

31 October 2019

Freshwater Submissions
Ministry for the Environment
PO Box 10362
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**FISHERIES INSHORE NEW ZEALAND SUBMISSION ON:
“ACTION FOR HEALTHY WATERWAYS
A DISCUSSION DOCUMENT ON NATIONAL DIRECTION
FOR OUR ESSENTIAL FRESHWATER”**

Thank you for the opportunity to comment on the consultation document on “Action for Healthy Waterways”. The consultation seeks feedback on:

- a new National Policy Statement for Freshwater Management
- National Environmental Standards for Freshwater, Sources of Drinking Water, and Wastewater
- regulations under Section 360 of the Resource Management Act in relation to stock exclusion and water metering

Who are we?

Fisheries Inshore New Zealand (“FINZ”) represents 75% by value and volume of the inshore finfish, pelagic and tuna fisheries of New Zealand. It was formed in November 2012 as part of the restructuring of industry organisations. Its role is to deal with national issues on behalf of the sector and to work directly with and behalf of its quota owners, fishers and affiliated organisations.

The fishstocks, for which we have a mandate to represent, are mainly those finfish caught in the coastal marine environment within the territorial sea. We have no mandate to represent the interests of commercial participants in the shellfish or freshwater (including eels) sectors.

As part of its work, FINZ works collaboratively with other industry organisations and Sector Representative Entities (SREs), Seafood New Zealand, Fisheries New Zealand (FNZ) and the Department of Conservation (DOC).

Our interest and context

Our interest is the quality of water entering the coastal water space, be it in rivers, estuaries or harbours. The coastal water space has been the unwilling recipient of excessive levels of nutrients, pollution and sediment from terrestrial activities to the detriment of our interests. Any generation of nutrient, pollution or sediment material in excess of the capacity of the land to absorb and use that material eventually flows into our domain.

We commend the government for adopting an holistic approach to this long-standing impact on the coastal marine environment. We have seen our estuaries, harbours and coastal space, the ecosystems on which we and aquatic life more generally depend, become degraded in productivity, polluted by agricultural, industrial and urban living excesses and fundamentally changed, and continuing to change, for the foreseeable future. It is not just the fishing industry that suffers—all coastal aquatic life is impacted, be it birdlife, marine mammals, corals, seaweed, shellfish or fish.

For too long, impacts on the coastal space have been overlooked, mismanaged or not managed in the traditional belief that the sea is a dumping ground that can sustain human impacts. That is not correct, we have seen valued fishing and foraging grounds lost to sedimentation, lost to toxic pollution, and lost to years of neglect. We have seen valuable spawning and juvenile fish territory lost to sediment and chemical pollution in harbours, estuaries and the near coastal water space. We have seen algal blooms along the coast invading the habitat of small bait fish such as sprats and pilchards. We have seen penguins and other coastal birds die of starvation that can be sourced back to the lack of those bait fish.

We commend this government for its recognition of the need to address the situation before it deteriorates further. In particular we commend the government for addressing nitrogen and phosphorous levels and sediment loads in rivers reaching the sea. We have submitted on this matter in previous consultations on freshwater and have encouraged successive governments to recognise and address the impacts of excessive sedimentation as part of wider freshwater management.

We recognise that Governments have been grappling with the issues of freshwater management for many decades. This initiative should not be seen as the holy grail – it merely supplements and complements existing initiatives which were in some ways incomplete and deficient but nevertheless were steps in the right direction. While we commend the introduction of consideration of sediment as a new factor to be managed, we consider it would be disingenuous of the Government to promote this package as ground-breaking or novel.

We support the continued use of science-based measures as indicators of ecosystem health and performance over social indicators or crowd-based assessments. We consider those pseudo-scientific social approaches to be non-representative of environmental conditions and we would prefer disciplined scientific monitoring of the environmental standards.

We recognise that there have been some improvements over time and other sectors are becoming aware of their impacts and undertaking actions to mitigate them. We commend them for their awareness and actions but believe that a concerted effort by all parties, and in particular regional councils, who are charged with the management of water, is needed to make any lasting impact on the rate of degradation.

