Regulatory Impact Statement: Intensive Winter Grazing

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing the release of a discussion document on changes to the Intensive Winter Grazing regulations
Advising agencies:	Ministry for the Environment, Ministry for Primary Industries
Proposing Ministers:	Minister for the Environment, Minister of Agriculture
Date finalised:	11 August 2021

Problem Definition

Intensive Winter Grazing (IWG) is a farming practice where large numbers of stock (cattle, sheep, deer) are confined over winter to small outdoor feeding areas planted with annual forage crops (eg, swedes, kale and fodder beet).

Winter forage crops are an important part of some pastoral farm production systems. They provide feed when there is no or low pasture growth, contribute to pasture renewal rotations for improved production and provide weed and pest control. If done poorly or too extensively, IWG can have serious negative effects on both animal welfare and the environment, particularly freshwater and estuary health. This farming practice can increase the discharge of nutrients, sediment and microbial pathogens into surface water and groundwater, by stripping the land of its vegetative cover.

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) sought to address the negative environmental effects of IWG with specific provisions. This consists of three pathway options:

- **Pathway 1**: intensive winter grazing activities are permitted if a farmer complies with the default conditions set out in the NES-F, or
- **Pathway 2**: intensive winter grazing activities are permitted if a farmer obtains a certified freshwater farm plan (FW-FP) (under this pathway, the certified FW-FP must demonstrate that any adverse effects in relation to the intensive winter grazing are no greater than would be allowed for by the default conditions set out in Pathway 1), or
- **Pathway 3**: Otherwise, a farmer needs to obtain a resource consent for intensive winter grazing activities.

The provisions were originally due to come into effect on 1 May 2021 however this has been deferred by a year to ensure the regulations work as intended and can be practically complied with.

Stakeholder feedback has identified a number of concerns with the existing IWG provisions in the NES-F. These concerns relate to the default conditions which are weather-dependent (resow and pugging) and those that are difficult to comply with practically and to enforce (sub-surface drains, mean slope definition, and pugging). Where farmers cannot comply with the default conditions or cannot be certain in advance that they are going to be able to comply with the conditions, they must seek a resource consent. This is because they cannot obtain a certified FW-FP because that regime is not yet available. This is likely to result in a significant number of resource consents being required, at a cost to both farmers and regional councils.

Executive Summary

The NES-F sets out the requirements for carrying out certain activities that pose high risks for freshwater and its ecosystems. It is part of the Government's commitment to improving freshwater health and management through the *Essential Freshwater – Healthy Water, Fairly Allocated* work programme. Along with the National Policy Statement for Freshwater Management 2020 (NPS-FM), this work programme is now being implemented.

The Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) are engaging with stakeholders to identify issues as they arise, and to ensure they have the support needed to effectively implement and/or comply with the new requirements.

Regional councils (especially Environment Southland) and the primary sector have identified challenges for successfully implementing the NES-F's IWG regulations. In September 2020, the Minister for the Environment and the Minister of Agriculture asked Environment Southland and primary sector representatives to look at the IWG regulations in the NES-F and provide practical recommendations for improving implementation and IWG practice.

An advisory group with membership drawn from Environment Southland, Fish & Game, farmers and farming sector representatives, along with observers from iwi and central government was established (the Southland Intensive Winter Grazing NES Advisory Group (SAG)). The SAG released its report and recommendations in December 2020. SAG recommended an alternative permitted pathway in the form of an IWG module (similar to the certified FW-FP pathway not yet available), or a deferral in applying the regulations to allow time for changes to the regulations to be considered.

The IWG regulations have been deferred and will now come into effect on 1 May 2022.

The deferral enabled the farming sector, regional councils, and government officials an opportunity to focus efforts on the development of an IWG module for FW-FPs and this was publicly launched in April 2021. It also provided additional time for officials to consider SAG's recommendations and potential changes to the default conditions in the IWG regulations. The deferral period has incentivised the farming sector to demonstrate

practice change for the 2021 winter grazing season, including for animal welfare, while the changes to the IWG regulations are being considered. It also allows for regional councils to undertake increased monitoring and reporting to ensure there are measurable improvements by 30 April 2022.

The Ministry for the Environment and the Ministry for Primary Industries propose to consult on changes to the NES-F.

Three options to amend the IWG regulations are:

Option 1: amend the default conditions

- All three pathways for undertaking IWG are retained
- The default conditions are amended as follows:
  - Limit of area used for IWG (50 ha or 10% of area of farm) is unchanged
  - Slope threshold amended from a *mean* to a *maximum* slope measurement; and retain a slope threshold of 10 degrees (noting changes can be considered following consultation, for example to an equivalent threshold which captures the same area as under the current *mean* slope)
  - Pugging condition amended to require reasonably practical steps to manage the effects of pugging on freshwater, or pugging condition removed and effects on soil structure managed through critical source areas,
  - Definition of drain amended to exclude *sub-surface* drains
  - Resowing deadline of 1 October (1 November in Otago and Southland) amended to “as soon as practicable”, and clarify that other methods of establishing ground cover (eg, companion planting) are included (ie, to minimise the amount of time bare ground is exposed to weather)
  - New condition requiring protection of critical source areas
- Develop guidance to ensure a shared understanding of the changes and what would constitute reasonably practical steps or timeframes.
- Defer the implementation of the regulations by a further 6 months to 1 November 2022 to allow farmers time to adjust their farm practices to comply with the new regulations.

Option 2: remove the permitted activity pathway based on default conditions, and manage intensive winter grazing through FW-FPs. Key elements are:

- Remove the permitted activity pathway based on default conditions (Pathway 1) and instead manage IWG through certified FW-FPs only (Pathway 2)
- Default conditions become a set of requirements that a FW-FP must address
- Results in only two pathways for undertaking IWG. If a farmer obtains a certified FW-FP IWG is permitted (Pathway 2), or otherwise a farmer needs to obtain a resource consent for IWG activities (Pathway 3)
- Implementation of the regulations would need to be deferred until FW-FPs are available

Transitional approach: This approach combines Options 1 and 2 to get the best of each, implementing Option 1 on a transitional basis until Option 2 can be implemented (ie, when FW-FPs are available).

Then (as per Option 2) FW-FPs would allow for farm-specific management of IWG activity.

This approach would provide protection for the period until FW-FPs are available (through Option 1), which would otherwise not be there if Option 2 were progressed on its own.

As per Option 1, the implementation of the regulations would be deferred by a further 6 months to 1 November 2022 to allow farmers time to adjust their farm practices to comply with the new regulations.

Limitations and Constraints on Analysis

The options analysis is based on the feedback received from local authorities, iwi and stakeholders and proposed amendments will be presented for consultation purposes.

Following the closure of the consultation period on the discussion document MfE and MPI officials will evaluate the submissions received and prepare a report outlining recommended changes to the IWG regulations and seek agreement from Cabinet to amend the NES-F accordingly.

Responsible Manager(s) (completed by relevant manager)

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11 August 2021

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11 August 2021

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for the Environment

Panel Assessment & Comment:	The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the RIS "Regulatory Impact Statement: Intensive Winter Grazing", which will accompany the discussion document upon release. The Panel confirms that the level of information provided meets the quality assessment criteria, for this stage of the process, and is likely to lead to effective consultation on the proposals. The consultation is expected to provide information where there are currently limits or uncertainty and later support the delivery of a Regulatory Impact Assessment supporting final decisions.

Section 1: Diagnosing the policy problem

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

Current state

1. Intensive Winter Grazing (IWG) is a farming practice where large numbers of stock (cattle, sheep, deer) are confined over winter to small outdoor feeding areas planted with annual forage crops (eg, swedes, kale and fodder beet). It is widely acknowledged that, if done poorly or too extensively, IWG can have serious negative effects on both animal welfare and the environment, particularly freshwater and estuary health.

2. The NES-F sets requirements for carrying out certain activities that pose high risks for freshwater and its ecosystems, including IWG. It is part of the Government's commitment to improving freshwater health and management through the *Essential Freshwater – Healthy Water, Fairly Allocated* work programme put in place last term.

