



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

Action for Healthy Waterways Proposals

Draft National Policy Statement for Freshwater Management
Proposed National Environmental Standards for Freshwater
Draft s360 (Stock Exclusion) Regulations

TO: Ministry for the Environment
(consultation.freshwater@mfe.govt.nz)

Submission on behalf of the

Resource Management Law Association of New Zealand Inc

Introduction

- 1 This Submission is made by the Resource Management Law Association of New Zealand Inc (**RMLA**).
- 2 The RMLA is concerned to promote within New Zealand:
 - a An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework.
 - b Excellence in resource management policy and practice.
 - c Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
- 3 The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,000 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.

- 4 While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed regulations. It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.
- 5 For these reasons, this submission does not seek to advance any particular policy position in relation to the proposed NPS/regulations, but rather is kept at a reasonably high level and is made with a view to ensure that the proposed NPS/regulations:
 - a are consistent with the general framework of existing laws and policies of relevance, and the Resource Management Act 1991 (“**RMA**”);
 - b are practicable and workable; and
 - c will assist in promoting best practice.

NPS-FM new drafting approach

- 6 The Government has sought feedback on the new drafting approach. The intention of the new drafting approach is “*to improve its quality and make it clearer and more accessible to all New Zealanders*”. The RMLA supports this intention.
7. Although important caselaw has developed around the current NPS-FM, the number of amendments that have been made since its inception arguably warrant a redraft. Further, the Government has stated it wishes to strengthen the direction.
8. The new structure and the ‘Information Notes’ in the Draft NPS-FM are particularly helpful. However, the NPS-FM does not exist in a vacuum. In some instances the Draft NPS-FM uses terms that are inconsistent with the Act. This may improve accessibility to the public but raises uncertainty as to how the NPS-FM fits with the scheme of the Act. This submission seeks to identify those instances where there is an apparent tension between accessibility and workability for RM practitioners.

Te Mana o Te Wai

9. The Draft NPS-FM provides that Te Mana o Te Wai is to be “given effect to” by regional councils.¹ Te Mana o Te Wai is to be articulated in a Region’s “long-term vision”. This long term vision will allow local input to the understanding of Te Mana o Te Wai, supplementing the national articulation of that concept in the NPS-FM.
10. Under the existing NPS, Te Mana o Te Wai is specifically recognised in the discussion of the matter of national significance to which the NPS applies.² The “Matter of National Significance” in the Draft NPS-FM is stated simply as “freshwater management”.³ The Association queries whether this may be seen to demote Te Mana o Te Wai. The concept

¹ 3.2(2).

² “The matter of national significance to which this national policy statement applies is the management of fresh water through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management.”

³ 1.4.

is stated as “fundamental”, but it does not retain the same link to sections 45(1) and 45A(1) of the Act.

11. The Association is aware that the concept of a “vision” is not new to the law, it has been included in treaty settlement legislation.⁴ There is a risk that the use of a “vision” might be viewed as aspirational (which is laudable) but overlooking the practical steps required (management approach) to get there. In this respect, the links between the “long term” vision and other *timing* requirements in the Draft NPS-FM are not explicit.
12. If the Draft NPS-FM is adopted in its current form, contention may well move away from the National Objectives Framework toward timing aspects. The Government may wish to consider further national guidance on timeframe requirements.
13. The RMLA is aware that the Government has a further work programme on allocation mechanisms (for water quality). That programme may feed into timeframe requirements. If the Government does intend to provide further guidance on timeframes, that should be provided early, prior to the consultation that will occur to set regional visions.
14. Areas where links between the long term vision and other timing requirements could be improved are listed here, and further explained in the Table attached to this submission:
 - First, it is unclear whether the long term vision must state an actual timeframe or be something to be attained at some unspecified future time.
 - Secondly, there does not appear to be a requirement that “environmental outcomes” be timebound. In the absence of a requirement for environmental outcomes to be time-bound, the time for achieving water *quantity* outcomes of the NPS-FM is unclear. For example, in 3.12 (Take limits) the circumstances in which existing water permits will be reviewed to comply with environmental flows and limits, will be contentious. The Association queries whether further guidance is required here linking the long term vision timeframe (or using environmental outcome timeframes).
 - 3.9(5) states that timeframes for achieving target attribute states “may be of any length or period”. Again, further guidance may be required here. For example, is it the Government’s intention that timeframes for achieving target attribute states should link to the long term vision. If so, this should be stated.
 - 3.19 does not provide for a link between timeframes for phasing out over-allocation and the long term vision (this clause requires regional councils to “define a timeframe within which over-allocation is phased out, and methods to achieve that, so that the limits on resource use and take limits are reduced to *levels* that meet the objective and policies of this National Policy Statement”).

⁴ For example, the Waikato-Tainui Raupato Claims (Waikato River) Settlement Act 2010. Under Schedule 2:

“(1) *Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri. The river of life, each curve more beautiful than the last.*

(2) *Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.*”

15. The Table below provides further comment on the Draft NPS-FM, the Proposed Freshwater NES and the Draft s360 Regulations.

Integration with other proposals

16. The Ministry for the Environment (and other Government departments) are currently consulting on, or about to consult on, a wide range of proposals to reform New Zealand's resource management system. This includes subordinate RMA documents relating to indigenous biodiversity, urban development, highly productive soils and air quality, as well as amendments to the RMA itself.
17. The RMLA has a significant interest in all of these reforms, as each will impact on many existing, and future, policies and plans. It is therefore crucial that these reforms are not developed in isolation and that each of these environment policy processes are 'joined up' in terms of how they provide for critical matters, such as managing the effects of climate change, land use change, freshwater quality improvement, and infrastructure provision. The RMLA looks forward to making further submissions on these other reforms.
18. If there is any further opportunity to do so, the RMLA wishes to be heard in support of this submission.



Signature of Mary Hill on behalf of the Resource Management Law Association

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Provision	Issue(s)	How to resolve the issue(s)
DRAFT NPS-FM		
2.1 Objective	<p>The word “resources” is very broad in the context of a National Policy Statement for water management. Further specificity would aid interpretation.</p> <p>The Objective sets <i>priorities</i> for management but does not state what the ultimate goal for such management is.</p>	<p>Consider amending “resources” to refer to “land and water”.</p> <p>If the intention is that the ultimate goal(s) will be set through the long term vision and/or in environmental outcomes, consider making this clearer as part of the Objectives, rather than relegating those matters to Subpart 1.</p>
New Objective or Policy	<p>With the reporting back to Parliament of the Climate Change Response (Zero Carbon) Amendment Bill, and ultimately the setting up of the Climate Change Commission, New Zealand will be looking for ways to transition to a low carbon economy. This should be reflected in New Zealand’s freshwater policy, so that climate change considerations are factored into freshwater decisions.</p> <p>The Association suggests including an express objective or policy that accounts for the ability for communities to adapt and be resilient to climate change. Currently there is an absence of any mention of climate change in the objective or policies that supports specific implementation method 3.9 (6)(a)(i). Such an objective or policy would be consistent with s7(i) of the Act, and with the proposed amendments to the purpose of the Climate Change Response (Zero Carbon) Amendment Bill.</p>	<p>Consider ways to better integrate this national direction for freshwater with climate change objectives, for example a new Objective or Policy based on the purpose statement in the Climate Change Response (Zero Carbon) Amendment Bill:</p> <p>“Provide a framework by which New Zealand can develop and implement clear and stable climate change policies that –</p> <ul style="list-style-type: none"> (i) contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5°Celsius above pre-industrial levels; and (ii) allow New Zealand to prepare for, and adapt to, the effects of climate change.”

<p>2.2 Policy 2</p>	<p>The Association queries whether the NOF alone will be all that is required to “ensure that the health and wellbeing of waterbodies and freshwater ecosystems is maintained or improved”. This policy indicates that the NOF forms the full basis for ensuring this aim. A check is required on whether that is the Government’s intent.</p> <p>Clarify the circumstances in which maintenance is required and the circumstances in which improvement is required.</p>	<p>If the NOF forms only <i>part</i> of the action required to “ensure that the health and wellbeing of waterbodies and freshwater ecosystems is maintained or improved”, consider moving the words “through a national objectives framework” to the end of the Policy (so it ends with: “<i>including</i> through a national objectives framework”).</p> <p>Consider the following wording (for the purpose of clarification):⁵</p> <p>“(a) maintained where the water quality is not degraded; and</p> <p>(b) improved where the quality of water is degraded by human activities.”</p>
<p>2.2 Policy 6</p>	<p>A person reading the NPS-FM would need to turn to Appendix 3 to understand this policy relates to primary contact/human contact.</p>	<p>Consider referring to primary contact or human contact in the Policy (noting also that these terms are used interchangeably in the NPS-FM and that one term could be used to avoid confusion).</p>
<p>Subpart 1 Approaches to implementing objective and policies</p>		
<p>Te Mana o Te Wai 3.2(8)</p>	<p>In the Act, and elsewhere in the NPS-FM, the words “give effect to” are used. The words “inform” and “provide the context” appear to echo that requirement but in a different</p>	<p>Consider deleting subclause (8).</p>

⁵ Although Policy 7 provides further guidance when referring to the concept of “over-allocation”, the Association agrees that a broader and more ‘accessible’ policy is warranted in Policy 2.

	<p>way. This adds confusion. It could also dilute the role of the long-term vision.</p> <p>Reference to the “discussions that led to” a long-term vision is unusual in a resource management document. Although discussions will provide valuable information, referring to this in an operative part of the NPS-FM could invite reference to a large amount of extraneous material by parties involved the development of regional plans. This may not be efficient.</p> <p>Although implicit, it is unclear whether the long term vision must actually state an anticipated achievement date, or be something to be attained at some unspecified time in the future.</p>	<p>Consider making it absolutely explicit that the vision must state an anticipated achievement date.</p>
<p>Integrated Management 3.4(1)(b)</p>	<p>It is unnecessary to state that freshwater, land use and development in catchments must be managed in a “sustainable” way. That is a requirement of the Act.</p> <p>It is unclear what the following words add to this clause: “avoid, remedy, or mitigate adverse effects, including cumulative effects”. More importantly, these words appear to be inconsistent with more directive requirements elsewhere in the Draft NPS-FM.</p>	<p>Consider amending 3.4(1)(b) to read:</p> <p>“manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects.”</p>
<p>Integrated Management 3.4(3)</p>	<p>Using the word “encouraging” could indicate to RMA practitioners that a non-regulatory or permissive approach is required, as distinct from a regulatory approach. If the intention is that co-ordination and sequencing of regional or urban growth, land use and development is <i>required</i> by the regional council when it undertakes its functions⁶, the wording</p>	<p>Consider the issues raised. Consider amending 3.4(3) to read:</p> <p>“Giving effect to subclause (2) includes encouraging the co-ordination and sequencing of <u>the provision of infrastructure,</u></p>

⁶ Including the regional council function: “control of the use of land for the purpose of... [t]he maintenance and enhancement of the quality of water in water bodies...” (s30).

	<p>would need to be stronger. If the word “encouraging” refers to a regional council’s role in setting direction for district councils, this appears to be dealt with in subsequent subclauses. The Association queries whether the word “encouraging” is needed in this clause.</p> <p>The Association queries whether “the provision of infrastructure” is intended to be “co-ordinated and/or sequenced” along with the other matters, or just “provided for”.</p>	<p>regional or urban growth, land use and development, and the provision of infrastructure.”</p>
<p>Subpart 2 National objectives framework</p>		
<p>Overview of National Objectives Framework</p> <p>3.5</p>	<p>If the word “interventions” is intended to mean the same as “method” under the Act, the same word should be used.</p> <p>If “action plans” are intended to mean the same thing as methods other than rules, the words “or other methods” should be used. If the desire is to be more specific than this, the nature of “action plans” should be clarified.</p> <p>Action plans appear to form a key part of implementation (for some attributes) but they are not required to be published in the regional plan (3.10(6)). This appears to diverge from s67(1) of the Act that provides that it is the <i>regional plan</i> that must state policies to implement objectives and rules (if any) to implement the policies.</p> <p>Environmental outcomes are mentioned as an essential part of the NOF in the subsequent provisions, however are omitted in this overview clause.</p>	<p>Consider referring to “methods” rather than introducing the new term “interventions”.</p> <p>Clarify the nature of “action plans”. Although plans that are independent from regional plans may be a more agile tool (because they are not subject to the same level of public participation), they have an unclear status.</p> <p>Consider including reference to “environmental outcomes” in this clause (for completeness).</p>

<p>Identifying values and environmental outcomes</p> <p>3.7</p>	<p>The time in which outcomes are to be achieved will be important for a Region’s ability to achieve its “long term vision” (in some instances, over more than one planning cycle). This may require “environmental outcomes” to be time bound.</p> <p>Under the current NPS-FM there has been substantial litigation on choices between the compulsory values and ‘out-of-stream’ values. That is not surprising. Some presume that “compulsory” values must take precedence over “other values” where they compete, but that is not entirely clear. The Association expects that such litigation would be reduced if the Draft NPS-FM is adopted. This is because there is a more comprehensive list of attributes in the Draft NPS-FM.⁷ However, the issue of potential ‘trade-offs’ remains for attributes, particularly those that are not included in Appendices 2A or 2B. In circumstances where the exceptions do not apply (exception for large hydro schemes) clarity may be required to deal with situations where values compete (i.e. “other” values compete with the compulsory values). The word “compulsory” does not fully address this conundrum.</p> <p>3.7 is headed “Identifying values and environmental outcomes”, whereas clauses (3) and (4) of 3.7 deal with “attributes”. It may be prudent to move subclauses (3) and (4) to a separate clause (for readability purposes).</p> <p>The concept of “component” is unclear.</p>	<p>Consider requiring “environmental outcomes” to state a timeframe in which the outcome is to be achieved.</p> <p>Provide clarity on whether “compulsory” values are intended to take precedence over “other” values where such values compete.</p> <p>Consider removing subclauses (3) and (4) to a separate clause headed “Additional attributes”.</p> <p>Clarify what the word “component” means.</p>
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⁷ 3.9(3) provides for national bottom lines and 3.9(4)(b) provides that attributes for compulsory values must be set in terms of the requirements of Appendices 2A or 2B as appropriate.

<p>Setting target attribute states</p> <p>3.9</p>	<p>3.9(5) states that timeframes for achieving target attribute states “may be of any length or period”. Presumably the intent is that such timeframes will achieve a Region’s “long term vision” within the term stated for that vision. Although 3.9(6) states that the long term vision is to be had regard to “when setting target attribute states”, there is no link in subclause (5), which deals with setting timeframes for achieving those states.</p> <p>Attribute states are to “achieve” environmental outcomes (under 3.9(1)), yet subclause (6) states that environmental outcomes are to be ‘had regard to’ when setting the target attribute states. These are different legal tests.</p>	<p>Consider linking timeframes for achieving target attribute states to the achievement of the long term vision.</p> <p>Clarify whether target attribute states must be set to <i>give effect to</i> the environmental outcomes and the long-term vision as is indicated elsewhere in the Draft NPS-FM. (“Have regard to” in (6) is a lesser legal test.)</p>
<p>Identifying limits on resource use and preparing action plans</p> <p>3.10</p>	<p>The references to including matters as “rules in regional plans” (in 3.10(1)(b), 3.10(2)(c) and 3.10(3)) and “imposing conditions on resource consents” (in 3.10(1)(d), 3.10(2)(d) and 3.10(3)(c)) could cause confusion. Limits on resource use to achieve the target attribute states in Appendix 2A “must” be included as rules. Many such rules would be associated with the imposition of conditions on resource consents. Yet imposing conditions on resource consents for achieving the target attribute states “may” be included.</p> <p>Refer above comments on “action plans”.</p>	<p>Consider clarifying the circumstances in which the non-mandatory provision of “impose conditions on resource consents” is intended to operate separately to the mandatory requirement for the use of rules.</p> <p>(An ‘Information Note’ may be useful.)</p> <p>Clarify the nature of “action plans”.</p>
<p>Setting environmental flows and levels</p> <p>3.11</p>	<p>3.11(2) says that “<i>environmental flows and levels must be developed on the basis of the environmental outcomes...</i>”. 3.11(4) then cross-refers to 3.9(6), so that environmental flows and levels would also need to “have regard to” the environmental outcomes. These are potentially inconsistent legal tests. Further, as with the comment above for attribute states (3.9), the Association queries whether the intention is</p>	<p>Consider replacing the words “on the basis of” with a legal test that is consistent with other wording in the Draft NPS-FM. Use the words “to give effect to” or “to achieve” if that is the intent.</p>

	<p>simply that environmental flows and levels “give effect to” or “achieve” environmental outcomes.</p> <p>The current NPS-FM acknowledges <i>climate change</i> as a key exacerbating challenge when managing freshwater to provide for all the values that are important to New Zealanders (Policies A1 and B1). The Draft NPS-FM explicitly directs regional councils to have regard to the foreseeable impacts of climate change when setting target attribute states (quality) by clause 3.9(6). This is less clear for setting environmental flows and levels, as it is only through the cross reference in 3.11(4). The Ministry is to be congratulated for acknowledging the relationship between water quality and the need to take future climate change projections into consideration (as they apply spatially to Freshwater Management Units).⁸ However the Association considers that the visibility of climate change as an issue should be made more prominent in clause 3.11.</p> <p>Note: This submission does not provide full comment on the provisions for water <i>quantity</i>. The Association is aware that some members have a concern regarding the reworking of established concepts in clause 3.11.</p>	<p>Consider making the issue of climate change more prominent within clause 3.11, for example through the following more explicit statement:</p> <p><i>“When setting environmental flows and levels, regional councils must have regard to the foreseeable impacts of climate change.”</i></p>
<p>Identifying take limits</p> <p>3.12</p>	<p>3.12(1)(c) states that every regional council “must state in its regional plan <i>whether</i> existing water permits will be reviewed to comply with environmental flows and levels”. This is potentially inconsistent with clause 3.19(3), which indicates that regional councils <i>must</i> phase out over-allocation (within a</p>	<p>Clarify the relationship between 3.12(1)(c) and 3.19(3).</p>

⁸ It was, after all, a recommendation for immediate action (Action 21) in the report *Adapting to Climate Change in New Zealand* – prepared by the Climate Change Adaptation Technical Working Group <https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/ccatwg-report-web.pdf>. Action 21 recognises the direct impact that climate change will have on our water resources and advises regional councils to have particular regard to adapting to the effects of climate change when implementing the National Policy Statement for Freshwater Management.

	<p>timeframe to be identified). More clarity on the relationship between these two clauses is required.</p> <p>For 3.12(1)(b) and (e), the same issue arises as in 3.10(1) (above), in that many take limit rules would be associated with the imposition of conditions on resource consents.</p> <p>For 3.12(3)(e), it is noted that “take limits” are to be identified at levels that “take into account” the environmental outcomes. This introduces another legal test in addition to those identified under 3.9(6)(a) and 3.11(2). The Association queries whether it is necessary to introduce this number of legal tests.</p>	<p>Consider clarifying the circumstances in which the non-mandatory provision of “impose conditions on resource consents” is intended to operate separately to the mandatory requirement for use of rules.</p> <p>(An Information Note may be useful.)</p> <p>Consider whether “take into account” is the correct legal test for 3.12(3)(e), given that other legal tests (“have regard to”, “on the basis of”, “to achieve”) are used elsewhere in the Draft NPS-FM.</p>
<p>What to do if deterioration detected</p> <p>3.14</p>	<p>In 3.14(1) the word “components” is unclear.</p> <p>The relationship between subclauses (1) and (2) with subclause (3) requires clarification. Where a regional council detects a trend indicating deterioration, or a failure to achieve environmental outcomes, it seems the regional council <i>must</i> (subclause (1)) prepare an action plan and <i>may</i> (subclause (3)) take any other regulatory or non-regulatory steps. But action plans would (presumably) include such regulatory or non-regulatory steps. The intention appears to be that there is an onus on the regional council to act. That intention is adequately expressed in subclauses (1) and (2). It is unclear what subclause (3) is intended to add.</p> <p>The Association has commented above on the need for clarity around the use of “action plans”.</p>	<p>Clarify what the word “component” means.</p> <p>Consider deleting subclause (3) and moving the words “within defined timeframes” in that subclause to the end of subclause (2). However, if subclause (3) is intended to place a substantively different requirement on regional councils than under subclauses (1) and (2), provide further clarity on the nature of that requirement.</p> <p>Clarify the nature of “action plans”.</p>

Subpart 3 Specific requirements		
<p>Inland wetlands</p> <p>3.15</p>	<p>The “effects management hierarchy” wording, stating that “offsetting is considered” and “compensation is considered”, raises a question as to what occurs when both offsetting and compensation are considered and then either not offered or rejected.</p> <p>The direction for regional councils to make or change their policy statement and plans to ensure that, when considering an application for a consent, adverse effects on any natural wetland are managed by applying the “effects management hierarchy” (3.15(4)) is potentially inconsistent with the following policy: “The loss or degradation of all or any part of a natural inland wetland is avoided” (3.15(2)).</p> <p>There also appears to be an inconsistency with regulation 6 of the Proposed NES for Freshwater which does not mention compensation. This regulation, for the effects of nationally significant infrastructure on natural wetlands, states that “to the extent that adverse effects on a natural wetland cannot be avoided, remedied, or mitigated, any residual adverse effects on the natural wetlands must be offset to achieve a net gain”.</p> <p>The Association considers that these apparent inconsistencies require clarification.</p>	<p>Consider the issues raised.</p>
<p>Streams</p> <p>3.16</p>	<p>In subclause (4), the direction for regional councils to make or change their policy statement and plans to ensure that the infilling of a river or stream bed is “avoided” (with some limited exceptions), is potentially inconsistent with subclause (3) which refers to the “effects management hierarchy”. The effects management hierarchy allows for options other than avoid. It is therefore ambiguous whether the full “effects</p>	<p>Consider the issues raised.</p>

	<p>management hierarchy” is available for the activity of infilling of a river or stream bed.</p> <p>This ambiguity is further raised by subclause (1) which states <i>inter alia</i> that the “extent” of rivers and streams in a region at least be maintained. The application of the “effects management hierarchy”, as defined in clause 3.15, may not necessarily achieve that goal. Offset/compensation may be offered to improve the <i>condition</i> of another river or stream reach, but reducing overall stream length.⁹</p> <p>The Association considers that these apparent inconsistencies require clarification.</p>	
<p>Water Allocation</p> <p>3.19</p>	<p>Requiring regional councils to “define a timeframe within which over-allocation is phased out, and methods to achieve that...”, does not provide an explicit link between timeframes for phasing out over-allocation and the long term vision.</p> <p>“Over-allocation” is defined as where the water has been allocated to users beyond a limit on resource use or take, or where a target attribute state is not being met. The following words in 3.19(3) add complexity and the Association questions whether they are needed in addition to the definition:</p> <p>“so that the limits on resource use and take limits are reduced to levels that meet the objectives and policies of this National Policy Statement”.</p> <p>These words appear to replicate the definition of “over-allocation”, but in a different and much more nuanced way,</p>	<p>Consider a link between the timeframe for phasing out over allocation and the achievement of the Region’s long term vision.</p> <p>Consider deleting the following words:</p> <p>“Regional councils must define a timeframe within which over-allocation is phased-out, and methods to achieve that, so that the limits on resource use and take limits are reduced to levels that meet the objective and policies of this National Policy Statement”.</p>

⁹ By way of example, this can be an outcome of application of the SEV (Stream Ecological Evaluation) Method developed for Auckland Council.

	potentially requiring a full analysis of the NPS-FM Objective and Policies.	
PROPOSED NATIONAL ENVIRONMENTAL STANDARDS FOR FRESHWATER		
General	<p>In some places the Proposed NESF does not appear to provide for a clear ladder or 'decision tree' for the status of an activity. For example:</p> <ul style="list-style-type: none"> • General earth disturbance for certain purposes is a discretionary activity (10(1) and (2)). If it is not for those purposes and it results in reclamation, infilling or damage it is a non-complying activity. However, if it is not for the stated purposes and does not result in reclamation, infilling or damage, activity status is unclear. • In regulation 16, water take activities for the purpose of "public flood control or drainage" or "building, maintaining, or operating any new or existing nationally significant infrastructure" are discretionary activities if they cause the effects listed in 16(4)(b). The NES is silent on such activities that would <i>not</i> cause the effects listed in 16(4)(b). If the activities <i>do not</i> cause those effects one would presumably need to consult the relevant regional plan to ascertain whether such activities held a less stringent status than discretionary. 	Review the hierarchies for activity status to ensure that a clear activity status is provided for those activities that are proposed to be regulated by the NES.
Regulations 6 and 18 (Standard conditions for nationally significant)	These regulations propose consent conditions that would include "to the extent that the adverse effects cannot be avoided, remedied, [or] mitigated, any residual adverse effects	Consider Regulations 6 and 18 against the BBOP principle of stakeholder participation i.e. whether the proposed condition could remove the need for effective stakeholder

<p>infrastructure; Infilling bed of river)</p>	<p>on [the natural wetlands/the river] must be offset to achieve [a net gain/a no net loss]”.¹⁰</p> <p>The Business and Biodiversity Offsets Programme (BBOP) establishes key definitions and a principles-based approach to biodiversity offsetting.¹¹ In addition to the mitigation hierarchy these principles include “stakeholder participation” (<i>“the effective participation of stakeholders should be ensured in decision-making about biodiversity offsets, including their evaluation, selection, design, implementation and monitoring”</i>).</p> <p>Although the condition is noted as a minimum requirement (through the wording “<i>at least</i>”), the Association queries whether the consent condition proposed would leave key decisions regarding offset evaluation, selection, design and implementation to unspecified processes outside the consenting process.</p> <p>In addition, as noted above, there is a potential inconsistency with this consent condition, and the Draft NPS-FM’s “effects management hierarchy” which refers to <i>compensation</i>.</p>	<p>participation through the consenting process, in offset evaluation, selection and design.</p>
<p>Regulation 21(3)(a) (Culverts)</p>	<p>The following is inappropriate as a condition on a resource consent. It does not meet best practice guidelines for certainty and enforceability:</p> <p>“the culvert is not contrary to the regional council’s objectives for aquatic life (as required by the National Policy Statement for Freshwater Management 2019)”.</p>	<p>Consider the whether the consent condition for culverts in Regulation 21(3)(a) would be more appropriate as an assessment matter for regional councils when considering the discretionary activity.</p>

¹⁰ Square brackets indicate differences between regulations 6(a) and 18(2)(a).

¹¹ BBOP 2012a. Business and Biodiversity Offsets Programme (BBOP). 2012. Standard on Biodiversity Offsets. BBOP, Washington, D.C. Available from <http://bbop.forest-trends.org/guidelines/Standard.pdf>.

DRAFT STOCK EXCLUSION REGULATIONS (s360)

General	It is unclear how exemptions to the s360 Regulations are to be dealt with.	Clarify how exemptions to the s360 Regulations are to be dealt with.
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