

ECOLOGICAL SIGNIFICANCE CRITERIA IN THE PROPOSED NPSIB



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ECOLOGICAL SIGNIFICANCE CRITERIA IN THE PROPOSED NPSIB

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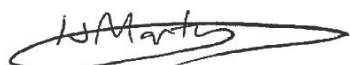
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1. INTRODUCTION

The Royal Forest and Bird Protection Society Inc. (Forest and Bird) require advice on the ecological significance criteria, and the framework for these criteria, in the proposed National Policy Statement on Indigenous Biodiversity (NPSIB). Specifically, Forest and Bird require advice on:

- Whether the criteria (excluding representativeness) are ecologically appropriate.
- Whether the criteria (excluding representativeness) are consistent with criteria sets in second generation regional plans.
- Whether the criteria (excluding representativeness) are fit for purpose in the West Coast Region, or if they would capture too much?

These matters are addressed in this report.

2. FRAMEWORK FOR THE NPSIB CRITERIA

Criteria for the identification of significant indigenous vegetation and significant habitat of indigenous fauna are provided in Appendix 1 of the proposed NPSIB. Attributes under four criteria - representativeness, diversity and pattern, rarity and distinctiveness, and ecological context - are to be used to assess significance, and at least one of these attributes must be present for a site to qualify as being significant.

The 'one or more' threshold is typical of how significance is assessed across most regions and districts in New Zealand, i.e. that have ecological criteria.

It is noted in the NPSIB that the context for any assessment of a significant natural area is the relevant ecological district and, as part of the rarity assessment, the land environment within which it is located.

While the ecological district scale is appropriate for the assessment of criteria such as representativeness and aspects of rarity and distinctiveness, the national scale is also appropriate. For example, species threat classifications are assessed at a national scale in New Zealand, and representativeness can also be assessed at the national scale and within ecological regions.

3. ARE THE NPSIB CRITERIA ECOLOGICALLY APPROPRIATE?

3.1 Representativeness

As specific advice on the NSPIB representativeness criterion was not sought we make no further comment on representativeness.

3.2 Diversity and pattern

The third key assessment principle of diversity notes that those areas with a wider range of species, habitats, communities, or wider environmental variation due to ecotones, gradients, and sequences, rate more highly. This is appropriate.

The assessment attributes for diversity are:

Significant Natural Areas that qualify under this criterion will have at least one of the following attributes:

- (a) *diversity of indigenous species, vegetation, habitats of indigenous fauna or communities in the context of the ecological district.*
- (b) *presence of ecotones, complete or partial gradients or sequences.*

Attribute (a) does not specify that a higher diversity, or the expected diversity (for the vegetation/habitat type), is required to trigger significance. Every natural area has a diversity of indigenous species, therefore all indigenous habitats would be assessed as being significant under the attribute in its current form. Similarly, attribute (b) requires only the presence of ecotones or complete or partial gradients or sequences. An ecotone is a sharp boundary between two different vegetation types (e.g. Lloyd *et al.* 2000) and thus is a truncated sequence. Natural ecotones typically occur, for example, at the upper and lower limits of beech forest. Anthropogenic ecotones should be excluded from this assessment. Generally, relatively intact vegetation gradients and sequences have higher value for diversity, but under this attribute, any partial gradient would also be assessed as being significant. In this case, only the relatively intact or less modified gradients and sequences should be captured.

3.3 Rarity and distinctiveness

Rarity and distinctiveness appropriately refers to the presence or rare or distinctive indigenous taxa, habitats of indigenous fauna, indigenous vegetation, or ecosystems.

Key assessment principle C3 notes that the significance of nationally-listed threatened and at risk species should not be downgraded just because they are common within a region or ecological district, but this is precisely what Appendix 2 of the proposed NPSIB does with respect to mānuka (*Leptospermum scoparium*) and kānuka (*Kunzea* spp). This ‘downgrading’ is an example of an informed judgement and should be provided for.

The proposed NSPIB attributes for Rarity and Distinctiveness are:

Significant Natural Areas that qualify under this criterion will have at least one of the following:

- (a) *provides habitat for an indigenous species that is listed as Threatened or At-risk in the New Zealand Threat Classification System lists:*
- (b) *an indigenous vegetation type or an indigenous species that is uncommon within the region or ecological district:*
- (c) *an indigenous species or plant community at or near its distributional limit:*
- (d) *indigenous vegetation that has been reduced to less than 30 per cent of its former extent in the ecological district, region or land environment:*
- (e) *indigenous vegetation or habitat of indigenous fauna occurring on sand dunes:*
- (f) *indigenous vegetation or habitat of indigenous fauna occurring on naturally uncommon ecosystems:*

- (g) *the type locality of an indigenous species:*
- (h) *the presence of a distinctive assemblage or community of indigenous species:*
- (i) *the presence of a special ecological or scientific feature.*

In general, the matters specified within these attributes are appropriate, but the thresholds in the first two criteria are relatively low and would result in large areas being assessed as being significant, such as all South Island vegetation containing matagouri (*Discaria toumatou*; At Risk-Declining). All At Risk taxa are lumped together in the first attribute, but the categories, and status, of At Risk-Declining, At Risk-Recovering, and At Risk-Relict taxa are significantly more threatened than the status of taxa classified as At Risk-Naturally Uncommon.

The criteria provide no guidance in relation to highly mobile Threatened and At Risk fauna, whereas Section 3.15 of the proposed NPSIB specifies requirements for councils to address highly mobile fauna. It is appropriate that the presence of low-mobility species with a status of At Risk-Declining, At Risk-Relict, or At Risk-Recovering should generally trigger significance, because populations of these species depend entirely on their habitats being maintained. The habitats of highly mobile Threatened and At Risk fauna are probably best dealt with as important habitats under the Ecological Context criterion.

As threat status is assigned subjectively by expert panels, where threat rankings are incorporated into criteria, there should always be provision for informed evidence-based judgments to arrive at alternative conclusions.

3.4 Ecological context

The attributes for Ecological Context are:

Significant Natural Areas that qualify under this criterion will have at least one of the following attributes:

- (a) *moderate to large size and compact shape, in the context of the ecological district:*
- (b) *well-buffered relative to remaining habitats in the ecological district:*
- (c) *provides a full or partial buffer to or link between, other important habitat(s) of indigenous fauna or significant natural area(s):*
- (d) *important for the natural functioning of an ecosystem relative to remaining habitats in the ecological district:*
- (e) *supports large numbers of indigenous fauna:*
- (f) *provides critical habitat for indigenous fauna, including feeding, breeding, refuge or resting habitat.*

These attributes are comprehensive and cover an ecologically-appropriate range of ecological context matters. The thresholds for significance require informed judgement and provide guidance for scale and importance. Just one change should be made: the word ‘critical’ in attribute (f) should be replaced by ‘important’. This is an important attribute and warrants a lower threshold for significance than ‘critical’.

4. ARE THE NPSIB CRITERIA CONSISTENT WITH SIGNIFICANCE CRITERIA IN SECOND GENERATION PLANS?

The significance attributes listed in Section 3 above have broad coverage and few gaps. They are generally consistent with the significance criteria in second generation plans such as the Canterbury RPS¹, the Southland RPS, the Auckland RPS, the Proposed Marlborough Environment Plan, and with the advanced evaluation that informed the significance criteria set for wetlands in the West Coast Region.

There are some differences however:

- There is no specific focus on wetlands, which second generation plans commonly have. We note that the scope of the NPSIB explicitly excludes indigenous biodiversity in waterbodies and freshwater ecosystems. This varies from current practice where wetlands are very often defined as SNAs, and included in SNAs along with terrestrial vegetation and habitats.
- Furthermore, all second generation plans use a 20% threshold for the evaluation of rarity of indigenous vegetation, i.e. indigenous vegetation that has been reduced to less than 20% of its original extent. The corresponding NPSIB criterion has a 30% threshold, and thus would result in a greater number of sites being assessed to be significant. This is important, because retaining 30% of an indigenous vegetation type would enable significantly greater ecological functioning of that type than if only 20% were retained.

5. ARE THE NPSIB CRITERIA APPROPRIATE FOR THE WEST COAST REGION?

The NPSIB criteria are appropriate for all areas of New Zealand, including the West Coast Region.

It is noted that the West Coast Region already has advanced criteria for the identification of significant wetlands, and these were developed as part of a robust process that was tested in the Environment Court and the High Court. Furthermore, the West Coast Region has a very small proportion (2.3%) of its area covered by one of the five 'threatened' environments, compared to a national mean for regions of 45% (Price and Briggs 2008). Thus the proposed NSPIB Rarity attribute (d), relating to land environments that have less than 30% of their original cover remaining, will have little effect in the West Coast Region. Much of the significant indigenous vegetation in West Coast Region will be located in formally-protected conservation land, but remaining lowland West Coast ecosystems are largely on unprotected land, and there are many sites that warrant recognition and protection in these lowland areas.

¹ Regional Policy Statement.

6. CONCLUSIONS

Ecological significance criteria in the proposed NPSIB are mostly sound. At Risk species are treated similarly under the Rarity criterion, which also does not take account of species that differ in mobility. Minor additional changes would improve the criteria set. The criteria and their thresholds are broadly similar to those contained in operative second generation regional plans, but a lower threshold is used in the NPSIB criteria for the extent of reduced vegetation and habitat, which is positive for retaining greater ecosystem function. The NPSIB explicitly excludes wetlands from coverage by the criteria, which is at variance with current practice, under which wetlands are routinely assessed as significant. If the refinements suggested above are made, the NPSIB criteria would be fit for purpose for application throughout New Zealand, including the West Coast Region.

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Forest & Bird

TE REO O TE TAIAO | *Giving Nature a Voice*

SUBMISSION ON THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

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13 March 2020

Introduction

1. The Royal Forest & Bird Protection Society of New Zealand has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.
2. Forest & Bird was a member of the Biodiversity Collaborative Group that collaborated to produce a draft National Policy Statement on Indigenous Biodiversity.
3. It is a key participant in district and regional planning and consenting decisions relating to indigenous biodiversity across New Zealand. It is a staunch defender of RMA requirements to sustain the life-supporting capacity of ecosystems, maintain biodiversity and protect significant indigenous vegetation and significant habitat of indigenous fauna.
4. In addition, it has over 100,000 members and supporters who are passionate about enhancing, restoring and protecting nature in rural and urban areas throughout the country. Examples of current and former projects include many decades of Kapiti Island revegetation, "Ark in the Park" open sanctuary project in the Waitakere Ranges in partnership with Auckland Council, and restoration of at risk ecosystems such as saltmarsh along the banks of the Heathcote/Opawaho river in Christchurch.

5. Forest & Bird largely supports the proposed National Policy Statement on Indigenous Biodiversity. It relies on the Biodiversity Collaborative Group's Report,¹ which contains the reasoning for the proposed policies and evidence relied on. Unless otherwise stated, Forest & Bird supports the draft NPS, for the reasons set out in the BCG's Report. This submission provides further information to support the policy framework proposed by the Biodiversity Collaborative Group and comments on areas of disagreement or where changes have been made by Government.

Executive Summary

International obligations and the New Zealand Biodiversity Strategy

6. The National Policy Statement supports New Zealand's implementation of the Convention on Biological Diversity. In order to implement the Ramsar Convention, the National Policy Statement should require protection of wetland habitat. The New Zealand Biodiversity Strategy 2000-2020 has not been effective in achieving its goal of net gain in the extent and condition of natural habitats and ecosystems important for indigenous biodiversity. New Zealand's approach to habitat protection must improve, in order to avoid another missed goal in 20 years' time. The NPSIB is a key tool for implementation of Te Koiora o te Koiora – the New Zealand Biodiversity Strategy 2020.

The role of national policy and the need for a National Policy Statement on Indigenous Biodiversity

7. It is essential that the Government progresses this National Policy Statement to operative status, and continues to support, monitor and audit its implementation after that. National direction is needed to address biodiversity-related issues that are re-litigated in planning processes across the country. National direction can also raise the bar in those regions and districts where biodiversity loss is still occurring and is not adequately controlled by plans. Habitat protection on private land is essential to halt biodiversity loss. The idea that regions or districts with a large proportion of public conservation land do not need to protect habitat on private land is a myth. Forest & Bird strongly opposes a differentiated approach to application of the National Policy Statement across New Zealand.

