



# Wai Māori Mātuatua

# Essential Freshwater

## Intensive Winter Grazing

## Intensive winter grazing factsheet

Essential Freshwater came into force in September 2020 and is part of the national direction to protect and improve our rivers, streams, lakes, wetlands and estuaries. The Essential Freshwater package aims to:

- stop further degradation of freshwater
- start making immediate improvements, so water quality improves within five years
- reverse past damage, to bring waterways and ecosystems to a healthy state within a generation.

### **Te Mana o te Wai is fundamental to all freshwater management**

Te Mana o te Wai recognises the vital importance of water. It expresses the special connection that New Zealanders have with freshwater. By protecting the health of freshwater, we protect the health and well-being of people and ecosystems. When managing freshwater, Te Mana o te Wai ensures the health and well-being of water is protected, and human needs are provided for, before enabling other uses of water. Through discussions with regional councils, tangata whenua and communities will have a say on how Te Mana o te Wai is applied in freshwater management locally. More information can be found in the [Te Mana o te Wai factsheet](#).

## Who should read this fact sheet?

This factsheet is part of a [series](#) and provides information on the amended regulations for intensive winter grazing. It is primarily intended for regional council staff and land users, but may also be of interest to tangata whenua, farmers, stock graziers, farm advisors and consultants, the wider agricultural industry, and anyone else with an interest in freshwater policy and stock management.

## Why do we need regulations for intensive winter grazing?

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

Annual forage crops are a part of some pastoral farm-production systems. They provide livestock feed when there is no or low pasture growth and contribute to pasture-renewal rotations for improved production.

However, it is widely acknowledged that, if done poorly or too extensively, IWG can have serious negative effects on both animal welfare and the environment, particularly freshwater and estuary health.

Poor management of livestock winter grazing on annual forage crops can result in degradation of ecosystem health. Intensively winter-grazed paddocks increase the risk of sediment runoff into waterways and depleting aquatic life. When animals feed on annual forage crops, their trampling can result in paddocks becoming pugged, damaging soil structure and stripping land of its protective vegetative cover. This results in the increased discharge of nutrients, sediment and microbial pathogens into surface and ground water.

Poor management can lead to animal-welfare issues, which are a concern for the Ministry for Primary Industries (MPI) in administering the Animal Welfare Act 1999, supporting regulations and animal codes.

## What do the regulations affect and when do they apply?

The National Environmental Standards for Freshwater (NES-F) were released as a part of the [Essential Freshwater package](#) in 2020. The NES-F includes the National Environmental Standards for Freshwater Intensive Winter Grazing Regulations 2020 (NES-F IWG regulations), which have been amended due to stakeholder concerns regarding challenges with successfully implementing regulations on farm.

The amended NES-F IWG regulations come into force on **1 November 2022**, to enable farmers time to adjust their farming practices, cultivation, paddock-selection, and planting choices, in preparation for the 2023 winter-grazing season.

These regulations apply to farms comprising 5 hectares or more of horticulture land use, 20 hectares or more of pastoral or arable land use, or 20 hectares or more of a combination of any of these land uses.

The relationship between the amended regulations and existing consents or existing lawful activities is set out in section 43B of the Resource Management Act 1991 (RMA). In general:

- resource consents granted prior to the gazette of the regulations prevail, until reviewed
- resource consents also prevail if there was a decision made to notify the relevant resource consent application prior to the gazette of the regulations
- activities that require a resource consent under the regulations may be able to continue temporarily under **section 20A(2)** of the RMA if:

- they were permitted, or allowed without a consent, and lawfully established, prior to the relevant regulations commencing; and
- the effects of the activities are of the same or similar character, scale, and intensity as they were before commencement; and
- the person carrying out the activities applies for a resource consent no later than six months after commencement of the regulations.

The activities may continue until the resource consent application, and any appeals, are finally determined.

**On 1 November 2022, the amended NES-F IWG regulations come into force.** This means:

- intensive winter grazing can continue without a consent indefinitely, if carried out in accordance with the permitted-activity standards in the regulations
- intensive winter grazing that does not meet the permitted-activity standards can temporarily continue without a resource consent from 1 November 2022 to 1 May 2023, if all the conditions in **section 20A(2) of the RMA** apply, including applying for a resource consent before **1 May 2023**.

A regional rule or resource consent can be more stringent than any of the intensive winter grazing regulations. If this is the case, the more stringent regional rule or resource consent prevails over the regulations.

