential Freshwater* package. The key objectives are that changes to the Regulations must be:
  - 59.1. **effective**, in giving effect to the principles of Te Mana o te Wai and preventing further degradation and loss of the country's freshwater resources, waterways, and ecosystems (and if possible, reversing past damage)
  - 59.2. **practical**, in enabling farmers subject to the Regulations to meet their obligations as intended within required timelines
  - 59.3. **equitable**, in appropriately allocating the costs of implementing the Regulations.

## Feedback from Māori and impact of proposals

60. Freshwater is a taonga for Māori. Tribal identity is linked to freshwater, with each water body having its own mauri. For Māori, great care must be taken in managing human impacts on freshwater. The importance of water to Māori is reflected in the *Essential Freshwater* package, which contains the overarching concept of Te Mana o te Wai. Te Mana o te Wai includes a hierarchy prioritising the wellbeing of water first, then the essential needs of people, then other uses of water. It also contains mandatory values that must be managed for, national bottom lines across a range of attributes, and provisions requiring that water not be allowed to degrade further.
61. Engagement with Māori, followed by the submission process, elicited varying responses to the stock exclusion requirements.
62. Collectively, Māori are supportive of keeping livestock out of water bodies – some raised concerns that the proposed approaches would not provide for Te Mana o te Wai or achieve the objectives of the *Essential Freshwater* reforms.
63. Māori had mixed responses to the use of FW-FPs to ensure compliance. Some suggested that stocking rates were best evaluated and managed through a certified FW-FP process, while others were concerned about its practicality and ability to achieve freshwater outcomes.
64. Due to data and participation limitations, the true impact on whenua Māori and the Māori farming community won't be known before further investigation into the amount and nature of impacted whenua/water bodies as well as into the fencing and mitigation requirements.
65. At this stage, officials consider that impacts of the proposal on Māori interests are minimal and, where possible impacts may occur, they could be remedied at implementation stages of this process. These remedies could include formal processes as the changes are implemented, alongside central government Tiriti relationships – allowing the opportunity for ongoing conversations to remedy any unforeseen impacts (including stages for Māori to comment on exceptions).

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

66. Following the objectives described in paragraph 59 above, the criteria used in the original Regulatory Impact Statement and the interim Regulatory Impact Statement<sup>16</sup> are also used to evaluate the options in this document.
- 66.1. **Effective.** Does the option avoid, offer remedy, or mitigate the effects of farming on freshwater, by ensuring that the Regulations specify stock exclusion from those waterways where it will have the greatest environmental benefits (and in so doing, give effect to the principles of Te Mana o te Wai and the requirements of the RMA, the NPS-FM and the NES-F)?
- 66.2. **Practical.** Does the option:
- 66.2.1. provide farmers and regional councils with clear information about the waterways from which stock must be excluded?
  - 66.2.2. provide farmers with flexibility to implement solutions (especially through certified FW-FPs) that are appropriate to the specific circumstances on their farm?
  - 66.2.3. set realistic timeframes for measures to be implemented to meet these obligations?
- 66.3. **Equitable.** Does the option:
- 66.3.1. allocate the costs of implementing the Regulations to landowners with waterways at most risk of degradation?
  - 66.3.2. avoid imposing disproportionate costs on landowners with waterways at low risk of degradation, or where costs of exclusion would be excessive, relative to environmental benefits?
- 66.4. **Consistent with te Tiriti.** Does the option:
- 66.4.1. take into account the principles of te Tiriti?
  - 66.4.2. promote partnership and protect Māori rights and/or interests and relationships with their taonga?
  - 66.4.3. acknowledge opportunities that may arise for Māori to exercise rangatiratanga and kaitiakitanga?

### What scope will options be considered within?

67. The scope of this Regulatory Impact Assessment is limited to interventions that can be carried out within the scope of the *Essential Freshwater* regulatory package and can best meet the outcomes agreed by Cabinet and Ministers.

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<sup>16</sup> Ministry for the Environment. 2022. *Regulatory Impact Statement: Changes to the map of low slope land in stock exclusion regulations*. Wellington: Ministry for the Environment.

68. In 2022, Cabinet authorised further work and consultation to develop an exception from the requirement to exclude stock from water bodies for farms that meet a threshold or definition for lower intensity farming, even where these are captured by the map of low slope land [ENV-22-MIN-0051].
69. This further work was not intended to affect any other requirement to exclude stock, including where beef cattle and deer are intensively grazed, or where other requirements determine it is appropriate in the circumstances (ie, FW-FP processes or regional council requirements). Cabinet also noted that an exception may be inappropriate in some circumstances (eg, where particularly sensitive water bodies are present).

## What options are being considered?

70. The Government agreed to develop and undertake further consultation to inform decisions on whether to make changes to stock exclusion requirements for lower intensity farms.
71. Feedback was sought through public consultation on the following issues.
  - 71.1. Issue One: Options to except lower intensity farms from the map of low slope land, including by:
    - 71.1.1. defining lower intensity farming for the purpose of an exception to the map of low slope land (this includes a suite of options relating to the measure and threshold used)
    - 71.1.2. creating an exception from the map and associated requirements to exclude stock for farmers who have obtained a certified FW-FP
    - 71.1.3. relying on certified FW-FP instead of the low slope map and associated requirements to exclude stock, including from wetlands.
  - 71.2. Issue Two: Addressing the unintended outcomes of excluding stock from wetlands where they are part of a lower intensity farming system. Options include defining lower intensity farms or relying on certified FW-FPs.
  - 71.3. Issue Three: Minor and technical issues of clarification, including looking at:
    - 71.3.1. whether the definition of a permanent fence in the Regulations is too prescriptive, and what other fences, or elements of a fence, should be included in that definition
    - 71.3.2. whether amendments should clarify that the associated requirements to exclude stock do not apply to areas above 10 degrees in slope and still captured by the map.
72. The regulation-making powers under [section 360\(1\)\(hn\)](#) of the RMA regarding stock exclusion are limited, and are unable to delegate authority to a third party (eg, for regional plans or FW-FPs certifiers to determine whether or not the Regulations should apply to a lower intensity farm). This limits changes that can be made to the current Regulations to address the identified issues.
73. Although we consulted on two options using FW-FPs to manage stock exclusion, the legislation would not allow for an exception to the low slope map based on a farm having a certified FW-FP that meets the same or better outcomes. Therefore, the only option assessed in this Regulatory Impact Assessment regarding using the FW-FP system to manage stock exclusion is Option Three below. This option would remove the low slope map and associated requirements entirely and use the FW-FP system more broadly to manage stock exclusion. Some hybrid options were also proposed

during consultation that delegate authority to the FWFP system. These options are also not permissible under Section 360, and therefore are not assessed as an option within this Regulatory Impact Assessment.

## **Issue One: Options to exempt lower intensity farms from the map of low slope land**

### **Option One: Status quo**

74. The current map is retained, and all beef cattle and deer farms captured by the map, including lower intensity farms, must exclude stock and from water bodies from 1 July 2025 (or 3 September 2020, for new pastoral systems). The Regulations remain unchanged.
75. Through consultation, we received information that up to 592 lower intensity farms could be captured by the low slope or medium slope map. We also heard that there are 43 lease arrangements for DOC-administered land in the West Coast region who have stocking rate limits in place to manage environmental outcomes.
76. We do not know the full scale of the problem, but we estimated 6 per cent of the currently mapped area is low producing grassland, which is often used for lower intensity beef cattle and deer farms. Through submissions, we identified that approximately 6,900 hectares of land could be affected on the West Coast. Additional information provided by industry bodies did not provide an accurate estimate of the scale of the issue on low slope land, but it did identify 592 lower intensity farms (not including DOC or LINZ lease arrangements) that could be captured by the low or medium slope map.

