



Discussion document

Managing our wetlands in the coastal marine area

A discussion document on the application of the
National Environmental Standards for Freshwater
to the coastal marine area



Ministry for the
Environment
Manatū Mō Te Taiao



Te Kāwanatanga o Aotearoa
New Zealand Government

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This document may be cited as: Ministry for the Environment. 2022. ***Managing our wetlands in the coastal marine area: A discussion document on the application of the National Environmental Standards for Freshwater to the coastal marine area***. Wellington: Ministry for the Environment.

Published in August 2022 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-99-102559-3 (online)

Publication number: ME1669

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This document is available on the Ministry for the Environment website: environment.govt.nz.

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Section 1: Managing our wetlands in the coastal marine area – consultation on a preferred option

Overview

In the coastal marine area (CMA),¹ wetlands and estuaries are the meeting place of terrestrial and marine environments. They act as a buffer zone, protecting coastlines from erosion and filtering contaminants from upstream land use. They also provide ecosystem services, such as water filtration, carbon sequestration and flood protection. They are sources of mahinga kai and resources such as raupō, and are part of New Zealand’s network of waterways over which kaitiakitanga is exercised. They are often sites of cultural and spiritual significance.

The National Policy Statement for Freshwater Management (NPS-FM) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) set requirements for freshwater and its ecosystems, including the protection of wetlands found in the CMA.

Context: Why are we talking about this now?

The original policy intent of the NES-F, as agreed by Cabinet in 2020, was to restrict activities likely to cause the loss or degradation of all natural wetlands, including those in the CMA.

However, many councils and stakeholders initially interpreted the NES-F as applying only to natural *inland* wetlands (which are natural wetlands not in the CMA). They therefore continued to rely on coastal plans to regulate activities that affect wetlands within the CMA.

In November 2021, the High Court held in *Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated*² (the High Court decision) that the NES-F wetland provisions do apply to natural wetlands in the CMA.

The High Court decision has prompted stakeholders and councils to raise the implications of applying the NES-F wetland provisions over top of the New Zealand Coastal Policy Statement (NZCPS) and coastal plan rules (see [The regulatory framework](#) for further background).

Key issues

Two key issues have been identified.

- The physical extent to which the NES-F wetland provisions should apply within the CMA is unclear, as the ‘natural wetland’ definition can be interpreted as capturing a far greater area of the CMA than was the initial policy intent.

¹ CMA means the foreshore, seabed and coastal water, and the air space above the water, of which the seaward boundary is 12 nautical miles (the boundary of the territorial sea) and the landward boundary is the line of mean high water springs, except where that line crosses a river ([section 2, RMA](#)).

² *Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated* [2021] NZHC 3113.

- Applying the NES-F wetland provisions in the CMA could prevent or constrain activities unlikely to cause the loss or degradation of natural wetlands, which goes beyond the original policy intent.

The physical extent to which the NES-F wetland provisions should apply within the CMA is unclear

The original policy intent was that the NES-F apply to all natural wetlands, including ‘coastal wetlands’, preliminarily defined in the [Action for Healthy Waterways discussion document 2019](#) as ‘natural wetlands found around the margins of estuaries and intertidal areas, and include salt marsh and mangrove areas’.³

The NES-F relies on the definition of [natural wetland](#), as opposed to ‘[natural inland wetland](#)’, to indicate that the NES-F wetland provisions apply in the CMA. Due to the broad definition of natural wetland, the regulations can be interpreted as applying to a much larger proportion of the CMA than originally intended.

The High Court noted it was unlikely that the NES-F wetland provisions were intended to apply to the entire CMA (ie, from mean highwater springs to the outer limit of the territorial sea). But the physical extent of what constitutes a natural wetland within the CMA was not specified by the Court.⁴

The physical extent to which the NES-F wetland provisions apply in the CMA needs to be clarified. The application of the NES-F provisions beyond the areas originally intended is difficult and impractical for councils.

Applying the NES-F wetland provisions in the CMA could prevent or constrain activities unlikely to cause the loss or degradation of natural wetlands

The NES-F provisions (eg, earthworks, vegetation clearance and water takes/discharges), apply to a wide range of coastal activities. Some coastal activities that have previously been managed by regional councils through coastal plans are unlikely to fall within existing or proposed consent pathways in the NES-F. As the more stringent NES-F provisions apply, these activities are captured as prohibited or non-complying.

Councils and stakeholders have pointed to examples of activities where this is the case, in particular relating to: mangrove clearance; the construction of structures in the CMA; dredging associated with harbour maintenance; vessel use; and aquaculture operations. Further impacted coastal activities are likely to arise as the NES-F continues to be implemented.

Additionally, the take, use and discharge of water has less of an impact on wetlands in the CMA as compared to inland wetlands due to the influence of tides. The relevant NES-F regulations may unnecessarily constrain operations that require such activities in the CMA.

³ Ministry for the Environment. 2019. [Action for healthy waterways – A discussion document on national direction for our essential freshwater](#). Wellington: Ministry for the Environment. p 44.

⁴ *Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated* [2021] NZHC 3113 at [117].