The Biodiversity Collaborative Group

8. The Biodiversity Collaborative Group's process was challenging, but extremely positive. By taking time to build and understand a shared evidence base (including both technical and social considerations) and understand each others' perspectives, stakeholders were able to coalesce on a policy direction for indigenous biodiversity. It is important that the BCG's recommendations are seen as a package because they involved careful compromise. The BCG's recommendations on complementary and supporting measures are also very important and should be progressed.

Application

¹ Indigenous Biodiversity (Land and Freshwater) Stakeholder Trust, Report of the Biodiversity Collaborative Group, October 2018

9. Forest & Bird accepts that the NPSIB will not apply to the coastal marine area, but seeks that once this NPS is operative, the Government moves on to review marine biodiversity policies and regulation. The direction that the NZCPS prevails in the event of conflict is supported.
10. The exclusion of indigenous biodiversity in water bodies and freshwater ecosystems as defined in the National Policy Statement for Freshwater Management 2019 is not supported. The exclusion results in a policy gap for wetlands, freshwater biodiversity and braided river ecosystems and land-based species that use freshwater ecosystems.

Fundamental Concepts

11. Forest & Bird strongly supports hutia te rito as a fundamental concept, because it recognises the reciprocity of the human-nature relationship. Specificity as to what maintenance of biodiversity entails, and a clause describing what are adverse effects on indigenous biodiversity (in a non-exclusive way), are also supported.

Objectives

12. An objective for protection of significant indigenous vegetation and significant habitat of indigenous fauna is lacking and should be included as a matter of national importance. A rewording of Objective 6 is proposed. The objectives are otherwise supported.

Tangata whenua and the Treaty

13. The National Policy Statement should implement RMA provisions relating to the Treaty (partnership, protection of taonga, and participation), kaitiakitanga and the relationship of māori with their taonga. The BCG intended its draft NPS to effectively implement those considerations and to respond to relevant parts of the Wai 262 report. Others will be better placed to comment on whether these goals are achieved.

Hutia te Rito

14. Forest & Bird supports provision for implementation of hutia te rito.

Climate change

15. Some adaptation to climate change is possible, and unless adaptation is planned for and implemented, the remainder of the National Policy Statement is futile. Clause 3.5 is therefore supported in part but should not be limited to a planning consideration.

Precautionary approach

16. Direction to take a precautionary approach towards proposed activities where effects on biodiversity are uncertain, unknown or little understood but potentially significantly adverse is supported. Additional guidance on what constitutes a precautionary approach would help to make this direction more certain.

Significant indigenous vegetation and significant habitat of indigenous fauna

17. A direction to identify areas of significant indigenous vegetation and significant habitat of indigenous fauna is strongly supported. Identification means protection of SNAs,

as required by s 6(c), is far more likely to be achieved. A process for fair, transparent and equitable SNA identification is likely to assist in effective identification.

18. The proposed criteria in Appendix 1 are supported with minor amendments. The criteria are appropriate for all of New Zealand including the West Coast.
19. Public conservation land should be deemed to be SNA unless shown not to be. Many ecologically destructive activities are proposed on conservation land: including 14 new mines since the Government's "no new mines" announcement.
20. A direct insertion policy is warranted to prevent a clearance goldrush prior to SNA identification.

Effects assessments

21. The effects assessment policy is essential to improve practice in this area. It is supported with amendments.

Effects management

22. The requirement in Clause 3.9(1) to avoid particular adverse effects on SNAs is well supported by evidence. Application of the effects management hierarchy for other effects is consistent with best practice, but Councils should retain a discretion to require more stringent effects management in appropriate circumstances. The mineral and aggregate extraction exemption is too broadly framed: there is no justification for enabling all farm and forestry quarries and activities like thermal coal extraction to have adverse effects on SNAs when other activities with far higher social and economic benefits cannot have such effects. The NPS should not provide a generic exemption for activities that have a social or economic benefit, as may be sought by other submitters. Codified biodiversity offsetting principles are supported, as set out in Appendix 3 but with an amendment to the "limits to offsetting" principle. Compensation should only be provided for within limits if at all.
23. A specific approach for indigenous biodiversity within plantation forestry (i.e. within the exotic conifer area itself) is supported, where the goal should be to manage plantation forestry activities so that the habitat for threatened or at risk species at a site is maintained, and enhanced where possible, over the long term; and threatened or at risk species populations are not reduced due to forestry activities.
24. Forest & Bird supports the recognition in clause 3.13 that maintenance of biodiversity beyond identified SNAs is necessary.
25. The wording of "improved pasture" policies is critical from a biodiversity conservation perspective because there have been instances where improved pasture permitted activity rules have allowed clearance of large areas of dryland vegetation and other important ecosystems. Forest & Bird continues to support the intent of the improved pasture policy but considers that has lost some of its intended meaning through its translation into the MFE draft. Some additional changes are proposed to increase clarity and ensure it achieves its intended outcome.

Highly mobile fauna

26. Protecting SNAs is not enough, by itself, to ensure that highly mobile fauna species persist across their natural range. The highly mobile fauna policy presents a critical opportunity to consider the needs of mobile native animals. This policy's application must not be limited to bats (which we understand Government to be considering), as it is also essential for the long-term survival other highly mobile threatened fauna such as tāiko (Westland Black Petrel).

Restoration and enhancement

27. As long as protection of existing habitat is recognised to be the priority, Forest & Bird is excited to see recognition in the draft NPS that restoration and enhancement are also important components of biodiversity maintenance. A more strategic approach to co-ordinating and achieving outcomes through restoration is also welcomed. The regulatory and non-regulatory balance in the restoration provisions has been carefully calibrated (almost exclusively towards non-regulatory approaches). Concerns from some submitters that the NPS imposes regulatory requirements on farmers to manage pests and weeds are not well-founded.
28. Restoration targets for indigenous vegetation cover are justified for the ecological benefits this will bring, as well as the social wellbeing benefits and ecosystem services this will provide. The targets deliberately differentiate between urban areas and rural areas. The 10 per cent target does not (and should not) apply to individual land holdings. Neither is it a "clear down to" target. The requirement for, purpose and contents of Regional Biodiversity Strategies is supported.

Monitoring

29. The requirement for state of the environment monitoring specific to biodiversity is supported. An additional requirement to monitor the effectiveness of measures to address impacts on biodiversity should also be incorporated.

DISCUSSION

International obligations and the New Zealand Biodiversity Strategy

30. The Convention on Biological Diversity (CBD) is an international, legally binding treaty with three main goals: conservation of biodiversity; sustainable use of biodiversity; and fair and equitable sharing of the benefits arising from the use of genetic resources.² Contracting Parties have undertaken to develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity and which integrate conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.³ A National Policy Statement on Indigenous Biodiversity is necessary to achieve the CBD goals.
31. New Zealand is also a contracting party to the Ramsar Convention. Forest & Bird is one of two National CEPA Focal Points assigned to help coordinate national implementation of the Convention. The Convention provides for the protection of wetlands of international importance and the "wise use" of all wetlands. "Wise use"

² Convention on Biological Diversity, Art. 1: Objectives.

³ Art. 6: General Measures for Conservation and Sustainable Use

of wetlands is “the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development” where “ecological character” is “the combination of the ecosystem components, processes and benefits/services that characterise the wetland at a given point in time.”⁴ Forest & Bird considers that the National Policy Statement would better give effect to the Convention if it applied to wetland protection (not only their restoration).

32. The vision of the New Zealand Biodiversity Strategy 2000-2020 is that:

New Zealanders value and better understand biodiversity;

We all work together to protect, sustain and restore our biodiversity, and enjoy and share in its benefits, as the foundation of a sustainable economy and society;

Iwi and hapu as kaitiaki are active partners in managing biodiversity;

The full range of New Zealand's indigenous ecosystems and species thrive from the mountains to the ocean depths; and

The genetic resources of our important introduced species are secure, and in turn support our indigenous biodiversity.

33. The desired outcome for 2020 was that:

A net gain has been made in the extent and condition of natural habitats and ecosystems important for indigenous biodiversity. Scarce and fragmented habitats (such as lowland forests and grasslands, wetlands and dunelands) have increased in area and are in better ecological health due to improved connections and the sustainable management of surrounding areas. Some modified habitats are restored.

A more representative range of natural habitats and ecosystems is secure in public ownership, complemented by an increase in privately owned and managed protected natural areas. Increased and more effective pest management, coupled with species recovery, has restored ecological processes in these areas. No new pest species have become established.

No further human-induced extinctions have occurred. Populations of all indigenous species and subspecies are sustained in natural or semi-natural habitats, and their genetic diversity is maintained. Fewer threatened species require active recovery programmes and ex situ management.

Threats to indigenous biodiversity from the activities of people are avoided or mitigated through sustainable use regimes and the sustainable management of production landscapes and urban areas.

34. While significant advances in pest control have been achieved over the last 20 years, habitat continues to be reduced.⁵ The Strategy has not been effective. New Zealand's approach to habitat protection (or, in many cases, lack of protection) of the last 20 years must improve, in order to avoid another missed goal in 20 years' time.

⁴ A definition of the "wise use" concept was adopted by COP3 (1987) and an updated definition was adopted in 2005 by COP9.

⁵ Native vegetation cover has continued to decline, even in recent years – being converted to land cover like exotic grassland (pasture), plantation forestry, and urban areas. Between 1996 and 2012 there was a 1.3 percent loss of tussock grassland (reduced by 31,000 hectares), a 1.3 percent loss of indigenous shrubland (reduced by 24,000 hectares), and a 0.2 percent loss of native forests (reduced by 16,000 hectares): Environment Aotearoa, page 34.

35. The NPSIB is a key tool for implementation of Te Koiora o te Koiora – the New Zealand Biodiversity Strategy 2020.

The role of national policy and the need for a National Policy Statement on Indigenous Biodiversity

36. National Policy Statements are RMA instruments intended to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the Act. Maintaining New Zealand's unique biodiversity is clearly a matter of national significance, and it is deeply concerning that a biodiversity-related National Policy Statement has not been produced in the almost three decades since the RMA's enactment. It is essential that the Government progresses this National Policy Statement to be fully operative, and continues to support, monitor and audit its implementation after that.
37. Biodiversity-related policies and rules are very frequently the subject of litigation around New Zealand. Issues that have proved most contentious include identification of significant indigenous vegetation and significant habitat of indigenous fauna (including identification criteria), management of the effects of human activity on those areas including activities in modified environments such as "improved pasture" maintenance, the place of biodiversity offsetting, and key definitions such as "indigenous vegetation", "vegetation clearance", and "wetland". Those issues could be largely resolved through national direction, which would be more efficient and less costly than reconsidering these issues in every district and region. At the same time, national direction can raise the bar in those regions and districts where biodiversity loss is still occurring and is not adequately controlled by plans.
38. Although a National Policy Statement may apply differently in different parts of New Zealand,⁶ none of the evidence reviewed by the Biodiversity Collaborative Group supported distinguishing between regions of New Zealand. There is a perception that regions or districts with a large proportion of public conservation land do not need to protect habitat on private land. This is a myth. Protecting biodiversity on public conservation land alone will still result in biodiversity loss. Much of New Zealand's rare and threatened native biodiversity is found on private land – in fact, some species are now only found on private land.⁷ In 2007, when the Government's National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land was released, New Zealand had about 14 million hectares or around half of its original native vegetation left, of which about 8.2 million hectares was legally protected. The remaining 5.8 million hectares is scattered across the country with no formal protection.
39. There are many examples of ongoing loss of indigenous habitat on non-conservation land. Indigenous grassland in inland South Island areas (mainly Mackenzie, Waitaki and Central Otago districts) was reduced by a massive 70,200 ha between 1990 and 2008 as a result of conversion to farmland or forestry. Almost two-thirds of that conversion occurred in threatened environments with less than 30% of indigenous

⁶ Section 45A(3)

⁷ Ministry for the Environment, Department of Conservation *Protecting our Places: Introducing the National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land* April 2007

cover remaining.⁸ Most of that conversion occurred on private or Crown pastoral land.

40. Critically important ecosystems are being lost in regions with high proportions of conservation land. For example, West Coast and Southland both contain large areas of public conservation land, and were two of four regions⁹ that saw the greatest number of wetlands lost or declining between 2001 and 2016.¹⁰ The West Coast also cleared more indigenous native forest (1343 ha) than any other region between 2012 and 2018, converting 383 ha into mines and dumps, and 590 ha into pasture.¹¹
41. Forest & Bird strongly opposes any exceptions or differentiated approaches to the application of the National Policy Statement across New Zealand.

