



# Cover briefing for Cabinet paper: Essential Freshwater 2022 Amendments – seeking final agreement on wetlands, technical, and stock exclusion amendment

Date Submitted:	17 November 2022	Tracking #: BRF-2462	
Security Level	Unclassified	MfE Priority:	Urgent

	Action sought:	Response by:
Hon David PARKER, Minister for the Environment	Approve the Cabinet package for lodging on 17 <sup>th</sup> November 2022	17 November 2022
CC Hon Poto Williams, Minister of Conservation	No action required	-
CC Hon Damien O'Connor, Minister of Agriculture	No action required	-

Actions for Minister's Office Staff	<p><b>Forward</b> this report to Hon Poto Williams, Minister of Conservation</p> <p><b>Return</b> the signed report to MfE.</p>
Number of appendices and attachments #8	<p><b>Appendix 1:</b> Cabinet paper: Essential Freshwater 2022 Amendments – seeking final agreement on wetland, technical, and stock exclusion amendments</p> <p><b>Appendix 2:</b> National Policy Statement for Freshwater Management 2020 (Amendment No 1)</p> <p><b>Appendix 3:</b> Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022</p> <p><b>Appendix 4:</b> Resource Management (Stock Exclusion) Amendment Regulations 2022</p> <p><b>Appendix 5:</b> Amendments to the 2020 NES-F and NPS-FM Section 32 Evaluation</p> <p><b>Appendix 6:</b> Regulatory Impact Statement: Changes to wetland regulations (inland wetlands)</p> <p><b>Appendix 7:</b> Regulatory Impact Statement: Changes to wetland regulations (wetlands in the CMA)</p> <p><b>Appendix 8:</b> Regulatory impact statement: Changes to the map of low slope land in stock exclusion regulations</p>

	<p><b>Appendix 9: Memo from the Ministry’s Chief Legal Adviser confirming the NPS-FM is ready for submitting to the Executive Council</b></p> <p><b>Appendix 10: Summary of submissions and recommendations Report</b></p>
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## Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Vicki Addison	s 9(2)(a)	
Responsible Manager	Nik Andic	s 9(2)(a)	
Director	Hayden Johnston	s 9(2)(a)	✓

# Cover briefing for Cabinet paper: Essential Freshwater 2022 Amendments – seeking final agreement on wetlands, technical, and stock exclusion amendment

## Purpose

1. The purpose of this briefing is to provide you with a Cabinet package of documents seeking final decisions on the Essential Freshwater 2022 amendments.
2. The package includes a Cabinet paper (Appendix 1) with three amended regulations:
  - National Policy Statement for Freshwater Management 2020 (Amendment No 1) (Appendix 2)
  - Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022 (Appendix 3)
  - Resource Management (Stock Exclusion) Amendment Regulations 2022 (Appendix 4).
3. To support your final decision-making a section 32 evaluation is provided (Appendix 5) which you are required to have 'particular regard to' when deciding whether to recommend the amendment regulations to the Governor-General in Council.
4. Three regulatory impact statements have been prepared for Cabinet decision making on the wetland and technical changes, NES-F application to the CMA, and changes to the low slope map in the stock exclusion regulations (Appendices 6-8 respectively).
5. This briefing also provides advice on remaining matters outstanding from exposure draft feedback on the wetland amendments, as follows:
  - detail on the pasture exclusion
  - strengthened offsetting provisions and
  - coal mining consent pathway only for the operation or expansion of existing mines.

## Context

6. In August 2020, the *Essential Freshwater* regulatory package was gazetted. It included:
  - the [National Policy Statement for Freshwater Management 2020 \(NPS-FM\)](#), designed to embed long term changes to freshwater management through regional plans
  - the [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020 \(NES-F\)](#), which regulates activities that can pose a high environmental risk to freshwater ecosystems and values and

- The Resource Management (Stock Exclusion) Regulations 2020.
7. Following gazettal, feedback received from councils and other stakeholders indicated that the NPS-FM and NES-F require modification to address issues and better support implementation.
  8. The Government agreed to undertake public consultation as follows:
    - changes to the wetland provisions in the NPS-FM and NES-F, from 1 September to 27 October 2021 [CAB-21-MIN-0338]
    - whether the NES-F should continue to apply in the coastal marine area, from 10 August to 21 September 2022 [CAB-22-MIN-0293]
    - exposure drafts of amendments to the wetland provisions and technical changes to the NPS-FM and NES-F, from 21 May to 10 July 2022 [CAB-21-MIN-0500], and
    - changes to the map of low slope land in the Stock Exclusion Regulations, from 26 July 2021 to 7 October 2021 [CAB-21-MIN-0270].
  9. The above occurred alongside other consultation relating to [Freshwater farm plan regulations](#), and [Intensive winter grazing regulations](#). The briefing contains advice on outstanding matters from the exposure draft feedback [BRF-1889 refers].

