

SUBMISSION ON 'Action for Healthy Waterways'

Draft NPS for Freshwater Management

Thursday 31st October, 2019

TO: Ministry for the Environment (consultation.freshwater@mfe.govt.nz)

NAME OF SUBMITTER: Horticulture New Zealand

Supported By: New Zealand New Zealand Kiwifruit Growers Incorporated (NZKGI), NZ Apple and Pears Inc , Association, , New Zealand New Zealand Kiwiberry Growers, Onions New Zealand, Vegetables New Zealand, Process Vegetables New Zealand, New Zealand Citrus Growers, Tomatoes NZ, Potatoes New Zealand , Central Otago Fruit Growers, Tevoit Fruit Growers Association



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Introduction

Horticulture New Zealand (HortNZ) thanks the Ministry for the Environment (MfE) for the opportunity to submit on the proposed Draft National Policy Statement for Freshwater Management (draft NPSFM).

Note: HortNZ has a separate submission on the proposed NES for freshwater.

HortNZ recognises the significant challenges in putting in place a land and water management regime within New Zealand that seeks to maximise opportunities for the environment, economy and communities, but at the same time ensuring alignment with the mandatory directives of the Resource Management Act 1991 (RMA).

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ wishes to be heard in support of our submission.

Background to HortNZ

HortNZ was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

HortNZ advocates for and represents the interests of 5000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers. Land under horticultural crop cultivation in New Zealand is calculated to be approximately 120,000 hectares.

The horticulture industry value is \$5.7 billion and is broken down as follows:

Industry value	\$5.7bn
Fruit exports	\$2.82bn
Vegetable exports	\$0.62bn
Total exports	\$3.44bn
Fruit domestic	\$0.97bn
Vegetable domestic	\$1.27bn

Total domestic

\$2.24bn

For the first time New Zealand's total horticultural produce exports in 2017/2018 exceeded \$3.44bn Free On Board value, 83% higher than a decade before.

It should also be acknowledged that it is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security.

The total investment in New Zealand's horticultural sector is estimated to be in excess of \$52 billion.

HortNZ's vision is *"healthy food for all forever"* and its mission is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.

HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

The principles that HortNZ considers in assessing the implementation of the RMA include:

- The effects based purpose of the RMA;
- Non-regulatory methods should be employed by councils;
- Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;

- Early consultation of land users in plan preparation;
- Ensuring that RMA plans work in the grower's interests both in an environmental and sustainable economic production sense.

As a founding member of the Land and Water Forum, HortNZ has played an active role as a submitter and in previous consultations with Central and Regional government reform of freshwater management. This submission is informed by HortNZ staff and contractors currently engaged in most aspects of Central and Regional management of freshwater across New Zealand.

The importance of water and highly productive land for horticulture

Water is essential for the production of food. Horticultural production in all regions of New Zealand is reliant on reliable supplies of fresh water that are suitable for sustained crop production and post-harvest washing and processing.

The values of food production land are inseparable from connected freshwater. Freshwater is a necessary component of food production land because:

- Freshwater processes formed much of our most productive land through erosion and deposition creating plains of arable soil in the lowlands. These make up the 5% of New Zealand that is available for high value horticultural production (versatile soils).
- The value of this finite and precious soil resource is compromised without clean fresh water to cultivate crops, to wash

and prepare food.

- Food cannot be grown without water and therefore cannot occur without discharges. The values of land and water are interlinked.

Food security

Current projections around New Zealand's expected population increase and annual food volumes available for consumption in New Zealand show that domestic vegetable supply will not be able to sustain our future population consumption needs.¹

Already many New Zealanders, are struggling to meet the recommended daily intake of 3 plus vegetables and 2 plus fruit a day. In 2016/2017, only 38.8 percent of New Zealand adults and 49.8 percent of children met the recommended daily fruit and vegetable intake.² Those living in the most deprived neighbourhoods were less likely to meet the recommended intakes and were more likely to be obese.³ 1 in 5 children are living in food insecurity⁴.

Abstractions and discharges are needed to grow the food New Zealanders need to eat. Reasonably priced health food is essential for human health.

Submission Structure

1. Executive Summary
2. Draft NPSFM Provisions Discussion.
3. Conclusion

Appendix A –Decisions sought on Draft NPSFM

Appendix B – Legal opinion

Appendix C – Consultation questions

¹ Horticulture New Zealand. (2017). *New Zealand domestic vegetable production: the growing story*. <http://www.hortnz.co.nz/assets/Media-Release-Photos/HortNZ-Report-Final-A4-Single-Pages.pdf>

² Ministry of Health. (2017). *Annual Data Explorer 2016/17: New Zealand Health Survey*: <https://minhealthnz.shinyapps.io/nz-health-survey-2016-17-annual-data->

<explorer/ w e9a07e83/ w aa03fb73/ w 320818d4 / w 26fa6ce8/ w f50ad45f/ w dbba0f02/#!/explor e-indicators>.

⁴ (Ministry of Health, 2019) <https://www.health.govt.nz/system/files/documents/publications/household-food-insecurity-among-children-new-zealand-health-survey-jun19.pdf>

1. Executive Summary

NPSFM consultation process

There has been no consultation with HortNZ on the development of the draft NPSFM. We have concerns about the drafting and the potential for unintended consequences (see **Appendix B – Legal opinion**). Due to options and drafting, it is unclear to what extent the final version may differ from this version. The Government should release an updated draft and provide a hearing process. HortNZ wishes to present evidence to the panel of decision makers.

Te Mana o te Wai and Objective

HortNZ supports the concept of Te Mana o te Wai and the holistic framework for resource management that Te Mana o te Wai provides.

The description of Te Mana o te Wai needs to be developed to discuss the relationship with Section 5 of the RMA. We recommend the wording of the objective be refined to reflect the intention of Section 5 of the RMA (see **Appendix B – Legal opinion**).

The essential health needs of people should be defined to include food. The description of Te Mana o te Wai should acknowledge the importance of ecosystem services, including highly productive land for food production. There is an inseparable link between catchments and freshwater, and the values of land and the values of water.

The description of Te Mana o te Wai includes a description of participation in decision making. It includes the concepts of mana whakahaere, kaitiakitanga and manaakitanga. The intention of this aspect of Te Mana o te Wai should be more clearly expressed through definitions and clearer links to the policies.

Integrated management

We support integrated management. We are unclear how the draft NPSFM and New Zealand Coastal Policy Statement (NZCPS) work together. We support integrated planning for land use decisions that impact on water quality and quantity. Catchment values within freshwater management units (FMU) should be identified. This would include the productive capacity of highly productive land for food production.

Freshwater values

We support the inclusion of new compulsory values for threatened species and mahinga kai.

We propose that food production is recognised with its own value. Food cannot be grown without water. Compulsory and other values must have equal weight in decision making for outcomes, limits and action plans.

We support the spatial unit for values being the FMU. We are of the view that values should only be identified at a finer resolution if there are specific values to be represented.

Outcomes, limits, actions and timeframes

An integrated process for determining outcomes, attribute states, limits and actions must be adopted.

The spatial resolution of target attribute states, must relate to FMUs and specific values. Maintaining current state at a very fine spatial resolution supports grand-parenting, not sustainable management.

The impact on catchment values, such as food production, must be assessed as part of the process of refining sustainable outcomes and time-frames. Catchment values will also influence whether an action plan or limit process is more appropriate.

Monitoring and decision support modelling and accounting

Establishing the current state and determining trends relies on reliable monitoring and analysis. Methods vary across the country. National guidance is needed to develop robust method for collecting and analysing data.

Catchment scale decision support models are required to link the impact of outcomes on catchment values, and to understand the impact of limits and actions on achieving outcomes. The spatial and temporal resolution of models has a large bearing on the reliability of predictions. National guidance is needed to guide robust methods for modelling. Financial support is needed to help councils to develop robust tools.

Allocation management should be linked to water quality and quantity limits. Limits must be able to be revised within planning cycles to reflect improved science.

To speed up the planning process, a more streamlined and focused approach to monitoring, catchment modelling and accounting is required. Section 360 regulations should be developed so there is a consistent and robust approach adopted across all regions.

Exceptions

We accept that for some nationally significant infrastructure, exceptions to bottom lines may be appropriate. But any exception must be linked to assessment criteria.

In many catchments, enduring changes have been made to freshwater systems and catchments. For example, urbanisation, flood protection, drainage and hydro-electricity. Not all of this infrastructure is nationally significant. In these situations, action plans rather than limit-based approaches are likely to be required. In some sub-catchments some of the bottom lines may be unobtainable.

Wetland and streams

We support the intention to protect wetland and reduce future stream loss. The definition of constructed wetland needs to ensure that riparian planting and water treatment devices are not disincentivised. There should be recognition of interconnected performance of private and public drainage.

The stream offsetting provisions are supported. But recognition is required that in some places it may not be possible to for suitable offset to be provided. Clarification is needed about whether replacement of existing structures is captured.

National Bottom Lines

We support minimum standards to maintain existing state and improvement toward bottom lines, to reflect FMU values and outcomes. We support improvement above bottom lines, where this reflects values, and can be achieved sustainably.

The development of monitoring and analysis and modelling regulations is essential to support sustainable decision making. Hydrology and water quality must be considered together.

Currently councils analyse the monitored and modelled statistics for the attribute states inconsistently. Average annual models cannot reliably predict the statistics required to assess whether limits and actions will achieve target attribute states.

The attribute states only apply to target attributes states. Target attribute states are linked to outcomes which are linked to values at the FMU scale. Other sites may be monitored to inform analysis and modelling. But sites, not linked the outcomes, must not be subject to achieving target attribute states.

Specific water quality attributes are defined as being subject to limits or action plans. Where robust modelling indicates attribute states cannot be achieved with limits within a 30 -year time frame, or maintained in 30 years time, then limits that achieve attribute states should not be required and instead action plans, which may include limits, should be adopted.

Implementation planning process

The policy establishes a long-term vision. Strategic Plans under the Local Government Act 2001 (LGA) provide a means of achieving this. This Strategic Plan, would then define the elements to be implemented through the RMA process. The Strategic Plan would include policy and limits, and also other elements such as action plans and Local Government funding.

We are concerned about the loss of merit appeal rights. We strongly recommend that an independent Water Commission is established to assess whether a council has: given effect to the NPSFM, consulted adequately, taken account of all the values and to consider appeals on merit.

Summary of recommendations

1. We call for a hearing process for evidence of submitters to be considered.
2. Re-word the Objective that describes the Te Mana o te Wai hierarchy to reflect holistic and sustainable decision making consistent with Section 5 of the RMA.
3. Within Te Mana o te Wai - define essential human health needs to include food.
4. Within Te Mana o te Wai - state the inseparable links between the values of catchments and the values of freshwater, including ecosystem services.
5. Create a new national value – mahi mara, recognising water use and discharges are essential for food production.
6. Freshwater outcomes must only be set at the FMU scale and specific sites.
7. Terrestrial values within FMUs should be identified including highly productive land.
8. Develop a policy to state clearly the establishment of outcomes, attribute states, flows and levels cannot be established without assessing the effects of limits, actions and timeframes on the social, economic, cultural wellbeing of people and on the wider environment including the productive capacity of highly productive land.
9. Develop policy stating that target attribute states, must be linked to outcomes and outcomes must be linked to FMU values.
10. Allocation management should be linked to limits, but limits must be able to be revised within planning cycles to reflect improved science, that meet standards.

11. Develop Section 360 regulations for monitoring and analysis, decision support modelling and freshwater accounting systems.
12. Direct funding to councils so they develop suitable decision support tools quickly.
13. Develop policy for assessing nationally significant exceptions.
14. Develop policy where action plans rather than limits must be used when limits alone cannot achieve outcomes within a 30-year timeframe.
15. Improve the definition of constructed wetland and amend the minimum criteria for mapping wetlands
16. Use the Strategic planning provisions under LGA to establish the NPSFM Te Mana o te Wai strategic plan. The plan would include RMA elements and other elements such as funding and action plans.
17. Establish an independent Water Commission for assessing council performance and for considering appeals on merit.

2. Draft NPSFM Provision Discussion

Preamble

The preamble to the draft NPSFM is currently unsatisfactory. The 2008 BOI Report gave the following guidance⁵:

'The Board considers that a preamble can provide a useful introduction to the NPS. It should outline in broad terms the challenges for freshwater management, and state national values, issues and goals.'

Recommendation:

- Rewrite the preamble in line with the direction from the 2008 BOI Report.

Fundamental Concept Te Mana o te Wai

Te Mana o te Wai is a framework for water resource management. The description of the concept of Te Mana o te Wai in the NPSFM 2017 describes an interconnection between the health of water, people and the environment. The 2019 version (draft NPSFM) builds on this concept and describes two key parts to Te Mana o te Wai. The first element is about resource management governance, decision making and participation. The second element is a hierarchy of obligations.

In our view the description needs to be built on to define key terms, to discuss the links between values in catchments and values in freshwater and to discuss how Te Mana o te Wai hierarchy relates to the Section 5 of the RMA.

Recommendations:

- Define essential human health needs to include food.
- Recognise the values within catchments, and in particular the importance of highly productive land for food production as an ecosystem service.
- Describe the relationship between Te Mana o te Wai and section 5 of the RMA.

Definitions

The substantial amendments and insertions of new definitions is a particular concern as the mis-match between the definitions in the draft NPSFM and the RMA will cause confusion and potentially lead to unproductive legal challenges.

We consider that the changes will not decrease the extent of litigation, rather they will increase it – particularly because redrafted policies and objectives contain new phrases untested by case law. For example: removing 18 existing definitions, introducing 16 new definitions and redrafting 9 existing definitions.

Recommendation

- Justify and explain where definitions differ to the RMA to avoid future litigation.
- We provided specific comments in **Appendix A**.

⁵ Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management (January 2010) at [254]

Application

The application of the NPSFM has expanded to include consideration of receiving environments in the coastal marine area, although the value and outcome setting process is confined to freshwater environments.

For example, bacteria discharged from land to freshwater can then impact on suitability of shell fish in open ocean beaches for consumption (Newcombe, et al., 2014). It appears that this effect could be recognised under section 3.4 (Integrated management), which includes the coastal environment and “other ecosystems”, but freshwater attribute states and limits set for bacteria would be established based on freshwater values, like freshwater mahinga kai and swimming.

It is unclear how the draft NPSFM and the NZCPS will interact and what the consequences of this will be.

The temporal application is the date of gazette. We support this provision, but acknowledge it may have implications for the wide range of baseline dates that currently exist in regional plans.

Recommendation

- Provide greater clarity on degree to which values and outcomes in the coastal marine area are to be achieved through the NPSFM policy, and how the concept of Te Mana o te Wai relates to marine waters.

Objectives

We recognise Te Mana o te Wai as a framework for directing freshwater management and ultimately a state where the health of water, people and the wider environment are provided for. Te Mana o te Wai provides guidance on how for the 13 policies in the draft NPSFM could be considered together using an integrated approach. However, the way the Objective is currently expressed, as a hierarchy of priorities, makes the Objective inconsistent with the purpose of the RMA.

Our interpretation is that the Te Mana o te Wai hierarchy seeks to explain how to integrate the bottom lines and the overall judgement approach of the Section 5 of the RMA. HortNZ considers the concept of Te Mana o te Wai is helpful in interpreting Section 5 for freshwater decision making, but in our view, further drafting is required to achieve an explanation that is legally robust (see **Appendix B** – Legal Opinion).

Recommendation

- Re-draft the objective to make it clear that the Te Mana o te Wai obligations are subject to an integrated holistic assessment of well beings

Policies

There are 13 policies proposed and they are similar to the NPSFM 2017 objectives.

There is inconsistent use of terms in policies within section 2.2 e.g. ‘gives effect to’, ‘to ensure’, ‘action is taken’, ‘managed’, ‘involved’, ‘achieved’, ‘avoided’, ‘protected’, ‘safeguarded’, ‘enabled’. Some of these terms have meaning in law and others do not. An

unintended consequence of this drafting may well be arguments over the hierarchy of importance of the policies relative to each other.

In our view, the policies should direct integrated assessments that consider catchment and freshwater values together, and in particular ecosystem services such as the productive capacity of highly productive land, and its importance for food production.

Recommendation

- The drafting of these policies is reviewed. See detailed comments in the legal opinion in **Appendix B**
- Specific comments on the policies provided in **Appendix A**

Te Mana o te Wai.

The draft NPSFM involves councils establishing long term freshwater outcomes. In our view the long-term nature of the planning is suited a council strategy document.

The strategy document can be prepared under the LGA and the public can be engaged through the *Special Consultative Procedure* (S82-S90). There are limited appeal rights, as the LGA appeal provisions apply, not the RMA appeal provisions.

A strategy prepared in this manner does have weight under the RMA as it is a *strategy prepared under other Acts* (e.g: s66(2)(c)(i) and s74(2)(b)(i)). Therefore, regional and district planning processes are required to have regard to such strategies.

Elements of the strategies, such as policies, limits and rules would be implemented through the RMA process. Other elements could be directed through Action Plans. Using the LGA provisions enables councils to direct funding towards actions.

The provisions include providing specific wording for RPS objectives. While Section 45A of the RMA states that a national policy statement may state 'objectives and policies that must be included in policy statements and plans'⁶, this does not mean that national policy statements may direct local authorities to take steps which go beyond their functions, powers, and duties, in regards to policy statements and plans. See our legal opinion in **Appendix B**.

In our view there should be a requirement that councils update their RPS to articulate their Te Mana o te Wai visions by a certain date, as it is the first thing that needs to be done.

As there is no requirement for Section 32 assessment on including Te Mana o te Wai vision in the RPS, there must be no timeframe set on achieving the outcomes associated with Te mana or wai, stated in the RPS objective. The timeframe for achieving outcomes must be set as part of the integrated assessment accounting for all values within each FMU.

Recommendation

- Use the Local Government Act to develop a Council strategy to reflect a long term Te Mana o te Wai vision.
- See specific wording in **Appendix A**.

⁶ Resource Management Act 1991 s45A(2)(e)

Tangata whenua roles and interests

Policy 5 and the Objective D1 in NPSFM 2017, are similar with both emphasising involving iwi and hapu and ensuring tangata whenua values and interests are identified and reflected. However, the implementation method in the NPSFM 2019 has shifted, and focuses on the engagement and involvement of tangata whenua, compared to the 2017 version, where the emphasis was on involving and working with iwi and hapu.

There is no link to concepts in the preamble, relating to the principles of mana whakahaere/governance, kaitiakitanga/stewardship and manaakitanga/respect and care. It unclear if these concepts refer roles for iwi, hapu and tangata whenua.

Matuaranga Māori is identified in the preamble and isn't picked up in this policy, it is picked up in obligations for council monitoring in section 3:13, but it is unclear if the policy envisages a role for Māori in mātauranga Māori.

Recommendations

- Improve clarity on roles and interests of iwi, hapu and tangata whenua in the objective and policy.
- It may require additional policies to reflect iwi, hapu, tangata whenua roles in whakahaere, kaitiakitanga and manaakitanga.
- It may require an additional policy on enabling the application of broader systems of values and knowledge, such as mātauranga Māori, to the health and wellbeing of waterbodies and freshwater ecosystems.

Integrated Management

The policies are similar to those in the NPSFM 2017, the scope of ecosystems has broadened. In the 2017 version it was limited to associated ecosystems, in the 2019 version it includes "other ecosystems". Presumably this could include any ecosystem whether related to freshwater or not. In Waikato Plan Change 1, human health is recognised as part of the ecosystem health value.⁷

The policy has a range of elements including managing use and development of land, infrastructure and urban development. This policy is relevant to setting timeframes for achieving attribute states and for allocation of limits.

Land use can have considerable impacts on the hydrology of catchments and the hydro-morphology of receiving waters. For example, impervious surfaces change the amount recharge and increase surface runoff, these changes result in hydrological changes. Similarly, forestry can result in large changes to catchment hydrology, but would not be captured by abstraction rules. The land use activities that impact on water quality and quantity are regional council functions

We have concerns about the direction in [3.4] of the Draft NPSFM requires territorial authorities to undertake actions that go beyond their functions, powers, and duties. We consider this will cause confusion of implementation and likely will result in local authorities

⁷ <http://www.waikatoregion.govt.nz/assets/WRC/Council/Policy-and-Plans/HR/Dip-your-toes/PlanChange1-pdf-Adobe-Acrobat-Pro.pdf>

acting ultra vires without being aware of their transgression, thereby opening them up to litigation. See legal opinion on **Appendix B**.

Recommendation

- Revising the over-arching objective to reflect integrated decision making
- Use the Local Govt Act provisions to develop a strategic plan that includes RMA, provisions and an Action Plan for achieving integrated management.
- Removing requirements that direct local authorities to take steps which go beyond their functions, powers, and duties, in regards to policy statements and plans.
- See specific comments on provisions in **Appendix A**.

Overview of national objectives framework

We have concerns about the fast-tracked process and the ability of growers to participate and for Councils to deliver quality plans. We are concerned about the impact on loss of appeal rights on the quality of decision making

In our view it is essential an independent body is established for challenging whether the Council has given effect to NPSFM, consulted adequately and taken account of all the values.

Recommendation

- Appoint an independent body to assess whether:
 - o Council has given effect to NPSFM
 - o Consulted adequately
 - o Taken account of all the values.
 - o Hear merit appeals

Identifying FMU's and monitoring sites

The policy directs identification of specific elements including primary contact sites within FMUs, and requires that monitoring sites are representative of the FMU and or representative of primary contact sites.

We are also of the view that catchment values should be identified, including highly productive land for food production.

Care needs to be taken to select FMU's that reflect surface water and groundwater relationships. The size of FMU's is influential on the analysis driving decisions as to whether outcomes are met or not. FMUs need to be sufficiently large for some flexibility of land use within them.

The size of the water course where monitoring occurs will have a considerable impact on the likelihood of bottom lines being met, national guidance on the establishment of site selection should be provided. The monitoring network is skewed to large rivers, where small streams are monitored, their quality is often much poorer than larger rivers. Water quality management decisions in rivers and streams cannot be compared, without consideration of hydrology.

The number of attribute states that are required to be linked to outcomes and monitored is significant. The cost and effort in collecting and analysing this data set will be considerable and must be well directed.

The state of environment monitoring sites, with the longest and most reliable data may not always be truly representative of the hydrology and contaminant load sources at an FMU scale. This is particularly true for background loads, small streams, urban and peri-urban environments, and for those attributes where a significant load is delivered in rain events.

We anticipate that over-time changes will need to be made to the monitoring network to make it fit for purpose for the FMU process.

In our view national regulations should be developed to include the following

- Standards for site selection within an FMU for target attribute states
- Standards for site selection within an FMU for informing models
- Minimum data length and quality standards for each attribute
- Statistical methods for current state attributes, flows and water level
- Statistical methods for NOF attributes,
- Statistical methods for trend and uncertainty analysis

Recommendation

- Identify freshwater and catchment values within FMUS.
- Catchment values include highly productive land for food production
- Develop section 360 regulations to provide consistent and robust methods for monitoring and analysis.

Identifying values and environmental outcomes

The process for identifying values includes recognition of the compulsory values, the decision as to whether any of the national values in schedule 1b rests with the council. The values within appendix 1 b include Mahinga kai and Wai tapu, presumably it would be appropriate for tangata whenua to determine where and whether these values exist within an FMU. Similarly, the values include irrigation, cultivation and food production. This value is very important to the horticulture sector, and we are of the view the sector should have a role in identifying its value.

The spatial scale for the value and outcome setting is described as for each FMU, or for individual waterbodies or freshwater ecosystems within an FMU. This is a considerable shift from the NPSFM 2017, where the environmental outcome was set at the FMU scale.

We understand that within FMUs there may be specific places where values are located, for example: a habitat of a threatened species, or a bathing site. Providing for outcomes to be set in specific places makes sense, however allowing the outcome to be set at stream scale rather than FMU for all or any attribute, reduces the potential for land use flexibility within catchments. It is aligned with a grand-parented approach to water quality allocation. It undermines integrated management.

The process includes setting numeric attributes, it is assumed these are the attributes that would be used for measuring whether the outcome is achieved, they would include the relevant attributes provided in the NPSFM for each value, but could also include any other attribute identified for any other value identified as part of the value identification process.

Modelling decision support tools of sufficient quality and resolution are required to enable the relationship between outcomes, attributes, limits and time frames to be predicted. These predictions are required for assessments of the social, cultural, environmental and economic effects of options to be considered.

The range and quality of decision support tools developed to date to support NPSFM 2017 decision making processes is extremely variable.

We see tools being used that lead to establishing limits that may not achieve target attribute states, because the temporal resolution insufficient this is especially relevant for *E. Coli* and Sediment. For example, when average annual models are used for modelling *E. Coli*, the effectiveness of stock exclusion in achieving swimming outcomes can be overstated. When daily model was used for modelling *E. Coli* for the Porirua Whaitua, it was apparent that the 95th percentile events were caused by wet weather flows from sheep and beef hill country, and stock exclusion of cattle and retirement of erosion prone land and wastewater overflow improvements achieved some reductions, but could not shift the attribute state past D or E band in most locations.⁸.

In some Regions, robust ground water models have not been developed, this leads to councils to setting arbitrary abstraction limits.

If robust modelling standards were set, it would be possible for resource users to develop information that could then be adopted by Council, for example catchment collective models that integrate with FMU models.

In our view national regulations should be developed to include the following

- Spatial resolution of models required for setting FMU attribute states and limits
- Temporal resolution required for various parameters
- Circumstances where integrated groundwater and surface water models are required
- Statistical methods for attributes
- Calibration and verification standards that must be met for each attribute.

Some regions have been unable to fund the development of suitable models. Funding should be made available to these regions

Recommendation

- Consult with tangata whenua and communities when determining what values are relevant to an FMU
- Include catchment values as well as freshwater values, including highly productive land
- Values and outcomes must be set at the FMU scale, and monitoring sites for determining whether FMU outcomes are being achieved must be representative.
- Water-body specific values and outcomes should only be set where they relate to specific values.
- Require that decision support models are used to enable integrated assessments of outcomes, attributes, limits and actions and timeframes, while acknowledging the limitation of bottom lines and maintaining current state.
- Develop Section 360 regulations for catchment scale water quality and quantity models
- See specific comments on provisions in **Appendix A**.

⁸ (Easton, Cetin, Shrestha, & Sands, 2019)

Identifying current attribute states, Setting target attributes states, Identifying limits on resources use and preparing action plans

This integrated assessment is missing from the NPSFM 2019, which seems to drive a process of selecting values, outcomes and attribute states, which may exceed bottom lines or may become increasingly difficult to obtain with climate change. This process seems to be directed to occur without reference to the limits and actions that would be required to achieve the outcomes. Setting limits and actions has social, economic and cultural consequences, including consequences for essential human health needs, and must be considered along freshwater values and outcomes.

In the situation where the outcome sought is maintenance of the existing state, the proposal links this to the statistical description of the existing state. Water quality and flow can vary significantly from year to year, and even accounting for 5-year rolling medians. Accounting for natural variability is particularly important, when the focus of the NPSFM 2019, has greater emphasis on responding to deterioration. Robust monitoring and analysis regulations are required to guide this process.

The process requires establishing resource use limits to achieve the attribute states for all attributes in Appendix 2a and an action plan approach for establishing actions to achieve the attribute states in Appendix 2B, in order to achieve any other target attribute states a Council may use limits, actions plans or consent conditions.

The process assumes it will always be possible to achieve the attribute target using the limit approach for specific attributes. In some circumstance, such as small streams in urban and peri-urban catchments and catchments with highly modified hydromorphology, this may not be possible, in some place limits and known actions may not achieve all of the bottom lines, for example Wairarapa Moana. The Ruamahanga Whaitua modelling indicted that extensive catchment mitigations could not achieve the bottom line attribute state in the Lake, and additional mitigations that involved deepening the Lake and re-introducing the Raumahanga River to the Lake, achieved some improvement but could not achieve the bottom lines. Achieving the bottom lines in Wairarapa Moana is likely to require a considerable change in the flood protection scheme that has so drastically altered the Lakes natural hydrology⁹.

In the coming years significant changes in flow regimes are predicted as result of climate change. For example, the climate change modelling for the Ruamahanga Whaitua predicted a large change in low flows is expected by 2040 (average reduction up to 10%).¹⁰ In some catchments significant changes in flow regime may occur as a result of increased forestation for emissions mitigation, for example lows can be expected to reduce by 50% when pasture is converted to plantation forest.¹¹ The current proposals require limits that mitigate the impacts of climate change. This approach will be increasingly unrealistic with time.

The increased number of attributes and bottom lines, increases the likelihood that many rivers will not be able to meet all the of the bottom lines.

Where robust catchment scale modelling indicates that abstraction and discharge limits cannot sustainably achieve bottom lines or maintenance of current state within 30 years,

⁹ (Allan, , Hamilton, , & Muraoka, 2017) <http://www.gw.govt.nz/assets/Ruamahanga-Whaitua/A-coupled-hydrodynamic-ecological-model-to-test-management-options-for-restoration-of-lakes-Onoke-and-Wairarapa.pdf>

¹⁰ (Zammit & Yang, 2017) <http://www.gw.govt.nz/assets/FINAL-Impact-of-climate-change-on-inflows-to-the-Ruamahanga-groundwater-management-zone-February-2017.pdf>

¹¹ (Duncan & Woods, 2004) <https://waikatoriver.org.nz/wp-content/uploads/2014/09/24-Flow-Effects.pdf>

then an action plan approach rather than a limit based method of achieving the outcome should be adopted. This is particularly likely to relate to urban and peri-urban streams. For example most of the Waitemata catchment fails either the proposed DIN or DRP attributes.¹²

Recommendation

- Require integrated assessments of outcomes, attributes, limits and actions and timeframes, while acknowledging the limitation of bottom lines and maintaining current state.
- Develop Section 360 regulations for monitoring and analysis
- Develop Section 360 regulations for catchment scale water quality and quantity decision support models
- Adopt an Action Plan approach when robust analysis indicates outcomes cannot sustainably be met using limits within 30 years, or maintained in 30 years.
- See specific comments on provisions in **Appendix A**.

Setting environmental flows and levels, Identifying take limits

The setting of environmental flows and limits must occur at the FMU scale and can occur at an individual waterbody scale. The environmental flows must be developed on the basis on environmental outcomes and must be expressed as a water level, flow rate and variability of flow. The flows and levels established are for the connected groundwater and surface water bodies.

This policy provides great clarity in how levels are set. We think this is particularly important for groundwater levels, where we have seen some Councils setting levels for groundwater as required by NPSFM 2107, without any meaningful link to achieving an environmental outcome, for example the minimum water level is bores as a limit in the Gisborne Freshwater Plan, when this is unlikely to be reliable indicator of aquifer water level, and unrelated to environmental outcomes.¹³

When setting levels and flows, councils are required to have regard to all the matters in section 3.9. This includes climate change. Given the attribute state is required to achieve the outcome, and the outcome is not subject to consideration of the impact of climate change, it appears, that in cases where climate change would result in a decline in flow or level, the environmental flow or level would not be able to reflect that adjustment.

When setting flows and levels, its also important to consider the impact on take limits and the essential human health needs as well as the social, economic and cultural wellbeing of people and communities.

The policy describes take limits as being designed to provide for the environmental levels and flows, which are in turn linked to environmental outcomes and values.

However, take limits, have an impact on the reliability of water supply. There are many competing users of water; e.g. domestic, livestock, recreation, industry, energy, environmental, cultural, as well as its use for crop irrigation and post-harvest washing and processing.

¹² (Local Government New Zealand, 2019)

¹³ (Williamson & Soltau, 2019)

Reliability of supply of water in terms of volume, quality and timing is critical for growers and their production. Generally, reliability must be greater than nine in ten years to support high value horticulture. Root stock survival and crop survival water is of critical importance for horticulture. Preventing irrigation at critical times can result in crop failure, hydroponic growing is particularly vulnerable as are trees where lack of water can result in death or long term damage to trees and vines, for example as occurred in the 2013 Hawkes Bay drought.¹⁴

We would expect in many FMUs the value for Irrigation, cultivation and food production would have been identified within the FMU and should be considered when establishing the take limit.

There are a limited range of factors that take limits are linked to in section 3.12. It's unclear why these are provided rather than the values and environmental outcomes identified section 3.6. These considerations are all related to ecosystem health, which would be consistent with compulsory ecosystem health value.

However, in this section, specific method is made to the essential human health needs of people. Essential human health needs of people extend beyond drinking water, at a minimum they include food, shelter, clothing, hygiene. It is unclear why consideration of essential human health needs is only provided for as part of take limits

When setting take limits, it's essential to consider the impact of take limits on the essential human health needs as well as the social, economic and cultural wellbeing of people and communities.

We understand decisions need to be made with the best available information, but the policy need to enable decisions on limits to be reviewed if better information becomes available. Limits are established to achieve outcomes. While the outcomes sought are likely to be stable over a planning cycle, the understanding of the limits and actions required to achieve the outcomes, may change with improved science.

Limits should be able to be reviewed within planning cycles, where robust science, meeting monitoring, analysis and modelling requirements indicates limits should be reconsidered. In our view, this should be provided for within the consenting process.

Recommendation

- We support a clear link between flows and level and environmental outcomes that reflect values.
- The take limit should be linked to achieving environmental outcomes and values as described in section 3.6.
- The take limit must be the maximum amount of resource use for the outcome to be met
- The take limit itself is not the element that is to be maintained, it is existing state that is to be maintained, and therefore the limit should be able to be revised to reflect best science.

¹⁴ (Archer & Brookes, 2018) <https://www.hbrc.govt.nz/assets/Document-Library/TANK/TANK-Key-Reports/Modelling-Water-Restrictions-and-Nutrient-Losses-for-Horticulture-AgFirst-2018.pdf>

- Require integrated assessments of outcomes, attributes, limits and actions and timeframes, while acknowledging the limitation of bottom lines and maintaining current state.
- Develop Section 360 regulations for monitoring and analysis
- Develop Section 360 regulations for catchment scale water quality and quantity decision support models
- Adopt an Action Plan approach when robust analysis indicates outcomes cannot be sustainably met using limits within 30 years, or maintained in 30 years.
- See specific comments on provisions in **Appendix A**.

Monitoring

The proposed monitoring provision require regional councils to establish of methods for monitoring progress towards attribute states and outcomes.

HortNZ supports the requirement for regional council's to be responsible for monitoring. The RMA states that every local authority has a duty to gather information, monitor and keep records (s35). State of the Environment monitoring is included within this (s35(1)(2)(a). There is also a requirement to make the monitoring findings available to the public at intervals of no less than 5-years (s35(2A)).

The monitoring methods, are required to include measures of health of indigenous flora and fauna. This appears not to only include monitoring to freshwater flora and fauna, but any flora and fauna. The primary focus on monitoring should relate to the freshwater values and outcomes that sought.

It may that as part of an integrated management approach, the action plan seeks to achieve values that are not only freshwater values. If this was the case then the monitoring should be clearly linked to these outcomes.

The methods include monitoring for matuaranga Māori. We note that matuaranga Māori is discussed in the preamble, relating to Te Mana o te Wai. We think it would be useful for describe how iwi, hapu, tangata whenua may be involved in its development.

We are of the view there should be national consistency in the development of the monitoring and analysis methods for measuring progress required under the NPSFM, to provide a consistent approach to measuring progress and responding to deterioration.

Recommendation

- Provide greater clarity in the other policies about how matuaranga Māori will be included in establishing values and outcomes and then the monitoring should be in the context of the outcomes sought
- Develop Section 360 regulations for monitoring and analysis
- See specific comments on provisions in **Appendix A**

What to do if deterioration detected

The section requires that if regional councils detect a trend indicating a deterioration or when an outcome is not meet, an action plan to halt or reverse the deterioration is developed. Care needs to be taken in interpreting when deterioration has occurred, or where changes are related to natural variability. For example, the evidence of Gilliam Holmes for the proposed Ngaruroro Water Conservation Order, demonstrated that the proposed periphyton

and DIN limits were subject to natural variability and unsuitable to be treated as limits that triggered action, without consideration of the wider hydrological system¹⁵.

It is unclear if the action plan is only required for deterioration, and the other steps (regulatory and non-regulatory) are required for when target attribute states, flows, levels or environmental outcomes are not met.

It is unclear if action plan discussed in this section is an update or review of the action plan developed under section 3.10.

Recommendation

- Develop Section 360 regulations for monitoring and analysis
- Clarify the action plan process for deterioration is part of the Action Plan under section 3.10.
- See specific comments on provisions in **Appendix A**.

Minimum Intervention

The minimum intervention table identifies for the ecosystem and human health values and the attributes that are associated with the value. This is the process that is required under section 3.7. Presumably if mahinga kai or a tangata whenua values are included within the compulsory values, the associated attributes for these values and related outcomes would be added to this table.

The table relates to section 3.10 which requires that limits or action plans are developed for specific attributes. In all cases an action plan may be developed and for some attributes a limit must be developed.

The limits that are set under section 3.10 must meet the target attribute state. As discussed above, we are of the view there will be some locations where factors other than discharges are the dominant reason water quality attribute states cannot be met, and in these cases an action plan approach is more appropriate.

In many places multiple contaminants will fail the bottom lines, in these cases a process that enables Councils to prioritise regulations and action that will have the most benefit will be needed.

Recommendation

- Identify a process for Regional Councils to adopt an action plan approach rather than a limit approach, for those sub-catchments and FMUs where robust analysis indicates a limit for achieving bottom lines cannot be sustainably established within 30 years, or where current state cannot be maintained in 30 years.
- See specific comments on provisions in **Appendix A**.

Inland wetlands

The provisions provide definitions for inland wetlands. These wetlands presumably exclude estuarine wetlands.

¹⁵ (Holmes, 2019) <http://www.hortnz.co.nz/assets/Natural-Resources-Documents/Ngaruroro-River-WCO-Evidence/Horticulture-New-Zealand-Gillian-Holmes-Evidence-25-January-2019.pdf>

The definitions refine the wetland definition in the RMA. It is technically desirable to differentiate types of wetlands in order to assess significance of wetlands and magnitude of effects. However, from a planning perspective, this can lead to ambiguity. Care should be taken to use the RMA definitions where possible and to relate refined definitions to RMA definitions to provide a logical planning framework. See legal opinion **Appendix B**.

In some regions we have found ourselves inadvertently caught up in discussions on wetlands in relation to implementing Good Management Practices, in particular sediment control ponds and off-stream water storage.

We also see risks with riparian planting, on lowland streams that may form swamp wetlands. If the provisions were to impact on planted riparian margins, it could disincentivise growers and farmers from planting area that revert to a wetland over time.

It is important that these Good Management Practices are not unintentionally constrained, thereby discouraging their use. The policy includes a description of constructed wetlands and a list of examples of constructed wetlands, these definitions aim to avoid the issue we are concerned with, but we think further refinement of this definition is required to avoid unintended and perverse outcomes.

We do not support the size class of 0.05ha and consider that a size class of 2ha should be the minimum criteria, as per the Landcare Research Wetland Delineation Protocols that refer to a small wetland as being <2ha. Mapping down to a scale of 0.05ha is not a practical measure. We also consider that requirements should specify for mapping purposes, that they relate to existing natural wetlands.

Recommendation

- Revise the definition of constructed wetland
- Amend the minimum criteria in Subpart 3.15(5)
- See specific comments on provisions in **Appendix A**.

Streams

The provisions to protect stream form were not included within the NPSFM 2017

The term stream and river are used throughout the NPSFM, and the term stream has been defined to be used interchangeable with River. The RMA defines River to include stream. River is the term in common use.

The policy uses the word infill, it is unclear if this has the same meaning as the word reclaim in the RMA. Often culverting will require minor diversions and reclamation, for example because culverts are often straighter than rivers.

Recommendation

- Clarification of definition of stream

Fish passage

These provisions are about providing for fish passage when considering consents for structure in the beds of rivers.

Recommendation

- Retain intent of fish passage provisions.

Primary contact sites

This provision requires councils specifically identifies locations for primary contact recreation. This is an additional requirement in addition to the compulsory human health value that provides for the suitability of swimming.

This provision, is aligned with the monitoring and reporting Councils already do on bathing sites and may enable a better integration of the monitoring and reporting undertaken for bathing sites and the monitoring and of outcomes required for the NPSFM process.

Recommendation

- Retain intent of primary contact site provisions.

Water allocation

These provisions require Councils to include criteria for approving water transfers within their regional plans and policies to maximise the efficient allocation of water

Water transfers are an important element of achieving efficient water use with any transfer occurring within a catchment, and controlled from within each region.

The efficient use of water, should be considered from a reasonable use perspective. For horticulture the use needs to crops change with the age of the crop and with the season

The provisions require timeframes for the over allocation of water, an integrated assessment will be required to determine an appropriate timeframe.

For water over-allocation, similar to water quality over-allocation an action plan approach may be appropriate to enable communities to consider options for addressing over-allocation, beyond efficiency gains and reduction in use.

Water storage, augmentation, harvesting and artificial recharge are methods that could be considered within an action plan framework. Methods that encourage collective use of water should be encouraged.

Recommendation

- Retain the intention to improve efficient allocation of water, and including transfers
- Retain the intention to drive the efficient use of water.
- Encourage collective approaches to water use and management
- Retain the intention to establish time frames to phase out over allocation, the timeframes must be established including an assessment of the social, economic and cultural wellbeing of people and communities, including the essential human health needs.
- Adopt an action plan approach to manage phasing out of over-allocation over time.
- Encourage collective management in collectives and enterprises
- Overallocation should be linked to limits rather than outcomes to provide for stability in decision making.
- However, limits must be able to be revised to reflect improved science during planning cycles.
- See specific comments on provisions in **Appendix A.**

Accounting systems

The provisions provide greater detail about the information that should be collected and reported at the FMU scale on water quality and quantify.

To date there has been reluctance from some Councils to develop sufficient accounting tools for water quality accounting, and this has led to limits being set at farm scale.

The provisions require recording and aggregation of data at the FMU scale, and including monitored and modelled water quality and quantify data.

Nationally consistent regulations to guide Councils in the development of robust and transparent tools for freshwater quality and quantity accounting are needed.

One of the issues that has faced vegetable growers, is regulations that set water quality limits at the farm scale, impeding crop rotation. This method of limit setting, has been driven by a lack of water quality accounting tools. In Plan Change 1, one of the key objections of Councils to enabling growers to manage vegetable growers at an FMU scale, was a reluctance from Councils to manage the accounting system that would be required.

Recommendation

- Section 360 regulations for freshwater accounting
- See specific comments on provisions in **Appendix A**.

Assessing and reporting

The provisions require annual reporting and additional requirements as part of the 5 yearly state of environment report.

Recommendation

- HortNZ supports the direction to prepare a summary report (synthesis report) that is written and presented in a way that members of the public are likely to understand and refer to the government plan language guidance¹⁶ as a starting point for regional councils.

Exceptions proposed

It is unclear what assessment criteria was used for determining the 6 hydroelectric schemes should be provided an exception, or how the assessment relates to the Te Mana o te Wai concept.

We accept that there will be some locations where due to significant changes in hydromorphology some bottom lines may never be met. Where these changes are a result of nationally significant infrastructure or a nationally significant activity, a case could be made that an exception is justified.

However, we are of the view a policy should be developed to direct an assessment against criteria. We recommend that in cases where exceptions are granted an action plan approach is adopted for those catchments to implement limits where possible, and to focus on the actions available and including the contribution the electricity companies might make, to achieving improved outcomes in the catchments.

¹⁶ <https://www.digital.govt.nz/standards-and-guidance/design-and-ux/content-design-and-management/how-to-write-for-the-web/plain-language?rf=1>

In some places, we expect that bottom lines will also not be able to be met, not because of nationally significant infrastructure, but rather local or regional conditions, such as flood protection and land drainage schemes or urbanisation. In these cases, we recommend an action plan approach. The action plan approach would enable options to be explored beyond limit setting, and for options and limits to be re-visited to determine whether changes in law or technology may provide opportunities for outcomes to be met.

Recommendation

- Develop criteria exceptions for nationally significant infrastructure and activities only
- Use an Action Plan approach for exceptions.
- Develop policy where action plans rather than limits must be used when limits alone cannot achieve outcomes within a 30-year timeframe

Timing

While HortNZ supports implementation timelines as a method for directing progress towards a goal, these must be achievable. HortNZ challenges the Government on this matter as we firmly believe that the date of 31 December 2025 will be unachievable without considerable support.

On a technical note, the 31st of December is outside the statutory dates in the RMA. We refer the Ministry to the definition of ‘working day’ in section 2 of the RMA, in which the period from 20th December to 10th January is excluded.

Recommendation

- Take advice from regional councils and set an achievable date, we are doubtful the 2025 data can be achieved.
- Develop Section 360 regulations for monitoring and analysis
- Develop Section 360 regulations for catchment scale water quality and quantity decision support models
- Develop Section 360 regulations for freshwater accounting
-

Compulsory values

The policy includes a compulsory ecosystem health value and a compulsory human contact and threatened species value, and a possible mahinga kai or tangata whenua value.

The ecosystem health value is described differently to the NPS2017, it includes a discussion of the 5 elements. Of these elements the NPSFM regulates water quality and quantity and has a influence impact on river habitat, through the stream works and integrated management provisions. The definition doesn't recognise the link between freshwater, terrestrial and marine ecosystem health.

If a tangata whenua value was adopted as proposed, it's unclear what it would include, and as such we cannot support its inclusion.

Recommendation

- Retain the intent of the existing compulsory values
- We support the inclusion of threatened species and mahinga kai value

- Define the freshwater ecosystem value to recognise the link between freshwater, terrestrial and marine ecosystem health.

Other values Other values that must be considered

The other values that must be considered are the same as NPSFM2017. Like the NPSFM2017 process, Councils must determine which of these other values apply within an FMU.

For horticulture, the irrigation, cultivation, and food production value is important. We are concerned that for numerous reasons (time, complexity of the bottom lines, the hierarchy), councils may choose not to account for the other national values.

HortNZ supports the approach where *compulsory values* are always considered and *other values* that are relevant within a catchment must also be considered. All *compulsory values* and relevant *other values* are considered together and balanced to achieve the community freshwater outcomes. There should be not priority afforded to compulsory values (over and above that provided by the bottom lines), compared with other values.

Furthermore, food production values of freshwater have been identified in regional policy statements and plans in many parts of New Zealand¹⁷.

In our view food production and cultivation should be afforded a value separate to irrigation. The value that is sought to be protected by the proposed NPS highly productive land, is the ability of this land to produce food. Food cannot be grown without water, and water cannot be used for growing without discharges.

For the reasons outlined above, it is of great importance that food production is recognised with its own value.

Recommendation

- Retain the other values, amend the irrigation value to remove food production
- Add a mahi mara value to recognise the importance of cultivation and food production for human health.
- Clarify that all values (compulsory and other) have equal weight in considering appropriate outcomes.
- Provide an opportunity for stakeholder to identify these values well as councils.

Appendix 2A and 2B: Attributes requiring limits and Action Plans

HortNZ supports the concept of National Bottom Lines, it is critical to New Zealand communities and the New Zealand economy that these are set at appropriate levels that are supported by robust and independently peer reviewed science.

A consistent approach to statistical analysis is required. The statistics provide within the NPSFM are ambiguous, this was also the case with NPSFM2017. This had led to councils interpreting the statistical methods for calculating attribute states differing across the country.

The number of attribute states that are required to be linked to outcomes and monitored is significant. The cost and effort in collecting and analysing this data set will be considerable.

¹⁷ Including Auckland, Northland, Waikato, Bay of Plenty, Gisborne, Hawkes Bay, Horizons, Wellington, Tasman, Marlborough, Southland.

The complexity of the data set increases the likelihood that many rivers will not be able to meet all the of the bottom lines. Prioritising action for improvements will be complex, and a values-based approach is recommended.

The limit-based approach assumes that a limit will be able to set to achieve the attribute states. This will not always be the case, particularly in urban streams and water courses that are highly modified due to flood protection and land drainage.

For some small low land streams, where their natural hydrology is highly disturbed due to land drainage and flood protection, the proposed DIN and DRP limits may be unachievable with a simple limit approach. These streams may not be identified as representative of the FMU, but in some catchments, particularly urban and peri-urban catchments, the only water courses that are monitored, are small and highly modified.

