Action for Healthy Waterways

Key final policies, regulations, and timeline

August 2020

Government process	National Environmental Standards (NES)	Resource Management Act Amendment	National Policy Statement for Freshwater Management (NPSFM)	Section 360 Regulations

	Name	Policy decision and specific details	Key dates	Link to relevant document/instrument
	New National Policy Statement for Freshwater Management, to include changes from current NPS	Clarification of what "limits" are, how they will be expressed in plans etc. In order to reach specified targets, councils **must "identify limits on resource use".** These limits may: - Apply to any activity or land-use - Apply at any scale (from an individual level to a catchment) - Be expressed as a land-use control, input control, or output control. These limits must ensure instream concentrations and "exceedance criteria" for instream nitrogen and phosphorous are achieved.	**NPSFM comes into force** on **3 September 2020,** regional councils must then implement through their planning instruments **as soon as reasonably practicable**, but to be notified by **31 December 2024.**	https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGE 18**
		Clarification of what Te Mana o te Wai means and how it is to be implemented. **Six principles of Te Mana o te Wai have been established** as well as a **hierarchy of obligations to be prioritised** (*see Appendix 1 to this document*).		https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGE 5**

		Policy 1 of the NPSFM requires that freshwater be managed in a way that gives effect to Te Mana o te Wai.		
		Councils **required to actively involve tangata whenua in processes** for policy and plan development and decision-making. This will include collaboration with tangata whenua to identify Maori freshwater values (in addition to mahinga kai) for freshwater management units.[1]		https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGE 12**
		The compulsory value[2] of ecosystem health (which was already in the previous NPS) has now been given a fuller definition, with five components: water quality, water quantity, habitat, aquatic life, and ecological processes (*see Appendix 2 to this document*). The NPSFM states: "In a healthy freshwater ecosystem, all 5 biophysical components are suitable to sustain the indigenous aquatic life expected in the absence of human disturbance or alteration…" **Water quantity limits must now be linked to ecosystem health outcomes.**		https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGE 36**
		Territorial authorities required to manage effects of urban land development on freshwater bodies, ecosystems, and receiving environments, through avoiding, minimizing, or mitigating adverse effects.		https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGE 13**
		A new **compulsory value for mahinga kai** for regional policies and plans (*see Appendix 2 to this document*).		https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGE 37**
		Previously, regional councils were able to set freshwater quality objectives below national bottom lines in catchments where there was "significant listed		https://www.mfe.govt.nz/publications/fresh-water/national-policy-

[1] Freshwater Management Units (FMUs) are the water bodies or parts of water bodies and their catchments that councils must identify and use as the appropriate unit for freshwater management and accounting.

[2] There are four compulsory values in the NPSFM: ecosystem health, human contact, mahinga kai, and threatened species. Councils must identify values within FMUs and then set policies, plans, and rules to achieve those values. The four compulsory values must be applied to every FMU in the country, whereas councils have discretion to identify others.

<table>
<tr>
<td></td>
<td></td>
<td>infrastructure", where that infrastructure contributed to the existing water quality. No such infrastructure was listed within the NPS, however.
The allowance for a departure from national bottom lines now specifically applies only to the following hydro-electricty schemes: Waikato, Tongariro, Waitaki, Manapouri, and Clutha.
The application of this clause has been more tightly defined and also requires councils to consider greenhouse gas emissions targets; the security of our electricity supply; and generational capacity, storage, and operational flexibility, when implementing the NPSFM.</td>
<td></td>
<td>statement-freshwater-management-2020
PAGE 32</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A range of new attributes[3] have been added to the NPSFM.
Some of these have a national bottom line[4]:
- Macroinvertebrates
- Submerged plants in lakes
- Dissolved oxygen
- Suspended sediment
- Deposited sediment
- E. coli at swimming sites during bathing season
The other new values have no national bottom line:
- Fish species
- Ecosystem metabolism
- Dissolved reactive phosphorous</td>
<td></td>
<td>https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020
PAGES 40-61</td>
</tr>
<tr>
<td>  </td>
<td>New attribute limits for nitrate and ammonia toxicity</td>
<td>Existing national bottom lines for nitrate and ammonia toxicity attributes have been increased to protect 95% of species (expressed in milligrams per litre):
<table>
<tr><th></th><th>Previous annual median</th><th>New annual median</th><th>Previous annual maximum</th><th>New annual maximum</th></tr>
<tr><td>Nitrate</td><td>6.9</td><td>2.40</td><td>9.8</td><td>3.50</td></tr>
<tr><td>Ammonia</td><td>1.30</td><td>0.24</td><td>2.20</td><td>0.40</td></tr>
</table>
</td>
<td></td>
<td>https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020
PAGES 44-45 for toxicity limits</td>
</tr>
</table>

[3] Attributes are the measurable characteristics (numeric, narrative, or both) that can be used to assess with a particular value is being provided for or achieved.

