



*Ministry for the*  
**Environment**  
*Manatū Mō Te Taiao*

# **Section 32 Evaluation Report**

**for proposed amendments to the National Policy  
Statement for Freshwater Management 2014**

New Zealand Government

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## Executive summary

The Government proposes to amend the National Policy Statement for Freshwater Management. Amendments are part of a wider set of initiatives to improve the management of fresh water, deliver better environmental and economic outcomes, and provide better outcomes for iwi. For more information on the full suite of initiatives, please refer to the [Clean Water document](#).

Proposed amendments include:

- clarifying how regional councils can give effect to the existing requirement to ‘maintain or improve’ the overall quality of fresh water
- requiring regional councils to improve how often rivers and lakes are suitable for swimming, and monitor and report on this using a specified methodology
- requiring regional councils to monitor macroinvertebrate communities
- clarifying that regional councils need to manage nutrients in rivers when setting freshwater objectives for periphyton
- clarifying when existing exceptions to national bottom lines will be available
- clarifying that existing water quality attributes for lakes apply to intermittently closing and opening lakes and lagoons
- strengthening the concept of Te mana o te Wai in freshwater management
- clarifying that regional councils need to consider economic opportunities when making decisions about water quality improvements.

This report assesses proposed amendments to the National Policy Statement for Freshwater Management according to requirements under section 32 of the Resource Management Act 1991.

The purpose of this report is to evaluate whether the objectives of the proposals are the most appropriate way to achieve the purpose of the Resource Management Act 1991, and whether the proposed amendments are the most appropriate way to achieve those objectives. It examines a range of matters prescribed by the Act, including the costs and benefits of proposals, providing a level of detail that corresponds to the scale and significance of proposals.

For more detailed analysis of options considered, and their costs and benefits, please refer to the [Regulatory Impact Statement](#).

The majority of proposed amendments seek to clarify existing objectives and policies. For more detailed analysis of existing objectives and policies – in particular, the extent to which they are the most appropriate to achieve the purpose of the Resource Management Act – please refer to the previous section 32 evaluation reports and regulatory impact statements completed in 2011 and 2014. These are available on the [Ministry for the Environment’s website](#).

# 1 Introduction

This report evaluates proposed amendments to the National Policy Statement for Freshwater Management (the NPSFM), in accordance with section 32 of the Resource Management Act 1991 (the RMA).

## 1.1 Why we do a section 32 evaluation?

Section 46 of the RMA requires the Minister for the Environment to prepare an evaluation report for any proposed NPS (including proposals to amend an existing NPS), in accordance with section 32. The Minister for the Environment must have particular regard to this evaluation report when deciding whether or not to notify the proposed NPS.

Broadly, a section 32 evaluation report examines proposals to amend a national policy statement in two ways:

1. The extent to which the *objectives* of the proposals are the most appropriate way to achieve the purpose of the RMA – these are specific objectives being introduced or amended, or the purpose of the proposals (if they do not relate to specific objectives).
2. Whether the *provisions* in the proposal are the most appropriate way to achieve the objectives – these are the specific policies that implement, or give effect to, the objectives of the proposals.

This report will outline section 32 requirements in more detail throughout. Appendix 1 of this report includes section 32 of the RMA for easy reference.

## 1.2 What is a National Policy Statement?

Under the Resource Management Act 1991, the purpose of a national policy statement (NPS) is to state objectives and policies for matters of national significance which are relevant to achieving the purpose of the RMA.

A NPS can have a significant influence on resource management practice, given that the RMA requires:

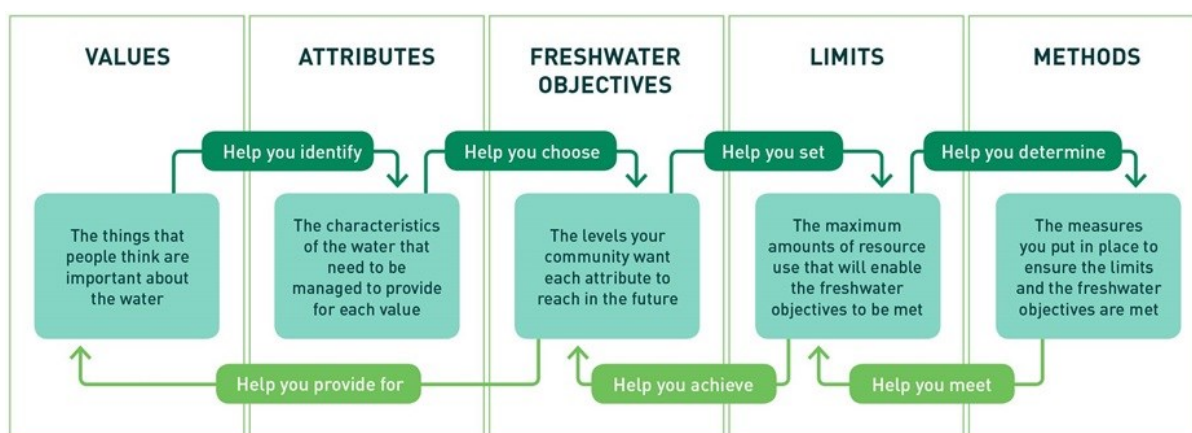
- the content of regional policy statements; regional plans and district plans must give effect to them
- consent authorities to regard a NPS when making a decision on a resource consent application
- territorial authorities to have particular regard to a NPS when considering a notice of requirement for a designation and when considering a requirement for a heritage order
- special tribunals and the Environment Court to have regard to a NPS when considering a water conservation order.

## 1.3 The National Policy Statement for Freshwater Management

The NPSFM states objectives and policies that direct regional councils in managing fresh water through regional plans.

The government introduced the NPSFM in 2011, and amended it in 2014, to address declining quality and increasing over-allocation of fresh water in New Zealand – both in terms of water quantity and quality.

The range of objectives and policies in the NPSFM currently requires regional plans to manage fresh water in an integrated and sustainable way. The NPSFM was amended in 2014 to direct a process that regional councils must use to set freshwater objectives to provide for values they have identified for fresh water within their region.



This process is supported by a set of national values, of which ‘ecosystem health’ and ‘human health for recreation’ are compulsory values. Regional councils must set objectives for the two compulsory values, for any other applicable national value, and any other value they consider appropriate. There is a set of measurable characteristics (attributes) that must be used to set these objectives. The set of attributes will be added to over time.

Each of the attributes for a compulsory value has a national bottom line. National bottom lines are minimum levels at which freshwater objectives can be set, although other objectives or policies may require something over and above this (for example, objective A2 of the NPSFM requires freshwater objectives to at least maintain the overall quality of fresh water).

This report will outline NPSFM objectives and policies in more detail as they relate to current proposals. For more information on other aspects of the NPSFM, refer to previous section 32 evaluation reports and regulatory impact statements available on [the Ministry for the Environment’s website](#).

## 1.4 Amending the National Policy Statement for Freshwater Management

This year the Government is proposing another package of amendments to the NPSFM, largely to clarify existing policy direction.

Amendments are part of a wider set of initiatives to improve the management of fresh water, deliver better environmental and economic outcomes, and provide better outcomes for iwi. For more information on other initiatives, please see the [Clean Water document](#) and the [Ministry for the Environment’s website](#).



### **1.4.1 Scale and significance of the proposed amendments**

Proposed changes will mitigate risks associated with unclear policy direction, such as increased risk of debate and litigation or different regional councils and communities taking inconsistent approaches. We anticipate these changes will have limited environmental, economic, social and/or cultural effects when compared to the status quo.

Note this evaluation report contains a level of detail that corresponds to the limited scale and significance of these effects – in accordance with s32(1)(c) of the RMA.

For more detailed evaluations of existing policy direction in the NPSFM, please refer to the 2011 and 2014 evaluation reports available on the [Ministry for the Environment's website](#).

### **1.4.2 Alternative options to guidance and implementation support**

The Ministry for the Environment has an [ongoing work programme to deliver guidance products and support](#) for regional councils and communities implementing the NPSFM.

Note this evaluation does not consider guidance or implementation support as alternative options, because they are already being produced as a matter of course.

### **1.4.3 Minor and consequential changes**

Proposed amendments to the NPSFM include minor changes to Part E. Progressive Implementation Programme. These are:

- removing the phrase “a policy”, and replacing it with “the objectives and policies” in two places. This is so the language is consistent with the rest of the NPSFM.
- changing the date by which any progressive implementation plan needs to be reviewed from 31 December 2015 to 31 December 2017. This is a consequential change. It is now 2017 and the reference to a past date is obsolete. The change gives regional councils the same amount of time to review their progressive implementation plan as previous amendments to the NPSFM (ie, to the end of the year).

These changes do not alter the objectives in any significant way – their purpose and function is unchanged. This report will not evaluate these changes in any more detail. Please refer to the s32 evaluation and regulatory impact statement completed in 2014 for more detail on these objectives and policies.

## **2 Evaluation approach**

This section outlines how proposals to amend the NPSFM will be evaluated. The rest of the report will follow this structure (ie, it will evaluate proposals in turn, as described in the table below).

<b>Status quo and problem statement</b>	This part of the report will explain the existing provisions in the NPSFM and why there is a need to amend them.
<b>Outline the proposal/s</b>	This part of the report will state exactly what is proposed to change about the NPSFM (eg, what the new or amended policies are).
<b>The objectives of the proposal/s</b>	<p>This part of the report will state what the objectives of the proposal/s are. In this context, the word ‘objectives’ has the meaning given to it under section 32 of the RMA:</p> <ul style="list-style-type: none"> <li>(a) for a proposal that contains or states objectives, those objectives; or</li> <li>(b) for all other proposals, the purpose of the proposal.</li> </ul>
<b>Evaluating the objectives of the proposal/s against the purpose of the Resource Management Act</b>	<p>This part of the report examines the extent to which the <i>objectives</i> of the proposal/s are the most appropriate way to achieve the purpose of RMA.</p> <p>For the purpose of this report, and in accordance with section 32(6) of the RMA, “objectives” means either:</p> <ul style="list-style-type: none"> <li>(a) for a proposal that contains or states objectives, those objectives (eg, where proposed amendments to the NPSFM would insert a new objective or amend an existing one); or</li> <li>(b) for all other proposals, the purpose of the proposal.</li> </ul> <p>Section 5 of the RMA defines the Act’s purpose, which is to promote sustainable management of natural and physical resources. ‘Sustainable management’ means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:</p> <ul style="list-style-type: none"> <li>(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;</li> <li>(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and</li> <li>(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.</li> </ul> <p>In examining the appropriateness of objectives, this report has regard to resource management issues they seek to address, and the extent to which the status quo does or does not achieve the purpose of the RMA.</p> <p>This part of the report will also examine how existing objectives are affected, whether the original intent is maintained, or whether changes are an appropriate way to achieve the purpose of the RMA.</p>
<b>Evaluating the proposal against its objectives</b>	This part of the report examines whether the provisions (that is the proposed changes to the NPSFM) are the most appropriate way of achieving the objectives examined in the previous section.

In this report, 'most appropriate' has been interpreted to mean 'suitable, but not necessarily superior'.<sup>1</sup> This means the most appropriate option does not need to be the most optimal or best option, but must demonstrate that it will meet the objectives in an efficient and effective way.

As part of examining whether the provisions are the most appropriate way of achieving the objectives, this evaluation also:

- (a) identifies other reasonably practicable options for achieving the objectives
- (b) assesses the efficiency and effectiveness of the provisions in achieving the objectives:
  - (i) including opportunities for economic growth and employment;
  - (ii) quantifying costs and benefits where practicable; and
  - (iii) assessing the risk of not acting where there is uncertain or insufficient information.
- (c) summarises the reasons for deciding on the provisions.

### 3 Amendments to clarify how regional councils can give effect to the objective – 'maintain or improve' the overall quality of fresh water

#### 3.1 Status quo and problem statement

Objective A2 of the NPSFM requires that the overall quality of fresh water in a region is maintained or improved. This objective was included in the NPSFM in 2011, and was not amended in 2014.

*"The overall quality of fresh water within a region is maintained or improved while:*

- a) protecting the significant values of outstanding freshwater bodies*
- b) protecting the significant values of wetlands; and*
- c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated."*

The wording of Objective A2 (particularly the qualifier 'overall') was intended to give regional councils some flexibility while requiring them to at least maintain water quality. This means regional councils would have the flexibility to determine where improvements would be made or further resource use could occur, while ensuring that overall water quality will at least be maintained at a scale they consider appropriate.

Since 2014, amendments to the NPSFM have required regional councils to set freshwater objectives using a National Objectives Framework (NOF). This means regional councils have to include all fresh water within their region in spatial units called freshwater management units (FMU). Regional councils must then follow a process under Policy CA2 for developing freshwater objectives for each FMU which involves:

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<sup>1</sup> *Rational Transport Soc Inc v New Zealand Transport Agency* HC Wellington CIV-2011-485-2259, 15 December 2011; see also [Ministry for the Environment guidance on s32 evaluations](#) available on the Ministry's website.

- a) identifying values the community holds for the water body or bodies in the FMU – which must at least include the two compulsory values of ecosystem health and human health for recreation;
- b) identifying attributes that provide for those values – these are the measurable characteristics that provide for the values they identify, and must at least include the 9 attributes listed in Appendix 2 of the NPS that provide for the compulsory values; and
- c) establishing freshwater objectives – these are the intended state of the water body expressed using attributes (eg, a desired level of *E.coli*, periphyton, or nitrate toxicity, etc).

However, it is not clear how regional councils and communities can establish whether a freshwater objective is sufficient to maintain overall water quality in terms of Objective A2. The current level of uncertainty creates a risk of inconsistent approaches, and increases the chances of debate and litigation. Feedback through consultation, and recent Environment Court cases demonstrate this is already occurring, and is likely to continue into the future.<sup>2</sup>

## 3.2 What are the proposals?

The proposals to address the problem identified above are:

Proposal 1. Amend Objective A2 so that it applies within a freshwater management unit, rather than a region; and

Proposal 2. Insert additional policies within Policy CA2 that specify minimum requirements for freshwater objectives intended to ‘maintain’ overall water quality in terms of Objective A2 – that they must be:

- a) within the same attribute band as existing water quality (where attribute bands have been defined), referred to as the ‘bands test’; or
- b) so that the values identified for the freshwater management unit will not be worse off when compared to existing water quality (where attribute bands have not been defined), referred to as the ‘values test’.

Please refer to appendix 2 for the actual text of proposed amendments.

## 3.3 What are the objectives of the proposals?

Both proposals are intended to work together to support the existing policy intent of Objective A2 – to maintain or improve the overall quality of fresh water. It will do this by clarifying what is required when regional councils are setting freshwater objectives using the NOF. This will mitigate risks associated with the current level of uncertainty, by specifying minimum requirements for ‘maintaining’ when setting freshwater objectives in freshwater management units.

The NPSFM provides regional councils and communities with a framework for producing a regional plan that ensures fresh water will support their social, economic and cultural well-being in accordance with the purpose of the RMA, while protecting ecosystem health and human health for recreation. These matters will be reflected in the values and attributes communities identify, and ultimately the freshwater objectives and limits they set.

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<sup>2</sup> Summary of submissions on *Next Steps for Fresh Water*, <http://www.mfe.govt.nz/publications/fresh-water/next-steps-fresh-water-summary-submissions>; *Ngati Kahungunu Iwi Inc v The Hawkes Bay Regional Council* [2015] NZEnvC 50.

Objective A2 is an important component of this framework. It requires that the overall quality of fresh water is at least maintained, so that fresh water will continue to provide for these matters to the same extent into the future.

Proposal 1 makes a minor change to the existing Objective A2, to ensure overall water quality is at least be maintained within each freshwater management unit. This is the same spatial scale at which communities will identify values and attributes to support them, set freshwater objectives and limits, and undertake representative monitoring. The change will clarify that whether overall water quality will be ‘maintained’, should be determined in each freshwater management unit with reference to these matters.

The purpose of Proposal 2 is to specify the ‘test’ for whether a freshwater objective will be sufficient to maintain overall water quality in terms of Objective A2. This will minimise risks associated with uncertainty, eg, inconsistent approaches, debate and litigation.<sup>3</sup>

### **3.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act**

Both proposals are intended to clarify the existing policy intent of Objective A2, and do not materially change the extent to which Objective A2 is the most appropriate way to achieve the purpose of the RMA. Please refer to [the 2011 section 32 evaluation](#), which evaluated Objective A2 in more detail.

Proposal 1 aims to clarify that decisions around maintaining or improving existing water quality are made at the same spatial scale as other freshwater management decisions.

The purpose of Proposal 2 is to clarify what Objective A2 requires in the context of setting freshwater objectives – using the ‘bands test’ and the ‘values test’. It aims to clarify that freshwater objectives that will maintain overall water quality should be based on the effects they have on the communities’ values (including the compulsory values of ecosystem health and human health for recreation), rather than on absolute concentrations of specific contaminants, thus better reflecting the purpose of the RMA.

For these reasons, the objectives of these proposals are considered the most appropriate way to achieve the purpose of the RMA. In addition, the proposals clarify existing policy intent and do not materially affect existing objectives in the NPSFM – they will assist regional councils in achieving the existing objectives of the NPSFM in practice, without undermining them.

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<sup>3</sup> Note that regional councils still have to comply with all obligations under the RMA, and any other legislation. The NPSFM does not change any regional council functions, duties or powers under the RMA. It only provides regional councils with *additional* direction when making or changing regional plans in relation to fresh water. Although analysis considers the requirements under the NPSFM are substantially the same, the functions of regional councils under s30 of the RMA may still require something more.

## 3.5 Examining whether the proposals are the most appropriate way to achieve the objectives

### 3.5.1 Alternative options considered

Analysis considered require freshwater objectives to maintain each attribute at its exact current state. However, this was considered less efficient than the proposals because it would unnecessarily constrain resource use without reference to the values that the attributes provide for – for example, managing to a specific nutrient concentration irrespective of the effects on ecosystem health (or any other identified values).

Analysis also considered applying the ‘values test’ to freshwater objectives for attributes with defined bands. However, this was considered less effective because it would introduce uncertainty to situations where the ‘bands test’ could otherwise be applied (which is considered the more certain and straightforward of the two tests).

All other options considered have been proposed. Please refer to the [Regulatory Impact Statement](#) for more detailed options analyses.

### 3.5.2 Efficiency and effectiveness

Proposal 1 is considered effective because it will make implementation of Objective A2 and the national objectives framework more straightforward for regional councils and communities. It does this by aligning Objective A2 and the NOF so they are applied at the same spatial scale. Whether a freshwater objective is sufficient to maintain overall water quality needs to be determined within a freshwater management unit.

Proposal 2 is considered effective because it specifies the tests for whether or not a freshwater objective is sufficient to maintain overall water quality in terms of Objective A2. This will clarify existing policy intent to reduce debate and litigation about whether or not a freshwater objective is sufficient to maintain in terms of Objective A2 – the objective of the proposals. It ensures that decisions are made based on the effects they would have on people’s values for fresh water.

- a) In terms of the ‘bands test’, this is because bands’ thresholds represent (where possible) thresholds where there is a meaningful difference in what is provided for (ie, the value that the attribute supports).
- b) In terms of the ‘values test’, it provides regional councils and communities with a framework for assessing freshwater objectives against Objective A2 where attribute bands have not been defined (ie, *Will the value supported by this attribute be worse off?*).

Both proposals are considered efficient and are expected to result in a net benefit. Note that proposals have limited impact (including costs and benefits) when compared to the status quo, because they only seek to clarify existing policy intent.

Costs associated with the current level of uncertainty will be avoided. These benefits include:

- reduced scope for debate around freshwater objectives and whether they are sufficient to maintain overall water quality in terms of Objective A2. This benefit has not been quantified. Analysis assumes that increased debate has the general effect of increasing the cost of participation for all parties (eg, through extended timeframes and general effort required)

- reduced scope for litigation around freshwater objectives and whether they are sufficient to maintain overall water quality in terms of Objective A2. This benefit has not been quantified because the cost of litigation varies significantly depending on the facts of each case. However, litigation can represent a significant cost for regional councils (eg, Horizons Regional council spent over \$10m in relation to litigation related to the One Plan<sup>4</sup>)
- reduced scope for inconsistent approaches to in regional planning, ie, when setting freshwater objectives to maintain overall water quality in terms of Objective A2
- reduced risk of unnecessary constraints on resource use where this can occur without negatively impacting on identified values (including compulsory values). Note that regional councils and communities can still decide to constrain resource use further.

To date, no regional councils have produced regional plans that fail to give effect to Objective A2, or do so in a manner that is inconsistent with its intent (as clarified by both options). This means we do not anticipate any regional councils will have to reconsider planning decisions as a result.

Consultation may uncover further impacts of the proposals. Please also refer to the [Regulatory Impact Statement](#) for more a detailed assessment of impacts.

### 3.5.3 Summary of reasons for deciding on the proposals

The proposals are considered efficient and effective ways to clarify existing policy intent and mitigate risks associated with uncertainty under the status quo. The proposals will provide clear tests for what Objective A2 requires in the context of setting freshwater objectives to be maintained. This will reduce time and effort spent on debate, and ensure freshwater objectives to maintain quality reflect the needs of the community rather than the risk of litigation.

## 4 Primary contact recreation

### 4.1 Status quo and problem statement

Objective A1 of the NPSFM requires regional councils to *“safeguard the health of people and communities, at least as affected by secondary contact with fresh water”*. Secondary contact is also defined, as *“contact with freshwater that involves only occasional immersion and includes wading and boating (except boating where there is a high likelihood of immersion)”*.

Regional councils must give effect to this objective through the content of their regional plans, for example, when developing objectives, policies and rules.

The reference to “secondary contact” was adopted to be consistent with the national bottom line for the *E. coli* attribute. *E. coli* is an indicator of the presence of faecal matter, and therefore the likely risk of infection or disease. The national bottom line for *E. coli* is set at a level that indicates that the risk of illness for people engaged in secondary contact with the water body is no more than 5%.

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<sup>4</sup> Regulatory Impact Statement for the National Policy Statement for Freshwater Management 2014, <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/national-policy>

The NPSFM requires regional councils to set freshwater objectives at or above national bottom lines. But in many cases freshwater objectives for *E. coli* will have to be more ambitious than the national bottom line. This would either be because:

- a) the current water quality is already better than the national bottom line and regional councils are required under Objective A2 to maintain or improve overall water quality, or
- b) the community wants the water managed to a lower level of health risk, or the same level of risk for a higher level of contact with the water (for example, swimming).

The policy intent of Objective A1 is to ensure regional councils safeguard human health – as affected by any level of contact – through policies and rules in regional plans. However, the reference to “secondary contact” within Objective A1 has created a public perception that regional councils are only required to manage freshwater bodies for the purposes of secondary contact, and can degrade down to this level.

Public confidence in the NPSFM is undermined by the incorrect perception that it only requires regional councils to manage freshwater bodies so they are suitable for secondary contact.

In addition, feedback to date has focussed on swimming as a binary issue – that a river or lake is either suitable for swimming or not. In fact, most rivers and lakes are safe to swim in at one time or another, and their ‘swimmability’ depends on how often contaminants harmful to human health exceed safe levels. The presence of disease-causing organisms depends on the surrounding land uses, stock access to water, direct discharges of sewage overflows during rainfall, and so on. Knowing how often water is safe to swim in, and why, is crucial to improving the swimmability of rivers and lakes over time.

## 4.2 What are the proposals?

The proposals to address the problem identified above are:

Proposal 1. Amend the NPSFM to remove the references to “secondary contact recreation”;

Proposal 2. Insert a new objective, requiring regional councils to improve the quality of fresh water in rivers and lakes so that the risk to human health is reduced and they are suitable for immersion more often – this is defined as reducing the frequency and magnitude of *E. coli* exceedances according to a specified monitoring methodology;

Proposal 3. Insert a new policy that requires regional councils to make or change regional plans so they:

- a) identify rivers and lakes that are currently suitable for immersion;
- b) identify improvements that will be made to rivers and lakes so they are suitable for immersion more often; and
- c) state what improvements will be achieved, and over what timeframe.

Proposal 4. Require regional councils to consider ‘how to improve the quality of fresh water in rivers and lakes so that the human health risk is reduced and they are suitable for immersion more often’ at all relevant points in the freshwater objective setting process;

Proposal 5. Require regional councils to monitor water quality using a specified methodology which will provide regional councils and communities with information on how often rivers and lakes are suitable for swimming.



Proposal 6. Replace the existing *E. coli* attribute table in Appendix 2 with a new one, measuring the proportion of time a waterbody is suitable for swimming.

Please refer to appendix 2 for the actual text of proposed amendments.

### **4.3 What are the objectives of the proposal?**

The purpose of Proposal 1 is to clarify the existing policy intent of Objective A1 – that regional councils are required to safeguard human health as affected by any level of contact with fresh water.

The obligations of regional councils under the NPSFM will remain the same. Regional councils must safeguard human health when making planning decision about fresh water. Freshwater objectives must provide for values identified by the community, and work towards desired levels of risk in terms of *E. coli*. Where communities value swimming or other forms of primary contact, freshwater objectives will need to reflect this.

Proposals 2-6 are intended to give regional councils a clear direction to improve *how often* rivers and lakes are suitable for swimming, use a suitable monitoring methodology to inform planning decisions to achieve this, and ensure regional councils and communities have an open conversation how they will do this. The changes will ensure regional councils safeguard the potential of rivers and lakes to support primary contact recreation like swimming into the future, by making improvements over time.

All proposals are intended to provide regional councils and communities with additional confidence that the NPSFM provides an effective national framework for protecting and enhancing national values and uses of fresh water – including aspirations for primary contact with fresh water – while also providing flexibility to accommodate local and regional circumstances and priorities.

### **4.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act**

Proposal 1 clarifies existing policy intent, and does not materially change the extent to which Objective A1 is the most appropriate way to achieve the purpose of the RMA. Please refer to [the 2011 section 32 evaluation](#), which evaluated Objective A1 in more detail.

Proposals 2-6 aim to improve rivers and lakes for swimming over time – safeguarding the potential of the resource for future generations. This is central to the purpose of the RMA.

For these reasons, the objectives of this proposal are considered the most appropriate way to achieve the purpose of the RMA.

All proposals will not materially affect the extent to which existing objectives are the most appropriate way to achieve the purpose of the RMA. Please refer to section 32 evaluations conducted in [2011](#) and [2014](#) for more detailed analysis of existing objectives.

## 4.5 Examining whether the proposal is the most appropriate way to achieve the objectives

### 4.5.1 Alternative options considered

Alternative options that have been considered are outlined below. Please refer to the [Regulatory Impact Statement](#) for more detailed options analysis.

#### 4.5.1.1 *Changing the national bottom line for E. coli*

Changing the *E. coli* attribute in appendix 2 so that the national bottom line is set at a 5% risk of infection from activities that involve primary contact with fresh water was not considered effective, because it would not achieve the objective of the proposals. It would establish a universally applicable risk infection level that would reduce the level of flexibility provided to regional councils and communities to accommodate local and regional circumstances and priorities.

#### 4.5.1.2 *A new national value for primary contact recreation*

Inserting a new national value for primary contact recreation in appendix 1 was deemed impractical as it would create unnecessary overlap with the compulsory national value of Human Health, which indicates there is a continuum of risk depending on the type of contact with fresh water.

#### 4.5.1.3 *A separate E. coli attribute for primary contact recreation*

Establishing a separate *E. coli* attribute in appendix 2 with attribute states based on the proportion of time a waterbody meets the risk level for primary contact was deemed infeasible as there has been no formal scientific testing and endorsement of this alternative framework for defining the level of risk to human health in combination with the existing *E. coli* attribute. Note that the Proposals 2-6 closely replicate this option, in that regional councils will have to monitor and improve water quality in terms of the *how often* it is safe for swimming, and manage to a single attribute based on proportion of time, rather than having to reconcile two potentially incompatible attributes for *E. coli*.

#### 4.5.1.4 *Amending Objective A2*

Amending Objective A2 to include a reference to improving water quality for primary contact was deemed redundant as this is already covered by Objectives A2(c), which requires water quality to be improved in waterbodies where freshwater objectives are set for primary contact but not being met due to over-allocation.

### 4.5.2 Efficiency and effectiveness

Proposal 1 is considered effective because it provides a clear signal that the policy wording of the NPSFM does not dictate the level at which regional councils set freshwater objectives for human health. It makes it clear that communities need to determine the appropriate level of risk to human health, and that this is not limited to being suitable for secondary contact.

Similarly Proposals 2-6 are considered effective because they give regional councils explicit direction to improve *how often* rivers and lakes are suitable for swimming; require them to state what improvements will be made, and the timeframes for doing so; and specify a monitoring methodology to inform planning and community discussions.

Proposal 1 is considered efficient because it achieves its objectives with nil impact (including costs and benefits). Note the proposal has a limited impact when compared to the status quo because it

only seeks to clarify existing policy intent, and obligations of regional councils under the NPSFM will remain the same.

Analysis did not identify any instances where planning that failed to give effect to Objective A1, or misunderstood its policy intent, and so would need to change – the identified problem is limited to public perceptions. This means there will not be any additional costs or benefits arising from the proposal.

Proposals 2-6 are considered efficient because they will achieve their objectives with minimal impact. Regional councils will retain discretion over where, when, and by how much they improve water quality – as long as planning is explicit and aims to improve how often rivers and lakes are suitable for swimming. While reducing the frequency and magnitude of *E. coli* exceedances will have some negative impacts (eg, cost of fencing, constrained land use, sewage upgrades), regional councils and communities are able to mitigate these by prioritising waterbodies for improvement, lowering expectations of improvement, or working to longer timeframes.

However, Proposal 5 will impose some additional monitoring costs on regional councils. Analysis has not quantified these costs, but consultation will be used to assess the scale of this impact.

Consultation may uncover further impacts of the proposals. Please also refer to the [Regulatory Impact Statement](#) for more a detailed assessment of impacts.

#### **4.5.3 Summary of reasons for deciding on the proposal**

The proposals are considered an efficient and effective way to clarify existing policy intent – that regional councils are required to safeguard human health as affected by any level of contact with fresh water. Removing the reference to “secondary contact” will avoid misunderstandings about the policy intent, and help regional councils and communities focus on the level of contact with fresh water that they aspire to.

## **5 Monitoring and macroinvertebrates**

### **5.1 Status quo and problem statement**

Freshwater macroinvertebrates are aquatic animals such as insects, worms and snails whose communities respond quickly to changes in water quality, habitat and catchment condition. As such, monitoring macroinvertebrates is useful to assess those aspects of water quality and ecological health in rivers and streams.

Macroinvertebrate monitoring in rivers is generally undertaken for one of two main purposes:

- a) Broad-scale monitoring of the ecological condition in river catchments over time; or
- b) Finer-scale monitoring and diagnosis of issues in a specific stream or river.

The information derived from long-term monitoring of macroinvertebrates (and other biological indicators) can be used to inform policy decisions, as well as for assessing the effectiveness of regional plans and policies and other methods to improve the environmental condition of rivers.

Part CB of the NPSFM requires regional councils to establish plans to monitor the progress towards the achievement of freshwater objectives. Freshwater objectives describe the intended state of freshwater bodies to provide for the community's values in those freshwater bodies, including the value of ecosystem health.

The NPSFM does not contain specific direction on monitoring macroinvertebrates, though the description of the ecosystem health value in appendix 2 states the "health of flora and fauna may be indicated by measures of macroinvertebrates".

Fifteen regional councils currently undertake some form of macroinvertebrate monitoring.<sup>5</sup>

There is now an opportunity to build on current monitoring practices and ensure regional councils use this information for monitoring under the NPSFM, and respond to this information if it indicates the freshwater objectives will not be met and/or identified values (which must include ecosystem health) will not be supported.

## **5.2 What are the proposals?**

The proposals to address the problem identified above are:

Proposal 1. Amend the existing direction to establish methods for monitoring progress towards freshwater objectives under Policy CB1, so these must at least include monitoring of macroinvertebrates

Proposal 2. Amend Policy CB1 to require regional councils to establish methods for responding to monitoring that indicates any freshwater objectives will not be met and/or adverse effects on a waterbody in a freshwater management unit.

Please refer to appendix 2 for the actual text of proposed amendments.

## **5.3 What are the objectives of the proposals?**

The purpose of both proposals is to ensure regional councils establish methods for monitoring that at least include macroinvertebrate communities, and to respond appropriately to monitoring that identifies any freshwater objectives will not be met and/or there will be adverse effects on a waterbody in a freshwater management unit.

This is intended to generate information about the state of macroinvertebrate communities in each FMU, to align current monitoring practices (carried out for SoE reporting purposes) with the freshwater planning processes prescribed through the NOF, and to enable regional councils to address issues affecting water quality outside of the planning process to avoid unnecessary and costly plan changes.

## **5.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act**

This will support regional councils and communities when making decisions about the management and use of fresh water resources, particularly when reviewing progress towards the achievement of

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<sup>5</sup> Gisborne District Council does not. Nor does the Chatham Islands Council, though it is understood monitoring macroinvertebrates is not appropriate in the water bodies of that region.

freshwater objectives and assessing the efficiency and effectiveness of any limits and methods implemented to achieve them in an FMU.

This will also ensure that regional councils have a mechanism in place to respond if the information shows these freshwater objectives will not be met and/or adverse effects on a waterbody are detected. These additional measures will improve the extent to which regional planning safeguards the life-supporting capacity of water, and so achieves the purpose of the RMA.

For these reasons, the objectives of the proposals are considered the most appropriate to achieve the purpose of the RMA. In addition, the proposals do not materially affect existing objectives in the NPSFM – they will assist regional councils in achieving the existing objectives of the NPSFM in practice, without undermining them. For more detailed analysis of existing provisions in the NPSFM and how they work, please refer to the [2011](#) and [2014](#) section 32 evaluations.

## **5.5 Examining whether the proposals are the most appropriate way to achieve the objectives**

### **5.5.1 Alternative options considered**

#### **5.5.1.1 *Numeric attribute for macroinvertebrates***

Analysis considered the option of including a numeric attribute for macroinvertebrates in appendix 2 of the NPSFM. This was not considered feasible at this time. Macroinvertebrate communities vary significantly depending on local conditions and it is not currently possible to define a nationally applicable attribute states and bottom lines due to the need to accommodate spatial variability. Officials have commissioned a scientific study to develop and test a potential numeric macroinvertebrate attribute for inclusion in the NPSFM in future.

#### **5.5.1.2 *Narrative attribute for macroinvertebrates***

Analysis also considered the option of including a narrative attribute for macroinvertebrates (ie, an attribute without a nationally defined bottom line or band thresholds). This was not considered any more effective than the proposals in terms of achieving the stated objectives.

#### **5.5.1.3 *Nationally prescribed monitoring methodology for macroinvertebrates***

Specifying national protocols for monitoring macroinvertebrates in the NPS was deemed impractical as regional councils have already agreed to develop macroinvertebrate sampling protocols that will support nationally consistent sampling, analysis and reporting on macroinvertebrates in the future.

For more detailed analysis of options considered, please refer to the [Regulatory Impact Statement](#).

### **5.5.2 Efficiency and effectiveness**

The proposals are considered effective options to achieve their objectives. The changes will give regional councils a clear direction to use macroinvertebrate monitoring at representative sites in each FM when implementing the NPSFM. This will ensure national coverage of macroinvertebrate monitoring to support freshwater planning and measure its effectiveness. It will ensure all regional councils have an additional tool for monitoring progress and an additional mechanism for responding to water quality issues outside of plan changes.

The proposals are considered efficient because they will achieve the stated objectives with minimal impacts. Identified impacts are outlined below (including costs and benefits). Further consultation may uncover further impacts of the proposals. Please also refer to the [Regulatory Impact Statement](#) for more a detailed assessment of impacts.

#### ***5.5.2.1 Additional cost for regional councils having to monitor macroinvertebrate communities in wadeable streams***

This cost is limited to Gisborne District Regional council, which does not have a macroinvertebrate monitoring programme in place. NIWA estimated these costs to include \$40,000 for design and establishment of a biological/macroinvertebrate monitoring programme plus annual operating costs of \$8250 + GST (27 monitoring sites at \$250 per site plus \$1500 for quality assurance and expenses).

All other regional councils have established macroinvertebrate monitoring programmes. They may incur costs to align existing monitoring with the new requirement to monitor macroinvertebrates at representative sites in each FMU. These costs have not been quantified.

#### ***5.5.2.2 Potential cost for regional councils in responding to monitoring***

There are potential costs for regional councils where they have to conduct scientific investigations and initiate management actions where monitoring identifies a decline in water quality. These costs will depend on what methods regional councils and communities choose to establish for responding to these situations, and have not been quantified.

### **5.5.3 Summary of reasons for deciding on the proposals**

The proposals are considered an efficient and effective way to build on existing monitoring practices, and ensure this information is used support freshwater planning. Proposals take advantage of a significant opportunity to track progress towards freshwater objectives, and ensure regional councils have a mechanism in place to respond if freshwater planning is not effective.

## **6 Managing nutrients in rivers**

### **6.1 Status quo/problem statement**

High concentrations of nitrogen and phosphorus (nutrients) in rivers can promote aquatic plant growth, which in large amounts have negative effects on aquatic ecosystems (eg, smothering the bed, removing oxygen). Nitrate and ammonia (forms of nitrogen) can also be toxic to animals and humans in very high concentrations.

Appendix 2 of the NPSFM defined three attributes to manage nutrient concentration in rivers:

- a) Periphyton, which measures aquatic plant growth – the main consequence of excess nutrient concentrations in rivers;
- b) Nitrate toxicity, which measures the toxic effects of excess nitrate concentrations; and
- c) Ammonia toxicity, which measures the toxic effects of excess ammonia concentrations.

Dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorus (DRP) are commonly used measures of nutrient concentrations in rivers. These are forms of nitrogen and phosphorus that are available for aquatic plant growth.

The NPSFM does not define attributes for DIN or DRP, although regional councils are able to define their own attributes when setting freshwater objectives and limits.

In practice, the NPSFM already requires regional councils to manage the effects of nitrogen and phosphorus by setting freshwater objectives for periphyton in rivers.<sup>6</sup> Nutrient concentrations are key drivers of periphyton growth (other drivers include things like shading, temperature, and flow). This means limiting nutrient concentrations is a way to achieve freshwater objectives for periphyton. In fact, previous regulatory impact analysis estimated the impact of a periphyton national bottom line by modelling the costs of reducing nutrient concentrations.<sup>7</sup>

However, the NPSFM does not explicitly require regional councils to manage DIN and DRP when managing periphyton. This has led to a public perception that these nutrients will not be managed in rivers, and has contributed to lack of confidence that the NPSFM will result in regional plans that manage the effects of high nutrient concentrations.

## 6.2 What is the proposal?

The proposal to address the problem identified above is:

Proposal 1. Amend the NPSFM to require regional councils to specify in-stream concentrations for DIN and DRP in regional plans when managing periphyton.

Please refer to appendix 2 for the actual text of proposed amendments.

## 6.3 What is the objective of the proposal?

The purpose of the proposal is to clarify the existing policy intent of Objective CA1 and Policy CA2 of the NPSFM – specifically, that regional councils need to manage nutrient concentrations in rivers to achieve freshwater objectives for periphyton.

## 6.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act

The proposal clarifies existing policy intent, and does not materially change the extent to Objective A1 and Policy CA2, which are the most appropriate way to achieve the purpose of the RMA.

Objective A1 already requires regional councils to safeguard the life-supporting capacity of fresh water. Policy CA2 already directs regional councils to set freshwater objectives for periphyton and any other attributes that will provide for the compulsory value of ecosystem health. In both cases, regional councils are already expected to manage the nutrients in rivers – the proposal will simply make this clearer. The proposal does not materially affect existing objectives in the NPSFM – it will assist regional councils in achieving the existing objectives of the NPSFM in practice, without undermining them.

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<sup>6</sup> Appendix 2 of the NPSFM defines a periphyton attribute. This measures algal growth in rivers – the main consequence of excess nutrients in fresh water. Note that Appendix 2 also defined nitrate and ammonia toxicity attributes to manage the toxic effects of excess nutrients.

<sup>7</sup> Regulatory Impact Statement for the National Policy Statement for Freshwater Management 2014, <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/national-policy>; Modelling Economic Impacts of Nutrient Allocation Policies in Canterbury - Hinds Catchment, <http://www.mfe.govt.nz/publications/fresh-water/modelling-economic-impacts-nutrient-allocation-policies-canterbury-hinds>



Please refer to the previous section 32 evaluations in undertaken in 2011 and 2014 for more detail.

## **6.5 Examining whether the proposal is the most appropriate way to achieve the objectives**

### **6.5.1 Alternative options considered**

Analysis considered the option of creating numeric attributes for DIN and DRP. However, it is not feasible to define these nationally. This is because local conditions, such as flow rates and shading, also have an impact on periphyton growth and what an acceptable concentration of DIN or DRP will be. Analysis did not consider it was possible to reflect this level of local variation in nationally defined attributes.

### **6.5.2 Efficiency and effectiveness**

The proposal is considered an effective way to achieve its objectives. Amendments will explicitly require regional councils to specify in-stream concentrations for DIN and DRP as part of managing periphyton. This will make it clear that regional councils have to manage nutrients in rivers, and that the NPSFM will result in regional plans that manage the effects of high nutrient concentrations.

The proposal is considered efficient because it achieves its objectives with no additional costs or benefits compared to the status quo. This is because it only seeks to clarify existing policy intent to address issues with public perceptions and confidence in the NPSFM. In fact, previous impact analysis estimated the impact of a periphyton national bottom line by modelling the cost of reducing nutrient concentrations. Please refer to the 2014 Regulatory Impact Statement for more detailed assessment of the impacts of managing nutrients in rivers.

### **6.5.3 Summary of reasons for deciding on the proposals**

The proposal is an efficient and effective way to clarify existing policy intent – specifically, that regional councils need to manage nutrient concentrations in rivers to achieve freshwater objectives for periphyton. This will address public perceptions that nutrients will not be managed in rivers or that the NPSFM will result in regional plans that don't manage the effects of high nutrient concentrations.

## **7 Exceptions to national bottom lines**

### **7.1 Status quo/problem statement**

Regional councils are required to establish freshwater objectives to provide for community values in their freshwater bodies (eg, by setting freshwater objectives for *E.coli* to provide for a community's recreational values in a river or lake).

The NPS defined national bottom lines for the nine attributes defined in appendix 2 of the NPSFM – these provide for the two compulsory values of ecosystem health and human health for recreation. Regional councils must set freshwater objectives at or above national bottom lines unless an 'exception' under Policy CA3 or a 'transitional objective' under Policy CA4 applies.

Policy CA3 requires regional councils to set freshwater objectives at or above national bottom lines, *unless* existing water quality is below a national bottom line and:



- a) existing water quality is caused by naturally occurring processes; or
- b) any of the existing infrastructure listed in appendix 3 contributes to the existing freshwater quality.

The exception relating to infrastructure under Policy CA3(b) was introduced to allow regional councils and their communities to balance the benefits of national bottom lines with those provided by infrastructure (eg, renewable electricity generation).

Appendix 3 is currently empty, meaning that no regional councils are able to set freshwater objectives below national bottom lines in freshwater management units because water quality is affected by infrastructure. The Minister may amend the NPSFM to populate appendix 3 with specific infrastructure in future, for example, if there is evidence of a need.

However, Policy CA3 is unclear and has the potential to allow regional councils to set freshwater objectives below national bottom lines in circumstances that are not consistent with existing policy intent. Specifically:

- 1) Freshwater objectives could be set below national bottom lines regardless of the age or significance of the infrastructure.
- 2) It is not clear that regional councils can only set freshwater objectives below national bottom lines for those attributes where the existing water quality is below national bottom lines.
- 3) Freshwater objectives could be set below national bottom lines in circumstances where setting freshwater objectives at or above national bottom lines would not adversely affect the benefit provided by the relevant infrastructure.
- 4) Freshwater objectives could be set below national bottom lines in parts of the FMU where the infrastructure is located but where the infrastructure does not contribute to existing water quality.

## **7.2 What are the proposals?**

The proposal to address the problem identified above is to clarify exceptions are only available:

- a) for attributes where the current water quality is below national bottom lines
- b) in the area where the listed infrastructure contributes to water quality that is below national bottom lines
- c) if it is necessary for the realisation of the benefits provided by the listed infrastructure.

And to clarify that only infrastructure that was operational on 1 August 2014 is eligible for listing in appendix 3.

Please refer to appendix 2 for the actual text of proposed amendments.

## **7.3 What are the objectives of the proposals?**

The purpose of the proposal is to clarify the existing policy intent of Policy CA3, by specifying additional parameters within which a regional council could set a freshwater objective below a national bottom line under Policy CA3(b).

This is intended to reduce uncertainty for regional councils and infrastructure owners that might want to have infrastructure listed in appendix 3, by giving them a clearer indication whether an 'exception' will be possible.

## **7.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act**

The proposals clarify existing policy intent, and do not materially change the extent to which Policy CA3 is the most appropriate way to achieve the purpose of the Act. In addition, the proposals do not materially affect existing objectives in the NPSFM – they will assist regional councils in achieving the existing objectives of the NPSFM in practice, without undermining them. Please refer to the previous section 32 evaluation undertaken in 2014 for more detail.

## **7.5 Examining whether the proposals are the most appropriate way to achieve the objectives**

### **7.5.1 Alternative options considered**

Analysis considered the alternative options of maintaining the status quo and producing guidance. However, these were not considered effective options because risks identified under the status quo would persist. Please refer to the [Regulatory Impact Statement](#) for more detailed options analysis.

#### **7.5.1.1 Listing specific hydroelectricity generation infrastructure**

Analysis considered whether any hydroelectricity generation infrastructure in New Zealand should be listed in appendix 3, having regard to available evidence of water quality and the risk of not enabling exceptions if they are needed. Analysis did not identify any instances where an exception would be needed and so would justify listing infrastructure in appendix 3 at this time. Infrastructure can be listed in future, if a need arises.

#### **7.5.1.2 Listing drinking water dams**

Analysis considered whether any large dams used for drinking water should be listed in appendix 3. Analysis did not identify any instances where an exception would be needed and so would justify listing infrastructure in appendix 3 at this time. Infrastructure can be listed in future, if a need arises.

#### **7.5.1.3 Further devolving decision making to regional councils**

Analysis considered whether regional councils should be able to set freshwater objectives below national bottom lines if current water quality is below national bottom lines as a result of infrastructure – without reference to appendix 3 (which is can only be populated by the Minister for the Environment amending the NPSFM). This option was not pursued because it would constitute a significant change in existing policy intent – as part of NPSFM amendments in 2014, the Minister for the Environment decided any exceptions to national bottom lines should be a central government decision. On balance, central government is best placed to determine whether specific infrastructure justifies setting freshwater objectives below a nationally defined bottom line.

### **7.5.2 Efficiency and effectiveness**

The proposal is considered an effective way to achieve its objectives. Changes will provide additional clarity about the scope and effect of Policy CA3, and will reduce uncertainty for regional councils and infrastructure owners that might want to have infrastructure listed in appendix 3.

The proposal is considered efficient because it achieves its objectives with limited impact compared to the status quo. This is because it only seeks to clarify existing policy intent by further specifying when exceptions to national bottom lines will be available. This will reduce costs associated with uncertainty for regional councils and infrastructure owners (eg, by reducing scope for debate). The proposals will not include specific infrastructure in appendix 3 of the NPSFM– this means the proposals will not enable any exceptions at this time.

Further consultation will uncover any unintended consequences of this proposed amendment. Please refer to the Regulatory Impact Statement for a more detailed assessment of the impacts.

### **7.5.3 Summary of reasons for deciding on the proposals**

The proposal is considered an efficient and effective way to give regional councils and infrastructure owners additional certainty by giving them a clearer indication whether an ‘exception’ will be possible under Policy CA3(b) according to existing policy intent.

## **8 Coastal lakes and lagoons**

### **8.1 Status quo/problem statement**

Regional councils must set freshwater objectives using the process described in Policy CA2 of the NPSFM. This means identifying values for each freshwater management unit, and the attributes that provide for those values. Identified values must include the compulsory values of ecosystem health and human health for recreation. The attributes must include those defined in appendix 2 of the NPSFM – these are nine attributes that provide for the compulsory values and have defined national bottom lines, some of which are specific to a type of waterbody (eg, Total Nitrogen in lakes, Periphyton in rivers). Regional councils then have to set freshwater objectives for these attributes.

Regional councils set freshwater objectives using this process for all fresh water in their region.

Intermittently closing and opening lakes and lagoons (ICOLs) are waterbodies near the coast that sporadically open up to the sea. New Zealand has seven ICOLs – six in the South Island and Te Whanga Lagoon on Chatham Island. These ICOLs are managed as fresh water by the relevant regional councils.

However, it is currently unclear whether all lake attributes defined in appendix 2 of the NPSFM apply to ICOLs. This ambiguity has arisen as a result of a footnote to the ‘Total nitrogen attribute table’ in appendix 2 of the NPSFM:

*\* Intermittently closing and opening lagoons (ICOLs) are not included in brackish lakes.*

This footnote was intended to clarify that numeric thresholds that are specified for brackish lakes do not apply to ICOLs. At that time, there was insufficient evidence to determine whether numeric thresholds for brackish lakes would be appropriate for ICOLs, which may respond differently to total nitrogen concentrations. Since then, analysis has confirmed that the numeric thresholds in this attribute are appropriate for ICOLs. Additionally, it was confirmed that all lake attributes are appropriate for ICOLs.

Feedback from regional councils has indicated that the footnote makes it unclear whether any other lake attributes (ie. non-brackish lakes) apply to ICOLLs, and that there is a risk these attributes will not be used to set freshwater objectives for ICOLLs.

## **8.2 What is the proposal?**

The proposal to address the problem identified above is:

Proposal 1. Amend the NPSFM to clarify that lake attributes (including their national bottom lines) apply to ICOLLs. Specifically, by amending the descriptions in the lake attributes tables in appendix 2 of the NPSFM so that it is clear that they apply to all freshwater lakes including ICOLLs. This will include removing the footnote underneath the attribute table for 'Total nitrogen (trophic state)'.

Please refer to appendix 2 for the actual text of proposed amendments.

## **8.3 What are the objectives of the proposal?**

The proposal is intended to remove an ambiguity present in the NPSFM by clarifying that all lake attribute tables in appendix 2 apply to ICOLLs. The purpose of the proposal is to ensure regional councils fully implement the NPSFM and achieve sustainable management of freshwater resources around New Zealand. This includes setting freshwater objectives using the attributes and national bottom lines that have been defined in the NPSFM to safeguard the life-supporting capacity of lakes (including ICOLLs).

## **8.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act**

These proposals are intended to clarify existing policy intent – to ensure that regional councils apply lake attributes and national bottom lines when setting freshwater objectives for ICOLLs. This means changes will not materially affect the extent to which lake attributes in the NPSFM achieve the purpose of the Act. To the extent that regional councils were not applying lake attributes to ICOLLs because of the ambiguity, the proposal will better achieve the purpose of the Act.

The proposals do not materially affect existing objectives in the NPSFM – they will assist regional councils in achieving the existing objectives of the NPSFM in practice, without undermining them.

Please refer to [the section 32 evaluation undertaken in 2014](#), which evaluated lake attributes in more detail.

## **8.5 Examining whether the proposal is the most appropriate way to achieve the objectives**

### **8.5.1 Alternative options considered**

Alternative options that have been considered are outlined below. Please refer to the [Regulatory Impact Statement](#) for more detailed options analysis.

#### **8.5.1.1 Excluding ICOLLs**

Analysis also considered the option excluding ICOLLs from the lake attributes tables, and therefore the need to meet national bottom lines. This option was not progressed because analysis has confirmed that lake attributes and their national bottom lines are appropriate for ICOLLs. Excluding

ICOLLs in this way would allow regional councils to set freshwater objectives that would not adequately safeguard the life-supporting capacity of lakes that are ICOLLs – and so would not achieve the purpose of the RMA.

### **8.5.2 Efficiency and effectiveness**

The proposal is considered effective. Removing the footnote underneath the attribute table for Total Nitrogen in appendix 2 and clarifying how the sampling regime in the lake attribute tables will apply to ICOLLs will remove ambiguity in the application of the NPSFM, and will give regional councils clearer direction about applicable attributes and national bottom lines for ICOLLs.

The proposal is considered efficient because it will achieve the stated objective with limited impacts. Analysis considers the benefit of safeguarding the life-supporting capacity of ICOLLs by applying appropriate attributes and national bottom lines outweighs these impacts.

The following outlines identified impacts (including costs and benefits). Further consultation will uncover any unintended consequence of this proposed amendment. Please refer to the Regulatory Impact Statement for a more detailed assessment of the impacts.

#### **8.5.2.1 Reducing uncertainty**

Clarifying that lakes attributes do apply to ICOLLs will reduce costs associated with uncertainty for regional councils and stakeholders (eg, debate and litigation).

#### **8.5.2.2 Impact of meeting national bottom lines in ICOLLs**

Land use in catchments for ICOLLs with water quality significantly below the national bottom lines may need to change. This could have major economic impacts if significant land-use changes were required over short to medium time frames.

Evidence suggests that all ICOLLs will be able to meet national bottom lines for lake attributes, except for Te Waihora/Lake Ellesmere in Canterbury. Environment Canterbury, which is responsible for the management of Te Waihora/Lake Ellesmere, has until 2030 to fully implement the NPSFM.

If it is not clear by 2030 that a management plan for Te Waihora/Lake Ellesmere can improve its quality to meet national bottom lines, the Government can consider listing Te Waihora/Lake Ellesmere in appendix 4 of the NPSFM. appendix 4 enables transitional freshwater objectives below national bottom lines for a set timeframe. This mechanism can apply if a regional council decides it is not feasible to meet national bottom lines in the short to medium term.

#### **8.5.2.3 Reduced risk to life-supporting capacity**

Analysis considers that applying all lake attributes and national bottom lines will decrease the risk of any ICOLLs flipping.

A 'flipped' lake is one which shows a rapid visible shift from a clear water state characterised by submerged aquatic plants to a turbid state characterised by a lack of, or distinct reduction in, aquatic plants. In a flipped lake, typical lake processes have been disrupted and it is much more difficult/costly to improve water quality when compared to a lake that has not flipped. Te Waihora/Lake Ellesmere flipped in the late 1960s, and the two other Canterbury ICOLLs are currently close to flipping.

This means actively managing these ICOLLs now using appropriate attributes and national bottom lines is the most efficient way to safeguard life-supporting capacity in these lakes.

### **8.5.3 Summary of reasons for deciding on the proposals**

The proposal is an efficient and effective way to achieve the stated objectives – to ensure regional councils apply lake attributes and national bottom lines when setting freshwater objectives for ICOLLs, so that the life-supporting capacity of these lakes is safeguarded.

## **9 Te mana o te wai**

### **9.1 Status quo/problem statement**

Te Mana o te Wai is a concept for fresh water that encompasses the integrated and holistic health and well-being of a water body.

References to Te Mana o te Wai were introduced into the preamble and in a statement sitting above the objectives and policies at the start of the of the NPSFM in 2014. The statement states the NPSFM is about *“recognising ... Te Mana o te Wai”* and that *“a range of community and tāngata whenua values ... may collectively recognise ... Te Mana o te Wai”*.

While this preamble and statement provides some information about Te Mana o te Wai in the NPSFM, linking it to community values, it is not defined in the NPSFM and it is not clear how regional councils can give effect to it in planning.

Feedback from regional councils, iwi and hapū and other stakeholders indicates the meaning of Te Mana o te Wai is unclear, and the direction it provides to regional councils is uncertain.

### **9.2 What are the proposals?**

Proposals to address the above problem are:

Proposal 1. To amend the NPSFM to include a purpose statement which provides context about the meaning of Te Mana o te Wai, and its status as the underpinning platform for community discussions on freshwater values, objectives and limits.

Proposal 2. Insert an overarching objective that clearly requires regional councils to approach all other objectives and policies according to Te Mana o te Wai, and additional policies to provide additional direction about how to implement this objective.

Proposal 3. Amending the narrative descriptions of national values described in appendix 1 of the NPSFM, so they more clearly relate to Te Mana o te Wai and support regional councils when identifying values, setting objectives and limits, and at all relevant parts of the NPSFM.

Please refer to appendix 2 for the actual text of proposed amendments.

### **9.3 What are the objectives of the proposals?**

The proposals are intended to clarify the status and meaning of Te Mana o te Wai within the NPSFM and provide clear direction to regional councils on how to recognise Te Mana o te Wai when implementing the NPSM through regional plans.

The purpose of all proposals is to enable regional councils to approach freshwater management in a way that embraces the full range of values held by the community, including tangata whenua – their social, economic and cultural well-being.

#### **9.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act**

As a platform for discussions about freshwater management, Te mana o te Wai better enable regional councils and communities to provide for their social, economic and cultural well-being. This matter is central to the purpose of the RMA.

In addition, the proposals will put the health and well-being of freshwater bodies at the forefront of discussions, clarifying that in order to use and develop water you must first provide for the health of the environment, the water and the people. This means proposals will work to sustain the potential of natural and physical resources to meet the needs of future generations, and to safeguard the life-supporting capacity of water and ecosystems.

For these reasons, the objectives of the proposals are considered the most appropriate way to achieve the purpose of the RMA.

In addition, the proposals will not materially change the extent to which existing objectives are the most appropriate way to achieve the purpose of the RMA. Proposed changes will better enable regional councils to implement NPSFM objectives without undermining them. Please refer to [the 2014 section 32 evaluation](#), which evaluated existing NPSFM content relating to Te Mana o te Wai in more detail.

#### **9.5 Examining whether the proposals are the most appropriate way to achieve the objectives**

##### **9.5.1 Alternative options considered**

Alternative options that have been considered are outlined below. Please refer to the [Regulatory Impact Statement](#) for more detailed options analysis.

##### **9.5.1.1 Maintaining the status quo**

Analysis also considered the option of maintaining the status quo, retaining the current reference of Te mana o te Wai in the preamble and the national significance of fresh water part of the NPSFM. While the recognition of Te mana o te Wai has been provided for in earlier stages of regulatory reform, recent submissions indicated that the current status of Te mana o te Wai in the NPSFM is unclear and ambiguous. Many submitters recommended that context for the meaning of Te mana o te Wai and clarification of its status in the NPSFM is necessary for regional councils to implement Te mana o te Wai in their regional policies. This option was therefore not progressed because the status of Te Mana o te Wai would remain unclear and continue to cause uncertainty for regional councils and the community, including iwi.

##### **9.5.2 Efficiency and effectiveness**

The proposal is considered effective. Proposed amendments will give regional councils more explicit direction about what Te mana o te Wai is, and how this can be implemented within the freshwater

management framework set out in the NPSFM. In addition, amendments will give regional councils a clear direction to give effect to the stated objectives.

The proposal is considered efficient because it will achieve the stated objective with limited impacts. Analysis considers the benefit of a purpose statement and overarching objective and policy outweigh the costs by:

- clarifying existing policy intent to increase compliance and reduce debate and litigation
- ensuring the incorporation of Te mana o te Wai in freshwater management
- encouraging the type of engagement with iwi/hapū required to meet the requirements Part D of the NPSFM
- maintaining flexibility for local communities, including tangata whenua, to apply local value systems to the implementation of Te mana o te Wai
- avoiding the costs associated with the current level of uncertainty around the meaning of Te mana o te Wai and the means of implementing this concept.

Changing value descriptions may elevate the values more closely associated with Te Mana o te Wai over other non-compulsory values. This may lead to conflict in communities, but the extent of this as a risk is unknown and will be tested during consultation. Guidance will also provide additional clarity, though it does not carry legal weight.

Because this proposal is merely clarifying existing policy intent, the anticipated impacts are minimal when compared to that which should be occurring under the status quo. However, consultation may uncover additional impacts, or provide further information on impacts that have been identified.

### **9.5.3 Summary of reasons for deciding on the proposals**

The proposal is considered an efficient and effective way to clarify existing policy intent and mitigate the risks associated with uncertainty that exist under the status quo. The proposal will provide context around the meaning of Te mana o te Wai and clear direction about the Governments expectations for implementation. This will ensure regional councils recognise and implement Te mana o te Wai more consistently in freshwater management and planning under the NPSFM.

## **10 Economic wellbeing**

### **10.1 Status quo/problem statement**

New Zealand's economy is reliant on fresh water. It is critical to the success and future of New Zealand's primary sector.

The NPSFM requires regional councils to improve and maximise the efficient use of fresh water (in respect of water allocation) and to consider economic implications when identifying community values in freshwater bodies, establishing freshwater objectives to provide for those values, and setting limits to ensure those freshwater objectives are met.

There is a risk there is insufficient direction to regional councils to consider implications for economic growth before they establish limits to meet freshwater objectives.



## 10.2 What are the proposals?

The proposal to address the above problem is:

Proposal 1. To amend the NPSFM and expand on Objective A2 – to maintain or improve overall water quality – to clearly state that should also provide for economic well-being, including productive economic opportunities, within environmental limits.

Please refer to appendix 2 for the actual text of proposed amendments.

## 10.3 What are the objectives of the proposals?

The purpose of these proposals is to ensure regional councils give adequate consideration to economic impacts when making decisions about resources use in regional planning decisions – specifically, when setting freshwater objectives and limits which will determine the amount of resource use that can occur.

## 10.4 Examining the extent to which the objectives are the most appropriate way to achieve the purpose of the Resource Management Act

The values and attributes regional councils and communities identify, and the freshwater objectives and limits they set, will determine how freshwater resources can be used – and whether it will support economic uses of fresh water like the primary sector.

Adequate consideration of the economic impacts is necessary to ensure regional planning decisions will enable people to provide for their economic well-being through resource use, as is required under the purpose of the RMA. This not intended to supersede other necessary considerations – regional planning must also enable people to provide for their social and cultural well-being while safeguarding the life-supporting capacity of fresh water. Rather, the proposal is intended to ensure regional councils give adequate consideration to all matters required under the purpose of the Act.

For these reasons, the purpose of the proposal is considered an appropriate way to achieve the purpose of the Act.

## 10.5 Examining whether the proposals are the most appropriate way to achieve the objectives

### 10.5.1 Alternative options considered

Analysis also considered maintaining the status quo and producing guidance. These were not considered effective options identified risks (see status quo and problem statement) would persist.

Please refer to the [Regulatory Impact Statement](#) for more detailed analysis of alternative options.

### 10.5.2 Efficiency and effectiveness

The proposal is considered effective because it provides regional councils with an explicit direction to provide for economic wellbeing. This will ensure economic impacts are considered at the outset of discussions about freshwater management.

The proposal is considered efficient because it will achieve the stated objectives with minimal impact. The proposal merely clarifies existing policy intent, and will not impose any additional costs on regional councils or communities when compare to what should be occurring under the status

quo - the NPSFM already requires regional councils to consider the economic implications at all relevant points of the limit-setting process.

Additional consultation is needed to identify the full range of impacts for this proposal.

### **10.5.3 Summary of reasons for deciding on the proposals**

The proposal is considered an effective and efficient way to mitigate the risk that regional councils and communities will not give adequate consideration to economic wellbeing when making decisions about freshwater management. In particular, when following the processes set out in the NPSFM for setting objectives and limits – which will ultimately determine the amount of resource use that can occur, and the amount of economic wellbeing that can be derived from it.

## **Appendix 1: Relevant sections of the Resource Management Act 1991**

### **5 Purpose**

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

### **6 Matters of national importance**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:

(g) the protection of protected customary rights.

### **7 Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) kaitiakitanga:

- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (e) [Repealed]
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

## **8 Treaty of Waitangi**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

## **32 Requirements for preparing and publishing evaluation reports**

(1) An evaluation report required under this Act must—

- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
- (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
  - (i) identifying other reasonably practicable options for achieving the objectives; and
  - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
  - (iii) summarising the reasons for deciding on the provisions; and
- (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

(2) An assessment under subsection (1)(b)(ii) must—

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

(3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—

(a) the provisions and objectives of the amending proposal; and

(b) the objectives of the existing proposal to the extent that those objectives—

(i) are relevant to the objectives of the amending proposal; and

(ii) would remain if the amending proposal were to take effect.

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

(5) The person who must have particular regard to the evaluation report must make the report available for public inspection—

(a) as soon as practicable after the proposal is made (in the case of a standard or regulation);  
or

(b) at the same time as the proposal is publicly notified.

(6) In this section,—

**objectives** means,—

(a) for a proposal that contains or states objectives, those objectives:

(b) for all other proposals, the purpose of the proposal

**proposal** means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

**provisions** means,—

(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

## **11 Appendix 2: Proposed amendments to the National Policy Statement for Freshwater Management**

Refer to Annex 1 in [Clean Water document](#) for proposed amendments to the National Policy Statement for Freshwater Management.