While the initial policy intent was for the NES-F to protect wetlands in the CMA, the application of the NES-F goes beyond this intent by preventing appropriate coastal activities from occurring, especially those with minor effects.

More could be done to identify and address the specific risks faced by wetlands in the CMA. Issues such as sedimentation, harmful marine activities, emerging contaminants, and climate change are known to impact the CMA. The NES-F may not be the best means to address these issues.

Case study

This case study shows the impact of the NES-F on a recent coastal consent application.

Case study: Rangitane Maritime Development

In September 2021, the Far North District Council and Far North Holdings Limited applied to construct a public boat ramp facility at Rangitane, Kerikeri, through the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTA).

The FTA sets out criteria for projects that may be referred to an expert consenting panel or lodged with the Environmental Protection Authority (EPA). A project is not eligible to be referred or lodged if it includes an activity that is described as a prohibited activity in the Resource Management Act 1991 (RMA) or regulations made under the RMA, including a national environmental standard.

The Rangitane Maritime Development project was referred to a panel and lodged with the EPA prior to the High Court decision in *Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated*. However, following the decision, the activity status of the proposed reclamation earthworks within the project were reassessed and the panel determined that those aspects of the proposal are now prohibited activities under the NES-F. Therefore, the panel cannot progress the consent application.

This means the public boat ramp facility, which may have had minor effects on the environment, is unable to be built under the current NES-F settings.

The regulatory framework

National regulation of wetlands in the CMA

There are three pieces of national direction under the Resource Management Act 1991 (RMA) that contain provision for the management of wetlands in the CMA.

The National Policy Statement for Freshwater Management (NPS-FM)

The NPS-FM sets national direction for freshwater and its ecosystems. While the policies in the NPS-FM relate only to natural inland wetlands, there are requirements to manage impacts of up-catchment freshwater and land use on **receiving environments** – which include wetlands and estuaries in the CMA.

The requirements for receiving environments under the NPS-FM relate to managing the impacts on receiving environments from upstream. For this reason, they are distinct from the regulations in the NZCPS and NES-F, both of which currently regulate activities within the CMA.

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F)

The NES-F regulates activities that are likely to cause adverse effects on natural wetlands, including those within the CMA.

The NES-F regulates three things – vegetation clearance, earthworks and water takes/discharges – for select purposes (eg, construction of specified infrastructure, maintenance of wetland utility structures). These select purposes are provided for through consent pathways (eg, construction of specified infrastructure is discretionary). There are general non-complying or prohibited rules for any purpose not specifically provided for and for the activities likely to impact a natural wetland (eg, activities that would result in the complete or partial drainage of a natural wetland).

The New Zealand Coastal Policy Statement (NZCPS) and coastal plans

Activities in the CMA (including those in and around wetlands) are regulated by the NZCPS and addressed under coastal plans, driven by the matters set out in [section 12](#) of the RMA (which requires resource consent for activities not specifically permitted in coastal plans).

Activities that are undertaken in the CMA (eg, reclamation, drainage, building, maintenance of structures and foreshore/seabed disturbance) are addressed via coastal plan rules, which specify whether an activity is permitted or whether consent is required.

How the NES-F and NZCPS work together

Regulations in coastal plans must be read alongside the regulations in the NES-F. Where both the NES-F and a coastal plan regulate an activity, the more stringent regulation prevails and must be adhered to by resource users.

In the case of duplication or conflict between coastal plans and the NES-F, [section 44\(A\)\(5\) of the RMA](#) requires that councils amend existing or proposed coastal plans to remove the duplication or conflict as soon as is reasonably practicable.

How wetlands are defined

[The Resource Management Act 1991 \(RMA\)](#) defines ‘wetland’ as including permanently or intermittently wet areas, shallow water and land water margins.⁵

[The National Policy Statement for Freshwater Management 2020 \(NPS-FM\)](#) uses the terms ‘natural wetland’ (which is the RMA definition, subject to three exclusions⁶) and ‘natural inland wetland’ (which is a natural wetland not in the CMA).

[The Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020 \(NES-F\)](#) exclusively uses the term ‘natural wetland’, as its provisions apply to all natural wetlands, including those in the CMA.

[The New Zealand Coastal Policy Statement 2010 \(NZCPS\)](#) does not define wetland, or coastal wetland, but its policies require that councils manage coastal wetlands through provisions in regional coastal plans (coastal plans).

⁵ See the full definition of ‘wetland’ in [section 2, RMA](#).

⁶ See the full definition of ‘natural wetland’ at Subpart 3, clause 3.2(1) of the [NPS-FM](#).

Preferred option to amend the NES-F

The Ministry is seeking to address the above issues associated with the application of the NES-F wetland provisions to the CMA, and to ensure that the protection of natural wetlands in the CMA from loss and degradation is achieved effectively. Three approaches were considered in the development of this discussion document, which are discussed in detail under [Section 3: Interim Regulatory Impact Analysis – Options considered](#).

This discussion document seeks your feedback on the Ministry's preferred option, which is to amend the NES-F so that the wetland provisions do not apply to wetlands in the CMA ([Option 2](#)). This could be achieved through a simple amendment to definitions used in the NES-F.

