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Submission on the 'managing our wetlands': discussion document on proposed changes to the wetlands regulations

This feedback is provided by Fish and Game New Zealand (referred to subsequently as **Fish and Game**), which is comprised of the 13 Fish and Game Councils.

Submitter Details

Submitter: Fish and Game New Zealand

Contact person	Ben Wilson	Mischa Davis
Council	Auckland/Waikato Fish and Game Council	Auckland/Waikato Fish and Game Council
Email	bwilson@fishandgame.org.nz	mdavis@fishandgame.org.nz
Office phone	07 849 1666	020 417 82599
Postal address	156 Brymer Road, RD9, Hamilton 3289	

Summary

1. Fish and Game welcomes the opportunity to comment on the Ministry for the Environment's ('MfE') discussion document seeking feedback on proposed changes to the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ('NES-F') specifically regarding managing wetlands.
2. Fish and Game supports:
 - the overarching intent of the NES-F, which is to regulate activities that pose risks to freshwater and freshwater ecosystems; and
 - the inclusion of standards in the NES-F that are designed to protect and restore natural wetlands.
3. Given the continued loss of wetlands and flow on effects to a wide variety of species that rely on them, Fish and Game understand the need for stricter regulation to safeguard wetland environments, however the framework needs to be carefully considered to provide for wetland construction, maintenance and restoration activities.
4. Unfortunately, many of the issues that Fish and Game highlighted in previous submissions have not been captured in the proposed changes put forward by MfE. Whilst the proposed changes are an improvement in some cases, they still fall short of the mark.
5. Of particular concern to Fish and Game are the proposed changes to provide a consenting pathway for damaging extractive activities such as quarrying and mining in and around wetlands, making the drainage of wetlands much easier for developers. Meanwhile minimal *Statutory managers of freshwater sports fish, game birds and their habitat*

changes have been proposed to better provide for wetland maintenance and restoration, meaning substantial barriers remain to do such meaningful work. Fish and Game's ability to carry out wetland maintenance and restoration projects on its own wetlands continue to be very much constrained. We consider these constraints will also affect all regional councils and non-profit organisations who routinely undertake wetland maintenance and restoration.

6. Fish and Game strongly support providing for wetland restoration activities in a natural wetland as a permitted activity; however, fulfilling the many requirements that apply to wetland restoration under the regulations effectively discourages landowners and agencies from conducting wetland restoration activities. While the proposed changes aim to address this issue to a limited extent, MfE still has not addressed the issue that consent fees are now the largest barrier for maintaining and restoring wetlands. Consent fees effectively penalise gamebird hunters, landowners and non-profit organisations who put in huge efforts to restore waterfowl habitat. Even if a wetland activity is provided for as a permitted activity it can still be liable for significant fees both for lodgement and ongoing monitoring.¹ Resource consents can generate an extra cost burden for projects which are already financially strained, inhibiting wetland restoration projects.
7. Simply put, the uncertain costs and outcomes associated with the regulation requirements for restoring wetlands may act as a disincentive to undertake the activity, which should be actively encouraged. Activities designed to maintain and restore wetlands should be incentivised by enabling them to be pursued without a cost burden or resource consent. Changes recommended by Fish and Game in this submission have been proposed with this in mind.
8. Further, the discussion document has not proposed any changes relating to wetland utility structures. This means a resource consent will still be required for the building of any new maimai, sign or boardwalk in or within 10m of a wetland. This is disappointing for Fish and Game as building maimai is a fundamental part of duck hunting in New Zealand. Other forms of wetland utility structures, such as signs, boardwalks, and jetties provide important opportunities for people to engage and interact with the natural environment, and are part of valued social activities such as walking, hunting and bird watching. Access to and enjoyment of wetlands is a powerful tool in raising awareness of the values of wetlands, water quality, vegetation and biodiversity. However these too will require a resource consent for construction.
9. In summary, MfE are missing the mark to incentivise activities that maintain and restore wetlands whilst enabling activities that degrade and destroy them.

Detailed submission

Proposals for additional consent pathways

10. Fish and Game support stringent rules for extractive and consumptive activities such as quarrying, mining and cleanfills in and near wetlands.

¹ Regulation 75 of the NES-F specifically provides that local authorities may charge for monitoring permitted activities.

11. The NPS-FM was implemented with the intention to set an environmental bottom-line of ensuring no net loss of natural wetland extent or values.² The NES-F then regulates activities in or near natural wetlands to ensure this bottom-line is met. Only in exceptional circumstances should wetland drainage or partial drainage ever be allowed. We consider the regulations as originally written adequately provide for quarrying, mining, urban development, landfills, cleanfills and managed fills, by having to meet the definition set under the NPS-FM of 'specified infrastructure'. Only where such infrastructure is recognised as regionally significant under a regional policy statement or plan would its construction then be significant enough to warrant consideration as a discretionary activity under regulation 45 of the NES-F for it to either drain or partially drain a natural wetland.
12. If an infrastructure activity is not recognised as regionally significant according to a regional policy statement or plan, then the NES-F regulations still allow a consenting pathway as a non-complying activity under regulation 52 if any earthworks, or the taking, use, damming, diversion, or discharge of water, results or is likely to result, in the complete or partial drainage of all or part of a natural wetland, but only when the activity is outside but within a 100m setback of a wetland.
13. We consider if the infrastructure activity is not able to meet these requirements, then it should not be allowed to go ahead and compromise an existing natural wetland. In which respect, Fish and Game strongly oppose the proposed changes to provide further consenting pathways for these industries, thereby making the drainage of wetlands much easier for developers.
14. Of concern with regards to the proposed consenting pathway is that within the "Effects Management Hierarchy" there is vague terminology and incrementally weak options to protect wetlands that can easily be exploited as wiggle room for extractive industry consent applications. Points (d) and (e) of the "Effects Management Hierarchy" leave the gate wide open for classification wars over the meaning of 'minor effects' and the type of 'compensation' required. Offsetting as a tool to ensure 'no net loss of natural wetlands extent and values' is also a dubious option and wide open to interpretation as a term and the type of offset, especially considering the complex biological systems that make up wetlands - rather than for example carbon sequestering. We also know from experience that there is poor compliance and enforcement with offsets.
15. While we are opposed to the consenting pathway and gateway test entirely, if this is to go ahead then we seek an additional requirement of an environmental bond, which is money held as a guarantee of returning the affected wetland to previous conditions / functionally the same – in this case supporting the 'no net loss of natural wetland extent and values' requirement of the NPS-FM. The concept of the MfE retaining environmental bonds from extractive industries, rather than turning to 'aquatic offsetting' or 'aquatic compensation' would support restoration works to be undertaken at their expense. This could be in the form of the establishment of Wetland Fund managed by MfE used to undertake maintenance and restoration works for existing and future impacted wetlands.

² NPS-FM (2020) Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

Wetland restoration work

16. If the loss and degradation of wetlands is to be addressed, encouraging wetland restoration and maintenance is vital. Relying on the preservation of remnant wetlands alone will be insufficient at preventing wetland degradation caused by anthropocentric alteration to natural ecosystem functioning.
17. Fish and Game has had, and continues to have, an important role in maintaining and restoring wetlands nationally. Fish and Game work with willing landowners by conducting earthworks to help restore hydrological functionality to wetlands. Earthworks activities can often best be described as 'reverse drainage' where the original hydrology is restored to wetland sites through the infilling of drains or creating small bunds and earth dams to create a preferential hydrological regime to restore wetland ecosystems.
18. Fish and Game strongly supports providing for wetland restoration work in a natural wetland as a permitted activity, however some of the conditions that apply to these regulations are overly onerous and thereby inhibit important activities.

- Wetland maintenance

19. Fish and Game support the proposed amendment to include the wetland maintenance alongside restoration in the regulations, as it has a wider meaning than restoration and will allow for a broader range of activities to be conducted in natural wetlands to maintain or enhance their values.
20. Of concern is that if an activity cannot meet the definition of 'restoration' under the NES-F then it by default becomes a non-complying activity under regulation 54. This definition being: "*restoration, in relation to a natural inland wetland, means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.*" In many cases, Fish and Game wetlands require consistent routine maintenance works which may not fall within the definition of restoration and would resultantly be a non-complying activity.

- Wetland area restriction and vegetation clearance

21. Simple wetland restoration activities such as clearing pest species like willows, alligator weed, yellow iris, and pampas are captured by the vegetation clearance conditions and require prior notification to the relevant regional council, and are further limited to 500m² or 10% of the natural wetland area, whichever is smaller, otherwise a resource consent is needed.
22. When considering creating, then maintaining and keeping clear a wetland because it has become overgrown with pest plants the area of 500m² is a very small area. A good wetland from a hunter's perspective is around 40 - 65 metres long and wide. This a reasonable area of water to attract waterfowl and still allow for an effective shooting range with a shotgun on waterfowl. The actual area size of a 45 x 65 metre pond is 2925 square metres beyond the 500m threshold by a factor of six.

23. Clearing weeds over an area larger than 500m² or 10% requires a resource consent and detailed restoration plan. This becomes an impediment to the crucial ongoing restoration and maintenance work carried out to protect wetlands by Fish and Game and many other NGO's and regional councils. The extra cost of restoration plans, and resource consents will mean that less weed clearance is carried out in the future than compared to the past.
24. We therefore strongly support the proposed amendment to the regulations so that any removal of exotic species is permitted, regardless of the size of the area treated, provided the conditions in regulation 55 of the NES-F are met.
25. However, we also propose a new condition be included under Regulation 55 (9) that excludes subclause (2) (the notification requirement) from applying to activities that involve the removal of non-indigenous vegetation. We consider this requirement overly onerous and unnecessary when weighed against the risks of adverse effects, by adding extra cost for landowners and delaying restoration works, as any notification requirement could attract significant fees both for lodgement and ongoing monitoring.³

- ***Earthworks and land disturbance***

26. We have some concerns that the area restriction for earthworks and land disturbance under 38 (4)(b) is too small and inhibits beneficial restoration activities in wetlands. We seek that the area be increased from 500m² to 1000m² before triggering the requirement for a resource consent. We also seek that the 10% threshold be removed as it inhibits restoration works in smaller wetlands, and when restoring multiple smaller wetlands condition (4)(b) will almost always be breached.
27. With those amendments any earthworks or land disturbance associated with restoration works will still be required to have prior notification to the relevant regional council and be required to comply with Regulation 55 conditions which consider effects.

- ***Water quality and movement***

28. We are further concerned that Regulation 38 (3) is contradicted by the Regulation 55 (3)(c) and (d) conditions relating to water quality and movement.
29. The conditions are all encompassing and would apply to any natural wetland including ones that are being restored. It is often necessary to change water levels or divert water back into wetlands to restore the natural hydrological functioning of a wetland. Past drainage and diversion schemes have lowered water levels in wetlands and restoring that flow of water is necessary to restore the ecological values of a wetland. That work would be permanent so would not be covered by the exclusion for temporary diversion in 55(5). The conditions in 55(3)(c) and (d) mean that any time someone installs a small bund, dam or fills in a drain to

³ Regulation 75 of the NES-F specifically provides that local authorities may charge for monitoring permitted activities.

restore hydrological functioning in a wetland, the permitted conditions could not be complied with and a resource consent would be required for this restoration work. Water levels and flow paths can be altered through damming and diversion for wetland restoration without any adverse environmental effects. We therefore seek that an exception be made for these conditions when the activity is for restoring the hydrology of natural wetlands.

Restoration of natural wetlands

38 Permitted activities

(1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of natural wetland restoration; and
- (b) complies with the conditions.

(2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of natural wetland restoration; and
- (b) complies with the conditions.

(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of natural wetland restoration; and
- (b) complies with the conditions.

Conditions

(4) The conditions are that—

- (a) the activity must comply with the general conditions on natural wetland activities in regulation 55 (but regulation 55 (3)(c) and (3)(d) do not apply if the activity is for the taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland); and
- (b) if the activity is vegetation clearance, earthworks, or land disturbance, the activity must not occur over more than 1000 m² 500 m² or 10% of the area of the natural wetland, whichever is smaller;

(5) However, the condition in subclause (4)(b) does not apply if the vegetation clearance, earthworks or land disturbance is for planting, or for the removal of non-indigenous vegetation.

General matters

55 General conditions on natural wetland activities

General conditions: vegetation and bird and fish habitats

(9) The general conditions relating to vegetation and bird and fish habitats are as follows:

(a) only indigenous species that are appropriate to a natural wetland (given the location and type of the natural wetland) may be planted in it; and

(b) the activity must not result in the smothering of indigenous vegetation by debris and sediment; and

(c) the activity must not disturb the roosting or nesting of indigenous birds during their breeding season; and

(d) the activity must not disturb an area that is listed in a regional plan or water conservation order as a habitat for threatened indigenous fish; and

(e) the activity must not, during a spawning season, disturb an area that is listed in a regional plan or water conservation order as a fish spawning area.