### **Option Two: Removing the low slope map and associated requirements and relying on FW-FPs to manage stock exclusion**

77. Under Option Two, certified FW-FPs are proposed as an alternative to the map and associated requirements to exclude stock. This would involve removing the low slope map and associated requirements entirely, and using the FW-FP system more broadly to manage stock exclusion.
78. This option proposes using certified FW-FPs as a mechanism for:
  - 78.1. assessing the risk of stock entering water and whether exclusion is needed in different contexts (eg, in lower intensity farms, between different catchments and/or beef cattle and deer farms, and where one part of a farm is more intensively grazed)
  - 78.2. identifying sensitive water bodies and assessing the risk of stock entering them and whether exclusion or additional protection is needed, irrespective of low stocking rates
  - 78.3. assessing the risk posed by stock entering wetlands, and whether it is desirable to exclude them on lower intensity farms.
79. Consultation submissions from most of the primary sector, and some regional councils, identified FW-FPs as an appropriate alternative to the low slope map. They identified that this pathway provides more flexibility for lower intensity farms that are captured by the map, enabling the development of bespoke mitigations to manage stock exclusion.
80. However, submissions also identified that removing the low slope map entirely, and relying solely on FW-FPs to manage stock exclusion, was not a preferred option. The

map was identified as a useful tool to help inform whether stock should be excluded and guide risk assessments on stock exclusion.

81. Some Tiriti partners, ENGOs and regional councils had concerns around using FW-FPs as an alternative to the low slope map. Issues identified through submissions included:
  - 81.1. the timing of the FW-FP rollout
  - 81.2. the lack of certainty provided to farmers on whether they need to exclude stock
  - 81.3. concern the current FW-FP thresholds will mean smaller farms will not be required to exclude stock
  - 81.4. that this option would not result in improved freshwater outcomes.
82. The FW-FP rollout is scheduled to be phased in, region by region, over the coming years. Full regional rollout is expected to be completed by the end of 2025. Farm operators will also have 18 months from the commencement date of the FW-FP system in their region or area to submit a FW-FP for certification.
83. A farm must have a certified FW-FP if 20 hectares or more is in pastoral use. These thresholds mean that if the map and associated requirements are removed, there will be no stock exclusion requirements for beef cattle and deer farms under 20 hectares, even if they are high intensity.
84. Removing the map and associated requirements would remove the 1 July 2025 stock exclusion requirement for higher intensity beef cattle and deer farms captured by the map, as well as the lower intensity beef cattle and deer farms. As the FW-FP system rollout is expected to occur across several years, this could mean potentially delaying investment in stock exclusion measures and environmental improvements for the farms captured by the low slope map and not captured by other regulations (the map captures approximately 163,751 hectares of land).

**Option Three: Create an exception from the Regulations where a stocking rate is already set in a grazing licence or lease administered by LINZ or DOC**

85. Option Three involves amending the Regulations to create an exception to the definition of low slope land where those arrangements include a limitation on the number of stocks that may be grazed on the land. The exception would be for any land:
  - 85.1. subject to a concession document granted under [Part 3B](#) of the Conservation Act 1987 for the purpose of grazing stock on public conservation land
  - 85.2. subject to a pastoral lease, pastoral licence, or special lease within the meaning of the [Crown Pastoral Land Act 1998](#), or a discretionary pastoral activity within the meaning of the [Crown Pastoral Land Reform Act 2022](#).
86. These lease or licence arrangements are subject to the specific provisions outlined in the legislation, with processes in place to manage any adverse effects. (Part 3B, Conservation Act 1987 (17U)(1); Part 1, Crown Pastoral Land Reform Act 2022 (10)(4)).
87. Submissions identified that 43 farm blocks within the West Coast have licences or leases with DOC and LINZ to graze land at a lower intensity, with the total area of lease arrangements equalling approximately 6,900 hectares. Most of these lease arrangements are located near rivers or streams. There are also approximately 170 pastoral lease arrangements managed by LINZ.

88. Stocking rates are set as part of these licences or leases to manage the impacts grazing has on the environment. As a result, water quality is generally very high and not considered adversely affected by current grazing.
89. Because stocking rates set by DOC and LINZ already effectively manage the effects of stock on freshwater, many submissions identified that any additional requirements to exclude stock on this land would create duplication. Feedback from the West Coast region (including from the West Coast Regional Council, farmers, and individual submitters) indicated this is particularly relevant to their region,<sup>17</sup> and that they considered the low slope map requirements should not apply where a stocking rate is already set in an existing grazing licence or lease.
90. Amending the Regulations to create an exception for DOC or LINZ administered land where a stocking rate is already set will mean that these lower intensity farms that cannot exceed certain stocking rates are excepted from the low slope map. This exception will apply for current and future arrangements where those arrangements include a limitation on the number of stock that may be grazed on the land.

#### **Option Four: Defining lower intensity farming for the purpose of an exception to the map of low slope land**

91. Under Option Four, an exception from the map would be provided for lower intensity farms based on stocking rate. Lower intensity farms would be defined according to a threshold for SU/ha, annualised and calculated for the farm as a whole.
92. An exception would mean that, if a farm meets a definition of lower intensity farming, there would be no requirement to exclude stock from water bodies, despite the farm being captured by the map.

#### *Defining a threshold*

93. Measurements of SU/ha are considered a useful proxy for the intensity of a farming system. They are obtained by calculating stocking rate across different species and age groups of animals, based on their relative feed demands. For example, a breeding bull might amount to 5.5 stock units, and a steer under 1 year old might amount to 4.5 stock units. Established methods for calculating stock units are available and widely used and understood in the primary sector.
94. Stats NZ collects data about stocking rates across a range of farm types as part of the Agricultural Production Survey.
95. Annualising stocking rates per hectare for a farm as a whole was proposed during consultation as a way to measure intensity. The intent of this proposal was to avoid complicating how the exception would apply in practice and align with how the measure is commonly used (ie, as part of industry benchmarking). During consultation, feedback was also sought on alternative options to calculate stocking rates.
96. Feedback from public submissions varied significantly in terms of what an appropriate stocking threshold would be for the purpose of an exception, between 1– 55 SU/ha according to an industry-led farmer survey and 2 – 18 SU/ha according to other submissions. Industry bodies also did an indicative analysis of 592 lower intensity farms who are currently captured by the low slope map and medium slope, and in the

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<sup>17</sup> The West Coast region is predominantly rural and public conservation land. The Conservation Estate comprises 84.17 percent of the West Coast land area, with an additional 1.55 percent administered by LINZ. This leaves 14.28 percent of land in private ownership.



analysis used a maximum stocking rate of 8 SU/ha to define lower intensity. Of these farms, average stocking rate varied between 2.7 SU/ha and 5.9 SU/ha, with an overall average of 3.7 SU/ha. The use of an 8 SU/ha threshold was not drawn from the industry's view on where a stocking rate threshold should be set. Rather, it was a nominal figure used for the purpose of the analysis.

97. Although most farms are likely to have an existing record of annual stocking rates per hectare, there will be situations where this will not accurately reflect the intensity of farming system and, therefore, the level of risk to freshwater. These situations include:
  - 97.1. when a farming system is destocked or is considerably lower intensity for the majority of the year, but has high stocking rates and higher intensity during certain times (ie, calving, winter grazing);
  - 97.2. where certain paddocks or areas of the farm are more intensively grazed than others.
98. As annualised stocking rates will only be recorded once per year, it could be difficult for enforcement action to be taken against suspected non-compliance with the Regulations until this annualised stocking rate is submitted. This could potentially result in adverse freshwater outcomes if there is a delay between expected non-compliance and verification.
99. Due to the difficulties in identifying an appropriate stocking rate unit, this Regulatory Impact Assessment will assess a de minimis threshold of 4 SU/ha, targeting the least intensive 5 per cent of Aotearoa New Zealand farms. This threshold was identified using Stats NZ data on the distribution of stocking rates, using the maximum 5th percentile per region (3.6 SU/ha), and rounding to the nearest figure.

#### *Sensitive water bodies*

100. Consultation identified multiple situations in which an exception to the low slope map for lower intensity farming would be inappropriate. Identified situations include mahinga kai sites, regionally significant wetlands, sensitive water bodies, natural wetlands, significantly degraded catchments, native fish spawning or passage sites, indigenous ecosystems, threatened environments, recreational areas, spring-fed streams, river flats, and culturally significant areas.
101. Submissions indicated that it would be difficult to identify these sites of significance at a national level, due to the wide variety of situations that were identified as requiring stock to be excluded.