[4] National bottom lines are the cutting limit – if the current state of waterbodies is below the national bottom line, regional councils must set attribute targets at or above the national bottom line, therefore rules will likely be required to improve water quality in the catchment.

		Exceptions to this will be allowed in specific **vegetable-growing** areas of the **Pukekohe and Lake Horowhenua** catchments, due to contribution to national food security (vegetable production).		**PAGE 69** for defined areas of exception
	**Water allocation**	Regional councils must include **criteria within regional plans** for: - Deciding applications to approve **transfers of water take permits** - Deciding how to improve and **maximise the efficient allocation** of water Councils must also include methods within regional plans to encourage the efficient use of water.	**NPSFM comes into force** on **3 September 2020,** regional councils must then implement through their planning instruments **as soon as reasonably practicable**	https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGES 29-30**
	**Stopping further loss of natural wetlands and rivers**	Regional councils must include specific policies within regional plans to protect rivers and natural inland wetlands (including mapping and monitoring) but allowing for a consenting pathway for some exceptions.	**NPSFM comes into force** on **3 September 2020,** regional councils must then implement through their planning instruments **as soon as reasonably practicable**	https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2020 **PAGES 24-26**
		The new National Environmental Standards (NES) prescribes that different actions affecting wetlands will have various activity statuses. This means that many activities which were previously allowed either with or without a resource consent depending on the region, will now all have the same status across the country. The regulations supersede any district rule or regional rules unless those rules are more stringent than these NES Regulations. Resource consent conditions can be more stringent than these NES Regulations. Vegetation clearance, earthworks or land disturbance, taking, using, damming or diverting water, discharges, and construction of infrastructure will require resource consents, unless meeting one of the exceptions provided in the regulations. The reclamation of the bed of any river[5] is a discretionary activity – meaning a resource consent is required.	From date regulations come into force – 3 September 2020	http://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html **PART 3 (pages 26 - 42)**

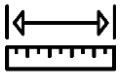
[5] See Appendix 4 for the definition of "bed" and "river"

	**Preserving connectivity of fish habitat (fish passage)**	Information must be provided to regional councils on the placement, alteration, extension, or reconstruction of any: - culverts - weirs - flap gates (passive or non-passive) - dams - fords when these are in, on, or under the bed of a river or connected area.[6] The required information varies for each type of structure (see the Regulations for the full list). This part of the Regulations does not apply to existing structures that were in rivers or connected areas on or before 2 September 2020, including any later alterations or extensions; or customary weirs for the purpose of practicing tikanga Maori.	From date regulations come into force – **3 September 2020**	http://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html **PART 3 (pages 42 - 52)**
	**Restrictions on intensification and dairy support**	New restrictions on intensification now apply unless a regional council has implemented the new NPSFM. The cutting date for increases in land-use activities is 2 September 2020. Discretionary activity **resource consents required for**: - land-use change of **more than 10 ha to dairy** - land-use change of **more than 10 ha from plantation forestry to pastoral** land-use - **increases in irrigated pasture for dairy farming above 10 ha** from maximum area irrigated in 12 months prior to 2 September 2020 - **increases in dairy support land** that hasn't been used as dairy support land - **increases in dairy support land** greater than maximum area of farm used for dairy support from 1 July 2014 to 30 June 2019	From date regulations come into force – **3 September 2020** Restrictions apply **until 31 December 2024** Applicable resource consents cannot extend beyond **31 December 2030.**	http://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html **SUBPART 2 (pages 15 – 19)**

[6] See Appendix 4 for the definition of "bed" and "river"

	**Restrictions on intensive winter grazing (IWG)**	New restrictions on winter grazing now apply unless a regional council has implemented the new NPSFM. Discretionary activity **resource consents required for winter grazing unless**: - area of farm used for IWG no greater than 50ha or 10% of farm (whichever is greater); and - mean slope of paddock used for IWG ≤10 degrees; and - no pugging deeper than 20cm; and - pugging of any depth not greater than 50% of paddock; and - livestock must be kept at least 5m away from bed of any river, lake, wetland, or drain (even if dry/empty); and - land must be replanted as soon as practicable after grazing (no later than 1 November for Otago and Southland or 1 October everywhere else). - OR no certified freshwater farm plan that applies to IWG and effects no greater than the above	From date regulations come into force – **3 September 2020** Restrictions apply **until 31 December 2024** Applicable resource consents cannot extend beyond **31 December 2030.**	http://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html **SUBPART 3 (pages 19 - 22)**
	**Cap on fertiliser application**	National maximum of *synthetic* nitrogen fertiliser application of 190kg N/ha/yr to pastoral land (land used for the grazing of livestock) in a contiguous landholding, averaged over that land and to each hectare of that land that is not used to grow annual forage crops. A non-complying resource consent is required to allow application over the cap. Synthetic nitrogen fertiliser can be liquid or solid and is more than 5% nitrogen by weight, but doesn't include: compost, soil treatment, or fertilisers that are derived from plant or animal waste and is minimally processes. Farms with dairy farmland must provide annual information to regional councils: - area of pastoral land use - area used to grow annual forage crops - other land - receipts for purchase of synthetic nitrogen fertiliser - types of synthetic nitrogen fertiliser applied and percentage of nitrogen component - application rate and dates of application	**1 July 2021**	http://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html **SUBPART 4 (pages 22 – 26)**