The Biodiversity Collaborative Group

42. Forest & Bird was a member of the Biodiversity Collaborative Group that collaborated to produce the draft National Policy Statement on Indigenous Biodiversity that has been used as the basis for the Government's consultation draft. This was a challenging, but extremely positive process. By taking time to build and understand a shared evidence base (including both technical and social considerations) and understand each others' perspectives, stakeholders were able to coalesce on a policy direction for indigenous biodiversity.
43. The value of that coalescence should not be taken lightly. The BCG's policy framework is the result of careful agreement and compromise, with a sound evidentiary underpinning. All stakeholders believed that it is critical that the BCG's proposals were taken forward as a package.
44. Just as important are the recommendations in the BCG's Complementary and Supporting Measures report. As the name suggests, many of those measures are intended to support successful implementation of the National Policy Statement and help it to land well with land owners and managers. Of particular importance are supporting measures designed to ease the implementation burden on local authorities, including assistance with SNA identification, and to enable landowners and communities to actively protect nature, including support with fencing, rates relief for protected areas, and predator control funding.
45. Other measures are complementary: they sit outside the scope of a National Policy Statement but, based on the evidence the BCG received, appeared essential to ensure biodiversity loss is halted. For Forest & Bird, some of the key recommendations were to:

⁸ Weeks ES, Walker S, Dymond JR, Shepherd JD, Clarkson BD 2013. *Patterns of past and recent conversion of indigenous grasslands in the South Island, New Zealand*. New Zealand Journal of Ecology 37: 127-138.

⁹ The other two regions are Canterbury and Auckland.

¹⁰ Environment Aotearoa, page 34.

¹¹ Manaaki Whenua Landcare Research Land Cover Database, Version 5.0, released in January 2020 and reproduced under creative commons license 4.0 - <https://lris.scinfo.org.nz/layer/104400-lcdb-v50-land-cover-database-version-50-mainland-new-zealand/>

- a. Increase the profile of indigenous biodiversity within local and central government.¹²
 - b. Continue the Department of Conservation's existing work programmes and support increased efforts.¹³
 - c. Improve monitoring, information and knowledge.¹⁴
 - d. Align institutional frameworks, policies and regulatory tools¹⁵ - particularly the 1 Billion Trees programme, the National Environmental Standard for Plantation Forestry, the Biosecurity Act, and law reform relating to urban tree protection rules.
 - e. Improvements (through enhanced commitment to and resourcing of) compliance, monitoring and enforcement.¹⁶
46. Forest & Bird hopes that the government will appreciate the importance of, and continue to progress, those recommendations.

Application

Coastal marine area

47. Forest & Bird understands that the coastal marine area may require a tailored approach and that policy applying to marine biodiversity involves a different range of stakeholders. It seeks that once this NPS is operative, the Government moves on to review marine biodiversity policies and regulation. Marine biodiversity is reduced and parts of the seabed are profoundly modified.¹⁷ The way we fish and the amount we catch (both commercially and recreationally), along with land based impacts and other activities in the marine environment are unsustainable. This is so even in locations where efforts have been made to maintain environmental quality. The State of our Gulf 2020 report reveals little has been achieved in keeping the area sustainable since the marine park was established 20 years ago. Improvements are urgently required.

Freshwater ecosystems

48. Forest & Bird does not agree with the exclusion of indigenous biodiversity in water bodies and freshwater ecosystems as defined in the National Policy Statement for Freshwater Management 2019. The exclusion of wetlands from the NPSIB will result in anomalous outcomes and a lack of integrated wetland management.
49. The proposed NPSFM and NESFM do not comprehensively address protection of freshwater biodiversity. The NPSFM requires councils to identify the location of habitats of Threatened species only.¹⁸ At the minimum, habitats of at risk species

¹² BCG Report, page 90

¹³ Page 94

¹⁴ Page 103

¹⁵ Page 109

¹⁶ Page 122

¹⁷ Environment Aotearoa, page 83.

¹⁸ Clause 3.6(3)

should be identified, and it would be preferable to apply ecological significance criteria that encompass considerations other than rarity.

50. New provisions for wetland protection are less stringent than the policy framework proposed by the BCG for wetlands. The BCG unanimously proposed more stringent policy direction for wetlands:¹⁹
 2. Avoid loss or degradation of any wetland or part of any wetland identified in accordance with Policy 12 1a) above and Appendix 3, or any wetland identified in accordance with Appendix 3 through an assessment undertaken as part of a resource consent application.
 3. Provide for activities that are necessary for: a) The intended purpose of the wetland to be met where that wetland was established for a purpose other than the maintenance or enhancement of indigenous biodiversity. b) The protection of the wetland.
51. The BCG proposed a policy framework for Significant Natural Areas (SNAs) which has been carried through into the Government's draft NPSIB. Under that framework loss of ecological integrity of high value SNAs must be avoided. Most (if not all) wetlands would qualify as high value SNAs, yet the NPSFM and NESFM would allow such loss to be assessed as a discretionary activity under an "avoid, remedy, mitigate, offset, compensate" policy. This means that where an area of habitat is partly wetland and partly high value terrestrial SNA, the wetland could be destroyed but the adjoining terrestrial SNA could not be. It is difficult to see any ecological or socio-economic justification for the distinction.
52. The NPSFM definition of wetland excludes "wet pasture or cropping land". This was not supported by the BCG report, which contained recommendations on wetland identification that were based on robust scientific method. Wet pasture or cropping land may well be "wetland" that is used for pasture or cropping, particularly where such areas are on the margins of more obvious wetland features. These areas often have high seasonal fauna values. Peatlands often have surface vegetation that is modified for pasture or cropping, but are still essential carbon sinks and provide other ecosystem services. They also have the potential for restoration to a healthy functioning state that supports indigenous biodiversity but only if their hydrology and soils are protected. Given the extent of loss of wetlands across New Zealand, and the data showing that most remaining small wetlands are on private farmland, this wetland exclusion is likely to result in further incremental loss of wetland extent.²⁰
53. Forest & Bird considers that the NPSIB effects management policies should apply to some activities that affect wetlands. Logically, the NPSFM would apply to activities involving water such as drainage or discharges, but the NPSIB should apply to vegetation and habitat disturbance within wetlands. We do not see that this overlap causes duplication, as the NPSIB is tailored towards biodiversity whereas the NPSFM is concerned with a range of freshwater values.

¹⁹ Biodiversity Collaborative Group report.

²⁰ See also *Hawke's Bay Fish and Game Council v Hawke's Bay Regional Council* [2018] NZEnvC 192. In that case the Court held that an exclusion for wet pasture or cropping land was inconsistent with policy requiring protection of remaining areas of significant indigenous vegetation, significant habitats of indigenous fauna and ecologically significant wetlands (at [36]-[37]).

54. There are many problems with excluding wetlands from the NPSIB protection policies and SNA criteria:
- a. Policy 3.4 calls for an integrated approach between the terrestrial, freshwater, and coastal marine area. Excluding wetlands is contrary to that approach.
 - b. Highly mobile fauna are not covered by the NPSFM. Highly mobile fauna (e.g. bittern) will often utilise wetland habitats but will not be covered by either NPS.
 - c. The detailed framework for assessment of environmental effects in 3.19 is not duplicated in the NPSFM so effects assessments for wetlands will continue to be inadequate leading to more situations like the 400+ hectare peat mining consent at Kaimaumu.
 - d. Policy 3.20 addresses monitoring. Will the significant values of wetlands be monitored under the freshwater framework?
 - e. Wetlands are routinely included in SNAs under current practice. Regionally significant wetlands are defined and mapped by most regional councils. What this means is that the significant values of the wetlands are identified and known. This is key to addressing potential effects on wetlands.
 - f. Wetlands are often a key component of ecological sequences addressed under the rarity criterion. If wetlands are out of scope for significance assessments, in some cases the sequence may no longer exist.
 - g. Terrestrial vegetation is often defined as significant because it buffers wetlands. But buffering is of varying importance for different types of wetlands. The extent of the buffer thus depends on the kind of wetland, and also on its value as habitat for indigenous fauna. Excluding wetlands from SNA assessments could at best result in a “donut” (where the donut’s hole is the wetland) or more likely will result in the terrestrial vegetation being defined as not significant because its connection with the wetland cannot be recognised.
 - h. Wetlands often occur as mosaics with terrestrial vegetation. Excluding wetlands would result in a “swiss cheese” SNA.
 - i. Geothermal wetlands are excluded from the definition of “natural wetland” in the NPSFM; it is unclear whether that means they are covered by the NPSIB. Situations where there are mixtures of freshwater and geothermal wetlands will be part-covered by the NPSFM. All wetlands are covered by the RMA. The policies and rules in regional and district plans will need to address all of these different scenarios.
 - j. Freshwater wetlands are out of scope in the NPSIB in terms of identification, ranking, and effects management (although geothermal wetlands may be in scope), but are in scope in the NPSIB (3.16) for restoration and enhancement, for wetlands and former wetlands.
55. The distinction between the two national policy documents also creates a potential policy gap for braided river ecology and for land-based species that use freshwater ecosystems, such as river birds. Braided rivers are very important ecologically. Braided

river islands provide critical habitat for nesting birds. Many of these are rare or threatened, including black stilt, wrybill, black-billed gull, and black-fronted tern. Many rare and threatened invertebrates, lizards and plants also live in braided rivers.²¹ Braided rivers are historically rare ecosystems and provide important refuges for native plant and animal species within highly modified landscapes.²² They are subject to a range of threats that are both water-related (e.g. changes in hydrology) and land-related (e.g. gravel extraction).

56. The NPSIB would not apply to “indigenous biodiversity in water bodies and freshwater ecosystems (as those terms are defined in the National Policy Statement for Freshwater Management 2019). The NPSFM 2019 does not contain a definition of freshwater ecosystem. The NPSFM 2019 defines waterbody (*sic*) as per the RMA, but excluding geothermal water. The RMA defines water body as:

water body means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area

57. It is not clear whether braided river ecosystems are “indigenous biodiversity in water bodies”. They are freshwater ecosystems (even though parts of the ecosystem is not in the water). However the NPSFM and NESFM do not control activities that affect the “dry” parts of braided rivers, which leaves a policy gap. It is not ecologically appropriate to separate braided river islands from the streams running between them. Braided rivers should be managed as an integrated system. Both the NPSIB and the NPSFM should apply to them.
58. Species that use freshwater have a similar policy gap. River birds’ habitat is partly on land but they also feed in water. They are potentially excluded from the NPSIB because they are indigenous biodiversity in water bodies and form part of freshwater ecosystems. The application section should make clear that such species are covered by the NPSIB.
59. Rather than distinguishing between freshwater ecosystems and terrestrial ecosystems, Forest & Bird recommends that both the NPSIB and the NPSFM should apply to indigenous biodiversity in freshwater ecosystems.

Geothermal ecosystems

60. Forest & Bird supports a modified Option 3 for geothermal ecosystems: management under the NPSIB. Please see the discussion at paragraphs 150 to 160 below.

New Zealand Coastal Policy Statement

61. The direction that the NZCPS prevails in the event of conflict is supported.

Fundamental Concepts

Hutia Te Rito

²¹ Environment Aotearoa, page 19 citing O’Donnell et al, 2016

²² Williams, P, Wisser, S, Clarkson, B and Stanley, M (2007) *New Zealand’s historically rare terrestrial ecosystems set in a physical and physiognomic framework* New Zealand Journal of Ecology 31(2): 119-128.

62. Forest & Bird strongly supports the *hutia te rito* concept. In our view, this concept recognises the reciprocity of the human-nature relationship, rather than viewing the environment and social/economic outcomes as opposites to be weighed against each other. It also recognises the integrated relationship between terrestrial biodiversity and freshwater and coastal domains.
63. We hope that it will come to have the prominence that *Te Mana o Te Wai* is attaining in the freshwater context. The Environment Court has said of *Te Mana o Te Wai*, and its role in the NPSFM:²³

[16] The health and wellbeing of our freshwater bodies is vital for the health and wellbeing of our land, our resources and our communities. In *te ao Maori*, water is the life-blood of the *whenua* (land). When water is in a healthy state it provides for the health and wellbeing of the land and people.