(f) the condition in subclause (2) does not apply if vegetation clearance is for removing non-indigenous vegetation.

- **Charging for monitoring of permitted activities**

30. As highlighted above council fees are the largest barrier for maintaining and restoring wetlands as they effectively penalise the applicant. Regulation 75 specifically provides that a local authority may charge for monitoring activities that are permitted activities under the NES-F, meaning that even if a permitted activity is for wetland restoration work it can incur significant fees for ongoing monitoring. The uncertain costs associated with the permitted activity regulation requirements for restoring wetlands may act as a disincentive to undertake the activity, which should be actively encouraged.

31. An example of this already being in effect is the Waikato Regional Council, which provides on its website:

Permitted activity compliance monitoring

Monitoring of Permitted Activities under:

(a) the National Environmental Standard for Plantation Forestry 2017 (NESPF) pursuant to Part 3, Regulation 106, and

(b) the National Environmental Standard for Freshwater 2020 (NESF) pursuant to Part 4, Regulation 75 will be charged actual and reasonable costs for monitoring compliance according to the following formula:

Charge = staff/contractor time x charge rate (*refer to staff charge rate table) + direct costs including disbursements
Parties operating under the NESPF and/or NESF will be charged for costs incurred on an ongoing basis as they occur,

unless otherwise agreed by Waikato Regional Council. Waikato Regional Council may set fixed charges for monitoring activities carried out under the NESPF and/or NESF. Council may require operators to pay the full charge towards monitoring the activity prior to any monitoring taking place.

32. Permitted activities designed to maintain and restore wetlands should be incentivised by enabling them to be pursued without a cost burden. We therefore seek an exemption under Regulation 75 for Regulation 38 wetland restoration permitted activities.

Part 4 Local authorities may charge for monitoring permitted activities

75 Local authorities may charge for monitoring permitted activities

Except for Regulation 38, aA local authority may charge for monitoring activities that are permitted activities under these regulations, if the authority is responsible for monitoring those activities.

Wetland utility structures

33. Wetland utility structures listed in the NES-F regulations include maimai, signs, jetties, boardwalks, and bird watching hides. Wetland utility structures are common on both public and private land; and are accepted around much of New Zealand as a permitted activity under relevant regional and district plans. They provide important opportunities for people to engage and interact with the natural environment, and are part of valued social activities such as walking, hunting and bird watching. Some wetland utility structures may be large, be part of a bigger project, or have more than minor impacts on wetlands. More commonly they will be small scale, undertaken by community groups or individuals and have less than minor effects on the wetland.
34. The right to build, tag and use maimai is a fundamental part of duck hunting in New Zealand and managing this activity is a core function of Fish and Game. A wide range of structures are used as maimai, including permanent and temporary structures, however they are typically small structures situated on the edge of wetlands facing towards open water. Fish and Game has spent considerable effort in recent years successfully advocating for the construction of maimai as a permitted activity in district and regional plans.
35. The construction and maintenance of signs is also a critical aspect of managing game bird shooting and sports fish angling activities in New Zealand and are important functions of Fish and Game. Fish and Game signs typically have brief information about legal access points, licence requirements, applicable hunting/angling regulations (i.e., local restrictions like “fly fishing only”), and /or the need for licence holders to take precautions against the spread of aquatic pests. In some court

proceedings involving illegal fishing and similar offending, the presence of adequate signage has been pivotal in pre-warning the person charged that they were committing an offence. These signs are accepted around much of New Zealand as a permitted activity.