	**Feedlots and stock holding areas**	All cattle feedlots to require resource consents, except for calves. Permeability standards, effluent controls, and siting rules for feedlots and stock-holding areas.	**1 July 2021**	http://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html **SUBPART 1 (pages 12 - 15)**
	**Mandatory and enforceable freshwater farm plans**	These will be required for the following land-uses: - pastoral farming totalling 20ha or more - arable farming totalling 20ha or more - horticulture totalling 5ha or more - an agricultural purpose prescribed in the regulations (not yet determined) any combination of the above uses totalling 20 ha or more. The purpose of the plans is to avoid, remedy, or mitigate the adverse effects of farming activities on freshwater and freshwater ecosystems. **Farm plans** will have to be **certified and audited** (certifiers and auditors will be appointed by councils).	To be **rolled out to progressively** to specific regions, districts, or areas (places and dates yet to be determined). **Further regulations** will be released specifying audit requirements, etc.	http://www.legislation.govt.nz/act/public/2020/0030/latest/LMS259082.html **PART 9A**
	**Real-time measuring and reporting of data on water use**	Amendments to water-metering regulations to require telemetry of data. - Permit holders previously required to **keep records** of cubic metres of water taken each day – but that is now required to be recorded in **each 15-minute period**. Exception allowed – volume recorded can be "in each week", but specific approval must be granted by regional council for this. - These 15-minute records must be provided **electronically** to councils **daily** (i.e. by the end of the next day). - **Records for a water year** are now required to be provided to councils **electronically as the default** unless council requests they be provided in writing.	Regulations come into force on 3 September 2020, but compliance dates as follows: - **3 September 2022** for water permits **≥20 l/s** - **3 September 2024** for water permits **≥ 10 l/s** - **3 September 2026** for water permits **≥ 5 l/s**	http://www.legislation.govt.nz/regulation/public/2020/0176/latest/LMS351161.html

	**Stock exclusion**	News regulations apply to **stock exclusion from lakes and rivers more than one metre wide and natural wetlands:** - Dairy cattle on any terrain - Pigs on any terrain - Dairy support cattle on any terrain - Beef cattle intensively grazed on any terrain - Deer intensively grazing on any terrain - Beef cattle on low slope land - Deer on low slope land **Exceptions** provided for **certain stock crossings** – see regulations for more details.	Dates vary depending on farm system, from 3 September 2020; 1 July 2023; and 1 July 2025. See regulations for details.	http://www.legislation.govt.nz/regulation/public/2020/0175/latest/LMS379869.html
	**National bottom line for dissolved inorganic nitrogen (DIN)**	**Review** as to whether there should be a **national bottom line for DIN**.	**July 2021**	
	**Nitrogen attributes of NPSFM**	Review of nitrogen management systems. **If no reduction in synthetic nitrogen fertiliser use** across the country, further **input controls will be considered**. Order in Council can be made create regulations around the sale and collection of information on fertiliser purchases.	**2023**	
	**Regional authority planning – new freshwater processes**	**New freshwater planning process** for regional councils' policy statements and plans. **Freshwater hearings panels** replace traditional regional council-appointed hearings panels for freshwater planning instrument hearings. Panels will be comprised of at least five members: - 2 freshwater commissioners - 2 persons who are nominated by the relevant regional council (may or may not be elected regional council members) - 1 person with understanding of tikanga Māori and mātauranga Māori nominated by local tangata whenua; or if no nomination made, appointed by the Chief Freshwater Commissioner. A Chief Freshwater Commissioner is appointed by the Government to convene the panels. Regional councils submit to her/him the proposed instruments, submissions, etc before panels are appointed.	By **31 December 2024** to implement new NPSFM	http://www.legislation.govt.nz/act/public/2020/0030/latest/LMS259249.html **SUBPARTS 3 & 4**

		Freshwater hearings panels are not limited in their recommendations to regional councils to only matters raised in submissions.		
	**Regional planning appeal rights**	A submitter may appeal a council's decision on a freshwater planning instrument as follows: - If a **recommendation of a freshwater hearing panel** was **rejected** by a council, the submitter may appeal to the **Environment Court** - If a **recommendation of a freshwater hearing panel** was **accepted** by a council, the submitter may appeal to the **High Court on points of law only**.		
	**Water allocation**	New allocation framework and Māori rights and interests addressed.	Unknown	

What does all this mean for regional plans already in place?

