Te Hunga Rōia Māori o Aotearoa, the Māori Law Society

Submissions on the draft National Policy Statement for Freshwater Management

31 October 2019

Introduction

This submission is made for and on behalf of Te Hunga Rōia Māori o Aotearoa, the Māori Law Society (THRMOA).

THRMOA was formally established in 1988. Since then, the Society has grown to include a significant membership of legal practitioners, judges, parliamentarians, legal academics, policy analysts, researchers and Māori law students. Our vision is Ma te Ture, Mo te Iwi – By the Law, for the People.

THRMOA encourages the effective networking of members, makes submissions on a range of proposed legislation, facilitates representation of its membership on selected committees, and organises regular national hui which provide opportunities for Māori to discuss and debate legal issues relevant to Māori.

When making submissions on law reform, THRMOA does not attempt to provide a unified voice for its members, or to usurp the authorities and responsibilities of whānau, hapū, and iwi, but rather, seeks to highlight areas of concern, and suggest further reform options where appropriate.

This submission is made on the ‘Action for Healthy Waterways’ discussion document proposing national direction for our essential freshwater (Discussion Document). This submission responds to some of the questions raised in the Discussion Document.

The structure of this submission follows the structure of the Discussion Document.

1. Do you think the proposals set out in this document will stop further degradation of New Zealand’s freshwater resources, with water quality materially improving within five years?

THRMOA supports in principle the Government’s objectives to stop degradation of freshwater, reverse past damage within a generation and address water allocation issues. However, as currently drafted, THRMOA questions whether the intent of the Discussion Document is realised in the proposed National Policy Statement for Freshwater Management (pNPS-FM) and proposed National Environmental Standards (pNES) given that it does not address fundamental issues with freshwater management including but not limited to, grandparenting, compliance and monitoring issues or critically, the lack of shared decision-making with Māori.

THRMOA also considers that these proposals should be reviewed and amended in light of the recent Waitangi Tribunal findings and recommendations in the Stage 2 Report of Wai 2358, the National Freshwater and Geothermal Inquiry (Stage 2 Report).

2. Do you think the proposals will bring New Zealand’s freshwater resources, waterways and ecosystems to a healthy state within a generation?

We consider that the proposals have the potential to stop further degradation within 5 years to a generation. However, we note that this potential will only be realised if (among other things):

- There is adequate provision for iwi and hapū to exercise tino rangatiratanga regarding freshwater rights and interests;
- Te Mana o te Wai is embedded throughout the freshwater management framework (we consider that as currently drafted, the pNPS-FM does not embed this concept throughout the entire system);
- Māori values for freshwater are identified, reflected, incorporated and monitored across the country. The development and application by tangata whenua of tools, frameworks and methods of identifying, giving effect to, and measuring freshwater health are a central aspect of implementing the pNPS-FM (this is key in embedding Te Mana o te Wai);
• Regional councils are adequately resourced to implement the proposals (which necessarily includes building the capacity regarding Te Mana o te Wai and tangata whenua freshwater values);

• Regional councils take the required action under the pNPS-FM. Many of the actions necessary to protect freshwater in the pNPS-FM are contained in the current NPS-FM. However, implementation is dependent on the will of local government which have largely failed to implement current requirements. For example, the Discussion Document notes that fewer than half of 16 regional councils have set nutrient limits in some catchments using the current attributes, and are working to implement rules that will gradually reduce nutrient run-off to meet those limits. Regional council are already required to take these actions under the current NPS-FM but fail to do so. The pNPSFM does not adequately address the lack of compliance, monitoring and enforcement required to ensure that local government properly apply and adopt these national directions. Accordingly, proposals will only succeed in improving New Zealand’s freshwater crisis if the required action is taken;

• There is a collaborative effort between all New Zealanders as it is clear that we all have a responsibility (i.e. urban and rural; farmers; industry etc.). Exemptions and exclusions such as the proposed exemption for six major hydro-electricity schemes, are not appropriate as they only undermine the proposals and are inconsistent with Te Mana o te Wai and ki uta ki tai;

• The value ranges and bottom lines of the freshwater attributes required for ecosystem health are amended on the basis of robust scientific evidence. We note that the attributes present in the current NPS-FM that have been carried over to the pNPS-FM have identical value ranges and bottom lines. These levels have not protected our freshwater and have been demonstrated as insufficient to provide for ecosystem health and have contributed to the degradation of our freshwater. Therefore the proposals to amend these attributes by raising the national bottom lines to meet the scientific evidence must be implemented if the proposals are to succeed; and

• There are mechanisms to ensure compliance and accountability. One of the key downfalls of the current regime is that there are few (if any) mechanisms for enforcing compliance and penalising those who do not meet the requisite standards. For example, under section 17 of the Resource Management Act 1991 (RMA) the duty to avoid, remedy, or mitigate adverse effects is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty. The pNPS-FM does not address compliance and accountability and includes this RMA language.