36. Wetland utility structures, like signs and maimai, are not provided for as permitted activities in the NES-F. Instead, the construction of a wetland utility structure (such as maimai, boardwalks, signs) in or near a natural wetland will require resource consent from the relevant consent authority where it involves:
- earthworks or vegetation clearance in a natural wetland or within 10 m from it, or
 - the taking, use, damming, diversion, or discharge of water within a natural wetland, or within a 100 m from it.⁴
37. The definitions of earthworks and vegetation clearance are so broad the circumstances in which a wetland utility structure would be able to be built without these triggering the NES-F regulations are very limited. This means that every new maimai, boardwalk or wetland interpretive sign in or near a wetland now requires a resource consent. Only a very small structure on top of the land that does not require any digging or vegetation clearance, such as a temporary manuka hide, will not trigger the regulations, and will not need a resource consent. The requirement for every new maimai or other wetland utility structure to seek and be granted a resource consent imposes significant cost to those wanting to undertake these projects and significant inefficiencies for projects that are at the minor end of the effects spectrum.
38. A maimai could be constructed without a resource consent if it were built 10m away from the edge of any wetland vegetation. However, the reason hunters build their maimai very close to waterbodies is that the maximum range of shotguns (i.e. the maximum range at which they can humanely shoot gamebirds), is at best 30-40 metres. Therefore, any maimai located back from the wetland that is being hunted on can make hunting impractical, inhumane, and unsafe. This is especially a concern when considering that many of the most popular wetlands for hunting are extensive in size. For example, the Whangamarino Wetland in the Waikato region, which contains 738 ha of Fish and Game owned and managed wetlands, is one of the most intensively hunted in New Zealand for waterfowl, attracting high densities of gamebird hunters and as such many maimai have been established. Without defined maimai, people can stand wherever they feel inclined to, and shoot in whatever direction they want meaning a lot less control over safe firing zones. Fish and Game regulations also require a distance of 90m between claimed maimai in order to ensure game bird hunting is undertaken safely. Maimai are the safer option yet would require a resource consent to be constructed within 10m of a wetland.
39. The NES-F regulations are inconsistent in how they treat maimai and how they treat other activities that have same or greater adverse effects. The NES-F permits vegetation clearance, earthworks, land disturbance and diversion of water for some activities without

⁴ Regulation 42 NES-F.

consent despite some of those permitted activities potentially having a detrimental effect on the wetland (for example Regulation 46). Some of those permitted activities can affect up to 500m² of a wetland. Many of the activities are poorly defined or not defined at all and could include a wide range of activities, with unknown merit or effects.

Examples include:

- Restoration activities up to 500m² or 10% of wetland area (reg 38).
Restoration work is anything aimed at restoring ecosystem, biodiversity or hydrological function
- Scientific research up to 10m² per site or 100m² in total (reg 40).
There is no definition of scientific research
- Maintaining specified infrastructure or other infrastructure up to 500m² or 10% of wetland area (reg 46).
Specified and other infrastructure definitions includes public flood control and drainage works, all regionally significant infrastructure and other utilities.
- Existing sphagnum moss harvesting with no limit on size (reg 48).
- Natural hazard works with no limit on size (reg 51).
Natural hazard works is works to remove material, such as trees, debris and sediment deposited as the result of a natural hazard, and likely to cause an immediate hazard to people or property.

40. Taken together these provisions provide a wide permitted baseline and precedent for considering maimai (and other wetland utility structures) as permitted activities. Maimai (and other wetland utility structures) have as much utility and social significance as other activities provided for as permitted, and can be provided for with a much smaller footprint and minor adverse effects. As a result, Fish and Game recommend that wetland utility structures are designated permitted activities as set out in the amended regulation 42 below.

41. The maintenance of wetland utility structures is also disproportionately regulated across the regulations, compared to other activities. Maintenance of *specified infrastructure* is permitted, despite the significant scale and potential for significant effects.

42. Vegetation growing around and over maimai can pose a safety concern when hunting. We therefore seek to increase the allowable area for vegetation clearance specifically for maimai under regulation 43 condition (4)(d).

Construction of wetland utility structures

42 Permitted activities

(1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a permitted activity if it –

(a) is for the purpose of constructing a wetland utility structure; and

(b) complies with the conditions

(2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a permitted activity if it –

(a) is for the purpose of constructing a wetland utility structure; and

(b) complies with the conditions

(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—

(a) is for the purpose of constructing a wetland utility structure; and

(b) complies with the conditions.

Conditions

(4) The conditions are that—

(a) the activity must comply with the general conditions on natural wetland activities in regulation 55; and

(b) if the activity is vegetation clearance, earthworks, or land disturbance, the activity must not occur over a single area within the natural wetland that is more than 15m².

43 44 Restricted discretionary activities

(1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a restricted discretionary-activity if -

(a) it is for the purpose of constructing a wetland utility structure; and

(b) does not comply with any of the conditions of 42(4)

(2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a restricted discretionary activity if -

(a) it is for the purpose of constructing a wetland utility structure; and

(b) does not comply with any of the conditions of 42(4)

(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary-activity if it—

- (a) is for the purpose of constructing a wetland utility structure; and
- (b) ~~does not comply~~ ~~complies~~-with any of the conditions of 42(4); and
- (c) complies with the conditions.

