

Office of the Minister for the Environment
Office of the Minister for Primary Industries

Chair

Cabinet Economic Growth and Infrastructure Committee

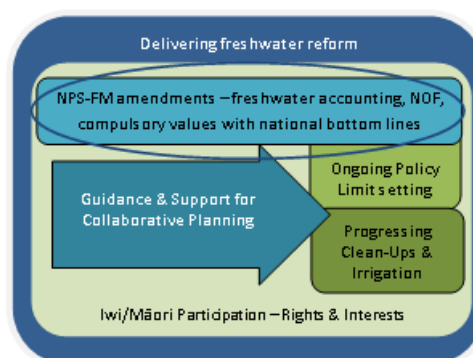
Freshwater Programme: Amendments to the National Policy Statement for Freshwater Management

Proposal

1. This paper seeks agreement to amend the National Policy Statement for Freshwater Management 2011 prepared under the Resource Management Act (RMA).
2. Subject to Cabinet agreement, the Minister for the Environment intends to recommend the amended National Policy Statement to the Governor General for approval.

Executive summary

3. When the National Policy Statement for Freshwater Management was promulgated in 2011, Cabinet agreed that further measures would be required to implement its policies effectively [CAB Min (11) 18/9 refers].
4. A number of implementation issues have been identified with the existing National Policy Statement. All regional councils say they face difficulties defining life supporting capacity and half of them have issues with resourcing the technical investigations and science needed. Some regional councils are setting objectives and limits without sufficient information and transparency of decision-making. Regions are duplicating freshwater science and may set objectives that are not clearly defined and are either ineffective in improving water quality or unnecessarily constrain economic growth. The result is an inefficient and litigious process under the RMA, with decision-making that is removed from the local council and community.
5. The amendments presented here build on the recommendations of the Land and Water Forum and are informed by advice from the Freshwater Iwi Leaders Group, the National Objectives Framework (NOF) Reference Group, and a Science Review Panel. The amendments form part of a comprehensive package of freshwater reforms currently being progressed, illustrated by the diagram



above, which align with the intent of the RMA reforms to provide a more efficient planning system.

6. The key amendments to the National Policy Statement, include:
 - a. a NOF with a range of values for fresh water and a process for setting freshwater objectives;
 - b. a process that requires councils and communities to consider the social and economic impacts of proposed freshwater objectives and limits;
 - c. national bottom lines for two compulsory values (ecosystem health and human health) that describe the minimum acceptable state that should be achieved over time;
 - d. grounds for when exceptions to national bottom lines may be permitted;
 - e. a requirement to account for all relevant sources of contaminants and all water takes;
 - f. a section recognising the national significance of fresh water and Te Mana o Te Wai;
7. We consulted the public about the proposals from November 2013 to February 2014. Submissions were generally supportive of the proposed amendments, particularly the process used to develop them. Many submissions supported the NOF, but the description of the compulsory values and where national bottom lines were set generated debate. Some primary industry submitters supported the compulsory value for human health for secondary contact recreation (for example wading or boating). The majority of submitters, however, sought a more aspirational goal for human health – that all waters should be swimmable.
8. We have carried out economic case studies that indicate economic growth can still be achieved, though in some catchments the future growth opportunities are likely to be reduced or come with higher costs. The majority of water bodies are above national bottom lines therefore, the impact of bottom lines will be limited to a small number of catchments.
9. This paper describes how the amendments to the National Policy Statement will assist councils to achieve environmental goals while enabling economic growth. It outlines the amendments we recommend to the National Policy Statement, following consideration of a statutory report provided to us under the RMA and the section 32AA evaluation.
10. Further detail on the amendments is contained in the documents attached to this paper:
 - a. The National Policy Statement for Freshwater Management 2014 (Appendix 1);
 - b. Report and recommendations on the proposed amendments to the National Policy Statement for Freshwater Management and public submissions (Appendix 2);
 - c. Regulatory Impact Statement (Appendix 3); and
 - d. A further evaluation under Section 32AA of the RMA (Appendix 4).

Background

11. The Government promulgated the National Policy Statement for Freshwater Management in 2011. At that time Cabinet agreed that further measures would be required to implement its policies effectively [CAB Min (11) 18/9 refers].
12. In October 2013 Cabinet agreed to consult on proposed amendments to the National Policy Statement to assist councils with implementing its requirements [CAB Min (13) 25/12 refers]. Consultation on the proposals concluded on 4 February 2014. A total of 7,151 submissions were received, of which 725 were unique. A high level summary of submissions is contained in Appendix 5.
13. The submissions generally support the amendments and the process by which they were developed. All of the major primary sector organisations have submitted on the proposals. Most of the primary sector organisations are in agreement that the amendments should be progressed now, notwithstanding some identified missing attributes. They endorse the emphasis on an iterative process with community collaboration to develop objectives and limits. The sector organisations are unanimous that decision making must be based on good information and that decisions must take account of social, environmental and economic impacts.
14. In finalising the amendments presented within this Cabinet paper we have considered a statutory report prepared by Officials, which includes recommendations on the submissions and proposed amendments to the National Policy Statement as required by the RMA (Appendix 2).
15. The freshwater reforms proposed in this paper align with the overall intent of the recent and proposed reforms to the RMA to provide for more efficient planning and greater central government direction and guidance.

