



## Essential Freshwater

# Natural inland wetlands factsheet

January 2023

**Essential Freshwater is the name of a package of regulations (national direction) made under the Resource Management Act 1991 (RMA) designed to protect and improve our rivers, streams, lakes and wetlands.**

The Essential Freshwater package aims to:

- stop further degradation of our freshwater
- start making immediate improvements so water quality improves within five years
- reverse past damage to bring our waterways and ecosystems to a healthy state within a generation.

### **Te Mana o te Wai is fundamental to all freshwater management**

Te Mana o te Wai recognises the vital importance of water. It expresses the special connection that New Zealanders have with freshwater. By protecting the health of freshwater, we protect the health and wellbeing of people and our ecosystems.

When managing freshwater, Te Mana o te Wai ensures the health and wellbeing of the water is protected and human needs are provided for before enabling other uses of water.

Through discussions with regional councils, tangata whenua and communities, people will have a say on how Te Mana o te Wai is applied locally in freshwater management. More information can be found in the [Te Mana o te Wai factsheet](#).

## Who should read this factsheet?

This factsheet is part of a [series](#) and provides information on existing and new provisions for wetlands that came into effect on 5 January 2023. It is primarily intended for council staff and land users, but may also be of interest to iwi, the wider agricultural industry, farm advisors and consultants, and anyone else with an interest in freshwater policy.

# What is the Essential Freshwater package for wetlands?

The [National Policy Statement for Freshwater Management 2020](#) (NPS-FM) was amended in December 2022. It contains policy 6 and clauses 3.22 and 3.23 that specifically relate to *natural inland wetlands*.

As part of the amendments in 2022, the definition of a natural inland wetland was refined and clarified. The natural inland wetland definition is the same as the definition of a wetland in the RMA, with a set of exclusions, as follows:

**natural inland wetland** means a wetland (as defined in the Act) that is not:

- (a) in the coastal marine area; or
- (b) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or
- (c) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
- (d) a geothermal wetland; or
- (e) a wetland that:
  - (i) is within an area of pasture used for grazing; and
  - (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the *National List of Exotic Pasture Species* using the *Pasture Exclusion Assessment Methodology* (see clause 1.8)); unless
  - (iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply.

The [National list of exotic pasture species](#) and the [Pasture exclusion assessment methodology](#) are incorporated by reference into the NPS-FM. Use these documents when assessing whether the pasture exclusion (e) applies. The Ministry will provide updated guidance on the definition and wetland provisions in 2023.

Policy 6 of the NPS-FM (to avoid the loss of extent of natural inland wetlands, protect their values and promote their restoration) remains unchanged by the 2022 amendments. However, the associated wetland provisions at clause 3.22 have been updated and now include additional consent pathways for the purposes of:

- urban development (with special provisions for the Bay of Plenty)
- quarrying activities
- the extraction of minerals and ancillary activities (with additional controls on coal mining)
- landfill and cleanfill areas
- water storage, ski area infrastructure and NZ Defence Force activities, which have been included in the definition, and the existing NES-F provision for, 'specified infrastructure'.

The consent pathways must pass associated 'gateway tests' and the effects of the activity must be managed using the 'effects management hierarchy' (see NPS-FM clause 3.21 and 3.22(3)).

The regulations in the [National Environmental Standards for Freshwater \(NES-F\)](#) place restrictions on damaging activities in and near natural inland wetlands and set out the rules that apply for the purposes listed above, including conditions that must be met before consent may be granted.

The [Resource Management \(Stock Exclusion\) Regulations 2020](#) mandate that certain stock must be excluded from natural inland wetlands in some circumstances.<sup>1</sup>

The NES-F, NPS-FM and stock exclusion regulations came into force on 3 September 2020. New changes to the NES-F, NPS-FM and stock exclusion regulations came into force on 5 January 2023.

## What are the new NPS-FM wetland provisions and when do they apply?

Since the amendments took effect on 5 January 2023, regional councils need to include the updated wetland content set out in clause 3.22(1) of the NPS-FM in their regional plans.<sup>2</sup> This amendment must be made as soon as practicable, without using a Schedule 1 process in the Resource Management Act 1991 (RMA). Councils will likely issue a public notice of the change once it has been made.

Other changes to regional policy statements and regional plans required to give effect to the NPS-FM 2020 will need to be notified by 31 December 2024 (as required by the RMA).

Under s104 of the RMA, consent authorities need to have regard to a national policy statement when considering an application for consent. Councils are encouraged to seek legal advice as to how the NPS-FM 2020 applies to specific applications for resource consent that are being processed at the time of amendment.

