Regulatory Impact Statement: Changes to wetland regulations (inland wetlands)

Coversheet

Purpose of Document	
Decision sought:	Cabinet approval for amendments to the provisions in the National Policy Statement for Freshwater Management 2020 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 that relate to inland wetlands.
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon David Parker, Minister for the Environment
Date finalised:	17 November 2022

Problem Definition

Three problems have been identified.

(1) The definition of 'natural wetlands' in the National Policy Statement for Freshwater Management 2020 (NPS-FM) is unclear and being interpreted inconsistently by councils. This is leading to significant costs and uncertainty for applicants for resource consents; and in some instances, more land is being classified and regulated as 'natural wetlands' than was intended, unnecessarily restricting some existing types of land use (primarily farming).

(2) Some provisions in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) result in activities proposed in or around natural wetland areas, such as landfills, water storage and urban development, being classified as non-complying activities (and hence deterred by significant uncertainty and high costs of obtaining a consent), or subject to outright prohibition. These activities may contribute to the social and economic needs of New Zealanders; and in some cases would have minimal effects on a natural wetland or could generate net gains in the extent and value of wetlands through offsetting.

(3) Wetlands restoration is subject to unnecessarily strict and expensive consenting requirements under the regulations, and there are no provisions for consenting related activities such as wetland maintenance and biosecurity.

There are also several technical changes intended to clarify the intent of existing regulations.

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Executive Summary

This Regulatory Impact Statement is intended to assist Ministers in decisions about the regulation of inland natural wetlands.

The NPS-FM and the NES-F were introduced in 2020 as part of the Essential Freshwater regulatory package. The overall policy direction set out in the NPS-FM is that natural wetlands are important and should be protected; it aims to embed long-term change through regional plans, including policies to protect and restore wetlands. The NES-F sets out the RMA status and resulting consenting processes ('consent pathways') for certain activities in and around natural wetlands.

After the NPS-FM and the NES-F were introduced, the Ministry for the Environment regularly engaged with local government and industry and other stakeholders to identify issues with implementation of the natural wetlands provisions. This engagement highlighted the problems set out above, which have arisen largely because the drafting of the NES-FM and the NPS-F was not entirely consistent with the original policy intent.

The impact of these problems is that unnecessary costs are generated as a result of ambiguities in the regulations, and a number of beneficial activities are discouraged by regulatory costs (or in some instances, subject to outright prohibition). Restricting these activities does not necessarily lead to enhanced protection of natural wetlands.

In response to this, the Ministry engaged in consultation with affected parties during 2021 and 2022, initially to determine the magnitude of the problems and whether they justify regulatory change; and subsequently, to test options and proposed solutions below:

Option 1: remove 'prohibited activity' status in regulation 53, which, for activities in or around a natural inland wetland that do not have an existing consent pathway under the regulations, would enable applicants to seek consents for them as 'non-complying activities'. **(Not recommended)**

Option 2: amend the definition of 'natural wetland' to improve clarity and bring the coverage of the regulation into line with the original policy intent. A minor extension, to protect habitats of endangered species, is also proposed. **(Recommended)**

Option 3(a): provide additional consent pathways for significant activities, by:

- provision of new consent pathways for quarrying, landfills and cleanfills fills, extraction of minerals and ancillary activities,[1] and urban development
- including water storage facilities, ski area infrastructure, and defence activities in the definition of 'specified infrastructure' (which already has a consent pathway).

(Recommended)

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[1] with applications for resource consents for coal mining limited to existing mines, and for thermal coal mines, subject to a sunset clause of 31 December 2030.

Option 3(b): better provide for wetland restoration and related activities, by extending relevant provisions to include 'wetland maintenance' and 'biosecurity', and clearly stating that councils must not charge applicants for plans to undertake these activities.

(Recommended)

We assessed the options against the following criteria:

- consistency with the obligations of Te Mana o te Wai and the NPS-FM
- providing a clear understanding and consistent application of regulatory requirements
- ensuring activities are regulated proportionately to their potential impacts on natural wetlands
- not generating unnecessary or unfair costs to stakeholders from uncertain and/or inappropriate requirements

We concluded that Option 1 is better than the status quo on some criteria, worse on others and not clearly better or worse overall. But options 2 and 3 represented a clear improvement over the status quo in terms of these criteria.

Options 1 and 3(a) are alternative ways to address problem (2), to enable significant. activities to be undertaken in natural wetland areas. Option 3(a) is preferred as it is more clearly focussed on identified problems, and provides consent pathways (as discretionary or restricted discretionary activities) that are appropriate in light of potential impacts.

Options 2 and 3(b) address problems (1) (uncertainty in the current definition of 'natural wetlands') and (3) (unnecessarily strict and expensive provisions for wetland restoration) respectively.

In all cases, consenting would be subject to strengthened gateway tests in the NPS-FM and application of the effects management hierarchy.

Views of people making submissions during the consultation were mixed. Submitters seeking a consent pathway were supportive of the proposals, but many others viewed the changes as a weakening of the regulations.

We consider that the recommended options would effectively address the problems with the status quo, and as such are preferable to a 'do nothing' scenario. They would better enable desirable activities to be undertaken in natural wetland areas while continuing to deliver a high level of protection for them.

Amendments to the NPS-FM and NES-F will be required to implement these recommendations.

Limitations and Constraints on Analysis

The options in this analysis are those that upon which we consulted as alternatives to the status quo, as a result of Ministerial direction. No other options were identified through the consultation process, although where additional problems were identified by submitters, measures to address these problems have been included in the relevant options

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During consultation, information about the negative effects of the current regulation was provided in the form of case studies of specific developments. This information has been incorporated in the document where relevant.

We consider the overall magnitude of the problems identified in this analysis and the total resulting costs among councils and regulated parties are significant from a national perspective, acknowledging that there are no reliable estimates of total impacts (eg how widespread the problems identified in the case studies are).

A critical assumption throughout this analysis is that if a wider range of activities were allowed in or around natural wetlands, the impacts of these activities can be managed effectively through consistent application of the gateway tests and the effects management hierarchy (EMH) in the NPS-FM.

This assumption is subject to material uncertainty. A significant minority of submissions on the proposed changes considered that the effectiveness of these instruments is unproven and relying on them more widely poses an unacceptable risk of further wetlands losses.

We acknowledge this argument, but consider that on balance, the risks are acceptable in light the need to address the problems identified.

We note that the gateway tests and the EMH are relatively new and have only been in use since the introduction of the NPS-FM in 2020; hence there is limited experience with which to assess their effectiveness. It is intended to strengthen these instruments through amendments to the NPS-FM that will specify how councils are expected to apply the EMH, and enable them to permit aquatic offsets or compensation for wetlands loss only in accordance with principles set out in new appendices.

Nevertheless, when changing any regulation to enable a wider range of activities, there is inherently some uncertainty about the effectiveness of instruments intended to deal with negative impacts.

We propose to carefully monitor the potential risks of these changes through ongoing engagement with councils and other stakeholders. This is intended to assess whether the changes are working as intended, or whether they are resulting in unacceptable impacts on natural wetlands.

On balance we consider the evidence is sufficiently robust for Ministers to be confident of the conclusions of this analysis.

Responsible Director

Nik Andic
Manager, Land and Water Systems
Ministry for the Environment

17 November 2022

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Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	The Regulatory Impact Analysis Review Panel (the Panel) at the Ministry for the Environment has reviewed the Regulatory Impact Statement on changes to wetland regulations (inland wetlands). The Regulatory Impact Statement (RIS) clearly sets out the problem definition, a full set of options, is framed by assessment criteria based on the intended outcomes of the policy intervention and is supported by engagement and consultation with key stakeholders and the public. The Panel considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria as it provides adequate information on the cost and benefits to industries but does not provide the equivalent environmental cost on inland wetlands. The analysis made assumptions that the statutory gateway tests and effects management hierarchy will be applied effectively and manage the environmental risks.

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Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. New Zealand's wetlands are at risk. Some 90% of wetlands have been lost since human settlement began and their degradation and loss is ongoing.[2]

2. Although wetlands have been a national priority for protection since the passage of the RMA in 1991, almost 5,400 hectares of freshwater wetland was destroyed as a result of human activities between 1996 and 2018, with the main driver being conversion to pasture. The scale of wetland restoration, with a gain of just 261 hectares, is insignificant in the face of such extensive losses.

Regulatory context

3. The National Policy Statement for Freshwater Management 2020 (NPS-FM) and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) are the primary instruments through which wetlands are managed and protected.

4. The NPS-FM and NES-F were developed as part of the *Essential Freshwater* package in 2020. Further background detail and analysis relating to the development of natural wetlands policy and regulations can be found on the Ministry for the Environment (the Ministry) website. In particular, the regulatory impact assessment[3] and section 32 evaluation report[4] prepared as part of that wider programme set out detail about the intent of natural wetland protections, and analysis of options at that time.

5. The package is now being implemented. The Ministry has been engaging with stakeholders to identify issues as they arise, and to ensure councils and others have the support needed to effectively implement the package.

6. The over-arching policy framework for the Essential Freshwater package is *Te Mana o te Wai*. This refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and wellbeing of the environment. Te Mana o te Wai is about preserving the balance between water, the wider environment and the community.

7. There is a hierarchy of obligations in Te Mana o te Wai that prioritises:
   - first, the health and wellbeing of waterbodies and freshwater ecosystems
   - second, the health needs of people (such as drinking water)
   - third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.

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2 Denyer, Karen and Monica Peters (2020) *The Root Causes of Wetland Loss in New Zealand: An Analysis of Public Policies and Processes*, Wetland Trust, October 2020 ROOT-CAUSES-OF-WETLAND-LOSS-IN-NZ_Jan-2021.pdf (wetlandtrust.org.nz).

3 Action for healthy waterways part 2: Detailed analysis | Ministry for the Environment

4 Action for healthy waterways: Section 32 evaluation report | Ministry for the Environment

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8. Policy 6 of the NPS-FM requires that

'*there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted*.'

