



Overview of technical corrections and clarifications in the NPS-FM exposure draft

For consultation 31 May to 10 July 2022

Purpose of this document

Since the National Policy Statement for Freshwater Management 2020 (NPS-FM) was gazetted in August 2020, the Ministry for the Environment (the Ministry) has maintained a record of technical issues and provisions that could benefit from clarification.

The Ministry is now seeking feedback on the proposed drafting of technical amendments to the NPS-FM, which aim to improve clarity of policies, reduce complexity of drafting and in some cases correct errors. The changes do not alter the policy intent.

This document provides a description and rationale for the proposed changes to the NPS-FM to assist in reading the proposed changes in the exposure draft.

Best information

Clause 1.6 of the NPS-FM provides direction on how councils should proceed in the absence of complete and scientifically robust data. It makes it clear that councils can use a range of information sources and must not delay making decisions solely because of uncertainty about the quality or quantity of the information available.

Currently, drafting constrains the application of this clause to parts of the NPS-FM that specifically require the use of 'best information available'. These parts direct councils to identify baseline states, set target attribute states, set resource use limits and set environmental flows and levels.

However, other parts of the NPS-FM that direct councils to identify take limits and manage attributes affected by nutrients, do not currently require the use of best information available. This is an unintended outcome of specifically referencing 'best information available' in some parts but not others, of the NPS-FM.

Feedback to date has queried whether clause 1.6 of the NPS-FM should apply to all direction under the NPS-FM (rather than specific parts), to make its application more straightforward. We consider it was always the intention that clause 1.6 apply in the same way across the NPS-FM.

Proposed changes apply clause 1.6 to all direction under the NPS-FM. This is consistent with the purpose of the clause: to ensure regional councils make use of all available information and implement the NPS-FM without further delay.

Transparent decision-making

Clause 3.6 of the NPS-FM directs regional councils to make decisions relating to tangata whenua involvement and developing action plans in a transparent way. It requires councils to publish the matters considered and the reasons for decisions reached.

This clause was included because decisions relating to tangata whenua involvement and developing action plans may not be adequately recorded by processes associated with development of a regional plan (ie, hearings under Schedule 1 of the RMA or a regional council's evaluation report prepared under section 32 of the RMA). How councils give effect to other parts of the NPS-FM (eg, limit-setting) should be transparent in the content of regional plans and supporting documents, and adequately addressed by such processes.

Feedback to date indicates the distinction is not well understood. Proposed changes will apply clause 3.6 to all decisions made under the NPS-FM. This will remove any doubt as to what is required. We consider existing processes under the RMA will result in transparent decision-making (further supported by the ability to appeal or judicially review decisions and the Local Government Official Information and Meetings Act 1987). Councils can record the relevant information in assorted documents they routinely produce through the planning process (eg, consultation documents, an evaluation report prepared under section 32 of the RMA etc).

Special provisions for attributes affected by nutrients

Clause 3.13 of the NPS-FM directs councils to achieve target attribute states for nutrient attributes and attributes affected by nutrients (eg, periphyton, macroinvertebrates etc) by managing dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorus (DRP). It describes a process by which regional councils derive the instream concentrations or instream loads and exceedance criteria needed to achieve target attribute states for a range of ecosystem health attributes and outcomes for downstream receiving environments. Once derived, clauses 3.12 and 3.14 direct councils on how to achieve these.

Feedback to date indicates that these provisions are unclear and may unnecessarily add to the complexity of managing nutrients. Specific issues are described in more detail below, including how the proposed changes address them.

Distinctions between limit-setting and action-planning attributes

Clauses 3.12(1) and (2) could be read to mean that regional councils can take different approaches to achieving target attribute states, depending on whether DIN and DRP are derived from an attribute listed in Appendix 2A (a limit-setting attribute) or Appendix 2B (an action-planning attribute). The clauses could be read as meaning regional councils do not need to set limits on resource use to achieve DIN and DRP outcomes and can instead rely on action plans if they were derived from action-planning attributes.

This is inconsistent with clause 3.14(3), which specifies that limits on resource use must ensure DIN and DRP outcomes determined under clause 3.13 are achieved.

In addition, any implication that regional councils do not need to set limits on resource use to achieve desired outcomes for nitrogen is inconsistent with the wider NPS-FM. Irrespective of clause 3.13, regional councils must set target attribute states for Nitrate (toxicity) in rivers and Total Nitrogen in lakes and must set limits to achieve these. All regional plans will need to include limits on resource use to achieve desired outcomes for nitrogen.

Proposed drafting to 3.12 and 3.13 clarifies the intended approach to managing nutrients as needed to achieve target attribute states regardless of the specific attribute or attribute type.

Distinctions between periphyton and other attributes

Clause 3.13(3)(a) implies that if the FMU supports conspicuous periphyton growth, the regional council does not need to derive DIN and DRP to achieve other target attribute states (eg, for macroinvertebrates).

This is inconsistent with clause 3.13(1) ie, requiring regional councils to manage nitrogen and phosphorus as needed to achieve desired outcomes for other ecosystem health attributes, *including macroinvertebrates*.

This is also unnecessarily complex. Drafting does not need to distinguish between periphyton and other attributes affected by nutrients. The purpose of clause 3.13 is to ensure councils take into account the needs of different target attribute states and downstream receiving environments, and then derive DIN and DRP as needed to achieve those.

Other errors and use of unclear terminology

Clause 3.13 contains inconsistent references to DIN, DRP, instream concentrations and instream loads. For example, clause 3.13(3)(b) refers to nitrogen instead of DIN.

Feedback also indicates that references to 'exceedance criteria' are not well understood. This term is intended to refer to temporal exceedance criteria when describing a nutrient concentration (eg, median, 95th percentile or otherwise).

Proposed changes

Proposed changes attempt to address these issues by simplifying the drafting of clause 3.13 and related provisions to focus on policy intent (ie, requiring regional councils to manage nutrients as needed to achieve desired outcomes for other ecosystem health attributes) and clarify how the clause relates to limit-setting.

Simplified drafting avoids unnecessary distinctions between attribute types, or periphyton and other attributes. Once DIN and DRP outcomes are derived under clause 3.13, they are simply treated as target attribute states in their own right and regional councils are directed to set limits on resource use under clause 3.12(1).

Clause 3.14 includes consequential changes, for consistency with other relevant clauses.