Conditions

(4) The conditions are that—

- (a) the activity must be undertaken only for as long as necessary to achieve its purpose; and
- (b) before the activity starts, a record must be made (for example, by taking photographs) of the original condition of the natural wetland's bed profile and hydrological regime that is sufficiently detailed to enable compliance with paragraph (c) to be verified; and
- (c) the bed profile and hydrological regime of the natural wetland must be returned to their original condition no later than 30 days after the start of the activity.

(5) However, the condition in subclause (4)(c) does not apply to any part of the bed that is in direct contact with the wetland utility structure.

Matters to which discretion restricted

(6) The discretion of a consent authority is restricted to the matters set out in regulation 56.

Maintenance of wetland utility structures

44 43 Permitted activities

(1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of maintaining a wetland utility structure; and
- (b) complies with the conditions.

(2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of maintaining a wetland utility structure; and
- (b) complies with the conditions.

(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of maintaining a wetland utility structure; and
- (b) complies with the conditions.

Conditions

(4) The conditions are that—

- (a) the activity must comply with the general conditions on natural wetland activities in regulation 55; and
- (b) the activity must not be for the purpose of increasing the size of the wetland utility structure; and
- (c) the activity must not result in the formation of new pathways, boardwalks, or other accessways; and
- (d) if the activity is vegetation clearance, earthworks, or land disturbance, the activity must not—
 - (i) occur over more than 2 m² around the base of each pile or post of the wetland utility structure, or 10% of the area of the natural wetland, whichever is a smaller area in total; or
 - (ii) occur more than 1 m away from the structure, if the activity is vegetation clearance, or 5 m if the structure is a maimai.

Consultation questions

1. Do you agree with the proposed changes to the definition of ‘natural wetland’? Why/why not?

Yes, we support the proposed changes to the definition as we consider it provides greater certainty for implementation of the NES-F, by deleting “subject to temporary rain-derived water pooling”. Where water is derived from to feed wetlands does not have a direct correlation to the value of that wetland and therefore this requirement appears arbitrary.

2. Should anything else be included or excluded from the definition of ‘natural wetland’?

MfE’s wetland definition guidance document has been helpful in clarifying some matters. We are still somewhat unclear how the hydrological tool which will define natural wetland areas will be utilised in practice and how it layers with the improved pasture exclusion rule. The accompanying chart titled “*A process to assess ‘natural wetland’ and ‘natural inland wetland’ status*” indicates that even if an area is entirely dominated by improved pasture, it will still qualify as a natural wetland if it passes the wetland hydrology test. If this is the intent, it should be better captured in the definition as currently there is no reference to hydrology which will only lead to further confusion. The proposed saturation thresholds will capture large areas of what is currently considered farmland, especially peatlands that are often near or at saturation for large parts of the year. If the chart is correct and the intent is to capture these areas as natural wetlands, then consideration needs to be given to how these sites will be managed. We are unclear what the ramifications of such a definition will mean in practice as on the face of it the ability to manage them as wetlands is entirely contrary to their current use. We note that saturation levels are only relevant during ‘growing seasons’ but the later does not appear to be explained or defined.

3. Should maintenance be included in the regulations alongside restoration? Why/why not?

Yes, we support the proposed amendment to include the word maintenance, as it has a wider definition than restoration and will allow for a broader range of activities to be conducted in natural wetlands to maintain or enhance their values.

Fish and Game is concerned that if an activity cannot meet the definition of ‘restoration’ under the NES-F then it by default becomes a non-complying activity under regulation 54. In many cases, Fish and Game wetlands require consistent routine maintenance works which may not fall within the definition of restoration.

Including maintenance in the regulations alongside restoration also acknowledges that many wetlands are now so heavily degraded through anthropogenic influences that routine maintenance activities are required to prevent their ecosystem health being compromised further.

4. Should the regulations relating to restoration and maintenance activities be refined, so any removal of exotic species is permitted, regardless of the size of the area treated, provided the conditions in regulation 55 of the NES-F are met? Why/why not?

Yes, we strongly support this proposed amendment as highlighted in our submission above.

5. Should activities be allowed that are necessary to implement regional or pest management plans and those carried out by a biosecurity agency for biosecurity purposes? Why/why not?

Yes, and we would assume this is already provided by under the wetland restoration regulations of the NES-F.