The [2021/2022 Intensive Winter Grazing Module](#), produced by the Ministry for the Environment (MfE) in collaboration with MPI, can assist farmers with planning and managing winter grazing in 2022.<sup>1</sup>

## What are the regulations?

Intensive winter grazing (IWG) refers to grazing livestock on an annual forage crop at any time in the period 1 May to 30 September. The definition includes activities on a farm that support IWG and that may occur year round, such as the preparation and sowing of land for grazing and the cultivation of annual forage crops.

The regulations apply to the following activities and associated discharges:

- the use of land on a farm for IWG; and
- the discharge of a contaminant into or onto land, including in circumstances that may result in the contaminant (or any other contaminant emanating as a result of natural processes from the contaminant) entering water, if the discharge is associated with the use of land on a farm for IWG.

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<sup>1</sup> The module will be revised later in 2022, in time for the 2023 season.

## Pathways

The amended NES-F IWG regulations establish three pathways that can be followed when undertaking IWG on a farm:

**Pathway 1 – permitted activities:** IWG activities are permitted, if a farmer complies with the default conditions set out in the NES-F IWG regulations.

**Pathway 2 – alternative permitted activities:** IWG activities are permitted if a farmer obtains a [certified freshwater farm plan](#) (FW-FP) that applies to IWG and under which any adverse effects in relation to the IWG are no greater than would be allowed for by the default conditions set out in Pathway 1.\*

**Pathway 3 – unable to comply with permitted activity standards:** a resource consent is required (restricted discretionary activities) for IWG.

\* Note that Pathway 2 is not yet available and the roll-out is expected to start in late 2022. Pathway 2 relies on the FW-FP regime coming into force and FW-FPs have not yet been rolled out at the time of writing this factsheet. [More information on FW-FPs](#) can be found on MfE's website.

## Additional standards

These replace the original pugging and resow conditions that were requirements in the 2020 NES-F IWG regulations.

The amended NES-F IWG regulations' standalone duties for pugging and ground cover apply to all pathways stated above, however, they do not influence the ability of farmers to apply for resource consent.

- **Pugging standard (regulation 26A):** All **reasonably practicable** steps must be taken to minimise adverse effects on freshwater from pugging land that is used for IWG. Reasonably practicable steps could include removing stock from IWG paddocks during extreme wet-weather events. More details on how to comply with the pugging standard will be released by MfE as IWG technical guidance in late 2022, however, there will be no further detail released on the standard itself.
- **Ground cover standard (regulation 26B):** Vegetation must be established as ground cover over the whole area of land used for IWG **as soon as practicable** after livestock have finished grazing. The timing of that may vary according to individual circumstances and weather events. More details on complying with the ground-cover standard will be released by MfE as IWG technical guidance.

A failure to meet the pugging and ground-cover standards allows councils to issue abatement notices and enforcement orders, or undertake prosecution based on non-compliance with regulations.

A person using land for IWG must provide any information required by a regional council enforcement officer for the purpose of monitoring compliance with pugging and ground cover regulations.

## Pathway 1: Permitted activities

IWG activities are **permitted activities** under amended [NES-F IWG regulation 26](#) if they comply with the conditions below.

- The slope of any land planted in annual forage crop used for IWG must be 10 degrees or less and is determined by measuring the slope over any 20-metre distance of the land.
- Critical source areas (CSA) must be protected. Any CSA that is within, or adjacent to, any area of land used for IWG between 1 May and 30 September, must:
  - not be grazed
  - have vegetation maintained as ground cover
  - not be cultivated in annual forage crops
  - not have annual forage crops harvested.
- Livestock must be kept at least 5 metres away from the bed of any river, lake, wetland or drain, regardless of whether there is any water in it at the time. Drains are defined in the regulations. Subsurface drains **are not** included in this condition.
- [Intensification regulations](#) in the NES-F must also be met.<sup>2</sup>

A person using land for IWG as a permitted activity must provide any information required by a regional council enforcement officer for the purpose of monitoring compliance with the NES-F regulations.

## Pathway 2: Alternative permitted activities

IWG activities can also be permitted under amended [NES-F IWG regulation 26](#) in the future if, instead of meeting the conditions above, they comply with a [certified freshwater farm plan](#) under which the adverse effects of the IWG activity are no greater than if the permitted activity conditions had been met. That certified freshwater farm plan must apply to IWG and be made in accordance with [part 9A of the RMA](#).

Part 9A of the RMA has not yet been implemented, so the freshwater farm plan pathway in regulation 26 is not yet available to those undertaking IWG.

