

Our Reference: A1289267

25 October 2019

Ministry for the Environment  
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**Wellington 6143**

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Dear Sir/Madam

**Otago Regional Council: Submission on *Action for healthy waterways* – A discussion document on national direction for our essential freshwater**

**Introduction**

1. Otago Regional Council (ORC) appreciates the opportunity to provide feedback on the *Action for healthy waterways* proposal (the proposal), which sets out a national direction for New Zealand's freshwater resources and which includes the following proposals:
  - Draft National Environmental Standards for Freshwater (NES-FW)
  - A draft National Policy Statement for Freshwater Management (NPS-FM); and
  - Section 360 Draft Stock Exclusion Regulations
2. ORC acknowledges that the current proposal builds on foundations laid by the Land and Water Forum (2011) and the current NPS-FM 2014 (amended 2017) and is an important step in implementing the Government's 2018's *Essential Freshwater* work programme to protect and restore fresh water in New Zealand.
3. Despite having their roots in the current NPS-FM, the new regulatory proposals mark a paradigm shift in freshwater management, which will affect all New Zealanders, and signals one of the most significant changes to the New Zealand's freshwater management since the Resource Management Act 1991 (RMA) was enacted.
4. It is important that all New Zealanders, irrespective of where they live and how they interact with water, play a part in improving our water quality.
5. ORC staff provided an overview of the proposal to ORC's Councillors before the triennium ended in October 2019. This submission incorporates the views of the Council at that time, who endorsed the key messages discussed in Part I below.
6. ORC has also considered the draft version of the Local Government New Zealand Submission, and supports its key points:

- Overall support for the intent to improve water quality and ecosystem health and the *Te Mana o te Wai* framework;
  - Greater recognition of local authorities' responsibility under the Local Government Act and Part II of the RMA to manage land and fresh water in a way and at a rate that enables people and communities to provide for their social, economic, environmental and cultural wellbeing;
  - Need for acknowledgment of the commitments to halt decline and secure improvements in water quality and ecosystem health already reflected in work programmes of local authorities; and
  - Greater recognition of the cost for local authorities and communities to implement the proposals.
7. In general, ORC supports the overall direction set by the proposal and its intention to improve the health of water bodies. However, ORC has some concerns around specific aspects of the proposed new regulations, and requests that the Ministry for the Environment (MfE) consider suggestions for amendments or alternative approaches to some of the proposed measures as a means to achieving benefits for water quality and quantity.

## Background

8. The Otago region comprises about 32,000 km<sup>2</sup> and is the second largest region in New Zealand. It is characterised by very diverse climate and topography, which support a variety of ecosystems and land uses.
9. Agriculture is the basis of Otago's economic development and continues to be a major source of revenue, as does mining for gold and other minerals, and education. Tourism now provides more than a quarter of Otago's Gross Domestic Product which is the highest proportion for any region in New Zealand.
10. While the diversity in landscapes and ecosystems is widely valued by local communities and a growing number of domestic and international visitors, agricultural development and intensification as well as rapid urban growth in the region's larger population centres (E.g. Dunedin, Queenstown, Cromwell and Alexandra) is a significant pressure on the landscape and the health of the region's natural resources and ecosystems.
11. Otago's primary planning instrument for managing the region's freshwater resources, the Regional Plan: Water for Otago (Water Plan) was notified in 1998 and made operative in 2004. Through the Water Plan, ORC currently manages approximately forty different aquifers and a large number of catchments, some of which discharge to the sea, while others are part of the larger catchments of the Clutha/Mata-Au and its iconic source lakes - Lake Wanaka, Lake Wakatipu and Lake Hawea.

12. On 31 October 2018, ORC adopted a Progressive Implementation Plan (PIP), which outlines the staged implementation of actions the ORC will take to implement the NPS-FM 2014 (amended 2017). As part of the PIP, ORC committed to undertaking a full review of the Water Plan under Section 79 of the Resource Management Act 1991. The PIP provides for the review of the Water Plan to be fully completed by 31 December 2025, by which date a new Water Plan is to be publicly notified. The PIP is attached to this submission as Appendix A.
13. In accordance with the PIP, ORC completed the first stage of its plan review process in April 2019, when Council adopted a Freshwater Management Unit (FMU) framework for the region. This framework provided for the setting of FMUs at two levels. At the highest level the region is divided into five FMUs: Mata-au, Taieri, North Otago, Dunedin Coastal and Catlins. At a lower level the Mata-au FMU has been further divided into five smaller units or 'rohe'. A map of the Otago region's FMU framework is attached as Appendix B.

### **Scope and structure of the ORC submission**

14. This submission focuses primarily on the consultation drafts for the following proposals:
  - Proposed National Environmental Standards for Freshwater (NES-FW)
  - A draft National Policy Statement for Freshwater Management (NPS-FM)
  - Section 360 Regulations for Draft Stock Exclusion
15. In addition, this submission includes feedback on other initiatives that have been outlined in *Action for healthy waterways – A discussion document national direction for our freshwater* and that are likely to be part of future proposals for reforming freshwater management and the wider resource management system.
16. This submission comprises three parts:
  - The first part of the submission provides an overview and discussion of ORC's key messages and comments on the wider principles and broader implications of the suite of proposals.
  - The second part of the submission, which is included as a table, includes more detail on submission points on specific aspects of the three consultation drafts.
  - A summary of ORC's position and concluding remarks are outlined in the third, and final part of the submission.

## PART 1: Key messages

### Overview

17. ORC has reviewed the “Essential Freshwater” draft proposals and has engaged in discussions on these proposals with MfE officials, our Iwi partners, key stakeholders and community representatives.
18. Following the review and discussions ORC:
  - Supports the overall intent of the proposal to improve the health and wellbeing of the region’s freshwater resources and associated ecosystems.
  - Considers that incorporating tangata whenua values and interests in the planning and decision-making process will positively contribute to the health of fresh water and wellbeing of communities.
  - Welcomes the clarity in direction and expectations that is generally being provided in the proposal.
  - Supports the intent to maintain the health and wellbeing of our fresh water and supported ecosystems, stop any further degradation, and where appropriate reverse past damage.
  - Acknowledges the hierarchy of obligations proposed under the new NPS-FM marks a substantial departure from the ‘four wellbeings’ approach (ecological, social, cultural economic). ORC submits that the proposals should provide for practical and effective environmental management practices and implementation timeframes that seek to avoid long term harm to the economic resilience and social fabric of New Zealand’s communities.
  - Is aware that the cost for ORC and its communities to fully meet the proposed new requirements in terms of plan development, monitoring and reporting is likely to be significant. There are currently capacity constraints to ORC’s ability to respond to the changes introduced under the proposal. ORC also believes that the proposed changes and implementation timeframes will result in significant capacity constraints across New Zealand.
  - Considers some of the measures and regulations proposed under the new regulations are rather prescriptive, and their rigid implementation could well stifle innovation or halt projects and processes that have been previously initiated to fully achieve the objectives of NPS-FM 2014 (amended 2017) within Otago.
  - Considers some proposed attribute states (e.g. nutrient limits) may not directly correlate to good environmental outcomes while others (e.g. Dissolved Inorganic Nitrogen and Dissolved Reactive Phosphorus) are likely to be unachievable in parts of the Otago region

*Support for the overarching principle of Te Mana o te Wai*

19. As stated above, ORC supports the current proposal's overall direction, and concepts therein, which are largely consistent with the strategic directions set in NPS-FM 2014 (amended 2017) and with the views of our communities, who want to be able to enjoy our rivers, lakes and wetlands and have access to clean water for contact recreation, drinking and irrigation.
20. *Te Mana o te Wai* establishes a three-tiered hierarchy of obligations, elevating the health of water as the first and absolute priority, above essential human health needs (second priority) and other consumptive and non-consumptive uses (third priority).
21. ORC acknowledges that the proposed hierarchy of obligations will pose significant challenges to individuals, businesses and communities relying on abstractive use of waters for domestic and communal supplies and economic activities (this is discussed in more detail in paragraphs 32 to 41 of this submission). However, ORC also recognises that looking after our water resources in accordance with the principle of *Te Mana o te Wai* will ultimately contribute to the long-term health, and social and cultural wellbeing, of Otago's communities.
22. ORC supports the overarching principle of *Te Mana o te Wai* as it:
  - embodies a more comprehensive long-term view on resource management, recognising that intergenerational social and economic wellbeing depend on current generations of resource users living within environmental limits; and
  - assists decision-making through the prioritisation of values and uses.

