Submission on the proposed National Policy Statement for Freshwater Management, National Environmental Standards for Freshwater and associated Regulations under the RMA.

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Introduction

The Water and Wildlife Habitat Trust (WWHT) has a mission of conserving, rehabilitating and sustainably managing freshwater ecosystems and wildlife, our kaitiakitanga. Today we see many waterways that are no longer swimmable and whose aquatic life and fish stocks are depleted and struggling. The WWHT is contributing to restore healthy waterways through its current project on Snake Creek in the Selwyn/Waihora catchment. It is a successful, yet tiny restoration effort given the task at hand. This is a very important catchment at a national scale as it flows into Te Waihora. The WWHT advocates a catchment and lake scale restoration program planned and funded over the next 10 years where property owners and governance action their duty to care for nature to halt and reverse the decline in biodiversity and ecosystem health.

The Unhealthy State of Our Waterways

Please refer to the recent compilation of freshwater facts prepared by Forest and Bird, Choose Clean Water, Greenpeace and Fish and Game that clearly articulates to progressive loss and degradation of our freshwaters, in lakes, rivers, streams, wetlands and underground. It is a sad indictment on past governance and stewardship of this precious natural resource.

Towards Healthy Waterways
A quantum shift in commitment, healthy waterways policies, climate change adaptation and implementation will be required to halt and reverse the declining ecological and public health of our waterways. Catchment and landscape scale restoration programs will need planning, resourcing and implementation through whole of government and community collaboration. The proposed National Policy Statement for Freshwater Management, National Environmental Standards for Freshwater and associated Regulations under the RMA will be a critical driver for positive change and collaboration.

Our submission

The WWHT supports the intentions of the proposed new policies to improve the health of freshwaters in Aotearoa. Yet, the policies, standards and RMA provisions must be clear and strong to drive behavior change and effective improvements within government, industry and the community over the next 10 years. The “generational” term of the policy framework should be 25 years with 5-year progress milestones and evaluations with adaptive management and necessary policy improvements.

1. **Adaptation to climate change** – The predicted changes in our climate over the next 30 years will require our community and governance to adapt by forward planning and policy making for resilience to changing rainfall patterns, higher temperatures, more extreme weather events, including intensive rainfalls, less snow melt and prolonged droughts. Water resources, including wetlands and waterways, and native vegetation will be severely impacted. The NPS for fresh water should have a dedicated sections of Adaptation to Climate Change that requires regional councils to have policies and requirements to take forecast regional climate changes into account when planning regional land and water resource management and for landowners planning and conducting various land-uses.

2. **Stronger regulation** – Free markets and soft/self-regulation by industry groups and farmers has not achieved sufficient change in land use practices and pollution control to halt and reverse the declining health of our waterways. Market failure to internalize the cost of pollution management must be addressed by government regulation. WWHT supports stronger rules and standards to provide for human and ecological health of freshwaters. WWHT supports the proposed requirement on regional councils to prepare and implement regional freshwater management plans, including reducing caps on nitrogen loss from farm lands. However, WWHT recommends 2023 be the deadline as some regional councils are already well underway with this regulatory tool, e.g. Environment Canterbury. The policy reforms should require strong compliance monitoring and enforcement. WWHT supports comprehensive farm environmental plans as a regulatory tool. The policy reforms should require strong compliance monitoring and enforcement by regional councils and third-party compliance audits. Non-compliance to an approved farm environmental plan regarding freshwater should be an offence with penalties set as a strong incentive to comply.
3. **Clearer duty to care for freshwater** - Section 17 of the RMA states *(1) Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person.* It is apparent that our community is failing to meet this duty probably because of the lack of clarity and certainty about what is an adverse effect on freshwaters and its environmental values. The WWHT supports the scope and definitions of freshwater values in Appendix 1A and 1B. WWHT recommends that a regulation under the RMA dealing with freshwater provides for a clearer definition of actual and potential adverse effects to these values. The Regulation should make it an offense to not to meet this duty and require persons to report adverse effects occurring to these values. Further, the NPS should require regional councils to a) develop and implement education programs about the legal duty, freshwater values at risk and the range of adverse effects that can occur by failing to meet this duty and b) develop Codes of Practice for various land uses, e.g. intensive dairy that set out ways of meeting the duty for a land-user. Also, regional councils should be required to monitor and enforce compliance to this duty.

4. **Water quality improvement** – WWHT supports the new measurements for improved water quality especially for sedimentation, E. coli, phosphorus and nitrates. WWHT does not support the exclusion of hydro-electricity from requirements to clean up our big rivers. Further, WWHT recommends that the NPS-FM should take priority over the NES for Productive Forestry (NES-PF), not the other way around.