3. In August 2020, the resulting regulatory package was gazetted. As well as the NES-F – directed at making early change to high-risk activities – the package comprised the National Policy Statement for Freshwater Management 2020 (NPS-FM) directed at embedding long-term change, and stock exclusion and water metering regulations.

4. The package is now being implemented. The Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) are engaging with external stakeholders to identify issues as they arise, and to ensure they have the support needed to effectively implement the package. This effort has included partnering with regional councils and the farming sector on key areas of work; establishing a cross-sectoral Freshwater Implementation Group (FIG); and appointing Freshwater Commissioners to facilitate the preparation of regional freshwater plans.

5. Feedback has been received that some aspects of the NES-F relating to IWG may require modification to support effective implementation and achieve improved environmental outcomes. With regard to the IWG regulations, the level of concern is greatest in Southland and Otago but is shared in other regions around the country to varying degrees. There is general acceptance that practices need to improve. That is why the Government put in place regulations through the NES-F to manage IWG.

6. As well as the environmental impacts, it is acknowledged that IWG can have serious negative effects on animal welfare. The Government has addressed both freshwater health concerns (through the NES-F), and animal welfare concerns (through animal welfare guidelines). MPI is responsible for managing animal welfare policy, guidelines and compliance. Regional councils are responsible for compliance with the NES-F and their regional plans more broadly.

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

7. Through the engagement process with Southland's farming and regional sectors, officials heard from stakeholders that they would be unable to be sure at the

beginning of the winter grazing season that their activity would meet the weather-dependent default conditions for IWG. Stakeholders therefore indicated to officials that all farms undertaking winter grazing would require a resource consent in case weather-dependent factors resulted in non-compliance with the default conditions during the winter grazing season. Officials were advised that, if the permitted activity standards remain as they are (with the implementation difficulties that are described in detail below) and in lieu of certified FW-FPs being in place by then, the resource consent pathway would be the only or predominantly used pathway. This is estimated to result in as many as 10,000 resource consent applications required to be lodged and processed (including 1,500 in Southland, 2000 in Otago, and 3000 in Canterbury) to authorise IWG activities. This is a significant consenting pressure and cost, borne by both farmers (the applicants) and regional councils.

8. Reducing the extent of IWG in the short term could have significant animal welfare implications if the system has not appropriately adapted to address the potential shortage in feed. In addition, there is no one right option for every farm, every option will have trade-offs (for example, wintering barns can have other negative animal welfare and environmental implications).

Key features and objectives of the IWG regulations

9. The NES-F sets requirements for carrying out certain activities that pose high risks for freshwater and freshwater ecosystems. Subpart 3 of Part 2 outlines regulations for IWG (including permitted activities).

10. The regulations preventing further expansion of IWG (Regulations 28-31) came into effect 1 May 2021, but the permitted activity standards and resource consent pathway (Regulations 26 and 27) have been deferred and are now coming into effect 1 May 2022.

11. For the majority of stakeholders, responsibility rests with them to ensure compliance with the regulatory requirements in the NES-F and NPS-FM. For IWG activities this mostly rests with the farming sector meeting the regulatory requirements in Part 2 of the NES-F. Subpart 3 of Part 2 states the requirements for undertaking IWG.

12. The regulations prevent further expansion of IWG and seek to improve practice by providing three pathways for IWG to occur. The compliance pathways in the NES-F for IWG activities are:

- **Pathway 1**: intensive winter grazing activities are permitted if a farmer complies with the default conditions set out in the NES-F

- **Pathway 2**: intensive winter grazing activities are permitted if a farmer obtains a certified freshwater farm plan (FW-FP) (under this pathway, the certified FW-FP must demonstrate that any adverse effects in relation to the intensive winter grazing are no greater than would be allowed for by the default conditions set out in Pathway 1)

- **Pathway 3**: Otherwise, a farmer needs to obtain a resource consent for intensive winter grazing activities.

13. Under Regulation 26 the use of land for IWG and consequential discharges into or onto land are a permitted activity if the following default conditions are met:

    - The area of farm used for IWG is no greater than 50ha or 10% of the farm area, whichever is greater; and
    - The mean slope of a paddock used for IWG is 10 degrees or less; and
    - On a paddock used for IWG, pugging at any one point is not deeper than 20cm, other than an area within 10m of a gate or fixed water trough, and pugging of any depth does not cover more than 50% of the paddock; and
    - Livestock are kept at least 5m away from the bed of any river, lake, wetland, drain; and
    - The land used for IWG must be replanted as soon as practicable after livestock have grazed the crop, but no later than 1 October (or 1 November for farms in the Otago or Southland regions).

14. Regulation 26 also provides that IWG is permitted if the farm has a certified FW-FP that applies to the intensive winter grazing, and a certifier has certified that any adverse effects allowed for by the plan in relation to the intensive winter grazing are no greater than those allowed for by the above conditions.

15. With regard to Pathway 3 above, IWG is classified as a restricted discretionary activity under Regulation 27 with the consent authorities' discretion restricted to the following matters:

    - Adverse effects on ecosystems, freshwater and water bodies;
    - Adverse effects on the water that affect the ability of people to safely come into contact with water;
    - Adverse effects on Māori cultural values;
    - Susceptibility of the land to erosion, and extent to which sediment loss and release of contaminants to water is exacerbated or accelerated; and
    - Timing and appropriateness of any methods proposed to avoid, remedy, or mitigate the loss of contaminants to water.

Other IWG regulations that are not subject to the delay or further changes

16. Regulations 28 to 31 seek to ensure that IWG is only undertaken on farms where IWG has previously occurred within a reference period, and the area used for IWG is no greater than the maximum area previously used. The reference period is defined in the NES-F as the period between 1 July 2014 and 30 June 2019.

17. If this cannot be complied with, then a discretionary activity resource consent is required. The requirement for a discretionary activity resource consent is also triggered by direct discharges into water.

18. A resource consent for the discretionary activity may only be granted if the consent authority is satisfied it will not result in an increase in contaminant loads as compared to loads as at the close of 2 September 2020, or concentrations of contaminants in freshwater or other receiving environments as compared with the concentrations as at the close of 2 September 2020.

19. If granted, the term of the discretionary activity resource consent granted is limited to a duration that ends before 1 January 2031.

20. Regulations 28 to 31 are intended to provide a temporary control over the intensification of IWG activities until each regional council has a new freshwater planning instrument in place (a regional plan or regional policy statement or a change or variation to an existing plan or policy statement). That gives effect to the NPS-FM 2020. Under section 80A of the RMA, regional councils must notify the freshwater planning instrument by 31 December 2024. As these regulations will be superseded by the new freshwater planning instruments they are temporary and expire on 1 January 2025.

Relevant prior government decisions, legislation and Regulatory Impact Statements

21. The Minister for the Environment decided to temporarily defer some of the IWG regulations in the NES-F coming into effect for a period of one year (from 1 May 2021 until 1 May 2022). The regulations restricting expansion of area (regulations 28-31) were not delayed (and came into effect 1 May 2021). The deferment applies to the permitted activity and restricted discretionary activity pathways (regulations 26 and 27).

22. The Minister for the Environment and Minister of Agriculture also accepted a commitment from regional councils and the farming sector to improve IWG practice during this period by rapidly developing, testing and deploying an IWG module that would be a prototype for use in the certified FW-FP regime currently under development, and due for introduction in 2022. The IWG Module was made available in April 2021. Regional councils have increased their monitoring and reporting to ensure there are measurable improvements in IWG practice by 30 April 2022, and beyond.

23. The Minister for the Environment and Minister of Agriculture consider that improvements in IWG practice relating to freshwater will be achieved in the medium/long term primarily through FW-FPs, rather than through default permitted activity conditions in the NES-F that serve as a bottom-line. The deferral of the application of the default conditions for a year facilitates the development, testing and deployment of a prototype IWG module. That IWG module has now been finalised and released to the public.

24. The temporary deferral of the IWG regulations has given the farming sector, regional government, and central government officials an opportunity to focus efforts on the IWG module, and on how the certified FW-FP regime of which it will be part can be operated in practice. It also provides an incentive to the farming sector to drive and clearly demonstrate improved practice and planning decisions for the 2021 winter grazing season, including for animal welfare. A further benefit of the deferral is it provides sufficient time for central government officials to progress proposed changes to the permitted activity default conditions in the regulations.

