

In Confidence

Office of the Minister for the Environment

Office of the Minister of Agriculture

Chair, Cabinet Environment, Energy and Climate Committee

Proposed regulations for Freshwater Farm Plans

Proposal

- 1 This paper seeks Cabinet's agreement to authorise the Minister for the Environment to instruct Parliamentary Counsel Office to commence drafting Freshwater Farm Plan (FW-FP) regulations under Part 9A of the Resource Management Act 1991 (RMA).
- 2 This will enable the FW-FP system to become operative following earlier decisions by Cabinet [CAB-18-MIN-0296].

Relation to government priorities

- 3 FW-FP regulations are a core part of the Government's efforts to improve freshwater health and management through the Essential Freshwater work programme [CAB-18-MIN-0296]. The Labour Party 2020 manifesto reaffirms this commitment.

Executive Summary

- 4 Part 9A of the RMA establishes FW-FPs as a new mandatory and enforceable regulatory tool that supports farmers and their advisors to implement actions to address on-farm risks to freshwater outcomes. Solutions are able to be tailored to meet specific on-farm situations and address their catchment's unique environmental context.
- 5 It is important for the FW-FP system to set clear expectations and obligations while providing for flexibility to ensure outcomes are achieved. This paper seeks Cabinet's approval of key aspects of FW-FP system design, namely:
 - 5.1. catchment challenges, values and context as a core outcome for FW-FPs, linking on-farm management to catchment outcomes, outlined in paragraphs 19-23;
 - 5.2. a risk assessment framework to support farmers and growers in identifying, assessing, prioritising and treating freshwater management risks in a nationally consistent way, outlined in paragraphs 24-31;
 - 5.3. specification of FW-FP minimum content requirements, outlined in paragraph 32;
 - 5.4. processes for the certification and audit of FW-FPs, the appointment of certifiers and auditors, and compliance, monitoring and enforcement of FW-FPs, outlined in paragraphs 33-55;

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- 5.5. data and reporting requirements for certifiers, auditors and regional councils, outlined in paragraphs 56-59;
- 5.6. arrangements for system oversight of the FW-FP system, outlined in paragraphs 60-66.
- 6 The intention is to adopt a phased approach to FW-FP implementation to ensure there is sufficient testing on the ground and ensure regional readiness to implement.
- 7 An exposure draft of the FW-FP regulations will be tested with targeted stakeholders prior to final decisions being made on them. The regulations are likely to be gazetted in late 2022.
- 8 The FW-FP regulations will be made within the existing regulation-making powers in Part 9A but, to enable system optimisation, legislative change may be required via the proposed Natural and Built Environments Act (NBA) to provide for any aspects that fall outside of the Part 9A powers.

Background

- 9 Cabinet agreed [CAB-18-MIN-0296 refers] to insert a new Part 9A into the RMA to provide for mandatory FW-FPs to better control the adverse effects of farming on freshwater and freshwater ecosystems, tailored to a farm's unique circumstances. The insertion was made by the Resource Management Amendment Act 2020.
- 10 On 2 July 2021, Cabinet approved the release of the *Freshwater Farm Plan Regulation: Discussion Document* for public consultation on regulatory design options [CAB-21-MIN-0270]. Public consultation ran from 26 July to 7 October 2021.
- 11 Officials received 172 submissions on FW-FPs with 70 percent of submissions coming from farmers, growers and primary sector / agriculture-support industries, and 20 percent from tangata whenua. Submissions were also received from environmental non-governmental organisations (ENGOS), and regional councils. Further feedback has been received via ongoing engagement with regional councils.
- 12 Key themes raised included the costs of FW-FPs, maintaining flexibility for farm operators, and the capacity and competence of certifiers and auditors. There was also broad agreement that FW-FP regulations should ensure freshwater outcomes are met, but minimise the regulatory requirements on farmers.
- 13 Regional councils supported FW-FP reference to catchment challenges, values and context. Māori landowners were concerned that the FW-FP system may not recognise their unique circumstances and challenges. Key themes from Māori entities related to informal and long-term leasing arrangements, complex governance and decision-making arrangements, and lack of capability and capacity in farm planning. A key area raised by ENGOS was ensuring clear line of sight between FW-FPs and national policy, regional plan objectives and targets and rules.
- 14 The feedback has been built into the approach detailed in this paper.