The benefits of achieving all of the target attribute states will vary depending on the hydrology of the stream. The ecosystem values in low and spring fed streams differ from hill stream and rivers, and applying limits uniformly may not be justified.¹⁸

Particular care needs to be taken with the analysis for attributes that are driven by rain events, where sampling design can have a significant impact on the representativeness of the data. This relates to *E. Coli*, sediment and nutrients.

It especially important for sediment attributes; in large rain events the average annual sediment load can be delivered to a receiving environment in a single day, for example in Porirua the large May 2015 event contributed more than three quarters of the total sediment load for the first six months of 2015 and more sediment than the combined loads for 2013 and 2014 for the Porirua stream¹⁹. When landslides occur, they can continue to deliver elevated sediment loads to receiving waters for many years. The natural variability of sediment delivery means particular caution needs to be applied in setting limits and measuring progress towards outcomes.

Recommendation

- Ensure robust and independently peer reviewed science is used for developing bottom lines, and their relevance for all locations
- Adopt an Action Plan approach when robust analysis indicates outcomes cannot be met using limits within 30 years, or maintained in 30 years
- Section 360 regulations for monitoring and analysis

Temporary exception for specified freshwater management units

In some places, we expect that bottom lines will not be able to be met, because of local or regional conditions, such as flood protection and land drainage schemes or urbanisation. These exceptions may not apply to the whole FMU.

In these cases, we prefer an action plan approach. The action plan approach would enable options to be explored beyond limit setting, and for options and limits to be re-visited to determine whether changes in law or technology may provide opportunities for outcomes to be met. Where robust analysis indicates a timeframe cannot be set for achieving the

¹⁸ (Local Government New Zealand, 2019)

¹⁹ (Morar & Oliver, 2016) <http://www.gwrc.govt.nz/assets/Whaitua/Freshwater-Baseline-Modelling-Technical-Report.pdf>

outcome attribute state, then a council would apply for a temporarily exception for specified freshwater management units

Recommendation

- Adopt an Action Plan approach when robust analysis indicates outcomes cannot be met using limits within 30 years, or maintained in 30 years

3. Conclusion

HortNZ is of the strong view that the NPS needs considerable redrafting. It has considerable inconsistencies with the RMA. The drafting will lead to uncertainty and inconsistent application.

We think the intention of Te Mana o te Wai is to be both an outcome and a holistic framework to guide resource management decision making. We support the concept but, with current drafting, it is unclear how to factor in the social, economic and cultural wellbeing of people in a sustainable way.

We support the approach of setting freshwater outcomes to reflect values. We support the concept of maintenance of existing state or improvement to achieve bottom lines as minimum outcomes. The time frame over which outcomes can be achieved, needs to be catchment specific and subject to an integrated assessment.

We are of the view that bottom lines must be set with robust science. The many extra bottom lines proposed will need a vast monitoring and analysis effort.

The target attribute monitoring sites must be representative of the freshwater management unit as a whole or linked to a site-specific values. An approach where many monitoring hold points are established within FMUs, reduces land use flexibility and supports grand-parenting, not sustainable freshwater management.

Currently there is an inconsistent approach to monitoring and data analysis across the regions. We recommend the government develop national guidance to provide a consistent approach to monitoring and analysis.

We support the involvement of communities and iwi, hapu and tangata whenua in setting values and outcomes. The proposed deadline of 2025 will put considerable pressure on Councils. We are doubtful this timeframe is achievable. We are concerned that growers will not be able to become involved in processes that are important to them.

There must be a feedback loop between outcome and limit setting decisions. Outcome decisions need to be considered in the context of the social, economic, environmental and cultural effects of the associated limits. Then, the desired outcomes, limits, actions and timeframes should be adjusted until a sustainable management approach is achieved. This feedback loop is not provided for in the policy at the moment. This omission is of considerable concern to us.

The policy identifies a limit-based approach for achieving outcomes for those attributes where it is assumed that the outcomes can be achieved with numeric limits on abstractions and discharges. The action plan approach is identified where other factors are influential. Actions plans can include limits and also include other mitigations and investments.

We support the limit concept, but it won't work everywhere. In some places, due to changes to river hydrology and form because of factors such as urbanisation, land drainage, electricity generation and flood protection, outcomes will not be able to be achieved using only a limit-based approach. In these places, an action plan approach should be adopted.

Councils need good quality decision support tools. In our view Councils need national support to ensure that good quality decision support tools are developed in a timely manner.

We understand that decisions need to be made with the information that exists at the time, it is equally important that limits and action plans can evolve over time as new information about how limits impact outcomes is improved.

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Appendix A: Decisions sought on draft NPSFM

Note: amendments sought to the notified text are shown in tracked changes, with additions shown in underline and deletions shown in ~~striketrough~~, or to similar effect. The provisions are presented in the order in which they appear in the draft NPSFM.

(1) The specific provisions that HortNZ's submission related to are:	(2) HortNZ's submission is that:	(3) HortNZ seeks the following decisions from MfE
PART 1 Preliminary provisions		
Preamble	The preamble of the NPSFM 2017 has in the past assisted users with interpretation and administration of the NPS. The lack of preamble provides much less insight and direction into the NPSFM. The draft NPSFM would be improved by reintroducing a preamble in line with the direction from the 2008 BOI Report. The 2008 BOI Report gave the following guidance²⁰: <i>The Board considers that a preamble can provide a useful introduction to the NPS. It should outline in broad terms the challenges for freshwater management, and state national values, issues and goals.</i>	Include a preamble in line with the direction from the 2008 BOI Report.
1.5 Fundamental Concept Te Mana o te Wai	HortNZ supports the consideration and recognition of the fundamental concept of Te Mana o te Wai. A concept well developed and recognised in the NPSFM 2017 as an integral part of freshwater management. However, this must be supported by a robust and effective resource management objective and policy suite. As proposed, it is unclear how Te Mana o te Wai works within a resource management context. The primary concern with the objective, is the manner in which priorities are now defined when the concept of Mana o te Wai appears more holistic and all encompassing. One element cannot occur without the other. If there is to be a priority, then it seems right that food security sits within the essential health needs of people. We find no definition of <i>essential health needs of people</i> but this cannot be simply contained to drinking water and water for sanitation. Without water there is no food, and this is an essential health need of people.	HortNZ supports the consideration and recognition of the fundamental concept of Te Mana o te Wai, our comments are to assist clarifying the meaning and application: Explain how Te Mana o te Wai hierarchy of obligations works in the context of Section 5 of the RMA .For example: decisions recognise constraints on resource use are necessary to safeguard the wellbeing of water and the use of water is fundamental for the wellbeing of people, and that a holistic approach is used for resources management decisions, that considers the wellbeing of water and people when applying the hierarchy of obligations Include discussion of ecosystem services – particularly those services that contribute to the essential health needs of people.

²⁰ Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management (January 2010) at [254]

	Provisioning services refer to food yet the concept of ecosystem services are not explicitly developed in the policy – referred to only in the draft NPS-FM in the context of effects on wetlands. The relationship between the terms <i>essential health needs of people</i>, <i>ecosystem services</i> needs clarity. Appendix 1A describes the biophysical components to be considered in measuring freshwater ecosystem health, and the term ecosystem health should be appropriately linked to this Appendix in the text. HortNZ has suggested some amendments to Schedule 1A.	Further define mana whakahaere Consider developing a single section with description, objectives and policies together. Provide a definition of essential health needs for communities as follows: <u>“essential health needs for communities incorporates ecosystem services such as:</u> • <u>the essential drinking water and sanitation needs of people</u> • <u>the ability of highly productive land to enable food security in relation to food production; and</u> • <u>other values assessed as being critical for the long term sustainability of communities.”</u>
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Definition of “limit” / “limit on resource use”.	A limit is now a “limit on resource use” or a “take limit”. Water Quantity matters within the proposed NPS are now far more clearly linked to water quality matters; and this is supported. However, in our view the NPS does not appropriately link policies on the setting of quantity limits to requirement for efficient allocation in proposed Policy 7. One key change from the existing NPS is the removal of reference to a limit providing for the “maximum amount of resource available that allows a freshwater objective [environmental outcome] to be met”. HortNZ supports the changes in general, but seeks to ensure that there is better connection to the requirement to be efficient (Policy 7, Part 2 of the proposed NPS) and enable production to the greatest extent possible; once the needs of waterbodies and essential needs are met. Limits that provide for rootstock survival water need to be linked the value of food production. Many existing limits simply provide a limit on resource use; particularly in the case of groundwater. A very good example (but by no means the only example) is the Gisborne Freshwater Plan; where aquifers in the Poverty Bay Flats specify a take limit but not an environmental flow or level. Often this is done when there is a poor natural resource accounting system; and the linkages between flows and an allocation volume cannot be made. Inefficient and precautionary allocation is extremely likely in poorly resourced regions. This will impact on regional development negatively and may hamper the Government’s regional development programme if not managed carefully. HortNZ also notes that many plans will not be compliant with the proposed NPS in terms of water quality; either because: • in the case of a limit on resource use it is not expressly tied to a Schedule 2A water quality attribute; and • in the case of a take limit it is not clearly linked to an environmental flow or level.	Signal the intention to develop a s. 360 regulation for hydrological accounting; to support local decision making on resource use and development. Enable better freshwater accounting in catchments where ground and surface water hydrology are not appropriately measured and modelled; through financial support for developing regions to build better natural resource accounting systems. Decisions sought also relate to accounting; and on Environmental Flows and Levels 3.11. MfE and MPI to publish an annual analysis of what limits on resource use and environmental flows and levels existing in current plans are compliant with the NPS.
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	HortNZ would predict that more surface water quantity limits will comply than groundwater quantity limits.	
1.6 Definitions Definition of FMU	The new process to identify FMU's and to align monitoring networks to more appropriately measure FMU's is supported conditionally.	HortNZ conditionally supports these measures with the addition of a requirement to identify all highly productive land within the FMU.
1.6 Definitions Definition of "overallocation"	Overallocation is now defined as being beyond a limit on resource use or a take limit or is being used to a point where one or more target attribute states is not being met. While there is a requirement to define environmental flows and levels and relate a take limit to the achievement of these; there is no reference to exceedances of environmental flows in relation to a take limit. There should be a connection if a take limit is required to support the environmental flow. Without it, a take limit may relate to anything at all; and this is not supported.	Redefine overallocation as follows: "over-allocation, in relation to both the quantity and quality of water, is the situation where the water: - is <u>beyond a limit on resource use or a take limit</u> <u>Take limits are revised within the life of plan to reflect analysis and modelling that meets the national standards.</u> is being used <u>utilised</u> to a point where one or more target attribute states is not being met."
1.7 Application - Geographic application	The relevance of 1.7(1) is not clear. The relationship of the NPS with the coastal receiving environments and the NPSC is a consideration relevant to integrated management, and not setting outcomes, and limits. HortNZ also notes that the proposed NPS-HPL, has by its nature a geographic application. HortNZ seeks changes to the NPSFM to provide better linkages across the policy statements.	Retain as notified. Make consequential amendments in policies and methods to ensure the geographic application is clear.
1.7 Application - Temporal application	The draft NPSFM sets a national benchmark for current or existing vs. new as the date the NPS is gazetted. Furthermore the "maintain" threshold would now appear to relate to a new point in time. HortNZ supports the setting of a holistic baseline that determines the state of resources at the date this policy statement come into effect. Given that all plans are to be in place by 2025 and that transitional provisions exist, it will be necessary to extinguish the complexity of multiple benchmark periods in plans that related to prior NPS versions and regional policy.	Retain as notified. Make consequential amendments in policies and methods to ensure the purpose of the temporal application date is clear.
1.8 Application of section 55(2) of Act	This relates to specific objectives or policies to be inserted into a policy statement or plan without use of the First Schedule process (s. 55 RMA) with clauses 3.2(1) and 3.15(2) explicitly referred to:	Clarify by identifying clearly (and without qualifying language) all parts of the proposed NPS as that are to be included via section 55(2).

	The draft NPSFM introduces new elements, including the requirement for every regional council to include a long-term vision (3.2(5)), methods (3.4(5)) and action plans (3.10). Clause 1.8 only identifies 2 matters to be included in policy statements or plans. Identified as examples. The reference in 1.8(1) to one objective and one policy could led to confusion that these are the only provisions that need including.	
PART 2 Objectives and Policies		
2.1 Objective	The NPSFM 2017 has 14 objectives, including Te Mana o te Wai (AA1) that is a logical extension from the preamble and national significance statement, supported by a suite of policies. The proposed structure is understood to translate the concept of Te Mana o te Wai, “the mana of the water”, which refers to the fundamental value of water and the importance of prioritising the health and wellbeing of water before providing for human needs and wants. The draft NPS-FM states that this is an expression of New Zealanders’ special connection with freshwater and that when Te Mana o te Wai is upheld, the future wellbeing of people and our unique ecosystems is protected. HortNZ supports the fundamental concept but not necessarily the manner in which Te Mana o te Wai has then been translated into a resource management objective with 13 proposed policies in the absence of clarity on where food security fits into this structure. The primary concern, is the manner in which priorities are now defined, when the concept of Mana o te Wai appears more holistic and all encompassing. One element cannot occur without the other. If there is to be a priority, then it seems right that food security sits within the essential health needs of people. We find no definition of <i>essential health needs of people</i> but this cannot be simply contained to drinking water and water for sanitation. Without water there is no food, and this is an essential health need of people. Given the interpretation issues and lack of clarity around food security, HortNZ supports a process whereby Te Mana o te Wai is able to be defined locally and where values and environmental outcomes are able to be locally determined. We propose amendments to make it clearer that the hierarchy of obligations within Te Mana o te Wai exist within an integrated and holistic decision making framework.	HortNZ supports the NPS Objective on the basis that amendments are made to ecosystem services, to include food production (including vegetable production) as a function of the essential health needs of communities, and the description of how Te Mana o te Wai hierarchy relates to the overall sustainable management approach required by Section 5 of the RMA, is added to the Section 1.5.

2.2 Policies	There is a policy that enables people to provide for their economic wellbeing. No mention is made of their social and cultural wellbeing. There is no policy to enable people to provide for their essential human health needs. The structure of the NPS is such that, any growth in commercial vegetable production could only occur where water quality remains within current attribute states. This would be the case in all catchments irrespective of whether the community, iwi and local expression of Te Mana o te Wai determine that a growth objective is appropriate given the state of water. HortNZ conditionally supports these policies (with amendments) if allowance is made within the allocation limits and environmental flows for commercial vegetable production. This is a particular requirement for commercial vegetable production on highly productive land to enable the productive capacity the NPS-HPL seeks to protect. HortNZ notes that the NPS already provides for exceptions. This is the case for the named hydroelectric power systems, government related activities and any natural exception. It is HortNZ's opinion that if exceptions can be made for nationally significant matters like infrastructure, then the NPS should also recognise and provide for the critical elements of the New Zealand food chain. It is here where an explicit linkage to the environmental outcomes sought through the NPS-HPL can be given effect to. HortNZ notes that the draft NPS includes an unpopulated "table of catchments" that are currently below bottom lines. Regional councils may set a target lower than a national bottom line for a timeframe set in this Appendix. It is not clear how this table will be populated. Our view is that an action plan approach is needed where robust analysis indicates that limits cannot sustainably achieve outcomes within a 30-year timeframe. HortNZ considers that the draft NPS-FM would be improved and provide the necessary linkages across national policy for food security (including the NPS-HPL) if a policy was added to address this issue. We note the draft NPS-FM includes a definition of ecosystem services as follows: <i>ecosystem services are the benefits obtained from ecosystems, which include:</i>	Amend policies as follows: "Policy 2: Freshwater is managed through <u>the establishment of environmental flows and levels</u> and a national objectives framework, in order to ensure that the currently <u>existing</u> health and wellbeing of waterbodies and freshwater ecosystems is maintained or improved." Policy 4: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchments basis, including: <u>the effects on sensitive receiving environments; the utility of highly productive land; the provision of ecosystem services and the essential health needs of people.</u> Policy 7: <u>Environmental flows and levels are set to maximise resource use while achieving environmental outcomes, and</u> Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided; Policy 12: <u>Accounting frameworks for natural resources are established and improved over time, and Information on the adoption of management practices, the state of freshwater bodies and ecosystem health are</u> regularly reported on and published; Policy 13: Communities are enabled to provide for their economic, <u>social and cultural</u> wellbeing while managing freshwater in a manner consistent with Te Mana o te Wai and as required by the national objectives framework and other requirements of this National Policy Statement.
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	a) supporting services (e.g. nutrient cycling, soil formation, habitat creation); b) provisioning services (e.g. food, freshwater, wood, fibre, fuel); c) regulating services (e.g. water purification, climate regulation, flood regulation, disease regulation); and d) cultural services (e.g. aesthetic, spiritual, educational, recreational) Provisioning services refer to food yet the concept of ecosystem services are not explicitly developed in the policy – referred to only in the draft NPS-FM in the context of effects on wetlands. The relationship between the terms <i>essential health needs of people</i>, <i>ecosystem services</i> needs clarity in the context of food security and a specific policy response. HortNZ considers that there is also a key policy omission regarding guidance on the importance of setting environmental flows and levels to manage water quantity	
PART 3 Implementing objective and policies		
3.2 Te Mana o te Wai	HortNZ supports the concept of Te Mana o te Wai. Māori growers have emphasised the importance of this concept to us. Section 3.2 provides an objective (or words to the same effect) to be included in all regional policy statements. The section also includes direction for councils to <i>give effect</i> to Te Mana o te Wai and for Te Mana o te Wai to inform the interpretation of the policy. As proposed, it is unclear what the inclusion of the objective will mean, how does the council go about doing this, what does it mean at the plan level. HortNZ considers that there needs to be a date, by which the Te Mana o te Wai objective is articulated. This should be the first task in giving effect to the NPS. That articulation to occur through a council strategy prepared under the Local Government Act 2001 and then incorporated into a regional policy statement. HortNZ notes that there is no requirement for a s32 evaluation and assessment, on the inclusion Te mana o te wai in the RPS. That being the case there needs to be a robust process whereby Te Mana o te Wai is able to be defined locally and where values and environmental outcomes are able to be locally determined. In accordance with the integrated and holistic concept of Te Mana o te Wai, HortNZ considers that it would not be appropriate to set timeframes on achieving	Ensure the Vision for Te Mana o te Wai is articulated through a council strategy prepared under the Local Government Act 2001 and then incorporated into a regional policy statement at least 2 years prior to the commencement of a Plan Change to implement the NPS Freshwater. Establish an independent Water Commission to oversee Council implementation of the NPS & NES, ensuring in regulations that it is established to oversee water related matters for the general good of the public. Appropriately resource the Commission to respond to legitimate grievances raised when values are not appropriately recognised and provided for, or when communities are hampered by a regional authority's failure to implement the NPS correctly.