Other government work programmes with interdependencies and linkages

25. Certified FW-FPs are a key tool in implementing the *Essential Freshwater* programme. On 14 July 2021 MfE released a discussion document seeking feedback on the development of FW-FPs under part 9A of the Resource Management Act 1991 (the RMA). Engagement commenced on 14 July with public submissions accepted from 26 July until 12 September 2021. The FW-FP discussion document provides an overview of the role and function of FW-FPs, their key elements, reporting and review requirements, and implementation options for phasing and staging their introduction.

26. The FW-FP discussion document acknowledges that FW-FPs will not be available across the country all at once and a phased approach based on risk is therefore anticipated. The document includes a proposal for a phased introduction of FW-FPs starting in the first half of 2022. The first tranche of FW-FPs that are certified would use the best local information and catchment context available at the time. This entails a capacity building exercise to support the primary sector across the country, including the certification, auditing, quality assurance systems, as well as enforcement and review.

27. A further timing challenge is ensuring alignment with the development of new regional plans to implement the NPS-FM. While the primary sector are developing FW-FPs, regional councils will be developing regional freshwater plans that implement the NPS-FM. These need to be publicly notified by December 2024. The NPS-FM requires the new plans to give effect to Te Mana o te Wai – the central concept for freshwater management. Once the new regional plans are operative; certified FW-FPs will need to be reviewed, and if required, updated to reflect the new catchment visions, values, limits and rules set by regional councils in the new regional plans. This may also occur for resource consents for the take and use of water, or for discharges to land and water.

28. Following the closure of the FW-FP consultation period, a decision will be made on the implementation options and the new FW-FP regulations are expected to be Gazetted in the first half of 2022.

29. Other work that is underway to implement the Essential Freshwater programme includes consultation on potential amendments to the natural wetland provisions in the NPS-FM and NES-F, and to the Resource Management (Stock Exclusion) Regulations 2020. The IWG consultation period is timed to overlap where possible with the engagement process on the stock exclusion and FW-FP discussion documents.

30. As noted earlier, MPI is responsible for managing animal welfare policy and guidelines. Regional councils are responsible for compliance with the NES-F and their regional plans more broadly.

What is the policy problem or opportunity?

31. If the permitted activity pathways for IWG are not able to be implemented, the regulations will not function as intended. The default conditions are difficult to comply with as they are weather-dependent (eg, resowing timeframes), or lack sufficient clarity and certainty in order to be complied with practically and enforced (eg, mean slope definition, sub-surface drains, and pugging). This results in farmers being unable to know in advance whether their IWG activity is going to comply with the regulations.

32. Further, the FW-FP regime is not yet in place, meaning the FW-FP pathway is not currently available. This means neither Pathway 1 nor Pathway 2 are currently available. Where farmers cannot comply with the default conditions or cannot be certain in advance that they are going to be able to comply with the conditions, and cannot currently obtain a certified FW-FP, they must seek a resource consent under Pathway 3. This will create the need for large numbers of resource consents. That would in turn frustrate farm planning for a time.

Timing issues

33. To ensure their effective implementation, the options that are available to address the policy problem will require additional time beyond the end of the existing 1 May 2022 deferral date. Therefore, a decision to further extend the deferral period is required. This is discussed further in the options analysis below as the length of the additional deferral period differs between the options considered.

34. When the deferred IWG regulations come into force (at present on 1 May 2022), IWG will be a permitted activity at that date if there is a certified FW-FP or if the default conditions are met. Given the timing issues identified above with the implementation of the FW-FPs, unless the regulations are deferred for a further time period, the permitted activity conditions must be met or a resource consent obtained.

35. Under sections 20A and 43B(9) of the RMA, existing use rights may apply to the existing IWG activity for a limited time period. Section 20A enables an activity to continue if:

    a. the activity was lawfully established and did not previously need a consent (prior to the regulations coming into effect), and

    b. the character, intensity and scale of effects do not change, and

    c. a resource consent application is lodged within 6 months of the new regulations coming into force.

36. For IWG, this could enable existing activities to continue, on the proviso a resource consent is lodged by 1 November 2022 (ie, within 6 months of regulations coming into

effect on 1 May 2022). The activity can continue until a decision on the consent application has been made and all appeals are resolved. Alternatively, a farmer could ensure their practice complied with the permitted activity requirements in the IWG regulations before the 6-month period under section 20A is up. The implications of this for the primary sector are that any amendments to the NES-F would have limited practical effect before the winter 2023 season, as would a further delay of 6 months as suggested for Option 1.

37. Existing use rights require a high degree of knowledge of the existing operations (eg, determining existing character, intensity and scale of the activity) and in any case are intended to provide a temporary holding position to ensure existing activities can adjust their operations to comply with the new regulations, or if unable to comply, ensure a continuance of their existing activities by obtaining a resource consent.

38. The timing of commencement of the IWG regulations is proposed to overlap with the roll-out of the FW-FP regime. The discussion document for FW-FPs outlines the following proposed timeline for FW-FP regulations and the staged roll-out of plans:

- refinement of options and development of regulations from the end of consultation to early 2022;
- the proposed regulations would come into force in the first half of 2022, if agreed by Ministers;
- the FW-FPs will be gradually rolled out across New Zealand – the exact date farmers require certified FW-FPs may vary across the country.

Nature, scale and scope of the problem

39. Without the temporary deferment to the regulations, the estimated number of consents needing to be lodged and processed would have been as many as 10,000. Even with the delay until 1 May 2022, the high number of estimated resource consents needed remains.

40. The roll-out of FW-FPs will be staged, so even with roll-out expected to commence in mid-2022, the FW-FP pathway will not be available for all farmers undertaking IWG for some time.

41. Under the FW-FP roll-out, all farms will eventually need to have a FW-FP. To the extent that permitted activity default conditions which cannot be implemented would drive consent applications that would not otherwise be made, those applicants potentially face a double up of costs, ie, for a consent for the interim period and then for a FW-FP.

42. Resource consents for discharges to land or water can be granted for a term of up to 35 years (note this is relevant to restricted discretionary consents under regulation 27, but not to discretionary consents for expanding existing IWG under regulations 28-31). During the period of the resource consent, meeting its conditions would supersede any requirements relating to IWG set out in a certified FW-FP. If a farmer operates under a consent for a fixed period, they will not be required to adjust their

farm practice to reflect emerging good and best practice which will reduce the ability of an FW-FP to drive continuous improvement in the farm's IWG practice.

Stakeholders and effect on stakeholders

43. Feedback on the IWG regulations has been received from a wide range of parties, including from within the primary sector and from regional councils across the country. Primary sector representatives include Beef + Lamb, DairyNZ, Federated Farmers, along with Fish & Game. In the discussion regarding IWG in the Southland region, Ngāi Tahu has been represented by Te Ao Marama Incorporated. Local authority involvement has focussed on the regional councils principally involved in implementing and monitoring IWG practices.

44. In September 2020, the Minister for the Environment and the Minister for Agriculture asked Environment Southland and primary sector representatives to review the IWG regulations in the NES-F and provide practical recommendations for improving implementation and IWG practice.

45. In response, the Southland Intensive Winter Grazing NES Advisory Group (SAG) was established. SAG released its report and recommendations in December 2020. The report's primary recommendation was for an alternative permitted pathway to be included in the regulations in the form of an IWG module. The SAG recommended that if this alternative pathway is not created that the application of the regulations be deferred until a certified FW-FP pathway became available. The SAG also recommended changes to the permitted activity default conditions, particularly those that are weather-dependent such as resowing and pugging.

46. The considerable public interest in IWG, is reflected in the SAG report, which says:

"During the 2019 IWG season (May-September) Environment Southland undertook compliance flights to monitor farmers' implementation of required good management practices. They found there was widespread evidence of poor practice and this was reinforced by members of the public and the media. On the ground inspections and enforcement action where necessary followed on from the flights."

47. The SAG report went on to state that since the 2019 IWG season, the farming sector, regional council and central government officials, and some farming leaders, have worked together to provide better information on good practice and lift standards. According to the SAG report, inspections in 2020 (albeit a dry year) showed considerable improvement in the adoption of good management practices than in 2019 and industry groups were working together to ensure farmers make good plans for the 2021 IWG season.