Proposed regulations for Freshwater Farm Plans

- 15 The FW-FP regulations will set out obligations for the preparation, certification, audit and enforcement of FW-FPs. They will also outline process and management

practice requirements to support farm operators, certifiers and auditors to perform their duties. Further detail for meeting requirements for processes and practices will be provided through guidance.

FW-FP will align with other related land management activities

- 16 FW-FPs will be the first regulated farm planning mechanism applied at a national level, implemented under the RMA. FW-FPs will build on work farmers and growers have already done via farm planning and will fit as a module within a broader Integrated Farm Planning programme [CAB-21-MIN-0162]. Integrated Farm Planning aims to consolidate farmers' regulatory and market assurance requirements and support data interoperability across the primary sector.
- 17 Actions on-farm require effort and investment, often over a long period of time. Landowners will be looking to ensure benefits of their investment are maximised. The FW-FP system is being built to integrate with other related land management activities (regulated and non-regulated) and be seamless from a user perspective, eg climate, biodiversity.
- 18 To do this, key FW-FP infrastructure will be outcome driven, flexible and robust and allow for integration particularly in the areas of:
 - 18.1. Data standards, definitions, interoperability and capture, and reporting;
 - 18.2. Workforce development, ensuring farmers have access to the right types of advice and information across a whole farm system;
 - 18.3. Supporting equivalency pathways for other farm planning and assurance programmes;
 - 18.4. Verification and audit processes.

Catchment challenges, values and context

- 19 Part 9A of the RMA establishes FW-FPs as a new mandatory and enforceable regulatory tool that supports farmers and their advisors to implement actions that address on-farm risks to freshwater outcomes.
- 20 To achieve the purpose of Part 9A, FW-FPs will be outcome-driven, risk-based and farm-specific.
- 21 It will be important to allow a farm to be considered in the context of the relevant catchment or sub-catchment it sits within, which is the biophysical unit that is most meaningful for freshwater and ecosystem health. We therefore recommend linking on-farm management activities to catchment outcomes.
- 22 To achieve this link, we recommend that FW-FPs reference catchment, challenges, values, and context. Catchment challenges, values and context would be limited to the extent that regional councils make information available for this purpose. This could include:
 - 22.1. Existing catchment information (eg biophysical characteristics such as soil, climate, freshwater data, water bodies, culturally significant sites);

22.2. Any freshwater outcomes that have been identified in applicable regional plans, iwi management plans, and action plans under the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020).

23 This would not create any new regulatory requirements for regional councils, and aligns with the provision of Te Mana o te Wai in the NPS-FM 2020 and regional planning processes already underway for the NPS-FM 2020.

Risk assessment – farm actions that respond to environmental risks

24 Section 217F of the RMA requires FW-FPs to “identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems”.

25 We recommend that this be achieved via a freshwater risk assessment of a farm. This would allow the FW-FP system to deliver a nationally consistent approach to managing the adverse effects of farming on freshwater and freshwater ecosystems.

26 This approach would also encourage farmers to take ownership of the activities occurring on their farms and ensure they are managed appropriately.

27 We consulted on how the risk assessment methodology should be prescribed in the regulations. Based on this feedback, our preferred option is to specify minimum general requirements. The risk assessment methodology (along with robust certification and auditing) will provide confidence that FW-FP actions will be fit for purpose.

28 We propose a risk assessment methodology that would include:

28.1. **Risk identification** – spatial mapping of land units and the identification of potential inherent (biophysical) risks, relevant sites of cultural value or importance (eg management risks and wāhi tapu associated with farming activities undertaken on the property);

28.2. **Risk analysis and prioritisation** – identifying the likelihood and potential severity of risks. Risks are prioritised with reference to current regulations, catchment challenges, values and context, and their potential impact on the immediate environment;

28.3. **Risk treatment** – identifying appropriate actions (existing and future) to avoid, remedy, or mitigate risk. In assessing the appropriateness of the action, the certifier would have to ensure the plan meets all regulatory requirements and demonstrates that the issues and values identified through the catchment challenges, values and context have been considered.

