

DRAFT FOR CONSULTATION

Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022

Governor-General

Order in Council

At Wellington this day of 2022

Present:
in Council

These regulations are made under section 43 of the Resource Management Act 1991—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for the Environment made in accordance with section 44 of that Act.

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Regulations

1 Title

These regulations are the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022.

2 Commencement

These regulations come into force on [to come].

3 Principal regulations

These regulations amend the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

Part 1

Amendments to principal regulations

4 Regulation 3 amended (Interpretation)

- (1) In regulation 3, revoke the definition of **improved pasture**.
- (2) In regulation 3, insert in their appropriate alphabetical order:

biosecurity has the meaning given by the National Policy Statement for Freshwater Management

cleanfill area has the meaning given by the National Planning Standards 2019

landfill has the meaning given by the National Planning Standards 2019

natural inland wetland has the meaning given by the National Policy Statement for Freshwater Management

wetland maintenance has the meaning given by the National Policy Statement for Freshwater Management

5 Regulation 10 amended (Discretionary activities)

Replace regulation 10(3)(a) with:

- (a) the base area of the feedlot must be sealed so that water cannot permeate at a rate greater than 10^{-9} m/s; and

6 Regulation 13 amended (Permitted activities: stockholding areas for larger and older cattle)

Replace regulation 13(4)(a) with:

- (a) the base area of the stockholding area must be sealed so that water cannot permeate at a rate greater than 10^{-9} m/s; and

7 Regulation 24 amended (Discretionary activities: conditions on granting resource consents)

Replace regulation 24(1) with:

- (1) A resource consent for an activity that is a discretionary activity under this subpart must not be granted unless the consent authority is satisfied that granting the consent will not result in an increase in either of the following:
 - (a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020;
 - (b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.

8 Regulation 32 amended (Interpretation of this subpart)

In regulation 32, definition of **synthetic nitrogen fertiliser**, paragraph (c)(i), after “is”, insert “wholly”.

9 Cross-heading above regulation 38 amended

In the cross-heading above regulation 38, after “*Restoration*”, insert “, *wetland maintenance, and biosecurity*”.

10 Regulation 38 amended (Permitted activities)

- (1) In regulation 38(1)(a), after “restoration”, insert “, wetland maintenance, or biosecurity”.
- (2) In regulation 38(2)(a), after “restoration”, insert “, wetland maintenance, or biosecurity”.
- (3) Replace regulation 38(3) with:
 - (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, wetland maintenance, or biosecurity; and
 - (b) complies with the conditions.
- (4) In regulation 38(4)(b), replace “occur over” with “affect”.
- (5) After regulation 38(4)(b), insert:
 - (c) if the activity is a discharge of water, it must not be a restricted discretionary activity as described in regulation 39(3A).
- (6) Replace regulation 38(5) with:
 - (5) However,—
 - (a) the condition in subclause (4)(b) does not apply if the earthworks or land disturbance is for planting for restoration or wetland maintenance purposes; and

- (b) the condition in subclause (4)(b) does not apply if the clearance of vegetation, the earthworks, or the land disturbance is for clearance,—
 - (i) for biosecurity purposes, of non-indigenous vegetation; or
 - (ii) that is demonstrably necessary for biosecurity purposes, of indigenous vegetation; or
 - (iii) using hand-held tools, for restoration or wetland maintenance, of non-indigenous vegetation; and
 - (c) the area limit in the condition in subclause (4)(b) does not apply to the clearance of non-indigenous vegetation (other than clearance to which paragraph (b)(iii) of this subclause applies) for restoration or wetland maintenance in accordance with a restoration plan provided to the council at least 10 working days before the clearance begins.
- (6) The restoration plan referred to in subclause (5)(c) must—
- (a) assess any restoration or wetland maintenance activities against the relevant general conditions in regulation 55; and
 - (b) address the matters in Schedule 2 that are relevant to the activity proposed.

11 Regulation 39 amended (Restricted discretionary activities)

- (1) In regulation 39(1)(a), after “restoration”, insert “, wetland maintenance, or biosecurity”.
- (2) In regulation 39(2)(a), after “restoration”, insert “, wetland maintenance, or biosecurity”.
- (3) In regulation 39(3), replace “diversion, or discharge” with “or diversion”.
- (4) After regulation 39(3), insert:
 - (3A) The discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if—
 - (a) it is for the purpose of natural wetland restoration, wetland maintenance, or biosecurity; and
 - (b) there is a hydrological connection between the discharge and a natural wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland; and
 - (d) it does not comply with the condition in regulation 38(4)(a).

12 Regulation 40 amended (Permitted activities)

After regulation 40(4)(c), insert:

- (d) if the activity is a discharge of water, it must not be a restricted discretionary activity as described in regulation 41(3A).

13 Regulation 41 amended (Restricted discretionary activities)

- (1) In regulation 41(3), replace “diversion, or discharge” with “or diversion”.
- (2) After regulation 41(3), insert:
 - (3A) The discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if—
 - (a) it is for the purpose of scientific research; and
 - (b) there is a hydrological connection between the discharge and a natural wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland; and
 - (d) it does not comply with the condition in regulation 40(4)(a), but does comply with the conditions in subclause (4) of this regulation.

14 Regulation 42 amended (Restricted discretionary activities)

- (1) In regulation 42(3), replace “diversion, or discharge” with “or diversion”.
- (2) After regulation 42(3), insert:
 - (3A) The discharge of water within, or within a 100 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) there is a hydrological connection between the discharge and a natural wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland; and
 - (d) it complies with the conditions.

15 Regulation 43 amended (Permitted activities)

After regulation 43(4)(d), insert:

- (e) if the activity is a discharge of water, it must not be a restricted discretionary activity as described in regulation 44(3A).

16 Regulation 44 amended (Restricted discretionary activities)

- (1) In regulation 44(3), replace “diversion, or discharge” with “or diversion”.
- (2) After regulation 44(3), insert:
 - (3A) The discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if—
 - (a) it is for the purpose of maintaining a wetland utility structure; and

- (b) there is a hydrological connection between the discharge and a natural wetland; and
- (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland; and
- (d) it does not comply with any of the conditions in regulation 43(4), but does comply with the conditions in subclause (4) of this regulation.

17 Regulation 45 amended (Discretionary activities)

- (1) In regulation 45(4), replace “diversion, or discharge” with “or diversion”.
- (2) After regulation 45(4), insert:
- (5) The discharge of water within, or within a 100 m setback from, a natural wetland is a discretionary activity if—
 - (a) it is for the purpose of constructing specified infrastructure; and
 - (b) there is a hydrological connection between the discharge and a natural wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.

18 New regulations 45A to 45D and cross-headings inserted

After regulation 45, insert:

Quarrying

45A Discretionary activities

- (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of quarrying.
- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of quarrying.
- (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural inland wetland is a discretionary activity if it—
 - (a) is for the purpose of quarrying; and
 - (b) results, or is likely to result, in the complete or partial drainage of all or part of the natural inland wetland.
- (4) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of quarrying.
- (5) The discharge of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if—
 - (a) it is for the purpose of quarrying; and

- (b) there is a hydrological connection between the discharge and a natural inland wetland; and
- (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.

Landfills and cleanfill areas

45B Discretionary activities

- (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of constructing or operating a landfill or a cleanfill area.
- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of constructing or operating a landfill or a cleanfill area.
- (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural inland wetland is a discretionary activity if it—
 - (a) is for the purpose of constructing or operating a landfill or a cleanfill area; and
 - (b) results, or is likely to result, in the complete or partial drainage of all or part of the natural inland wetland.
- (4) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of constructing or operating a landfill or a cleanfill area.
- (5) The discharge of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if—
 - (a) it is for the purpose of constructing or operating a landfill or a cleanfill area and
 - (b) there is a hydrological connection between the discharge and a natural inland wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.

Urban development

45C Restricted discretionary activities

- (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development.

- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development.
- (3) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development.
- (4) The discharge of water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if—
 - (a) it is for the purpose of constructing urban development; and
 - (b) there is a hydrological connection between the discharge and a natural inland wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.

Matters to which discretion restricted

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

Mining

45D Discretionary activities

- (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of mining.
- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of mining.
- (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural inland wetland is a discretionary activity if it—
 - (a) is for the purpose of mining; and
 - (b) results, or is likely to result, in the complete or partial drainage of all or part of the natural inland wetland.
- (4) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of mining.
- (5) The discharge of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if—
 - (a) it is for the purpose of mining; and
 - (b) there is a hydrological connection between the discharge and a natural inland wetland; and

- (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural inland wetland.
- (6) On and from 1 January 2030, mining for coal, other than coking coal, is excluded from the purposes for which consent may be obtained under this regulation.

19 Regulation 46 amended (Permitted activities)

- (1) Replace regulation 46(4)(a) with:
 - (a) the activity must comply with the general conditions on natural wetland activities in regulation 55, but regulation 55(2), (3)(b) to (d), and (5) do not apply—
 - (i) if the activity is for the purpose of maintaining or operating hydro-electricity infrastructure; or
 - (ii) as conditions on the activity as it relates to the maintenance and operation of public flood control, flood protection, or drainage works; and
- (2) Replace regulation 46(4)(b) with:
 - (b) the activity must not be for the purpose of increasing the size of the specified infrastructure or other infrastructure unless the increase is to provide for the passage of fish in accordance with these regulations; and
- (3) After regulation 46(4)(e), insert:
 - (f) if the activity is a discharge of water, it must not be a restricted discretionary activity as described in regulation 47(3A).

20 Regulation 47 amended (Restricted discretionary activities)

- (1) In regulation 47(3), replace “diversion, or discharge” with “or diversion”.
- (2) After regulation 47(3), insert:
 - (3A) The discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if—
 - (a) it is for the purpose of maintaining or operating specified infrastructure or other infrastructure; and
 - (b) there is a hydrological connection between the discharge and a natural wetland; and
 - (c) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland; and
 - (d) it does not comply with any of the conditions in regulation 46(4), but does comply with the conditions in subclause (5) of this regulation.
- (3) Replace regulation 47(6) with:

- (6) However,—
- (a) the condition in subclause (5)(c) does not apply to any part of the bed that is in direct contact with a part of the specified infrastructure or other infrastructure that was constructed for maintenance purposes; and
 - (b) the 30-day limit in the condition in subclause (5)(c) does not apply if the maintenance and operation of the infrastructure necessitates the ongoing taking, use, damming, diversion, or discharge of water.

21 Regulation 52 amended (Non-complying activities)

In regulation 52(2), replace “diversion, or discharge” with “or diversion”.

22 Regulation 53 amended (Prohibited activities)

In regulation 53(2), replace “diversion, or discharge” with “or diversion”.

23 Regulation 54 amended (Non-complying activities)

(1) In regulation 54(c), replace “diversion, or discharge” with “or diversion”.

(2) After regulation 54(c), insert:

- (d) the discharge of water within, or within a 100 m setback from, a natural wetland if—
 - (i) there is a hydrological connection between the discharge and the natural wetland; and
 - (ii) there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.

24 Regulation 55 amended (General conditions on natural wetland activities)

Replace regulation 55(3)(e) with:

- (e) debris and sediment must not be placed—
 - (i) within a setback of 10 m from any natural wetland; or
 - (ii) in a position where it may enter any natural wetland.

25 Regulation 75 replaced (Local authorities may charge for monitoring permitted activities)

Replace regulation 75 with:

75 What local authorities may and must not charge for

- (1) Subject to subclause (2), a local authority may charge for monitoring activities that are permitted activities under these regulations, if the authority is responsible for monitoring those activities.

- (2) Despite subclause (1), a local authority must not charge to receive or review notifications of intended permitted activity work (including restoration plans, where required,) for wetland restoration, wetland maintenance, or biosecurity.

26 Schedule 4 amended

In Schedule 4, checklist of conditions for harvesting, item 7, replace “outside a 10 m setback from the natural wetland” with “within a natural wetland”.

Part 2

Consequential amendments to Resource Management (Stock Exclusion Regulations) 2020

27 Principal regulations

This Part amends the Resource Management (Stock Exclusion Regulations) 2020.

28 Regulation 4 amended (Interpretation)

- (1) In regulation 4, revoke the definition of **improved pasture**.

- (2) In regulation 4, insert in its appropriate alphabetical order:

National Policy Statement for Freshwater Management means the National Policy Statement for Freshwater Management whose approval under section 52 of the Act was notified in August 2020 (as amended or replaced from time to time)

- (3) In regulation 4, replace the definition of **natural wetland** with:

natural wetland has the meaning given by the National Policy Statement for Freshwater Management

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

[To come.]

Regulatory impact statement

[To come, if any.]

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry for the Environment.