THRMOA is also concerned that the introduction of a the pNPS-FM (rather than amendments to the current NPSFM) will have implications on what ‘maintain’ is measured against. That is, having a pNPS-FM will essentially re-start the clock for ‘maintain’ and has the potential to reinforce current degradation rather than the proposed intent of reversing degradation.

3. What difference do you think these proposals would make to your local waterways, and your contact with them?

'E rere kau mai te awa nui mai te Kāhui Maunga ki Tangaroa, ko au te awa, ko te awa ko au.' The river flows from the mountain to the sea, I am the river, the river is me. The river gives to you and you give to the river by keeping it healthy.

This whakataukī explains the intimate connection between people and te taiao (the environment). In te ao Māori, the health of te taiao directly impacts the health of the people. Therefore the continued degradation of all waterways continues to have an impact on the health of Māori as a people. If these proposals are successful, the impact would be restoration and protection of the mauri of our freshwater bodies and therefore restoration and protection of the mauri of us as a people, both individually and collectively.

7. Do you think it would be a good idea to have an independent national body to provide oversight of freshwater management implementation, as recommended by KWM and FLG?

We consider that it would be essential to have an independent national body to provide oversight. It is clear that accountability requires such oversight as the degradation of our waterways has occurred
because of poor implementation of the current NPS-FM. However, for this body to be Treaty compliant, it must adequately represent Māori interests in freshwater and be co-designed with Māori.

The Waitangi Tribunal’s recommendations in its Stage 2 Report included:

- the establishment of a national co-governance body for fresh water, which would (among other things) arrange the allocation scheme for iwi and hapū, investigate other forms of proprietary recognition, and oversee more comprehensive restoration of water bodies; and

- make co-design of policy with Māori a standard Government process where Māori interests are concerned.

We support these recommendations of the Tribunal and consider that the Crown should ensure it considers these recommendations in the establishment of any independent national body.

**Te mana o te Wai**

9. **Do you support the Te Mana o te Wai hierarchy of obligations, that the first priority is the health of the water, the second priority is providing for essential human health needs, such as drinking water, and third is other consumption and use?**

We support the Te Mana o te Wai hierarchy of obligations but strongly recommend that the six core principles (as set out in the Te Kahui Wai Māori Advisory Report) must also be applied, specifically mana whakahaere.

10. **Do you think the proposals will have the desired effect of putting the health of the water first?**

Please refer to our points at questions 1 and 2 regarding the overall success of the proposals.

11. **Is it clear what regional councils have to do to manage freshwater in a way consistent with Te Mana o te Wai?**

We do not consider that the way the pNPS-FM is currently drafted makes it clear what regional councils have to do to manage freshwater in a manner which is consistent with Te Mana o te Wai. As noted in the Discussion Document, under the current NPS-FM, regional councils are directed to consider and recognise Te Mana o te Wai, but they remain uncertain as to what is expected, and how Te Mana o te Wai relates to or adds to other directions in the NPS-FM. This is important because notwithstanding that the pNPS-FM proposes to change the requirement from “consider and recognise” to “give effect” to Te Mana o te Wai, if those tasked with implementing it do not understand what it is, then they can no more give effect to it than they could consider and recognise it. However, in principle, THRMOA supports requiring regional councils to ‘give effect to’ rather than merely consider and recognise.

Further, the knowledge and understanding of te ao Māori (the Māori world) and the Māori approach to environmental management is limited (despite the incorporation of various Māori concepts in legislation and policy). There are a myriad of decisions that reflect this general lack of understanding (many which include resource consents for freshwater).

For example, in a recent decision (*Ngāti Tama Ki Te Waipounamu Trust v Tasman District Council* [2017] NZHC 1081) the regional council granted a groundwater take consent. On appeal, the Court held that the Council failed to take into account the mandatory consideration of analysing Ngāti Tama’s position to the extent to which it was an affected party because of its connection to the Te Waikoropupū Springs. This case is concerning because even after two and half decades of legislative recognition of Māori cultural concepts and the requirement that decision-makers consider these concepts, the regional council made an incorrect conclusion based on its limited understanding of Māori cultural concepts.