29 Actions arising from this risk assessment methodology must be clear, reasonable, measurable, time-bound, and considered in the context of the individual farm. Appropriate actions will range from relevant regulatory requirements to best industry practice, alongside the application of the RMA.

30 For low-risk activities – we recommend providing flexibility for farm operators and certifiers to determine actions.

31 For high-risk activities – we recommend that required management standards be more explicit and be provided for in regulations. To enable drafting of the regulations to begin, we recommend authorising the Minister for the Environment and the

Minister of Agriculture to jointly agree the details of the framework for the management of high-risk activities once available.

Freshwater Farm Plan minimum content

- 32 Based on submissions we recommend that the minimum FW-FP content must include:
- 32.1. Property and business details including key contacts, locations, farm areas, references to existing resource consents;
 - 32.2. Nature of the farming activities and farm system types;
 - 32.3. Catchment challenges, values and context where available from regional councils;
 - 32.4. Risk assessment information including inventory of inherent and farm management risks, supporting maps and information on natural and built environments, risk analysis (likelihood and severity) and risk evaluation (prioritisation);
 - 32.5. List of existing and new on-farm actions with an explanation of how they avoid, remedy or mitigate the risks identified, and a timeline for implementation of new actions;
 - 32.6. Dates of certification(s) and the intended frequency of audit(s) of the FW-FP and names of certifier(s).

Certification and audit of a Freshwater Farm Plan

- 33 Part 9A of the RMA sets out the specific functions of certifiers and auditors and in general what steps they must take when exercising them.
- 34 The specific obligations and practice and performance requirements for these functions will be included in the FW-FP regulations.
- 35 For example, the regulations would specify the obligation of the certifier to verify that the risk assessment process was undertaken in an appropriate manner.
- 36 We recommend that the farm operator be responsible for directly engaging and paying for the services of certifiers and auditors. Contractual arrangements and costs of engaging the certifier or auditor would be left to normal commercial arrangements.
- 37 A robust appointment process (as discussed in paragraphs 48-51) would manage any risks of conflicts of interest or client capture. Based on feedback from submissions, we recommend the certifier may help the farm operator develop the FW-FP.
- 38 The below table recommends the following timeframes for certification and audit of a FW-FP:

Requirement	Timeframe	Condition
Initial Certification	Within 12 months	Of regulations coming into effect in the specified

		district, region or part thereof.
Initial Audit	Within 12 months	Of initial certification
Certification frequency	Within 5 years	Of previous certification, unless a more frequent time period has been specified under the relevant regional plan.
Audit frequency	Generally, within	Of previous audit, based on grade.
Audit Full compliance and Minor non-compliance	3 years	
Audit Moderate non-compliance	12 months	
Audit Significant non-compliance	6 months	
Triggered recertification	Within 12 months	Of triggered condition
Triggered audit	Within 12 months	Of triggered condition

39 We recommend that the following situations trigger recertification:

- 39.1. Additional land added to the current farming operation that has an additional inherent risk, is in a different catchment, or upon which a different farm system is being undertaken;
- 39.2. A change in farming system or change of land use;
- 39.3. A change in ownership or farm operator where the current FW-FP is not adopted.

40 The FW-FP audit will provide assurance that on-farm mitigation actions are met or are being met.

41 Consultation feedback from stakeholders favoured a risk-based approach to auditing that rewards compliance. We recommend a graded audit system, with grades determining frequency of future on-farm audits, as described in Table 1.

42 This approach would align with existing regional council compliance, monitoring and enforcement systems.

43 We recommend the following situations trigger an additional audit within 12 months:

- 43.1. After a change in farm operator, to demonstrate they are familiar with the FW-FP;
- 43.2. Following recertification triggered by a change in farm system or land use, as the on-farm actions will likely change and need to be checked.

