



Clarification on national direction on freshwater management

Fish passage policy and regulations

This information sheet provides clarification on the National Policy Statement for Freshwater Management (NPS-FM) and National Environmental Standards for Freshwater (NES-F) for fish passage.

It is intended for council staff and land users, but may also be of interest to iwi, the wider agricultural industry, farm advisors and consultants, and anyone else with an interest in freshwater policy.

Answers to council questions

1. Does NES-F Regulation 71, Discretionary activities in respect of culverts apply to connected areas too?

Yes, Regulation 71 should apply to connected areas.

A culvert is a pipe, box structure, arched or covered channel that has an inlet and outlet, which connects the water or bed of the river or connected area.

The intent is to provide for fish passage.

2. Does the NES-F apply to temporary structures such as culverts? For example, culverts to allow for crossings during works.

Yes.

The NES-F does not distinguish between permanent and temporary structures.

There may be temporary structures put in place during the construction phase of works, that are intended to be removed once the works have been completed. For example, a temporary culvert may be placed in a stream to divert water from a works site when building a bridge. This temporary culvert would enable a dry working area for an excavator to access the stream, and for concrete to set without getting wet.

Anyone installing these temporary structures can follow the Fish Passage Advisory Group's guidance available on the [DOC Fish Passage web pages](#).

The regulations do not specifically exempt temporary structures, therefore all culverts regardless of their lifespan, need to comply with the permitted activity conditions or will require consent. If the structure falls within the provisions of the NES-F, it is captured. See the [Temporary culverts and fish passage fact sheet](#) on DOC's website for guidance on providing fish passage at temporary structures.

3. Does NES-F Subpart 3—Passage of fish affected by structures apply to consented and unconsented (unlawful) structures?

The NES-F does not apply to structures that were in rivers before 2 September 2020.

The lawfulness of existing structures is outside of the scope of the NES-F and is a compliance issue for councils.

If an existing structure is not permitted under the regional plan, the council may require a consent to be obtained or the culvert removed. If consent is required, the NPS-FM as it relates to fish passage must be applied.

Any new structures must meet the requirements under the NES-F. If consent is required for any structure, then consideration must be given to the NPS-FM as it relates to fish passage.

4. Can you clarify the terms 'desirable/undesirable' in the NPS-FM section 3.26 Fish Passage?

Councils are expected to distinguish desirable and undesirable fish when identifying Freshwater Management Units (FMUs) values with their communities. Refer to the NPS-FM section 3.26.

These definitions are left open as identifying fish species as desirable or undesirable depends on a council's community values and local environmental outcomes set in regional plans. This is a local decision because local communities have different values regarding what fish are desirable where. For example, some communities may want to block koi carp. However, generally, the default is to provide unrestricted upstream and downstream passage to all species present. Fish passage connects all the habitats necessary for freshwater fish and other instream organisms like frogs, shrimps and aquatic invertebrates, to complete their life cycles, so consideration should be given to all species that use instream pathways.

There is clear direction in the [New Zealand Fish Passage Guidelines](#) on key species that could benefit from a built barrier or natural waterfall (see prioritised species list in table 6-1, page 101). The key undesirable species that could be considered at a more local scale with respect to the region/catchment/waterway are also identified (see section 6.1, page 98).

5. Which species does fish passage under the NES-F apply to?

The fish passage provisions are designed to apply to species that the community finds desirable.

However, generally, the default is to provide unrestricted upstream and downstream passage to all species present unless there are reasons not to. Fish passage connects all the habitats that are necessary for freshwater fish and other instream organisms like frogs, shrimps and aquatic invertebrates, to complete their lifecycles, so consideration should be given to all species that use instream pathways.

The same species may be desirable in some situations but undesirable in others (eg, salmonids may be desirable in some reaches for their fishing value but may be undesirable in others as they may predate on indigenous fish species). Where a species is not desired in a specific area, instream structures may preclude them. For example, it is possible to construct structures that indigenous fish can navigate but that will prevent the passage of introduced undesirable species such as koi carp. Councils may set more lenient rules than the NES-F if it is necessary in specific locations to exclude certain species to protect others.