We also note that existing use rights and existing resource consents for high consumptive takes (i.e. bottling water) will continue to undermine Te Mana o te Wai. While this is an allocation issue and we will comment on this on specific reforms addressing allocation, we consider that this issue must be addressed by national directions.
12: **Will creating a long-term vision change how councils and communities manage freshwater and contribute to upholding Te Mana o te Wai?**

While we consider a long term vision may change how councils and communities manage freshwater and contribute to upholding Te Mana o te Wai in principle, we consider real change and upholding Te Mana o te Wai requires continuous engagement, discussion and partnership with Māori.

We also consider the success of the long term vision depends on the adequacy of the engagement. In terms of engagement, we consider the points raised by the Waitangi Tribunal in Wai 262 are relevant here, in that engagement must go beyond consultation.

Further, the success of these proposals also depends on the RMA, which is the current law governing freshwater. In the Stage 2 Report, the Waitangi Tribunal noted that many Tribunal panels have found the RMA to be in breach of the Treaty principles, yet very few of the myriad of recommendations made by the Tribunal have been implemented. The Stage 2 Report discussed a number of issues with the RMA, including:

- the weakness of s 8 (Treaty principles). The report recommends amending s 8 to state that Crown duties, in terms of the principles of the Treaty, are imposed on all who exercise powers and functions under the Act;
- the inadequate provision for iwi and hapū to exercise tino rangatiratanga and kaitiakitanga over their freshwater taonga. Section 33 provides a mechanism for transferring power to iwi but this has never been used and the terms of s 33 further restrict its use. To address the ineffectiveness of s 33, Joint Management Agreements were added to the RMA. However, their use has also been limited;
- the insufficient legal weight afforded to Iwi Management Plans;
- the limits on Māori involvement in RMA processes as a result of under-resourcing;
- the lack of recognition of Māori proprietary rights in their freshwater taonga;
- the occurrence of serious degradation of water quality in ancestral water bodies, which is a breach of active protection; and
- the barriers that have prevented Māori from accessing water in the RMA’s first-in, first-served system (this breaches the principle of equity and the Crown has acknowledged that Māori have been unfairly excluded. However, the Crown have not introduced any reforms to address this inequity.

While we acknowledge that the RMA is under reform and that reform may address some of the issues identified above, it is essential for the effectiveness and success of the pNPS-FM from a Treaty perspective, that the Tribunal’s criticisms and recommendations are taken into account and the steps it sets out in the Stage 2 report are taken by the Crown. These steps will assist in remedying the identified Treaty breaches (which includes the degradation of our freshwater) and restore a healthy and enduring Treaty relationship between Māori and the Crown.

**New Māori value**

13. **Do you think either or both of these proposals will be effective in improving the incorporation of Māori values in regional freshwater planning?**

14. **Do you foresee any implementation issues associated with either approach?**

15. **What are the benefits and impacts of either of these approaches?**

16. **What implementation support will need to be provided?**

We consider that both proposals of elevating “Mahinga Kai” and creating a new “tangata whenua freshwater values” should be included.
However, we consider that Proposal 1 (elevating Mahinga kai) is the preferred option because mahinga kai values are already understood by councils and therefore there is certainty regarding these values and familiarity regarding the processes with which to give effect to these values. Elevating this to a compulsory value compels regional councils to provide for mahinga kai values. Ensuring sufficient compulsion, both in respect of councils supporting hapū/iwi to identify and articulate tangata whenua values and attributes, and ensuring councils must incorporate these into freshwater planning documents, is fundamental to embedding Te Mana o te Wai.

We support Proposal 2 as a supplement to (and not a substitution for) Proposal 1 and consider “tangata whenua freshwater values” complements the consolidation and elevation of mahinga kai to a compulsory value by providing for a broader range of tangata whenua values. Therefore this value would assist in the better incorporation of Māori values in freshwater, which further embeds Te Mana o te Wai.

However, further detail is required regarding:

- how this value will work in practice,
- the status of the values and attributes identified by Māori under this option;
- the express direction that will be given to regional councils to work with and support hapū/iwi to develop tangata whenua values and attributes;
- how hapū/iwi will be supported to participate; and
- how councils will be required to incorporate those values and attributes into planning documents.

A critical aspect to the success of both of these proposals is supporting and resourcing iwi/hapū to ensure tangata whenua values are meaningfully incorporated (emphasis added).