	the Te Mana o te Wai objectives in a regional policy statement objective. The timeframes to be determined through the FMU process.	
3.4 Integrated Management	HortNZ considers that revising the over-arching objective, providing a preamble and increasing the explanation of how Te Mana o te Wai concept can be used to guide decisions required to enable integrated decision making. The fundamental concept of Te Mana o te Wai is integrated management. In implementing the objective and policies via integrated management, it must be recognised that land use can have considerable impacts on the hydrology of catchments and the hydro-morphology of receiving waters. For example, impervious surfaces change the amount recharge and increase surface runoff, these changes result in hydrological changes. Similarly, forestry can result in large changes to catchment hydrology, but would not be captured by abstraction rules. The land use activities that impact on water quality and quantity are regional council functions. HortNZ recommends removing requirements that direct local authorities to take steps which go beyond their functions, powers, and duties, in regards to policy statements and plans.	Amend as follows: (1) Regional councils must, consistent with Te Mana o te Wai: - recognise the interactions ki uta ki tai between freshwater, land, waterbodies, freshwater ecosystems, other ecosystems, <u>ecosystem services</u> and sensitive receiving environments, including the coastal environment; and - manage freshwater, and land use and development, in catchments in an integrated and sustainable way, to avoid, remedy, or mitigate adverse effects, including cumulative effects; and <u>Where land use activities have a considerable impact on the hydrology, water quality, morphology and ecosystem health of receiving waters, but are not captured by the NPSFM provisions regulating discharges and abstractions, then an Action Plan approach to achieving long-term target attribute states must be adopted</u>
3.5 Overview of national objectives framework	3.5 Outlines the steps taken to give effect to the NOF: • Set FMU's • Values /attributes defined • Flows and levels set • Interventions implemented • Monitoring The previous NPS had adequate safeguards in terms of the Objective and Policies in Part CA. If no oversight is to be provided in the form HortNZ is seeking, we recommend the reinsertion of Objective CA and the accompanying policies.	HortNZ conditionally supports the outlined process as long as there is independent oversight and recourse to an independent Commissioner with appropriate powers to investigate and resolve grievance that can be justified. Establish an independent Water Commission to oversee Council implementation of the NPS & NES, ensuring in regulations that it is established to oversee water related matters for the general good of the public. Appropriately resource the Commission to respond to legitimate grievances raised when values are not appropriately recognised and provided for, or when

		communities are hampered by a regional authority's failure to implement the NPS correctly. If an independent watchdog for freshwater processes is not established, HortNZ does not support the new proposed structure and seeks maintenance of the appeal rights regime and the retention of Objective CA and the related policies from the prior NPS.
3.6 Identifying FMU's and monitoring sites	Care needs to be taken to select FMU's that reflect surface water and groundwater relationships. The size of FMU's is influential, they need to be sufficiently large for some flexibility of land use within them. The state of environment monitoring sites, with the longest and most reliable data may not always be truly representative of the hydrology and contaminant load sources at an FMU scale. HortNZ suggests that the government adopt regulations pursuant to section 360 of the RMA to describe monitoring and analysis standards, including spatial representation and water quality and quantity catchment modelling standards. Those regulations to be referenced into the NPS.	Adopt regulations pursuant to section 360 of the RMA to describe monitoring and analysis standards Amend to include an information note as follows: 6 Identifying FMUs and monitoring sites (1) Every regional council must identify FMUs for its region. (2) Every waterbody in the region must be located within an FMU. (3) Every regional council must also identify the following (if present) within each FMU: a) sites to be used for monitoring attributes; b) primary contact sites; c) the location of habitats of threatened species; d) outstanding waterbodies; e) inland wetlands (see clause 3.15). (4) Monitoring sites in an FMU must be located at sites that are either or both of the following: a) representative of the FMU: - representative of one or more primary contact sites in the FMU <u>Information note:</u> <u>The Resource Management (Monitoring and Analysis standards) Regulations 2019 set out the standards for monitoring and analysis, including spatial representation and modelling standards</u>

3.7 Identifying values and environmental outcomes	HortNZ supports the change in terminology proposed in the draft in referring to values and outcomes. As evident in land change processes under previous versions of the NPSFM there is much confusion and inconsistency in how terms such as targets and objectives are used. The proposed changes support clearer interpretation and administration. HortNZ considers that consultation with tangata whenua and communities must occur when determining whether the values in 1b are relevant to an FMU. It is HortNZs opinion that values and outcomes must be set at the FMU scale, and monitoring sites for determining whether FMU outcomes are being achieved must be representative. Water-body specific values and outcomes should only be set where they relate to the items identified in section 3.6, - o primary contact sites; - o the location of habitats of threatened species; - o outstanding waterbodies; - o inland wetlands (see clause 3.15). - o Or where an identified value has a limited spatial extent. A process must be established where the outcomes, limits, actions and timeframes are assessed before outcomes are set. A policy directing the use of robust decision support modelling tools should be provided. In our view national guidance is required to assist councils in developing suitable tools. The process for establishing attributes other than those identified in the NPSFM, must be subject to robust independent peer review.	Amend as follows: 7 Identifying values and environmental outcomes (1) Every regional council must identify the values that apply to each FMU, as follows: a) the compulsory values as set out in Appendix 1A; b) any of the other values set out in Appendix 1B that the <u>council, community or tangata whenua</u> considers applies; c) any other value as the council considers, after consultation with its community and tangata whenua, applies. (2) For each FMU, and for individual waterbodies or freshwater ecosystems within an FMU <u>where specific values are identified</u>, the regional council must describe the environmental outcomes that it wants to achieve for: a) the value Ecosystem Health, and each of its components; and b) the value Human Contact, and each of its components; and c) the value[s] of <u>Mahinga Kai or Tangata Whenua Value and</u> Threatened Species; and d) any other values and components the council identifies. (3) A regional council may identify additional components and attributes for any of the compulsory values, and components and attributes for any additional values identified. (4) Any attributes developed by councils must be specific and, where possible, be able to be assessed in numeric terms, <u>and independently peer reviewed</u>. (5) Regional councils must include the environmental outcomes identified or described under this clause as an objective in their regional plans. 6) <u>Prior to setting outcomes councils must assess the impact of limits and actions on the productive utility of HPL, ecosystem services, the essential human health needs of</u>
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		people and the social, economic and cultural wellbeing of people. Information note: <u>The Resource Management (Monitoring and Analysis standards) Regulations 2019 set out the standards for monitoring and analysis, including spatial representation and modelling standards</u>
3.8 Identifying current attribute states	It is HortNZs view that identifying current state must be based on robust scientific measurement. Regulators must use best practice based on good science when determining the current state. Furthermore, the measurement, data collection and reporting requirements must be relevant, practical, achievable and necessary. HortNZ considers that it is essential the current state is described in statistical manner that accounts for natural variability and sampling error. We recommend national guidelines are provide to clarify the minimum data length and statistical analysis required for describing the current state, and that guidance is provided to decision makers on how to account for uncertainty in decision making. Those regulations to be referenced into the NPS.	Amend as follows: 3.8 Identifying current attribute states <u>6) where new science is developed through monitoring and modelling that meets the 360 regulations, this must be taken into account in decision making,</u> Information note: <u>The Resource Management (Monitoring and Analysis standards) Regulations 2019 set out the standards for monitoring and analysis, including spatial representation and water quality and quantity catchment modelling standards</u>
3.9 Setting target attributes states	It is HortNZs opinion that a process must be established where the essential human health needs of people and the social, economic and social wellbeing of people is considered, in the process of selecting and prioritising values, outcomes and the associated attributes for FMUs. • The essential human health needs of people and the social, economic and social wellbeing of people must be a key consideration in determining the appropriate time scale for achieving interim and target attribute states. • HortNZ supports a maintain and improve approach to establishing target attributes, but this should be within attribute bands and provide for statistical variability to ensure effort directed towards halting and reversing deterioration described in section 3.14 is not misdirected. • A policy requiring suitably robust modelling decision support tools to inform decision making is required. Identify a process for those places where robust analysis indicates a timeframe for achieving bottom lines cannot be established. In these locations we	Amend as follows: 3.9 Setting target attribute states (1) In order to achieve the environmental outcomes described under clause 3.7, every regional council must set a target attribute state for every attribute, as at each relevant monitoring site. (2) Every target attribute state must: a) for attributes relating to the value Human Contact, be above the current state of that attribute as determined under clause 3.8; and b) for all other attributes, be at or above the current state of that attribute <u>and</u> as determined under clause 3.8.

	recommend interim targets and interim timeframes are set and reviewed to account for improving information and technology. In these situations, an action plan approach, that may include limits, rather than a limit approach must be adopted.	(3) However, if the current attribute state is worse than the national bottom line for that attribute (as identified in Appendix 2A or 2B), the target attribute state must be set at, or better than, the national bottom line (see subpart 4 for exceptions to this). (4) Every target attribute state must: a) specify a timeframe for achieving the target attribute state; and b) for attributes for compulsory values, be set in terms of the requirements of Appendix 2A or 2B, as appropriate; and c) for any other attribute, be set in any way appropriate to the attribute. (5) Timeframes for achieving target attribute states: a) may be of any length or period; but b) if timeframes are long-term, they must include interim targets (set for intervals of not more than 10 years) to be used to assess progress towards achieving the target attribute state in the long-term. c) <u>where robust analysis indicates a timeframe for achieving bottom lines cannot be established. In these locations we recommend interim targets and interim timeframes are set and reviewed to account for improving information and technology. In these situations, an action plan approach, that may include limits, rather than a limit approach must be adopted.</u> (6) When setting target attribute states, regional councils must: a) have regard to the following: i. the foreseeable impacts of climate change; ii. the long-term vision set under clause 3.2; iii. the environmental outcomes set under clause 3.7(2);
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		iv. the connections between waterbodies; v. the connection of waterbodies and coastal water; and b) use the best information available at the time; and c) not delay making decisions because of uncertainty about the quality or quantity of the information; and d) take into account results or information from freshwater accounting systems; and e) consider the requirements of all other national directions. (7) If an attribute applies to more than one value, the most stringent target state that is required to achieve the environmental outcomes described under clause 3.7 must be applied wherever that attribute applies. <u>(8) Prior to setting attribute states, councils must assess the impact of limits and actions on the productive utility of HPL, ecosystem services, the essential human health needs of people and the social, economic and cultural wellbeing of people.</u> <u>6) where new science is developed meeting national standards, this must be taken into account in assessing the degree which limits are overallocated.</u> <u>Information note:</u> <u>The Resource Management (Monitoring and Analysis standards) Regulations 2019 set out the standards for monitoring and analysis, including spatial representation and water quality and quantity catchment modelling standards</u>
3.10 Identifying limits on resources use and preparing action plans	The process prescribed in the NPS assumes it will always be possible to achieve the attribute target using the limit approach for specific attributes. In some circumstance, such as urban and peri-urban catchments and catchments with highly modified hydromorphology, this may not be possible. the action plan approach provides more scope, for achieving attribute states, in those locations	Amend as follows:

	where water quality and flow is not simply a function of discharges and abstractions. As part of Te Mana o te Wai , every regional council must develop, and articulate, a long-term objective that gives effect to Te Mana o te Wai, as discussed above we see this would be contained within a council strategy prepared under the Local Government Act 2001. • This approach would also useful for the action plan, because it can direct actions that are outside of the limitations of the RMA, such as local authority spending. HortNZ also believes that the community as a whole must work towards achievable target attribute states. An action plan approach can drive innovation.	Identifying limits on resource use and preparing action plans (1) In order to achieve the target attribute states for the attributes in Appendix 2A, every regional council: a) must identify limits on resource use that will achieve the target attribute state; and b) must include the limits on resource use as rules in its regional plan; and c) may prepare and publish action plans; and d) may impose conditions on resource consents. e) <u>where robust analysis indicates a limit for achieving bottom lines cannot be established, or where climate change is significantly impacting trends, in these situations, an action plan approach, that may include limits, must be adopted.</u> (2) In order to achieve the target attribute states for the attributes in Appendix 2B, every regional council: f) must prepare an action plan for achieving the target attribute state within the specified timeframe; and g) must publish the action plan; and h) may identify limits on resource use and include them as rules in its regional plan; and i) may impose conditions on resource consents. j) <u>The Action plan should be part of the strategy document can be prepared under the Local Government Act 2001 and the public can be engaged through the Special Consultative Procedure (s82-s90).</u> Include a review function in Clause 3.10(5) by inserting a new subclause c) where a take limit or a limit on resource use relies on limited data, Council must review the limit within 5 years, and can review it more frequently.
3.11 Environmental	Environmental flows and levels must be set to support the 3.7 “freshwater outcomes” developed, for groundwater this has not often been done. There is a	Signal the intention to develop a s. 360 regulation for hydrological accounting within the accounting method;

Flows and Levels	real danger this will not be done well; particularly in under-resourced regions. There must be guidance on how it should be done. All freshwater management should start with the fundamental building blocks of a natural resource accounting model. Almost all of these require a hydrological model at the base of them; so it is recommended a s.360 regulation be promulgated that describes good practice criteria and minimum standards for hydrological modelling to be accepted as evidence. We believe that s360 regulations for freshwater accounting will enable better freshwater accounting in catchments where ground and surface water hydrology are not appropriately measured and biophysical relationships are complex.	to support local decision making on resource use and development. Enable better freshwater accounting in catchments where ground and surface water hydrology are not appropriately measured and modelled; through financial support for developing regions to build better natural resource accounting systems.
3.12 Identifying take limits	HortNZ questions why volume <u>or</u> rate and not both are specified when appropriate. For groundwater the rate may be less important. For surface water the volume may be less important. However often both are desirable limits – but sometimes they are not. The policy should be clear on what is required for sound management of the natural resource.	Amend as follows: Specify that take limits must be described as both a volume and a rate when the resource reaches greater than 75% of the estimated environmental flow or level is allocated.

3.13 Monitoring	HortNZ considers it critical that the NPS is supported by national standards and methods for monitoring and analysis. It may that as part of an integrated management approach, the action plan seeks to achieve values that are not only freshwater values, may include catchment values such as ecosystem services. If this was the case then the monitoring should be clearly linked to these outcomes.	Amend as follows: Every regional council must establish methods for monitoring progress towards achieving target attributes states and identified environmental outcomes for values and components. (2) The methods must include: a) measures of the health of indigenous flora and fauna; and b) mātauranga Māori. (3) Monitoring methods must recognise the importance of long-term trends in monitoring results, and the relationship between results and their contribution to evaluating the environmental outcomes set under clause 3.7(2).
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3.14 What to do if deterioration detected	The is a need to establish national standards and statistical methods for defining thresholds for determining deterioration for the various attributes, and including the ability to consider natural variability due to extreme or climate change. There is also a need to clarify the action plan process to be followed.	Amend as follows: (1) If a regional council detects a trend indicating a deterioration, <u>using analysis that meets national standards</u>, in any attribute state, or a failure to achieve identified environmental outcomes for values or components, it must prepare an action plan for halting, and if possible reversing, the deterioration. (2) The action <u>adaptive management plan</u> must include actions to identify the causes of the deterioration, methods to address those causes, an evaluation of the effectiveness of the methods, and processes for regular review and adjustment. (3) Where a target attribute state, environmental flow or level, or environmental outcome is not being met, the regional council may take any other steps, which may be regulatory (such as making rules or implementing methods), non-regulatory, or both, to assist the improvement of water quality, and avoid over-allocation, within defined timeframes. Information note: <u>The Resource Management (Monitoring and Analysis standards) Regulations 2019 set out the standards for monitoring and analysis, including spatial representation and water quality and quantity catchment modelling standards</u> HortNZ request that MfE publish guidance on interpretation of the NPS giving timeframes for determination of a trend; that are tailored to the natural fluctuations present in individual attributes, this method would be provided within 360 regulations for monitoring and analysis.
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Minimum interventions	The table relates to section 3:10 which requires that limits or action plans are developed for specific attributes. In all cases an action plan may be developed and for some attributes a limit must be developed. The limits that are set under section 3.10 must meet the target attribute state. As discussed above, we are of the view there will be some locations where factors other than discharges are the dominant reason water quality attribute states cannot be met, and in these cases an action plan approach is more appropriate.	Identify a process for Regional Councils to adopt an action plan approach rather than a limit approach, for those sub-catchments and FMUs where robust analysis indicates a limit for achieving bottom lines cannot be established
3.15 Inland wetlands	If definitions are not clear, the rules could create a disincentive to create soft-engineering approach such as ponds and wetland for water quality treatments. If planted swamp riparian margins were counted as natural wetlands, this would create a disincentive to planting buffers (as opposed to leaving buffers in grass). We do not support the size class of 0.05ha and consider that a size class of 2ha should be the minimum criteria, as per the Landcare Research Wetland Delineation Protocols that refer to a small wetland as being <2ha. We also consider that requirements should specify for mapping purposes, that they relate to existing natural wetlands.	Amend definition to exclude planted riparian margins. HortNZ also comment on wetland definitions and provisions in our submission specific to the proposed NESFM. Amend the minimum criteria for mapping wetlands to 2ha and specify for mapping purposes, that they relate to existing natural wetlands.
3.16 Streams	Part 3.16 requires regional councils to change regional policy statements and plans to require no net loss in extent or the ecosystem health of stream through permanent diversion or culverting and avoiding the filling of streams unless no other practical alternative methods provide for an activity. HortNZ conditionally supports the proposal on the basis that the NPS and changes to regional policy statements and plans continue to recognise that in some circumstances no other practical alternative methods provide for an activity. Furthermore, offsetting must remain a viable method to address stream loss scenarios. It should be clear that access to land for rural production purposes is provided for; particularly access ways which were existing and lawfully established prior to the gazetting of the NPS and NES FW.	Retain 3.16 as proposed with Insert a new 3.16(5b) as follows: <u>Is required for the purpose of maintaining legal access to a property.</u>

3.19 Water allocation	Councils to develop criteria for transfers, identify methods for efficiency and to claw back overallocation so that the limits on resource use and take limits are reduced to levels that meet the objective and policies of this National Policy Statement. HortNZ supports the use of a method to manage transfers and efficiency but considers some changes are required to make the method more applicable to other activities that may improve overallocation. In particular, there is a real need to encourage group management of freshwater resources and some irrigation infrastructure also deserves consideration in the rule framework.	Amend Method 3.19 as follows: 3.19 Water allocation (1) Every regional council must make or change its regional plan to include criteria for: a) deciding applications to approve transfers of water take permits; and b) <u>collective management in groups and enterprises;</u> c) deciding how to improve and maximise the efficient allocation of water. (2) Every regional council must identify in regional plans methods to encourage the efficient use of water; and to <u>promote collective management of water.</u> <u>(2A) Every regional authority must identify the highly productive land within each FMU; and adopt policies and methods providing for the utility of highly productive land.</u> (3) Regional councils must define a timeframe within which over-allocation is phased out, and methods to achieve that, so that the limits on resource use and take limits are reduced to <u>comply with the environmental flows and</u> levels that meet the objective and policies of this National Policy Statement.
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3.20 Accounting systems	HortNZ supports greater detail being provided on the expectation on Council to develop suitable and appropriate accounting tools at the FMU scale. To align with the outcomes sought through the NPS accounting systems must developed by a set time. To achieve this standard methods and reporting is required. HortNZ considers that the accounting policies of both regional and central government are generally inadequate for the planned government work programme in the NPS and in particular those related to allocation of resources. It remains the missing and critical building block in the development of sound resource management decisions. It seems inconsistent that so little coordination or leadership is being provided by government agencies in this area. NPS policies are however gradually improving and the policy on accounting within this proposed NPS is a small step up. Natural resource accounting requires the development of integrated biophysical models that are continuously improved through data collection to help predict spatial and temporal changes in the impacts of climate, soil, weather and ultimately land-use. Decision support models are critical to: (1) developing links between environmental outcomes and environmental flows, levels; limits on resource use and take limits; (2) estimating the fate of contaminants beyond the root zone; (3) allocating responsibility for discharges and ensuring water taken and used is within take limits and limits on resource use; (4) Predicting the trajectory of freshwater resources in flux when landuse change or subdivision, use and development proposals are being considered and authorised; (5) Supporting the development and cost benefit analysis required to by communities tasked with developing limits and attribute states; and determining the local expression of environmental outcomes to support Te Mana o te Wai; and (6) Establishing numeric estimations of natural resources available for allocation.	Amend as follows: <u>By 2025</u> Every regional council must operate and maintain, for every FMU for which target attribute states and limits have been or are being set,: a) a freshwater quality accounting system; and b) a freshwater quantity accounting system. HortNZ recommend as discussed above that Govt. signal the intention to develop section 360 regulations for freshwater accounting within the accounting method. There is a clear need to support local decision making on resource use and development. Changes are required to regional policy to enable better freshwater accounting in catchments where ground and surface water hydrology are not appropriately measured and modelled. To assist this actually occurring new funding is required to provide financial support for developing regions to build better natural resource accounting systems. HortNZ recommend amending Method 3.20 as follows: <u>3.20 Accounting systems</u> <u>(X1) Every regional council must make or change their regional policy statement to the extent needed by 2023 to provide for the integrated management of resource by:</u> <u>“requiring every FMU where regional authorities develop a decision support tool for public use to support implementation of NPS FW Method 3.20”.</u>
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3.22 Exception for large hydro schemes	It is unclear what assessment criteria was used for determining these schemes should be provided an exception, or how the assessment relates to the Te Mana o te Wai concept. We accept that there will be some locations where due to significant changes in hydromorphology some bottom lines may never be met. Where these changes are a result of nationally significant infrastructure or a nationally significant activity, a case could be made that an exception is justified. However, we are of the view a policy should be developed to direct an assessment against criteria. We recommend that in cases where exceptions are granted an action plan approach is adopted for those catchments to implement limits where possible, and to focus on the actions available and including the contribution the electricity companies might make, to achieving improved outcomes in the catchments.	Develop criteria exceptions for nationally significant infrastructure and activities only Use an Action Plan approach for exceptions. If the exemptions framework is retained, then commercial vegetable production as a nationally significant activity should be provided with an enabling framework, particularly on highly productive land.
3.24 Transitional exception	Regional councils may set target attribute states that are worse than national bottom lines in respect of freshwater ecosystems identified in Appendix 4, until the times, or for the periods, specified in that appendix. In some places, we expect that bottom lines will also not be able to be met, not because of nationally significant infrastructure, but rather local or regional conditions, such as flood protection and land drainage schemes or urbanisation. In these cases, we prefer an action plan approach. The action plan approach would enable options to be explored beyond limit setting, and for options and limits to be re-visited to determine whether changes in law or technology may provide opportunities for outcomes to be met. Where robust analysis indicates a timeframe cannot be set for achieving the outcome attribute state, then a council would apply for a temporarily exception for specified freshwater management units.	For other places where robust analysis indicates bottom lines cannot be met, use the Action Plan approach, and the potentially temporarily setting outcomes below bottom lines or longer timeframes.

4.1 Timing	The final decisions on changes to policy statements and plans that are necessary to give effect to this National Policy Statement must be publicly notified no later than 31 December 2025. While HortNZ supports implementation timelines as a method for directing progress towards a goal, these must be achievable. HortNZ challenges the Government on this matter as we firmly believe that the date of 31 December 2025 will be unachievable. Removing the natural justice protections of merit appeals presents significant concerns for HortNZ. The removal of merit appeal rights exerts significant responsibilities for local government agencies. It is reasonable to expect that some poor decision making will be encountered within local communities. This is why HortNZ is calling for an Independent Water Commission. All sectors, iwi and technical specialists will be stretched to provide the resourcing for informed and constructive scientific input to the truncated processes. Efforts to improve natural resource accounting will require use of all public and private science resources to inform the construction of NPS compliant plans and the development of the local Vision for Te Mana o te Wai. At the same time it is likely that local and regional government will be required to invest heavily in monitoring, measuring and reporting. The strain on the resource planning system will be considerable. The truncated processes must be supported by Central Government to avoid unintended consequences of poor community outcomes from insubstantial planning frameworks. Resourcing should also be provided to Regional Councils to support accounting, monitoring and FMU identification initiatives. The consequences of setting limits that are poorly informed by science in catchments and FMU's with significant development are particularly likely to undermine the economic opportunities in developing regions.	Seek advice from regional councils and set an achievable date. Provide support to Councils to increase the pace. In our view technical guidance on modelling and monitoring and analysis could assist in streamlining the process somewhat.
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Appendix 1A: Compulsory values	The policy includes a compulsory ecosystem health value and a compulsory human contact and threatened species value, and a possible mahinga kai or tangata whenua value. HortNZ considers that healthy ecosystems by definition provide ecosystem services including provisioning services.	Support introduction of Mahinga Kai, rather than tangata whenua value. Amend Schedule 1A as follows: 1 Ecosystem health In relation to a waterbody in an FMU, ecosystem health refers to the extent to which the FMU supports an ecosystem appropriate to the type of waterbody (eg, river, lake, wetland, or aquifer), <u>and the ecosystem services provided to the FMU by the waterbody.</u> There are 6 biophysical components that contribute to <u>indicate</u> freshwater ecosystem health, and it is necessary that all of them are managed. They are: Water quality – the physical and chemical measures of the water, such as temperature, dissolved oxygen, pH, suspended sediment, nutrients and toxicants Water quantity – the extent and variability in the level or flow of water. Habitat - the physical form, structure and extent of the waterbody, its bed, banks and margins, riparian vegetation and connections to the floodplain. Aquatic life – the abundance and diversity of biota including microbes, invertebrates, plants, fish and birds. Ecological processes – the interactions among biota and their physical and chemical environment such as primary production, decomposition, nutrient cycling and trophic connectivity.
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Appendix 1B: Other values that must be considered	The policy reflects the same other national freshwater values. HortNZ supports the approach where <i>compulsory values</i> are always considered and <i>other values</i> that are relevant within a catchment must also be considered. All <i>compulsory values</i> and relevant <i>other values</i> are considered together and balanced to achieve the community freshwater outcomes. There should be not priority afforded to compulsory values (over and above that provided by the bottom lines), compared with other values. The concern for HortNZ is that as proposed, the value for irrigation, cultivation and food production has significantly less weight than before, with the new interpretation of Te Mana o te Wai and the addition of new compulsory values and attributes. Unfortunately, there seems to be a heavy focus on reducing the importance of provisioning services; (food security and food production) as a way of reducing the environmental effects of excessive primary production; despite our dependence and reliance on these essential human health requirements. The Government has recently released national direction around highly productive land. This has been done to preserve the productive capacity of finite high class soils; (for food production). HortNZ strongly disagrees with the inclusion of food crops within the irrigation value. Significant change is being sought from rural communities. Growers will be more open to that change if their values are more adequately recognised in national policy. Recognising the values of high production land is a good start; but food crops requires access to the means of production including access to water. If a cultivation and food production value is to be recognised it should come with responsibilities; the potential for adverse effects on water quality must be well managed through a tailored regulatory approach to vegetable production. We suggest that cultivation and food production is removed from this value and retained in another value as described in the relief sought. The previously utilised value for “mahi mara” is a more apt description of this value; referring to the knowledge and culture of cultivation for food production.	HortNZ has reviewed the values framework closely and believe that while there is a comprehensive value set which support environmental outcomes, there is a significant gap in the framework for providing for essential the health needs of people. HortNZ strongly support inserting a new value: Mahi mara / Food security and cultivation <u>Highly productive land within the FMU retains access to freshwater while managing water quality; to ensure utility for arable, fruit and vegetable production.</u> <u>The stewardship of highly productive land is essential for the protection of ecosystem services derived from the use of water on highly productive land.</u> This requires a consequential amendment to the value for Irrigation, cultivation and food production, as follows: “Irrigation, cultivation and food production – The freshwater management unit meets irrigation needs for any purpose. Water quality and quantity would be suitable for irrigation needs, including supporting the cultivation of food crops, the production of food from domesticated animals, non-food crops such as fibre and timber, pasture, sports fields and recreational areas. Attributes will need to be specific to irrigation and food production requirements.”
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Appendix B: Legal Opinion

MEMORANDUM

TO: Horticulture New Zealand

FROM: Helen Atkins

DATE: 30 October 2019

SUBJECT: REVIEW OF DRAFT NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT 2019

INTRODUCTION

1. This memorandum reviews the Draft National Policy Statement for Freshwater Management 2019 ("**Draft NPSFM**"). The purpose of this review is to be productive, constructive and provide officials and the Minister with a recommended pathway forward.
2. The discussion material notes that the drafting of the Draft NPSFM is a new approach to improve its quality and make it clear and more accessible to all New Zealanders. Unfortunately, the drafting will have the reverse effect to this as it does not result in a document that is more logical, internally consistent with clearer obligations, actions and directions for local authorities to meet. This coupled with the fact that many regional councils are a long way down the path of giving effect to the 2017 NPSFM will mean considerable confusion, duplication of work and ultimately cost and time delays. All this will result in an outcome that is worse for freshwater management in New Zealand.

SUMMARY OF THE KEY POINTS

3. As noted above the Draft NPSFM is inconsistent with existing legislation, inadequately drafted, and unclear. The key concerns are, the Draft NPSFM:
 - (a) is inconsistent with the section 5 of the RMA in the way in which it sets priority for freshwater;
 - (b) objectives and policies do not meet the requirement of what these provisions should be;
 - (c) contains directions to local authorities that appear to go beyond the functions that those organisations have;
 - (d) contains unclear definitions that are different from the definitions used in the RMA;
 - (e) inclusion of 'action plans' and 'long term visions' do not sit well within an RMA framework and would be better placed in the Local Government Act framework as part of long term planning.

4. A more detailed critic follows with a suggested pathway forward. In summary it is considered that either the Draft NPSFM be substantially re-written or the preferred option is that the 2017 NPSFM framework is adopted and updated to address the key matters that the reform package is seeking to have addressed and included.

SPECIFIC CONCERNS WITH DRAFT NPSFM

5. The details of the specific concerns are set out in this section of the memorandum following the order outlined above. For ease of reference most of the provisions referred to have been included in full.

