



NZ Freshwater Sciences Society (NZFSS) submission on the Resource Management (Freshwater and Other Matters) Amendment Bill

Thank you for the opportunity to make a submission on the Resource Management (Freshwater and Other Matters) Amendment Bill. NZFSS represents the many freshwater scientists in Aotearoa (<https://freshwater.science.org.nz/>) who have some very significant concerns with both the overarching justification and the detail of this proposed Bill.

Key concerns

The intent of the bill is to “reduce regulatory burden...through targeted amendments”. NZFSS considers that while some of the changes may be seen to reduce regulatory burden, they actually just reallocate and/or delay the burden.

The hierarchy of controls in the current NPS FM is designed to ensure adequate water supply and quality in the long term, which is essential to the health and wellbeing of our freshwater environments, as well as our economy and society. While the controls may start with environmental considerations, it is the same water that is required for human consumption, tourism activities, agricultural production and various industry processes. In the absence of strict controls, the risk of adverse water-related events such as the Havelock North drinking water contamination increases. Therefore, a perceived reduction in regulatory burden now, is likely to just transfer the burden to future players.

Amendments to the National Policy Statement for Freshwater Management

1. Water quality is currently poor across most developed areas of New Zealand, and it is generally getting worse not better. Many lakes and rivers have unnaturally high levels of nutrients due to leaching and run-off from agricultural (or urban) developments. Nationwide modelling in 2022 estimated that of 3,813 lakes, 46 percent rated poor or very poor in terms of nutrient enrichment. While trends were improving in some locations (38 percent of monitoring sites for nitrate-nitrogen), the vast majority showed no change or a worsening trend.¹ Alongside the environmental impacts themselves, poor water quality affects individual New Zealanders, for example by reducing the quality of drinking water, affecting the capacity for recreation in waterbodies, or through scarcity affecting food production.
2. This is partly a legacy issue, but occurs mainly as a result of ongoing decisions to authorise activities that contaminate water. In results released this month, more than half of the wells monitored in the Canterbury Regional Council's annual groundwater survey showed nitrate

¹ MFE and Statistics NZ, *Environment Aotearoa*, 2022, page 41.

levels are still increasing. Groundwater is the major source of drinking-water supply in Canterbury.

3. This is a substantial problem for New Zealand, and a threat to our tourism and primary export markets. The only way this trend will change is by prioritising the health of fresh water ahead of other uses and interests. The NPSFM (2020) recognised this, and as a result introduced the fundamental concept of Te Mana o te Wai, which embodies a hierarchy of obligations:
 - a. First, the health and well-being of waterbodies 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 into the future.
4. Currently this hierarchy can be applied when applications for resource consents to undertake activities that will affect freshwater are being considered. This means we have a chance of achieving the paradigm shift that is needed for freshwater health to improve.
5. The Resource Management (Freshwater and Other Matters) Amendment Bill contains a suite of changes that aim to reduce the use of Te Mana o te Wai in resource consent decisions, until such time that the hierarchy of Te Mana o te Wai is captured in local planning documentation and plan changes. In the proposed Bill, an assessment of effects on the environment must not include an assessment against cls 1.3(5) or 2.1 of the NPSFM (which relate to the hierarchy of obligations in the NPSFM) (cl 26). A consent authority must not request information or commission a report on those clauses (cl 22). Consent authorities considering a resource consent application must not have regard to those clauses (cl 23). These changes apply to consent applications lodged after commencement of this Act.
6. It is unclear what the “problem” is that this change is intended to solve. There is no evidence that prioritisation of the health and well-being of waterbodies and freshwater ecosystems is preventing reasonable applications for resource consent from being granted, or that it increases the cost to applicants. Analysis of this proposal by MFE establishes that:
 - a. There is limited evidence on how the hierarchy of obligations is impacting resource consent applications across the country.³
 - b. In most consent decisions reviewed by MFE, consent applicants were able to demonstrate that their activity adhered to the hierarchy of obligations, which led to consents being granted. Alternatively, inconsistency with the hierarchy of obligations was balanced against wider considerations, which also led to consents being granted.⁴

² Regulatory Impact Statement: Excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management from resource consenting (23 May 2024)

³ At 44.

⁴ At 46.

- c. Officials were only aware of two resource consent applications that had been declined where inconsistency with the hierarchy of obligations featured as one of the reasons contributing to those decisions. A groundwater take application in Hawke's Bay was refused, in part because it did not sufficiently meet the hierarchy of Te Mana o te Wai, and a discharge permit application in Taranaki was refused with one of ten principal reasons being 'the application is inconsistent with Te Mana o te Wai'. However, in both examples, adverse environmental effects also featured in the decisions and these consents would likely have still been declined irrespective of the hierarchy of obligations.⁵
7. We acknowledge that Regional Councils will remain obligated to give effect to the NPSFM (2020), including the hierarchy of obligations, through their policy statements and plans. This will be delayed until such time as plan changes are put through. However, as indicated by the statistics on freshwater quality in Aotearoa New Zealand, it is clear that this change will ultimately prevent prioritisation of freshwater health and as a result, will perpetuate the existing trends of water quality degradation. As MFE's analysis concluded, a key cost of the change is that it will not safeguard natural resources:⁶

"... a hierarchy for how freshwater should be managed would be excluded from resource consent decision making, which could result in resource consent decisions being made in a manner that makes trade-offs between freshwater outcomes and activities that affect freshwater" (MFE, 2024)
8. In summary, NZFSS opposes the changes to the application of Te Mana o Te Wai, on the basis that they serve no useful purpose and can cause significant environmental harm.

