

Resource Management (Freshwater and Other Matters) Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Resource Management (Freshwater and Other Matters) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

This bill would amend the Resource Management Act 1991 (RMA) and various national direction instruments. The Government is taking a three-phased approach to reforming the resource management system.¹ This bill is part of the second phase to make “targeted legislative changes to the RMA in 2024”.

The bill seeks to reduce the regulatory burden on key sectors including farming, mining, and other primary industries. To achieve this, it would amend the RMA and various national direction instruments that are used under the RMA to develop a nationally consistent approach to resource management issues. The national direction instruments that this bill would amend include the National Policy Statement for Freshwater Management 2020, the National Policy Statement for Indigenous Biodiversity 2023, the Resource Management (National Environment Standards for Freshwater) Regulations 2020, and the Resource Management (Stock Exclusion) Regulations 2020.

The bill proposes to:

¹ The first phase involved the repeal of the Natural and Built Environment Act and Spatial Planning Act. This phase is complete.

- exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consenting requirements
- amend the NPS-FM, the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB), and the National Environment Standards for Freshwater (NES-F) to align the consenting pathway for new and existing coal mines with other mineral extraction activities
- suspend requirements under the NPSIB for councils to identify and include in district plans new significant natural areas (SNAs) for three years
- amend the Resource Management (Stock Exclusion) Regulations 2020 to remove the map of “low slope land” and associated requirements
- amend the NES-F to repeal the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing.

This bill also aims to streamline processes for preparing and amending national direction instruments so that they are less onerous and more efficient.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation’s design to bring to the attention of the House.

Proposed amendments

This commentary focuses on the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

The “Other matters” section at the end of our commentary covers some matters that we considered but that did not result in proposed amendments. We include them to give a more complete picture of our consideration.

Extending proposals to all resource consent applications

Clause 41 sets out how the specified provisions relating to the NPS-FM 2020 would apply. Clause 43 sets out the effect of the amendments relating to coal mining on applications for resource consents. As introduced, the clauses specify that the bill’s amendments would only apply to resource consent applications lodged with a consent authority after the bill commenced. This was designed to provide an orderly transition for councils implementing the bill.

Some submitters noted that consent applicants could bypass this by withdrawing and relodging their consents. We acknowledge that this would be inefficient and costly, and would run counter to the policy intent of reducing the regulatory burden. We therefore propose that the bill’s provisions apply to all resource consent applications, including those already lodged with a consent authority. Any resource consents that have previously been declined, could be reapplied for.

We recommend amending clauses 41 and 43 of Schedule 1 to make clear that the bill's provisions would apply to all resource consent applications.

Three-year suspension period for certain provisions under the NPSIB

Clause 21 would insert new section 78 (time-limited modifications to the NPSIB 2023) in the RMA to set out a 3-year period during which specified provisions in the NPSIB would not apply. This would allow time for a review of the NPSIB to be undertaken without new SNAs under the NPSIB being identified during that period. Proposed new section 78(5) sets out that if an area is deemed to be of significant indigenous biodiversity after enactment of this bill, it would not be treated as an SNA under the NPSIB. Section 78 would be repealed after three years.

There was some confusion among local councils and industry about how the proposed amendment would affect planning processes and whether it would alter councils' obligations under the RMA to protect areas of indigenous biodiversity. A few submitters also noted that the relationship between section 6(c) of the RMA (matters of national importance) and new section 78(5) is unclear.

We therefore recommend amending clause 21 to replace proposed sections 78(4) and 78(5) with 78(4) and 78(4A). The revised section 78(4) would make clear that the provision would not alter functions or requirements for local authorities and decision makers under the Act (subsection (a)) or a policy statement and plans (subsection (b)). New section 78(4A) would make clear that if councils identified or notified a new area of significant indigenous biodiversity during the suspension period, it would not be an SNA for the purpose of the NPSIB. Section 78(4A)(b) would set out that provisions in the NPSIB would not apply to that area.

We also recommend replacing section 78(6) to make clear that the proposal would not affect policy statements, proposed policy statements, plans, proposed plans, or changes initiated under the RMA that were in place before commencement, or not completed before commencement of this bill.

Local authority obligations under the NPSIB 2023

Clause 3.8 of the NPSIB requires every territorial authority to undertake a district-wide assessment of the land to identify significant indigenous vegetation or significant habitat of indigenous fauna that would qualify as an SNA.

Clause 3.8(5) of the NPSIB sets out that a territorial authority does not need to comply if, within four years after the commencement of the NPSIB, a suitably qualified ecologist engaged by the territorial authority confirms that the methodology originally used to identify the area as an SNA, and its application, is consistent with the assessment approach in Appendix 1 of the NPSIB. Given that the suspension period is for three years after commencement of the bill, we consider that the deadline concerning this clause should also be extended. We think this would be helpful for councils with SNAs in operative or proposed plans.

We recommend amending Schedule 2 to extend the time frame for councils to confirm their original methodology to identify an SNA from four years to six years.

Ministerial power to amend NPSIB

Clause 21 would insert new section 78(7). This would enable the Minister for the Environment to amend the NPSIB to remove an inconsistency (or potential inconsistency) between the NPSIB and the bill (when enacted), or to clarify the relationship between the two.

Some submitters opposed this proposal because it could enable changes to be made without consultation or without a defined scope. We note that it was included to address unforeseen inconsistencies between the NPSIB and the RMA and to provide certainty. However, suspending the requirements to identify and notify NPSIB SNAs is done via the bill, rather than the NPSIB. We therefore recommend removing the powers for the Minister for the Environment to make further changes to the NPSIB after the bill has been enacted.

We recommend removing section 78(7) and (9) so that the Minister cannot use the powers within this bill to change the NPSIB after the bill comes into force.

Intensive winter grazing

Schedule 2 would amend Part 2, subpart 3 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, which relates to intensive winter grazing.² The bill would revoke regulation 26, which sets out that intensive winter grazing can only occur if all the default conditions have been complied with or if the farm has a certified freshwater farm plan that applies to intensive winter grazing. If neither of these conditions is met, a farmer must obtain a resource consent. The bill would retain the stand-alone regulations 26A and 26B relating to pugging and ground cover respectively. Regulations 27 to 31 would also be revoked.

Some councils emphasised the importance of regulations 26(4)(d) and (e) which relate to minimum setback from waterways and critical source areas. Two councils recommended that the stand-alone regulations instead focus on preventing intensive winter grazing in riparian areas and in critical source areas. We acknowledge these concerns and note that the management of critical source areas and riparian setbacks are matters that farmers can control. This would also address concerns about the environmental and regulatory gap that is likely to occur.

