

Changes to wetlands regulations proposed

Protection and restoration of wetlands is a pillar of the Essential Freshwater reforms package, but a number of issues have been identified with interpretation and implementation of the strong policy direction and prescriptive regulations introduced. As a result, a number of changes to the wetland regulations are now proposed, including changes to ensure that areas such as heavily modified, exotic pasture are not inappropriately excluded from development, and to better provide for wetland restoration and maintenance works.

Wetlands regulations

Natural wetlands are important as they filter and protect water quality, are habitats for threatened wildlife and plants and act as carbon sinks. In New Zealand only 10% of wetlands remain. The Government is focused on protecting these wetlands as part of its freshwater reforms.

In 2020 the Government introduced the Essential Freshwater package, comprised of the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and National Environmental Standards for Freshwater (NES-F). A particular focus of the **NPS-FM** is on protection of natural wetlands, to ensure that there be no further loss of these wetlands and that their restoration be promoted.

The NES-F sets out consenting pathways and otherwise manages certain activities in and around natural wetlands. Notably:

- earthworks, water takes or discharges in a natural wetland, resulting in complete or partial drainage, are prohibited activities and cannot be consented; and
- earthworks or take and use of water within 100m of a natural wetland, resulting in complete or partial drainage, is a non-complying activity. Vegetation clearance within or within 10m setback of a natural wetland is also a non-complying activity unless it has a specified purpose, for example restoration. Obtaining these consents is likely to be challenging given the strong policy focus on protection of natural wetlands.

After receiving feedback from stakeholders and industry that there were difficulties in applying the wetland regulations, the Ministry for the Environment consulted on amendment to the regulations. The Minister is now taking advice on the feedback received and amendments to the NES-FM are expected to be made around June 2022. We outline the problems identified with the wetland regulations and look at the changes put forward below.

What is a natural wetland?

Wetlands are diverse, there are different types and they can be found in various locations including urban areas and farms.

The Essential Freshwater package focuses on the regulatory framework for "natural wetlands", a term carefully defined in the NPS-FM, partly drawing on the definition in the Resource Management Act 1991 (**RMA**). Feedback from stakeholders and industry around the country is that the definition of "natural wetland" has been applied overcautiously and inconsistently, particularly through the NES-F regulations.

Changes to wetlands regulations proposed (Continued)

Application to exotic pasture areas

Of particular concern has been the way the definition has captured heavily modified, exotic pasture-dominated wet areas, even though it was intended that these areas be excluded. The current definition of natural wetlands excludes:

- (c) *any area of pasture that has more than 50 percent ground cover comprising exotic pasture species or exotic species associated with pasture.*

Issues identified with this clause have included:

- uncertainty as to the meaning of "improved", for example whether this requires a certain level of nitrogen application;
- the requirement to assess the pasture at the commencement of the regulations, which will become increasingly difficult over time;
- how 50% of exotic pasture species is to be assessed, by number or ground cover, and which species qualify; and
- the term 'temporary rain-deprived pooling' which has been superseded by a hydrology tool to identify wetland extent.

To address these concerns, the Government proposes to amend the definition of natural wetland in the NPS-FM, as follows:

- (c) *any area of pasture that has more than 50 percent ground cover comprising exotic pasture species or exotic species associated with pasture*

Some have asked whether changes to the definition will be enough to strike the balance between natural wetland protection and land use development. Perhaps the underlying policy for protection and restoration of all natural wetlands also needs to be amended to better reflect this balance.

Restoration, maintenance and biosecurity work

Ironically, while the NPS promotes restoration of wetlands, the current drafting of the regulations has impeded this process in some cases, due to the requirement to notify and/or gain consent from the council.

In addition, biosecurity and maintenance activities are not included within the definition of "restoration" and so are not covered by the wetland regulations that provide for restoration activities. The Government has been informed that this is restricting the ability of groups to restore and maintain natural wetlands and undertake biosecurity activities, such as prevention of new pest species.

Amendments are proposed to better provide for restoration and maintenance work. This includes permitting some restoration and maintenance activities, including removal of exotic species regardless of the size of the area treated, and activities undertaken in accordance with a council approved wetland management strategy.

Stock Exclusion Regulations

The Essential Freshwater package also includes the Stock Exclusion Regulations, which have particular requirements for exclusion of cattle, deer and pigs (**stock**) from natural wetlands.

For existing farms, stock are to be excluded from natural wetlands identified in an operative regional or district plan by 1 July 2023. By 1 July 2025 stock must be excluded natural wetlands that support a population of threatened species, and wetlands on low slope land that are 0.05ha or more. For any new pastoral system, these requirements have applied from 3 September 2020.

The NPS-FM requires regional councils to map natural wetlands greater than 0.05ha unless they are a type naturally less than 0.05ha in extent and known to

Changes to wetlands regulations proposed
(Continued)

contain threatened species (as described in NPS-FM). Regional Councils are expected to have undertaken the mapping exercise by 2030. Progress of the regional council in your area will largely depend on competing concerns and resourcing.