For the NPS-FM to be Treaty compliant, the Tribunal noted in its Stage 2 report that the NPS-FM must include:

- essential attributes such as sediment, wetlands, acquifers, or estuaries (we note the draft NPS-FM has proposed to address sediment and wetlands);
- adequate nutrient levels that support human and ecosystem health;
- compulsory Māori values in the National Objectives Framework;
- national bottom lines for Māori values; and
- Māori cultural indicators.

These two proposals address these in part, however further steps are required.

**Specific comments on the proposed NPS-FM**

Clause 1.5 of Part 1 provides a potential placeholder for reference to the Treaty of Waitangi/Te Tiriti o Waitangi. “The Treaty of Waitangi” is different from “Te Tiriti o Waitangi”. Therefore, it is essential, if the NPS-FM is going to reference both versions, there is clarity about what this means in practice. Treaty principles provisions generally, as well as section 8 of the RMA, have not had the impact envisioned and therefore further clarification is needed.

We also note that tino rangatiratanga is not included as a feature of Te Mana o te Wai. Currently the features only refer to “mana whakahaere”, “kaitiakitanga” and “manaakitanga”. Wai 2358 makes it clear the freshwater management regime must (and it currently does not) provide adequate provision for iwi and hapū to exercise tino rangatiratanga. We consider this requires an express reference to tino rangatiratanga.

We recommend making it explicit the NPS-FM must give effect to Te Mana o te Wai. For example by adding the words “Freshwater management under the National Policy Statement must give effect to Te Mana o te Wai” before the words “In the context of this National Policy Statement...”.

Section 3.3 (Tangata whenua roles and interests) requires regional councils to engage with tangata whenua in the management of waterbodies and freshwater ecosystems. However, engagement with tangata whenua only requires *taking reasonable steps* to:
• involve tangata whenua in freshwater management and decision-making regarding freshwater planning;

• identify tangata whenua values and interests in relation to waterbodies and freshwater ecosystems; and

• reflect those values and interests in the management of, and decision-making regarding, the waterbodies and freshwater ecosystems in the region.

THRMOA supports the findings and recommendations of the Waitangi Tribunal in the Stage 2 Report in respect of Section D (now section 3.3 of the pNPS-FM). The Tribunal found that Section D is not Treaty compliant and any amendments need to specify a direct, co-governance level of involvement in freshwater decision-making to satisfy Treaty standards. Further we recommend =Section 3.3 be amended to require ‘local authorities’ to engage with tangata whenua rather than only regional councils.

We consider regional councils should be required to engage rather than simply “take reasonable steps” to engage. To embed Te Mana o Te Wai, tangata whenua values must be incorporated into the NPS-FM. This requires meaningful engagement that goes beyond consultation.

Clause 3.4 (Integrated management) uses the RMA language of “avoid, remedy, or mitigate adverse effects, including cumulative effects” (Duty). We consider this standard needs to be strengthened as the Duty has not protected our freshwater, will undermine the proposals overall, and in particular, Te Mana o Te Wai. We recommend integrated management must be undertaken in accordance with Te Mana o Te Wai and must include ‘improve’ (rather than simply a requirement to avoid adverse effects). Our concern with the RMA Duty is that there is already a body of common law jurisprudence that has used the Duty to subordinate Māori cultural concepts based on the cultural impacts being assessed as not meeting the threshold of “adverse effects”. Therefore, we consider the NPS-FM should carefully consider the language chosen to ensure it does not hinder our freshwater goals overall.

We also consider the NPS-FM should include the precautionary principle to ensure a precautionary approach is taken in any actions made in the management of freshwater to ensure we do not do further damage.

**New planning process for freshwater**

**Question 17:** Do you support the proposal for a faster freshwater planning process? Note that there will be opportunity to comment on this proposal in detail through the select committee process on the Resource Management Amendment Bill later this year.

We agree in principle with this planning process. However, we will comment in more detail on this proposal in our submission on the amendments to the RMA.

We also note the RMA reforms seem premature given the freshwater planning process is still underway (and in our opinion still has some way to go to ensure it is Treaty compliant and effectively embeds Te Mana o te Wai). We also note a number of environmental reforms are also occurring concurrently. Although we support the Government’s proactive approach to addressing longstanding issues, we are concerned the urgency may not result in the creation of robust legislation and policy.

Further, while we support the work of Kāhui Wai Māori, we note it is essential their work is not in substitute for proper engagement (including pre-engagement) in accordance with the Crown’s obligations as Treaty party.

**Exceptions for major hydro schemes**

**Question 19:** Does the proposal to allow exceptions for the six largest hydro-electricity schemes effectively balance New Zealand’s freshwater health needs and climate change obligations, as well as ensuring a secure supply of affordable electricity?

