



10 July 2022

Submission on the 'Exposure draft of proposed changes to the NPS-FM and NES-F (including wetland regulations'

This feedback is provided by Fish & Game New Zealand (referred to subsequently as **Fish and Game**), which is comprised of the 13 Fish and Game Councils.

Submitter Details

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Summary

1. Fish and Game welcomes the opportunity to comment on the Ministry for the Environment's ('MfE') exposure draft of proposed changes to the National Policy Statement-Freshwater Management (NPS-FM) 2020 and National Environmental Standards for Freshwater (NES-F) 2020, including wetland protection, management and restoration regulations.
2. Fish and Game supports:
 - the overarching intent of the NPS-FM and NES-F, which is to regulate activities that pose risks to freshwater and freshwater ecosystems; and
 - the inclusion of amendments to the standards, technical amendments and clarifications outlined in the exposure draft and supporting documents that have been refined with the intention of protecting natural wetlands.
3. Our previous submission on the development of freshwater regulation (13/10/2021) noted that the framework needs to be carefully considered to provide for wetland construction, maintenance and restoration activities. It is encouraging to see that the wording of the regulations relating to wetland restoration has been made more prescriptive, including the recognition of the need to undertake invasive weed removal (biosecurity) and hydrological *Statutory managers of freshwater sports fish, game birds and their habitat*

maintenance (earthworks) activities on wetlands in order to prevent silting, weed infestation and eventual loss of the wetland and its biodiverse ecosystem.

4. The lack of scale in the definition for 'land disturbance' and the way it is combined with a need for notification means that absurdly small activities are captured. Planting a single plant is intended to be captured but a gumboot can leave a similarly sized hole in wetland mud while walking through. Walking, driving or a dog digging in a wetland will be captured by the need to notify the activity, which is not practical in application or likely events.
5. MfE shouldn't be relying on regional councils to not follow the NES-FW in order for its provisions to make practical sense. This issue should be resolved.
6. Given the continued loss of wetlands nationally and the impacts this habitat loss has on the biodiversity values of freshwater species that rely on them, Fish and Game understand the need for stricter regulation to safeguard freshwater and wetland environments.
7. There is concern among Fish and Game regarding the proposed changes to provide a consenting pathway for quarrying, mining, cleanfill and landfill within a defined setback of a natural wetland. While it is recognised that specifying provisions within the NES-F relating to quarrying, mining and urban development will provide for some additional protections against changes to the hydrology of the wetland, by specifically defining these industries in the regulations and limiting their activities, there remains concern that by enabling a consenting pathway for these industries further losses to wetlands and wetland health may be inadvertently enabled by the permitting provisions.
8. Fish and Game's ability to carry out activities within its own wetlands continue to be constrained due to the area restrictions within the regulations. This leads to the requirement for costly consent applications and some confusion over the need for single over-arching consents for ongoing management activities, or multiple single consents in order to meet disturbance thresholds when planning large-scale ongoing works. We consider these constraints will also affect all regional councils and non-profit organisations who routinely undertake wetland maintenance and restoration.
9. While the proposed changes aim to address this issue to a limited extent, MfE still has not addressed the issue that consent fees are now the largest barrier for maintaining and restoring wetlands. Consent fees effectively penalise gamebird hunters, landowners and non-profit organisations who put in huge efforts to restore waterfowl habitat. Resource consents can generate an extra cost burden for projects which are already financially strained, inhibiting wetland restoration projects and ultimately contributing to the ongoing decline in wetlands nationally.
10. The uncertain costs and outcomes associated with the consent process to restore wetlands may act as a disincentive to undertake the activity, which should be actively encouraged. Activities designed to restore wetlands should be incentivised by enabling them to be pursued without a cost burden or resource consent.

