

Action for Healthy Waterways

Summary of the new requirements

September 2020 (updated October 2021)

Background

The Resource Management Act (RMA) is the foundation of freshwater management in New Zealand. The primary planning 'tools' are policies and rules in Regional Plans. Central Government can also make national policy and regulations under the RMA.

The Government's *Action for Healthy Waterways* package included a suite of new regulations – including a new National Policy Statement for Freshwater Management and National Environmental Standards for Freshwater - these came into force on 3 September 2020.

National-level directives for freshwater management

There has been a **National Policy Statement for Freshwater Management** since 2014, this was amended in 2017, and as at 3 September 2020 has been replaced by the new NPSFM 2020.

A National Policy Statement sets our **objectives and policies** that apply nationally. The NESFM 2020 must be given effect to by regional councils in regional plans.

This is the first **National Environmental Standard (NES) for freshwater** – although there are NES's for other resource management issues (e.g. renewable electricity generation, transmission lines, air quality, forestry).

A National Environmental Standard is a set of **'rules'** which apply nationally – they are like rules in a regional plan, and are implemented/enforced by Councils. The NESFM is implemented by regional or unitary councils.

Regional-level freshwater management

Regional (and unitary) councils have functions under the RMA of managing freshwater in the following ways:

- the control of the use of land for the maintenance and enhancement of water quality and ecosystems in waterbodies.
- the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body.

Councils are required to, through their regional plans, give effect to National Policy Statements. The freshwater provisions (objectives, policies and rules) in regional plans are the vehicle for giving effect to the NPSFM.

What are the new requirements?

| Document or amendment | Policy decision/ specific details | Key dates/ what does it mean for me? | Link to relevant regulation |
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| <p>Freshwater Farm Plans (FWFP) - Part 9A of the RMA</p> | <p>The RMA was amended to enable mandatory and enforceable FWFP for:</p> <ul style="list-style-type: none"> - Horticulture: 5 hectares or more - Arable or Pastoral: 20 hectares or more - Any combination of the above: 20 hectares or more - Any agricultural land use introduced through regulations <p>The purpose of the FWFP is to identify, and then manage any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems.</p> <p>FWFP's will have to be certified and audited (Councils must appoint certified and auditors)). All further details (e.g. further information and content requirements, timeframes for certification and audit etc.) will come through regulations</p> <p>The mandatory FWFP requirements can apply to specific regions, districts, or parts of NZ (the provisions do not apply until there is regulations stating where there apply).</p> <p>October 2021 update: <i>The Government consulted on the detail that will be part of Freshwater Farm Plan regulations in August/September 2021, including the content that will be required in FWFP, what outcomes should be achieved, and how plans could be certified, audited and amended. HortNZ's submission seeks that the Government provides for GAP assurance frameworks be able to be recognised to deliver FWFP for growers.</i></p> | <p>Nation-wide, mandatory FWFP requirements do not apply yet.</p> <p>(However FEP's are already required by some Regional Plans).</p> <p>Mandatory FEP requirements are expected to be rolled out progressively – the discussion document proposes two options (catchment-by-catchment, or prioritisation by farm characteristics and risk)..</p> <p>Now is a great time to get prepared and start developing an FEP</p> | <p>Refer to Part 9A of the RMA.</p> <p>(Change made by the Resource Management Amendment Act 2020)</p> <p>Refer to Freshwater Farm Plan Regulations Discussion Document</p> |
| <p>Water metering and recording requirements</p> | <p>Existing regulations requiring measurement and reporting of water takes have been amended to require consent holders to:</p> <ul style="list-style-type: none"> • measure (and keep records of) the cubic meters of water (cm³) taken in each 15-minute period (previously cm³ each day), and • provide records electronically to the regional council no later than the end of the next day. <p>The regulations do not apply to consents for takes of less than 5L/s.</p> <p>October 2021 update: MfE has produced a guide for consent holders here: https://environment.govt.nz/publications/measuring-and-reporting-water-takes/</p> | <p>New water metering requirements have a phase-in period</p> <ul style="list-style-type: none"> • 3 September 2022 for consents for ≥ 20 L/s, • 3 September 2024 for ≥ 10 l/s • 3 September 2026 for ≥ 5 l/s. | <p>Resource Management (Measurement and Reporting of Water Takes) Regulations 2010</p> |

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| <p>Stock Exclusion Regulations</p> | <p>Apply to a person who owns or controls stock; include the requirement to exclude stock from the person to exclude stock from specified wetlands, lakes, and rivers more than one metre wide. They also introduce a 3-metre setback (unless there is existing fencing or vegetation that effectively excludes stock). There are some exclusions for stock crossings.</p> <p>They apply:</p> <ul style="list-style-type: none"> • On any terrain for dairy cattle, dairy support cattle, pigs, beef cattle intensively grazed, deer intensively grazed • On mapped low slope land only to for beef cattle, deer (unless intensively grazed) <p>October 2021 update: <i>MfE are consulted in October 2021 on changes to low slope maps. The proposed changes are:</i></p> <ul style="list-style-type: none"> - <i>To use a new mapping approach called 'local terrain averaging' on land with an average slope of up to 5 degrees</i> - <i>Introduction of a 500 metre altitude threshold</i> - <i>Using freshwater farm plans in areas outside the map, with a presumption that stock will need to be excluded from access to waterways on land with an average slope between 5 and 10 degrees.</i> | <p>The regulations come into force on 3 September 2020.</p> <p>The date at which requirements apply varies depending on the specific regulations farming system (e.g. 1 July 2023, 1 July 2025).</p> | <p>Resource Management (Stock Exclusion) Regulations 2020</p> |
| <p>National Environmental Standard for Freshwater (NESFW)</p> | <p>Rules for 'HIGH RISK' FARMING ACTIVITIES</p> <p>Rules (which include standards to be met) introduced to improve farming practices:</p> <ul style="list-style-type: none"> • Feedlots – refer Regulations 9, 10 & 11 • Stockholding areas other than feedlots – refer Regulations 12, 13 & 14 <p>Temporary standards for agricultural intensification (these will be revoked on 1 January 2025 – when Councils will have updated or made their freshwater plans to give effect to the NPSFM):</p> <ul style="list-style-type: none"> • Conditions apply to the conversion of land: <ul style="list-style-type: none"> • Plantation forestry to pastoral land use • Farm land to dairy farm land • New areas of irrigated dairy farm land • Dairy support land • These regulations permit only a 10-ha increase on the area of land on that farm as at 2 September 2020 for this (or in the case of dairy support land, no increase from the reference period). <p>Standards for Intensive winter grazing – Regulations 26 – 30</p> | <p>These rules <u>are not directly related to horticulture</u> activities.</p> <p>The regulations come into force on 3 September 2020, except for:</p> <ul style="list-style-type: none"> • intensive winter grazing, from 1 May 2021* • stockholding other than feedlots and nitrogen cap, from 1 July 2021 <p>* Refer to Oct 21 update for proposed changes.</p> <p>Regional plans may still have stricter rules.</p> | <p>Part 2 of the National Environmental Standards for Freshwater 2020</p> |

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| | <p>October 2021 update: MfE are consulted in October 2021 on changes to the IWG regulations to make improvements to the weather-dependent or impractical conditions to address implementation issues. The proposed changes are:</p> <ul style="list-style-type: none"> - Changes to how slope is measured (from mean slope to maximum slope of 10 degrees) - Amendment to the pugging condition and replating date, to require reasonably practicable steps to be taken (rather than a set depth or date). - Adding a permitted activity condition requiring critical source areas to be protected, and making it clear that sub-surface drains are excluded from 'drains'. - Deferral of implementation by 6 months (meaning regs would not apply until 1 November 2022) <p><i>HortNZ's submission sought an amendment so that it is clear that it does not capture grazing within arable and vegetable crop rotations, or grazing of fallen fruit or canopy litter.</i></p> <p>Introduction of a synthetic nitrogen fertiliser cap for pastoral land (190 kg/ha/year) – Regulation 33 and 34</p> <p>Annual information requirements for dairy farms (to be provided to the regional council) – Regulation 36</p> <p>Where the permitted activity conditions of these rules/regulations cannot be met – a resource consent is required from your regional council.</p> | | |
| | <p>Rules to protect NATURAL WETLANDS</p> <p>Vegetation clearance, earthworks or land disturbance (for the purpose of arable land use or horticultural land use) within 10m of a natural wetland (Regulation 50):</p> <ul style="list-style-type: none"> • <u>Existing activities</u> (that occurred any time between the start of 1 Jan 2010 and the close of 2 September 2019) can continue but the general conditions listed in Regulation 55 (except (2)) must be met. <ul style="list-style-type: none"> ○ These address matters such as avoiding effects from discharges, not increasing flood levels, placement of sediment or debris, erosion and sediment control measures. • <u>New activities</u> (vegetation clearance, earthworks or land disturbance) cannot occur within 10m of a natural wetland (without first seeking a resource consent, applied for as a Non Complying Activity). | <p>Rules in managing effects on natural wetlands - these regulations are in force from 3 September 2020.</p> <p>(Regional rules may be stricter than these regulations)</p> <p>If you are unsure about how these regulations apply to you – contact your regional council for more information.</p> | <p>Part 3 (Subpart 1) of the National Environmental Standards for Freshwater 2020</p> |

Drainage of natural wetlands is not permitted;

- Activities within 100m of a natural wetland that is likely to result in complete or partial drainage of part of a natural wetland requires resource consent.
- Activities in a natural wetland that are likely to result in complete or partial drainage of part of a natural wetland are prohibited.

All other activities in /near natural wetlands

- Specific regulations cover the following specific activities: Restoration (Reg. 38), Scientific Research (Reg. 40), Construction and maintenance of Wetland Utility Structures (Reg. 42 & 43), Construction/maintenance/operation of specified infrastructure (Reg. 45 & 46), Sphagnum moss harvesting (Reg. 48), and Natural Hazard works (Reg. 51).
- All other vegetation clearance, earthworks within 10m of a natural wetland require **resource consent** (Reg. 54).
- All other take/use/damming or diversion of water or discharge of water within, or within 100m of, a natural wetland requires **resource consent** (Reg. 54).

October 2021 update: *Since the release of the NESFM, there have been the following developments in regard to wetlands:*

- *It is being debated in Court whether the NESFM applies to coastal wetlands. A recent High Court decision determined that the NESFM does apply to in the CMA (i.e to coastal wetlands).*
- *In September 2021, MfE released guidance on defining 'natural wetlands' and 'natural inland wetlands' to support the interpretation of the NESFM and NPSFM.*
- *MFE are consulted in October 2021 on changes to the following natural wetland provisions in the NESFM:*
 - *Changes to the definition of 'natural wetland' – particularly in regard to highly modified pasture areas that are inadvertently being captured.*
 - *Better provision for restoration, maintenance and biosecurity activities in natural wetlands*
 - *Additional consenting pathways for some activities within or near a natural wetland (quarrying, landfills, clean fills & managed fills, mining and urban development).*

HortNZ's submission sought additional provision for biosecurity activities and consent pathways for water storage.

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| | <p>Rules to protect STREAMS & RIVERS Resource consent is required for the reclamation of the bed of any river.</p> <p>This supported by policy in the NPSFM which informs the assessment of a consent application - there must be a functional need for the activity in that location and the effects are managed by applying the effects management hierarchy.</p> | <p>Rules managing reclamation of streams/rivers - these regulations are applicable from 3 September 2020.</p> <p>(Regional rules may be stricter than these regulations)</p> | <p>Part 3 (Subpart 2) of the National Environmental Standards for Freshwater 2020</p> |
| | <p>Rules to protect FISH PASSAGE</p> <p>Rules relate to structures that affect fish passage – culverts, weirs, flap gates, dam, or ford.</p> <p>The NES sets out information requirements (detailed in Regs. 62 - 68), which must be provided to the regional council within 20 working days after the activity is finished – this applied to permitted and consented activities involving the placement, alteration, extension, or reconstruction of the structures listed above.</p> <p>Includes rules for the placement, use, alteration, extension, or reconstruction of the following structures in, on, over, or under the bed of any river or connected area:</p> <ul style="list-style-type: none"> • Culverts – Regulation 70 • Weirs – Regulation 72 • Passive flap gates – Regulation 74 <p>The NES sets out matters which resource consents must include as consent conditions.</p> | <p>Rules to protect fish passage - these regulations are applicable from 3 September 2020.</p> | <p>Part 3 (Subpart 3) of the National Environmental Standards for Freshwater 2020</p> |
| <p>National Policy Statement for Freshwater</p> | <p>Summary of key changes from the last NPSFM</p> <p>Te Mana o Te Wai now the fundamental concept of the NPSFM; this established a hierarchy of obligations.</p> <ul style="list-style-type: none"> • Six principles of Te Mana o te Wai have been established as well as a hierarchy of obligations to be prioritised | <p>Policy/limit setting process that will be implemented through changes to/or new regional plans – Councils must give effect to the NPSFM ‘as soon as reasonably practicable’ and notify a plan</p> | <p>National Policy Statement for Freshwater Management 2020</p> |

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| | <p>Councils (with their communities and tangata whenua) must set long-term visions for freshwater</p> <p>Councils are required to actively involve tangata whenua in processes for policy and plan development and decision-making.</p> <p>12 new attributes were introduced (some of these have national bottom lines)</p> <p>With national bottom line:</p> <ul style="list-style-type: none"> • Macroinvertebrates • Submerged plants in lakes • Dissolved oxygen • Suspended sediment • Deposited sediment • E. coli at swimming sites during bathing season <p>Without a national bottom line:</p> <ul style="list-style-type: none"> • Fish species • Ecosystem metabolism • Dissolved reactive phosphorous <p>There is now a tougher national bottom line nitrate and ammonia toxicity attributes to protect 95% of species from toxic effects (up from 80%).</p> <p>Policy requiring no further loss of extent of natural inland wetlands, protection of stream values and greater focus on fish passage – this is supported by the NESFM rules relating to natural wetlands</p> <p>An amended ‘process’ that regional councils must go through in making their regional plans (for freshwater) – including the requirement set (with the community and tangata whenua) long-term visions for water.</p> <p>The intent remains that:</p> <ul style="list-style-type: none"> • water quality if improved where it is degraded, and otherwise maintained or improved • over-allocation of water is phased out and new over-allocation avoided. | <p>or plan change by December 2024</p> | |
| | <p><u>What do Councils need to do</u> to implement the NPSFM?</p> | | |

- Identify **values** and set **environmental outcomes** for each value;
 - There are compulsory national values
 - Other values may also be identified (e.g. Irrigation, cultivation, and production of food)
- For each value, regional council must identify attributes, determine baseline attribute states and **target attribute states**
 - There are some attributes that Councils must use (Appendix 2A), but they may also identify others
 - Target attributes must be set above baseline states, and at or above the national bottom lines
 - They are set to meet environmental outcomes and the long-term vision
- **Limits must be set** to achieve attribute states and environmental targets
 - Councils **may also prepare action plans** and impose resource consent conditions
 - A limit in a plan may be a land-use control, an input control, or an output control
- **Environmental flows and levels and water take limits** must be included in regional plans to achieve the environmental outcomes set

Regional Councils must monitor, assess trends and respond to any degradation, and have freshwater quality and quantity accounting systems.

Recognition of specified vegetable growing areas (3.33)

There are some activities for which a specific policy response is provided – one of these is specified vegetable growing areas.

These areas – **catchments in Horowhenua and Pukekohe** – are spatially defined in the NPS (Appendix 5).

- This policy enables a regional council to set a water quality target below a national bottom line in these defined areas, however water quality must still be improved.
- This policy only applies for a period of 10 years or until a vegetable specific National Environmental Standard is introduced.

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| | <p>October 2021 update: <i>The provisions in the NPSFM 2020 for vegetable growing (in the Horowhenua and Pukekohe) are being judicially reviewed. This means that the Court is being asked to review the actions or decisions of the Government to include these provisions.</i></p> | | |
| <p>New process for making freshwater plans (Freshwater planning process)</p> | <p>Amendments to the RMA introduced a new freshwater plan making process for regional councils' policy statements and plans.</p> <ul style="list-style-type: none"> • Freshwater hearings panels replace traditional regional council-appointed hearings panels • A Chief Freshwater Commissioner will be appointed to appoint hearing panels • Freshwater hearings panels will make recommendations to regional councils – these are not limited to points raised in submissions • Appeals rights are limited to the High Court where a regional council has accepted a recommendation of the hearing panel (only appeals on rejected recommendations can be made to the Environment Court). <p>October 2021 update:</p> <ul style="list-style-type: none"> • <i>Professor Peter Skelton CNZM has been appointed as the Chief Freshwater Commissioner.</i> • <i><u>Freshwater commissioners</u> have been appointed by MfE – these people will be placed by the Chief Freshwater Commissioner to onto regional freshwater hearing panels (two on each).</i> • <i>In Otago, the Council is seeking a Court determination as to whether the Freshwater planning process can be used for a entire Regional Policy Statement (or whether a two separate processes will be required).</i> | <p>This process will apply to any plan changes or new plans that include freshwater provisions.</p> <p>(Plans to give effect to NPSFM must be notified by December 2021)</p> | <p>Part 5, Subpart 4 and Schedule 1 of the RMA.</p> <p>Website – Office of the Chief Freshwater Commissioner</p> |