9. The NPS-FM uses a subset of the RMA wetland definition[5] to define 'natural wetlands':

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

(a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or

(b) a geothermal wetland; or

(c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling.[6]

10. Currently the NPS-FM provides a consent pathway for a limited number of purposes, which enables people to apply for consent to undertake the following activities, within a natural wetland or associated buffer (up to 100 metres):

- earthworks and land disturbance
- vegetation clearance
- the discharge, take, use, damming and diversion of water

11. Consents are subject to the following tests – commonly referred to as the '*gateway tests*':

- there is a functional need to operate at that location
- the operation will provide significant national or regional benefit
- the effects management hierarchy (below) has been sequentially applied.

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5 The definition of 'wetland' in section 2 of the Resource Management Act 1991 (RMA) is:

"*permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.*"

6 Note that a separate proposal to remove wetlands in the Coastal Marine Area (CMA) from the coverage of the NES-F means that the term "natural wetland" would no longer exist in the NPS-FM /NES-F and would be replaced by the term "natural inland wetland".

Box 1: The Effects Management Hierarchy

The effects management hierarchy is defined in the NPS-FM as follows:

> ***effects management hierarchy****, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:*
>
> *(a) adverse effects are avoided where practicable; then*
>
> *(b) where adverse effects cannot be avoided, they are minimised where practicable; then*
>
> *(c) where adverse effects cannot be minimised, they are remedied where practicable; then*
>
> *(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; then*
>
> *(e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; then*
>
> *(f) if aquatic compensation is not appropriate, the activity itself is avoided.*

12. Activities that can be granted a resource consent in a natural inland wetland area are listed in clause 3.22(a) of the NPS-FM and include:
    - the customary harvest of food or resources in accordance with tikanga Māori
    - restoration activities
    - scientific research
    - the sustainable harvest of sphagnum moss
    - the construction or maintenance of wetland utility structures
    - the maintenance and operation of specified infrastructure and natural hazard works (as defined in the NES-F).
13. The NES-F contains the rules for what activities can and cannot occur within natural wetlands or associated buffers (up to 100m), and attributes RMA statuses to them (permitted, discretionary, restricted discretionary, non-complying or prohibited) dependent on the nature of the activity. This status in turn determines the processes applicants must follow to apply for and obtain a consent ('consent pathways').
14. The NES-F also provides for consents for 'specified infrastructure' including regionally significant infrastructure listed in a council plan, flood control works, and 'lifeline utilities' (eg roads, "three waters" pipes, ports (air and sea), electricity transmission infrastructure, rail etc).
15. Where activities are permitted, they must comply with the conditions set out in Regulation 55.

Stakeholder engagement

16. As a result of the engagement undertaken during implementation of the Essential Freshwater package, several problems about the application of the NPS-FM and NES-F to inland wetlands were raised by councils and other stakeholders.

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17. As a result of this feedback, the Ministry concluded that there were potential problems in three areas - the definition of 'natural wetlands', consent pathways for some activities, and provisions affecting wetlands restoration – that might justify changes to the NPS-FM and NES-F. It undertook policy work and consultation to examine the issues in more depth, assess whether regulatory changes might be needed, and test potential solutions.

18. Throughout this and subsequent consultation processes, the Ministry sought information from stakeholders about the practical consequences of the issues raised, and satisfied itself that the problems merit changes to the regulation.

19. In response to concerns about interpretation of the 'natural wetlands' definition in the NPS-FM, the Ministry drafted guidance on the definition early in 2021. This was followed by an implementation workshop supported by technical expertise from councils, Department of Conservation (DOC) staff and Manaaki Whenua Landcare Research; and release of an exposure draft of the guidance to a technical working group, council special interest group networks, and a mailing list of practitioners for feedback.

20. Based on the above, guidance on the existing wetland definition was released in September 2021 to coincide with consultation on draft changes to the definition, and to provide a counterfactual to the proposed amendments.

21. In August 2021, the Government agreed to consult on amendments to the wetland provisions in the NPS-FM and NES-F. An interim regulatory impact assessment[7] and discussion document[8] were developed to accompany public consultation which occurred from 1 September to 27 October 2021. The discussion document included proposed changes to the NPS-FM and the NES-F to address the identified problems.

22. Following public consultation, Ministers agreed on preferred solutions to the problems. The Ministry then undertook further public consultation on exposure drafts of proposed changes to the NPS-FM[9] and to the NES-F[10] incorporating the preferred solutions from 31 May to 10 July 2022. This was accompanied by a summary of submissions report[11] and a report outlining the policy rationale and further proposed changes [12].

23. The Ministry also met with significant stakeholders to discuss their submissions and subsequent matters raised. These submissions have been considered in further advice delivered to the Minister to inform the final decisions for these regulatory amendments.

24. The views of stakeholders are summarised in the section *What feedback has been received from stakeholders?*

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7 Regulatory Impact Statement Wetlands August 2018 (environment.govt.nz)

8 Managing our wetlands | Ministry for the Environment

9 Exposure-draft-changes-to-npsfm-2020.pdf (environment.govt.nz)

10 Exposure-draft-changes-to-rm-nesf-regulations-2020.pdf (environment.govt.nz)

11 Managing our wetlands: Report, recommendations and summary of submissions | Ministry for the Environment

12 Managing our wetlands: Policy rationale for exposure draft amendments 2022 | Ministry for the Environment

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25. From this process the Ministry has identified three issues of concern, below, and potential solutions (discussed in subsequent sections of this document).

Ambiguity in the definition of 'natural wetlands'

26. A consistent theme of feedback from various stakeholders is that the 'natural wetland' definition is unclear and is leading to confusion and discrepancies in application of the NES-F.

27. Part (c) of the definition was intended to exclude highly modified wetland landscapes currently used for pasture, so that these areas can continue to be used for farming. This recognises that applying the regulations within such wetlands and associated buffers (100m of a natural wetland) would be likely to have a prohibitive impact on farming activities in these areas.

28. One concern raised was that part (c) of the definition is problematic because of its multiple qualifiers; and as a result, it actually captures some modified wetlands dominated by exotic pasture that it was intended to exclude.

29. The exclusion under part (a) of the definition was intended to exclude wetlands deliberately constructed for other purposes eg, drinking water for stock and firefighting ponds, so that they can continue to be used for the intended purposes.

30. Councils and other stakeholders have also sought clarity as to what constitutes a 'wetland constructed by artificial means' under part (a) of the definition. Consultation has identified multiple interpretations across different councils, which affects whether comparable activities can be consented in different areas, through which pathways and at what cost.

Absence of or onerous consent pathways for some 'developmental' activities

31. The NES-F specifies a number of activities that are permitted in or around natural wetland areas as permitted, discretionary or restricted discretionary activities. Applications to undertake other activities default to:

    - *prohibited*, if the activity is earthworks or the discharge, take, use damming or diversion of water within a natural wetland, and is likely to result in complete or partial drainage of the wetland (regulation 53)

      or

    - *non-complying*, under regulation 52 and/or 54, if not specified elsewhere in the regulations.

32. The Ministry received feedback from numerous industries (and in some instances from councils), that the categorisation as prohibited and/or non-complying activities is leading to significant difficulties for some activities that occur in and around natural wetlands.

33. Where an activity is classified as non-complying, it is possible to apply for a consent; but this may come with considerable uncertainty about whether a consent will be granted, and a likelihood of high costs in the consenting process. This uncertainty and/or cost may discourage investment in activities that could contribute to the social and economic needs of New Zealanders.

34. Industry and councils have also stated that some proposed activities classified as prohibited or non-complying would have minimal effects on a natural wetland, or where

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(through application of the effects management hierarchy) net gains in the extent and value of wetlands could be made as a condition of a consent.

Unnecessarily strict consent pathways for restorative activities

35. The Ministry received feedback that the current requirements in the NES-F for activities that have a pathway to obtain consents is in some cases inappropriately onerous and is disincentivising beneficial activities, eg wetland restoration undertaken by community groups. In some cases, this is discouraged by requirements to go through consenting processes and/or the costs of doing so.

36. The NES-F also lacks any provision for consenting related activities such as wetland maintenance and biosecurity, and this is likely to result in negative impacts for natural wetlands, contrary to the policy intent.

Other government work programmes with interdependencies and linkages

37. The Ministry has recently completed public consultation on whether the NES-F wetland provisions should apply in the Coastal Marine Area (CMA). Although both inland and coastal wetlands are subject to these regulations, consultation on the latter has been run as a separate process, due to the different policy issues. Ministerial decisions on these issues will be sought at the same time as on amendments to the wetland provisions.

38. Changes are proposed to the Resource Management (Stock Exclusion) Regulations 2020 (Stock Exclusion Regulations) to amend the map of low slope land which identifies areas in which beef cattle and deer must be excluded from access to water bodies, from 1 July 2025. These changes are also included in the policy package relating to wetlands.

39. The Government, as part of New Zealand's COVID-19 economic response, has committed $12 billion through the New Zealand infrastructure upgrade programme. This includes further investment in roads, rail, and public transport, walking and cycling infrastructure across New Zealand. Access to materials and services to support infrastructure projects is required from the quarry and fill sectors.

40. To support this the COVID-19 Recovery (Fast-track Consenting) Act 2020 was enacted, enabling accelerated consenting for qualifying projects through referral to an expert consenting panel or lodgement with the Environmental Protection Authority (EPA).