6. Does the NES-F overall apply to flap gates without hinges? If yes, how does it apply to flap gates without hinges?

The policy intent is hinged flap gates are gates that open and close passively. The reference to a hinged gate refers to a pivot point not specifically a 'hinge'. A non-hinged flap gate may be one that slides in grooves or a track like a sluice gate. A non-hinged flap gate is not a "flap gate" under the NES-F. However, a non-hinged flap gate could be regulated if under the definition of a 'dam'.

The Building Act 2004 defines dams, and requires that all dams be constructed to meet the Building Code, regardless of their size and location. Any new dam or diversion structure proposed requires consideration by the Department of Conservation under the Freshwater Fisheries Regulations 1983 to determine if a fish facility is required or not (see [Fish passage authorisations: Apply for permits](#) on DOC's website).

Note the policy intent was not to regulate hinges, but to regulate gates and other structures that could impede fish passage. Passive gates are particularly bad for fish passage as they are generally located at or near the river mouth and so obstruct passage for the entire network.

Gates that are not hinged may meet the definition of other structures that may impede fish structures such as dams that are regulated under the NES-F or under the Resource Management Act 1991 (RMA).

7. Does NES-F Fish Passage Regulation 67 apply to fords that are not structures?

No.

You can ford a river without using a structure if the river is shallow enough to get across. However, it does not mean these areas are 'fords' for the purpose of the NES-F. The regulations are about managing structures that impact fish passage.

For the purposes of Regulation 67, fords are structures. Structure is defined in the RMA.

8. Under NES-F, Regulation 69(2)(c)(ii) what constitutes a significant natural hazard?

Please refer to the Resource Management Act 1991 (RMA) definition of natural hazards:

In this Act, unless the context otherwise requires, natural hazard means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.

9. How do the NES-F and NPS-FM apply to river reclamation?

The NES-F gives reclamation of riverbeds a discretionary activity status, meaning councils will have full discretion to approve of, set conditions for, or decline any resource consents that will involve reclamation. However, councils may opt to make stricter rules for reclamation in district or regional plans (such as making it a non-complying activity).

The NPS-FM requires councils to assess any activity that could lead to the loss of rivers. They will consider whether it is necessary to conduct the activity in that river environment (using the functional need test) and, if it is, whether the adverse effects of the activity can be managed, applying the effects management hierarchy. Alternative options which will not adversely impact the river should be thoroughly investigated (eg, planning a new development around rivers rather than reclaiming, piping or diverting them).

10. What is the definition of 'extent' and 'values' in relation to rivers?

The extent is determined when the community decides what values apply where in the Freshwater Management Units (FMUs).

The NPS-FM definition of FMUs is intentionally flexible so councils can determine the spatial scale best suited to managing freshwater in the specific circumstances of their region. Management includes setting values, objectives, limits, and undertaking freshwater accounting and monitoring.

11. Does the fish passage NES-F or NPS-FM requirements apply to all instream structures?

The NES-F regulations for fish passage do not apply to existing structures or to customary weirs used for fishing practices in line with tikanga Māori. Existing structures are those structures that were in the river or connected areas at the close of 2 September 2020, and subsequent alterations to them.

The NES-F does apply to all new consents from 3 September 2020. Any consents for the expansion of existing structures will fall under any relevant plan rules related to fish passage.

The NPS-FM will apply to existing structures through changes to regional plans, which will include requirements such as promoting the remediation of existing structures to allow for fish passage and gathering information on existing structures. How this is achieved will be determined through the plan change process.

12. What fish passage conditions apply to instream structures?

There are information requirements for all new instream structures (as defined in the NES-F) regardless of whether they are permitted or otherwise in the NES-F or relevant plan. These requirements vary by specific type of structure but were made to ensure the relevant regional council obtains all the necessary information on the design and performance of structures in relation to fish passage. Activities that require a resource consent will, at a minimum, need to be monitored and maintained. To identify and record barriers the Ministry endorses the use of the [Fish Passage Assessment Tool](#) to identify, assess and record existing instream structures.

Regional councils may set more stringent conditions than the NES-F standards for new structures.

13. Which instream structures are permitted, and which structures under the NES-F require a resource consent?

Under the NES-F, new culverts and weirs are permitted if they meet the conditions in the NES-F. If an activity does not meet those conditions, then new culverts and weirs become a discretionary activity. The placement, use, alteration, extension, or reconstruction of new passive flap gates is a non-complying activity.

Check the rules in your regional plan for the activity status for activities related to instream structures, as well as for ones not discussed here (like fords and dams).