The definitions of ‘current water quality’ and ‘existing water quality’ should refer to water quality as it existed in 1991. Since 1991 regional councils have had a responsibility to maintain water quality under the RMA and we should not permit their failures over the past 28 years to shift the baseline of water quality. Data on the state of freshwater in 1991 should be used as the goal for water quality improvement over the next 10 years.

WWHT supports the new E coli standards for swimming sites. However, these standards for primary contact should apply everywhere, not just swimming sites.

WWHT supports the proposed nitrogen limits (DIN) and the proposed new attributes (indicators of ecosystem health) to be monitored and maintained or improved.

WWHT supports improvements to the existing periphyton (slime) attribute by adopting the science and technical advisory group’s (STAG) recommendations to alter this table and provide default nutrient criteria for councils to use.

5. **Catchment scale healthy waterways programs** – The policies and RMA amendments should provide for and require large catchment scale planning and implementation of healthy waterways programs. Importantly, the policies should also make provision for large scale and long-term funding models for these catchment plans. A national healthy waterways fund with 5 billion dollars should be established over the next term of
national government to start adequate resourcing of healthy waterways projects around the country.

6. **Protection and restoration for wetlands** – this should apply to all wetlands of all sizes including on private land. The forestry industry shouldn’t be exempt from these requirements. Since 90 percent of our wetlands have already been destroyed, all remaining wetlands should be protected. It essential that the policy address wet farmlands that were once wetlands and have been drained or diverted. Wet farmland, i.e. modified historic wetlands, can be restored to natural wetlands in some priority areas. Restoring wetland function on farmlands can trap and treat overland flows of pollutants and sediments before they can enter waterways. Stock should be excluded from protected and restored wetlands.

WWHT supports the two wetland attribute tables recommended by the STAG to be included in the NPS. One will drive improvement to a minimum level of health, the other will drive an increase in wetland extent.

WWHT generally supports the policy proposals in section 3.15 Inland Wetlands. However, WWHT recommends that the “effects management hierarchy” be strengthened for part d) and c) by substituting “required” for “considered” to provide certainty of offsetting outcomes and no net loss and net gain in wetlands.

Further the description of a natural wetland should include historic natural wetlands that have been drained or diverted and converted to pasture that gets inundated in high rainfall events. Alternatively, establish a separate definition of historic and modified natural wetland. These previous wetlands have the potential to be restored to natural wetlands for nutrient and sediment attenuation and wildlife values. Further, regional councils would then be required to identify and map these historic modified wetlands and engage landowners in restoration works through farm environmental planning and regulation.

7. **Exclude farm animals from streams and create riparian reserves** – WWHT supports the proposed exclusion of stock from wetlands, lakes and rivers more than a metre wide in flat and rolling terrain and the proposed timelines for imposition. In addition, small streams and farm drains that were once natural streams need to be protected because all water is connected and they are most common on developed farmland. This would require fencing streams and farm drains that are less than a metre wide on farmland.

WWHT support the 5m setbacks of streams greater than 1m proposed in the Draft Stock Exclusion Section 360 Regulations. However, WWHT recommends that the NPS require the establishment of waterway riparian reserves. The riparian reserves inside fence lines should be at least 5-8 m wide either side of the watercourse, depending on the ecological significance of the waterway, to effectively trap and treat overland flow of
sediments and other pollutants and provide wildlife habitat and corridors. Stock must be excluded from the riparian zones.

WWHT strongly oppose the exemption in part (b) of the general stock exclusion requirements that enables landowners with setbacks of 2m minimum to keep them in place until 2035. WWHT recommends a 2025 timeframe be imposed. WWHT recommends that small streams (<1m) be included in the Stock Exclusion 360 Regulations, with 3m buffers either side of the stream. Further, WWHT recommends amending the draft stock exclusion regulations to require a mandatory 10m setback on all waterways in the high country.

8. **Intensification of land uses** – is causing decline in the health of waterways. Stronger regulation of land use intensification is required through the NPS and NESF. Specifically, strengthen the NESF’s intensification rules in the high country throughout New Zealand (base this on an altitude e.g. all land higher than 300 MASL)

   a) Make intensive grazing, irrigated farming and the conversion to high risk farming activities non-complying activities and make all consents made publicly notified.
   b) Do not make discharge limits based on what was lost during 2017/2018 rather base it on achieving a threshold limit for the catchment.
   c) Expand the definition of high-risk activities in the high country to include conversion from extensively farmed sheep and beef to intensively farmed sheep and beef.