*Support for strengthening the requirements to consider tangata whenua values*

23. Fresh water supports a wide array of Kāi Tahu values and sites and resources used by Kāi Tahu that are throughout Otago.
24. ORC supports the Kāi Tahu philosophy of holistic resource management, *ki uta ki tai* – "from the mountains to the sea" and has adopted this concept as a guiding principle within the planning framework of its Partially Operative Proposed Regional Policy Statement (POPRPS), and also in determining the boundaries for our FMU's
25. ORC supports the introduction of the concept of *Te Mana o te Wai* and the strengthened requirements to incorporate tangata whenua values and interests into freshwater planning processes, because this will contribute to the sustainable management of our freshwater resources and wider environment, and the long-term wellbeing of our diverse communities.

*Maintaining the health of fresh water and improving it where appropriate,*

26. Since the inception of the RMA, and further strengthened by the introduction of the first NPS-FM in 2011, maintaining the health of water bodies and improving the quality of fresh water in water bodies degraded by human activities, has been a fundamental aspect of ORC's role and responsibilities in freshwater management.
27. ORC has endorsed this approach, which is already apparent in its Water Plan, through Plan Change 6A (Water Quality) and its POPRPS.

28. ORC continues to support the intent to maintain the health and wellbeing of our freshwater bodies and their associated ecosystems, stop any further degradation, and where appropriate reverse past damage.

*A clear direction, but uncertainty around the detail*

29. The proposed new NPS-FM sets a clear direction by reducing the number of objectives from 12, under the current NPS-FM, to 1. The proposed NPS-FM also applies a much more streamlined structure through the integration of distinct sections on Te Mana o te Wai, Water Quality, Water Quantity and Integrated Management.
30. Similarly, the proposed NES-FW is generally clear in terms of the activities it seeks to manage and the standards and limits that it proposes to set for these activities.
31. Overall, the proposed regulations signal what the Government expects in terms of actions from regulators and water users and resulting environmental outcomes. This degree of clarity is supported by ORC as it is likely to provide for a strong focus for plan development and increase efficiency in decision-making.
32. However, some of the terminology in the provisions for the proposed regulations is uncertain in terms of expectations, outcomes or both, and improvement to the clarity of certain aspects of these proposals would assist all parties. A more comprehensive overview of the proposed provisions or principles within the draft proposals that would benefit from further clarification is provided in Part 2 of this submission.

*A changing stance on the four-wellbeing approach*

33. The hierarchy of obligations established under the principle of *Te Mana o te Wai* will assist with clarifying ORC's obligations under Part II of the RMA, highlighting the primacy of environmental limits which underpin intergenerational economic, social and cultural wellbeing. However, while ORC acknowledges that healthy ecosystems contribute to the overall wellbeing of communities, we caution against an approach that is solely aimed at ensuring the health of fresh water and its ecosystem, without recognising the wider needs and aspirations of people and communities.
34. Looking after the natural environment, while a priority, cannot always be done at 'no expense'. Planning is a human-centric instrument to allow resources to be used sustainably. Therefore, the freshwater planning framework must also provide, to the extent possible, for the social and economic wellbeing of communities.
35. ORC believes that this can be done in accordance with the principle of *Te Mana o te wai*, by recognising the synergies between the four well-beings, and encouraging regional councils to actively pursue planning regulations and measures that seek to achieve all four well-beings at the first instance, and only resort to approaches that favour ecological enhancement at the expense of communities' well-being and economic resilience, where it is not possible to achieve both.

36. Swift action is needed to avoid further degradation of fresh water and delays by regional councils to respond to this risk will result in further uncertainty for land users. Therefore, the process for developing new regional plans and policy statements and introducing new national environmental standards and other regulations must be carried out in a timely manner.
37. However, ORC considers that, depending on the complexity, cost and scale of improvements needed, the new regulations, whether set at regional or national level, there must be time provided to allow people and communities to transition and adapt to those provisions. ORC is aware that doing more earlier will be more cost efficient in the long term but is mindful that expecting too much too soon could have the opposite effect in terms of water quality outcomes.
38. The development of non-regulatory tools, including the provision of educational campaigns, implementation guidance, funding and other incentives, by both local and central government will be equally important to ensure that communities can make a relatively smooth transition to meeting new standards and implementing new land management practices. Furthermore, these tools often also positively influence behaviour change and increase the speed at which regulatory changes can be implemented.
39. As for many other parts of New Zealand, Otago has seen a steady increase in catchment groups, whose aims include improving their understanding of catchment hydrology, implementing on farm improvements, fostering community connections and improving water quality. These groups do and will play a critical role in long term improvements in water quality and land management.
40. For these reasons, ORC calls upon central government and the MfE to assist with the development of these non-regulatory tools and incentives and allow for adequate implementation timeframes when introducing new national environmental standards and regulations

#### *Capacity constraints*

41. The increased scope of ORC's responsibilities and functional activities and stringent timeframes required under the proposal, are likely to generate the need for significant increases in resourcing and investment in additional staff, equipment and systems.
42. The proposal will require a significant increase in efforts from ORC in the following areas:
  - updating plans and policy statements to meet the requirements of the proposed NPS-FM, including monitoring and data analysis under the new National Objectives Framework (While ORC made a commitment to update its Water Plan, the current proposal has shortened the time frame for undertaking this work);
  - adapting data management systems and increasing staffing to respond to increased consenting requirements and administer compliance with new regulations proposed under the NES-FW;

- developing action plans for the adaptive management of freshwater bodies where specified attribute states are showing a declining trend or are below national bottom-lines; and
  - engaging with industry groups, community groups and individuals to help with transitioning towards new land management and resource use practices
43. In addition, the implementation timelines set out in the proposed NPS-FM and NES-FW and cumulative effect of a staged introduction of legislative changes pose a significant challenge for ORC in terms of resourcing.
44. ORC expects these resourcing impacts will be common to all regional councils, which creates a further and more intractable problem: there is likely to be a shortage of suitably qualified and experienced professionals to assist regional councils as well as individual landholders, industry and stakeholder groups (e.g. due to the requirement to prepare and audit certified Farm Management Plans) with this transition towards, and longer term implementation of, the proposals. This challenge is likely to be more significant for smaller councils and organisations, especially when these are located outside the main population centres and could generate competition between councils and industry or sector groups on the job market.
45. ORC considers that there are several options for addressing the risk of capacity constraints across the public and private sectors:
- **Prioritisation and focus efforts on areas subject to the highest risk.** Significant improvements in the health and well-being of fresh water and associated ecosystems can still be achieved by focussing immediate efforts on improving the health of regional 'hotspots' (i.e. degraded or at-risk water bodies/ecosystems) and outstanding water bodies, while applying a more practical approach to monitoring less sensitive areas. For example, by reducing monitoring requirements of areas where there is little risk of degradation or allowing monitoring of FMUs to be rostered on an annual cycle, reporting and development of management programmes (including action plans) can be undertaken in a more cost effective and comprehensive manner.
  - **Establish a national data management system for receiving, storing and reporting on monitoring data.** A national data management system would allow for a more cost-effective approach to data management, than if this were to be undertaken at the level of individual councils.
  - **Cooperation between regional councils.** Increased cooperation between regional councils, facilitated by central government funding, can reduce resourcing requirements through the sharing of information and the development and dissemination of best practice across the country.
  - **Retain the ability to adopt a PIP.** Regional councils that have made significant progress toward improving the health of fresh water but are unable to meet the 31 December 2025 deadline for having new plans in place, should continue to be able to adopt a (new) PIP for giving full effect to the proposed NPS-FM.



46. Finally, ORC is concerned that the timeframes set by the proposal provide limited time or ability to develop meaningful partnerships between council, industry groups and communities. Time and capacity constraints also are more likely to provoke competition instead of engendering cooperation between stakeholders.
47. ORC considers that a key step towards implementing the proposed regulations in a cost-efficient and effective way involves the creation of stakeholder partnerships. These will allow for the strengthening of social connections, fostering of understanding and sharing of information, and sharing the costs of implementing the proposed measures and actions to achieve the improvements needed. ORC submits that the proposal should encourage the formation of these relationships and should provide sufficient time for these relationships to be developed. ORC's position is that, long term, these relationships will ensure enduring investment and commitment by a wider group to freshwater health and ecosystem diversity.