11. The NES-F exposure draft has not proposed any changes relating to constructing new wetland utility structures. This means a resource consent will still be required for the building of any new maimai, sign or boardwalk in or within 10m of a wetland. This is disappointing for Fish and Game as building maimai is a fundamental part of duck hunting in New Zealand. Other forms of wetland utility structures, such as signs, boardwalks, and jetties provide important opportunities for people to engage and interact with the natural environment, and are part of valued social activities such as walking, hunting and bird watching. Access to and enjoyment of wetlands is a powerful tool in raising awareness of the values of wetlands, water quality, vegetation and biodiversity. However these too will require a resource consent for construction.
12. The provision of a permitted activity status for the maintenance of existing wetland utility structures is noted within Part 3 (43) of the standards, which would encompass small scale structures such as maimai. Further discussion of the characteristics, uses and issues associated with the consenting pathway as it relates to maimai is provided below.
13. Fish and Game feel the need to acknowledge that the NPS-FM wetlands definition encompasses only a subset of all wetlands within New Zealand – only natural inland wetlands. The Resource Management Act has a more comprehensive approach to wetlands including constructed wetlands. Constructed wetlands include those within hydrolakes that were constructed for hydropower generation. Many of these hydrolakes have been present for up to for 100 years and comprise of established, stable and biodiverse wetland ecosystems. The NPS-FM does not protect these wetlands and certainly should consider them as valuable remnants of wetland estate nationally.
14. The narrow focus of the NPS-FM on ‘natural inland wetlands’ also limits scope relating to issues with drained historical wetlands that are now almost exclusively represented as degraded wetland remnants within extensive stretches of farmland nationally. The regulations could be considered more comprehensive if they provided clarification on what a historical wetland site is and created an incentive pathway to reinstate wetlands through recognition of the values of restored and constructed wetlands.
15. Finally, Fish and Game fully support the intention of the NPS-FM to adopt an Integrated Management approach as required by Te Mana o te Wai. This requirement for top-down adherence of government, regional and local councils to recognising the interconnectedness of the whole environment is vital to achieving the goals of the regulations. The NPS-FM and NES-F are attempting to manage, safeguard and restore the freshwater environments of New Zealand and a careful balance needs to be achieved between prescriptive and focussed wording and inclusions within these regulations, with the understanding of the holistic management approach required to achieve the objects of NPS-FM.

About Fish and Game

16. Fish and Game is the statutory manager for sports fish and game, with functions conveyed under the Conservation Act 1987. The organisation is an affiliation of 13 separate Fish and Game Councils – 12 regional Councils and one national Council. Together, these organisations represent roughly 140,000 anglers and hunters.
17. The sports fish and game resource managed by Fish and Game is defined and protected under the Conservation Act and the Wildlife Act 1953. The species within include introduced sports fish and a mix of native and introduced waterfowl and upland game.¹ These species are also recognised within the NZ Biodiversity Strategy – Te Mana o te Taiao as ‘valued introduced species’ with significant cultural, economic and recreational contributions within New Zealand.
18. Wetlands and their health play a key role in Fish and Game’s operations as the primary habitat for the majority of game birds and we have a statutory mandate to maintain and enhance this habitat. Nationally Fish and Game manage a number of wetlands as well as routinely operating restoration programmes to enhance the quantity and quality of wetland habitat. These operations have a dual benefit, creating increased habitat for game birds and accordingly increased opportunity for game bird hunters as well as providing increased habitat for a number of critically endangered or at risk/declining indigenous species. Such as the **Australasian bittern (Matuku-hūrepo), Spotless crane (Pūweto), Fernbird (Mātātā) and NZ dabchick (Weweia)**.
19. Currently \$4 per game bird licence issued by Fish and Game goes to the Game Bird Habitat Trust, which oversees a grant programme for wetland restoration and construction – representing millions of dollars invested in freshwater habitat restoration activities to-date by Fish and Game. Since its inception in 1990 Fish and Game has been one of the strongest voices for freshwater in New Zealand.
20. Fish and Game is entirely funded by licence holder fees and private contributions, meaning the delegated function of managing the species for the public good is funded entirely by the users. It is a democratic ‘user pays, user says’ organisation. Using this system, the organisation funds public good research to ensure fisheries and game bird populations are managed sustainably; undertakes compliance with the licencing system and regulations; and contributes to public planning processes.
21. In relation to planning, the Councils share a similar function to advocate on behalf of anglers and hunters and to advocate in the Councils’ interest, including their interest in habitat. Overwhelmingly, the advocacy sought by anglers, hunters and their elected Council representatives has been to seek environmental protection and restoration of degraded ecosystems.

¹ Most New Zealanders refer to these species as ‘game birds’, distinguishing them from other types of game, such as deer or pigs. The Wildlife Act 1953 defines these birds simply as ‘game’ and this phrase is used in the context of this submission.