We are concerned with the intense focus on the impacts of farming in this consultation. Farming is a risk exacerbator but in that respect it is no different to other production and service sectors that impact on water quality. Modern living in urban areas produces its own impacts, frequently not observed when the pollution effects are removed into the coastal water space before they are measured. If New Zealand's primary focus is on farming and farming alone and other sectors are treated more leniently, it will be to the detriment of the quality of New Zealand's long-term freshwater resources. We have yet to see quality science that identifies in a comprehensive manner the relative contributions of threats and adverse effects on freshwater resources to enable a prioritised response to degraded freshwater quality.

We note that a number of the policies, in particular the effective moratorium of additional freshwater impacts, effectively replicate the recommendations from the report of the Kāhui Wai Māori, an advisory group to the Essential Freshwater programme. The group contends that system reform must begin with the Government giving effect to iwi/hapū retained customary dominion (ownership) of freshwater in this country. We find no reference to this matter in the consultation report but find that a number of the restrictions in the consultation document parallel requests in the Kāhui Wai Māori report but with different justifications attached. We consider it to be misleading of the Government to fail to discuss the issue of the Treaty rights in the consultation document while adopting a number of the advisory group proposals and promoting moratorium requests as policy objectives.

Overview

The Government has three objectives:

- stop further degradation of freshwater resources
- reverse past damage to bring freshwater ecosystems to a healthy state
- address water allocation issues

This consultation addresses the first two issues and are of strong interest to the fishing sector. We recognise that restoring the health of our freshwater systems will take decades to achieve but if we fail to apply effort now, that timespan will become more protracted and some coastal marine spaces may have passed their tipping point from which some meaningful restoration cannot be achieved.

The policy will be enabled through a tiered approach of:

- A National Policy Statement for Freshwater Management: (NPS-FM) which sets out a national framework to delegate responsibility to and to guide regional councils in their decision-making on the management of freshwater resources within their jurisdiction

- National policy statements (NPSs): NPSs are issued by the Government to provide direction to local government about matters of national significance which contribute to meeting the purpose of the RMA. NPSs are implemented in regional and district planning documents
- National environmental standards (NESs): NESs are issued by the Government to set nationally-consistent rules for the ways particular activities or resource uses are to be carried out. NESs apply to all people undertaking activities regulated in the NES
- Regulations made under section 360 of the RMA: (section 360 regulations) which set technical and/or complex requirements for specific activities, duties or other RMA matters

We support the concept of a model by which national objectives and environmental standards are established and then the responsibility for achieving those objectives being delegated to regional councils. However, we are concerned that the resources, expertise and powers needed to achieve the objectives currently held by regional councils may be inadequate for the task ahead. The cost of managing freshwater resources will increase significantly and probably disproportionately to the ability of risk exacerbators to pay for the improvements. We would see the desirability of Government contributing to the costs of the processes to reflect the public interest benefits of better freshwater resources.

The proposals

We have presented our views below on the proposals as set out in Section 1.1 Summary of Proposals. We have presented more detailed comments on the NPS-FM, the NPSs, the NESs and the section 360 regulations following the summary below.