We consider exemptions work against the proposals and undermine the concept of Te Mana o te Wai. We consider further research is required to determine the most appropriate way to manage the effects, causes and management options regarding these waterbodies.
We also consider any management scheme with particular hydro schemes must include partnership with the relevant Māori with interests in the particular waterbody.

**Attributes**

**Question 20:** Do you think the proposed attributes and management approach will contribute to improving ecosystem health? Why/why not?

We consider the proposed attributes will only improve ecosystem health if the proposed attributes (and their associated value ranges and bottom lines) are based on robust scientific evidence. Therefore we support those proposed by STAG.

Similarly, we consider the management approach (proactive adaptive management) will contribute to improving ecosystem health if implemented. However, as noted earlier, this will only be effective if regional councils are adequately resourced to undertake this management.

**Threatened indigenous species national value**

**Question 22:** Do you support the new compulsory national value? Why/why not?

We consider it is essential to include this new value as aquatic species are an indication of ecosystem health. Therefore to give effect to the first priority of Te Mana o te Wai, we must include a compulsory value for threatened indigenous species. This compulsory value is also required to align with the Government’s approach to protecting indigenous biodiversity.

**Fish passage**

**Question 23:** Do you support the proposed fish passage requirements? Why/why not?

**Question 24:** Should fish passage requirements also apply to existing instream structures that are potentially barriers to fish passage, and if so, how long would it take for these to structures to be modified and/or consented?

We support the proposals for fish passage because fish passage is essential for many species, particularly some of our native species such as tuna, to complete their life cycles. Enabling these species to complete their life cycles is essential to population health and population health contributes to freshwater health. Further, the presence of aquatic life is an indication of ecosystem health and water health. Therefore to give effect to the first priority of Te Mana o te Wai, we must include a requirement for fish passage.

We note however, that the Freshwater Fisheries Regulations 1983 has always contained a requirement to promote fish passage under Part 6 of those Regulations and applies to every dam or diversion structure in any natural river, stream, or water. For example, under s 42:

1. no person shall construct any culvert or ford in any natural river, stream, or water in such a way that the passage of fish would be impeded, without the written approval of the Director-General incorporating such conditions as the Director-General thinks appropriate.

2. The occupier of any land shall maintain any culvert or ford in any natural river, stream, or water (including the bed of any such natural river, stream, or water in the vicinity of the culvert or ford) in such a way as to allow the free passage of fish:

   provided that this requirement shall cease if the culvert or ford is completely removed or a written exemption has been given by the Director-General.

We consider that fish passage requirements should also apply to existing instream structures. However, we cannot comment on the length of time for modification or consent as this will be case specific but a reasonable time should be granted based on a robust evidential basis.

**Wetlands / Streams**

25. Do you support the proposal to protect remaining wetlands? Why/why not?

27. Do you support the proposal to limit stream loss? Why/why not?
29. Do the ‘offsetting’ components adequately make up for habitat loss?

We support the proposals to protect remaining wetlands and to limit stream loss because Te Mana o te Wai requires a holistic approach to freshwater management and cannot exclude aspects of the freshwater ecosystem as a whole. This would also be consistent with Ki Uta Ki Tai principles and would account for land use impacts downstream.

Further, avoiding loss of habitats is more effective than attempting to restore them at a later date. In most cases, once lost, habitats cannot be restored. For this reason, we do not consider that offsetting is an adequate substitute for habitat loss and therefore we only support off-setting as a last resort. Further, we do not support off-setting for wāhi tapu (whether identified on district plan or not).

**New bottom line for nutrient pollution**

30. Do you support introducing new bottom lines for nitrogen and phosphorus? Why/why not?

32. Do you have a view on the STAG’s recommendation to remove the ‘productive class’ definition for the periphyton attribute?

We support introducing new bottom lines for nitrogen and phosphorus because the scientific evidence shows the current attributes and bottom lines do not support ecosystem health and have contributed to the degradation of our waterways.

Reducing nitrogen run-off has many benefits and there are a number of actions that can be taken immediately to reduce run-off, including:

- better management of fertiliser, stock and effluent,
- afforestation,
- protection of soil and capture of animal effluent during periods of high risk of run-off, and
- stock exclusion from streams and wetlands.

There are also a range of other actions that can support long term management of run-off, such as riparian planting and using new systems and technologies to deal with effluent so it doesn’t pollute waterways.