22. At the direction of its licence holders, Fish and Game has become one of the nation's best-known advocates for freshwater ecosystems. Since 1991, when the RMA came into effect, Fish and Game has:

- a. protected the Hakataramea River from overallocation²;
- b. protected the Nevis River from damming (via an amendment to the Kawarau Water Conservation Order);
- c. set minimum flow on select rivers, and allocation limits and water quality standards on all rivers in Otago through environment court processes;
- d. participated in the deemed permit process in Otago to restore ecosystems degraded by historic abstraction, including the Lindis High Court process, the Kyebrun Environment Court appeal and the Environment Court Plan Change 7 first instance hearing;
- e. secured enhancement requirements for regionally significant wetlands in Otago, including recognising game hunting as a reason for protection;
- f. successfully sought an Environment Court declaration that Horizons Regional Council was not implementing the One Plan in a lawful manner by issuing multiple consents for intensive farming with nitrogen leaching figures significantly over those identified as necessary to achieve the Plan's water quality outcomes;
- g. lead the evidence which provided for the protection of the Tukituki catchment and established nitrogen limits in the Tukituki waterways, and preventing the building of the proposed Ruataniwha Dam;
- h. secured recognition and provisions for the protection of salmon spawning sites in the Canterbury Land and Water Regional Plan;
- i. secured a prohibition on damming the Hurunui River due to the presence of the outstanding trout fishery;
- j. increased the minimum flow in the Hurunui River based on salmon passage requirements;
- k. worked with environmentally aligned parties to secure incontrovertible recognition that agricultural land use was a significant contributor to degraded water quality in Southland's rivers, lakes and estuaries;³
- l. maintained a hydrological periodicity for wetlands such as Pukepuke Lagoon, Lake Omanu and the eastern Lake Wairarapa shore wetlands – the latter under the Lake Wairarapa Water Conservation Order;

² *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36.

³ <https://www.stuff.co.nz/southland-times/southland-top-stories/113363858/federated-farmers-admits-its-time-to-start-cleaning-up-southland-rivers>

- m. successfully opposed a 35-year resource consent application, which was declined as a result,⁴ by Open Country Dairy to more than double the amount of wastewater it discharges year round into the degraded Wairoa River;
 - n. secured 13 out of the total of 15 current Water Conservation Order's;
 - o. provided feedback / written submissions as an affected party to thousands of consents affecting freshwater habitat and ecosystems nationally;
 - p. advocated for an active program to identify and remove fish passage barriers;
 - q. instigated research to place limits on discharges which increase instream water temperature to assist with the health of trout and native fish species population; and
 - r. worked with flood protection management through the resource consent process to protect and preserve the geomorphological characteristics of rivers.
23. To achieve this, Fish and Game staff includes ecology, planning and policy specialists. The local-facing structure of the organisation, combined with generally low turn-over rates and a focus on freshwater means that these staff are experts in freshwater policy and its implementation.
24. This submission has been developed using the combined expertise and experience of Fish and Game's environmental policy staff.

Detailed submission

NPS-FM: River Protection Limitations

25. Policy 7 of the NPS-FM exposure draft has amended the wording from 'rivers' to 'river beds', narrowing the scope of the policies protection it can afford to river extent and values. This is characterised as a clarification due to technical issues, which is not intended to change the policy intent.
26. The narrowing of scope to 'river bed' dramatically changes the focus of Policy 7 and subsequent provisions in the NPS-FM. The wider 'river' scope encompasses the extent and values of the river itself, the water (in terms of quantity and quality), the fish, the bed, the processes. Prior to the exposure draft, Policy 7 represented a bottom line, which no river should drop below. With the wide scope of the provision, loss of values or extent as a result of further anthropogenic pollution, abstraction or physical alteration to the bed was captured. As such, the wide scope is effective as a bottom line and was interpreted by Fish and Game to be a critical component in the NPS-FM, enabling a halt to the further degradation of our freshwater and bringing waterways and ecosystems to a healthy state within a generation.
27. This narrowed focus on riverbed health was no-doubt intended to add emphasis to the importance of aquatic macrofauna and periphyton, which the measure of is currently

⁴ [Dairy company seeks to double its river discharge \(newsroom.co.nz\)](https://www.newsroom.co.nz/news/dairy-company-seeks-to-double-its-river-discharge)

recognised as an indicator of ecosystem health and water quality. The protection of these essential criteria is wholeheartedly supported by Fish and Game.

28. This protection should not come at the cost of protection for the other river components. Given the overarching direction to safeguard the life-supporting capacity of water,⁵ preserve the natural character of rivers and their margins⁶ and the particular regard to the maintenance and enhancement of the quality of the environment⁷, a bottom line for values at least is entirely appropriate. Given the plight of freshwater in New Zealand, no river value should be further degraded. For Fish and Game, this is entirely consistent with a Te Mana o te Wai approach.
29. Narrowing the focus of Policy 7, and subsequent provisions, will remove a key protection of the NPS-FM 2020 which, even if through coincidence or mistake, is generally consistent with Te Mana o te Wai and the Essential Freshwater Package aims. Fish and Game strongly opposes the technical clarification proposed in the exposure draft.
30. With that said, Fish and Game can see how a bottom line on the 'extent' of a river may be problematic. Hypothetically, in a pristine river the smallest level of abstraction, say 1L/s, will literally reduce a river's extent but to an imperceptible degree. Some theoretically small level of abstraction or pollution can be sustainable and this may be unreasonably restricted via Policy 7's reference to 'extent'. Fish and Game recommends revising either the use of the term 'extent', perhaps replacing it with a more suitable term; removing reference to 'extent' entirely; or including a definition for the term within the NPS-FM context so that it cannot be interpreted so literally. If implemented thoughtfully, any of these pathways could resolve the rigidity of Policy 7 without fundamentally undermining its current direction.

NPS-FM: Definition of a Natural Wetland

31. We support the intention of the NPS-FM that constructed wetlands will not usually be considered natural wetlands unless they're being built to offset the adverse impacts of an activity elsewhere (environmental offsetting) or are on the site of an existing natural wetland.
32. However, there is no guidance or clarification given as to what protection will be given by regional councils, if any, to wetlands that do not meet the standards of a "natural wetland". Wetlands that do not meet the definition of a natural wetland may still need to be protected under regional plans.
33. The new definition also appears arbitrary in that 'induced wetlands', which are wetlands created "accidentally" by human activities, such as culverts, may be considered natural wetlands, but natural wetlands do not include '*wetlands constructed by artificial means*' for the following purposes:

⁵ RMA s5(2)(b)

⁶ RMA s6(a)

⁷ RMA s7(c)

- a. Hydroelectric power generation
- b. Irrigation
- c. Stormwater management

34. For example, hydrolakes often hold well established, stable and biodiverse wetland ecosystems. The NPS-FM does not protect these wetlands, but they should be considered as valuable remnants of the wetland estate nationally. The definition of wetlands is much wider under the RMA; therefore, we recommend that guidance and advice is given to regional councils as to how wetlands that are not “natural wetlands” should be managed. At a minimum, the NPS-FM should include a statement that wetlands other than “natural wetlands” still need to be considered in the regional planning process.

35. The new definition for Natural Wetland excludes pasture dominated wetlands to enable pastoral land use to continue. However, the new definition doesn't include the previous definition's reliance on the pasture “being modified and managed for livestock grazing” (in the definition of ‘improved pasture’). The proposed definition now excludes all pasture dominated wetlands when it meets the required technical tests. However, this enables other activities that are not grazing to use the ‘pasture’ exclusion to avoid the new regulations.

NPS-FM: Wetland delineation and the use of the hydrological tool

36. Fish and Game support the removal of ‘rain derived’ water pooling from the natural wetland definition as we did not consider that the source of water was relevant when considering whether a site should be considered a wetland.

Fish and Game are concerned that determining whether a site meets the NPS definition of a wetland remains fraught. We view the heavy reliance on the hydrological tool as problematic especially for small wetlands. It is our interpretation that several years of hydrological monitoring data may be required to establish whether or not the thresholds are met. Currently most wetlands in the country will not have any long term data.

NPS-FM: Definition additions (biosecurity and wetland maintenance)

37. *Biosecurity activities*: the inclusion of the definition for biosecurity in clauses 3.21 to 3.24 is acknowledged to have clarified and supported the need for wetland management actions regularly undertaken by Fish and Game within the wetlands we manage. The implications of the definition of this term are further discussed below.

biosecurity means eliminating or managing pests and unwanted organisms

38. *Wetland maintenance*: the inclusion of this definition within the NPS-FM has significant impacts in supporting wetland management activities regularly conducted by Fish and Game

within the wetlands we manage. This is a welcome inclusion, especially as it relates to the NES-F as discussed further below.

wetland maintenance means activities, such as weed control, intended to prevent the deterioration of a wetland's condition.

