

Submission on Managing our wetlands in the coastal marine area: A discussion document on the application of the National Environmental Standards for Freshwater to the coastal marine area

To the Ministry for the Environment

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Submitter details

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The Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and make recommendations to improve environmental outcomes. The Commissioner is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Submission

I undertook an investigation into the management of Aotearoa's estuaries in 2020. Wetlands in the coastal marine area are diverse. They include saltmarshes, mudflats, rushland, mangrove swamps.¹ All of them are sensitive ecosystems. Given that over 90 per cent of our natural wetlands have been lost since human settlement, we need to tread carefully.

I'm writing to voice my concerns about the preferred option in the Managing our wetlands in the coastal marine area discussion document. It proposes to amend the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) so that that the NES-F wetland provisions no longer apply to natural wetlands in the coastal marine area.

I note that the NES-F was originally intended to apply to both inland and coastal wetlands. In 2020 Cabinet agreed that the "NES will lead to consenting requirements and conditions on activities such as infilling and diversions that lead to the loss of wetlands, including coastal wetlands, and streams."²

¹ For more details on what constitutes a wetland in a coastal marine area see P. Gerbeaux and T.M. Hume (2022): What constitutes a wetland in the New Zealand Coastal Marine Area? – a scientific perspective. New Zealand Journal of Marine and Freshwater Research, DOI: 10.1080/00288330.2022.2085309.

² Cabinet paper, 2020. Action for healthy waterways – Decisions on national direction and regulations for freshwater management, paragraph 53. <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/action-for-healthy-waterways-decisions-on-national-direction-and-regulations-for-freshwater-management/>.

The discussion document raises concerns that a range of activities occurring near coastal wetlands will be “captured as prohibited or non-complying under the NES-F, where they would otherwise have been adequately and appropriately managed by coastal plans”.³

Those activities include:

- water take and water use, damming, diversion or discharge of water
- vegetation clearance, including mangroves clearance
- earthworks for the construction or maintenance of structures (e.g. wharfs, jetties or sea walls).

All of those activities have the potential to adversely affect coastal wetlands. We need to proceed with caution given that only a small proportion of these sensitive ecosystems are left.

While some unforeseen issues with the application of the NES-F rules have arisen since the standards came into force, the preferred option of completely excluding wetlands in the coastal marine area from the scope of the NES-F goes too far.

After examining Part 3 of the current NES-F, it appears that many (if not all) of these activities fall under permitted or restricted discretionary activities, meaning that they will be able to go ahead, provided certain conditions are met. I recognise that there may be cases where desired activities will not meet the criteria for those consenting pathways. In that case they would need to be assessed on a case-by-case basis. This doesn't seem unreasonable.

Given that coastal wetlands are highly location-specific, requiring management that is tailored to the demands of the location, a more nuanced framework is needed. It would be unwise to remove the protection offered by the current NES-F without an assessment of the interactions, gaps and inconsistencies between the national policy direction instruments – the New Zealand Coastal Policy Statement 2010 (NZCPS), National Policy Statement for Freshwater Management 2020 (NPS-FM) and NES-F – and current regional coastal plans. It appears that such analysis has not been undertaken to inform this consultation and that the blunt exclusion of coastal wetlands from the NES-F is an expedient way of avoiding this.

The NZCPS only has broad objectives “to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems”. Its implementation relies on regional coastal plans. The variable and generally more permissive rules in the current suite of regional coastal plans make it likely that they may prove insufficient for looking after the remaining wetlands.

Further, while the NPS-FM requires recognition of the interconnectedness of the whole environment and adoption of an integrated approach – ki uta ki tai – to the management of freshwater, estuaries have not been explicitly included in freshwater management units, nor have meaningful attributes for estuaries been developed and added, as I recommended in 2020.⁴ While extending the NPS-FM to cover estuaries was included in the Labour Party 2020 Election Manifesto, no changes to the NPS-FM have been progressed to date.⁵

³ MfE, 2022. Managing our wetlands in the coastal marine area discussion document, p.11.
<https://environment.govt.nz/assets/publications/land/ME1669-Discussion-Document-Managing-our-wetlands-in-the-CMA-9-v2.8-FINAL.pdf>.

⁴ PCE, 2020. Managing our estuaries. <https://www.pce.parliament.nz/media/197063/report-managing-our-estuaries-pdf-44mb.pdf>.

⁵ While MfE has reactivated the Managing Upstream project to develop specific attributes for estuaries for inclusion in the NPS-FM, this project appears to be in the initial policy scoping stage.

The original intent of the NES-F rules was to prevent “reinvention of the wheel” and ensure wetlands are “treated in a consistent manner” to avoid further loss of remaining wetlands.⁶ Removing coastal wetlands from the NES-F would decrease integration when more is needed, risking coastal wetlands falling through the cracks.

I support further development of Option 1 mentioned in the discussion document by:

- documenting interactions, gaps and inconsistencies between the national policy direction instruments – the NZCPS, NPS-FM and NES-F – and current regional coastal plans, and
- resolving any conflicts identified by proposing carefully designed amendments to the NES-F to clarify where and how it applies.

The discussion document also mentions definitional issues that surround ‘natural wetlands’. Here I support commissioning a group of experts to come up with a definition that is both ecologically meaningful and policy fit.

Given the precarious nature of many of Aotearoa’s wetlands, I do not think designing a more nuanced framework can wait.

Changes sought

- Commission biodiversity and planning experts to come up with a definition of ‘natural inland and coastal wetlands’ that is both ecologically meaningful and policy fit.
- Support further development of Option 1 by:
 - undertaking further work to carefully assess conflicts, gaps and ambiguities in application of the NZCPS, NFS-FM, NES-F and current coastal plans in the coastal areas
 - resolving any conflicts identified by proposing carefully designed amendments to the NES-F to clarify where and how it applies.

With kind regards



Rt Hon Simon Upton

Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

⁶ MfE, 2019. Interim Regulatory Impact Analysis for Consultation: Essential Freshwater. Part II: Detailed Analysis, Appendix 13. <https://environment.govt.nz/assets/Publications/interim-regulatory-impact-analysis-for-consultation-essential-freshwater-part-2-v3.pdf>.