## Analysis and advice

10. You have previously received advice on the regulatory changes, and your decisions have enabled the final drafting of regulations for Cabinet consideration [BRF-1004/BRF-1889]. Briefing 1889 noted there were two outstanding matters from exposure draft feedback on the wetland amendments that we now provide advice on below.

### *Pasture exclusion – national list of exotic pasture species with a methodology for assessment*

11. These amendments clarify the ‘pasture exclusion’ in the *natural inland wetland* definition. For the purposes of the regulations, a *natural inland wetland* is essentially the broad RMA definition of a wetland with a set of exclusions. To clarify the ‘pasture exclusion’ we removed multiple qualifiers and instead have incorporated by reference into the NPS-FM a *national list of exotic pasture species* and a *methodology* to standardise the assessment process. The pasture exclusion is as follows:

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

(a-d); or

(e) a wetland that:

- (i) is within an area of pasture used for grazing; and
- (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the *National List of Exotic Pasture Species* using the *Pasture Exclusion Assessment Methodology* (see clause 1.8)); unless

- (iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply (**NPS-FM cl 3.21**)

12. The national list of exotic pasture species (the list) captures those species that contribute to productive pasture for the purpose of livestock grazing. Recommendations for the List were developed by pasture species experts at AgResearch, with review from NIWA's wetland weed expert to ensure these species were not over-represented. You have previously agreed to include this list in the NPS-FM/NES-F [BRF-1004 refers]. It was tested via the exposure draft process [BRF-664 refers].<sup>1</sup>
13. On the advice of AgResearch/NIWA there have only been minor corrections to the list as consulted on. The list will be formally incorporated by reference into the NPS-FM and periodically reviewed and updated as appropriate. A summary report of the analysis and literature review used to establish the list will be provided on the Ministry's website.
14. The *Pasture Exclusion Assessment Methodology* has been developed by Manaaki Whenua Landcare Research (as with the wetland delineation protocols and these are designed to work in tandem). The methodology was not included in the exposure draft but has been field-tested with practitioners including consultants, regional council, and industry bodies. The final method outlines the key desktop and field steps to assessing and delineating areas of wet grazing land that are excluded from the definition of 'natural inland wetland' under the NPS-FM. It provides a nationally consistent assessment method.

### *Strengthening the offsetting provisions*

15. The exposure draft of the NPS-FM (July 2022) contained new appendices with principles to guide offsets and compensation to ensure there is no loss of extent or values from consented activities in wetlands (NPS-FM Appendices 6 and 7).
16. The requirement, or weight, given to the principles in the exposure draft was for councils 'to be satisfied that the applicant has had regard' to the principles. The rationale was that the principles would be in the NPS-FM to guide offset design but would not make the consent pathway unviable if every principle was not met (eg, the engaging stakeholders in the design of the offset is not appropriate where offsets occur on private land).
17. Feedback from ENGO's was that at least some of the core principles should be compulsory for them to be meaningful – eg the principle stating when offsetting is not appropriate. We agree and recommend an approach where principles 1-6 must be complied with<sup>2</sup>, and

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<sup>1</sup> The list includes commercially available exotic pasture species as well as 'non-commercial' species (other exotic herbaceous species that are commonly found in pasture and considered palatable to livestock). The List only includes those species which have a wetland indicator status rating of UPL (upland), FACU (facultative upland), or FAC (facultative). FACW (facultative wetland) and OBL (obligate wetland) species were not included as these species are highly indicative of wetland conditions (rather than pasture).