48. The effect on all stakeholders is principally the significant resource, cost and time associated with either implementing or administering a group of regulations with permitted activity conditions that are uncertain and difficult to implement, thereby requiring a significant number of resource consents. These effects fall on both the primary sector and regional councils in their respective roles as applicant and regulatory authority. The volume of consents will also pose a resourcing issue for

iwi/hapū who are unlikely to have the capacity to participate in consultation, particularly in the most-impacted regions requiring thousands of consents (ie, Otago and Southland regions).

Overall regulatory burden

49. There is an overall regulatory burden to consider relating to implementation of any changes to the IWG regulations:

- Transition times, ie, for farmers to transition away from current IWG practices, where required that may be generating significant adverse environmental effects; and
- Cumulative effects, ie, from the policies and regulatory changes farmers must comply with over the next few years.

50. Farmers will be managing compliance with a number of new policies, as well as engaging on further regulatory changes, with overlapping time frames and competing priorities for farm planning and financial/physical resourcing. A factsheet will be created that shows an overview of all the regulatory changes and when they will each come into effect, to assist with farm planning. Implementation and compliance must be realistic.

Specific implementation issues

51. Table 1 below describes the implementation issues with the current default conditions:

Table 1: Implementation issues with the default conditions

	Default condition in the current NES-F IWG regulations	**Implementation issue**
1	**Slope threshold**: IWG is restricted to paddocks where the mean slope is 10 degrees or less.	Measuring the slope as a mean across a paddock is difficult to calculate and could result in areas at a slope greater than the 10 degrees threshold being grazed where they are a small area of the paddock. The SAG recommended changing to measure slope as a maximum slope (maximum slope can be easily measured eg, using an app), and also recommended to set the threshold at 15 degrees.
2	**Re-sowing**: Land used for IWG must be replanted as soon as practicable after livestock have grazed the crop, but no later than 1 October (1 November in Otago and Southland).	This is impractical to meet (or, to be certain in advance that it will be met) due to unpredictable weather, and farmers still grazing up to 30 September and in some cases into early October. It is not practical to have a nationwide date: for the date to work in all instances, it would have to be overly permissive. The way the regulations are currently drafted may also restrict the ability of farmers to utilise good management practices

	Default condition in the current NES-F IWG regulations	Implementation issue
		such as companion planting due to the requirement to replant (a system that uses companion planting does not require replanting because cover is maintained through winter and beyond, and the focus is to minimise the amount of time bare ground is exposed to weather).
3	**Pugging**: Pugging must not cover more than 50% of the paddock and must not be deeper than 20cm at any one point (except near fixed water troughs or entrance gates).	This is impractical to implement, monitor and enforce. There is also little evidence of the adverse impacts to freshwater regarding sediment loss in relation to pugging specifically, the real concern is soil structure damage, the effects of which can be better managed via other means, such as through critical source area (CSA) identification, or other practical steps to address the effects of pugging on freshwater. For both environmental and animal welfare benefits it is best practice to use portable water troughs. However, Regulation 26(4)(c)(i) only provides an exception for fixed water troughs. If the pugging condition is retained, then it should be amended by either deleting the term 'fixed' or extending the reference to 'fixed or portable water troughs'. Consideration could be given to also including supplemental feed areas (eg, feed throughs, self-feeding silage stacks etc).
4	**Total area**: The area of the farm that is used for IWG must be no greater than 50 ha or 10% of the area of the farm, whichever is greater.	The SAG raised concerns about the restriction on total area, however, officials are not proposing amendments to this default condition to ensure a control on the extent of IWG remains (in conjunction with the interim intensification restrictions).
5	**Buffer zone from waterways**: Stock must be kept at least 5m away from the bed of any river, lake, wetland, or drain.	No implementation issues have been raised regarding the buffer zone itself. However, the definition of "drain" currently includes *sub-surface drains* as well as surface drains. This is impractical to implement, monitor and enforce, as there are extensive networks of sub-surface drains that have not been mapped, or cannot practically be mapped. The inclusion of sub-surface drains was an unintended result of drafting.
6	**Critical Source Areas (CSAs)**: No default conditions currently	The SAG recommended their inclusion, however, there are some issues with their use through default conditions. They are potentially better suited to the FW-

	Default condition in the current NES-F IWG regulations	Implementation issue
		FP pathway, where there is a mechanism to implement. CSA identification requires case-by-case analysis, and enforcement could be difficult as a default condition unless using a national mapping approach.

What objectives are sought in relation to the policy problem?

52. The consideration of objectives is guided by the purpose of the RMA and the objectives of the *Essential Freshwater* package reforms. The key objectives are:

a) Any change must be implementable, ie, it must provide a realistic pathway for activities to occur where environmental effects can be appropriately managed.
b) Stop further degradation and loss, so the state of the country's freshwater resources, waterways and ecosystems does not get worse.
c) Reverse past damage, through changes to current methods to enable restoration of areas previously damaged by the IWG practice.

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

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

53. To assess the policy effectiveness of potential options for addressing IWG implementation issues the following criteria a) – g) are used. The criteria are not ranked or prioritised in any particular order as all are relevant and interrelate. Any change to the NES-F regulations for IWG must:

    a) not result in an adverse environmental impact worse than is possible under the current regulations. This includes the risk of any adverse effects that result from a further delay to the regulations taking effect;
    b) allow for (and encourage) practice changes and improvements;
    c) enable innovative practices that address underlying issues (such as companion planting);
    d) support the roll-out and function of freshwater farm planning;
    e) consider ease of implementation;
    f) consider ease of compliance, monitoring and enforcement; and
    g) consider any inconsistencies or tension with animal welfare guidelines and ensure the changes do not impinge on animal welfare issues.

54. The criteria are a refinement of the more generic criteria used in the Regulatory Impact Analysis (RIA) for the *Essential Freshwater* package (dated 22 April 2019). The RIA reviewed the IWG provisions in terms of the following assessment criteria:

    a) effectiveness;
    b) timeliness;
    c) fairness;
    d) rfficiency;
    e) principles of the Treaty of Waitangi; and
    f) Te Mana o te Wai.

    These continue to be relevant and are assessed as part of the analysis of the options against the criteria listed above in paragraph 51.

What scope will options be considered within?

Existing policy decisions

55. The Cabinet decision (CAB-21-MIN-0121) to defer the implementation of Regulations 26 and 27 by one year to 1 May 2022 has enabled the review and development of feasible options to address the implementation challenges.

Stakeholder engagement

56. IWG usage varies across the country due to climatic conditions. Stakeholder engagement to date in Southland has resulted in a set of recommendations which are reviewed in the options analysis. Other options have been developed by officials, some of which respond directly to the feedback received from stakeholders.

57. Officials intend to continue their ongoing discussion with the primary sector, regional councils and iwi on the effects of IWG and the options to address these issues. In addition, officials will shortly commence public consultation on a range of matters relating to the implementation of the *Essential Freshwater* programme. To ensure an efficient process and to minimise the risk of consultation fatigue, consultation on potential changes to the IWG regulations is intended to overlap with consultation on FW-FPs as much as possible. The FW-FP consultation period runs from 26 July – 12 September.

Available non-regulatory options

58. The key non-regulatory option is the use of education on preferred farm practices and the encouragement of voluntary, environmental protection measures. While these options are important, by themselves we cannot be certain they will ensure that the objectives of the *Essential Freshwater* programme are achieved.

59. During the deferral period, extra monitoring and a range of practical support has been deployed to assist the primary sector in achieving improvements in IWG practices. MPI, MfE, regional councils and primary sector representatives have developed an online tool called the 2021/22 Intensive Winter Grazing Module (the Module) to help improve practices to benefit freshwater quality and animal welfare. The Module was publicly launched in April 2021. It sets minimum expectations for IWG practices and helps farmers plan and plant annual forage crops.

60. The Module also identifies practical measures to avoid or mitigate the adverse effects of IWG. Such measures include leaving a 5m buffer area adjacent to waterways, grazing crops top down where they grow on a slope and using portable water troughs to minimise pugging.