*Supporting communities by providing flexibility and encouraging innovation*

48. Feedback from the rural farming sector and local communities suggests widespread concern that certain aspects of the proposed NES-FW, NPS-FM and stock exclusion regulations, specifically those addressing land management, are overly prescriptive, do not provide for exceptions, and are not always practical. The proposal also promotes a rather prescriptive approach to undertaking processes that inform the development of a planning framework.
49. The use of a rigid planning framework can stifle innovation and contravenes the strategic direction set by the National Objectives Framework (NOF) that was introduced in 2014, which sought to recognise local differences and work with communities to develop tailored responses to local issues and pressures (as opposed to a one size fits all approach). Stringent and prescriptive regulation also creates a risk that resources are often focused on ensuring compliance, rather than delivering good outcomes.
50. To address the lack of flexibility provided by some aspects of the proposed measures ORC welcomes further refinement of the proposals to:
  - i. provide landholders with greater flexibility in terms of the management practices they need to implement to achieve the environmental outcomes envisaged;
  - ii. allow individuals and community groups to continue to build on the work that has been initiated previously to mitigate the impacts of their activities; and
  - iii. allow local authorities to continue their work programmes already committed.
51. An example of this flexibility can be seen in managing contaminant loads on land. The current proposals require stock exclusion, which ORC supports, but having flexibility to identify and manage critical source areas, which often carry a greater load of contaminants, could result in better water quality outcomes than stock exclusion. The flexibility to identify, on farm, the most appropriate method, is ORC's preferred approach.

52. National level support for matters such as critical source area management can be achieved through central government adoption of LiDar, to better enable on site management. This is an example of the type of practical implementation support that the Ministry should support.
53. ORC considers that effective and proactive management of the environment involves the

#### Otago Example 1: Water quality projects supported by ORC's ECO fund

**Waiwera Kaihiku Farmer Led Watercare Group** received two separate grants of \$2,517 to plant a riparian strip on the Waiwera Stream with the local school and \$2,500 towards the trial of silt fences on 14 farmer's land in the catchment to reduce sediment runoff into the Waiwera and Kaihiku streams. This group was created as the result of the Clutha Water Project (now Otago South River Care) which received a total of \$29,000 towards work to establish farmer leaders and developing catchment groups in the Lower Clutha Catchment.

***Outcome:** Support for sharing of local knowledge and development of innovative solutions that can reduce the effect of non-point discharge sources on water quality.*

**The Wanaka Water Project** received \$12,500 towards the costs of a project leader. The Wanaka Water Project undertakes strategic riparian planting, research on the effects of urban stormwater in partnership with the University of Otago and the development of a community-led integrated catchment management plan.

***Outcome:** Bringing together science and local knowledge to develop community initiatives that will lead to improving water quality.*

**NZ Landcare Trust** received \$3,361 to purchase a HACH DR 900 colorimeter to test nitrogen, phosphorus and ammonia in water. The instrument has been used by catchment groups, individual farmers, school groups and staff from other organisations to help determine and explain water quality and stream health. This has helped to inform landowners about the quality of the water and has encouraged a greater understanding of water quality.

***Outcome:** Gathering and sharing data to inform and educate about water quality and identify possible causes and innovative solutions.*

development and implementation of a wide range of management tools, both regulatory and non-regulatory.

54. While ORC is about to embark on a comprehensive review of its Water Plan, we want to work together with iwi partners, communities and stakeholders to develop non-regulatory tools, such as educational programmes and the provision of financial support, that encourage people or organisations to seek for innovative approaches to managing the impacts of their activities on the environment. The ORC's ECO fund (Environment. Community. Otago) is one such initiative. For further information about this, see Otago Example 1.
55. ORC is supportive of the work that has already been done by community groups and is committed to continue working in partnership with these groups, providing funding for projects, science support where required, and in-kind support for education and best practice initiatives. One initiative where ORC has assisted community groups through the provision of science support is the water quality project undertaken by the Pomahaka Water Care Group. For further information about this, see Otago Example 2.

### Otago Example 2: Pomahaka Water Care Group

The Pomahaka Water Care Group is a farmer led catchment group that was born out of a concern that the water quality in the catchment was deteriorating. This was prompted from the water quality results that the ORC publish as part of its State of the Environment monitoring. Further comparisons of this data against the parameters set out in Schedule 15 of the Regional Plan: Water for Otago prompted the formation of the group.

While the group started out with a focus on water testing, they have many initiatives in the area to promote farm practices that support good water now. These include the creation of sediment traps and small wetlands that are being monitored to measure their effectiveness (ORC sponsor the water testing programme), a trail of sediment cloth to manage sediment run off, a community nursery and plant propagation programme for riparian planting initiatives, regular community events with guest speakers to promote best management, a first response team for farmers to refer concerns about practises on other farms to them for follow up, a stream health programme in schools, as well as a regular water testing programme with updates to the catchment farmers.

**Outcome:** *This initiative is leading to a catchment that has a high awareness of good management practices and improvements in operational behaviour are evident. Future monitoring is hoped to show an improvement in water quality overall for the catchment.*

### Otago Example 3: Simon, Farm operation - East of Milton

Simon has been farming his land for 8 years. Over that time, the farm has invested in stock exclusion and crossing infrastructure, tree planting for new shelter and riparian margins, and investing in a stock water delivery system, to reverse a historic reliance on natural water courses in paddocks. The investment in this has been prioritised to support the sustainability of planned capital development and intensification of the farm in future.

Simon's submission will speak to his concern that the farm's initiative and investment may now act as a penalty as the proposed NPS for Freshwater Management will restrict the planned intensification.

56. Since the release of the *Action for healthy waterways – A discussion document national direction for our freshwater* ORC has been working with Otago communities to help them understand the proposal's intentions and potential implications, and how to engage in the process. Many landowners, managers and industry representatives have expressed concern about how aspects of the proposal will affect their lifestyle, viability of their business and wellbeing. For further information about this, see Otago Example 3

*Relevance and achievability of proposed target attribute states.*

57. The proposed NPS-FM currently contains 23 attributes that require limits. ORC considers that large parts of the Otago region are likely to meet the proposed limits for key attributes but is concerned that the target attribute states for Dissolved Inorganic Nitrogen (DIN) and Dissolved Reactive Phosphorus (DRP) may be difficult to achieve in some parts of the region.

58. Meeting the DIN and DRP attribute states set out in the proposed NPS-FM may not necessarily always be a good indicator of a tangible improvement in ecological health.
59. Furthermore, improvements to ecological health are less likely to be achieved through tight nutrient limits, rather than through controlling sediment runoff from the agricultural landscape, measured through the deposited sediment and suspended solids attributes of the NPS-FM.
60. Finally, the existing NPS-FM provides scientifically accepted controls of ammonia toxicity, periphyton and nitrate toxicity which could be amended so they can be applied by regional authorities in an effects-based manner. It would be necessary to enable these controls to be customised to specific regional conditions. This is in line with current nutrient management practices.