44 The audit will seek evidence that actions (or remedial action) have been completed or are being completed to be able to provide a grade. Both existing and new actions will be assessed during the audit process.

45 We recommend the FW-FP regulations provide a review mechanism that enables farm operators to seek an independent review of, or to otherwise challenge, the decision of a certifier or auditor on their FW-FP. The mechanism is intended to

ensure the FW-FP system is robust and provides procedural fairness. The scope of the mechanism is contingent on final decisions about the roles and responsibilities of key system participants.

- 46 There is a possibility that the review mechanism may not be completely accommodated within the scope of the regulation-making powers in Part 9A. The NBA will provide an appropriate vehicle for addressing this if required. Officials will continue to obtain legal advice on this matter and provide further advice to the Minister for the Environment and the Minister of Agriculture.
- 47 Complaints relating to the conduct and competency of FW-FP certifiers and auditors will be addressed under the appointment process of certifiers and auditors.

Appointment of certifiers and auditors

- 48 Part 9A provides for regional councils to appoint certifiers and auditors. As part of the regional appointment process, guidance will be provided at a national level to ensure consistency across certifiers and auditors' skills and capabilities including the circumstances when conditions may be imposed on their ability to practice or when their appointment status may be removed.
- 49 Regulations would specify the competency framework required for a person be appointed as a certifier or auditor. Once the framework is developed, we recommend authorising the Minister for the Environment and the Minister of Agriculture to jointly approve the competency framework for incorporation into the regulations.
- 50 Regional council appointment would also provide for comprehensive assessment of a certifier's and auditor's understanding of local planning rules and catchment challenges, values and context requirements which would be administered by the relevant regional council. We recommend that the regulations allow for regional councils to require demonstration of (including but not limited to) an understanding of regional rules and plans, and key catchment challenges, values and context competencies.
- 51 Regional councils may choose to support this process by outlining training or qualification needs for certifiers and auditors, the development of which may involve iwi/hapū groups.

Compliance, monitoring and enforcement

- 52 Regional councils would be responsible for enforcing the FW-FP regulations, and general compliance, monitoring and enforcement (CME) functions apply under existing RMA powers.
- 53 We consulted on five proposed offences and fees for infringement. We recommend the following infringement offences are incorporated into the FW-FP system:

Table 2.	
Proposed Infringement	Proposed fee
Farm operator does not have a certified farm plan within the specified timeframe	\$1,500
Farm operator does not have an audited farm plan within the specified timeframe	\$1,500
Farm operator does not seek recertification of their freshwater farm plan in line with the recertification triggers	\$1,500

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Farm operator does not implement action or actions in line with the agreed timeline	\$1,500
Farm operator does not lodge an addendum or update details	\$500

54 To provide certainty that infringement offences are in place when FW-FP implementation commences in 2023, we recommend the FW-FP regulations amend the Resource Management (Infringement Offences) Regulations 1999 to include these offences. We also note that any changes to fees as a result of the NBA would apply.

55 The ability for regional councils to recover administrative costs as a result of related CME activities for an individual FW-FP is already provided for under section 36 of the RMA.

Data and reporting

56 Part 9A sets out data and reporting requirements for certifiers, auditors and regional councils eg that a certifier is to notify the regional council when a plan has been certified.

57 We recommend that the regulations provide for specific data and reporting requirements eg what form a certifier should follow when notifying the regional council.

58 Work is underway to establish a way to capture, collect and report data in a standardised and robust manner. This would avoid each regional council having to independently develop their own system.

59 To ensure transparency, there will be continued engagement with relevant groups on how FW-FP data is generated, collected, managed, shared and published.

System oversight

60 The scale of this FW-FP system requires significant supporting infrastructure to set standards, oversee performance, provide coordination and support, and ensure accountability.

61 Its successful implementation depends on the commitment of a broad range of delivery partners, including regional councils, farmers and growers, tangata whenua, industry bodies, local catchment groups, and professionals working in the primary industry advisory field.

