

# Defining ‘natural wetlands’ and ‘natural inland wetlands’

Guidance to support the interpretation of the National Policy Statement for Freshwater Management 2020 and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020



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

New Zealand Government

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This document may be cited as: Ministry for the Environment. 2021. *Defining 'natural wetlands' and 'natural inland wetlands'*. Wellington: Ministry for the Environment.

The Ministry for the Environment is reviewing this guidance to ensure it accurately reflects case law.

Published in September 2021 by the  
Ministry for the Environment  
Manatū Mō Te Taiao  
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-99-003376-6

Publication number: ME 1590

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# 1 Purpose

The National Policy Statement for Freshwater Management (NPS-FM) 2020 introduced the terms ‘natural wetlands’ and ‘natural inland wetlands’. This guide shows how to apply those definitions and clarifies the policy intent. The full definitions are in section 3 below.

This guide also covers common queries about the definitions and recent relevant case law.

The terms ‘natural wetlands’ and ‘natural inland wetlands’ are also used in the Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (Freshwater NES) and the Resource Management (Stock Exclusion) Regulations 2020 (Stock Exclusion regulations).

For a quick guide to defining ‘natural wetlands’, for the purposes of the NPS-FM and NES-F, see the flowchart in section 3.

## 1.1 Legal status of guide

While this guide cannot provide legal interpretation of RMA national instruments or overrule legal decisions, it clarifies what the Ministry for the Environment’s policy intends.

## 1.2 New terms introduced

The guide introduces two new terms not used in the NPS-FM. These terms have no legal status and are used to help interpret the NPS-FM. They are:

- inland saline wetland
- induced wetland.

## 1.3 Future amendments to the wetland definitions

The Ministry has received feedback that applying the definition of ‘natural wetland’ in the NPS-FM can cause problems. For example, some heavily modified, pasture-dominated wetlands have been captured as ‘natural wetland’ areas even though part (c) of the definition seeks to exclude these areas (see definition in 3.2 below). This is not the intention and could unnecessarily restrict changes in land use and development in these areas.

As of the date of publication of this guide, changes to the Freshwater NES and NPS-FM are being considered to correct this. Amendments to the definition of ‘natural wetland’ under the NPS-FM may be one way to resolve implementation challenges.

This guide advises how to apply the current definitions. It will be amended if any changes are made.

## 2 Policy intent and summary of the NPS-FM and Freshwater NES wetland provisions

New Zealand has lost most of its wetlands, and wetland loss is ongoing, with almost 5400 hectares of freshwater wetland lost to non-natural causes between 1996 and 2018.<sup>1</sup> Many of those remaining are rare and valuable ecosystems.

### 2.1 New policies and regulations to protect ‘natural wetlands’

The Essential Freshwater package came into force in September 2020. It included the Freshwater NES, the NPS-FM and Stock Exclusion regulations. The package introduced policies and regulations to protect ‘natural wetlands’ with nationally consistent standards. The NPS-FM applies to ‘natural inland wetlands’ while the Freshwater NES and Stock Exclusion regulations refer to ‘natural wetlands’ (see section 3).

The term ‘natural wetlands’ does not include all wetlands in New Zealand, so some are not affected by the Essential Freshwater regulations. Under sections 6(a) and 6(c) of the Resource Management Act 1991 (RMA) councils have to recognise and provide for matters of national importance, such as the preservation of the natural character of wetlands, the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. This would include some wetlands not covered by the ‘natural wetlands’ definition due to the broader definition of a wetland under section 2 of the RMA.

The Freshwater NES regulates potentially damaging activities in or near natural wetlands to make sure there is no further loss or degradation of natural wetlands. From 1 July 2025 the Stock Exclusion regulations will control stock access to natural wetlands larger than 500 square metres on low slope land.

The wetland policies in the 2020 NPS-FM are intended to protect both the extent and values of all remaining natural inland wetlands, regardless of their size and condition (see Policy 6 below).

NPS-FM (2020) Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

For more information about council obligations for natural inland wetlands, see the [Essential Freshwater wetlands factsheet](#)<sup>2</sup>.