Inconsistency with RMA – section 5 and priority of water

6. The RMA sets out the purpose of national policy statements as follows:¹

The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act.

7. The purpose of the RMA is contained in section 5 as follows:

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, *sustainable management* means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

8. The Objective of the Draft NPSFM is as follows:

2.1 Objective

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.

[emphasis added]

¹ Resource Management Act 1991 section 45(1)

Critique

9. The RMA's purpose as contained in section 5 requires resources to be managed in a way or at a rate which enables people and communities to provide for their social, economic, and cultural well-being, and for their health and safety. While the intention is that prioritisation that puts 'health and wellbeing of waterbodies and freshwater ecosystems' at the top reflects the bottom line setting approach envisaged by section 5, this black and white prioritisation could result in a situation where councils are unable to make management decisions in relation to freshwater that enables their communities to provide for their wellbeing.
10. Section 5 has been described as the "lodestar" of the Act.² Case law holds that section 5³:

It is not a part of the Act which should not be subject to strict rules and principles of statutory construction which aims to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meaning and its connotations which is intended to allow the application of policy in a general and broad way.
11. Subsequent cases have supported the importance of the openness of the language⁴:

We have considered in the light of those remarks the method to be used in applying section 5 to a case where on some issues a proposal is found to promote one or more of the aspects of sustainable management, and on others is found not to attain, or to attain fully, one or more of the aspects described in paragraphs (a), (b) and (c). To conclude that the latter necessarily overrides the former, with no judgment of scale or proportion, would be to subject section 5(2) to the strict rules and proposal [sic] of statutory construction which are not applicable to the broad description of the statutory purpose. To do so would not allow room for exercise of the kind of judgment by decision-makers (including this Court — formerly the Planning Tribunal) alluded to in the *NZ Rail* case.
12. Subject to the comments below in relation to the *King Salmon* decision, the general approach taken by the Courts in relation to section 5 has been described as the "overall judgment" approach, which requires an 'overall broad judgment of whether the proposal would promote the sustainable management of natural and physical resources. Such a judgment allows for comparison of conflicting considerations and relative scale and degree of them, and their relative significance in the final outcome'.⁵

² *Lee v Auckland City Council* [1995] NZRMA 241 (PT)

³ *New Zealand Rail Limited v Marlborough District Council* 1994 NZRMA 70 at pg 72

⁴ *North Shore City Council v Auckland Regional Council* (1996) 2 ELRNZ 305

⁵ *Independent News Auckland Ltd v Manukau City Council* (2004) 10 ELRNZ 16 at [26]

13. Case law has considered whether section 5 contains any preference for factors to consider, with the Court holding that the RMA contains no preferences for any aspect in section 5 over another:⁶

In our view, the enabling and management functions of section 5(2) are of equal importance.

14. This was clarified in *Long Bay-Okura Great Park Society Inc v North Shore City Council*:

[278] ... We observe that there is some confusion in the labels being attached to different provisions in Part 2. In *Kiwi Property Management* the first part of section 5(2) appears to be an 'enabling' function, and the second part of section 5(2) - section 5(2)(a) to (c)- is the 'management' function. That contrasts with the *Winstone Aggregates* decision where 'the management function' appears to be the name for the first part of section 5(2). We consider it is more consistent if the first component of section 5(2) is called 'the enabling obligation' and the second is simply called 'section 5(2)(a) to (c)'. But if the point of *Kiwi Property Management* is that the 'enabling' obligation and the section 5(2)(a) to (c) functions are of equal importance, then we respectfully agree. That is not the same as setting up a dichotomy between the 'natural environment' - which is not a phrase used in the RMA - and 'people'.

[279] Counsel for Landco referred to *Judges Bay Residents Association v Auckland Regional Council* where the Environment Court held:

In general the Act contains no preference for managing use and development of resources for enabling communities to provide for their economic wellbeing over protection of resources for enabling communities to provide for their social and cultural wellbeing, sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, and avoiding, remedying adverse effects on the environment. [Our emphases]

This decision makes another point completely - and one we respectfully agree with - where the Environment Court stated that the RMA contained no general preference for economic wellbeing over social and cultural wellbeing and the section 5(2)(a) and (b) matters.

15. In our view case law supports the proposition that prioritising one of the components of section 5 over another is not appropriate. Making decisions about resource management without enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety is not in accordance with section 5. A holistic approach to freshwater management would ensure that the ecological wellbeing of freshwater is provided for (enhanced where it is degraded and maintained where it is not degraded) in the context of community wellbeing. In short, a healthy freshwater system will ensure a healthy community. The two are inextricably linked.
16. The failure of the objective to achieve the purpose of the RMA is compounded by the stipulation that the first priority is 'the health and wellbeing of waterbodies and freshwater ecosystems', with the second

⁶ *Kiwi property Management Limited and Others v Hamilton City Council* (2003) 9 ELRNZ 249 at paragraph

priority being 'the essential health needs of people'. The use of the words of 'first' and 'second' priorities suggest that these matters are not subject to any other considerations or limitations. In other words the drafting does not indicate that the prioritisation of these matters is subject to enabling people and communities to provide for their social, economic, and cultural well-being. As noted above considerations of ecological wellbeing cannot be divorced from community wellbeing.

17. The intention of the objective is clear in that it is essentially trying to say what section 5 is intended to do which is to provide that the biophysical bottom lines must be set to ensure that wellbeing of waterbodies and freshwater ecosystems. Once these bottom lines are set (based on scientific evidence) the needs of communities can be considered. However the first priority is more black and white than section 5 in that it does not consider important concepts such as the current state of the water body under consideration, the rate of use or non-use of freshwater and the timing of any use changes.
18. It is acknowledged that section 5 has not been implemented consistently and appropriately in relation to freshwater (and indeed other resources) but this is not a problem with section 5. It is a problem with the implementation, the lack of national guidance from the time the RMA was enacted, and the enforcement, compliance and monitoring of the performance of the RMA. Section 5 sets a clear framework for ensuring ecological health in the context of providing for community wellbeing. Re-defining section 5 as has been done in the Draft NPSFM will inevitably result in to uncertainly and lead to confusion.
19. The 2008 BOI Report acknowledged that *'the NPS needs to be consistent with the RMA provisions, but considers that for the NPS to make a difference it needs to do more than just mirror the words in the RMA'*.⁷ We agree with this but do not consider that the current drafting of the Draft NPSFM is protected by this analysis as it simply does not achieve the purpose of the RMA. Significant risks arise from current drafting as noted below.
20. With regards to the decision of the Supreme Court in *King Salmon* it held that resort to Part 2 of the RMA is not necessary or helpful in order to interpret policies *except* in the case of invalidity, incomplete coverage, or uncertainty of meaning.⁸ This decision, and the subsequent Court of Appeal decision in *Davidson*⁹ which endorsed the above three caveats carved out by the Supreme Court, has emphasised that close attention must be paid to objectives and policies. Decision makers making decisions on the Draft NPSFM must, therefore, be cognisant of this imperative.

⁷ Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management (January 2010) at [54]

⁸ *Environmental Defence Society Inc v New Zealand King Salmon Company Lt* [2014] NZSC 38 at [90]

⁹ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, specifically see [76] and [82]

21. The inconsistency with the purpose of the RMA constitutes both invalidity and uncertainty of meaning, which would then invite councils to resort to Part 2 for interpretation. This would not encourage consistency of approach as each council decision maker would be making decisions and analysis independently.
22. The Supreme Court in *King Salmon* saw that absent invalidity, incomplete coverage or uncertainty of meaning, recourse to Part 2, in enabling decision makers to decline to implement parts of the New Zealand Coastal Policy Statement if they considered that appropriate in the circumstances, does not fit readily into the hierarchical scheme of the RMA.¹⁰ The Supreme Court commented that while the scheme of the Act does give subordinate decision-makers 'considerable flexibility and scope for choice' that scope is not infinite, and the requirement to "give effect to" is intended to constrain decision-makers, and enabling discretion through resort to Part 2 seems incompatible with this.
23. Accordingly, there is judicial direction that allowing resort to Part 2 is undesirable. The current wording of the Draft NPSFM will inevitably lead to more litigation on what the words in the objective means in the context of Part 2. On a more pragmatic note, allowing decision-makers to resort to Part 2 would encourage inconsistency of application, thereby undermining the application and interpretation of the Draft NPSFM.

Suggested solution

24. As noted above the preferred solution is to have an enhanced 2017 NPSFM rather than a totally new NPS. If the way forward is to be a totally new NPS then significant changes are needed to the wording of this objective to ensure its consistency with section 5.
25. One option with regards to the wording is for officials to consider amending the objectives in line with the existing 2017 NPSFM and that proposed in 2008 by the Board of Inquiry (see the **2008 BOI Report**) at that time. Such an approach would provide more clarity, consistency, and certainty, and provide the necessary updates the Government is seeking to make in freshwater policy.

Objectives and Policies not fit for purpose

26. The general drafting of the objectives and policies are currently not fit for the purpose. As noted, the objectives and policies must be appropriate to achieving the purpose of the Act.¹¹

¹⁰ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at

¹¹ Resource Management Act s45A(1)

27. The 2008 BOI Report gave the following guidance regarding objectives and policies in a NPS:

[137] The RMA treats the words objective and policy as having different meanings. From section 62(1)(c) of the RMA the Board understands that an objective is something sought to be achieved. The Court of Appeal has held that a policy is a course of action, and may be a mandatory direction having a restraining effect. The Board infers from that case that **a policy is intended to be a course of action for the achievement of an objective.**

[emphasis added]

28. The case referenced by the 2008 BOI Report is *Auckland Regional Council v North Shore City Council* [1995] CA29/96 1B ELRNZ at 433 which states:

'Policy' and 'policies' must bear their natural and ordinary meaning in the context of the Act. As an appropriate definition Mr Salmon cited what is described in the Oxford English Dictionary, second edition, as the chief living sense:

"5. A **course of action adopted and pursued by a government**, party, ruler, statesman, etc; any course of action adopted as advantageous or expedient."

The definition 'a course of action' is also given by other dictionaries, such as Chambers. It may readily be accepted as appropriate in the present context.

[emphasis added]

29. The 2008 BOI Report also noted that '[W]hen an objective is seen as too difficult to implement, this can lead to inaction.'¹² This is pragmatic advice, and we consider that the drafting of the objectives should ensure that they are achievable and possible to implement.

Critique

30. In light of this direction on what constitutes an 'objective' and what constitutes a 'policy', we do not consider that the objectives and policies contained in the Draft NPSFM are appropriately drafted.
31. Not only is the objective (as discussed above) inconsistent with the purpose of the RMA, it is drafted in a vague way, with no real clarification of what constitutes 'the health and wellbeing of waterbodies and freshwater ecosystems' and 'the essential health needs of people'. The lack of clarity makes the objective difficult to measure and subsequently difficult to be confident that it has been met. This lack of clarity and uncertainty over achievement requirements makes the objective too difficult to implement with the risk being inaction – the very thing the new programme is seeking to address.

¹² Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management (January 2010) at [152]

32. General wording in objectives is not fatal provided they are backed up by clear policies. In this case the wording of the objective has flow-on effects in the policies. As the policies are intended to achieve the objective and any lack of clarity or uncertainty in the objective impacts on the wording of the policies that follow it.
33. It is, therefore, uncertain exactly how the policies will achieve the objective. For example, it is unknown whether managing freshwater in a way that gives effect to Te Mana o te Wai (Policy 1) will prioritise the 'health and wellbeing of waterbodies and freshwater ecosystems', 'the essential health needs of people', or 'the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future'. This same uncertainty arises for all the policies.

Risks arising from current drafting

34. The risks of having objectives and policies which are not fit for purpose include:
 - (a) Uncertainty, leading to lack of action;
 - (b) Inability to measure success, leading to lack of action;
 - (c) Difficulty in implementation, leading to lack of action;
 - (d) Potential litigation, and specifically the risk of judicial review, leading to delay and a lack of action; and
 - (e) Lack of clear national direction, leading to uncertainty and lack of action in the regions.

Suggested solution

35. As noted above it is considered that an enhanced 2017 NPSFM is the answer or an amalgam of 2017 and the draft 2008 NPS. Some work has been done on what this redraft may look like and this can be shared with officials at the appropriate time.

Direction to local authorities which entail going beyond their functions

36. We consider that the Draft NPSFM appears to contain directions to local authorities which go beyond their functions and to the extent it does these would be ultra vires. Specifically, these are the directions contained in the NPSFM to regional councils to include content in their regional policy statements and regional plans.

Critique

37. While section 45A of the RMA states that a national policy statement may state 'objectives and policies that must be included in policy statements and

plans'¹³, this does not mean that national policy statements may direct local authorities to take steps which go beyond their functions, powers, and duties, in regards to policy statements and plans.

38. The functions, powers, and duties of regional councils in relation to policy statements and plans are set out in Part 4 of the RMA.

30 Functions of regional councils under this Act

(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

(b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

(ba) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region:

(c) the control of the use of land for the purpose of—

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:

(iii) the maintenance of the quantity of water in water bodies and coastal water:

(iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:

(iv) the avoidance or mitigation of natural hazards:

...

(e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—

(i) the setting of any maximum or minimum levels or flows of water:

(ii) the control of the range, or rate of change, of levels or flows of water:

(iii) the control of the taking or use of geothermal energy:

(f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:

(fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:

(i) the taking or use of water (other than open coastal water):

(ii) the taking or use of heat or energy from water (other than open coastal water):

(iii) the taking or use of heat or energy from the material surrounding geothermal water:

(iv) the capacity of air or water to assimilate a discharge of a contaminant:

(fb) if appropriate, and in conjunction with the Minister of Conservation,—

(i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:

(ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:

(g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—

¹³ Resource Management Act 1991 s45A(2)(e)

- (i) soil conservation:
- (ii) the maintenance and enhancement of the quality of water in that water body:
- (iii) the maintenance of the quantity of water in that water body:
- (iv) the avoidance or mitigation of natural hazards:
- (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:
- (gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:
- (h) any other functions specified in this Act.

39. The RMA specifies that every regional council shall have the function of 'the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region'.¹⁴ For something to be 'integrated' it needs to work in with other aspects of the environment, and not be prioritised above it. Further, 'integrated' suggests that a wide variety of factors are present in the management of the natural and physical resources, which precludes prioritisation at the expense of other factors.
40. The objectives, policies and methods must achieve 'integrated management of the natural and physical resources of the region'. The RMA defines 'natural and physical resources' as:
- natural and physical resources includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.
41. This means that the objectives, policies, and methods must achieve *integrated management* of these elements of natural and physical resources, including all forms of plants and animals. Where the objectives, policies and methods preclude the integrated management of one of these aspects, this would make the objective, policy or method ultra vires.
42. While the RMA permits that regional councils can control 'the use of land' for the purpose of the maintenance and enhancement of the quality and quantity of water in water bodies and coastal water, and of ecosystems in water bodies and coastal water,¹⁵ this does not permit preventing the integrated management of other aspects of natural and physical resources.
43. The Draft NPSFM often recognises the need to manage integrated management while recognising the needs of other aspects of natural and physical resources, however there are particular sections where the Draft NPSFM instructs regional councils to include wording, methods, or wording and methods to the same effect, where that wording or method is outside the

¹⁴ Resource Management Act 1991 s30(1)(a)

¹⁵ Resource Management Act 1991 s30(1)(c)

ability of the regional council to implement as it would be ultra vires. An example of this is the following:¹⁶

Every regional council must include in its regional policy statement the following policy (or words to the same effect): "The loss or degradation of all or any part of a natural inland wetland is avoided"

44. Another example includes:

3.2 Te Mana o te Wai

(1) Every regional council must include the following objective (or words to the same effect) in its regional policy statement: "The management of freshwater in our region must be carried out in a manner that gives effect to Te Mana o te Wai, as it is described in the National Policy Statement for Freshwater Management 2019 and understood locally."

45. Te Mana o te Wai inherently involves the holistic aspects of freshwater. If the water is healthy the social, economic and cultural wellbeing of people and communities is healthy. Te Mana o te Wai does not prioritise one aspect over another all are inherently interconnected and important as part of the holistic consideration that is essential in freshwater management decisions. In essence, section 5 and the concept of integrated management are embodied in Te Mana o te Wai.