Status quo

16. Regional councils must amend policy statements and plans to give effect to the National Policy Statement as promptly as is reasonable in the circumstances but before 31 December 2030. To give effect to the National Policy Statement, regional councils are required to:
 - a. maintain or improve the overall quality of fresh water within a region;
 - b. safeguard the life-supporting capacity of fresh water, ecosystem processes, and indigenous species including their associated ecosystems; and
 - c. achieve this by setting freshwater objectives and limits on resource use.
17. The majority of councils have indicated that they plan to fully implement the National Policy Statement by 2025.
18. A number of implementation issues have been identified with the existing National Policy Statement. A survey conducted in December 2012 asked regional councils about any difficulties they were having with interpreting and implementing the National Policy Statement. All councils cited difficulties with defining life supporting capacity. Half of all councils cited issues with capability and capacity with regard to resourcing the technical investigations and science required to inform objective and limit setting.

19. Under the current National Policy Statement councils can be conservative in setting objectives or, not have clearly defined objectives, making it difficult to set effective limits to achieve them. Conservative objectives can unnecessarily constrain economic growth, while a lack of defined objectives can result in the desired water quality outcomes not being achieved.
20. Some regional councils are setting objectives and limits without sufficient information and transparency of decision-making. Under the status quo each region will duplicate the science behind freshwater objectives and establish their own bottom lines. This can then be appealed to the Environment Court with the result that decision-making is removed from the local council and community.

Policy

21. The proposed amendments will assist councils to give effect to the current requirements of the National Policy Statement by providing a process for how to set objectives and nationally agreed science to underpin them, thereby reducing the litigation risk. We are putting in place a process to require communities to consider the economic, social and environmental impacts of managing within limits. Adopting a consistent approach through the use of compulsory values, with national bottom lines achieved over time, allows the costs and benefits for both economic and environmental gains to be appropriately balanced.
22. We recommend the following key amendments to the National Policy Statement:
 - a. a NOF with a range of values for fresh water and a process for setting freshwater objectives;
 - b. national bottom lines for two compulsory values (ecosystem health and human health) that describe the minimum acceptable state that degraded water bodies should achieve over time;
 - c. grounds for when exceptions to national bottom lines may be permitted;
 - d. a requirement to account for sources of contaminants and all water takes;
 - e. the inclusion of a section recognising the national significance of fresh water and Te Mana o Te Wai.
23. The following sections of the paper provide detail on these amendments and how they will assist implementation of the National Policy Statement.

National Objectives Framework

24. The NOF is a decision support tool that will assist regional councils and communities to set freshwater objectives and limits in regional plans. Freshwater planning using the NOF process will increase the transparency of decision-making as it requires an iterative approach that tests a range of possible objectives and the means for their achievement. In this way the implications of proposed objectives are clear for both councils and communities as part of the objective setting process. A summary of the NOF process is contained in Appendix 6.

25. The NOF includes a process for setting freshwater objectives and a set of reference tables that provide:
 - a. national values and uses for which communities would consider managing (for example fishing);
 - b. attributes (for example periphyton) that would need to be managed to provide for a value or use;
 - c. for each attribute, a range of associated states (A, B, C, and D) that represent a range of environmental states and/or community aspirations; and
 - d. for each attribute, a numeric minimum acceptable state (bottom of state C). State D would not be acceptable because it represents a state that falls below what is required to provide for a value or use.
26. Two of the proposed values in the NOF are compulsory. They are:
 - a. Ecosystem health; and
 - b. Human health for recreation.
27. The compulsory values have national bottom lines associated with them. Councils must set objectives for the compulsory values, at or above the bottom line, using the attributes provided. Long timeframes can be chosen where water quality is not currently above a bottom line which acknowledges the difficulty in achieving the bottom line in some catchments.
28. All attributes in the NOF are those for which science is available, have been tested sufficiently and can be applied nationally.
29. The NOF process requires councils to group water bodies, or parts thereof, into 'freshwater management units' for the purposes of setting freshwater objectives and limits. Councils are then required to undertake freshwater accounting to establish the amount of water available for use and the amount of contaminants in a catchment. A council and community will decide what values or uses they hold for each freshwater management unit using both the compulsory and additional values contained in the NOF. The attributes in the NOF are used to set freshwater objectives that provide for a particular value. Limits on resource use are set to ensure the freshwater objective is met.
30. The majority of submissions on the NOF were supportive of the process. Most submissions, while acknowledging that some important attributes are yet to be included, still support incorporating the NOF into the National Policy Statement now.

Compulsory value - ecosystem health

31. A compulsory national value for ecosystem health is part of the NOF. However, it should be noted that the existing Objectives A1(a) and B1 already require the life-supporting capacity, ecosystem processes and indigenous species of all water bodies to be safeguarded. Including ecosystem health as a compulsory value will assist councils in achieving this objective. It will do this by providing established science, to underpin the narrative objective.