**PART II: Comprehensive overview of submission points**

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Submission Point	Document reference	Issue	Position	Suggested action
<b>ACTION FOR HEALTHY WATERWAYS – WHOLE PACKAGE</b>				
<b>General</b>				
<b>1</b>	<b>General</b>	Prescriptive nature and lack of flexibility around the implementation of aspects of the proposed new regulations [see Part I, paragraphs 44 to 50 above]	Amend	Amend the provisions of the proposed NPS-FM and NES-FW to: <ul style="list-style-type: none"> <li>• provide regional councils with a greater degree of flexibility around the process and timeframe for implementing the new regulations</li> <li>• provide for continuation of existing projects and programmes by regional councils, individuals and communities, that are proven to be effective in maintaining the health of fresh water, stopping further degradation or reversing past degradation.</li> </ul>
<b>2</b>	<b>General</b>	The increased scope of ORC's responsibilities, functional activities and stringent timeframes required under the proposal, are likely to generate the need for significant increases in resourcing and investment in additional staff, equipment and systems [see Part I, paragraphs 44 to 50 above]	Amend	Amend the proposal to reduce the risk of capacity constraints hampering the implementation of measures for managing fresh water. Suggested actions and potential approaches include <ul style="list-style-type: none"> <li>• Prioritisation and focus efforts on areas subject to the highest risk (i.e. degraded or at-risk water bodies/ecosystems) and outstanding water bodies</li> <li>• Establishment of a national data management system for collating, storing and reporting on monitoring data.</li> <li>• Cooperation between regional councils.</li> </ul>

				<ul style="list-style-type: none"> <li>• Retain the ability to have progressive implementation.</li> <li>• Allow for the establishment of meaningful partnerships between local authorities, industry groups and communities.</li> </ul>
<b>Terminology</b>				
<b>3</b>	<b>Terminology</b>	<p>The National Planning Standards require local authorities to draft plans and policy statements using prescribed definitions. For example, the National Planning Standards and the RMA use the term “fresh water” as the noun form and “freshwater” as the adjective.</p> <p>The proposed regulations announced under the <i>Action for Healthy Waterways</i> programme use “freshwater” (one word) throughout.</p>	Amend	The proposed regulations that have been announced under the <i>Action for Healthy Waterways</i> programme will need to apply terms, concepts and definitions that are consistent with those introduced under the National Planning Standards.
<b>4</b>	<b>Terminology</b>	The words ‘land’, ‘farm’, ‘property’ and ‘landholding’ are used interchangeably throughout the NES-FW	Amend	Apply consistent wording across all three proposals (the Draft Stock Exclusion Section 360 Regulations, NES-FW and NPS-FM).
<b>5</b>	<b>Terminology</b>	The proposed regulations refer to water bodies using a number of variants including ‘stream’ and ‘waterways’. The word “stream” is defined by the NPS-FM as having the same meaning as “river” in the RMA, while “waterways” is not a defined RMA term.	Amend	Where reference is made to flowing freshwater water bodies, the term “river” should be used consistently for clarity and certainty.

6	<b>Terminology</b>	Terms are not consistently defined across the three proposals. For example, the definition of dairy cattle in the Draft Stock Exclusion Section 360 Regulations is inconsistent with the definition of dairy cattle included in the NES-FW.	Amend	Ensure that terms are defined in a consistent manner across all three proposals: the Draft Stock Exclusion Section 360 Regulations, NES-FW and NPS-FM.
<b>Future changes</b>				
7	Using placeholders for amendments or further regulation to come	The proposed NPS-FM and NES-FW both include placeholders for further changes to the regulations to be introduced at later stage. The staged introduction of regulations makes it difficult for local authorities and communities to develop actions that seek to ensure compliance with these new regulations. By drip-feeding proposals for new national planning regulations to the public it becomes increasingly difficult for local authorities to undertake plan development processes and have plans in place that are fully consistent with these regulations for any length of time. Councils and communities both require certainty for the next four years to enable completion of necessary plan making processes without constantly having to revisit and potentially rework already completed plan provisions.	Amend	Eliminate placeholders.  Introduction of further proposals for new regulations should be avoided as much as possible until after 31 December 2025 when plans are operative.



Resource Management Act Amendment Bill				
General comments				
8	New planning process for fresh water	<p>The RMA Amendment Bill will introduce a new freshwater planning process that requires councils to have plans for managing fresh water in place by 2025. This new planning process includes:</p> <ul style="list-style-type: none"> <li>• The formation of panels with government appointed freshwater commissioners, local councillors, and tangata whenua-nominated representatives (to consider council plans, hear submissions and make recommendations); and</li> <li>• Restricted avenues for appeal</li> </ul> <p>ORC supports the introduction of a more efficient process that involves participation of independent commissioners qualified in relevant areas of expertise but notes that the National Planning Standards are directing local authorities towards the development of combined plans that address all aspects of resource management, including fresh water, coast, air and urban development.</p>	Clarify	<p>Ensure that any proposal for a new planning process for managing fresh water fits in well with the overarching direction promoted under the National Planning Standards to work toward the development of combined plans for the integrated management of natural and physical resources.</p> <p>ORC would support clarification on how combined plans, as directed through Planning Standards, and RPS's will be dealt with by the appointed Panels.</p>

		<p>ORC is unclear how the new freshwater planning process will fit in with the wider process for developing combined plans for the integrated management of natural and physical resources. It is also unclear how an RPS might be dealt with by the Panel.</p> <p>In addition, no consideration has been undertaken as to the cost of the proposed Panels. It is ORC's understanding that the cost of hearing freshwater plans will be fully borne by the Regional Council, who will have no ability to determine who sits, and no ability to manage the costs.</p>	<p>ORC would like some clarity around the cost of using the Panel for plan hearings. It is anticipated that the Panel will be more expensive than traditional hearings panels have been, and this will be a direct and additional cost to ratepayers. To mitigate this, some cap on the amount able to be charged by members of the Panel would be useful.</p>
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<b>Draft Proposed NES-FW</b>				
<b>General comments</b>				
<b>9</b>	<b>Use of standard consent conditions</b>	ORC support the introduction via the NES-FW of standard minimum conditions for consents for specific activities, as it provides for a greater consistency across the region. However, these standard conditions must be unambiguous in order to be effective and enforceable.	Conditional Support	The wording of proposed standard consent conditions must be clear and unambiguous.
<b>10</b>	<b>Consenting</b>	The proposed provisions requiring consent for certain activities are not always clear whether a land use consent or discharge consent is required. This lack of clarity makes it difficult for consent authorities to determine the matters that need to be assessed and the type of consent conditions that can be imposed.	Conditional support	The proposed provisions requiring consent for certain activities need to be amended to clearly state whether a land use consent or discharge consent is required.
<b>11</b>	<b>Definitions</b>	Definitions of terms applied in the NES-FW are dispersed across different parts and subparts of the NES-FW. This complicates the structure of the NES-FW.	Amend	Centralise all definitions applied throughout the NES-FW in one section (Part 1).
<b>12</b>	<b>Summer vs winter cropping</b>	The provisions of the NES-FW explicitly refer to winter cropping (e.g. provisions 30 and 33). However, it is unclear whether (some of the NES provisions) also seek to manage summer cropping.	Clarify	Provide more clarity around the restrictions and limitations on both summer and winter cropping.

Part 1: Preliminaries				
13	2 Stringency	It is unclear why the National Environmental Standard for Plantation Forestry (NES-PF) prevails over the wetland rules (pending review). This is inconsistent with the overall direction set for managing wetlands promoted under the Essential Freshwater Programme.	Oppose	It is more appropriate to have the requirements of the NES-FW prevail over the NES-PF. In addition, the NESPF specifically allows more stringent provisions to be introduced where those provisions introduce freshwater objectives.
14	3 Charging for monitoring	ORC supports the inclusion of a provision that allows local authorities to charge for monitoring permitted activities. However, the NES-FW does not clearly state under what authorisation charges may be applied.	Clarify	For clarity, the definition should state these are to be set under the Local Government Act 2002.
Part 2 Wetlands, rivers, fish and fish passage				
Subpart 1 - Wetlands				
15	4 Definitions for subpart 1 – nationally significant infrastructure	The term “ <i>major gas or oil pipeline</i> ” needs better definition. (What is “ <i>major</i> ”?).	Clarify	Amend the definition of ‘nationally significant infrastructure’. Greater clarity and more certainty may be added by referring to a volume or a size (diameter).
16	5 Standard wetland monitoring obligation	Clause (2) requires notice under subclause (1)(c) to be given by phone immediately. Given ‘ <i>phone</i> ’ could mean using it for voice, text, email etc, this is potentially open to interpretation.	Clarify	Amend subclause (2)(c) to read “ <i>The advice required by subclause (1)(c) must be given by contacting <del>phoning and speaking to</del> an appropriate regional authority staff member immediately (or as soon as practicable) and be confirmed in writing....</i> ”

17	<b>6 Standard conditions for nationally significant infrastructure</b>	The use of “ <i>avoid, remedy or mitigate</i> ” in subclause (6)(a) is unhelpful because it provides choice and the option to select the least restrictive of these three.	Amend	The emphasis should be on “ <i>avoid</i> ” as a first priority. Only where it is impracticable to “ <i>avoid</i> ”, should “ <i>remedy</i> ” or “ <i>mitigate</i> ” be available options.
18	<b>15 Water take activities</b>	It is not clear what the source of ‘ <i>water take activities</i> ’ relates to (surface and/or groundwater)?	Clarify	Clarify what the scope of sources for ‘ <i>water takes</i> ’ is.
19	<b>17 Water take restrictions – Non-complying activity</b>	It is not clear whether these provisions apply to takes permitted under RMA Section 14(3)(b) (animal drinking water and domestic supplies)	Clarify	Clarify whether the provision applies to takes that are provided for under RMA Section 14(3)(b) (subject to conditions).
<b>Part 3 Farming</b>				
20	<b>27 Feedlots</b>	Not clear whether subclause (1)(a) applies to 80 consecutive days, or 80 days within a 6-month period	Clarify	Amend to clearly state whether subclause (1)(a) applies to 80 consecutive days or 80 days within a 6-month period.
21	<b>27 Feedlots</b>	Condition 3 (d) does not read like a condition.	Amend	Amend the wording to make it read as a consent condition.
22	<b>28 Sacrifice paddocks</b>	The definition of sacrifice paddock is uncertain (use of the word likely) and consequently does not allow for the provision to be easily enforced.	Clarify	Amend the definition to increase its clarity.