NES-F: Wetland Maintenance, restoration and biosecurity

39. If the loss and degradation of wetlands is to be addressed, encouraging wetland restoration and maintenance is vital. Relying on the preservation of remnant wetlands alone, will be insufficient at preventing wetland degradation caused by anthropocentric alteration to natural ecosystem functioning.
40. Fish and Game has had, and continues to have, an important role in maintaining and restoring wetlands nationally. Fish and Game work with willing landowners by conducting earthworks to help restore hydrological functionality to wetlands. Earthwork's activities can often best be described as 'reverse drainage' where the original hydrology is restored to wetland sites through the infilling of drains or creating small bunds and earth dams to create a preferential hydrological regime to restore wetland ecosystems.
41. Fish and Game strongly supports the definition inclusions of 'biosecurity' and 'wetland maintenance' within the NPS-FM and its translation to 38(a) Permitted activities. The amendment of the clauses with the new definitions supports Fish and Games ongoing wetland restoration and maintenance works to be classified as a Permitted Activity and hopefully reducing the consenting requirement and associated costs to undertake wetland management works.
42. Fish and Game support the intention of the proposed amendment to include wetland maintenance alongside restoration in the regulations, as it has a wider meaning than restoration and will allow for a broader range of activities to be conducted in natural wetlands to maintain or enhance their values.
43. However, the new conditions for wetland maintenance are confusing, especially for activities affecting more than 500m² of a natural wetland. Some examples:
 - a. Clause 38 (5)(a): refers to earthworks or land disturbance for "*planting for restoration or wetland maintenance purposes*". Therefore, does the clause mean that earthworks can only be undertaken for planting, or are earthworks for general wetland maintenance also permitted?
 - b. What does the "and" at the end of Clause 38 (5) (a) mean? Shouldn't it be "or". Does it mean that wetland maintenance over 500m² can only be carried out for biosecurity purposes?

- c. Why the reference to “hand-held tools” in Clause 38 (5)(b). What does that mean, is it optional? It suggests that wetland maintenance for biosecurity purposes is restricted to using hand-held tools and with the requirement for a restoration plan.

NPS-FM: Effects Management Hierarchy (EMH)

44. Fish and Game has serious concerns regarding the option for ecological offsetting within the effects management hierarchy. The EMH defines a series of options available for managing the adverse effects of an activity on a wetland or riverbed, including options (d) offsetting and (e) compensation. However, the EMH is more in the nature of considerations to be had regards to rather than ‘threshold tests’, and thus doesn’t ensure no net loss.

- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and
- (e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and

45. Neither attempting to offset the negative effects of an activity, or providing a form of aquatic compensation will result in the protection of the wetland. It is not possible to offset one habitat with another, nor will compensation result in make up for the loss of the habitat. The activity simply should not be permitted if it is resulting in degradation or loss of a freshwater habitat to which this regulation has identified the priority to protect.
46. The requirements for offsetting and ecological compensation provided within Appendix 6 and 7 of the NPS-FM respectively, do not adequately address the concepts of ‘no net loss’ or the inequalities and biophysical challenges required to achieve a ‘like for like’ offset or compensation goal. The EMH is based on highly controversial scientific opinion regarding biological offsetting, as well as limited evidence regarding the ability to create constructed wetlands with biodiversity and biophysical characteristics equal to those of a natural wetland. The timescales suggested within the appendices for a ‘time lag’ of expected gains from the offset being ‘not longer than 35 years’ may in fact not achieve a stable replica wetland state, and is more likely to have pushed the loss of the original wetland and subsequent failure of the constructed offset wetland onto the next generation as an additional environmental degradation legacy.
47. The provision of these options as part of a freshwater ecosystem management approach will only serve to enable further destruction of wetland and river ecosystems, both in the short and long term. It also appears to be in direct violation of the priorities and requirements of Te Mana o te Wai as protection of the health and wellbeing of the environment before all other considerations.

48. Fish and Game oppose the inclusion of these options (d and e) within the EMH and suggest they be removed if it is intended that the effects management hierarchy will be a successful tool within the regulation.