32. The following attributes for the ecosystem health value are included in the NOF; each attribute has a national bottom line.

	Lakes	Rivers
Periphyton (trophic state)		✓
Nitrate (toxicity)		✓
Ammonia (toxicity)	✓	✓
Dissolved oxygen (below point sources)		✓
Total nitrogen (trophic state)	✓	
Total phosphorus (trophic state)	✓	
Phytoplankton (trophic state)	✓	

33. In response to consultation we propose the following changes to the attributes. The changes are:
- rename some attributes for clarity, for example phytoplankton rather than chlorophyll *a* (chlorophyll *a* is the unit measured);
 - amend the nitrate (toxicity) attribute so that it only applies to rivers (lakes are already covered by the total nitrogen attribute);
 - amend the ammonia (toxicity) attribute to use an annual maximum rather than the 95th percentile;
 - amend the periphyton attribute to use an annual maximum that is exceeded no more than once per year (rather than the original two).
34. These changes are consistent with the advice of the expert science panels and the Science Review Panel. At present, no national monitoring sites fail the bottom line for ammonia (toxicity) and the change to the statistical unit used for ammonia (toxicity) does not affect this. The changes to the periphyton statistical measure do not have a significant effect on the modelled impacts of the attribute. However, the change provides a more robust statistical measure, and allows for drought years when increased periphyton would naturally occur.
35. There is limited information about the levels of periphyton (slime) in New Zealand Rivers and whether the rivers meet the proposed bottom line. We will manage this risk by requiring councils to gather periphyton information for three years before setting limits. Indications are that most councils are already setting periphyton objectives above the bottom line, meaning the bottom line is unlikely to create an additional burden. We will monitor the impacts of where councils set objectives and limits for periphyton. This will inform possible future reviews of the national bottom lines.
36. Many submissions requested additional biological attributes, particularly macroinvertebrates, be included in the NOF. Almost all councils monitor macroinvertebrates using the macroinvertebrate community index (MCI) method as part of their regular environmental monitoring. We consider MCI is an important measure of ecosystem health. There is limited information on the impacts a bottom line for MCI would have and, as it is best used as a performance measure rather than as a basis for limit setting, we are not recommending MCI as a bottom line. Instead we propose to amend the value

description for ecosystem health to reference additional matters to take into account, including macroinvertebrates.

37. In addition, in recognition of the importance of MCI as a monitoring tool, we recommend that a regulatory tool for requiring councils to monitor MCI should be considered. This could be a National Environmental Standard or a regulation under s360 of the RMA. Officials will shortly provide further advice on the most suitable regulatory option.
38. There remain some additional critical attributes for ecosystem health that are not yet developed, for example sediment, temperature and flow regimes. Work will continue to develop attributes, including those for wetlands. In the meantime councils may develop suitable attributes for their regions.

Compulsory value - human health

39. We propose a new compulsory national value for human health that covers the full range of recreation activities from boating and wading through to swimming. We propose merging what were two different values in the Discussion Document that separated immersion activities (swimming) from non-immersion activities (boating and wading).
40. The Land and Water Forum recommended that the National Policy Statement should provide for both ecosystem health and human health. The proposal to include human health as an objective and compulsory value was widely supported by submissions. Submissions asked that activities such as swimming be included in the compulsory value and some requested that swimming be the bottom line for all fresh water.
41. We are not proposing that swimmability be a national bottom line because it would not be technically possible and the costs would be significant. While this change makes swimming part of the compulsory value, the bottom lines will stay the same as those proposed in the Discussion Document. A single compulsory value that provides a scale for recreation from wading through to swimming will make it easier for councils and communities to decide which water bodies to manage to the higher quality.
42. The national bottom lines are set at a level which provides, at a minimum, for activities that do not involve full immersion. Objectives set at a level higher than the national bottom line (the A or B state) would provide for a wider range of activities including full immersion activities such as swimming.

Impacts of national bottom lines

43. Since 2011 the National Policy Statement has required councils to set freshwater objectives and limits in plans. It is therefore, difficult to quantify the costs of the proposed amendments over and above what is already required. In order to provide an indication of the likely costs of national bottom lines, detailed economic impact studies have been carried out in Southland, Canterbury and Waikato. These regional case studies show that the costs of meeting national bottom lines in some catchments will be minimal, while in a few they will be significant [EGI (13) 225 refers]. These studies are summarised in the Regulatory Impact Statement and section 32 evaluation (Appendix 3 and 4).