61. The Module will be used to inform the IWG components of existing and new farm plans and enable them to be tested and incorporated into certified FW-FPs. The work on the Module is also aligned with increased monitoring and reporting by regional councils. As the module is now in use, there is potential for this to accelerate the uptake of FW-FP where IWG occurs.

Overseas examples and experience

62. Although IWG is used extensively in overseas jurisdictions, differing climatic conditions mean practices vary considerably (eg, housing stock in enclosures for the majority of the winter season) as do priorities (eg, the adverse effects of runoff and degradation of freshwater may be accorded a lower priority as it does not occur to the same extent as in New Zealand). One of the competitive advantages New Zealand farming practice has over international competition is the predominance of outdoor grazing. This is aligned with overseas consumer preferences, including concerns regarding animal welfare.

What options are being considered?

Status Quo Option

63. Maintaining the status quo keeps the regulations as they are (ie, the permitted activity default conditions pathway, the FW-FP pathway (currently under development), and consenting pathways in the NES-F remain unchanged). This does not address the difficulties identified for implementation. Without change, it will continue to be challenging for farmers to comply with these regulations, and for councils to undertake monitoring and compliance. This is also likely to lead to a high number of resource consents being required, and significantly impact both farmers and councils.

64. Feedback received from stakeholder groups and the primary sector indicates that many farmers are unlikely to rely on the permitted activity default conditions defined in the NES-F. Some of the default conditions (eg, pugging, and resowing by a specified date) are weather-dependent and therefore farmers will not be confident of meeting them in advance. As a result, they would have to apply for a resource consent if they are to continue carrying out IWG.

65. The date for introduction of the FW-FP regime across each region is currently unknown (but it will be mid-2022 at the earliest). It is also unknown whether there will be an interim approval process until the full certification process is in place. In the meantime, where the permitted activity default conditions cannot be met, and a FW-FP is intended but not yet available, resource consents will be required.

66. While the IWG module has been rolled out this year, that is a non-regulatory pathway. It is however helping to set consistent expectations for IWG management practices and prepare for the uptake of the FW-FP regime when that becomes available. The IWG module is expected to form part of the FW-FP regime.

67. There is evidence of improvements in practice already occurring, and some councils have progressed their plans and included IWG restrictions. If the status quo is maintained, the issues identified with implementation will be most significant in the short term but will reduce over time as the FW-FPs become widely available, and as farmers continue to implement practice changes and improvements in line with the regulations and guidance.

Option 1 – Amend the default conditions for IWG and further defer commencement for a fixed term

68. Option 1 amends the default conditions for IWG in Regulation 26(4) and further defers the commencement of the regulations to allow farmers time to adjust to the new conditions. The proposed changes to the default conditions in Regulation 26(4) are:

    - Amend the definition of drains to exclude *sub-surface drains* as originally intended, and instead manage sub-surface drains as critical source areas;

- Move from measuring *mean slope across a paddock* to a *maximum allowable slope* (and also consider amendments to the threshold, for example, amending to an equivalent slope threshold which would capture the same amount of land as would be captured under the current *mean slope* threshold of 10 degrees);

- Require farmers to resow *as soon as practicable* (which may vary according to circumstances and weather events), and remove the requirement to do so by 1 October (1 November in Otago and Southland); and clarify that other methods of establishing ground cover (eg, companion planting) are included (ie, to minimise the amount of time bare ground is exposed to weather)

- Remove the condition that relates to pugging and manage the effects on soil structure through CSAs; or, amend the condition to require reasonably practical steps to manage the effects of pugging on freshwater; and

- Include new requirements to identify and protect (ie, not graze) critical source areas.

69. Officials could also develop guidance to ensure a shared understanding of the changes, for example of what would constitute reasonably practical steps or timeframes.

70. Under Option 1 there is no change to the remaining two conditions in Regulation 26(4):

    - Total area. The area of the farm that is used for IWG must be no greater than 50ha or 10% of the area of the farm, whichever is greater; and

    - Buffer zone from waterways. Livestock must be kept at least 5m away from the bed of any river, lake, wetland, or drain (regardless of whether there is any water in it at the time). No implementation issues have been raised regarding the buffer zone itself. However, the definition of “drain” currently includes *sub-surface drains* as well as surface drains. The inclusion of sub-surface drains was an unintended result of drafting and is proposed to be amended.

71. The fixed time period of delay has not been set, but is anticipated to be a further period of 6 months (eg, extending the current deferral from 1 May 2022 out to 1 November 2022). This time period recognises that planning and planting for the winter grazing season in 2022 will be starting over the next few months and early 2022 is likely the earliest that an announcement on Cabinet-approved changes to the default conditions could be made.

Option 2 - Remove the permitted activity pathway based on default conditions (Pathway 1), and instead manage IWG through certified FW-FPs only (Pathway 2)

72. Under Option 2, all of the default conditions are deleted from Regulation 26, but instead the substance of the default conditions is incorporated into a set of requirements that a FW-FP must satisfy. For example, a FW-FP would factor in local

conditions when determining a resow date and address how a farmer will respond to weather events that might delay resowing.

73. Farmers would either need to have a FW-FP which includes practice expectations for IWG (Pathway 2) or obtain a resource consent (Pathway 3). The start date of the IWG regulations would be deferred until FW-FPs are available. Option 2 recognises that eventually all farmers will need a FW-FP under section 217D of the RMA and ensures IWG mitigation actions occur as part of that process.

74. FW-FPs can also include bespoke mitigation options if the FW-FP certifier is satisfied that the adverse effects (if any) allowed for by the FW-FP in relation to the intensive winter grazing are no greater than those allowed for by the requirements.

75. Option 2 recognises that eventually all farmers will need a FW-FP regardless of intensive winter grazing regulations, and takes advantage of those processes (ie, certified farm planners and auditing) to work through practical difficulties with the default conditions and find farm-specific, bespoke, mitigation actions that can be taken to reduce the impacts of intensive winter grazing activity.

Transitional Approach

76. While either Option 1 or Option 2 could be progressed independently, it would also be possible to apply Option 1 on a transitional basis, until Option 2 can be implemented (ie, when FW-FPs are available). Once FW-FPs are available, they will be the best way to manage intensive winter grazing, and removing Pathway 1 would ensure there is no disincentive to adopt FW-FPs.

77. This approach would provide protection in the period until FW-FPs are available (through Pathway 1), which would not otherwise be there if Option 2 were progressed on its own.

78. For the same reasons as outlined under Option 1, the commencement date of the amended default conditions will need to be deferred for a further period of 6 months.

Table 2: Proposed changes under Option 1 and Option 2, compared to the current default conditions (Status Quo)

	Default condition in the current NES-F IWG Regulations	Option 1: amend the default conditions	Option 2: remove the permitted activity pathway based on default conditions and manage intensive winter grazing through FW-FPs
1	**Slope threshold:** IWG is restricted to paddocks where the mean slope is 10 degrees or less.	Set the slope threshold as a *maximum slope threshold* (instead of *mean slope threshold measured across a paddock*). Retain a slope threshold of 10 degrees (noting changes can be considered following consultation, for example, the threshold could be an equivalent which would capture the same amount of land as would be captured under the current mean slope threshold of 10 degrees). Nb. Measuring the *maximum slope* could be based on the definition in Rule 25 of the Proposed Southland Water and Land Plan (Note: currently subject to appeal), which measures slope across any 20-metre distance.	Remove the default condition. Under FW-FPs, set the slope threshold as a *maximum slope threshold* (instead of *mean slope threshold measured across a paddock*). Retain a slope threshold of 10 degrees (noting changes can be considered following consultation, for example, the threshold could be an equivalent which would capture the same amount of land as would be captured under the current mean slope threshold of 10 degrees). Nb. Measuring the *maximum slope* could be based on the definition in Rule 25 of the Proposed Southland Water and Land Plan (Note: currently subject to appeal), which measures slope across any 20-metre distance. *See note on discretion.
2	**Re-sowing:** Land used for IWG must be replanted as soon as practicable after livestock have grazed the crop, but no later than 1 October (1 November in Otago and Southland).	Land used for IWG must be replanted *as soon as practicable* after livestock have grazed the crop. Amend the drafting to enable alternative approaches to establishing ground cover (eg, companion planting), ie, in order to minimise the amount of time bare ground is exposed to weather.	Remove the default condition. Under FW-FPs, specify how bare ground (where it was used for IWG) will be minimised as soon as practicable, and how the effects of bare ground will be managed.