[17] The purpose of a national policy statement is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA (s 45(1)). Under the National Policy Statement for Freshwater Management (NPS-FM), it is a matter of national significance that fresh water is managed through a framework that considers and recognises *Te Mana o te Wai* as an integral part of freshwater management. **When we speak about *Te Mana o te Wai* we are referring to the integrated and holistic wellbeing of a freshwater body. Upholding *Te Mana o te Wai* acknowledges and protects the mauri of water.** While *mauri* is not defined under the NPS-FM, and we will return to this shortly, the *mauri* of water sustains *hauora* (health): the health of the environment, the health of the waterbody and the health of the people. **As a matter of national significance the NPS-FM requires users of water to provide for *hauora* and in so doing, acknowledge and protect the mauri of water.**

Maintenance of indigenous biodiversity

64. Specificity as to what maintenance of biodiversity entails is supported. The “ecological integrity framework” is as a useful basis for considering what elements of indigenous biodiversity need to be maintained. That framework formed the basis for the maintenance of biodiversity core concept. It includes:
- a. species occupancy (to avoid extinctions). Are the species present that you would expect?
 - b. indigenous dominance (to maintain natural ecological processes).
 - c. ecosystem representation (to maintain natural ecological processes).
65. That framework was accepted by the Environment Court as “useful because it particularises the 'integrity' component of the definition in the RMA of the 'intrinsic values' of ecosystems.”²⁴
66. Forest & Bird agrees that maintenance of indigenous biodiversity may require the restoration and enhancement of habitat. Ecological studies show that dropping below 10 percent native vegetation cover can trigger a decline in many species²⁵ (although decline starts much higher than this tipping point). On that basis, even “holding the line” for vegetation cover will not maintain biodiversity. In addition, many areas of

²³ *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208

²⁴ *Oceana Gold Limited v Otago Regional Council* [2019] NZEnvC 41 at [113]

²⁵ Environment Aotearoa, page 23

significant habitat are degraded and require restoration to support the full range of species that would naturally be present.

67. The core concept uses the term “function of ecosystem” – if this means the same as ecosystem functions (a defined term) this should be made clear. The definition of ecosystem functions²⁶ is unusual, and the meaning of “flows” is not clear. This definition appears to be cut down from the *Critical Factors* report²⁷, which said:

Ecosystem processes (seen here as equivalent to ‘ecosystem function’): abiotic (physical) and biotic (biological) flows that are properties of an ecosystem, including the water cycle, nutrient cycling (including decomposition, plant nutrient uptake, microbial respiration, nitrification, denitrification), energy flow (photosynthesis, respiration, primary production), community dynamics (including population processes such as migration, dispersal, pollination, herbivory, population dynamics, predator–prey dynamics, competition, predation, succession, source–sink dynamics), and natural selection.

68. Without the examples, the term “flows” is not readily understood. The *Critical Factors* authors may be able to provide a more appropriate definition of ecosystem function.

Adverse effects on indigenous biodiversity

69. This clause is similar to Policy D9.3(2) of the Auckland Unitary Plan. It is useful to specify (non-exclusively) the range of effects that should be considered when managing adverse effects on biodiversity, and this clause is therefore supported.
70. It is important that the effects of people and their pets is recognised as a potential adverse effect (as proposed). This can be highly relevant in the context of subdivisions in un-urbanised areas. Domestic animals can greatly increase the risk to native birds, lizards and invertebrates. Disruption from people can also impact on species during vulnerable life stages. The impacts of people and their pets was a key reason for the Environment Court’s decision not to allow for urbanisation of land next to Okura Estuary.²⁸

Objectives

71. The objectives lack any reference to protecting significant indigenous vegetation and significant habitat of indigenous fauna. Persons exercising functions and powers under the RMA must recognise and provide for these places as a matter of national importance. On that basis, Forest & Bird submits that there should be an objective:
- Objective X: to protect significant indigenous vegetation and significant habitat of indigenous fauna
72. Objective 6 is to recognise the role of landowners, community and tangata whenua as stewards and kaitiaki of indigenous biodiversity by:
- a. Allowing people and communities to provide for their social, economic and cultural wellbeing now and in the future; and

²⁶ the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem

²⁷ Manaaki Whenua Landcare Research. *Critical factors to maintain biodiversity: what effects must be avoided, remediated or mitigated to halt biodiversity loss?* May 2018.

²⁸ *Li v Auckland Council* [2018] NZEnvC 87

- b. Supporting people and communities in their understanding of, and connection to, nature.
73. The connection between recognising stewardship/kaitiakitanga and allowing people to provide for their social, economic and cultural wellbeing is unclear. Also, Objective 6 is not consistent with the Act's sustainable management purpose because it does not recognise that use and development should occur within limits. Forest & Bird recommends rewording Objective 6 to:²⁹
- Objective 6: to enable people and communities to provide for their social, economic and cultural wellbeing now and in the future by:
- a. recognising the need for resource used and development to occur within environmental limits;
 - b. recognising the role of landowners, community and tangata whenua as stewards and kaitiaki of indigenous biodiversity;
 - c. recognising that the protection of indigenous biodiversity and taonga contributes to social, cultural and economic wellbeing; and
 - d. supporting people and communities in their understanding of, and connection to, nature.
74. The NPS objectives are otherwise generally supported.

Tangata whenua and the Treaty

75. The BCG sought to ensure that its draft National Policy Statement would implement those parts of the Wai 262 report³⁰ relating to māori involvement of management of New Zealand's flora and fauna. It sought to be consistent with RMA provisions relating to kaitiakitanga and protection of the relationship of māori with their taonga. In terms of s8, the BCG sought to draft a National Policy Statement that would be consistent with Treaty of Waitangi principles of partnership, active protection of taonga, and participation. As a result, it included objectives and policies relating to tangata whenua as kaitiaki and protection of taonga.
76. Those provisions appear to have been largely carried through into the Government's National Policy Statement. Others will be better placed on whether the objectives described above are achieved by the wording used.

Hutia te Rito

77. Forest & Bird supports the way in which hutia te rito is to be recognised and provided for in Implementation Requirement (IR) 3.2.
78. We consider that Implementation Requirement 3.7 (social, economic and cultural wellbeing) is part of hutia te rito. It recognises the interdependence of people and nature by ensuring that subdivision, use and development must occur in appropriate places and forms, and within appropriate limits, and that people are critical to maintaining indigenous biodiversity. We do not support a reference to enhancing

²⁹ This wording draws on the BCG's Objective 5.

³⁰ Waitangi Tribunal, Ko Aotearoa Tēnei, 2011.

indigenous biodiversity in 3.7(c). Enhancement of biodiversity can only be achieved by creating new species. What this is intended to refer to (we believe) is enhancement of habitats and ecosystems, and the range of species within them. Forest & Bird supports a distinction between maintaining biodiversity (the variability within and between species) and enhancing habitats and ecosystems and the range of species within them. IR3.7 is otherwise supported.

Climate change

79. In New Zealand, and globally, impacts of climate change are already observable and will increase. Even with immediate global action, the legacy of historical emissions will continue to change climate for centuries, with predicted impacts through rising temperatures, sea-level rise, ocean acidification, and potential changes to patterns of storms, precipitation and global ocean circulation. Effects on terrestrial biodiversity include range shifts (latitudinal and altitudinal), changes in distribution and composition of native forests, significant declines in some habitats (for example alpine areas), negative impacts on some ecosystems from increasing frequency and severity of extreme weather events, and increased fire frequency is also predicted for some eastern regions. For coastal species that must migrate inshore as sea level rises (e.g., mangroves, saltmarsh and brackish wetlands), a reduction in these habitats will occur where topography or human alterations limit the landward extent of coastal expansion. Reductions in abundance of intertidal habitats will decrease abundance of dependent species such as migratory wading birds, including those at Ramsar wetland sites. The most serious threats to New Zealand's biodiversity involve interactions between climate change and pre-existing threats such as habitat loss and fragmentation, and invasive species.³¹
80. Some adaptation to climate change is possible, and unless adaptation is planned for and implemented, the remainder of the National Policy Statement is futile.
81. Clause 3.5 is therefore supported in part, but should not be limited to a planning consideration. To be effective, climate change adaptation needs to be considered both at the planning and consenting stages.
82. An example of an existing climate change adaptation policy is Policy 18 NZCPS. Lundquist et al described the effect of Policy 18 as follows:³²

Policy 18 recognizes the need for public open space, which includes setting aside esplanade reserves for all new developments. These undeveloped coastal buffers should be protected or enhanced (Policy 26) to provide natural defences to coastal erosion from climate change. This new coastal policy should better protect and mitigate threats from coastal development that would impact on native coastal habitats and their associated biodiversity
83. Using the NZCPS example above, if a requirement for undeveloped coastal buffers could be considered when formulating plans but not when considering resource

³¹ Lundquist, Carolyn J et al. "Predicted Impacts of Climate Change on New Zealand's Biodiversity." *Pacific Conservation Biology* 17.3 (2011): 179–191. Web.

³² *Ibid.*

consent applications for new coastal land use, this would not achieve the outcome sought by the policy.

84. What is needed is to consider the impacts of climate change such as drought as an additional stress when assessing the effects of a proposed activity. This will require consideration of whether the activity decreases the resilience of a SNA to cope with climate change-induced stresses. To be effective, the NPSIB should require that type of assessment.
85. Under s 7(i) RMA, all persons exercising functions and powers must have particular regard to the effects of climate change. The NPSIB should be consistent with that requirement. Section 7(i) will apply to consideration of consent applications whether the NPSIB provides for it or not, but it is inefficient, and risks undermining the outcome of clause 3.5, to exclude consideration of the biodiversity-specific guidance in Clause 3.7 when considering consent applications.

Precaution

86. Direction to take a precautionary approach towards proposed activities where effects on biodiversity are uncertain, unknown or little understood but potentially significantly adverse is supported. It is justified by the gaps in information about biodiversity pressures, states and trends, the acknowledged decline in many species despite management effort, and to enable consistency with both the management of effects in the coastal environment (where a precautionary principle applies under the NZCPS), and international obligations under the Convention of Biological Diversity.
87. Additional guidance on what constitutes a precautionary approach would help to make this direction more certain. The precautionary approach has a “when” component (in what circumstances is a precautionary approach justified?) and a “what” component (what sort of approach makes a course of action precautionary?). Clause 3.6 covers the “when” component but not the “what”.
88. The EEZ Act provides that decision makers should “favour caution and environmental protection” in the circumstances described in Clause 3.6. That is the “what” aspect that should be incorporated into Clause 3.6.

Significant indigenous vegetation and significant habitat of indigenous fauna

Requirement to identify SNAs

89. Forest & Bird supports a mandatory requirement to identify SNAs. Protection of SNAs is a matter of national importance that decision-makers must recognise and provide for. It is not possible to discharge this obligation without having identified where SNAs are. Forest & Bird has many stories of loss of indigenous vegetation due to such areas not being identified.
90. In *Forest & Bird v Innes*, Forest & Bird took enforcement action against a landowner who had disced land adjacent to the Clutha River, seeking to stop any further clearance and to require restoration. The land was classified as by the Department of Conservation as a Recommended Area for Protection (“RAP”). It contained

threatened plants and rare vegetation. The plan contained a rule indigenous vegetation clearance. The definition of indigenous vegetation - a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity – was uncertain. The clearance rule itself was uncertain. The landowner had made enquiries of the Council but neither were aware that the native plants on the land triggered the rule. The Council was not aware of the land's RAP status. The Court found that the site's vegetation was unlikely to recover. The enforcement action failed. The destruction of this site likely would not have happened if the RAP had been formalised into an identified SNA in the District Plan.



Damaged indigenous plants and bare earth within the Recommended Area for Protection after discing

91. The Ministry will no doubt receive a large number of submissions which support a voluntary approach to biodiversity protection. Many landowners are active in conservation of native habitat on their land. There are plenty of examples of excellent conservation projects being undertaken. However, collective goodwill is not sufficient by itself, and biodiversity continues to be lost in areas where regulatory controls are insufficient, particularly where economic drivers favour land use change and development (which is almost everywhere). This is particularly apparent in the Mackenzie Basin where economic drivers to convert from extensive sheep and beef to intensive dairy as a predominant land use have drastically changed the nature of the environment, and hugely reduced indigenous cover, in just a few short decades. The evidence does not support a purely voluntary approach.
92. Recent data demonstrating the ongoing, pervasive loss of native habitat from Landcare Research showed:
 - a. In Hawke's Bay, 39ha of indigenous forest and 171ha of tussock was converted to low producing grass land between 2012 to 2018. This contributed to an overall national loss of 1471ha of tussock, and 2304ha of indigenous forest in the six year period.
 - b. Canterbury cleared 1468ha of matagouri, more than any other region, turning it into pasture.