#### *Compliance monitoring and enforcement*

102. Feedback received during consultation identified that there could be potential difficulties with compliance monitoring of an exception based on stocking rates. Regional councils submitted that it would be difficult for them to undertake compliance monitoring on an annualised stocking rate using their usual methods of compliance monitoring (ie, site visits, flyovers), due to the potential variability of stocking levels across the year.
103. Some submissions also suggested a stocking rate threshold that applies at any given time, or for a grazed area, to improve the ability to monitor compliance. However, there was still significant variability in terms of what this threshold should be, and there was some concern around the difficulties that could arise for farmers regarding compliance (ie, not having the information available to know whether they are complying).



## How do the options compare to the status quo/counterfactual?

	Option One Status quo	Option Two Remove low slope map and rely on FW-FPs	Option Three Create exception for LINZ or DOC land (preferred option)	Option Four Create exception based on stocking rates
<p><b>Effective</b></p> <p>Does the option avoid, remedy, or mitigate the effects of farming on freshwater, by ensuring that the Regulations specify stock exclusion from those waterways where it will have the greatest environmental benefits?</p>	<p>0</p> <p>The Regulations and incorporated map provide an effective way of determining where stock must be excluded from water bodies to avoid, remedy, or mitigate the effects on freshwater.</p>	<p>--</p> <p>This option may allow more stock than under the status quo to be excepted from exclusion requirements, meaning that there will be a greater impact on freshwater.</p> <p>However, risks to freshwater will be mitigated as certified FW-FPs take a risk-based approach and will encourage actions to reduce effects of farming on freshwater.</p> <p>These actions are subject to certification and audit, which will ensure environmental benefits can be monitored and measured. The roll out of the FW-FP system could mean effective stock exclusion based on these plans will be in place later than under the status quo, and further degradation of water bodies could continue until plans are implemented.</p>	<p>0</p> <p>This option may allow more stock than under the status quo to be excepted from exclusion requirements, meaning that there could be a greater impact on freshwater.</p> <p>However, risks to freshwater will be mitigated by restricting the exception to DOC- or LINZ-leased land where water quality is already managed through stocking rates. This ensures that the Regulations specify stock exclusion from waterways where it will have the greatest environmental benefits.</p>	<p>--</p> <p>This option will allow more stock to be excepted from exclusion requirements than under the status quo, meaning that there will be a greater impact on freshwater.</p> <p>Difficulty in assessing stocking rates could lead to higher intensity farms being excepted.</p> <p>There are also multiple situations which are inappropriate to have an exception, which would be difficult to identify at a national level.</p>

	<b>Option One Status quo</b>	<b>Option Two Remove low slope map and rely on FW-FPs</b>	<b>Option Three Create exception for LINZ or DOC land (preferred option)</b>	<b>Option Four Create exception based on stocking rates</b>
		Smaller farms will not be required to have a certified FW-FP, meaning stock may not be required to be excluded, even if there are environmental risks.		
<p><b>Practical</b> Does the option:</p> <ul style="list-style-type: none"> <li>provide farmers and regional councils with clear information about the waterways from which stock must be excluded?</li> <li>provide farmers with flexibility to implement solutions (especially through certified FW-FPs) that are appropriate to the specific circumstances of their farm?</li> </ul>	<p>0</p> <p>The Regulations and incorporated map are a practical method in most cases for defining where stock need to be excluded from water bodies.</p> <p>There is no flexibility for lower intensity farms which are captured by the Regulations.</p> <p>The Regulations were introduced in 2020, with all requirements to be met by 2025.</p>	<p>++</p> <p>This option is more practical than the Regulations, as there will be no requirement for stock to be excluded from lower intensity farms until a certified FW-FP plan is in place, which will identify the most appropriate and effective areas for stock exclusion.</p> <p>A staged approach by time and region will be taken to implement the FW-FP system across Aotearoa New Zealand, with the intent to have all regions switched on by the end of 2025.</p> <p>This option would also reduce the overall compliance burden for farmers, by aligning with other regulatory requirements.</p>	<p>+</p> <p>This option is more practical than the current Regulations, as it provides farmers on DOC- or LINZ-leased land with flexibility where they already having stocking rates in place, enabling them to implement a solution that works best for their specific lease circumstances.</p> <p>Clear information is provided on which areas are excluded from the map (DOC- and LINZ-leased land).</p> <p>There is no change to the timeframe for implementation.</p>	<p>-</p> <p>This option will provide greater flexibility for the least intensive 5 per cent of Aotearoa New Zealand farms, as they will not be required to exclude stock on low slope land.</p> <p>However, this option is less practical than the current Regulations, as it would create exceptions to the map. This could create confusion about where the map does and does not apply.</p> <p>There are also likely to be issues with compliance monitoring, or with a farm knowing if it needs to exclude stock at any given time.</p> <p>There is no change to the timeframe for implementation.</p>

	<b>Option One Status quo</b>	<b>Option Two Remove low slope map and rely on FW-FPs</b>	<b>Option Three Create exception for LINZ or DOC land (preferred option)</b>	<b>Option Four Create exception based on stocking rates</b>
<ul style="list-style-type: none"> <li>set realistic timeframes for measures to be implemented to meet these obligations?</li> </ul>				
<p><b>Equitable</b></p> <p>Does the option:</p> <ul style="list-style-type: none"> <li>allocate the costs of implementing the Regulations towards landowners with waterways at most risk of degradation?</li> <li>avoid imposing costs on landowners with waterways at low risk of degradation or where costs of exclusion would be excessive relative to environmental benefits?</li> </ul>	<p>0</p> <p>The Regulations and incorporated map are likely to capture some lower intensity farms on low slope land.</p> <p>This would impose costs on landowners with waterways at low risk of degradation and is not aligned with Cabinet's intent.</p>	<p>+</p> <p>Certified FW-FPs are more equitable than the current Regulations. Although farmers can take specific actions to improve freshwater in the most cost-effective way for their farm system, using a risk-based approach, smaller farms will not be required to have a certified FW-FP, meaning they may not be required to exclude stock.</p> <p>This pathway will be available to all farms currently captured by the low slope map, not just those which are lower intensity, which means the cost of implementing the Regulations will only fall on farms captured by regulations 9–13 and will exclude higher intensity beef cattle and deer.</p>	<p>+</p> <p>This option is more equitable than the current Regulations, as it avoids imposing costs on farmers who lease DOC- or LINZ-administered land, where there are stocking rates in place to manage environmental outcomes and water quality is already high.</p> <p>This option would not provide an exception for farmers with similarly low stocking rates who are not on DOC- or LINZ-leased land. However, there is additional flexibility provided that does not exist under the current Regulations, meaning this option is more equitable.</p>	<p>+</p> <p>Creating an exception from the map for lower intensity farms is more equitable than the current Regulations, as the least intensive 5 per cent of Aotearoa New Zealand farms with lower risks of degradation (due to lower stocking rates) avoid having to pay an excessive cost for stock exclusion.</p> <p>Even with lower stocking rates, however, allowing stock into waterways may harm specific areas (ie, significant natural areas, spawning sites).</p> <p>It is unknown what an appropriate stocking rate would be outside of a de minimis threshold. There is a risk that lower intensity farms would still</p>