Part 3 Farming				
23	<b>29 Other stock holding</b>	The term “ <i>other stockholding</i> ” is not clearly defined, causing the relationship between the provisions in 27, 28 and 29 to be uncertain.	Clarify	Amend clause 29 (1) as follows:  <i>(1) Holding stock in any other stockholding area not covered under 27 and 28 for more than 30 days in a 12-month period, or ...is a restricted discretionary activity.</i>
24	<b>30 Intensive winter grazing</b>	Relationship between conditions is unclear	Amend	Add “and” after 1(f) and 1(g) to be clear that you must do all of these to be permitted.  Note: this amendment is relevant to many other provisions that list conditions
25	<b>30 Intensive winter grazing</b>	The wording of clause (2) is awkward. It is unclear why subclauses (2)(a) and (2)(b) are conjunctive.	Amend	Amend clause (2) to state that either of the two conditions will trigger the need for a Restricted Discretionary Activity consent.
26	<b>34 Irrigated farming</b>	It is unclear in what date is referred to by the term “ <i>commencement date</i> ”.	Clarify	Clarify the date referred to as “ <i>commencement date</i> ”
27	<b>34 Irrigated farming</b>	Unclear how a Farm Plan with a Freshwater Module (FW-FP) can include actions about avoiding, remedying and mitigating adverse effects of contaminant discharges. Assessment of the proposed actions should occur as part the consent application process.	Amend	Amend the proposal so that actions to avoid, remedy and mitigate adverse effects of contaminant discharges are undertaken as part of the assessment of the resource consent application.
28	<b>34 Irrigated farming</b>	The measurement of sediment and microbial pathogen discharges at farm scale in the context of a consent application is very complex and challenging.	Clarify	Guidance is needed on the following: <ul style="list-style-type: none"> <li>• Methods for measuring sediment and microbial pathogen discharges at farm scale.</li> <li>• Methods for assessing compliance with clause 4(c).</li> </ul>

29	<b>35 High risk land-uses</b>	It is unclear what date is referred to by the term " <i>commencement date</i> ".	Clarify	Clarify the date referred to as " <i>commencement date</i> "
30	<b>35 High risk land-uses</b>	It is not very clear what constitutes a change from " <i>old use</i> " to " <i>new use</i> ".	Clarify	Clarify what triggers a change from " <i>old use</i> " to " <i>new use</i> ".
31	<b>36 Land use change for commercial vegetable production</b>	It is unclear in what date is referred to by the term " <i>commencement date</i> ".	Clarify	Clarify the date referred to as " <i>commencement date</i> "
32	<b>36 Land use change for commercial vegetable production</b>	More specificity is required around the periods referred to in clauses (2) and (3).  As presently written, the provision suggests the full year is included, which leads to great uncertainty.	Clarify	Amend the period referred to in clauses (2) and (3) as follows: " <i>1 January 2013 and 31 December 2018</i> ".
33	<b>37 Who must have FW-FP?</b>	It is unclear what date is referred to by the term " <i>commencement date</i> ".	Clarify	Clarify the date referred to as " <i>commencement date</i> "
34	<b>37 Who must have FW-FP?</b>	ORC supports the general position that FW-FPs are a good on farm management tool, which can assist with achieving great outcomes at the farm level. As an instrument, FW-FPs can tie together regulatory requirements and industry best practice with landowner knowledge and experience at the farm scale in holistic fashion.	Support	

35	<b>41 Audit of compliance with FW-FP</b>	As presently worded, 41 allows for the development and auditing of a FW-FP to be carried out by the same person, which could result in unsatisfactory auditing.	Amend	Amend the wording to make it clear that the auditor should not work for the same organisation as the person who prepared the FW-FP.
<b>Additional proposal for the management of nitrogen in Schedule 1 catchments</b>				
36	<b>48 Requirement to provide Overseer output files</b>	<p>OVERSEER outputs can vary between versions even though absolutely nothing has changed 'on the ground'. The output files are often indicative of a real trend in nitrogen discharges, provided they cover a sufficiently long time period.</p> <p>However, the accuracy of the tool in measuring actual nitrogen levels is unclear as it does not always accurately account for local 'ambient' conditions.</p>	Oppose	Promote the use of OVERSEER as an educational or modelling tool, but apply caution around using it for regulation.



Draft Proposed NPS-FM				
General comments				
37	Consistency with 'National Planning Standards'		Amend	Ensure that the layout of the policy framework that needs to be developed under the NPS-FM will be consistent with the National Planning Standards' requirements so that integrating the proposed regulations into regional planning documents can be easily achieved.
Part 1 Preliminary provisions				
38	<b>1.6 Definitions - Stream</b>	<p>There is the defined term "<i>river</i>" in the RMA. Introducing the word "<i>stream</i>" is confusing and unnecessary as it does not aid comprehension to include a second term in the NPS-FM that means the same thing.</p> <p>ORC acknowledges there is a common understanding of the word "<i>stream</i>" that is different to the common understanding of the word "<i>river</i>" and the use of both words within the same document suggests there is a difference between rivers and streams when there is none within the context of the NPS-FM.</p>	Amend	Replace all instances of the word " <i>stream</i> " with " <i>river</i> " and remove the term " <i>stream</i> " from the definitions.
39	<b>1.6 Definitions – Take limit</b>	The NPS-FM provides for take limits to be specified at an FMU-level but it is unclear whether a take limit can also be specified for individual catchments or sub-catchments within an FMU.	Clarify	Amend the definition of " <i>take limit</i> " to make it clear that it is possible for regional councils to set a take limits at FMU and sub-FMU level (i.e. for individual rivers, river stretches or tributaries).

		Aggregation to the FMU level could result in some particularly perverse outcomes whereby a river or tributary is dewatered but the FMU limit is not breached.		
<b>Part 2 Objectives and policies</b>				
<b>40</b>	<b>2.1 Objective</b>	<p>Agree with the sentiment, but some of the concepts used in the Objective (i.e. “health and well-being of water bodies and freshwater ecosystems” and “Essential health needs of people”) are not well defined.</p> <p>It is hard to assess whether the Objective is achieved due to the lack of clarity around the concepts used and wide range of matters that need to be considered.</p>	Support subject to minor amendments	Retain the principle but redraft to include better defined and delineated objective points.
<b>41</b>	<b>2.1. Objective</b>	The Objective is not written as a “done” statement, but rather as a policy (with a ‘how’ focus).	Amend	Redraft to read as an objective.
<b>42</b>	<b>2.2. Policies Header text</b>	<p>The language used in the header text is unclear.</p> <p>The words “<i>intended to achieve</i>” make the header text appear uncertain and weak.</p> <p>Policies are not ends to be achieved. Instead, they are the means for achieving the objective. The header text is confusing in this respect.</p>	Amend	Rephrase header text to “ <i>The policies to achieve the objective are:</i> ”

43	<b>2.2. Policies General</b>	It is not clear how the Policies in section 2.2 achieve the Objective in section 2.1	Conditional support	Amend the Policies to better describe how the Objective in section 2.1 is to be achieved.
44	<b>2.2. Policies General</b>	There is no clear link between the Policies and Provisions outlined under to Part 3	Conditional support	Amend the policies to better describe how the objective point is to be achieved.
45	<b>2.2. Policies General</b>	The policies in Section 2.2 could be more directly phrased. Several policies are drafted more like objectives (i.e. as done statements), rather than actions. For example, Policies 4, 8 to 11 are very objective-like, and include no direction on actions.	Amend	Rephrase policies, for example, policy 4 to: <i>“Consider land use and development effects on a whole-of-catchment basis, including effects on sensitive receiving environments, to ensure integrated freshwater management.”</i>
46	<b>2.2. Policies Policy 4</b>	The term <i>“sensitive receiving environment”</i> is not defined in the NPS-FM, nor is there any clarity around the method that should be used by regional councils to identify <i>“sensitive receiving environments”</i> .	Clarify	Provide more clarity around the term <i>“sensitive receiving environment”</i> and the methods for identifying these environments.
47	<b>2.2. Policies Policy 7</b>	The NPS-FM does not provide guidance around methods for phasing out over-allocation.	Amend	Provide greater guidance or direction on the methods for phasing out over-allocation.
48	<b>2.2. Policies Policy 13</b>	Policy 13 is a restatement of the objective.	Amend	Remove policy 13, or otherwise alter the objective.