We also support raising the bottom lines (and reassessing the value ranges) of all the attributes to ensure that ecosystem health not only improves but flourishes.

**Reducing sediment**

33. For deposited sediment, should there be a rule that if, after a period (say five years), the amount of sediment being deposited in an estuary is not significantly reducing, then the regional council must implement further measures each and every year? If so, what should the rule say?

34. Do you have any comments on the proposed suspended sediment attribute?

We support the proposals regarding reducing sediment, including adding a suspended sediment attribute because excessive sediment is one of the most severe stressors on our freshwater and coastal ecosystems. A number of the other measures the NPS-FM proposes to put in place will reduce sediment (i.e. stock exclusion and limiting winter grazing, and riparian planting). Therefore sediment is both a measure of ecosystem health as well as indication of the success of the proposals overall.

**Higher standard for swimming**

36. Do you agree with the recommended approach to improving water quality at swimming sites using action plans that can be targeted at specific sources of faecal contamination? Why/why not?
We support the proposal as a holding arrangement only until the proposed Quantitative Microbial Risk Assessment is completed. We also agree with STAG and RSWS that this work needs to be completed as soon as possible.

Although we understand the approach only applying to popular swimming spots in principle, we emphasise the requirement to achieve national swimmability targets set in 2017 are essential to upholding Te Mana o te Wai as we must take a holistic – ki uta ki tai – approach to managing water (rather than focusing on isolated areas). We also suggest there should be reasonable time frames applied to these goals and that the long term approach should aim to achieve a standard above swimmability.

Minimum Flows

37. Is any further direction, information, or support needed for regional council management of ecological flows and levels?

THRMOA is concerned with the disconnect between the intent of the Discussion Document and policy in the pNPS-FM in respect of minimum flows. That is, minimum flows must be set to ensure the waterway can undertake its natural flushes and sustain itself first.

Draft NPS-FM

40. Are the purpose, requirements, and process of the National Objectives Framework clearer now? Are some components still unclear?

We consider the purpose, requirements, and process of the National Objectives Framework remain unclear, particularly those regarding embedding and implementing Te Mana o te Wai. As this concept intends to underpin the entire freshwater management regime, it is essential that this concept and the associated aspects of the pNPS-FM are clear.

We also note further drafting work is required to promote clarity and readability overall. We assume consultation (and the opportunity to submit) on the final version of the pNPS-FM will occur before the NPS-FM is finalised. We intend to comment further on that final version.

Drinking water

43. Do you agree with the proposed amendments to the Drinking Water NES? Why/why not?
44. Are there other issues with the current Drinking Water NES that need to be addressed?
45. Do you have any other comments?

We agree in principle with the proposed amendments to the Drinking Water NES, however, we would need more information to comment more fully, which we intend to do when the legislative and policy proposals for these standards occurs in 2020.

Engagement with tangata whenua on these proposals is essential and although the Discussion Document notes that this has likely already occurred, we note that there must be ongoing engagement at every stage of the process.

We also note that the Discussion Document notes that Kāhui Wai Māori, the Freshwater Leaders Group, Regional Sector Water sub-group, and the Science and Technical Advisory Group have not been consulted on these proposals. We consider that further engagement on drinking water needs to occur with such expert groups but also with all Māori and the wider community before any further proposals are finalised.

Stormwater and wastewater

Does the proposed Wastewater NES address all the matters that are important when consenting discharges from wastewater networks? Will it lead to better environmental performance, improve and standardise practices, and provide greater certainty when consenting and investing?
47. Do you agree with the scope of the proposed risk management plans for wastewater and stormwater operators? Are there other aspects that should be included in these plans?

48. What specific national level guidance would be useful for supporting best practice in stormwater policy and planning and/or the use of green infrastructure and water sensitive design in stormwater network design and operation?

49. What are the most effective metrics for measuring and benchmarking the environmental performance of stormwater and wastewater networks? What measures are most important, relevant and useful to network operators, regional councils, communities, and iwi?

50. Do you have any other comments?

We support the waste water and stormwater proposals in principle. However, we require more detailed information to fully comment, and in particular, to be able to answer the question of whether it will lead to better environmental performance. We intend to comment more fully when the legislative and policy proposals for these standards occur in 2020.

Regarding stormwater proposals, we support national guidance on incorporating green infrastructure and water sensitive urban design. We consider that these policies should be compulsory for future design (where it is possible for these design features to be implemented). Stormwater has a huge impact on urban stream ecosystems. To fully embed and give effect to Te Mana o te Wai, the stormwater system must be managed effectively and brought under the ambit of freshwater management generally. As noted earlier, exclusions and exemptions run counter to Te Mana o te Wai and ki uta ki tai.