AMEND THE NES-F SO THE WETLAND PROVISIONS DO NOT APPLY TO THE CMA

Replace all references to natural wetland in the NES-F with natural inland wetland and define 'natural inland wetland' by reference to the existing definition in the NPS-FM⁷. This would clarify that the NES-F wetland provisions no longer apply to natural wetlands in the CMA.

How wetlands in the CMA would continue to be managed

Wetlands in the CMA would continue to be managed through the NZCPS, coastal plans and section 12 of the RMA.

Councils would still be required to pursue integrated catchment management through requirements in the NPS-FM to manage freshwater and land-use in a way that mitigates adverse effects on receiving environments (which may include estuaries and the wider coastal marine area).

The Ministry has a work programme focussed on providing better outcomes for estuaries, which is currently in the planning stage. Within this work programme there will be scope to further consider protections for wetlands in the CMA. This is a separate work programme and will therefore have its own public consultation process.

This development of estuaries policy will also clarify the relationship between the NPS-FM and the NZCPS, and provide for better integration across freshwater and coastal management.

⁷ The NPS-FM defines 'natural inland wetland' as 'a natural wetland that is not in the coastal marine area' (3.21, [NPS-FM](#)).

Section 2: How to have your say

The Government welcomes your feedback on this consultation document, at <https://consult.environment.govt.nz/freshwater/managing-our-wetlands-in-the-coastal-marine-area>. The questions posed in this document are a guide only and all comments are welcome. You do not have to answer all the questions.

To ensure your point of view is clearly understood, you should explain your rationale and provide supporting evidence where appropriate.

Consultation questions

1. Do you agree that the current application of the NES-F to the CMA requires amendment? Why/why not?
2. Do you agree with the proposal to amend the NES-F wetland provisions to no longer apply to the CMA? Why/why not?
3. Do you think the wording changes proposed in the preferred option make it clear that the NES-F would no longer apply in the CMA? Why/why not?
4. Are there any reasons to prefer other options? If so, what are they?
5. Is there any additional relevant information that you think the Ministry should consider?

Timeframes

This consultation starts on 10 August 2022 and ends at midnight on 21 September 2022.

When the consultation period has ended, we will report back to the Minister for the Environment on submissions received and develop final policy advice that considers these submissions.

How to provide feedback

There are two ways you can make a submission:

1. via Citizen Space, our consultation hub, available at <https://consult.environment.govt.nz/freshwater/managing-our-wetlands-in-the-coastal-marine-area>
2. write your own submission.

If you want to provide your own written submission you can provide this as an uploaded file in Citizen Space.

We request that you don't email or post submissions as this makes analysis more difficult. However, if you need to, please send written submissions to Managing our wetlands in our coastal marine area, Ministry for the Environment, PO Box 10362, Wellington 6143 and include:

- your name or organisation
- your postal address
- your telephone number
- your email address.

If you are emailing your feedback, send it to WetlandsTeam@mfe.govt.nz as a:

- PDF, or
- Microsoft Word document (2003 or later version).

Submissions close at midnight on 21 September 2022.

More information

Please direct any queries to:

Email: WetlandsTeam@mfe.govt.nz

Postal: Managing our wetlands in the coastal marine area, Ministry for the Environment,
PO Box 10362, Wellington 6143

Publishing and releasing submissions

All or part of any written comments (including names of submitters), may be published on the Ministry for the Environment's website, environment.govt.nz. Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting of both your submission and your name.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to the Ministry for the Environment (including via email). Please advise if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 2020 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including the Ministry for the Environment. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in relation to the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

Section 3: Interim regulatory impact analysis

Context and related work programmes

The Ministry is currently proposing changes to the wetland provisions in the NES-F and NPS-FM as part of the work programme *Managing our wetlands*. This includes proposed amendments to the exclusions within the definition of a natural wetland, along with other proposals, including consent pathways for additional operations. Consultation on those changes closed on 10 July 2022, but information on them is still available in the [consultation section of the Ministry's website](#).

The proposal in this discussion document relates to, but is distinct from, that work as it relates specifically to whether the NES-F wetland provisions should apply to the CMA.

For additional background see [the regulatory framework](#) and other amendments being progressed (above in [Section 1](#)).

Future policy development for the protection of estuaries could result in options that also provide further protection for wetlands in the CMA. However, this policy development would occur through a separate process.

Policy problem

The policy problem is twofold.

- The physical extent to which the NES-F wetland provisions should apply within the CMA is unclear, as the 'natural wetland' definition can be interpreted as capturing a far greater area of the CMA than was the initial policy intent.
- Applying the NES-F wetland provisions in the CMA could prevent or constrain activities unlikely to cause the loss or degradation of natural wetlands, which goes beyond the original policy intent.

For a detailed description of these issues and how they have come about see [Section 1 – Key issues](#).

Objectives

The purpose of this analysis is to assess which option best addresses the policy problem set out above. The preferred option will best achieve the following objectives:

- Effectiveness
- Practicality
- Gives effect to Te Mana o Te Wai
- Takes into account Te Tiriti o Waitangi (the Treaty of Waitangi).

The criteria by which these objectives will be assessed, as compared to the status quo, are set out in [Section 3.4](#) below.