- c. Manawatu-Wanganui contributed to a North Island trend of clearing manuka and kanuka, converting 892ha into pasture and exotic forestry.³³
93. When the “goodwill” approach is put to the test, it is found lacking. In *Forest & Bird v New Plymouth District Council*, Forest & Bird sought to enforce a Council agreement to identify and protect SNAs on private land. The ecological evidence was that the large-scale loss of indigenous biodiversity from the New Plymouth District had resulted in a dramatic change in the landscape, particularly in the lowland areas of the District. Indigenous vegetation has been largely reduced to small, discrete, isolated patches in the lowland areas, with larger more contiguous cover in the uplands. The Council called evidence that community attitudes had changed. According to the Council:³⁴
- Whereas historically, landowners sought to exploit the economic possibilities of their land and resisted any effort to consider the environment, now farmers are amongst the most ardent of environmentalists. The [witnesses from the farming sector] demonstrate precisely the point: they voluntarily plant trees — lots of them, they voluntarily fence their waterways and they voluntarily fence their SNAs. From the Council’s perspective they have found farmers increasingly of the view that they must leave their land better than they found it and the Council wishes to work collaboratively with the farmers to ensure the protection of SNAs. The Council’s view is that is best achieved by demonstrating trust in the landowners and monitoring their activities.
94. The Council also referred to the benefits of QEII covenants, which (unlike SNA rules) go beyond legal protection of the land and provide for fencing and predator control. The Court carefully considered all of the evidence but found that the possibility that there might be those who act contrary to the general attitude must be considered, as well as the context that at least in some parts of the District small losses of habitat can have a disproportionate effect and that failure to protect what is left risks ultimate extinction of some habitats.³⁵
95. Another example is Native Habitats Tasman. Forest & Bird has been involved in this SNA identification process that was agreed as part of an Environment Court settlement in the mid-2000s. The process of assessing significance has been voluntary process, with regular reporting to an oversight group. When landowners are engaged, the outcomes have been very positive in terms of landowner satisfaction and the information they have received. Many good outcomes have arisen as a result, e.g. increased protective actions, fencing, etc. Hence Forest & Bird strongly supports the careful relationship-building that this process has involved.
96. However, there are a significant number of landowners who decline access and involvement in the programme. The decline rate sits around 30%. That is, 30% of land is never surveyed under the voluntary process, and there is no way to assess the condition of these potential SNAs. It is important to note that they have already been identified using aerial photography to be SNA. That is a relatively robust process, which demonstrates that there are a large proportion of SNAs that are not formally identified as such due to the voluntary nature of the process.

³³ Manaaki Whenua – Landcare Research Landcover Database, above n 11.

³⁴ At [81].

³⁵ At [88].

97. A similar outcome has occurred in Marlborough. Marlborough District Council has undertaken a voluntary process where they have had about 30% decline rate over the years it has been running. Some areas of the region are still not surveyed and this has been noted in the recent decisions on the Marlborough Environment Plan.
98. Forest & Bird urges the Ministry to consider the evidence of habitat loss rather than unsubstantiated claims that a voluntary approach is sufficient to maintain biodiversity, and to include a requirement for SNA identification in the NPSIB.
99. Forest & Bird considers that district councils are best placed to undertake SNA identification but would have no objection to this function being carried out in a collaborative manner across several districts, or for the function to be transferred to the regional council in circumstances where it has already undertaken a SNA identification process.

The SNA identification process

100. It is very important for the integrity of the process that SNA identification occurs in a respectful way that is fair to landowners. The principles for SNA identification in the NPSIB support that outcome.
101. Aerial identification of the presence of indigenous vegetation is a common starting point for SNA assessments. That approach should be supplemented by consideration of fauna that may have significant habitat in areas that will not show up on an aerial vegetation survey: for example, road side verges are often the last vestiges for cryptic species such as Nelson Green Gecko. MFE guidance should provide advice on best practice SNA identification that recognises the potential for non-indigenous fauna habitat to be SNA.

Significance criteria

102. The importance of settled significance criteria cannot be overstated. Significance criteria are frequently litigated, and a large amount of effort has gone into producing separate criteria in regions and districts around the country, when this is an area that is totally amenable to national consistency.
103. Forest & Bird largely supports the significance criteria in Appendix 1, with some suggested amendments.
104. **Representativeness** is described in the proposed NSPIB as the extent to which the indigenous vegetation or habitat of indigenous fauna is typical or characteristic of the indigenous biodiversity of the ecological district. No baseline is expressly referenced (e.g. 1840) which implies that the current characteristic of the ecological district's biodiversity is the comparator. This approach is supported by Forest & Bird because it recognises that New Zealand's indigenous communities, habitats and ecosystems are dynamic and modified but still have high biodiversity value today (e.g. fire induced tussock grasslands).
105. Attribute (a) of the **diversity and pattern** criterion does not specify that a greater diversity is required to trigger significance. The criterion should recognise that some areas have naturally low diversity. The phrase "high diversity for the ecosystem type" could be used.
106. The **rarity and distinctiveness** criterion includes: (a) habitat for an indigenous species that is listed as Threatened or At-risk in the New Zealand Threat Classification System

lists. While this is generally supported, we note that this would result in all South Island vegetation containing matagouri (*Discaria toumatou*; At Risk-Declining) being assessed as significant. In some areas matagouri is highly significant. Matagouri/tumamatakuru is the backbone of greyscrub across hundreds of thousands of hectares of New Zealand's drier areas. Greyscrub is a highly distinctive and characteristic component of NZ vegetation, as iconic and unique as our podocarp forests, and just as important. Often this scrub/shrubland is the only woody component of entire landscapes that were once densely clad in dryland forest/treeland. Matagouri provides habitat for a large range of other plant, insect and lizard species, and some bird species, in landscapes that are otherwise open tussock/herbfield. It fixes nitrogen and builds soil, and acts as an effective nursery for re-establishment of forest long lost from the landscape, including species such as upland totara, and browse sensitive forest species trying to re-establish themselves, with the thorns acting as a barrier to ungulates. It is a component of frost flat vegetation.

107. However, fertiliser-induced matagouri on hillslopes in some areas is unlikely to have the same ecological significance. Forest & Bird would support a refined approach to how matagouri is treated under the significance criteria. Further input on this issue from ecological experts is warranted.
108. The criteria provide no guidance in relation to highly mobile Threatened and At Risk fauna. It is appropriate that the presence of low-mobility species with a status of At Risk-Declining or At Risk-Recovering should generally trigger significance, because populations of these species depend entirely on their habitats being maintained. The habitats of highly mobile Threatened and At Risk fauna are probably best dealt with as important habitats under the Ecological Context criterion.
109. As threat status is assigned subjectively by expert panels, where threat rankings are incorporated into criteria, there should always be provision for informed evidence based judgments to arrive at alternative conclusions.
110. A threshold of 30 % for the evaluation of rarity of indigenous vegetation (i.e. indigenous vegetation that has been reduced to less than 30% of its original extent) is supported as it would enable significantly greater ecological functioning of that type than if only 20% were retained.
111. The attributes for **ecological context** include: (f) provides critical habitat for indigenous fauna, including feeding, breeding, refuge or resting habitat. The word 'critical' in attribute (f) should be replaced by 'important'. This is an important attribute and warrants a lower threshold for significance than 'critical'.
112. The significance criteria are appropriate for the West Coast region. Much of the significant indigenous vegetation in West Coast Region will be located in formally-protected conservation land, but remaining lowland West Coast ecosystems are largely on unprotected land, and there are many sites that warrant recognition and protection in these lowland areas.
113. The West Coast region has a very small proportion (2.3%) of its area covered by one of the five 'threatened' environments, compared to a national mean for regions of 45% (Price and Briggs 2008). Thus the proposed NSPIB Rarity attribute (d), relating to land environments that have less than 30% of their original cover remaining will have very little effect in the West Coast Region.

114. The requirement to identify SNAs within five years after the commencement date is supported. The requirement to protect SNAs has existed since 1991. Stemming biodiversity loss by protecting remaining habitat should be prioritised.
115. We **attach** a report by Wildlands NZ that supports the significance criteria with amendments.

Conservation land

116. Forest & Bird considers that public conservation land should be deemed to be significant unless demonstrated not to be. Many activities occur on conservation land, and some are destructive to native habitat. The Mokihinui Dam, Ruataniwha Dam and the Denniston Escarpment Mine all affect or would have affected conservation land, and there are recent media reports that 14 new mines have been approved on PCL since the Government's "no new mines on conservation land" announcement.³⁶ The effects management framework for activities on conservation land should be the SNA-specific policies, not the "outside SNAs" policies. It is unfair if an activity on conservation land is subject to less stringent RMA provisions than a similar activity on private land.

Preventing a goldrush

117. There is a real risk of native habitat being cleared in advance of SNA identification. The definition of SNA will assist with this, as it includes areas identified before the NPS commencement date as being SNA but it does not deal with areas that would be identified as SNA if a proper assessment had been undertaken. Forest & Bird proposes that the NPSIB should directly insert a policy into plans which requires that until a district has fully implemented the NPSIB, clearance of indigenous vegetation that meets the criteria in Appendix 1 is to be assessed in accordance with the NPSIB policies.
118. Also with regard to the SNA definition – it is important that this includes an area identified as SNA as part of an assessment of effects (as currently proposed). The significance of an area can change over time, and protection should not be afforded only to areas that were assessed as significant at a given point in time.

Effects assessments

119. Policy 5 and clause 3.19 relate to information and environmental effects assessments. Forest & Bird submits that clause 3.19 is very important and should feature before the effects management policies in the NPSIB (it should be inserted between clauses 3.8 and 3.9).
120. Forest & Bird considers that clause 3.19 should clearly require that the attributes of the areas covered by 3.19(1) are described in the effects assessment.
121. Effects assessments relating to biodiversity are often poorly executed and have a tendency to merge environmental features and effects into a single conclusion that downplays specific environmental outcomes. For example, an activity with a significant effect on one feature and a minor effect on other features will be described as having "overall moderate impacts" or even "overall minor impacts". This is inappropriate because the more significant impacts will often be on threatened species or ecosystems, and because this averaging can result in public notification being circumvented. Another weakness is

³⁶ <https://www.newsroom.co.nz/2020/03/02/1058426/hold-21-new-mines-on-conservation-land>

the tendency to describe remediation or offsetting measures as if they are certain to be effective, when this may not be accurate – such as where unproven remediation techniques are adopted. This means that an activity with a significant adverse effect can be described as having low impacts following remediation (even where the outcome of remediation is highly uncertain). Once consent is granted, there is no recourse if remediation is less successful than predicted.

122. Improving environmental effects assessments, and in particular requiring that the effectiveness of mitigation, remediation or offsetting is demonstrated, is critical to inform risk assessments in the context of decisions about activities that impact biodiversity. This requirement should be strengthened in clause 3.19.

123. The following changes are proposed:

(2) Local authorities must make or change their policy statements and plans to include a requirement that the assessment of environmental effects required by clause 7(1) of Schedule 4 the Act –

a) for the purposes of clause 7(1)(c) of Schedule 4 of the Act –

i. describes the attributes of areas within the site that contain features listed in (1).

ii. addresses effects of the proposal (if relevant) on the areas referred to in subclause (1)(a)(i) to (vi); and

iii. includes sufficient information to demonstrate the effective management of adverse effects as required by this National Policy Statement, including an assessment of the likely effectiveness of measures to avoid, remedy, mitigate, offset or compensate for adverse effects; and ...

Effects management

124. The NPSIB requires that certain effects on SNAs are avoided, and that other effects are managed using the effects management hierarchy.