Part 3 Implementing objective and policies				
49	Subpart 1, 3.2 Te Mana o te Wai. (5)	<p>ORC is supportive of the development of long-term visions but considers that:</p> <ul style="list-style-type: none"> <li>• A long-term vision set at a regional scale is likely to be too general to set a clear and meaningful direction</li> <li>• That freshwater planning would benefit from long term visions to be set at an FMU (or in the case of Otago sub-FMU/Rohe) level.</li> </ul> <p>ORC considers that long-term visions should be developed for each FMU or Rohe, as this is the spatial/geographical scale at which ORC is required to:</p> <ul style="list-style-type: none"> <li>• develop freshwater objectives and set limits, and</li> <li>• undertake freshwater accounting and monitoring.</li> </ul>	Conditional support	Provide clarity and flexibility around the geographical scope for the long-term vision.
50	Subpart 1, 3.2 Te Mana o te Wai. (8)	<p>The NPS-FM requires that the long-term vision and discussions that led to its formation must inform decision-making. However, it is not clear how the discussions that led to the development of a long-term vision need to be documented and to what extent.</p>	Clarify	Provide more clarity around how and to what extent the content of the discussions that led to the development of the long-term vision need to be documented.

51	Subpart 1, 3.4 Integrated Management. (2)(b) & (5))	The term “ <i>sensitive receiving environment</i> ” is not defined in the NPS-FM, nor is there any clarity around the method that should be used by regional councils to identify these (see submission point 46).	Clarify	Provide more clarity around the term “ <i>sensitive receiving environment</i> ” and the methods for identifying these.
52	Subpart 1, 3.4 Integrated Management. (4)	Effective integrated management requires regional authorities to work together where they share responsibility for a catchment. Subpart 3.4(4) says that local authorities “ <i>should</i> ” cooperate. “ <i>Should</i> ” is not a useful instruction. It gives regional authorities the option not to cooperate, and it is not clear how it can be enforced.	Amend	Replace the word “ <i>should</i> ” in subpart 3, 3.4(4) with a more directive word e.g. “ <i>will</i> ”, “ <i>must</i> ” or “ <i>shall</i> ”.
53	Subpart 1, 3.4 Integrated Management. (5)	The use of “ <i>avoid, remedy or mitigate</i> ” is unhelpful because it provides clear choice and the option to select the least restrictive of these three.	Amend	The emphasis should be on “ <i>avoid</i> ” as a first priority and only where that is impracticable, should “ <i>remedy</i> ” or “ <i>mitigate</i> ” be available options.
54	Subpart 1, 3.4 Integrated Management. (6)	Subpart 3.4(6) states: “ <i>Every territorial authority must include objectives, policies, and methods in its district plan <u>at the next review of the plan</u> to avoid, remedy, or mitigate the cumulative adverse effects of land use resulting from urban development on waterbodies and sensitive receiving environments.</i> ” [ORC emphasis]  It is not clear what “ <i>the next review</i> ” is. It could be the next full review, or any partial	Clarify	Change this policy to be more explicit about the review requirement’s timing.

		review of any part of the plan, or in step with the timing requirements for the NPS-FM (i.e. notified by 2025).		
55	<b>Subpart 2, 3.6 Identifying FMUs and monitoring sites. (1-4)</b>	It is unclear whether the proposed NPS-FM requires the following to be included and/or mapped in regional plans: <ul style="list-style-type: none"> <li>• FMU (boundaries)</li> <li>• Sites for monitoring attributes</li> <li>• Primary contact sites</li> <li>• Location of habitat of threatened species</li> <li>• Outstanding water bodies</li> <li>• Inland wetlands</li> </ul>	Clarify	Clarify whether the following need to be included and/or mapped in regional plans: <ul style="list-style-type: none"> <li>• FMU (boundaries)</li> <li>• Sites for monitoring attributes</li> <li>• Primary contact sites</li> <li>• Location of habitat of threatened species</li> <li>• Outstanding water bodies</li> <li>• Inland wetlands</li> </ul>
56	<b>Subpart 2, 3.7 Identifying values and environmental outcomes. (1)</b>	Unclear whether the proposed NPS-FM requires the following to be included and/or mapped in regional plans: <ul style="list-style-type: none"> <li>• The values that apply to each FMU</li> <li>• The attributes developed by Councils for identified values</li> </ul>	Clarify	Clarify whether the following need to be included and/or mapped in regional plans: <ul style="list-style-type: none"> <li>• The values that apply to each FMU</li> <li>• The attributes developed by Councils for identified values</li> </ul>
57	<b>Subpart 2, 3.7 Identifying values and environmental outcomes. (1)</b>	Attributes and monitoring methods must be established for each of the values identified under clause 3.7(1), including attributes and monitoring methods for the health of threatened indigenous flora and fauna and Mahinga Kai or Tangata Whenua values. Some of these attributes are not currently monitored and they are typically not Mātauranga Māori measures.	Support	Provide guidance and support to regional councils for identifying attributes and monitoring methods for the health of threatened indigenous flora and fauna and Mahinga Kai or Tangata Whenua values.

58	<b>Subpart 2, 3.8 Identifying current attribute states. (3)</b>	ORC supports the inclusion of provisions that require council to use the best available information at the time and to not delay decision-making due to the uncertainty around the quality or completeness of the available information.	Support	Retain, as it enables decision-making in situation where little information is available.
59	<b>Subpart 2, 3.9 Setting target states. (1-5)</b>	Unclear whether the proposed NPS-FM requires the following to be included and/or mapped in regional plans: <ul style="list-style-type: none"> <li>• The target attribute state for each relevant monitoring site</li> <li>• The timeframes for achieving target attribute states</li> </ul>	Clarify	Clarify whether the following need to be included and/or mapped in regional plans: <ul style="list-style-type: none"> <li>• The target attribute state for each relevant monitoring site</li> <li>• The timeframes for achieving target attribute states</li> </ul>
60	<b>Subpart 2, 3.9 Setting target states. (6)(c)</b>	ORC is in support of these proposed provisions as it could ensure that plan development processes can proceed, even in situations where the amount of technical background information (e.g. length of the data record) is currently limited.	Support	Retain these provisions.
61	<b>Subpart 2, 3.11 Setting environmental flows and levels (3)</b>	ORC notes that the proposed requirement to set flows or levels does not apply to wetlands. However, in some cases it may be appropriate to set levels for wetlands (e.g. where flows in rivers upstream of a wetland can be modified by abstraction or damming activity).	Amend	Consider extending the requirement to set levels to apply to wetlands.