	<b>Option One Status quo</b>	<b>Option Two Remove low slope map and rely on FW-FPs</b>	<b>Option Three Create exception for LINZ or DOC land (preferred option)</b>	<b>Option Four Create exception based on stocking rates</b>
		<p>However, this is offset by FW-FPs still requiring actions to be taken to improve water quality, with the stock exclusion Regulations designed to work in combination with these. Financial costs to farmers of preparing a FW-FP and having it certified will vary, depending on the complexity of the farm system, existing farm plans they may have in place, and what level of system change is already underway.</p>		<p>be captured by the map, or that higher intensity farms would be excluded, which could be considered inequitable.</p>
<p><b>Takes into account Te Tiriti o Waitangi</b></p> <p>Does the option:</p> <ul style="list-style-type: none"> <li>take into account the principles of Te Tiriti o Waitangi?</li> <li>promote partnership and protect Māori rights and/or interests and relationships with their taonga?</li> </ul>	<p>0</p> <p>The Regulations aim to provide for Te Mana o te Wai by excluding stock from higher intensity farms from entering lakes and rivers.</p>	<p>+</p> <p>This option could have a greater impact on Te Mana o te Wai than the status quo. Certified FW-FPs provide more opportunity to exercise rangatiratanga, as actions can be tailored to the specific farm and must consider catchment context, challenges and values, which mana whenua will be given the opportunity to feed into.</p> <p>Using FW-FPs to determine exclusion requirements on a</p>	<p>0</p> <p>This option could have a similar impact on Te Mana o te Wai when compared to the status quo.</p> <p>This option could benefit Māori-owned farms on DOC or LINZ leased land, but we do not have data on the number or share of Māori-owned farms in this category</p>	<p>0</p> <p>This option could have a similar impact on Te Mana o te Wai when compared to the status quo.</p> <p>Enabling greater flexibility for lower intensity farms could benefit Māori-owned farms, but we do not have data on the number or share of Māori-owned farms in this category.</p> <p>Developing an exception based on stocking rates was not a</p>

	<b>Option One Status quo</b>	<b>Option Two Remove low slope map and rely on FW-FPs</b>	<b>Option Three Create exception for LINZ or DOC land (preferred option)</b>	<b>Option Four Create exception based on stocking rates</b>
<ul style="list-style-type: none"> <li>acknowledge opportunities that may arise for Māori to exercise rangatiratanga and kaitiakitanga?</li> </ul>		<p>farm-by-farm basis could benefit Māori-owned farms more than the relatively blunt approach in the Regulations, but we do not have data on the number or share of Māori-owned farms in this category.</p> <p>In consultation, some Tiriti partners supported the use of FW-FPs. However, there were concerns, and overall, this was not the preferred approach.</p>		<p>preferred pathway from Treaty partners during consultation.</p>
<b>Overall assessment</b>	<p>0</p> <p>The requirements of the Regulations and incorporated map to exclude stock are intended to manage the environmental risks of stock entering water bodies.</p> <p>The Regulations are inflexible and may capture lower intensity farms. The Regulations may not be equitable in the allocation of</p>	<p>+</p> <p>This option is more effective than the current Regulations. Although there would be more practicality in the system and the ability to develop stock exclusion actions based on risk, this option has some issues. These include:</p> <ul style="list-style-type: none"> <li>the rollout timing of the FW-FP system meaning potential delays in environmental improvements</li> </ul>	<p>+</p> <p>This option is more effective than the current Regulations, but only for a very limited set of farmers where there are already stocking rates in place to protect water quality.</p> <p>This option adds more practicality and equitability to the system, as it removes the requirements of stock exclusion from DOC- or LINZ-leased land where there are already stocking rates in place, and where</p>	<p>-</p> <p>This option is less effective and practical than the current Regulations, as there is not enough information on what an appropriate stocking rate would be.</p> <p>There is also a risk that lower intensity farms would still be captured by the map, or that higher intensity farms would be excluded.</p> <p>There could also be issues with compliance monitoring, a farm</p>

	<b>Option One Status quo</b>	<b>Option Two Remove low slope map and rely on FW-FPs</b>	<b>Option Three Create exception for LINZ or DOC land (preferred option)</b>	<b>Option Four Create exception based on stocking rates</b>
	costs for some lower intensity farms.	<ul style="list-style-type: none"> <li>• smaller farms not being captured by the FW-FP requirements</li> <li>• the pathway being available to all farms currently captured by the low slope map, not just those which are lower intensity.</li> </ul> <p>This would mean that higher intensity cattle and deer farming operations would not be required to exclude stock under the Regulations.</p>	environmental outcomes are being managed. This option is not available to all lower intensity farms captured by the Regulations.	knowing if it needs to exclude stock, and having specific situations where stock should still be excluded.

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

104. Some lower intensity farms (estimated fewer than 600) will likely be captured by the low slope map despite Cabinet's intent that they be exempted. We consider that an exception for lower intensity farms ([Option Four](#)) would be difficult to define and monitor, and for farmers to understand how to comply. Replacement of the low slope map with FW-FPs ([Option Two](#)) would be more effective than the current Regulations, as it would allow for greater targeting of stock exclusion requirements to risks to freshwater. However, this option could potentially delay investment in stock exclusion measures and environmental improvements for the land currently captured by the low slope map and not captured by other Regulations (the map captures approximately 163,751 hectares of land). Option Two would also create an exception for higher intensity beef cattle and deer not captured by [regulation 12](#) and [regulation 13](#), which was not Cabinet's intent when going out for consultation regarding an exception [ENV-22-MIN-0051]. Therefore, this is not the recommended option.
105. Creating an exception where a stocking rate is already set in a grazing licence or lease administered by LINZ or DOC ([Option Three](#)) addresses the inadvertent capture of a subset of lower intensity farms where verifiable measures are already in place to mitigate impacts on water quality. For this reason, Option Three is the favoured option. Although this will result in several lower intensity farms continuing to be captured by the requirement to exclude stock from lakes and rivers, we do not have enough information on the extent of this issue, or on how many lower intensity farms will still be captured by the low slope map and associated requirements. We consider that Option Three best balances considerations of effectiveness and equity against freshwater outcomes.

## Issue Two: Addressing the unintended outcomes of excluding stock from wetlands where they are part of a lower intensity farming system

106. Draining wetlands for agricultural and urban development over the past 150 years has led to significant wetland loss and deterioration. Wetlands support biodiversity, provide habitats, clean water, control flood water and pollutants, and act as carbon sinks. Wetlands have strong cultural and spiritual importance for Māori and wider benefits for surrounding communities.<sup>18</sup>
107. Allowing stock to graze in a wetland can have negative environmental outcomes on water quality and biodiversity by increasing sediment runoff and habitat damage, especially where stock are intensively grazing. Conversely, some wetlands benefit from grazing at very low stocking rates to achieve weed management from invasive pest species.
108. The Government is aware this is a particular issue for the Upper Taieri Scroll Plain in Otago, and pastoral lease land in the South Island high country.
109. There is limited data on the location and extent of existing wetlands, and where they may exist in their current state as part of a farming system benefitting from ongoing weed management by the farmer.
110. [Issue One](#) above relates to the map of low slope land and includes the requirement to exclude stock from natural wetlands with an area more than 500 square metres. The

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<sup>18</sup> Stats NZ. [Wetland area](#). Retrieved 5 September 2023.



Regulations also contain other requirements to exclude stock from wetlands, irrespective of the map of low slope land, where:

- 110.1. the wetland is identified in a regional or district plan, or regional policy statement<sup>19</sup>
- 110.2. the wetland supports a population of threatened species.<sup>20</sup>
111. The discussion document sought feedback on whether an exception, or use of certified FW-FPs, should apply more broadly to requirements to exclude lower intensity stock from natural wetlands. This was in part because requirements to exclude stock from natural wetlands may be similarly problematic when applied to lower intensity farming, and because they could lead to reduced weed management and poor outcomes for some wetlands.
112. Information in submissions added little to the evidential basis to support that an exception is necessary beyond the identified examples (ie, the Upper Taieri Scroll Plain and pastoral lease land in the South Island high country).
113. There was also a lack of evidence provided in public submissions that lower intensity farming does not apply pressure to wetlands. The Regulations are the only tool that currently regulates grazing in natural wetlands. The definition of 'vegetation clearance' in the NPS-FM expressly excludes grazing, and other forms of more intensive weed control are available and permitted under the NES-F pathway for wetland restoration, maintenance, and biosecurity provisions.