6. Should restoration and maintenance of a ‘natural wetland’ be made a permitted activity, if it is undertaken in accordance with a council-approved wetland management strategy? Why/why not?

With regards to a council-approved management strategy we are not clear on what this exactly is as the discussion document lacks detail to explain it and its purpose. Is a ‘council-

approved management strategy' a policy document that the council are obligated to prepare and adopt and then a landowner must comply with? Or is it a document that a landowner must prepare themselves as part of regulation 55 (2) prior notice? We have concerns with the use of both of these depending on the level of detail that will be required. If the process is overly onerous and proves time or cost prohibitive for landowners this will simply provide a disincentive to conduct wetland restoration and maintenance projects. If the process is simple, easy to follow and has clearly defined criteria we may support it, but at this stage we lack the requisite detail to make any such judgment.

At any rate further consideration should be given to simplifying permitted activity process under the NES when it is for the purpose of wetland enhancement or restoration. For example, the act of blocking an existing drain that has and is continuing to have a clearly understood detrimental effect on natural wetland hydrology should not be forced to go through convoluted permitted activity pathway involving a large amount of planning or assessment. In these situations, a simple appraisal by a suitably qualified wetland ecologist should be sufficient for the project to progress. Most importantly any costs associated with this process should not be passed onto people or agencies conducting wetland maintenance or restoration activities. Any such impediments will lead to the perverse outcomes whereby it will be easier for landowners to continue to graze marginal wetland areas that would easily lend themselves to restoration.

7. Should weed clearance using hand-held tools be a permitted activity? Why/why not?

Yes, however Fish and Game are confused as to why this amendment has been proposed when the regulations do not preclude the use of hand-held tools for vegetation clearance as a permitted activity, nor do they preclude mechanical vegetation clearance as a permitted activity either. We consider that this proposed amendment should not be adopted as by default could then be interpreted to exclude other forms of vegetation clearance as a permitted activity. As highlighted in the submission above, in many cases vegetation needs to be removed by other means as the task is simply too large to do by hand. We support the conditions that already apply to the use of machinery, vehicles, equipment, and construction materials under regulation under 55(12) and consider this does not need to be added to or amended any further.

8. Should a consenting pathway be provided for quarries? Is discretionary the right activity status? Why/why not? (See page 10 for a definition of discretionary activity.)

We do not support a consenting pathway for quarries – reasons given in the submission above.

9. Should resource consents for quarrying be subject to any conditions beyond those set out in the 'gateway test'? Why/why not?

As above we do not support the adoption of a "gateway test" for quarrying beyond what has already been provided for 'specified infrastructure' in the regulations.

10. Should a consenting pathway be created for landfills, cleanfills and managed fills? Is discretionary the right activity status? Why/why not? (See page 10 for a definition of discretionary activity.)

Likewise, for quarrying we do not support a consenting pathway for landfills, cleanfills and managed fills.

11. Should resource consents for landfills, cleanfills and managed fills be subject to any conditions beyond those set out in the 'gateway test'? Why/why not?

No, again as above we do not support the adoption of a "gateway test" for landfills, cleanfills and managed fills beyond what has already been provided for 'specified infrastructure' in the regulations.

12. Should a consenting pathway be provided for mineral mining? Is discretionary the right activity status? Why/why not? (See page 10 for a definition of discretionary activity.)

Likewise, for quarrying, landfills, cleanfills and managed fills we do not support a consenting pathway for mineral mining.

13. Should the regulations specify which minerals are able to be mined subject to a resource consent? Why/why not?

No, as above, we do not support the adoption of a consenting pathway for mining and correspondingly would not be necessary to specify which minerals are able to be mined.

14. Should resource consents for mining be subject to any conditions beyond those set out in the 'gateway test'? Why/why not?

No, again as above we do not support the adoption of a "gateway test" for mining beyond what has already been provided for 'specified infrastructure' in the regulations.

About Fish and Game

43. Fish and Game is the statutory manager for sports fish and game, with functions conveyed under the Conservation Act 1987. The organisation is an affiliation of 13 separate Fish and Game Councils – 12 regional Councils and one national Council. Together, these organisations represent roughly 140,000 anglers and hunters.