44. National bottom lines are not standards; they are an objective or outcome to be achieved over time where they are already not met. The current National Policy Statement objective requiring that the overall quality of freshwater within a region is maintained or improved will prevent water bodies being managed down to bottom lines. In most cases objectives will be set higher than national bottom lines. This is because the current state of the majority of water bodies is better than the proposed national bottom lines.
45. For the minority of water bodies below a national bottom line, regional councils will be required to set a freshwater objective above the bottom line with limits and management measures to achieve the bottom line over time. There is no time frame within which councils must achieve freshwater objectives and the management options that councils can use may be tailored by each region to achieve bottom lines at least cost.
46. There has been broad support for the idea of national bottom lines. Where the national bottom lines are set has generated debate. However, the intent of establishing bottom lines was that this debate should occur once, at a national level, rather than being duplicated on a region by region basis or through the Environment Court.
47. Litigation has added considerable time to the planning process. Delays to plans becoming operative not only incur costs to participants in the planning process, but to the wider economy as investment decisions are deferred. Defined bottom lines should reduce delays and improve certainty for investment purposes. The certainty comes from knowing what the limits on resource use are at the time a regional plan becomes operative rather than relying on the resource consent process.
48. The effect of the application of bottom lines to significant infrastructure, such as hydro schemes, is difficult to quantify as it will depend on how the regional plan is implemented and what if any, bottom lines are breached. The value of hydro generation is acknowledged in the existing NPS on Renewable Energy Generation, which requires decision makers to recognise and provide for the national significance of renewable electricity generation activities and in the policy on exceptions proposed as part of the amendments.

Exceptions to national bottom lines

49. The second report of the Land and Water Forum acknowledged the need for exceptions to national bottom lines in certain circumstances. Exceptions will only be used in situations where bottom lines cannot be met over time.
50. Exceptions to national bottom lines where a water body is contaminated from naturally occurring processes are included as part of the NOF. Naturally occurring processes would be defined to ensure that processes caused by human intervention would not be eligible for an exception.
51. Any exception for naturally occurring processes will be decided by regional councils through the plan development process. The normal checks and balances of the planning system will apply.
52. Exceptions for freshwater management units that have water quality below a bottom line due to existing in-stream infrastructure are also included in the NOF. These exceptions will likely apply in catchments modified by hydroelectricity

generation or drinking water dams where flows are significantly reduced or stopped.

53. Existing infrastructure that could lead to an exception on this basis will be decided nationally through a further amendment to the National Policy Statement. We intend to report back to Cabinet in June 2014 with a proposal to consult on a list of infrastructure.
54. Exceptions to national bottom lines where historical activities have created impacts that cannot be remediated were also consulted on. This is now removed. Many submitters were concerned that this exception could be abused and we have received no indication of situations where this would be needed. This decision can be revisited in later reviews if situations emerge where such an exception might be appropriate.
55. Exceptions will not be allowed where a long adjustment timeframe would enable the freshwater objective to be met.

Flexibility

56. Using the NOF process, councils and communities can choose their own timeframes for adjusting to and meeting objectives. Flexible timeframes for meeting objectives will enable improvement over a period that is acceptable to communities and minimise the impacts of change.
57. Alternatively, if a community is concerned about the potential for significant impacts due to the adjustment required to meet a national bottom line, they may approach central government to discuss the potential for a water body to be included in Appendix 4. Inclusion in Appendix 4 would allow a council to set objectives below the national bottom line for a set time period. Following this, a new plan would be required to set freshwater objectives that comply with national bottom lines. The length of any transitional period and the area to which it could apply would be decided on a case by case basis and would need to be inserted into the National Policy Statement by amendment. During any transitional period the requirement to maintain or improve overall water quality within a region will still apply.

Te Mana o te Wai

58. Submissions highlighted a wide range of opinions regarding how tāngata whenua values are best expressed in the National Policy Statement. Different values are important to different groups and values are expressed in a range of different ways. The need for regional variation in the expression of tāngata whenua values suggests that a flexible or high level approach is needed. In the end our recommendation has been guided by the on-going work with the Freshwater Iwi Leaders Group and their view as to how tāngata whenua values are best incorporated.
59. We recommend a statement at the start of the National Policy Statement that sits above the objectives and policies. This statement would recognise the national significance of fresh water and Te Mana o te Wai. The statement would be inclusive of all communities and provide an expression of collective values for both tāngata whenua and the broader community. The aggregation of community and tāngata whenua values and the ability of fresh water to provide

for them over time recognises the national significance of fresh water and Te Mana o te Wai.

60. Guidance would be provided to regional councils to support councils' interpretation of this statement.

Freshwater accounting

61. Good planning decisions require good information about how much fresh water is taken, the sources and proportions from each source of relevant contaminants, and the extent to which those sources contribute to water quality issues. Freshwater accounting will provide the information councils need in order to set effective objectives and limits.
62. Accounting information is also important for resource users to identify catchments where there is capacity for increased resource use or intensification. Accounting supports managing within limits, which will drive efficient use of fresh water. In time this will lead to improved reliability for water takes, increased investment certainty, reduced over-allocation, reduced conflict, and highest value use.
63. The amendments to the National Policy Statement require councils to have a system in place to account for the amount and sources of contaminants and all water takes. A two year grace period will apply, providing councils time to have an accounting system in place prior to setting freshwater objectives.
64. The proposed freshwater accounting requirements complement existing requirements on consent holders to measure and report significant takes under the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.