We recommend amending Schedule 2 of the bill to replace subpart 3 of Part 2 of the regulations with a new subpart 3 that includes new regulations 26 and 27. New regulation 26 would require an area of land that is used for intensive winter grazing to be located at least five metres away from the bed of any river, lake, wetland, or drain.

² Intensive winter grazing is the grazing of livestock on an annual forage crop at any time between 1 May and 30 September.

New regulation 27 would apply the following requirements to any critical source area within, or adjacent to, any area of land used for intensive winter grazing:

- the area must not be grazed
- vegetation must be maintained as ground cover over all the area
- maintaining the vegetation must not include cultivation or harvesting of annual forage crops.

National direction

Clause 10 of the bill would amend section 44 of the RMA which sets out the steps a Minister must take before recommending making national environmental standards (NESs) to the Governor-General. The bill would expand the circumstances where updates to NESs are exempt from the consultation and submission requirements in section 46A of the RMA (single process for preparing national directions). It also proposes cross-references to this section so that national policy statements and national planning standards could be updated without those restrictions also.

Many groups submitted that the scope of the proposal is too broad. Local authorities expressed concern that it could result in significant changes to national direction, and unintended consequences without appropriate consultation. Iwi/Māori concurred with this view, saying that streamlining processes and cost saving should not occur at the expense of meaningful participation, analysis, and evaluation.

We recommend inserting section 44(3A)(a) which would require the Minister to consider the appropriateness of using the entire section 46A process before deciding whether to use the process under section 44(3) to update an NES (and a national policy statement or national planning standard by cross-reference). This would ensure that Ministers consider which process is appropriate for a proposal, considering its scale and significance.

We also recommend inserting paragraph (b) into section 44(3A) to require the Minister's reasons for the amendment under section 44(3) to be published on an internet site with public access. This would provide greater transparency.

Time frame for implementation

Clause 10(4), new section 44(3)(d), sets out that the Minister would not need to follow the full process for amending an NES (and a national policy statement or national planning standard by cross-reference) in section 46A if the Minister was recommending the making of an amendment to "change the time frame for implementation" of any part of an NES.

Many local government authorities expressed concern that this provision would create uncertainty for budgeting and work programmes, as there is a risk that implementation time frames could be brought forward unexpectedly. We acknowledge these concerns and recommend limiting the proposal to an extension of the time frame.

We recommend amending section 44(3)(d) to allow the Minister to "extend" the time frame for implementation, rather than "change".

Time frame for submissions

Clause 11(7) as introduced would amend the consultation requirement under section 46A(4)(b) to give the Minister discretion over the time frame for submissions.

Some submitters oppose this proposal and consider that a minimum consultation period of at least 20 working days should be required, or the wording “adequate time” should be more clearly specified. We agree that specifying a minimum time frame would provide for a fair process. Section 48(2)(c) of the RMA specifies a minimum time frame of 20 working days for submissions on national direction proposals considered by a board of inquiry. We consider this time frame appropriate and consider that the bill should align with the current RMA provisions.

We recommend amending clause 11 to insert a new section 46A(2). This would require at least a 20 working day submission period for national direction proposals.

Board of inquiry process

Clause 13 would remove the board of inquiry process for making and amending a national direction, by repealing sections 47 to 51 of the RMA. These sections require a board of inquiry to lead the consultation and recommendations to the Minister. The bill proposes that all national environmental standards and national policy statements would instead be made using the alternative process under section 46A. This alternative process would be led by the Minister and the Ministry for the Environment.

Many submitters commented on the proposed removal of section 51, which requires consideration of listed matters, including Part 2 of the RMA relating to sustainable management. We agree that the matters in Part 2 are critical in the resource management system, and propose amending the bill to keep the requirement for these matters to be considered.

We recommend amending clause 11 to insert section 46A(3) into the RMA. This would ensure consideration of matters in Part 2 of the RMA when reporting to the Minister on national direction proposals.

Evaluation report requirements

Clause 5 of the bill would remove the requirement for evaluation reports for national direction proposals, as set out under section 32 of the RMA. Clause 7 would replace these requirements with more streamlined evaluation reporting requirements in new section 32AB.

Although some submitters support simplifying reporting requirements, many opposed this proposal on the basis that these requirements would be weakened by section 32AB. Notably, it would remove consideration of Part 2 matters, social and cultural effects, and full cost and benefit assessment. Currently, evaluation of national direction proposals occurs in both a section 32 report and a regulatory impact statement (RIS). We consider that there is considerable duplication between these two documents and recommend removing proposed section 32AB to create a more efficient national direction-making process.

We recommend removing clause 7 and all references to the proposed section 32AB, as well as all requirements for evaluation reports for national direction proposals, so that evaluation reporting does not apply to the preparation of national directions.

Consenting discharges

Section 107 of the RMA prevents a discharge permit from being granted if the council is satisfied that the discharge is likely to result in any significant adverse effects on aquatic life.

Several primary industry submitters raised matters regarding recent court decisions. The court held that adverse effects must be mitigated immediately for a discharge permit to be granted under section 107. Submitters requested that the bill amend section 107 as a matter of urgency, claiming that those court decisions will significantly affect their ability to obtain resource consents for farming activities. We note that the NPS-FM enables councils to achieve environmental outcomes over time. We propose amending section 107 to align with the approach in the NPS-FM.

We recommend inserting clause 23A to amend section 107 of the RMA. This would enable a discharge permit or a coastal permit to be granted where the discharge may contribute to significant adverse effects on aquatic life, if the consent authority:

- is satisfied that receiving waters are already subject to significant adverse effects on aquatic life
- imposes conditions on the consent
- is satisfied that those conditions will contribute to a reduction of those significant adverse effects on aquatic life over the duration of the consent.

We also recommend inserting clause 44 to make clear that the proposed amendment in clause 23A applies to all resource consent applications, including those already lodged with a consent authority.

Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

Section 31 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 sets out provisions that relate to the effect an environmental covenant has on other documents and decisions. We considered Ngā Hapū o Ngāti Porou's submission about the impact of the proposed removal of the board of inquiry process on their rights under section 31(2) of that Act. They request an alternative process to exercise existing rights if the board of inquiry process is removed.

Our departmental advisers consider that an alternative process is not needed because, despite the removal of the board of inquiry process, the ability for Ngā Hapū o Ngāti Porou to influence the preparation of a national direction will remain the same as it currently is under sections 31(1) and 31(3) of that Act. For these reasons we do not propose any amendment to the bill to provide for an alternative process.

Officials have recommended, and Ngā Hapū o Ngāti Porou have agreed, a change to section 31(3) of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act to amend existing cross-referencing and clearly state that any person who prepares a report or rec-

ommendations for a proposed national policy statement that directly affects ngā rohe moana must consider the environmental covenant.