Amendments providing for new coal mines in wetlands and SNA's

9. The Bill allows new coal mines and ancillary activities in significant natural areas (SNAs, Sched 2), even where the mine would cause significant adverse effects such loss of ecosystem representation and extent, fragmentation of SNAs, or a reduction in the population size or occupancy of Threatened or At Risk (declining) species.
10. The Bill also enables new coal mines and ancillary activities in wetlands (Sched 2). Under the NPSFM, coal mining in wetlands is only authorised where it is part of the operation or extension of an existing coal mine, but the Bill would remove that limitation.
11. Mining in a natural wetland or SNA will generally result in complete loss of the ecological values of these features. In some cases, offsetting these effects may be possible, but many effects can only be compensated for. That is because coal mining is often proposed in areas that are home to rare wetland types, or unique native plant and animal communities, that are not found in other parts of New Zealand. For example, the Environment Court that declined the Te Kuha mine recorded its concern that "there are particular unique and intact ecological values described at Te Kuha, including the bryophyte and invertebrate communities and other threatened plant species, and uncertainty as to whether they exist

⁵ At 47-48.

⁶ At 56.

elsewhere”.⁷ The Court recorded the ecologist witnesses agreement “that there are significant residual adverse effects and that these effects cannot be effectively offset”⁸ and found that there would be residual adverse effects which could not be offset, on coal measure vegetation, invertebrates, bryophyte communities and threatened vascular and non-vascular plant species.⁹

12. The inclusion of consenting pathways for new coal mines in the NPSIB and NPSFM therefore widens the range of activities that will cause significant destruction and net loss of wetlands, significant indigenous vegetation, and significant habitat of indigenous fauna.
13. NZFSS does not consider that coal mining (specifically new coal mines) should be considered to be equivalent to other mineral extraction activities. In the Supplementary Analysis [Report](#), the Ministry of Business, Innovation and Employment comments “reduced timeframes and the narrow scope of the Bill limited our ability to assess the feasibility of a broader range of options...”. It appears that these changes are being made in haste and without sufficient time to consider the actual costs and benefits.
14. NZFSS opposes these changes because they enable significant adverse effects on the environment, and will contribute to climate change resulting in irreparable harm to current and future generations.

Amendments to Significant Natural Area requirements for Councils

15. The Bill proposes suspending requirements for councils to identify, and include in plans, new SNAs under the National Policy Statement for Indigenous Biodiversity (NPSIB) 2023 for three years and extends the time for councils to identify new SNAs under the NPSIB until December 2030.
16. Freshwater fauna are not well protected under existing legislation, with most being excluded from the Wildlife Act 1953 and the Resource Management Act (RMA) 1991 which focussed on habitats of these fauna, rather than the fauna themselves. While the SNA’s identified under the NPSIB focus on terrestrial ecological values, the inherent biodiversity benefits to freshwater fauna remains relevant.
17. NZFSS considers that the proposed amendments will reduce protections for biodiversity, which is contrary to the obligation in section 6 of the RMA. For this reason, the NZFSS is opposed to these proposed changes.

Amendments to stock exclusion and intensive winter grazing regulations

18. The bill proposes removing the low slope land requirements regulating the access of farm animals to water bodies and removing the requirements relating to intensive winter grazing.

⁷ *Royal Forest and Bird Protection Society of New Zealand Inc v West Coast Regional Council* [2023] NZEnvC 68 at [270].

⁸ At [139].

⁹ At [154].

It is the intention of the bill, that the controls will instead be managed by freshwater farm plans and/or regional plan rules.

19. Controls at a national level were implemented to contribute to reducing the well-recognised effect agricultural activities have on waterbodies. Leaving the management of this to Regional Plans or Freshwater Farm Plans is insufficient. In many cases, freshwater farm plans are not yet in place (and the deadline for their adoption has recently been extended), and many regional plans have deferred to the stock exclusion regulations for management of stock exclusion.
20. Accordingly, this change will leave a gap where stock exclusion is unregulated for some time, which will adversely affect water quality and freshwater/wetland habitats. For these reasons, the NZFSS opposes these proposed changes.

Amendments that affect preparation, change and evaluation of national direction

21. The NZFSS acknowledges the intent to streamline national direction. However, the proposed approach appears to limit the ability for participation beyond the ministerial level. This may result in poor decision-making, where local and scientific communities cannot have input to this national direction.

Summary

22. The NZFSS is opposed to the changes proposed in the Resource Management (Freshwater and Other Matters) Amendment Bill for the reasons outlined in this submission.
23. NZFSS does not wish to be heard in support of its submission.

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