Impacts of accounting

65. Most councils already account for water quantity and some have sophisticated systems in place. There is much less accounting for water quality. Councils that have adequate accounting systems in place already will not face additional costs while councils with no systems in place will incur set-up and on-going costs.
66. It is difficult to estimate potential costs to councils as improvements to accounting systems would be likely under the current National Policy Statement. There will be initial set-up costs and on-going costs relating to the operation and maintenance of freshwater accounting systems. These costs are detailed in the RIS and section 32AA evaluation (Appendix 3 and 4)

Monitoring

67. We propose an amendment to the National Policy Statement to require councils to develop plans to monitor progress toward freshwater objectives. The new requirement makes it clear that monitoring for freshwater objectives should be undertaken at representative sites within each catchment, as identified by regional councils. The policy is intended to signal to councils that monitoring regimes should be practical and affordable.
68. There was wide support for this proposed amendment, although many submitters requested further direction on what and how to monitor. Guidance will be provided to assist councils in developing monitoring plans.

Implementation timeframe

69. Under the current National Policy Statement councils must set objectives and limits in regional plans by 31 December 2030. Some submissions suggested the final implementation date should be brought forward.
70. We propose to change the proposed deadline for full implementation of the National Policy Statement to 2025. We have included a safety valve allowing a 2030 deadline where it would be impracticable for a regional council to meet this date or where it would result in lower quality planning.
71. Surveys have indicated the majority of councils will have final plan changes completed by 2022. We additionally sought the views of regional councils on this proposal and responses have indicated that changing from 2030 to 2025 is possible for most councils.
72. Timeframes may need to be reassessed in future if further attributes are added to the National Policy Statement.

Implementation

73. Officials will work with councils to identify any specific requirements needed to support councils in implementing the National Policy Statement. Initial guidance will be provided on the amendments.
74. A number of additional non-regulatory tools are proposed to support the amendments, including guidance on converting freshwater objectives to limits, good management practice toolkits and models to assist in the planning process.
75. Monitoring to assess how implementation is progressing will be crucial to determine the impact and outcomes of the National Policy Statement. Regular reviews of the National Policy Statement to update the science will allow adjustments to the policies to be made if required.

Review

76. The preamble of the National Policy Statement states that an independent review will be carried out on the implementation and effectiveness of the National Policy Statement no later than five years after it comes into effect. We are proposing no changes to this and intend to commission an independent review in 2016. Based on the findings, we will consider whether further amendments to the National Policy Statement are required.

Financial implications

77. The proposals in this paper have financial implications for the Ministry for the Environment and Ministry for Primary Industries. Current resourcing will enable the provision of guidance supported by models and science to assist council implementation of the National Policy Statement.
78. There will be financial implications for regional councils and other stakeholders associated with consultation and planning. However, regional planning is a regular process and it is expected that the proposals in this paper will reduce costs for the scientific analysis and litigation that often accompany planning.

Financial impacts for affected sectors will in part be offset by efficiencies from a better process and agreed science.

79. The costs and benefits of the proposed amendments are detailed in the attached RIS and section 32AA evaluation.

Legislative implications

80. This paper has legislative implications as it seeks a decision to amend to the National Policy Statement. The National Policy Statement is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012. This means that the amended National Policy Statement must be presented to the House of Representatives and the House may, by resolution, disallow it or any provisions of it.
81. We are advised that the proposed amendments are not inconsistent with the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Section 17(3) of that Act requires consideration of the Vision and Strategy for the Waikato River when carrying out functions under the RMA. The Vision and Strategy applies to the catchments of the Waikato and Waipa rivers, whereas the National Policy Statement applies throughout New Zealand.
82. The Vision and Strategy includes policies and strategies that aim to improve freshwater quality to a greater extent than the National Policy Statement. For example, the Vision and Strategy includes an objective to provide for swimming and food gathering for the entire length of the Waikato River. The differences between the National Policy Statement and Vision and Strategy are not problematic. The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 states, at section 12, that the Vision and Strategy prevails over any provision in a national policy statement.

Certification by Office Solicitor of the Ministry for the Environment

83. The draft amended National Policy Statement has been certified by the Office Solicitor of the Ministry for the Environment as being in order for submission to Cabinet.

Compliance

84. The proposed regulations comply with:
 - a) the principles of the Treaty of Waitangi;
 - b) rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - c) principles and guidelines set out in the Privacy Act;
 - d) relevant international standards and obligations; and
 - e) the LAC Guidelines: Guidelines on Process and Content of Legislation.
85. The statutory prerequisites that apply to amending a national policy statement are detailed in sections 45-54 of the RMA. The statutory requirements have been met.

86. Section 46A requires the Minister for the Environment to choose between using a board of inquiry or an alternative process to inquire into and report on the proposed amendments. The Minister for the Environment chose to use an alternative process under section 46A(1)(b) that meets the statutory requirements to give the public adequate time and opportunity to make a submission; and consider a report and recommendations on the submissions and the subject matter of the proposed amendments.
87. Consultation on the proposed amendments commenced on 5 November 2013 and closed on 4 February 2014. A report and recommendations on the submissions and the proposed amendments is contained in Appendix 2. The report provides an evaluation of the key issues raised in submissions, recommendations on the proposed amendments and evaluates the proposed amendments against the matters in Part 2 of the RMA.
88. The proposals in this paper follow consideration of the report and recommendations and a further evaluation under section 32AA of the RMA (Appendix 4). If Cabinet agrees, the Minister for the Environment will recommend that the Governor-General approve the National Policy Statement.