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<sup>1</sup> See Denyer K and Peters M. 2020. *The Root Causes of Wetland Loss in New Zealand: An Analysis of Public Policies and Processes*. Pukekohe: National Wetland Trust.

<sup>2</sup> Note, this content now needs updating to align with the recent Environment Court decision on coastal wetlands in the CMA (see section 11).

## 2.2 Application of the New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement 2010 (NZCPS) administered by the Department of Conservation, provides direction on wetlands in the ‘coastal environment’.<sup>3</sup>

While the NPS-FM applies to ‘natural inland wetlands’, there may be areas where both the NZCPS and NPS-FM apply to wetland areas, for example, inland saline wetlands, and some freshwater wetlands in the coastal environment but outside the coastal marine area (CMA).<sup>4</sup>

The intent of the Freshwater NES was that it would apply to wetlands in the coastal marine area, however this has been challenged in the Environment Court (Bay of Islands Maritime Park Incorporated v Northland Regional Council [2021] NZEnvC 006). The Crown has appealed this declaration (see section 11).

## 2.3 The NPS-FM protects the of extent and values of every individual natural inland wetland

The intent of Policy 6 is that the extent of all individual natural inland wetlands is maintained – regardless of their ecological state or size. This is to prevent fragmentation of remaining wetland habitat.

The policy intent to protect the extent of all individual natural wetlands is supported by the requirement to prioritise the mapping of any natural wetland larger than 500 square metres or at risk of loss of extent (clause 3.23(4)(a)) and, if there is any uncertainty or dispute, to use the wetland delineation protocols (clause 3.23(3)). Councils also must provide for and promote wetland restoration in their regional plans.

Recent planning decisions have interpreted Policy 6 to mean that the overall extent of natural inland wetlands should be protected<sup>5</sup>. The Ministry does not recommend this approach. Instead, Policy 6 should be interpreted to protect the extent of individual natural wetlands, where any activity that causes destruction of natural wetland extent is only available as a last resort under limited circumstances that comply with the provisions in 3.22; that is:

- The activity must be for one of the prescribed purposes in clause 3.22 (1(a))

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<sup>3</sup> Policy 1(2)(c) of the NZCPS (DOC, 2010) recognises that the coastal environment includes “areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands and the margins of these”.

<sup>4</sup> RMA (1991): **coastal marine area** means the foreshore, seabed, and coastal water, and the air space above the water—

(a) of which the seaward boundary is the outer limits of the territorial sea:

(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—

(i) 1 kilometre upstream from the mouth of the river; or

(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

<sup>5</sup> For example, in the Matawii water storage reservoir fast-track consenting decision (23 October 2020), the judge agreed with the applicant’s view on the NPS-FM that “if the overall extent of natural wetland is not reduced, then the policy is met provided that their values are protected, and their restoration promoted” [para 340].

- The activity must meet the ‘functional need’ test in clause 3.22 (1(b))
- The full effects management hierarchy must be applied as per clause 3.22 (1(b(iv)))

## 2.4 ‘Natural wetland’ applies regardless of wetland condition

Natural wetlands include degraded wetlands. The NPS-FM definition of ‘natural wetland’ applies regardless of wetland condition. The wetland delineation protocols do not distinguish based on wetland condition. Both native/endemic and exotic wetland species are considered when assessing a wetland (see section 4).

Even degraded wetlands, such as those that have been highly modified, drained or invaded by weeds, play an important role in hydrological regulation and carbon sequestration, and may be a habitat for many threatened species. The NPS-FM directs councils to consider restoring wetlands (see Policy 6 and clause 3.22 (4)). Protecting degraded wetlands recognises their potential for future restoration.

Some degraded wetland areas are excluded (see exclusion (c) of clause 3.21(1)). These wetlands have been modified for grazing and their use as improved pastures can continue (see section 8).

## 2.5 ‘Natural wetland’ applies regardless of wetland size

There is no minimum size for a natural wetland. The NPS-FM and Freshwater NES apply to areas of any size that meet the ‘natural wetland’ and ‘natural inland wetland’ definitions (respectively).

Damage or loss of many small wetlands would add up to a larger net loss. Some wetland types are naturally smaller than 0.05 ha in size, such as kettle holes, springs and seepages. Some wetland types are (or support) rare ecosystems or species in a particular region, so even small examples of that wetland type must be protected.