44. The sports fish and game resource managed by Fish and Game is defined and protected under the Conservation Act and the Wildlife Act 1953. The species within include introduced sports fish and a mix of native and introduced waterfowl and upland game.⁵

45. Fish and Game is entirely funded by licence holder fees and private contributions, meaning the delegated function of managing the species for the public good is funded entirely by the users. It is a democratic 'user pays, user says' organisation. Using this system, the organisation funds public good research to ensure fisheries and game populations are managed sustainably; undertakes compliance with the licencing system; and contributes to public planning processes.

46. In relation to planning, the Councils share a similar function to advocate on behalf of anglers and hunters and to advocate in the Councils' interest, including their interest in habitat. Overwhelmingly, the advocacy sought by anglers, hunters and their elected Council representatives has been to seek environmental protection and restoration of degraded ecosystems. This makes sense as anglers typically have a great deal of lived experience on water bodies and therefore are highly attuned to changes, which to date have overall been for the worse.

47. Apart from the Department of Conservation, Fish and Game is the largest owner and manager of wetlands in the country. For example, Auckland/Waikato Fish and Game owns some 1700

⁵ Most New Zealanders refer to these species as 'game birds', distinguishing them from other types of game, such as deer or pigs. The Wildlife Act 1953 defines these birds simply as 'game' and this phrase is used in the context of this submission.

hectares of wetland in the Waikato District, most of which requires active and ongoing management.

48. At the direction of its licence holders, Fish and Game has become one of the nation's best-known advocates for freshwater ecosystems. Since 1991, when the RMA came into effect, Fish and Game has:
- a. protected the Hakataramea River from overallocation⁶;
 - b. protected the Nevis River from damming (via an amendment to the Karwarau Water Conservation Order);
 - c. set minimum flow on select rivers, and allocation limits and water quality standards on all rivers in Otago through environment court processes;
 - d. participated in the deemed permit process in Otago to restore ecosystems degraded by historic abstraction, including the Lindis High Court process,⁷ the Kyeburn Environment Court appeal and the Environment Court Plan Change 7 first instance hearing;⁸
 - e. secured enhancement requirements for regionally significant wetlands in Otago, including recognising game hunting as a reason for protection;
 - f. successfully sought an Environment Court declaration that Horizons Regional Council was not implementing the One Plan in a lawful manner by issuing multiple consents for intensive farming with nitrogen leaching figures significantly over those identified as necessary to achieve the Plan's water quality outcomes;
 - g. lead the evidence which provided for the protection of the Tukituki catchment and established nitrogen limits in the Tukituki waterways, and preventing the building of the proposed Ruataniwha Dam;
 - h. secured recognition and provisions for the protection of salmon spawning sites in the Canterbury Land and Water Regional Plan;
 - i. secured a prohibition on damming the Hurunui River due to the presence of the outstanding trout fishery;
 - j. increased the minimum flow in the Hurunui River based on salmon passage requirements;
 - k. worked with environmentally aligned parties to secure incontrovertible recognition that agricultural land use was a significant contributor to degraded water quality in Southland's rivers, lakes and estuaries;⁹
 - l. maintained a hydrological periodicity for wetlands such as Pukepuke Lagoon, Lake Omanu and the eastern Lake Wairarapa shore wetlands – the latter under the Lake Wairarapa Water Conservation Order;

⁶ *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36.

⁷ This hearing is ongoing.

⁸ This hearing is ongoing.

⁹ <https://www.stuff.co.nz/southland-times/southland-top-stories/113363858/federated-farmers-admits-its-time-to-start-cleaning-up-southland-rivers>

- m. successfully opposed a 35-year resource consent application, which was declined as a result,¹⁰ by Open Country Dairy to more than double the amount of wastewater it discharges year round into the degraded Wairoa River;
 - n. secured 13 out of the total of 15 current WCO's;
 - o. provided feedback / written submissions as an affected party to thousands of consents affecting freshwater habitat and ecosystems nationally;
 - p. advocated for an active program to identify and remove fish passage barriers;
 - q. instigated research to place limits on discharges which increase instream water temperature to assist with the health of trout and native fish species population; and
 - r. worked with flood protection management through the resource consent process to protect and preserve the geomorphological characteristics of rivers.
49. To achieve this, Fish and Game staff includes planning and policy specialists. The local-facing structure of the organisation, combined with generally low turn-over rates and a focus on freshwater means that these staff are experts in freshwater policy and its implementation.
50. This submission has been developed using the combined expertise and experience of Fish and Game's planning and policy staff.

¹⁰ <https://www.newsroom.co.nz/recidivist-dairy-company-seeks-river-discharge-consent>