Timing and 28-day rule

89. The amendments to the National Policy Statement will come into force 28 days after notification in the Gazette.

Regulations Review Committee

90. A national policy statement prepared through the process in section 46A(1)(b) is a disallowable instrument and must be presented to the House of Representatives.
91. We consider that there are no grounds for the Regulations Review Committee to draw the National Policy Statement to the attention of the House under Standing Order 310.

Regulatory impact analysis

92. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached (Appendix 3).
93. The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry for the Environment, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.
94. This RIS builds on previous RISs provided for in-principle decisions about the planning and decision-making arrangements for freshwater. The different feasible options for amending arrangements within the RMA framework are explained clearly and have been tested in consultation with affected stakeholders. However, the collaborative approach to developing a full package of proposals has made it difficult to compare the potential impacts of all feasible options.

95. The costs and resource implications of the proposed options to establish national bottom lines (with two compulsory national values) and to require councils to have water accounting systems have not been fully described for every region. The RIS states that these costs are likely to be balanced by environmental benefits and savings in planning costs over the longer term without setting these costs out in detail.

Publicity

96. The amended National Policy Statement will be notified in the Gazette. The amended National Policy Statement and the report under section 46A(1)(b) will be publicly notified and a copy will be sent to every local authority. A summary of the recommendations in the report and a summary of the Minister for the Environment's decisions (including reasons for not adopting any recommendations) will be made available to submitters as required by section 52(3)(c).
97. We intend to make a public statement on the amended National Policy Statement and to make relevant papers publicly available on the Ministry for the Environment website following notification in the Gazette.

Consultation

98. The following agencies have been consulted on this paper and their views have been taken into account: The Ministry of Health, Te Puni Kōkiri, The Ministry of Business, Innovation and Employment, The Treasury, The Department of Conservation, The Department of Internal Affairs, The Office of Treaty Settlements. The Department of Prime Minister and Cabinet has been informed.
99. The development of the amendments to the National Policy Statement has been done in conjunction with several of the agencies listed above and the remainder have been consulted. Agency views have been addressed and are reflected in the final proposal.

Recommendations

The Minister for the Environment and the Minister for Primary Industries recommend that the Committee:

Background

1. note that on 25 October 2013 Cabinet agreed to consult on proposed amendments to the National Policy Statement for Freshwater Management 2011 [CAB Min (13) 25/12 refers]
2. note that public meetings, hui and technical workshops were held to discuss the proposed amendments to the National Policy Statement
3. note that consultation occurred from 7 November 2014 and closed on 4 February 2014
4. note that we have considered the statutory report on the submissions and recommendations, have made decisions on the recommendations and have decided to amend the National Policy Statement accordingly

Status quo

5. note that the National Policy Statement for Freshwater Management 2011 currently requires councils to amend plans by 31 December 2030 to:
 - 5.1. maintain or improve the overall quality of fresh water in a region
 - 5.2. safeguard life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater
 - 5.3. achieve this through setting objectives and limits in regional plans
6. note there is currently minimal national direction on how councils should set objectives and limits in plans, which has led to duplication of the science and unnecessary litigation concerning that science

The National Objectives Framework and national bottom lines

7. agree to amend the National Policy Statement for Freshwater Management 2011 to incorporate the National Objective Framework, including:
 - 7.1. a process to use in setting freshwater objectives
 - 7.2. a set of reference tables that provide an array of values and uses for which communities may consider managing water bodies and for each value or use, a set of attributes and associated states that indicate the level to which that value or use is met
 - 7.3. a new objective to safeguard the health of people and communities, at a minimum, for non-immersion activities
 - 7.4. two compulsory values of ecosystem health and human health for recreation
 - 7.5. numeric national bottom lines for attributes that achieve the compulsory values that, where not already met, need to be met over time
8. note that the National Objectives Framework proposed contains numeric attributes and states where the science is robust and is applicable nationwide
9. note that scientific work will continue so that updated versions of the National Objectives Framework can be introduced in future (a review in 2016 is already included in the National Policy Statement and further updates are expected in due course)
10. agree we will investigate regulatory options to require the use of MCI in managing water

Exceptions to national bottom lines

11. agree to amend the National Policy Statement for Freshwater Management 2011 to allow exceptions to national bottom lines on the following grounds:
 - 11.1. where a water body is contaminated from natural processes, such as where a native bird colony causes an *E. coli* state that breaches national bottom lines

- 11.2. where the impacts of existing infrastructure mean the freshwater quality is currently below bottom lines and this is caused by the infrastructure listed in Appendix 3 of the National Policy Statement
12. invite the Minister for the Environment to report back to Cabinet in June 2014 with a proposal to consult on a list of existing infrastructure that can be included in Appendix 3 of the National Policy Statement
13. note that the exception proposed for historic impacts is not required

