

SUBMISSION ON DISCUSSION DOCUMENT “FRESHWATER FARM PLAN REGULATIONS”

SUBMITTER DETAILS

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1. Introduction

- 1.1. This is a submission on the discussion document “Freshwater farm plan regulations”, Publication Number ME 1577 (**Discussion Document**). The Discussion Document seeks feedback on the regulations needed to give effect to the freshwater farm plan process set out in Part 9A of the Resource Management Act 1991 (**RMA**).
- 1.2. Environmental Defence Society (**EDS**) is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning in order to promote better environmental outcomes in resource management. EDS has had an extensive involvement in freshwater matters, having litigated since the early 1970s to both protect freshwater quality and support the promulgation of water conservation orders. EDS has also been a key player in policy reform relating to freshwater, initiating the Land and Water Forum and holding placements on subsequent groups.
- 1.3. Greenpeace is a global, independent campaigning organisation that acts to protect and conserve the environment and to promote peace. Greenpeace is one of the world’s largest and oldest environmental organisations, operating for half a century, since 1971, and now works in more than 55 countries. The New Zealand branch of Greenpeace (Greenpeace Aotearoa) was founded in 1974 and has grown to represent 35,000 financial donors and many tens of thousands of supporters. Greenpeace has an interest in Freshwater Farm Plan Regulations because degraded freshwater, contaminated drinking water, biodiversity loss and climate change are all results of accelerated intensive land use practices such as

dairy conversions, and affect the ability of current and future generations of people and nature to survive and thrive. Greenpeace Aotearoa's preference is for input controls and tighter restrictions and better reporting and regulation of synthetic nitrogen fertiliser. This is in order to avoid the need for Freshwater Farm Plans to address nutrient run off from too much fertiliser and too many cows. At source (producer and processor) controls are more efficient, effective, economical and transparent than on-farm management approaches.

- 1.4. Fish and Game is the statutory manager for sports fish and game, with functions conveyed under the Conservation Act 1987. The organisation is an affiliation of 13 separate Fish and Game Councils – 12 regional Councils and one national Council. Together, these organisations represent roughly 140,000 anglers and hunters.
- 1.5. Forest & Bird is New Zealand's leading independent conservation organisation, which has played an important role in preserving New Zealand's environment and native species since 1923. The society is independently funded by private subscription, donations, and bequests with a mission to protect New Zealand's unique ecological values, flora and fauna, and natural habitat through the sustainable management of indigenous biodiversity, natural landscapes, rivers, lakes, and coastal environments. With branches throughout the country and a strong regional presence Forest & Bird is actively engaged in RMA planning processes at a local and national level with a key focus on improving freshwater habitats for indigenous species.
- 1.6. The state of freshwater in Aotearoa New Zealand is well documented and the recent publication by the Ministry for the Environment and Statistics New Zealand, *Our Freshwater 2020*¹, paints a damning picture. Our native freshwater species and ecosystems are under threat and water is polluted in most areas (urban, farming and forestry). Half of Aotearoa New Zealand's river length is in pastoral catchments, the majority of which are polluted with nutrients, pathogens and suspended sediment.
- 1.7. The above organisations (collectively, **the organisations**) have a long-standing interest in the management of freshwater in Aotearoa New Zealand. In respect of freshwater farm plans, the collective vision is largely aligned. This submission sets out the joint position of the organisations.

2. Summary of submission

- 2.1. The Discussion Document sets options for the content of freshwater farm plans, how they will be certified and audited and the approach for implementation. As freshwater farm plans are, in some cases, intended to provide an alternative pathway for achieving national or regional regulations, it is essential that they are robustly tested and capable of achieving regulated outcomes.

¹ Ministry for the Environment & Stats NZ (2020) New Zealand's Reporting Series: *Our Freshwater 2020*

2.2. The organisations consider that in order for the freshwater farm plan system to achieve this, some key concerns must be addressed:

- There must be a clear line of sight between national policy regional plan objectives, targets and rules, and freshwater farm plans
- Regional plans must include clear, unambiguous rules that can feasibly be inserted into freshwater farm plans
- Outcomes to be achieved on-farm must be specified in regulation, not left to unenforceable guidance documents
- Freshwater farm plans should include meaningful base information, and actions to avoid, mitigate or remedy risks identified should be sufficiently detailed and timeframes should be included for the implementation of such actions
- Certification and audit processes should be owned by the regional council. This will not only reduce the very real risk of client capture, but will also create alignment between the two systems and enable a catchment-wide approach to be taken
- Government should anticipate the ways in which for-profit companies could exploit this farm planning regime and protect the public interest from this
- Freshwater farm plans should be publicly available, with commercially sensitive information redacted, to prevent information asymmetry
- The roll out of freshwater farm plans should occur as soon as possible, on a catchment-by-catchment basis. Catchments that are approaching tipping points should be identified and prioritised.

3. Context

3.1. It is essential to recognise the history of farm planning in New Zealand, particularly why it has failed to respond appropriately to and/or avoid the increase of impacts on freshwater. We do this to highlight why New Zealand has arrived at the need for greater intervention from government and in order to avoid repeating past mistakes in this reform package.

3.2. In 2003, the Dairying and Clean Streams accord was established to “reduc[e] the impacts of dairying on the quality of New Zealand streams, rivers, lakes, ground water and wetlands”.² As part of the accord, a commitment was made to get 100 per cent of dairy farms to have nutrient management budgets (a part of farm planning). As we know, the nutrient losses from dairying to waterways, despite nutrient management budgets, has continued to increase post-2003.³

² Full Dairying and Clean Streams Accord (2003) can be accessed [here](#).

³ Julian, Jason & de Beurs, Kirsten & Owsley, Braden & Davies-Colley, Robert & Ausseil, Anne-Gaelle. (2017). River water quality changes in New Zealand over 26 years: Response to land use intensity. *Hydrology and Earth System Sciences*. 21. 1149-1171. 10.5194/hess-21-1149-2017.

- 3.3. This industry-driven attempt to use farm planning to deliver on the objective of reducing impacts on waterways failed because:
- (a) it lacked regulatory oversight and a system of accountability at farm and/or industry body level;
 - (b) nutrient management budgets were not determined by the needs of the catchment and asked only for nutrient losses to be ‘minimised’; and
 - (c) it was focused on mitigating outputs of pollution but ignored the need to also address excessively high farm system inputs such as fertiliser that would inevitably result in pollution losses to the environment.
- 3.4. Please note, the same failures apply to the 2013 Sustainable Dairying Accord that focused on, “[a] new set of national good management practice standards aimed at lifting environmental performance on dairy farms”.⁴
- 3.5. Additionally, we provide a careful review of the first generation of freshwater farm plans, Farm Environment Plans that have been in place in Canterbury since 2016, for guidance. The failings of this system should be a salutary lesson going forward. A detailed account of this is set out in Appendix A.
- 3.6. It is vital that these freshwater farm plan regulations recognise these past failures and establish a robust regulatory system that can achieve the three objectives of the Essential Freshwater reforms.
- 3.7. The organisations support the development of regulations to provide structure to the freshwater farm plan system and consider this will ensure consistency across the system.
- 3.8. It must be noted however that freshwater farm plans do not set out the regulatory obligations in respect of freshwater, rather they are a tool for delivering such outcomes. Freshwater farm plans assist farmers in understanding what their obligations are and how limits, targets and other outcomes will be achieved within their individual farm system.
- 3.9. The regulatory obligations are found in higher order documents, such as the NPSFM2020, NES-FW, section 360 regulations and regional plan rules. It is these obligations that will be the drivers for change and the achievement of the three objectives of the reform. As such the wider legislative and policy context must be considered when developing regulations relating to freshwater farm plans. Diagrams setting out how the regulatory system interacts with the freshwater farm plan system is included at Appendix B.
- 3.10. Section 217L RMA is clear that the provision of a “specified instrument”, which by definition includes regional plan rules, prevails over a freshwater farm plan. While a freshwater farm plan can be more stringent than the regional plan rules, it cannot be more lenient. This highlights the importance of freshwater regional plans in the freshwater farm plan system.

⁴ Full Sustainable Dairying Accord (2013) can be accessed [here](#).

- 3.11. Regional councils must therefore put in place clear, unambiguous rules that achieve higher order direction and which can feasibly be inserted into freshwater farm plan documents.
- 3.12. As regional plans vary in the extent they give effect to the NPSFM2020 (and, in some cases, earlier iterations) central government guidance may be required in the event a regional plan does not contain adequate rules. Freshwater farm plans developed prior to the development of the regional freshwater plans should be seen as interim and must be reviewed once the new regional plan giving effect to the NPSFM2020 is in place.

4. Content of freshwater farm plans

Regulated outcomes

- 4.1. Freshwater farm plans are required under s 217F to set out how the outcomes prescribed in regulations are to be met. To be effective, and avoid ambiguity, such outcomes need to be specific and clearly articulated. They must also be capable of achieving the objectives sought.
- 4.2. Option 1, as set out in the Discussion Document, does not achieve this. Inclusion of broadly stated outcomes in the regulations provides little certainty that the long-term objectives will be met. Guidance documents lack legal enforceability, and it is therefore not sufficient to include the detail required by higher order documents, in guidance documents.
- 4.3. The specificity provided in Option 2 is preferred. By including detail on what each freshwater farm plan is to achieve, as required by the RMA, they become a much more robust tool. Providing specific limits around what is or is not appropriate action is the only way to achieve the Government's objectives of halting further degradation of waterways, making material improvements to the health of waterways and restoring degraded waterways within a generation.
- 4.4. The ability for freshwater farm plans to "mesh" with other regional council freshwater policies and objectives should not be a cause for concern. As highlighted above, it is critical that freshwater farm plans link back to rules in regional plans. Regional freshwater plans are required to give effect to Te Mana o te Wai and it is intended that the outcomes will play a key role in giving effect to Te Mana o te Wai at a farm plan scale.
- 4.5. While providing overall support for the approach set out in Option 2 the organisations do have some high-level concerns with the outcomes proposed in the Discussion Document.
- 4.6. As currently worded, a number of the outcomes in B: Ecosystem Health do not give effect to the higher order direction contained in the NPSFM-2020. Including Policy 3.26: Fish Passage and Policy 3.22: Natural inland wetlands. Amendments are required to address this.
- 4.7. In addition, Outcome C contains numerous references to the need to "minimise" risk or certain effects. "Minimise" is a general term and provides no certainty about the degree of mitigation that is required. Note that problems associated with the use of 'minimise' have been a feature of farm planning within the 2003 and 2013 accords and Environment

Canterbury farm planning. Similar issues arise with other equally ambiguous terms used in the outcomes, such as “adequate”, “appropriate” and “where necessary”.

- 4.8. To be enforceable, outcomes should be measurable and linked to the specific actions that are to be achieved that are consistent with the objectives and resource limits of the catchment.
- 4.9. Collectively the outcomes also do not provide a pathway for restoration, and instead focus on avoiding the adverse effects of activity. The Government has set the objective of restoring degraded waterways within a generation, however a pathway to achieve this is not currently provided for. The regulations should include an additional outcome for restoration and the actions needed to achieve this.

Regulated ‘base information’

- 4.10. The organisations consider that more specificity is required in relation to some of the ‘base information’ set out in Appendix 1 of the Discussion Document.
- 4.11. Base information should reflect the hierarchy of obligations established by Te Mana o Te Wai. For example, the catchment/waterway, its brief description and a high-level outline of how to meet its ecosystem health needs first.
- 4.12. In addition to the cumulative catchment context, maps required should be of sufficient scale to adequately identify risks and mitigations. Providing information and maps at a paddock scale would provide sufficient detail for those certifying and auditing the plan as well as farmers themselves, and is achievable. Guidance documents setting out the quality of maps expected should be developed.

5. Actions to be achieved by Freshwater farm plans

Risk/impact assessment

- 5.1. The RMA requires freshwater farm plans to identify the adverse effects of activities carried out on-farm on freshwater. By prescribing a template methodology, such as a National Freshwater Assessment Tool, this will ensure consistency across farm systems. This is also likely to streamline certification and auditing processes.
- 5.2. While a template approach is preferred, it is recommended that any template developed should be flexible enough to change if faults are identified or to reflect changes in farming practices.
- 5.3. Having information related to the flow accumulation, rainfall, soil permeability, habitat, etc. publicly available to those developing freshwater farm plans, certifiers and auditors could also usefully assist in identifying risks.

Identifying actions to avoid, remedy or mitigate risks/impacts

- 5.4. Identifying the actions to avoid, remedy or mitigate risks/impacts is a key component of the freshwater farm plan system. It is therefore crucial that the freshwater farm plan provide sufficient detail on what these actions are.⁵ This is a common issue with Canterbury's Farm Environment Plans, which often lack adequate detail of risks and/or mitigation measures (see Appendix A).
- 5.5. Avoidance of risk should begin with explicitly including intensity reductions through input management. For example, this may require reductions of inputs such as synthetic nitrogen fertiliser and imported feedstock such as Palm Kernel Extract (PKE) and the lowering of stocking rates.
- 5.6. The actions must sufficiently address the risks of activities undertaken in the farm system and must ensure that the freshwater farm plan achieves the direction contained in regional and national instruments.
- 5.7. The organisations support the approach outlined in Option 3. Leaving the detail as to how an outcome/action will be achieved to professional judgement introduces ambiguity. For high risk activities, where there is specific national direction (in the form of regulations), it is appropriate that the actions contained in the freshwater farm plan are highly prescribed in order for there to be confidence that the plan will achieve the requirements.

Determining timeframes to implement the actions identified in the freshwater farm plan

- 5.8. The organisations agree that a timeline for implementing actions is an important component in achieving the goals of the freshwater farm plan system. There is a risk that, unless specified, implementation may be delayed. Timeframes therefore need to be built into the freshwater farm plan, and compliance with these monitored.
- 5.9. In addition to a 'reasonableness' test it is important that a staged approach is adopted whereby the farmer must be taking meaningful steps in the right direction, even if full implementation is delayed. This need for continuous improvement should be addressed in the guidance documents.

6. Certification and audit process

- 6.1. Ensuring certainty and confidence in the certification and audit processes is fundamental to a successful freshwater farm plan system.

⁵ For example:

- (a) If a buffer is suggested as a mitigation measure, the size of the buffer should be stated, the location of it is mapped and details of whether it is permanently retired or not included.
- (b) If a bund is suggested as a mitigation method, the specifics relating to the engineering design should be included (eg details around how much water it can hold back for what time period etc.), and the specific location mapped
- (c) Where nutrient application per hectare is given, it must be related to effective area, and that effective area must be properly mapped, rather than assigning a per hectare loss rate to a large geographically diverse area that does not have even loss rates.

- 6.2. The organisations are proposing that both the certification and audit processes be housed within the regional council. It is understood that this will require regional councils to be properly resourced to build capacity, including the need for adequate ecological experts. However, this is not a reason to place responsibility in independent certification and audit bodies, as capacity building is likely to be required in any event.
- 6.3. Both the certifier and the auditor should have a clear line of accountability back to regional councils. This will connect the freshwater farm plan process into the existing system and aligns with the regional council's function to ensure that freshwater farm plans achieve the regional plan rules. It will also enable a catchment-scale approach, providing insight into whether the cumulative effect of the actions included in the farm plans will actually achieve the outcomes in the regional plan.
- 6.4. Having certifiers and auditors both housed within regional council will also achieve a more integrated system of information sharing, enabling a streamlined approach.
- 6.5. To ensure consistency and accountability, central government agencies should also proactively monitor and audit the audit function of regional councils. This could be a role for the Environment Protection Authority or Ministry for the Environment.

Certification

- 6.6. It is the role of certifiers to ensure that the freshwater farm plan complies with the requirements. If strong avoidance and mitigation measures are required on farm, the certifier must ensure they are in place in the plan.
- 6.7. The organisations consider that in all cases, the certifier should be appointed by the regional council, and the cost is recovered from the farmer. This will assist in reducing the very real risk of client-capture.
- 6.8. Certifiers should be nationally accredited prior to regional council appointment. Accreditation against a set of national standards will ensure that certifiers have the relevant expertise, professionalism and do not have any conflicts. The organisations also consider there should be a process in place to randomly select and test the performance of certifiers to ensure their performance complies with the standards over time.
- 6.9. The organisations consider that the involvement of the certifier in developing the freshwater farm plan could vary, depending on the needs of the farmer. As such, Option 1 is supported. It would be up to the farmer to determine whether they wish to prepare the freshwater farm plan themselves, either entirely or with assistance from external consultants, or whether they wish to have the certifier involved in developing the plan.
- 6.10. The organisations consider that having the certifier involved in the development of the freshwater farm plan will streamline the process and ensure the plan adequately reflects on-farm activity. This does however create a greater risk of conflict. To reduce this risk, it is

imperative that certifiers be appointed and owned by the regional council. The degree to which certifiers are involved in drafting plans should also be limited akin to how a consent officer may hold a pre-application hearing to check a consent is in the correct form prior to submitting it. The proposals in the Discussion Document to further reduce the risk of client capture are supported.

- 6.11. Re-certification of freshwater farm plans at three-yearly intervals is also supported, as this will assist in achieving a fast response to any environmental risks that may arise.

Audit process

- 6.12. The role of the auditor is to “audit the farm for compliance with the freshwater farm plan”. This is analogous to the compliance, monitoring and enforcement functions already required by regional councils.
- 6.13. The organisations support an approach wherein the auditor is appointed by the regional council and the cost of the auditing is recovered from the farmer. This will provide a clear line of sight back to the regional plan, and whether they are being achieved, and will enable councils to identify whether freshwater farm plans are working at a catchment scale.
- 6.14. The organisations are strongly opposed to freshwater farm plans being audited by an independent, existing or new, accreditation body. Having freshwater farm plans audited by farm-company accreditation bodies creates a serious risk of conflict. Through programmes such as Fonterra’s ‘Tiaki’ plans for example, the industry body is clearly incentivised to be far less critical through the auditing process, as the exercise has the potential to provide the company with a ‘good news story’ (ie. “90% of plans achieved an A”). Another example would be accreditation through the Fertiliser Association, which is 98 per cent owned by the two largest commercial fertiliser companies. Because the reforms require fertiliser reductions and intensity reductions, the Fertiliser Association has the wrong incentives to be able to appropriately respond. It is essential for government to anticipate the ways in which for-profit companies could exploit this farm planning regime and seek to protect the public interest from this occurring. Additionally, it is also likely to exacerbate the transparency issues referred to below.
- 6.15. As discussed, the lack of accountability is one reason for the failure of farm planning initiatives of the past. Despite their shortcomings, as a public entity, councils have the ability to be held to account by the government and civil society in ways that private companies do not. To further provide public confidence, central government agencies should proactively ensure councils are undertaking consistent and adequate certification and audit processes.
- 6.16. It appears far more democratic and in the public interest for resources and capacity building to be focused on the public sector rather than privatised. Councils and the public should benefit from the resourcing of this regime rather than private entities. This will have additional benefits beyond freshwater, as improved and better resourced compliance,

monitoring and enforcement and land management/extension services within councils has the potential to benefit the public across other domains.

- 6.17. While analogies can be drawn to other independent accreditation bodies for different sectors (eg business and finance or product certification) these processes can be distinguished from environmental processes. Environmental issues, including freshwater quality, do not operate within the bounds of a single business's system. The health of the wider catchment requires that all farms within that catchment are adhering to the actions set out in their freshwater farm plan, function together and are contributing to restoration appropriately. Councils need to be across this information in a timely manner so that they can respond where gaps or failures are identified.
- 6.18. Additionally, because attributes in Appendix 2B of the NPSFM2020 require action plans that can be developed outside the regional plan, councils need to have insight across both certification and auditing in order to be able to appropriately and effectively manage these essential attributes (eg. primary contact and fish attributes). Having auditing and/or certification systems outside the council will create unnecessary and complicated pathways for receiving and collating information, which will make councils' response difficult and less timely.
- 6.19. The proposed approach for determining audit frequency as set out in the Discussion Document is supported.

7. Transparency

- 7.1. Given the role the organisations play as 'watchdogs' for the management of freshwater in Aotearoa New Zealand, they hold concerns about the transparency of freshwater farm plans. Information is a crucial factor in achieving accountability of the system.
- 7.2. Freshwater farm plans are, in many cases, going to act as a proxy for resource consents. Resource consents are publicly available via council websites. This enables individuals, eNGOs or any other agency to see what is required of farmers, and whether or not this is being achieved, enabling public accountability of on-farm actions.
- 7.3. By setting up a system where the public does not know what actions are contained within freshwater farm plans or whether or not they are being complied with, an environment of information asymmetry is created. This gives a power advantage to those who hold the information, creating a climate of distrust.
- 7.4. The organisations consider that freshwater farm plans should be made publicly available, with commercially sensitive information redacted. Freshwater farm plans should be included on the regional council website once certified, similar to the process for resource consents. Monitoring, at a catchment scale, of whether compliance with freshwater farm plan is being achieved should also be provided.

8. Enforcement

- 8.1. The organisations hold concerns that the offences proposed in the Discussion Document are not sufficient. A fee of \$1,000 - \$1,500 is unlikely to act as a disincentive in the face of significant costs of mitigation measures (eg fencing costs which are likely to far exceed the fine). Penalties should be set at a level that will act as a deterrent to undertaking the activity.
- 8.2. The organisations also consider that farm systems that cannot meet the requirements of a freshwater farm plan should default to standard operating procedures (eg. resource consent process). This should apply to specific activities within the farm system that are consistently demonstrating non-compliance or, if needed, the entire freshwater farm plan.

9. Phasing and Staging

- 9.1. The organisations consider that it is imperative that the roll-out of freshwater farm plans occur as soon as possible, and not be deferred until the regional water plans giving effect to the NPSFM are put in place. This is particularly relevant given the concerns with the efficacy of existing Farm Environment Plans (see Appendix A).
- 9.2. A catchment-by-catchment approach is supported and synergies between the roll-out of freshwater farm plans and the development of regional water plans should be harnessed where possible. This will ensure that freshwater farm plans give effect to the most recent regional plan.
- 9.3. While the organisations consider there are catchments where the roll out of freshwater farm plans be prioritised, there is also a risk in prioritising action on the basis of farm characteristics and risks.
- 9.4. There is a concern that the conversation of what constitutes a priority catchment may run interference with the roll-out of freshwater farm plans. The organisations refer back to the arduous process of identifying 'at risk' catchments for the process of the Essential Freshwater reforms, a process which delayed action for numerous years. There was a decision-making matrix tool developed by Ministry for the Environment officials using anticipated land use change, ecological and cultural values information. This appears to remain a useful but unutilised tool.
- 9.5. There are however some catchments that are approaching tipping points, where biodiversity and water quality are declining at pace, or that are experiencing rapid land use change (for example the Canterbury High Country⁶). In these areas, early action may prevent further degradation, and as such should be prioritised. These areas should be clearly defined and identified.

⁶ Grove P, Parker M, Bayer T and Gray D (2021) 'Agricultural land use change in mid-Canterbury hill and high country, 190 – 2019: implications for indigenous biodiversity and ecosystem health', Report No: R20/62 prepared for Environment Canterbury

10. Conclusion

- 10.1. Freshwater is a taonga for Aotearoa New Zealand, however it is degraded in most places. Now is the time to turn that around, halting further degradation and making material improvements to the health of freshwater nationally.
- 10.2. Under the RMA, freshwater quality is managed by regional councils in accordance with higher order documents such as the NPSFM2020, NES-FW and section 360 regulations. It is within this context that freshwater farm plans must be considered. Freshwater farm plans cannot be more lenient than regional plan rules, and therefore it is critical that the rules in these plans are adequate to drive change.
- 10.3. Freshwater farm plans should not be seen as a way to weaken environmental protections, rather they provide an alternative pathway to achieving such protection. The freshwater planning system posited in the Discussion Document does not provide certainty that this will occur, however the amendments proposed by the organisations in this submission address these concerns.
- 10.4. The organisations thank the Ministry for the Environment for the opportunity to make a submission on the Discussion Document. We welcome the chance to contribute to the discussion and are interested in engaging further as the regulations are developed.