41. New Zealand is currently experiencing major housing problems, with very high house prices relative to incomes, the lowest home ownership rates in 60 years, and high levels of overcrowding and homelessness. Underlying this is an inadequate supply of new housing to keep up with population growth, and constraints around planning and resource consents are partly to blame for this. There is also a growing need to provide urban infrastructure to support new house building.[13]

42. In response to this the Government has mandated development capacity to be identified and released in high-growth urban areas through the National Policy

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13 Johnson, Alan, Philippa Howden-Chapman and Shamubeel Eaqub (2018) *A Stocktake Of New Zealand's Housing* Report to the Minister of Housing, February 2018. A Stocktake Of New Zealand's Housing.pdf (beehive.govt.nz)

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Statement for Urban Development 2020 (NPS-UD). It requires councils to plan for growth and ensure a well-functioning urban environment for all people, communities and future generations. It puts specific requirements on regional, city and district councils and regional and district plans in large and/or rapidly growing urban areas.

43. The Government is presently working toward a goal of 100% renewable electrical energy by 2030 and is committed to phasing out coal used in energy production by 2030 as a signatory to the 'Powering Past Coal' alliance. We have therefore considered these work programmes and the findings of the Climate Change Commission *Ināia tonu nei: a low emissions future for Aotearoa New Zealand*[14], in considering the mining of thermal coal under the proposed consent pathway for the extraction of minerals and ancillary activities.

44. A number of activities affected by the NES-F (discussed below) are subject to other legislation and national direction:

- *quarrying* – National Planning Standards 2019
- *landfills and cleanfills* – National Planning Standards 2019, Waste Minimisation Act 2008, Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009
- *mining* – Crown Minerals Act 1991, Climate Change Response (Zero Carbon) Amendment Act 2019
- *urban development* – NPS-UD, Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

45. The NPS-FM and NES-F are national direction made under the RMA. The Government's reform of the resource management system includes replacing the RMA with a Natural and Built Environments Act (NBA), under which all existing regulations (including the proposed amendments set out here) will be transitioned into the proposed National Planning Framework and NBA Plans.

How is the status quo expected to develop if no action is taken?

46. The NPS-FM and NES-F currently appear to be having the desired effect of managing activities in and around natural wetlands, to ensure that the intent of Policy 6 – no further loss of wetland extent and their values protected - is achieved. If they continue to operate in their current form, natural wetlands will continue to be comprehensively protected.

47. The Ministry has received feedback from Greater Wellington Regional Council (GWRC) that the regulations are currently having the desired effect, of encouraging the modification of consent applications to specifically avoid natural inland wetlands. Prior to the introduction of the regulations, wetlands would have been overlooked and/or filled in. Ministry officials have met with GWRC and observed that they seem to be applying the current 'natural wetland' definition effectively in the Greater Wellington region.

48. However, the experience of GWRC is not echoed across the board. The general view is that in future the NES-F protections will be applied inefficiently, and the costs of them

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14 He Pou a Rangi | New Zealand Climate Change Commission (2021) *Ināia tonu nei: a low emissions future for Aotearoa New Zealand* 31 May 2021 Ināia tonu nei: a low emissions future for Aotearoa New Zealand

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will result in a number of activities being curtailed unnecessarily. This will include some activities with minimal effects on natural wetlands or where beneficial outcomes could be achieved, eg through offsetting.

49. Confusion will remain under the status quo about how to apply the 'natural wetland' definition. This will result in:

- continuing high costs of expert technical assessments about whether a site meets the definition
- inconsistent application of the definition across the country, leading to inequitable outcomes for landowners and users
- more capture of wetland areas than intended under the policy, which would unnecessarily restrict some types of existing land use when the policy intent was to enable that land use to continue.

50. Parts of the NES-F governing prohibited and non-complying activities are restricting some operations that occur in and around natural wetlands, the outputs of which could contribute to the social and economic needs of New Zealanders. This would remain the case under the status quo.

51. Costs to industries that rely on some raw materials are likely to increase due to restrictions on the operations of 'locationally constrained' activities such as quarries and mines, which can only take place where the resource is physically located.

52. The lack of a consent pathway for urban development could continue to result in exclusion of some land suitable for urban development, which could in turn drive up land prices and housing costs.

53. The lack of provision for wetland maintenance and biosecurity under the regulations is likely to result in negative impacts for natural wetlands, contrary to the policy intent. Moreover, wetland restoration activities by community groups may continue to be discouraged by requirements to go through consenting processes.

What is the policy problem or opportunity?

Key issue 1: the 'natural wetland' definition

54. Regional councils and industry stakeholders have signalled to the Ministry that the natural wetland definition is confusing, subjective and complicated to apply. In particular, it is unclear what is intended to be excluded from the 'natural wetland' definition under parts (a) and (c). The Ministry has heard that consent applicants have received conflicting advice from ecological specialists and councils about whether an area is considered a natural wetland or not, due to varying interpretations of the definition.

55. Part (c) of the definition is particularly contentious. Extensive feedback from councils, ENGOs, ecologists and industry groups on draft guidance released by the Ministry clearly highlights the issues with this definition. For example, it is unclear when the 50% or more qualifier applies, and what constitutes an 'exotic pasture species'. 'Improved pasture' is being interpreted as requiring a certain stocking or fertiliser rate even though the term is separately defined in clause 3.21 of the NPS-FM.

56. The issues raised by stakeholders with part (c) of the 'natural wetland' definition are summarised in the following feedback from Fletcher Building Ltd on the Essential Freshwater Wetland Definitions Interpretation Guidance:

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'Significant ambiguity still remains within the wetlands definition and as it currently stands, consents cannot be obtained for areas that contain small, wetted areas in a grazed paddock. The industry (including councils) require clarification that provides certainty and consistency in approach. However, the Guidance note is not the solution. It has been at least six months since we started engaging with the Government over the issues with the Regulations. We are now experiencing significant delays to housing projects while we wait for a response.'[15]

57. Council and industry stakeholders have highlighted that part (a) of the 'natural wetland' definition is also resulting in interpretation issues, because of a lack of clarity on what constitutes a 'wetland constructed by artificial means'. Some councils have interpreted this to include artificial wetlands resulting from construction for other purposes ('induced wetlands'), whereas others have limited the exclusion to wetlands built intentionally for a specific purpose. This is leading to confusion and uncertainty for consent applicants, particularly for those without a consent pathway under the regulations. (See paragraph 66 for an example of where this ambiguity is exacerbating consenting difficulties in the mining industry.)

58. Forest and Bird have highlighted that, at present, the definition fails to recognise or provide for the compulsory value of threatened species under the NPS-FM. Part (c) of the definition exempts wetlands dominated by pasture from protection under the regulations, even where these wetlands are a habitat to threatened species.

Key issue 2: prohibited and non-complying status for 'developmental' activities

59. Various stakeholders have consistently stated that the activity-based structure of the NES-F provisions is problematic because they apply the stringent regulations 52, 53 and 54 (prohibited and/or non-complying activity status) to all activities unless specifically provided for. This means that activities are assessed on their nature, not effects, so that activities that may have a minimal (or beneficial) impact on natural inland wetlands are treated in the same way as those that would destroy it.

60. The stakeholders suggested that it would be more consistent with Te Mana o te Wai for activities to be consented based on their effects, rather than their nature, and that this would resolve difficulties and prevent the need for 'carve outs' from the policy by way of consent pathways.

61. The sections below highlight issues raised by various stakeholders in relation to rules 52, 53 and 54 of the NES-F and the effects of these regulations on their specific operations.

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15 Fletcher Building Ltd, Submission on Wetlands Definition Interpretation Guidance, 3 May 2021.

Table 1: Impacts of prohibited and non-complying status on specific industries

Industry	Nature of the impact	Additional information
Quarrying	Restrictions on provision of aggregate necessary for the construction of 'specified infrastructure' (already provided for in the regulations).	There are few practical substitutes to aggregate, and it is critical to many infrastructure projects as an input to roading, concrete, and ground stabilization.[16] Quarrying is 'locationally constrained' in that it can only be undertaken where the resource is located. Reduced supply would result in rising prices and higher carbon emissions associated with the transport of aggregate from pre-existing and currently viable quarrying sites.[17] Cost increases are likely to have a flow-on effect in the form of increased building costs and housing prices.
Clean/managed landfills	Significant limitations on site selection for landfills.	The waste industry considers that there are currently no viable alternatives to landfill available for the disposal of large quantities of waste in New Zealand. To avoid large monetary and carbon costs associated with the transport of overburden from quarrying, mining, urban development and construction of infrastructure, it is desirable that fill sites to dispose of overburden be located in close proximity to operations.
Mining	Inability to seek and/or obtain consents for mining operations that will be of significant national benefit	Mining is 'locationally constrained' in that it can only be undertaken where the resource is located. Some coal is required for industrial process heat (dairy and meat processing) and to make coke for steel production.[18] If not mined locally coal and steel would need to be imported with potential flow-on costs for construction.[19]
Urban development	Reduction in the land area available for urban development	The NPS-UD is designed to reduce housing costs by ensuring there is sufficient 'urban development capacity' in high-growth cities to ensure that future needs for housing can be met. Wetland provisions may reduce the availability of accessible land for development, affect infrastructure needed for the development of urban areas and contribute to higher housing costs. The NES-F provides a consent pathway for activities to support urban development that affect wetlands, under the definition of specified infrastructure in a regional plan. However, there is no comparable pathway for urban development under a district plan.
Water storage facilities	Not adequately provided for within the definition of 'specified infrastructure.	As water storage facilities such as aquifers, bores and storage lakes commonly use existing hydrology, they are frequently located in wetland areas or are connected to existing sources of hydrology such as natural inland wetlands. They are likely to also require the ongoing take and discharge of water. They are likely to also require the ongoing take and discharge of water, which is currently a non-complying activity, even if the natural wetland will not be drained..
Ski industry infrastructure	Inability to seek and/or obtain consents for necessary safety, maintenance and upgrade works to be undertaken	This results from the presence of natural inland wetlands in the alpine environment; infrastructure to support ski areas (eg utilities, access roads for construction and ski towers) may sometimes need to be situated in, or cut across, these wetlands.[20]
Defence facilities	No consent pathway for the maintenance, renewal or construction of facilities not identified as regionally significant.	Some defence facilities are identified in regional plans as regionally significant and are therefore captured by the 'specified infrastructure' pathway under the status quo' but other facilities are not. There is also no provision for temporary military training activities, which can require minor earthworks or water takes, damming and discharges, within, or in proximity to, natural inland wetlands.[21]

16 New Zealand Infrastructure Commission (2021:7) *Infrastructure resources study*, November 2021 Infrastructure-Resources-Study-11-Nov-21.pdf (tewaihanga.govt.nz)

17 M.E. Consulting (2022:1) *Wetland provisions in the NES for Freshwater; Economic assessment of aggregate loss on regional economies*, 02/11/2021

18 Bathurst Resources and BT Mining Ltd, submission on Managing our wetlands public consultation, 27 October 2021, Response 330002022 to Managing our wetlands - Ministry for the Environment - Citizen Space, pp 1-2.

