

Consultation on Essential Freshwater October 2019

Submission by Betsan Martin,
Convenor, Methodist Public Issues
PO Box 12297, Wellington
Ph +64 21 388 337

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Policies to strengthen the health of water ecosystems are timely. In general we fully support the direction of integrated governance of fresh water, and the overall framework of Te Mana o Te Wai as a means to achieve ecosystem health.

In this submission we identify selected points for proposed policy in the *Essential Freshwater* programme.

We welcome the impetus for public debate provided by the *Essential Freshwater* consultation, and by the information from Te Kahui Wai, the Freshwater Leaders Group, The Science Technical Advisory Group, the Regional Stakeholder Water Sector, and draft NPs-FM and the NES, and the proposed RMA 2019 amendment.

At the outset we wish to note that Response Trust is undertaking research on freshwater governance for Stage Two reforms, and beyond. This research is with the New Zealand Māori Council and Assoc Prof Linda Te Aho (Te Piringa, University of Waikato), and is funded by the NZ Law Foundation. Therefore we anticipate further engagement with the Ministry for Environment and the Minister for Environment in 2020.

1. We fully endorse Te Mana o Te Wai as the knowledge base from which to achieve ecosystem health as a framework that encompasses the multiple dimensions of water ecosystems. The three-tiered hierarchy of obligations (*Essential Freshwater* S. 4.2) brings clarity of purpose and resolves the matter of 'balance' between sustainability and economic growth which has led to decision-making in which economic benefit outweighs environmental safeguards.

We acknowledge the development of Te Mana o Te Wai by Tangata Whenua leaders and advocates for Freshwater, as a remedial knowledge base for fresh water policy. This holistic, integrative framework for informing and guiding policy strengthens capacity to link the multiple dimensions of water governance, policy, interests and fields of responsibility. It marks a profound step forward in a Treaty respectful approach to governance and a move forward from the deeply adverse history of colonial alienation of waterways. The legally fragmented regimes and sidelining of tangata whenua knowledge and participation in decision-making for waterways with which they have relationship is documented in many places – most recently and comprehensively in the Wai 2358, the Waitangi Tribunal Freshwater and Geothermal Resources claim. It is important to be informed of this history in order to appreciate the emphasis given to Māori participation in *Essential Freshwater*.

2. On the issue of integrative systems we agree with 'whole-of-government investment' noted in *Essential Freshwater* 1.5. This is a pathway to correcting the problem of treating water and pollution as an economic externality, excluding the impacts of productivity and growth on water health.

In particular it is a priority for the Resource Management Act (RMA) and other relevant legislation to be aligned with the Climate Change Response (Zero Carbon) Amendment Bill.

Sections 104E and 70A of the RMA specifically rule out the ability of a council to take into account the effect of greenhouse gas emissions on climate change when making rules and when considering

a resource consent. A similar section is in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ/CS Act) - s59 (5)(b).

Under these provisions, local authorities and the Environmental Protection Agency (EPA) are blocked from considering the effects of emissions on climate change for any new project. The RMA and EEZ/CS Act will stand in the way of a comprehensive path of cutting emissions in order to get onto a 1.5°C pathway.

Resource Management Amendment Bill

Currently the RMA is before Environment Select Committee in respect of the *Essential Freshwater* policies.

It is important to make the following amendments:

- make climate change a matter of national importance, and
- remove Sections 104E and 70A, and insert requirements for regional councils and territorial authorities to be consistent with the Climate Change Response (Zero Carbon) Amendment Act in planning and in considering consents.

Our recommendation is to remove Sections 104E and 70A from the RMA and section 59(5)(b) of the EEZ.CS Act.

The complexity of influences on water and of the interests across sectors makes an across sectoral and whole-of-government approach imperative. *Essential Freshwater* identifies farmers and farm practices, implementation by councils, catchment-level protection and restoration, technology to manage pollution. Hydro-electricity companies are major stakeholders, and also dairy processors, most significantly Fonterra. Urban development, diversified agriculture and horticulture are in scope of *Essential Freshwater*. Including Wastewater, Stormwater and Drinking water in *Essential Freshwater* policy is a further advance on a whole-of-system approach. We note the issue of water bottling and exporting needs urgent attention.