9. **Erosion and sediment control** – land and stock management practices need to be regulated to reduce soil and stream bank erosion and to stabilize these eroding areas. Sediment discharge and deposition in streams needs better controls and remedial action to restore instream habitat and flows. Routine excavation of sediment deposition and installed sediment traps should be a part of farm environmental plans and flood control/land drainage programs of local councils. Further, excavation works by local government in drains to maintain flows should be required to batter back the banks to a stable profile, remove deposited sediments and macrophytes infestations and restore the riffle pool dynamics of the watercourse.

10. **Control intensive winter grazing** – stronger regulation of stock grazing during winter is required to minimize sediment and nutrient runoff into wetlands and waterways. WWHT supports setting national standards and requiring a resource consent for winter grazing above a defined area and terrain type. Restoration of wetlands and riparian areas in a farm plan should be required as a management practice supporting winter grazing practices.

    WWHT supports the proposed regulation and permitting of stock holding areas on a farm.
11. **Accountability for regional councils** – proposed 'action plans' don’t have teeth. Regional councils must be held to account. New rules must ensure councils engage their communities and industries to develop a comprehensive, targeted and resourced plans, make and prove real progress and adaptively manage then plans to achieve the long-term goals and key performance indicators. Councils should be required to prepare a progress report and recommended plan improvements every 3 years. Regional Councils should be required to monitor and enforce regulatory requirements, including compliance to approved farm environmental plans and environmental approvals to local government and various industries. Penalties for non-compliance should be stronger to drive behavior change and presented on a public register.

The NPS should require regional councils to a) develop and implement education programs about the legal duty. freshwater values at risk and the range of adverse effects that can occur by failing to meet this duty and b) develop Codes of Practice for various land uses, e.g. intensive dairy that set out ways of meeting the duty for a land-user. Also, regional councils should be required to monitor and enforce compliance to this duty.

Further, the NPS should requires regional councils to have policies and requirements to take forecast regional climate changes into account when planning regional land and water resource management and for landowners planning and conducting various land-uses.

12. **Healthy rivers for our indigenous and sports fish** – many of our native fish swim up and down streams to complete their life cycles. They need healthy and productive ecosystems and adequate flows. They also need rivers and streams free of barriers. WWHT support proposals to provide safe fish passage where there are new intakes, weirs and dams. Regional Councils should be required to identify and remove existing barriers in rivers and streams so our fish have suitable habitat for feeding and breeding. In addition, waterways important for indigenous fish and mahinga kai, should be mapped and protected in the regional plans and barriers to sports fish could be installed.

13. **Sports fisheries** - Trout and salmon are valued species for many New Zealanders. The protection afforded to the habitat of trout and salmon under s7(h) is a matter that all decision-makers must have particular regard to. The NPSFM needs greater recognition of the habitat, water quality and flow requirements of trout and salmon. Specifically, in trout spawning reaches (as defined in Sports Fish and Game Management Plans - SFGMP), the fine deposited sediment should be less than 10% cover. In trout fishery reaches (also in SFGMP), trout should be included in the fish index of biotic integrity. River and stream flows necessary for fish migration and spawning should be recognized, mapped and preserved in regional plans. Specific streams and rivers for high value recreational fishing should be mapped and managed for this use in statutory regional plans.
14. **Farm Environmental Plans** - WWHT supports the proposed scope and regulatory requirement for a freshwater module in farm environmental plans, particularly with the management of nitrogen loss to surface and ground waters and the requirement to apply for a resource consent before changing to a more intensive land-use. WWHT also supports setting a N loss caps in sensitive or vulnerable catchments so that individual farm environmental plans will have a frame to set reduction targets for excessive nitrogen loss.

WWHT recommends that the farm mapping phase should include mapping land drainage or overland flow paths on the farm at sufficient scale to plan surface drainage and wetland and riparian restoration areas to trap and treat contaminated overland flows before they reach the drains and streams. WWHT recommends flow path/attenuation maps should be required for FW-FP’s under NES subpart 38 (2). All spring head wetlands should be fenced off for stock exclusion and native revegetation. Sediment and erosion control on farm should be well planned. Similarly, detailed nutrient and effluent management should feature in the plan. Farm Environmental Plans could be assessed and approved by a third-party auditor, provided the regional council established a register of acceptable auditors and conducted QA audits of the auditors’ work. Penalties for providing a false audit or approval should be severe. Otherwise the regional council should assess and approve the plans, including any major variation to an acceptable plan.

Regional councils should be required to develop and implement capacity building programs for local governments and high-risk industries, e.g. dairy and horticulture farming and to provide incentives for the transition to non-polluting sustainable land use practices.