125. The requirement in Clause 3.9(1) to avoid particular adverse effects on SNAs is well supported by evidence. The *Critical Factors Report*³⁷ considered for the first time what activities could be avoided, remedied or mitigated consistent with maintaining biodiversity. The list of factors in 3.9(1)(a) are a sub-set compiled from the Critical Factors report. However, “At Risk” species are missing from 3.9(1)(a)(iv) and should be included. Where species are at risk of extinction, it is appropriate to avoid a reduction in population size or occupancy of these species where they use a SNA for any part of their life cycle.

126. Avoidance of these particular adverse effects is consistent with a requirement to safeguard the life-supporting capacity of ecosystems (s 5(2)(c)). The Environment Court has held³⁸ in relation to the first of those matters that:

safeguarding (or protecting) the life-supporting capacity of ecosystems includes in each case having particular regard to each of its components including - as the definition of "intrinsic values" implies ... its biological and genetic diversity, and in particular, the essential (biotic and abiotic) characteristics of:

³⁷ Above, note 27.

³⁸ *Director General of Conservation v Invercargill City Council* [2018] NZEnvC 84.

- the ecosystem's integrity (e.g. what space does it occupy at a given time? Is an occurrence at the limit of the ecosystem's extent of occurrence?);
- its form (what are the characteristics of its environment - the geomorphology, topography, soils, climate, indigenous and other species of flora and fauna, patterns of distribution, natural processes and other relevant constituents identified in the definition of "environment" in s2 RMA);
- its functioning (e.g. is it a seral or 'climax ecosystem? What are the external processes that apply to it? - climate change? pests? weeds? How are the natural cycles and feedback loops - the Carbon, Nitrogen, Phosphorus cycles and others - being changed?); and
- Its resilience (e.g. at what point is a degraded ecosystem irretrievably doomed to "collapse" or can it recover?).

127. Many of those elements are consistent with the provisions of clause 3.9(a).
128. Avoidance of those effects is also consistent with maintaining each of the parameters of indigenous biological diversity as described in the NPS core concepts section.
129. The Biodiversity Collaborative Group carefully considered alignment with other national policy direction and provision for social and economic wellbeing in the effects management policies that it agreed on. Some provision for nationally significant infrastructure (including renewable electricity generation), mineral and aggregate extraction and provision for activities on māori land is appropriate and was provided for.
130. Forest & Bird opposes the provision exempting mineral and aggregate extraction from a requirement to avoid adverse effects on SNAs. While some provision could be made for mineral and aggregate extraction to meet an essential domestic supply need, this provision is more broadly framed. It would allow mineral and aggregate extraction no matter the scale or value. There is no justification for enabling all farm and forestry quarries and activities like thermal coal extraction to have adverse effects on SNAs when other activities with far higher social and economic benefits cannot have such effects.
131. Forest & Bird requests that the Government fulfils its promise not to allow further mining on conservation land alongside this policy.
132. Some submitters are likely to seek a generic exemption for activities that have a social or economic benefit. That approach should not be adopted. It will entirely undermine the environmental bottom line approach and fails to recognise that a healthy environment is a prerequisite for social and economic wellbeing. The Hutia te Rito lens requires a more protective approach. Requiring protection of some areas is consistent with the Act's sustainable management purpose: protection, as well as use and development, is contemplated.
133. The effects management hierarchy is generally appropriate for activities that do not have to avoid adverse effects. However, consent authorities should not be obliged to grant consent to all activities that step through the hierarchy. Consent authorities should retain a discretion to require a more stringent effects management approach, or decline consent, in appropriate circumstances. Suggested rewording is:

All adverse effects of a new subdivision, use or development of the below activities must may be managed using the effects management hierarchy. If application of the effects management hierarchy would result in an outcome that is contrary to the objectives and policies of this NPS, councils are not precluded from requiring a more stringent effects management approach or declining consent.

Biodiversity offsetting and compensation

134. Biodiversity offsetting is another area of environmental policy that has been the subject of frequent litigation. The ability to consider biodiversity offset proposals is well-established (they can be assessed as a positive effect, or as an “other matter” under s 104, or as an action proposed by the applicant under s 104(1A)). However, the requirements for a valid biodiversity offset are only established in guidance. Clear regulatory direction on the principles that make actions a valid biodiversity offset are desirable. Forest & Bird supports the principles in Appendix 3. Forest & Bird considers that it is reasonable that only “more than minor” adverse effects are offset (rather than all effects). A threshold of “significant effects” is not appropriate, as this would leave cumulative effects on SNAs and biodiversity unaddressed, resulting in a net loss of biodiversity.
135. The effects management policies should require biodiversity offsetting for all (more than minor) adverse effects on SNAs. It is not clear whether the policy requires biodiversity offsetting or simply requires it to be considered.
136. It is critical to recognise that biodiversity offsetting is not appropriate in every case. In some circumstances, biodiversity offsetting will result in a net loss due to the rarity of affected ecology (or may result in a net loss due to the uncertainty of outcomes). The limits to offsetting principle (Principle 2) does not include the situation where affected ecological values are so rare that avoidance of impacts is the only option. It contemplates that offsetting will be appropriate so long as residual effects “can” be offset (which becomes a matter of evidence). Forest & Bird seeks that Principle 2 is rewritten as set out below:
2. **Limits to offsetting:** Many biodiversity values cannot be offset and if they are adversely affected then they will be permanently lost. These situations include where:
- i) ~~residual adverse effects cannot be offset~~ because of the irreplaceability or vulnerability of the indigenous biodiversity affected, residual adverse effects cannot be offset or avoidance of the adverse effect is the only ecologically acceptable outcome.
137. The policy framework should make clear that these effects must be avoided, remedied or mitigated if the project is to proceed. Guidance on what constitutes “vulnerable or irreplaceable” biodiversity will be required.
138. Forest & Bird would prefer that biodiversity compensation was not provided for in the NPS. Forest & Bird does not support biodiversity compensation because it does not achieve “no net loss” of biodiversity on a “like for like” basis. As a result, it does not maintain biodiversity. This was described by an expert ecological witness in the *Oceana Gold* decision:³⁹
- Like-for-like transactions can, at least theoretically, be balanced, so that net maintenance or enhancement of biodiversity occurs. On the other hand, like-for-unlike transactions trade certain loss of one feature of biodiversity in exchange for improvement in a different feature of biodiversity. Thus there is a decline in the biodiversity of the first feature, compensated for by an enhancement in the biodiversity of the second feature. Overall, biodiversity is not maintained, because one feature declines.
139. MFE has asked submitters whether they support limits to compensation as accepted by the Court in *Oceana Gold*. To be consistent with the Court’s decision of what is required to ensure maintenance of indigenous biodiversity, the same limits should apply to

³⁹ *Oceana Gold Limited v Otago Regional Council* [2019] NZEnvC 41.

biodiversity compensation in the NPS where the “avoid policy” does not apply. Those limits are:⁴⁰

The residual adverse effects will not result in:

- (1) The loss of an indigenous taxon (excluding freshwater fauna and flora) or of any ecosystem type from an ecological district or coastal marine biogeographic region;
- (2) Removal or loss of viability of habitat of a threatened or at risk indigenous species of fauna or flora under the New Zealand Threat Classification System (NZCTS);
- (3) Removal or loss of viability of an originally rare or uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna;

140. That approach was recently upheld by the High Court.⁴¹

Plantation forestry

141. Plantation forestry can provide habitat for native fauna and flora. These species are not only found in pockets of native vegetation adjacent to and surrounded by plantation forest (referred to here as native habitat) but also within the area that is planted in exotic conifers⁴² (referred to here as plantation forestry). Some species, particularly those with low mobility, are extremely vulnerable when plantation forest is harvested. The Eyrewell Beetle is a notorious example, having likely gone extinct following harvest of forest at Eyrewell Forest.
142. Plantation forestry is managed in accordance with the Resource Management (National Environmental Standard on Plantation Forestry) Regulations 2017 (“NES”). The NES contains rules controlling plantation forestry activities. Most activities require resource consent within SNAs. The NES does not recognise that many areas of plantation forestry will meet significance criteria due to the presence of rare fauna, and that some areas will also meet the criteria due to rare plant species. The NES does not contain objectives and policies to guide decisions on plantation forestry activities that affect SNAs or other biodiversity. The NES has rules controlling effects on SNAs, but contains only very limited controls on flora and fauna within plantation forestry.
143. Areas that are ecologically significant in terms of s 6(c) should be identified based on whether they meet significance criteria rather than their present land use. However, different management approaches are justified for native habitat vs plantation forestry, and it is necessary to distinguish between the two for that purpose. The “plantation forestry biodiversity area” concept is supported as long as it is used as a way to more specifically manage effects of plantation forestry activities on ecological values and distinguish this from the management of effects on native habitat that is SNA.
144. It is important that native habitat SNAs surrounded by, or adjacent to, plantation forestry are managed in accordance with the SNA effects management policies. The definition of “plantation forest biodiversity area” does not sufficiently distinguish between plantation forest with ecological value, and SNAs adjacent to/surrounded by the plantation forest (this is apparent from the many queries we have received on this point).

⁴⁰ An additional limit relating to freshwater has been excluded.

⁴¹ *Oceana Gold Limited v Otago Regional Council* [2020] NZHC 436.

⁴² Steve M. Pawson, Chris E. Ercroyd, Richard Seaton, William B. Shaw and Eckehard G. Brockerhoff *New Zealand's exotic plantation forests as habitats for threatened indigenous species* *New Zealand Journal of Ecology* (2010) 34(3): 342-355.

145. In addition, the definition assumes that an assessment of significance has already occurred where-as the definition of a SNA includes an area identified through an assessment of effects.
146. Forest & Bird proposes the following amendment:
- plantation forest biodiversity areas** means an area of ~~are~~ deliberately established plantation forests ~~which have been identified as containing significant indigenous vegetation and significant habitat of indigenous fauna using~~ that meets the significance criteria in Appendix 1. For the avoidance of doubt, it does not include native vegetation adjacent to or surrounded by plantation forest that is not beneath a canopy of exotic conifers.
147. Forest & Bird submits that the overall goal for biodiversity within plantation forestry should be that:
- Plantation forestry is managed so that the habitat for threatened or at risk species at a site is maintained, and enhanced where possible, over the long term; and threatened or at risk species populations are not reduced due to forestry activities.
148. This goal is limited to threatened or at risk species, where-as other activities such as farming and urban activities will need to manage their effects on biodiversity more broadly. This goal recognises that it is probably not possible to undertake forestry activities like harvest in a way that manages all potential biodiversity impacts, while acknowledging that at risk and threatened species must be protected because of their vulnerability to extinction as a result of cumulative impacts.
149. The NES will require amendment to implement the policy direction in the NPSIB for plantation forestry.

Geothermal ecosystems

150. The approach to assessing the significance of geothermal ecosystems in the Waikato and Bay of Plenty RPSs is out of step with current best practice. The same can be said for aspects of the effects management approach.
151. The Bay of Plenty RPS has a set of significance criteria⁴³ for geothermal features. The criteria are focussed on significance in the Tāupo Volcanic Zone (“TVZ”) context and do not recognise the national significance of these ecosystems – for example the **distinctiveness** criterion is:
- The extent to which indigenous vegetation or habitat of indigenous fauna on a geothermal area is one of the largest remaining examples of its type within the Taupo Volcanic Zone.
152. A potential SNA’s naturalness and viability (e.g. The extent to which indigenous vegetation or habitat of indigenous fauna on a geothermal area is in a natural state or healthy condition) is relevant to assessing significance, which is not relevant to the significance of rare ecosystems (most rare ecosystems are degraded to some extent).
153. The SNA criteria for geothermal ecosystems in the BOPRPS “are not tests of standards which, if any one or more are met, will necessarily result in a conclusion that the place, feature or landscape (as the case may be) is significant or a matter of national importance. Instead, the criteria are factors to be considered and evaluated in order to reach an overall

⁴³ Appendix F, Set 7

judgement as to the significance of any given feature(s).” That approach is not ecologically appropriate and makes the assessment unduly subjective. If an area is significant under any one of the criteria it should qualify.