19 New Zealand Infrastructure Commission (2021:36).

20 Ski Areas Association of New Zealand, submission on Managing our wetlands public consultation, 27 October 2021, Response 292034756 to Managing our wetlands - Ministry for the Environment - Citizen Space.

21 New Zealand Defence Force, submission on Managing our wetlands public consultation, 27 October 2022, Response 639817574 to Managing our wetlands - Ministry for the Environment - Citizen Space.

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62. Examples of specific instances of these impacts (highlighted during consultation) include:

63. *Quarrying*: aggregate (crushed rock that is mixed with cement) is an essential component of concrete and has other important uses in construction. A report prepared on behalf of Winstone Aggregates, Fulton Hogan, Kaipara Ltd and J.Swap stated that an estimated 550 million tonnes of aggregate in the Waikato and Auckland regions will become unavailable if the status quo is retained.[22]

64. The New Zealand Infrastructure Commission has identified restrictions on supply of aggregate as a threat to building infrastructure, and highlighted the NPS-FM and NES-F as regulatory mechanisms restricting quarry development 'in any areas with a natural wetland, putting the brakes on a number of potential developments.'[23] It considered that the trade-off between protecting the environment and enabling access to aggregate needs to be re-balanced.[24]

65. *Landfills*: *the expansion of the Envirofill North clean fill site in Auckland's North Shore.* A consent application made in October 2019 to expand this facility was placed on hold due to the presence of a wetland area, which it was proposed to offset. However, regulation 53 prevented the application from being consented. If the status quo is retained, Envirowaste submits that this will lead to the premature closure of the site.

66. *Mining*: *the proposed Martha gold mine pit in the Coromandel.* This an example of the compounding effects of a lack of clarity in part (a) of the definition, along with the application of the prohibited activity rule. Technical advice sought by Oceana Gold was that the wetland affected by the proposed mine pit is induced by other activities, which they consider means it has been constructed; however the Regional Council has questioned whether the wetland meets the definition of 'constructed'. If the wetland is found to be a 'natural inland wetland' (ie not constructed) and therefore triggers regulation 53, this will have significant impacts on the proposed plan for the mine extension.

67. Mining industry body Straterra noted that because of the scarcity of economic mineral deposits, mining has a relatively small footprint. As mining is a temporary use of land, a mined area will, on completion of rehabilitation, be returned to its pre-mining state or used for other commercial or community activities, per the conditions of relevant resource consents.[25]

68. *Urban development*: the potential impact of the NES-F on urban development can be seen in the Tauriko West development area in Tauranga (anticipated to provide 3,000-3,500 houses). This development is one of several large-scale developments planned in Tauranga in order for councils there to meet their obligations under the NPS-UD. However, ecological assessments of the site have identified a number of natural inland wetlands throughout it. Although the development has been planned in such a way that 'significant' wetlands are avoided and aquatic offsetting is provided for loss of other

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22 Response 497120795 to Managing our wetlands - Ministry for the Environment - Citizen Space

23 New Zealand Infrastructure Commission (2021:7)

24 New Zealand Infrastructure Commission (2021:27)

25 Response 19987872 to Managing our wetlands - Ministry for the Environment - Citizen Space.

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wetland, regulation 53 of the NES-F is preventing the development due to the prevalence of small natural wetland areas throughout the site (which cannot be offset).

69. *Ski areas:* a report commissioned by Real Journeys and Ski Area Association of New Zealand (SAANZ) shows the significant economic and social benefits that the ski industry brings to the Queenstown Lakes Region, contributing 6.3% of the district's economy in 2019 and employing over 7,000 people.[26] However, at present ski-fields are not identified as 'regionally significant' in the Otago Regional Plan, meaning that the construction and renewal of ski area infrastructure falls outside the 'specified infrastructure' consent pathway.

70. The Ministry of Primary Industries (MPI) has analysed the impacts of *water shortages and storage* on the primary sector. Its 2021 report on '*Water availability and security in Aotearoa New Zealand*'[27] noted that the declining natural availability of water due to climate change, combined with the need to halt further degradation of natural waterbodies and impose environmental limits, pose significant challenges for the food and fibre sector and rural communities. Because of this, there is a need to consider the role of supply solutions such as investment in water storage.

71. The MPI report found that New Zealand is getting drier, while the need for irrigation to support the growth of the food and fibre sectors has almost tripled in the past two decades. It also emphasised that recent droughts in Northland and Tairawhiti have demonstrated the impact of water shortages when there is insufficient community infrastructure for reliable provision of water for households, livestock and fire provision (MPI 2021:12&25).

Key issue 3: provisions affecting restoration, maintenance and biosecurity

72. Councils, ENGOs and other stakeholders including DOC have expressed concern that the provisions for restoring wetlands are too constraining. There has been feedback that community groups are discouraged from undertaking wetland restoration due to the conditions that must be met, or because of needing a consent to carry out such things as weed removal.

73. The current restoration definition only covers restoration activities to reverse deterioration in wetlands that has already occurred, and not maintenance to avoid it.

74. In addition, the current framework does not recognise or regulate activities undertaken for biosecurity purposes such as pest management and mitigation. Consequently, organisations such as DOC and Biosecurity NZ must currently find workarounds within the regulations to enable them to undertake such operations.

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26 Patterson, Benje (2021) *The contribution of skiing to the Queenstown-Lakes economy*, November 2021

27 Ministry for Primary Industries (MPI) (2021) *Water Availability and Security in Aotearoa New Zealand*' MPI Information Paper No: 2021/04, p9
Water Availability and Security in Aotearoa New Zealand (mpi.govt.nz).

Who is affected by these problems, how and how much?

75. Key stakeholders are:

- councils, in their roles as regulators and as providers of infrastructure and amenities, along with their responsibilities for urban development
- businesses operating in or around natural wetlands whose activities do not currently have a consenting pathway
- farmers whose ability to use existing pasture may be curtailed by a broad interpretation of the 'natural wetlands' definition
- community organisations and government agencies (Department of Conservation, Biosecurity New Zealand) undertaking wetlands restoration and related activities
- environmental consultancies, lawyers and similar businesses providing advisory services
- environmental non-government organisations (ENGOs)
- iwi, in both the exercise of tikanga and mātauranga Māori, and economic interests in activities in and around wetlands (eg farming).

76. There is considerable uncertainty about the size of the problems identified above and how they will manifest over time. We do not have reliable information about the level of costs generated among councils and regulated parties by uncertainty about the definition – for example, how much technical and legal advice is commissioned for consent hearings to resolve ambiguities in apply the definition to specific cases. In particular, it is not possible to estimate how much activity does not proceed because of prohibitions or uncertainty about/ excess costs of consenting (although the examples of these impacts in paragraphs 62 to 69 are informative).

77. The views of stakeholders are discussed in the section ***What feedback has been received from stakeholders?***

What objectives are sought in relation to the policy problem?

78. To address the problems identified above, our objectives are to:

- ensure the inland natural wetland provisions in the NPS-FM and NES-F support the effective implementation of the Essential Freshwater programme, the obligations of Te Mana o te Wai and Policy 6 of the NPS-FM (that *'there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted'*)
- provide clarity and consistency to councils and other stakeholders about when regulatory requirements governing natural inland natural wetlands in the NPS-FM and NES-F apply, and do not apply
- ensure regulation (consenting) of activities in inland wetlands and associated buffers is proportionate to potential environmental impacts and/or scope to offset these impacts; including activities that are currently prohibited/ non-complying and discretionary
- avoid unnecessary or unfair costs to stakeholders that result from uncertain, unduly onerous and/or inappropriate legal requirements in the NES-F.

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79. These objectives are reflected in the criteria in the next paragraph, which expands on the intention of each in order to explain how they will be applied in evaluating each option.

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Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

80. The options will be assessed against the following criteria; that they should ensure:

- *consistency with the obligations of Te Mana o te Wai and Policy 6 of the NPS-FM*

  The intention of this criterion is primarily to test how effective each option is in giving effect to the 'protective' objectives of these policies; and if (and only if) this is the case, whether the subsidiary objectives of Te Mana o te Wai (meeting health needs and providing for social, economic and cultural well-being) would be met. clear understanding and consistent application of regulatory requirements governing natural inland natural wetlands (including between different consenting authorities)

- *a clear understanding and consistent application of regulatory requirements*

  This criterion is intended to test how effective each option is in addressing the ambiguities that have been identified in the definition of inland wetlands, and the consequential effects on councils and land users.

- *activities in inland natural wetlands being regulated proportionately to potential environmental impacts and/or offsets to those impacts*

  This criterion is intended to test how effective each option is in dealing with consenting requirements that appear unduly onerous under the status quo, and the extent to which it would enable activities to proceed, subject to consent requirements to manage or offset the impacts on wetlands.

  This applies to both developmental and restorative activities (Key Issues 2 and 3 respectively).

- *no unnecessary or unfair costs to stakeholders from uncertain, onerous and/or inappropriate legal requirements in the NES-F*

  This criterion is intended to identify the costs each option would impose on affected parties – including highlighting who would bear these costs and whether they fall excessively on any party – in order to compare these costs with the positive impacts expected from the option.