Some parts of the NPS-FM and Stock Exclusion regulations do identify size thresholds:

- Under the NPS-FM (3.23), councils must identify and map wetlands 0.05 ha or greater unless they are of a type that is naturally smaller than 0.05 ha (such as ephemeral wetlands) and known to contain threatened species. Regional councils are also encouraged to map and control activities in wetlands smaller than 0.5 ha, even if these are not known to contain threatened species (see section 9).
- The Stock Exclusion regulations specify that by 2025 stock must be excluded from wetlands larger than 0.05 ha on low slope land, or those smaller than 0.05 ha where they support a population of threatened species. Stock includes beef cattle, dairy cattle, dairy support cattle, deer and pigs.

Despite the thresholds for some activities, councils are obliged under the NPS-FM and Freshwater NES to protect natural inland wetlands and natural wetlands regardless of size or whether they are mapped.

## 3 Wetland definitions in the RMA 1991 and NPS-FM

‘Natural inland wetlands’ defined and protected under the NPS-FM are a subset of ‘wetlands’ as defined in the RMA.

The Freshwater NES, Stock Exclusion regulations, and the NPS-FM, control activities in natural wetlands to protect the extent and values of remaining natural wetlands. Given the intentionally restrictive nature of the rules, it is essential that the definitions do not capture more wetland areas than intended. Some wetland areas, including geothermal wetlands, wetlands constructed by artificial means and wetlands in areas of improved pasture (without permanent wetland hydrology) have been excluded from the definition (see section 3.2).

Councils still have obligations to protect all wetlands under the RMA s 6(a) and 6(c), as discussed in section 2.1.

### 3.1 Wetlands in the RMA

**Wetland** is defined in the Resource Management Act 1991 as follows:

“**Wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.”

A wetland under the RMA may contain endemic/native or exotic wetland species. Wetlands with introduced vegetation can still offer valuable habitats for native flora and fauna and provide other important ecosystem functions. The RMA definition should not be interpreted to mean that plants and animals must both be present, but that the area supports a ‘natural community’ of plants and/or animals.

The wetland delineation protocols can be used to identify wetlands under the RMA, with some caveats (see section 4).

### 3.2 ‘Natural wetlands’

The NES and Stock Exclusion regulations apply to ‘natural wetlands’ as defined in the NPS-FM, a subset of the RMA’s broad definition of wetlands.

The NPS-FM definition of ‘natural wetland’ (clause 3.21) uses the RMA definition of ‘wetland’ as a starting point, but excludes three categories (emphasis added):

A 'natural wetland' means a wetland (as defined in the Act) that is **not**:

**(a)** a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or

**(b)** a geothermal wetland; or

**(c)** any area of improved pasture that, at the commencement date, is dominated by (that is more than 50 per cent of) exotic pasture species and is subject to temporary rain-derived water pooling.

See section 5 for more information about the exclusion for wetlands constructed by artificial means. Wetlands that have been constructed to offset impacts on or restore an existing or former natural wetland, and induced wetlands, are treated as natural inland wetlands.

See section 7 for more information about the exclusion for geothermal wetlands.