We recommend inserting new clauses 29 and 30 which would amend the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. Clause 30 would replace section 31(3) of the Act to ensure that any person who, under a process established under section 46A of the RMA, prepares a report and recommendations for a proposed national policy statement that directly affects ngā rohe moana, must consider the environmental covenant.

Other matters

As previously noted, we discuss below some matters that we considered but that did not result in proposed amendments.

Hierarchy of obligations under the NPS-FM 2020

Clauses 22, 23, and 26 would remove the hierarchy of obligations, as set out in clauses 1.3(5) and 2.1 of the NPS-FM 2020, from resource consenting requirements. The single objective of the NPS-FM is to manage freshwater in a way that prioritises these obligations.

Councils, iwi/Māori, and environmental non-government organisations opposed the amendment, in part because removing it could lead to poorer water quality outcomes. We consider that the potential effects of this amendment on freshwater quality are uncertain, given that the remainder of the NPS-FM, as well as provisions under the RMA, would continue to be relevant considerations in resource consenting. The policies in the NPS-FM, although designed to implement its single objective, are distinct from the hierarchy of obligations and would continue to apply to resource consenting where relevant. This includes the remaining parts of Te Mana o te Wai under Policy 1 of the NPS-FM. We also note that under section 104(1)(a) of the RMA, consent authorities must consider any actual or potential effects on the environment when deciding consents.

Many councils submitted that they have generally taken a balanced (rather than absolute) approach to interpreting and applying the hierarchy of obligations to resource consenting. They consider that the hierarchy ensures that environmental, social, economic, and cultural components can be considered and balanced in resource consent decisions. Some suggested that the hierarchy of obligations be amended to include this broader interpretation.

We note that the bill would only exclude the specific clauses in the NPS-FM, rather than the subject matter of those clauses. Further, other policies in the NPS-FM would continue to apply to resource consenting. We think the bill as introduced is clear about the clauses of the NPS-FM that would no longer apply. We do not recommend any further changes to the proposed amendments to the NPS-FM.

Coal mining that affects wetlands or SNAs

Schedule 2 of the bill would amend the NPS-FM, NPSIB, and the NES-F to align consenting pathways for extractive activities, notably coal mining. Currently, the consent pathway for coal mines that affect wetland and SNAs is limited to the operation and expansion of existing coal mines. There is a sunset clause for thermal coal extraction, with this consent pathway ceasing on 31 December 2030. The bill would remove the provisions that impose restrictions on new coal mines, and would remove the sunset clause for thermal coal.

Most submitters opposed the policy intent of this proposal, citing climate change, adverse effects on wetlands and biodiversity, and inconsistency with wider local or central government climate change plans and obligations.

We consider that the extent of adverse effects on wetlands, SNAs, and climate change are uncertain, particularly because any new coal mine would still require a resource consent. Further, this proposal would not prevent local authorities from establishing additional protections for specific wetlands or SNAs in their region, such as enforcing a prohibition. We acknowledge that, although the proposal may increase the volume of coal mined in New Zealand, it is unlikely to affect net domestic emissions. Coal is covered by the New Zealand Emissions Trading Scheme and any increased domestic emissions from mining or consumption would require a reduction elsewhere, or an increase in emissions removals. For these reasons, we do not propose changes to the amendments to the NPS-FM, NPSIB, and the NES-F in Schedule 2.

Stock exclusion regulations

Schedule 2 would amend the Resource Management (Stock Exclusion) Regulations 2020 to remove the map of “low slope land” and associated requirements. The map shows areas of low slope where beef cattle and deer must be excluded from lakes and rivers over one metre wide, and all stock from natural wetlands with an area of more than 500 square metres. Removing the map from regulations aims to avoid imposing significant costs on lower-intensity beef and deer farmers for limited environmental benefit.

Most councils supported the proposal, submitting that stock exclusion is more appropriately managed through regional plans and freshwater farm plans. However, several councils expressed concern that this proposal could create a period during which activity was unregulated. Those submitters recommended introducing transitional arrangements so that the map remained in place until councils had implemented freshwater farm plans or their own regional stock exclusion rules. We do not recommend transitional arrangements because it would likely have the same effect as retaining the low slope map requirements, and farmers would still be required to invest in actions to exclude stock. This would not align with the reason for the amendment.

We do not recommend any changes to Schedule 2 of the bill relating to Stock Exclusion Regulations.

Labour Party differing view

The Labour Party members of the committee wish to express their concern that we are once again looking to pass legislation that has had a very short time frame for consultation and engagement with the public.

Many councils, iwi/Māori and environmental NGOs have opposed the proposals in this bill. The voice of industry and business seems to take precedence, regardless of the fact that on several occasions the Government's own officials have noted that effects of these proposals remain uncertain. Submitters believe that these proposals could lead to more environmental degradation, and the Labour Party members agree.

NPSIB

Advice is that environmental effects on indigenous biodiversity from pausing the identification of new SNAs for three years while a review is undertaken are difficult to assess. Iwi/Māori submitters believe that pausing this for three years will potentially result in the loss of "taonga species due to unmanaged clearing of native vegetation and delayed action for pest control". Labour members consider this pause will cause unnecessary confusion and potentially detrimental environmental effects.

We agree with the change that removes the ability of the Minister for the Environment to make any further changes to the NSPIB provision; this ensures that any further changes will need to be consulted on.

Intensive winter grazing

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) requires consent if default conditions are not met, or inclusion in a certified farm plan. The regulation will be revoked by this bill, while a new regulation 26 will be inserted that only requires a five-metre minimum setback. This means that conditions relating to the area and the slope are removed.

Labour acknowledges that the effects of winter grazing have greatly improved since 2020 because of the NES-F requirements. Without the NES-F the problems (with animals in mud and runoff into waterways) would not have been addressed. The regulations improved with iterations developed with Environment Southland and farmer organisations including Dairy NZ, Federated Farmers, and Beef + Lamb New Zealand. Environmental regulations are difficult and can be improved over time; the idea not to have environmental regulations, in this case relating to slope and area, and repealing them rather than improving is wrong.

The justification for removing the regulation relating to slope and area seems in part to have been based on wild exaggeration of the number of consents required. What was predicted to be tens of thousands in fact turned out to be a few hundred.

Labour members consider that farm plans can be an alternative to consents. However, we are concerned by the observation from the departmental report that "the timeframes for rolling out the freshwater farm plan system and updating regional plan rules (where they do not already exist) could lead to further degradation of freshwater quality due to increased sediment and nutrient loss until plans are implemented".

Some councils relied on the NES-F rather than implementing separate rules so these councils may now need new rules which is inefficient and costly.

National direction

Because national directions apply across regional and district plans, it is important that there is appropriate consultation and analysis into the consequence of the national direction instrument. The changes to this bill reduce the opportunity for both consultation and analysis. National direction must not be used simply as a tool to pursue a Minister's development priorities.

