

13 September 2022

Ministry for the Environment  
Wellington



To Whom it May Concern,

**SUBMISSION: Managing our Wetlands in the Coastal Marine Area**

This letter sets out feedback from Boffa Miskell Ltd (Boffa Miskell) on **the current application of the NES-F to the CMA**, released August 2022.

We acknowledge the effort that the Ministry for the Environment (MfE) has put into managing our wetlands work programme in response to concerns about the ambiguity of the application of the National Environmental Standards for Freshwater (NES-F) to the coastal marine area.

Our feedback is mostly focused on **clarity and workability** and a key threat to coastal ecological values of the proposed changes as outlined in the discussion document and has been prepared with input from the practitioners within Boffa Miskell having experience working with the provisions of the NES-F. We recommend an expansion on Option 1 to provide bespoke regulations for natural coastal wetlands, amendments to the NZCPS to provide consistent policy direction and seek modifications to improve the clarity and workability of this definition.

This feedback does not represent the views of any of our clients.

**About Boffa Miskell**

Boffa Miskell is a leading New Zealand environmental planning and design consultancy with offices in Whangārei, Auckland, Tauranga, Hamilton, Wellington, Nelson, Christchurch, Queenstown and Dunedin. We bring planning, design and ecology together to enhance the value and sustainability of the natural, built and social environment. We work with a wide range of local and international private and public sector clients.

Amongst our practitioners, Boffa Miskell has some 60 ecologists and planners who provide expert ecological and planning advice to a range of clients including all levels of government (national, regional and territorial councils), government organisations (the Department of Conservation, MfE etc.), energy companies, the quarrying industry and land developers. Our practitioners hold registrations in their specific disciplines and represent their specialist expertise in decision-making

forums such as hearings and the Environment Court. A number are also accredited decision-makers under MfE's Making Good Decisions programme.

As practitioners involved in field assessments of freshwater (including wetlands), and in the interpretation of the application of national, regional, and territorial legislation, policy and regulations, we have first-hand knowledge and experience of the management of freshwater ecosystems throughout New Zealand; as well as the implementation of the effects management hierarchy. We work with many guiding documents, scientific literature, planning frameworks, mentors, and our own experiences.

**Feedback from Boffa Miskell**

In the table below we provide our response and feedback to the questions set out in the discussion document. Our feedback reflects our preferred approach of an expansion to Option 1. Suggested changes in line with this feedback are provided in **Appendix 1** of this letter.

1. Do you agree that the current application of the NES-F to the CMA requires amendment? Why/why not?
We agree that the current application of the NES-F to the CMA does need amendment in order to provide more clarity around how it applies to the CMA. We consider that the current framework under the NES-F is not workable for wetlands within the CMA.
2. Do you agree with the proposal to amend the NES-F wetland provisions to no longer apply to the CMA? Why/why not?
We do not support amendments to the NES-F to remove provisions related to the CMA. We acknowledge that clear direction around protecting coastal wetlands from further fragmentation is needed. In our opinion the Regional Coastal Plans cannot be relied upon to safeguard against further loss of coastal wetland extent, because in our experience there is inconsistent application of Policy 11 of the NZCPS and the rules under coastal plans are not consistently applied and therefore may or may not protect coastal wetlands from loss of extent. The more targeted approach that the NES-F provides around specific activities is what is needed to safeguard these vulnerable coastal environments.
We consider that the most efficient and effective approach for the management of coastal wetlands is through bespoke regulations within a national environmental standard. We acknowledge however that this NES approach cannot be undertaken in isolation of a review and change to the associated policy direction in the NZCPS.
3. Do you think the wording changes proposed in the preferred option make it clear that the NES-F would no longer apply in the CMA? Why/why not?
While we do not agree with the preferred option outlined in the discussion document, we agree that the wording changes do make it clear that the regulation will not apply to wetlands within the CMA.
4. Are there any reasons to prefer other options? If so, what are they?
Generally, we prefer Option 1 in that we agree specific regulations should apply to coastal natural wetlands, but we consider that a more bespoke approach is required that also includes a review of the NZCPS to ensure a consistent approach to all natural wetlands. We suggest changes are made to the NES-F and the NZCPS as outlined in <b>Appendix 1</b> . We provide the following reasons for the suggested changes, and this bespoke approach:

1. Specific regulations that relate to natural coastal wetlands will ensure a more effective way of managing activities within coastal wetlands. While Option 1 does provide for removal activities that are not relevant to a coastal based ecosystem, we do not consider that all activities would be captured by the regulation that are specified under Section 12 of the RMA. Option 1 as drafted in the discussion document would result in an overlap of rule framework between the NES-F and the Regional Coastal Plan. This may result in gaps in managing activities within coastal wetlands and inconsistent treatment of activities across different regions. In addition, the hydrology-based thresholds of “partial drainage” or “full drainage” are not appropriate for a Coastal Natural Wetland and unduly restrict reasonable activities. In our opinion the regulations are ambiguous when applied to the CMA and should reflect consistent terminology used in the NZCPS and Section 12 of the RMA, specifically reclamation and drainage of the CMA. Our suggested approach would seek to manage all relevant activities under specific regulations for natural coastal wetlands. To provide for this, other existing regulations that current apply to natural wetlands will need to be amended to refer only to “natural inland wetlands”. We recommend using a restricted discretionary activity status for all relevant activities within a natural coastal wetland, with the exception of reclamation and drainage for non-specified infrastructure activities, that should be a non-complying activity status.
2. We also consider that there is inconsistency between the National Policy Statement for Freshwater (NPS-FM) and the NZCPS for the protection of natural wetlands. The NPS-FM contains specific policy direction for the protection of wetlands, namely applying the effects management hierarchy and we support this approach. The NZCPS does not contain specific direction for wetlands and is rather directed through Policy 11. As noted above, in our experience there has been inconsistent application of this policy. To resolve this inconsistency and lack of specific policy direction for coastal wetlands, to provide certainty we suggest that Policy 11 of the NZCPS is amended to reflect the same direction for protection of natural wetlands as the NPS-FM provides.
3. We agree with the definition provided under Option 1 for natural coastal wetland, except for the definition provided for the “seaward boundary”, which in our opinion is overly complicated. The seaward extent of a coastal wetland should be MLWS. Subtidal habitats should be sufficiently covered under NZCPS. We have suggested changes to the definition to account for this.
4. We disagree with the proposed amendment under Option 1 to provide exemption for mangrove removal from vegetation clearance rules in the NES-F. Mangroves are recognised as providing a range of important ecosystem services including providing habitat for threatened species, protection from coastal inundation and carbon sequestration. In our opinion the coastal plans are not providing a consistent approach to protect these important habitats. Clear standards as are provided under the NES-F are needed in order to provide sufficient protection for mangroves. Extensive mangrove expansion should be managed by addressing the route course, which is human induced discharges of sediment to the CMA, rather than through vegetation clearance which has far reaching trophic implications. Our suggested changes would seek to make any indigenous vegetation clearance a restricted discretionary activity.

By leaving provision for coastal wetlands in the NES-F (with the suggested amendments as outlined above), coastal wetlands will be provided with the same level of protection as inland wetlands and a consistent overarching approach between regions, which is currently needed, will be applied. In our opinion this option will simplify assessment of activities within the CMA and provide better protection to important coastal wetland systems.

5. Is there any additional relevant information that you think the Ministry should consider?

Wetland identification and delineation protocols as has been provided for natural inland wetlands would also be a beneficial tool for coastal wetlands.

It would be useful for any wetland identification and delineation protocols for coastal wetlands to include a clear interpretation of the RMA definition of a wetland and how it applies to the CMA. In our experience the interpretation of “**permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions**” is not consistently interpreted between consenting authorities, with some councils interpreting this as “... plants OR animals...” versus “... plants AND animals...”

**Concluding comments**

Boffa Miskell is grateful for the opportunity to provide feedback on the discussion document. We hope that any future National Policy Statement or regulatory-related documents will consider seeking the input of practitioners such as staff at Boffa Miskell.

Accordingly, Boffa Miskell would be happy to participate in any further workshops or advisory groups to further develop the NES-F and any future guidance documents.

Yours sincerely,



Kerry Gupwell  
Chief Executive  
Boffa Miskell Ltd.

## Appendix 1: Suggested changes to the NZCPS and the NES-F

### Amend Policy 11 of the NZCPS as follows:

#### **Policy 11: Indigenous biological diversity (biodiversity)**

To protect indigenous biological diversity in the coastal environment:

- a. avoid adverse effects of activities on:
  - i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
  - ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
  - iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
  - iv. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
  - v. areas containing nationally significant examples of indigenous community types; and
  - vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:
  - i. areas of predominantly indigenous vegetation in the coastal environment;
  - ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
  - iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable
  - iv. to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
  - v. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
  - vi. habitats, including areas and routes, important to migratory species; and
  - vii. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.
- c. Irrespective of clause (a) and (b), protect *natural coastal wetlands* by managing the adverse effects of an activity on the extent or values of a natural coastal wetland (including cumulative effects and loss of potential value) that requires that:
  - i. adverse effects are avoided where practicable; and
  - ii. where adverse effects cannot be avoided, they are minimised where practicable; and
  - iii. where adverse effects cannot be minimised, they are remedied where practicable; and
  - iv. where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and
  - v. if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and
  - vi. if aquatic compensation is not appropriate, the activity itself is avoided.

### Amend Regulations 52, 53 and 54 of the NES-F as follows:

#### *Drainage of natural inland wetlands*

#### **52 Non-complying activities**

- (1) Earthworks outside, but within a 100 m setback from, a natural inland wetland is a non-complying activity if it—

- (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and
  - (b) does not have another status under any of regulations 38 to 51.
- (2) The taking, use, damming, diversion, or discharge of water outside, but within a 100 m setback from, a natural inland wetland is a non-complying activity if it—
- (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and
  - (b) does not have another status under any of regulations 38 to 51.

**53 Prohibited activities**

- (1) Earthworks within a natural inland wetland is a prohibited activity if it—
- (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural inland wetland; and
  - (b) does not have another status under any of regulations 38 to 51.
- (2) The taking, use, damming, diversion, or discharge of water within a natural inland wetland is a prohibited activity if it—
- (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural inland wetland; and
  - (b) does not have another status under any of regulations 38 to 51.

*Other activities*

**54 Non-complying activities**

The following activities are non-complying activities if they do not have another status under this subpart:

- (a) vegetation clearance within, or within a 10 m setback from, a natural inland wetland;
- (b) earthworks within, or within a 10 m setback from, a natural inland wetland;
- (c) the taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural inland wetland.

Insert new Regulation 53A and 53B into the NES-F as follows:

*Activities within a natural coastal wetland*

**53A Restricted discretionary activities**

- (1) Reclamation or drainage of any natural coastal wetland is a restricted discretionary activity if it is for the purpose of construction or maintenance of specified infrastructure.
- (2) Indigenous vegetation clearance within a 10 m setback from a natural coastal wetland is a restricted discretionary activity.
- (3) Occupation of space in the common marine and coastal area within any natural coastal wetland is a restricted discretionary activity.
- (4) Disturbance of the foreshore or seabed within any natural coastal wetland is a restricted discretionary activity.
- (5) Deposition in, on or under the foreshore or seabed within any natural coastal wetland is a restricted discretionary activity.
- (6) Discharge of contaminants into any natural coastal wetland is a restricted discretionary activity.

*Matters to which discretion restricted*

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

**53B Non-complying**

- (1) Reclamation or drainage of any natural coastal wetland that is not otherwise provided for by regulation 53A(1) is a non-complying activity.

**Amend the (proposed) definition of natural coastal wetland of NES-F as follows:**

**natural coastal wetland** (coastal wetland) means a natural wetland that:

- is within the coastal marine area (CMA) and bounded by:
  - the landward boundary of mean high-water springs; and
  - the seaward boundary of mean low water springs; and
- is part of a tidal estuarine hydrosystem; ~~and~~
- ~~does not exceed a depth of six metres at low tide.~~