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Freshwater Reform

Ministry for the Environment

Sent by email to watersubmissions@mfe.govt.nz

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Introduction

1. Forest & Bird is an independent community-based conservation charity, established in 1923. Our mission is to be a voice for nature, on land, in fresh water, and at sea, on behalf of our 77,000 members and supporters, and 50 branches. We have been involved in resource management processes around New Zealand for many years, and our experience informs this submission. Forest & Bird has also been part of the Land and Water Forum.

Key points

- Water quality should be required to maintained or improved in each water body/freshwater management unit in a region. A 'regional average' approach will be unworkable, will likely create delay, will undermine the intent of the reforms, and has no justification.
- Urgent work needs to be done to complete the NOF. Without the 'nuts and bolts' of the NOF, it is likely to fall short of achieving the objectives of the NPS-FM. Where nationally applicable numeric limits aren't yet available, tight narrative descriptions should be included immediately. This should be done now, rather than waiting for 2+ years.
- Some of the numeric levels set in the NOF are so permissive as to negate the whole purpose of the NOF, and will mean progress towards improvement does not happen. Specifically, nitrogen is currently set at toxicity. This needs to be changed to a level that will instead control periphyton growth.

- The NPS-FM need to recognise the potential for activities governed by land use rules to affect water quality (rather than only those activities regulated by discharge permits).
- The exemptions regime is too permissive and weakens the national approach to improving water quality.
- There needs to be more guidance on how FWMUS should be defined – with an upper limit of catchment.
- The addition to the definition of ‘outstanding freshwater bodies’ should be removed, as it will mean that a large proportion of water bodies with outstanding values will not receive protection.
- More direction should be given to encourage the adoption of ‘swimmability’ as a value/objective.
- The addition of the words ‘significant values’ to Objective A2(a) is likely to cause confusion.

Specific matter: Preamble – ‘overall’ approach to water quality

2. An addition has been made to the Preamble (bottom of pg 48 and the top of pg 49 of the Discussion Document) regarding the requirement in Objective A2 that the overall quality of fresh water is maintained or improved.
3. The Preamble states that the NPS ‘*allows some variability in terms of freshwater quality, including between freshwater management units, as long as the overall freshwater quality is maintained within a region.*’
4. The Preamble seems to be saying that ‘trading off’ can occur within a region, so that some Freshwater Management Units (FWMUs) will be allowed to drop in water quality, if others are improved, as long as there is general improvement across the region.
5. There are several issues with this interpretation of the existing wording in Objective A2.

It will be unworkable.

6. We cannot see how a region-wide approach to Objective A2 would be workable.
7. Whether water quality is being maintained or improved is determined by whether a FWMU is meeting the objectives that have been set for it (see Policies A1 and A2). Each FWMU will have its own set of objectives that it is to be managed for. These objectives will depend on the values that have been chosen for the FWMU. Other than the two compulsory values, each FWMU in a region may have a different range of values, and different attributes. Would each value or attribute receive equal weighting in the overall regional assessment? If not, how would weighting be determined?
8. It is also unclear how each FWMU in a region would be treated in an overall regional assessment. Would large FWMUs weigh more in the calculation, or would each FWMU be given

equal weighting? A blunt 'tallying-up' approach would be unlikely to provide a meaningful picture of water quality.

9. The requirement in the NPS for accounting systems (Policy CC1) is supported. The implementation and maintenance of these systems is likely to represent a significant challenge for councils and communities. The requirement to somehow compare the performance of each FWMU against the others in a region, such that an overall assessment could be confidently made, would likely be unduly onerous.
10. The interpretation contained in the Preamble (at page 16 of the Discussion Document) is supported by the idea that Councils will benefit from the flexibility that this approach would afford. We submit that the complexity and unworkability of this interpretation would actually be a hindrance to the efficacy of Councils' work in this area.
11. The problem is removed by interpreting the Objective to require that water quality is must be maintained or improved in each FWMU, so that overall improvement or maintenance of water quality in a region will automatically follow.

It could create delay in the planning processes, because of issues between resource users in different FWMUs.

12. The choice of values and objectives for each FWMU will inevitably mean that water users in some FWMUs will face greater restrictions than in others. However, if those restrictions arise because of the need to 'compensate' for the allowed degradation of water in another FWMU, so that the 'regional average' is met, this is likely to cause contention.
13. It is recognised that given the proposed amendments to planning processes under the RMA there may be far fewer opportunities for submitting on, and appealing, Council decisions in this regard. However, whatever the process that is used, it can be expected that the 'regional average' approach could be a source of delay (including possible litigation) in the planning process.

It could undermine the intent of the reforms.

14. The broader policy intent of the Government's reforms on freshwater has been to address the degradation of NZ's water quality that has been allowed to occur under the current water management regime. Specifically implementing a new regime that anticipates further degradation will be counter-productive, and would be a waste of the opportunity to reform current practice.
15. More specifically, the interpretation of Objective A2 contained in the Preamble appears to undermine Objective A1. It is inconsistent to have an objective that directs safeguarding the life-supporting capacities etc of water, while also having an objective that allows degradation of water bodies.

It is contrary to previous, thoroughly considered, interpretation and advice.

16. The Land and Water Forum did not envisage an 'averaged' approach to improving water quality. The Board of Inquiry into the NPS-FM considered the 'overall improvement/maintenance' requirement that was included in Objective A2, and acknowledged the risk that the phrase could

be interpreted to mean that degradation of some water bodies was intended. It recommended new wording that excluded the 'overall' requirement. (Paragraph 194, *Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management*). Finally, the NOF Reference Group in their October 2012 Report recommended intra-unit maintenance or improvement.

17. The new interpretation of Objective A2 is also out of step with the interpretation taken by planning professionals. Evidence given by experienced planner Rob van Voorthuysen to the Board of Inquiry hearing the Tukituki Catchment Proposal stated:

*42.6 The concept of maintain or improving the overall quality of fresh water is an interesting one. First, I remind the Board of the United Nations (UN Water) definition of water quality (which I discussed under POL TT1) which is "physical, chemical, and biological characteristics of water necessary to sustain desired water uses". **In my view the word "overall" in that objective must refer to the whole region. However, this does not allow one river to be degraded in the hope that another river will be improved to compensate for that degradation (namely trading off one river against another).** Instead, it will in most instances require the maintenance or improvement of quality in each specific instance, subject to "quality" being interpreted in accordance with the United Nations definition.*

18. The Government is free to take a different course of action to such advice. However, given the significance, and likely contentious nature, of the freshwater management regime, and the amount of work from a broad range of stakeholders that has already been undertaken, it is submitted that there should be clear and justifiable reasons for doing so. In this case no such reason has been given.

Relief sought

19. Amend the preamble to make clear that water quality must be maintained or improved for each FWMU in the region, rather than being allowed to lessen in some FWMUs. Suggested wording:

Overall freshwater quality within a region must be maintained or improved. This national policy statement allows some variability in terms of freshwater quality, but only to the extent that there must be maintenance or improvement in water quality in each FWMU in the region. It does not mean that some FWMUs should be allowed to degrade, or that progress towards the goal of water quality maintenance or improvement can be 'averaged' across a region.

Specific matter: Definition of 'Freshwater management unit'

20. A new term and definition has been inserted: 'Freshwater management unit' (pg 51).
21. The NPS-FM now approaches water management on the basis of FWMUs (rather than 'water bodies' in the previous version). The move away from 'water bodies' is understood, however there needs to be much greater guidance on the appropriate spatial scale for FWMUs.

22. As the definition currently stands, a region could have just one FWMU covering their whole region. While that would be an extreme approach, it illustrates the looseness of the definition and lack of guidance in the NPS.
23. Having FWMUs that are very large may be appropriate for areas containing many homogenous water bodies (in terms of type, values, uses etc). However where a FWMU contains varied water bodies and uses of water, there is a risk that applying the same management approach to the whole FWMU will not ensure that the objectives of the NPS are met.
24. The Land and Water Forum recommended a management approach on the basis of catchments (*Land and Water Forum Second Report*, recommendations 2 and 9).
25. Another reason that the spatial scale of FWMUs is important is that there is only required to be one 'representative' monitoring site per FWMU. (This is dealt with further below, regarding the monitoring provisions.) The bigger and more diverse a FWMU, the less likely that the monitoring will provide a true picture of whether the intended outcomes for each FWMU are being achieved.
26. Finally, in the context of the proposed changes to the planning processes by which each FWMU will be chosen (under the broader proposed RMA changes), there is likely to be far less opportunity to ensure that the Council has chosen the appropriate scale. In that context, it is very important that further national guidance is provided.

Relief sought

27. We submit that the definition of 'Freshwater management unit' should be amended to include more specificity about the appropriate spatial scale of FWMUs, so that sub-catchments and catchments are the 'starting point' for the designation of FWMUs. Further guidance may also be appropriate in the Preamble. We suggest that 'catchment' may be an appropriate upper size limit for FWMUs.

Specific matter: Definition of 'Outstanding freshwater bodies' (and Policy CA1(f))

28. An addition has been made to the definition of 'Outstanding freshwater bodies' to the effect that these must be identified by a regional policy statement or regional plan to qualify (pg. 52 Discussion Document).
29. We have several concerns about the requirement that a water body must be identified as 'outstanding' in an RPS or RP before Objectives A2 and B4 would apply to such water bodies.
30. We do not know of any Councils that have compiled a comprehensive list of the outstanding water bodies in their region. Such an exercise, if done robustly, involves a significant commitment of time and resources.
31. A comprehensive list would likely also require access onto private land, a power not conferred on Councils by the RMA.

32. Even assuming that each Council had the resources, and access to land, to compile a list, water bodies and our knowledge and understanding of those water bodies changes. Such a list would require regular revision.
33. There is no requirement contained in the RMA or in the NPS-FM that Councils must compile a list of outstanding freshwater bodies. As noted above, the compilation (and revision) of such a list will be resource-intensive, if it is possible at all. In that context, if the amended definition remains, Objectives A2 and B4 will have no application in several regions around New Zealand.
34. Further, the values of water bodies are often discovered through the resource consent process, as a result of the specific sampling and surveying that occurs to support the Assessment of Environmental Effects and applicant and submitters' evidence. It cannot be right that water bodies with outstanding values revealed through a consenting process do not attract the protection afforded under Objectives A2 and B4.
35. Finally, the process of objective-setting requires (Policy CA1(f)(i)) that a region consider the current state of the FWMU. This presumably would include a consideration of the values of the constituent water bodies, and whether they were outstanding (although this could be made explicit in the Policy). It is unclear how the process set out in Policy CA1 would interact with the requirement of identification of outstanding water bodies in an RPS, but there could be an overlap (at best) or a conflict (at worst) between these two processes. The objective-setting process should not be restricted by the requirement that outstanding water bodies need to have been identified in an RPS or RP.

Relief sought

36. We suggest removing the new additional words from the definition of 'Outstanding freshwater bodies'.
37. We suggest that thought be given to making it explicit in Policy CA1(f) that the values of a FWMU's constituent water bodies' values are considered, including whether those values are outstanding.
38. If the addition to the definition is to remain, at the very least transitional provisions are needed to give Councils ample time to compile a robust list of outstanding water bodies.

Specific matter: Objective A1 - providing for human health

39. We note that Objective A1 only aims at safeguarding human health as affected by secondary contact with fresh water. Forest & Bird would prefer a higher standard was set – while 'swimmability' is of value for New Zealanders in and of itself, this higher standard will generally mean better habitat for native freshwater flora and fauna. While this high standard may not be required for all waterways in New Zealand, we think it should be made as easy as possible to achieve that via the NOF process. To that end, at the very least there should be 'fit for purpose' attributes that support contact recreation as a value. Currently the one attribute tailored towards contact recreation is based on standards developed for beach use. This may or may not be appropriate for many fresh water bodies.

Relief sought:

40. Immediately develop specific attributes to support the value of contact recreation.

Specific matter: Objective A2(a) - additional words 'significant values'

41. It is unclear what this addition is intended to achieve. A list of values has already been included in the definition of 'Outstanding freshwater bodies' – are the 'significant values' mentioned in the Objective something different from the 'Outstanding' values? If so, how do the two relate? Are both kinds of values to be protected? This addition has the potential to cause a lot of confusion and debate.

Relief sought

42. Further thought needs to be given to this amendment to ensure that it is clear and consistent with the relevant definitions, and to ensure that the Objective achieves protection of outstanding freshwater bodies.

Specific matter: Policy A4 – minor error.

43. Policy A4 directs certain transitional policies be included in plans. The first line of new policy (2) appears to be missing the word 'permit'.
44. Although this is in line with the existing Policy 1 (which also omits the word 'permit') it isn't correct to refer to an application for a 'discharge'. The application is for a discharge permit.

Relief sought

45. Include the word 'permit' the first line of transitional Policy 2: 'When considering an application for a discharge permit....'

Specific matter: Policy A4(3)

46. The scope of transitional Policy 3 does not cover land use rules that control discharges.
47. In some regions discharges are controlled (at least in part) through land use rules, rather than solely through discharge rules. For example, specific nitrogen and phosphorus in-stream concentrations or leaching rates may be set through land use rules. Whether intentional or not, this has the effect of avoiding the requirements of section 70 RMA, and avoiding the application of Policy A4 of the NPS-FM.
48. This policy should be extended to cover such rules, so that the freshwater management regime cannot be avoided or undermined by regional differences in approaches to rule-making. There is no Policy reason for considering the matters in A4 (1) and (2) when considering a discharge permit, but not considering those same matters when considering an application for a land use consent which also results in effects on life-supporting capacity of freshwater.

Relief sought

49. Include provision in the directions to regional councils for all NPS-FM water quality provisions to apply to land use rules that control discharges. Also, include provision in: Policy A3(a) to deal with land use consents; and A3(b) to make it clear that such contamination may result from land uses.

Specific matter: Objective B4 – addition of ‘outstanding freshwater bodies’

50. We support this addition. In our experience the omission of outstanding freshwater bodies from the water quantity objective and policies was a lacuna in the policy framework, as water quantity is often an essential requirement for protecting an outstanding water body’s values.

Relief sought

51. Retain the additional words.

Specific matter: Policy C2(b) – additional clause

52. We support the additional clause regarding the integrated management of effects of use and development of land and fresh water on coastal water, as this closes a lacuna in the policy framework.

Relief sought

53. Retain the additional words.

Specific matter: Open- ended timeframes for achieving objectives

54. We acknowledge that time will be needed to achieve water quality improvement in several catchments throughout the country, and that in some cases such improvement will require a very long time. However we think that the timeframes (or lack thereof) in the NPS-FM are too liberal, and threaten to undermine any real progress towards water quality improvement.
55. Under Policy E1(b), Councils have until 2030 to implement the NPS-FM. While it is acknowledged that the objective-setting process will be lengthy, we submit that this timeframe is too generous. We suggest amending this date to 2025 at the latest.
56. For FWMUs that are below the bottom lines, timeframes should be included in the NPS-FM to set the outer limit for when those water bodies must meet the bottom lines. We presume that most regions will set objectives for their ‘worst’ water bodies early in the process, well before the cut-off date of 2030 (or 2025 as suggested above). Assuming objectives for the most degraded waterways are set by say 2020, we think 20 years should be ample for all FWMUs to meet bottom lines.

Relief sought

57. Amend Policy E1(b) to 2025, rather than 2030.
58. Include a requirement in the NPS-FM that all FWMUs must be above bottom lines for compulsory values by 2040.

Specific matter: Policy CA2 – Exemptions regime

59. Policy CA2 sets out a regime whereby Councils can set objectives for the compulsory values below national bottom lines in certain situations. Policy CA2(b) covers the situation where water quality has been degraded by historical non-natural processes.
60. The wording contained in Policy CA2(b)(ii) needs to be much tighter, to avoid the risk of undermining the policy intent of maintaining and improving water quality nationwide. Specifically, allowing an exemption on the basis that reversal of impacts in a FWMU is not 'reasonably practicable' could arguably exempt a large number of degraded waterways. The term 'reasonably practicable' is too open to interpretation, even with the additional wording (physically or ecologically).
61. Further, a key reason that bottom lines are a useful planning tool is that they will encourage innovation, such that improvements that are not 'reasonably practicable' today become a realistic option in the future. Including such a broad 'get out' clause risks undermining the development of best practice for water management.
62. The NPS allows councils an unlimited timeframe to plan for improvements to water quality. While we do not believe that timeframes should be open-ended, long timeframes are the appropriate mechanism under the NPS-FM to allow for gradual change. The exemption contained in CA2(b) appears to be an unnecessary addition to the timeframe allowance.
63. Finally, the Discussion Document (on pg 27) states that the checks and balances of the planning process will ensure that the exemptions regime is applied properly. However, in the context of the proposed changes to planning processes under the RMA, there will be greatly reduced opportunity to apply such checks and balances. The risk is that the exemptions regime will be overused, and will undermine the intent of the reforms.

Relief sought

64. We submit that either Policy CA2(b) be deleted, or at the very least that the words 'reasonably practicable' are replaced with the word 'possible'.