62 Given this scale and the broad range of partners, we recommend that several parts of the FW-FP system have national leadership and coordination, including guidance on the appointment process for certifiers and auditors, and general performance monitoring of the system.

63 We propose that this system oversight function be established initially within the Ministry for the Environment (MfE), and be funded from within MfE's baseline budget.

64 An advisory group (including representatives from key system partners) would be appointed by MfE (in consultation with relevant Ministers) to support initial rollout and implementation of the FW-FP system.

- 65 The oversight function would provide advice to the Minister for the Environment and the Minister of Agriculture on finalising any further FW-FP system oversight arrangements, as and when required during future implementation. The advisory group would input into any advice where appropriate.
- 66 As the FW-FP is a new national system, we anticipate specific technical implementation issues may arise as the system is rolled out, with refinements needing to be made.

Implementation

- 67 The proposed system will require a transition from the current state, where there is a range of existing farm planning programmes with different status and requirements, to a situation where all farmers and growers have a FW-FP that is compliant with Part 9A of the RMA and the FW-FP regulations. We therefore recommend taking a staged approach (staged by time and regions) to implementing the FW-FP system across regional councils and farm businesses.
- 68 None of the existing farm planning programmes and industry assurance programmes are likely to meet all the requirements of Part 9A. To do so, many programmes would require (to varying degrees) more robust risk assessment, independent certification, and follow-up audits and enforcement.
- 69 Officials will work with programme providers to support them in ensuring their programmes meet the standards set by the FW-FP regulations, and will provide national guidance as needed to assist in achieving this equivalence. This would mean that the exact form of a farm plan could be left up to the farmer or grower as long as it complied with the regulations.
- 70 Section 217C of Part 9A allows the Minister for the Environment, in consultation with the Minister of Agriculture, to phase the rollout of regulations, including the order in which regulations apply to regions.
- 71 The description of the areas to which Part 9A and the regulations apply would be periodically updated and notified by Order in Council when the Minister for Environment decides to include new areas in the FW-FP system.
- 72 An exposure draft of the FW-FP regulations will be tested with targeted stakeholders prior to final decisions being made on them. The FW-FP regulations are likely to be gazetted in late 2022.
- 73 The FW-FP regulations will be made within the existing regulation-making powers in Part 9A but, to enable system optimisation, legislative change may be required via the NBA to provide for any aspects that fall outside of the Part 9A powers.

Financial Implications

- 74 The 2022 Budget allocated \$35.643 million over four years for the establishment and operation of the FW-FP system. This allocation will fund the oversight function within MfE, supported by an advisory group. It will also fund the nationally administered framework that will cover the requirements to be a certifier or auditor.
- 75 In addition, \$24 million over three years will be allocated from the Essential Freshwater Fund (EFF). The EFF is part of Phase 3 of the Jobs for Nature programme and has a long-term strategic focus on addressing known key workforce capability and capacity gaps within the freshwater management system.

- 76 The EFF funding will support the development of the workforce of certifiers and auditors to support the rollout of FW-FPs. Certifiers will mostly be drawn from the existing workforce of farm advisors. The Government will be inviting them to take on new roles in supporting the FW-FP system. Enabling enough certifiers to achieve the required competency standards will require financial support.

Legislative Implications

- 77 Regulatory changes will be required to implement the FW-FP proposals. New regulations are proposed under Part 9A of the RMA (Part 9A prescribes what can be included in the regulations). The Parliamentary Counsel Office has advised that drafting regulations of this kind will take at least three months.

- 78 Ministers have agreed that the policy intent of Part 9A will transfer to the NBA.

Impact Analysis

Regulatory Impact Statement

- 79 A RIS has been prepared for the proposed regulations discussed in this Cabinet paper and is attached in Appendix 1.

- 80 A joint Ministry for Primary Industries and the Ministry for the Environment Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement: Proposed Regulations for Freshwater Farm Plans. The panel considers the document meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the options available, describes costs and benefits on impacted people, and provides a convincing analysis of the reasons for the regulations.

Climate Implications of Policy Assessment

- 81 The Climate Implications of Policy Assessment (CIPA) team in MfE has been consulted and confirms that the CIPA requirements do not apply to this proposal as the direct emissions impact is unable to be accurately quantified.