<sup>2</sup> For example, the first 6 offset principle are: **Adherence to effects management hierarchy: When aquatic compensation is not appropriate: No net loss and preferably a net gain: Additionality: Leakage: and Long-term outcomes.**

the remaining 'had regard to' by the applicant. s 9(2)(g)

18. We have also strengthened the direction to include consent conditions that require monitoring and long-term management of the offset/compensation. In the exposure draft this was applicable only to the urban development pathway. Submitters on the exposure draft sought for this to apply to all consent pathways. We agree this is appropriate to ensure offsets for any purpose are managed to ensure no loss of extent or values are achieved.
19. The strengthened requirements for monitoring and management address findings from the National Wetland Trust report of 2020 that a cause of wetland loss is offsets required by consent conditions not being fulfilled.
20. In a July 2021 briefing where we identified this as being an issue, margin notes from you queried whether we could require standard monitoring requirements and timeframes [BRF-263 refers]. This amendment provides that strengthened direction (NPS-FM 3.22(3)).

#### *Mining pathway for coal - existing mines only*

21. You have requested the mining consent pathway for coal apply only to the operation or expansion of *existing* mines. This will apply to any type of coal (thermal or coking) from the date the amendment regulations take effect. The sunset clause will still apply on and from 31 December 2030 to applications for expanding an existing mine for *thermal* coal (with existing coking coal mines being able to still seek consent for operation/expansion).
22. Under the RMA, a NES does not impact existing consented activities and they can continue for the duration of the consent. Also, an application for consent where the council has made a decision to accept and notify the application for consideration may still proceed (and be granted or not by the council). These RMA provisions under s46B(7) would then provide the definition for 'existing'. We have updated the suite of Cabinet documents and drafting accordingly (see Appendix 3, new r45D(6) page 13).

#### *Consequential changes and corrections to the Stock Exclusion regulations*


23. As a result of amendments to the *natural inland wetland* definition, a consequential change is required to the definition of *natural wetland* within the stock exclusion regulations. As the natural inland wetland definition no longer applies in the CMA [BRF-2072 refers], consequential changes are needed to the definition of natural wetland to keep them aligned as far as possible but without limiting stock exclusion requirements to natural inland wetlands only (eg, and therefore not the CMA).
24. Similarly, a correction to the definition of *annual forage crop* within the Stock Exclusion regulations is needed to align with that used in the NES-F. The definitions were previously identical, until the NES-F was amended as part of changes to intensive winter grazing regulations (which clarified how the definition relates to pasture and crops that are grown for arable or horticultural land uses). The changes are set out in the Stock Exclusion Amendment Regulations (Appendix 4).

## Other considerations

### *Consultation and process*

25. We have undertaken departmental consultation on the Cabinet paper with the following: Department of the Prime Minister and Cabinet; Parliamentary Counsel Office, Treasury, Ministry of Justice, Office for Māori Crown Relations, Department of Conservation, Ministry for Primary Industries, New Zealand Infrastructure Commission, Ministry of Housing and Urban Development, Ministry of Business, Innovation and Employment, and Department of Internal Affairs.
26. Where a regulation is drafted by the Ministry rather than PCO (eg the NPS-FM), before it can be submitted to the Executive Council there must be a covering memo signed by our Chief Legal attached to the lodged Cabinet paper. The memo must state that the item is ready to be submitted, certify that the item is ready for signature, and note any other relevant information.<sup>3</sup>

27. s 9(2)(h)



### *Risks and mitigations*

28. There are no risks associated with the proposals in this briefing note. Talking points will be provided to your office prior to Cabinet to support discussions.

## Next steps

29. The RMA process for amending a National Environmental Standard requires you to provide public notification of select documents *prior to* recommending a NES to the Governor-General (s44). The document that must be notified is Appendix 10 to this briefing. It is a report collating advice following public consultations on submissions received with officials' recommendations.
30. Note our intention is to release this report in the period between the Cabinet Committee and Cabinet.
31. Note that we are aiming for a Cabinet date of 28th November and gazettal on 1 December. This means the regulations will come into effect on 29 December 2022.