What scope will options be considered within?

Existing policy decisions

81. The range of options below are those that were used in consultation, as no other options were identified through that process.

82. In some instances, additional problems were identified by submitters during consultation (eg ski area infrastructure, NZDF facilities, habitats of threatened species) and measures to address these problems have been included in the relevant options.

Non-regulatory options

83. Currently there is some use of educative tools including the use of guidance documents, providing advisory services to landowners, and other educative initiatives, to reduce the degree of uncertainty and promote the protection of wetlands.

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84. However, feedback is generally that reliance on guidance is unlikely to address many of the issues of concern. In particular, clarification from Ministry guidance has not withstood legal challenges. In a recent Environment Court decision, the legal weight of the September 2021 guidance on the definition of natural wetlands was considered. Smith J stated that the guidance had no regulatory force, and therefore could not be relied on to instruct the Court.[28]

85. Moreover, guidance cannot address concerns about unduly onerous regulation of both prohibited/ non-complying and discretionary activities.

What options were considered?

86. The policy intent of the NPS-FM remains the same; the NES-F regulations will provide a strong level of protection for natural wetlands and result in improvements to water quality. The options below seek to address the implementation issues above.

87. Three options were considered vis-à-vis the status quo:

- Option 1 involves the removal of regulation 53 (prohibited activity status). This would enable consent applications for activities that are currently prohibited, to be considered under the default non-complying consent pathway on the merits of the application.
- Option 2 involves amendments to the 'natural wetland' definition to clarify the exclusions under parts (a) and (c) and direct councils as to how assessments should be made. It also includes further protection for the habitats of threatened species.
- Option 3 involves the provision of consent pathways for additional activities and amendments to the restoration provisions in the NES-F.

Option 1- Remove prohibited activity status

88. Under option 1, the natural wetland definition would remain unchanged but the 'prohibited activity' status in regulation 53 of the NES-F would be removed. This means that any activity could be considered for a consent for earthworks, or water takes or discharges, that may result in drainage of a natural wetland.

89. For activities that do not have a consent pathway under the regulations, this means that an applicant could seek a consent for 'non-complying activities' in a natural inland wetland. Each application would be considered on its merits and approved or declined, having regard to all relevant considerations.

90. Under s 87A(5) of the RMA, a consent authority may grant a consent for a non-complying activity if is satisfied that the adverse effects of the activity on the environment will be minor (or that the application is for an activity that will not be contrary to the objectives and policies of a relevant plan and/or proposed plan).

91. The question of whether the effects of a potential activity would be considered 'more than minor' can be problematic. A significant body of case law shows that 'more than minor' is open to interpretation by consent authorities.

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28 *Federated Farmers of New Zealand, Minister of Conservation, Royal Forest and Bird Society of New Zealand v Northland Regional Council* [2022] NZEnvC 016 at [20]-[25].

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92. This option therefore results a need for consent authorities to make subjective assessments of 'more than minor' effects for all potential activities that do not have consent pathways in the NES-F.

93. At best, removal of 'prohibited activity' status from the NES-F (with no other complementary changes) will result in increased ambiguity for councils and consent applicants about when previously-prohibited activities meet the threshold for consent.

94. There could also be considerable variations in interpretation between councils and inconsistent treatment of comparable activities. Some councils may apply the 'no more than minor effects' test so stringently that it becomes a *de facto* prohibition; others, so liberally that consents are granted for a wide variety of activities, resulting in further losses of natural wetland extent and value (undermining the intent of Policy 6 of the NPS-FM).

95. This option would only deal with key issue (2) , and not the others. As such it is an alternative to option 3(b).

96. It would not address issues in relation to interpretation of the natural inland wetland definition (meaning that there would be continued confusion about where the NES-F regulations apply), nor concerns about existing pathways for activities such as restoration.

Option 2- Amend the natural wetland definition

97. Option 2 includes changes to the natural wetland definition to address the issues raised by stakeholders about its lack of clarity and consequential problems with interpretation and application.

98. Most of the changes proposed to the natural wetland definition under this option are intended to remove current ambiguity about the exclusion of areas of pasture, so those areas can continue to be used for farming (per the original policy intent):

- deletion of '*at the commencement date'*

  The current provision requires councils to retrospectively establish an accurate baseline of the extent of natural wetlands to determine coverage of pasture as of the original commencement date of 3 September 2020. Accurately fulfilling this requirement could be problematic, especially if accurate data are not available.

- removal of '*and is subject to temporary rain-derived water pooling*'

  This change removes an interim definition that has been superseded by the 'wetland delineation hydrology'[29]' tool to identify and delineate wetlands.

- replacement of the term '*improved pasture*' with the term '*pasture used for grazing*'

  There has been ambiguity about the interpretation of 'improved pasture', and it is simpler to focus on the actual land use.

- replacement of '*is dominated by (that is more than 50% of) exotic pasture species*' with '*has ground cover comprising more than 50% exotic pasture species*'

- inclusion of a reference to the national NPS-FM list of *'exotic pasture species'*

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29 wetland-hydrology-tool-final.pdf (environment.govt.nz)

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The rationale for these two changes is to guide the assessment of whether an area falls within the definition by focusing on exotic pasture species. It is proposed to incorporate a national list of exotic pasture species into the NPS-FM, to clarify which species are included with a methodology for undertaking the pasture assessment that must be used (to ensure national consistency of approach).

99. Other changes are proposed to address issues raised during consultation:

- amendment of part (a) of the definition to make it clear that the exclusion applies to:
    - wetlands deliberately constructed to restore an existing former wetland (under the EMH)
    - wetlands that have formed around a deliberately constructed water body since it was constructed.

  These amendments are intended to clarify inconsistent interpretation of the current provision, by excluding wetlands developed as offsets to other wetland loss, or 'induced' wetlands that are a side effect of other construction.

- provision for the protection of threatened species, by removing the exclusion under part (c) of the definition for any area known to contain threatened species.

  This amendment addresses an anomaly in the current regulations, that some wetland habitats are supposed to be protected under the NPS-FM; but with the current wording, this protection does not apply when such habitats are within pastoral land.

100. In addition, a new provision would be introduced to exclude natural wetlands in the CMA., as the outcome of a separate policy process (see paragraph 37).

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101. If all of the above changes were made to the definition of natural wetland, the definition would read as follows:

Box 2: Proposed definition of 'natural wetland'

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

a) in the coastal marine area; or

b) a deliberately constructed wetland other than a wetland constructed to offset impacts on, or restore, an existing or former natural wetland; or

c) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or

d) a geothermal wetland; or

e) a wetland that:

   (i) is within an area of pasture used for grazing; and

   (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species (see clause 1.8)); and

   (iii) is not a habitat of threatened species identified under 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply.

102. We consider that this option is a considerable improvement on the status quo. It addresses the policy problem by providing direction about how the exclusions under existing parts (a) and (c) of the definition should be applied.

103. More consistent application of the definition will result in better overall outcomes for natural wetlands, and will prevent instances where wetlands that are intended to be captured or excluded are not, due to differing interpretations of how the definition should be applied.

104. The changes proposed under this option should also reduce costs and uncertainties for both councils and consent applicants, by substantially reducing consent processes (and associated legal and technical advice) to determine whether proposed activities are within or outside the coverage of the NES-F.

105. It is possible that where councils have been interpreting the current definition stringently, these changes could result in lesser protection for natural inland wetlands. However, councils may continue to take a more stringent approach in their interpretation of the definition by stricter provisions in a district rule, regional rule, or resource consent (under regulation 6(1)) of the NES-F).

106. Although the 'threatened species' requirement might seem to add complexity and costs, this should be minimal as councils are already required to identify habitats of threatened species under policy 3.8(3)(c) of the NPS-FM.

107. While this option provides clearer direction as to how the definition is to be applied, we recognise that any change is likely to result in the necessity for further guidance on

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interpretation and application. This would be provided in Ministry guidance which will be released shortly after the gazettal of any changes.

Option 3- Provide consent pathways for additional activities and enable restoration, wetland maintenance and biosecurity

108. There are two subparts to this option 3:

- Option 3(a) proposes changes be made to the NPS-FM and NES-F to provide consent pathways for additional operations which appear to be significantly constrained by regulation 53
- Option 3(b) proposes that amendments be made to the existing rule structure for restoration to enable a broader scope of activities.

Option 3(a): provision of additional consent pathways

109. This option includes the provision of consent pathways in the NPS-FM and the NES-F for significant activities currently limited by prohibited and non-complying activity regulations (52, 53 and 54) of the NES-F. These activities are

- quarrying activities
- landfills, cleanfills and managed fills
- mining and ancillary activities; with applications for resource consents for coal mining limited to existing mines; and for thermal coal mines, subject to a sunset clause of 31 December 2030.[30]
- urban development.

110. Most of the above will be classified as 'discretionary' activities in the NES-F. This addresses key issue (2) absence of or unduly onerous consent pathways for these activities, by providing alternatives to non-complying consent pathways and prohibitions.

111. The classification of most of these as 'discretionary' activities is to ensure that they will still require a resource consent if they have an impact on natural wetlands, with the requirements to identify impacts, and justify and address these through the gateway tests and EMH.

112. The exception is for urban development which will be a 'restricted discretionary' activity. [31] This is to align the ability to apply for consents for urban development that affect natural wetlands with other types of consent the requirements under the NPS-UD.

113. The option also provides consent pathways for ski area infrastructure, water storage infrastructure and defence activities, by including them in the definition of 'specified infrastructure' (which already has a consent pathway under the regulations).

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30 This would enable applications for consents to expand an existing mine for the purposes of extracting coking coal beyond 31 December 2030, as there are not any viable alternatives for steel and cement production yet.

31 Consenting authorities' discretion is limited to matters specified in the regulations.

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114. The Ministry commissioned a cost-benefit analysis comparing the benefits of greater production by several of the above industries (below) with the costs of each.[32] It concluded that providing councils with the ability to assess the merits of applications for the selected activities on a case- by-case basis is likely to lead to an overall net benefit.

