



PROACTIVE RELEASE COVERSHEET

Minister	Hon. David Parker	Portfolio	Minister for the Environment
Name of package	Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023	Date to be published	5 October 2023

List of documents that have been proactively released

Date	Title	Author
10 August 2023	Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023	Ministry for the Environment
17 August 2023	Cabinet Legislation Committee Minute of Decision: Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 (LEG-23-MIN-0144)	Cabinet Office

Information redacted

No redactions proposed.

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023

Proposal

- 1 This paper seeks agreement from Cabinet to authorise submission of the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 (the NES-F Amendment) to the Executive Council.

Correcting a minor omission in the NES-F

- 2 The NES-F Amendment corrects a minor omission in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F).
- 3 The NES-F contains standards for freshwater, including natural inland wetlands, that determine whether an activity is permitted or requires a resource consent.
- 4 All permitted activity standards in the NES-F must comply with conditions set out in the relevant standard.
- 5 Amendments were made to the NES-F in 2022 to provide additional consent pathways for activities within natural inland wetlands if certain conditions are complied with [CAB-22-MIN-0539]. During the drafting of these amendments, the requirement that “the activity complies with the conditions” was erroneously omitted for the permitted activity at regulation 46(3).¹
- 6 The NES-F Amendment will correct this omission by adding these words as regulation 46(3)(d), thus requiring the activity to comply with the conditions under regulation 46(4). I have determined this omission can be addressed, as a minor technical amendment, under section 44(3) of the Resource Management Act 1991 (RMA). No new policy decision is required.
- 7 The NES-F Amendment regulations have been drafted accordingly (see Appendix 1), and I seek agreement to submit these to the Executive Council.

Timing and 28-day rule

- 8 I propose the 28-day rule apply as normal, meaning the NES-F Amendment will come into force on 21 September 2023, 28 days after notification in the Gazette.

Compliance

- 9 The NES-F Amendment complies with each of the following:

- 9.1 the principles of the Treaty of Waitangi;

¹ The activity is the taking, use, damming, diversion, or discharge of water within, or within a 100 setback from, a natural inland wetland, for the purpose of maintaining or operating specified infrastructure or other infrastructure.

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- 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 9.3 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 9.4 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 10 There are no international standards and obligations relevant to the NES-F Amendment.
 - 11 Section 44(3) of the RMA enables amendments that correct an error with no more than minor effect to be made to a national environmental standard without following one of the processes outlined at section 46A of the RMA. As this change is not a policy change, a new evaluation report under section 32 of the RMA has not been completed.

Regulations Review Committee

- 12 I do not consider there are any grounds for the Regulations Review Committee to draw the NES-F Amendment to the attention of the House of Representatives as a Standing Order requirement.

Certification by Parliamentary Counsel

- 13 The proposed NES-F Amendment has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 14 The Treasury's Regulatory Impact Analysis team has determined that the proposal to insert the phrase "the activity complies with the conditions" into regulation 46(3) of the NES-F is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 15 The Ministry for the Environment will notify regional councils that the omission in the NES-F has been corrected.

Proactive release

- 16 I intend to proactively release this Cabinet paper on the Ministry for the Environment website following gazettal of the NES-F Amendment.

Consultation

- 17 Given this is a minor amendment of the NES-F made under section 44(3) of the RMA, no public consultation is required in respect of correcting the omission.

Recommendations

I recommend that Cabinet:

- 1 **note** that the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) contain standards for freshwater, including natural inland wetlands, that determine whether an activity is permitted or requires a resource consent;
- 2 **note** that all permitted activity standards must comply with certain conditions set out in the relevant regulation;
- 3 **note** that amendments were made to the NES-F in 2022 to provide additional consent pathways for certain activities within natural inland wetlands, and during the drafting of these amendments the requirement that “the activity complies with the conditions” was erroneously omitted for the permitted activity at regulation 46(3);
- 4 **note** that the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 will correct the omission at regulation 46(3) by adding as regulation 46(3)(d) a requirement that “the activity complies with the conditions” under regulation 46(4);
- 5 **note** that section 44(3) of the Resource Management Act 1991 enables amendments to a national environmental standard that correct errors of no more than minor effect to be made without following the standard consultation process for national direction;
- 6 **note** that as this amendment to the NES-F corrects a minor drafting omission, it does not require any new policy decision;
- 7 **authorise** submission of the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 to the Executive Council;
- 8 **note** that the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 will come into force on 21 September 2023.

Authorised for lodgement

Hon David Parker
Minister for the Environment

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Appendix 1 - Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023

Portfolio Environment

On 17 August 2023, the Cabinet Legislation Committee:

- 1 **noted** that the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) contain standards for freshwater, including natural inland wetlands, that determine whether an activity is permitted or requires a resource consent;
- 2 **noted** that all permitted activity standards must comply with certain conditions set out in the relevant regulation;
- 3 **noted** that in November 2022, the Cabinet Environment, Energy and Climate Committee agreed to amendments to the NES-F to provide additional consent pathways for certain activities within natural inland wetlands, and during the drafting of these amendments the requirement that “the activity complies with the conditions” was erroneously omitted for the permitted activity at regulation 46(3) [ENV-22-MIN-0051];
- 4 **noted** that the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 will correct the omission at regulation 46(3) by adding as regulation 46(3)(d) a requirement that “the activity complies with the conditions” under regulation 46(4);
- 5 **noted** that section 44(3) of the Resource Management Act 1991 enables amendments to a national environmental standard that correct errors of no more than minor effect to be made without following the standard consultation process for national direction;
- 6 **noted** that as this amendment to the NES-F corrects a minor drafting omission, it does not require any new policy decision;
- 7 **authorised** submission to the Executive Council of the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 [PCO 25554/2.0];
- 8 **noted** that the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2023 come into force on 21 September 2023.

Rebecca Davies
Committee Secretary

Attendance: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Dr Ayesha Verrall
Hon Damien O'Connor
Hon Andrew Little
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Willow-Jean Prime
Hon Dr Duncan Webb
Hon Rachel Brooking
Hon Jo Luxton
Tangi Utikere, MP (Chief Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG