



NPS – Indigenous Biodiversity Submission
WRITEN SUBMISSION TO THE MINISTRY FOR THE ENVIRONMENT
By New Zealand Fish and Game Council
14 March 2020

Introduction

1. Fish & Game welcome the NPS – Indigenous Biodiversity (**NPS-IB**) as an overdue and necessary step in reversing the decline of New Zealand’s biodiversity.
2. New Zealand possesses a unique array of flora and fauna that is irreplaceable. Our environment is our heritage, and yet it is in steady decline. Today, 80 per cent of native birds, 88 per cent of lizards and 100 per cent of frogs are threatened with extinction.
3. Between 1996 and 2012, there was a net loss of approximately 71,000 hectares of indigenous habitat, native forests, areas of lowlands, wetlands and coastal habitats, with human activity the primary driver of this loss.
4. The legislative system to protect New Zealand’s biodiversity is multifaceted and includes the Resource Management Act (RMA) 1991, the Conservation Act 1987, the National Parks Act 1980, and the Reserves Act 1977. These Acts each address distinct, but often overlapping, aspects of New Zealand’s environmental management and biodiversity protection. They are further supplemented by National Policy Statements and National Environmental Statements that sit primarily under the RMA.
5. Collectively these represent the legislative and policy framework by which New Zealand’s indigenous biodiversity is protected, and yet to date they are failing all New Zealanders. The NPS-IB represents a step in the right direction to correct the decline.
6. The intention of this submission is to provide a broad overview of the organisation’s perspective, with submissions from regional Fish and Game councils providing specific examples of the implications of this document in their regions.

Support for NPS-IB

7. Fish & Game broadly supports the NPS-IB and believe that implementing the policy will have wide ranging habitat benefits that will support indigenous and valued introduced biodiversity alike.

8. At a fundamental level, we support the rationale for the draft NPS-IB, in particular the acknowledgement of the deficiencies of the RMA in protecting biodiversity and the impact that this has had on indigenous biodiversity, particularly on private land (both urban and rural) as a result of intensification. A prime example of this is lowland wetland loss, which is ongoing and particularly associated with unconsented pastoral development. Addressing this requires strong national policy, including addressing biodiversity loss on private land, which the NPS-IB provides.
9. We further support the philosophy associated with the whakatauki *Hutia Te Rito*, and specifically the way in which it recognises the inherent integration between humans and our natural environment as well as the often-determinative role that human action plays in biodiversity degradation or conservation.
10. We also see the all land tenure approach to recognising indigenous biodiversity across both public and private land as a critical shift. Currently there is a strong bias in regional plans towards recognising and addressing biodiversity values in publicly held land. To adequately address our biodiversity crisis requires acceptance that there is a communal obligation to care for and protect indigenous biodiversity across all land types and by all landowners and community members – *he waka eke noa*.
11. Finally, we are encouraged to see the adoption of a precautionary approach as set out in cl2.2 Policy 2 and cl3.6, requiring local authorities to take a precautionary approach where the effects of proposed activities on indigenous biodiversity are unknown, uncertain or little understood. This represents a significant step by shifting the onus, when demonstrating that an activity does not have detrimental effects on indigenous biodiversity, on to the party that would benefit from the activity.

Exclusion of aquatic biodiversity

12. Fish & Game note that the NPS-IB explicitly excludes indigenous biodiversity in waterbodies and freshwater ecosystems (cl1.5(1)(b)). Instead, the intention is for the freshwater domain to be addressed in the National Policy Statement for Freshwater Management.
13. Whilst we understand the rationale of this approach, it raises two primary points:
 - a. The NPS-IB functions exclusively as a terrestrial biodiversity policy (with the marine sphere also excluded per cl1.5(1)(a)).
 - b. It is fundamental that the NPS-IB and the biodiversity components of the NPS-FM and the New Zealand Coastal Policy Statement are carefully aligned to provide consistency across differing ecosystems.
14. This alignment is particularly critical given the frequent movement of highly mobile species between these ecosystems. Numerous species Fish and Game manage move freely between freshwater, saltwater and wetland environments either as a part of their breeding cycle or simply as a seasonal migration.
15. Such an approach also seems inconsistent with the intention of the New Zealand Biodiversity Strategy to operate in a Mountains to Ocean capacity, viewing

ecosystems and their connectivity as a whole rather than in isolation. Similarly, this could be seen to contradict the NPS-IB's own Objective 4: 'to improve the integrated management of indigenous biodiversity.'

16. Fish & Game is not opposed to the division of ecosystem domains as set out in the NPS-IB, however we do wish to strongly argue for careful integration between the various biodiversity protection mechanisms.

Terminology and the place of introduced species

17. There is an absence of clear definitions for potentially significant terms in the NPS-IB, such as 'pest animal' and 'exotic species that have become pests'. Given the increasingly rhetoric driven debate about the effects of introduced species on indigenous biodiversity it is critical that these terms are clearly defined.
18. Fish & Game recommend that the NPS-IB includes a definition of 'pest' which limits 'pests' to plant, animal or insect species that are defined as pests by statute or within regional pest management plans.
19. This ensures that the approach taken to 'pest' management is science driven and is not able to be politicised so as to be directed against introduced species generally.
20. Fish & Game further recommend that the NPS IB recognise that:
 - a. Many ecosystems with high biodiversity values are mixed in character, insofar as they support both indigenous and introduced species, including sports fish and game birds.
 - b. Wild and self-sustaining sports fish and game bird populations are highly valued by the community, primarily for their recreational and cultural values. Some of these species are indigenous, but most are introduced, and yet are valued components of New Zealand's biodiversity.

Indigenous vegetation clearance

21. New Zealand is undergoing rapid vegetation clearance, particularly in the South Island high country, which is having correspondingly detrimental effects on sensitive freshwater habitats. These areas provide nationally significant trout and salmon spawning sites, and indigenous galaxiid habitat, as well as wetland habitat for game birds and indigenous wetland birds.
22. The NPS-IB requires territorial authorities to map any significant natural areas of indigenous vegetation or fauna within five years of the commencement date of the policy (cl3.8(1)-(3)). However, as it stands the NPS-IB permits a further five years of effectively unmoderated high-country vegetation clearance, during which we estimate a further 20-25% of the remaining low gradient land in the high country may be cleared.
23. Fish & Game believe there is a need for a backstop to prevent rapid clearance of indigenous vegetation before SNA's are able to be mapped. We propose three options to address this:

- a. Our preference is to include a subclause in clause 3.8 that precludes any indigenous vegetation clearance in the high-country until all SNA's are mapped; or
 - b. To map all 'Converted Pasture' in the South Island High Country. Converted pasture would be defined as grassland that has been converted to intensive pasture by cultivation and/or irrigation. Any clearance outside of this area would require resource consent until all SNA mapping had been carried out; or
 - c. The least preferred option would be to put a much shorter time frame on the establishment of SNAs in the South Island High country, ideally no more than six months following the gazetting of the NPSIB. Like the above option, this could be achieved through a remote desk top mapping exercise and would need the government to invest the resources to make it happen.
24. We further recommend that the definition of 'improved pasture' is amended to reflect the improvements the Timaru District Council and Selwyn District Councils have made to the definition. Indigenous vegetation clearance is currently permitted under district plan rules where it is located in an area of improved pasture. Resultantly, the failure of the definition of improved pasture to recognise indigenous species that exist within that area means there is potential for significant loss in indigenous biodiversity.
25. The definition should be amended to:
- a. '**improved** pasture' means an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed, for livestock grazing, *and where the naturally occurring indigenous species are largely absent.*
26. This issue also represents an instance where it is impossible to isolate the impacts of activities to a specific ecosystem, as terrestrial vegetation clearance is having a demonstrable impact upon freshwater ecosystems. Again, this emphasises the need for close co-ordination between the relevant policy statements.
27. Fish & Game believe that there are issues associated with vegetation clearance being managed by territorial authorities. To date territorial authorities have failed to adequately manage vegetation clearance, and it is likely that a contributing factor to this is the division of consents between regional councils (responsible for land use consents) and territorial authorities (responsible for vegetation clearance consents). Either vegetation clearance needs to be managed by regional councils, where appropriate consents can be built into the land use consenting process or gaining consent for vegetation clearance from territorial authorities needs to be a condition of being granted land use consent from regional councils.
28. Finally, we also have concerns about the resourcing of district councils, and the internal biodiversity expertise within them as compared with regional councils, especially if district councils are to be undertaking increased monitoring and

reporting. Whilst it is likely that there will be opposition to aspects of the NPS-IB from district councils on the basis of cost, it needs to be acknowledged that district and city councils, as territorial authorities, have been required to maintain 'indigenous biological diversity' since the inception of the RMA, per s31(1)(b)(iii). Many of the most resource intensive components of the NPS-IB (such as mapping SNA's) are already obligations of councils under the RMA; the NPS-IB simply sets finite time periods by which they must achieve them.

Biodiversity off-setting and compensation

29. The concept of biodiversity off-setting is inherently problematic. It implies that it is still acceptable to destroy indigenous biodiversity and it requires the assessment of often very different biodiversity values, which cannot be done objectively. As such it creates a highly discretionary potential that is not adequately accounted for in the NPS-IB.
30. There are situations where residual impacts cannot be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected. In situations where this is likely to occur, an offset would not be appropriate because the risk of net biodiversity loss is unacceptable. The consequences of an offset failure may be unacceptable if it will result in a significant or irreversible impact on irreplaceable and vulnerable biodiversity.
31. Despite the acceptance of offsets/compensation as a matter of law, the practice of environmental compensation in New Zealand remains ad hoc and variable and needs to be put on a sounder footing. A far more robust regime, learning from best international practice needs to be developed in New Zealand if environmental compensation is to be used to protect significant biodiversity and landscape values. Pilgrim et al. (2013) propose a global approach that addresses each of these values in turn, cumulating in a burden of proof framework to guide a developer's assessment of whether no net loss associated with the significant residual effects of their project can actually be achieved with a biodiversity offset.
32. Fish & Game recommend that the use of biodiversity off-setting is restricted from what is currently proposed in the NPS-IB.

Reconsideration of class of land clauses 3.16 and 3.17

33. Fish & Game believe that there needs to be a reconsideration of the class of land (on which wetlands occur) that clauses 3.16 and 3.17 apply to. Failing to do so may ultimately prove to be an impediment to wetland habitat restoration and could potentially conflict with Fish & Game's statutory functions.
34. Broadly, wetlands are excluded from the NPS-IB by cl1.5(1)(b), however cl1.5(2)(a) states that the provisions relating to restoration and enhancement do apply to wetlands.

35. In most instances, particularly on private land, this will have a substantial benefit to indigenous biodiversity by creating a policy mandate to restore and enhance wetlands as well as increase their indigenous vegetation cover.
36. However, land set aside as Wildlife Management Reserves under the Wildlife or Reserves Act are there for just that purpose; to enhance the values for wildlife. Accordingly, the use of machinery that could potentially prove detrimental to flora is permitted because these areas are managed for specific biodiversity values.
37. Further, wetlands on publicly held conservation land are already typically subject to management and restoration schemes, and to mandate their inclusion in cl3.16 and 3.17 will result in a duplication of protection that will both cause administrative difficulties as well as prove a barrier to restoration and enhancement and the carrying out of Fish & Game's statutory function.
38. Per s26S(3) all land, or interest in land, that Fish & Game acquires may only be used for the management of sports fish and game and the protection of their habitat.
39. Fish & Game recommend the inclusion of a subclause in both 3.16 and 3.17 that states:
 - a. 'The above provisions do not apply to wetlands that are already subject to a statutory management and protection provision.'
40. Alternatively, we recommend that 3.16(6) does not apply to wetlands held or managed by Fish & Game Councils under s26S.

Conclusion

41. Fish & Game are pleased to broadly support the NPS-IB, but make the following recommendations:
 - a. The NPS-IB, as effectively a terrestrial biodiversity policy, must be carefully aligned with the remaining biodiversity mechanisms such as the NPS-FM, New Zealand Coastal Policy Statement and the New Zealand Biodiversity Strategy in order to adequately address the inter-connectivity of these environments and the flora and fauna within them.
 - b. 'Pest' needs to be defined within the document and linked to those species that are defined as pests by statute or regional council pest management strategies.
 - c. There needs to be a moratorium on indigenous vegetation clearance, particularly in the high country, until territorial authorities have had the opportunity to map significant natural areas.
 - d. The definition of improved pasture should be amended to require the absence of naturally occurring indigenous species.
 - e. Either regional councils should manage vegetation clearance or there should be a clear process link between the land use consent from regional councils and vegetation clearance consents from district councils.
 - f. The use of biodiversity offsetting should be reconsidered and restricted from what is currently in the NPS-IB.

- g. Categories of land on which wetlands occur that are subject to statutory management obligations and schemes should be excluded from clauses 3.16 and 3.17.

About Fish & Game

- 42. Fish & Game is a statutory entity established by Parliament under the Conservation Act 1987 to manage, maintain and enhance sports fish and gamebirds and their habitats throughout the country. This model is unique in the world as it requires Fish & Game to manage a public resource for the benefit of all New Zealanders.
- 43. Fish & Game directly represents 150,000 licence holders who value the cultural traditions of trout fishing and game bird hunting, the skills associated with these pursuits and the recreational opportunities and time outside they afford.
- 44. As well as the Conservation Act, Fish & Game has specific responsibilities under several other Acts of Parliament, including the Wildlife, Resource Management, Walking Access, Public Finance and Overseas Investment Acts.
- 45. Fish & Game is made up of the national body (New Zealand Fish & Game Council) and 12 regional Fish & Game councils. Each council reports to the Conservation Minister and provides an annual report to Parliament.
- 46. Fish & Game receives no public money or financial support from the government. All funding is provided by freshwater anglers and gamebird hunters and totals around \$11 million a year.
- 47. Fish & Game's staff are committed, professional and experts in their fields. Its scientists are graduates of a range of relevant disciplines and many hold qualifications to doctorate level.
- 48. Parliament has given Fish & Game the responsibility to maintain, enhance and protect a number of species and the habitat they live in. By fulfilling that legal obligation, Fish & Game has become one of this country's leading environmental organisations, in particular regarding rivers, lakes and wetlands.
- 49. The list of species for which Fish & Game has a statutory mandate to manage is as follows:
 - a. Fish:
 - i. Brown trout.
 - ii. Rainbow trout.
 - iii. Brook trout.
 - iv. Tiger trout (Eastern Fish and Game Council).

- v. Lake trout (Lake Pearson – North Canterbury Fish and Game Council).
- vi. Atlantic salmon (Lakes Te Anau and Manapouri – Southland Fish and Game Council).
- vii. Chinook salmon.
- viii. Sockeye salmon.
- ix. Perch.
- x. Tench.
- xi. Rudd (Auckland/Waikato Fish and Game Council only).

b. Game:

- i. Black Swan.
- ii. Grey duck.
- iii. Mallard duck.
- iv. Paradise duck.
- v. Shoveler duck.
- vi. Pukeko.
- vii. Chukar.
- viii. Red legged partridge.
- ix. Pheasant.
- x. Australian or brown quail.
- xi. Californian quail.
- xii. Virginian or bobwhite quail.

50. But these are not the only species that Fish & Game protects with its dedicated environmental work. Its defence and restoration of rivers, lakes and wetlands, and the habitat they provide, ensures protection for endangered indigenous species like bittern, fernbirds, marsh and spotless crane, mudfish, eels and galaxiids.

51. Its advocacy for clean water ensures the protection of the environment indigenous fish and birds rely on. When other agencies were not prepared to make a stand to protect the Nevis River's Gollum galaxiid, or stop the Tukituki River being destroyed by dam developers, it was Fish & Game's judicial advocacy funded by licence holders' money that secured the best environmental outcome for both sports fish and indigenous freshwater species.

52. Throughout the country, Fish & Game devotes time, resources and funds to endeavour to ensure local government properly protects waterways and complies with the Resource Management Act. It is responsible for securing most Water Conservation Orders – 12 out of 15 - to better protect our valuable rivers and lakes and played an active role in obtaining the other three.

53. All this work plays a vital role in protecting indigenous and introduced species and their habitat, and Fish & Game strongly supports Parliament's efforts to provide better and long overdue protection for New Zealand's biodiversity.