115. The basis for this conclusion was that for projects that could secure consents and begin or extend operations, there would be a range of benefits, including:

Box 3: Benefits of consent paths by industry

Industry	Benefit(s)
Quarrying	• increased supply of aggregates for housing and infrastructure • lower prices • reduced transport costs and emissions through supply from local rather than distant sources
Landfills and cleanfills	• reduced transport costs and emissions through transporting waste and overburden to local rather than distant sources • reduced costs to users - mines, quarries, construction sites and infrastructure projects
Mining	• maintaining incomes and employment in existing operations • export revenues • minimising cost increases in steel and cement production by avoiding constraints on domestic coal supply • royalty payments to government
Urban development	• increased housing supply enabling lower housing costs
Water storage	• helping to meet increasing demand for water by the food and fibre sector, and supporting land use change that creates rural jobs and incomes • more drinking water for people and stock • opportunities for hydro- electrical generation • fire protection in high-risk areas • improved flood management

116. The analysis also assumed that there would be limited adverse impacts on wetlands, assuming that the gateway tests in the NPS-FM and the EMH are enforced. Given this

32 M.E Consulting (2022) *National Policy Statement -Freshwater Management: Consenting Pathways: Cost Benefit Analysis* Report to the Ministry for the Environment 2 August 2022

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assumption of minimal impacts and costs compared to positive outcomes above, they concluded that there would be net benefits for each activity and New Zealand as a whole.

117. The analysis was essentially qualitative, in that it provided descriptions of benefits and costs but not quantified or monetised estimates of them. In many instances analysis of impacts was based on uncertain and incomplete data.

118. The number of workplaces (geographic units) and employees (employee count) for some of the above industries are shown below.

Table 2: Number of workplaces and employees by selected industry, 2022

Industry	Geographic units	Employee Count
Coal mining	24	700
Metal ore mining	111	1,250
Construction material mining	351	1,950
Other non-metallic mineral mining & quarrying	24	120
Water Supply	201	1,900
Waste treatment & disposal services	198	2,300
Defence	57	13,200

Source: Statistics New Zealand Business demographics statistics, '*Geographic units by region and industry 2000-2022*' NZ.Stat (stats.govt.nz)

119. There are in addition 39 ski fields in New Zealand.[33]

120. The above table shows that these are all small industries and (given many would not operate in or around wetlands), this suggests that there would not be many sites in these industries where new consent pathways would be used.

121. The rationale for providing for specific activities, and relevant concerns and mitigations, is discussed below.

Quarrying activities

122. Aggregate is required for the construction of 'specified infrastructure' which already has a consent pathway in the regulations. Aggregate is locationally constrained, meaning that it can only be sourced from locations where the resource is naturally present.

123. Some quarrying operations can cause significant destruction, ie drilling and blasting of rock face to fracture and break up rock and the use of hydraulic excavators and heavy vehicles to remove overburden. There is a risk that these can cause irreparable damage to, and loss of, natural wetland areas in or adjacent to quarrying. However, we consider that this can be mitigated and rectified through the gateway tests in the NPS-FM and application of the EMH.

33 Ski resorts New Zealand - skiing in New Zealand

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Landfills and cleanfills

124. There is an ongoing need to provide for waste management infrastructure, both to service urban areas and to provide for the disposal of overburden from industry. Fills are frequently placed in depressions in the landscape, where natural inland wetlands are often prevalent, in order to avoid prevailing winds.

125. *Landfill Guidelines* prepared for the Ministry by the Centre for Advanced Engineering in 2000, set out criteria for assessment of appropriate sites for landfills. One requirement is that significant wetlands are avoided. There are risks of surface water pollution if fills are situated in close proximity to waterways, and the potential impacts are greater in waterways used for drinking water or aquaculture.[34]

126. The Ministry's expectation is that the waste management industry will comply with best practice guidelines, avoiding natural wetlands where possible in determining where to locate fill sites. We also consider that consents for landfills will only be granted by a consent authority where they are consistent with the local council's Waste Management Plan.

127. We acknowledge that there may be circumstances where a fill operation can be situated in proximity to a natural wetland but have minimal drainage effects on that wetland. We also accept that there may be exceptional situations where a fill must be situated in a natural wetland area (and therefore fill it in) such as an extension to an existing fill site. In these circumstances any adverse effects would require mitigation through application of the EMH.

Extraction of minerals and ancillary activities

128. Like aggregates, mineral resources are locationally constrained, meaning that they can only be sourced from geographic locations where the resource is naturally present. Some mined minerals are essential for the construction of specified infrastructure, eg coking coal and iron, or may be used in technology needed as part of New Zealand's transition to a low emissions economy, eg aluminium and zinc. If these minerals cannot be sourced locally, New Zealand must compete on global markets them which could drive up the end price for consumers.[35]

129. The sunset clause of 2030 for consent applications relating to thermal coal mining is intended to align with the Government's commitment to the phasing out of coal-powered energy generation by 2030[36] and New Zealand's commitments as a signatory to the *Powering Past Coal Alliance*.[37]

130. We do however note that there are some risks associated with the inclusion of the sunset clause for thermal coal mining both in relation to access to necessary resources and further loss of natural inland wetlands.

131. Like quarrying, the extraction of minerals and ancillary activities can cause significant destruction to the sites in which they occur. There is therefore a risk of irreparable

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34 Landfill Guidelines - Towards Sustainable Waste Management In New Zealand (environment.govt.nz), p.18.

35 New Zealand Infrastructure Commission (2021: 36)

36 100% renewable electricity generation by 2030 - NZ Labour Party.

37 Who we are | Powering Past Coal Alliance. New Zealand joined the Powering Past Coal alliance in 2017.

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damage to, and loss of, natural wetland areas if a consent pathway is to be provided. However, this risk can be managed through the gateway tests in the NPS-FM and application of the EFM.

Urban development

132. Providing a consent pathway for urban development in the NPS-FM will make it and the NPS-UD more consistent with one another. This will alleviate pressure on district councils that are currently trying to reconcile the two pieces of national direction and provide an effective solution to the policy problem by providing a pathway through which the objectives of the NPS-UD can be realised.

133. The proposed consent pathway is for land identified for urban development in an operative regional or district plan. It could not be used for development on land zoned general rural, rural production or rural lifestyle; nor urban development in a proposed district plan or identified as such in a Future Urban Strategy.

134. The regulations will provide an exception for the Bay of Plenty in the immediate term, so that significant development of new housing areas can proceed prior to changes in its district plan (which may take up to five years to come into effect). Significant planning and investment have already gone into the preparation of Tauriko West and Te Tumu for urban development, and any delay in proceeding there may lead to shortfalls in housing supply in the short-medium term.

135. No other councils have expressed concerns about wetland protection impeding urban development in the immediate future. M.E Consulting (2021: 53-64) identified very few areas of overlap between proposed growth areas and wetlands in the Auckland, Hamilton and Christchurch urban areas.

136. As with the other consent pathways proposed, the provision of a consent pathway for urban development increases the chances of further wetland loss, especially where councils are already under pressure to meet their requirements under the NPS-UD. However, this consent pathway is only available for proposed activities needing consents in areas identified for urban development in operative district plans (and not zoned general rural, rural production, or rural lifestyle) at which time any impacts on wetlands must be considered.

137. We consider that this potential for further loss can be mitigated and rectified through the gateway tests in the NPS-FM and application of the EMH.

138. There are other provisions that limit the scope of this extension, in particular that:

- any proposed activity must be necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the NPS-UD)
- there is either no practicable alternative location for the activity within the area of the development, or every other practicable location in the area of the development would have equal or greater adverse effects on a natural inland wetland.

Water storage facilities

139. The provision of water storage to provide for food, fibre and water security in New Zealand is a matter of increasing national significance, and as such it should be provided for within the definition of specified infrastructure. We note that in some instances, water storage infrastructure may be undertaken in such a way that it is of net

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benefit to a network of natural wetland hydrology, for example by replenishing areas that have previously been drained.

140. This option deliberately does not distinguish between types of water storage, as councils and communities will need to determine what type of water storage works best in their given environment. We acknowledge that this increases the risk of wetland loss and adverse effects on natural inland wetlands; however, we consider that attempts to define what types of water storage should be permissible would be impractical because of site-specific considerations, and may introduce unnecessary uncertainty into the process and constrain the ability for this infrastructure to be provided.

141. We consider that where necessary, potential drainage or loss of value due to the construction of water storage infrastructure, can be mitigated and rectified through the gateway tests in the NPS-FM and application of the EMH.

Ski area infrastructure

142. It is reasonable that point-to-point ski area infrastructure can be constructed and renewed, to enable this industry to continue to operate and ensure the safety of users. Under the status quo, this is not possible in some cases due to regulation 53. For this reason, we consider that provision for ski area infrastructure within the definition of 'specified infrastructure' will provide a solution to the policy problem, in line with other types of point-to-point infrastructure already provided with a consent pathway under the regulations.

143. As with provision for any additional activities, there is potential that ski area infrastructure will result in the further loss of natural inland wetlands. Of particular concern are rare wetland types, eg cushion bogs, that exist in the alpine environment, and the extent to which loss of these can be effectively offset.

144. However, Ministry officials are encouraged by evidence provided of ecological assessments already undertaken by SAANZ on wetlands in the alpine environment.[38] We expect that the type of wetland, and the ability for it to be effectively offset, will be a consideration during the consenting process; and that any natural wetland loss will be mitigated and rectified through the gateway tests in the NPS-FM and application of the EMH.

New Zealand Defence Force facilities

145. Some New Zealand Defence Force (NZDF) facilities are captured by the definition of 'specified infrastructure', due to being recognised as regionally significant infrastructure in regional plans; however others are not. The NZDF has therefore requested that defence force facilities be provided for within the definition of specified infrastructure to ensure that there is a consistent pathway for defence force facilities to be constructed, renewed and maintained, as required.