Under the RMA, urban stream health in Wellington has continued to decline, which in large part has been caused by stormwater which have caused significant erosion and resulted in increased nutrient levels (particularly nitrogen). A number of these streams are culturally significant sites and their mauri has been reduced. Therefore, stormwater policies must account for the impact the stormwater network has on freshwater more generally. Further, if streams are to be given more protection and regard under the NPS-FM, then this requires any stormwater policy to adequately address the risks to urban stream health from the stormwater network. This also relates to fish passage and threatened indigenous species protection as many native fish species depend on the stormwater network for their lifecycle, particularly those species that are “climbers”.

To determine the most effective metrics for measuring and benchmarking the environmental performance of stormwater will require meaningful engagement with the relevant parties. However, we consider that it should include a cultural health indicator (CHI) metric or cultural health monitoring (CHM). CHI’s or CHM uses huānga or elements determined locally by tangata whenua, to assess the cultural health of a culturally significant site. These huānga can include standard ecosystem health indicators, such as those contained in the NPS-FM (i.e. dissolved oxygen and nitrogen levels). However, they also include additional huānga such as the abundance of traditional kai that can be harvested. There are a huge number of iwi and hapū rōpū already undertaking CHM in their rohe and these groups have established their own unique set of huānga. The rōpū must be meaningfully and adequately included in the design and creation of these proposals.

We also consider the proposals need to consider wider issues impacting our freshwater environments. For example, the impacts on ecosystem health from the presence of micro and macro plastic. NIWA is currently undertaking a nationwide project looking at how the freshwater network (particularly streams) are a vector for plastic. We consider that plastic could be an additional attribute to measure and monitor.

**Improving farming practices**

**Restricting further intensification**

51. Do you support interim controls on intensification, until councils have implemented the new NPS-FM? Why/why not?
52. For land-use change to commercial vegetable growing, do you prefer Option 1: no increase in contaminant discharges OR Option 2: farms must operate above good management practices. What are your reasons for this?

53. How could these regulations account for underdeveloped land, and is there opportunity to create headroom?

We support proposing tighter restrictions on further intensification so that it can only occur where there is evidence it will not increase pollution. This should include restricting intensification in areas that are not suitable or appropriate for intensification because of environmental factors, such as soil drainage. We also note that we only support restrictions that are based on a robust evidentiary foundation. Therefore, we will only support the interim restrictions proposed in the Discussion Document if they are based on a robust scientific foundation.

We question why the prevention of intensification in a way that is not sustainable is only proposed to cease by 2025. We consider 2025 to be too long and that the fresh water crisis requires immediate action – which should include any further intensification of land that is unsustainable.

For this reason, we consider that further intensification should be prohibited for a period of time. Further, we do not support the use of resource consents as these have proven incapable of protecting our freshwater historically. To ensure no further degradation occurs, we must adopt a precautionary approach to ensure any decisions regarding intensification are not subsequently found to be unsustainable. Farming has been subject to exemptions and allowances for too long, which Environment Aotearoa 2019 identified as a key factor in the increase of specific nutrients in waterways. Therefore, we must take a precautionary approach to further intensification in the farming and agriculture sector.

If the resource consent approach is taken, then we consider option 1 (no increase in contaminant discharges) to be the preferred option because this places clear parameters on what is required. Option 2 (Operating above good management practice) is ambiguous and leaves too much room for interpretation. Further, if resource consents are chosen to address the issue of increasing intensification then we would support strict monitoring and enforcement from regional council.

Underdeveloped land must be subject to a rigorous assessment to demonstrate, based on a robust evidentiary foundation, that it is suitable and appropriate for sustainable use as production land. As noted above, a precautionary approach is required.

**Farm plan options**

54. Do you prefer mandatory or voluntary farm plans (acknowledging that farm plans may be required by councils or under other parts of the proposed Freshwater NES?) What are your reasons for this?

55. What are your thoughts on the proposed minimum content requirements for the freshwater module of farm plans?

56. What are your thoughts on the proposed priorities and timeframes for roll out of farm plans, as set out in the proposed Freshwater NES?

57. Do you have any comment on what would be required to ensure this proposal could be effectively implemented, including options for meeting the cost of preparing, certifying and auditing of farm plans; and on financing options for other on-the-ground investments to improve water quality?

