



National Wetland Trust submission / Essential Freshwater Package

31 October 2019

The National Wetland Trust of New Zealand welcomes the opportunity to submit on the Healthy Waterways package. Our submission focuses on inland wetlands, however we acknowledge and support the comprehensive range of tools proposed to protect and improve all freshwater systems and components.

The National Wetland Trust is a non-profit organisation established in 1999 to increase the appreciation of wetlands and their values by all New Zealanders. The Trust aims to:

- Increase public knowledge and appreciation of wetland values.
- Increase understanding of wetland functions and processes.
- Ensure landowners and government agencies commit to wetland protection, enhancement and restoration.

New Zealand is a contracting party to the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, with obligations to implement its objectives and resolutions. The National Wetland Trust is one of two National CEPA Focal Points appointed by the Department of Conservation to help coordinate national implementation. The Convention provides for the protection of wetlands of international importance and the "wise use" of all wetlands. A definition of the "wise use" concept was adopted by COP3 (1987) and an updated definition was adopted in 2005 by COP9.[1] "Wise use" of wetlands is "the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development" where "ecological character" is "the combination of the ecosystem components, processes and benefits/services that characterise the wetland at a given point in time."

New Zealand is also a signatory to UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) and the government has obligations and responsibilities under Te Tiriti o Waitangi to recognise that wetlands are more than their ecosystem services; but are also key to supporting life, and the resilience of cultural practices generated through experience and interaction.

[1] Ramsar Secretariat *Ramsar Resolution IX.1* (2005), Annex A.

General responses to the proposals

2. Do you think the proposals will bring New Zealand's freshwater resources, waterways and ecosystems to a healthy state within a generation?

The National Wetland Trust applauds the coalition government for recognising the values and management needs for wetlands. While the RMA has had strong provisions under s6a for protection of wetland values since 1991, these have rarely been incorporated into regional policies and plans, with most local authorities electing to focus only on a subset deemed to meet s6c of the RMA, e.g. Myers *et al.* 2013 [Myers, S. C., Clarkson, B. R., Reeves, P. N., & Clarkson, B. D. (2013). *Wetland management in New Zealand: Are current approaches and policies sustaining wetland ecosystems in agricultural landscapes?* Ecological Engineering, 56.]

Unfortunately some elements of the proposed package perpetuate this narrow focus by excluding major industries and certain types of wetland from vegetation destruction, earthworks, and water take rules, and by limiting vegetation clearance consent requirements to vegetation considered “significant”. We propose a more ambitious wetland policy, changes to several definitions, and a suite of more targeted regulations to incentivise restoration activities and discourage commercial activities in wetlands. We support the requirement on councils to include measures to encourage the restoration of inland wetlands, and we seek to ensure that what is proposed does not undermine or hamper pest control efforts (whilst ensuring pest management does not have perverse adverse effects on indigenous ecosystems).

We believe that with our proposed amendments, and if appropriately implemented - and that is always where the rubber meets the road - the proposals to protect wetlands will help to halt the loss of wetlands and reduce degradation.

Impacts and implementation

6. Can you think of any unintended consequences from these policies that would get in the way of protection and/or restoration of ecosystem health?

The National Wetland Trust believes that the “devil” really is in the “detail” and there are several areas where the currently drafted provisions could lead to perverse outcomes or unintended consequences. For example, we support strong rules to end the destruction of wetlands, but if the “natural wetland” definition is too broad it will capture commonly grazed

areas which will be both unwieldy and untenable putting the whole package of freshwater reform at political risk. If it is too narrow, and/or the provisions to allow the destruction of indigenous vegetation provided it is isn't "significant" remains, the reforms are likely to be as ineffectual as the status quo.

Questions on the proposed amendments to the National Policy Statement for Freshwater Management and ecosystem-health aspects of the proposed National Environmental Standards for Freshwater

9. Do you support the Te Mana o te Wai hierarchy of obligations, that the first priority is the health of the water, the second priority is providing for essential human health needs, such as drinking water, and third is other consumption and use?