- 82 Agriculture emissions reductions are expected to be achieved through on-farm mitigation actions including improved nutrient management that will reduce discharges to water and nitrous oxide emissions and reductions in stock numbers because of removal of production on land next to rivers and streams.

Population Implications

Farmers and growers

- 83 Approximately 34,000 farmers and growers meet the size threshold that will require a certified and audited FW-FP. These farmers and growers will incur costs associated with the development, certification and audit of their FW-FPs and the implementation of on-farm management actions.

- 84 The proposed risk and performance-based approach to the recertification and audit of FW-FPs would serve to reduce administration costs for farmers.

- 85 FW-FPs also have the potential to act as a vehicle for integrated farm planning, combining other regulated farm management and reporting requirements over time (ie, biodiversity and greenhouse gas emissions as well as market/consumer

assurance requirements), and minimising duplication and administrative requirements for farmers and growers.

Regional councils

- 86 Regional councils would hold the compliance, monitoring and enforcement function of this system through the RMA.
- 87 They would also be responsible for appointing certifiers and auditors in their region, as well as aligning the FW FP system where applicable with their plans, policies and objectives to achieve freshwater outcomes.

Tangata whenua

- 88 Across the FW-FP system, tangata whenua (iwi/hapū/Māori landowners) would hold several roles:
- 88.1. Participating on the advisory group that will support the MfE FW-FP system oversight function, alongside regional councils;
 - 88.2. Supporting development of catchment challenges, values and context – via existing processes and relationships with regional councils (ie NPS-FM 2020, iwi management plans);
 - 88.3. Contributing to regional councils' processes to appoint certifiers and auditors, including contributing to regional competency frameworks and training development and delivery.
- 89 We do not propose individual farmers and growers would be required to identify and engage relevant tangata whenua about their individual FW-FP.
- 90 Submitters highlighted the need for the FW-FP regulations to respond to specific challenges associated with the management of Māori freehold land. Guidance will be developed to support Māori freehold land arrangements to meet regulatory requirements.

Wider community

- 91 Implementing FW-FPs will involve the wider community, including rural communities. FW-FP implementation will be supported by a network of advisory services including farm planners, systems experts, certifiers, auditors, and those involved in implementing actions on farm. Funding was allocated in Budget 2021 to support MPI's farm advisory system development.

Human Rights

- 92 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 93 The following agencies have been consulted on the proposals in this paper: Ministry of Māori Development—Te Puni Kōkiri, Ministry of Business, Innovation, and Employment, Treasury, Department of Conservation, Department of Internal Affairs, Office for Māori Crown Relations—Te Arawhiti, Crown Law Office, Parliamentary Counsel Office, Department of the Prime Minister and Cabinet, Toitū Te Whenua

Land Information New Zealand, Environmental Protection Authority, Taumata Arowai, and Ministry of Justice.

- 94 The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.

Communications

- 95 No specific communication activities are planned at this point but further targeted consultation will occur later this year in connection with the release of the exposure draft.

Proactive Release

- 96 The Minister for the Environment and Minister of Agriculture intend to proactively release the Cabinet paper, subject to redactions as appropriate under the Official Information Act 1982, once Cabinet decisions have been confirmed.

Recommendations

The Minister for the Environment and the Minister of Agriculture recommend that the Cabinet Environment, Energy and Climate Committee:

1. **Note** that Freshwater Farm Plans (FW-FPs), under Part 9A of the Resource Management Act 1991 (RMA), are a core part of the Government's commitment to improving freshwater health and management through the Essential Freshwater work programme [CAB-18-MIN-0296]
2. **Note** that FW-FPs will be a module within the broader Integrated Farm Planning Programme [CAB-21-MIN-0162]
3. **Note** that Part 9A of the RMA establishes FW-FPs as a new mandatory and enforceable regulatory tool that would support farmers and their advisors to implement actions that address on-farm risks to freshwater outcomes