154. In the TVZ, thermally induced manuka and kanuka are not protected because they are not considered significant locally. That approach is against the principle outlined in the NPSIB Introduction that features that are locally common but nationally rare still need protection.
155. In addition the policy explanation says:

Although a large number of geothermal features (1840) have been identified within the region, they have not been classified in a way that takes account of their status as taonga, customary activity, outstanding natural feature or their significance as indigenous vegetation or habitat.
156. For those reasons, Forest & Bird considers that the NPSIB approach to assessing significance should apply to geothermal ecosystems.
157. Geothermal ecosystems should be included in the NPS so that their significance is identified and effects of geothermal energy production and other subdivision, use and development activities is managed.
158. A positive aspect of the effects management approach in the BOPRPS is that some geothermal ecosystems have been identified as protected systems. This is similar to the NPSIB approach of avoiding effects on high value SNAs. However, the protected systems are very limited, and are those with no existing extractive use (e.g. Whakaari/White Island). The BOPRPS provides for geothermal ecosystems to be classified as Group 1 (Protected) or Group 2 (Rotorua) where numerous significant geothermal features (“SGFs”) or SGFs with high to moderate vulnerability to extractive use are present, Group 3 (Conditional Development) where some SGFs with moderate vulnerability to extractive use are present; or Group 4 (Development) where no SGFs or few SGFs with moderate to low vulnerability to extractive use are present. For “conditional” and “development” systems (those where further development is provided for) only significant adverse effects must be avoided, remedied or mitigated.⁴⁴ This approach is not sufficient to control cumulative adverse effects and maintain biodiversity.
159. Forest & Bird partly supports Option 3 in the consultation document but does not support geothermal system classification as per the BOPRPS because the approach to SNA identification and effects management are not sufficiently robust. Instead:
 - a. the SNA identification approach should be in accordance with the NPSIB criteria,
 - b. classification should ensure that all high value SNAs are protected in accordance with the NPSIB effects management policies.
160. There is scant information about the biological values of organisms living in thermal water and soil. Those matters should be taken into account in SNA assessments. Given the extensive use of geothermal resources now and the NPSIB’s provision for existing uses, it is reasonable for new geothermal developments to comply with the NPSIB effects management regime.

⁴⁴ BOPRPS Table 12.

Outside SNAs

161. Forest & Bird supports the recognition in clause 3.13 that maintenance of biodiversity beyond identified SNAs is necessary.
162. Protecting indigenous biodiversity outside SNAs is critical to maintaining biodiversity, and protecting and restoring nature:
 - a. It provides important opportunities for corridors across landscapes, e.g. small bush fragments connecting forest for forest dwelling birds (unlikely to meet SNA criteria)
 - b. It may provide other ecosystem benefits, e.g. cooling, seed source, itinerant feeding opportunities.
 - c. It may contain insect and invertebrate diversity not well identified through SNA work.
 - d. It is important habitat for more common species, e.g. roosts for kereru, piwakawaka
 - e. It provides occasional feeding zones for threatened species that help provide species richness.
163. Clause 3.13(1)(b) appears overly prescriptive and the direction to place biodiversity compensation at the same level as biodiversity offsetting is inconsistent with biodiversity offsetting principles and appears intended to create an artificial and arbitrary distinction between effects management within and outside SNAs. Forest & Bird considers that clause 3.13(1)(b) is not needed and Councils can determine how to control subdivision, use and development outside SNAs under clause (1)(a).
164. The ongoing process of identifying new SNAs as provided for in clause 3.13 (1)(c) is supported.

Existing activities

165. The “improved pasture” implementation requirement (“IR”) is an important policy that was produced following significant discussions and negotiations between Forest & Bird and Federated Farmers. It is important from a biodiversity conservation perspective because there have been instances where improved pasture permitted activity rules have allowed clearance of large areas of dryland vegetation and other important ecosystems (e.g. in the Mackenzie Basin and at the Bayley property at Kaitorete). It is important for farming because farmers do not want to be required to obtain a resource consent in order to carry out regular clearance of native regrowth within exotic pasture. Circumstances vary greatly along a spectrum (from the fully exotic, cultivated paddock with occasional woody shrub regrowth to predominantly native dryland ecosystems that have some exotic pasture species due to over-sowing and top-dressing). As a result it is difficult to produce a “one size fits all” policy. In addition, a lot of improved pasture maintenance is anticipated to be a permitted activity, so the policy cannot distinguish between appropriate and inappropriate clearance based on effects (because there will not be an assessment of effects).
166. The policy that was produced by Federated Farmers and Forest & Bird takes a “baskets” approach rather than a directly applicable effects- or outcomes-based approach. In other words, it describes when clearance is likely to be acceptable and when it is likely to require closer consideration.

167. Forest & Bird continues to support the intent of the improved pasture IR but considers that it has lost some of its intended meaning through its translation into the MFE draft. Some additional changes are proposed to increase clarity and ensure it achieves its intended outcome. Forest & Bird has discussed its feedback on the improved pasture provisions with Federated Farmers.
168. The first issue is how IR 13.12(4)(b) is phrased. The policy put forward by Federated Farmers and Forest & Bird (first discussed at a meeting on 29/3/19 and agreed through subsequent emails) applied within and outside SNAs. This policy only applies within SNAs. There are two problems with that. First, there is no improved pasture policy outside SNAs and the generic “outside SNAs” IR (3.13) would apply which is not fit for purpose - farmers would be required to avoid, remedy, mitigate, offset or compensate for effects when they undertake regular pasture maintenance vegetation clearance. Second, the current wording of IR 13.2(4)(b) does not make sense if the policy only applies to SNAs. The intention was to acknowledge that where indigenous vegetation has regrown within exotic pasture, periodic clearance is unlikely to compromise protection of SNAs and maintenance of biodiversity as long as the native vegetation would not itself be assessed as SNA. It does not make sense, if you are exclusively dealing with areas within an SNA, to talk about vegetation becoming or not becoming SNA. The temporal nature of that wording is also confusing – we propose it should be amended to refer to whether the area meets SNA criteria rather than “has become SNA”.
169. The second issue is that the link between 4(b) and 4(c) is also not as clear as it could be. It is not clear from 4(c) that these activities will require oversight. There is also an error in 4(c) which cross-references sub-clause (2) when presumably the cross-reference should be to sub-clause (3).
170. The third issue is that we have received advice that the term “alluvial” in 4(c)(iv) may be interpreted more narrowly than we intended, and we propose to change it to depositional landforms. Forest & Bird’s primary concern with this provision is to ensure that no further dryland ecosystems are lost through vegetation clearance in reliance on improved pasture rules. This vegetation is not “regrowth” but rather native ecosystems that have persisted despite some (generally extensive) farming activities.
171. The fourth issue relates to existing activities rather than improved pasture specifically. The IR provides in 3.12(2) for regional councils to make or change their policy statements to specify where, how and when plans must provide for existing activities that may adversely affect indigenous biodiversity. It may be more efficient to enable district and regional plans to directly identify what existing activities are provided for rather than requiring this in policy statements.
172. The fifth issue is one that Forest & Bird has consistently raised: that clearance should be defined to include modification of indigenous vegetation, because otherwise activities that will cause clearance over time but not immediately will not be covered by this policy.
173. On that basis, Forest & Bird continues to support the intent of the existing activity and improved pasture policy but seeks the following changes:

3.12 Existing activities in SNAs

(1) ~~This clause (2) and (3) applies~~ to the management of the effects of existing activities on SNAs. Clause (4) applies both within and outside SNAs.

(2) ~~Local authorities~~ Regional councils must ~~make or change their policy statements to specify where, how and when plans must provide for~~ existing activities that may adversely affect indigenous biodiversity are to be provided for.

(3) In providing for existing activities in their policy statements and plans, local authorities must –

a) ensure the continuation of an existing activity will not lead to the loss, including through cumulative loss, of extent or degradation of the ecological integrity of any SNA; and

b) ensure the adverse effects of an existing activity are of no greater character, intensity or scale than they were before the National Policy Statement commencement date.

(4) In regions and districts where pastoral farming is an existing activity, local authorities must ensure their policy statements and plans recognise that –

a) indigenous vegetation may regenerate in areas that have previously been cleared of indigenous vegetation and converted to improved pasture; and

b) subject to 3.12(4)(c), as long as the regenerating indigenous vegetation ~~has does not now meet SNA criteria not itself become a SNA in the time since the last clearance event,~~ the periodic clearance of indigenous vegetation as part of a regular cycle to maintain improved pasture ~~is unlikely to~~ may not compromise the protection of SNAs or the maintenance of indigenous biodiversity; and

c) consideration of effects (under Schedule 1 of the Act or through a resource consent application) ~~may~~ will be required in the following circumstances, to ensure the outcomes in subclause ~~(23)~~ are met:

i) a proposed clearance is likely to have adverse effects that are greater in character, intensity or scale than the adverse effects of clearance that has previously been undertaken as part of a regular cycle to maintain improved pasture on the farm:

ii) there is inadequate information to demonstrate that a proposed clearance of regenerating indigenous vegetation is part of a regular cycle of clearances to maintain improved pasture and will not have greater adverse effects than the previous clearance undertaken:

iii) a clearance is proposed in an area that supports any threatened or at-risk species:

iv) a clearance is proposed ~~in an area that supports~~ on depositional alluvial landforms that have not been cultivated (ie, the land has not been disturbed for the purpose of sowing, growing or harvesting pasture or crops).

(5) In this clause –

clearance refers to the removal or modification of indigenous vegetation by cutting, crushing, application of chemicals, drainage, burning, cultivation, over-planting, application of seed of exotic pasture species, mobstocking and/or changes to soils, hydrology or landforms

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

regular cycle means the periodic clearance of regenerating indigenous vegetation that is demonstrated to be part of a consistent management regime in place for the purpose of maintaining improved pasture

depositional landform means alluvial (matter deposited by water e.g. fans, river flats and terraces), colluvial (matter deposited by gravity at the base of hillslopes, such as talus), and/or glacial (matter deposited by glaciers: moraines and outwash) landforms

174. Forest & Bird also submits that the existing activities policy should be amended to provide better guidance. At the moment, the policy says:

Policy 10: to provide for appropriate existing activities that have already modified indigenous vegetation and habitats of indigenous fauna:

175. This policy should reflect the intention that within SNAs, existing activities should not increase the character, intensity or scale of their effects:

Policy 10: to provide for appropriate existing activities that have already modified indigenous vegetation and habitats of indigenous fauna while ensuring that such activities do not increase the character, intensity or scale of their effects on SNAs

Identified taonga

176. The direction to agree a process for identification of taonga and to manage protection of taonga is supported as it implements section 6(e) RMA.

Highly mobile fauna

177. Some fauna species travel large distances and use a range of habitats along the way. Protecting SNAs is not enough, by itself, to ensure that these species persist across their natural range.
178. The highly mobile fauna policy presents a critical opportunity to consider the needs of mobile native animals. It is limited to threatened and at risk species, which are most in need of protection to avoid the risk of them becoming extinct. Forest & Bird strongly support's the overall goal of this policy which is that mobile fauna should be sufficiently protected that viable populations are maintained across species' natural range. That outcome is consistent with the NZBS 2000-2020 Goal 4. At the concept level, it is a justified and proportionate response.
179. However, the policy in the draft NPS is more directive and onerous than the BCG's recommended policy:
- a. The direction to undertake surveys or use existing information to identify mobile fauna habitat, and to include maps in plans where it would assist their protection, was qualified by the direction "where practicable". That qualifier recognises that it is not feasible to survey for every at risk and threatened species.
 - b. The direction was also for councils to collaborate where-as the draft NPS language is much more directive.
180. A second issue is that the draft NPS is focused on what will "help manage highly mobile fauna" where-as it is effects on these species and/or their protection that is managed, not the species themselves (see BCG policy 14.1(e)).