Labour supports the committee's recommendation to require the Minister to consider the appropriateness of the Minister using the entire section 46A process. Labour also supports the inclusion of reference to Part 2 and this must be at the forefront of any national direction. We also consider that the board of inquiry process should remain an option for larger national direction instruments.

Consenting discharges

It is extraordinary that Government members are making changes to the RMA that are not related to national direction in the report-back to this bill. In Labour's opinion these changes are out of scope. There may be submitters interested in section 107 who have missed out on the ability to raise concerns. It is an exceptionally poor process to panic at the result of a court decision and jump to a legislative change without analysis or process. An alternative process would be the Minister promoting an amendment paper (or new amendment bill) and sending it back to the committee for submissions from all interested parties, and associated analysis. Because such a process has not taken place, Labour opposes this change. While there may be an issue with section 107 that requires amendment, we consider this deserves more attention than being slotted in at the end of this process. A full public process would have enabled the committee to better understand the issue and receive appropriate advice, in order to be assured that any change would achieve positive environmental outcomes.

Hierarchy of obligations under the NPS-FM 2020

Te Mana o te Wai is the single objective of the NPS-FM. The Government states that there is too much confusion around the interpretation and applying hierarchical obligations to resource consenting, and appears to believe that the hierarchy within Te Mana o te Wai (with the health of the water body at the top) is applied in an absolute way so that human health and consumption become unattainable.

Labour Party members disagree and in fact many councils that submitted said that rather than taking an "absolute" approach, they had taken a wider approach to interpreting and applying the hierarchy in resource consenting. If the single objective was treated as "absolute", the rest of the NPS-FM would be largely irrelevant. It is simply a nonsense that the hierarchy was taken as absolute.

The real reason for the change to the NPS-FM appears to be the removal of the underlying objective of cleaning up our rivers. This objective should not be changed.

Coal mining that affects wetlands or SNAs

The NPS-FM treats coal mining differently from other extractive activities affecting wetlands; this treatment is because new coal mines both go against New Zealand's decarbonisation efforts and potentially have specific adverse effects that are detrimental to wetlands and SNAs. We agree with the Environment Defence Society's submission that:

Aotearoa New Zealand's wetlands and indigenous biodiversity need urgent protection. Natural wetlands and SNAs are hotspots for declining biodiversity and provide important biophysical controls to mitigate human hazards such as flooding, eutrophication and contamination of drinking water. Removing environmental protections to avoid a prospective court case and the risk of court fees is inappropriate and fails to respect core constitutional principles.

This amendment is a regressive change and is consistent with this Government's approach of enabling more greenhouse gas emissions. There is no need for coal mines in wetlands as New Zealand attempts to meet its international climate commitments. We strongly oppose this proposal.

Stock Exclusion Regulations

The Stock Exclusion Regulations limit stock access to waterways by stock type and mapped low slope land. Regulations relate to beef cattle and deer as well as all stock in relation to some wetlands on low slope land.

We are disappointed that the amendments removing Stock Exclusion Regulations do not have a transitional arrangement to enable regional plans to manage stock exclusion. We understand there is no specified date when freshwater farm plans will be in place and that many regional plans have been deferred. This means that stock exclusion will be unregulated for some time.

The Labour Party members agree with advice in the departmental report, that:

further degradation of freshwater quality due to stock entering water bodies could continue until plans are implemented. Smaller farms are also currently not required to have a freshwater farm plan, meaning stock may not be required to be excluded, even if there are environmental risks.

Green Party differing view

The Green Party strongly opposes the Resource Management (Freshwater and Other Matters) Amendment Bill, as it removes critical regulations that protect ecosystems and communities from freshwater degradation and drinking water contamination, and it facilitates coal mining.

Freshwater quality in Aotearoa is in a dire state: 95 to 99 percent of river length in urban, pastoral, and exotic forest areas exceeds water quality guidelines, 90 percent of our wetlands have been drained, and 76 percent of our native taonga are threatened with or at risk of extinction. The freshwater protections in the Resource Management Act were introduced to stop further degradation of freshwater environments and

restore waterways to health within a generation. This bill strips away critical protections for freshwater.

Excluding the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consenting requirements allows economic interests to be prioritised over the health and wellbeing of waterways and freshwater ecosystems, and the quality of drinking water. We are concerned that decision makers will no longer need to prioritise the health and wellbeing of freshwater when deciding whether to grant consents to take or pollute water. Te Mana o te Wai is critical for prioritising the health of water, above all other uses, and is one of the only ways to stop pollution and contamination of waterways at source. Excluding the hierarchy of obligations from consent applications and decision making will enable commercial and private interests to more easily pollute waterways and will inevitably see a worsening of water quality, including drinking water.

Amending the NPS-FM, the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB), and the National Environmental Standards for Freshwater to align consenting pathways for new and existing coal mines with other mineral extraction activities is strongly opposed, as is the removal of restrictions on new coal mines and the sunset clause for thermal coal. These amendments are directly contrary to protection of biodiversity and reduction in greenhouse gas emissions. They enable consenting pathways for coal mining in and around wetlands and significant natural areas (SNAs) which will result in harm to local ecosystems and facilitate the extraction of the dirtiest fossil fuel, coal, and consequently, acid mine drainage and global climate change.

The Green Party views that suspending requirements under the NPSIB for councils to identify and include in district plans new SNAs for three years poses significant risks to New Zealand's biodiversity. Delaying requirements for councils to identify SNAs and include them in plans for another three years (until 2031) will see less indigenous biodiversity protected and restored, and more significant ecology degraded and destroyed.

Amending the Resource Management (Stock Exclusion) Regulations 2020 to remove the map of "low slope land" and associated requirements risks further degradation of waterways. Regulating the proximity and access of cattle, pigs, and deer to water bodies is essential to keeping our waterways healthy.

Amending the NPS-FM to repeal the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing risks permitting winter grazing by default (in regions without controls in their plans). Repealing intensive winter grazing regulations means regions without controls on the activity in their plans will see a return to winter grazing being permitted by default, without conditions. The Green Party views that this bill will see winter grazing have serious, avoidable negative effects on both animal welfare and the environment, particularly freshwater and estuarine health.

The amendment (after the public submission process) to section 107, at the behest of several primary industry submitters, is a knee-jerk reaction to a court ruling. It is

opposed as poorly considered due to its lack of non-vested, independent, and public scrutiny. It risks inadequate conditions to meaningfully improve the state of already significantly degraded waterbodies and protect aquatic life from significant adverse effects.

Appendix

Committee process

The Resource Management (Freshwater and Other Matters) Amendment Bill was referred to the committee on 28 May 2024.

We called for submissions on the bill with a closing date of 30 June 2024. We received and considered submissions from 1,997 interested groups and individuals. We heard oral evidence from 123 submitters at hearings in Wellington and via video-conference.

Advice on the bill was provided by the Ministry for the Environment with support from the Ministry of Business, Innovation and Employment, and the Ministry for Primary Industries. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Mark Cameron (Chairperson)

Steve Abel

Miles Anderson

Hon Jo Luxton

Suze Redmayne

Cushla Tangaere-Manuel

Catherine Wedd

Related resources

The documents received as advice and evidence are available on the Parliament website.

**Resource Management (Freshwater and Other Matters)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Chris Bishop

Resource Management (Freshwater and Other Matters) Amendment Bill

Government Bill

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<u>29</u>	<u>Amendment to Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019</u>	<u>13</u>
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resource Management (Freshwater and Other Matters) Amendment Act **2024**.

2 Commencement

5

This Act comes into force on the day after it receives the Royal assent.

3 Principal Act

This Act amends the Resource Management Act 1991.

Part 1

Amendments to Resource Management Act 1991

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4 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

~~national direction means, except as provided in section 80B(2),—~~

~~(a) a national environmental standard; or~~

~~(b) a national planning standard; or~~

15

~~(c) a national policy statement; or~~

~~(d) a New Zealand coastal policy statement~~

National Policy Statement for Freshwater Management 2020 or **NPSFM 2020** means the National Policy Statement for Freshwater Management 2020 that was approved by the Governor-General under section 52(2) on 3 August 2020 and that came into effect on 3 September 2020

20

National Policy Statement for Indigenous Biodiversity 2023 or **NPSIB 2023** means the National Policy Statement for Indigenous Biodiversity 2023 that was approved by the Governor-General under section 52(2) on 31 May 2023 and that came into effect on 4 August 2023

25

5 Section 32 amended (Requirements for preparing and publishing evaluation reports)

(1) ~~Replace the heading to section 32 with “Evaluation of proposal (other than national direction)”.~~

(2) ~~In section 32(1), after “under this Act”, insert “for a proposal other than a national direction”.~~

30

(3) ~~In section 32(3), delete “national planning standard, regulation”.~~

(3) In section 32(3), replace “standard, statement, national planning standard, regulation,” with “regional policy statement,”.

(4) Replace section 32(5) with:

35

Resource Management (Freshwater and Other Matters) Amendment Bill	
Part 1 cl 6	
(5) The person who must have particular regard to the evaluation report must make the report available for public inspection at the same time as the proposal is notified.	
(5) In section 32(6), definition of proposal, delete “national planning standard, regulation, regulation”.	5
(5) <u>In section 32(6), definition of proposal, replace “standard, statement, national policy statement, regulation,” with “regional policy statement,”.</u>	
6 Section 32AA amended (Requirements for undertaking and publishing further evaluations)	
(1) Replace the heading to section 32AA with “Further evaluation of proposal (other than national direction)”.	10
(2) In section 32AA(1), after “Act”, insert “of a proposal other than a national direction”.	
(3) Replace section 32AA(1)(d)(i) with:	
(i) be published in an evaluation report that is made available for public inspection at the same time as the decision on the proposal is notified; or	15
(4) In section 32AA(3), definition of proposal , replace “statement, national planning standard,” with “regional policy statement,”.	
7 New section 32AB inserted (Evaluation of national direction)	20
After section 32AA, insert:	
32AB Evaluation of national direction	
(1) An evaluation report required under this Act of a proposal that is a national direction must include consideration of—	
(a) the effectiveness of the proposal; and	25
(b) the impact on the environment and on the economy (whether adverse or beneficial) when proposing whether to regulate; and	
(c) reasonably practicable alternative options in the proposal.	
(2) The analysis for the report must begin early in the process of developing the proposal.	30
(3) The report must be prepared and presented in a way that—	
(a) is cost effective; and	
(b) provides a level of detail that is proportionate to the scale and significance of the proposal; and	
(c) is succinct and plainly expressed; and	35
(d) is useful for decision makers and the public.	

8 Section 32A amended (Failure to carry out evaluation)

- (1) ~~In section 32A(1), replace “or 32AA” with “, 32AA, or **32AB**”.~~
- (2) In section 32A(1), delete “49,”.
- (3) ~~In Section 32A(2), after “32”, insert “or **32AB** as applicable”.~~
- (4) In section 32A(3), replace “statement, national planning standard” with “~~national direction, regional policy statement, standard~~”.

9 Section 42 amended (Protection of sensitive information)

In section 42(6)(b)(i), replace “section 47 or 149J” with “section 149J”.

10 Section 44 amended (Restriction on power to make national environmental standards)

- (1) ~~In section 44(1)(b), replace “section 32” with “**section 32AB**”.~~
- (2) ~~In section 44(1)(d), replace “section 46A(4)(c) or 51(2), as the case requires” with “section 46A(4)(c)”.~~
- (1) In section 44(1)(a), replace “46A(3)” with “**46A(1)**”.
- (2) Replace section 44(1)(b) to (d) with:
 - (b) publicly notify the report and recommendations made under **section 46A(1)(c)**.
- (3) In section 44(2)(a), replace “section 46A(4)(c) or 51, as the case requires” with “~~section 46A(4)(c)~~**section 46A(1)(c)**”.
- (4) Replace section 44(3) with:
 - (3) The Minister need not follow the process referred to in **section 46A** if the Minister is recommending the making of an amendment for 1 of the following reasons:
 - (a) to align with a New Zealand Standard within the meaning of section 4 of the Standards and Accreditation Act 2015:
 - (b) to implement New Zealand’s obligations under any international convention, protocol, or agreement to which New Zealand is a party:
 - (c) to give effect to provisions in an emissions reduction plan or national adaptation plan:
 - (d) to ~~change~~ extend the time frame for implementation of any part of a national environmental standard:
 - (e) to remove provisions in a national environmental standard that are no longer required as a consequence of changes to legislation:
 - (f) to make changes that are no more than minor in effect, to correct errors, or to make similar technical alterations.
- (3A) The Minister must,—