The National Wetland Trust supports Te Mana o te Wai hierarchy of obligations because ecosystem health is at the heart of our future survival and prosperity - degraded waterways are unable to provide for human health needs.

New Māori value and new threatened species values

22. Do you support the new compulsory national value? Why/why not?

The National Wetland Trust supports the new compulsory values, but has the following comment.

Aquatic ecosystems do not exist in isolation from terrestrial systems. Many species interact across the boundary. Use of the term "Aquatic life" potentially excludes terrestrial species that have important interactions with aquatic habitats - for example pekapeka-tou-roa (long-tailed bats) forage over linear aquatic habitats, feeding on insects emerging from their aquatic phase, while tui pollinate harakeke in wetlands, and terrestrial plants contribute food to aquatic species. Conversely some terrestrial plant and animal pest species can degrade waterways and may also need managing. We propose the broader term "Biota" e.g "Biota – the abundance and diversity of species and subspecies, including microbes, invertebrates, plants,

fish, birds, mammals and other species that rely on or interact, either positively or negatively, with freshwater systems”.

Exceptions for major hydropower schemes

19. Does the proposal to allow exceptions for the six largest hydro-electricity schemes effectively balance New Zealand’s freshwater health needs and climate change obligations, as well as ensuring a secure supply of affordable electricity?

The National Wetland Trust has concerns about exemptions for any industries whose activities adversely affect wetlands and other freshwater systems. As per the Resource Management Act, the proposals should be effects-based, not industry or land-use based.

The submission form does not include a question around exemptions for naturally occurring processes. The National Wetland Trust would like to see a **clearer definition of naturally occurring processes** to explicitly exclude “human-induced climate change”. Climate change has the potential to cause significant disruption to wetlands through changes in drought/flood regimes and sea-levels. Climates have changed historically, and we seek to avoid use of historic climate change as an opportunity to allow councils to set a target attribute state that is worse than the national bottom line on the basis of that argument. We suggest: *“For the purposes of this section, naturally occurring processes means processes that could have occurred in New Zealand before the arrival of humans and does not include human-induced climate change.”*

Ecosystem health policies

25. Do you support the proposal to protect remaining wetlands? Why/why not?

The National Wetland Trust supports supports the proposal to protect remaining wetlands.

It has been clearly established through several robust scientific analyses that wetlands are a severely depleted and degraded ecosystem type in New Zealand and we are not meeting our international obligations under the Ramsar Convention to use wetlands wisely (i.e. sustainably manage them). Despite the RMA Section s6a requiring the protection of the values of wetlands and their margins, many regional councils have focused narrowly on only s6c of the RMA,

seeking protection for only a small number of wetlands - i.e. those deemed significant using their own criteria. (e.g. Myers et al. 2013).

We support Policy 8 in the draft NPS-FM, but feel it should go further enable and encourage wetland restoration and reconstruction/reinstatement, given the staggering loss of 90% of the original extent of inland wetlands and the degraded state of many of the few remaining wetlands. We also consider it should refer specifically to wetland area (rather than potentially interpreted as number of wetlands) as well as quality.

We support the urgent implementation of the Proposed National Environmental Standards for Freshwater (NES FW), to reduce the incentive to destroy wetlands where controls are currently permissive, particularly in view of the potential future cost to landowners of fencing requirements in grazing land. We support a financial package to assist landowners with wetland fencing, to ensure wetlands do not become a financial burden, and create a disincentive to creation or protection of wetlands on private land.

We also support the inclusion of smaller wetlands in regional council monitoring requirements and no size limits for the proposed wetland protection rules, based on literature highlighting the importance of small and ephemeral wetlands, e.g. Richardson SJ, Clayton R, Rance BD, Broadbent H, McGlone MS, Wilmshurst JM 2014. *Small wetlands are critical for safeguarding rare and threatened plant species.*

26. If this proposal was implemented, what would you have to do differently?

The National Wetland Trust has the following recommendations:

Recommendation 1: Amend Policy 8 to seek an increase in wetland extent, number and quality, and encourage wetland restoration and re-creation.

Recommendation 2: While we support Policy 11 to protect the habitats of freshwater fish we note that fisheries legislation (Freshwater Fisheries Regulations 1983) provides absolute protection for only one species - thought to be extinct. While outside the scope of this package we would like to note the limitations of a focus on fish habitat while allowing the commercial harvest of species that are threatened with extinction.

Recommendation 3: Tighten the definition of “natural wetland” with respect to the exclusion of (a) “wet pasture.....”. We support the intent of this exclusion, namely, to ensure that the proposed strong rules to protect wetlands do not apply to grazed paddocks with little, or no, indigenous wetland values. However while we consider some of these areas could be enhanced and restored – indeed policies and objectives should support this – it would be politically untenable to require farmers to apply for a consent to continue to graze such “wetland” areas. It would also outstrip regional council capacity to identify, map and monitor such sites.

In order to achieve the intent, we recommend that:

- The wetland identification protocol is “used to assist” in the identification of natural wetlands, rather than “for the avoidance of doubt” (we note the protocol will delineate some area of pasture grasses with patches of exotic rushes/sedges as “wetland” thereby contradicting the exclusion) - dNPS FM subpart 3 3.15 (6).
- The current definition of natural wetland is expanded and refined, for example, by adopting Greater Wellington’s approach of defining pasture use a threshold and referring to species as defined by the NZ Grassland Association.

Recommendations 4: Reconsider the definition of natural wetlands in relation to the **constructed wetlands exclusion** (and/or the provisions related to them) in the proposed NESF and draft NPS-FM.

The current definition is problematic. How should councils provide for situations where a wetland comprises a natural portion and a contiguous constructed portion - which definition would prevail, or would provisions apply to part of the wetland only? How would activities in the constructed part, that may affect the natural portion of a wetland, be managed? How would the boundaries between the natural and constructed portion be determined? Should the specific purpose for which the wetland was constructed be documented to enable councils to apply s3.15 (8)? How would disputes regarding the origin of a wetland be resolved, particularly if a wetland is destroyed through earthworks or water takes it could be very difficult to determine whether the site was a natural wetland or had been constructed. Will the definition apply only to wetlands constructed since the NES/ NPS become operative or will they apply retrospectively to wetlands created in the past and, if so, within what time period? If wetlands were constructed some time ago, how will it be conclusively determined that they were not constructed in a site where a wetland previously existed?

There are many examples of wetlands with high natural values that have been inadvertently created or enlarged through human activities such as stopbanks, causeways, or damming and diverting water. For example, the regionally significant Kimihia Wetland [Waikato Regional Council. 2017. Technical Report 2017/36. Significant natural areas of the Waikato District: terrestrial and wetland ecosystems] formed as a result of de-watering the Huntly East Coalmine. There are also many examples where wetlands constructed (or reconstructed) through excavation and water level manipulation have developed into habitats with high ecological values, including through natural vegetation succession and self-introduction of native species. Examples include: Evans Rd mitigation wetland www.stuff.co.nz/waikato-times/news/115803321/spoonbill-visits-new-manmade-wetland-in-waikato, Sheely Wetland, Tauranga pg 42: www.landcare.org.nz/file/managing-land-for-the-future-guide/open

We recommend tightly defining constructed wetlands as those that are “deliberately” constructed for a specific purpose, such that inadvertently constructed wetlands supporting indigenous flora and fauna are treated as natural wetlands. Further, constructed wetlands that support indigenous communities analogous to naturally occurring wetlands in the area, and any

wetland that was developed for biodiversity offset/ mitigation purposes should be afforded the same level of protection as natural wetlands.

Recommendation 5: Clarify how/where **geothermal wetlands** are defined and provided for? Geothermal wetlands include the critically endangered fumerols and geothermal streamside ecosystems (Wiser *et al.* 2013), and support threatened and at risk wetland species such as the Nationally Vulnerable sedge *Machaerina complanata* and the at risk ferns *Cyclosorus interruptus* and *Thelypteris confluens*. There seems to be no justification for their exclusion from the draft NPS FM, as they are not provided for in the NPS for Renewable Electricity Generation 2011. Johnson and Gerbeaux (2004) define geothermal wetlands as “A hydrosystem where the dominant function is geothermal water (heated by volcanic activity to 30°C or more); geothermal wetlands may have water temperatures below this, yet be influenced by chemicals from current or former inputs of geothermal-derived water.” Johnson and Gerbeaux. 2004. Wetland Types in New Zealand.