Further sectors immediately concerned with waterways to be brought into the scope of accountability for impacts on waterways include Forestry, the Ministry for Primary Industry, Tourism, and the financial and banking sector. I participated in a recent site visit across the Canterbury region from the Waimakiriri to the Rakaia River allowed for observation of the land use changes and investments in massive scale irrigation systems. It is clear that farmers with investment in these large scale installations are also tied to debt management. This forces an emphasis on high productivity at any cost. The need for engagement between farmers, irrigation stakeholders and financial investors needs to be included in the remedial strategies for waterways, with a view to involving banks and investors in solutions. While this may seem out of scope for the current Stage 1 reforms, our attention to this issue is informed by anecdotal advice from farming networks.

With regard to specific proposals:

3. National Policy Statement - Freshwater Management/ NPS-FM (*Essential Freshwater* S. 2)

Overall, we support regulation through NPS-FM to achieve the the health of water ecosystem outcomes. While many farmers and foresters, and some Regional Councils are contributing to improved standards and implementing strategies to avert pollution, the overall decline in the health of fresh water since 1994 shows that previous policies that rely on devolved co-operation and voluntary management practices, are inadequate. Most notably this is reinforced by the statement that over half of regional councils are not confident of plan changes to give effect to the current NPS-FM by 2025 (*Essential Freshwater* 4.1).

More on NPS-FM

4. **Mahinga Kai** (*Essential Freshwater 4.4. Proposal 1*)

We support Mahinga kai as a compulsory value with water resources, and kai, as safe to harvest and eat, and that 'the mauri of the place is intact'. We agree with the adaptive and catchment-context approach to identifying mahinga kai in catchments and that provision should be made to enable tangata whenua to continue to identify the multi-faceted qualities of mahinga kai values.

We support a corresponding provision for catchments to ensure the resourcing of tangata whenua to undertake the work of identifying mahinga kai in their rohe and for the engagement of tangata whenua with regional councils.

This accords also with Proposal 2 to strengthen priority given to tangata whenua freshwater values.

5. **New Planning process through the RMA** (*Essential Freshwater S.4.4*).

The requirement for councils to have plans in accordance with Te Mana o Te Wai and to implement the new NPS-FM gives credibility to implementation of the new policies.

Re Plans – all five components of ecosystem health should be compulsory in the new regional plans. (see *Essential Freshwater 5.2*), no. 7 below. The five, aquatic life, habitat, water quality, water quantity, ecological processes all contribute to ecosystem health and should not be divided and allocated amongst land users or consent holders. For example it is obligatory for very farm plan to account for all five components.

New policy for making plans through freshwater hearing panels:

On the matter of Government-appointed freshwater commissioners as part of the panel team to review regional council plans, we propose that government appointments are provisional and would prefer that commissioners be appointed by a Waterways Commission if this established.

6. **Exceptions for hydro schemes** (*Essential Freshwater 4.6*)

We do not support the exemptions from the new standards for the six nominated hydro schemes. Given the scale of hydro generation, this exemption has the potential to exempt a very large proportion of Lakes and waterways – notably Whanganui River, Lake Taupo, Waikato River. Exemptions could mean that objectives can be set below the bottom line on the basis that meeting water quality goals will inhibit electricity production.

Rather we propose that consents for hydro are subject to mitigation measures. This is in line with advice from KWM and FLG advice and RSWS advice in favour of regional council discretion to consent to enabling exemptions and offset mitigation requirements.

7. **Ecosystem Health** (*Essential Freshwater 5.2 – 5.12*)

Aquatic life, habitat, Water quality, Water quantity, ecological processes.

Raising the bar on ecosystem health is very important improvement on the attribute focus which isolates a few aspects of river dynamics and does not account for the complex, dynamic and interactive ecosystem. We urge further development of the five criteria, as recommended by STAG.

Criteria that need development are interaction between species, and native fish species

Selected commentary:

5. 4, 5.5 Aquatic life.

The new compulsory value for native freshwater (and saltwater) fish should be added to the **NPS-FM** with criteria for ecosystem health that would support the return to abundance of native fish. The shocking state of 75% decline in is an indictment on the state of waterways and a clear indicator of degraded water ecosystems. Fish passage is a corollary of native fish restoration.

5.6 Habitat. No further loss of Wetlands

The proposal of no further loss of wetlands and protecting wetlands falls short of restoring wetlands. No further loss settles for the status quo. What about land managers who have drained wetlands, or who will do so in the period up to 2025? Wetlands are part of the habitat and ecosystem health requirements for strengthening the viability of threatened species.

There needs to be more thought on how Wetland restoration can be included in policy. In the Resource Management Act defines a wetland as 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. We commend reference to the more comprehensive Ramsar framework for wetlands.¹ To which New Zealand is a signatory.

5.8 Water Quality

The new limit of 1mg dissolved inorganic nitrogen (nitrate-nitrogen) per litre water will require different responses in different regions, according to the conditions in the catchment and the management regime in place.

There has been inflammatory opposition to the level of reductions that will be needed in areas such as Southland, Canterbury and Waikato.

Adaptive principles enable different management systems to be used for soft-bottomed rivers and hard/stony bottom rivers, which may require tighter restrictions on nutrients to achieve the new standards. Similarly policy should provide for tighter restrictions in agriculture-dominated lowlands.

The toxicity levels of current attributes (N, phosphorus, periphyton) which measure toxicity to aquatic species are different for ecosystem health.

While 1mg nitrate-nitrogen is significantly lower than the 6.9mg in the current NPS-FM, it only brings it to a level nearer to a human health standard. It is salutary to link nitrate-nitrogen with research on human health and exposure to colonic cancer. A recently published analysis of nitrate-nitrogen in New Zealand drinking water² drew on an extensive Danish study³ which links .89mg nitrate-nitrogen with exposure to risk of colonic cancer. Recent monitoring of wells in Canterbury gave nitrate-nitrogen as over 3mg. in over half of the sites.

5.9 Water Quality – reducing sediment

Policy to reduce sediment is one of the most important areas for this policy programme.

We support the recommendation of STAG:

Amend the national framework for freshwater management to introduce tables specifying numeric biophysical values for deposited and suspended sediment.

¹ https://en.wikipedia.org/wiki/Ramsar_Convention and

<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/wetland>

² <https://www.stuff.co.nz/environment/110205437/is-nzs-drinking-water-dangerous-major-international-study-links-nitrates-with-bowel-cancer>

³ <https://www.newshub.co.nz/home/rural/2019/01/nitrates-in-the-water-could-be-behind-nz-s-high-bowel-cancer-rates.html>

And note the recommendations in 4.6 of the Interim Regulatory Impact Analysis for Consultation: Essential Freshwater Part I: Summary and Overview (p. 27):

That the NPS-FM include:

- a suspended fine sediment attribute with a requirement to set resource use limits and
- a deposited sediment attribute with an action plan requirement

Deposited sediment.

This important component is poorly developed and needs far more criteria and guidance than the proposed adaptive management direction to councils. It should set limits to the quantities of deposited sediment and not wait to assess whether there are improvements in 5 years.

Suspended sediment

Similarly these are poorly developed guidelines. See spatial attribute map on NIWA website, and [NPS-FM-Appendix 2](#)

8. *Safe Drinking Water S. 6; Stormwater and wastewater S. 7*

We agree with integrating all aspects of water into the *Essential Freshwater* programme. We do not have detailed commentary on these sections at this stage.

The intention to appoint an independent regulator to implement a new framework is a topic that is to be included in the research on an independent Commission supported by the NZ Law Foundation. The research will consider the scope of the multiple domains of water governance might come within the responsibilities and advice of a Te Mana o Te Wai Commission. The proposed Water Services Act will be of interest.

In principle we strongly support progress in requirements for green infrastructure, and recommend a programme of work for planning, on stormwater network design, with examples on good practice to actively support council innovation and implementation. National guidance on green infrastructure should be a priority.

We will provide information to MfE from this research.

9. *Improving Farm practices Essential Freshwater S.8.*

8.2 Restricting intensification

a. We support the intention of restrictions on intensification.

Policy needs to be developed to address the following:

- while the proposed policy should stop further contamination, the restrictions on further intensification to not stop current practices. Under the proposed regime intensified practices and fertilizer use are not subject to these rules. Nor is there recognition of farming practices which have changed to low discharges.

- a question on the proposed restrictions on land above 10ha. Under this policy a land user could intensify, or change land use on multiple 9.9 ha blocks and thus circumvent the restrictions of 10ha's and the need for a resource consent.

b. Commercial vegetable growing.

We support Option 1: no increase in contaminant discharges

[See Part 3 NES for Freshwater.](#)

8.3 Farm plans

Achieving integrated planning for fresh water, climate emissions, biosecurity, animal welfare, health and safety is brilliant! We note the confluence with the provisions for reducing emissions in the Zero Carbon Act.

We support mandatory requirement of a water module in Farm Plans. While many farmers are carrying out practices to reduce contaminants and emissions, regulation is required for farmers that are noncompliant.

While farm plans are a valuable support tool for farm practices, they are not a substitute for regional council implementation responsibilities. Farm Plans are not a substitute for setting environmental limits.

The question of managing the costs of farm plans, estimated at \$3500 per plan? The certification scheme is promising and would amplify Regional Council implementation. However professional farm plan advisors and certifiers would expect professional level remuneration, likely to be well above this figure.

The possibilities for funds for farm plans and for other measures for ecological restoration lie beyond the current policy system. At present the costs could be met through an MFE fund through a government budget vote.

Looking forward, and beyond the scope of *Essential Freshwater* Stage 1, other avenues for such costs could be through the revenue from a charge on commercial use of water, on charges for water bottling, on taxes on fertilizer and on imported feed.

These options will be considered more fully in the NZ Law Foundation funded research on a Commission and the economy of water.

8.4 Nitrogen-loss cap in high nitrate-nitrogen catchments.

In summary we support option 1 and 2 .

We support a nitrate cap at no less than the 70th percentile as the threshold for any land use (dairy, sheep and beef), with 12 months to reduce nitrogen below the threshold, or option to apply for a resource consent with conditions to comply within 2 years.

Policy for setting a nitrogen fertilizer cap should be developed urgently. Advice we have been given proposes a fertilizer cap of 150kg N per ha, which should be applied nationally.

There is no mention of incentives to encourage organic farming or permaculture methods which do not rely on chemical inputs. We propose these methods be brought into the thinking of the *Essential Freshwater* Policy process.

8.5 Stock exclusion – an important management tool, should be achieved through fencing with a 5 meter setback from river or lake bed – as recommended in the Regulatory Impact Statement (s. 4.20 p. 47)

Regarding streams under 1 meter wide, contamination from stock is potent in small streams, as identified in the Regulatory Impact Statement (4.20 p. 48).

An ecosystem health perspective would take account of the habitat damage caused by cattle, pigs, deer and goats around streams. This includes loss of vegetation, bank erosion, adverse effects on fish-spawning. Further details are spelled out in the Regulatory Impact Statement (4.20) We see the value of the clarity of national consistency. However a more flexible approach, possibly through the Farm Plan process, could identify exclusion requirements by an evaluation of stream and water contamination on each farm unit.

This submission does not comment on the detailed analysis of costs, except to note that stock exclusion did not result in significant loss of profits. Once again we mention alternative economic models, and income streams that might be brought to bear on the costs of environmental protection.

The emphasis on stock exclusion need corresponding policy on urban pollution through stormwater, overflows and leaky pipes (Environment Aotearoa Issue 5)⁴.

10. Conclusion

This submission does not attempt to provide comprehensive feedback on all the areas identified in Action for Healthy Waterways, and the suite of accompanying documents: Kahui Wai Māori, Freshwater Leaders Group, Science Technical Advisory Group, Regional Stakeholders Water Sector, Regulatory Impact Statement and draft NPS-FM, and draft amendment to RMA

This submission is also informed by the Waitangi Tribunal State 2 Report on the Freshwater and Geothermal Resources Claim.⁵

In conclusion we emphasise the importance of enabling and ensuring tangata whenua/ Māori engagement and the urgent attention required to resourcing engagement. Resourcing is needed first of all for tangata whenua/ Māori and for hapū.

Additionally, resourcing Regional Council staff and the agricultural sector on Māori knowledge and protocols of engagement is an area for 'relationships with Māori' and Te Tiriti o Waitangi capability development.

Thank you for the important work being initiated through the *Essential Freshwater* policy process.



Betsan Martin
Public Issues, Te Hahi Weteriana

⁴ <https://www.mfe.govt.nz/sites/default/files/media/Environmental%20reporting/environment-aotearoa-2019.pdf>

⁵ https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_152208791/Freshwater%20W.pdf