#### *The Upper Taieri Scroll Plain*

114. The Upper Taieri Scroll Plain is a unique, vast, low gradient and ephemeral wetland complex, with wet and dry periods corresponding to the Taieri River level. Coupled with its unique climate, the Upper Taieri Scroll Plain holds unique hydrology and biodiversity values found nowhere else in the world.
115. The Upper Taieri Scroll Plain is classified as a Regionally Significant Wetland and, due to this status, is captured by the Regulations as of 1 July 2023. This is ahead of the 1 July 2025 deadline for the stock exclusion requirements for natural wetlands and areas captured by the low slope map.
116. Local farmers have grazed cattle within the wetland complex (when dry), and they emphasise that this is a desirable form of weed management. Some submissions suggested that grazing is preferable to no management interventions at all in this instance. Further, as the area has been grazed for such a long period of time,<sup>21</sup> ecosystems may take time to respond to other forms of weed management.
117. Funding (\$4.5m over five years) has already been provided by the Freshwater Improvement Fund, as part of the Tiaki Māniototo project, to protect the scroll plain complex by implementing a large-scale planting and fencing programme that is guided by a catchment management plan.<sup>22</sup>

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<sup>19</sup> Resource Management (Stock Exclusion) Regulations 2020, [reg 16](#).

<sup>20</sup> Resource Management (Stock Exclusion) Regulations 2020, [reg 17](#).

<sup>21</sup> Submissions regarding the Upper Taieri Scroll Plain suggested the area had been grazed for over 100 years.

<sup>22</sup> The funding is for catchment scale fencing, riparian planting and weed control, as well as for the restoration of recreational areas, and the development and promotion of walking access to the river.

118. In February 2023, Otago Regional Council (ORC) provided a memo, developed with Tiaki Māniototo and Upper Taieri Wai, on the merits of implementing a management plan approach to protect the Upper Taieri Scroll Plain. No further updating information was provided in submissions as to why a bespoke exemption or alternative approach was being sought for the scroll plain, where funding had been provided (in part) to meet requirements.
119. To address the risks of reduced weed management and poor outcomes identified through submissions, we have identified two options to create a specific exception for the Upper Taieri Scroll Plain.
- 119.1. Exempt the geographic area. Noting that all regions will need to notify freshwater plans by the end of 2024 and give effect to the NPS-FM, including Te Mana o te Wai and policies directing regional councils to avoid loss of wetland extent and value.
- 119.2. Apply a de minimis stocking level threshold to the area. Noting that some farms may be over a threshold, and this is unlikely to address all the issues in the area.
120. Tiriti partners in their public submissions did not indicate support for an exception to the Upper Taieri Scroll Plain area, and instead emphasised the need to protect wetlands. They were interested in being involved in any discussions for managing an exception to the stock exclusion requirements.
121. ENGO submitters did not support a blanket exception to the stock exclusion requirements for wetlands in lower intensity farming areas. However, one noted that they were open to discussing the creation of a bespoke exemption and alternative approach for the Upper Taieri Scroll Plain.

*Excluding stock from natural wetlands located in high country pastoral leases*

122. The High Country Accord sought an exception for pastoral leases in the South Island high country (below or above the 500-metre threshold) on the basis that it is not feasible for all natural wetlands to be fenced, and that weed control from light grazing will cease.<sup>23</sup>
123. To address the impracticalities of meeting the stock exclusion requirements for natural wetlands in high country pastoral leases, we have identified two options.
- 123.1. Apply any exception for LINZ or DOC land to wetlands requirements. Noting that this exception is being proposed on the basis that stocking rate is actively managed, and that an exception would pose a particular risk for wetlands (the impacts of stock entering them and clearing vegetation may be more significant, due to wetlands potentially being more sensitive to stock).
- 123.2. Apply a de minimis threshold to the area. Noting that some farms may be over a threshold, and this is unlikely to address all the issues in the area.
124. At this stage, we do not consider a geographical exception to the South Island high country to be a feasible option to address the concerns raised by the High Country Accord. This is because the area is expansive, and the exception would apply to all farms in the area, regardless of intensity or lease arrangements.

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<sup>23</sup> Submissions from the High Country Accord indicated that there are now approximately 160 remaining pastoral or special leases of pastoral land, covering about 1.3 million hectares.

### **Option One: Status quo**

The current Regulations are retained, and stock are required to be excluded from natural wetlands, irrespective of the low slope map, where:

- 124.1. the wetland is identified in a regional or district plan, or regional policy statement<sup>24</sup>
- 124.2. the wetland supports a population of threatened species.<sup>25</sup>

### **Option Two: Provide an exception to stock exclusion requirements for the Upper Taieri Scroll Plain by geographical area**

125. Option Two involves amending the Regulations to provide for an exception for the Upper Taieri Scroll Plain by geographical area. Under Option Two, the Upper Taieri Scroll Plain will have an exception from all the regulations that require stock to be excluded from natural wetlands and waterways.
126. It would be for the regional plan developed by ORC to determine what (if any) requirements to exclude stock will exist.

### **Option Three: Create an exception from regulations 16 and 17 where a stocking rate is already set in a grazing licence or lease administered by LINZ or DOC**

127. Option Three involves amending the Regulations to provide for an exception for DOC- and LINZ-administered leased land from the requirements to exclude stock from wetlands. This would provide for concerns raised during submissions for high country accord pastoral leases, but it would be a national exception.
128. Stocking rates are set as part of these licences or leases, to manage the impacts grazing has on the environment. There are potentially additional risks that grazing can pose to wetlands, and the impact of stock entering them and clearing vegetation may be more significant.

### **Option Four: Provide an exception to Upper Taieri Scroll Plain and/or South Island high country wetland requirements based on stocking rates**

129. Option Four involves amending the Regulations to provide an exception to wetland requirements in the Upper Taieri Scroll Plain and South Island high country, based on setting a de minimis stocking rate threshold of 4 SU/ha targeting the least intensive 5 per cent of Aotearoa farms. The same logistics and rationale regarding this option are provided in the section above ([Issue One, Option Four](#)).

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<sup>24</sup> Resource Management (Stock Exclusion) Regulations 2020, [reg 16](#).

<sup>25</sup> Resource Management (Stock Exclusion) Regulations 2020, [reg 17](#).

## How do the options compare to the status quo/counterfactual?

	<b>Option One Status quo</b>	<b>Option Two Exception for Upper Taieri Scroll Plain geographical area</b>	<b>Option Three Exception for LINZ- and DOC-administered leased land</b>	<b>Option Four Exception based on stocking rates</b>
<p><b>Effective</b> Does the option avoid, remedy, or mitigate the effects of farming on freshwater, by ensuring that the Regulations specify stock exclusion from those waterways where it will have the greatest environmental benefits?</p>	<p>0</p> <p>Stock are required to be excluded from natural wetlands where the wetland is identified in a regional or district plan or regional policy statement, or the wetland supports a population of threatened species – achieving the best environmental benefit.</p>	<p>-</p> <p>A lack of evidence has been provided that lower intensity farming does not apply pressure to wetlands.</p> <p>Grazing on the Upper Taieri Scroll Plain is generally lower intensity, but a geographical exception would also extend to high intensity farms, meaning the risk presented to freshwater is higher.</p> <p>Submissions suggested environmental benefits could be maintained from weed management via grazing.</p> <p>This option would mean the Regulations would not exclude any stock from grazing in natural wetlands in this area, but the regional council could impose specific requirements (ie, through their regional plan, or a specific management plan).</p>	<p>-</p> <p>A lack of evidence has been provided that lower intensity farming does not apply pressure to wetlands.</p> <p>There are potentially additional risks that grazing can pose to wetlands, and the impact of stock entering them and clearing vegetation may be more significant and outweigh the benefits of the weed control provided.</p>	<p>-</p> <p>A lack of evidence has been provided that lower intensity farming does not apply pressure to wetlands.</p> <p>Submissions suggested environmental benefits could be maintained from weed management via grazing, but it is not clear whether the impacts of stock entering them and clearing vegetation may outweigh the benefits of the weed control provided.</p>