Recommendation 6: Amend the definition of vegetation destruction pNES F Part 2 Subpart 1 (4).

We suggest the following alternative definition:

“Vegetation destruction means destroying (including by felling, crushing, cutting, spraying, burning, grazing, smothering, flooding or excavating) any vegetation, but does not include cultural harvest of plant material.”

Our recommended definition removes the undefined and narrow term “significant”. Freshwater wetlands are a critically threatened ecosystem type, therefore all natural inland wetlands should be considered to be significant. Further, leaving it to individual councils to define significant will lead to inconsistency and probably result in a continued status quo (as per Myers *et al.* 2013) and fail to meet Policy 8: “*There is no further loss or degradation of natural inland wetlands*”. It is possible to destroy wetland vegetation without undertaking drainage or earthworks (e.g. spraying and planting peatland in blueberries or grazing or burning areas of indigenous vegetation during drier periods).

Our definition also removes the term “indigenous” as:

- including indigenous in the definition will lead to arguments around the definition of indigenous vegetation; and
- indigenous vegetation can be destroyed indirectly through activities related to destruction of non-indigenous vegetation (e.g. a indigenous understory can be destroyed when willows are removed, depending on the method employed); and
- non-indigenous vegetation removal can occur in a way that adversely impacts wetland habitat, including threatened fauna.

We consider it more efficient to provide for small-scale weed/non-indigenous plant control as a permitted activity subject to conditions, and require consents for any larger scale clearance of any type of wetland vegetation, to ensure indigenous vegetation is not destroyed.

Note that any definition of vegetation destruction should specifically exclude cultural harvest to ensure it does not undermine the rights of tangata whenua to harvest their cultural materials according to their tikanga. We encourage MfE and councils to work with hapu and iwi to clarify the practices that should be exempt.

Recommendation 7: Amend the **vegetation destruction rules** (draft NES-FW s7) to provide a more flexible approach that:

- recognises the range of activities that affect wetlands to different degrees by creating a hierarchy of rules as suggested below (i.e including some permitted and controlled activities) ;
- does not become a disincentive for restoration activities.

One way to achieve this could be a permitted activity section to allow:

- weed control to be undertaken in a manner that won't adversely affect indigenous vegetation and fauna, &
- certain minor-scale restoration-related activities.

The above should be subject to permitted standards, including timing to avoid sensitive periods such as nesting/migration/moulting and assessment criteria that consider the impacts on indigenous fauna as well as vegetation. They should also exclude excavation to create open water wetlands in areas of existing indigenous vegetation.

Furthermore a controlled activity section could also be added for lower risk activities - such as moderate-scale ecological restoration activities that will not adversely affect existing wetland values. This, if coupled with waivers of consent fees and annual charges (e.g. as currently employed by Waikato Regional Council) would reduce barriers to voluntary wetland restoration. Alternatively provide for approval of restorative actions via a farm plan approved and audited by the relevant regional council, i.e. permitted activity if part of a registered management document (a method currently employed by BOPRC).

For the current discretionary rule, limit recreational and educational purposes to non-commercial activities - this would leave commercial activities as non-complying activity status, an appropriate status for potentially destructive activities in a rare ecosystem that are conducted for private financial gain.

We seek conditions of consent regarding “like for like” mitigation in situations where adverse effects cannot be avoided (other than by declining consent). For instance, it would be inappropriate to allow for replacement of a semi-swamp forest with a stormwater pond.

Recommendation 8: We support strengthening the proposed NPS-FM to further **enable the restoration of wetlands**, particularly in regions where wetland loss has been extreme, and prioritising wetland types that have had the greatest loss(es) compared to historic wetlands.