PROPOSAL	WHAT WILL BE DIFFERENT	OUR VIEW
Set and clarify policy direction		
Introduce a new freshwater planning process that will require councils to have new plans in place no later than 2025.	Better, faster, more nationally consistent freshwater management plans and implementation.	We concur with the proposal although have doubts as to the capacity and capability of councils to prepare and have in place detailed management plans by 2025.
Strengthen and clarify the requirement to manage freshwater in a way that gives effect to Te Mana o te Wai; this refers to the integrated and holistic health and wellbeing of waters as a continuum from the mountains to the sea.	The health and wellbeing of the water will be put first in decision-making; providing for essential human needs, such as drinking water, will be second, and other uses will be third.	<p>We view this as an inspirational objective more so than a realistic and pragmatic approach.</p> <p>New Zealand is dependent on its freshwater resources <i>inter alia</i> for its national well-being. The management of competing demands for resources is not a simple process of placing some demands above others – the improvement and sustainability of a resource must be balanced with the need for utilisation.</p> <p>That is the foundation of the Resource Management Act and its fundamental premise cannot be discarded in a wave of environmental euphoria.</p> <p>Livelihoods and the essence of New Zealand's well-being depend heavily on the use of freshwater resources. Many users have rights protected in law. They cannot be set aside but the rights holders and those who use water or degrade water quality can be made responsible for mitigating the externalities of their activities. However, retrofitting such features into freshwater management will not be easy and will require the commitment of users and risk exacerbators to address their activities.</p> <p>We cannot support the hierarchy obligation proposed.</p>

Restructure and redraft the NPS-FM to improve clarity and reinforce an holistic approach to freshwater management.	Councils and the communities they represent will find it easier to put the health and wellbeing of the water first because they will have stronger and clearer direction.	It is not the direction that councils lack, it is the resources, tools and powers to give effect to the direction that appears to be lacking.
Strengthen the requirement to identify and reflect Māori values in freshwater planning, with two options set out in this document for feedback.	Iwi and hapū values for freshwater in a region will be a focus for freshwater management.	While we support the commitment to work with the Treaty partners and accept the need to work with tangata whenua in a respectful manner when setting policies and standards, we recognise that the implementation of an appropriate freshwater management policy must benefit all New Zealanders equally. We cannot support either of the two specific options proposed to strengthen Māori values but would support a more generic statement.
Support renewable energy targets by exempting major hydro-electric schemes from some freshwater management requirements.	Status of major existing hydro-electric schemes will be clarified. This is not expected to result in any change to current consent requirements for managing water flows and environmental impacts.	We are not comfortable with the comment that the policy is not expected to result in any change to current consent requirements for managing water flows and environmental impacts. Water flows and environmental impacts must be managed for all users. Without further information as to exemptions planned, we do not support exempting major hydro-electric schemes from some freshwater management requirements.
Raise the bar on ecosystem health		
Broaden the focus of national direction and planning to a more holistic view of ecosystem health and require better monitoring and reporting.	Land and water resources will be managed so that in a generation our freshwater will be healthier for people, animals, native fish, trout and salmon, plants and other species that live in or alongside waterways.	While we support the general thrust of the statement, we note the continuing absence of reference to the impact on the coastal marine environment. <i>“Live in or alongside waterways”</i> needs to be extended to include <i>“or at the coastal margins of our waterways”</i> .
New attributes (indicators of ecosystem health) to be monitored and maintained or improved: <ul style="list-style-type: none"> • nutrients (nitrogen and phosphorus) • sediment • fish and macroinvertebrate numbers • lake macrophytes (amount of native or invasive plants) • river ecosystem metabolism • dissolved oxygen in rivers and lakes 	Land and water resources will be managed to maintain or improve ecosystem health in each catchment. This is likely to require different actions in different catchments, including reducing soil loss, reducing nutrient run-off, and/or investing in upgrading wastewater and stormwater infrastructure.	We are comfortable that new indicators should be established, in particular for sediment. However, we see the need for some stability in the indicators to allow councils to apply their resources to achieving the indicators rather than contributing to the development of yet another set of indicators. A changing of the goalposts and the indicators does little to achieve the desired outcomes. We are comfortable that different catchments may choose different actions to address the issues providing there is some consistency in priorities and indicators. It would be preferable if the indicators included some timeframes within them to ensure some spatial and temporal consistency between the decisions of different councils for different catchments.
Higher standard for swimming in summer.	Greater efforts to reduce contamination where people want to swim.	While we understand the desire for safe swimming water, we would favour a prioritisation of addressing the major externalities. We do not see safe swimming water as necessarily the priority.