	<b>Option One Status quo</b>	<b>Option Two Exception for Upper Taieri Scroll Plain geographical area</b>	<b>Option Three Exception for LINZ- and DOC-administered leased land</b>	<b>Option Four Exception based on stocking rates</b>
<p><b>Practical</b></p> <p>Does the option:</p> <ul style="list-style-type: none"> <li>provide farmers and regional councils with clear information about the waterways from which stock must be excluded?</li> <li>provide farmers with flexibility to implement solutions (especially through certified FW-FPs) that are appropriate to the specific circumstances of their farm?</li> <li>set realistic timeframes for measures to be implemented to meet these obligations?</li> </ul>	<p>0</p> <p>Provides clear information about which wetlands must have stock excluded.</p> <p>Farms can use whatever form of stock exclusion is most appropriate, but have no flexibility to manage freshwater outcomes outside of stock exclusion.</p> <p>There is limited data on wetland extent.</p> <p>Councils are required under the NPS-FM to map wetlands by 2030.</p> <p>The Regulations were introduced in 2020, with all requirements to be met by 2025.</p>	<p>+</p> <p>No wetlands within the area will be required to have stock excluded. If farmers identify stock exclusion as the most appropriate management option, then farmers will have flexibility in how this is done, or will have the flexibility to manage environmental outcomes that is most appropriate to their farm.</p> <p>There is the potential for council to develop a management plan for the area, which will provide for the specific circumstances.</p>	<p>+</p> <p>No wetlands within DOC- or LINZ-administered lease land will be required to have stock excluded.</p> <p>If farmers identify stock exclusion as the most appropriate management option, then farmers will have flexibility in how this is done, or will have the flexibility to manage environmental outcomes in the most appropriate way for their farm.</p> <p>DOC or LINZ lease arrangements could provide requirements to exclude stock that are specific to the circumstances of the land.</p>	<p>-</p> <p>This option will provide greater flexibility for the least intensive 5 per cent of Aotearoa farms, as they will not be required to exclude stock from natural wetlands.</p> <p>However, this option is less practical than the current Regulations, as it would create exceptions to the map. This could create confusion about where the map does and does not apply.</p> <p>There are also likely to be issues with compliance monitoring, or a farm knowing if it needs to exclude stock at any given time.</p> <p>There is no change to the timeframe for implementation.</p>
<p><b>Equitable</b></p> <p>Does the option:</p>	<p>0</p> <p>The Regulations capture some lower</p>	<p>-</p> <p>A lack of evidence has been provided that lower intensity</p>	<p>-</p>	<p>0</p> <p>Creating an exception from the Regulations for lower intensity</p>

	<b>Option One Status quo</b>	<b>Option Two Exception for Upper Taieri Scroll Plain geographical area</b>	<b>Option Three Exception for LINZ- and DOC-administered leased land</b>	<b>Option Four Exception based on stocking rates</b>
<ul style="list-style-type: none"> <li>allocate the costs of implementing the Regulations towards landowners with waterways at most risk of degradation?</li> <li>avoid imposing costs on landowners with waterways at low risk of degradation, or where costs of exclusion would be excessive relative to environmental benefits?</li> </ul>	<p>intensity farms which have wetlands identified in a regional or district plan, or regional policy statement, or the wetland supports a population of threatened species, which may not be considered equitable. The cost to exclude could exceed the environmental benefits in some cases.</p>	<p>farming does not apply pressure to wetlands, outside of any weed management benefits from light grazing.</p> <p>This option does not address any similar concerns outside of the area, which may not be considered equitable.</p> <p>Funding has also been provided to protect the scroll plain complex by implementing a large-scale planting and fencing programme.</p>	<p>A lack of evidence has been provided that lower intensity farming does not apply pressure to wetlands outside of any weed management benefits from light grazing.</p> <p>The cost of excluding stock from natural wetlands would be removed from DOC- and LINZ-administered lease land.</p> <p>This option does not address any similar concerns outside of DOC- and LINZ-administered lease land, which may not be considered equitable.</p>	<p>farms is more equitable than the current Regulations, as the least intensive 5 per cent of Aotearoa farms with potentially lower risks of degradation (due to lower stocking rates) avoid having to pay an excessive cost for stock exclusion.</p> <p>A lack of evidence has been provided that lower intensity farming does not apply pressure to wetlands in excess of any weed management benefits from light grazing.</p> <p>It is unknown what an appropriate stocking rate would be outside of a de minimis threshold.</p> <p>There is a risk that lower intensity farms would still be captured by the map, or that higher intensity farms are excluded, which could be considered inequitable.</p>
<p><b>Takes into account te Tiriti</b> Does the option:</p>	<p>0 The principles of te Tiriti were taken into</p>	<p>- This option could have a similar impact on Te Mana o te Wai</p>	<p>- This option could have a similar impact on Te Mana o te Wai</p>	<p>- This option could have a similar impact on Te Mana o te Wai</p>

	<b>Option One Status quo</b>	<b>Option Two Exception for Upper Taieri Scroll Plain geographical area</b>	<b>Option Three Exception for LINZ- and DOC-administered leased land</b>	<b>Option Four Exception based on stocking rates</b>
<ul style="list-style-type: none"> <li>• take into account the principles of te Tiriti?</li> <li>• promote partnership and protect Māori rights and/or interests and relationships with their taonga?</li> <li>• acknowledge opportunities that may arise for Māori to exercise rangatiratanga and kaitiakitanga?</li> </ul>	<p>account in the development of the Regulations.</p>	<p>when compared to the status quo.</p> <p>During consultation, Tiriti partners did not indicate support for an exception to the Upper Taieri Scroll Plain area, and some emphasised the need for further information and engagement before they would support an alternative to managing stock exclusion.</p> <p>Tiriti partners emphasised the need to protect wetlands. The Taieri catchment holds significant cultural and historical importance to Tiriti partners in the area and continues to provide connection between mana whenua to wāhi tūpuna, taonga species and mahinga kai.</p> <p>Tiriti partners indicated an expectation to be heavily involved in any progression and development of an exception to the stock exclusion requirements in the Upper Taieri Scroll Plain.</p>	<p>when compared to the status quo.</p> <p>This option could benefit Māori-owned farms on DOC- or LINZ-leased land, but we do not have data on the number or share of Māori-owned farms in this category.</p> <p>All Tiriti partners who submitted opposed an exception for lower intensity farming applying more broadly to natural wetlands.</p>	<p>when compared to the status quo.</p> <p>Enabling greater flexibility for lower intensity farms could benefit Māori-owned farms, but we do not have data on the number or share of Māori-owned farms in this category.</p> <p>Developing an exception based on stocking rates was not a preferred pathway of Tiriti partners during consultation, and all opposed an exception for lower intensity farming applying more broadly to natural wetlands.</p>



	<b>Option One Status quo</b>	<b>Option Two Exception for Upper Taieri Scroll Plain geographical area</b>	<b>Option Three Exception for LINZ- and DOC-administered leased land</b>	<b>Option Four Exception based on stocking rates</b>
<b>Overall assessment</b>	<p>0</p> <p>The requirements of the Regulations to exclude stock from natural wetlands are intended to manage the environmental risks of stock entering water bodies.</p> <p>The Regulations may not provide for a farm's specific circumstances.</p> <p>The Regulations may not be equitable in the allocation of costs for some lower intensity farms.</p>	<p>-</p> <p>This option is less effective and equitable than the current Regulations. There is a lack of evidence provided that lower intensity farming does not apply pressure to wetlands, and the area has already received funding to implement stock exclusion measures.</p> <p>The exception would extend to high intensity farms in the area, meaning the risk presented to freshwater is higher. This option is more practical than the current Regulations.</p> <p>Before any exception is progressed, we would need to do more evidence gathering, working with Tiriti partners and ORC to ensure specific provisions are in place to manage the effects of not excluding stock from the wetland (eg, through a formal letter).</p>	<p>-</p> <p>This option is less effective than the current Regulations. There is a lack of evidence provided that lower intensity farming does not apply pressure to wetlands and no certainty that stocking rate is actively managed regarding wetlands.</p> <p>This option is more practical than the current Regulations.</p>	<p>-</p> <p>This option is less effective and practical than the current Regulations.</p> <p>A lack of evidence has been provided that lower intensity farming does not apply pressure to wetlands.</p> <p>There could also be issues with compliance monitoring, or a farm knowing if it needs to exclude stock at any given time.</p> <p>This option does not enable any consideration of wetland type, biodiversity values, or the nature and effects of grazing activity.</p>