62	<b>Subpart 2, 3.12 Identifying take limits (3)(d))</b>	<p>The concept “<i>Essential health needs of people</i>” is unclear.</p> <p>Specify what uses or water are encompassed under this concept. (I.e. Does the term “essential health needs of people” include safe drinking water, disposal of waste water, or is it wider than this?)</p>	Clarify	<p>Define the concept “<i>essential health needs of people</i>” or provide clarity around the types of uses of water that are considered to provide for the “<i>essential health of well-being</i>”.</p>
63	<b>Subpart 3, 3.15 Inland Wetlands (1)</b>	<p>Terms that are used in Subpart 3 of the NPS-FM are also used in other parts of the document (For example, the terms “<i>net loss</i>” and “<i>inland wetland</i>” are defined in Subpart 3, 3.15 Inland wetlands, but are previously referred to in Part 2, 2.2 Policies)</p>	Amend	<p>Include the definitions under 3.15 (1) in Part 1, 1.6 Definitions as it may assist with clarifying terms that are used elsewhere in the document.</p>
64	<b>Subpart 3, 3.15 Inland Wetlands (5)</b>	<p>ORC supports the policy direction to avoid further loss or degradation of natural inland wetlands.</p> <p>However, we note that:</p> <ul style="list-style-type: none"> <li>• the proposed wetland mapping requirement is a mammoth task that will be resource intensive (cost and staff time) and difficult to carry out due to the remote nature of some wetlands and their dynamic nature (e.g. wetlands can increase or decrease in size depending on climate conditions).</li> <li>• Although MfE have verbally indicated that this mapping would be carried out by central government or</li> </ul>	Conditional support	<p>More clarity and certainty needs to be provided around:</p> <ul style="list-style-type: none"> <li>• The level and type of support that regional councils can expect to receive from central government to map wetlands.</li> <li>• The timeframe for mapping, and what guidance will be provided as to how regions should go about prioritising the mapping of wetlands.</li> <li>• The criteria for SNA identification in wetlands and how this relates to the identification of SNAs in terrestrial areas under the NPSIB, noting that SNAs could potentially contain wetlands and “terrestrial” parts.</li> </ul>



		<p>supported by central government, the proposed NPS states this as a requirement of regional councils.</p> <ul style="list-style-type: none"> <li>• Wetland mapping would need to be implemented over a minimum 5-year period, and mapping would need to be prioritised according to wetlands with the highest values and at the greatest risk.</li> <li>• Criteria are lacking for the identification of wetlands that are Significant Natural Areas (SNAs under S.6) are also lacking. Wetlands are excluded from the NPS for Indigenous Biodiversity, which will include criteria for SNAs in terrestrial environments (excluding wetlands) only.</li> </ul>		
65	<b>Subpart 3, 3.16 Streams (1)-(6)</b>	<p>The proposed policy in (1) sets a very high bar. However, as currently worded the proposed requirements in 3.16 (4) to amend regional policy statements and plans to ensure there is no net loss in the extent or ecosystem health of a stream only apply to activities, such as culverting/piping of streams, infilling of river beds, and permanent diversions. The clause currently does appear to include activities such as damming or water taking, which are common throughout the region and pose a higher risk to stream health.</p>	Amend	Amend the requirements set out in 3.16(4) to include all activities that may impact on stream health, including water taking and damming.

66	<b>Subpart 3, 3.17 Fish Passage (1)-(6)</b>	The term “Structures”, as used in 3.17 (4) to (6), is not defined in the NPS-FM. “Structures” could include culverts, weirs, dams, outfalls, etc. It is unclear whether the definition of the term structure in the RMA is consistent with how this term should be interpreted within the context of the NPS-FM.	Clarify	Make reference to the definition of “structures” in the RMA.
67	<b>Subpart 3, 3.17 Fish Passage (4)-(6)</b>	<p>ORC is supportive of the objective to achieve species diversity and abundance of fish by removing current barriers to fish passage. The provisions are however impractical for the reasons outlined below.</p> <ul style="list-style-type: none"> <li>• There are many instream structures in Otago that have been established under the permitted activity rules of ORC’s Water Plan. ORC has no record of where they are, or how many of these structures exist.</li> <li>• There are many instream structures in Otago that ORC does not own. ORC has no statutory powers to undertake works on structures owned by others, or to compel owners of lawfully established structures to undertake those works.</li> <li>• The remediation assessment and prioritisation is based solely on the specified ecological criteria, with no account of other factors such as cost, technical feasibility, or ability to</li> </ul>	Amend	<p>Consult further with regional councils, conservation groups and agencies and sector groups on the drafting of this provision to ensure it will be practical and feasible to implement.</p> <p>Greater consideration should be given to improving species diversity and abundance and fish passage through the development of non-regulatory support mechanisms; and FW-FPs.</p>

		<p>consent the remediation option. This approach appears to ignore the effectiveness and efficiency of remediation and prioritisation processes.</p> <ul style="list-style-type: none"> <li>The identification and prioritisation and implementation of remediation programmes will require significant (financial, staff time).</li> </ul>		
68	<b>Subpart 3, 3.20 Accounting systems (6)</b>	<p>ORC supports the requirement to improve freshwater management by providing for comprehensive freshwater accounting systems. However, monitoring the taking of water under permitted activity rules in the water Plan or under RMA Section 14(3)(b) is challenging, as permitted takes are not required to be metered under Resource Management (Measurement and Reporting of Water Takes) Regulations and often does not hold any information on the location, rate of take and/or volume of take.</p>	Conditional support	<p>Provide regional councils with further guidance and practical tools to model permitted takes for stock water and domestic use within FMUs.</p>
69	<b>Subpart 3, 3.20 Accounting systems (7)</b>	<p>The term “<i>freshwater take</i>” is a definition</p>	Amend	<p>Consider including the definition of the term “<i>freshwater take</i>” in Part 1, 1.6 Definitions as it may assist with clarifying the meaning of this term.</p>

70	<b>Subpart 3, 3.23 Exception for naturally occurring processes (1)</b>	<p>This provision is unclear for three reasons:</p> <ul style="list-style-type: none"> <li>• There is no clarity around the process that regional councils must follow to exempt all of a water body that is affected by naturally occurring processes from the requirement to achieve national bottom lines</li> <li>• The notion “<i>to the extent feasible</i>” is unclear and does not necessarily refer to an environmental outcome.</li> <li>• The term “<i>naturally occurring processes</i>” is not well defined and includes processes or events that are sporadic but could have profound impact on the health of a river.</li> </ul>	Clarify	<p>Amend the provisions to provide greater clarity around</p> <ul style="list-style-type: none"> <li>• The process that regional councils must follow to exempt all of a water body that is affected by naturally occurring processes from the requirement to achieve national bottom lines</li> <li>• The degree to which the attribute states of water bodies exempt from natural bottom lines need to be improved to meet the requirements of the NPS-FM.</li> <li>• The meaning of the term “<i>naturally occurring processes</i>”</li> </ul>
71	<b>Subpart 3, 3.23 Exception for naturally occurring processes (3)</b>	Clause (3) is a definition.	Amend	Consider including the definition of the term “ <i>naturally occurring process</i> ” in Part 1, 1.6 Definitions as will assist with streamlining the NPS-FM.

Part 4 Timing				
72	4.1 Timing	<p>The implementation timelines set out in 4.1 provide a very short term in which to achieve the proposed NPS-FM's objective and achieve its requirements.</p> <p>Responding to the requirements set out in the NPS-FM within the timeframes set out in 4.1 will require significant resource investment in additional staff, equipment and systems.</p> <p>It also poses challenges to our key stakeholders (community groups, industry groups, Iwi, etc).</p>	Amend	Provide regional councils with greater flexibility around the timeframe for fully implementing the NPS-FM through their plans and policy statements.
Appendices				
73	Appendix 2A – Table 2	This attribute is very expensive to monitor.	Amend	Consider replacing with or adding periphyton (percent cover) to identify the type of periphyton. Chlorophyll (Chla) does not do that.
74	Appendix 2B – Table 13	ORC has no historical datasets of QMCI. QMCI requires replicate samples to achieve an acceptable level of precision.	Amend	Replace QMCI with SQMCI. The SQMCI (Semi-Quantitative MCI) responds to changes in community dominance in a similar manner to the QMCI (Quantitative Macroinvertebrate Community Index) but requires fewer replicate samples to achieve the same precision. In addition, ORC's historical datasets are SQMCI not QMCI.