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<sup>3</sup> The Executive Council role in the regulations process (DPMC)

## Recommendations

We recommend that you:

- a. **Approve** the Cabinet package of documents for Cabinet on 28 November  
Yes/No
- b. **Note** that gazettal can occur on 1 December and the regulations will come into effect on 29 December 2022

*Outstanding decisions from the exposure draft process*

- c. **Note** that you have previously agreed to incorporate by reference into the NPS-FM a *National list of exotic pasture species* to support the pasture exclusion in the natural inland wetland definition [BRF-1004 refers]
- d. **Agree** to incorporate by reference a *Pasture Exclusion Assessment Methodology* to provide a nationally consistent assessment method that will support the pasture exclusion in the *natural inland wetland* definition  
Yes/No
- e. **Note** that you have previously agree to include principles for offset/compensation in the NPS-FM Appendix 6 and 7 and that applicants must 'have regard' to these
- f. **Agree** that the offset/compensation principles numbered 1-6 in Appendices 6 and 7 of the NPS-FM must be *complied with* and the remainder *had regard to* by consent applicants  
Yes/No
- g. **Agree** that strengthened requirements to apply consent conditions on monitoring and management of offsets/compensation will apply to all consent pathways  
Yes/No
- h. **Agree** that the mining consent pathway for coal apply only to the operation or expansion of *existing* mines to any type of coal (thermal or coking) from the date the amendment regulations take effect  
Yes/No
- i. **Note** that the consent pathway for the operation and expansion of existing mines for thermal coal ceases to be available on 31 December 2030 [BRF-1004 refers].
- j. **Note** the consequential amendments to the Stock Exclusion Regulations in respect of definitions (Appendix 4)

*Next steps*

- k. **Note** our intention is to release the report in Appendix 10 during the period between the Cabinet Committee and Cabinet to comply with s44 requirements

l. **Note** we will proactively release the Cabinet package documents on our website following gazettal of the regulations

m. **Note** that final proofing and formatting changes may be made prior to publishing the Cabinet package on our website, but there will be no material changes to the Cabinet package

n. s 9(2)(h) [Redacted]  
[Redacted]  
[Redacted]

o. **Agree** to forward this briefing and appendices to Hon Poto Williams, Minister of Conservation

Yes/No

p. **Agree** to forward this briefing and appendices to Hon Damien O'Connor, Minister of Agriculture

Yes/No

### Signature

Hayden Johnston <b>Director - Water and Land Use Policy</b>	
Hon David PARKER, <b>Minister for the Environment</b>  Date	

## **Appendix 1: Cabinet paper: Essential Freshwater 2022 Amendments – seeking final agreement on wetland, technical, and stock exclusion amendments**

<https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/cabinet-paper-2022-seeking-final-agreement-on-wetland-technical-and-stock-exclusion-amendments/>

Proactively released under the Official Information Act



## **Appendix 2: Amendments to the 2020 NES-F and NPS-FM Section 32 Evaluation**

<https://environment.govt.nz/publications/amendments-to-nes-f-and-nps-fm-section-32-report/>

Proactively released under the Official Information Act



## **Appendix 3: Regulatory Impact Statement: Changes to wetland regulations (inland wetlands)**

<https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/regulatory-impact-statement-changes-to-wetland-regulations-inland-wetlands/>

Proactively released under the Official Information Act



## **Appendix 4: Regulatory Impact Statement: Changes to wetland regulations (wetlands in the CMA)**

<https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/regulatory-impact-statement-changes-to-wetland-regulations-wetlands-in-the-cma/>

Proactively released under the Official Information Act



## **Appendix 5: Regulatory impact statement: Changes to the map of low slope land in stock exclusion regulations**

<https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/regulatory-impact-statement-changes-to-map-of-low-slope-land-in-stock-exclusion-regulations/>

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## **Appendix 6: National Policy Statement for Freshwater Management 2020 (Amendment No 1)**

<https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-freshwater-management/>

Proactively released under the Official Information Act



## **Appendix 7: Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022**

<https://environment.govt.nz/acts-and-regulations/regulations/national-environmental-standards-for-freshwater/>

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## **Appendix 8: Resource Management (Stock Exclusion) Amendment Regulations 2022**

<https://environment.govt.nz/acts-and-regulations/regulations/stock-exclusion-regulations/>

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## **Appendix 9: Memo from the Ministry's Chief Legal Adviser confirming the NPS-FM is ready for submitting to the Executive Council**

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## **(Appendix 10) Amendments to the NES-F and NPS-FM 2022: Report and recommendations**

<https://environment.govt.nz/publications/amendments-to-the-nes-f-and-nps-fm-report-and-recommendations/>

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