Table 2: Proposed changes under Option 1 and Option 2, compared to the current default conditions (Status Quo)

	Default condition in the current NES-F IWG Regulations	Option 1: amend the default conditions	Option 2: remove the permitted activity pathway based on default conditions and manage intensive winter grazing through FW-FPs
3	**Pugging:** Pugging must not cover more than 50% of the paddock and must not be deeper than 20cm at any one point (except near fixed water troughs or entrance gates).	Amend to require reasonably practical steps be taken to manage the effects of pugging on freshwater, or remove the pugging condition. Manage effects on soil structure through critical source areas (see proposed new condition below).	Remove the default condition. Under FW-FPs, specify how degradation of soil structure and associated run-off would be minimised.
4	**Total area:** The area of the farm that is used for IWG must be no greater than 50 ha or 10% of the area of the farm, whichever is greater.	No change	Remove the default condition. Practice expectation which states that under FW-FPs, the area of the farm that is used for IWG must be no greater than 50 ha or 10% of the area of the farm, whichever is greater. (No change from the current position) *See note on discretion.
5	**Buffer zone from waterways:** Stock must be kept at least 5m away from the bed of any river, lake, wetland, or drain.	Definition of “drain” excludes *sub-surface* drains. Manage sub-surface drains (where known to exist) as CSAs as managed (see CSAs in row 6 below)	Remove the default condition. Practice expectation which states that under FW-FPs, stock must be kept at least 5m away from the bed of any river, lake, wetland, or drain. (No change from the current position). Definition of “drain” excludes *sub-surface* drains. Under FW-FPs, manage sub-surface drains (where known to exist) as CSAs. *See note on discretion.

Table 2: Proposed changes under Option 1 and Option 2, compared to the current default conditions (Status Quo)

	Default condition in the current NES-F IWG Regulations	Option 1: amend the default conditions	Option 2: remove the permitted activity pathway based on default conditions and manage intensive winter grazing through FW-FPs
6	**Critical Source Areas (CSAs)**: No default conditions currently	Consult on: a. using CSAs within FW-FPs to address/minimise soil damage b. using CSAs within the default conditions (to require no cultivation or grazing of CSAs). The definition of CSAs could be based on the definition within: • the Proposed Southland Water and Land Plan, in line with recommendations from the SAG (but noting the Plan is subject to appeal), or • the proposed certified FW-FP regulations.	Under FW-FPs, identify CSAs and management of those areas (including stock being excluded from CSAs).
*Note that the requirement would have some discretion: the requirement must be met under the certified FW-FP, or, the certified FW-FP must demonstrate that the environmental effects would be no more than if the requirement had been met. Any action that is written into a certified FW-FP will be mandatory and enforceable.			

Table 3: How do the options compare to the status quo/counterfactual?

	Status Quo	Option 1 – amend the default conditions	Option 2 - remove the permitted activity pathway based on default conditions and manage intensive winter grazing through FW-FPs
Environmental impact	0	0 The amended conditions address environmental impacts but could be seen as more permissive. The proposed new condition managing CSAs would provide increased environmental protection.	0/+ In the short-term the deferral will result in higher risk due to the absence of enforceable IWG regulations. This can be addressed through monitoring and enforcement. But in the medium-term FW-FPs would have better environmental outcomes than amended bottom lines (ie, Option 1) because they will target on-farm risks and catchment context.
Practice changes and improvements	0	+ Making the default conditions workable would encourage uptake of the permitted activity pathway based on default conditions, improving practice to meet those conditions. However, if the default conditions cannot be met and a consent is required, it may imbed current practice and limit the ability for continuous improvement through other mechanisms.	++ FW-FPs are acknowledged by government, councils and the farming sector as being the approach most likely to achieve long-term, tangible improvements in the use of IWG.
Innovative practices	0	0 The amended default conditions would not allow any flexibility for innovative practices (although some limited scope for flexibility exists in relation to resowing and pugging under some changes considered here).	++ Will enable bespoke management options, tailored to IWG on individual farms. Enables environmental management tools to be introduced, such as Critical Source Areas or companion planting.
Roll-out and function of freshwater farm planning	0	0 All farmers will eventually require a FW-FP (regardless of IWG regulations). This option makes the permitted activity pathway based on default conditions more practical to comply with, and that may reduce incentives for early adoption of FW-FPs.	++ All farmers will eventually require a FW-FP (regardless of IWG regulations). This option benefits from the processes of FW-FP to enable more bespoke management options, and therefore may encourage early adoption of FW-FPs.
Implementation	0	+ Amendments will enable farmers to use the permitted activity based on default conditions	+ Will result in a delayed implementation as it is dependent on the FW-FP regime being in place. However, once implemented these

	Status Quo	Option 1 – amend the default conditions	Option 2 - remove the permitted activity pathway based on default conditions and manage intensive winter grazing through FW-FPs
		(Pathway 1), therefore reducing the number of resource consents required. However, the regulations would come into effect before the FW-FP pathway is available so where farmers cannot meet the (amended) permitted activity conditions they would still require a consent. That could result in a double-up of costs when farmers are required to get a FW-FP a short time later once available (FW-FPs will eventually be required regardless of IWG regulations).	changes will provide a simpler process for farmers and councils, using the FW-FPs regime which farmers will be required to use anyway.
Compliance, monitoring and enforcement (CME)	0	++ Overall amendments are expected to result in more readily enforceable conditions (with the exception of removing a specific resow date). Could result in more permissive conditions than the status quo, however, limited evidence to identify the difference in environmental effect as the existing conditions are difficult to interpret and enforce.	++ CME will be much simpler because there will be a bespoke FW-FP for each farm, subject to certification and audit, against which to undertake monitoring and compliance. It will also be easier to confirm compliance as a permitted activity – rather than assessing whether the FW-FP demonstrates that the effect of IWG activities is no greater than if they met the default conditions, there is instead an assessment of whether those matters have been covered by the FW-FP. CME will also be supported by the FW-FP process.
Animal welfare	0	0 There are not expected to be any impacts on animal welfare by amending the default conditions.	0 There are not expected to be any impacts on animal welfare by removing the default conditions and relying on the FW-FP pathway.
Overall assessment	0	+ Resolves the workability issues identified with the regulation default conditions regarding slope threshold, resowing dates, pugging, and interpretation of drains, and provides a permitted	+ Will ensure the management of IWG in a way that doesn't permit significant adverse environmental effects under an NES-F, through the use of bespoke management options enabled under the FW-FP regime. It also minimises compliance and consenting burden and costs for farmers and councils. However, it requires a

	Status Quo	Option 1 – amend the default conditions	Option 2 - remove the permitted activity pathway based on default conditions and manage intensive winter grazing through FW-FPs
		activity pathway in the short term that would avoid a large number of consents being required.	further deferral until FW-FP are available, leaving a regulatory gap in the interim.

Example key for qualitative judgements:

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

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

79. Options 1 and 2 address the issues identified with the default conditions in Regulation 26(4) of the NES-F. The key difference between the two options is the way that the implementation issues with the default conditions are addressed. Feedback received during consultation will provide further information to assess the elements of each option.

80. Amending the default conditions under Option 1 to make them more workable could result in them becoming more permissive than the status quo. Under section 43A(3) of the RMA a national environmental standard cannot state that an activity that has significant environmental effects on the environment is a permitted activity. In the present case, officials have limited evidence to identify the difference in environmental effect between the existing default conditions and the proposed conditions in Table 2 above.

81. Feedback received during consultation may identify further changes to the default conditions which may be appropriate to mitigate this risk. Option 1 however still only sets minimum requirements in regulations and will not necessarily encourage further practice change and introduce bespoke management options that could be identified under the FW-FP process to be more effective on a particular farm, such as companion planting. Where farmers cannot meet the default conditions and instead obtain a resource consent, this will also remove the incentive to improve practices and adopt FW-FPs, as they can continue with whatever practices are locked in for the duration of that consent. Further, where farmers cannot meet the amended default conditions but will be able to obtain a FW-FP once available, they will be required to get a resource consent first for a short period, and then get a FW-FP in the following year(s) once they are required for all farmers, resulting in a double-up of costs.