- (a) before recommending an amendment for a reason specified in **subsection (3)**, consider whether it is more appropriate to follow the process referred to in **section 46A** to make the amendment; and
- (b) as soon as practicable after making the amendment under **subsection (3)**, publish their reasons for the amendment on an internet site to which the public have access. 5
- (4) An amendment under ~~this section~~ **subsection (3)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 11 Section 46A amended (Single process for preparing national directions)**
- (1) Replace the heading to section 46A with “**Process for preparing national environmental standards and national policy statements**”. 10
- (2) Repeal section 46A(1).
- (3) Replace section 46A(2) and (3) with:
- (2) This section sets out the requirements for preparing —
- (a) a national environmental standard; or 15
- (b) a national policy statement.
- (3) If the Minister proposes to issue a national environmental standard or national policy statement, the Minister must establish and follow a process that includes the steps described in subsection (4).
- (4) In section 46A(4), replace “subsection (3)(b)” with “**subsection (3)**”. 20
- (5) Replace section 46A(4)(a)(i) with:
- (i) the proposed national environmental standard or national policy statement (the **proposal**); and
- (6) In section 46A(4)(a)(ii), replace “proposed national direction” with “proposal”. 25
- (7) Replace section 46A(4)(b) with:
- (b) those notified must be given what the Minister considers to be adequate time and opportunity to make a submission on the subject matter of the proposal; and
- (8) In section 46A(4)(c), replace “national direction; and” with “proposal.”.
- (9) Repeal section 46A(4)(d). 30
- (10) Replace section 46A(5) with:
- (5) In preparing a national environmental standard or national policy statement, the Minister may, at any time, consult on a draft of that document.
- (11) Repeal section 46A(6).
- 11 Section 46A replaced (Single process for preparing national directions)** 35
- Replace section 46A with:

46A	<u>Process for preparing national environmental standards and national policy statements</u>	
(1)	<u>If the Minister proposes to issue a national environmental standard or national policy statement, the Minister must establish and follow a process that includes the following steps:</u>	5
(a)	<u>the public and iwi authorities must be given notice of—</u>	
(i)	<u>the proposed national environmental standard or national policy statement (the proposal); and</u>	
(ii)	<u>why the Minister considers that the proposal is consistent with the purpose of this Act; and</u>	10
(b)	<u>those notified must, subject to subsection (2), be given what the Minister considers to be adequate time and opportunity to make a submission on the subject matter of the proposal; and</u>	
(c)	<u>a report and recommendations must be made to the Minister on the submissions and the subject matter of the proposal.</u>	15
(2)	<u>The time given for submissions under subsection (1)(b) must not be less than 20 working days.</u>	
(3)	<u>A person preparing a report and recommendations required by subsection (1)(c) must consider the matters in Part 2.</u>	
(4)	<u>In preparing a national environmental standard or national policy statement, the Minister may, at any time, consult on a draft of that document.</u>	20
(5)	<u>If the Minister decides, after consulting as required by subsection (1), to recommend that regulations on the same subject matter as that consulted on be made under any of sections 360 to 360C, the consultation under subsection (1) satisfies the requirement to consult the public and iwi authorities in relation to those regulations.</u>	25
12	Section 46B amended (Incorporation of material by reference in national direction)	
(1)	In the heading to section 46B, replace “ national direction ” with “ national environmental standard or national policy statement ”.	30
(2)	In section 46B, replace “national direction” with “national environmental standard or national policy statement”.	
13	Sections 47 to 51 repealed	
	Repeal sections 47 to 51.	
14	Section 51A amended (Withdrawal of proposed national policy statement)	35
	Repeal section 51A(3).	

15 Section 52 amended (Consideration of recommendations and approval or withdrawal of statement)

(1AAA) In section 52(1), delete “whether made in accordance with section 46A(3)(a) or (b).”.

(1) Replace section 52(1)(a) with: 5

(a) first, must consider a report and any recommendations made under ~~section 46A(4)(c)~~ **section 46A(1)(c)**; and

~~(2) In section 52(1)(c), replace “section 32” with “section 32AB”.~~

(3) Repeal section 52(1)(c).

(4) In section 52(3)(b), after “report”, insert “made under **section 46A(1)(c)**”. 10

16 Section 53 amended (Changes to or review or revocation of national policy statements)

(1) Replace section 53(1) with:

(1) The Minister may review, change, or revoke a national policy statement after following the process referred to in **section 46A**. 15

(2) In section 53(2), replace “without using a process referred to in subsection (1)” with “without following the process referred to in **section 46A**”.

(3) Replace section 53(2)(a) with:

~~(a) amend a national policy statement if the Minister is recommending the amendment for a reason specified in **section 44(3)**, which applies as if a reference in that section to a national environmental standard were a reference to a national policy statement; or~~ 20

(a) amend a national policy statement if the Minister is recommending the amendment for a reason specified in **section 44(3)**, in which case,—

(i) **section 44(3)** applies as if a reference to a national environmental standard were a reference to a national policy statement; and 25

(ii) the Minister must comply with **section 44(3A)**; or

17 Section 57 amended (Preparation of New Zealand coastal policy statements)

In section 57(1), replace “using one of the processes referred to in section 46A(3), as if references in sections 46 to 52” with “after following the process referred to in **section 46A** as if references in that section”. 30

~~18 Section 58D amended (Preparation of national planning standards)~~

~~In section 58D(3)(b), replace “section 32” with “section 32AB”.~~

19 Section 58E amended (Approval of national planning standard) 35

Replace regulation 58E(1) with:

- (1) Before approving a national planning standard, the Minister must consider the report and recommendations made under section 58D(3)(d)(ii).

20 Section 58H amended (Changing, replacing, or revoking national planning standards)

Replace section 58H(2) with:

- (2) ~~The Minister need not follow the process set out in sections 58D and 58E if the Minister is recommending a change to a national planning standard for a reason specified in **section 44(3)**.~~

- (2) The Minister need not follow the process set out in sections 58D and 58E if the Minister is recommending a change to a national planning standard for a reason specified in **section 44(3)**, in which case,—

- (a) **section 44(3)** applies as if a reference to **section 46A** were a reference to sections 58D and 58E and a reference to a national environmental standard were a reference to a national planning standard; and
- (b) the Minister must comply with **section 44(3A)** (which applies as if a reference to **section 46A** were a reference to sections 58D and 58E and a reference to an amendment were a reference to a change).

21 New section 78 inserted (Time-limited modifications to NPSIB 2023)

After section 77T, insert:

Certain provisions of NPSIB 2023 suspended for 3-year period

78 Time-limited modifications to NPSIB 2023

- (1) ~~For the purposes of this section, the **3-year period** means the period that—~~
- (a) ~~commences on the date of commencement of the Resource Management (Freshwater and Other Matters) Amendment Act **2024**; and~~
- (b) ~~expires on the date that is 3 years after commencement.~~

- (1) In this section,—

3-year period means the period that—

- (a) commences on the date on which the Resource Management (Freshwater and Other Matters) Amendment Act **2024** comes into force; and
- (b) expires on the date that is 3 years after that date

commencement means the date on which the Resource Management (Freshwater and Other Matters) Amendment Act **2024** comes into force

NPSIB SNA means a significant natural area as defined in clause 1.6 of the NPSIB 2023.