Te Mana o te Wai

14. agree to amend the National Policy Statement for Freshwater Management 2011 to include a new section to recognise the national significance of fresh water and Te Mana o te Wai

Freshwater accounting

15. agree to amend the National Policy Statement for Freshwater Management 2011 to include:
 - 15.1. a requirement for councils to account for all water takes and for all sources of relevant contaminants and the proportion of each contaminant attributable to each source
 - 15.2. a timeframe for complying with this requirement, with a grace period of two years from promulgation, after which councils will be required to have a system in place prior to setting objectives and limits in plans under the National Policy Statement for Freshwater Management 2014

Monitoring

16. agree to amend the National Policy Statement for Freshwater Management 2011 to require development of plans to monitor progress towards freshwater objectives, including:
 - 16.1. requiring regional councils to identify a range of monitoring sites that are representative of water bodies within a region
 - 16.2. recognising the importance of long-term trends in monitoring results

Flexibility

17. agree to amend the National Policy Statement for Freshwater Management 2011 to provide a transitional provision that:
 - 17.1. may apply where a regional council approaches central government and the freshwater management unit is listed in the National Policy Statement for Freshwater Management following public consultation
 - 17.2. will allow a freshwater objective to temporarily be set below a national bottom line for a specific period

Implementation timeframe

18. agree to amend the National Policy Statement for Freshwater Management 2011 to bring forward the implementation date to 2025 with a mechanism to allow until 2030 for implementation where it would be impracticable for a regional council to meet this date or it would result in lower quality planning

Financial implications

19. note that the cost to the Crown of implementing these reforms has been budgeted for
20. note the economic studies that have been undertaken in Southland, Canterbury and Waikato on the impacts of national bottom lines and that in some catchments costs will be minimal while in others they will be significant
21. note that costs of developing and implementing the amended National Policy Statement for Freshwater Management 2011 are outweighed by the benefits to regional councils and communities, namely through greater scientific and technical certainty, more consistent planning outcomes, less litigation, increased investment certainty, and improved outcomes for freshwater management

Compliance

22. note that section 46 of the RMA requires the Minister for the Environment to seek and consider comments from relevant iwi authorities and others considered appropriate, then prepare a proposed national policy statement before recommending a change to a national policy statement
23. note that in March 2013 the Government released the consultation document *Freshwater reform 2013 and beyond* which sought comment from the public, including iwi authorities. The Minister for the Environment considered the comments received prior to preparing the proposed National Policy Statement
24. note that section 46A of the RMA requires that, after preparing a proposed national policy statement, the Minister for the Environment must choose between the Board of Inquiry process set out in sections 47-52 or an alternative process that:
 - 24.1. gives the public adequate time and opportunity to make a submission; and
 - 24.2. requires a report and recommendations to be made to the Minister on the submissions and subject matter
25. note that the Minister for the Environment chose to establish an alternative process in accordance with section 46A(1)(b) of the Resource Management Act 1991, administered by the Ministry for the Environment
26. note that the Minister must carry out an evaluation under section 32 of the RMA before a proposed National Policy Statement is publicly notified for consultation

27. note that an evaluation was carried out and published on November 2013
28. note that section 51 requires prescribed matters to be considered and a report and recommendations prepared under section 46A(1)(b)(ii) be provided to the Minister for the Environment
29. note that the Ministry for the Environment considered the prescribed matters and made a report and recommendations to the Minister on 16 April 2014
30. note that section 52 requires the Minister to consider a report and recommendations made to her under section 46A(1)(b)(ii)
31. note that the Minister for the Environment has received the report and considered the recommendations within it
32. note that the Minister must undertake a further evaluation of the proposed national policy statement in accordance with section 32AA and have particular regard to that evaluation when deciding whether to recommend the statement
33. note that a further evaluation was undertaken (attached in Appendix 4) which the Minister had particular regard to when considering whether to proceed with recommending the statement
34. note that Part 2 of the RMA requires the Minister to recognise and provide for the prescribed matters of national importance in section 6, have particular regard to other matters in section 7 and take into account the principles of the Treaty of Waitangi in accordance with section 8 in achieving the purpose of the RMA in section 5 when developing a national policy statement
35. note that the statutory report made under 46A(1)(b)(ii) and the section 32 evaluation considers and assesses how Part 2 is provided for in the amendments to the national policy statement
36. note the advice of the Minister for the Environment is that the statutory prerequisites above for the preparation of a national policy statement have been met

Final decisions

37. authorise the submission to the Executive Council of the National Policy Statement for Freshwater Management 2014
38. note that, in accordance with section 52(3)(a) of the RMA, the Minister will issue the National Policy Statement for Freshwater Management 2014 in the Gazette as soon as practicable after it is approved by the Governor-General in Council
39. note that the National Policy Statement for Freshwater Management 2014 will come into effect 28 days after the date on which it is published in the Gazette

Hon Amy Adams
Minister for the Environment

____ / ____ / ____

Hon Nathan Guy
Minister for Primary Industries

____ / ____ / ____

Appendix 1. [withheld due to professional legal privilege]

Proposed amendments to the National Policy Statement for Freshwater Management 2011

Appendix 2. [available on the Ministry for the Environment's website]

Statutory report for the Minister for the Environment summarising submissions and with recommendations

Appendix 3. [available on the Ministry for the Environment's website]

Regulatory Impact Statement

Appendix 4. [available on the Ministry for the Environment's website]

Section 32AA evaluation

Appendix 5

Summary of submission feedback and recommendations

Appendix 6.