NES-F: Wetland utility structures: Maimai

49. Wetland utility structures listed in the NES-F regulations include maimai, signs, jetties, boardwalks, and bird watching hides. Wetland utility structures are common on both public and private land; and are accepted around much of New Zealand as a permitted activity under relevant regional and district plans.
50. They provide important opportunities for people to engage and interact with the natural environment, and are part of valued social activities such as walking, hunting and bird watching. Predominately maimai will be small scale, established by community groups or individuals and have less than minor effects on the wetland.
51. The right to build, tag and use maimai is a fundamental part of duck hunting in New Zealand and managing this activity is a core function of Fish and Game. A wide range of structures are used as maimai, including permanent and temporary structures. Fish and Game has spent considerable effort in recent years successfully advocating for the construction of maimai as a permitted activity in district and regional plans.
52. The construction and maintenance of signs is also a critical aspect of managing game bird shooting and sports fish angling activities in New Zealand and are important functions of Fish and Game. Fish and Game signs typically have brief information about legal access points, licence requirements, applicable hunting/angling regulations (i.e., local restrictions like “fly fishing only”), and /or the need for licence holders to take precautions against the spread of aquatic pests. In some court proceedings involving illegal fishing, the presence of adequate signage has been pivotal in pre-warning the person charged that they were committing an offence. These signs are accepted around much of New Zealand as a permitted activity.
53. New wetland utility structures, like signs and maimai, are not provided for as permitted activities in the NES-F. Instead, the construction of a wetland utility structure (such as maimai, boardwalks, signs) in or near a natural wetland will require resource consent from the relevant consenting authority:
54. This means that every new maimai, boardwalk or wetland interpretive sign in or near a wetland requires a resource consent. Only a very small structure on top of the land that does not require any digging or vegetation clearance, such as a temporary manuka hide, will not trigger the regulations, and will not need a resource consent. The requirement for every new maimai or other wetland utility structure to seek and be granted a resource consent imposes significant cost to those wanting to undertake these projects and significant inefficiencies for projects that are at the minor end of the effects spectrum.
55. A maimai could be constructed without a resource consent if it were built 10m away from the edge of any wetland vegetation. However, the reason hunters build their maimai very close to

waterbodies is that the maximum range of shotguns (i.e. the maximum range at which they can humanely shoot game birds), is at best 30-40 metres. Therefore, any maimai located back from the wetland that is being hunted on can make hunting impractical, inhumane, and unsafe. This is especially a concern when considering that many of the most popular wetlands for hunting are extensive in size. For example, the Whangamarino Wetland in the Waikato region, which contains 738 ha of Fish and Game owned and managed wetlands, is one of the most intensively hunted in New Zealand for waterfowl, attracting high densities of gamebird hunters and as such many maimai have been established. Without a maimai, people can stand wherever they feel inclined to, and shoot in whatever direction they want meaning a lot less control over safe firing zones. Maimai are the safer option yet would require a resource consent to be constructed within 10m of a wetland.

56. The NES-F regulations are inconsistent in how they treat maimai and how they treat other activities that have same or greater adverse effects. The NES-F permits vegetation clearance, earthworks, land disturbance and diversion of water for some activities without consent if they are for maintenance of an existing structure (Regulation 43). Some of the other activities permitted (Reg. 45 construction of specific infrastructure, 45a Quarrying, 45b Landfill and Cleanfill, and 45c Urban Development) whose permitted activities can affect up to 500m² of a wetland. Many of the activities are poorly defined or not defined at all and could include a wide range of activities, with unknown merit or effects.

Examples include:

- Scientific research up to 10m² per site or 100m² in total (reg 40).

There is no definition of scientific research

- Construction of specified infrastructure or other infrastructure up to 500m² or 10% of wetland area (reg 45).

Specified and other infrastructure definitions includes public flood control and drainage works, all regionally significant infrastructure and other utilities.

- Quarrying (45a)
- Cleanfill and Landfill(45b)
- Urban Development (45c)
- Mining (45d)
- Existing sphagnum moss harvesting with no limit on size (reg 48).
- Natural hazard works with no limit on size (reg 51).

Natural hazard works are works to remove material, such as trees, debris and sediment deposited as the result of a natural hazard, and likely to cause an immediate hazard to people or property.

57. Taken together these provisions provide a wide permitted baseline and precedent for considering new maimai (and other wetland utility structures) as permitted activities. Maimai (and other wetland utility structures) have as much utility and social significance as other activities provided for as permitted, and can be provided for with a much smaller footprint and minor adverse effects.

NPF-FM: Water quality and movement

58. We are encouraged to see that amendments to Regulation 38 (3) have attempted to facilitate the restoration of wetland hydrology as a permitted activity. There are few if any wetlands left in the country which have not been afflicted through direct or indirect effects of drainage. Restoring the hydrological functionality of wetlands is integral to restoring their ecosystem health.

59. It is often necessary to change water levels or divert water back into wetlands to restore the natural hydrological functioning of a wetland. Past drainage and diversion schemes have lowered water levels in wetlands, restoring that flow of water is necessary to restore the ecological values of a wetland.

60. In practice we see no way of restoring the natural hydrology of wetlands while complying with the conditions e.g. regulation 55 (3)(c,d). In our view any attempt to permanently restore the hydrology of a wetland would breach these conditions and therefore require a restricted discretionary consent.

61. *General conditions: water quality and movement*

(c) the activity must not alter the natural movement of water into, within, or from any natural wetland (but see subclause (5)); and (d) the activity must not involve taking or discharging water to or from any natural wetland (but see subclause (5));

62. There are uncertainties as to how the general conditions in regulation 55 will be interpreted by regional authorities and subsequently implemented. 38 (4) stipulates that *(a) the activity must comply with the general conditions on natural wetland activities in regulation 55; and.....* This tends to indicate that all general conditions in regulation 55 need to be assessed.

63. Regulation 55 contains various subheadings, and we assume that each proposed activity should only be assessed against the relevant subheading contained in the regulations? If this is the intent, we have examples in the Waikato Region where compliance assessments have viewed regulation 55 all-encompassing and all activities referencing regulation 55 must comply with all conditions outlined in the regulation at all times. This issue around the correct application of regulation 55 needs to be clarified to give some certainty around uniform national implementation.

64. Relief Sought: Fish and Game request that flow through changes are made to the conditions (regulation 55) which make it clear that permanently changing water flow in and out of natural wetlands is permitted if it is for the purpose of natural wetland restoration.

NPS-FM: Maintenance and operation of specified infrastructure and other infrastructure 46 Permitted activities

65. Fish and Game are opposed to the relaxation of PA rules 46 (a)(i),(ii). Flood control schemes have and are continuing to have significant adverse effects on wetland hydrology. It seems obscene that the restoration of wetland hydrology requires compliance with the same rules, yet the continued drainage of wetlands does not.

- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—
- (a) is for the purpose of natural wetland restoration, wetland maintenance, or biosecurity; and
 - (b) complies with the conditions.
- ~~(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—~~
- ~~(a) is for the purpose of natural wetland restoration; and~~
 - ~~(b) complies with the conditions.~~
- ~~(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—~~
- ~~(a) is for the purpose of natural wetland restoration, wetland maintenance, or biosecurity; and~~
 - ~~(b) complies with the conditions.~~

66. Relief Sought: Remove newly introduced text that allows for exemption of hydro and flood control schemes.

NES-F: Additional consent pathways – Quarrying, Landfill & Cleanfill, Mining, and Urban Development

67. Fish and Game support stringent rules for extractive and consumptive activities such as quarrying, mining and cleanfills in and near wetlands.

68. The National Policy Statement for Freshwater Management 2020 (NPS-FM) was implemented with the intention to set an environmental bottom-line of ensuring ‘no net loss’ of natural wetland extent or values.⁸ The NES-F then regulates activities in or near natural wetlands to ensure this bottom-line is met. Only in exceptional circumstances should wetland drainage or partial drainage ever be allowed. We consider the regulations as written adequately provide for quarrying, mining, urban development, landfills, cleanfills and managed fills, by having to meet the definition set under the NPS-FM of ‘specified infrastructure’. Only where such

⁸ NPS-FM (2020) Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

infrastructure is recognised as regionally significant under a regional policy statement or plan would its construction then be significant enough to warrant consideration as a discretionary activity under regulation 45 of the NES-F for it to either drain or partially drain a natural wetland.

69. We consider if the infrastructure activity is not able to meet these requirements, then it shouldn't be allowed to go ahead and compromise an existing natural wetland. In which respect, Fish and Game strongly oppose the changes within the exposure draft (Reg 45a, b, c and d) to provide further consenting pathways for these industries, thereby making the drainage and degradation of wetlands much easier for developers.