82. To implement Option 1 a further delay to the commencement of the regulations would be required to allow farmers time to adjust their farm practices to meet the new conditions. A delay of 6 months by extending the end of the regulatory deferral period from 1 May 2022 to 1 November 2022 should provide sufficient time for this to occur.

83. Option 2 would take advantage of FW-FP processes to allow farmers to put in place farm-specific actions to reduce the impacts of IWG activity, which would not be possible under the more rigid default conditions pathway. Option 2 has benefits in an implementation context as it reduces the available compliance pathways for farmers undertaking IWG to just two and removes the present uncertainty regarding the application of the default conditions under Pathway 1. If Option 2 is adopted, either a farmer's IWG methodology on their farm is certified as part of a FW-FP, or a resource consent is obtained.

84. Option 2 is dependent on the FW-FP regime being in place. Implementing Option 2 therefore requires a further deferral to the IWG regulations. The timeframe associated with this deferral is not fixed – although the FW-FP roll-out is expected to begin in mid-2022, it is likely to take several years before FW-FPs are available to all farmers. If the roll-out of the FW-FP regime is staged based on risk, it could be prioritised to

areas with high-risk IWG activity, and IWG regulations could be applied in a staged way to mirror that roll-out. This would ensure that the intensive winter grazing regulations only apply in an area once FW-FPs are available in that area.

85. While Option 2 requires a longer delay than Option 1, in the interim the other non-regulatory programmes in place will continue to provide guidance to the primary sector and work to ensure environmental adverse effects are reduced or mitigated. In particular, the IWG module will continue to be deployed throughout this period, leading to improved IWG practices and increased monitoring and reporting by regional councils. Implementation of the initiatives outlined in the Module will also encourage a quicker adoption of updated FW-FPs in relation to IWG once they are available.

86. The transitional approach of using both options would see benefits from each. In the short term it would amend the default conditions to resolve the practical issues (as per Option 1), but then enable management of IWG using bespoke management through FW-FPs once they are available (as per Option 2). This ensures that IWG activity is regulated in the interim (in contrast to Option 2, which involves a longer delay than Option 1). However, it would still result in Option 2 ultimately being implemented, and providing for farm-specific management of effects of IWG (in contrast to Option 1).

87. As with Option 1, the transitional approach may still drive consents in the short term (see paragraph 81).

88. As with Option 1, the transitional approach would require a further delay (see para 82).

89. A risk with the transitional approach is that the two-step nature of this means the permitted baseline changes over time, which sends a changing signal over a short period as to what farmers must do for IWG to be permitted, and may result in a complex compliance and monitoring environment during this period. This is mitigated to some extent, as the set of requirements in Option 2 are based on the substance of the same amended conditions under Option 1, ie, something similar would be required in the future so it is not radically different in substance.

What are the marginal costs and benefits of the options?

90. Some or all of these benefits are true of the *Essential Freshwater* package as a whole, of which IWG regulations are a part. The options considered here have a marginal impact on those costs and benefits, and those are described below.

Costs and Benefits of Option 1			
Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the Option 1 compared to taking no action (status quo)			
Regulated groups – Farmers undertaking IWG	Ongoing costs. Variable mitigation costs per farm relating to: • 5m setback and critical source areas • Changes to paddock grazing management • Changes to stock feeding supplementary feed, silage etc • Consequential need for run-off/lease land • Infrastructure construction	**Low** (relative to the status quo option which would likely trigger unnecessary consent requirements)**.**	**Medium.**
Regulators – Regional councils	Ongoing compliance and monitoring costs. Councils are required to monitor and ensure environmental compliance under the existing provisions in the RMA.	**Low** (relative to the status quo option which would likely trigger unnecessary consent requirements)**.**	**High.**
Others – Government, ENGOs	ENGOs may be concerned that the changes to the default conditions may be more permissive and not provide sufficient environmental protection. Development of implementation support and interpretation materials. Primary sector advisory services require support and development. Ongoing monitoring and reporting costs. Government's costs mostly generated by its reporting and policy effectiveness monitoring responsibilities which apply regardless of the IWG provisions.	**Low.**	**Medium.**
Total monetised costs			

Non-monetised costs		**Low**	
Additional benefits of Option 1 compared to taking no action (status quo)			
Regulated groups – Farmers undertaking IWG	Efficient to meet the permitted activity default conditions pathway rather than obtaining resource consents. Associated farm production and animal health benefits. Regulatory costs: under the status quo a resource consent is likely to be required, however if the default conditions can be met, farmers will not face that regulatory cost. Supports good stewardship decision making and supports social licence.	**High.**	**Medium.**
Regulators – Regional councils	Reduced regulatory costs: under the status quo a large number of resource consents are likely to be required, however if the default conditions can be met, councils will not face the regulatory cost of processing a large number of consents. For resource consent conditions and general compliance with the RMA (including the NES-F IWG provisions), monitoring against the set default conditions. Consistent approach to management of activity common across NZ.	**High.**	**High.**
Others – Government, ENGOs	The changes will ensure the regulations can be implemented and therefore manage IWG activity.	**High.**	**High.**
Total monetised benefits			
Non-monetised benefits	Providing a workable permitted activity pathway will enable farmers to continue IWG activities without the cost (to farmers and regional councils) of the large number of consents that would be required under the status quo, while ensuring IWG activities are managed.	**High.**	

Costs and Benefits of Option 2 Note that under the status quo a permitted activity pathway based on certified FW-FPs already exists, but is not yet available in practice. The impacts described here are relative to the status quo (ie, no FW-FP available in practice), but it is important to note the impacts of Option 2 are largely the same as those expected of the FW-FP pathway in the current regulations.			
Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of Option 2 compared to taking no action (status quo)			
Regulated groups – Farmers undertaking IWG	Ongoing costs. Variable mitigation costs per farm relating to: • 5m setback and critical source areas • Changes to paddock grazing management • Changes to stock feeding supplementary feed, silage etc • Consequential need for run-off/lease land • Infrastructure construction Regulatory costs. FW-FPs are 'living documents' and will require updating resulting in consultant costs. May also require additional monitoring costs. Extensive engagement has occurred with farmers, primary sector representatives and councils to understand and scope issues. However, FW-FPs are new and site specific so comparison of costs against compliance with the NES-F conditions or grant of a consent is difficult to quantify.	**Low** (relative to the status quo option which would likely trigger unnecessary consent requirements)**.**	**Medium.**
Regulators – Regional councils	Ongoing compliance and monitoring costs. Councils are required to monitor and ensure environmental compliance under the existing provisions in the RMA. Councils will be able to recover any compliance and monitoring costs	**Low** (relative to the status quo option which would likely trigger unnecessary consent requirements)**.**	**High.**

	from applicants regardless of the pathway option adopted. Compliance and monitoring costs for councils may reduce if the FW-FP system under Option 2 is adopted as the certification and auditing process is not undertaken by councils.		
Others – Government, ENGOs	Development of implementation support and interpretation materials. Primary sector advisory services require support and development. Ongoing monitoring and reporting costs. Majority of monitoring will be undertaken by councils. FW-FP as a new planning tool may require additional research and monitoring that cannot be undertaken on a cost-recoverable basis from applicants. Government's costs mostly generated by its reporting and policy effectiveness monitoring responsibilities which apply regardless of the IWG provisions. The additional deferral required to implement Option 2 risks poor practices continuing for longer with associated impacts on the environment (noting IWG activities cannot be expanded in the interim) and that it is dependent on a yet to be implemented regulatory regime.	**Low.**	**Medium.**
Total monetised costs			
Non-monetised costs		**Low**	
Additional benefits of Option 2 compared to taking no action (status quo)			
Regulated groups – Farmers undertaking IWG	Efficient to include IWG within a farm-based FW-FP rather than obtaining separate consents. Allows for more bespoke management relative to the farm, catchment, climate, etc. Associated farm production and animal health benefits.	**High.**	**Medium.**

	Supports good stewardship decision making and supports social licence.		
Regulators – Regional councils	Reduced regulatory costs: under the status quo a large number of resource consents are likely to be required, however if farmers can obtain a certified FW-FP, councils will not face the regulatory cost of processing a large number of consents. Less costs and litigation involved in plan preparation to manage specific activity. Consistent approach to management of activity common across NZ.	**Medium.**	**High.**
Others – Government, ENGOs	This option focuses on FW-FPs which some consider to be a more effective mechanism at driving medium- and long-term positive change. FW-FPs will enable more bespoke action to address the specific environmental effects of IWG. This will ensure effective implementation of the Essential Freshwater programme while reducing consenting and compliance costs for farmers.	**High**.	**High.**
Total monetised benefits			
Non-monetised benefits	If FW-FP delivery is well-resourced the policy has potential to provide significant benefits, not only in contributing to improved water quality and associated values, but also reducing implementation and compliance costs for the primary sector and regional councils.	**High**	

Section 3: Delivering an option

How will the new regulations be implemented?