## Pathway 3 – unable to comply with permitted activity standards (resource consent)

Activities that do not meet the permitted activity standards for IWG are **restricted discretionary activities**. When considering resource consent applications for restricted discretionary activities, regional councils will take into consideration the adverse effects of IWG on ecosystems, freshwater, water bodies, the ability of people to come into contact with water safely, Māori cultural values, erosion of land, sediment and other contaminants to water, and the timing and appropriateness of any mitigation methods.

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<sup>2</sup> Refer to NES-F IWG regulation 29, [Permitted activities and restricted discretionary activities: temporary further conditions](#) and NES-F IWG regulation 30, [Discretionary activities](#).

## Temporary intensification standards

Activities that do not meet the NES-F IWG [regulation 28 intensification conditions](#) limiting the expansion of land for IWG are **restricted discretionary activities** and require a resource consent. This requirement came into force on **1 July 2021** and has not been amended.

The intensification conditions are:

- land on the farm must have been used for IWG between 1 July 2014 and 30 June 2019 (the reference period), and
- land used for IWG must be no greater than the maximum area of land (in terms of hectares) used for IWG between 1 July 2014 and 30 June 2019 (the reference period).<sup>3</sup>

The IWG intensification standards are temporary and last until notification of the regional plan or regional policy statement giving effect to the NES-F, or 1 January 2025, whichever is sooner.

A resource consent may only be granted for a term that **ends before 1 January 2031**, and only if the regional council is satisfied that the activity will not result in an increase in contaminant loads in the catchment, or concentrations of contaminants in freshwater or other receiving environments, as compared with loads and concentrations on 2 September 2020.

Please refer to the **Appendix** for a flow chart that helps determine whether a resource consent is required for IWG.

## Key concepts for pathway 1 conditions

### Slope

[NES-F IWG regulation 26\(4\)\(b\)](#) provides that the slope of any land planted in annual forage crop that is used for IWG must be 10 degrees or less, determined by measuring the slope over any 20-metre distance of the land. The slope of all land can be measured, and any areas of land that are **at or below the slope threshold** of 10 degrees can be used for IWG via pathway 1, irrespective of paddock boundaries (meaning some paddocks may only be partially used). Any area of land that is over the slope threshold will not meet the permitted-activity condition and must be managed either via pathway 2 or pathway 3. Paddock boundaries are no longer relevant.

### Critical source areas

[NES-F IWG regulation 26\(4\)\(e\)](#) provides that critical source areas (CSAs) are considered high-risk landscape features where runoff naturally accumulates from the surrounding land as a result of overland flow. CSAs can be defined as landscape or hydrological features that accumulate and transport sediment-laden water to surface water bodies (connected rivers, lakes and wetlands). Other contaminants, such as phosphorus and nitrogen, are also often mobilized to these areas via CSAs.

Examples of critical source areas include gullies, swales and land depressions.

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<sup>3</sup> This condition is based on the total area used in any one year, and whichever year in the reference period had the greatest area used for intensive winter grazing. For example: if 10 hectares was used each year in 2014/2015 to 2016/2017 and 2018/2019, and 20 hectares was used in 2017/2018, then the condition is that the land used for intensive winter grazing must not expand beyond 20 hectares without a consent.

Protecting CSAs from IWG can minimise soil disturbance that occurs from exposed soil and preserve the vegetative cover within the CSA. The CSA filters sediment out of overland flows before it can reach connected surface water bodies.

More details on CSAs will be released as MfE IWG technical guidance.

## Annual forage crop

An annual forage crop is defined in [part 1 \(3\) of the NES-F IWG regulations](#) as a crop that is grazed by livestock in the place where it is grown; it excludes pasture or a crop that is grown for arable land use or horticultural land use.

# A summary of the changes made to the NES-F IWG regulations

The 2020 NES-F IWG regulations were due to come into effect on 1 May 2021. This was initially deferred by a year (to 1 May 2022) to consider stakeholder feedback and to draft amendments to ensure the regulations can be implemented as intended and can be practically complied with.

Through analysis, public consultation and engagement with stakeholders, the following amendments have been made to regulations 26, 26A and 26B of the NES-F IWG provisions:

NES-F IWG regulation provision	NES-F IWG: Original	NES-F IWG: Amendment (Pathway 1, managed through pathway 2 or 3)
<b>Total area</b> r 26(4)(a)	The area of the farm that is used for IWG must be no greater than 50ha or 10% of the area of the farm, whichever is greater.	No change
<b>Slope threshold</b> r 26(4)(b)	IWG is restricted to paddocks where the mean slope is 10 degrees or less.	Amended to measure slope across any 20m distance (rather than a mean across the paddock)  The slope threshold only applies to the area of land under annual forage crop and used for IWG.  No change to the slope threshold of 10 degrees
<b>Pugging</b> Original: r 26(4)(c) Amended: r 26A	Pugging must not cover more than 50% of the paddock and must not be deeper than 20cm at any one point (except near fixed water troughs or entrance gates).	The pugging condition prescribing set restrictions on depth and area has been removed.  A new stand-alone duty has been added requiring farmers to take all reasonably practicable steps to minimise the adverse effects of pugging on freshwater.
<b>Buffer zones and subsurface drains</b> r 26(4)(d)	Livestock must be kept at least 5m away from the bed of any river, or lake, wetland or drain.	The definition for <b>drain</b> has been amended to exclude subsurface drains in relation to the NES-F IWG regulations.
<b>Resowing</b> Original: r 26(4)(e) Amended: r 26B	Land used for IWG must be replanted as soon as practicable after livestock have grazed the crop, but no later than 1 October (1 November in Otago and Southland).	The permitted-activity condition requiring farmers to resow by a prescribed date (1 October/1 November) has been removed.  A new stand-alone duty has been added requiring farmers to ensure that vegetation is established as <b>ground cover</b> as soon as practicable after grazing.

NES-F IWG regulation provision	NES-F IWG: Original	NES-F IWG: Amendment (Pathway 1, managed through pathway 2 or 3)
<p><b>Critical source area (CSA)</b> New: r 26(4)(e)</p>	<p><b>CSA:</b> No condition currently</p>	<p>A new condition has been added, requiring that, during the period 1 May to 30 September each year, CSAs:</p> <ul style="list-style-type: none"> <li>• must not be grazed and</li> <li>• vegetation must be maintained as ground cover and</li> <li>• that vegetation must not include cultivation or harvesting of any annual forage crops.</li> </ul> <p><b>CSAs</b> are defined as a landscape feature, such as a gully, swale or depression, that:</p> <ul style="list-style-type: none"> <li>• accumulates runoff from adjacent land and</li> <li>• delivers, or has the potential to deliver, contaminants to a water body (excluding subsurface drains).</li> </ul>
<p><b>Annual forage crop (definitions)</b> r 3</p>	<p>An <b>annual forage crop</b> is defined in the NES-F IWG regulations as a 'crop, other than pasture, that is grazed in the place where it is grown'.</p>	<p>The definition of <b>annual forage crop</b> has been amended to avoid capturing crops that are not intended to be included, ie, exclude crops grown for arable or horticultural land use.</p>
<p><b>Deferral and existing-use rights</b> r 2</p>	<p>IWG regulations in the NES-F IWG regulations came into force on <b>1 May 2021</b>.</p> <p>Through <b>section 20A (2)</b> of the RMA (existing-use rights), farmers would have to have their consents lodged by <b>31 October 2021</b>.</p> <p>A deferral of a year was put in place to re-evaluate the NES-F IWG regulations to <b>1 May 2022</b>.</p>	<p>The regulations come into effect on <b>1 November 2022</b> (rather than 1 May 2022).</p> <p>The relationship between IWG and temporary existing-use rights has been clarified. The definition of IWG has been amended to clarify that it is a continuous, year-round activity (with sowing, growing and grazing phases), while making any consequential changes necessary to avoid imposing additional controls on the non-grazing phases of the activity.</p> <p>This means, through section 20A(2) of the RMA, <b>existing-use rights will apply from 1 November 2022</b> and farmers have until <b>1 May 2023</b> to lodge any resource consent applications.</p>



# More about the Essential Freshwater package

The package includes a number of national policies and regulations including:

- [new national environmental standards for freshwater](#)
- [stock exclusion regulations](#)
- [freshwater farm plans](#)
- the [National Policy Statement for Freshwater Management 2020](#), which replaces the NPS-FM 2017
- [amendments to the RMA](#) to provide for a faster freshwater planning process
- [amendments to the RMA](#) to enable mandatory and enforceable certified freshwater farm plans, and the creation of regulations for reporting nitrogen fertiliser sales.