46. We have further concerns about the direction in [3.4] of the Draft NPSFM with regard to territorial authorities which states:

"District plans must include objectives, policies, and methods to avoid, remedy, or mitigate the cumulative adverse effects of land use on freshwater bodies, freshwater ecosystems, and sensitive receiving environments resulting from urban development."

47. The functions of a territorial authority pursuant to section 31 of the Act, and in relation to water, are restricted to 'the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes'.¹⁷ Therefore the direction contained above is either ultra vires, or is restricted to actions solely undertaken in relation to the surface of water in rivers and lakes.

Risks arising from current drafting

48. We consider that drafting of the objectives and policies are at least unclear and confusing and at worst ultra vires in some areas. As such they are vulnerable to judicial challenge. If this were to occur this would weaken and delay the implementation which is exactly what the Government is seeking to overcome.

¹⁶ Draft NPSFM Subpart 3 Specific Requirements, 3.15(2)

¹⁷ Resource Management Act 1991 s31(1)€

Suggested solution

49. As noted above.

Drafting of definitions

50. Some of the definitions used by the Draft NPSFM are drafted poorly as they carve out exceptions to the already established definitions contained in the RMA, thereby creating unnecessary confusion and inconsistency.

Critique

51. The inconsistencies arise specifically as follows:

Draft NPSFM term and definition	Resource Management Act term and definition
<u>'Coastal wetland'</u> Coastal wetland means a natural wetland that is influenced by marine or coastal geomorphological processes to the seaward extent of freshwater influence, and includes: a) Saltmarshes (of which mangroves can be a structural component); and b) seagrass meadows in intertidal and subtidal zones less than 2 m below mean low water spring tide	<u>'Wetland':</u> Wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet condition
<u>'Constructed wetland'</u> Constructed wetland means a wetland constructed by artificial means that: a) supports an ecosystem of plants that are suited to wet conditions; and b) is constructed for a specific purpose in a place where a natural wetland does not already exist	
<u>'Inland wetland'</u> Inland wetland means any wetland that is not a coastal wetland, but does not include geothermal wetlands	
<u>'Natural wetland'</u> Natural wetland means a wetland as defined in the Act (regardless of whether it is dominated by indigenous or exotic vegetation) except that it does not include: a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species; or b) constructed wetlands; or c) geothermal wetlands	
<u>'Waterbody'</u>	<u>'Water body'</u> Water body means fresh water or geothermal water in a river, lake,

Waterbody has the meaning in the Act, except that it does not include geothermal water	stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area
<u>'Stream'</u> Stream has the same meaning as river in the Act, and is used interchangeably with that term, as consistent with common usage	<u>'River'</u> River means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)
<u>'Freshwater'</u> is not defined in the Draft NPSFM	<u>'Fresh water'</u> Fresh water means all water except coastal water and geothermal water
	<u>'Long-Term Action Plan'</u> A long-term plan prepared under sections 93-94 of the Local Government Act 2002 which deals with matters set out in the NPSFM
	<u>'Coastal Environments'</u> Coastal environment encompasses the elements described in the New Zealand Coastal Policy Statement 2010, Policy 1, including the ecosystems, marine and intertidal areas, estuaries, dunes and land of the coastal environment.
	<u>'Sensitive receiving environment'</u> <u>[a definition is needed not sure there is precedence from the freshwater area there is certainly some in the air quality arena]</u>
	<u>'Natural wetlands'</u> Natural wetlands do not include wetlands which have been crafted by humans, and specifically does not include sediment ponds.

Risks arising from current drafting

52. There is no reason to re-define or tweak the meaning of terms or carve out exceptions (as has been done in regards to the drafting of 'waterbody')

where complete definitions already exist in the RMA. To do so risks creating uncertainty, inconsistency of application, and further, is unnecessary.

53. Further, it is undesirable to use the word 'stream' and 'river' interchangeably as the RMA is clear that the term 'river' includes a stream. The term 'river' should be used in the Draft NPSFM for consistency's sake.
54. It is questionable whether it is necessary to define 'freshwater' in the Draft NPSFM as to not do so could cause unnecessary confusion and unreasonable uncertainty. This is particular the case when the Draft NPSFM has chosen to define some terms but not others. We propose that the definition of 'freshwater' as contained in the RMA is included in the Draft NPSFM.

Suggested solution

55. Our suggested solution to this drafting is to:
 - a) use the definitions contained in the Act, as this is the primary legislation;
 - b) Include a direct reference to the definition for 'freshwater' as defined in the RMA;
 - c) Remove all carve-outs from the definitions contained in the RMA; and
 - d) Use the word 'river' as it is defined in the RMA.

GENERAL DRAFTING COMMENTS

The preamble

56. The preamble to the Draft NPSFM is unsatisfactory and unfit for purpose. The 2008 BOI Report gave the following guidance:¹⁸

The Board considers that a preamble can provide a useful introduction to the NPS. It should outline in broad terms the challenges for freshwater management, and state national values, issues and goals.

57. Part 1 of the Draft NPSFM neither outlines the challenges for freshwater management, nor states the national values, issues, and goals, aside from explaining the concept of 'Te Mana o te Wai'. Accordingly we consider that the preamble needs to be re-written in line with the direction from the 2008 BOI Report.

Action Plan and Long-Term Vision

58. The objectives and policies of the Draft NPSFM contain references to 'long-term visions' being prepared and placed within regional policy statements,¹⁹ and 'action plans' being prepared.²⁰ Neither of these terms are defined, and

¹⁸ Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management (January 2010) at [254]

¹⁹ Draft NPSFM at 3.2 Te Mana o te Wai

²⁰ Draft NPSFM at 3.10 Identifying limits on resource use and preparing action plans

their purpose, intention, and parameters are therefore uncertain and confusing.

59. As such, we are uncertain what the status and format of the long-term vision and action plans are, where they sit in the hierarchy of documents, what their legal status is, and whether there are any legal requirements attached to these documents. Our feeling is that these documents are aspirational documents which have no legal effect, as we are uncertain under what authority these are prepared and what the legal status and enforceability of such a document is.
60. This drafting resulting in such confusion over the status and requirements associated with action plans and long-term visions is unacceptable.

Suggested Solution

61. We suggest that the process for formulating action plans and long-term strategies is incorrectly placed under the auspices of the RMA, where it should be located under the provisions of the LGA 2002. This is because a long-term vision should set a vision and aspirations for outcomes, and these visions and aspirations are implemented through resource management statements and plans.
62. Under the RMA a policy and plan is reviewed every 10 years, which is antithetical to the concept of long-term planning.
63. The LGA 2002 provides a process by which a strategy can be prepared, with public engagement under the special consultative procedure contained in sections 93 through 94. A strategy prepared under this process has weight under the Act, as it constitutes a 'management plans and strategies prepared under other Acts' which must be had regard to by council when preparing or changing a regional policy statement.²¹

Parts 3 and 4

64. The Draft NPSFM contains the following sections:
 - a) Part 3, Subpart 1: approaches to implementing objective and policies;
 - b) Part 3, Subpart 2: national objectives framework;
 - c) Part 3, Subpart 3: specific requirements;
 - d) Part 3, Subpart 4: exceptions; and
 - e) Part 4: timing.
 - f) Appendices
65. As noted, the structure of the 2017 NPSFM is preferred but if the current structure is to be retained then the information currently contained in Parts 3

²¹ Resource Management Act 1991 s61(2)(a)9i)

and 4 should be included as policies in the NPSFM. The Act specifies at section 45A that:

(1) A national policy statement must state objective and policies for matters of national significance that are relevant to achieving the purpose of this Act.

(2) A national policy statement may also state –

(a) The matters that local authorities must consider in preparing policy statements and plans;

(b) methods or requirements in policy statements or plans, and any specifications for how local authorities must apply those methods or requirements, including the use of models and formulae;

(c) the matters that local authorities are required to achieve or provide for in policy statements and plans;

(d) constraints or limits on the content of policy statements or plans;

(e) objectives and policies that must be included in policy statements and plans;

(f) directions to local authorities on the collection and publication of specific information in order to achieve the objectives of the statement;

(g) directions to local authorities on monitoring and reporting on matters relevant to the statement, including—

(i) directions for monitoring and reporting on their progress in relation to any provision included in the statement under this section; and

(ii) directions for monitoring and reporting on how they are giving effect to the statement; and

(iii) directions specifying standards, methods, or requirements for carrying out monitoring and reporting under subparagraph (i) or (ii);

(h) any other matter relating to the purpose or implementation of the statement.

66. Parts 3 and 4 contain directives which are relevant to the implementation of the objectives and policies, which are permitted under section 45A(2)(h) ('any other matter relating to the purpose or implementation of the statement'). Part 3 subpart 2 contain directives regarding the national objectives framework which is created in the policies of the Draft NPSFM, which again is permitted under section 45A(2)(h). However, the specifications relating to the national objectives framework are better included as a policy giving effect to an objective – as they are in the 2017 NPSFM.

67. The confusion regarding the proper place for actions and directions in this Draft NPSFM appears throughout the drafting, as seen in the above discussion regarding the wording and content of the objectives and policies. If the national objectives framework is included as an objective, then the policies will detail how it is to be achieved, and we consider this structure will provide greater clarity and legal certainty than the current situation where a great amount of detail and technical requirements are included in Parts 3 and 4.

68. It is, therefore, considered that the content of Parts 3 and 4 should be included in the policies section of the NPSFM.

CONCLUDING COMMENTS

69. In undertaking this review detailed thought has been given to drafting changes that could be made to either enhance the 2017 NPSFM (the preferred approach) or produce a new NPS using the style of the 2008 Draft NPS updated to include the relevant parts of the 2017 NPSFM and the Draft NPSFM.
70. Further input can be provided at the appropriate time.

Appendix C: Responses to Discussion Document Questions

Question(s)	Specific provisions	Comments
1-8	Section 1.6 - Questions	The draft NPSFM will prevent the outcomes desired being achieved as it requires considerable redrafting to ensure the intent is understood in practice and achievable. As discussed in the submission above, there are many unintended consequences within the NPS. The best way forward for the draft NPSFM is to redraft, and establish a process for submissions to be heard. This would be more efficient and effective for timely implementation than continuing with the draft NPSFM as it is.
9-12	Te Mana o te Wai	HortNZ supports the concept of Te Mana o te Wai and the holistic framework for resource management that Te Mana o te Wai provides. However, as drafted, the description of Te Mana o te Wai and 2.1 Objective in the draft NPSFM are contrary to the purpose of the RMA. The RMA requires an overall judgement approach to management of all resources. This is appropriate as it enables a decision maker to consider the specific context of the matters they are assessing, including environmental bottom lines. Creating a long-term vision is a good method for achieving goals over time. However, a long-term vision is not an RMA method for good reason. This method more appropriately fits within a strategy/ action plan prepared under the LGA 2002 and then RMA plans are required to have regard to those strategies / action plans and their established long-term visions pursuant to s66(2)(c)(i) and s74(2)(b)(i) of the RMA.
13-16	New Māori Value	HortNZ acknowledges the benefits of adopting a Māori world view in managing our Environment. Māori values are currently incorporated into regional land and water plans across New Zealand, as required by the NPSFM. It is unclear what the compulsory tangata whenua values would be.

17	New planning process for freshwater	HortNZ opposes the proposed new planning process. Having experienced the ECan Act and the considerable 'unintended consequences' on horticulture in the Region due to the inability to appeal significant matters to the Environment Court, we would not want to see this replicated across the Country. HortNZ has been required to put more effort and money into ECan processes because of the reduced appeal rights under the ECan Act, and yet still came out with perverse outcomes for Canterbury Growers. If we had the ability to appeal on matters of substance, then the issues could have been resolved immediately. However, we were left arguing our points for six months before ECan agreed to a plan change, which took a further 18 months to promulgate and notify. Decisions are expected late 2020. This would mean that the issues will not be remedied for three and a half years. And there is still no guarantee that the unintended consequences will be fully addressed. The idea of a streamlined process is good in theory, but the reality is quite different. In removing appeal rights, we have also experienced a less helpful approach to RMA statutory processes when compared to other authorities who are subject to the RMA appeal rights. Removing appeal rights does not encourage the local authority to co-operate with stakeholders during statutory processes and reduces their desire to understand all issues We recommend an independent Water Commission is established to consider matters, other than points of law.
18	More integrated management of freshwater	HortNZ support the principle and practice of integrated management and believed that this is currently being achieved in many instances across New Zealand. We have concerns that some of the roles and responsibilities of regional council's and territorial authorities as outlined in the draft NPSFM seek to go beyond their functions as specified in the RMA and this direction in turn is beyond the functions of the Minister for the Environment (refer to Part 4 of the RMA). There is very good reason why the functions are divided as they are. Reasons include ensuring that local authorities have appropriate resources, including suitably qualified staff to fulfil the authority's functions; preventing duplication and ensuring efficient use of rate-payers and tax-payers money; separating the consenting functions from management functions (e.g. Territorial Authorities manage stormwater, wastewater and stormwater; but

		Regional Council's assess and issue consent's, and monitor the compliance with consent conditions).
19	Exceptions for major hydro schemes.	HortNZ does not support an exceptions regime in general. We do not support a differentiation between infrastructure for hydroelectric generation and other nationally significant infrastructure. We consider criteria would need to be established to assess exceptions against.
20-21	Attributes	HortNZ supports the concept of National Bottom Lines, it is critical to New Zealand communities and the New Zealand economy that these are set at appropriate levels that are supported by peer reviewed science.
22	Threatened indigenous species	All <i>compulsory values</i> and relevant <i>other values</i> must be considered equally within the context of an FMU.
23-24	Fish passage	HortNZ supports the provisions for fish passage,
25-26	Wetlands	In some places we have found ourselves inadvertently caught up in discussions on wetlands in relation to implementing Good Management Practices, in particular sediment control ponds and off-stream water storage. It is important that these Good Management Practices are not unintentionally constrained, thereby discouraging their use. It would be a perverse outcome if in attempting to protect wetlands, sediment in streams was to increase because dredging of sediment control ponds was not allowed. Similarly, there is environmental benefit in planting the edges of water storage ponds, however, this will also be discouraged if council staff begin classify them as manmade wetlands thereby preventing the use of the water when most needed.
27-29	Streams	We support the provisions, but it should eb acknowledged in some place offset may not possible and to
30-32	New Bottom Line for nutrient pollution	Bottom lines need to be supported by robust science and appropriate independent peer review. This science must support the application in all river and stream orders and all call catchments if they are to be credible national guidelines. Many rivers and streams in NZ have highly modified hydrology, and may never be able to reach a natural ecosystem state, by limiting abstractions and discharges. In locations

		where robust analysis indicates that limits cannot achieve outcomes sustainably within 30 years an action plan must be adopted.
33-35	Reducing sediment	HortNZ advocates for growers to operate a Good Management Practice (GMP) and have established a number of industry codes of practice and guidance documents for growers such as the Vegetable Washwater Discharge Code of Practice ²¹ , Erosion and Sediment Control Guidelines for Vegetable Production ²² , and Code of Practice for Nutrient Discharge ²³ .
36	Higher standard for swimming	HortNZ supports the provisions
37	Minimum flows	We support a stronger link between water limits and flows and levels.
38	Reporting water use	The position of HortNZ is that in order to manage a resource efficiently and sustainably, then monitoring and reporting must be based on robust scientific measurement. Regulators must use best practice based on good science when formulating catchment and aquifer allocation.
39	Raising the bar on ecosystem health	Refer to comments above for Reducing sediment.
40-42	Draft NPSFM	HortNZ is of the strong view that the draft NPSFM is in need of considerable redrafting. There are intentions within the draft NPSFM that are supported, but there are also elements that cause deep concern. HortNZ recommends that this document is re-drafted.
79-80	Aligning RMA national direction	Yes, there is tension between the draft NPSFM and the RMA. The NPSFM is a subsidiary instrument to the RMA. The draft NPSFM does not give effect to section 5 of the RMA. Separation of land and water values in the changes proposed in the draft NPSFM are not consistent with the principles of Integrated Management.

²¹ <http://www.hortnz.co.nz/assets/Natural-Resources-Documents/VegetableWashwaterDischargeCOP.pdf>

²² <http://www.hortnz.co.nz/assets/Natural-Resources-Documents/ES-Control-Guidelines-1-1.pdf>

²³ <http://www.hortnz.co.nz/assets/Uploads/Code-of-Practice-for-Nutrient-Management-v-1-0-29-Aug-2014.pdf>