91. Under section 43 of the RMA the government may by Order in Council introduce new regulations as national environmental standards.

Ongoing operation and enforcement

92. Local authorities with resource management responsibilities under section 30 of the RMA (ie, regional councils and unitary authorities) will have the principal role for managing and enforcing the amended IWG regulations. When introduced, MfE and MPI will support regional councils (including any unitary authority) and the farming sector to implement the new regulations through the publication of updated guidance documents and advisory notes.

93. Under section 35 of the RMA regional councils are responsible for monitoring and reporting on the state of the environment in their region. MfE has given direction to the councils to increase their monitoring and reporting of IWG practice. A quarterly report will be delivered from the regional sector to show what progress has been made this winter, with the first report due in August 2021.

94. In addition to the councils' enforcement powers under the RMA for environmental breaches of the NES-F or a regional plan, from an animal welfare perspective MPI has a dedicated enforcement approach in the 2021 winter season for winter grazing monitoring. This is occurring in two phases within the Otago and Southland regions.

95. The first phase was a proactive, educative phase where MPI and Environment Southland visited farmers to ensure they had effective plans in place before the winter grazing practice started. Forty-two proactive inspections were completed across Otago and Southland. The second phase runs from 4 July to 16 August 2021. This phase is more enforcement based. An additional animal welfare officer and National Animal Identification and Tracing (NAIT) officer will be in the Southland region to conduct follow up inspections to ensure that the plans have been put into effect, respond to complaints, and record any stock movement in and out of the region.

96. If a decision is made to further delay the IWG regulations, the enforcement and monitoring practices noted above could be extended.

Timing for when regulations come into effect

97. The implementation date is yet to be advised and is dependent on whether Option 1 or 2 (or an alternative transitional approach) is adopted.

Stakeholder and council involvement in implementation

98. Prior to the implementation of any new amendments, work is underway to address the issues associated with IWG. While the IWG regulations have been deferred for one year (from 1 May 2021 to 1 May 2022), central government, regional councils, farmers, and industry bodies are working to ensure that improved practices regarding IWG are achieved. Officials worked with council and primary sector representatives to

develop an IWG module which is now publicly available. This module sets minimum expectations for IWG and helps support farmers to plan and plant winter forage crops according to government expectations for improved practice.

99. The module was developed with the intention that it could ultimately form part of FW-FPs (once available). As the module is now in use, there is potential for this to accelerate the uptake of FW-FP where IWG occurs.

Public notification process of the regulatory changes/ Other work required for successful implementation

100. MfE, MPI and the regional councils will need to continue their existing educative efforts through the production of further guidance notes and advisory notices to the primary sector. This is part of the normal operational practice that occurs whenever new RMA regulations under a NES or a council regional plan change becomes operative.

Implementation risks

101. Both Options 1 and 2 carry implementation risks. Either option may limit the ability of regional councils, albeit temporarily, to manage and enforce a national standard for an activity which may adversely affect freshwater bodies. Option 1 addresses the known issues with the IWG regulations but risks making the regulations more permissive. Option 2 is dependent on the FW-FP regime being in place. One of the risks for Option 1 is that farmers who cannot meet the default conditions (Pathway 1) but would be able to obtain a FW-FP (Pathway 2) in the future once they are available, will have to get a resource consent for the time period that the FW-FP pathway is not available. This is not appropriate from a cost and administrative efficiency perspective for both famers and regional councils. Option 2 addresses this risk by ensuring the regulations do not apply until the FW-FP pathway is available. This will reduce the cost and regulatory burden of the regulations and ensure the regulations work as intended (ie, that there is a viable FW-FP pathway).

102. The key risk with Option 2 is the length of time that elapses before all IWG activities are being managed under FW-FPs. This risk to the environment can be mitigated through operational measures including the prioritisation of FW-FPs in areas with high-risk IWG activity, a continuance of effective monitoring and enforcement by the regional councils, and continued focus on improving practices (eg, through the IWG module). It could also be addressed through a transitional approach, of implementing Option 1 in the interim until Option 2 can be implemented (once FW-FPs are available).

Existing management arrangements for IWG

103. Once new IWG regulations come into effect, both MfE and regional councils have a significant role in managing their implementation. Thereafter the majority of responsibility for implementation, enforcement and monitoring will rest with the regional council as one of their section 30 RMA responsibilities.

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

104. The monitoring, evaluation and review of NES regulations and regional plan provisions is a requirement under the RMA. Arrangements for the monitoring, evaluation and review of the FW-FP regime (including the certification and audit of farm plans) are described in the FW-FP discussion document[1] and the FW-FP regulatory impact analysis[2].

Opportunities for feedback

105. In addition to the consultation process on IWG options summarised above, once any new IWG regulations come into effect it is expected the Minister for the Environment will continue to receive feedback from regional councils, iwi, famers, primary sector representatives, NGOs, and other stakeholders on their implementation.

106. If required, further amendments or changes can be undertaken at both the national and regional level. Government can at any stage introduce further changes to the NES-F regulations, while regional councils can change their regional plans to include additional controls on IWG activities.

Monitoring and evaluation of the new regulations

107. Monitoring and evaluation of the new IWG regulations will rest with MfE and the regional councils as part of their ongoing responsibilities under section 35 of the RMA to monitor the state of the environment. This will include data on compliance and the number of consents granted being provided by the regional councils.

108. Current monitoring practices of IWG is undertaken by:

- Site visits by council staff;
- Previous analysis that estimated the environmental impact of permitted activity conditions (largely focused on the relationship of slope and sedimentation, and controls on IWG expansion);
- Resource consent conditions on granted consents.

109. Current environmental monitoring is not sufficient to identify the effects of IWG because it cannot be used to link environmental change to specific causes. There are further complications when it comes to monitoring sediment, as levels are dictated largely by weather events and the time it takes sediment to travel through catchments varies widely.

[1] Available at: https://environment.govt.nz/publications/freshwater-farm-plan-regulations-discussion-document/.

[2] Available at: https://environment.govt.nz/publications/freshwater-farm-plan-regulations-regulatory-impact-analysis/.

110. If the IWG regulations are delayed further, then commitment from the primary sector and councils is necessary to identify and manage the effects of IWG during this period.

111. As an alternative to existing environmental monitoring there are a range of options to ensure cost-effective monitoring of IWG activities. It is possible to use satellite and/or aerial imagery to monitor the extent of IWG activities and this form of monitoring has been undertaken in Southland already over the past two winter seasons. However, monitoring the direct effects of IWG on water is more challenging on account of the difficulty with assessing the discharges from individual IWG sites.

Future regulatory reviews

112. The NES-F may be reviewed again at any stage. A further consideration is the transition to a new planning and resource management regime under the future Natural and Built Environments Act and the effect of this on the existing NES-F regulations.

113. The Government expects councils to continue working on the requirements of the RMA and current national direction. The development of the National Planning Framework (under the RM reform work) is intended to capture the policy intent of existing national direction, align it with the new legislation, and determine how to fill gaps. It is expected therefore that the policy intent of the NES-F, including the IWG provisions, will be carried over into the regime.