Protect urban and rural wetlands and streams.	There will be no more draining or development of wetlands. Remaining streams in urban and rural areas will not be piped or filled in unless there is no other option, for example to provide a crossing.	We cannot accept a blanket ban on further wetland development or modifications of urban and rural streams. We would support a process to ensure that any such developments are in the best interests of the nation but that does not include a blanket ban.
Protect threatened indigenous freshwater species.	Land and water resources will be managed in a way that helps indigenous species thrive.	We agree with the need for resources to be managed in a manner that provides for indigenous freshwater species to thrive but that also takes into consideration other factors such as utilisation and those non-indigenous species from which value is generated. We do not see the standard as providing priority over other uses.
Provide for fish passage.	Fish that need access to the sea to breed will face fewer barriers.	It is not just the number of barriers that impact the ability of fish to access the sea to breed. It is the efficacy of the barriers to provide an effective passage that is critical.
Improvements to setting minimum water flows and reporting on water use.	Better management of water allocation within the current system.	We see the setting of minimum standards and monitoring as fundamental to the management of freshwater resources.
Support the delivery of safe drinking water		
Strengthen requirements to assess and control risks to drinking water sources.	Tighter management of land use in areas that are sources of drinking water supply so drinking water is not contaminated.	We concur with this proposal but note that many threats to drinking water have resulted from subsequent council activities rather than the quality of the water drawn from natural sources.
Improve ecosystem health by better managing stormwater and wastewater		
Set minimum standards for wastewater discharges and overflows and require all operators to follow good practice risk management.	There is less pollution of rivers, lakes, groundwater and the sea from stormwater and wastewater.	We concur with this proposal. The only effective control on pollution is to limit it at the source, not the outfall.
Improve ecosystem health by improving farm practices where needed		
Ensure all farmers and growers have a plan to manage risks to freshwater.	There is less pollution of rivers, lakes and groundwater from agriculture and horticulture because all farmers and growers understand and manage environmental risks and follow good practice. All farmers and growers have a farm plan by 2025.	We support the need for farmers and horticulturalists to address their practices. However, that need should be matched by all other sectors that impact on freshwater quantity and quality. Farm plans need to be matched by plans in all other sectors.
Tightly restrict any further intensification of land use through interim measures until all regions have operative freshwater management plans.	From June 2020, changes such as new irrigation or conversion to dairying will only happen where there is clear evidence it will not increase pollution.	We see no reason to ban any intensification of land-use until all regions have freshwater management plans in place. We agree that intensification of land-use should not proceed until a regional plan exists for the area of intensification and for which the pollution effects can be measured, mitigated and monitored.

Reduce nitrogen loss in catchments with high nitrate/nitrogen levels through interim measures until all regions have operative freshwater management plans.	In catchments with high nitrate/nitrogen levels there will be a reduction in nitrogen loss within five years.	We are not supportive of tight timeframes where solutions are not readily available.
Exclude stock from waterways.	There will be more fencing and wider setbacks to keep stock out of waterways, reduce erosion, and capture contaminants before they reach the water.	Excluding stock from waterways is, we would have thought, a relatively simple first step.
Apply standards for intensive winter grazing, feedlots and stock holding areas.	There will be less erosion and less pollution of waterways from nutrients, sediment and pathogens.	We anticipate farm plans would be comprehensive documents where all farming practices would be included, but we are not supportive of regulations to define how activities must be undertaken. We are comfortable with a framework that sets desired outcomes and standards but leaves it to the discretion of the operator to achieve those outcomes.

The Draft National Policy Statement for Freshwater Management 2019

The Objectives

We generally support the intent of the principles and content of the draft policy statement but have a strong objection to the hierarchy of obligations as stated in the Part 2.1 Objectives:

The objective of this National Policy Statement is to ensure that resources are managed in a way that prioritises:

- a) first, the health and wellbeing of waterbodies and freshwater ecosystems; and*
- b) second, the essential health needs of people; and*
- c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.*

Resource management is not as one-dimensional as portrayed in the objectives. It is a considered allocation of the resource among the competing uses and the need to maintain the resource in a sustainable manner – sustainability involves both quantity and quality. We need to use freshwater to live, our national well-being depends on using freshwater, but we cannot live by freshwater alone. We need to accept that living and using resources will have adverse impacts on resources – the issue is where is the acceptable threshold for long term sustainability. We cannot approach freshwater management by placing the sanctity of the resource as the primary consideration and then the essential needs of people next and then other uses. Food is an essential for life and its production requires use of the freshwater resource.