75	<b>Appendix 2B – Table 15</b>	The Fish Index of Biotic Diversity does not work very well in all parts of the region. Monitoring for this attribute works well in areas with high species diversity, but less so in areas with low species diversity.	Amend	Make this attribute optional or only require the monitoring of this attribute in situations where a broader number of fish species have been identified as values under the process set out in Subpart 2.
76	<b>Appendix 2B – Table 16</b>	Submerged Plants (natives) is an expensive attribute to monitor and a three-year timeframe for conducting monitoring is too short.  Furthermore, there is currently a shortage of qualified contractors in the region (i.e. one) to monitor this attribute.	Amend	Amend the proposal to provide for a five-year monitoring timeframe.  Alternatively, MfE could contract the one provider to monitor nationally and RC's contribute to the cost on a pro rata basis. This approach may achieve efficiencies of scale and help support smaller authorities with challenging environments in terms of issues and access.
77	<b>Appendix 2B – Table 17</b>	Submerged Plants (invasive species) is an expensive attribute to monitor and a three-year timeframe for conducting monitoring is too short.  Furthermore, there is currently a shortage of qualified contractors in the region (i.e. one) to monitor this attribute.	Amend	MfE could contract the one provider to monitor nationally and RC's contribute to the cost on a pro rata basis. This approach may achieve efficiencies of scale and help support smaller authorities with challenging environments in terms of issues and access.

Draft Stock Exclusion Section 360 Regulations				
78	<b>General comment</b>	<p>ORC supports the principle of stock exclusion from water bodies, but considers that a blanket, prescriptive set back may not always achieve the best environmental outcomes.</p> <p>The proposal may require some land owners to remove existing and effective fencing (in order to achieve compliance with the proposed regulation). This is economically inefficient and can be environmentally ineffective (risk that soil disturbance cause sedimentation in streams).</p>	Amend	<p>Amend the proposal to provide greater flexibility (i.e. exemptions) for landholders where:</p> <ul style="list-style-type: none"> <li>➤ The establishment of fences in accordance with the proposed regulations is not practical due to physical constraints</li> <li>➤ Existing fencing has been established that has been proven. to be effective or where no tangible environmental benefits can be achieved from replacing it to comply with the proposed regulations</li> </ul> <p>Alternatively, stock exclusion can be addressed through the FW-FP's</p>
79	<b>General comment</b>	<p>Further guidance or clarity could be provided around the range of methods that can legally be applied for stock exclusion, and whether methods other than fences, such as natural barriers, rock walls and hedging, are also considered to be legitimate methods for excluding stock from water ways.</p>	Clarify	<p>Provide more clarity around the methods that can be applied to meet the stock exclusion requirements, without imposing tight constraints (i.e. limiting the methods may stifle innovation).</p>
80	<b>General comment</b>	<p>There is a lack of clarity around the status of provisions 1 to 3 in the <i>Information notes</i></p>	Clarify	<p>Remove provisions 1-3 from the <i>Information Notes</i> and incorporate these within the <i>General Stock Exclusion Requirements Section</i>.</p>

81	<b>Information note 1</b> <b>1</b>	It is unclear whether the width of the river is measured from one edge of the river bed to the other edge, or only refers to the width of the wetted river bed.	Clarity	Improve clarity around the method for measuring the width of the river.
82	<b>Information note 2 and 3</b>	Lack of clarity around the method for calculating <i>carrying capacity</i>	Clarity	Provide greater clarity around the methods for calculating carrying capacity.
83	<b>General stock exclusion requirement a)</b>	It is difficult to monitor or enforce the maximum allowable frequency of river crossings (twice per month). Have no way of knowing if this happens or not.	Amend	Amend the provision so it becomes easier to enforce or monitor (without the rule becoming too onerous for landholders or regulators).
84	<b>General stock exclusion requirement a)</b>	The general stock exclusion requirements only refer to stock crossing water bodies. It is not clear whether the general stock exclusion requirements also apply to stock entering the water body, or accessing its banks or riparian edges	Clarify	Improve the clarity of the rule.
85	<b>General stock exclusion requirement a)</b>	The provision does not apply to deer, even though-09p-p00o deer are known to love playing in water and creating muddy wallows.	Amend	Amend the provision to apply to deer.
86	<b>General stock exclusion requirement c)</b>	Exemptions could be considered for existing fencing that do not comply with the proposed requirements where it can be demonstrated there are no alternatives or where no tangible environmental benefits can be achieved from replacing it to comply with the proposed regulations. However, the	Amend	Amend the proposal to provide more clarity around: <ul style="list-style-type: none"> <li>➤ the circumstances where exemptions may apply</li> <li>➤ the process for applying for an exemption (including assessment criteria and information required to be provided)</li> <li>➤ the requirement to monitor exemptions.</li> </ul>



		<p>proposal, as currently drafted, also does not clearly stipulate:</p> <ul style="list-style-type: none"> <li>➤ The circumstances under which landholders can seek an exemption.</li> <li>➤ The process for applying for an exemption.</li> </ul>		<ul style="list-style-type: none"> <li>➤ The cost or process associated with an exemption; and</li> <li>➤ Who bears responsibility for monitoring the exemptions.</li> </ul>
87	<b>General stock exclusion requirement d) i</b>	The Rules for Assessment of Carrying Capacity of Crown Land do not provide clarity around the method for calculating carrying capacity	Clarify	Provide greater clarity around the methods for calculating carrying capacity.
88	<b>General stock exclusion requirement d) ii and iii</b>	<p>The definition of dairy cattle (in ii) includes dairy cattle not being milked, that are grazed off the platform either temporarily or throughout the year and excludes dairy support. However, the definition of dairy support in iii) which is excluded from the definition of dairy cattle ) also includes dairy cattle not being milked, that are grazed off the platform either temporarily or throughout the year</p> <p>So dairy cattle not being milked, grazed off platform either temporarily or throughout the year are dairy cattle and dairy support, and both included and excluded.</p>	Amend	Amend the definitions of “ <i>dairy support</i> ” and “ <i>dairy cattle</i> ” to avoid overlap.

89	<b>General stock exclusion requirement d) vii</b>	The definition of “ <i>river</i> ” excludes ephemeral streams. It is unclear whether this exemption also applies to naturally ephemeral streams and streams that are ephemeral due to abstraction.	Amend	Amend the definition to make it clear that the exemption only applies to naturally ephemeral streams.
90	<b>General stock exclusion requirement d) viii</b>	The definition of “ <i>setback</i> ” is unclear as it allows for the setback to be measured as the distance between the edges of the bed as well as the distance between the edges of the wetted bed. These are often different.	Amend	Amend the definition to provide greater clarity around the method for calculating setback.

### **PART III Concluding remarks**

59. ORC recognises that, as a sector, we have not gone far enough fast enough under current legislation, resulting in efforts falling short of the outcomes expected by our communities. This proposal positively builds on previous advancements to tackle fresh water management, by elevating the primacy of *Te Mana o te Wai* thus providing us with a stronger narrative and clear principle to build from, and to better support the well-being of our natural and physical environment and communities.
60. While ORC has been active in tackling Otago's fresh water management challenges, it recognises it can and needs to do more. ORC is therefore supportive of the clear direction the proposals require. It is encouraging to observe a greater recognition that water quality is an issue for all New Zealand, not just in our rural environments.
61. An important difference to previous initiatives is that these proposals take an intergenerational perspective over achieving short term results, balancing the needs of the day with making provision to be able to deliver positive, sustainable outcomes into the future. This new approach for freshwater will align better with planning horizons and provide more robust planning options.
62. However, success of the desired outcomes will only be achieved by local authorities, iwi partners, stakeholders and the wider community having clear, practical direction that will allow them to work together to achieve positive outcomes, and the flexibility to be innovative to the benefit of the environment and community's well-being.
63. It is critical that Government carefully considers all feedback on the detail of these proposals, particularly the regulatory framework of objectives, policies and rules and makes amendments as necessary to ensure they are clear, reasonable, defensible and enforceable.
64. Capacity constraints are a very real risk to successful outcomes. Competition for limited resources and inefficiencies of process are areas Central Government can assist with ensuring the process does not unnecessarily get in the way of progress and outcomes.
65. ORC's experience is that positive collaboration with our Iwi partners, industry groups and local communities is key to responding and adapting to make affective sustainable changes in how we use and interact with land and fresh water. While these relationships already exist, and are successful, the implementation of the freshwater package will require all parties to contribute more and differently to ensure success. Building and strengthening these relationships requires time. ORC is hoping for an outcome from this submission process that facilitates supporting and strengthening both existing and new relationships with our partners, stakeholder groups and communities which enables temporal adjustments to be made.

66. Finally, the proposals must provide due consideration of community well-being within the regulatory framework, enabling people to live and work within their environments while fostering environmental awareness, ensuring protection and enhancement of fresh water.

Yours sincerely



Sarah Gardner  
**Chief Executive**