Specific matter: Policy CA3 – transitional exemptions

65. Policy CA3 allows for councils to set objectives below bottom lines for a transitional period.
66. This policy is unnecessary – Councils can already determine the timeframe within which change occurs in a FWMU (Policy CA1(f)(vi)). The timeframe itself is the 'transitional tool' – the NPS does not envisage that an objective will be met immediately.

67. It is unclear why another exemption is required. Wherever possible, bottom lines should remain bottom lines.
68. Again, the Discussion Document (on pg 27) states that the checks and balances of the planning process will ensure that the exemptions regime is applied properly. However, in the context of the proposed changes to planning processes under the RMA, there will be greatly reduced opportunity to apply such checks and balances. The risk is that the exemptions regime will be overused, and will undermine the intent of the reforms.

Relief sought

69. Delete Policy CA3.

Specific matter: Policy CB1(b) – Monitoring

70. Policy CB1(b) requires that a monitoring plan identifies a representative site or sites for each FWMU at which monitoring will be undertaken.
71. Monitoring is supported. However, the minimum requirement is for only one site per FWMU. For homogenous FWMUs, this could be appropriate. However for FWMUs that contain an even slightly diverse range of water bodies, water uses, flows etc, it is difficult to see how one site will adequately monitor whether progress is being made towards the objectives.
72. Further, no guidance is given as to what 'representative' would mean. Does it refer to water body type? Likely nutrient load? Ecological state? Would it need to be downstream of all water takes and discharges? This is exacerbated by the lack of guidance on the appropriate spatial scale for defining FWMUs, such that a FWMU may be very large and contain a diverse range of water bodies with varying ecological values, flows, uses etc.

Relief sought

73. Suggest requiring at least two monitoring sites per FWMU (or per catchment). Suggest further guidance on the criteria for determining representative monitoring sites.

Specific matter: NOF – partial population

74. The NOF attribute tables have only been partially populated. It is intended that further additions will be made in the future. In the meantime it is up to Councils to come up with attributes that are not yet in the NOF.
75. The NOF should at the very least include tight narrative descriptions for each of the most important attributes. It is accepted that it is important to get the science right before providing numeric ranges to apply across all water bodies. We understand that the reason numeric limits haven't been applied to more attributes is that although there may be good data for the majority of regions, the absence of data for the remaining regions means that a nationally applicable bottom line has been held up.

76. The Discussion Document (at page 21) notes that work for some potential attributes may be undertaken in 2016-2019. This work should not be delayed another 2+ years. Urgent effort should be made immediately, before the NPS progresses any further, to at least provide narrative descriptions for those attributes that are important for safe-guarding the life-supporting capacity of water. Even if numeric limits are not yet able to be set that can apply across the whole country, narratives will provide guidance to all regional councils on what is likely to be a complex, and contentious area.
77. One of the important absent attributes is biological monitoring. The Macro-Invertebrate Community Index is already in use around the country and can provide the necessary numbers for inclusion in this version of NPS-FM.
78. The opportunity to provide meaningful national direction will be wasted if tight narrative descriptions of key attributes are not included immediately.
79. Simply leaving the job to Councils is not an acceptable solution to not having the exact numeric limits ready. If numeric ranges are not yet possible a better alternative is to include narratives so that this work will not be duplicated in each region.

Relief sought

80. Immediately include attributes that are important for protecting the life-supporting capacity of water, with clear and unambiguous narratives where numeric limits are not yet possible.

Specific matter: Attribute levels in NOF

81. While we support the use of national bottom lines and numeric standards to achieve those, we are concerned that some of the numeric levels in the NOF attribute tables will only encourage water quality degradation. In particular, the proposed Total Nitrogen levels, being set at toxicity rather than at a level that will control periphyton growth, are well above what is required to actually achieve water quality maintenance or improvement.

Relief sought

82. Change the Nitrogen limits to reflect a level that will control periphyton growth, rather than a level that reflects toxicity.

Specific matter: Process for amending NPS

83. The Minister has chosen the alternative to the Board of Inquiry process (under s46A(1)(b)) to making the amendments to the NPS.
84. Given the importance, and far-reaching implications of the new water management regime, we suggest that the Board of Inquiry process is more appropriate to ensure that the final NPS is the best that it can be.

85. If a Board of Inquiry process is not used, the Government should provide some clarity on how submissions will be assessed.

Relief sought

86. Suggest using the process under sections 47-52 RMA to progress the proposed amendments.