In order to do so, we would like to see a **definition for “wetland restoration”** to clarify that it relates only to activities undertaken for the purpose of returning or enhancing the natural and indigenous ecological and/or biodiversity values of the wetland, as opposed to, for instance, enhancement of amenity or other values or the introduction of ecologically inappropriate species, and use the term in sections such as draft NPS FM Subpart 3 3.15 (3) b. It should specifically be noted that wetland restoration does not include excavation within areas of terrestrial or wetland indigenous vegetation to create open water wetland systems.

Recommendation 9: We support the development of inventories of wetlands but acknowledge this will require significant resources and councils may look for opportunities to minimise cost of such an exercise. In the draft NPS FM subpart 3 Section 3.15 (5), **reword to confirm that regional councils should be mapping all such instances**, rather than opt to select which the list of wetland i to iii it will identify and map, e.g.

Section 5 a) identify and map in its region the following:

- i. natural wetlands that are 0.05 hectares or greater in size;*
- and*
- ii. natural wetlands known to contain threatened species; and*
- iii. natural wetlands of a type that is naturally less than 0.05 ha in size (such as ephemeral wetlands or springs); and*

Recommendation 10: We recommend the Ministry undertakes to **develop a scientifically robust national list of wetland types** that meet s5 a) iii and consider which are priorities, and if there are locations where this may be less urgent (e.g. in catchments wholly within highly protected land), this goes hand in hand with our Recommendation 11 because it will require first a national classification system to determine what is a wetland “type”.

Recommendation 11: We support the development of wetland inventories but recommend defining a classification system that should be used in s5 b)iii to ensure national consistency, e.g. specify use of Johnson and Gerbeaux to wetland class level for palustrine wetlands, and see Denyer and Robertson 2016 Appendix 4.2 for a synopsis of wetland types (including coastal wetlands, lakes and riverine wetlands).

www.doc.govt.nz/globalassets/documents/about-doc/role/international/national-guidelines-ramsar-wetlands.pdf

Recommendation 12: We support (where there is doubt or dispute) the use of a national wetland delineation protocol for the purposes of identifying wetlands, and consider it, along with collection of information regarding indigenous flora and fauna to be helpful in identifying the boundaries of natural wetlands. The existing vegetation and hydric soils tools should be complemented by a **hydrology tool, that should be developed as soon as possible**. Further such tools should be refined and/or complemented with matauranga Maori, and there

should be provision to modify such tools as necessary as we enhance our understanding of wetland metrics. The availability of the three tools will provide in the cases of uncertainty or dispute. We also recommend that the protocol is also referenced in the dNES-FM and draft 360 regulations.

Recommendation 13: We consider directing regional councils to permit management of **constructed wetlands** consistent with their purpose (as per draft NPS FM subpart 3 section 3.15 (8)) to be unworkable. There are too many “grey areas” that could be abused to allow for destructive use of a natural wetland.

For example, would this only apply to wetlands constructed after the NPS /RPS become operative, or would it apply to wetlands constructed prior to that time, and if so back to what baseline time frame? What evidence would be required to determine that a wetland was artificially constructed? Who would determine what was the original purpose of the wetland, and how would that be verified? There is scope for confusion and inconsistencies around wetlands that are fully constructed vs those that were inadvertently constructed/ modified/enhanced/enlarged/ or re-created on a previously drained site. Should there be a continual use requirement, with evidence that the wetland in question has been continually/regularly used for the original purpose? What is the mechanism by which a council permits this? Through permitted or controlled activities? How might a council determine if a wetland was constructed or natural if it was destroyed by someone who claims it wasn't a natural wetland so the rules didn't apply?

Recommendation 14: Regarding dNPS FM subpart 3 section 3.15 (9) we support ‘methods to respond when degradation of wetland conditions is detected’ and suggest that to assess the current ecosystem health/state of wetlands, and to guide management and restoration, the draft NPS-FM refers specifically to the Wetland Condition Index (WCI) attribute table (with limits and natural bottom line) as proposed in the STAG (Science and Technical Advisory Group) report – section 3.10. This includes specific reference We recommend amending Appendix 2a of the dNPS FM to include the wetland health attributes, e.g. those from the Wetland Extent and Condition index (as per recommendation 14 c. STAG Report to MfE, 2019).