## Factsheets in this series

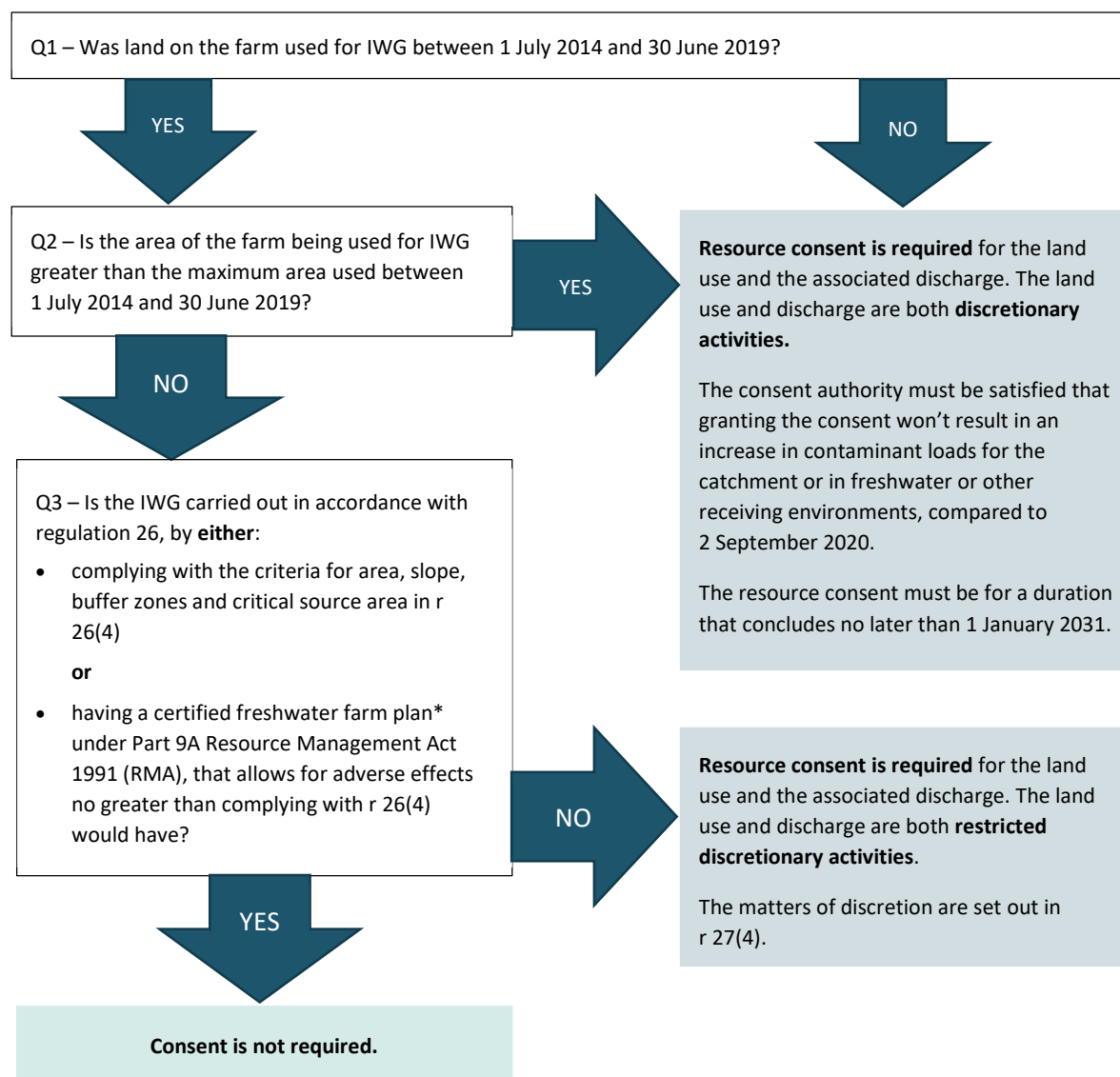
The full set of Essential Freshwater factsheets is available on the [Ministry for the Environment's website](#).

## Find out more and give us feedback

Contact us by emailing [freshwater@mfe.govt.nz](mailto:freshwater@mfe.govt.nz), or visit the [Essential Freshwater page](#) on the Ministry for the Environment's website.

# Appendix: Is a resource consent required?

## Resource Management (National Environmental Standards for Freshwater) Regulations 2020



### Note A: Status of existing resource consents

If a person carrying out IWG:

- has a resource consent for the land use and discharge; or
- applied for a resource consent for the land use and discharge *and* a decision about notification was made before 2 September 2020 then the consent prevails over the National Environment Standards for Freshwater.

### Note B: Situations where activities now require resource consent under the National Environmental Standards for Freshwater, but were formerly permitted or otherwise allowed without a resource consent

Section 20A of the RMA applies, meaning the activity can continue **temporarily**, provided the:

- activity was not discontinued
- activity was lawfully established
- effects of the activity are now the same as, or similar to, before
- person doing the activity applies for a resource consent within 6 months of the relevant rule commencing.

\* Note that freshwater farm plans have not yet been rolled out at the time of writing this factsheet. [More information on FW-FPs](#) can be found on MfE's website.

## Disclaimer

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