146. There is provision for the NZDF within the proposed NPS-Indigenous Biodiversity as follows: (e) *defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990*. We recommend including the same within the definition of specified infrastructure under the wetland regulations. This will align with

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38 SAANZ, letter to MfE officials- Proposed amendments to Natural Wetlands provisions in the NPS-FM and NES-FW – Further information, 2 December 2021.

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new national direction and ensure NZDF is able to continue to construct and maintain infrastructure as needed – subject to the gateway tests and offsetting requirements.

147. We consider that where necessary, potential drainage or loss of natural inland wetland value and/or extent due to the construction of defence facilities, can be mitigated and rectified through the gateway tests in the NPS-FM and application of the EMH.

148. We note that the provision for defence facilities will not cover temporary military training activities for which the NZDF also sought consent in their submission. While these activities are temporary in nature, if they involve earthworks and the take, use, damming and diversion of water, there are likely to be instances where the effects are long term. Therefore, they would not justify potential damage to natural wetlands. We also consider that the scope of activities proposed by the NZDF (and therefore the nature of potential effects) is too broad.

Option 3(b): better provision for wetland restoration and maintenance, and biosecurity

149. Under option 3(b), 'wetland maintenance' and 'biosecurity' would be defined in the NPS-FM and NES-F.

150. In addition, the regulations would clearly state that councils must not charge applicants to review notifications of intended activity (including restoration plans) for wetland restoration, maintenance and biosecurity. It would also provide a number of technical amendments to area restrictions and the like.

151. The policy intent of the regulations was never to obstruct activities necessary for wetlands restoration. The conditions on permitted activities and default status as a restricted discretionary activity were intended to enable some council oversight.[39]

152. The original policy documents are silent on the necessity to provide for biosecurity and maintenance operations. It is likely that these activities were intended to be included in the restoration pathway, but if so, this was not captured in the drafting of the restoration definition.

153. We propose defining 'wetland maintenance' and 'biosecurity activities' and providing for them within the restoration consent pathway and associated regulations in the NES-F. This change was unanimously supported by submitters during public consultation.

154. At present these regulations are not working as intended, as they require groups and individuals proposing beneficial restoration activities to pay the costs associated with obtaining a resource consent for large-scale projects such as weed removal. For many groups consenting costs are a significant deterrent to undertaking wetland restoration. We consider that this is neither fair, nor consistent with the original policy intent.

155. The amendment proposed, preventing councils from charging to review notifications of intended activity, will better provide for the original policy intent by removing the costs associated with obtaining a resource consent for vegetation clearance beyond the area threshold. Council oversight would be continued by a requirement that these activities be set out in a restoration plan submitted prior to the commencement of the activity.

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39 Ministry for the Environment, Interim Regulatory Impact Analysis for Consultation: *Essential Freshwater,* Part II Detailed Analysis, 8 August 2019, p 258. interim-regulatory-impact-analysis-for-consultation-essential-freshwater-part-2-v3.pdf (environment.govt.nz).

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156. We also acknowledge that the requirement to consider (but not charge for consideration of) wetland restoration plans under these changes will result in an increased administrative burden and costs for regional councils. However, we consider that this is more appropriate than placing the costs of undertaking restoration planning on groups who are less well resourced.

157. Some stakeholders raised concerns about the changes proposed to area restrictions, suggesting that these could lead to an increased likelihood that large scale restoration, maintenance or biosecurity activities may inadvertently damage a natural inland wetland. We consider that these risks are lessened by requirement for compliance with the general conditions set out in regulation 55 of the NES-F, and the requirement that these activities be undertaken in accordance with a restoration plan approved by the relevant council.

158. On balance, we consider that changes proposed to the restoration provisions under this option will result in beneficial outcomes for the state of natural inland wetlands by incentivising restoration, maintenance and biosecurity activities. It will also result in a fairer system by not charging groups and persons seeking to undertake activities to protect and restore natural inland wetlands.

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How do the options compare to the status quo/counterfactual?

	Status quo	Option 1 – Remove prohibited activity status	Option 2 – Amend the natural wetland definition	Option 3 (a) – Provide consent pathways for additional activities	Option 3 (b) – Enable wetland restoration, maintenance and biosecurity
Consistency with the obligations of Te Mana o te Wai and Policy 6 of the NPS-FM	0	0 Impacts likely to be minor, with some activities currently prohibited being able to be consented as non-complying. Assumes "health and wellbeing of wetlands will be maintained, and the ability of people and communities to provide for their social, economic and cultural well-being will be enhanced"	+ Changes do not substantively differ from the status quo, but greater clarity in the definition may improve consent authorities' and communities' ability to recognise and care for natural inland wetlands	0 Impacts likely to be moderate, with some activities currently prohibited or subject to onerous (non-complying) consent processes able to proceed through less strict consent pathways Assumes "The health and wellbeing of wetlands will be maintained, and the ability of people and communities to provide for their social, economic and cultural well-being will be enhanced"	++ The health and wellbeing of wetlands will be enhanced by enabling more activities to support this, at lower costs
Clear understanding and consistent application of regulatory requirements	0	- Replacement of prohibited with non-complying status is likely to result in ambiguity and inconsistency in assessment of 'more than minor' effects.	++ Resolves confusion about the definition under the status quo by defining, removing, or replacing terms that were leading to confusion Should standardise interpretation among consenting authorities (may depend on suitable guidance) Should minimise unintentional non-compliance by people who do not understand their obligations	**0** No change	+ Addresses previous failure to incorporate policy intent (to enable maintenance and biosecurity) into actual provisions.
Activities are regulated proportionately to potential environmental impacts	0	+ Removal of prohibitions would enable some applicants to seek consents for activities on their merits Consenting requirements as non-complying activities may still be disproportionately high	+ Avoids application of provisions more broadly that intended (under parts (a) and (c)) Increases protection for habitats of threatened species	++ Provides consent pathways for a wider range of activities that contribute to social, economic and cultural well-being	+ Removes excessive consenting barriers to current (restoration) and new (maintenance, biosecurity) activities.
No unnecessary or unfair costs to stakeholders from uncertain, onerous and/or inappropriate requirements	0	- Costs of obtaining consents could be high, and vary considerably between consenting authorities	++ Should substantially reduce costs to councils and applicants from (a) legal arguments about interpretation and (b) unnecessarily ecological assessments, eg whether or not a wetland meets the 'natural wetland' definition (although ecological assessments might still be needed on actual impacts of proposed activities)	**0** More consents will be sought through wider consent pathways, and substantial costs will be incurred to support of those consents. However applicants will only seek consents for projects if they consider positive outcomes justify the consenting costs,	+ Places the costs of consenting on councils that are better placed to bear them than community organisations
OVERALL ASSESSMENT	**0**	**0**	**+**	**+**	**++**

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

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159. As noted previously, the only direct alternatives are options 1 and 3(b). Providing well-defined consent pathways for activities with potential benefits to the community, under option 3(a), is considered to generate positive benefits; whereas the positive and negative aspects of option 1 appear to largely counteract each other.

160. The main concern with options 1 and 3(a) (expressed by a number of submitters during consultation) is that removal of the strong protection provided by the non-complying and prohibited activity regulations is contrary to Te Mana o te Wai and may negate one of the key purposes of the Essential Freshwater programme, to arrest the decline and loss of natural wetlands. They suggested that provision of additional consent pathways increases the potential for natural wetland loss.

161. Our conclusions above, that most options have net positive effects, are based on the assumption that current requirements set out in the gateway tests in the NPS-FM and application of the EMH are sufficient to protect the extent and value of natural wetlands. While providing additional consent pathways is likely to result in new or extended operations being proposed in and around natural wetlands, we assume that the wetlands will be prioritised until it is established that proposed activities are necessary in the specific area, will provide significant benefits and will be undertaken in a way that minimises loss of natural wetland extent and values.We acknowledge that these are strong assumptions about the effectiveness of the gateway test and EMH. These are still relatively new instruments which have only been used since the introduction of the NPS-FM and NES-F in 2020; hence there is limited experience with which to assess their effectiveness.

162. Some aspects of the current test will be strengthened, through amendments to the NPS-FM that will specify how councils are expected to apply the EMH (strictly in the sequence of the hierarchy, with less stringent means to manage impacts only considered if more stringent means are not practicable or possible).

163. Nevertheless, when changing any regulation to enable a wider range of activities, there is inherently some uncertainty about the effectiveness of instruments intended to deal with negative impacts.

164. Feedback from stakeholders was that under the status quo, there is little direction as to how aquatic offsets and compensation should be applied, nor any requirement for ongoing management and monitoring of offsets. To complement the proposed regulatory changes, the Ministry will set out principles for offsetting and compensation as appendices to the NPS-FM. These will provide further guidance and consistency of approach, and should result in better outcomes where offsetting and compensation is applied.

165. Wider potential uses of aquatic offsetting and compensation principles should encourage the EMH to be applied in a way that results in better outcomes. A number of submitters seeking expanded consent pathways for their developments have already indicated a willingness to provide offsets this if legally permitted.

166. However, there are some limitations to offsetting:

- more recourse to offsetting in the short term may result in fewer suitable sites over time
- not all types of wetland loss can or should be offset; the submission from the National Wetland Trust during public consultation highlighted this point:

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"[T]here are some wetlands where the loss is so great in type or amount that no offset could appropriately compensate for them, eg the losses of significant habitat. Furthermore, some wetland types cannot be recreated within reasonable consent timeframes eg, bogs."[40]

- restoration and offsetting required by consents may not be undertaken and/or will not be maintained over time unless there is regular monitoring (Denyer and Peters 2020).
- compensation could become the norm instead of offsetting, resulting in an continued decline of wetland extent and biodiversity values.