We consider the third objective alone provides an appropriate outcome. Well-being requires the resource to be of a sustainable nature, to be used to support life and wellbeing and to be managed appropriately. We do not see a policy that prioritises the health and wellbeing of the resource above its utilisation as being appropriate to a New Zealand context.

The Policy Statements

Te Mana o te Wai, “the mana of the water” may be used as a general principle but we should not ignore that its interpretation will differ between individuals and that this may only serve to build future divisions of opinion. We would prefer to see Policy 1 set out a framework that all New Zealanders can readily understand and align with – a policy that refers to sustainability, use, quality and quantity standards rather than an objective of restoring the resources to a state that is not defined.

We are somewhat uncomfortable with the definition of and prominence given to tangata whenua engagement. We have no issue with the engagement and involvement of tangata whenua in the development of policy and standards but are concerned with the statement to reflect those values and interests in the management of, and decision-making regarding, the waterbodies and freshwater ecosystems in the region. We can agree that tangata whenua values and interests must be taken into consideration but that does not require the values to be reflected in decision-making and management.

We are uncomfortable with the absolute statement of no loss in Policy 8 in respect of wetlands and would prefer the relative statement of net loss in Policy 9.

Implementing the Policy

Our comments above in relation to the definition of Te Mana o te Wai and the Treaty engagement processes apply in relation to Parts 3.2 and 3.3 of the draft National Policy Statement.

We support the remaining implementation policies but would prefer to see the following effects management hierarchy elevated to a wider principles application rather than apply only to the wetlands, i.e.

—*an approach to managing the adverse effects of subdivision, use, and development that requires that:*

- a) *adverse effects are avoided where possible; and*
- b) *adverse effects that cannot be demonstrably avoided are remedied where possible; and*
- c) *adverse effects that cannot be demonstrably remedied are mitigated; and*
- d) *in relation to adverse effects that cannot be avoided, remedied, or mitigated, offsetting is considered; and*
- e) *if offsetting is not demonstrably achievable, compensation is considered.*

Compulsory and discretionary considerations

For reasons given earlier, we would prefer to see the compulsory considerations limited to the ecosystem health. If that is achieved, the aspirations and desires of all New Zealanders would be satisfied.

Attributes requiring limits – National Bottom Lines

We consider that the National Bottom Lines proposed in the policy are inconsistently high relative to the desired objectives of the National Policy. The bottom lines proposed appear to provide for substantive adverse effects and the risk of those effects to be acceptable. We would prefer the bottom line to be more protective of the resource and set more appropriately at a point within the “C” range rather than at the end of the range. The objective would be to achieve a 10% effect rather than the 20% effect proposed. The 10% effect would be more consistent with the 2040 National Target as set out in Appendix 3.

Proposed National Environmental Standards for Freshwater

The proposed National Environmental Standards for Freshwater appear to provide standards in respect of wetlands, fish passage and farming. While our knowledge of the regulatory framework is not comprehensive, we are concerned that the standards proposed are limited to wetlands, fish passage and farming and do not address other sector activities that can generate externalities such as sediment.

We are aware of the NES for Plantation Forestry but have been unable to locate any standards for other activities that might also affect freshwater quality – e.g. discharges from manufacturing or other urban land-use, or discharges from horticulture.

If NESs are to be prepared for those other activities, then this NES should be retitled to reflect its limited application.

Draft Stock Exclusion Section 360 Regulations

We have no comment on these draft regulations and presume them to be appropriate.

Yours sincerely



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