We support the use of farm plans as an important support tool for farmers. We consider that the farm plans should be mandatory because this promotes consistency and ensures there is a national standard. However, we consider these farm plans should be developed using a risk-based approach. However, we do not consider that these farm plans should be used to demonstrate regulatory compliance – they are only appropriate as a tool to assist farmers to meet limits and regulations set by central and/or local government.
We consider that farmers should be given significant support to ensure the farm plans result in practical improvement on the ground and to ensure they are fit for purpose. Our only concern with farm plans is that increased administration and cost could take away from the need for on the ground practical change. Therefore it is essential we resource and build the capacity of farmers adequately as well as hold them accountable.

There is a risk that farm plans become a tick boxing exercise and it is imperative for our ecosystem health this potential risk is avoided.

**Immediate action to reduce nitrogen loss**

58. Which of the options (or combination of them) would best reduce excessive nitrogen leaching in high nitrate-nitrogen catchments? Why?

61. Do you think the action already underway in five regions (identified in section 8.4) will be effective in reducing excessive nitrogen leaching in those high nitrate-nitrogen catchments?

62. Should there be higher thresholds for farms that produce food products in winter, and if so, which food products?

63. What alternative or additional policies could contribute to reducing nitrogen loss?

64. Do you have any comment on what would be required to ensure this proposal could be effectively implemented?

We support the focus on, and targeting of, excessive nitrogen loss in the interim. However, we consider the proposals should not simply focus on those above a certain threshold of nitrogen loss nor should it allow farmers below a particular threshold to continue to discharge nitrogen without limits (so long as they remain below the threshold). We consider that such an approach may undermine the benefits of the reductions achieved by those farmers over the threshold. Further, we should aim to achieve sustainable discharges nationally, rather than simply focusing on those who are the worst offenders when it comes to nitrogen loss.

We consider the proposals will be effectively implemented if:

- Farmers are resourced appropriately (i.e. they have all the information necessary to meet the threshold targets;
- Regional councils enforce compliance with the target threshold; and
- Accountability measures are available to regional council to penalise non-compliance.

**Excluding stock from waterways**

65. Do you support excluding stock from waterways? Why/why not?

66. Do you have any comment on the proposed different approach for larger and smaller waterbodies?

67. Do you have any comment on the proposed five metre setback, or where it should be measured from?

68. Are there any circumstances that are appropriate for allowing exemptions to the stock exclusion regulations? If so, please give examples.

We consider that stock should be excluded from waterways in all instances because this is essential to uphold Te Mana o te Wai and ki uta ki tai. Where there are barriers or environmental features that make this unachievable, then we need to consider why we are allowing farmers to farm in these areas.

We consider that compliance, monitoring and enforcement will be critical in the implementation of these proposals.
Regarding the proposed five metre setback from streams, we consider this should be based on a robust evidential foundation and should not be an arbitrary number that is set across the board because in some instances this may be insufficient depending on the slope, soil quality, etc.

**Controlling intensive winter grazing**

69. Do you prefer Option 1: Nationally-set standards or Option 2: Industry-set standards? Why?

70. For the proposed nationally-set standards, which options do you prefer for the area threshold, slope, setback, and pugging depth components of the policy?

We consider that winter grazing creates a significant amount of environmental as well as animal welfare issues, which has a negative impact on Te Mana o te Wai (and in particular the first priority of freshwater first).

However, we would only support Option 1 as this requires a resource consent, which will provide greater oversight of this activity as well as ensuring only those farmers meeting specific conditions are winter grazing. For example, we consider the following specific conditions to be a bare minimum:

- providing a dry place for animals to lie;
- no activity at all on highly permeable soils (such as gravel) where there is a high risk of preferential flow pathways; and
- well managed farm systems that protect vulnerable soils and manage critical contaminant source areas.

**Reducing pollution from stock holding areas**

72. Do you support the proposal relating to stock holding areas? Why/why not?

75. Do you have any comment on what would be required to ensure this proposal could be effectively implemented?

We support the proposals regarding feedlots and stock holding areas and, in particular, the requirement for resource consents to ensure that effluent is managed and contaminant loss is controlled.

We consider that compliance, monitoring and enforcement will be critical in the implementation of these (and all of the proposals).

**In Closing**

Te Hunga Rōia Māori o Aotearoa are grateful for the opportunity to comment on this kaupapa and we hope our submissions assist with the important mahi Ministry for the Environment is tasked with undertaking. Should you have any pātai or wish to discuss any aspect of our submissions, please feel free to contact [Personal details removed].

Ngā mihi nui ki a koutou

[Personal]

On behalf of THRMOA