167. We consider compliance with offsetting will be improved in the future by the following requirements in the NPS-FM.
    - councils must require monitoring of wetland offsets by the consent holder, as a condition of any consent issued to undertake activities in and around wetlands
    - wetlands must be mapped where they are the subject of a consent application (eg offsetting wetlands), or greater than 500 square metres, naturally smaller types, and any identified in a farm environment plan
168. We propose to carefully monitor the impacts of these changes to the consent pathways and the effectiveness of the enhanced instruments through ongoing engagement with councils and other stakeholders. This is intended to assess whether the changes are working as intended, or whether they are resulting in unacceptable impacts on natural wetlands.
169. There are likely to be increased monetary and resource costs for applicants and councils as a result of more proposals going through consent processes. However, we consider that these will be outweighed by positive outcomes from projects that subsequently proceed. We assume that applicants will only proceed with proposals which they consider worthwhile in light of uncertainties and costs associated with obtaining consents.

What feedback has been received from stakeholders?

170. Submissions were made by councils, companies and industry organisations, ENGOs and individuals.
171. There was wide support for simplifying and clarifying the natural wetlands definition, but considerable diversity in views on how this should be done. Where the proposed changes were not supported, this was primarily because changes were perceived as weakening the protections.
172. The Ministry's view is that changes to the definition are necessary, and that as the key changes are to enable existing land use (pasture for farming) to continue, the risks of negative impacts to wetlands are minimal. The proposed changes were informed by feedback, but given the diversity of responses, represent the Ministry's best judgement of suitable wording.
173. The majority of industry submitters in favour of the proposed consent pathways provided information about instances where NES-F requirements had been a barrier to

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40 National Wetland Trust, submission to Managing our wetlands public consultation, 27 October 2021. NWT_Submission27Oct2021 (8).pdf.

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a specific project, for each of the sectors identified in the discussion document. Other submissions identified activities not included in the discussion document where this had occurred.

174. Councils generally (but not unanimously) expressed support of additional consent pathways for individual industries in the discussion document, although frequently differed on the appropriate status (discretionary versus non-complying) and other matters related to those pathways.

175. A significant number of submissions (from ENGOs and individuals) opposed the proposed consent pathways in principle, because of a perceived inconsistency between them and the obligation to prioritise the health of water under Te Mana o te Wai, and a view that the environment should be given more importance than commercial enterprise.

176. The Ministry's view is that the problems identified do provide a justification for enabling new consent pathways in and around natural wetlands, and that this would apply only to a small number of clearly-specified activities. It considered the risks of wetland loss can managed through the gateway tests and the EMH as part of the consenting process. This was discussed in more detail in paragraphs 160 to 167.

177. There was general support for the proposals to make restoration and maintenance of natural wetlands easier.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

178. We conclude from the above analysis that a regulatory package consisting of options 2 and 3 is the preferred option.

179. This package would address all of the policy problems, by reducing uncertainties associated with the natural wetland definition, providing consent pathways for significant operations whose activities are constrained under the status quo, and extending current provisions for wetlands restoration to maintenance and biosecurity.

180. They would better enable desirable activities to be undertaken in natural wetland areas, while (through the existing gateway tests in the NPS-FM and application of the EMH) continuing to deliver a high level of protection for them.

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What are the marginal costs and benefits of the preferred option?

Affected groups	Comment	Impact	Evidence Certainty.
Additional costs of the preferred option compared to taking no action			
Regulated groups	Increased costs for consenting (including ecological assessments and offsetting wetlands losses) of activities for which new consent pathways are provided	Medium	High
	(However, applicants will only incur those costs if they consider them justified by positive outcomes of the activities.)		
	Some existing use of wetlands curtailed by the inclusion of habitats of threatened species in the revised wetlands definition	Low	Medium
	Uncertainty (and potential costs) regarding the revised wetlands definition	Low	Medium
Regulators (councils)	Increased costs for consenting and monitoring of activities for which new consent pathways are provided (some or all of which may be recovered from applicants)	Medium	High
	Costs of restoration consents and plans (councils will have to meet these and cannot recover them from applicants)	Low	High
	Uncertainty (and potential costs) regarding the revised wetlands definition.	Low	Medium
	Costs in developing and promulgating guidance material on revised NES-F	Low	High
Central government	Costs in developing and promulgating guidance material on revised NES-F	Low	High
	Costs of ongoing monitoring to assess effectiveness of revised regulations	Low	High
The wider community	Risks that the gateway tests in the NPS-FM, application of the EMH and offsetting are not fully effective, resulting in continuing loss of wetlands extent and/or value	Low	Medium
Total monetised costs		**-**	**-**
Non-monetised costs		**Medium**	**High**

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Affected groups	Comment	Impact	Evidence Certainty.
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Some development projects proceed through new consent pathways	High	Medium
	Reduced uncertainty about coverage and substantially lower consenting and associated costs from the revised wetlands definition	Medium	High
	Some activities, especially farming, can continue in line with the original policy intent under the revised wetlands definition	Medium	High
Regulators	Reduced uncertainty about coverage and substantially lower consenting costs from the revised wetlands definition	Medium	High
The wider community	Arresting the decline in wetlands extent and values (possibly reversing it marginally though offsetting)	High	Medium
	Enhanced wetlands extent and values though increases in restoration, management and biosecurity work	Low	High
	Reduced compliance costs for voluntary organisations undertaking maintenance and restoration work	Low	High
	Greater protection of threatened species, though inclusion of their habitats in the revised wetlands definition	Low	High
	Greater provision and/or lower costs of activities enabled by new consent pathways (urban development, water storage etc)	High	Medium
Total monetised benefits		**-**	**-**
Non-monetised benefits		**High**	**Medium**

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Section 3: Delivering an option

How will the new regulations be implemented?

Public notification process of the regulatory changes

182. Notification of changes to the wetland regulations will occur as part of a package of changes to the Essential Freshwater regulations.

183. When the changes are introduced, the Ministry will support councils and other stakeholders through the publication of updated guidance documents[41] and advisory notes.

184. These materials will be prepared by the Ministry in consultation with stakeholders (to draw on their experience and expertise). These will provide information about the policy intentions of the regulatory changes and the Ministry's expectations of how they will be applied. – acknowledging limitations, such as the likelihood of situations eventuating that were not anticipated when regulations and guidelines were drawn up, or Court judgements that provide interpretations of the regulations with implications that are materially different from the policy intent.

Ongoing operation and enforcement

185. Both the Ministry and councils have a significant role in ensuring that changes to the NPS-FM and NES-FW are implemented appropriately when they come in effect. Thereafter the majority of responsibility for implementation, enforcement and monitoring rest with regional councils and unitary authorities as one of their responsibilities under section 30 RMA responsibilities.

Stakeholder and council involvement in implementation

186. To date industry stakeholders and local government have contributed to identifying issues with implementation of the natural wetlands provisions. This has been part of a deliberate effort by the Ministry to secure feedback from stakeholders on the implementation of the Essential Freshwater package, and will be maintained after the proposed changes come into effect.

187. A key focus of this engagement will be the impact of the proposed changes, in terms of the experience of the new consent pathways – ie whether they are being used as intended (and if not, why not) - what types of wetlands are being affected, and how the relevant tools (gateway test, the EMH and offsetting and compensation) are being used.

188. This should provide an indication of whether any of the risks highlighted previously (eg excessive compensation instead of avoid/mitigate/remedy impacts) are being realised.

189. This engagement will also examine whether the enhanced restoration provisions are being used more widely.

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41 See Essential Freshwater policies and regulations implementation guidance | Ministry for the Environment

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190. Funding is also available from the Ministry for initiatives that could improve the management and enhance the condition of natural wetlands.[42]

Implementation risks

191. The changes to the natural wetland definition may not fully resolve the interpretation issues identified by stakeholders. Ultimately a regulatory definition will be determined through its application in consent applications and decisions by councils and the Environment Court.

192. If Options 2 and 3 are adopted, the number of consents to be prepared and processed (by applicants and councils respectively) could increase materially as a wider range of activities could now be consented. Councils would also have an increased monitoring burden to manage.

193. A key concern is the capacity of the system to deal with an increased volume of consents. This in turn is a function of the number of people with suitable technical expertise.

194. Councils have indicated (in the context of delivering revised plans required under the NES-F), that they are experiencing pressures on capacity and difficulty in recruiting policy/planning and scientific staff.[43] This in turn poses an ongoing challenge for delivering these plans by 2024, as required by the NES-F, and is exacerbated by pressures from other RMA changes, and consenting and Environment Court processes.

195. It is not known whether there are comparable pressures outside councils, for example among private sector experts in planning, RMA law and ecology, who will be essential for applicants to prepare consent applications of a suitable standard.

196. Council capacity constraints represent a risk to the achievement of the objectives of proposed changes to the NES-F, if they cannot manage the resulting increase in the number of consents.

197. There is limited research on the long-term success of constructed wetlands achieving good biodiversity outcomes. It is anticipated that in many areas there will be increasingly limited areas available for offsetting that are not required for other purposes such as urban development.

How will the new arrangements be monitored, evaluated, and reviewed?

198. Monitoring natural wetlands is part of regional councils' statutory responsibility for monitoring and reporting on the state of the environment in their region under section 35 of the RMA.

199. Councils are also required to map wetlands under clause 3.23 of the NPS-FM. This includes any wetland affected by an application for consent. Future mapping will show trends in the extent of wetlands. Monitoring will show trends in condition of select wetlands over time.

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43 Te Uru Kahika Regional and Unitary Councils Aotearoa (2022) *Progress Report: Regional planning implementation of the NPS-FM* June 2022
Regulatory Impact Statement, Changes to wetland regulations (inland wetlands)220705 NPS-FM progress report as a 1 May 2022 - proofed.docx (environment.govt.nz)

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200. The effectiveness of the NES-F will be assessed in 2023 and again in 2026, using reports on the state of New Zealand's freshwater prepared under the Environmental Reporting Act 2015.

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