The provisions at 3.22 provide the ability to apply for resource consent for some specified purposes to undertake activities in or near wetlands. There are 'gateway tests' that must first be met and the impacts of the activity must be managed by applying the effects management hierarchy (see NPS-FM 3.21 and 3.22(3)). For example, councils may grant resource consents for the construction or upgrade of specified infrastructure that will provide significant national or regional benefits, if:

- the regional council is satisfied that there is a functional need for that infrastructure in that location
- the infrastructure will provide significant national or regional benefit
- the effects are managed through application of the effects management hierarchy.

Since 'specified infrastructure' includes regionally significant infrastructure identified as such in a regional policy statement or plan, regional councils are encouraged to begin the process of identifying appropriate infrastructure in their policy statements and plans.

## Managing adverse effects on wetlands

Councils must assess resource consent applications by applying the effects management hierarchy to address any adverse effects on the wetland extent or values, including cumulative effects and loss of

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<sup>1</sup> The stock exclusion regulations apply to natural wetlands defined by reference to the NPS-FM definition of natural inland wetland except that they continue to apply also to wetlands in the CMA.

<sup>2</sup> Including special provision for urban development within the Bay of Plenty at clause 3.34.

potential value, as a result of the proposed activity (3.22(3)(a)(i)). The provisions in the NPS-FM that require councils to impose conditions on resource consents to apply the effects management hierarchy and require monitoring of the wetland for the consent duration, have been significantly strengthened through the 2023 amendments (see NPS-FM 3.22(3)).

In addition, principles for best practice aquatic offsetting and compensation have been included in Appendix 6 and 7 of the NPS-FM to help guide the design of offsets, and signal when offsetting and compensation are not appropriate, and the activity must be avoided (and consent declined).

Under the effects management hierarchy, adverse effects on the wetland extent or values caused by the activity are avoided, minimised then remedied (in that order) wherever practicable, then offset or compensated (in that order) where possible. If these cannot be achieved, the activity must be avoided, and consent declined.

The Ministry will work with partners and stakeholders in 2023 to develop technical guidance on the effects management hierarchy. In the meantime, aquatic offsetting and compensation under the effects management hierarchy (defined terms in 3.21) should be applied in accordance with the requirements set out in 3.22(3) using the principles for offsetting and compensation set out in Appendix 6 and 7 of the NPS-FM. Additional guidance is available online.<sup>3</sup>

Note that the NPS-FM also requires consideration of values other than indigenous biodiversity, such as ecosystem health, hydrological functioning, mahinga kai and other Māori freshwater values, and amenity values.

## Mapping and monitoring

Regional councils need to identify, map, and monitor those natural inland wetlands that are larger than 500 square metres or that contain threatened species (if less than 500 square metres), excluding those located on public conservation lands or waters. Councils may also include coastal wetlands and conservation lands and waters in their mapping at their own discretion. Mapping must be completed by 3 September 2030. If there is uncertainty about the existence or extent of a wetland, this should be decided using the wetland delineation protocols, available online.<sup>4</sup>

Monitoring should provide enough information for the council to assess whether its plan provisions successfully ensure no net loss of wetland extent and values. The mapping and monitoring information collected should be used to create and maintain an inventory of wetlands in the region. This data collection will support councils to track the health of wetlands in their region and provide a baseline for restoration efforts.

The Ministry is currently working with regional councils to provide support for wetland mapping and monitoring.

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<sup>3</sup> Biodiversity offsetting guidance:

- Environment Institute of Australia and New Zealand Inc. 2018. [Ecological impact assessment](#). Melbourne, Australia: EIANZ.
- Department of Conservation. 2014. [Guidance on good practice biodiversity offsetting in New Zealand](#). Wellington: Department of Conservation.
- LGNZ. 2018. [Biodiversity offsetting under the resource management act](#). Wellington: LGNZ.

Note that the LGNZ guidance references the hierarchy of obligations in the RMA and is therefore not directly applicable to the NPS-FM 2020 as the order and steps of the effects management hierarchy differs.

<sup>4</sup> Ministry for the Environment. 2022. [Wetland delineation protocols](#). Wellington: Ministry for the Environment.

# What are the NES-F regulations and when do they apply?

The NES-F regulations came into force on 3 September 2020. New consent pathways for the purposes listed and other changes above came into force on 5 January 2023. The regulations impose strong rules on the following activities that contribute to wetland loss:

- vegetation clearance
- earthworks/land disturbance
- discharges and water takes, use, damming and diversion.

The NES-F prescribes activity statuses (rules) and detailed conditions for the various purposes set out in clause 3.22 of the NPS-FM, new purposes included in 2022 are for:

- urban development (with special provisions for the Bay of Plenty at 3.34)
- quarrying activities
- extraction of minerals and ancillary activities (with additional controls on coal mining)
- landfill and cleanfill areas
- water storage, ski area infrastructure and New Zealand Defence Force activities, which have been included into the definition, and the existing NES-F provision for, 'specified infrastructure'.