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

130. The impacts of stock entering natural wetlands can be higher than other water bodies, due to their unique attributes and can have significant negative environmental outcomes on water quality and biodiversity. The Government has heard concerns that, for some natural wetlands, lower intensity grazing provides weed control benefits that outweigh impacts to freshwater quality, and that stock exclusion is inappropriate in these circumstances. We have considered options to create exceptions for lower intensity farming that would provide weed control benefits. However, given a lack of evidence that lower intensity grazing for weed control would not impact freshwater quality, we recommend no change to the current Regulations.
131. The Minister for the Environment and Minister of Agriculture agreed to support the Otago Regional Council request for an exemption that would enable an alternative approach to stock exclusion in the Upper Taieri Scroll Plain [BRF-3641 / B23-0564 refers]. The Otago Regional Council has agreed to implement a suitable management plan to manage grazing, supported by a robust monitoring programme to ensure the impacts are understood.
132. Ministers have entered into a letter of agreement with the Otago Regional Council that any alternative management plan for the Upper Taieri Scroll Plain will:
- 132.1. be developed with the local community and tangata whenua
  - 132.2. be implemented as soon as reasonably practical through their regional plan, no later than 1 July 2025
  - 132.3. give effect to the NPS-FM
  - 132.4. be designed for the purpose of achieving improved outcomes for the wetlands
  - 132.5. include a monitoring and evaluation plan.

### Issue Three: Minor technical issues of clarification and definition

133. Minor technical issues of clarification and definition are proposed to be addressed as part of the review of the Regulations. We consulted on two minor issues.

#### Minor Issue One: Definition of a permanent fence

134. The definition of a 'permanent fence' in the Regulations is:<sup>26</sup>
- (a) a post and batten fence with driven or dug fence posts; or
  - (b) an electric fence with at least 2 electrified wires and driven or dug fence posts; or
  - (c) a deer fence.
135. The Regulations outline that a permanent fence that was in place as at 3 September 2020 does not have to be moved to comply with the 3-metre setback rule.<sup>27</sup>

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<sup>26</sup> Resource Management (Stock Exclusion) Regulations 2020, [Sch 1, Pt 1, cl 1\(2\)](#).

<sup>27</sup> Stock that are required by the Regulations to be excluded from lakes and wide rivers must not be allowed closer than 3 metres to the edge of the bed of a lake or wide river (Resource Management (Stock Exclusion) Regulations 2020, [reg 8](#)).

136. The definition of a permanent fence was included in the Regulations to address an issue raised during the consultation on the *Essential Freshwater* package in 2019 – that existing fences would need to be moved to comply with the 3-metre setback rule. The rationale for this prescriptive definition was to avoid the risk of landowners attempting to bypass the setback rule by installing temporary and ineffective fences and claiming they were pre-existing.
137. Feedback indicated that the definition could be unnecessarily prescriptive and exclude fence types that are nonetheless permanent.<sup>28</sup>

*Option One: Status quo and/or counterfactual*

138. The current definition is retained. Fences that meet the definition of a permanent fence and that were in place as at 3 September 2020 do not have to be moved to comply with the 3-metre setback rule to lakes and rivers.
139. Other fences not covered by the definition of a permanent fence need to satisfy the 3-metre setback rule.

*Option Two: Amend the definition of a permanent fence*

140. Option Two is the preferred option to address the problems identified with the status quo regarding the definition of a permanent fence being too prescriptive.
141. Under Option Two, the Regulations are amended to update the definition to “any type of permanent fencing that achieves the purpose of excluding stock from a waterway”.
142. The risk of landowners attempting to bypass the setback rule (by putting up temporary and ineffective fences) is now less relevant, as the Regulations have been gazetted for three years. We agree with submitters that the current definition of a permanent fence is too narrow and should be adjusted to allow other types of fences with dug and driven posts.
143. Changing the Regulations to allow for a less prescriptive definition of a permanent fence will mostly benefit those who graze dairy support cattle on any terrain,<sup>29</sup> and beef cattle and deer on low slope land.<sup>30</sup> Those requirements are coming into force on 1 July 2025 for existing pastoral systems. Other requirements to exclude stock from lakes and wide rivers came into force on 1 July 2023. This option would allow for any type of permanent fence that achieves the purpose of excluding stock from a waterway, provided it is in place at the commencement of the Amendment Regulations.

*Summary of feedback received*

144. There was confusion across submissions around the use of the term ‘permanent fence’. Many submitters incorrectly associated this definition with general fencing requirements, rather than whether a fence is exempt from the 3-metre setback requirement.

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<sup>28</sup> Some submissions provided examples of fences not currently included in the definition of permanent fence, but which are likely to be similar in durability and effectiveness at excluding stock. These include post and rail, post and waratah, waratah and wire, post and netting, post and rail, and post and electric wire (one or two wires).

<sup>29</sup> Resource Management (Stock Exclusion) Regulations 2020, [reg 11](#).

<sup>30</sup> Resource Management (Stock Exclusion) Regulations 2020, [regs 14 and 15](#).

145. However, some submissions agreed that the definition of a permanent fence is too prescriptive, and that fences with dug and driven fence posts represent a significant financial investment.
146. Replacing this fencing would impose significant costs on farmers with limited additional benefit (ie, the fences already effectively excluded stock).
147. Where these requirements apply, stock must be set back a minimum of 3 metres unless a permanent fence or riparian vegetation was in place when the Regulations commenced.

*What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?*

148. Changing the Regulations to allow for a less prescriptive definition of permanent fence would mean less fencing needing to be replaced to meet the definition under the status quo. This would decrease the marginal cost to farmers who would need to replace their fences, and it would decrease the cost to the environment from sediment loss when replacing fence lines.
149. We recommend amending the definition of a permanent fence.

#### **Minor Issue Two: Land above 10 degrees captured by the map**

150. When the map of low slope land was introduced in 2020, it was intended to apply to land with an average slope of 10 degrees or less. However, there were claims that this map inaccurately captured areas of steeper land.
151. In 2022, a revised map was released. The revised map used a more conservative 5-degree threshold to avoid capturing land above 10 degrees. This reduced the area of land with an average slope above 10 degrees to approximately 0.02 per cent of the map (which corresponds to approximately 1,160 hectares).
152. Despite the revision of the map, many people still claimed that it inaccurately captured their land. The public consultation discussion document sought to clarify whether submitters agreed that amendments to the Regulations should clarify that the map and associated requirements to exclude stock do not apply on slopes that are greater than 10 degrees. The purpose of consulting on this was to clarify what happens if land above 10 degrees is still captured by the map of low slope land.

#### *Option One: Status quo and/or counterfactual*

153. The Regulations remain unchanged. This means landowners must exclude stock on all areas as indicated on the map of low slope land, even if they consider that their land is above 10 degrees in slope.

#### *Option Two: Amend the Regulations to make it clear that low slope land does not include land that exceeds 10 degrees in slope, despite being included on the map of low slope*

154. Option Two is the preferred option to address the issues raised by farmers who claim their land is incorrectly captured on the map of low slope.
155. Amending the Regulations – to make it clear that land above 10 degrees captured by the map is not subject to the Regulations – will address concerns about the inaccuracy of the map. It provides more certainty around what areas need to have stock excluded and will address any situations where the low slope map still captures land above 10 degrees.
156. Consultation feedback identified the need for a mechanism for landowners to verify the slope of their land. It is proposed that this can be achieved by using the same method

as that currently used in the regulations on intensive winter grazing – that is, specifying that slope is to be determined by measuring the slope over any 20-metre distance of the land.<sup>31</sup>

157. It is estimated that the map may capture a relatively small area (1,160 hectares) of land above 10 degrees, so instances of landowners using this option should be extremely low.

#### *Summary of feedback received*

158. Feedback was sought on whether submitters agreed that amendments to the Regulations should clarify that the map and associated requirements to exclude stock do not apply on slopes that are greater than 10 degrees. Most submitters agreed with this, stating reasons such as providing certainty to landowners and reducing confusion.
159. Some submitters provided reasons for not agreeing with the proposed amendments and/or raised concerns about proposed amendments, expressing concern that:
- 159.1. the Regulations should be based on stocking rates, not land slope
  - 159.2. it would decrease the level of certainty and enforceability that the map provides to farmers and regulators
  - 159.3. it may discourage farmers from excluding stock on land above 10 degrees.
160. We received other feedback that highlighted concerns about other aspects of the map, including:
- 160.1. feedback that expressed a distrust in the accuracy of the map
  - 160.2. a suggestion that a mechanism is needed for landowners to verify the slope land that is inaccurately mapped.

*What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?*

161. As any land greater than 10 degrees is inaccurately captured by the map, we recommend amending the Regulations to make it clear that low slope land does not include land that exceeds 10 degrees in slope, despite being included on the map of low slope.

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<sup>31</sup> Resource Management (National Environmental Standards for Freshwater) Regulations 2020, s 26(4)(b).

## What are the marginal costs and benefits of the preferred options?

### Overall regulatory burden

162. There is an overall regulatory burden to consider, relating to implementation of any changes to the Regulations.
  - 162.1. Farmers need to comply with the Regulations, alongside multiple other regulations from central and local government – for example, in relation to intensive winter grazing and feedlots.<sup>32</sup>
  - 162.2. Regional councils are responsible for their compliance monitoring and enforcement.
  - 162.3. Regulatory requirements may also overlap – for example, where regional plans and certified FW-FPs impose more stringent requirements to exclude stock.
163. Feedback indicates there may be some confusion because of the above, and includes general concern about the overall impact on farmers.
164. The above requirements are already in place, and the recommended changes are designed to better target the Regulations and avoid the capture of lower intensity farms.

### Preferred changes

165. The preferred changes to the Regulations can be made under [section 360\(1\)\(hn\)](#) of the RMA, and they will address the issues raised during consultation. These changes are as follows.
  - 165.1. Amend the Regulations to create an exception from the definition of low slope land for DOC or LINZ land where a stocking rate is already set in a grazing licence or lease.
  - 165.2. Amend the Regulations to make it clear that:
    - 165.2.1. low slope land does not include land that exceeds 10 degrees in slope, despite it being included on the map of low slope
    - 165.2.2. slope is to be determined by measuring the slope over any 20-metre distance of the land, consistent with intensive winter grazing regulations.
  - 165.3. Amend Part 1 of Schedule 1 of the Regulations to update the current definition of a permanent fence to any type of permanent fencing that achieves the purpose of excluding stock from a waterway.
166. These changes are designed to address the remaining concerns with the map. The longer-term option to transition the Regulations into another legislative instrument will provide more flexibility and enable specific exceptions to the Regulations where required.

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<sup>32</sup> Councils are required to notify their regional plans to give effect to the NES-F by 2024.

167. We consider these changes to be minor, as the exception will only apply to a small number of lower intensity farms, and the technical changes will provide greater clarity in the Regulations.

Affected groups	Comment	Impact	Evidence certainty.
<b>Additional benefits of the preferred option, compared to taking no action</b>			
<b>Regulated groups</b>	There are no additional costs to regulated groups above the status quo. Lower intensity farms on DOC- or LINZ-leased land are expected to benefit from the changes, as they will be excluded from the requirements of the map and won't face the increased costs of fencing and loss of pastoral land. Landowners will benefit from the clarity provided by the minor changes.	Medium	Medium
<b>Regulators</b>	There are unlikely to be additional benefits to regulators above the status quo. Regulators will benefit from the clarity provided by the minor changes.	Low	Low
<b>Māori</b>	For Māori lower intensity farms on DOC- or LINZ-leased land, benefits will be the same as for regulated groups above. Māori landowners will benefit from the clarity provided by the minor changes.	Low	Low
<b>Others</b> (eg, wider government, consumers)	The preferred option enables viable farming to continue in these areas, supporting employment and economic returns.	Low	Low
<b>Total monetised benefits</b>	---	N/A	N/A
<b>Non-monetised benefits</b>	---	Low	Low



## Section 3: Delivering an option

### How will the new arrangements be implemented?

168. The Regulations are made under [section 360](#) of the RMA, meaning they are administered by regional councils as part of their functions and roles under that Act. The Ministry for the Environment will help regional councils in their role, by working with them and industry groups to update any guidance as necessary.
169. The Policy Implementation and Delivery directorate of the Ministry for the Environment is actively developing guidance and provides implementation across the entire *Essential Freshwater* package.<sup>33</sup> Officials will determine what guidance products are needed to support implementation for delivery before the relevant requirements to exclude beef cattle and deer take effect on 1 July 2025.
170. Regional councils are responsible for enforcing compliance with the Regulations and administering the imposition of any infringement fees. Compliance with regional rules relating to farm activities is already an established part of regional council work, including the enforcement of their existing rules for stock exclusion.
171. Non-compliance with the Regulations is an infringement offence. Such an offence is subject to a fee, based on a 'per animal' basis, up to specified maximums.<sup>34</sup>
172. The Policy Implementation and Delivery directorate of the Ministry for the Environment has an ongoing role in developing and maintaining relationships with councils and industry groups. This will involve discussing issues and concerns regarding implementation, and how these can be resolved.

### Technical changes to provide clarification of land greater than 10 degrees captured by the map, and amend the definition of a permanent fence

173. These technical changes will come into force on 5 October 2023, 28 days after they are notified in the *New Zealand Gazette*.

### Exception for DOC- and LINZ-administered land where a stocking rate is already set in a grazing licence or lease

174. The exception for DOC- and LINZ-administered lease land will come into place on 1 July 2025, in line with the current stock exclusion requirements for land captured by the low slope map. This means that DOC- and LINZ-administered land with leases that have stocking rate requirements will not be required to exclude stock as per the Regulations.
175. DOC and LINZ will continue to be involved during the implementation and ongoing operation of the exception, to:
  - 175.1. ensure that freshwater outcomes are continuing to be met in these areas
  - 175.2. check the status of the lease arrangements to ensure the exception is meeting its intended purpose.

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<sup>33</sup> Ministry for the Environment. [Essential Freshwater policies and regulations: implementation guidance](#). Retrieved 5 September 2023.

<sup>34</sup> Resource Management (Infringement Offences) Regulations 1999, [Sch 1A](#).

176. The public will be made aware of the exception to the Regulations through the gazettal of the amended Regulations. Communications about the changes will be developed accordingly.
177. A grazing licence or lease will be clearly defined within the Regulations, referencing the specific legislation they are developed under.<sup>35</sup>

### How will the new arrangements be monitored, evaluated and reviewed?

178. The effectiveness of the Regulations will be assessed in 2026, using the reports on the state of Aotearoa New Zealand's freshwater prepared under the [Environmental Reporting Act 2015](#). This assessment may happen too soon to assess whether the Regulations and any changes are contributing to improvements, as the requirements do not apply broadly until 2025. Future reports may be more useful.
179. A key aspect of monitoring, evaluating and reviewing the Regulations is to identify performance indicators to gauge the effectiveness of the regulations (eg, monitoring of *E. coli* and sediment in waterways). Monitoring will be part of the wider *Essential Freshwater* monitoring, as well as standard compliance, monitoring, and enforcement functions of regional councils.
180. Other key monitoring sources will aid in the evaluation and review of the overall effectiveness of the Regulations – namely:
  - 180.1. monitoring and reporting on the state of the environment required under [section 35](#) of the RMA and reporting under the Environmental Reporting Act 2015, which may indicate changes in key indicators affected by stock exclusion (eg, *E. coli* and sediment)<sup>36</sup>
  - 180.2. voluntary reporting by industry (eg, the [Sustainable Dairying: Water Accord](#) reports on progress in fencing water bodies).

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<sup>35</sup> That is, the [Crown Pastoral Land Reform Act 2022](#), the [Crown Pastoral Land Act 1998](#), the [Conservation Act 1987](#), and the [Land Act 1948](#).

<sup>36</sup> Ministry for the Environment. [Environmental reporting](#). Retrieved 5 September 2023.