Criteria used to compare options to the status quo

The following criteria have been considered in assessment of whether the options meet the above objectives.

- a) **Effectiveness** – Does the option:
 - address activities most likely to cause loss and degradation of wetlands in the CMA
 - manage wetlands in an integrated way on a whole-of-catchment basis and considers the effects on receiving environments
 - support the objectives of the RMA, the NES-F, the NPS-FM and the NZCPS
 - treat regulated parties equally and fairly?
- b) **Practicality** – Is the option:
 - implementable and able to be understood by users
 - flexible – takes a risk-based approach and is tailored to the threats faced by a wetland in the CMA
 - accessible – interacts well with other relevant systems
 - trusted by all stakeholders
 - likely to achieve maximum benefits with minimum wasted effort or expense?
- c) **Gives effect to Te Mana o te Wai** – Does the option:
 - place the wellbeing of the water first, and promote values-based, holistic management to sustain the wellbeing of the people
 - acknowledge mātauranga Māori
 - give practical expression to the principles of Te Mana o te Wai?
- d) **Takes into account Te Tiriti** – Does the option:
 - take into account the principles of Te Tiriti
 - promote partnership and protect Māori rights/interests, and relationships with their taonga?

Limitations of analysis

The total area of the CMA that would be classified as natural wetland, or impacted by the 10-metre and 100-metre setbacks in the NES-F wetland provisions (under the [status quo](#) or [Option 1](#)), has not been determined. However, we are aware that under the status quo, the NES-F could be interpreted to apply to over 15,000 kilometres of the New Zealand coastline, out to a depth of several metres.

Costs associated with administering the regulations, consent applications and compliance have yet to be quantified. It is likely the costs will vary by region but they are expected to be substantial, particularly for those regions with large coastal areas, eg, Auckland and Northland.

The scope of this impact assessment is focussed on the question of whether the wetland provisions in the NES-F should continue to apply to the CMA. It does not make any wider

assessment of the NES-F or NPS-FM. These instruments were the subject of public consultation, and a significant body of analysis and advice, before being agreed by Cabinet in 2020 – they are not examined further in this document. Nor does this document consider the impact of any future work to come, as part of better protecting estuaries.

Te Tiriti

The options outlined in this interim regulatory impact analysis are of a limited scope, focussed on how the existing NES-F wetland provisions should apply (or not) to the CMA. The assessment of iwi/Māori interests is considered within the context of this limited scope of options.

The broader NES-F and its structure were subject to extensive engagement and consultation before being agreed by Cabinet in 2020.

Options considered

In working through viable options to address the [policy problem](#) set out above (and described in more detail in [Section 1](#)), we considered three possible approaches. These are discussed in full below and are as follows:

- [Retain the status quo](#): The NES-F continues to apply to the CMA (unchanged)
- [Option 1](#): Amend the NES-F to clarify where and how it applies to the CMA
- [Option 2](#): Amend the NES-F so its wetland provisions do not apply to the CMA

Retain the status quo: The NES-F continues to apply to the CMA (unchanged)

If the status quo is retained, uncertainty will remain about where in the CMA the NES-F wetland provisions apply due to the broad RMA definition of wetland and associated definition of natural wetland in the NES-F.

The current overlap between the NZCPS, coastal plan rules and the NES-F wetland provisions will also remain under the status quo.

For more detail about how the regulatory framework currently works see [Section 1](#).

Under the status quo, any person conducting an activity in the CMA must:

- determine if their activity falls within an area defined as a natural wetland; and, if so,
- comply with the most stringent activity status. If the NES-F is more stringent, that will apply. If the regional coastal plan is more stringent, it will apply; and
- ascertain which conditions apply. A plan rule can have conditions that deal with different effects of the activity regulated by a National Environmental Standard (NES) but if the plan's conditions deal with the same effects, then the NES prevails.

A wide range of coastal activities in or around natural wetlands would continue to be managed under the NES-F, and some coastal activities managed by coastal plans such as reclamation, dredging or mangrove management, are unlikely to meet the conditions under existing or proposed consent pathways in the NES-F.

Many activities would therefore be captured as prohibited or non-complying under the NES-F, where they would otherwise have been adequately and appropriately managed by coastal plans.

Councils would continue to be required to amend coastal plans where there is duplication with an NES-F provision as soon as reasonably practicable, even where activities would be more appropriately managed by coastal plans.

Retaining the status quo is likely to involve a substantive analysis for councils, require amendments to coastal plans and generate costs for councils and resource users. Many councils have told us they were unaware that the NES-F would apply to the CMA and therefore have not planned or budgeted for this work, which in some cases will be extensive.

Option 1: Amend the NES-F to clarify where and how it applies to the CMA

Option 1 is to amend the NES-F to clarify the physical extent to which the natural wetland definition (and therefore the NES-F wetland provisions) applies in the CMA and to amend the wetland provisions to reflect which rules are applicable to the CMA. This option would not alter the underlying position that the NES-F wetland provisions apply to the CMA.

The two changes would be to:

- clearly define what is a ‘natural coastal wetland’ for the purpose of the NES-F
- amend the NES-F to clarify which rules apply to ‘natural coastal wetlands’.

This would retain the NES-F wetland provisions in the CMA, but would clarify where and how they apply. The proposed amendments would alleviate some of the conflict/duplication between rules in coastal plans and the rules in the NES-F, but councils would still need to amend existing or proposed coastal plans.

Define a ‘natural coastal wetland’ in the NES-F

The Department of Conservation and the Ministry have collaborated with technical experts to develop a definition and to test the practicability of its application with a preliminary regional council working group. The definition developed is:

natural coastal wetland (coastal wetland) means a natural wetland that:

- is within the coastal marine area (CMA);
- is part of a tidal estuarine hydrosystem⁸; and
- does not exceed a depth of six metres at low tide.

The boundaries of a natural coastal wetland would be:

- the **inland boundary** of a natural coastal wetland is the inland boundary of the CMA; and
- the **seaward boundary** of a natural coastal wetland is drawn at the geographic line between the inlet constriction or the outer headlands and the 6-metre bathymetry contour⁹ within the coastal hydrosystem.

⁸ Hume T, Gerbeaux P, Hart DE, Kettles H, Neale D. 2016. [A classification of New Zealand’s coastal hydrosystems](#). Prepared for the Ministry for the Environment by the National Institute of Water and Atmospheric Research. Wellington: Ministry for the Environment.

⁹ This is consistent with the RAMSAR definition of a wetland which includes areas of saline water the depth of which at low tide does not exceed six metres.

Habitats such as saltmarsh, mangroves seagrass, and mud/sandflats would be included in the definition of natural coastal wetland. Marine environments such as open coast beaches, rocky reef and kelp forests would be excluded.

This definition would identify which areas of the coastal environment fall within the definition of natural coastal wetland and are therefore subject to the NES-F. The definition is implementable, as all proposed boundaries have already been mapped through various national projects.

Further context for what constitutes a coastal wetland, and the coastal hydrosystems classification system used to develop this definition, can be found in [A classification of New Zealand's coastal hydrosystems](#).

The preliminary regional council working group expressed concern that the proposed definition would capture the majority of an estuarine system (up to a depth of six metres) rather than just 'the margins of estuaries and intertidal areas and include saltmarsh and mangrove areas.'¹⁰ While the working group indicated some agreement with the definition from a scientific perspective, it did not agree with the application of the NES-F wetland provisions to such a broad area, due to the significant impacts that this would have on a range of coastal activities.

The proposed definition captures a range of coastal hydrosystems and wetland types. CMA wetlands are subject to different threats and activities dependent on wetland type. Therefore, some NES-F wetland provisions may apply appropriately to one type of CMA wetland captured by the definition, but not to others (eg, a saltmarsh, but not to a shallow harbour).

Amend the NES-F to clarify which rules apply to natural coastal wetlands in the CMA

Option 1 would also make the following changes to the NES-F rules so that they apply more appropriately to natural coastal wetlands:

- amend the take, use, damming, diversion or discharge of water rules so they only apply to natural inland wetlands (and not to natural coastal wetlands)
- provide an exemption for mangroves from vegetation clearance rules in the NES-F (as these are managed to a more nuanced degree via coastal plan rules)
- clarify that rules managing sphagnum moss harvesting, and arable and horticultural land use, only apply to natural inland wetlands (and not to natural coastal wetlands).

Take, use, damming, diversion or discharge of water

Amend the NES-F so that the rules regarding the take, use, damming, diversion or discharge of water in the NES-F apply only to natural inland wetlands, and not natural coastal wetlands.

Under the proposed definition above, natural coastal wetlands would all be geographically within areas of tidal influence, therefore water takes and discharges have minimal impacts on CMA wetlands. All other natural wetlands (eg, brackish dune wetlands) are covered as natural inland wetlands by the NES-F, as they exist above the inland CMA boundary.

¹⁰ Ministry for the Environment. 2019. [Action for healthy waterways – A discussion document on national direction for our essential freshwater](#). Wellington: Ministry for the Environment. p 44.

Vegetation clearance

Provide an exemption for mangroves from vegetation clearance rules in the NES-F.

Mangroves are an indigenous species found only in the four northern regions and expansion is a known consequence of land-based human activity (eg, sedimentation and nutrification). Mangroves and mangrove seedlings are removed for a variety of purposes, including to maintain roading sight lines or prevent mangrove establishment in key wildlife habitats. In some instances, rules around managing mangroves in coastal plans have been co-designed with communities and have community group investment.

Currently under the NES-F, permitted and restricted discretionary activities that involve vegetation clearance apply to all species under the NES-F – both exotic and indigenous vegetation. However, many situations where mangroves can be cleared under coastal plans would become non-complying under NES-F regulation 54(a).

Councils are concerned about the non-complying rule overriding detailed coastal plans that have a rule structure nuanced to uses and outcomes in the CMA.

This option would leave the coastal plan rules developed under NZCPS, and negotiated by regional councils with their communities, as the regulatory tool for managing mangroves.

Earthworks

Earthworks for the construction or maintenance of structures within the CMA range from permitted to prohibited activity status in coastal plans. Councils' interpretation of NES-F regulation 54(b) of the NES-F is that all coastal activities leading to land disturbance would become non-complying.

The full implications for coastal activities and structures (eg, wharfs, jetties or sea walls) are not fully understood at this stage. A detailed analysis of how, or if, coastal activities or structures can be incorporated into existing consent pathways (eg, 'wetland utility structures' or 'specified infrastructure') would be required.

Other consent pathways

Amend the NES-F to clarify that sphagnum moss harvesting (r48–49) and arable and horticultural land use (r50) apply only to 'natural inland wetlands' and not to natural coastal wetlands.

Note that the new consent pathways being proposed through the *Managing our wetlands* work programme (ie, for quarrying, fills, mineral mining, urban development) are proposed to only apply to natural inland wetlands.

No further amendment has been identified for the following consent pathways, and the relevant rules would apply to all natural wetlands (both inland and coastal):

- restoration of natural wetlands (r38–39)
- scientific research (r40–41)
- natural hazard works (r51)
- other activities (r54).

Address overlap with other regulations and legislation

Other coastal activities captured by equivalent RMA regulations that create 'land disturbance' may be inadvertently captured as non-complying in coastal wetlands by the NES-F. For example, vessel use and discharges, or aquaculture activity and structures.

To ensure these activities remain without conflict, a new regulation in the NES-F would state that the NES-F is subject to:

- [National Environmental Standards – Marine Pollution 1998](#); and
- [National Environmental Standards – Marine Aquaculture 2020](#).¹¹

Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA

This option would mean that the NES-F wetland provisions do not apply to wetlands in the CMA. It could be achieved through a simple amendment to the NES-F to replace references to 'natural wetlands' with references to 'natural inland wetlands'.

This option would resolve ambiguity about where the NES-F wetland provisions apply in the CMA and would not require further policy work to define natural wetlands within the CMA.

This option also addresses the issue that the NES-F does not appropriately manage some activities in the CMA. It alleviates workability issues associated with some appropriate coastal activities being constrained by the more stringent prohibited or non-complying activity status in the NES-F, when they were effectively and appropriately managed through coastal plans.

It would also remove the regulation of activities (under the NES-F), such as the take, use and discharge of water, which do not require regulation in the CMA, due to tidal influence.

Wetlands in the CMA would continue to be managed through the NZCPS, existing coastal plans, and section 12 of the RMA.

Councils would also have ongoing requirements under the NPS-FM to provide for an integrated management approach, including recognition of, and objectives to address, the impacts of freshwater and up-catchment land use, on receiving environments – which include estuaries and the wider coastal marine area.

Non-regulatory options

We do not consider that non-regulatory options (such as technical guidance and support for councils) sufficiently address the implementation challenges outlined in this document.

¹¹ This would be similar to the existing regulation 7 in the NES-F, which states that the NES-F is subject to the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.

Comparative analysis of options against the status quo

Table 1: Comparative analysis of Option 1 and Option 2 against the status quo

Criteria	Status quo	Option 1: Amend the NES-F to clarify where and how it applies to the CMA	Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA
Effectiveness	0	<p>+</p> <p>Addresses some activities likely to cause loss or degradation of wetlands in the CMA by retaining some stringent regulatory provisions under the NES-F for the protection of natural coastal wetlands.</p> <p>Provides for integrated catchment management by enabling councils to develop plan rules that appropriately manage the impacts of freshwater and land use on their receiving environments (requirements to do so remain under the NPS-FM).</p> <p>Supports the requirements of the RMA, NPS-FM and NES-F, but requirements in the latter will continue to overlap with the NZCPS, in some instances inappropriately.</p> <p>Despite the amendments, the NES-F rules will still overlap with regional coastal plan rules, leading to duplication or conflict. That could threaten regional council objectives and may result in some activities being subject to overly stringent rules in the NES-F, instead of more appropriate coastal plan rules.</p>	<p>+</p> <p>Addresses some activities (through identification and associated rules in coastal plans) that are likely to cause loss and degradation of wetlands in the CMA.</p> <p>Would remove rules that are ineffective at regulating impacts in the CMA, eg, water takes and discharges.</p> <p>Provides for integrated catchment management by enabling councils to develop plan rules that appropriately manage the impacts of freshwater and land use on their receiving environments (requirements to do so remain under the NPS-FM).</p> <p>Supports the requirements of the RMA and NPS-FM but recognises that the requirements in the NES-F may be less appropriate for managing adverse effects on wetlands in the CMA than other national direction (coastal plans under the NZCPS).</p> <p>Removes overlap with coastal plan rules and supports regional councils to achieve their objectives through retaining coastal plans as the primary tool for wetlands in the CMA.</p>
Practicality	0	<p>+</p> <p>Reduces some of the duplications or conflicts between the NES-F and coastal plan rules, but the remaining regulatory regime is complex and may be difficult for users to understand.</p> <p>The NES-F is tailored to natural inland wetlands and does not take a risk-based approach for wetlands in the CMA.</p> <p>Amending the NES-F wetland provisions to address some of the known workability issues when applied to the CMA should minimise the need for</p>	<p>++</p> <p>Resolves workability issues associated with applying the natural wetland definition in the CMA, and provides clarity for regulated parties and regulators.</p> <p>Section 12(1) of the RMA restricts resource use activities in the CMA unless expressly allowed by a national environmental standard, a rule in a regional coastal plan or a resource consent.</p>

Criteria	Status quo	Option 1: Amend the NES-F to clarify where and how it applies to the CMA	Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA
		<p>councils to amend existing or proposed coastal plans, as the amendments should address duplication or conflict between the NES-F and coastal plans.</p> <p>The natural coastal wetland definition will provide some clarity as to where the NES-F wetland provisions apply in the CMA but is likely to still require substantive guidance and may continue to result in broader areas being captured than was the initial policy intent.</p> <p>Issues remain with defining a wetland in the CMA so that the regulations would appropriately apply, eg, some regulations may apply appropriately to a saltmarsh but not to a shallow harbour.</p> <p>Retains the existing framework which is causing conflict and confusion due to the application of two separate management systems and associated rules in the CMA, under the NES-F and coastal plans under the NZCPS.</p> <p>Does not provide for maximum benefit, as the NES-F does not regulate the full range of threats to wetlands in the CMA but is likely to require substantial effort from councils to amend plan rules.</p>	<p>The NZCPS and coastal plan rules take a risk-based approach for most activities in the CMA, including those likely to impact natural wetlands. Existing coastal plan rules that are developed for the circumstances within regions continue to apply.</p> <p>Avoids the necessity for councils to amend their plans to avoid duplication between NES-F and coastal plan rules under s44(A)(5) of the RMA.</p> <p>Interacts well with the existing framework where the NZCPS manages activities in the CMA while the NPS-FM manages up-catchment land use and freshwater to achieve best outcomes for receiving environments.</p> <p>Limits the application of regulations that already underwent a full consultation process. However, there was not a common understanding of the application of the NES-F in that previous consultation, so this present consultation seeks feedback on this, with clarity about the proposed application.</p> <p>Minimises effort and expense to councils, and allows for a more nuanced approach to managing threats to wetlands in the CMA through the NZCPS and coastal plan rules.</p>

Criteria	Status quo	Option 1: Amend the NES-F to clarify where and how it applies to the CMA	Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA
Gives effect to Te Mana o te Wai	0	<p>0</p> <p>Removes some of the NES-F wetland provisions in the CMA, providing more stringent protection of freshwater in these environments.</p> <p>Promotes a holistic approach by overlapping freshwater and coastal management tools.</p> <p>NES-F provisions may over-ride coastal plan rules developed in consultation with communities and tangata whenua to recognise mātauranga Māori and region-specific tikanga.</p> <p>Gives practical expression to some principles of Te Mana o te Wai in line with the status quo.</p>	<p>0</p> <p>Removes all NES-F wetland provisions in the CMA, but retains the protections for wetlands in the CMA as freshwater receiving environments under the NPS-FM.</p> <p>Recognises that the NES-F may not address the key threats or values associated with wetlands in the CMA .</p> <p>Removes provisions in the NES-F that could over-ride coastal plan rules developed in consultation with communities and tangata whenua, and ensures that mātauranga Māori and region specific tikanga can continue to be recognised through coastal plans.</p> <p>Gives practical expression to some principles of Te Mana o te Wai in line with the status quo.</p>
Takes into account Te Tiriti o Waitangi (the Treaty of Waitangi)	0	<p>0</p> <p>The remaining NES-F wetland provisions will continue to cut across regional coastal plan rules that have had input from Te Tiriti partners.</p> <p>At this stage, no further engagement has been undertaken with our Te Tiriti partners to understand the possible impact on their rights and interests in the CMA.</p> <p>Retains regulation 37 of the NES-F, that nothing in the regulations applies to the customary harvest of food or resources undertaken in accordance with tikanga Māori. Does not provide scope for the recognition of other activities that may be undertaken in accordance with tikanga Māori in the CMA.</p>	<p>+</p> <p>Removal of the NES-F from the CMA will allow for the unobstructed management of wetlands in the CMA through coastal plans. Under the RMA and NZCPS, development of coastal plan rules require councils to effectively consult with Te Tiriti partners. An example of where a regional council has adopted a partnership approach to environmental management in the CMA is the Ōhiwa Harbour Strategy with the Bay of Plenty Regional Council.</p> <p>Maintains regulation of wetlands in the CMA at a regional and local level, where mana whenua can input local knowledge to best protect local values and environmental objectives for coastal wetlands.</p> <p>Enables regional councils (through coastal plans) to recognise full expression of, and provision for, mātauranga Māori, tikanga Māori and te ao Māori in the CMA, without being constrained by the NES-F.</p>
Overall assessment	0	<p>+</p> <p>Option 1 could not be progressed under timeframes for the <i>Managing our wetlands</i> work programme as it would require further development, collaboration and consultation. The amendments would not be in place in until</p>	<p>++</p> <p>Option 2 could be progressed alongside the proposed changes to the wetland provisions in the NES-F and NPS-FM as part of the <i>Managing our wetlands</i> work programme. The amendments could be in place by late 2022.</p>

