

Scion submission on the proposed amendments to the National Policy Statement for Freshwater Management 2011: a discussion document

We thank the Ministry for the Environment for the opportunity to comment on the proposed amendments to the National Policy Statement for Freshwater Management (NPS-FM) 2011. The amendments propose far reaching changes to the way New Zealand manages its freshwater resources. Scion supports the intent and purpose of these proposed amendments but recommends, as described below, that further careful consideration and planning be given to some of the detail to ensure that the overall objectives are met. We have responded to the questions below, where we consider it appropriate for Scion to do so.

Questions for section 2: problems

1. Have we correctly identified the problems currently associated with implementing the National Policy Statement for Freshwater Management (NPS-FM)?

The discussion document clearly identifies the key problems associated with the implementation of the NPS-FM.

2. If not, what problems, if any, you have faced with implementation?

Achieving effective collaborative process when stakeholders have very diverse and often polarised views on water management remains a big challenge. In part this is due to a lack of knowledge/experience in collaborative processes; in part it is cultural. Achieving genuine change in this arena will therefore take time, and expectations of rates of improvement in freshwater management should reflect this.

Questions for section 3: options

3. Do you agree that amending the NPS-FM would solve the problems identified in section 2?

Amending the current NPS-FM along with supporting guidance material should go a long way to solving the problems identified in this discussion document and we support this option. However its overall success will be contingent on effective monitoring of the process and regular updates to stakeholders of the NPS-FM to incorporate latest scientific knowledge and findings of the monitoring process, including further engagement with the public that keeps them informed of developments; progress and where their input may be further required. We support the iterative, learning and adaptive management approach proposed for the reforms.

4. If not, would additional guidance be sufficient to solve the problems identified?

In light of the extensive changes proposed in this discussion document, additional guidance alone will not be sufficient to achieve the objectives of the reforms proposed. Clear tracking and regular communication of changes in water quality performance measures by MfE and councils will be necessary. This should be accompanied by explanation of where further adjustments are necessary.

5. Is there another solution to the problems? Why would that be preferable?

If amending the current NPS-FM along with guidance material fails to achieve the overall objectives of these reforms, then we would recommend stronger legislative changes as an alternative or complementary option to achieve the desired outcomes.

[withheld]

Proposed amendments to the NPS-FM: accounting
Questions for section 4.1: accounting

6. Do you agree with requiring councils to account for all water takes?

Yes we support this; without this basic information, councils cannot effectively manage their freshwater resources.

7. Do you agree with requiring councils to account for all sources of contaminants?

As for Question 6.

8. Do you think that the requirements in policies CC1 and CC2 of the proposed NPS-FM amendments have the right balance between national prescription and regional flexibility?

This is for councils to judge but we note the regional flexibility, while laudable, should not generate large differences between regions extending problems for organisations that operate nationally (eg farming, forestry businesses). As much as possible a nationally consistent performance framework with common quantitative objectives should be maintained. Regional flexibility can be achieved through the implementation plans to achieve the quantitative targets. We think it would be helpful for MfE to specify an acceptable range for non-defined measures (eg sediment) rather than, as inferred on page 19, allow councils to develop these independently.

9. Do you think the time period allowed for councils to develop accounting systems is appropriate?

Because of the seriousness of the challenges confronting freshwater we would favour tension being maintained on councils to deliver to a tight timeframe. Many elements required for accounting for managing water are already in place (and if not, given the prominence of water management issues over at least the past decade, one would question 'why not?').

Proposed amendments to the NPS-FM: National Objectives Framework
Questions for section 4.2: NOF Values

10. Should there be a national set of values as outlined in Appendix 1 of the proposed NPS-FM?

Yes there should be a national set of values to guide councils and their communities. However, councils' ability to include additional values pertinent to their region should be more clearly articulated in the first bullet point on page 18 of the discussion document.

11. Are there any additional values that should be included? Why are these values nationally significant/important (recognising that councils can use other values if they wish)?

Some of the values in the previous version of the NPS-FS have not been adequately captured in the new set of values in Appendix 1, in particular:

- the interdependency of the elements of the freshwater cycle.
- healthy ecosystems supporting sustainable populations and diversity of indigenous species.

We recommend that these values are incorporated into Appendix 1, and suggest that they be included under the definition of Ecosystem health (page 65). This would both broaden and strengthen this definition, particularly as this is the only value that provides a voice to the water body. All other values relate to what "we" want from the water body.

[withheld]

12. Are there any values that should be deleted from Appendix 1 of the proposed NPS-FM and why?

No.

13. Do you agree with the descriptions of the national values in Appendix 1 of the proposed NPS-FM?

The descriptive text for Mahi mara on page 66 (defining primary production as the cultivation of crops and the production of food from domesticated animals) is incomplete. Primary production also includes the production of biofibres and timber not just crops and foods. **We strongly recommend** that biofibres and timber are explicitly included here so that this sector is adequately represented under this value. In light of the large size of these sectors in the economy and their relation to water use and quality **we strongly recommend** amendments are made throughout the proposed NPS-FM and associated documentation, where appropriate, to incorporate them. In particular, the text box on food security on page 66 needs revising to better incorporate all aspects of primary production, and the values and uses table in Figure 1 on page 17.

NOF Attributes

14. Do you agree with the attributes associated with the values in Appendix 2 of the proposed NPS-FM?

Appendix 2 currently contains only those attributes where numeric national bottom lines have been defined. Currently, no biological attributes are listed. Given that macroinvertebrates have been monitored alongside physical and chemical attributes for many years, comprehensive datasets exist for this attribute and indices such as the MCI and QMCI have been used as indicators for water quality for many years, it is surprising that this attribute isn't in the proposed national list. **We recommend** prioritising this work to include a measure of macro invertebrates in the final NPS-FW.

MfE has not asked the question '*Do you agree with the full list of attributes for the two compulsory values of Ecosystem health and Human health (secondary contact) and the value of Mahinga kai in the table of proposed and potential attributes on page 21 of this document?*'

If the question was asked then we would recommend the inclusion of heavy metals, water clarity, physical habitat and biodiversity as attributes for Ecosystem health and Mahinga kai.

15. Do you agree with the numeric attribute states in Appendix 2 of the proposed NPS-FM?

The numeric attribute states for Human health (secondary contact) currently use a median value to determine the bands. We recommend the inclusion of numeric values for the annual 95th percentile, a more appropriate precautionary value suitable for risks associated with human health.

16. Do you agree with the narrative attribute states in Appendix 2 of the proposed NPS-FM?

The narrative attributes provide a useful tool to assist with the interpretation of the numeric states.

[withheld]

Timing

17. Do you agree with putting a NOF in the NPS-FM now, including only the attributes for which there is adequate evidence, and updating it as the scientific basis for further attributes and states becomes available?

Yes in principal we support this process, however see our response under Question 14 where we contend sufficient datasets for some additional measures already exist. Given the iterative adaptive management approach proposed for the reforms, we consider making a start by specifying values in this category of information availability is better than leaving them unstated. While the number of attributes with national numeric bottom lines in Appendix 2 is limited, as long as councils remain obliged to set regional numeric limits for those attributes currently not in the national list (or failing that, narrative objectives), then conceptually the current limited list of national bottom lines should not delay implementing the changes proposed in this document.

18. Or should the Government delay putting the NOF into place until a more comprehensive set of attributes has been developed?

No – based on the history of fresh water management, it will take years to develop national numeric values for all the proposed attributes in the Table on page 21 and some may never meet national thresholds and remain a regional exercise for setting bottom lines. Further delays will be detrimental to the process of improving New Zealand's management of its freshwater resources. We cannot afford further delays.

Processes for freshwater objective setting

19. Do you agree with having the process requirements to link values and freshwater objectives directed in policy CA1 in the proposed amendments? If not, why not?

Yes, linking values and freshwater objectives will assist in providing a nationally consistent framework with the flexibility at the regional level to include additional values where deemed appropriate.

20. Do you think the process outlined will work? If not, why not?

With commitment from councils and key stakeholders the process outlined in CA1 (page 58) should provide a suitable framework for implementation of the National Objectives Framework.

21. Do you agree with the proposed matters in policy CA1(f) that must be considered when establishing freshwater objectives? If not, why not?

Policy CA1(f) provides a comprehensive list of considerations when establishing freshwater objectives. **We recommend** an additional consideration that requires Councils to consider the implications of potential cumulative effects on the water body.

22. Is it clear that setting freshwater objectives is an iterative process which involves consideration of the impacts of the limits, management methods, and timeframes required to meet a potential freshwater objective?

Yes.

[withheld]

23. Do you agree that regions should have discretion to determine timeframes for meeting freshwater objectives?

Yes, regions have the best knowledge base to determine appropriate timeframes for meeting freshwater objectives. However we do not think these should be open-ended. All councils should be required to work towards a timeline and, given that some councils appear to be further advanced with their freshwater reforms than others, progress should not be disadvantaged by those who have been tardy.

24. Are there any aspects of the process that are not clear?

No.

Questions for section 4.3: Compulsory values

25. Do you agree that ecosystem health should be a compulsory value?

Yes, this is fundamental to the health of all water bodies and we support its inclusion as a national compulsory value.

26. Do you agree that human health for secondary contact recreation (such as boating and wading) should be a compulsory value?

Yes, see the response for Question 25.

27. Do you think there should be more compulsory values? If so, what should they be, and why? What attributes should be associated with them?

No, the two proposed compulsory values should be sufficient in providing standards that promote healthy water bodies across New Zealand.

Questions for section 4.4: National bottom lines

28. Should there be numeric bottom lines for attributes of the compulsory values?

The development of numeric bottom lines for all the attributes of the two compulsory values is critical in achieving the objectives of the proposed changes to the NPS-FM. **We recommend** that work continue on developing numeric bottom lines for all the remaining attributes of the two compulsory values and where this is not possible, the development of narratives to guide the process.

29. Do you agree with the proposed level at which bottom lines would be set for each attribute of ecosystem health? If not, at what level should they be set?

Bottom lines have been developed with the concept of a safety buffer above the 'tipping point' where the water body would reach a degraded or irreversible state. **We recommend** that this precautionary approach continue with the future development of bottom lines for other attributes taking into account the unknown risks associated with cumulative effects and inaccuracies (and related uncertainties) around the use of predictive models.

30. Do you agree with the proposed level at which bottom lines would be set for each attribute of human health for secondary contact recreation? If not, at what level should they be set?

See comments under Question 15.

[withheld]

31. Do you agree that transitional arrangements should be provided to allow councils and communities to set objectives below a national bottom line for a short time?

No, this is a new and unnecessary policy. Under the proposed amendments councils and communities have the ability to set appropriate time frames to meet management unit objectives. Further this contradicts the mandate that regions cannot choose a D state as their freshwater objective. This proposal undermines the integrity and purpose of the proposed amendments to NPS-FM to maintain and improve water quality and we recommend removing policy CA 3 from this document.

Questions for section 4.5: Exceptions to bottom lines

32. Do you agree that there could be exceptions where the natural state of the freshwater management unit breaches bottom lines? Where in your region do you think this type of exception might apply?

Yes in relation to large scale, unmanageable and unpredictable natural hazard events. For example, volcanic activity could contribute natural contaminants to a waterway which would breach bottom lines, for example heavy metals from geothermal sources and these same sources can alter pH, water temperature and water chemistry.

33. Do you agree that there could be exceptions where historical activities have created impacts on water quality and the reversal of those impacts is not reasonably practicable, either physically or ecologically, even in the long term? Where in your region do you think this type of exception might apply?

Yes, an example is the North Island East Cape region where extreme erosion rates are the highest in the world. To date re-forestation rates have had limited success in reducing shallow types of erosion and no success in halting deep-seated erosion such as gullying which generate most of the sediment to waterways. Sediment accumulation in river channels is several storeys deep. No land-use under these circumstances, even under the best management practice, can reduce this process in the foreseeable future to raise sediment attributes above a D state. As this process was instigated by humans it does not come under naturally occurring processes but constitutes an exception under the impacts of historical activities. **We recommend** the inclusion of this type of exception as land owners/managers in these catchments would be unfairly penalised. However, we are not suggesting the abandonment of these types of exceptions and would still expect that under these circumstances every option would be explored to improve water quality to the highest level possible.

34. Do you agree that there could be exceptions for significant existing infrastructure (eg dams), where a choice is made to manage a freshwater management unit below bottom lines? Where in your region do you think this type of exception might apply?

Similar rationale and principles to those outlined in Question 33 apply here.

35. Do you agree that freshwater management units eligible under the first two exceptions above should be decided by regional councils?

The application of exceptions should be stringently applied otherwise the integrity, credibility, and purpose of the NPS-FM will be undermined. Therefore **we recommend** a nationally consistent approach through a nationally appointed body to determining exceptions with input from regional councils and communities.

[withheld]

36. Do you agree that freshwater management units eligible for an exception due to the effects of significant existing infrastructure should be decided at a national level and included in appendix 3 of the NPS-FM?

Yes for the same reasons as Question 35.

37. What should the criteria be for allowing exceptions based on significant existing infrastructure?

There should be criteria related to substantial economic benefit and provision of essential social services; and a long term (inter-generational) perspective on matters such as this.

Proposed amendments to the NPS-FM: Tāngata whenua values
Questions for section 4.6: Tāngata whenua values

38. Do you think the proposed NPS-FM adequately provides for Te Mana o te Wai?

Scion believes this should be judged by Mana Whenua.

39. Do you agree with the way tāngata whenua values are described in proposed appendix 1 of the NPS-FM?

As for Question 38.

40. Do you support adding Te Mana o te Wai to objective A1 of the amended NPS-FM as a matter that must be safeguarded? What would be the implications of adding this to objective A1 in the NPS-FM?

In principle yes, however, Te Mana o Te Wai under Objective A1 on page 53 of the discussion document lacks a clear definition and the possible attributes for Te Mana o Te Wai are not specified in the discussion document. While the table on page 21 lists proposed attributes for the two compulsory values of Ecosystem health and Human health – secondary contact; the third list of attributes is for Mahinga kai not Te Mana o Te Wai. The lack of clarity and supporting information makes it difficult to answer this question. If Te Mana o Te Wai was included it will be important to maintain national consistency and Te Mana o te Wai should not conflict with achieving other measures in the NPS-FM.

Proposed amendments to the NPS-FM: Monitoring
Questions for section 4.7: Monitoring

41. Do you agree with the new section in the NPS-FM requiring monitoring plans? If not, why not?

Well-designed, regular monitoring is a critical success factor for achieving the reforms; therefore we fully support the inclusion of this new section. An intrinsic component of this is the need to collect data in a nationally consistent manner (linking to NEMAR project). In the absence of monitoring there is no way of assessing the effectiveness of the NPS in meeting its objectives (for either the users or regulators). Ensuring councils have the necessary resources to undertake this monitoring is equally critical. We support the principle of post-regulatory governance where as many measures as possible are of shared importance to those issuing and exercising consents and able to be collected in a timely, affordable manner to support decision making.

Question for section 4.8

42. Is there anything else you would like to tell us about the issues and proposals in this document?

[withheld]

Under the NPS-FM, councils must manage land use and water in an integrated way. How does the reform document practically address integration?

The reforms promote a collaborative planning process for the management of freshwater resources. Effective collaboration requires well-trained facilitators and a fair and transparent process where all parties regardless of their background resources have equitable input into the process. Without these key elements the collaborative process has the potential to be subverted with outcomes contrary to the intent of the proposed reforms. **We recommend** that guidance on collaborative planning be included in the proposed national guidance material.

There is some concern that councils will not have the necessary resources to effectively implement the proposed amendments to the NPS-FM. For example, data collection, monitoring and effective collaborative processes can be time consuming and expensive, but also necessary for freshwater objective and limit setting, the development of water quality and quantity accounting systems and application of robust models to assist with these processes. There should be more clarity about how the Government plans to deal with this issue which is pivotal to the success of the reforms.

The heading for Appendix 2 needs clarification to clearly state that Appendix 2 lists the attribute tables for only those attributes where national bottom lines have been set and refer the reader to the guidance documents that contain the full list of attributes (currently the table on page 21). This is important as people look at Appendix 2 as a stand-alone document, or if they have not fully read the accompanying text and think that these are the only attributes MfE is considering for ecosystem and human health.

We recommend re-wording Policy 4 section 2 to make the intent of this amendment clearer.

We recommend an additional bullet point to Policy A1 on page 53 and Policy B1 on page 55;

- the connections between land and water

because the two are inextricably connected with land characteristics and management practices both strongly influencing water quality.

While the numeric attributes defined so far in this document are aimed at ecosystem and human health, what degree of protection does this provide for at risk pets such as dogs? People like to exercise their dogs along river walkways without them being exposed to water-borne health risks.

We propose the following definitions be included in the Glossary:

- all the Maori terms.
- maintain and improve.
- council.
- river (including how far up the system does this definition extend, to first-order streams, intermittent or perennial streams?).

Submitter:

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[withheld]