Catchment challenges, values and context

4. **Agree** to the making, under Part 9A, of FW-FP Regulations that will link on-farm management activities to catchment outcomes as identified by regional councils
5. **Agree** that FW-FPs will reference catchment challenges, values and context
6. **Agree** that catchment challenges, values and context could include existing catchment information, any freshwater outcomes that have been identified in applicable regional plans, iwi management plans, or action plans under the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020)
7. **Note** that catchment challenges, values and context would be limited to the extent that regional councils make information available for this purpose

Risk assessment

8. **Agree** that a risk assessment methodology is used to identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems
9. **Agree** that the risk assessment methodology specify the minimum general requirements for a risk assessment including risk identification, risk analysis and prioritisation and risk treatment (actions)
10. **Agree** that appropriate actions will range from relevant regulatory requirements to best industry practice

11. **Agree** that actions for low-risk activities will provide flexibility for farm operators and certifiers to determine actions
12. **Agree** that for high-risk activities, required management standards may be more explicit
13. **Authorise** the Minister for the Environment and the Minister of Agriculture to jointly agree a framework for the management of high-risk activities

Freshwater Farm Plan minimum content

14. **Agree** that minimum FW-FP content must include:
 - 14.1. Property and business details including key contacts, locations, farm areas, and references to existing resource consents
 - 14.2. Nature of the farming activities and farm system types
 - 14.3. Catchment challenges, values and context, where available
 - 14.4. Risk assessment information including inventory of inherent and farm management risks, supporting maps and information on natural and built environments, risk analysis (assess severity) and risk evaluation (prioritisation)
 - 14.5. List of existing and new on-farm actions with an explanation of how they avoid, remedy or mitigate the risks identified, and a timeline for implementation of new actions
 - 14.6. Dates of certification(s) and the frequency of audit(s) of the FW-FP and names of certifier(s) and auditor(s)

Certification and audit of a Freshwater Farm Plan

15. **Agree** to specific obligations and practice and performance requirements for certification and audit functions
16. **Agree** that the farm operator is responsible for directly engaging and paying for the services of certifiers and auditors
17. **Agree** that a FW-FP must be certified within 12 months of regulations coming into effect in the specified district, region or part
18. **Agree** that FW-FPs will automatically come up for recertification every five years
19. **Agree** that the following situations will also require recertification within 12 months:
 - 19.1. Additional land added to the current farming operation that has an additional inherent risk, is in a different catchment or upon which a different farm system is being undertaken
 - 19.2. A change in farming system or change of land use
 - 19.3. Change in ownership or farm operator where the current FW-FP is not adopted
20. **Agree** that an audit is required within 12 months of first certification
21. **Agree** that a FW-FP will be audited based on a graded audit system
22. **Agree** that certified FW-FPs which return an audit with a grade of fully compliant or minor non-compliant will generally be audited again within three years
23. **Agree** that moderately non-compliant FW-FPs will generally be audited again within one year, and significantly non-compliant plans will generally be audited within six months

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24. **Agree** that an audit is also required within 12 months:
 - 24.1. After a change in farm operator, to demonstrate they are familiar with the FW-FP
 - 24.2. Following recertification triggered by a change in farm system or land use
25. **Agree** that the auditor must have evidence that FW-FP actions (or remedial action) have been completed or are being completed to be able to provide a grade
26. **Agree** that complaints relating to the conduct and competency of FW-FP certifiers and auditors will be provided for via the appointment process
27. **Agree** that the FW-FP regulations provide a review mechanism that enables farm operators to seek an independent review of, or to otherwise challenge, the decision of a certifier or auditor on their FW-FP
28. **Note** that the review mechanism is intended to ensure the FW-FP system is robust and provides procedural fairness
29. **Note** that should incorporation of the review mechanism require changes to the primary legislation, this could be achieved via the proposed Natural and Built Environments Act (NBA), which will replace the RMA
30. **Authorise** the Minister for the Environment, in consultation with the Minister of Agriculture, to include the establishment of a review mechanism in drafting instructions for the NBA if required

