

Date: 10 July 2022

Ministry for the Environment
Wellington



To Whom it May Concern,

SUBMISSION: Exposure draft of amendments to the National Policy Statement for Freshwater Management 2020.

This letter sets out feedback from Boffa Miskell Ltd (Boffa Miskell) on the '**Exposure draft of amendments to the National Policy Statement for Freshwater Management 2020**', released June 2022 (the exposure draft).

We acknowledge the effort that the Ministry for the Environment (MfE) has put into the exposure draft in response to concerns about the ambiguity and unworkability of the National Policy Statement for Freshwater Management 2020 (NPS-FM) (dated August 2020).

Our feedback is focused on the **clarity and workability** of the proposed changes as outlined in the exposure draft and has been prepared with input from the practitioners within Boffa Miskell having experience working with the provisions of the NPS-FM. We respond to the proposed Amendment 1, being the definition of natural wetlands, 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 (in italics) on the proposed Amendment 1 as set out in the exposure draft.

<p>Amendment 1: Definition of ‘natural wetland’</p> <p>Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?</p> <p>In particular, we welcome your feedback on this list of ‘exotic pasture species’, in particular commentary on any missing species, and whether the list would work when applied in your region.</p>
<p>Response: We welcome the amendments that better clarify the definition of a ‘natural wetland’, and that clarify the exclusion clauses. We respond to each separate exclusion clause below:</p> <p><i>Natural wetland means a wetland (as defined in the Act) that is not:</i></p> <p><i>(a) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural wetland) as part of giving effect to the effects management hierarchy; or –</i></p> <p>We support this amendment.</p> <p><i>(b) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or</i></p> <p>We support this amendment with the following comment.</p> <p>We note that under the RMA, a ‘water body’ includes a ‘river’, and a ‘river’ includes streams and modified watercourses but does not include an artificial watercourse such as a (deliberately constructed) farm drainage canal. We consider that there is inconsistency and a lack of clarity with exclusion (b). Only those areas where wetlands have developed around a deliberately constructed water body meet the exclusion from natural wetlands, whereas those that have developed within or alongside equally deliberately constructed artificial farm drainage canals or channels (where they are not a modified natural waterbody or wetland) but not a modified waterbody) would fail the exclusion. Alternatively, a definition of constructed water body would help better clarify the intent of this exclusion.</p> <p>We consider that the exclusion (b) should be consistently applied to all deliberately constructed watercourses and not just those that meet the definition of a water body under the RMA.</p>

(c) a geothermal wetland.

No change.

(d) a wetland that:

(i) is within an area of pasture; and

(ii) has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species (see clause 1.8)); and

(iii) is not known to contain threatened species

We make the following submission.

Regarding matter (i).

This proposed amendment is helpful, but we submit that a definition for pasture needs to be provided. Dictionary definitions for this term vary – pasture can mean a site **used for** grazing, and / or a site **suitable for** grazing. An example of an agricultural definition of pasture is as follows:

Pasture is **an area of land that is covered in a range of low-growing forage species.**

Grasses, legumes, and herbs are common pasture plants, with farmers selecting particular cultivars to suit animal nutritional needs and local growing conditions.¹

Furthermore, the standard definition of pasture does not address other exotic grasslands not grazed; for example, cropping land, hay or silage growth, winter crops (beets), pasture being spelled, laneways within farms, or other maintained exotic grass areas such as golf courses and council parks, are ‘captured’ by the definition or not.

Regarding matter (ii)

The definition of ‘natural wetlands’ excludes wetlands (as defined in the RMA) that occur ‘*within an area of pasture and has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species)*’.

The draft national list of exotic pasture species comprises commercially available grasses and legumes, a selection of plants historically sown as forage species, and a few species that may have productive potential as fodder plants but are not widely cultivated in New Zealand. All non-forage species that commonly occur in pasture are excluded, as are fodder crops (e.g., beets and brassicas) that could be cultivated in seasonally wet sites. All wet-tolerant (obligate or facultative wetland) exotic grasses are excluded, including common and widespread species such as Mercer grass that were intentionally established to increase the productivity of seasonally wet sites.

Evaluation using the draft list of specified pasture species will exclude substantial areas (both wet and dry) that are routinely used to graze livestock and would intuitively be regarded as pasture. Furthermore, the decision to leave all species tolerant of wet conditions off the list rather defeats the purpose of the ‘pasture exclusion’ to the natural wetland definition, as essentially no sites that meet the definition of pasture using this list would qualify as wetlands. The example definition of ‘pasture’ set out above accurately identifies that the species present in a pasture will vary widely across the NZ landscape based on conditions and the species being grazed, which we don’t see accurately reflected in the current national list.

¹ <https://www.sciencelearn.org.nz/resources/3017-observing-pasture-composition>

We consider that the proposed national list of pasture species should either be removed, or updated to reflect common species of pasture, including wet-tolerant and non-forage species, to avoid the situation where areas that clearly meet an ordinary definition of pasture are treated inconsistently under the NPS-FM; and where landowners, in the course of routine farm operations such as cultivation and pasture management, would be in breach of National Environmental Standards for Freshwater (NES-F) regulations. We consider that further work needs to be undertaken to compile a list that is representative of pasture communities throughout New Zealand and considering regional variations.

Regarding matter (iii)

We note that 'threatened species' is defined in the NPS-FM (clause 1-4) but further note that the definition also requires that a threatened species 'relies on water bodies for at least part of its life cycle'. The term 'life cycle' is not defined but can be considered to mean 'the series of changes and developments that a species passes through from the beginning of its life until its death'². Essentially this means that any single, some, or all stages of life from hatching/rearing/juvenile growth/dispersion/adulthood/residency/reproduction/nesting may be applicable to 'contain'.

We are concerned that the term 'contain' in the criterion (iii) is ambiguous and will be subject to different and potentially conflicting interpretations. Whilst we accept 'contain' as purposeful for resident flora (permanently growing and present), it is a much more difficult term to apply to fauna that may disperse amongst a variety of different locations and ecosystem types. For example, a transient or occasional visitor for a short period (or a series of short periods) for feeding or dispersal purposes would potentially be accepted as 'contain' for the purpose of defining a natural wetland. If that is the case, then we submit that needs to be clearly articulated in the definitions for the avoidance of any doubt.

Furthermore, we consider that the ambiguity of 'not known to contain' is equally vexed. The ability to respond to such a criterion may require extensive data collection and/or observations over different seasons and possibly several years to confirm the presence (or not) of a threatened species. We consider that there may be a need for extensive surveys to prove there are no threatened species, or the status of a wetland area (as being a 'natural wetland' or not) could be determined on the premise that threatened species might visit briefly. Indeed, incidental sightings of threatened birds in transit are common in many wetland areas as well as wet pasture (and also in constructed wetlands).

We seek further clarification to part (iii) of the wetland exclusion. In order to improve the workability of the amendments to the NPS-FM, we seek clarification of the intention of the term 'contain'. One option may be to clarify whether incidental visits by transient individuals is part of the life cycle, and or to define specific stages of life cycle that meet the 'contain' category.

Finally, we note and agree with the stated intention of this criterion to 'capture' within the definition of natural wetland (for example) ephemeral wetlands that may be dominated by pasture species but that also provide important habitat for indigenous plants of conservation importance.

Amendment sought: We seek the following modifications to the Amendment 1.

² Collins dictionary

(b) We submit that, for the avoidance of doubt, the exclusion needs to clarify that river (as a defined water body), as defined in the RMA, does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal) which would all be considered as a deliberately constructed water body for the purposes of the NPS-FM.

(c)(i) We seek that a definition for 'pasture' is provided, especially one that clarifies whether it is narrowed to specifically mean sites 'used for' grazing, or a broader meaning that includes sites 'suitable for' grazing.

(c)(ii) We submit that the list of pasture species should reflect common species of pasture, including wet-tolerant and non-forage species, and that further work needs to be undertaken to compile a list that is representative of pasture communities throughout New Zealand and taking into account regional variations.

(c)(iii) We seek clarification of the intent of the use of the term 'contain' in the exclusion, particularly in respect to mobile fauna. One option may be to clarify whether a species is reliant on a site for part of its lifecycle such as breeding, or if the habitat supports that species seasonally or annually by way of forage or shelter, as opposed to for example, the observation of an incidental visit by a transient or wide-ranging individual on flooded pasture.

Concluding comments

Boffa Miskell is grateful for the opportunity to provide feedback on the discussion document. We emphasise that we feel that earlier opportunities for practitioners to contribute to the NPS-FM and NES-F might have avoided some of these issues. 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 NPS-FM and any future guidance documents.

Yours sincerely,



Kerry Gupwell CEO

Boffa Miskell Ltd.