14. When building a new instream structure, what information needs to be provided and to who?

If you are installing a new instream structure you need to provide information to your relevant regional council within 20 working days after the completion of the activity (as required by Regulation 62, NPS-F). There are specific requirements for the different types of structures (eg, you must report on the slope of a weir) but in general you will need to provide information on:

- the type of structure
- the geographical co-ordinates of the structure

- the flow of the river or connected area (whether none, low, normal, or high)
- whether the water is tidal at the structure's location
- at the structure's location the width of the:
 - river or connected area at the water's surface
 - bed of the river or connected area
- whether there are improvements to the structure to mitigate any effects the structure may have on the passage of fish
- whether the structure protects species, or prevents access by species to protect other species; the likelihood that the structure will impede the passage of fish; visual evidence (eg, photographs) that shows both ends of the structure, viewed upstream and downstream.

Local councils are responsible for providing information on existing instream structures.

To support the new requirements, we encourage councils and others to use the [Fish Passage Assessment Tool](#) developed by NIWA. We have endorsed the tool and fund the long-term hosting and support of the tool, including improvement upgrades to ensure this tool complies with the NES-F and NPS-FM.

The NPS-FM requires that:

“The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.”

The NES-F also directs councils to maintain records, assess structures, and develop rehabilitation strategies to fix them.

15. If you remediate a wetland or watercourses, is it required to provide a fish passage to these if it is a new habitat? For example a newly created wetland?

The policy intent is to provide for fish passage.

Sometimes it will be best to not provide passage for example, when stormwater retention and offline dry detention system no link to natural waterway.

Stormwater management ponds (refer to the NZ Fish passage guidelines) are designed to reduce downstream flooding and erosion.

Utilise dry detention ponds where fish passage is not needed or develop on offline wet pond system.

If have to have online wet pond design wetland with water levels controlled by weir at outlet and weir follow best practice in section 4.3; vertical risers are not recommended.

Fish passage definitions

Term	Definition
Baffles	Refer to page 142 of the NZ Fish Passage Guidelines Baffles are one of the tools available to help improve fish passage where there are instream barriers. In the context of fish passage, they can be described as any device used to disrupt the flow path of water (near the bed) to make it easier for fish to get past. Refer to spoiler baffles on page 86 of the NZ Fish Passage Guidelines.
Bed	Refer to RMA Part 1 Interpretation and application.
Bankfull	The water level or stage at which a stream, river or lake is at the top of its banks and any further rise would result in water moving into the flood plain.
Culverts	Refer to NES-F, Part 1 Preliminary provisions. Culvert is not defined in the RMA.
Extension of structures	Use typical dictionary definition (no RMA definition).
Ephemeral streams	This term is not used in the NES-F or NPS-FM. Refer to the ordinary dictionary meaning.
Fish habitat	This term is not defined in the NPS or NES. The dictionary defines fish habitat as any land or water in or beside the waterbody that fish need to complete their life cycle.
Fish Passage Assessment Tool	This is an app and website to record and assess instream structures and their impact on fish passage. The information is also added to a database that is accessible to the public. We have endorsed this tool and encourage its use and are hosting and supporting its improvement and maintenance.
Flap gate	Refer to NES-F definition.
Non-passive flap gate	Refer to NES-F definition.
Passive flap gate	Refer to NES-F definition.
Fords	Refer to the NES-F, Part 1 Preliminary provisions definition.
Functional need	Refer to NPS-FM 2020.
Riverbed and River (different permanent, intermittent and ephemeral)	Refer to NES-F definition of River: <i>river or connected area means—</i> <i>(a) a river; or</i> <i>(b) any part of the coastal marine area that is upstream from the mouth of a river</i>

	<p>Refer to Resource Management definition of river:</p> <p><i>River means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).</i></p>
Irrigation intakes (offline and online ponds)	<p>Normal dictionary meaning applies. 'Irrigation' is defined in the NES.</p>
Reclamation	<p>Refer to NES-f definition, Part 1Preliminary provisions, 3 Interpretation. In these regulations, unless the context otherwise requires,—)</p> <p><i>reclamation has the meaning given by the National Planning Standards 2019.</i></p>

Find out more

Read our [Fish passage fact sheet](#)

Read the [New Zealand Fish Passage Guidelines](#)



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