Unless a purpose is provided for in the NES-F (with specific rules) there is a general non-complying catch-all provision (r54). Where an activity may cause complete or partial drainage of all or part of a natural wetland it is either non-complying (r52) or prohibited (r53). A regional rule or resource consent may be more stringent than the regulations, but more lenient rules in regional plans are superseded by the NES-F.

Amendments to the definition of 'vegetation clearance' in the NES-F now clarify that *grazing* is not covered under vegetation clearance for the purposes of the regulations. However, *mob-stocking* remains as an example of an activity that would result in the destruction, or removal of vegetation and so is still captured by the NES-F definition of vegetation clearance.

The NES-F regulations do not apply to the customary harvest of food or resources undertaken in accordance with tikanga Māori.

See the NES-F for rules and conditions that apply to each listed purpose, including matters to which the discretion of a consent authority is restricted (r56).

The relationship between the regulations and existing consents or existing lawful activities is set out in section 43B of the RMA. In general:

- consents granted prior to gazettal<sup>5</sup> of the regulations prevail until reviewed
- consents also prevail if there was a decision made about whether or not to notify the relevant consent application prior to gazettal of the regulations
- activities that require a consent under the regulations may be able to continue temporarily under section 20A(2) of the RMA if:

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<sup>5</sup> The regulations were gazetted on 5 August 2020.

- they were permitted, or allowed without a consent, and lawfully established, prior to the relevant regulations commencing; and
- the effects of the activities are of the same or similar character, scale, and intensity as they were before commencement; and
- the person carrying out the activities applies for consent no later than six months after commencement. The activities may continue until the consent application and any appeals, are finally determined.

The consent application deadline for activities to which section 20A applies was 2 March 2021.

## What are the stock exclusion regulations and when do they apply?

### Natural Wetlands

The stock exclusion regulations continue to use the term ‘natural wetland’ (rather than ‘natural inland wetland’ as used in the NPS-FM and NES-F). Natural wetlands are defined as having the meaning given to ‘natural inland wetland’ in the NPS-FM, except that the exclusion of wetlands in the coastal marine area does not apply.

### New farms

Under the stock exclusion regulations, for any new pastoral system,<sup>6</sup> beef cattle, dairy cattle, dairy support cattle, deer and pigs, must be excluded from natural wetlands that are identified in any regional or district plan or regional policy statement that is operative on or after 3 September 2020.

Farmers managing a new pastoral system must also ensure stock are excluded from wetlands supporting a population of threatened species (identified in the NPS-FM 2020), and from any wetland 0.05 hectares (500 square metres) or greater on [low slope land as mapped](#). The maps form part of the stock exclusion regulations and are published on the Ministry for the Environment website.

### Existing farms

For all other farms, stock (excluding sheep) must be excluded by 1 July 2023 from natural wetlands identified in an operative regional or district plan or regional policy statement as at 3 September 2020.

These farms must also exclude stock from wetlands supporting a population of threatened species (identified in the NPS-FM 2020) by 1 July 2025.

Stock must be excluded from wetlands 0.05 hectares or greater on low slope land by 1 July 2025.

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<sup>6</sup> Any land converted to pastoral land use on or after 3 September 2020.

## All farms

The responsibility for complying with the stock exclusion regulations sits with the person who owns or controls the stock. More stringent stock exclusion provisions in a regional plan prevail over provisions in these stock exclusion regulations.

## Why these provisions?

The NES-F, NPS-FM and stock exclusion regulations are designed to prevent further loss of New Zealand's valuable natural inland wetlands and associated ecosystems.

New Zealand wetlands provide essential habitat for a diverse range of endemic flora and fauna, including critically endangered birds like matuku and kōtuku, as well as many freshwater fish species, and 13 per cent of nationally threatened plant species. Wetlands provide essential ecosystem services, acting as buffers for flooding, nutrient cyclers, water purifiers and carbon sinks. Replacing these ecosystem services with infrastructure like constructed wetlands, flood barriers and dams generally costs more than avoiding their loss in the first place.

The value of wetlands has not been historically recognised, and many were drained to create additional 'usable' land. This has resulted in the loss of over 90 per cent of New Zealand's historical inland wetland extent.

### Factsheets in this series

The full set of Essential Freshwater factsheets is available [on our website](#).

### Find out more and give us feedback

Contact us by emailing [freshwater@mfe.govt.nz](mailto:freshwater@mfe.govt.nz) or visit the [Essential Freshwater page](#) on our website.