The Wetland Condition Index is a standardised way to measure the quality of wetlands so that quality is protected, not only the extent of wetlands. We also recommend including a sampling period of no greater than 10 years for wetland condition monitoring.

Improving farm practices

Restricting further intensification

51. Do you support interim controls on intensification, until councils have implemented the new NPS-FM? Why/why not?

The National Wetland Trust supports interim controls on intensification to prevent ongoing destruction of wetlands and other freshwater systems, such as that documented in association with land use change e.g. in Southland [HA Robertson, AG Ausseil, B Rance, H Betts, E. Pomeroy. 2019. *Loss of wetlands since 1990 in Southland, New Zealand*. New Zealand Journal of Ecology 43 (1), 1-9]. Impending changes to regional and district plans may provide an incentive to fast-track intensification prior to implementation of tighter restrictions.

Excluding stock from waterways

65. Do you support excluding stock from waterways? Why/why not?

The National Wetland Trust supports excluding stock from waterways and wetlands, as large animals in particular can cause considerable damage to wetlands through pugging, trampling vegetation and nests, grazing, and introducing nutrients and weed seed. Wetlands are also unsafe places for stock, fencing will protect farmstock as well as wetlands.

67. Do you have any comment on the proposed five metre setback, or where it should be measured from?

The National Wetland Trust would like to see more work done to establish appropriate setbacks, including consideration of potential for significant invasive plant establishment behind fences. There may be arguments for differing setbacks based on slope, such as is employed by Waikato Regional Council in their Plan Change 1.

We consider it more urgent to get protective rules in place to avoid potential fencing costs being an incentive to drain wetlands where such activities are currently permitted.

Interactions between National Policy Statement for Freshwater Management, National Environmental Standards for Freshwater and other policies

Policy interactions

Treaty Settlements. As a recognised bicultural nation, the government of Aotearoa/New Zealand have obligations to its indigenous partners under Te Tiriti o Waitangi. In some cases, these obligations have been formalised directly under Treaty Settlements which seek to redress the impacts of colonisation on the health and wellbeing on tangata whenua. The past decade has seen some ground-breaking settlements in particular, which focus specifically on the needs of key natural landscape features – forests, rivers, lakes and mountains – and their important position as sources of identity and nourishment for the communities affiliated with them. Two Settlements in particular – the Waikato Raupatu River Settlement (2010) and Te Awa Tupua (2017) – highlight the importance of supporting and enhancing key ecosystems, of which wetlands form a key component for both river systems. Yet, the regions within which these nationally significant rivers sit, are amongst the worst in terms of the degradation and drainage of wetland systems and their natural coverage over the past 180 years (at least).

While the discussion document (pg 35) states that the proposal would not impact on the settlement legislation that creates specific regimes for the Waikato and Whanganui Rivers as the settlement legislation means those regimes prevail if the NPS-FM is inconsistent, we do not see reference to that primacy in the dNPS. Further, do the NES/ NPS go far enough to give effect to, and thus enhance the agreements under (1) The Waikato River Settlement; and (2) Te Awa Tupua Settlement for the Whanganui River? Specifically, Te Ture Whaimana o te Awa Waikato (the primary setting document for the Waikato River) and Tupua te Kawa under the Te Awa Tupua Settlement.

We raise this as an important consideration in terms of the obligations and responsibilities of the government to recognise that wetlands are more than their ecosystem services; but are also key to supporting life, and the resilience of cultural practices generated through experience and interaction. Such relationships are recognised in the articles of Te Tiriti o Waitangi, and also UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples), of which New Zealand is a signatory.

NES Plantation Forestry: The National Wetland Trust does not support the supremacy of the NES Plantation Forestry over the wetland protection provisions of the NES. The range of exemptions of industries other than farming appear to be inequitable.

Plantation forestry activities have the potential for significant adverse effects on wetlands, including in-filling with sediment drastically changing their condition. The NES is under review

and we are unable to predict what protection measures for wetlands will be included in that document. Where policies between the two documents conflict the more stringent policy should apply.

Ends.