Appointment of certifiers and auditors

31. **Note** as part of the regional appointment process, guidance will be provided at a national level to ensure consistency across certifiers' and auditors' skills and capabilities including the circumstances when conditions may be imposed on their ability to practice or when their appointment status may be removed
32. **Agree** that the regulations will specify the competency framework required to be met by a person to be appointed as a certifier or auditor
33. **Agree** that, for a regional appointment process, the regulations allow regional councils to require demonstration of an understanding of matters including (but not limited to) regional rules and plans, and key catchment challenges, values and context competencies
34. **Agree** to authorise the Minister for the Environment and the Minister of Agriculture to jointly finalise the competency framework

Compliance, monitoring and enforcement

35. **Note** that regional councils will be responsible for enforcing the FW-FP regulations, and general compliance, monitoring and enforcement (CME) functions apply under existing RMA powers
36. **Note** that regional councils can use the administrative cost recovery system already within the RMA
37. **Agree** that the following will be infringement offences with their corresponding fee:

Proposed Infringement	Proposed fee
Farm operator does not have a certified farm plan within the specified timeframe	\$1,500
Farm operator does not have an audited farm plan within the specified timeframe	\$1,500
Farm operator does not seek recertification of their freshwater	\$1,500

I N C O N F I D E N C E

farm plan in line with the recertification triggers	
Farm operator does not implement actions in line with the agreed timeline	\$1,500
Farm operator does not lodge an addendum or update details	\$500

- 38. **Agree** that the FW-FP regulations amend the Resource Management (Infringement Offences) Regulations 1999 to include these offences
- 39. **Note** that any changes to fees as a result of the NBA would apply

Data and reporting

- 40. **Note** that Part 9A of the RMA sets out data and reporting requirements for certifiers, auditors and regional councils
- 41. **Agree** that the regulations will specify data and reporting requirements, including certification and audit data to regional councils, and system performance and monitoring data
- 42. **Note** that work is underway to establish a way to capture, collect and report data in a standardised and robust manner

System oversight

- 43. **Note** that the scale of this FW-FP system requires significant supporting infrastructure to set standards, oversee performance, provide coordination and support, and ensure accountability
- 44. **Note** that the Ministry for the Environment (MfE) will establish an initial FW-FP system oversight function within MfE, supported by an advisory group including representation from key system implementers
- 45. **Agree** that the advisory group will support initial rollout and implementation of the FW-FP system from a national perspective and via the system oversight function contribute to further advice to the Minister for the Environment and the Minister of Agriculture to finalise any further FW-FP system oversight arrangements as required
- 46. **Note** that the system oversight function will be funded from within MfE's baseline budget

Implementation

- 47. **Note** that officials will work with programme providers to support them in ensuring their programmes meet the standards set by the FW-FP Regulations, and will provide national guidance as needed to assist in achieving this equivalence
- 48. **Note** that Part 9A provides the Minister for the Environment, in consultation with the Minister of Agriculture, with the authority to decide phasing of the rollout of FW-FP regulations, including the order in which regulations apply to regions
- 49. **Agree** that the FW-FP regulations commencing is contingent on the Minister for the Environment (in consultation with Minister of Agriculture) recommending an Order In Council under section 217C of the RMA.
- 50. **Agree** that the description of the areas to which the FW-FP regulations apply will be periodically updated, as and when new areas fall under the FW-FP system
- 51. **Agree** that an exposure draft of the FW-FP regulations will be tested with targeted stakeholders prior to final decisions being made on them
- 52. **Note** that, to enable system optimisation, legislative change may be required via the NBA to provide for any aspects that fall outside of the regulation-making powers in Part 9A

Authorisations

53. **Authorise** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office for regulations to give effect to the above decisions
54. **Authorise** the Minister for the Environment, in consultation with the Minister of Agriculture, to make further decisions as necessary to give effect to the above decisions
55. **Note** that the Minister for the Environment does not intend to seek an exemption to the 28-day rule for these regulations.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Hon Damien O'Connor

Minister of Agriculture

Appendix 1: Regulatory Impact Statement: Proposed Regulations for Freshwater Farm Plans