

# Action for Healthy Waterways

## Summary of the new requirements

September 2020

### 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Policy Statement for Freshwater Management** since 2014, this was amended in 2017, and as at 3 September 2020 has been replaced by the new NPSFM 2020.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
<p><b>Freshwater Farm Plans (FEP)</b></p>	<p>The RMA was amended to enable <b>mandatory and enforceable FEP</b> for:</p> <ul style="list-style-type: none"> <li>- Horticulture: <b>5 hectares or more</b></li> <li>- Arable or Pastoral: 20 hectares or more</li> <li>- Any combination of the above: 20 hectares or more</li> <li>- Any agricultural land use introduced through regulations</li> </ul> <p>The purpose of the FEP is to identify, and then manage any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems.</p> <p>FEP's will have to be <b>certified and audited</b> (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 FEP 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><b>Nation-wide, mandatory FEP requirements do not apply yet.</b></p> <p>(However FEP's are already required by some Regional Plans).</p> <p>Mandatory FEP requirements are expected to be rolled out progressively targeting at-risk catchments (locations and timing is to be determined) – once further regulations are released.</p> <p>Now is a great time to get prepared and start developing an FEP</p>	<p>Refer to <a href="#">Part 9A of the RMA</a>.</p> <p>(Change made by the <a href="#">Resource Management Amendment Act 2020</a> )</p>
<p><b>Water metering and recording requirements</b></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"> <li>• measure (and keep records of) the cubic meters of water (<b>cm<sup>3</sup></b>) taken in <b>each 15-minute period</b> (previously cm<sup>3</sup> each day), and</li> <li>• <b>provide records electronically to the regional council no later than the end of the next day.</b></li> </ul> <p>The regulations do not apply to consents for takes of less than 5L/s.</p>	<p><b>New water metering requirements have a phase-in period</b></p> <ul style="list-style-type: none"> <li>• 3 September <b>2022</b> for consents for ≥ 20 L/s,</li> <li>• 3 September <b>2024</b> for ≥ 10 l/s</li> <li>• 3 September <b>2026</b> for ≥ 5 l/s.</li> </ul>	<p><a href="#">Resource Management (Measurement and Reporting of Water Takes) Regulations 2010</a></p>
<p><b>Stock Exclusion Regulations</b></p>	<p>Apply to a person who owns or controls stock; include the requirement to exclude stock from the person to <b>exclude stock from specified wetlands, lakes, and rivers more than one metre wide</b>. 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>The regulations <b>come into force on 3 September 2020</b>.</p> <p>The <b>date at which requirements apply varies</b></p>	<p><a href="#">Resource Management (Stock Exclusion) Regulations 2020</a></p>

	<p>They apply:</p> <ul style="list-style-type: none"> <li>On any terrain for dairy cattle, dairy support cattle, pigs, beef cattle intensively grazed, deer intensively grazed</li> <li>On mapped low slope land only to for beef cattle, deer (unless intensively grazed)</li> </ul>	<p>depending on the specific regulations farming system (e.g. 1 July 2023, 1 July 2025).</p>	
<p><b>National Environmental Standard for Freshwater (NESFW)</b></p>	<p><b>Rules for 'HIGH RISK' FARMING ACTIVITIES</b></p> <p>Rules (which include standards to be met) introduced to improve farming practices:</p> <ul style="list-style-type: none"> <li><b>Feedlots</b> – refer Regulations 9, 10 &amp; 11</li> <li><b>Stockholding areas</b> other than feedlots – refer Regulations 12, 13 &amp; 14</li> </ul> <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"> <li>Conditions apply to the <b>conversion of land</b>: <ul style="list-style-type: none"> <li>Plantation forestry to pastoral land use</li> <li>Farm land to dairy farm land</li> <li>New areas of irrigated dairy farm land</li> <li>Dairy support land</li> </ul> </li> <li>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).</li> </ul> <p>Standards for <b>Intensive winter grazing</b> – Regulations 26 - 30</p> <p>Introduction of a <b>synthetic nitrogen fertiliser cap for pastoral land</b> (190 kg/ha/year) – Regulation 33 and 34</p> <p>Annual <b>information requirements for dairy farms</b> (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>These rules are <u>not directly related</u> to horticulture activities.</p> <p>The regulations come into force on <b>3 September 2020</b>, except for:</p> <ul style="list-style-type: none"> <li>intensive winter grazing, from <b>1 May 2021</b></li> <li>stockholding other than feedlots and nitrogen cap, from <b>1 July 2021</b></li> </ul> <p>Regional plans may still have stricter rules.</p>	<p><b>Part 2</b> of the <a href="#">National Environmental Standards for Freshwater 2020</a></p>
	<p><b>Rules to protect NATURAL WETLANDS</b></p> <p><b>Vegetation clearance, earthworks or land disturbance</b> (for the purpose of arable land use or horticultural land use) <b>within 10m of a natural wetland (Regulation 50):</b></p>	<p><b>Rules in managing effects on natural wetlands</b> - these regulations are in force <b>from 3 September 2020</b>.</p>	<p><b>Part 3 (Subpart 1)</b> of the <a href="#">National Environmental Standards for Freshwater 2020</a></p>