181. A third issues is that the BCG policy included a statement that:
2. An area identified in accordance with this policy is not a significant natural area, unless the area also meets the criteria in Appendix 1.
182. While this may be seen as self-evident, this clause was important to other BCG members and its deletion plus the directiveness of the draft NPS's highly mobile fauna policy may have given submitters the impression that the stringency of SNA policy will also be applied to highly mobile fauna habitat. This is unfortunate as that was not the BCG's intention.
183. There is a suggestion that this policy should be limited to bats. The policy is critically important for bats. Long tailed bats are 'nationally critical', while short-tailed bats are 'nationally vulnerable'. Both use a range of habitats and can be difficult to detect leaving them vulnerable to loss from development. Loss of a single tree could wipe out a colony if it occurs at the wrong time. Luckily, human activities can be modified so that development can still occur while ensuring bats survive, such as by surveying and using tree felling protocols.
184. However, the policy's application is not limited to bats, and it is also essential for the longterm survival other highly mobile threatened fauna. One such example is tāiko (Westland Black Petrel). Tāiko is endemic to New Zealand and naturally rare. They only have one breeding location in coastal ranges near Punakaiki. They are at sea for months. While at sea they are particularly vulnerable to being caught by long line and trawl fishing. When they do make it to their breeding site they are predated on by the usual suspects. Of relevance to this policy, when making their way to and from their breeding site to the sea tāiko can fly into structures (power lines for example) and can be disorientated by lighting. An example of how this policy could apply is by encouraging Grey District Council to map the tāiko flight path zone (a relatively short distance from the shore to where they breed) and to include provisions around minimising lighting and lighting design and controlling new structures within the zone.
185. Forest & Bird considers that this policy should also apply to highly cryptic species, such as geckos. As with highly mobile fauna, these species are often not picked up in SNA assessments and additional methods are required to ensure their persistence.
186. We anticipate that lack of Council capacity will be raised as an issue in opposition to this policy. To a certain extent this can be addressed by making the policy less directive and making clear that not every species needs to be surveyed for and managed. However, Forest & Bird does not accept that this policy should not be adopted merely because Councils may not have in-house expertise in mobile fauna. The Department of Conservation has a statutory function to advocate for the conservation of natural heritage – not just on conservation land but everywhere. It exercises this function in part through participation in RMA processes. Iwi/hapu also often have a well-developed understanding of the fauna within their rohe. This policy provides the framework within which councils, the Department of Conservation, iwi, hapu, landowners and communities can work together to better understand and protect mobile fauna species.
187. There are a number of existing resources available. 'eBird' is a citizen science, global, on-line checklist database programme. Observations of single birds through to

checklists of all birds seen at a location are submitted to the website. The database holds tens of millions of records from around the world. Results are freely available through searches by species or specific areas. The website has become a valuable source of information to assist with the development of lists of bird species present in particular locations. This type of resource could assist in identifying likely mobile fauna habitat.

Restoration and enhancement

Prioritise protection of remaining habitat

188. The BCG recognised that protection of remaining habitat must be a priority. It said:

It is more efficient and cost-effective to maintain existing indigenous ecosystems than to try and create new ecosystems. There are inherent difficulties and risks in seeking to recreate or reconstruct indigenous habitat in order to mitigate for continuing removal of indigenous habitat for development projects, and that mitigation may not result in an ecosystem of equivalent richness or function. However, advice received by the BCG is that it is possible to reconstruct or re-create high quality indigenous habitat to complement (rather than replace) measures to protect existing ecological values. This can bring indigenous nature back into urban centres, the peri-urban zone and other highly modified landscapes.

189. As long as the priority of protecting existing habitat is recognised, Forest & Bird is excited to see recognition in the draft NPS that restoration and enhancement are also important components of biodiversity maintenance. Our members are already involved in a huge range of restoration projects across the country, and formal recognition of the contribution these projects make to the national objective of halting biodiversity loss will be warmly welcomed. Also welcome is a more strategic approach to co-ordinating and achieving outcomes through restoration.

Clarity around restoration provisions

190. The restoration provisions should be re-ordered to make clear that the “enhancing vegetative cover” and “restoration and enhancement” policies relate to activities for which the detail will be agreed in regional biodiversity strategies. We suggest that the regional biodiversity strategy policy should come first, followed by the restoration and enhancement and enhancing vegetative cover policies.

Regulatory vs non-regulatory

191. The BCG was clear that restoration and enhancement should be a mandatory objective, but that achievement of that objective by individual landowners and others should be non-regulatory. The distinction between regulatory and non-regulatory aspects of the restoration and enhancement recommendations is articulated in the BCG’s covering report⁴⁵ and in the language used in the recommended policies, which have largely been taken up by MFE. In particular:

- a. Territorial authorities must identify the locations of priority restoration areas.⁴⁶
This imposes a mandatory requirement. As an aside we note that if this obligation

⁴⁵ Pages 34-36

⁴⁶ Clause 3.16(1) and (2)

is on territorial authorities, these locations should be recorded in district plans not RPSs (territorial authorities do not have RPSs).

- b. Local authorities must promote restoration and enhancement of those areas.⁴⁷ This language implies incentive-based approaches plus ensuring that regulation is consistent with enabling restoration and enhancement (for example, a permitted activity rule allowing indigenous vegetation to be planted in SEAs).
- c. Objectives, policies and methods must identify opportunities for restoration or enhancement⁴⁸. This language again implies non-regulatory incentivisation (if it intended to require restoration or enhancement it would use language like require or control).
- d. Local authorities may provide incentives for restoration and enhancement.⁴⁹ This clause reiterates the expectation for incentivisation.
- e. Local authorities may impose or review restoration or enhancement conditions on resource consents and designations relating to activities in areas prioritised for restoration and enhancement. Such conditions are commonly used where an activity requires resource consent and restoration or enhancement is required to address the effects of the activity. It is not an authorisation to impose wide-ranging conditions unrelated to an activity for which consent is sought. Application of the clause is limited by RMA s 108A which provides that a consent authority must not include a condition in a resource consent for an activity unless the applicant for the resource consent agrees to the condition; or the condition is directly connected to an adverse effect of the activity on the environment or an applicable district or regional rule, or a national environmental standard; or the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

192. We are aware that Beef and Lamb NZ and Federated Farmers have raised a concern that:

... goal posts have shifted to where restoration initiatives could now be considered part of Councils' legal obligation to maintain biodiversity - The implications for farmers are significant; this potentially gives legal grounds for imposing requirements on farmers to actively manage pests and weeds, fence off SNAs and other costly restoration actions – perhaps even retire land altogether. This may not have been the intention of these provisions, so we will be submitting strongly that all restoration initiatives should be nonregulatory and should focus on supporting landowners and community groups with their conservation efforts.

193. Forest & Bird does not read the restoration provisions as requiring that farmers actively manage pests and weeds or fence off SNAs. Where consent is sought for a new activity and that activity affects a SNA, a requirement for restoration could be imposed and that is no different from the current situation. Pest and weed management is also a requirement of some consents where the activity increases the risk of pest or weed ingress (for example, consents for roading projects may have weed management plan requirements, and subdivision consents may specify that cats, dogs

⁴⁷ Clause 3.16(3)

⁴⁸ Clause 3.16(4)

⁴⁹ Clause 3.16(5).

and mustelids are not to be kept on dwellings on the new titles). Pest and weed conditions may also be part of a biodiversity offset. However, other than in those situations there is no general legal ability for Councils to impose conditions requiring control of pests and weeds. On that basis, we do not think that changes to the restoration and enhancement policies are needed to address the Beef and Lamb/Federated Farmers concern, but in the spirit of collaboration we suggest the following amendment:

3.16(3) Local authorities must ~~promote~~, through objectives, policies and methods in policy statements and plans, enable people and communities to undertake activities that contribute to the restoration and enhancement (including through reconstruction) of areas to which this clause applies.

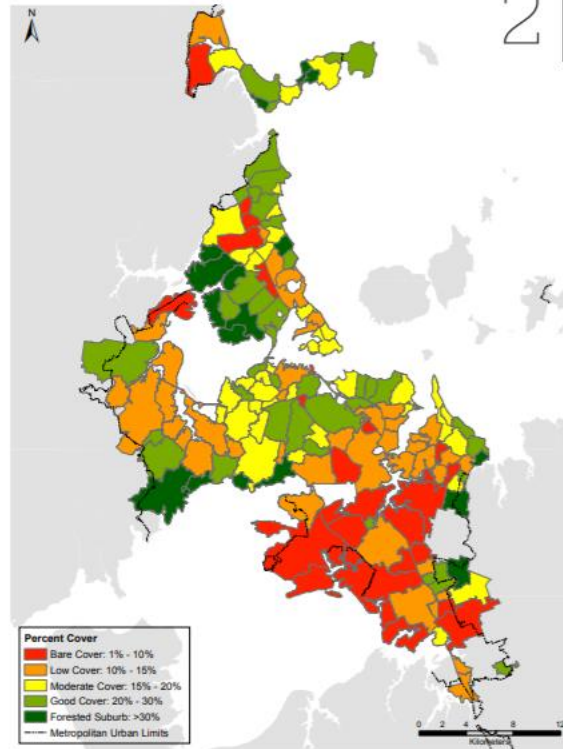
Restoration targets

194. The BCG received advice that when ecosystems persist at 10 per cent or less of their original extent, a decline in many species may be triggered, with severe fragmentation effects.⁵⁰ The advice was that adoption of a formal target is important to provide a goal to inform and develop biodiversity protection strategies, and that for urban and peri-urban areas, that target should be at least 10 per cent indigenous cover.
195. Forest & Bird sees a target of 10 percent indigenous cover as also furthering the wider benefits of biodiversity. Opportunities to experience nature are important for human wellbeing, yet they are often inequitably distributed across society. Internationally, tree cover tends to be higher in more socio-economically advantaged neighbourhoods⁵¹ and the same is true in New Zealand as shown in the image below (showing tree cover rather than indigenous cover).⁵² An increased indigenous cover target is consistent with enabling people to provide for their wellbeing, and with broader human health goals.
196. Indigenous cover is also important for carbon storage, canopy shading, reduced air pollution and flooding mitigation.

⁵⁰ BCG Covering Report, page 34.

⁵¹ D.F. Shanahana, B.B. Linb, K.J. Gastonc, R. Bushd, R.A. Fuller *Socio-economic inequalities in access to nature on public and private lands: A case study from Brisbane, Australia* Landscape and Urban Planning 130 (2014) 14-23

⁵² Auckland's Urban Ngahere (Forest) Strategy, Figure 2.



Canopy cover across Auckland suburbs

197. A 10 per cent indigenous cover target is not overly ambitious. Auckland has already adopted a target of increased canopy cover to 30 per cent across Auckland's urban area, and at least 15 per cent in every local board area.⁵³ While not all of that will be indigenous cover, it is reasonable to expect at least 10 per cent cover to be indigenous.
198. The BCG's proposed targets deliberately differentiated between urban areas and rural areas, in recognition that some rural areas have extremely low indigenous cover and a relatively low target is still aspirational, where-as in other rural areas there may be capacity to be more ambitious.
199. The 10 per cent target was not intended to apply to individual land holdings, and Forest & Bird does not read the draft NPS as requiring that outcome.
200. It should be made clear that the 10 per cent target is certainly not a "clear down to" target, and that it is the minimum target for urban areas that are currently below it. Other areas may well set more ambitious targets.
201. The priority areas for increasing indigenous vegetation cover in clause 3.17(7) are supported as being ecologically appropriate.

Regional biodiversity strategies

202. The BCG saw regional biodiversity strategies ("RBS") as a way to co-ordinate and support council, tangata whenua, landowner and community conservation initiatives. The requirement to have a RBS is mandatory, but it does not have direct regulatory effect (it is a matter to have regard to in preparing regional policy statements and

⁵³ Auckland's Urban Ngahere (Forest) Strategy

plans). The way in which this is proposed to occur in Clause 3.18 and purpose and contents of RBSs as set out in Appendix 5 are supported.

Monitoring

203. The draft NPS requires that regional councils develop a monitoring plan for indigenous biodiversity in their regions and districts. The requirement for state of the environment monitoring specific to biodiversity is supported. An additional requirement to monitor the effectiveness of measures to address impacts on biodiversity should also be incorporated.

Conclusion

204. Improving New Zealand's indigenous biodiversity policy framework has been a goal of successive governments for over 20 years - but has not been achieved. This is due, in short, to people speaking past one another, to protective policies being weaponised for political objectives, and to a lack of leadership and courage within government to champion a biodiversity NPS and see it through to completion.
205. A huge amount of effort, goodwill and time has gone into the creation of this NPS. The Government has a one-off opportunity to take that goodwill and turn it into meaningful, fair and proportionate environmental policy that will make a real difference to stopping loss and degradation of habitat and associated biodiversity decline.
206. New Zealand has advanced legal and governance institutions and a well-informed population that by and large cares about the natural environment and wants nature in this country to thrive. New Zealanders' attachments to nature and efforts to halt the decline in indigenous biodiversity have grown and are visible in conservation projects throughout the land. If a goal of halting biodiversity loss cannot be achieved in this country, there is little hope for the rest of the world.
207. Forest & Bird strongly supports the proposed NPS, with amendments as set out above.