The new NPSFM requires all regional authorities to implement it "as soon as reasonably practicable." That means that all regional councils must amend, update, or implement new planning documents (such as Regional Policy Statements and Regional Plans) to implement the new NPSFM and these must be notified by 31 December 2024.

However, Councils may determine that their current Policy Statements and Plans already implement the new NPSFM. If there is a "dispute" about this (for instance, a person or group could initiate judicial review proceedings against a council if that person thinks that the NPSFM has not been implemented by the region), the onus is on the council to prove that their instruments do implement the NPSFM, rather than the other party having to prove that the NPSFM hasn't been implemented.

Local authorities are not required to make changes to wording or terminology within in their planning instruments simply to match the wording of the NPSFM – changes are required where they are substantive to implementing the NPSFM. If they do wish to make minor (non-substantive) changes to wording or terminology, a local authority does not have to go through the standard plan change process to do so.

The new regulations and national environmental standards, such as stock exclusion, may come into force prior to new regional rules and policies being introduced.

Appendix 1: Te Mana o te Wai – a fundamental concept (wording taken directly from NPSFM)

Concept

1. Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri[7] of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.
2. Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this NPS.

Framework

3. Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.
4. The 6 principles are:
    a. *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater
    b. *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations
    c. *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others
    d. *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future
    e. *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations
    f. *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.
5. There is a hierarchy of obligations in Te Mana o te Wai that prioritises:
    a. first, the health and well-being of water bodies and freshwater ecosystems
    b. second, the health needs of people (such as drinking water)
    c. third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

---

[7] **mauri** (noun): life principle, life force, vital essence, special nature, a material symbol of a life principle, source of emotions - the essential quality and vitality of a being or entity. Also used for a physical object, individual, ecosystem, or social group in which this essence is located.
https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=mauri

Appendix 2: Ecosystem health compulsory value (wording taken directly from NPSFM)

This refers to the extent to which an FMU or part of an FMU supports an ecosystem appropriate to the type of water body (for example, river, lake, wetland, or aquifer).

There are 5 biophysical components that contribute to freshwater ecosystem health, and it is necessary that all of them are managed. They are:

- *Water quality* – the physical and chemical measures of the water, such as temperature, dissolved oxygen, pH, suspended sediment, nutrients and toxicants
- *Water quantity* – the extent and variability in the level or flow of water Habitat – the physical form, structure, and extent of the water body, its bed, banks and margins; its riparian vegetation; and its connections to the floodplain and to groundwater
- *Aquatic life* – the abundance and diversity of biota including microbes, invertebrates, plants, fish and birds
- *Ecological processes* – the interactions among biota and their physical and chemical environment such as primary production, decomposition, nutrient cycling and trophic connectivity.

In a healthy freshwater ecosystem, all 5 biophysical components are suitable to sustain the indigenous aquatic life expected in the absence of human disturbance or alteration (before providing for other values).

Appendix 3: Mahinga Kai value to be included in regional planning (wording taken directly from NPSFM)

Mahinga kai – kai is safe to harvest and eat.

Mahinga kai generally refers to freshwater species that have traditionally been used as food, tools, or other resources. It also refers to the places those species are found and to the act of catching or harvesting them. Mahinga kai provide food for the people of the rohe and these sites give an indication of the overall health of the water. For this value, kai would be safe to harvest and eat. Transfer of knowledge is able to occur about the preparation, storage and cooking of kai. In FMUs or parts of FMUs that are used for providing mahinga kai, the desired species are plentiful enough for long-term harvest and the range of desired species is present across all life stages.

Mahinga kai – Kei te ora te mauri (the mauri of the place is intact).

In FMUs or parts of FMUs that are valued for providing mahinga kai, customary resources are available for use, customary practices are able to be exercised to the extent desired, and tikanga and preferred methods are able to be practised.

Appendix 4: RMA definitions of "river" and "bed"

River means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).

The 2020 NES Regulations further add to this definition (for the purpose of these Regulations only):

River or connected area means –

a) a river; or
b) any part of the coastal marine area that is upstream of the mouth of a river.

Bed means -

(a) in relation to any river –
    (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks:
    (ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and
(b) in relation to any lake, except a lake controlled by artificial means,—
    (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the lake cover at its annual highest level without exceeding its margin:
    (ii) in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and
(c) in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and
(d) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea