

**SUBMISSION ON DISCUSSION DOCUMENT “HE KURA KOIORA I HOKIA: A
DISCUSSION DOCUMENT ON A PROPOSED NATIONAL POLICY STATEMENT
FOR INDIGENOUS BIODIVERSITY”**

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1. Introduction

- 1.1. This is a submission on the discussion document “He Kura Koiora i hokia: A discussion document on a proposed National Policy Statement for Indigenous Biodiversity (**NPSIB**)”, Publication Number ME 1472 (**Discussion Document**).
- 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.
- 1.3. EDS has had an extensive involvement in advocating for good environmental outcomes for biodiversity in Aotearoa New Zealand. EDS has produced a number of publications on the subject of biodiversity, most notably “Vanishing Nature: facing New Zealand’s biodiversity crisis”¹; “Pathways to Prosperity: Safeguarding biodiversity in development”²; and “Banking on Biodiversity”³. EDS was also represented on the Biodiversity Collaborative Group (**BCG**) and was represented on the Stakeholder Reference Group for the New Zealand Biodiversity Strategy.
- 1.4. The state of biodiversity in New Zealand is in decline and we are reaching a crisis point. Today, 80 per cent of native birds, 88 per cent of lizards and 100 per cent of frogs are threatened with extinction. Indigenous habitat also continues to decline. Between 1996 – 2012 there was a net loss of 71,000 hectares of indigenous habitat – largely in lowlands, wetlands and coastal habitat, areas most affected by human action.⁴
- 1.5. While existing legislation provides strong protection for public conservation land in New Zealand, this is largely located in mountainous areas, leading to an over-representation of alpine ecosystems. However, indigenous biodiversity is important everywhere – not just on dedicated conservation land. Indigenous vegetation cover (which can be used for a proxy for indigenous biodiversity) is now below 10 per cent in lowland zones and in urban areas. As most people live in urban centres, this loss of biodiversity has significant

¹ Brown, M et al (2015) *Vanishing Nature: facing New Zealand’s biodiversity crisis*, Environmental Defence Society, Auckland

² Brown, M (2016) *Pathways to Prosperity: Safeguarding biodiversity in development*, Environmental Defence Society, Auckland

³ Brown, M (2017) *Banking on Biodiversity; the feasibility of biodiversity banking in New Zealand*, Environmental Defence Society, Auckland

⁴ Biodiversity Collaborative Group (2018) *Report of the Biodiversity Collaborative Group*, Biodiversity (Land and Freshwater) Stakeholder Trust, Wellington at 4

implications for people's wellbeing and connection to the natural environment. The NPSIB seeks to address this problem by providing better direction on how to protect indigenous biodiversity across the whole of New Zealand.

- 1.6. In saying this, it is acknowledged that the NPSIB applies only to terrestrial environments and the reasons for this limitation are included in the BCG report.⁵
- 1.7. While EDS agrees with the scope of the current version of the NPSIB being limited to terrestrial indigenous biodiversity, it seeks to ensure that the indigenous biodiversity that exists in the intersection between the freshwater domain (governed by the National Policy Statement on Freshwater Management 2017 (**NPSFM**)) and the terrestrial domain (governed by the NPSIB) is protected. The current definition of terrestrial environment in the NPSIB may lead to the indigenous biodiversity in areas such as riparian margins and braided river beds not being captured by either policy statement.
- 1.8. EDS also does not agree with the exclusion of wetlands from the regulatory provisions of the NPSIB. Wetlands are hotspots for indigenous biodiversity and provide important ecosystem services for the wider environment. Although the NPSIB includes provisions addressing the restoration and enhancement of wetlands, there is no requirement to manage the adverse effects on indigenous biodiversity within wetlands. These are aspects that are also not addressed by the NPSFM – creating a policy lacuna.
- 1.9. In order to adequately protect New Zealand's wetlands, a nationally consistent process and criteria are required.⁶ Currently, wetlands are routinely included within SNAs; in particular wetlands can form part of the ecological sequences that are addressed under Criteria C: Ecological Context of Appendix 1. Wetlands also occur as mosaics within terrestrial environments, and the terrestrial vegetation is often defined as significant as it buffers the wetland. If wetlands are excluded from the NPSIB they would not be subject to the effects management framework in the NPSIB, despite being identified as significant under the RMA. This will lead to a disjointed and inappropriate management approach. As such, EDS considers that the NPS should cover wetlands and that the SNA criteria in Appendix 1 be expanded to include wetlands that have retained ecological integrity.
- 1.10. With regard to the marine domain, more information is required to ensure that policy direction is appropriate. The policies (namely for the identification of SNAs) contained in the NPSIB may not be appropriate for indigenous biodiversity in the marine environment. However, better protection for marine biodiversity is urgently needed. This is highlighted in the most recent State of our Gulf report produced by the Hauraki Gulf Forum.⁷
- 1.11. This report discusses the changes that have been observed in the Hauraki Gulf Marine Park since its establishment in 2000. It notes that as a result of over-fishing a number of fishstocks are declining; crayfish populations have been substantially reduced and are regarded as functionally extinct in a number of heavily fished areas. The indirect effects of fishing on the marine environment are also significant. There has been an increase in the

⁵ Above n 4 at 9 - 15

⁶ Above n 4 at 43

⁷ Hauraki Gulf Forum (2020) *State of our Gulf 2020*, Hauraki Gulf Forum, Auckland

number of Threatened seabirds⁸ and the use of dredging methods of commercial fishing has damaged the seabed, destroying the plants and animals that live there.

1.12. The Resource Management Act 1991 (**RMA**) does not only apply to terrestrial environments: the requirements to safeguard the life-supporting capacity of ecosystems and protect areas of significant indigenous vegetation and significant habitat of indigenous fauna apply both on land and in the marine environment. The New Zealand Coastal Policy Statement sets objectives of at least maintaining natural biological and physical processes in the coastal environment and maintaining the diversity of New Zealand's indigenous coastal flora and fauna which self-evidently are not being achieved.

1.13. As such EDS urges the government to undertake a separate process for the identification and protection of marine indigenous biodiversity in New Zealand.

2. Summary of key recommendations

2.1. EDS provides broad support for the provisions contained in the NPSIB and seeks:

- The inclusion of wetlands within the scope of the NPSIB
- That SNAs, once mapped, be included in both regional and district plans
- Amendment to Policy 3.9(2) to enable councils the ability to apply greater stringency when applying the effects management hierarchy
- Amendments to Policy 3.9(4)(ii) and (iv) to narrow the scope of the exemptions provided
- Amendment to Policy 3.10 to require threatened or at-risk flora within plantation forest to be managed using specific reference to the effects management hierarchy in Policy 3.9
- Amendment to Policy 3.12 relating to improved pasture as sought at [10.8]
- Amendment to enable a more lenient approach to mapping of highly mobile fauna in Policy 3.15

3. General comments

3.1. EDS is very supportive of the preparation of an NPS for indigenous biodiversity. This was identified as an urgent priority by Dr Marie Doole⁹ in her 2016 report *Pathways to Prosperity: Safeguarding biodiversity in development*¹⁰ and has been subject to government discussion since 2000.

3.2. EDS considers that national direction is required to adequately protect our indigenous biodiversity. The current management of indigenous biodiversity under the RMA is not

⁸ From 4% in 2000 to 22% in 2020. Above n 7 at 147

⁹ Previously Marie Brown

¹⁰ Above n 2 at 39

leading to good environmental outcomes. To the contrary the RMA “*has presided over an alarming decline in biodiversity values.*”¹¹

- 3.3. There is a significant gap between the statutory aspirations of the RMA and the outcomes achieved. The underwhelming environmental outcomes of the RMA are often a result of weak implementation exacerbated by a lack of national direction, agency capacity and in some instances a lack of political will. This lack of strategic oversight and decision-making has reduced the potential to protect environmental values, particularly for strategic issues such as the management cumulative effects.¹²
- 3.4. The RMA was predicated upon the need for environmental bottom-lines. However these have either not been set or have not been reliably observed. Where strict rules do exist non-compliance, exacerbated by poor monitoring and enforcement, has instead contributed to significant loss. As such, perverse outcomes continue.
- 3.5. The development of the NPSIB will set out how to give effect to the section 6(c) obligation to protect indigenous biodiversity and will provide clearer direction to agencies on their roles. This will create consistency in approach among local authorities and agencies and provide clarity in relation to how biodiversity is provided for in planning instruments. This is likely to create greater certainty in the planning process, and prevent costly and cyclical litigation. One clear example of this would be the concept of ‘significance’. Significance is undefined in the RMA, often leading to disputes as to whether an area of vegetation or habitat is or is not significant in terms of Part 2 RMA.¹³ The NPSIB seeks to remedy this by including clear criteria, based on ecological evidence, as to what constitutes significance.
- 3.6. The NPSIB will also put in place enduring environmental bottom lines to direct planning processes. These nationwide limits will provide greater protection for indigenous biodiversity and reduce the likelihood of cumulative loss.¹⁴ This is particularly important given the declining state of indigenous biodiversity in New Zealand.

Part 2 RMA

- 3.7. EDS considers that the NPSIB gives effect to the purpose and principles contained in Part 2 of the RMA. In particular, the NPS gives effect to:
 - Section 6(c): the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna
 - Section 6(e): the relationship of Māori with their culture and traditions with taonga
 - Section 7(a) and (aa): kaitiakitanga and the ethic of stewardship
 - Section 7(c): maintenance and enhancement of amenity values

¹¹ Severinsen, G (2019) *Reform of the Resource Management System: A model for the future*, Environmental Defence Society, Auckland at 241

¹² Brown, M., Peart, R., Wright, M (2016) *Evaluating the environmental outcomes of the RMA*, Environmental Defence Society, Auckland at 53 – 60

¹³ Above n 12 at 38

¹⁴ Walker, S et al (2018) *Critical factors to maintain biodiversity: what effects must be avoided, remediated or mitigated to halt biodiversity loss*. Maanaki Whenua Landcare Research Report No. LC3116 prepared for the Biodiversity Collaborative Group at 18

- Section 7(d): intrinsic values of ecosystems
 - Section 7(f): maintenance and enhancement of the quality of the environment
 - Section 8: the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)
- 3.8. It is noted that the express obligation to safeguard the life-supporting capacity of ecosystems as required by section 5(2)(b) is not referenced in the NPSIB. This is a core element of sustainable management and is the primary responsibility of local authorities when exercising their functions in respect of indigenous biodiversity.
- 3.9. The recognition and protection of indigenous biodiversity is an extension of that primary obligation. If an ecosystem is found to be significant under section 6(c), that ecosystem is to be protected in itself, not merely have its life-supporting capacity protected. This goes further than the obligation in section 5(2)(b), however that does not justify a failure to provide for the primary obligation.¹⁵
- 3.10. While the fundamental concept of indigenous biodiversity in the NPSIB contains reference to ‘ecosystems’ it goes no further than this. What is required under the RMA is to identify each of its components, including biological and genetic diversity and the essential characteristics of the ecosystems integrity, form, functioning and resilience.¹⁶ As such, EDS seeks that the NPSIB identify both the indigenous biodiversity itself and the ecosystems in which it lives.

Hutia te Rito

- 3.11. EDS supports the inclusion of Hutia te Rito as the underpinning framework for the NPSIB. Hutia te Rito provides a framework that embeds te ao Māori, mātauranga and tikanga Māori within the decision-making process and places it on an equal footing with western science.
- 3.12. Hutia te Rito provides a holistic framework that recognises the environment’s intrinsic value as well as people’s connections and relationships with it. The framework recognises that prosperous biodiversity and healthy ecosystems are critical to human prosperity. Resource use that degrades the mauri and health of our indigenous biodiversity will also degrade the health of our people.
- 3.13. Hutia te Rito is also consistent with wider government reforms including the NPSFM’s Te Mana o te Wai. Te Mana o te Wai, recognises water as the life-blood (mauri) of the land. When water is in a healthy state it provides for the healthy wellbeing of the people and the land. *“Te Mana o te Wai disrupts the regulation of the status quo by RMA tools as it makes the mana of water, its health and status, the paramount priority”*.¹⁷ It places the health and wellbeing of water at the forefront of decision making and in doing so provides for the principles of te Tiriti o Waitangi (including rangitiratanga and active protection). EDS

¹⁵ *Director General of Conservation v Invercargill City Council* [2018] NZEnvC 084 at [46]

¹⁶ Above n 15 at [47]

¹⁷ *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208 at [54]

considers an equivalent direction is appropriate when considering indigenous biodiversity and the wider environment.

BCG process

- 3.14. EDS would like to acknowledge the exemplary process of the BCG and the importance of seeking cross-sector support for the NPSIB. This exercise of consensus-building enabled parties with a strong interest in biodiversity management to come around the table to draft a document that reflected their interests. In the context of section 5 RMA this also represented sustainable management: it enabled people and communities to provide for their social, economic and cultural wellbeing when managing the use and protection of natural resources.
- 3.15. While there was broad consensus among the BCG, there were some areas where it did not reach full consensus. This submission will address some of these areas in turn.

4. Maintenance of biodiversity

- 4.1. The maintenance of biodiversity is a mandatory function of both regional¹⁸ and district¹⁹ councils under the RMA. However in the absence of clear national direction there is a lack of clarity as to what this means, and how these functions should be applied. EDS supports the provisions in the NPSIB that seek to address this.
- 4.2. The fundamental concept of 'maintenance of indigenous biodiversity' sets out what it means to maintain indigenous biodiversity in practice. The NPSIB sets out a number of attributes that contribute to indigenous biodiversity, and requires that there be at least no reduction in these. This provides clarity as to what local authorities must achieve to 'maintain' biodiversity.
- 4.3. The fundamental concept of 'maintenance of indigenous biodiversity' is accompanied by Policy 3.13 which provides the regulatory direction. Local authorities must maintain indigenous biodiversity as set out in (1)(a) – (c). As discussed below, the maintenance of indigenous biodiversity within significant natural areas (**SNA**) is subject to its own regulation. EDS supports this direction.
- 4.4. It is also recognised in the NPSIB that the maintenance of indigenous biodiversity contributes to the social, economic and cultural wellbeing, in essence giving effect to section 5(2) RMA.

5. SNA identification

- 5.1. Under section 6(c) of the RMA, all persons exercising functions and powers under the RMA must recognise and provide for the protection of significant indigenous vegetation and significant habitat of indigenous fauna as a matter of national importance (collectively SNAs). However, in order to fulfil this obligation councils must first identify what is significant. While most councils (64%) survey and identify significant sites, the

¹⁸ Section 30(1)(ga) RMA

¹⁹ Section 31(1)(b)(iii) RMA

methodologies and criteria to assess significance differ markedly.²⁰ This results in uncertainty, cyclical litigation, and in many instances inadequate protection of indigenous biodiversity.

- 5.2. The NPSIB seeks to address this issue by defining what constitutes ecological significance. Appendix 1 sets out four criteria, and associated attributes, of what constitutes an SNA (representativeness; diversity and pattern; rarity and distinctiveness; and ecological context). These criteria were scientifically derived and based on the input of expert ecologists. They are also not new; they are based on orthodox criteria found in many plans across the country.²¹ This is summarised in a document provided to the BCG regarding SNA practice in regional and district councils:²²

“The number of criteria used varies widely, from 3 (Taranaki) to 17 (Bay of Plenty). However 12 regional and unitary councils use less than 8 criteria and a core set of common criteria is apparent; Representativeness, rarity or distinctiveness, diversity or pattern and ecological context.”

- 5.3. EDS supports the adoption of the Appendix 1 criteria, subject to any technical amendments that may be made following further advice from DOC and consultant ecologists.
- 5.4. Identifying areas of significance is the next step. Policy 3.8 provides an express requirement for territorial authorities to undertake a district wide assessment to determine whether an area is a SNA, and if so whether it should be classified as High or Medium (in accordance with Appendix 2). EDS supports the mapping of SNAs and their inclusion in plans.²³ The alternative, providing for an assessment of significance at the time of consent application is a perplexing approach. Not only is there a risk that the SNA criteria will be applied at a site level, rather than underpinning a consistent approach but it also means councils do not have a comprehensive view of the areas within the district that are significant or oversight of the impacts of activities that do not require consent. Councils cannot be confident that permitted activities are not causing biodiversity loss.
- 5.5. EDS has considered whether the obligation in Policy 3.8 to map SNAs should sit with district or regional councils and has not been able to reach a firm view on this. Its initial view is that the function may better sit with regional councils. However, it considers there are pros and cons to each approach, and is interested in seeing what it submitted by others.
- 5.6. Currently there is overlapping jurisdiction for the maintenance of biodiversity, making it easier to evade responsibility by passing the obligation on and ultimately leading to a gap. Having one agency responsible would counter this. Regional councils are also better set up

²⁰ Above n 1 at 59

²¹ For example the Auckland Unitary Plan criteria include representativeness; threat status and rarity; diversity; stepping stones, migration pathways and buffers; uniqueness or distinctiveness.

²² Ministry for the Environment (2018) *Summary of SNA practice in a sample of regional and district councils*. Retrieved from: <http://www.biodiversitynz.org/uploads/1/0/7/9/107923093/mfe-summary-of-sna-practice-in-a-sample-of-regional-and-district-councils-2018.pdf>

²³ In *Royal Forest and Bird Protection Society v New Plymouth District Council* [2015] NZEnvC 219 at [96] the court found that: ‘The protection of SNAs which the District Council is obliged to recognise and provide for requires the application of the full palette of methods identified in the District Plan, including the identification of SNAs [in Appendix 21.2] and the application of rules to them.’

to implement policy in a broader regional sense and act as environmental regulators.²⁴ Alternatively, the obligation could be retained by territorial authorities, who are currently responsible for mapping SNAs, as this obligation sits well within their function of controlling land-use and the impacts of this on terrestrial ecosystems.

- 5.7. EDS considers that in making this decision it is important that capacity is not the main determinant. Capacity is a separate issue, and one that can be addressed through the use of supplementary measures. EDS supports the recommendations contained in the BCG report that a contestable fund be established for local authorities to access for assistance with the identification and mapping of SNAs; and that DOC makes its ecological experts available to local authorities for this purpose.²⁵
- 5.8. EDS also considers that it is important that SNAs that have been identified are included in both regional and district plans, as recommended by the BCG.²⁶ Currently the NPSIB only requires inclusion in district plans, and as such there is no ability for reference back to the mapped SNAs in interpreting the regional rules and policies. EDS considers that regardless of whether SNAs are mapped at the district or regional level, as discussed above, there should be one process for identification. For example if SNAs are included in regional plans (using the Schedule 1 process) EDS considers that incorporation into district plans should be enabled without contest.
- 5.9. SNA mapping, whether by district or regional councils, will ensure that a uniform and consistent approach to assessment is undertaken. It provides certainty to land owners, resource users and the wider community. It is a more efficient and effective way of ensuring that protection of indigenous vegetation and habitat is achieved.
- 5.10. EDS also supports the process identified in Policy 3.8(2) of the NPSIB to be used when undertaking an assessment of SNAs. These are evidence-based principles and considered good practice. The principles of partnership and transparency will provide certainty to landowners and the remaining principles (quality, access, consistency and boundaries) will ensure that a consistent, thorough and fair assessment is undertaken.
- 5.11. With regard to public conservation land, EDS considers that all public conservation land should be deemed as an SNA as a default. Although there is separate legislative protection under the Conservation Act, National Parks Act and Reserves Act, including it as an SNA would create consistency (a level playing field) and ensure more thorough protection for New Zealand's indigenous biodiversity.
- 5.12. It is noted that some public conservation land may not meet the criteria for SNA, however EDS considers this is something that can be addressed on a case-by-case basis once an activity is proposed.

²⁴ Doole, M (2019) *Conservation System Reform: a proposed model to better protect and enhance species and ecosystems in New Zealand*. The Catalyst Group Contract Report No. 2019/150 prepared for the Environmental Defence Society at 2

²⁵ Above n 4 at 92

²⁶ In Policy 4(4)

6. Effects management

- 6.1. EDS broadly supports the direction in Policy 3.9 of the NPSIB, with some changes sought. This policy sets out how regional and territorial authorities give effect to the obligation of ‘maintaining indigenous biodiversity’ by managing the adverse effects of activities in areas identified as an SNA.

Avoidance of adverse effects

- 6.2. Policy 3.9(1)(a) sets out the adverse effects of new activities that must be avoided to maintain indigenous biodiversity. These adverse effects (loss of ecosystem representation and extent; disruption to sequences, mosaics or ecosystem functions; fragmentation or loss of buffering or connectivity and a reduction of population size or occupancy of threatened species) are derived from the ecological evidence provided to the BCG by Manaaki Whenua Landcare Research.²⁷ Their inclusion indicates that these adverse effects are considered irreversible (loss is permanent or feasibility of full replacement within 25 years is low) and as such avoidance is required.
- 6.3. The purpose of the RMA recognises that the avoidance of effects is anticipated under the RMA and that environment protection (through the avoidance of adverse effects) is a core element of sustainable management:

“... the use of the word “protection” in the phrase “use, development and protection of natural and physical resources” and the use of the word “avoiding” in subpara (c) indicate that s 5(2) contemplates that particular environments may need to be protected from the adverse effects of activities in order to implement the policy of sustainable management...”²⁸

- 6.4. However, this does not mean that primacy is given to the avoidance of effects under section 5 RMA. That direction, in regard to effects on indigenous biodiversity, comes from the NPSIB. The strict avoidance of the four effects listed in Policy 3.9(1)(1) represent environmental bottom-lines (that must be adhered to) and are entirely consistent with the principle of sustainable management as expressed in section 5(2) and elaborated in section 6(c) RMA.²⁹ EDS supports this approach.

Effects management hierarchy

- 6.5. Where strict avoidance is not required, the NPSIB directs that the effects management hierarchy is applied to all other adverse effects.³⁰ Unlike section 5(2)(c) RMA, which does not impose a strict hierarchy, the NPSIB requires that effects are first avoided where possible, then remedied, then mitigated. Where adverse effects cannot be avoided, remedied or mitigated then offsetting can be considered. Only if there are residual adverse effects after following the above hierarchy, can biodiversity compensation be considered.

²⁷ Above n 14

²⁸ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [24(d)]. See also [150]

²⁹ Above n 28 at [149]

³⁰ As defined in the ‘definition’ section of the NPSIB

At each stage, the steps taken to manage adverse effects must be demonstrated and exhausted before moving sequentially down the hierarchy.³¹

- 6.6. While EDS agrees that an effects management hierarchy is required to manage adverse effects, it is concerned that there is no direct link to achieving the objectives and policies of the NPSIB. It is submitted that Policy 3.9(2) should provide for councils to apply increased stringency, if required to achieve the indigenous biodiversity outcomes in the NPSIB.
- 6.7. Currently Policy 3.9(2) is directive: adverse effects *must* be managed using the effects management hierarchy. This would enable adverse effects of an activity that cannot be avoided, remedied or mitigated to be offset – even if in a given situation that is an outcome that is inappropriate and contrary to the purpose of the NPSIB. In that situation, resource consent could not properly be declined, because the activity would be consistent with the NPSIB and policies under it. An example might be where the activity would adversely affect an area that is highly valued by the local community and where community predator control is being carried out. Effects on such an area can technically be offset, but the area is not readily interchangeable for another area because of its specific value. It should be open to the consent authority to decide that in this type of situation effects should be avoided rather than offset. In other words, consent authorities should be enabled to apply the effects management hierarchy, rather than directed to strictly apply it.
- 6.8. EDS considers that to remedy this issue Policy 3.9(2) should be amended to allow council's the ability to decline consent. For example, Policy 3.9(2) could be amended as follows:

All adverse effects of a new subdivision, use or development of the below activities must be managed using the effects management hierarchy, except, if application of the effects management hierarchy would result in an outcome that is contrary to the objectives and policies of this NPS, councils are not precluded from requiring a more stringent effects management approach or declining consent.

Offsetting and compensation

- 6.9. The effects management hierarchy in the NPSIB seeks to ensure that the main adverse effects are avoided, remedied and mitigated. Biodiversity offsetting and compensation are then available to manage residual effects only. Biodiversity offsetting and compensating counterbalance the adverse effects of activities by providing a positive effect in a different location, but do not protect the affected resource itself. As such, the underlying motive of the NPSIB is to reduce impacts on the subject site as far as possible before considering more disconnected ways of addressing the harm.
- 6.10. Biodiversity offsetting and compensation are also distinct concepts. Biodiversity offsetting must achieve no net loss (of species abundance, habitat structure and ecosystem function) and effects must be offset on a like-for-like basis. Conversely, biodiversity compensation is

³¹ It was noted in Brown & Penelope 'Biodiversity Offsets in New Zealand: addressing the risks and maximising the benefits' Policy Quarterly 12(1): 35-41 at 37 that this requirement to demonstrate that options at one stage have been exhausted before moving to the next is important to ensure the appropriate implementation of offsetting and that offsetting is only used for residual effects.

not required to maintain the specific species or ecosystems being impacted – it is not a like-for-like basis.³² This is the key difference between the offsetting and compensation framework (set out in principle 3 in both Appendix 3 and 4).

- 6.11. Without national policy guidance,³³ approaches to offsetting have been ad hoc and negotiated on a case-by-case basis often without ecological input. This has led to poor outcomes for indigenous biodiversity – highly inappropriate developments have proceeded on the basis of equally inappropriate compensatory offers.³⁴ In many cases long-term and flexible management arrangement for offsetting are agreed and the promised offsets do not eventuate.
- 6.12. It is also well understood that biodiversity offsets in some cases are inappropriate, for example when they will result in irreversible loss of indigenous biodiversity (for example vulnerable or spatially restricted species). The need for clear limits on when biodiversity offsetting and compensation cannot be used was recently been supported by the Environment Court in *Oceana Gold (New Zealand) Ltd v Otago Regional Council*.³⁵
- 6.13. To achieve the maintenance and protection of indigenous biodiversity, policies on offsetting and compensation need to be robust and follow national and international best practice. *“Biodiversity offsetting is not simply ‘mitigation with numbers’, it is a process underpinned by a set of principles. If any of these principles, and particularly the no-net-loss goal, are not met, then the action is not a biodiversity offset, but rather some form of mitigation or compensation.”*³⁶
- 6.14. The criteria in Appendix 3 are derived from the International Business and Biodiversity Offsetting Programme (**BBOP**) and are supported in the BioManagers report to the BCG. EDS considers that the level of stringency provided in Appendix 3 and 4 is appropriate. Proper application of the criteria will reduce the likelihood of offsetting and compensation leading to biodiversity harm. It is reiterated that the NPSIB should provide a preferential or sequential hierarchy, and that each stage of the mitigation hierarchy must be demonstrated before offsets, and then subsequently compensation, can be considered. This provides a further layer of protection for indigenous biodiversity.
- 6.15. EDS supports the direction in Appendix 3 that biodiversity offsetting applies to all more than minor residual effects. To the extent that other submitters suggest that biodiversity offsetting should apply to significant adverse effects only, EDS disagrees and reiterates its reasoning in the BCG that while *“the Government Guidance on Good Practice Biodiversity Offsetting refers to ‘significant’ residual adverse effects but goes on to clarify that this means ‘ecologically meaningful’ rather than a ‘significant effect’ as used in the RMA.”*³⁷ EDS submits that “more than minor” is closer to “ecologically meaningful” than to “significant”.

³² *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41 at [86]

³³ Above n 2 at 13: the Guidance on Good Practice Biodiversity Offsetting in New Zealand (2014) provides insight into key issues but falls short of providing policy guidance.

³⁴ Above n 1 at 62 and 153

³⁵ Above, n 32 at [88] – [95] and [190] – [200] (upheld on appeal: *Oceana Gold Ltd v Otago Regional Council* [2020] NZHC 436).

³⁶ BioManagers Group (2018) *Biodiversity Offsetting under the Resource Management Act: A Guidance document. Report prepared for the Biodiversity Working Group* at 8

³⁷ Above n 4 at 31

- 6.16. EDS also supports the guidance in Appendix 4 of the NPSIB about the use of biodiversity compensation.
- 6.17. Where possible, compensation proposals should align with as many of the offsetting principles as possible.³⁸ Limits to compensation are also appropriate, as required by the Environment Court in *Oceana Gold*. The Court held that “Clearly the circumstances in which biodiversity compensation should be permissible (or not permissible) need to be identified”³⁹ and limited compensation to where the residual adverse effects will not result in:
- (1) The loss of an indigenous taxon (excluding freshwater fauna and flora) or of any ecosystem type from an ecological district or coastal marine biogeographic region;
 - (2) Removal or loss of viability of habitat of a threatened or at risk indigenous species of fauna or flora under the New Zealand Threat Classification System (NZCTS);
 - (3) Removal or loss of viability of an originally rare or uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna;
 - (4) Worsening of the NZTCS conservation status of any threatened or at risk indigenous freshwater fauna

Exceptions for specific activities within Medium SNAs

- 6.18. Policy 3.9(2) also includes a more lenient framework for managing adverse effects of four specific activities, which cannot feasibly occur at another location, within Medium SNAs. EDS supports the intention behind the policy but considers that Policy 3.9(2)(d)(ii) and (iv) are too permissive.
- 6.19. EDS considers that the exception within Medium SNAs for mineral and aggregate extraction should be limited to extraction that is essential to provide a domestic supply for New Zealand’s mineral or aggregate needs.
- 6.20. In the BCG report, this exception was limited to allow only for extraction required for domestic supply. The need for the exception arose in the context of ecosystems that are specifically linked to particular mineral resources, such as lime. Much like geothermal ecosystems, discussed below, indigenous vegetation found on limestone is naturally rare, making it an SNA. The exception would allow resource users domestically to access a limestone resource (that they would otherwise have to import) while also putting a limit on the amount of extraction provided for.
- 6.21. While some biodiversity impacts may be justifiable where mineral resources that are essential for New Zealand’s domestic needs may be justified, EDS does not consider that causing damage to New Zealand’s indigenous biodiversity for the sake of export earnings is justified. As such, EDS disagrees with the statement in the Discussion Document that “it is not appropriate for the proposed NPSIB to determine whether mineral or aggregate is used domestically or exported”.⁴⁰

³⁸ Above n 36 at 21

³⁹ Above n 32 at [86]

⁴⁰ Discussion Document at 47

- 6.22. EDS also considers that the exception allowing “*the use of Māori land in a way that will make a significant contribution to enhancing the social, cultural or economic wellbeing of tangata whenua*” is too broadly framed.
- 6.23. It was recognised by the BCG that Māori land contains a disproportionate amount of indigenous vegetation, a large amount of which is threatened,⁴¹ and as such there is a risk that limitations on the use and development of land that contains SNA values could disproportionately impact Māori. To address this issue a policy relating to the use of Māori land was included in the BCG draft NPSIB. Relevantly, this policy directed decision-makers to specifically look for “*opportunities for the development of Māori land and the potential to enhance the social, cultural and economic wellbeing of Māori.*”⁴²
- 6.24. As currently expressed this exception is much wider and leaves open the possibility of a large number of activities being consented, the adverse effects of which would otherwise need to be avoided. The cumulative impact of this extent of loss has not been adequately assessed.

7. Climate change

- 7.1. EDS supports the inclusion of Policy 3.5 regarding the resilience of indigenous biodiversity to climate change. Climate change is already having an impact on our native species: increased temperatures have shifted the distribution of some species and increased the number of invasive pests.⁴³ As temperatures continue to increase, climate change has the potential to further destabilise indigenous species distribution and abundance patterns and affect the physical drivers of many habitats.⁴⁴
- 7.2. It is no longer justified to avoid addressing the effects of climate change on the basis of uncertainty. While more research may be required to fully understand the potential impacts of climate change on our biodiversity, there is already a wealth of existing information about adapting to a changing climate.⁴⁵ Two specific reports addressing the effects of climate change on terrestrial biodiversity are:
- Adapting to a changing climate: A proposed framework for the conservation of terrestrial native biodiversity in New Zealand⁴⁶
 - Potential effects of climate change on New Zealand’s terrestrial biodiversity and policy recommendations for mitigation, adaptation and research⁴⁷

⁴¹ There is also a higher proportion of indigenous forest that is chronically threatened (10–20 per cent remaining vegetation cover) and at risk (20–30 per cent remaining cover) on Māori land than on other non-Crown land (approximately 1.8 per cent and 3.1 per cent of total land area respectively). More generally, around 33 per cent of land cover on Māori land is comprised of indigenous vegetation compared with 8 per cent of other non-Crown land. Above n 4 at 19.

⁴² Policy 10, above n 4 at 64

⁴³ Ministry for the Environment & Stats NZ (2019) *New Zealand’s Environmental Reporting Series: Environment Aotearoa 2019* at 103: For example, warmer temperatures have played a role in shifting the distribution of two wētā species in Taranaki and the warm dry spring are linked with more wasps in Nelson.

⁴⁴ Above n 14 at 10

⁴⁵ The Deep South National Science Challenge has a key focus on the ‘Impacts and Implications’ of climate change, and recently published *Climate Change Impacts and Implications for New Zealand to 2100: A systematic review of recent research* which has a section outlining the recent literature on the potential implications of climate change on biodiversity management.

⁴⁶ Christie J, (2014) *Adapting to a changing climate: A proposed framework for the conservation of terrestrial native biodiversity in New Zealand*, Department of Conservation, Wellington

- 7.3. The approach set out in the NPSIB is consistent with the current Government’s general approach to increasing New Zealand’s resilience to climate change and the obligation in section 7(i) RMA to have particular regard to the effects of climate change. EDS also recently presented submissions on the Resource Management Amendment Bill seeking amendments to better address climate change issues under the RMA. If accepted, these amendments would provide further support for the inclusion of Policy 3.5 in the NPSIB.

8. Precautionary approach

- 8.1. EDS supports the inclusion of the precautionary approach in Policy 3.6 and continues to fully support the reasons given in support in the BCG report:⁴⁸

“... gaps in information about biodiversity pressures, states and trends, acknowledged decline in many species despite management effort, and to enable consistency with both the management of effects in the coastal environment (where a precautionary principle applies under the NZCPS), and international obligations under the Convention of Biological Diversity.”

- 8.2. The precautionary principle is widely incorporated in a number of international instruments (such as the Convention of Biological Diversity⁴⁹ and Rio Declaration⁵⁰). In a New Zealand context the principle is incorporated in a number of statutes and planning documents including the New Zealand Coastal Policy Statement (NZCPS)⁵¹, Fisheries Act 1996⁵² and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012⁵³.
- 8.3. It may be argued that the precautionary principle is already inherent under the RMA, or that its inclusion creates greater uncertainty. These are concerns that have been raised before in regard to prior documents and which were ultimately dismissed in favour of incorporation.⁵⁴
- 8.4. In the NPSIB the precautionary principle requires that local authorities are prudent in the face of effects that are possibly significant adverse, rather than negligent or reckless with the environment. Given the state of indigenous biodiversity decline in New Zealand EDS considers this is an appropriate direction.

9. Plantation forestry

- 9.1. The NPSIB includes an alternate approach to managing SNAs within plantation forestry areas, whereby areas that contain significant habitat for threatened or at risk indigenous

⁴⁷ McGlone M; Walker S, (2011) *Potential effects of climate change on New Zealand’s terrestrial biodiversity and policy recommendations for mitigation, adaptation and research*, Science for Conservation 312, Department of Conservation, Wellington

⁴⁸ Above n 4 at 27

⁴⁹ Convention on Biological Diversity 1992, preamble

⁵⁰ United Nations Conference on Environment and Development. (1992). Agenda 21, Rio Declaration, Forest Principles. New York: United Nations, principle 15

⁵¹ Policy 3

⁵² Section 10(d)

⁵³ Section 34(2)

⁵⁴ For example: Proposed New Zealand Coastal Policy Statement: Board of Inquiry report and recommendations, Volume 2: working papers (2009) at 46

fauna must be managed over the course of consecutive harvest rotations to maintain long-term populations. Adverse effects on threatened and at-risk flora must also be managed.

- 9.2. EDS supports the inclusion of an alternative approach for managing SNAs within plantation forests. Plantation forestry can provide important habitat for a number of indigenous animals including kiwi, falcon, native frogs and snails.⁵⁵ As such, many plantation forests would qualify as SNAs under the NPSIB. This creates an issue in applying the SNA management approach in Policy 3.9 and would likely result in forest owners being unable to harvest, or undertake the activities required for their business.
- 9.3. The value of plantation forestry as fauna habitat also changes over the harvest cycle. A newly harvested area may have low ecological significance for some species, whereas a forest that has been growing for several years is likely to provide habitat to a range of native species. In essence, much of the indigenous fauna that is recorded within plantation forestry areas is there because plantation forestry has replaced these species' natural habitat, and because the long period of relatively undisturbed land use between forestry cycles means these species can persist in an exotic ecosystem.
- 9.4. It is not contested that the identification of SNAs should be land-use neutral and not determined by planning imperatives, in that restrictions that would apply to the management and use of the land should not form part of the identification process.⁵⁶ However, EDS considers that a different approach to how effects are managed is justified given the issues associated with managing SNAs in plantation forestry.
- 9.5. However EDS does not support the management approach proposed for managing threatened or at-risk flora. The direction to 'manage' adverse effects in Policy 3.10(3) is vague and would not achieve an adequate level of protection. As these areas are easily identified, adverse effects should be managed in accordance with the approach set out in Policy 3.9.
- 9.6. It is also noted that for indigenous flora there is also a lack of alignment between the definition of 'plantation forestry biodiversity areas' and the management clause in Policy 3.10. The definition refers to plantation forests which have been identified as containing *significant indigenous vegetation* whereas Policy 3.10(3) refers instead to areas containing *threatened or at-risk flora*. This results in ambiguity. EDS also seeks that the reference to *significant indigenous vegetation* in the definition is replaced by '*threatened or at-risk flora*' as included in the management clause.
- 9.7. EDS also notes that there is currently a misalignment between the definitions of 'indigenous vegetation' in the NPSIB and the National Environment Standards for Plantation Forestry (2017) (**NESPF**). The NESPF currently defines indigenous vegetation as "*vegetation that is predominantly vegetation that occurs naturally in New Zealand...*".⁵⁷ If

⁵⁵ Pawson et al, (2010) *New Zealand's exotic plantation forests as habitats for threatened indigenous species*, New Zealand Journal of Ecology 34(3): 342-355

⁵⁶ See reasoning in *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24 at [62]: the questions of what restrictions apply to land that is identified for its natural values (in this case an outstanding natural landscape) are separate and subsequent considerations to the identification of the values; and *Royal Forest and Bird Protection Society v Auckland Council* [2018] NZHC 1069.

⁵⁷ Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, section 3

retained this definition would exclude indigenous flora growing within exotic plantation forestry (such as *pinus radiata*) irrespective of whether it is threatened or at risk.

- 9.8. The use of the word ‘predominately’ in the NESPF definition creates ambiguity; it cannot easily be objectively ascertained.⁵⁸ As such, EDS submits that the definition in the NESPF should be amended to conform with the definition in the NPSIB.

10. Existing activities

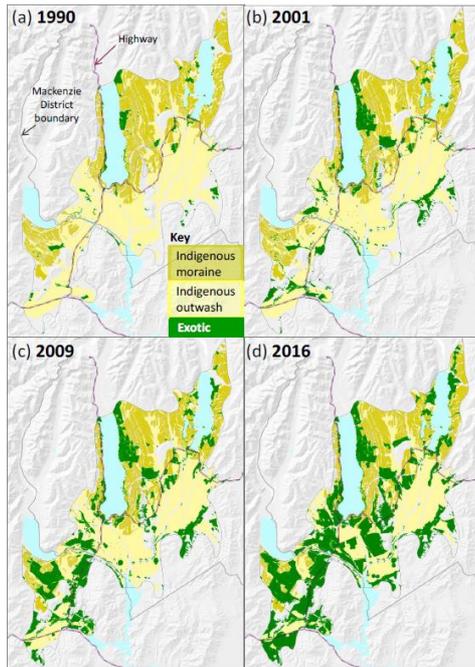
- 10.1. The NPSIB recognises the contribution that existing activities make to social, cultural and economic wellbeing and as such provides for the continuation of existing uses provided the adverse effects are of no greater character, intensity or scale. Two activities that are of particular importance are pastoral farming and geothermal activities.

Pastoral farming - improved pasture

- 10.2. The NPSIB sets out specific requirements in regard to pastoral farming and the conversion of indigenous vegetation to improved pasture. Policy 3.12(4) intends to allow existing farming activity to continue whilst making sure the effects (character, intensity or scale) on indigenous biodiversity do not increase.
- 10.3. However, the concept of improved pasture creates difficulties. As stated by the BCG: ‘Improved pasture exists on a spectrum from wholly exotic grass species, to mixed exotic-indigenous grasslands, or exotic grasslands interspersed within indigenous shrublands. As a result improved *pasture may have no, or anywhere from low to high, indigenous ecological value*’.⁵⁹
- 10.4. As such, EDS considers the formulation of Policy 3.12(4) is crucial in protecting indigenous vegetation from the effects of pastoral intensification. EDS draws on observations from the Mackenzie Basin to support this contention.
- 10.5. Between 2009 and 2016 the Mackenzie Basin experienced extensive loss of indigenous dryland ecosystems (as seen below).

⁵⁸ As discussed in *Director General of Conservation v Invercargill City Council*, above n 15 at [31] – [43]

⁵⁹ Above n 4 at 32



Map showing the extent of indigenous vegetation (indigenous moraine and indigenous outwash ecosystems) clearance in the Mackenzie Basin⁶⁰

- 10.6. During this time the pace of land use change increased significantly, facilitated by loopholes in the rules regulating vegetation clearance of short tussock grasslands and indigenous cushion and mat vegetation.⁶¹ These rules were based on the concept of ‘improved pasture’ and the exemption carved out from the indigenous vegetation clearance rules for the purpose of improved pasture maintenance. By creating an exemption for areas that had been oversown or topdressed at least three times in ten years, creating exotic-dominant vegetation,⁶² as a permitted activity, council was unable to address the effects on indigenous vegetation. As such they were unable to control inappropriate intensification and clearance of native habitat..
- 10.7. The NPSIB seeks to address this problem and prevent similar outcomes going forward. Policy 3.12(4) seeks to provide for the maintenance of improved pasture, which is important for the continuation of farming activities, whilst also ensuring the protection of indigenous vegetation that may exist within the area.
- 10.8. This requires a more refined policy framework, indicating where vegetation clearance is likely to be acceptable and should be enabled, and where further consideration is required. EDS supports the intent in Policy 3.12 to achieve this, however considers a number of amendments are required to provide clarity and better protect indigenous vegetation. These amendments are set out below.

⁶⁰ Walker, S (2016) Statement of Evidence of Dr Susan Walker on behalf of the Mackenzie Guardians Incorporated, Environment Court, 09 September, Appendix p 16: mapping exercise indicates that 6,700ha clearance occurred before 1990, 14,800ha between 1990-2001, 10,400ha between 2001-2009 and 42,800ha between 2009 – July 2016

⁶¹ *Re Mackenzie District Council* [2016] NZEnvC 253 at [48]

⁶² Defined as: Any short tussock grassland where the site has been oversown, and topdressed at least three times in the last 10 years prior to new clearance so that the inter-tussock vegetation is dominated by clovers and/or exotic grasses.

3.12 Existing activities ~~in SNAs~~

- (1) ~~This~~ Clause (2) and (3) applies to the management of the effects of existing activities on SNAs. Clause (4) applies both within and outside SNAs.
- (2) ~~Local authorities~~ Regional councils must make or change their policy statements to specify where, how and when plans must provide for existing activities that may adversely affect indigenous biodiversity are to be provided for.
- (3) In providing for existing activities in their policy statements and plans, local authorities must –
 - a. ensure the continuation of an existing activity will not lead to the loss, including through cumulative loss, of extent or degradation of the ecological integrity of any SNA; and
 - b. ensure the adverse effects of an existing activity are of no greater character, intensity or scale than they were before the National Policy Statement commencement date.
- (4) In regions and districts where pastoral farming is an existing activity, local authorities must ensure their policy statements and plans recognise that –
 - a. indigenous vegetation may regenerate in areas that have previously been cleared of indigenous vegetation and converted to improved pasture; and
 - b. subject to 3.12(4)(c), as long as the regenerating indigenous vegetation has does not now meet SNA criteria not itself become a SNA in the time since the last clearance event, the periodic clearance of indigenous vegetation as part of a regular cycle to maintain improved pasture is unlikely to may not compromise the protection of SNAs or the maintenance of indigenous biodiversity; and
 - c. consideration of effects (under Schedule 1 of the Act or through a resource consent application) ~~may~~ will be required in the following circumstances, to ensure the outcomes in subclause (23) are met:
 - i. a proposed clearance is likely to have adverse effects that are greater in character, intensity or scale than the adverse effects of clearance that has previously been undertaken as part of a regular cycle to maintain improved pasture on the farm:
 - ii. there is inadequate information to demonstrate that a proposed clearance of regenerating indigenous vegetation is part of a regular cycle of clearances to maintain improved pasture and will not have greater adverse effects than the previous clearance undertaken:
 - iii. a clearance is proposed in an area that supports any threatened or at-risk species:
 - iv. a clearance is proposed ~~in an area that supports~~ on depositional alluvial landforms that have not been cultivated (ie, the land as

not been disturbed for the purpose of sowing, growing or harvesting pasture or crops).

(5) In this clause –

clearance refers to the removal or modification of indigenous vegetation by cutting, crushing, application of chemicals, drainage, burning, cultivation, over-planting, application of seed of exotic pasture species, mobstocking and/or changes to soils, hydrology or landforms

improved pasture means an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed, for livestock grazing

regular cycle means the periodic clearance of regenerating indigenous vegetation that is demonstrated to be part of a consistent management regime in place for the purpose of maintaining improved pasture

depositional landform means **alluvial** (matter deposited by water e.g. fans, river flats and terraces), **colluvial** (matter deposited by gravity at the base of hillslopes, such as talus), and/or **glacial** (matter deposited by glaciers: moraines and outwash) landforms

- 10.9. EDS has discussed the above amendments with Forest & Bird and supports the amendments for the reasons set out in Forest & Bird's submission.
- 10.10. EDS also agrees with Forest & Bird's submission to amend Policy 10 to better reflect the intention that within SNAs, existing activities should not increase the character, intensity or scale of their effects. This amendment is set out below:

Policy 10: to provide for appropriate existing activities that have already modified indigenous vegetation and habitats of indigenous fauna while ensuring that such activities do not increase the character, intensity or scale of their effects on SNAs.

Geothermal ecosystems

- 10.11. The NPSIB recognises that a unique approach must be adopted for the management of adverse effects on geothermal ecosystems. Given their rarity, geothermal ecosystems are likely to be identified as high-value SNAs, requiring the strict avoidance of a number of adverse effects. However, the use of geothermal resources for the generation of electricity is also recognised as being nationally important⁶³ – creating a conflict.
- 10.12. Given the importance of these ecosystems, EDS considers that a national framework for the management of geothermal ecosystems is required. This framework should be contained within the NPSIB itself, as this will ensure the process endures regional and district planning processes (particularly in areas with geothermal resource that are not currently managed well). As such, EDS supports Option 3 in the Discussion Document.

⁶³ National Policy Statement for Renewable Energy Generation 2011, Objective A

11. Identified taonga

- 11.1. EDS supports the approach set out to identifying and managing taonga species as set out in the Discussion Document. By providing for tangata whenua to manage the particular species, ecosystems, sites and individual plants or animals that are treasured to them the NPSIB gives effect to Article 2 of te Titiriti o Waitangi and the principle of rangatiratanga.
- 11.2. Policy 3.14 of the NPSIB gives effect to the recommendations in the Wai 262 report, namely that future legislative reforms should provide for:⁶⁴
- Control by Māori of environmental management in respect of taonga where it is found that the kaitiaki interest should be accorded priority
 - Partnership models for environment management in respect of taonga
- 11.3. The proposed approach is also consistent with section 6(e) RMA which requires decision-makers to recognise and provide for the protection of relationships with taonga as a matter of national importance; and section 7(a) which provides recognition for kaitiakitanga as a form of environmental management.

12. Highly mobile fauna

- 12.1. EDS supports the inclusion of a separate approach for the management of highly mobile indigenous fauna. Due to the migratory nature of these species, they are hard to detect and as such have been badly managed under the current RMA processes. EDS considers that in order to maintain biodiversity as required by the RMA, better protection for these important species is needed. As a first step, better data is required about their likely presence or absence, and communities need to be better educated about their needs.
- 12.2. However, EDS considers that the proposed Policy 3.15(1) goes further than what was anticipated by the BCG. The current wording requires that councils *must survey and record areas outside SNAs where highly mobile fauna have been, or are likely to be, sometimes present*. This reads more like an environmental bottom line and imposes stringent requirements on local authorities.
- 12.3. In comparison, the BCG's intent was that this would be a flexible policy that encouraged regional and territorial authorities to *where practicable undertake region-wide surveys or use existing information to indicate the likely presence or absence of highly mobile indigenous fauna*.⁶⁵ It was intended that this could largely be a desktop analysis using existing information and the wealth of knowledge held by the Department of Conservation, community conservation groups and other sources, with the intention of integrating existing information and filling gaps in coverage. The inclusion of 'where practicable' also indicates a degree of leniency— it was not intended that there be a strict requirement on councils to survey but rather that there be flexibility and feasible in terms of councils resources. It is not practicable to undertake whole district surveys for all threatened or at

⁶⁴ Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity* (WAI 262). Wellington: Waitangi Tribunal

⁶⁵ Policy 14(1)(e), above n 4 at 66

risk mobile fauna species (for example, a large number of invertebrates are threatened or at risk). There should be prioritisation of species that are likely to be impacted by peoples' activities.

12.4. EDS recommends that Policy 3.15(1) is redrafted as follows:

Where practicable every regional council shall work together with the territorial authorities in its region to undertake region-wide surveys or use existing information to indicate the likely presence or absence of highly mobile fauna in areas outside SNAs, prioritising identification of presence of species likely to be affected by human activities.

13. Restoration and enhancement

- 13.1. In addition to the regulatory direction regarding the maintenance of biodiversity, and management of adverse effects, the NPSIB also contains provisions relating to the enhancement of ecosystems (namely Policy 3.16, 3.17 and 3.18). EDS supports the inclusion of all of these policies.
- 13.2. As stated in the Discussion Document: *'some ecosystems in New Zealand have suffered so much loss the only way they can be maintained is through the restoration, reconstruction and enhancement of indigenous habitat'*.⁶⁶ It is recognised that inherent in the concept of 'maintain' is some degree of loss (for example as a result of pests, climate change or degradation) and as such some active protection is required just to stay in equilibrium.
- 13.3. Policy 3.16 promotes the restoration and enhancement of three areas: wetlands and former wetlands; degraded SNAs and areas that provide important connectivity or buffering functions. These priority areas are an obvious choice and are identified due to their importance and the level of loss that will result if they are not restored. As described earlier, wetlands are hotspots for indigenous biodiversity and provide ecosystem services to the wider environment. Preservation of wetlands is also a matter of national importance under s 6(a) RMA. Despite this, only 10% of the historical extent of wetlands remains.⁶⁷ As such the restoration and enhancement of what remains is critical. The enhancement of buffer and connecting areas also provides fragmentation and promotes landscape-scale protection.
- 13.4. As stated in the BCG report: *'it is generally accepted that when ecosystems persist at 10 per cent or less of their original extent, a decline in many species may be triggered, with severe fragmentation effects'*. This conclusion, reached on the basis of ecological advice, provides the basis for Policy 3.17 which requires councils to put in place restoration targets for urban and rural areas.
- 13.5. Policy 3.17(4) and (5) require councils to put in place targets to increase indigenous vegetation cover in areas that have less than 10 per cent cover. This is not a binding and enforceable limit, but instead a target to inform and develop biodiversity protection strategies. As described by the Land and Water Forum in the freshwater context: *'targets*

⁶⁶ Discussion Document at 68

⁶⁷ And in many places this percentage is even less. For example in the Hawkes Bay region on 2% of wetlands remain. Above n 4 at 43

identify the desired end point, and the time frame within which it must be achieved.⁶⁸ This direction in Policy 3.17 is therefore different to that in earlier provisions of the NPSIB that seek to maintain biodiversity through directive provisions.

- 13.6. The implementation of the restoration policies described above is assisted by the preparation of regional biodiversity strategies (as required by Policy 3.18). Regional biodiversity strategies encourage collaborative action and align the community behind a shared vision and set of priorities – encouraging landscape- scale restoration. Local authorities would then need to have regard to these strategies when developing restoration and enhancement provisions in their plans.
- 13.7. EDS supports the use of regional biodiversity strategies and considers that they are a good framework for connecting people to nature, focusing restoration efforts and preventing fragmented action.

14. Monitoring

- 14.1. EDS supports the requirements in Policies 3.19, 3.20 and 4.1 that require the monitoring of indigenous biodiversity. It is widely recognised that robust monitoring and reporting is required for the effective management of biodiversity: we need to know what the pressures are and whether the problem is improving or deteriorating.⁶⁹
- 14.2. Policy 3.19 sets out the requirement that information about indigenous biodiversity is included in the assessment of environmental effects. This policy recognises that councils need good information to adequately make decisions about resource consents and requires that this be provided before decisions are made, thereby strengthening the information base for management.
- 14.3. EDS also considers that environmental monitoring is a key component of the NPSIB. The monitoring plan required by regional councils under Policy 3.20 enables an assessment of the state of indigenous biodiversity: whether it is improving, remaining the same or degrading. By monitoring indigenous biodiversity against nationally agreed standards (to be determined through the New Zealand Biodiversity Strategy process) the information from each region can feed into a national data base, providing a holistic picture of the state of indigenous biodiversity in New Zealand.
- 14.4. For completeness, EDS also supports the requirements in Policy 4.1 requiring a national review of the effect of the NPSIB within 10 years of its commencement.

15. Conclusion

- 15.1. Overall EDS commends the work undertaken by the Ministry for the Environment and other government agencies in creating this document. The NPSIB provides a thorough, nationally consistent framework for the management of indigenous biodiversity. This

⁶⁸ Land and Water Forum (2010) *Report of the Land and Water Forum: A Fresh Start for Fresh Water* at 20

⁶⁹ Above n 1 at 69. See also Parliamentary Commissioner for the Environment (2019) *Focusing Aotearoa New Zealand's environmental reporting system*, Parliamentary Commissioner for the Environment, Wellington

framework will provide certainty to those tasked with managing biodiversity under the RMA and will create transparency in the way decisions are made.

- 15.2. EDS fully supports the proposal for the NPSIB, subject to the amendments sought in this submission. New Zealand's biodiversity is in crisis there is still time to turn it around. The NPSIB will be a critical tool in achieving this.