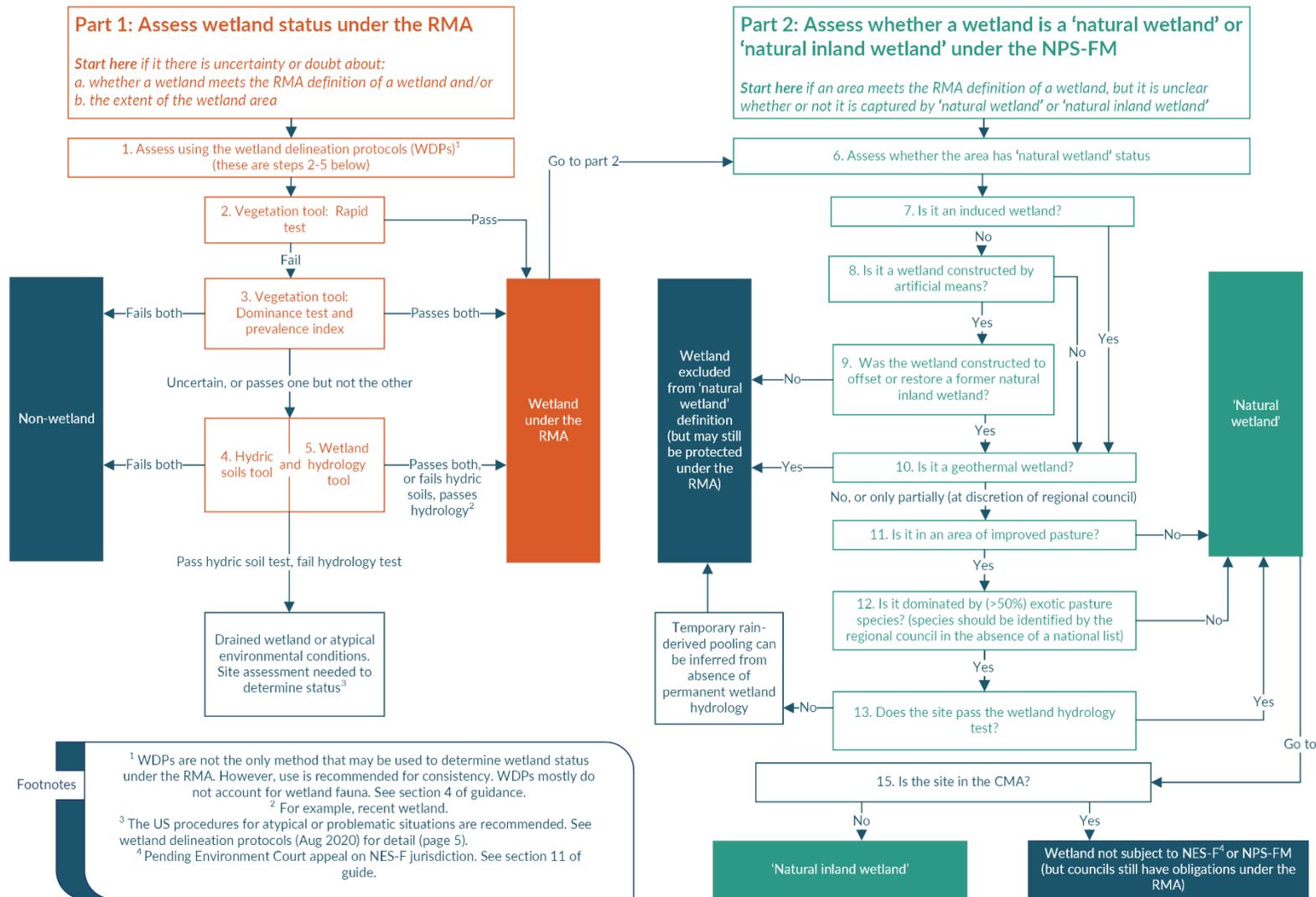
See section 8 for more information about the exclusion for areas of improved pasture.

### 3.3 'Natural inland wetlands'

The NPS-FM applies to 'natural inland wetlands', which are a subset of 'natural wetlands' that are not in the coastal marine area. This includes both freshwater and inland saline wetlands.

### 3.4 A process to assess 'natural wetland' and 'natural inland wetland' status

Figure 1 Assessing 'natural wetland' and 'natural inland wetland' status under the NPS-FM



## 4 Wetland delineation protocols

### 4.1 Using the protocols to resolve uncertainty or dispute

The wetland delineation protocols can be used to assess whether an area meets the definition for a wetland under the RMA. They cannot be used to distinguish between an RMA wetland and a 'natural wetland'.

The wetland delineation protocols are incorporated by reference into the NPS-FM (1.8). Under clause 3.23(3), in case of uncertainty or dispute about the existence or extent of a natural inland wetland, a regional council must have regard to the wetland delineation protocols. Using the protocols is recommended rather than alternative methods for wetland delineation, as this will improve national consistency on what is considered a wetland under the RMA.