How the NOF process will support implementation of the National Policy Statement.

Appendix 5 - Summary of submission feedback and recommendations on key themes

National Objective Framework (NOF) submissions:

There was wide support for inclusion of the NOF process.

Acknowledgement of missing attributes but support for the NOF to be implemented now rather than waiting for further attributes.

The majority support the two compulsory national values but have concerns about where the national bottom lines are set (discussed below).

Submissions identified that the NOF process as proposed does not require councils to set any freshwater management units or have units that cover a region.

Recommendations:

Proceed with the NOF as proposed.

Include an amendment to clarify that freshwater management units must be set and cover each region.

Ecosystem health - compulsory value submissions:

There was wide support for a compulsory value for ecosystem health.

Many submissions on how the value should be described and perceived missing attributes essential to achieving the value, including the macroinvertebrate community index (MCI) and sediment.

Technical submissions received on national bottom lines, including where they are set and the statistical measures used to monitor the attributes.

Recommendations:

Proceed with the compulsory value ecosystem health but amend the description of the value to better describe healthy ecosystems and the matters to take into account in achieving the value, including macroinvertebrates, sediment and other matters.

Proceed with the bottom lines as proposed.

Amend statistical measures and descriptions of some attributes in line with science advice and to more accurately reflect the value.

Human health - compulsory value submissions:

There was wide support for a compulsory value for human health.

Many submissions were concerned about the national bottom line being set at a secondary contact level and requested that primary contact (swimming) be the bottom line.

Many submissions also request all waters to be safe for fishing, food gathering and eventually drinking.

Recommendations:

Amend the value of human health to provide for general recreation at different levels of contact with fresh water, making it clear that it ranges from low contact activities such as boating and wading to high contact activities such as swimming.

Proceed with the national bottom line as proposed.

Delete the additional value of contact recreation.

Exceptions submissions:

Submissions were mixed, with some supporting and others opposed. Some recommended that exceptions be kept to a minimum and described as narrowly as possible.

A small group of submissions sought additional exceptions for different types of activity or industry, while a proportionate number of submissions specifically opposed this.

Hydroelectricity generators requested immediate population of the appendix containing exceptions for freshwater management units affected by significant existing infrastructure.

Recommendations as a result of submissions:

Proceed with exceptions on natural grounds.

Undertake a separate process to populate an appendix of significant existing infrastructure eg hydro-electricity and drinking water dams.

Remove the exception based on the effects of historical activities.

Transitional provision submissions:

Submissions were split on transitional arrangements.

Individuals tended to support the proposal, while it was opposed by the LAWF, LGNZ, and other submissions from the Local Government and Primary sectors. Those in opposition considered the ability to use long timeframes to achieve objectives would be preferred over a process that requires amending the NPS-FM.

Submissions that supported the proposal did so either because they supported specified 'staggered compliance targets' to be achieved within a set timeframe, or because the policy could mitigate the costs of improving expensive infrastructure.

Recommendations as a result of submissions:

Proceed with the transitional provisions as proposed.

Freshwater accounting submissions:

There was wide support for the concept of requiring councils to undertake freshwater accounting but confusion around how to undertake accounting, and when the information should be available for use.

Recommendations as a result of submissions:

Proceed with freshwater accounting with an amendment to clarify that accounting information must be available for objective and limit setting.

Te Mana o te Wai submissions:

A number of submissions supported including Te Mana o te Wai in the body of the National Policy Statement, not just the Preamble and Appendix.

Some submissions opposed an objective to safeguard Te Mana o te Wai as its meaning varies regionally and would introduce uncertainty and potential costs and litigation.

Submissions highlight the wide range of opinions regarding how tāngata whenua values are best expressed.

A number of submissions offered an alternative approach of including Te Mana o Te Wai in a high level overarching purpose, statement, korowai, or objective.

Recommendations as a result of submissions:

Include a section following the preamble recognising the national significance of fresh water and Te Mana o Te Wai.

Monitoring submissions:

All sectors strongly support this amendment but request guidance on how and what to monitor.

Submissions request resources for councils and clarification of alignment with other national monitoring initiatives.

Recommendations:

Proceed with the amendments as proposed.

Appendix 6 – How the NOF process will support implementation of the National Policy Statement.

The purpose of a national policy statement is to provide direction to regional councils how to achieve the purpose of the RMA on specific matters – in this case the management of freshwater.

This diagram compares the current NPS provisions with the amendments. It illustrates how the amendments will assist with implementation of the NPS by providing a process for how to set freshwater objectives.