Criteria	Status quo	Option 1: Amend the NES-F to clarify where and how it applies to the CMA	Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA
		<p>later in 2023. Ongoing workability issues for regulated parties and regulators would remain in the interim.</p> <p>The NES-F wetland provisions may not be the most effective tool to achieve the Government’s objectives for wetlands in the CMA as the NES-F is broad in its application to the CMA and limited in its capability to effectively regulate the range of activities that occur in or near wetlands in the CMA.</p> <p>Applying the NES-F wetland provisions in the CMA is not practical and even under this option, which leads to a complex and ambiguous regulatory regime that is unlikely to enhance the benefits of coastal plan rules.</p> <p>It gives effect to some principles of Te Mana o te Wai, but is not a holistic way to manage a wetland in the CMA, and further engagement with Te Tiriti partners would be needed to better incorporate mātauranga Māori and understand potential impacts on rights and interests in the CMA.</p>	<p>This would provide a more immediate and effective resolution, and greater clarity for regulated parties and regulators.</p> <p>Addresses concerns raised by regional councils regarding planning, consenting and compliance in the CMA, and reduces costs to councils and applicants. Protection continues through the NZCPS and existing plan rules.</p> <p>This option recognises that the regulation of vegetation clearance, earthworks and land disturbance, and water takes and discharges through the NES-F wetland provisions may not be appropriate for wetlands in the CMA. It acknowledges that threats and community objectives and outcomes for wetlands in the CMA may be best managed through tailored rules in coastal plans.</p> <p>It upholds a regional risk-based approach to managing wetlands within the CMA, which provides scope for regional councils (through coastal plans) to determine (and consult with their communities and Te Tiriti partners on) what activities should be regulated to best protect wetlands in the CMA.</p>

Example key for qualitative judgements:

- | | | | |
|----|--|----|--|
| ++ | much better than doing nothing/the status quo | - | worse than doing nothing/the status quo |
| + | better than doing nothing/the status quo | -- | much worse than doing nothing/the status quo |
| 0 | about the same as doing nothing/the status quo | | |

Which option is most likely to address the problem?

Analysis of options

Retaining the status quo would mean the ambiguity around the physical extent to which the NES-F wetland provisions apply to the CMA would remain. Councils would also face the cost of amending existing or proposed coastal plans to remove duplication or conflict with the NES-F, even where activities were more appropriately managed by coastal plan provisions.

Option 1 would go some way to addressing this, but would not resolve all potential conflict. As additional conflicts emerge over time, subsequent amendment would be required to address the ongoing implications of applying the NES-F to the CMA.

There are likely to be further instances, beyond those addressed in Option 1, where coastal plan rules and NES-F rules conflict, leading to the requirement for councils to amend their coastal plans under section 44(A)(5) of the RMA and more stringent provisions applying, even if this is not appropriate.

Even with a new definition of natural coastal wetland introduced under Option 1, it is likely that uncertainty over natural coastal wetland identification would remain an issue. Substantive guidance would be needed for councils and resource users to help determine if a habitat is a natural coastal wetland.

We further note that the NES-F regulations, even if amended under Option 1, may be insufficient to fully address the wide range of threats that impact wetlands in the CMA. The risks to wetlands in the CMA are different from the risks to inland wetlands. The NES-F is well structured to address risks to inland wetlands, but does not effectively address coastal risks specific to wetlands in the CMA (eg, sedimentation, marine activities, climate change).

We consider that coastal plans under the NZCPS and section 12 of the RMA remain the best mechanisms for managing the range of impacts on natural wetlands in the CMA at the present time. While more could be done to improve the management and protection of CMA wetlands in the future, it is apparent from the uncertainty and workability issues under the current application of the NES-F wetland provisions to CMA wetlands, that the NES-F is not the appropriate tool for achieving this.

Option 2, to amend the NES-F so its wetland provisions do not apply to the CMA, is the preferred option.

Estimated costs and benefits of the preferred option (Option 2)

An initial assessment of the estimated costs and benefits of Option 2 to amend the NES-F so that it no longer applies to the CMA, is set out below.

Regional councils: Option 2 will minimise costs to regional councils associated with administering the wetland provisions within the CMA, and avoid the need for councils to update existing or draft coastal plans to address duplication or conflict with the NES-F.

Resource users: Option 2 will reduce costs to resource users associated with consent application fees under the NES-F. It will also mitigate the legal risk of resource users

inadvertently undertaking activities that are captured as non-complying under the NES-F, but set out as permitted, controlled, restricted discretionary or discretionary in coastal plans.

Central government: Option 2 provides certainty about where the NES-F applies and simplifies regulatory processes. It will reduce costs in the system associated with a dual layer of regulatory policy by relying on coastal plan rules and section 12 of the RMA, which regulate activities and impacts on wetlands in the CMA.

Delivering the preferred option

Final Cabinet decisions on the full package of wetland amendments will be supported by a final regulatory impact statement and section-32 evaluation for all amendments. Cabinet consideration and gazettal could occur in late 2022, and could be progressed alongside the policy proposals within the *Managing our wetlands* process that is amending specific wetland provisions in the NES-F and NPS-FM.

Updated guidance will support the implementation of the full package of amendments to the wetland provisions in the NES-F and NPS-FM.