	<ul style="list-style-type: none"> <li>• <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"> <li>◦ These address matters such as avoiding effects from discharges, not increasing flood levels, placement of sediment or debris, erosion and sediment control measures.</li> </ul> </li> <li>• <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).</li> </ul> <p><b>Drainage of natural wetlands is not permitted;</b></p> <ul style="list-style-type: none"> <li>• Activities <u>within 100m</u> of a natural wetland that is likely to result in complete or partial drainage of part of a natural wetland requires resource consent.</li> <li>• Activities <u>in</u> a natural wetland that are likely to result in complete or partial drainage of part of a natural wetland are prohibited.</li> </ul> <p><b>All other activities in /near natural wetlands</b></p> <ul style="list-style-type: none"> <li>• Specific regulations cover the following specific activities: Restoration (Reg. 38), Scientific Research (Reg. 40), Construction and maintenance of Wetland Utility Structures (Reg. 42 &amp; 43), Construction/maintenance/operation of specified infrastructure (Reg. 45 &amp; 46), Sphagnum moss harvesting (Reg. 48), and Natural Hazard works (Reg. 51).</li> <li>• All other vegetation clearance, earthworks within 10m of a natural wetland require <b>resource consent</b> (Reg. 54).</li> <li>• All other take/use/damming or diversion of water or discharge of water within, or within 100m of, a natural wetland requires <b>resource consent</b> (Reg. 54).</li> </ul>	<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><b><u>Rules to protect STREAMS &amp; RIVERS</u></b></p> <p><b>Resource consent is required for the reclamation</b> 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><b>Rules managing reclamation of streams/rivers</b> - these regulations are applicable <b>from 3 September 2020.</b></p> <p>(Regional rules may be stricter than these regulations)</p>	<p><b>Part 3 (Subpart 2)</b> of the <a href="#">National Environmental Standards for Freshwater 2020</a></p>

	<p><b><u>Rules to protect FISH PASSAGE</u></b></p> <p>Rules relate to structures that affect fish passage – <b>culverts, weirs, flap gates, dam, or ford.</b></p> <p>The NES sets out <b>information requirements (detailed in Regs. 62 - 68), which must be provided to the regional council</b> 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 <b>rules for the placement, use, alteration, extension, or reconstruction of the following structures</b> in, on, over, or under the bed of any river or connected area:</p> <ul style="list-style-type: none"> <li>• Culverts – Regulation 70</li> <li>• Weirs – Regulation 72</li> <li>• Passive flap gates – Regulation 74</li> </ul> <p>The NES sets out matters which resource consents must include as consent conditions.</p>	<p><b>Rules to protect fish passage</b> - these regulations are applicable <b>from 3 September 2020.</b></p>	<p><b>Part 3 (Subpart 3)</b> of the <a href="#">National Environmental Standards for Freshwater 2020</a></p>
<p><b>National Policy Statement for Freshwater</b></p>	<p><b><u>Summary of key changes from the last NPSFM</u></b></p> <p><b>Te Mana o Te Wai now the fundamental concept of the NPSFM;</b> this established a hierarchy of obligations.</p> <ul style="list-style-type: none"> <li>• Six principles of Te Mana o te Wai have been established as well as a hierarchy of obligations to be prioritised</li> </ul> <p>Councils (with their communities and tangata whenua) must <b>set long-term visions for freshwater</b></p> <p>Councils are required to <b>actively involve tangata whenua</b> in processes for policy and plan development and decision-making.</p> <p><b>12 new attributes were introduced</b> (some of these have national bottom lines) With national bottom line:</p> <ul style="list-style-type: none"> <li>• Macroinvertebrates</li> </ul>	<p><b>Policy/limit setting process that will be implemented through changes to/or new regional plans</b> – Councils must give effect to the NPSFM ‘as soon as reasonably practicable’ and notify a plan or plan change by December 2024</p>	<p><a href="#">National Policy Statement for Freshwater Management 2020</a></p>

- Submerged plants in lakes
- Dissolved oxygen
- Suspended sediment
- Deposited sediment
- E. coli at swimming sites during bathing season

Without a national bottom line:

- Fish species
- Ecosystem metabolism
- Dissolved reactive phosphorous

There is now a **tougher national bottom line nitrate and ammonia toxicity attributes** to protect 95% of species from toxic effects (up from 80%).

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

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.

The intent remains that:

- 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.

#### **What do Councils need to do to implement the NPSFM?**

- 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

	<ul style="list-style-type: none"> <li>○ Target attributes must be set above baseline states, and at or above the national bottom lines</li> <li>○ They are set to meet environmental outcomes and the long-term vision</li> <li>● <b>Limits must be set</b> to achieve attribute states and environmental targets <ul style="list-style-type: none"> <li>○ Councils <b>may also prepare action plans</b> and impose resource consent conditions</li> <li>○ A limit in a plan may be a land-use control, an input control, or an output control</li> </ul> </li> <li>● <b>Environmental flows and levels and water take limits</b> must be included in regional plans to achieve the environmental outcomes set</li> </ul> <p>Regional Councils must monitor, assess trends and respond to any degradation, and have freshwater quality and quantity accounting systems.</p> <p><b><u>Recognition of specified vegetable growing areas (3.33)</u></b></p> <p>There are some activities for which a specific policy response is provided – one of these is specified vegetable growing areas.</p> <p>These areas – <b>catchments in Horowhenua and Pukekohe</b> – are spatially defined in the NPS (Appendix 5).</p> <ul style="list-style-type: none"> <li>● 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.</li> <li>● This policy only applies for a period of 10 years or until a vegetable specific National Environmental Standard is introduced.</li> </ul>		
<p><b>New process for making freshwater plans (Freshwater planning process)</b></p>	<p>Amendments to the RMA introduced a <b>new freshwater plan making process</b> for regional councils' policy statements and plans.</p> <ul style="list-style-type: none"> <li>● Freshwater hearings panels replace traditional regional council-appointed hearings panels</li> <li>● A Chief Freshwater Commissioner will be appointed to appoint hearing panels</li> <li>● Freshwater hearings panels will make recommendations to regional councils – these are not limited to points raised in submissions</li> </ul>	<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, <a href="#">Subpart 4</a> and Schedule 1 of the RMA</p>

	<ul style="list-style-type: none"><li>• 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).</li></ul>		
--	---	--	--