The protocols are a set of three tools that help determine if an area has wetland characteristics based on the vegetation, soil type and hydrology. The protocols have been adapted to a New Zealand context from the US Corps of Engineers Wetlands Delineation Manual.<sup>6</sup>

#### Key resources:

[Wetland delineation protocols \(WDPs\)](#)

[Vegetation tool](#)

[Hydric soils tool](#)

[Hydrology tool](#)

[New Zealand Wetland delineation data form](#)

[Quick reference for using the WDPs](#)

### 4.2 Limitations of the WDPs

- The wetland delineation protocols do not account for wetland fauna under the RMA (except for the hydrology tool, which uses freshwater invertebrates as an indicator of hydrology).
- The protocols have not been tested to delineate wetlands that are in or extend into the coastal marine area (CMA), including connected areas.
- The protocols have not been tested to delineate geothermal wetlands.

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<sup>6</sup> Environmental Laboratory 1987, and US Army Corps of Engineers updates.

## 4.3 Further assessment to determine a ‘natural wetland’

The wetland delineation protocols can be used to assess whether an area meets the definition for a wetland under the RMA. However, to determine whether an area is a ‘natural inland wetland’ under the NPS-FM, the area must also:

1. meet the definition of ‘natural wetland’ in the NPS-FM, which is narrower than those areas captured by the wetland delineation protocols because of the three exclusions in (a) (b) and (c).
2. be outside the coastal marine area to be considered a ‘natural inland wetland’.

Where a wetland meets or appears to meet the definition under the RMA, but there is doubt about whether it meets the criteria of a ‘natural inland wetland’ under the NPS-FM, more assessment may be needed. Specifically:

- use a site history to assess whether a wetland has been constructed by artificial means and is being maintained for that purpose (see section 5)
- determine if the wetland was constructed to offset impacts on or restore an existing or former wetland as part of an offset requirement (see section 5)
- distinguish between geothermal and natural inland wetlands (see section 7)
- assess ground cover of pasture species. A national methodology for assessing ground cover of pasture species to help solve this issue has been proposed for development by MfE (see section 8.6.1).

## 5 Wetlands constructed by artificial means

New and existing wetlands and waterbodies constructed by artificial means are excluded from the NPS-FM definition of a 'natural wetland'. It is not the intent of the NPS-FM or Freshwater NES to regulate activities that affect these wetlands and waterbodies because they should be able to be maintained over time for the purpose for which they were constructed. However, if the wetland was constructed as part of offsetting it is considered a 'natural wetland' and the NPS-FM and NES-F regulations apply (see 5.2 below).

### 5.1 Why they are excluded

Wetlands constructed by artificial means were excluded to avoid discouraging anyone from constructing a wetland or restricting the ability to maintain a wetland or waterbody constructed by artificial means for a specific purpose, such as nutrient attenuation.

'Wetlands constructed by artificial means' includes wetlands and waterbodies that have been deliberately constructed for a specific purpose and that may require maintenance over time (for example, vegetation or silt removal) to continue to fulfil that purpose. This includes areas of wetland habitat that have formed in or around any deliberately constructed waterbody. See the list in 5.3 for examples.

### 5.2 Exceptions to this exclusion

This exclusion does not apply to wetlands constructed to offset impacts on or restore an existing or former natural wetland. The reason for this is that these wetlands should continue to fulfil that role and need protection to ensure this occurs.

This exclusion does not include induced wetlands (see section 6 for examples of induced wetlands.)

### 5.3 Examples of wetlands constructed by artificial means

'Wetlands constructed by artificial means' include wetlands and waterbodies that have been deliberately constructed by artificial means for a particular purpose, including for any of the following purposes:

- nutrient attenuation
- effluent treatment and disposal systems, including pond or barrier ditch systems, and areas installed for sediment control
- stormwater management
- reservoirs for firefighting
- hydroelectric power generation
- irrigation

- stock watering
- domestic and community water supply
- water storage ponds
- landscaping to create a wetland or waterbody
- other artificial water-storage facilities, including artificial watercourses under the RMA and engineered soil conservation structures, including sediment ponds and sediment traps
- hunting.

These wetlands and waterbodies may develop associated wetland habitat as a direct or unintentional result of being built and maintained. So, the definition of ‘wetlands constructed by artificial means’ also extends to the incidental wetlands created as a result of these waterbodies.

These are not the same as induced wetlands, which are incidental wetlands created by any other human activity (see section 6).

## 5.4 No timeframe for consideration

There is no timeframe in the NPS-FM definition for the consideration of wetlands constructed by artificial means. The exclusion applies no matter when the wetland was constructed.

The exclusion is based on whether the waterbody needs to be maintained over time so that it can continue to fulfil its purpose. Councils will need to make a case-by-case assessment as to whether this has been happening. Where it has not been maintained over time it may be considered ‘a natural wetland’.

See section 9 for cases where protection of the NPS-FM does not apply. Councils can still choose to protect these wetlands under the stringency clauses.

## 6 Induced wetlands

‘Induced wetlands’ are wetlands that have resulted from any human activity, except the deliberate construction of a wetland or waterbody by artificial means (see section 5). They are considered ‘natural wetlands’.

In a highly modified landscape, as we have across New Zealand, wetlands often result from human activities or changes to the landscape. Many wetlands that we have today have historically been induced through these activities, such as deforestation, and have often developed significant values over time and warrant protection.

Wetlands that have been unintentionally induced through human activities, for example, as a consequence of in-stream works such as culverts, or through the effects of increased sedimentation caused by deforestation, or as a result of climate change, are not considered wetlands constructed by artificial means. The term ‘constructed’ in ‘wetlands constructed by artificial means’ reflects a deliberate course of action to create and maintain over time a wetland or waterbody. So, induced wetlands are captured by the definition of ‘natural wetland’, meaning the Freshwater NES, Stock Exclusion regulations and NPS-FM apply.

Where a wetland is induced as the result of ‘specified infrastructure’ or ‘other infrastructure’ (lawfully established before 3 September 2020) then the Freshwater NES provides a consent pathway to maintain the infrastructure within or adjacent to the induced wetland (rules 46 and 47).

Where a wetland is induced as the result of a wetland or waterbody constructed by artificial means for a specific purpose, it falls under ‘wetland constructed by artificial means’ (see section 5).

### 6.1 Examples of induced wetlands

- wetland induced through an overflowing culvert
- wetland induced as an unintentional result of forestry
- remnant wetland habitats, eg, those associated with drainage channels and other works installed to drain a natural wetland
- wetland induced through stock pugging
- wetland induced through roading works.

### 6.2 Previous advice retracted

A letter previously sent to Auckland Council from the Ministry stated:

A “wetland that has formed as a result of a structure or earthworks or a culvert or weir being placed within a watercourse or as a result of a stormwater pond on another site including an inadvertently ‘induced wetland’ is not intended to come within the definition of ‘natural wetland’ in the National Policy Statement for Freshwater Management 2020 (NPS-FM). Therefore, these wetlands are not captured by the rules in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F).

The letter misinterpreted how the phrase 'induced wetland' is used and is incorrect. This guide should be relied on as the Ministry's position.

## 7 Geothermal wetlands

Geothermal wetlands are not defined in the NPS-FM or the Freshwater NES. We recommend using the Johnson and Gerbeaux geothermal wetland typology to distinguish these from 'natural wetlands' (see below).

Johnson and Gerbeaux (2004) describe geothermal wetlands as:

"A hydrosystem where the dominant function is geothermal water (heated by volcanic activity to 30°C or more); geothermal wetlands may have water temperatures below this, yet be influenced by chemicals from current or former inputs of geothermal-derived water. Geothermal wetlands occur predominantly in the central North Island and include volcanically active habitats of fumarole margins, hot surface waters, heated soils that are permanently or intermittently wet, and shallow water at land margins."

The scope of the Essential Freshwater package (NPS-FM, Freshwater NES and Stock Exclusion regulations) does not include geothermal wetlands because they are complex and dynamic, especially at small scales where it may be difficult to separate out wetland components from their terrestrial surroundings.

Temperature is not always a defining feature of geothermal wetlands, and chemical composition will occur on a continuum. Where a geothermal wetland grades into a natural inland wetland, only the part of the wetland that is geothermally influenced is excluded from the definition. The regional council must make a case-by-case decision on how to treat these. Geothermal wetlands also cannot be distinguished from 'natural wetlands' using the wetland delineation protocols.

For simplicity, MfE recommends considering the whole wetland area as a 'natural inland wetland' if part of it meets the definition. Discretion, however, is left to the regional council.

Geothermal wetlands are likely to still fall under sections 6(a) and 6(c) of the RMA.

## 8 Improved pasture

The NPS-FM defines **improved pasture** in clause 3.21 (1) as follows:

An area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.

### 8.1 Intent of this exclusion

Areas with some wetland characteristics (except for current wetland hydrology), that are within areas of improved pasture that were being actively managed as improved pasture at the commencement date of the NPS-FM are excluded from the definition of a 'natural wetland'. These areas have been so heavily modified for pasture grazing, for example, through extensive historical drainage, that they should not be captured by the strict rules of the Freshwater NES and Stock Exclusion regulations or the NPS-FM natural wetland policies.

To be excluded from the definition of a 'natural wetland', the area must also have ground cover of more than 50 per cent exotic pasture species, and the presence of temporary rain-derived pooling (defined below as the absence of wetland hydrology).

In practice, this means the NPS-FM and Freshwater NES will not apply to many areas with some wetland characteristics (except for current wetland hydrology) in landscapes modified for pasture grazing. However, these areas may still qualify as areas of significant indigenous vegetation or significant habitats of indigenous fauna under 6(c) of the RMA and need protection, as discussed in section 2.1.

### 8.2 Assessing temporary rain-derived pooling

Instead of directly assessing an area for temporary rain-derived pooling, the Ministry recommends using the wetland delineation hydrology tool to determine if an area has permanent wetland hydrology.

Due to the wording of the definition, temporary rain-derived pooling must be present for an area to be excluded under (c) (rather than an absence of wetland hydrology).

We understand this is difficult to assess, as temporary rain-derived pooling may not be present or visible at the time of field visits. We recommend that councils take the pragmatic approach outlined below, of using the hydrology tool to assess the presence of permanent wetland hydrology:

- Temporary rain-derived pooling is any visible water pooling that does not meet the standard for wetland hydrology as defined by the hydrology tool.
- If a wetland has permanent wetland hydrology (as defined by the hydrology tool) it is considered a 'natural wetland', and temporary rain-derived pooling is irrelevant.
- If permanent wetland hydrology is absent, this can imply the presence of temporary rain-derived pooling. No further assessment is required. The area may then be considered

under exclusion (c) if it is within an area that was being managed as improved pasture at the commencement date of the regulations (see section 8.3) and has more than 50 per cent cover of pasture species.

Hydrological indicators must be assessed during the growing season and not outside this time window. The growing season differs across New Zealand. The table in the hydrology tool (table 1, page 12) gives approximate start and end dates for each local authority.

This recommended approach avoids some unintended outcomes of the policy wording. If temporary rain-derived pooling is directly assessed, then identical areas of improved pasture on sloping ground and flat ground would be classed differently (as rainwater will pool on a flat surface but not a slope); an assessment of temporary rain-derived pooling could be made only on days following rainfall; and areas with wetland hydrology would be able to be excluded as 'natural wetlands' if they also undergo temporary rain-derived pooling. We do not recommend this approach.

The temporary rain-derived pooling requirement for the improved pasture exclusion was originally included in the definition to ensure areas of pasture that were temporarily wet due to rainfall were excluded from consideration as a 'natural wetland' and could be distinguished from areas with true wetland hydrology. This was in the absence of a New Zealand tool to assess wetland hydrology.

Manaaki Whenua Landcare Research has since developed the hydrology tool, which completes the suite of delineation protocols. This now means that the presence of wetland hydrology should be identified during the delineation process, particularly for cases where it is not clear through the vegetation and soils.

### **8.3 Timeframes for assessing this exclusion**

The area must have been managed as improved pasture at the commencement date of the NPS-FM (3 September 2020) to be excluded from the definition.

Future pasture expansion or improvement, or pasture expansion or improvement after the commencement date, is not a basis for an area to be excluded from the 'natural wetlands' definition. Areas that were previously managed as improved pasture before this date, are also not considered.