- (2) The following provisions of the NPSIB 2023 do not apply during the 3-year period:

- (a) clause 2.2, Policy 6 (which requires a consistent approach in identifying significant indigenous vegetation and significant habitats of indigenous fauna as NPSIB SNAs):
- (b) clause 3.8(1), (6), and (8) (which requires a territorial authority to conduct assessments to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna that qualify as NPSIB SNAs): 5
- (c) clause 3.9(1) (which requires a territorial authority to notify a plan or plan change to include areas identified as qualifying as NPSIB SNAs):
- (d) clause 3.9(3) (which requires that a local authority must, when doing its 10-yearly plan review, assess its district in accordance with clause 3.8(1) and (2) to determine whether changes are needed). 10
- (3) ~~Clause 4.1~~ 4.1(1) of the NPSIB 2023 (which requires a local authority to give effect to the NPSIB 2023 as soon as reasonably practicable)—
 - (a) does not apply during the 3-year period in relation to clause 3.8(5) of the NPSIB 2023 and the provisions of the NPSIB 2023 specified in **subsection (2)**; but 15
 - (b) continues to apply in relation to the other provisions of the NPSIB 2023.
- ~~(4) This section does not affect any function or requirement under other provisions of this Act relating to indigenous biological diversity, including in relation to areas of significant indigenous vegetation or significant habitats of indigenous fauna.~~ 20
- (4) This section does not affect—
 - (a) any function or requirement under other provisions of this Act relating to indigenous biological diversity, areas of significant indigenous vegetation, or areas of significant habitats of indigenous fauna; or 25
 - (b) any obligations of local authorities and other decision makers under this Act to give effect to provisions in policy statements and plans relating to indigenous biological diversity.
- (4A) However, if, during the 3-year period, a new area of significant indigenous vegetation or significant habitat of indigenous fauna is included in a proposed policy statement, proposed plan, or change,— 30
 - (a) the new area is not an NPSIB SNA regardless of how it is described in that document; and
 - (b) the NPSIB 2023 does not apply to the new area. 35
- ~~(5) However, an area of significant indigenous vegetation or significant habitat of indigenous fauna that, after commencement, is included in a policy statement, proposed policy statement, plan, proposed plan, or change is not to be treated as an SNA regardless of how it is described in that document.~~

- (6) ~~This section does not affect any SNAs that are included in a policy statement, proposed policy statement, plan, proposed plan, or change before commencement (see also **clause 40 of Schedule 12**).~~
- (6) This section does not affect—
- (a) any NPSIB SNA included in a policy statement, proposed policy statement, plan, proposed plan, or change before commencement (see also **clause 40 of Schedule 12**); or 5
- (b) any of the following matters that commenced but were not completed before commencement (see also **clause 40 of Schedule 12**):
- (i) a proposed policy statement, proposed plan, or change (a **planning process**) that has been notified under Schedule 1; and 10
- (ii) the identification, modification, or removal of an area to give effect to decisions on that planning process.
- (7) ~~The Minister for the Environment may amend the NPSIB 2023 to make any changes that the Minister is satisfied are required as a result of the enactment of the Resource Management (Freshwater and Other Matters) Amendment Act 2024 to—~~ 15
- (a) ~~remove an inconsistency or a potential inconsistency between the NPSIB 2023 and that Act; or~~
- (b) ~~clarify the relationship between the NPSIB 2023 and that Act.~~ 20
- (8) ~~In this section,—~~
- ~~**commencement** means the commencement of the Resource Management (Freshwater and Other Matters) Amendment Act 2024~~
- ~~**SNA** means a significant natural area as defined in clause 1.6 of the NPSIB 2023.~~ 25
- (9) ~~An amendment under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~
- (10) This section is repealed on the close of the date of expiry of the 3-year period.
- 22 Section 92 amended (Further information, or agreement may be requested)** 30
- After section 92(2), insert:
- (2A) However, a consent authority must not request further information nor commission a report on clause 1.3(5) or 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020).
- 23 Section 104 amended (Consideration of applications)** 35
- After section 104(2E), insert:

Resource Management (Freshwater and Other Matters) Amendment Bill		
Part 1 cl 23A		
(2F)	When considering an application and any submissions received, a consent authority must not have regard to clause 1.3(5) or 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020).	
(2G)	Subsection (2F) applies despite subsection (1)(b)(iii) and any other provision of this Act.	5
23A	<u>Section 107 amended (Restriction on grant of certain discharge permits)</u>	
(1)	In section 107(1), after “subsection (2)”, insert “or (2A) ”.	
(2)	After section 107(2), insert:	
(2A)	<u>A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15A that may allow the effects described in subsection (1)(g) if the consent authority—</u>	10
(a)	<u>is satisfied that, at the time of granting, there are already effects described in subsection (1)(g) in the receiving waters; and</u>	
(b)	<u>imposes conditions on the permit; and</u>	
(c)	<u>is satisfied that those conditions will contribute to a reduction of the effects described in subsection (1)(g) over the duration of the permit.</u>	15
24	Section 360B amended (Conditions to be satisfied before regulations made under section 360A)	
	In section 360B(2)(d), replace “32” with “32AB”.	
25	Schedule 1 amended	20
	In Schedule 1, clause 47(1), delete “51.”.	
26	Schedule 4 amended	
	In Schedule 4, after clause 2(2), insert:	
(2A)	An assessment required by subclauses (1)(g) and (2) must not include an assessment of the activity against clause 1.3(5) or 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020).	25
(2B)	Subclause (2A) applies despite subclauses (1)(g) and (2) and any other provision of this Act.	
27	Schedule 12 amended	
	In Schedule 12,—	30
(a)	insert the Part set out in Schedule 1 of this Act as the last Part; and	
(b)	make all necessary consequential amendments.	

Part 2 Other matters

28 Amendments to secondary legislation made under Resource Management Act 1991

Amend the secondary legislation specified in **Schedule 2** as set out in that schedule. 5

29 Amendment to Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

Section 30 amends the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

30 Section 31 amended (Effect on other resource management documents)

Replace section 31(3) with:

10

- (3) A person who, under a process established under section 46A of the Resource Management Act 1991, prepares a report and recommendations for a proposed national policy statement that directly affects ngā rohe moana must consider the environmental covenant.**

Schedule 1

New Part 7 inserted into Schedule 12

s 27

Part 7

Provisions relating to Resource Management (Freshwater and Other Matters) Amendment Act 2024

39 Interpretation

In this Part, unless the context otherwise requires,—

amendment Act means the Resource Management (Freshwater and Other Matters) Amendment Act 2024

commencement means the date ~~that~~ on which the amendment Act comes into force

specified provisions relating to the NPSFM 2020 means—

- (a) **section 92(2A)**; and
- (b) **section 104(2F) and (2G)**; and
- (c) **clause 2(2A) and (2B) of Schedule 4.**

40 Effect of certain amendments on significant natural areas before commencement

- (1) The NPSIB 2023, as it was immediately before commencement but subject to the specified amendments, continues to apply in respect of an NPSIB SNA described in **section 78(6)(a)** or any matter described in **section 78(6)(b).**

- (2) In this clause, **specified amendments** means the amendments made by **section 28 and Schedule 2** of the amendment Act to—

(aaa) clause 3.8(5) of the NPSIB 2023:

- (a) clause 3.11(1)(a)(ii) and (iv) of the NPSIB 2023;
- (b) clause 4.2 of the NPSIB 2023.

~~41 Specified provisions relating to NPSFM 2020~~

- (1) ~~The specified provisions relating to the NPSFM 2020 apply only in relation to an application for a resource consent that is lodged with a consent authority in accordance with section 88 on and from commencement.~~

- (2) ~~To avoid doubt, an application referred to in **subclause (1)** includes any application that is treated as a new application under section 88(4) and lodged with a consent authority on and from commencement.~~

41	<u>Specified provisions relating to NPSFM 2020</u>	
	<u>The specified provisions relating to the NPSFM 2020 apply to an application for a resource consent that is lodged with a consent authority—</u>	
	(a) <u>on or after commencement; or</u>	
	(b) <u>before commencement if the consent authority has not, before commencement, served notice of its decision on the application.</u>	5
42	Repeal of specified provisions relating to NPSFM 2020 by Order in Council	
(1)	The Governor-General in Council may, on the recommendation of the Minister, repeal the specified provisions relating to the NPSFM 2020.	10
(2)	The Minister must make a recommendation under this clause when recommending the approval of a new national policy statement under section 52 to replace the NPSFM 2020.	
(3)	An Order in Council under this clause is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	15
43	Effect of certain amendments on-existing applications for resource consents	
(1)	The amendments affecting coal mining do not apply to an application for a resource consent that is lodged with a consent authority before commencement regardless of any provision to the contrary in this Act.	20
(1)	<u>The amendments affecting coal mining apply to an application for a resource consent that is lodged with a consent authority—</u>	
	(a) <u>on or after commencement; or</u>	
	(b) <u>before commencement if the consent authority has not, before commencement, served notice of its decision on the application.</u>	25
(2)	In this clause, the amendments affecting coal mining mean <u>means</u> the amendments made by section 28 and Schedule 2 of the amendment Act to—	
	(a) regulation 45D(7) and (8) of the Resource Management (National Environment Standards for Freshwater) Regulations 2020:	
	(b) clause 3.22(1)(e)(i) of the NPSFM 2020:	30
	(c) clause 3.11(1)(a)(ii) and (iv) of the NPSIB 2023.	
44	<u>Effect of amendments to section 107 on applications for discharge or coastal permits</u>	
	<u>The amendments made to section 107 by section 23A of the amendment Act apply to an application for a discharge permit or coastal permit that is lodged with a consent authority—</u>	35
	(a) <u>on or after commencement; or</u>	

- (b) before commencement if—
- (i) the consent authority has not, before commencement, served notice of its decision on the application; or
 - (ii) the consent authority's decision on the application was the subject of judicial review proceedings and was referred back to the consent authority for reconsideration, as long as the consent authority has not, before commencement, served notice of that decision.

5

Schedule 2
Amendments to secondary legislation made under Resource
Management Act 1991

s 28

~~Resource Management (Freshwater Farm Plans) Regulations 2023 (SL 2023/113)~~ 5

~~In regulation 3, replace the definition of **critical source area** with:~~

~~**critical source area** means a landscape feature such as a gully, swale, or depression that —~~

- ~~(a) accumulates runoff from adjacent land; and~~
- ~~(b) delivers, or has the potential to deliver, 1 or more contaminants to 1 or more rivers, lakes, wetlands, or drains, or their beds (regardless of whether there is any water in them at the time)~~ 10

Resource Management (National Environment Standards for Freshwater)
Regulations 2020 (LI 2020/174)

~~In regulation 3, revoke the definition of **critical source area**.~~ 15

~~Revoke regulation 26.~~

~~In regulation 26A(1), delete “in accordance with regulation 26”.~~

~~In regulation 26B(1), delete “in accordance with regulation 26”.~~

~~Revoke regulations 27 to 31.~~

In Part 2, replace subpart 3 with: 20

Subpart 3—Intensive winter grazing

26 Minimum setback for land used for intensive winter grazing

An area of land that is used for intensive winter grazing on a farm must be located at least 5 m away from the bed of any river, lake, wetland, or drain (regardless of whether there is any water in it at the time). 25

27 Critical source area

The following requirements apply in relation to any critical source area that is within, or adjacent to, any area of land that is used for intensive winter grazing:

- (a) the critical source area must not be grazed; and
- (b) vegetation must be maintained as ground cover over all of the critical source area; and 30
- (c) maintaining that vegetation must not include cultivation or harvesting of annual forage crops.

Revoke regulation 45D(7) and (8).

Schedule 2	Resource Management (Freshwater and Other Matters) Amendment Bill	
Resource Management (Stock Exclusion) Regulations 2020 (LI 2020/175)		
Revoke regulation 3(4) and (7).		
In regulation 3A, replace “14 to 18” with “16 and 17”.		
In regulation 4, revoke the definition of low slope land .		
In regulation 7, replace “12(b), or 14(b)” with “or 12(b)”.		
		5
Revoke regulations 14, 15, and 18.		
Resource Management (Infringement Offences) Regulations 1999 (SR 1999/359)		
In Schedule 1A, table, revoke the items relating to regulations 14(a), 14(b), 15, and 18.		
National Policy Statement for Freshwater Management 2020		
		10
Replace clause 3.22(1)(e)(i) with:		
(i) the activity is necessary for the purpose of the extraction of minerals and ancillary activities; and		
National Policy Statement for Indigenous Biodiversity 2023		
In clause 3.8(5), replace “four” with “six”.		
		15
In clause 3.11(1)(a)(ii), delete “; but this subparagraph does not apply to any mineral extraction that is coal mining, and subparagraph (iv) applies instead”.		
In clause 3.11(1)(a)(iii), replace “New Zealand:” with “New Zealand; and”.		
Revoke clause 3.11(1)(a)(iv).		
In clause 4.2(1), replace “subpart 2 of Part 3 (significant natural areas)” with “clause 3.16 (indigenous biodiversity outside SNAs)”.		
		20
After clause 4.2(1), insert:		
(2) Local authorities must publicly notify any policy statement or plan or changes to these necessary to give effect to subpart 2 of Part 3 (except clause 3.16) by 31 December 2030.		
		25

	Legislative history
23 May 2024	Introduction (Bill 47–1)
28 May 2024	First reading and referral to Primary Production Committee