Assessment of state at commencement date should be done with the best available information, for example, aerial photographs or ecological survey data.

### **8.4 Self-established exotic pasture species in areas that are not under active management**

The definition of 'natural wetland' does not exclude areas with wetland characteristics where some exotic pasture species have self-established and there has been no management for livestock grazing. The definition can only apply to improved pasture areas that were being actively managed for livestock grazing and exotic pasture production at the commencement date of the NPS-FM.

## 8.5 Further guidance to come

To help implement the improved pasture exclusion, feedback on this document called for two further pieces of technical guidance. These are:

### 8.5.1 A methodology for assessment of 50 per cent exotic pasture species on the ground

The requirement of '50 per cent cover of exotic pasture species' should be interpreted as a percentage of ground cover of exotic pasture species, determined through an ecological assessment. The feedback from practitioners is that it is hard to assess percentage cover in the field.

A methodology to assist with this assessment has been proposed for development by MfE. This methodology will also address queries around scale of assessment.

In the meantime, however, councils should use their own discretion to assess this requirement.

### 8.5.2 National list of exotic pasture species

There is no national list of exotic pasture species. Several councils have, however, produced their own lists of pasture species, which may be a starting point. This includes the list published by Greater Wellington Regional Council, which collates pasture species from NZ Grasslands Association in their [wetland technical determination guidance](#). In the absence of a national list, regional councils should define their own lists of exotic pasture species, as there are regional differences in species used.

The Ministry for the Environment is looking at producing a national list of exotic pasture species. If successful, this will be appended to this guide.

## 9 Providing protection for all other wetlands

Councils are able to provide additional protection for any wetland, including wetlands constructed by artificial means, geothermal wetlands and wetlands in pasture areas in accordance with the stringency clauses in the NPS-FM (3.1 (2)(a)) and Freshwater NES (regulation 6(1)) and may retain or develop rules for these types of wetlands in their district or regional plan.

## 10 Distinguishing wetlands from other waterbodies

Lakes and rivers are covered by their own definitions in the RMA, which are the same as those used in the NPS-FM. However, there is an overlap between these and the waterbodies captured by 'natural inland wetland'. In the RMA and NPS-FM:

**Lake** means a body of fresh water which is entirely or nearly surrounded by land.

**River** means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).

In many situations there is no clear boundary between a wetland and surrounding lakes or other waterbodies. The full extent of some shallow lakes may be included within a natural wetland and considered part of the extent of the natural wetland.

These situations must be assessed on a case-by-case basis, using an ecological assessment where necessary, to distinguish whether a wetland comprises lakes and/or rivers.

# 11 Coastal wetlands

The definition of ‘natural wetland’ at clause 3.21 of the NPS-FM was intended to cover coastal wetlands within the coastal marine area (CMA), as set out in the [interim RIA](#) for the NPS-FM (p 248-251).

In February 2021, the Environment Court issued a declaration to the effect that the Freshwater NES does not apply to the majority of coastal wetlands (Bay of Islands Maritime Park Incorporated v Northland Regional Council [2021] NZEnvC 006).

The Court found that the Freshwater NES applies “to the coastal marine area (CMA) only to the extent that they cover the area of CMA upstream of the ‘river mouth’ as defined in the Resource Management Act 1991”. The Court stated that “in particular, the Freshwater NES did not apply to the general CMA, open oceans, estuaries, bays and other areas not falling within the definition of “river or connected area”.

The Crown has appealed the Environment Court’s decision and that appeal has yet to be heard. In the meantime, the legal position is that the jurisdiction of the Freshwater NES does not extend to the CMA, other than upstream of a river mouth.

## 12 Next steps

This document is intended to assist interpretation of the definitions where it is unclear whether or how the 'natural wetland' definition applies. Further guidance is likely to be needed to clarify the improved pasture definition discussed in section 8.5. This could include additional visual guidance with photographs/ examples to help identify 'natural wetland'.

All Ministry guidance is available as a draft for six months from the date of publication prior to being finalised. If you have feedback on this guide, or to contact us about the development of further guidance and resources, please email [freshwater@mfe.govt.nz](mailto:freshwater@mfe.govt.nz). We will review feedback in February 2022.